

HB

58

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 27, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/14/97

The FINANCE Committee considered:

SSHB 58

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58

CIVIL ACTIONS & ATTY PROVIDED BY INS CO.

"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute CSSS HB 58 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) AK Jud Council
AK Court Sys

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) (2) DDA 2/27/97
 (1) DCED 2/27/97

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Edon G. Field</i>	X			
<i>Pete Kelly</i>				✓
<i>Terry Martin</i>	X			
<i>Gene Therriault</i>				✓
<i>John Kohring</i>	X			
<i>Charles Moses</i>			X	
<i>John Foster</i>	X			
<i>J. Davis</i>				X
<i>Grussendorf</i>				✓
<i>G. Davis</i>				X

CO-CHAIR'S SIGNATURE

Gene Therriault
 Therriault

FISCAL NOTE

Bill Version: CSSSHB 58 (JLD)

(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Effective Date: _____

Department Affected: Administration

Title: An Act relating to civil actions; amending Rules 49 and BRU:

Risk Management

68.

Component: Risk Management

Sponsor: Representatives Porter, Cowdery

Requestor: House Judiciary

COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability exposure and the amount Risk Management will ultimately pay in future liability loss settlements will be reduced by this legislation.

The extent of such savings is difficult to forecast, due to the uncertainty that the limitations in the type of claims that may be filed or the amounts of damages that can be awarded will be realized in future liability claims — that might be filed against State agencies — arising from events that have not yet occurred.

The state funds the liability coverage provided through Risk Management on a "cash flow" basis, appropriating only the amounts expected to be paid the next fiscal year—collected solely through interagency receipts assessed each agency.

In future years, Risk Management's liability premium assessments will reflect the reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

No immediate negative fiscal impact can be shown due to outstanding unfunded liabilities.

Prepared by: J. Brad Thomson, Director
Division: Risk Management

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2/20/97

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FISCAL NOTE

No. 2
 Bill Version: CSSSHB 58(JUD)
 (H) Publish Date: 2/27/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to civil action"; . . . amending BRU: Civil Division
. . . AK Rules of Civil Procedure, . . . AK Rules of Evidence . . . Component: General Legal Services
 Sponsor: Representative Porter
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Sponsor Substitute for HB 58 is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 2/20/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho* Date: 2/20/97
 Agency: Department of Law

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FISCAL NOTE

No. 3
 Bill Version: CSSHB 58 (JUD)
 (H) Publish Date: 2/27/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act relating to civil actions: relating to BRU: Insurance
independent counsel provided under an insurance policy. Component: Insurance
 Sponsor: Porter
 Requestor: _____ COMPONENT SERIAL NO. 324

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES _____

CHANGE IN REVENUES _____

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)
 This legislation will have a slight fiscal impact which can be managed by the division. The division currently requires the information requested in Section 38 of the legislation but will have to implement regulations for new compilation and reporting requirements.

Prepared by: Mananne K. Burke, Director Phone: 465-2515
 Division: Insurance Date: 2-20-97
 Approved by Commissioner: William L. Hensley Date: 2-20-97
 Agency: Commerce and Economic Development

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FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

BILL NO. HB58

Revision Date: 02/18/97 Dep. Affected: Alaska Judicial Council
 Title: Civil Actions & Attorneys Provided by Insurance Company BRU: _____
 Components: _____
 Sponsor: Reps. Brian Porter and John Cowdery
 Requestor: _____ COMPONENT SERIAL NO. 0771

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	17.5	16.7	16.7	16.7	16.7	16.7
TRAVEL		1.3	1.3	1.3	1.3	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.5	19.2	19.2	19.2	19.2	19.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.5	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	26.5	19.2	19.2	19.2	19.2	19.2

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	1	1	1	1	1	1

Estimate of current year (FY 97) cost: \$ None

ANALYSIS: (See attached pages)

Prepared by: William T. Cotton, Executive Director Phone: 279-2526
 Agency: Alaska Judicial Council Date: 2/19/97

Approved by: William T. Cotton, Executive Director
 Agency: Alaska Judicial Council Date: 2/19/97

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**Analysis for Alaska Judicial Council
Fiscal Note on HB 58:
Civil Actions and Attorneys Provided by Insurance Company**

The bill assigns two tasks to the Alaska Judicial Council: (1) review and report on alternative dispute resolution (ADR) programs in other states; and (2) collect, analyze and report on Alaska civil cases which are settled. The costs of the two functions are discussed separately.

1. Review of ADR Programs

The bill provides:

Section 09.42.010. Legislative Intent. It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive and efficient resolution of civil disputes.

Sec. 09.42.020. Pilot program for alternative dispute resolution. The Alaska Judicial Council shall consult with the Alaska Dispute Settlement Association, review court sanctioned alternative dispute resolution programs in other states and in the federal court system, and make recommendations to assist the legislature and the Alaska Court System in the establishment of a pilot program for alternative dispute resolution within the Alaska Court System. The Alaska Judicial Council shall submit a written report to the legislature and to the Alaska Supreme Court within six months after the effective date of this legislation. The report shall include specific types of programs; specific types of cases within each program which are amenable to alternative dispute resolution; the cost to the parties and to the Alaska Court System under these programs; and the qualifications of the neutrals who will provide dispute resolution services under the programs, including nonlawyers.

Sec. 09.42.030. Definitions. In this chapter,

(a) "alternative dispute resolution" is limited to arbitration, mediation and early neutral evaluation.

The Council would hire a contract attorney to complete much of the review of ADR programs. The attorney would be paid \$35 per hour for 200 hours for a total of \$7,000. The contract attorney would work with Council staff to complete the project. Other costs would include a temporary secretary, long distance telephone, and costs for various books and other literature.

ADR Costs Summarized

Personnel

Temporary Secretary 50 hours @ \$16.38/ hour	\$ 841
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Contractual

Contract Attorney (200 hours @\$35/hour)	\$7,000
Telephone	\$ 500
Books	\$ 300

TOTAL \$8,641

2. Review of Settlement Data

The bill provides in relevant part:

Sec. 42. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. **Collection of settlement information.**

(a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other settlement of all civil litigation. The information, including the case name and file number, a general description of the claims being settled, the dollar amount of the settlement to whom it was paid, and any nonmonetary terms, shall be collected on a form developed by the council for that purpose.

(b) The information received by the council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children in need of aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

The Council estimates that 8,000 settlement forms would be filed per year. The data would be entered into a Microsoft Access database (estimating four minutes per form). A data entry employee also would review approximately 500 case files per year to check the accuracy of the settlement data and put the settlements in context (estimated 20 minutes per case). Finally, the data employee would spend about 300 hours cleaning the data and working with Judicial Council staff to conduct the preliminary analysis.

Council staff would complete the analysis and issue a fairly brief annual report based on the settlement forms. A more extensive report would be prepared in the third year based on data both from the settlement forms and the case data. The time of existing Council staff is not included in the fiscal note.

Other costs include short trips to Fairbanks and Juneau to collect case data, a temporary secretary for forty hours, and a small amount for printing and postage.

Settlement Data Review Annual Costs Summarized

Personnel

One Part-time Data Entry/Analysis Employee
 8,000 forms @ 4 minutes each = 533 hours
 5,000 case files @ 20 minutes each = 167 hours
 Data cleaning and Prelim Analysis = 300 hours

Total Hours: 1,000 @ \$16.00 per hour = \$16,000.00

Temporary Secretary
 40 hours @ \$16.83 per hour = \$ 673.20

Travel

One 5 day trip to Fairbanks \$ 700.00
 One 3 day trip to Juneau \$ 600.00

Contractual

Postage and Printing \$ 1,200.00

TOTAL \$19,173.20

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSSHB 68 (JUD)

Revision Date: 03/11/97

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Component: _____

Sponsor: Rep. Porter

Requestor: House Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL						
CONTRACTUAL	13.7	13.7	13.7	13.7	13.7	13.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.4	19.4	19.4	19.4	19.4	19.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.4	19.4	19.4	19.4	19.4	19.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	19.4	19.4	19.4	19.4	19.4	19.4

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 03/11/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 03/11/97

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Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

CSSSHB 58 (JUD) proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

At the present time, a defendant has no right to pay a civil judgment for future damages periodically; such damages must be paid as a lump sum unless the plaintiff requests periodic payments. Plaintiffs rarely exercise this option because they generally do not perceive periodic payments as being in their economic best interest. Thus, as a practical matter, the court system does not now hold hearings on this issue. Sections 11, 12, 13, and 14 of CSSSHB 58 (JUD) give a defendant the option of making periodic payments to a successful plaintiff for judgments in excess of \$100,000. The judgment must set the amounts of the payments, including any increases for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments will be made. Setting the appropriate amount, number, and inflation factor of these payments will require taking and evaluating conflicting testimony from experts and others representing each party, if the parties disagree. Such disagreements are inevitable. The payment hearing will be held before a judge and will not require the expenditure of jury costs. However, additional costs will inevitably arise when a percentage of plaintiffs return to court in later years because the defendant has stopped making periodic payments for some reason. This fiscal note estimates that approximately ten percent of superior court tort judgments are for future damages in an amount in excess of \$100,000.

While California has been cited as a state in which mandatory periodic payments do not result in additional court time, this reputed result was not achieved for at least five to six years following passage of the legislation; during this period, substantial court time was expended on the issue of periodic payments, and the question of the constitutionality of such payments was appealed to the California Supreme Court on two separate occasions before it was finally upheld.

Section 15 of CSSSHB 58 (JUD) repeals and reenacts AS 09.17.070, relating to collateral benefits. This amendment essentially provides that the amount which a defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, at the present time only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

Section 23 of CSSSHB 58 (JUD) modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed thousands of times per year, so even small increases in time spent per case can have a major impact on clerical staff.

Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 28 of CSSSHB 58 (JUD) increases the number of medical malpractice three-person expert advisory panels which will be paid for each year by the court system, by requiring the appointment of such panels in cases involving claims against government doctors. The number of additional panels appointed each year should be relatively low, and this note does not include costs for payments to the panel members.

CSSSHB 58 (JUD) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSSSHB 58 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 96, there were 1005 tort cases filed. Approximately 42 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 53 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 42 default judgments entered, with all entered for the plaintiff. Determining periodic payments will average one day of court time without a jury. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 96, there were 515 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System
Fiscal Analysis
CSSHB 58 (JUD)

Personal Services
Position

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, fully vested, Anchorage, PPT, 1 3/4 months	\$3,706	\$2,025	<u>\$5,731</u>

Contractual Services

Jury Fees

8,663

Superior Court-

42 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)

6,825

District Court-

21 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)

1,838

Programming (one-time cost)

Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce personnel costs for entering interest rate information.

5,000

Total Contractual Services

13,663

Estimated Total Cost

\$19,394

AMENDMENT 1

Adopt

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: CSSH 58(JUD).

- 1 Page 16, lines 13 - 14:
- 2 Delete "or delivery of electrical service"
- 3 Insert ", delivery, or sale of electricity"

Adopted

#2
AMENDMENT

As Amended

OFFERED IN THE HOUSE
TO: CSSH B 58(JUD)

BY REPRESENTATIVE PORTER

pg 3

1 Page 4, line 6, following "law":

2 Insert "; or

3 (4) the provisions of this section are waived by contract"

4 Page 4, lines 11 - 30:

5 Delete all material.

6 Renumber the following bill sections accordingly.

7 Page 5, following line 8:

8 Insert new bill sections to read:

9 "* Sec. 7. AS 09.10.140(a) is amended to read:

10 (a) Except as provided under (c) of this section, if [IF] a person entitled to
11 bring an action mentioned in this chapter is at the time the cause of action accrues
12 either (1) under the age of majority, or (2) incompetent by reason of mental illness
13 or mental disability, the time of a disability identified in (1) or (2) of this subsection
14 is not a part of the time limit for the commencement of the action. Except as
15 provided in (b) of this section, the period within which the action may be brought is
16 not extended in any case longer than two years after the disability ceases.

17 * Sec. 8. AS 09.10.140 is amended by adding a new subsection to read:

18 (c) In an action for personal injury or death of a person who was under the
19 age of six years at the time of the injury or death, the time period before the person's
20 sixth birthday is not a part of the time limit imposed under AS 09.10.070(a) for
21 commencing the civil action."

- 1 Renumber the following bill sections accordingly.

- 2 Page 6, line 1:
 - 3 Delete "another person"
 - 4 Insert "another person's rights"

- 5 Page 24, line 9:
 - 6 Delete "sec. 10"
 - 7 Insert "sec. 11"

- 8 Page 24, line 12:
 - 9 Delete "sec. 11"
 - 10 Insert "sec. 12"

- 11 Page 24, line 15:
 - 12 Delete "sec. 12"
 - 13 Insert "sec. 13"

- 14 Page 24, line 18:
 - 15 Delete "sec. 13"
 - 16 Insert "sec. 14"

- 17 Page 24, line 21:
 - 18 Delete "sec. 14"
 - 19 Insert "sec. 15"

- 20 Page 24, line 24:
 - 21 Delete "sec. 16"
 - 22 Insert "sec. 17"

- 23 Page 24, line 29:
 - 24 Delete "sec. 20"

- 1 Insert "sec. 21"

- 2 Page 25, line 1:
- 3 Delete "secs. 21 and 22"
- 4 Insert "secs. 22 and 23"

- 5 Page 25, line 6:
- 6 Delete "sec. 24"
- 7 Insert "sec. 25"

Delete Sec 65
Pg 25, line 30

Also delete Effective date
from title

AMENDMENT

failed #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 3, line 11:

Delete "eight"

Insert "ten"

Page 3, line 4:

Delete "eight"

Insert "ten"

with drew

0-LS0056K.4

Ford
3/14/97

#1

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

- 1 Page 4, line 6, following "law":
- 2 Insert "; or
- 3 (4) the provisions of this section are waived by contract"

Withdraw

#5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 4, delete lines 11 - 30

failed

0-LS0056\K.7

Ford
3/14/97

#6

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

1 Page 5, line 15, following "(c)":

2 Insert " or (e)"

3 Page 5, line 18:

4 Delete "In"

5 Insert "Except as provided under (e) of this section, in"

6 Page 5, following line 27:

7 Insert a new subsection to read:

8 "(e) On January 1 of each year, the amounts specified under (b) and (c) of
9 this section shall be changed to reflect inflation, if any. The Department of Labor
10 shall adopt a regulation on or before December 31 of each year announcing the
11 change in dollar amounts required by this subsection. In this subsection, "inflation"
12 means the change in the Consumer Price Index for Anchorage, All Items Index,
13 compiled by the Bureau of Labor Statistics, United States Department of Labor."

W. T. Drew

0-LS0056K.8

Ford

3/14/97

#7

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

- 1 Page 5, line 17, following "\$300,000":
- 2 Insert ", plus \$100,000 for injury or death of each person under 18 years of age"

- 3 Page 5, line 19, following "\$500,000":
- 4 Insert ", plus \$100,000 for injury or death of each person under 18 years of age,"

new
"of a person"
after claims
pg 5 line 14
Adopted

W. Th... 0-LS0056K.5
Ford
3/14/97

#6

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

- 1 Page 6, line 1:
- 2 Delete "another person"
- 3 Insert "another person's rights"

filed

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

- 1 Page 6, lines 8 - 9:
- 2 Delete "four times the amount of compensatory damages awarded or \$600,000,
- 3 whichever is greater,"
- 4 Insert "three times the annual net profit reasonably attributable to the commercial
- 5 activity"

#10

failed

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 6, line 21:

Delete through page 7, line 4

Failed 3-5
AMENDMENT

#11

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 7, line 8:

Following "\$100,000"

Insert "or the total of medical bills and other costs reasonably expected to be incurred by the injured party from the time of the injury through two years after the date of judgment, whichever is greater"

Failed -

0-LS0056K.6
Ford
3/14/97

#12

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

- 1 Page 9, line 28, following "action":
- 2 Insert "in this paragraph, "other person responsible" does not include a person
- 3 protected from a civil action under AS 09.10.055"

Alaska State Legislature



Official Business

House Majority Leader

State Capitol
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First Supplemental Sectional Summary

of

CS of SSHB 58 (FIN)

An Act Relating to Civil Actions

The following amendments were made by the House Judiciary Committee when this bill was reported out:

Section 12 and 14. Periodic payments. The word "future" was left intact to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be available to the injured person for the payment of such obligations. Additionally, the inflation index was changed from "Anchorage" to the "United States city average" because the former is updated annually, while the latter is updated monthly.

Section 17. Apportionment of damages. The last sentence was deleted as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 35. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 39. Independent counsel. The words "fees and" were inserted in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that subsection.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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DISTRICT 20

March 13, 1997

Sectional Summary of CS of SSHB 58 (JUD)

An Act Relating to Civil Actions

Section 1. Legislative intent. This section generally sets forth the legislative intent of this Act.

Section 2. Minor consistency change. This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

Section 3. Certain property actions to be brought in six years. This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

Section 4. Contract actions to be brought in three years. This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

Section 5. Statute of repose of eight years. This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;

- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Limitation of actions against health care providers. This section amends AS 09.10 by adding a new section. It generally requires that actions for medical malpractice involving children under the age of six at the time of the alleged negligent act or omission be brought before the child's eighth birthday, including actions involving birth injuries. This statute is tolled in cases where fraud or collusion, or intentional concealment of facts can be shown. It is also tolled until the actual discovery of a foreign object in the body of the injured person.

Section 7. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

→ **Section 8. Noneconomic damages.** This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places more stringent limits on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

→ **Section 9. Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought.

Section 10. Punitive damages. This section relates to new subsections which are added to the preceding Section 9 in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 11. Award of damages; periodic payments. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 12. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

Section 13. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State

of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 14. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

Section 15. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 16. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 17. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 18. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 19. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 20. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 21. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 22. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 23. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 24. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is

consistent with existing Alaska case law. McConkey v. Hart. Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 25. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

Section 26. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

Section 27. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 28. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 29. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 30. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 31. Expert advisory panel; public sector provider. This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 32. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 33. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 34. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 36. Civil liability of hospitals for nonemployees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 37. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or watercraft

while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

Section 38. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 39. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

This section was amended in the House Judiciary Committee by inserting the phrase "fees and" in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that section.

Section 40. Appointment of independent counsel; conflicts of interest.

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 41. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 42. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 43. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 44. Alaska Rule of Civil Procedure 16.1(k)(4). This section is repealed as a consistency change to the foregoing section 42.

Section 45. Alaska Rule of Civil Procedure 16.1(n). This section also is a consistency change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 46. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 47. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 48. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

Section 49. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 50. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 51. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 42.

Section 52. Collateral benefits. This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 53. Apportionment of damages. This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 54 - Section 61. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 62. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

Section 63. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 64. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 65. Effective date. This Act takes effect July 1, 1997.

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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SPONSOR STATEMENT OF SSHB 58 (JUD): Tort Reform Bill

Many individuals and businesses have already experienced the nightmare of litigation that drags on for years and the high legal costs that go with them. Lawsuits in this country have proliferated. Litigation has become an industry. Contingent fee contracts give up to 40% of injured victims' damage recoveries to trial lawyers. The incentives to create the most litigious society on earth are firmly in place. As a consequence, the cost of liability insurance has become unaffordable to many. In some areas of this state, there are no domestic insurance companies which will write a liability insurance policy for any price. Across the country, and throughout Alaska, there is an outcry for reforming our civil justice system. Ordinary people and businesses of all sizes seek relief from a flawed system. Consistent with the foregoing, a more efficient and fair method of compensating wrongly injured victims must be crafted and maintained.

Tillinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards on some \$132 billion nationwide went to the injured party. The remaining 50% went to the cost of litigation and attorney fees. From the foregoing, it is apparent that if the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient because only about half of the cost goes toward any form of compensation for victims. It is unfair because many injured victims receive insufficient compensation to no compensation at all.

In contrast with the foregoing deficiencies, the workers' compensation system returns about 70% of the workers' compensation insurance premium dollars to the injured party. The efficiencies enjoyed in the health insurance industry are even higher, with about 85% of health insurance premium dollars being returned to the beneficiary. The most efficient of them all is Social Security, with 99% of social security taxes collected being returned to the beneficiaries of that system. The relative certainty of recovery, and the certainty in the amount of recovery under these systems, stands in stark contrast to the uncertainties inherent in the litigation of claims and defenses. The absence of uncertainty and high costs of litigation in these alternative

systems makes clear that there is a compelling need for substantial reforms in the civil justice system.

A more specific statement of legislative intent is found in Section 1 of the Act. This Act addresses many of the areas which must be reformed if we are to create an environment which is conducive to rational economic development, a positive business climate, the creation of jobs, and a higher standard of living for all Alaskans. We are all personally responsible for the attainment of these goals, and we are all personally accountable if we fail.

FAX TRANSMITTAL

TO: Representative Therriault, 465-3884

Pages (including cover) 4

SECTIONAL ANALYSIS
OF
HOUSE BILL 58

Prepared by:

Alaska Action Trust
P.O. Box 102323
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March 13, 1997

SECTIONAL ANALYSIS OF CSSS H.B. 58

Alaska Academy of Trial Lawyers
Alaska Action Trust

The Governor's Advisory Task Force on Civil Justice Reform studied court statistics on cases in Alaska and heard from two nationally recognized experts on civil justice reform. Contrary to the stated need for H.B. 58, the Task Force found that there was no explosion in the number of tort cases filed, no evidence of high jury awards, and no evidence of significant numbers of frivolous lawsuits. The Task Force found no evidence of any crisis in insurance cost or availability, or that tort reform in Alaska would have any effect on insurance rates for Alaskans. The following explains why H.B. 58 neither helps Alaskans nor follows the recommendations of the Governor's Task Force.

Section 5: Reduces the ability of those injured by faulty design or construction to recover for their injury by prohibiting claims after eight years from completion of the construction, even if the negligent work is not discovered until after then. *The Governor's Task Force did not recommend any changes to the statute of repose. This provision will prevent local governments, school districts and homeowners from recovering damages for faulty construction which is typically not discovered until a fire, roof collapse or other event occurs long after completion of the project.*

Section 6: Gives only doctors and other health care professionals special protection when their negligence injures young children. This section requires malpractice actions affecting children under six years of age to be filed by the child's eighth birthday, even if the effect of the doctor's negligence can't be recognized because of the infant's age. No other person or professional is given this special protection. *The Governor's Task Force did not recommend any changes regarding when lawsuits must be filed for injuries to children.*

Section 8: This provision reduces the existing cap on non-economic damages. Section 8 not only limits the non-economic damages which can be recovered for all claims to \$300,000 in most situations, but also does not allow non-economic damages to exceed \$500,000, even when someone is quadriplegic and has suffered permanent brain damage. Current law at least allows the cap to be exceeded when injuries are serious. *The Governor's Task Force did not recommend reductions to the cap on non-economic damages because this only harms those who are most severely injured.*

Section 9: This section changes the current legal definition for punitive damages by eliminating reckless conduct as the basis for an award of punitive damages. This means that punitive damages cannot be assessed against a drunk driver and could not have been assessed against Exxon for the oil spill. *The Governor's Task Force did not recommend any changes in the definition of punitive damages.*

Section 10: Section 10 places an absolute cap on punitive damages regardless of the wealth of the wrongdoer or the nature of the wrongdoer's conduct. This section also requires 50% of punitive damages to be deposited to go to the state. This section only benefits large multi-national corporations, like Exxon, against whom a punitive damage award of \$600,000 would have no effect. *The proposal of the Governor's Task Force on punitive damages allowed for consideration of the financial gain of the defendant and did not recommend that punitive damages go to the state.*

Section 11: This section reduces all damages an injured person might receive by a federal income tax rate, *even though these damages are not taxed under state or federal law.* This unfair provision means that an injured person's recovery is automatically reduced 20%-30%. *No such proposal was made by the Governor's Task Force.*

Sections 12 - 14: Force an injured person to accept any damages which are awarded for past injury as installment payments to be paid over time in the future. This takes away the choice of injured Alaskans to decide for themselves whether periodic payments are fair, or meet their needs. *This proposal was rejected by the Governor's Task Force.*

Section 15: This section requires a jury to reduce the damages an injured person can receive by the amount of insurance payments the person has received for the injury, or might receive in the future. *The Governor's Task Force concluded that such a proposal would increase the cost of insurance and rejected the idea.* This provision in HB 158 will only make trials more time consuming and complicated.

Sections 16 - 19: These sections allow responsibility for injury to be allocated to a person or corporation which is not even brought into the lawsuit or into the courtroom. This means that someone at fault can shift blame to an "empty chair" without the jury ever hearing evidence to the contrary. *The Governor's Task Force rejected this proposal because innocent victims might be denied full recovery.* Section 19 even allows punitive damages to be allocated to someone who is not in the courtroom.

Section 21: This section forces injured persons to guess about the outcome of their case with near certainty at the risk of having to pay all of the defendants' actual attorney's fees. This section and

Section 16 encourage a negligent defendant to delay disclosing actors who may be at fault. *The changes to Section 21 are far harsher to victims than the recommendations about offers of judgment made by the Governor's Task Force.*

Other Sections make it more difficult for those injured to have experts testify on their behalf (Sec. 20); give special protection to hospitals (Sec. 35); limit attorney fee recoveries in punitive damage cases (Sec. 34); and make trials more complicated (Sec. 49). None of these changes were recommended by the Governor's Task Force.

question of what level of due process protection a respondent attorney was owed with respect to notice of the charges against him. *Id.* at 550-51, 88 S.Ct. at 1225-26. As Bar Counsel points out, commentators and courts treat *Ruffalo* as being limited to procedural due process concerns. Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 8.1:102, at 923 (2d ed. Supp.1996) (stating that "virtually all courts have concluded that the Supreme Court's characterization [of disciplinary proceedings as quasi-criminal] . . . was made in the narrower context of assessing the applicability of procedural Due Process concerns, such as entitlement to notice of the charges"); see also, *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir. 1990), cert. denied, 498 U.S. 1087, 111 S.Ct. 963, 112 L.Ed.2d 1050 (1991) ("A lawyer disciplinary proceeding is not a criminal proceeding. As a result, normal protections afforded a criminal defendant do not apply." (citation omitted)); *Mississippi State Bar v. Young*, 509 So.2d 210, 213 n. 1 (Miss.1987) ("Most states which have addressed the matter have held that disciplinary proceedings are not so criminal in nature as to evoke double jeopardy protections."). Double jeopardy is a substantive due process protection and therefore is not extended to attorney grievances under *Ruffalo*.⁹

2. *The Lubin case should not have been dismissed.*

[2] In dismissing Lubin, the Board asserted that procedures, conduct, and delay by the Area Hearing Committee created potential prejudice to Triem which could not be set aside. The Board, however, did not specify what procedures and conduct created potential prejudice. Triem argues a number of due process violations as well as prejudicial delay caused by the committee and Bar Counsel.

Over four years passed from the filing of the Lubin grievance to the issuance of the committee's report and recommendation. Bar Counsel did not file a petition for formal

9. We reject Triem's additional argument that the Alaska Bar Rules afford no right of appeal to Bar Counsel, who is only entitled to limited discretionary review by filing a petition with this court

hearing until nine months after Triem rejected the proposed discipline in April 1991. Triem filed a number of motions and eventually answered this petition late. After three hearings, the committee requested two extensions and did not issue a report until approximately eleven months after the close of evidence.

Dicta

A five-year statute of limitations governs the filing of attorney grievances. Alaska Bar R. 18. This reflects a judgment that five years is the outer limit of time in which responding attorneys are able to fairly defend themselves against charges, given the loss of memory, evidence, and witnesses that occurs over time. The alleged misconduct in Lubin occurred between October 1989 and January 1990, and the committee completed its adjudication of the complaint within the five years allowed for filing a complaint. This circumstance militates against the contention that the delay so prejudiced Triem's ability to present a defense as to require dismissal.

The timing and source of the delays also militate against the dismissal. Triem, by moving for a more definite statement, was partially responsible for some of the prehearing delay. Most importantly, the longest delay, the late issuance of the committee's report, occurred after Triem presented his defense, and thus did not prejudice Triem's ability to offer a defense. This eleven-month delay was unjustified, but the persons most hurt by it were the victims of Triem's alleged misconduct and the public, not Triem. The public's faith in the system is harmed by lengthy adjudications of discipline matters, but dismissing the matter would simply exacerbate the injury to the public interest.

Holding

Therefore, we hold that the delays in the Lubin proceedings do not warrant dismissal of the complaint. Because we find that the other due process concerns raised by Triem, discussed *infra*, are either invalid or harmless, we reverse the Board's dismissal and

under Alaska Bar Rule 25(h). Alaska Bar Rule 22(p) clearly states that Bar Counsel and respondent have a right of appeal within ten days of an order or recommendation of the Board.



Fall
1996

ISSUE BRIEF

Medical Malpractice Tort Reform: Lessons from the States

The cost of insuring physicians against medical malpractice claims has increased dramatically in recent years. Skyrocketing premium costs and a string of highly publicized lawsuits have led many physicians to curtail certain high-risk procedures. By reducing the availability of important medical services, this practice of defensive medicine could have serious public-health consequences. In addition, increased malpractice insurance expenses are passed on to patients and health plans, thus fueling medical inflation.

To combat these ill effects, several states have adopted reforms designed to reduce the cost of medical malpractice insurance. More recently, Congress has attempted to follow the initiative of the states but has been unable to enact comprehensive medical malpractice tort reforms into law.

To date, state efforts have enjoyed varying degrees of success in reducing medical malpractice insurance rates. What can be learned from the experience of the states? How can these conclusions be applied at the federal level? The American Academy of Actuaries Work Group on Medical Malpractice Reform has studied the impact of state reforms and offers its comments to state and federal officials who are considering national tort reform.

Findings

Any federal medical malpractice tort reform effort should be based on a package of measures that have exhibited some success in stabilizing medical malpractice costs. The most effective elements of such a package are a cap on noneconomic damages and an

offset for collateral payments from other sources. These reforms would limit the financial exposure of health-care providers to lawsuits and would ensure that damages could not be collected through multiple suits. While there are significant limitations on data used to study specific tort reforms, persuasive results can be observed by looking at medical malpractice costs in certain states over time and relating that experience to the timing of particular tort reform measures.

In the following comparison of cost levels in three states that have enacted tort reform measures, paid losses of the individual states as a percentage of the U.S. total are used as the measure of costs. The percentage of physicians in each state as a total of U.S. physicians is used as a reasonable benchmark. The degree to which the percentage of paid losses differs from the percentage of physicians measures the effectiveness of the reforms. All else being equal, the relative cost percentages of paid medical malpractice claims should remain constant over time. Any observed changes in a state's relative cost levels provide an indication of the effectiveness of tort reform. The three states studied are California, New York, and Ohio.

The American Academy of Actuaries is the public policy organization for the actuarial profession, providing unbiased actuarial information to elected officials and regulators.

Members of the Work Group on Medical Malpractice Reform: James D. Horky, ACAS, MAAA; William E. Burns, ACAS, MAAA; Unda A. Dembe, FCAS, MAAA; Allan C. Lytle, FCAS, MAAA; and Edward M. Wrobel Jr., FCAS, MAAA.



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• **California.** Since the Medical Injury Compensation Reform Act (MICRA) package of reforms was enacted in 1975, medical malpractice costs have fallen substantially as a percentage of the U.S. total.

• **New York.** Individual reform measures were adopted in 1975, 1981, 1985, and 1986. No observable improvement in the state's relative costs has resulted. The New York reforms did not include a cap on damages.

• **Ohio.** Reforms enacted in 1975 included a cap on damages. The cap was overturned in 1985, after which costs rose dramatically and have remained high.

California

The California loss data (Exhibit 1) illustrate that while the state's proportion of the U.S. physician population has remained relatively stable, its per-

Exhibit 1
Malpractice Loss Payments in California as a Percentage of the U.S. Total, 1975-94

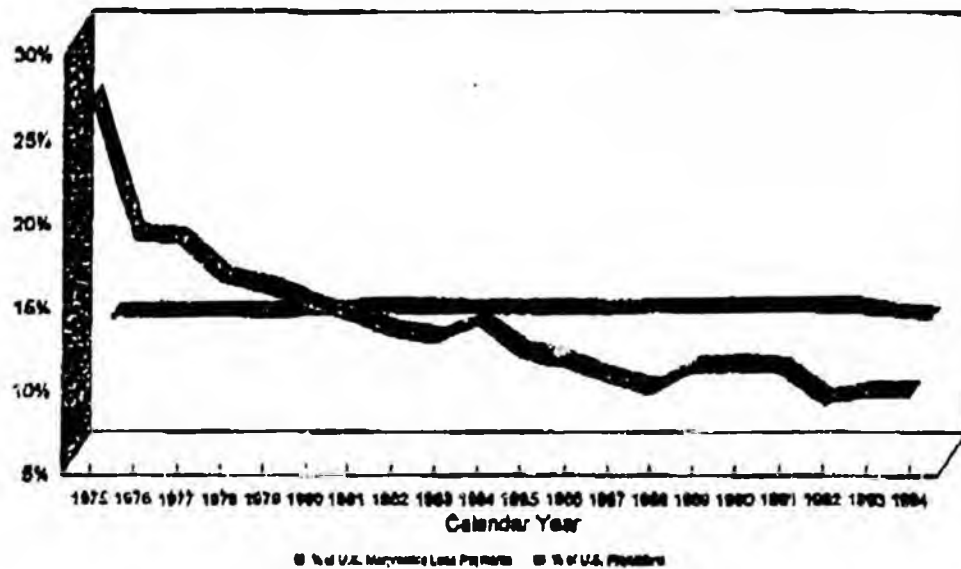
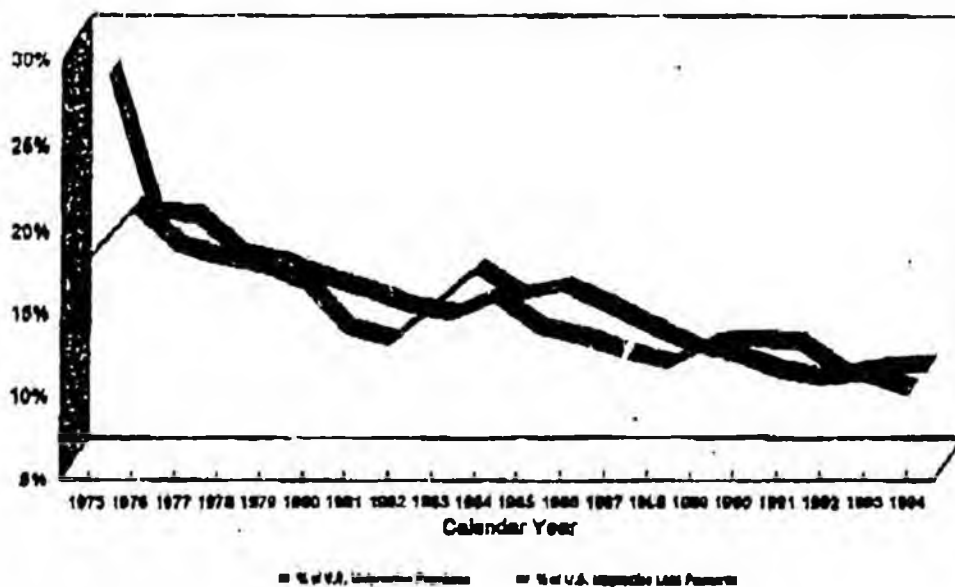


Exhibit 2
Malpractice Premiums and Malpractice Loss Payments in California as a Percentage of the U.S. Total,



centage of loss payments has dropped dramatically since enactment of the MICRA package of tort reforms. Before MICRA's adoption in 1975, California's percentage of loss payments was significantly higher than its proportion of physicians. By 1981, California's loss payments had dropped and were about even with its percentage of physicians. Since that date, California has continued to benefit from MICRA. Costs continue to drop as a percentage of the U.S. total, even as the percentage of physicians remains stable. Although other factors affect these data, the relationship of decreased relative costs to the timing of reform provides strong evidence for the effectiveness of the MICRA package.

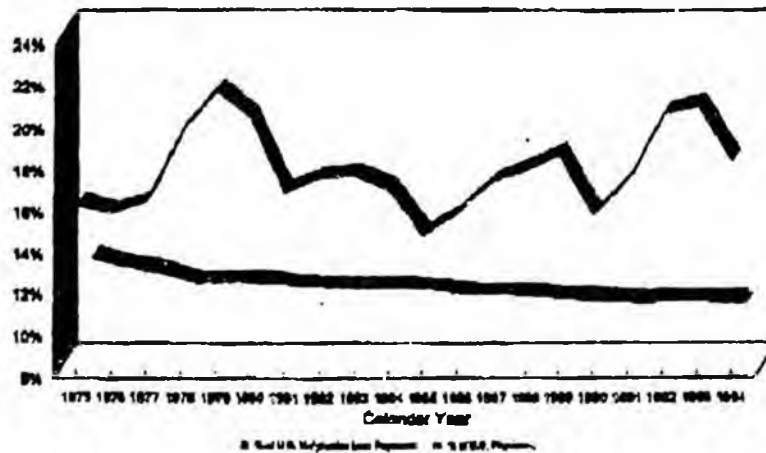
Many opponents of tort reform argue that insurance premiums do not drop after medical malpractice reform. Indeed, costs and premiums normally rise with inflation, and tort reform may only slow the increases. However, the California data show that premiums declined as losses declined. Exhibit 2 compares the paid loss data from Exhibit 1 with California premiums as a percentage of the total U.S.

medical malpractice premiums. Although year-to-year fluctuations do occur, premiums have fallen in proportion to the decline in losses. Competition tends to keep companies at an appropriate profit margin, and any extra profits are normally short-lived.

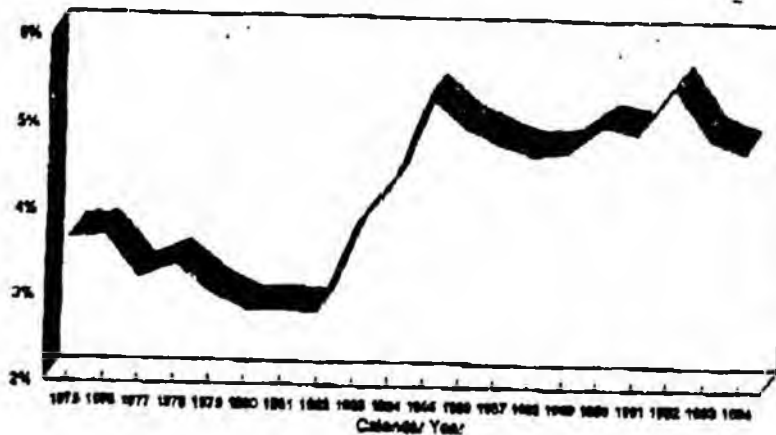
New York

The New York loss experience is shown in Exhibit 3. It shows that the individual tort reform measures implemented in New York did not improve New York's experience relative to that of other states. New York's loss payment percentage does not show any observable pattern of decline or improvement over the 19-year period, despite the various tort reform measures adopted. The New York reforms did not include a cap on damages and were enacted in piecemeal fashion. Therefore, this result supports the merits of a cap on damages and the concept of a package of reforms.

Exhibit 3
Malpractice Loss Payments in New York as a Percentage of the U.S. Total, 1975-94



Malpractice Loss Payments in Ohio as a Percentage of the U.S. Total, 1975-94



Conclusions

California's experience indicates that properly implemented medical malpractice tort reform can reduce the cost of medical malpractice insurance. After reviewing several states' experience with medical malpractice tort reform and examining studies on the issue, the Academy work group has concluded the following:

- a package of reforms is more likely than individual reforms to achieve savings in malpractice losses and insurance premiums, and
- key among the reforms in the package are a cap on noneconomic awards and a mandatory collateral-source offset rule.

For reform to be effective in reducing costs, the cap on noneconomic awards should be established on a

per-medical-injury basis at a level low enough to have an impact (e.g., \$250,000). In addition, a mandatory collateral-source offset rule is needed to ensure that double and triple damages cannot be collected through multiple suits. Under this rule, each suit would have to consider damages already paid from other sources.

Although these reforms have been successful in reducing the cost of medical malpractice insurance, elected officials and regulators must still consider the effects of medical malpractice reform on physicians, consumers, health plans, and other interested parties. When considering medical malpractice reform, state and federal officials should weigh the impact on society as a whole and strive for a balanced, comprehensive solution.



Electric Service for 155,000 Alaskans

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February 26, 1997

Rep. Brian Porter
State Capitol
Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

Dear Representative Porter:

Pursuant to my testimony before the House Judiciary Committee regarding House Bill 58 on Tort Reform on February 22, 1997, you requested that I provide you with information regarding Strict Liability cases that have arisen in the Lower 48. In addition, Representative Eric Croft requested similar information on cases in the state of Alaska. Enclosed is preliminary research performed by our attorneys on both of these subjects. Please let me know if you require any additional information.

We very much appreciate your consideration of our amendment.

Sincerely,

A handwritten signature in black ink that reads "Eric P. Yould". The signature is written in a cursive, slightly slanted style.

Eric P. Yould
Executive Director

cc: Rep. Jce Green

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WRITER'S E-MAIL ADDRESS:
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February 24, 1997

Eric Yould
Executive Director
Alaska Rural Electric
Cooperative Association, Inc.
703 W. Tudor Road, Suite 200
Anchorage, AK 99503

VIA FACSIMILE: 561-5547

Subject: 1997 Legislation--Strict Liability

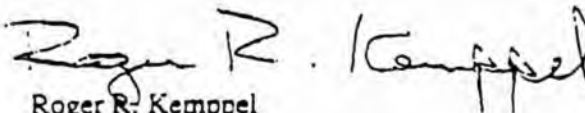
Dear Eric:

At your request, I am enclosing a short summary of some of the other states that have addressed the strict liability issue. Due to the time frame involved, the listing is not exhaustive but should provide some assistance to you in your testimony.

Please call if you have questions.

Sincerely yours,

KEMPEL, HUFFMAN AND ELLIS, P.C.


Roger R. Kempel
General Counsel for ARECA

:lka

Attachment

ARECA\Legis\1997

WISCONSIN

Ransome v. Wisconsin Electric Power Company, 275 N.W.2d 641 (Wis. 1979).

Lightning struck an electric line near a transformer. An electrical insulator was damaged, but power was not interrupted. Four days later, there was a heavy rainstorm. The transformer exploded, and the electricity going to a nearby house was estimated to be in the range of 1,000 to 4,8000 Volts instead of the normal 120-140 Volt service. The house caught fire. The investigator from the fire department believed the fire was caused by an overload of electricity in the service entrance of the house.

Through the application of strict liability, the electric company was liable for the damage to the house. The court said the electricity was unreasonable dangerous and defective when delivered to the house by the electric company.

ILLINOIS

Elgin Airport Inn, Inc. v. Commonwealth Edison, 410 N.E.2d 620 (C.A. 2d Dist. 1980).

During routine testing of a line that service the inn, electric service was switched to an alternate line and then back to the regular line. When service was switched back to the regular line, a switching mechanism failed. The switching mechanism had been tested once a year for the previous five years and was always found to be in good operating condition. The last test had been done about one month prior to the incident. The defect that occurred could not have been discovered by the inspections that took place. The defect caused low voltage which damaged air conditioning motors at the inn. The problem was corrected in five minutes. The court said the electric company was not negligent but could, through strict liability, be liable for the damages.

OHIO AND NEW YORK

Courts in these states have decided not to apply strict products liability to electricity. These decisions are based upon the acknowledgement that the sale and delivery of electricity by a power company is a service and not the sale of a product. These courts reason that the amount a customer pays is dependent upon the length of time the electricity flows through the customer's meter. If the amount paid is tied to the amount of usage, this is more like a service than a product.

The Alaska Supreme Court has not been asked to decide if it would apply the doctrine of strict liability to the sale of electricity. There are trial courts which have been presented with strict liability claims. For example, in *Fancyboy v. Alaska Village Electric Cooperative, Inc.*, Case No. 4BE-94-97 Civil, the assertion was made that the electric company should be held strictly liable for allegedly defective electric service delivered to the plaintiffs' house. In that case, the plaintiffs had received electricity to their house by running a length of 12/2 Romex wire from a neighboring house. The plaintiffs' house caught fire, and it has been alleged that the fire was caused because of low voltage. The trial court dismissed the strict liability claim when the testimony showed that the electrical service was not defective as of the time AVEC delivered the electricity to the neighbor's house.



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March 10, 1997

Representative Gene Therriault
Co-Chairman
House Finance Committee
Room 511
State Capitol
Juneau, AK 99801-1182

Re: HB58

Via Fax: 1-907-465-3884

Dear Representative Therriault:

I wish to comment on the proposed legislation (HB58) that is very much needed in this State for reducing the cost and time of litigation. I fully support the bill in general, and the following section in particular.

1. **SECTION 12:** 09.17.404(d) This language is extremely important as proposed. The reasons are as follows:

a. A defendant can now make an offer of periodic payments to replace the future damages as they would have occurred with cost of living adjustments. Section 104(a)(2) of the Internal Revenue Code allows those payments to flow exempt from Gross income.

b. A plaintiff should be demonstratively advised by counsel of his or her options to either receive a partial lump sum, future lump sums and future periodic payments on a tax exempt basis under Section 104(a)(2).

c. This eliminates the potential dissipation of the award and avoids the "Risks of Mismanagement". Industry statistics show that about 25-30% of all accident victims completely dissipate their judgments or settlement within two months of recovery, and 90% if they spend it all within five years. (The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tener, "California Practice Guide: Personal Injury" TRG 1992 Ch.4)

d. More importantly it allows a person to retain pride and dignity in his or her life, and it eliminates dependence on public assistance programs, as the funds cannot be dissipated through imprudent investments and or spending sprees..

e. Most importantly it makes it highly likely that the injured party is made aware of his or her choices. Currently it is estimated that about 95% of injured parties are not advised or properly advised on this issue. In most cases it could amount from thousands to millions of dollars in increased tax benefits. It also would deter potential plaintiff legal malpractice cases in which the injured party was not demonstratively advised of this choice.

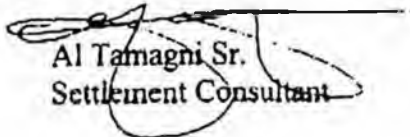
2. **SECTION 13:** 09.17.404(e) This section is excellent as it allows claimants to choose between a "Structured Settlement" funded by United States government obligations or an "Annuity" from a financially sound life insurance company or combination of both. (See Attached Rating Agency Reviews)

Additionally it mandates diversification from affiliated companies, allows potential for independent payment choice, prohibits insurance companies from placing these in house with their own Life Company, and allows placement with an independent carrier in addition to guarantees by a second non affiliated company.

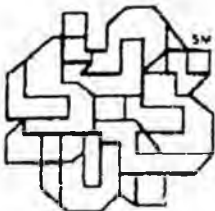
I applaud the action on this bill to make changes in our laws and our courts which we own to facilitate a better system that currently is dysfunctional.

In the event you may have any questions please call at any time.

Very Truly


Al Tamagni Sr.
Settlement Consultant

encl/ratings



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COMP-PARE

1995 Life Insurance Company Rating Definitions

A. M. BEST RATINGS EXPLANATIONS

A++ and A+ (Superior)

Assigned to companies which, in our opinion, have demonstrated superior overall performance when compared to the standards established by the A. M. Best Company. A++ and A+ companies have a very strong ability to meet their obligations to policyholders over a long period of time.

A and A- (Excellent)

Assigned to companies which, in our opinion, have demonstrated excellent overall performance when compared to the standards established by the A. M. Best Company. A and A- companies have a strong ability to meet their obligations to policyholders over a long period of time.

B++ and B+ (Very Good)

Assigned to companies which, in our opinion, have demonstrated very good overall performance when compared to the standards established by the A. M. Best Company. B++ and B+ companies have a good ability to meet their obligations to policyholders over a long period of time.

B and B- (Adequate)

Assigned to companies which, in our opinion, have demonstrated adequate overall performance when compared to the standards established by the A. M. Best Company. B and B- companies generally have an adequate ability to meet their obligations to policyholders, but their financial strength may be vulnerable to unfavorable changes in underwriting or economic conditions.

C++ and C+ (Fair)

Assigned to companies which, in our opinion, have demonstrated fair overall performance when compared to the standards established by the A. M. Best Company. C++ and C+ companies generally have a current ability to meet their obligations to policyholders, but their financial strength is vulnerable to unfavorable changes in underwriting or economic conditions.

C and C- (Marginal)

Assigned to companies which, in our opinion, have demonstrated marginal overall performance when compared to the standards established by the A. M. Best Company. C and C- companies have a current ability to meet their obligations to policyholders, but their financial strength is very vulnerable to unfavorable changes in underwriting or economic conditions.

D (Very Vulnerable)

Assigned to companies which, in our opinion, have demonstrated poor overall performance when compared to the standards established by the A. M. Best Company. D companies have a current ability to meet their obligations to policyholders, but their financial strength is extremely

vulnerable to unfavorable changes in underwriting or economic conditions.

E (Under State Supervision)

Assigned to companies which are placed by a state insurance regulatory authority under any form of supervision, control or restraint, such as a conservatorship or rehabilitation, but does not include liquidation. May be assigned to a company under a cease and desist order issued by a regulator from a state other than its state of domicile.

F (In Liquidation)

Assigned to companies which have been placed under an order of liquidation by a court of law or whose owners have voluntarily agreed to liquidate. Note: Companies that voluntarily liquidate or dissolve their charters are generally not insolvent.

NA-1 (Limited Data Filing)

Assigned primarily to small companies exempt from filing the standard NAIC annual statement. These company reports are based on selected financial data obtained by the A. M. Best Company.

NA-2 (Less than Minimum Size)

Assigned to companies that file the standard NAIC annual statement but do not meet our minimum size requirement. To assure reasonable financial stability, we require a company to have a minimum policyholders' surplus of \$2.0 million for assignment of an initial letter rating. Exceptions include: a company that is virtually reinsured by a Best's rated affiliated company; is a member of a group participating in a business pooling arrangement; or is a company writing stable lines of business and has demonstrated a long history of above average performance when compared to Best's Rating standards. Companies assigned to the NA-2 rating category are eligible for assignment of Best's Financial Performance Rating (FPR).

NA-3 (Insufficient Operating Experience)

Assigned to companies which meet, or are anticipated will shortly meet, our minimum size requirement, but have not accumulated five consecutive years of representative operating experience. This requirement pertains to the age of the company's financial performance and not the actual experience of its management and includes consistency in both the types of coverages written and the relative volume of premium writings. Additional years of operating experience may be required if a company exhibits substantial premium growth or changes in product mix. NA-3 rated companies are eligible for assignment of Best's Financial Performance Rating (FPR).

NA-4 (Rating Procedure Inapplicable)

Assigned to companies whose business and/or operations are such that our normal rating procedure does not properly

apply. Examples are as follows: companies writing lines of business not common to the property/casualty or life/health fields; companies writing financial guaranty insurance; companies retaining only a small portion of their gross premiums written; companies which have discontinued writing new and renewal business and have a defined plan to run-off existing contractual obligations; companies that are effectively dormant or have no significant premium volume or in-force business; companies that are true captives; companies discounting loss reserves to the extent that the anticipated future investment income represents a significant part of their policyholders' surplus; and companies not soliciting business in the United States. This rating is also assigned to the life/health companies whose sole operation is the acceptance of business written directly by a parent, subsidiary or affiliated insurance company, or those writing predominantly property/casualty insurance under a dual charter.

NA-5 (Significant Change)

Assigned to previously letter-rated companies which experience a significant change in ownership, management or book of business, or other event which affects the nature of their operations and makes it impossible to render a rating opinion. Depending on the change, our rating procedure may require one to five years before the company is eligible for a rating.

NA-6 (Reinsured by Unrated Reinsurer)

Assigned to companies which have a substantial portion of their book of business reinsured by, or have reinsurance recoverables from, non-Best's rated reinsurers which represent a substantial portion of their policyholders' surplus. Exceptions are non-Best's rated foreign reinsurers that comply with our reporting requirements and satisfy our financial performance standards.

NA-7 (Below Minimum Standards)

Replaced by the Best's Rating of D.

NA-8 (Incomplete Financial Information)

Assigned to companies eligible for a ratings but which failed to submit complete financial information for the five-year period under review, including all domestic insurance subsidiaries in which the company's ownership exceeds 50%.

NA-9 (Company Request)

Assigned to companies eligible for ratings, but which request that the rating not be published because they disagree with our rating.

NA-10 (Under State Supervision)

Replaced by the Best's Rating of either E or F.

NA-11 (Rating Suspended)

Assigned to previously rated companies which have experienced sudden and significant events affecting their financial position and/or operating performance whose impact cannot be evaluated due to a lack of timely or adequate information.

STANDARD & POOR'S CLAIMS-PAYING ABILITY RATING DEFINITIONS

AAA

Insurers rates "AAA" offer superior financial security on both an absolute and relative basis. They possess the highest degree of safety and have an overwhelming capacity to meet policyholders obligations.

AA

Insurers rates "AA" offer excellent financial security, and their capacity to meet policyholder obligations differ only on a small degree from the insurers rates "AAA".

A

Insurers rates "A" offer a strong financial security, but their capacity to meet policyholder obligations is somewhat more susceptible to adverse changes in economic or underwriting conditions than more highly rated insurers.

BBB

Insurers rated "BBB" offer good financial security, but their capacity to meet policyholder obligations is considered more vulnerable to adverse economic or underwriting conditions than that of more highly rated insurers.

BB

Insurers rated "BB" offer adequate financial security for the "short-tail" or short-term policies, but their capacity to meet policyholder obligations is considered vulnerable to adverse economic conditions or underwriting conditions and may not be adequate for "long-tail" or long-term policies.

B

Insurers rated "B" are currently able to meet policyholder obligations, but their vulnerability to adverse economic or underwriting conditions is considered high.

CCC

Insurers rated "CCC" are vulnerable to adverse economic or underwriting conditions to the extent that their continued capacity to meet policyholder obligations is highly questionable unless a favorable environment prevails.

R (Regulatory Action)

As of the date indicated, the insurer is under supervision of insurance regulators following rehabilitation, receivership, liquidation, or any other action that reflects regulatory concern about the insurer's financial condition. Information on this status is provided by the National Association of Insurance Commissioners and other regulatory bodies. Although believed to be accurate, this information is not guaranteed. The R rating does not apply to insurers subject only to non-financial actions, such as market conduct violations.

"Quantitative" Ratings

A 'q' subscript indicates that the rating is based solely on quantitative analysis of publicly available data. In the case of claims-paying ability ratings, this is the statutory financial data filed with the National Association of Insurance Commissioners. These ratings are issued for each insurer on a standalone basis with out consideration for strength or weakness that might be added by a parent or affiliated companies. These new ratings which were effective July 31, 1995 replace Qualified Solvency Ratings, which are being discontinued.

**MOODY'S CLAIMS-PAYING
RATINGS DEFINITIONS**

Numeric modifiers are used to refer to the ranking within the groups below - one being the highest and three being the lowest. However, the financial strength of companies within a generic rating symbol is broadly the same.

Aaa

Highest quality.

Aa

High quality by all standards; long-term risks somewhat larger.

A

Upper medium grade; adequate security.

Baa

Medium grade; neither highly protected nor poorly secured.

Ba

Judged to have speculative elements.

B

Lack characteristics of the desirable investment.

Caa

May be in default or there may be present elements of danger with respect to principal or interest.

Ca

Speculative in a high degree; often in default.

C

Lowest rated class.

**DUFF & PHELPS CLAIMS-PAYING
ABILITY RATINGS DEFINITIONS**

AAA

Highest claims paying ability. Risk factors are negligible.

AA+, AA, AA-

Very high claims paying ability. Protection factors are strong. Risk is moderate, but may vary lightly over time due to economic and/or underwriting conditions.

A+, A, A-

High claims paying ability. Protection factors are average and there is an expectation of variability in risk over time due to economic and/or underwriting conditions.

BBB+, BBB, BBB-

Below average claims paying ability. Protection factors are average. However, there is considerable variability in risk over time due to economic and/or underwriting conditions.

BB+, BB, BB-

Uncertain claims paying ability and less than investment grade quality. However, the company is deemed likely to meet these obligations when due. Protection factors will vary widely with changes in economic and/or underwriting conditions.

B+, B, B-

Possessing risk that policyholder and contractholder obligations will not be paid when due. Protection factors will vary widely with changes in economic and/or underwriting conditions, or company fortunes.

CCC

There is a substantial risk that policyholder and contractholder obligations will not be paid when due. Company has been or is likely to be placed in state insurance department supervision.

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 10, 1997

The Honorable Gene Therriault, Co-Chairman
Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801

AOGA Position on Tort Reform Legislation

Dear Representative Therriault:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

On February 10, 1997, the AOGA Board of Directors adopted the following position on tort reform legislation. AOGA is aware of your interest in tort reform legislation and wanted to forward our position to you for your reference.

The Alaska Oil and Gas Association believes Alaska should adopt reforms to its civil justice system:

- The Alaska civil justice system gives juries and judges discretion to impose unlimited punitive damages awards, without adequate guidelines or criteria necessary to insure the constitutional protection of due process.
- Alaska's civil justice system discourages investment in the state. Firms assessing whether to invest or to conduct business in Alaska rather than in another state or country must take into account the legal risks that Alaskan law allows, and the substantial legal risks that can be incurred even in defending against frivolous civil actions.

A variety of reforms have been suggested to address these problems. The Alaska Oil and Gas Association believes the most important are:

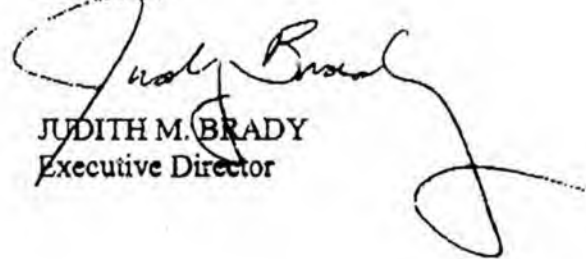
- Limitations on punitive damages. This reform would make it clear that awards beyond those necessary to compensate plaintiffs for real damages would need to be justified by clear and convincing evidence of outrageous conduct, and would be capped - as are sentences in criminal law - so that juries and judges could not impose financially ruinous or unlimited awards.

The Honorable Gene Therriault
March 10, 1997
Page 2

• Judgments should be proportionate to fault. It is fundamentally unfair to require a defendant to pay a much larger share of damages than the defendant's share of fault.

Other legitimate and important reforms are appropriate. However, the two reform areas above are particularly significant to companies who are sensitive to the large risks they face from disproportionate awards and unlimited punitive judgements. Reform of these two areas would reduce business risks, establish a greater degree of fairness, and bring Alaskan law into line with that found in progressive states interested in fairness and a competitive business climate.

Sincerely,



JUDITH M. BRADY
Executive Director

cc: Rep. Brian Porter



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

March 5, 1997

The Honorable Gene Theriault
House Finance Committee
State Capitol, MS 3101, Room 511
Juneau, Alaska 99801-1182

Dear Chairman Hanley and Committee Members:

The following enclosure includes draft amendments United Fishermen of Alaska (UFA) would like to see introduced in HB 58 (Tort Reform). UFA testified twice during the Judiciary Committee hearings with regards to these issues and thought drafting the requests in advance of the Finance Committee hearings would be of some assistance to you.


The concerns of small business people being harmed by frivolous lawsuits and high punitive awards is a valid issue in considering tort reform. The commercial fishing industry is made up of over 18,000 small business owners who are also subject to litigation. Tort reform has its place in protecting the small businessman from frivolous lawsuits.

On the other hand, torts relating to resource damage should be excluded from the lower caps contained in HB 58. These damages have long-term and far reaching effects that are impossible to assess with great precision. In addition, any individual incident can effect tens of thousands of Alaskans - including commercial fishermen. We as Alaskans must send a clear message to those who could damage our natural resources or sensitive ecosystems. If this message is not emphatically expressed, the Exxon Valdez disaster could be the first in a long line of such incidents. Capped punitive damages could be easily absorbed and considered as just another cost of doing business.

In regard to Section 10(d), please refer to the second paragraph of the sponsor statement that accompanies this bill. The fishing community fully agrees with these statements and see the plaintiff as not receiving the fair treatment noted in this statement. If the state were to receive 50% of any punitive award, after attorney fees the plaintiff would be lucky to walk away with 25%. That is definitely not justice.

Please consider these statements and introduce the amendments attached. We are committed to working with the legislature on this bill. I will be happy to answer any questions you may have and thank you for your consideration.

Sincerely,


Theo Matthews, President *eyes*
UNITED FISHERMEN OF ALASKA

TM/cas

Enclosures

cc: Governor Tony Knowles
Alaskan Congressional Delegation
Senate & House Resource Committees
Representative Gail Phillips, Speaker of the House

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Dinkners Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen Union • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gineffers



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463 2545

March 5, 1997

Amendment offered for consideration to HB 58

Amend Section 10. AS 09.17.020 is amended by adding new subsections to read:

(b) Except as provided under (c) of this section, the amount of punitive damages awarded by a court or jury under (a), may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount is greater, with the exception of torts relating to natural resource damages and ecosystem disruptions.

For purposes of this exception, the amount of punitive damages shall not exceed the greatest of

- (1) the amount calculated under the limitation in (c) of this section;
- (2) the average net annual income earned by the defendant for the five years before the date the trial began; or
- (3) two times the amount of financial gain that the defendant received or expected to receive as a result of the defendant's misconduct as determined by the jury.

Delete in its entirety, Section 10 (d) relating to 50% of any award being deposited into the general fund of the state

Delete Section 34 AS 09.60: Section 09.60.080 contingent fee agreements as proposed.

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Outrigger Association • Concerned Area Fishermen
Cock Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Sealood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cock Inlet Drift Association • United Southeast Alaska Gillnetters



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 279-7997 Telephone: (907) 276-0347

March 10, 1997

Honorable Gene Therriault
Co-Chairman, House Finance
Capitol Building
Juneau, AK 99801

RE: Tort Reform

Dear Representative Therriault,

The Alaska Miners Association wishes to go on record in support of House Bill 58, regarding tort reform. The Alaska Miners Association has over 1000 members from all parts of the mining industry. Our membership includes suction dredgers, small mom & pop miners, independent prospectors, suppliers, and major international mining companies.

The time has come for meaningful and comprehensive reform of Alaska's tort law. This bill will accomplish what is needed. We support fair compensation for injured persons but we do not support the current system that encourages abuse of the law. Many, and possibly most, tort cases are now settled out of court because that is less costly for the company. When this happens to our vendors, they have to increase the cost of goods and services to the miner to cover the settlement as well as the cost of insurance to cover the uncertainty of other tort issues.

Other tort reform needs include a change to insure that each party is liable only to the extent that each is responsible. Another needed change is to ensure that a person cannot receive an award for an injury that occurs while committing a criminal act.

Lastly, this area of law is a major factor in the general and wide-spread distrust and contempt in this country for the legal system, the courts, and attorneys in this country. The changes and reasonable limits in this bill will help restore the public faith in our legal system.

Thank you for the opportunity to comment on this important bill. We urge its passage.

Sincerely,

Steven C. Borrell, P.E.
Executive Director

cc: Representative Brian Porter



November 26, 1996

Magone Marine
P. O. Box 442
Dutch Harbor, Ak 99692

Dear Dan:

On September 30 we concluded a very, very difficult liability insurance renewal. Not only did the price increase drastically, but for the second year in a row we were unable to get passenger liability limits over one million dollars per passenger seat.

After our accident of August 11, it has become apparent that under present Alaska law judgements in wrongful death claims can be many millions of dollars, even without any negligence.

So I have been looking at each charter customer, trying to analyze the possible exposure of Penair. It occurs to me that your divers are probably young and highly compensated, which would lead to such an excessive award.

Therefore, I must decline to provide you with such charter services, we simply cannot accept the risk.

My attorney is working on some sort of "hold harmless" or limitation of liability that the passenger could execute, we hope to have that available in the next few weeks.

Meanwhile, the real problem is the present Alaska laws, this situation clearly illustrates the need for Tort reform. I intend to be working on this issue during the upcoming legislative session, and would appreciate any help you might be able to give.

Very truly yours,

Orin D Seybert
President



11/21/96 12:07:11

November 21, 1996

Rep Brian Porter
State Capitol
Juneau, Ak 99801-1182

Dear Brian:

Penair is involved right now in a scenario that clearly highlights the need for tort reform.

We lost a Goose ~~_____~~. The one passenger was a highly compensated, ~~_____~~. He was relatively young, and left a wife and two daughters.

Enclosed is copy of the letter from her attorney, estimating purely economic value of \$2.7 million. (by the way, there will be no finding of any negligence on our part whatsoever).

In past years, we normally carried a \$20 million Combined Single Limit (CSL) for any accident. As you know, that sum is available for all the passengers collectively. If there were nine passengers, each estate would be entitled to over two million, or varying amounts as the case proved. In this case the entire twenty million would have been available.

Two years ago the London underwriters, primarily the BAIG, (British Aviation Insurance Group) simply refused to write any more Alaskan computers, period. That leaves us with only two underwriters in the world, AIG (Aviation Insurance Group in Atlanta) and USAIG (US Aviation Insurance Group in New York, different company!).

They absolutely refuse to write the CSL any more, so we are now limited to one million dollars per seat. Most of the other operators only have \$500,000 per seat, and some of the real small operators are at \$150,000.

The reason given is not particularly related to the perceived accident rate or difficult operating conditions in Alaska. Rather the overwhelming problem is the fact, or at least perception, that Alaska has a history of the highest punitive damage jury awards in the nation.

PAGE TWO

So back to the letter from [redacted], you see his [redacted] about the punitive damages being 12 to 16 million. And this apparently is possible without any negligence by the defendant!

My first reaction was to realize that Fenair is exposed, so I examined our customer base to see where potential problems lay. That resulted in the enclosed letter to the Alaska Marine Pilot group. So a direct result of the insurance problem is impacting the ability of some companies to do business. I am preparing similar letters to other customers.

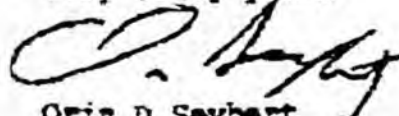
I have thought of another argument for reform. Since the limits are so low, there is actually less money available for the average Alaskan claimant. If we could just cap the punitive damages there would be more insurance coverage available.

For instance the Jisair crash at Lake Hood in September killed three tourists, but they only had \$150,000 per seat insurance. Since there were no other assets, it doesn't make any difference what the judgement is, but if it were easier for underwriters to write higher limits, there would then be more money available in cases such as that.

Anyway, as I told you I am now highly motivated to help write the bill this session, and I intend to be there.

I would like to ask for your help in letting me know what things are happening during the session, and who the key players are that I need to work on.

Very truly yours



Orin D Seybert
President

CC: Gail Phillips
Rick Halford



November 8, 1966

Capt. Stephan Moreno
Alaska Marine Pilots
2622 38th Ave S. W.
Seattle, Wa 98126

Dear Steve:

We recently concluded a very, very difficult insurance renewal. Not only did the price increase drastically, we were not able to get any increase in limits. We still have only one million dollars for passenger liability.

In view of our recent tragedy it has made me realize that Penair cannot afford to be put in such a position again.

So I am in the process of identifying charter groups and individuals where the resource generated does not justify the risk associated with the contract. Certainly the Alaska Marine Pilots (and any marine pilot) is a perfect example.

Therefore, I am sorry to say that effective immediately we will no longer be able to provide transportation to your group.

This limitation applies only to charter or contract operations involving the nine or less passenger planes. We were able to get proper limits on the larger aircraft operating the schedules out of Anchorage.

I am having our attorney look into the possibility of having a limitation of liability agreement the customer could execute which would limit the exposure in the event of an accident. If such becomes available we will contact your groups at that time for the purpose of discussing the resumption of service.

Very truly yours

Crin D Seybert
President

CC: Hal Snow

BISS AND HOLMES

ATTORNEYS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS, OF COUNSEL
ROGER F. HOLMES

3948 CLAY PRODUCTS DRIVE
ANCHORAGE, ALASKA 99517
TELEPHONE (907) 248-8013
FAX (907) 243-6885

WASILLA OFFICE
MCJ1 BOX 8111
WASILLA, ALASKA 99654
TELEPHONE (907) 376-5218

February 23, 1997

Representative Brian S. Porter
Alaska State Legislature
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: House Bill 58 (Sponsor substitute)

Dear Representative Porter:

This will confirm my conversation with Jim Sourant of your office concerning the Statute of Repose. I mentioned to Jim that all professionals in the State of Alaska are now covered by "claims made" professional liability insurance. This means that the claim must arise and be made during the policy period. When a professional retires the custom is to buy "tail insurance." This insurance covers the professional for claims made during the policy period but which do not arise until after the professional has retired and no longer carries insurance.

At the present time, most professional "tail" endorsements only cover three years into the future. In certain limited situations a five year "tail" endorsement is possible. You do not need much insurance savvy to figure out that without a statute of repose, all professionals who spend their lives practicing in Alaska have a substantial uninsurable risk in their retirement years.¹

Most professionals carry insurance to protect their clients (patients) as well as to protect themselves and their families. An uninsured loss over five years after retirement without adequate resources to combat the suit or income potential to recoup the loss is a devastating situation for the retired professional. Such a claim could result in the professional and his/her family requiring substantial state aid in their declining years.

¹The alternative if for the retired professional to continue to purchase "claims made" insurance for the remainder of his/her retirement years. For most professionals this is prohibitively expensive without income from the practice of their profession. For instance, some many physicians pay in excess of \$50,000 a year for "claims made" insurance.

Representative Brian S. Porter
February 23, 1997

Very truly yours,

BISS & HOLMES

A handwritten signature in dark ink, appearing to read "Roger F. Holmes", written over a horizontal line.

Roger F. Holmes
RFH

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES

A PROFESSIONAL CORPORATION
FIRST INTERSTATE CENTER
999 THIRD AVE., SUITE 2600
SEATTLE, WASHINGTON 98104
FAX (206) 340-0289
(206) 292-8008

JUNEAU OFFICE
302 GOLD STREET
JUNEAU, ALASKA 99801
(907) 598-7210

ANCHORAGE OFFICE
530 W. 7TH AVENUE, SUITE 1000
ANCHORAGE, ALASKA 99501-3510
(907) 274-0088

February 21, 1997

VIA FACSIMILE - (907) 465-3422

Marianne Burke
Commissioner of Insurance
State of Alaska
333 Willoughby Ave.
Juneau, AK 99811-1720

Dear Ms. Burke:

Thank you very much for talking with me yesterday about the proposed Sections 39 and 40 of SSHB58. I have attempted to find some published decision or article which discuss the abuses that these sections are intended to counter. Unfortunately, I have been unable to locate any such publication. I do, however, have very real firsthand knowledge of these abuses by independent counsel in specific cases. I have spoken with the clients that I have represented in those cases and while they are very comfortable with me providing the details, they are concerned about providing client names or case names.

I do harken back to our conversation, however, and your apparent opinion that independent counsel's bill for uncovered claims should not be the responsibility of the carrier. If that is the case, we presume that the Division would not object to codifying that concept rather than leaving it to the vagaries of the litigation process.

I would be most happy to provide whatever additional information I can. I will be in my office for the rest of this day and in our Juneau office Monday morning.

Very truly yours,


Michael A. Barcott

MAB/amf

AMF\C:\WP51\MATTER\BURKE.LTR

Ketchum



AIR SERVICE, INC.

MAIL: P.O. BOX 190588

ANCHORAGE, ALASKA 99519-0588

On the North Shore of Lake Hood

907-243-5525

800-433-9114

FAX 907-243-8311

E-mail: ketchum@alaska.net

Rep. Brian Porter

2-21-97

Dear Congressman Porter,

We support HB 58 regarding Tort Reform. The escalating costs of litigating and the awards for aviation accidents continue to hamstring our industry.

It has become increasingly difficult to factor our costs due to the unpredictable insurance rates. Currently the market of available insurances are so limited that many small operators are being forced out of business or are uninsuring.

This added cost effects all other aspects of our business. This fluctuating cost detracts from maintenance, pilot training, new equipment acquisitions, payrolls, etc., etc.

We support protecting the traveling public with liability coverages comparable with the rest of the country.

Sincerely,

Craig Ketchum
President



ACVA

Home Page- <http://www.alaska.net/~ketchum/KETCHUMFLYINALASKA.html>

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Alaska State Legislature



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(907) 465-2689

Speaker of the House of Representatives

February 19, 1997

Mr. Willem S. Van Hemert
CRW Engineering Group
3900 Arctic Blvd., Suite 203
Anchorage, AK 99503-5781


Dear Mr. Van Hemert:

Although I look forward to meeting with constituents and friends, sometimes the busy schedule here in Juneau and last minute changes make that impossible. I sincerely appreciate your taking the time to stop by and am glad that you were willing to meet with my aide, Judi Jordan, when I couldn't be there.

From what Judi tells me, the Alaska Professional Design Council emphasizes its support for a change to the Statute of Repose to 8 years as presented in Rep. Porter's bill as well as the mandatory arbitration provision in the Governor's version. In addition, she mentioned the need to extend the AELS for 6 years and to change the Mining Engineer position to a non-designated position. I will keep in mind AELS' desire to add the Landscape Architects for licensing under the AELS and the need for changing the current examiners position to an Executive Director position as well. Your position statement is very helpful, and I will refer to it often and the various issues come up during the session.

Again, I would like to thank you for bringing your concerns to my attention. I hope that you will continue to let me know the issues that are important to you. Whenever I can be of help, please feel free to call on me.

Sincerely,


Gail Phillips
SPEAKER OF THE HOUSE

GP:jmj

cc: Representative Brian Porter - re: HB 58

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Fax (907) 224-3248

February 18, 1997

Representative Brian Porter
Alaska State Legislature
State Capitol
M/S 3100
Juneau, Alaska 99801-1182

FAXED & MAILED

Dear Representative Porter:

The City of Seward continues to support your tort reform legislation, including the revisions to-date. Municipalities and taxpayers are deeply impacted by rising costs associated with claims. Since 1986, insurance and claim costs have been a major factor in municipal tax increases and have, in some cases, influenced communities to limit or eliminate recreation and other public services.

We are concerned for our youth, yet due to the increase in public liability, municipalities are reducing and/or eliminating recreational facilities and activities, such as skateboard parks, that would provide our youth with constructive activities instead of idle time which causes many of our youth to get in trouble in their communities.

The City supports tort reform legislation that will:

- ▶ Relieve hospitals of liability for negligent acts of an emergency room contract physician if the doctor carries malpractice insurance.
- ▶ Decrease the statute of limitations from 6 to 3 years for contract disputes, attorney malpractice and damages to personal property.
- ▶ Set a "statute of repose" which is like a statute of limitations, at 8 years for damages caused by exposure to hazardous substances, defective products or fraud. The limit is currently 15 years.
- ▶ Establish a pilot program for alternative dispute resolution.
- ▶ Cap a punitive damage award by tying it to the compensatory award in the case, with limits.

REPRESENTATIVE PORTER

Tort Reform Legislation

Page 2

We should work together to provide services the public wants in the safest, most cost-efficient manner. High insurance premiums and claims interfere with local government's ability to do our part of the job. We all want to do more for our citizens, but must not be afraid to provide needed services like skate parks because of punitive legal actions.

Thanks for your help!

Sincerely,

City of Seward

A handwritten signature in cursive script, appearing to read "Dick S. Garzini".

Ronald A. Garzini,
City Manager

RAG:rg

cc: Governor Tony Knowles
Senator John Torgerson
Representative Gary Davis
Seward Mayor and Council Members
Alaska Municipal League
Alaska Municipal League Joint Insurance Association



February 21, 1997

Representative Brian Porter
Alaska State Legislature
State Capital, Room 118
Juneau, AK 99801-1182

Dear Representative Porter:

The Ounalashka Corporation is a small village corporation in the land leasing business.

We are very supportive of HB58 for several reasons.

1. It puts a reasonable cap on punitive damages.

Almost all small businesses do not have insurance that covers punitive damages, therefore the outrageous award's being given can put a small business out of business.

2. It will most certainly keep nuisance lawsuits out of the court system.

3. I also believe that the legal cost per case will decline and therefore keep some cost control on insurance costs.

Please keep this bill on track and persuade the Governor to sign it this time.

Sincerely,

Richard L. Davis, Jr.
Chief Executive Officer

STUTZMANN ENGINEERING ASSOC., INC.

P.O. BOX 1429
FAIRBANKS, ALASKA 99707
(907) 452-4094

February 20, 1997

House Judiciary Committee

Re: HB 58, Tort Reform

Dear Sir:

Please support HB 58, the tort reform bill.

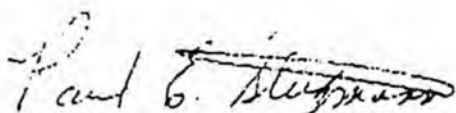
We are a small engineering firm and while we have not had legal problems, I do think there should be a limit in personal injury cases, especially where a plaintiff sues a firm that many not be even remotely connect with the injury. You will still be required to hire an attorney and defend yourself, which adds to the cost of business.

There should also be a time limit. Someone who sues years and years later should not be allowed to do so.

Many times an insurance company will pay just to get rid of the nuisance, which in turn makes business costs go up.

Lost wages and medical costs are not limited by this bill so please support it.

Sincerely,



Paul E. Stutzmann, President



CHANNEL CORPORATIONS

Channel Construction, Inc.
Channel Landfill

W.R. Tonsgard Logging and Lumber, Inc.
Channel Equipment Rental, Inc.

W.R. "SHORTY" TONSGARD, CHAIRMAN OF THE BOARD

Facsimile transmittal to 465-4318

2/21/97
10:12 am

February 20, 1997

The Honorable Joe Green
Chairman, House Judiciary Committee
Alaska State House of Representatives
Juneau, Ak 99801

Dear Representative Green:

Please be advised that Channel Corporations supports House Bill No. 58 regarding tort reform.

Channel Corporations is four family-owned and -operated businesses which have been in operation for more than 20 years. The businesses provide diverse services such as disposal of garbage refuse, refuse and soils incineration, commercial and residential construction and demolition, a logging and sawmill enterprise, and equipment rental, service and sales.

The ever-increasing cost of personal injury cases and the unpredictability of juries in awarding damages have had a huge impact on small business. We believe this very important bill can control these costs, while assuring appropriate compensation for persons injured through the fault of others. We believe the legislation makes the civil justice system more fair, more efficient and less costly.

I would very much appreciate your support of House Bill No. 58. Thank you.

Very truly yours,

W. R. Tonsgard, Jr.
Chairman of the Board

WRT:dk



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 21, 1997

Representative Brian Porter
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

Last year the AML urged the implementation of the Tort Reform bill. The AML continues its support of the adoption of a meaningful tort reform bill.

Municipalities have considerably broader liability exposures than almost any private business because of the extremely broad nature of municipal services and public safety responsibilities. Also, municipalities are seen as "deep pockets", however, a municipality must pass costs on to residents directly through taxes. It is clearly in the interest of residents of municipalities to reasonably limit their municipality's liability exposures.

Much of what SSHB 58 (JUD) proposes for general liability is similar to the way the Workers Compensation laws works, i.e. by more clearly defining liability and remedies, injured workers are more effectively served and protracted and expensive legal processes are kept to a minimum. The Workers Compensation laws were established because the existing process was too costly, complicated, and ineffective. It is time to apply similar principles more broadly to tort reform.

The AML Legislative Committee has not reviewed the provisions of the bill and may comment on specific provisions at a later date. Please keep the AML informed of any issues specifically relevant to municipalities and the AML will be pleased to continue to participate in the process.

Sincerely,


Kevin Ritchie
Executive Director

CC: AML Legislative Committee
C:\Legcom\297\tortreformhb58

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KENAI ELECTRIC CO.
11887 Kenai Spur Highway
KENAI, ALASKA
99611

February 20, 1997

To: Representative Brian Porter
Re: HB58 - Tort Reform

Dear Sir:

For the good of every citizen of the State
of Alaska, as well as every small business,
we support HB58.

This year we hope you can pass this bill,
veto-proof.

Sincerely,

Glenn J. Kipp

G.T. Construction, Inc.
P.O. Box 190329
Anchorage, AK. 99519
(907) 248-9243
fax (907) 248-9341

Brian Porter
FAX TO: _____

FAX FROM: Guy Turner _____

DATE: 2/20/97 _____

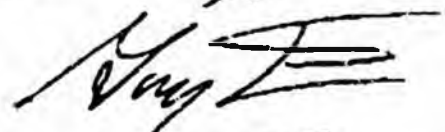
1 pages including this page.

Reference: Support for HB 58

I have a small Mom + Pop Business.
The ever increasing costs of personal
injury cases have had a huge impact
on small business. The ever
increasing costs of insurance,
and the overhead has to come
under control.

I would like your support for
HB 58.

Sincerely,


Guy Turner

NORTHERN PERFORMANCE

THUMPER & JULIE WILLIAMSON
e-mail - twwill@alaska.net
S.R. Box 300
Mt. 44 Tok Hwy
Oakland, Ak, 99575

Telephone 907-822-3545
Fax 907-822-3585

February 20, 1997

Rep. Brian Porter
cc. NFIB/Alaska's state legislative office

Dear Representative,

Northern Performance is a small business in the Copper River Basin. We are an authorized Polaris dealership, handling snowmobiles and atv's. Our 1996 sales were \$835,000. Our customer base is spread throughout Alaska, from the Canadian Boarder to Tokona, and Valdez to Delta Junction. We have no employees, the business is run by myself, and my husband Grant Williamson Jr. aka Thumper.

We feel that the HB 58: Tort Reform is vital to the continued success of small businesses like our own. Operating a business in the Alaskan bush is struggle enough without the threat of losing our hard earned livelihood to a lawsuit, because some person felt the need to sue. Lawsuits in this day and age are entirely out of hand. No person should be entitled to millions in damages because they refuse to accept responsibility for their own actions.

Thank you for your time and attention to this matter.

Sincerely



Julie Williamson
Owner

JW/jw
cc/ NFIB

CORDOVA OUTBOARD, INC.
P. O. BOX 960
CORDOVA, ALASKA 99574-0960

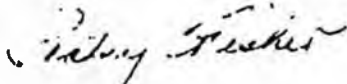
FEBRUARY 20, 1997

REP. BRIAN PORTER
ALASKA STATE CAPITAL
JUNEAU, ALASKA 99801

REPRESENTATIVE PORTER:

WE ARE A SMALL MARINE AND AUTO PARTS CORPORATION THAT DOES SERVICE WORK ON BOATS IN OUR AREA. WE SUPPORT HB 58: TORT REFORM. TORT REFORM IS VERY IMPORTANT TO THE SMALL AND INDEPENDENT BUSINESS COMMUNITY. WE REPRESENT THE ECONOMIC BACK BONE OF OUR NATION. PLEASE CONTINUE TO WORK TOWARD PROTECTING US IN COURT AGAINST THE EVER INCREASING COST OF PERSONAL INJURY CASES AND THE UNPREDICTABILITY OF JURIES IN AWARDING DAMAGES WHICH HAVE HAD HUGE IMPACT ON SMALL BUSINESS.

SINCERELY,



PATSY FISHER, SECRETARY

REP. JOE GREEN
REP. CON BUNDE
REP. NORM ROKEBERG
REP. JEANNETTE JAMES
REP. ERIC CROFT
REP. ETHAN BERKOWITZ

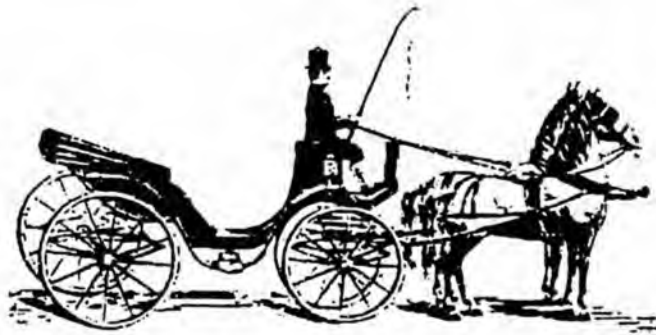
Rep. Porter, Green, Bunde, Rakeberg, James, Craft,
Berkowitz

↓ Support HB58 - Reform of tort.

The unpredictability of juries and their awards
of damages Plus the ~~costs~~ increases of personal
injury cases have had a huge ^{adverse} impact on
small businesses. These costs need to be
controlled. Compensation still needs to be
made to some degree to persons injured if
proven to be caused by others.

Please support this bill.

Sid Childers



HORSE-DRAWN CARRIAGE CO., INC.
P.O. Box 671316, 22012 Blair Ave. Chugiak, Alaska, 99567
(907) 688-6005, Fax 688-1218
Internet: <http://www.goworldnet.com/carriage.htm>

FEBRUARY 20, 1997

Rep. Brain Porter

I urge you to continue your efforts in tort reform in HB 58. As a small business owner, with very little or no profit margin, liability insurance is a major expense item. Since our state doesn't have Equine Liability Law our business is constantly exposed to potential law suits.

We have been doing carriage rides in downtown Anchorage since 1983. We do approximately \$100,000.00 worth of sleigh, hay and carriage rides annually, and typically spend \$10,000.00 to \$20,000 more than that. I spend approximately \$10,000.00 a year for liability insurance alone.

I find it appalling that our laws and lawyers representing those laws continue to feather their nest by supporting long drawn out trials and expensive litigation that only the big companies and very rich can afford. Please continue the fight to help small businesses in Alaska.

Jon Nauman, President

SOUTHEAST MARINE

5306 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-6786 FAX (907) 747-6062

February 20, 1997

Rep. Brian Porter

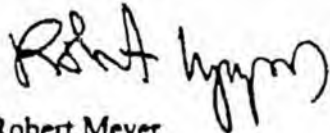
RE: HB 58 Tort Reform

Dear Mr. Porter;

I own a marine business here in Sitka and in Juneau. I wholeheartedly support your Tort Reform Bill HB 58. This bill will assist in keeping the cost of doing business down for insurance and unduely high damages awarded to unscrupulous people.

Sincerely,

SOUTHEAST MARINE INC.

A handwritten signature in black ink, appearing to read "Robert Meyer", written in a cursive style.

Robert Meyer
Owner

ALASKA LAUNDRY INC.
1114 GLACIER AVE.
JUNEAU, AK 99801

REP. BRIAN PORTER
ALASKA HOUSE OF REPRESENTATIVES
JUNEAU, AK 99801

FEBRUARY 20, 1997

RE: HB 58

DEAR REP PORTER,

WE ARE A SMALL FAMILY OWNED LAUNDRY AND DRY-CLEANING BUSINESS THAT HAS BEEN IN BUSINESS IN ALASKA FOR OVER A CENTURY. HAVING JUST CLOSED OUR COMPANY BOOKS FOR LAST YEAR I AM QUITE AWARE OF THE COST OF LIABILITY INSURANCE. I APPLAUD YOUR EFFORTS TO BRING SOME SANITY TO TORT LAW AND HOPEFULLY SLOW THE RISE IN OUR INSURANCE PREMIUMS IF NOT REDUCE THEM.

BEYOND JUST THE COST OF INSURANCE THERE ARE THE COSTS INCURRED IN TRYING TO TORT PROOF OUR BUSINESS. IT IS A REAL SHAME WHEN MANY BUSINESS DECISIONS ARE DRIVEN BY EXPOSURE TO LIABILITY AND NOT ECONOMICS. WHERE FEAR OF FRIVOLOUS LAWSUITS OVERRIDES THE DESIRE TO EXPAND SERVICES AND PRODUCTS. THE ONLY WINNERS IN THE PRESENT SYSTEM ARE THE SHYSTER LAWYERS AND A FEW OF THEIR CLIENTS. THE REST OF THE PUBLIC ONLY GETS TO PAY FOR THEIR OUTRAGEOUS AWARDS. PLEASE BRING SOME SANITY TO THE SYSTEM AND PASS OUT TORT REFORM THIS YEAR.

SINCERELY YOURS,

E. NEIL MACKINNON
PRESIDENT

CC.	REP JOE GREEN	465-4316
	REP CON BUNDE	465-3871
	REP NORM ROKEBERG	465-2040
	REP JEANNETTE JAMES	465-2381
	REP ERIC CROFT	465-4419
	REP ETHAN BERKOWITZ	465-2137

Chilkat Guides, Ltd.

PO. Box 170, Haines, Alaska 99827 • Ph. 907-766-2491 • Fax 907-766-2409
E-Mail: RaftAlaska@eworld.com



To: Rep. Brian Porter, and the members of the House Judiciary
Committee

RE: HB58

Dear members of the committee,

Tort reform is long over due! The present system and it's
uncertainty is dragging us all under in an avalanche of insurance and
legal costs. Those costs are added to everything we buy and sell,
reducing everyone's ability to invest in worthwhile enterprise.

No one argues with the necessity to defend the interests of an
injured person, but our system is now so askew that we have created
a society that thrives on law suits.

Please pass HB 53 as a first step in reigning in the runaway train
before it plunges over the edge.

Thank you,

Bart Henderson

Kennedy & Co. LLC

Dan F. Kennedy, CPA, MBA and Janet C. Kennedy CPA
Lakeview Professional Building
851 E. Westpoint Dr., Suite 108
Wasilla, Alaska 99654

work phone: 907.376-1272

fax: 907.373-1272

Internet Home Page: <http://www.corecom.net/~kennedpp>

Internet Email Address: kennedpp@corecom.net

February 22, 1997

To: Representatives of the Alaskan Legislature

Re: Support of HB 58 - Tort Reform

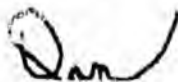
Thank you for your hard work on HB 58. We appreciate all of your efforts with helping Alaskans create a sensible tort framework.

Kennedy & Co. LLC is a family owned certified public accounting firm. We serve many small businesses. Kennedy & Co. LLC is a small firm that emphasizes the support of emerging businesses.

The future of economic expansion and change will be fueled by such emerging businesses. These successful entrepreneurs are fearful of lawyers (truly) and of the current tort system. Please change it. In our discussions with clients there is overwhelming support for tort reform. Just do it! - is the message from small business and Kennedy & Co. LLC.

Please approve HB 58.

Sincerely,



Dan F. Kennedy CPA, MBA and Janet C. Kennedy CPA



WASILLA REALTY

P.O. Box 870237
Wasilla, Alaska 99687
Office: (907) 376-5346
Fax: (907) 373-2553



Saturday, February 22, 1997 7:44 AM

Alaska State Legislature
Juneau, Alaska

Dear Members of the Alaska House of Representatives:

We appreciate of all your efforts with respect to tort reform.

Wasilla Realty was formed in 1960. It has been successful and a corner stone in the Mat-Su Valley real estate industry. Wasilla Realty has been active in the development in both the City of Wasilla and Mat-Su Borough. I was mayor of Wasilla during the 1980's. I am an informed leader in this state.

During my 50+ years I have seen many instances of the threat and actual frivolous lawsuits. I have also seen court awards of "damages" beyond reason. I have been concerned for many years about the run-away legal system and the extreme hardship that it has caused small business owners like myself.

It is important to the next generation that we control the legal system before it strangles small business. Please do everything you can to pass HB 58 -- NOW. We were so close during the last legislative session. Many Alaskan small business were very disappointed with the Governor's veto of tort reform. Let's pass the bill as it currently read.

It is in the best interest of Alaska to pass HB 58.

Sincerely,

Harold S. Newcomb, Owner
Wasilla Realty
Wasilla, Alaska

**NFIB**National Federation of
Independent Business

National Federation of Independent Business

Statement of Support for HB 58 - Tort Reform

February 22, 1997

The Alaska Chapter of the National Federation of Independent Business has 4,400 members, making it the largest small-business advocacy group in the state. The typical NFIB/Alaska member is quite small, employing five workers and ringing up gross sales of about \$181,000 per year. Yet, in aggregate, the membership is a potent economic force, employing more than 43,000.

Each year NFIB/Alaska polls its entire membership on a variety of state legislative and regulatory issues. The federation uses the poll results to set its legislative agenda and promote those positions approved by majority vote. NFIB/Alaska ballot results have shown overwhelming support for a number of the provisions contained in HB 58.

NFIB supports putting reasonable limits on non-economic and punitive damages. When there are no limits on damages, the unpredictability of what a jury may award often forces insurance companies to settle out of court too soon for too much money. This drives up the cost of liability insurance.

The costs of personal injury cases and the unpredictability of unlimited damage awards has had a large impact on small business. NFIB/Alaska believes HB 58 will help to control these costs while assuring appropriate compensation for persons injured through no fault of their own. This legislation will help make the civil justice system more fair, more efficient and less costly.

NFIB/Alaska urges support for HB 58.

Service Oil & Gas, Inc.

Mi. 188.5 Glenn Highway
P.O. Box 276
Glennallen, Alaska 99588
Phone (907) 822-3375
Fax (907) 822-3511

523 South Valley Way
Palmer, Alaska 99645
Phone (907) 745-3776
Fax (907) 745-2876



February 24, 1997

Representative Brian Porter
Alaska State Legislature
Juneau, Alaska

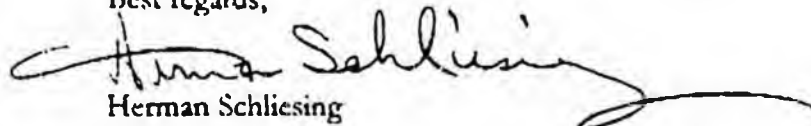
Reference: House Bill 58

Dear Representative Porter:

Service Oil & Gas, Inc. fully supports tort reform in general, and HB58 in particular. The trend toward placing blame on others and the move away from personal responsibility is disconcerting. The speed with which this has occurred is unnerving. The willingness of our courts and juries to allow damages to be claimed that have no basis in reality is in itself criminal. The results of these circumstances are less competition, loss of jobs and availability of services, and increased insurance premiums. In addition, the courts are flooded with unwarranted litigation.

Service Oil & Gas, Inc. operates as a fuel distributor in Palmer, Wasilla, Delta Junction, Glennallen, and Valdez. We employ over 50 employees and have been in business since 1975. The changing business environment with respect to liability is frightening. It threatens every business in every industry. Please take the steps necessary to rein in the runaway lawsuits and move us back toward personal responsibility and common sense.

Best regards,


Herman Schliesing
President



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB 58 . dated February 21, 1997
bill/subject

1. I believe that there should not be any Punitive damages unless the action was proven to be premeditated.
2. Punitive Damages should be no more than 2 times compensatory.

Thank You,

Signed: Walter Wood Walter Wood
Testifier

Self
Representing (Optional)

P.O. Box 868, Valdez, ALASKA
Address

907-835-2408
Phone No.

VICTOR O. SCHINNERER & COMPANY INC.
 SPECIAL CLAIM STUDY
 DISTRIBUTION OF CLAIMS IN RELATIONSHIP TO SUBSTANTIAL COMPLETION

<u>Years Brought Within</u>	<u># of Claims</u>	<u>% of Claims</u>	<u>Cumulative Percentage</u>
One	73*	45.9	45.9
Two	22	13.8	59.7
Three	13	8.2	67.9
Four	13	8.2	76.1
Five	12	7.5	83.6
Six	9	5.7	89.3
Seven	5	3.1	92.4
Eight	5	3.1	95.5
Nine	0	0	95.5
Ten	2	1.3	96.8
More Than Ten	5	3.1	99.9
	<u>159</u>	<u>99.9</u>	<u>99.9</u>

*Based on CNA's records, roughly 32.9% of these claims were brought prior to the date of substantial completion.

Study is based upon a review of 250 CNA files set up between December 1979 and October 1980.

The Date of Substantial Completion was established from information secured from CNA claim records.

159 files contained sufficient documentation which could be used for the purpose of this study.

Distribution Of Claims By Year As Compared To Project Substantial Completion

Year Claim Made v. Substantial Completion	Number of Claims Each Year	Percentage of Claims Made Each Year	Cumulative Percentage of Claims
Prior	6	25%	25%
One	5	21%	46%
Two	4	17%	63%
Three	4	17%	80%
Four	0	0	80%
Five	0	0	80%
Six	1	4%	84%
Seven	3	12%	96%
Eight	0	0	96%
Nine	0	0	96%
Ten	0	0	96%
Eleven	0	0	96%
Twelve	0	0	96%
Thirteen	0	0	96%
Fourteen	1	4%	100%
Total	24	100%	

DISTRIBUTION OF CLAIMS BY YEAR WITHIN WHICH RECEIVED AFTER SUBSTANTIAL COMPLETION

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	NUMBER OF CLAIMS MADE WITHIN EACH YEAR	PERCENTAGE OF CLAIMS MADE WITHIN EACH YEAR	CUMULATIVE PERCENTAGE OF CLAIMS BY YEAR
1	106	33.13%	33.13%
2	45	14.06%	47.19%
3	41	12.81%	60.00%
4	30	9.38%	69.38%
5	23	7.19%	76.56%
6	20	6.25%	82.81%
7	9	2.81%	85.63%
8	7	2.19%	87.81%
9	12	3.75%	91.56%
10	4	1.25%	92.81%
11	8	2.50%	95.31%
12	2	0.63%	95.94%
13	7	2.19%	98.13%
14	1	0.31%	98.44%
15	0	0.00%	98.44%
16	0	0.00%	98.44%
17	2	0.63%	99.06%
18	2	0.63%	99.69%
19	0	0.00%	99.69%
20	0	0.00%	99.69%
21 +	1	0.31%	100.00%
TOTAL	320	100.00%	

This chart gives the number and percentage of claims by year within which claims are made after substantial completion. For example, the row of data with the first column entry of 10 represents all claims received at least 9 years after substantial completion but less than 10 years. Thus, if a 10 year statute of limitations had been in place, 92.81% of the claims would have been allowed and 7.19% would have been outside the time period.

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	NUMBER OF CLAIMS RESULTING IN AN INDEMNITY PAYMENT	PERCENT WITHIN GIVEN YEAR OF TOTAL OF SUCH CLAIMS	CUMULATIVE PERCENTAGE OF CLAIMS
1	12	30.77%	30.77%
2	5	12.82%	43.59%
3	9	23.08%	66.67%
4	1	2.56%	69.23%
5	1	2.56%	71.79%
6	3	7.69%	79.49%
7	1	2.56%	82.05%
8	4	10.26%	92.31%
9	1	2.56%	94.87%
10	0	0.00%	94.87%
11	2	5.13%	100.00%
12	0	0.00%	100.00%
13	0	0.00%	100.00%
14	0	0.00%	100.00%
15	0	0.00%	100.00%
16	0	0.00%	100.00%
17	0	0.00%	100.00%
18	0	0.00%	100.00%
19	0	0.00%	100.00%
20	0	0.00%	100.00%
21 +	0	0.00%	100.00%
TOTAL	39	100.00%	

This chart gives the number and percentage of claims resulting in an indemnity payment by the insurer for the year within which the claim is made after substantial completion. All examined claims resulting in indemnity payment, except for 2, were received within 10 years of substantial completion. For example, the row in which the left column has an entry of 10 provides the number and percentage of claims having an indemnity payment that were received at least 9 years after substantial completion, but less than 10 years. For year 10, there were 0 claims received that resulted in an indemnity payment. For claims received within year 11, 2 resulted in an indemnity payment; 2 equals 5.13 percent of the total number (39) of claims examined that resulted in an indemnity payment. Since no claims received after 11 years of substantial completion resulted in an indemnity payment, the cumulative percentage at year 11 is 100%; all claims resulting in an indemnity were filed by the end of the 11th year of substantial completion.

DISTRIBUTION OF CLAIMS BY TYPE OF CLAIMANT

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	PERCENT OF CLAIMS FROM PARTIES INVOLVED IN DESIGN, CONSTRUCTION, ETC.	NUMBER FROM PARTIES NOT SO INVOLVED
1	65.71%	34.29%
2	60.00%	40.00%
3	75.61%	24.39%
4	73.33%	26.67%
5	65.22%	34.78%
6	70.00%	30.00%
7	55.56%	44.44%
8	42.86%	57.14%
9	41.67%	58.33%
10	50.00%	50.00%
11	12.50%	87.50%
12	0.00%	100.00%
13	42.86%	57.14%
14	0.00%	100.00%
15	0.00%	0.00%
16	0.00%	0.00%
17	0.00%	0.00%
18	0.00%	100.00%
19	0.00%	100.00%
20	0.00%	0.00%
21 +	0.00%	100.00%
TOTAL	61.76%	38.24%

This chart gives the percentage of claims by parties involved in design and construction of a project and the percentages of parties not involved, by year within which the claims were made after substantial completion. For example, the row with the first column entry of 10 gives the percentage of claims received at least 9 years after substantial completion but less than 10 years for each type of claimant. For year 10, fifty percent were from claimants involved in the design and construction of the project and fifty percent were not so involved.



HOUSE OF REPRESENTATIVES

Official Business

State Capital
Juneau, AK 99801-1142

Statute of Repose/Limitations by State, 1993

<u>State</u>	<u>Years Within Date of Discovery</u> (Statute of Limitations)	<u>Maximum # Years</u> (Statute of Repose)
Alabama	6 months	4 years
Alaska	2 years	-
Arkansas	-	-
Arizona	2 years	-
California	1 year	3 years
Colorado	2 years	3 years
Connecticut	2 years	3 years
Delaware	3 years	-
Florida	2 years	4 years
Georgia	-	5 years
Hawaii	2 years	6 years
Idaho	-	-
Indiana	2 years	6 years
Kansas	2 years	4 years
Kentucky	1 year	5 years
Louisiana	1 year	3 years
Massachusetts	-	7 years
Maine	-	3 years
Maryland	3 years	-
Michigan	6 months	6 years
Minnesota	-	-
Mississippi	2 years	-
Missouri	2 years	10 years
Montana	3 years	5 years
Nebraska	1 year	10 years
Nevada	2 years	-
New Hampshire	3 years	-
New Jersey	2 years	-
New Mexico	-	-
New York	-	-
North Carolina	-	4 years
North Dakota	2 years	6 years
Ohio	1 year	-
Oklahoma	2 years	3 years
Oregon	2 years	5 years

Pennsylvania	2 years	.
Rhode Island	3 years	.
South Carolina	3 years	6 years
South Dakota	.	.
Tennessee	1 year	3 years
Texas	.	.
Utah	2 years	4 years
Vermont	2 years	7 years
Virginia	.	10 years
Washington	1 year	8 years
West Virginia	2 years	10 years
Wisconsin	1 year	5 years
Wyoming	2 years	.

The statutory time limit for bringing suit is measured from the time at which the plaintiff could have reasonably discovered the injury. Often States allow the time limit to run from either the time of injury or the time of discovery, depending on the nature of the injury.

The maximum period in which a claim can be brought, regardless of whether the limit is measured from the date of injury or act or the date of discovery.

document produced by Parkers office; info from Leg. Research



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046
http://www.state.ak.us/local/akpages/COURTS/AJC/home.htm E-Mail: 72302.1261@compuserve.com

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
David A. Depevich
Janice Lienhart
Vicki A. Otte

Facsimile Transmittal

ATTORNEY MEMBERS
Thomas G. Neve
Robert M. Wagstaff
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

To: Rep. Therriault
Attn: Sara Fisher

Fax #: 465-3884

Date: 2/28/97

From: Bill Cotton

Time: 11:40 am

Number of pages (including this cover sheet) 5

If you have any problems or questions, please contact Stephanie
at (907) 279-2526.

Comments:

Sara: Attached is our fiscal note for HB58
-the tort reform legislation. While we
sent it earlier, it apparently never got
attached to the bill in House Judiciary.
Could you make sure it gets to House
Finance. Thanks! Bill Cotton

cc:Mail for: Representative Gene Therriault

Subject: [Fwd: [Fwd: HB 58]]

From: jeffjan@Alaska.NET (Jan Porterfield Jeff Friedman) at CC2MHS1 2/27/97 8:18 PM

To: Representative Eldon Mulder at LAA_TRANS

To: Representative Ben Grussendorf at JNU_CAPITOL

To: Representative Vic Kohring at LAA_TRANS

To: Representative Richard Foster at LAA_TRANS

To: Representative Mark Hanley at LAA_TRANS

To: Representative John Davis at JNU_LAA

To: Representative Gary Davies at JNU_LAA

bcc: Representative Gene Therriault at LAA_TRANS

To: Representative Carl Moses@Legis.Alaska at CC2MHS1

Attached are some thoughts about the problems with HB 58. Since this has now passed the judiciary committee, I don't know if you are concerned about the legal problems. The Finance Committee should be concerned about the extra cost to the state treasury this bill will cause.

While the purpose of this bill may be to save money, saying it doesn't make it true, even if you say it loudly.

If you limit suits against health care providers, then welfare will pick up the tab for the future medical care.

If you require all large judgments be paid by periodic payments, then when welfare has a subrogation right, they will also have to wait many years to be paid

The offer of judgment provision will have a large impact on the state. The AG's office is typically bad about accepting early offers of judgment. Thus, when the state finally loses the case, it will be obligated to pay 100% of the opposing party's attorney fees. Where will that money come from?

The collection of settlement information will cost money. It can not be done for free.

I hope you will reject, or at least significantly improve, this bill. It is good for insurance companies, but bad for the average citizen.



Alaska State Legislature

Please enter into the record my testimony to the HFIN
 committee name
 committee on HB 58 , dated 2-28-97
 bill/subject

On February 26, 1997 I spent some non-quality time listening to a legislative teleconference of the House Judiciary Committee impassionately plotting their goals for tort reform (HB 58). I was soon conscious of a predisposed assumption that, as a legislator, one has an honored right to claim an inherent wisdom to evaluate and limit the value of all other persons' loss of body parts, pain, suffering, disfigurement and / or mental anguish. This implies a wisdom able to project a responsible "fits all" guess that is accepted as superior to the reflected discussion that is the cumulation of all of those who are privy to all relevant, timely facts.

These legislators have demanded, and are prepared to establish, their designed governmental controlled, price-fixing rules defining the parameters that establish liabilities and the extent of harmful loss inflicted on all victims. They questioned the extent of a real disabling handicap resulting from a disfigurement. To me this appears as an ignorance of the habitual intolerance in a society that refuses equal consideration for those who are viewed as different. The legislators discussed the comparable loss values of different body parts. One legislator offered an opinion that the loss of both eyes was more acceptable than the loss of both legs. At that point I wanted to puke into the teleconference microphone; instead, I got up and left.

I suggest that legislative hearings be assigned ratings. I believe this hearing's tape be labelled: "Warning! Contains explicit audio of man's inhumanity to man."

Signed by a bleeding heart liberal,

Alec Bondurant

401 Box 1197 Soldotna AK 99669

Address

262-0818

Phone No.



Resource Development Council for Alaska, Inc.

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Founded 1975

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March 10, 1997

Representative Gene Therriault, co-Chair
Representative Mark Hanley, co-Chair
House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Therriault and Hanley:


RE: Support for CSHB 58, Tort Reform legislation.

The Resource Development Council supports CSHB 58 and urges its passage. RDC has long supported liability reform efforts which will improve Alaska's business climate for natural resource development.

RDC is a statewide, membership-funded, non-profit, pro-development organization working on behalf of Alaska's basic industries, including oil and gas, mining, timber, fishing and tourism. RDC's membership, numbering in the thousands, includes the aforementioned industries, as well as the sectors which support those industries, such as construction, labor and other technical service providers, individuals, Native corporations, and a wide variety of Alaska communities.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Becky L. Gay
Executive Director

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

March 11, 1997

The Honorable Gene Therriault
Co-Chair Finance Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Representative Therriault:

I am writing this letter on behalf of the Alaska Hospital and Nursing Home Association in support of CS for Sponsor Substitute for House Bill 58 (Jud).

Our 33 member community hospitals and nursing homes from across the state join with other health care organizations, architects, engineers and the business community in asking the Legislature to pass and the Governor to sign CSSSHB58(Jud), the 1997 Comprehensive Liability Reform Bill.

It will not be possible to control costs within our health care system if we do not control the costs related to the inefficiency of the liability system. Tillinghast, a consulting actuarial firm, reported in 1992 that only 43% of tort costs of some \$132 billion nationwide went to the injured party. The remaining 57% went to the cost of litigation (administrative costs, 24%; defense costs, 18%; and plaintiff costs, 15%).

Medical liability costs include the cost of insurance, defensive medicine and the costs borne by the manufacturers of medicines and medical supplies.

Between 1982 and 1992 medical malpractice insurance premiums in Alaska increased from 2,276,000 to 13,371,000. The following comparison between rates for the same level of liability insurance in Alaska and those in California, where components of CSSSHB58(Jud) are the law, demonstrates the savings that can be realized when tort reform legislation is enacted:

<u>SPECIALITY</u>	<u>CALIFORNIA</u>	<u>ALASKA</u>
Anesthesia	\$10,000	\$26,500
Family Practice	\$ 7,000	\$16,000
OB/GYN	\$31,500	\$64,500

March 11, 1997

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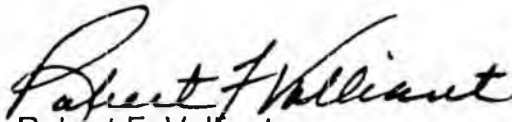
The cost associated with the practice of defensive medicine creates another unnecessary financial burden shifted to the patient. Defensive medicine can be defined as those procedures and tests ordered because of a perceived malpractice risk and those services not provided to patients because of the perceived liability risk to the provider. An example of the latter is the OB/GYN who provides gynecology services but not obstetrics.

Alaska's small rural communities continue to face the challenge of recruiting and retaining physicians particularly family physicians wishing to provide obstetrical care. The cost of liability insurance is a barrier to that recruitment process.

Section 36, on page 16, of CSSSHB58(Jud) is very important to Alaskan hospitals. Hospitals have become the deep pocket when uninsured or under-insured physicians are sued. An Alaska Supreme Court decision (Jackson vs Power) holds hospitals liable for emergency room physician actions, even though the hospital or its personnel did nothing wrong. Mandated minimum liability coverage for practitioners as a pre-requisite to immunity for Jackson vs Power for hospitals makes sense to us.

In conclusion, the Alaska Hospital and Nursing Home Association supports CSSHB58(Jud) in its entirety with particular interest in the provisions outlined in Section 36.

Sincerely,



Robert F. Valliant
Hospital Administrator



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P.O. Box 91139
Anchorage, AK 99509-1139
(907) 274-2236
(907) 274-2520 Fax

March 10, 1997

apdcclctm11397

Representative Gene Therriault
Co-chair, House Finance Committee
Room 511, State Capitol
Juneau, AK 99801-1182

Re: HB58

Dear Representative Therriault:

I am writing to you and your committee as a professional engineer and as a representative of the Alaska Professional Design Council, commonly known as APDC. APDC is a consortium of professional societies representing architects, engineers, land surveyors, building code officials, and landscape architects. The ten member-organizations have a combined membership of over 1400 and represent approximately 5000 licensed professionals. APDC is very supportive of tort reform in general and HB58 in particular.

Our legal system needs modification! Over 90% of civil suits never go to trial. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials, the threat of punitive damages (which aren't covered by insurance) and the seemingly capricious decisions of juries. When suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement, some defendants end up spending a considerable amount of time and money to extricate themselves from cases in which they shouldn't be involved. In most cases, they get to contribute to the settlement, even though they have no fault, due to pressure from the other parties to the suit. Knowing this, some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a settlement. Millions of dollars are spent in the so called "discovery process" which almost always results in the defendants throwing in their insurance to stop the bleeding and make the case go away. Existing sanctions against frivolous suits are rarely used because they require that the plaintiff first lose at trial, a trial that rarely happens. Summary judgment is also very rare because appellate courts have almost always overturned such decisions, making trial judges wary of issuing such orders. Many settlements are due to fear of the perceived large down side of going to trial, including the expense involved and the tendency of some juries to ignore common sense and aid the "little guy" plaintiff by dipping into the so-called "deep pocket". All too often we read about large awards being reduced by the trial judge or on appeal or on the second appeal, all of which takes time and money. Some argue that these are rare, but they are not rare enough to take the gamble of a trial.

HB58 includes two sections which will help the situation for design professionals:

The first reduces the statute of repose for construction related suits from fifteen years to eight years and expands it to cover all suits. According to a study by Victor O. Schinnerer, over 83% of cases associated with construction are brought within 4 years after substantial completion, almost 90% percent of the cases are brought within eight years and 100% of claims which resulted in an indemnity payment were brought within nine years. We believe that an eight year statute is more reasonable than the current fifteen years for four main reasons:

Dennis L. Berry, PE

Forrest T. Braun, PE

Troy J. Feller, PE

Colin Maynard, PE

- 1) Almost all of the cases brought after eight years are related to maintenance problems, rather than design or construction problems. The owner of the building would still be available for suit if his lack of maintenance is the cause of the damage, because that would be an on-going problem. Cases brought this late do not result in an indemnity payment on the behalf of the design professional. However, it does require expenditure of time and money which is rarely recovered by the designer.
- 2) It is impossible to defend, or prosecute, a case fifteen years after substantial completion due to the lack of witnesses, fading memories, and lack of documentation. Most of us would have a hard time remembering what we did fifteen days or months ago, never mind fifteen years.
- 3) Designers will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage, and pass the savings on to our clients.
- 4) It is unreasonable to expect an engineer or architect to pay tens of thousands of dollars a year in insurance premiums for fifteen years after they retire. Errors & omissions insurance for design professionals is on a claims-made basis: that is, it covers you for claims made during that year. Therefore, the longer a period you have to cover, the higher the premium. The firm in which I am a principal had a premium of nearly twenty thousand dollars in our first year, with no "tail" to cover. It was our third highest expense, after payroll and rent. Adding a fifteen year tail results in a considerably higher premium. It is not unheard of to have a premium of over a hundred thousand dollars with a deductible of a hundred thousand dollars for the million dollar policy required by the State of Alaska. If we can limit the "tail" for which we have to insure to eight years, we expect to see a reduction in our insurance bills.

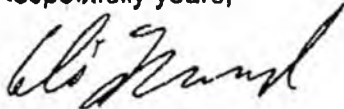
Many of the arguments for a statute of repose for construction related cases also apply to other cases and its application to those cases makes sense.

The second section in which we have an interest is the section regarding alternative dispute resolution. **It is time to develop a system which identifies patently frivolous and meritorious suits early, so we can get them out of the system.** With this in mind, APDC is urging that alternative dispute resolution be included in any tort reform action by the legislature. A mandatory mediation or independent early evaluation system would reduce the number and costs of frivolous suits by letting the plaintiff and their attorney know early on if a case has no merit. They will be less willing to press the case as the likelihood of recovery will be decreased and the likelihood of court sanction for bringing a frivolous suit will be increased. On the other hand, it will encourage defendants to settle valid claims early by giving them an independent opinion of the validity of the claim against them. It will reduce the costs of litigation by resolving cases before the lengthy, expensive, discovery process which may result in more money going to the injured, rather than lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable. It is our understanding that approximately 80% of cases sent to mediation in Washington are resolved during or soon after the mediation process. Fewer, smaller, and shorter cases should provide relief to an overtaxed court system. A bill which would have established mandatory mediation in suits against design professionals passed the House last year, 37-3. The trial attorneys, who have generally not been proponents of tort reform, testified on that bill that they would support mandatory mediation, if it was mandatory for all suits. We would have no objection to this approach.

In closing, it is our belief that Representative Porter has worked hard with all of the parties interested in this action and has crafted a bill which resolves many of the concerns with the legal system without infringing on anybody's ability to have their wrongs redressed. We urge that your committee move HB58 with a recommendation of "do pass".

If you have any questions, I can be reached by phone at (907) 274-2236, by fax at (907) 274-2520, or by e-mail at bbfm@alaska.net.

Respectfully yours,



Colin Maynard, PE

cc: Rep. Brian Porter



March 11, 1997

The Honorable Gene Therriault
Co-Chairman, House Finance Committee
Alaska House of Representatives
State Capitol
Juneau AK

Subject: House Bill 58 / USAA Policyholders

Dear Chairman Therriault:

As you may know, USAA is a worldwide insurance and diversified services company meeting the needs of members of the armed forces and their families. USAA members insure one another and our membership consists primarily of present and former military officers and their families. In the state of Alaska, USAA has approximately 12,000 automobile insurance policyholders (insureds) and, in addition, has nearly 5,000 homeowner insureds there. Most of the homeowner insureds will also be automobile insureds. The information I am providing is merely designed to inform you of USAA's method of serving its insureds and to show how those insureds can be better served by the adoption of House Bill 58. Additionally, I would recommend you seek similar input from other insurers.

As a reciprocal insurer, USAA pays dividends to its members which are based, in part, on the loss experience in their state for the previous year. Since 1980, with the exception of 1992, when no dividends were paid because of losses due to natural catastrophes, USAA's Alaska safe driver insureds have received a 10% dividend each year in recognition of their safe driving. In addition to the safe driver dividend, a special dividend has been paid to USAA insureds. In 1995 the dividend was 15% and in 1996 it was 8%. In 1996, our Alaska insureds received a 6% payout from their individual Subscriber Savings Account (SSA). It should be noted that only members of the United Services Automobile Association are holders of SSA's. Persons, such as former dependents and spouses, insured by the subsidiary USAA Casualty and Indemnity (CIC) did not receive the SSA distribution.

As a true reciprocal, USAA members insure each other and they are the owners of the Association. Since 1969, USAA has employed the SSA to represent a measure of a members ownership in the Association. A member's SSA balance grows based on both the members participation (number of policies and premiums in effect) and the Association's performance. The SSA serves an important role in the Association's financial structure by providing the flexibility to retain sufficient funds to cover large, unexpected losses and the

The Honorable Gene Therriault

March 11, 1997

Page Two

financial resources necessary to grow. The SSA is one of the unique aspects of USAA as a reciprocal inter-insurance exchange. The amount in each member's SSA is returned to the member upon leaving the association.

SSA funds are held on account by the Association on behalf of the members. The funds comprise a portion of USAA's surplus and are available for use by the Association should the need arise. The amount of retained surplus is important to insurance regulators and rating agencies. Each year, the Board of Directors determines the appropriate level of surplus needed to provide adequate assurance that all financial obligations can be met. SSA funds not needed by the Association are paid to the members. SSA payments are the combination of a percentage of the members SSA balance from previous years and a percentage of the premium paid in the previous year. Worldwide, SSA payments since 1969 have varied from an annual average of 34.67% (high) to none. In 1996, the average was nearly 11%.

Obviously, insurance companies will vary widely in their business practices and products. For example, stock insurance companies will disburse any profits to the shareholders. Reciprocal and mutual insurers such as USAA and State Farm will share their profits in the form of policyholder dividends. No matter what type of ownership an insurer may have, however, there are a number of statutory and regulatory changes which can affect insurance premiums. Among the proposed statutory changes in House Bill 58 that will have a significant impact on USAA's loss experience in Alaska and, in turn, a substantial effect on insurance premiums, are those which impose reasonable limits on punitive and non-economic damages, and those which reform the collateral benefits rules in order to prevent double recovery.

Tort reform can have a major effect on insurance premiums, both directly and in the form of increased dividends and higher SSA distributions. In Alaska, USAA policy holders will be directly benefited by adoption of House Bill 58. As this bill moves forward, I would be pleased to assist you in any way possible.

Sincerely



James R. Jinks, AVP
Senior Legislative Counsel

JRJ:djn

cc: Representative Brian Porter

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March 11, 1997

The Honorable Gene Therriault
Co-Chair of the House Finance Committee
House of Representatives
State Capitol, MS 3100
Juneau, AK 99801-1182

Re: CS for Sponsor Substitute for House Bill No. 58(JUD)
File No. 1795.6377

Dear Representative Therriault:

I am writing to provide my support for CS for Sponsor Substitute for House Bill No. 58(JUD). The specific provisions which I am addressing are Sections 40 and 41 relating to independent counsel. A significant portion of my practice entails providing legal advice to insurers doing business in the State of Alaska. We are very pleased with the Bill offered by the Committee and appreciate Representative Porter's efforts in this regard.

Sections 40 and 41 of this Bill address significant problems which remain in the wake of the Supreme Court's decision in CHI of Alaska, Inc. v. Employers Reinsurance Corporation, the decision which gave a defendant the right to select its own independent counsel when an insurance company had issued a reservation of rights on coverage.

The situation addressed by these sections arises when a claim for which there may be insurance coverage is joined with several for which there clearly is not insurance coverage. The example I will utilize is a lawsuit in which a plaintiff has sued a defendant in five separate counts. The First is for injury, which is alleged to be negligent. The Second is for injury alleged to be either negligent or intentional. The Third is for unpaid wages. The Fourth is for breach of contract. The Fifth is for discrimination. If the defendant is a typical business it has insurance for the injury claim, but that insurance will not cover the injury claim if it was intentionally caused. The first count - injury negligently caused - is clearly covered. However, an insurer would typically issue a "reservation of rights" letter on the Second count advising the defendant that it would be

The Honorable Gene Therriault
March 11, 1997
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responsible for defending a negligently-caused bodily injury but would reserve its rights not to pay for a judgment on this Count if the jury found it was intentionally caused. The claims for unpaid wages, breach of contract, and discrimination have no insurance coverage. I have attached a chart demonstrating this scenario.

Because the insurer has issued a reservation of rights letter on the Second Count, the defendant is entitled to select its own counsel and, under current practice in Alaska, that lawyer would defend Counts 1-5 and submit his/her entire bill for that defense to the insurance company. Because the insurance company has no control over the independent counsel it has been the experience of many of my clients that these bills are extraordinarily high. In one case with which I am personally familiar the bills were \$80,000 per month and totaled \$800,000 with most of that time devoted to the non-covered claims. Counsel for other insurers have advised me that this experience is not unique. I have knowledge of a second case which is almost identical to the example I am using in which the fees totalled in excess of \$1,000,000. "Independent counsel" use the checkbook of the insurance carrier to provide a gold plated defense to claims for which there has never been insurance coverage.

Section 40 of this Bill provides that the insurance carrier in this situation need only pay for the costs of defending the First and Second Counts. Because these are the only counts for which insurance coverage was ever purchased, the defendant is getting precisely what it bargained for when it bought insurance. This is a resolution which has been brought about judicially in California, in Horace Mann Insurance Co. v. Barbara B. 846 P.2d 792 (1993). Alaska has modeled much of its judicial and statutory law in this area upon California precedent.

I have had conversations with Marianne Burke, the Director of the Division of Insurance, and she has advised that it is the Division's understanding that insurance carriers did not pay for the defense of uncovered claims in this situation. While we appreciate the position of the Division, threats of bad faith litigation against the insurers make the practice in Alaska different than that understood by the Division. Ms. Burke was aghast when I conveyed to her the magnitude of the attorneys fees which had been incurred in these cases. Because it is Ms. Burke's belief that insurers do not at present pay for the costs of defense for the uncovered claims, we anticipate no objection from the Division to these provisions.

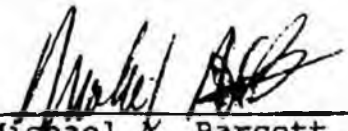
The Honorable Gene Therriault
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I would not expect the plaintiff's bar to have difficulty with this proposal. When a defendant is represented by independent counsel, that independent counsel frequently takes a "scorched-earth" approach to litigation because of the lack of real financial constraints on the defense activity. In the case I have utilized here, one would expect the independent counsel to defend Counts 3-5 with extensive discovery and motion tactics that run up the costs of litigation for the plaintiff who must respond to these tactics. By requiring the defendant individually to shoulder the burden of expense for defending Counts 3-5, there is a realistic fiscal check on the activities of independent counsel.

Section 41 of this Bill provides a mechanism by which the insurance carrier can deal directly with the plaintiff in settling these types of cases. In the example we have utilized the only claims giving rise to the obligation for defense are Counts 1 and 2. Section 41 makes it clear that the insurer can deal directly with the plaintiff to settle the injury claims. Once those claims are settled, all that remain are claims for which there is no coverage and the obligation to provide independent counsel is eliminated. At present, there is a fear among insurance carriers that if they deal directly with the plaintiff, that they run the risk of a bad faith lawsuit by their insured. Once again the insurance carrier is providing all that it contracted to provide as it is settling the claims for which there is potentially coverage and eliminating a risk to the defendant. The plaintiff's bar should have no opposition to this as it allows plaintiffs to settle cases but obviously does not require them to do so. This is a section which is only implicated where both the plaintiff's counsel and the insurance carrier are in agreement on the settlement.

Thank you very much for considering these matters.

Very truly yours,



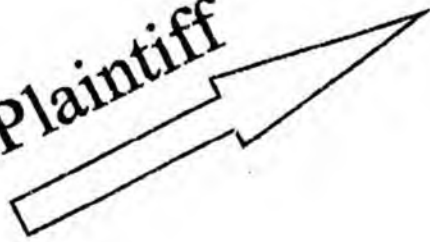
Michael A. Barcott

MAB:mb

Enclosure

cc: Representative Brian Porter

Plaintiff



Defendant

I.
Injury
Negligent

Covered

II.
Injury
Negligent/Intentional

*Reservation
of
Rights*

III.
Unpaid Wages

IV.
Breach of Contract

*Denial
of
Coverage*

V.
Discrimination

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**THE ALLIANCE**

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Transmittal by Fax

March 11, 1997

Representative Gene Therriault
Finance Co-Chairman
Alaska State Legislature
Room 511
Juneau, AK 99801

Dear Representative Therriault:

The Alaska Support Industry Alliance is a non-profit trade association representing a broad-based membership doing business within the oil, gas and mining industries. Our mission is to foster and promote the safe and environmentally sound development of natural resources, and to enhance and stimulate the business climate for our 300+ members. Comprised of oilfield service companies, transportation, wholesale and retail sales, professional services, and private citizens, The Alliance is one of the most effective and dominant voices for business in Alaska.

As a state, we are competing for investment dollars on a global basis. We must continue to send the message to potential investors that Alaska is "Open for Business". We can do this by stabilizing the economic climate through fiscal restraint and by stabilizing the legal climate through comprehensive tort reform.

The cost of litigation and liability insurance has a dramatic impact on businesses — both small and large. The ever-increasing product liability, personal injury suits, and unpredictability of damage awards have caused costs to soar. Tort reform legislation will help control these expenditures while assuring appropriate compensation for persons injured through the fault of others.

Alaska Support Industry Alliance

...for responsible development of Alaska's Oil, Gas & Mineral Resources

The Alliance
Support Letter/HB #58
Page 2

Government officials must continue to search for ways to reduce the cost of doing business in Alaska, including a comprehensive review of liability laws affecting the economics of business. We believe House Bill #58, sponsored by Representative Brian Porter, addresses this critical problem with a fair and equitable solution. The Alliance strongly supports HB #58, and ask the House Finance Committee to pass this legislation out of committee, and on to the House floor.

Sincerely,



Karen Cowart
General Manager

cc: Representative Brian Porter

A L A S K A



March 11, 1997

Representative Mark Hanley, Co-chairman
Representative Gene Therriault, Co-chairman
House Finance Committee
State Capitol
Juneau, AK 99801-1162

Dear Representative Hanley and Representative Therriault,

HB 58, making important changes in Alaska's tort law, will be before the Finance Committee this week. This is a priority issue for the National Federation of Independent Business. With 4,400 Alaska members, NFIB/Alaska is the states largest small-business advocacy organization. NFIB represents the entire spectrum of independent businesses, from one person "cottage" operations to quite substantial enterprises.

NFIB is interested in changing Alaska's tort laws to make the civil justice system more fair, more efficient and less costly. That is the purpose of HB 58. This bill allows for appropriate compensation for persons injured through the fault of others. There is no limit on economic damages such as medical costs and lost wages. It does put a reasonable cap on additional awards for damages such as pain and suffering. It prohibits punitive damages unless deliberate disregard for another person is shown. It also puts sensible limits on punitive damage awards.

NFIB/Alaska strongly supports putting reasonable limits on non-economic and punitive damages. When there are no limits on damages, any business may be just one lawsuit away from being put out of business. The unpredictability of what a jury may award often forces insurance companies to settle out of court too soon for too much money. This drives up the cost of liability insurance.

NFIB/Alaska believes HB 58 will help control the costs of personal injury cases while assuring appropriate compensation for persons injured through no fault of their own. NFIB/Alaska urges support for HB 58.

Sincerely,

Thyes J. Shaub
on behalf of NFIB/Alaska



Philip R. Hinderberger
Vice President and
General Counsel

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March 11, 1997

Gene Therriault, Co-Chair
House Finance Committee
House of Representatives
State Capitol
Juneau, AK 99811

RE: SSHB 58 (JUD) Tort Reform Bill

Dear Representative Therriault:

NORCAL Mutual Insurance Company is a physician and health care provider-owned professional liability insurer with over 13,000 policyholders located in Alaska and the lower 48. In 1991, we assumed the medical malpractice business formerly written by Medical Insurance Company of Alaska (MICA). We are the only professional liability insurer with a full service office located in Alaska. Our nine person professional staff has served physicians and hospitals located throughout Alaska since 1975. Based on our extensive experience in Alaska and the lower 48, we support those portions of SSHB 58 in order to provide modest relief for physicians and hospitals from the worst abuses of the tort system. This bill will help move Alaska more in line with most other states that have adopted medical tort reform.

A number of studies have been done regarding the relative cost of medical malpractice insurance and the impact of tort reform on health care costs. Although we have been advised by actuaries that it is impossible to quantify precisely the impact of any particular tort reform, it is widely acknowledged that the package of reforms known as the Medical Injury Compensation Reform Act ("MICRA") has made medical malpractice insurance widely available and affordable in California as compared to Alaska. These savings arising from medical tort reform have been passed on to consumers in the form of lower medical costs (Exhibit 1).

Prior to the enactment of MICRA, California medical malpractice costs were out of control. During the period 1970 - 1975, medical malpractice costs increased over 400% in response to the dramatic increase in the number of lawsuits brought against doctors and hospitals. Since 1976 when MICRA was enacted, medical malpractice costs have only increased about 100% in California while nationwide costs excluding California have increased by over 563% (Exhibit 2). Had California medical malpractice premiums increased at the same rate as the rest of the United States, California physicians and hospitals would have paid an additional \$663 million during calendar year 1992 alone. Total savings to date exceed several billion dollars.

AMMIC-3/11/97

March 11, 1997

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Comparing experience in California to other states graphically demonstrates that tort reform helps control medical malpractice insurance costs. Several states including Ohio enacted medical malpractice tort reforms similar to California and also saw a gradual reduction in malpractice costs compared to the rest of the United States. However, in 1982, Ohio's medical malpractice tort reforms were substantially weakened and its costs have risen dramatically (Exhibit 3).

Some states such as Alaska have not enacted medical tort reforms and their physicians and hospitals have over the years suffered severe increases in the cost of medical malpractice insurance resulting from swings in the severity and frequency of losses. Alaska has experienced the largest percentage increase in medical malpractice premiums in the nation with malpractice premiums skyrocketing from \$781,000 in 1976 to \$13,940,000 in 1994. This is a 1,684% increase in the cost of Alaska medical malpractice over 18 years for an average of 22% per year, which is almost three times the national average of 7.8% and more than eight times the average annual increase in California of 2.7% for the same period.

In 1975, California physicians' malpractice costs were the highest in the nation. To date, a comparison of premium costs for six medical specialties in California and Alaska clearly demonstrates that MICRA has kept California premiums significantly lower than in other states (Exhibit 4). California physicians not only pay less than their colleagues in other states, but they have seen a drop in their premiums when adjusted for the cost of living. The average California physician pays 60% less today than before MICRA (Exhibit 5).

Over the long term, Alaska physicians and hospitals should see similar reductions in the cost of malpractice insurance if SSB 58 is enacted and upheld by the courts. California's medical tort reforms have worked in spite of strong pressure from the trial bar to overturn them in the courts. Real savings did not occur for many years until the California Supreme Court upheld MICRA in 1985. Because trial courts were reluctant to apply MICRA before the Supreme Court ruled on the constitutionality of MICRA, insurers were unable to report savings from tort reform and malpractice insurance costs actually increased during the early 1980s. The MICRA debate was finally put to rest in 1987 when the California Legislature refused to repeal or weaken MICRA. Since that time, California trial courts have recognized MICRA and policyholders have received substantial "MICRA" dividends amounting to several hundred million dollars. These MICRA dividends were paid by California's physician-owned insurers from loss reserve savings in the late 1980s. During the 1990s, California policyholders have had almost no rate increases and continue to receive substantial MICRA dividends.

The impact of legal reforms on health care costs has been the subject of several recent studies. The U.S. Congress, Office of Technology Assessment reported in 1993 that states which place reasonable limits on non-economic damages, require periodic payments and permit juries to hear evidence of collateral sources have seen a reduction in costs. Twenty-nine states place limits on non-economic damages, 30 states authorize periodic payments of large verdicts, 40 states have abolished the collateral

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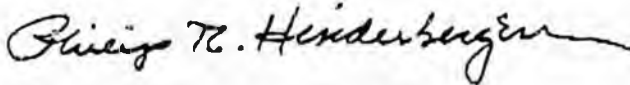
source rule, 50 states have statute of limits and 22 states control the amount of attorney contingency fees (Exhibit 6).

SSHB 58 offers a fair and balanced approach to reforming the civil justice system. SSHB 58 allows all Alaskans whether rich or poor to access the civil justice system and receive full compensation for their economic losses. SSHB 58 will eliminate the worst abuses by those who treat the civil justice system as a lawsuit lottery.

If the Alaska Legislature enacts SSHB 58, the rate of increase in the cost of medical malpractice insurance should, over time, be brought in line with other states that have enacted similar tort reform. SSHB 58 should also help eliminate the wild swings in the severity and frequency of losses which will foster a stable marketplace for medical malpractice insurance in Alaska and, ultimately, help control health care costs.

We urge your support of SSHB 58.

Very truly yours,



PHILIP R. HINDERBERGER

PRH/rl

Enclosures

cc: Representative Brian Porter

March 11, 1997

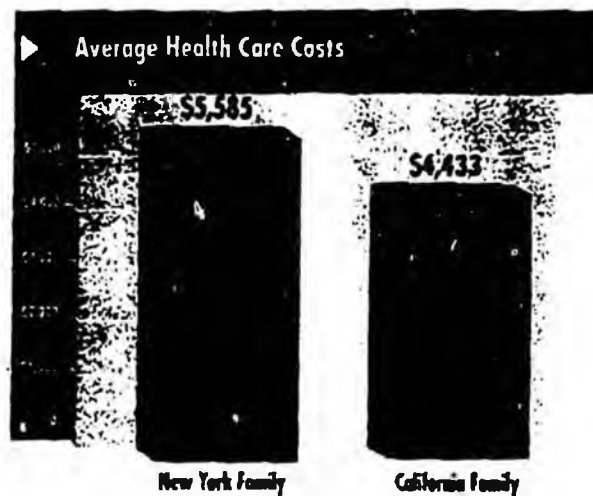
Page 4

bc: Richard Cattanach, Alaskans for Liability Reform
Steven S. Fountain, M.D., NORCAL Mutual Insurance Company
Roger Holmes, Biss & Holmes
Janet Johnston, NORCAL Mutual Insurance Company - Alaska
Jim Jordan, Alaska State Medical Association
Harden Knudson, Alaska State Hospital and Nursing Association
Jay Michael, Californians Allied for Patient Protection
Ron Neupauer, Medical Insurance Exchange of California, San Francisco, CA
J. William Newton, NORCAL Mutual Insurance Company
Tim Shannon, California Association of Professional Liability Insurers
Larry Smarr, Physician Insurers Association of America

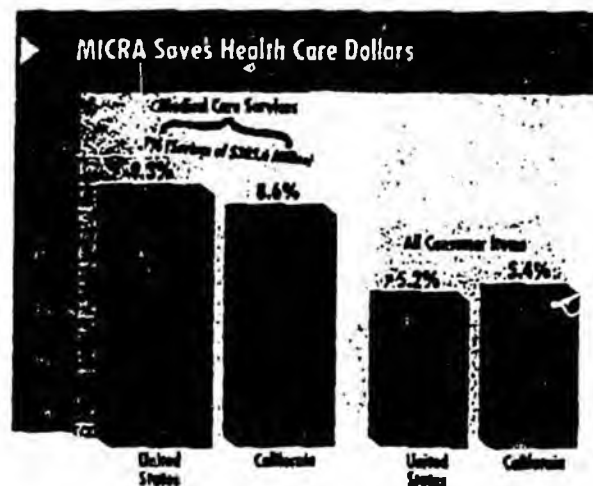
▶ After MICRA: Real Results

MICRA Helps Control Medical Costs in California — Without MICRA, Medical Costs Would Be Even Higher

By controlling the cost of liability insurance, MICRA has slowed the increase of health care costs in California. As illustrated in the first chart, a recent consumer study by "Families USA" shows that health care costs for the average New York family in 1991 were \$5,585 — compared to \$4,433 for the average California family.



Further, as seen in the second chart, although consumer costs in California generally were higher than the national average in 1991, the state's medical care services index was lower. In 1991, California's medical costs increased less than medical costs for the nation as a whole, saving Californians \$385.6 million.



- SOURCE: 1. Families USA
2. SOURCE: Consumer Price Index for All Urban Consumers (CPI-U), 1987-1990 based on averages from the Los Angeles and San Francisco Bay Area indexes.

EXHIBIT

Charts

**Alaska Medical Malpractice Insurance Costs
Compared to U.S. and California
1976 - 1994**

Year	AK Premium Earned (Thous.)	% Change	U.S. Premium Earned (Millions)	% Change	CA Premium Earned (Millions)	% Change
1976	\$781		\$1,187		\$288	
1977	655	-16	1,266	+6.7	227	-21.2
1978	Not available		1,382	+9.2	249	+9.7
1979	2,233	+240.9	1,235	-10.6	239	-4.0
1980	1,798	-19.5	1,333	+7.9	230	-3.8
1981	2,125	+18.2	1,232	-7.6	204	-11.3
1982	2,276	+7.1	1,361	+10.5	211	+3.4
1983	2,609	+14.6	1,844	+35.5	287	+36.0
1984	3,483	+33.5	1,835	-.50	375	+30.7
1985	4,403	+26.4	2,261	+23.2	450	+20.0
1986	8,480	+92.6	3,435	+51.9	629	+39.8
1986	13,639	+60.8	4,450	+29.5	633	+0.6
1988	15,109	+10.8	5,080	+14.2	663	+4.7
1989	16,341	+8.2	5,120	+8.0	633	-4.5
1990	14,983	-8.5	4,931	-3.7	605	-4.4
1991	13,371	-10.8	4,862	-1.4	529	-12.6
1992	13,439	+0.5	5,138	+5.7	526	-0.6
1993	14,723	+9.0	5,174	+1.0	563	+6.0
1994	13,940	-5.0	5,932	+15.0	577	+2.0

National Association of Insurance Commissioners' Report on Profitability by Line and by State 1976-1994.
This report is based on information obtained from insurance company Annual Statements.

Conclusions:

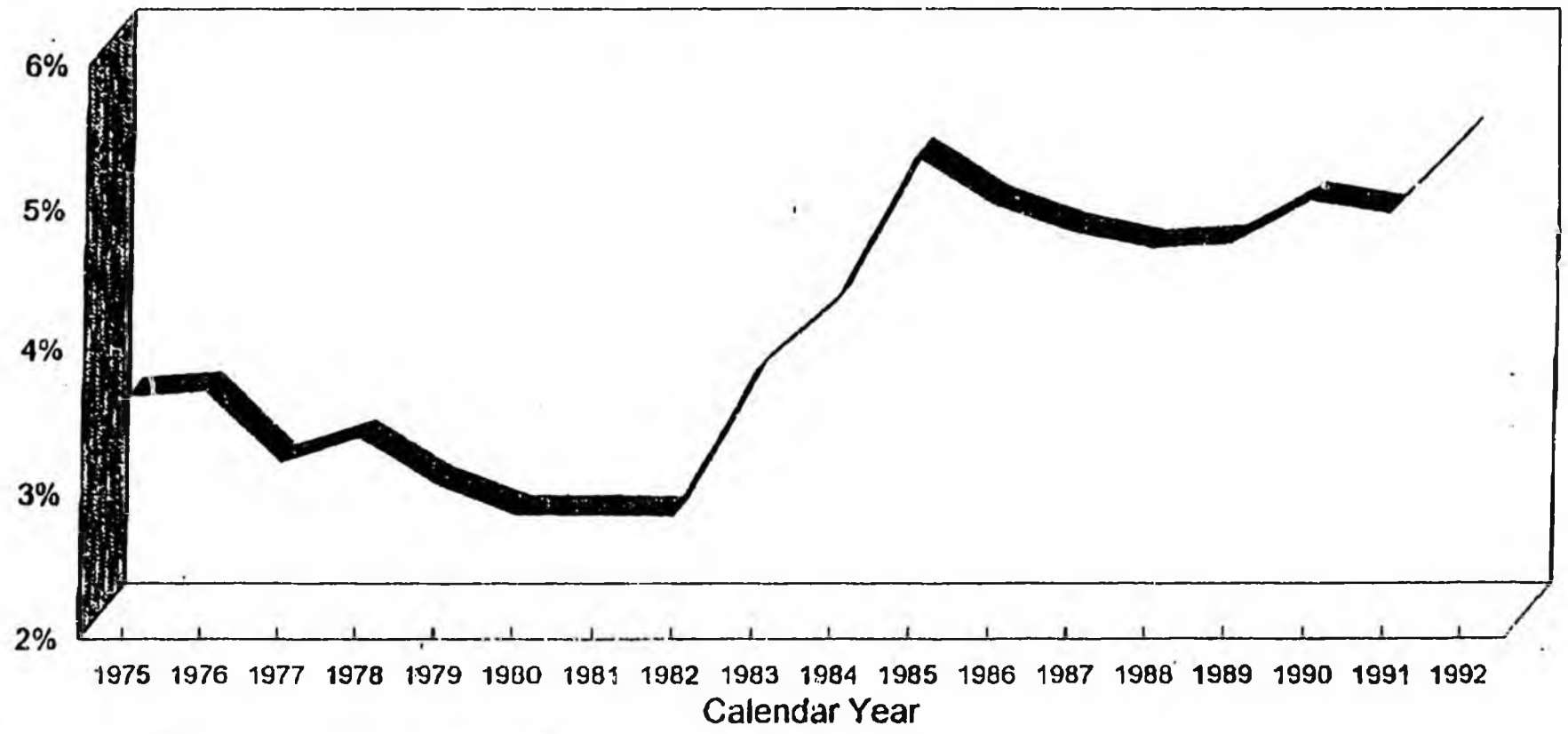
- Alaska medical malpractice premiums have increased from \$781,000 to \$13,940,000 for a total increase of \$13,159,000 or 1,684% overall at an average annual rate of 22%.
- U.S. medical malpractice premiums including Alaska have increased from \$1,187 billion to \$5,932 billion for a total increase of \$4,745 billion or 400% overall at an average annual increase of 7.8%.
- California medical malpractice premiums have increased from \$288 million to \$577 million for a total increase of \$289 million or 100% overall at an annual average increase of 2.7%.

AMMIC-3/11/97

EXHIBIT 2

EXHIBIT 3

Ratio of Ohio Paid Loss and LAE to Countrywide



Medical Liability Insurance Costs

California v. Alaska

	<u>California</u>	<u>Alaska</u>	<u>Difference</u>
Anesthesia	10,000	26,500	2 1/2x
Family Practice/ Minor Surgery	7,000	16,000	2x
Family Practice/ Major Surgery	19,000	26,500	1 1/2x
Neurosurgery	43,000	80,000	2x
Obstetrics/ Gynecology	31,500	64,500	2x
Orthopedic Surgery	26,000	80,000	3x

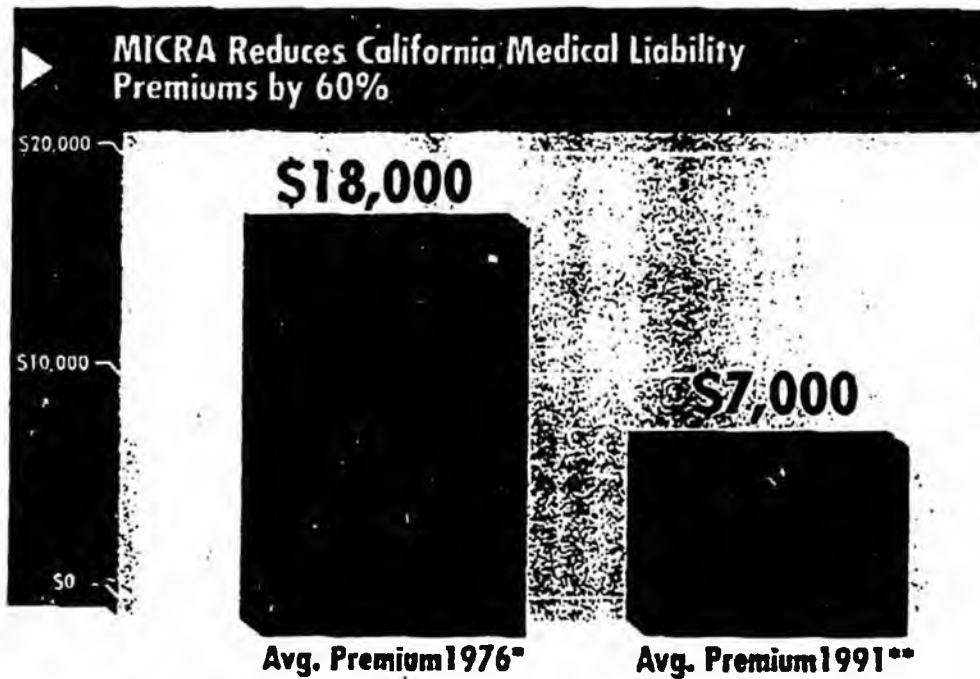
NOTE: NORCAL, Northern California and Alaska published premiums 1995.

EXHIBIT 4

Insurance Premiums Cut

MICRA Has Cut Medical Liability Insurance Premiums by 60%

Before MICRA took full effect, California physicians paid an average \$18,000 for liability insurance in 1976. By 1991, MICRA had reduced the average liability premium to \$7,000 — a 60% savings.



— Shown in 1991 dollars

* \$7,241 average premium adjusted to 1991 dollars on the December Urban CPI Index

** Dividends from 1990 deducted from 1991 average premium

EXHIBIT 5

IMPACT OF LEGAL REFORMS ON MEDICAL MALPRACTICE COSTS

Background Paper
prepared by the

Health Program
Office of Technology Assessment

Clyde J. Behney, *Assistant Director, OTA*

Project Staff

Judith L. Wagner, *Project Director*
Defensive Medicine and the Use of Medical Technology

Jacqueline A. Corrigan, *Study Director*

David Klingman, *Senior Analyst*

Leah Wolfe, *Analyst*

Philip T. Polishuk, *Research Assistant*

September 1993

This paper was prepared for desk-top publishing by Carolyn Martin and Daniel B. Carson.

EXHIBIT 6

Appendix A
State Medical Malpractice Reforms

EXPLANATION OF METHODS USED
BY OTA TO COMPILE DATA

The tables, figures, and accompanying notes in appendix A were derived from a variety of sources and synthesized by OTA to reflect the most recent information available on selected State medical malpractice reforms.

The primary published sources were 1991 and 1993 editions of a compendium developed for the Federal Agency for Health Care Policy and Research (AHCPR),¹ selected State statutes, and judicial cases. Two additional sources were used to update, cross-check, and supplement the AHCPR compendia.²

After compiling information from these sources into summary tables, OTA sent draft copies of the information to the attorneys general in all 50 States on March 24, 1993, for confirmation or amendment. Information was changed to reflect respondents' comments. Where conflicts arose between

the attorney general response and information found elsewhere, the attorneys general's responses were favored. Unresolved questions were addressed through follow-up phone conversations with attorney general respondents and statutory research. The revised drafts were sent again to all 50 State attorneys general on June 25, 1993, for a final review and any corrections were incorporated.

For States that responded to the first survey only, information is current to March 1993. For States that responded to the second survey, information is current to June 1993. For the 10 States³ that did not respond to either review and the District of Columbia, information was cross-checked and supplemented through followup telephone calls and/or review of the relevant State codes where possible. Where confirmation was not possible, information in this appendix reflects that presented in the 1993 edition of the AHCPR compendium.

¹U.S. Department of Health and Human Services, Agency for Health Care Policy and Research, "Compendium of State Systems for Resolution of Medical Injury Claims," prepared by S.M. Spornak, Center for Health Policy Research, The George Washington University (Rockville, MD: AHCPR, April 1993), AHCPR Pub. No. 93-0053; U.S. Department of Health and Human Services, Agency for Health Care Policy and Research, "Compendium of State Systems for Resolution of Medical Injury Claims," prepared by S.M. Spornak and P.P. Budetti, Center for Health Policy Research, The George Washington University (Rockville, MD: DHHS, February 1991), DHHS Pub. No. (PHS)91-3474.

²These sources were: Fisk, M.C., "The Reform Juggernaut Slows Down," The National Law Journal 15(10):13-37, Nov. 9, 1992; American Nurses Association, "Report to ANA Board of Directors on Tort Reform, Part 3: Presentation of Selected Summary of State and Local Legislation Related to Tort Reform and Review of Insurance Company Practices and Policies Related to Nursing Negligence with Recommendations," December 1991.

³DE, FL, HI, KS, KY, MS, NJ, NM, TX, WV.

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Table A-1—Collateral Source Offset Provisions,^a by State, 1993

Mandatory	Discretionary	No provision
CO*	AK*	AR
CT	AL	DC
FL	AZ	GA ^o
IA	CA	HI
IL*	DE	LA
ID	IN	MO*
KS ^o *	KY	MS
MA*	MD*	NC
ME	ND ^o *	NE
MI	OR	NH ^o
MN*	SD	NV*
MT*		OK
NJ		PA ^o
NM		SC
NY		TX
OH*		VA
RI*		VT
TN		WA*
UT		WI
		WV
		WY

^aThe traditional collateral source rule forbade evidence of the plaintiff's collateral sources of income and reimbursement (e.g., medical insurance, disability payments) from being entered into evidence. States classified as "mandatory" or "discretionary" in this table have modified the traditional evidence rule to allow certain types of collateral sources to be admitted as evidence. Statutes which require that the plaintiff's award be offset by certain collateral sources are classified as mandatory. Statutes that leave the decision of whether to offset to the jury or judge are classified as discretionary. States with no provision have not modified their traditional collateral source rules. It is of note that a number of States reduce the malpractice award by the collateral source payments, but credit the plaintiff with any premiums he or she has paid or will pay to obtain the insurance (e.g., MN, MI, CT, RI, IL and NY).

^o = Provision overturned.

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

Appendix A—State Medical Malpractice Reforms - 81

Table A-2—Caps on Damages^a and State Patient Compensation Funds, by State, 1993

Noneconomic cap	Economic and noneconomic	No statutory limits	PCF (Patient Compensation Fund)
AK: \$500,000*	AL: ^o Total recovery capped at \$1 million.*	AR	FL: Physicians may participate in fund by obtaining liability coverage of \$250,000 per claim and \$500,000 per occurrence. Fund will pay malpractice awards exceeding maximum physician liability of \$250,000 per claim, up to \$1 million per claim and \$3 million aggregate per policy.
CA: \$250,000		AZ	
FL: ^o \$350/250,000	CO: Total recovery capped at \$1 million.	CT	
HI: \$375,000	\$250,000 cap on noneconomic.*	DC	
ID: ^o \$400,000*		DE	
KS: ^o \$250,000*	IN: \$750,000	GA	
MD: \$250,000	LA: \$500,000*	IA	
MA: \$300,000	NE: \$1,250,000	IL ^o	
MO: \$465,000*	NM: \$500,000*	KY	
OR: \$500,000	SD: \$1,000,000*	ME	
UT: \$250,000	VA: \$1,000,000	MN ^a	IN: Provider not liable for that portion of any malpractice award which exceeds \$100,000. Any amount due the plaintiff which is in excess of the total liability of all health care providers, shall be paid from the PCF, with total payments from the PCF not to exceed \$750,000.
WV: \$1,000,000		MS	
WI: \$1,000,000		MT	
		NC	
		*ND ^o	
		NH ^o	
		NJ	
		NV	
		NY	
		OH ^o	
		OK ^R	KS: Physicians must carry \$200,000 in malpractice insurance per claim (\$600,000 per annum) then can choose one of three options for excess coverage from PCF. For each option, the physician pays the initial \$200,000 in damages and then the fund will pay some portion of the remainder depending on how the physician chooses to distribute fund liability across potential claims: 1) fund liable for next \$100,000 per claim (\$300,000 aggregate per provider); 2) fund liable for next \$300,000 (\$900,000 aggregate per provider); and 3) fund liable for up to \$800,000 per claim.
		PA	
		RI	
		SC	
		TN	
		*TX ^o	
		VT	
		WA ^o	
		WY	

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Table A-2—Caps on Damages^a and State Patient Compensation Funds, by State, 1993 (Continued)

Noneconomic cap	Economic and noneconomic	No statutory limits	PCF (Patient Compensation Fund)
			<p>LA: Provider liability limited to \$100,000 for injuries or death to plaintiff. Fund will pay total amount recoverable for all injuries or death of a plaintiff exclusive of future medical care and related benefits, up to \$400,000 for private providers. The State pays all damages up to \$500,000 for State health care providers.</p>
			<p>NE: The PCF shall cover liability exceeding \$200,000 up to \$1.25 million.</p>
			<p>NM: Health care provider liability is capped at \$100,000, with the remainder to be paid by the PCF. Total payment from PCF not to exceed \$500,000 per occurrence per year.</p>
			<p>PA: The fund shall pay any amount exceeding \$100,000 per occurrence, up to \$1 million per claim.</p>
			<p>SC: The fund will pay awards in excess of \$100,000 per claim (no upper limit).</p>
			<p>WI: Physicians must have \$400,000 of malpractice coverage per incident and \$1,000,000 in coverage per annum. The fund will pay for damages exceeding the physician's coverage. Each health care provider is also assessed an annual fee to help finance the fund.</p>

^aNOTE: OTA's review did not include caps that apply only, or separately, to claims against State-employed or State-owned health care providers.

O = Provision overturned.
 R = Provision repealed.

*See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

Appendix A--State Medical Malpractice Reforms - 85

Table A-3--Periodic Payment of Awards,^a by State, 1993

Mandatory	Discretionary	No provision
AL > \$150,000*	AK*	DC
AZ	AR > \$100,000	GA
CA > \$50,000	CT > \$200,000*	HI
CO > \$150,000	DE	KS ^o
IL > \$250,000*	FL > \$250,000	KY
LA ≥ \$500,000*	IA	MA
ME ≥ \$250,000	ID > \$100,000	MS
MI	IN	NC
MO > \$100,000*	MD	NE
NH	MN > \$100,000	NH ^o
OH > \$200,000	MT > \$100,000	NJ
SD > \$200,000	ND*	NV
UT > \$100,000	NY > \$250,000*	OK
WA > \$100,000*	OR	PA
	RI > \$150,000*	TN
	SC > \$100,000	TX
		VA
		VT
		WI
		WV
		WY

^aPeriodic payment provisions are often not triggered unless the award reaches a threshold amount. The specific thresholds are noted parenthetically in the table. Periodic payment provisions apply only to future damages. The schedule of payments is either negotiated by the parties or determined by the court. Some statutes offer guidelines for determining the schedule. The mandatory category includes statutes in which periodic payment is mandatory upon reaching the threshold or upon unilateral request by defendant or plaintiff.

^o = Provision overturned.

* See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

Appendix A--State Medical Malpractice Reforms - 87

Table A-4--Statutes of Limitations,^a by State, 1993

Years within date of injury	Years within date of discovery	Maximum number of years	Foreign object exception**
AL: 2 years	6 months	4 years	-
AK: -	*2 years	-	-
AF: 2 years	-	-	1 year
AZ: -	2 years	-	-
CA: 3 years	1 year	3 years	1 year
CO: -	2 years	3 years	2 years
CT: -	2 years	3 years	-
DC: 3 years	-	-	-
DE: 2 years	3 years	-	-
FL: 2 years	2 years	4 years	-
GA: 2 years*	-	5 years	1 year
HI: -	2 years	6 years	-
ID: 2 years	-	-	1 year*
IN: -	2 years	-	-
IL: -	2 years	4 years	-
IA: -	2 years	6 years	2 years
KS: -	2 years	4 years	-
KY: -	1 year	5 years	-
LA: 1 year*	1 year	3 years	-
MA: 3 years	-	7 years	General Exception
ME: 3 years	-	3 years	Upon "reasonable discovery"
MD: 5 years	3 years	-	Exception for minors only
MI: 2 years*	6 months	6 years	6 months
MN: 2 years*	-	-	-
MS: -	2 years	-	-
MO: -	2 years	10 years	2 years after discovery 10 years max.
MT: 3 years	3 years	5 years	-
NE: 2 years	1 year	10 years	-
NV: 4 years	2 years	-	-
NH: 3 years	3 years	-	-
NJ: -	2 years*	-	-
NM: 3 years*	-	-	-
NY: 2 years, 6 months	-	-	1 year
NC: 3 years	-	4 years	1 year after discovery, 10 year max
ND: -	2 years	6 years	-
OH: -	1 year	-	-
OK: -	2 years	3 years O*	-
OR: -	2 years	5 years	-
PA: 2 years	2 years	-	-
RI: 3 years	3 years	-	-
SC: 3 years	3 years	-	-
SD: 2 years	-	6 years	2 years
TN: -	1 year	-	-
TX: 2 years*	-	3 years	1 year
UT: -	2 years	4 years	1 year

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Table A-4—Statutes of Limitations,² by State, 1993 (Continued)

Years within date of injury	Years within date of discovery	Maximum number of years	Foreign object exception ^{***}
VT: 3 years	2 years	7 years	2 years
VA: 2 years	-	10 years	1 year
WA: 3 years	1 year	8 years	1 year
WV: 2 years	2 years	10 years	-
WI: 3 years	1 year	5 years	1 year
WY: 2-2.5 years	2 years	-	-

Explanatory Notes for Table A-4

Column 1: Statutory time limit for bringing a suit is measured from the time the injury occurs or from the date of termination of the medical treatment that led to the claim.

Column 2: The statutory time limit for bringing suit is measured from the time at which the plaintiff could have reasonably discovered the injury. Often States allow the time limit to run from either the time of injury or the time of discovery, depending on the nature of the injury.

Column 3: The maximum period in which a claim can be brought, regardless of whether the limit is measured from the date of injury or act or the date of discovery. In most States, this maximum does not apply to the foreign body exception (see column 4).

Column 4: Because of the difficulty of discovering a foreign body (e.g., a surgical sponge) left inside a patient during invasive procedures, a number of States make special exceptions to the statute of limitations for these cases.

²This table does not cover special provisions for minors, disabled plaintiffs or cases involving fraud or concealment on the part of the healthcare provider.

0 = Provision overturned.

² See additional notes on following page.

^{***} Within year of discovery, maximum number of years do not apply unless stated.

SOURCE: Office of Technology Assessment, 1993.

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Table A-5--Pretrial Screening Panels, by State, 1993

Pretrial screening panels ^a		No provision	
Mandatory	Voluntary		
AK [*]	AR	AL	ND ^R
HI [*]	CT	AZ ^R	NJ ^R
ID [*]	DE [*]	CA	NY ^R
IN	KS [*]	CO [*]	OH
LA [*]	NH [*]	DC	OK
MA [*]	VA	FL ^O	OR
MD [*]		GA	PA ^O
ME		IA	RI ^O
MI		IL ^O	SC
MT		KY	SD
NE [*]		MN	TX
NM [*]		MO ^O	WA
NV		MS	WI ^R
TN		NC [*]	WV
UT			WY ^O
VT [*]			

^a"Mandatory" includes provisions that allow a waiver of the pretrial screening process upon the request of one or both parties.
 "Voluntary" refers to provisions that allow but do not require parties to submit their claim to pretrial screening panels.

^R = Provision repealed
^O = Provision overturned

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

Appendix A--State Medical Malpractice Reforms - 93

Table A-6--Attorney Fee Limits,^a by State, 1993

Sliding scale	Maximum %	Court-determined/ court approved	No statutory limits
CA: 40% of first \$50,000	IN-15%*	AZ	AK
33.33% of next \$50,000	MI-33.33%	HI	AL
25% of next \$50,000	OK-50%	IA	AR
15% damages that exceed \$600,000	TN-33.33%	KS	CO
	UT-33.33%	MD*	DC
CT: 33.33% of first \$300,000		NE	FL ^R
25% of next \$300,000		NH ^O	GA
20% of next \$300,000		WA	ID
15% of next \$300,000			KY
10% damages that exceed \$1.2 million			LA
			MN
DE: 35% of first \$100,000			MO
25% of next \$100,000			MS
10% of damages that exceed \$200,000			MT
			NC
IL: *33.33% of first \$150,000			ND
25% of next \$250,000			NM
20% of damages exceeding \$1 million			NV
			OH
MA: 40% of first \$150,000			OR ^R
33.33% of next \$150,000			PA ^O
30% of next \$200,000			RI
25% of damages that exceed \$500,000*			SC
			SD
ME: 33.33% of first \$100,000			TX
25% of next \$100,000			VA
20% of damages that exceed \$200,000			VT
			WV
			WY
NJ: 33.33% of first \$250,000			
25% of next \$250,000			
20% of next \$500,000			
Amount shall not exceed 25% for a minor or an incompetent plaintiff			
NY: 30% of first \$250,000			
25% of next \$250,000			
20% of next \$500,000			
15% of next \$250,000			
10% of damages exceeding \$1.25 million			

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Table A-6--Attorney Fee Limits,^a by State, 1993 (Continued)

Sliding scale	Maximum %	Court-determined/ court approved	No statutory limits
WI: 33.33% of first \$1 million OR 25% of first \$1 million recovered if liability is stipulated within 180 days, and not later than 60 days before the first day of trial and 20% of any amount exceeding \$1 million			

^aNOTE: Most attorney fee limits are not direct limits on the amount attorneys can charge their clients. Rather, they are limits on the portion of the damage award that may go toward attorney fees.

- O = Provision overturned.
- R = Provision repealed.

^{*} See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

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Table A-7—Arbitration Provisions^a by State, 1993

Specific provision for medical malpractice claims	General arbitration provision ^b
AK	AL
CA	AR
CO [*]	AZ
FL [*]	CT
GA	DC
HI [*]	DE
IL	IA
LA [*]	ID
MI	IN
NJ [*]	KS
NY [*]	KY
OH [*]	MA
SD	MD
UT [*]	ME
VA	MN
	MO
	MS
	MT
	NC
	ND ^R
	NE [*]
	NH
	NM
	NV
	OK
	OR
	PA
	RI
	SC [*]
	TN
	TX [*]
	VT
	WA
	WI [*]
	WV
	WY

^aNOTE: Voluntary, binding arbitration provisions only, unless otherwise noted. This table does not indicate statutory provisions for court-annexed, nonbinding arbitration. Several States have provisions authorizing mandatory, nonbinding arbitration for civil suits where expected damages are below a certain threshold (most thresholds range from \$10,000 to \$50,000). However, because the vast majority of medical malpractice cases involve expected awards in excess of these thresholds, the provisions are rarely relevant to medical malpractice. One exception is the State of Hawaii, which requires court-ordered nonbinding arbitration for all civil tort actions having a probable jury award (exclusive of costs and interest) of \$150,000 or less (Hawaii Rev. Stats. Sec. 601-20 (Lexis 1992)). However, medical malpractice claimants may elect to bypass court-ordered arbitration if a decision has been rendered under the State's mandatory medical malpractice pretrial screening provision (Hawaii Rev. Stats. Sec. 671-16.5 (Lexis 1992)).

^bMany States have adopted the Uniform Arbitration Act (UAA) (Uniform Arbitration Act, Uniform Laws Annotated (Vol. 7) (St. Paul, MN: West Publishing Company, 1992)).

R = Provision repealed
 O = Provision overturned

^{*} See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

KETCHIKAN MEDICAL CLINIC, INC.3612 Tongass Avenue
Ketchikan, Alaska 99901-5637H.J. Henrickson, MD, FAAFP (1967-1996)
David E. Johnson, MD, FAAP
Diane L. Liljegren, MD, FAAFP
Vicky Malurkar, MD
Jeanne Snyder, MD, FAAFPPhone (907) 225-5144
Fax (907) 247-0920

11 March 1997

Honorable Gene Therriault
Finance Committee
Alaska House of Representatives
Juneau, Alaska

Dear Representative Therriault:

I am writing on behalf of the Alaska State Medical Association Board of Trustees in support of House Bill 58. I would particularly like to address Section 6 regarding the statute of limitations, Section 8 regarding noneconomic damages, and Sections 29 and 30 regarding the expert advisory panels.

We support a statute of limitations of two years, except for infants. Waiting until two years after the incident or age eight, whichever is later, provides time for parents to watch their children through most of their developmental milestones. Contact with the school system comes within a few weeks of the child's sixth birthday at the latest, and that provides a societal back-up to the parents' observations. Early injuries do not have quiet interludes before expression: brain injury is not a discontinuous event.

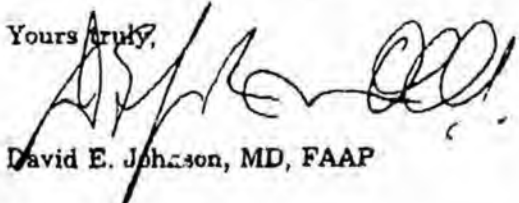
Unpredictability of noneconomic damages is the single most expensive aspect of insuring against liability, and the unpredictability in unlimited damages makes it possible to justify almost any insurance premium a company might want. With medical expenses and lost economic value paid, a limitation on the lottery aspect of noneconomic damages makes the system more predictable and thus less expensive for everyone.

Steps to more sharply focus and to define timelines more clearly will strengthen the expert advisory panel system. As currently constituted the panel system is being distorted by preemptory challenges by counsel from its intended role as advisory to the court. We believe that the expert advisory panel system has been a useful tool for sorting through the complexities of medical liability cases, and that the system should be preserved.

Thank you for the opportunity to present our ideas on House Bill 58. I would be happy to address both any aspect of what I have presented here and any other questions regarding this important piece of legislation.

The Alaska State Medical Association supports House Bill 58.

Yours truly,


David E. Johnson, MD, FAAP



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523
 In Valdez: 154 Fairbanks Dr. / P.O. Box 3089 / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

March 11, 1997

House Finance Committee:

Rep. Mark Hanley, Co-Chair	Rep. Gene Therriault, Co-Chair
Rep. Eldon Mulder	Rep. Gary Davis
Rep. Richard Foster	Rep. Pete Kelly
Rep. Vic Kohring	Rep. Terry Martin
Rep. John Davies	Rep. Ben Grussendorf
Rep. Carl Moses	

Re: HB 58

The Prince William Sound Regional Citizens' Advisory Council (RCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Alyeska terminal and associated tankers. RCAC's 18 member organizations are communities and boroughs impacted by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental representatives.

As a general matter, RCAC has no interest in the statutory guidelines for negligence suits. We are pleased to see that the retroactive provision of last year's bill has been dropped.

However, we are very concerned that the proposed cap on punitive damages - \$300,000 or three times the actual damages - will have the unintended effect of removing what are now compelling incentives for oil shippers to prevent oil spills.

In the last seven years, we have seen very significant progress toward effective spill prevention. There can be little doubt that a major motivation behind spill prevention programs adopted by major oil companies and shippers is the potential of substantial punitive damages such as those awarded in the Exxon Valdez case. The value of oil shipped is so substantial as to make potential penalties of \$300,000 meaningless. Punitive damages must be potentially high enough to make a serious impression on the shippers.

The provision for higher punitive awards - \$600,000 or four times the actual damages - in certain cases (where wrongful conduct arose in connection with commercial activities and was motivated by financial gain) is small comfort. It doesn't go far enough and even if it did, the burden of proving motivation would likely make such cases very difficult to prosecute.

The whole point of punitive damages is that they must hurt; punitive damages should provide sufficient "ouch factor" to both discourage a repeat of the injurious action and to discourage others. To be effective, punitive damages must take into account the net worth of the defendant. A punitive award of \$600,000 would not even nick the fingernail of a Bill Gates.

Under current law, a jury can tailor its punitive damages to the financial status of the defendant, making sure that the sanction is adequate to give an incentive to the defendant to avoid such conduct in the future. That ability is lost under the bill. The jury will be unable to vary its damage award to take into account whether the defendant is a Mom-and-Pop local business or an international conglomerate worth billions. The cap on punitives is the same for both of them.

We propose HB 58 be amended to incorporate language from HB 60, tying punitive damages to either average net annual income or two times the financial gain, in cases where the defendant's action was motivated by financial gain. While not ideal, this compromise would provide stronger disincentives against injurious conduct.

RCAC also opposes the Section 10 requirement that half of all punitive damages be paid to the state. This provision would discourage legitimate victims of an oil spill from spending the time, effort and money to collect those funds. As demonstrated in the Exxon Valdez case, after costs and attorneys' fees, even an award of punitive damages does not always make a party whole. We recommend this provision be dropped.

We appreciate the opportunity to provide input on this important issue and hope you will consider our suggestion.

Sincerely,



Louis "Tex" Edwards, President

cc:	Sen. Georgianna Lincoln	Sen. Jerry Mackie	Sen. John Torgerson
	Sen. Jerry Ward	Rep. Gene Kubina	Rep. Mark Hodgins
	Rep. Alan Austerman	Rep. Gail Phillips	
	RCAC Board of Directors	Paul Richards, Alyeska Pipeline Service Co.	

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-0599
Phone 907-225-8114
FAX 907-225-5920

March 12, 1997

Honorable Mark Hanley, Co-chairman
Honorable Gene Therriault, Co-chairman
House Finance Committee
State Capitol
Juneau, Alaska 99801

Subject: Support for HB 58 - Tort Reform

Dear Gentlemen,

The Alaska Forest Association (AFA) is a private, non-profit corporation comprised of member companies engaged in activities related to the forest industry. We currently have over 250 member companies representing all aspects of the industry. Our membership includes logging companies, road building companies, towing companies, wood processing facilities, and a wide variety of firms that deliver goods and services in support of the timber industry.

The time is long overdue for meaningful changes in Alaska's tort law. There have been many individuals over the last 15 years working hard for legal liability reform. It is a complex system that has been abused too often. The Alaska Forest Association supports House Bill 58 sponsored by Representative Brian Porter because it is a step in the right direction to make the civil justice system more fair and less costly.

AFA supports reasonable compensation for valid personal injury cases. This bill allows a person to be "made whole" with no limits on medical costs and lost wages. One of the problems with the current system is that there are no real limits on "non-compensatory" damages such as pain and suffering and punitive damages. It is this "sky is the limit" system that is rife for abuse. Representative Porter's legislation includes reasonable limits on these damage awards as well as other provisions that make the system more fair.

Please move this bill expeditiously through the process for passage this year.

Sincerely,

Jack Phelps, Executive Director



March 10, 1997

Representative Brian Porter
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

Thank you for your continued hard work on tort reform. Last year the AML urged the implementation of the Tort Reform bill. **The AML continues its support of the adoption of a meaningful tort reform bill.** The provisions of CS of SSHB 58 (JUD) appear to fulfill this goal.

Municipalities have considerably broader liability exposures than almost any private business because of the extremely broad nature of municipal services and public safety responsibilities. Also, municipalities are seen as "deep pockets", however, a municipality must pass costs on to residents directly through taxes. It is clearly in the interest of residents of municipalities to reasonably limit their municipality's liability exposures.

In CS for SSHB 58 (JUD), a good example of a direct benefit for municipalities is the liability reduction for non-negligent actions of an electric utility. As a broader example, the provisions that limit liability to more reasonable sums, encourage early settlements, and discourage the proliferation of "nuisance" suits, will benefit taxpayers by reducing the legal and other costs of claims. These same provisions will require that municipalities become more efficient in submitting their own claims, especially in cases such as the discovery of latent defects in construction work. On balance, **a more defined legal system, as proposed by this bill, will have benefits for municipal taxpayers.**

While the AML endorsed last year's tort reform bill, the AML Legislative Committee has not yet formally approved the provisions of this bill and may comment on specific provisions after the AML/Alaska Conference of Mayors Legislative Conference on April 1 and 2 in Juneau. You are invited to present the bill to municipal officials on Tuesday April 1. Please keep the AML informed of any issues specifically relevant to municipalities and the AML will be pleased to continue to participate in the process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Ritchie', with a horizontal line extending to the right.

Kevin Ritchie
Executive Director

CC: AML Board of Directors
AML Legislative Committee

C:Legcomm:297tortreformhb58

Member of the National League of Cities and the National Association of Counties



Electric Service for 300,000 Alaskans

Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

March 11, 1997

Representative Gene Therriault
Co-Chairman
House Finance Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Subject: House Bill 58—Tort Reform Legislation

Dear Representative Therriault:

I am writing this letter to express support for the tort reform legislation that is currently moving through the House of Representatives. House Bill 58, introduced by Representative Brian Porter, is a piece of legislation that deserves the Senate's consideration and support.

This letter is being written on behalf of the members of the Alaska Rural Electric Cooperative Association, Inc. ("ARECA"). The active members of ARECA comprise 18 electric cooperatives situated throughout the state of Alaska. These electric cooperatives serve a large percentage of the state's population. The cooperatives represent an effort by citizens of the state to provide the best possible electric service to their communities at the lowest possible cost. The members of ARECA are in support of tort reform legislation and believe it would be beneficial if tort reform were accomplished during this legislative session.

One section of the legislation is of particular importance to the members of ARECA. Over the years, the electric cooperatives have been subject to many claims by plaintiffs' attorneys attempting to impose strict liability on an electric utility for any and all electric service. The argument is made that the electric utility should be responsible for any injuries or damages arising from electricity even if the utility was not negligent in any way. For example, in one situation a claim has been made that an electric utility should be strictly liable for the quality of electric service even though the injured individual had obtained electricity only by running his own wiring from a neighboring house. The provision of the tort reform legislation desired by the electric cooperatives would ensure that utilities are held accountable only in situations in which an injured party can establish how the utility may have been at fault.

f:\ARECA\Legis\3-11-97\

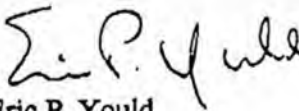
DEMOCRACY IN ACTION

Representative Gene Therriault
March 11, 1997
Page 2

Thank you for your time and attention. I will of course be available to provide testimony to the appropriate committee or committees which consider this important piece of legislation.

Sincerely yours,

ALASKA RURAL ELECTRIC
COOPERATIVE ASSOCIATION, INC.



Eric P. Yould

:lka

cc: ARECA Active Members
Larry Markley
Roger R. Kempel, Esq.

Resolution 97-3-2

A Resolution Supporting Tort Reform

ARECA supports tort reform and especially passage of section 35 of CSSSHB 58 as currently written; the section clarifies the liability of utilities for providing electric service.

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-1545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

March 12, 1997

The Honorable Gene Therrault
STATE CAPITAL, Room 511
Juneau, Alaska 99801-1182

Re: SSHB58 - Tort Reform Legislation

Dear Representative Therrault:

The Municipality of Anchorage is self insured for tort claims. As such, every dollar spent on the defense and resolution of tort claims is paid directly by the taxpayers. Despite earlier tort reform, the Municipality of Anchorage continues to be faced with frivolous lawsuits and in a climate of a back logged court system and increasing defense costs. In particular, there has been a significant increase in frivolous lawsuits against the Anchorage Police Department and individual officers. When the officers are pulled away from their important duties of investigating, fighting, and prosecuting crime to defend against these lawsuits, the safety of the people of this city and state is jeopardized.

For these reasons, the Municipality of Anchorage supports SSHB58, tort reform legislation, which would encourage the efficiency of the Alaska civil justice system by discouraging frivolous litigation while at the same time protecting injured Alaskans' rights to just compensation for injuries and damages caused by the negligent acts of others.

Anchorage supports the comprehensive changes set forth in SSHB58. In particular, those portions of the legislation that the Municipality would like to see implemented are as follows:

1. Section 7. AS 09.10.070(a) which would amend the statute of limitations for lawsuits arising out of damage to personal property to two years instead of the current six years. It is difficult if not impossible to defend against stale claims when memories have faded, personnel have changed, witnesses are gone, and evidence is lost. The Anchorage Police Department, in particular, has been faced with having to defend such claims due to the large amount of property handled by it in the course of a criminal investigation. The current six year statute actually encourages a delay in the bringing of such an action since the current prejudgment interest at 10.5% could potentially result in a windfall to the claimant.

The Honorable Gene Therrault

March 12, 1997

Page 2 of 3

2. Section 8. AS 09.10.070 Non-economic damages. The changes proposed to this section are fair and would result in reasonable compensation to Alaskans who are injured by the negligent acts of others. The current law results in excessive damage claims that are typically unsupported by facts.
3. Section 9. AS 09.17020 Punitive damages. The Alaska Supreme Court has ruled that municipalities are exempt from liability for punitive damages. In an effort to circumvent this law, plaintiffs' attorneys attempt to avoid Anchorage's immunity for punitive damages by suing employees individually and alleging punitive damages against them. There has been a significant increase in such claims in recent years. A legislative change which would streamline litigation by preventing meritless punitive damage claims is strongly supported by Anchorage.
4. Section 18. AS 09.17.080(c) Anchorage supports changes to the current law that would allow any person responsible for damages to be assessed a percentage of fault regardless of whether the person is named in a lawsuit. Anchorage has often found itself in a position of acting as a third-party plaintiff to bring the appropriate parties into a lawsuit for a fair determination of fault. This is expensive and time consuming and the proposed legislation would obviate this need and would reduce the costs of defending litigation while at the same time ensuring a just result.
5. Section 36. AS 09.65.210 Anchorage strongly supports repeal and reenactment of AS 09.65.210 to eliminate potential recovery of damages for personal injury or death if the injury or death occurred while the person was engaged in the commission of a felony. Further, since alcohol and other controlled substances have become an increasing problem in Alaska and across the country, Anchorage encourages the passage of both sections AS 09.65.210(4) and (5) which would reduce or eliminate the need to defend against claims brought by impaired persons who have substantially contributed or caused their own injuries.

Finally, Anchorage supports changes to the law that it would allow an offset for collateral benefits received by a party to avoid a double recovery, the proposed changes to prejudgment interest to avoid the windfall that currently exists regarding prejudgment interest, and more "teeth" in the present offer of judgment law to encourage early and prompt resolution of claims.

The Honorable Gene Therrault

March 12, 1997

Page 2 of 3

On behalf of the Municipality of Anchorage, the Law Department and the Risk Management Department encourage the passage of SSHB58. I would happy to discuss with you more detail how the proposed changes would impact litigation in this State, and in particular, would impact litigation faced by Anchorage on a day to day basis. Thank you for your attention to these matters.

Very truly yours,



Stephanie Galbraith Moore
Assistant Municipal Attorney

cc: Mary K. Hughes, Municipal Attorney
Harry Sjoberg, Risk Manager

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-2662 • (907) 561-2063 (fax)

March 13, 1997

The Honorable Mark Hanley, Co-Chairman
The Honorable Gene Therriault, Co-Chairman
Finance Committee
Alaska House of Representative
State Capitol (MS3100)
Juneau, AK 99801

Subject: SSHB58

Dear Representatives Hanley and Therriault:

The Alaska State Medical Association (ASMA) is comprised of nearly 500 physicians located throughout Alaska. The ASMA House of Delegates and Board of Trustees would like to thank you for providing the opportunity for ASMA to testify on its recommendations for modifications to the civil justice system.

Physicians in Alaska practice in unique and challenging circumstances. Our goal is to provide the most appropriate and best medical care possible to our patients. Our profession is facing increasingly complex issues involving new technology, moral and ethical situations, and fiscal pressures from all fronts.

The practice of medicine in Alaska is typified by the sole practitioner or small clinic practices which are essentially small businesses. But this too is changing with managed care appearing throughout Alaska which brings its own special considerations. Questions arise as to quality of care in a managed care setting that is driven perhaps more by fiscal considerations than by the medical condition of the patient. These fiscal considerations are being driven by others than the treating physicians. Such circumstances provide for further complications and uncertainties in the applications of the civil justice system to the practice of medicine.

ASMA has been on record for many years supporting changes in the civil justice system that provide for less uncertainties in the system while not keeping any person from the courthouse. Those changes are as follows:

1. Ceiling on Non-economic Damages
No limit is suggested on proven economic damages such as loss of earnings and medical expenses. ASMA recommends a ceiling of \$250,000 on recovery from non-economic damages which are those intangibles such as pain and suffering.

No caps or extremely high ceilings for non-economic damages provides for a system along the lines of a lottery. Uncertain, extremely high potential awards lead to high professional liability insurance rates which in turn leads to more physicians going without such coverage. An uninsured doctor may not have the assets to satisfy a judgment for loss of earnings and future medical expenses let alone an award for non-economic damages.

2. **Limits on Attorney Fees**

A sliding attorney's contingency fee schedule is recommended as follows:

- 40% of the first \$50,000
- 33 1/3% of the next \$50,000
- 25% of the next \$500,000
- 15% of any amounts in excess of \$600,000

Sufficient, appropriate net compensation to the injured party is the goal of the recommendation while providing for just compensation to the injured party's attorney. More compensation to the patient is the result.

3. **Collateral Source Evidence**

Allow a defendant (e.g., physician) to introduce evidence pertaining to amounts of other proceeds received by a plaintiff due to the situation that resulted in the lawsuit. Examples of those proceeds are insurance proceeds and workers compensation payments. This prevents duplicate payments for the same loss.

4. **Periodic Payment of Future Damages**

When an award for future damages exceeds \$50,000, allow either party to require the court to provide that the judgment be paid in installments over the term of the plaintiff's disability.

This allows for the purchase of an annuity to make future payments as and when they arise - a significant savings over an immediate lump-sum payment of an entire award.

5. **Arbitration**

Allow physicians to contract with patients for mandatory arbitration of malpractice claims.

6. **Statute of Limitation**

Maintain a statute of limitation that requires an action for injury or death against a physician to be filed within 2 years of when the person knows or should have known of the injury. However, for children under age six, require that action be brought before age eight or within two years, whichever is longer. But, the clock stops if there is fraud, intentional concealment of facts, or if there exists an undiscovered foreign body (of no therapeutic or diagnostic purpose) in the body of the injured child and the action is based on the presence of the foreign body.

7. Statute of Repose

Incorporate a general statute of repose that prevents suits from being brought after eight years measured from the date of the act that caused the injury or death. The statute of repose applies without regard to the statute of limitation. However, any statute of repose should not apply in cases involving intentional acts or if intentional concealment of facts occurred that resulted in a delay of more than eight years before the basis for the legal action was known.

8. Panel System

ASMA recommends the continuation of the panel system. Although, complete and credible empirical data which would indicate the impact of the panel system is impossible to develop, anecdotally many ASMA member physicians feel it is important and worthwhile for the panel system to remain in place. ASMA would consider a change in the method of selection of the panel to allow each side to choose a physician member with then those two members selecting a third physician. However, the physicians chosen should be physicians both licensed and actively practicing medicine in Alaska.

ASMA would also recommend that the "bias" questionnaire be changed so as to ferret out only real conflicts of interests as opposed to perceived conflicts. It would also appear that the existing questionnaire may be easily "gamed" by physicians not wanting to serve.

ASMA's experience is that it is not unusual for 40 suits involving medical malpractice to be filed each year which tend to take approximately two years to be adjudicated. Therefore, at any given point in time approximately 240 Alaska physicians are impaneled. This is over 20% of all physicians in Alaska, a significant contribution to the system for which, in most cases, the service is done pro bono.

The above are outlines of the features of civil justice reform that ASMA member physicians feel should be adopted. Many of the above are incorporated in SSHB58. For those that aren't, ASMA recommends amending SSHB58 to include them. Specifically, the absolute cap of \$250,000 on non-economic damages is recommended to be incorporated. The general concepts underlying SSHB58 are supported by ASMA.

The underlying purpose in the above is to provide some certainty where little certainty currently exists. Imposition of certainty provides for greater predictability and should result in reduced premium rates for professional liability coverage. Similar measures were adopted in California over 20 years ago with one result being that overall medical malpractice insurance premiums in California are half of what they are here in Alaska. Attached is a copy of an article that appeared in January/February 1997 issue of Contingencies the bi-monthly journal of the American Academy of Actuaries. Also, included is the "Issue Brief" cited in the article. As you can see, the impact of the MICRA has been significant in California; The Academy work group concludes that a

package of reforms is more effective than individual reforms, and key among the reforms are a cap on non-economic damages and a mandatory collateral-source offset rule.

Lower rates should result in more physicians having professional liability insurance coverage with sufficiently high limits. This result should provide for added peace of mind to patients. We believe it can be expected that lower costs for professional liability will have a marginally greater impact on the likelihood of private practice physicians practicing in rural communities having coverage with sufficient limits than those physicians practicing in urban areas.

Should you have any questions or comments you may direct them to any of the following people:

ASMA Board of Trustees

Paul Raymond MD, President,
235-7000, fax 235-4050

John J. Smith MD,
276-5222, fax 278-9044

Kevin M. Tomera MD,
276-2903, fax 278-8052

Lee Schlosstein MD,
563-3929, fax 562-2848

James J. Jordan, Executive Director, ASMA,
562-2662, fax 561-2063

Cynthia Brooke MD,
563-8588, fax 563-6903

Patrick Brady MD,
261-3102, fax 261-4882

Douglas G. Smith MD,
272-2571, fax 272-6751

David E. Johnson MD,
225-5144, fax 247-0920

Thank you again for opportunity to provide testimony.

Sincerely,



James J. Jordan
Executive Director

cc: Representative Brian Porter
Alaska House of Representatives
State Capitol, Mail Stop 3100
Room 216
Juneau, AK 99801-1182



A Surgical Fix for Medical Malpractice

Reforms Work Best as a Package. Study Shows

By Jeffrey Speicher

Almost everyone agrees: The medical malpractice system in the United States serves no one well. Although a few multimillion dollar settlements draw public attention, most individuals who suffer real injury at the hands of their physician or hospital accept less than the full value of their claim—and endure long delays before receiving compensation. Those most harmed—people left with lifelong medical needs or permanent loss of income—are most likely to be underpaid.

Physicians, who in the 1950s faced a 1-in-7 chance of being sued over the course of a career, now see the odds reduced to 1-in-7 *per year*. As a result malpractice insurance premiums have skyrocketed, causing many practitioners to abandon their specialties or adopt costly defensive-medicine procedures. Many insurers, buffeted since the early '70s by recurrent cycles of higher claims frequency and larger jury awards, have withdrawn from the market, which has reduced availability of coverage and further driven up costs. And as for attorneys . . . well, even some thoughtful legal scholars believe the system is out of whack.

According to Randall Bovbjerg of Washington's Urban Institute, author of numerous studies on medical malpractice, many of the system's problems arise from a basic difference between doctors and lawyers: Physicians think about healing injuries, attorneys about resolving disputes. Says Bovbjerg, "Doctors see medical malpractice as a way to make injured patients whole—financially as well as physically. Lawyers come into the process after a conflict arises, and their focus is on justice for their client."

Jeffrey Speicher is manager of member communications for the Academy and an editor for Contingencies.

This difference in worldview intertwines medical malpractice with the legal system. Malpractice must balance the need to compensate deserving claimants, deter future violations by making doctors more careful, and obtain justice for both patients and medical providers. All this from what Bovbjerg defines as "mainly an insurance system run by experts."

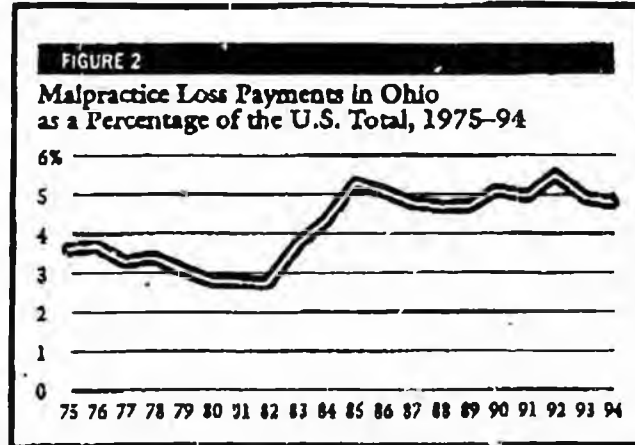
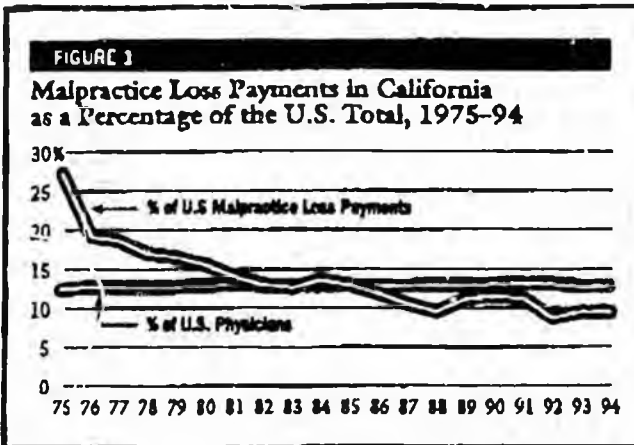
A group of those insurance experts, members of the American Academy of Actuaries, recently suggested an approach to make the system less costly. According to the Academy report, "Medical Malpractice Tort Reform: Lessons from the States," the mixed results of reform attempts by the states point the way to effective federal action.

"Congress should adopt a comprehensive approach to tort reform by adopting a package of measures," says Jim Hurley, an actuary with Tillinghast/Towers Perrin and leader of the Academy group. "Our report provides a synthesis of measures that have been effective at the state level."

A Package Deal

The California Medical Injury Compensation Reform Act (MICRA) of 1975 shows the success of the package approach. Before MICRA's adoption, the state's percentage of total U.S. loss payments was significantly higher than its proportion of the nation's physicians. By 1981, California's loss payments had dropped and were about even with its percentage of physicians. Costs continue to fall, even as California's share of physicians remains stable. Writes the Academy group: "The relationship of decreased relative costs to the timing of reform provides strong evidence for the effectiveness of the MICRA package." [See Figure 1.]

At the head of the Academy's list for lawmakers is a nationwide cap on jury awards for noneconomic damages such as pain and suffering. As evidence, Hurley points to Ohio where malpractice costs fell after a 1975 cap on damages, only to rise dramatically after court challenges led to a 1985



ruling that overturned the cap. [See Figure 2.]

Such a cap should be established on a per-medical-injury basis at a level low enough to have an impact—at \$250,000, for example. In addition, a mandatory collateral-source offset rule is needed to ensure that double and triple indemnification cannot be collected through multiple suits. Under this rule, a jury or judge would have to consider compensation paid from other sources.

Above all, the Academy report warns against piecemeal or faulty changes. Loss experience in New York shows that the individual tort reform measures adopted in that state over the past two decades did not improve costs relative to the U.S. total. "Poorly crafted malpractice reform—either

Above all, the Academy report warns against piecemeal or faulty changes. "Poorly crafted malpractice reform—either individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs."

individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs," says Hurley.

The Academy's suggested approach involves what medical malpractice experts call "takeaway" reforms—preserving the current reliance on the tort system, but eliminating some of the costliest and most abused features.

Other voices in the debate, including representatives of the medical community, call for a back-to-the-drawing-board approach. Unfortunately, the design that comes back often relies on a no-fault model. While no-fault medical malpractice insurance would largely untangle the process from the legal system, no-fault often rewards individuals whose claims would otherwise be denied. Says Hurley, "No-fault would drive frequency of claims through the roof—some argue by a factor of at least two and perhaps by a factor of

eight or more. It's scary how many things can be compensated under the typical no-fault system."

Frequency of claims, according to Hurley, is the key driver of costs. "Over the past two decades, the plateaus and surges of claims frequency have been difficult to anticipate and measure, but the long-term trend has been up," says Hurley. Size of claims also is an important cost factor, but dollar amounts in settlements have been increasing in a more predictable fashion over time.

No-fault also would take most cases out of court and make malpractice a transaction between insurer and claimant. Advocates claim that this would cut legal costs—which are enormous. For example, according to the Insurance Services Office, legal defense costs for insurers alone accounted for 14 percent of total tort costs in 1992.

However, experience in Florida and Virginia, where no-fault for obstetric cases is already in place, does not show substantially reduced costs or less need for legal counsel. Says Bovberg, "Everyone who uses the no-fault system in Florida and Virginia consults a lawyer."

Other options exist. A proposal by Jeffrey O'Connell, professor at the University of Virginia School of Law, seeks a middle way between no-fault and status quo. He would shorten the process and lower costs through an early offer of payment of noneconomic damages.

O'Connell is blunt about his disgust with the current state of affairs. "Medical malpractice is a nightmare of useless circularity," he says. However, according to O'Connell, the system is not consistently biased against defendants. Most proposed changes, on the other hand, invariably favor the defendant. Justice—as well as political reality—requires benefits for the plaintiff as well.

"Reform requires a quid pro quo," says O'Connell. "While the Academy has described quite lucidly the options for takeaway reform, such measures could not get through Congress without being so watered down as to be meaningless," says O'Connell. "True reform should involve a fair trade: making it easier for claimants to be paid, but paying them less, as under workers compensation laws."

An Offer You Can't Refuse

O'Connell's ideas have found sponsorship on Capitol Hill. A bill introduced in the 104th Congress by Sen. Mitch Mc-

Connell (R-Ky.) would create an early-offer plan for all tort claims, including medical malpractice. Under the proposal, a defendant in a personal injury claim is given the option of offering payment to the injured party within 180 days of the claim. The defendant purchases for the claimant a comprehensive major medical insurance policy that covers medical expenses, rehabilitation, and lost wages beyond monies received from collateral sources. In addition, reasonable hourly fees for the claimant's attorney would be paid.

Claimants who are offered such a settlement within 180 days of the claim would be obliged to accept. This won't get egregious medical offenders off the hook, however. A normal tort claim could be pursued for noneconomic damages, but with a higher-than-current standard of evidence.

Medical malpractice is a nightmare of useless circularity.

The plaintiff must prove that the medical provider's misconduct was wanton or intentional.

Because the defendant would not be forced to offer a settlement, physicians and their insurers could take their chances in court in the case of bogus claims. However, the risk might be too great. O'Connell cites a prominent medical malpractice defense lawyer who estimates that he'd make an early offer in 200 of the his firm's 250 current cases. So the balance is tipped toward the defendant, but not without providing a substantial benefit to the plaintiff: Timely resolution and quick settlement.

The limit on legal fees would discourage what O'Connell calls "the unconscionable abuse of the system by some members of my profession." Among other criticisms, the Virginia professor points out that contingent fees are often not truly contingent on risk. Attorneys take the same settlement percentage from open-and-shut cases as from complex cases, a practice that subsidizes work on failed litigation and which O'Connell denounces as an illegal tax on deserving claimants.

Hurley gives O'Connell's proposal a mixed review. "To its credit, the early-offer plan is not mandatory for defendants, which leaves the tort system in place to challenge claims perceived as nonmeritorious," says Hurley. He also notes that periodic insurance payment to claimants allows compensation to be made as costs are incurred, eliminating the burden of large lump-sum payouts. Also, O'Connell's plan emphasizes two fundamentals that the Academy report identified: mandatory recognition of collateral benefits and controlling noneconomic damage costs. In fact, the O'Connell plan eliminates consideration of noneconomic damages altogether unless the case goes to court.

However, Hurley notes, the periodic payment plan theoretically would have to remain in force for decades. Will claimants be out in the cold after the disability policy limits are reached, or will the insurer face unlimited exposure? Another concern: Like no-fault, the early-offer plan could give incentives for unmerited claims. Insurers may pay a doubtful claim rather than incur expensive litigation costs

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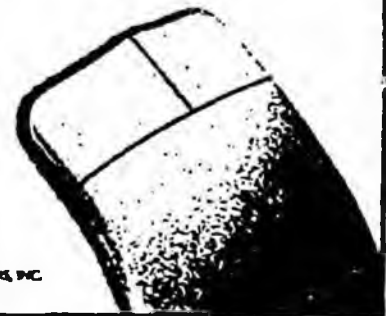
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and risk a large judgment award. In addition to increased costs, Hurley worries about a basic question: "Is it the right message to send to individuals who think doctors and insurers have deep pockets? The system may have practical advantages, but in terms of equity, it is hardly fair."

No matter which remedy is tried, no action will slash premium costs immediately, Hurley cautions. "Tying tort reform to premium reductions, as has been done in some states, is unrealistic," he says. "There is little evidence that the cost savings can be translated directly into lower costs for health care providers. More likely, reform will slow the rate of premium cost increases."

The course of reform will be determined by elected officials at the state and federal levels. The debate will be long, no matter which option—if any—is approved. In the meantime, the cost of inaction continues to be passed on to the public in the form of increased medical fees and reduced services.

By working together in recent years, insurers and health-care providers have begun to bring medical spending under control. Effective medical malpractice reform is one way to keep the momentum going. □

Answer to Brain Drain, page 13:
 The house number is 76.

Copy

DAVID A. MCGUIRE, M.D.*Orthopedic Surgery*DIPLOMAT OF THE AMERICAN BOARD
OF ORTHOPAEDIC SURGERY4048 LAUREL STREET
SUITE 202

ANCHORAGE, ALASKA 99508

PHONE 907-562-4142

March 10, 1997

Mr. Gene Therriault
Co-Chairman, House Finances
State Capitol, Room S17/15
Juneau, AK 99801-1182

Dear Representative Therriault:

I'm writing this letter to encourage your support of tort reform. I appreciate the efforts that you expend on our behalf. As you may know, I was instrumental in founding the original tort reform effort in Alaska, called the Citizens' Coalition for Tort Reform. We got some tort reform established in 1986, and were successful in getting the initiative on the ballot in 1988. Clearly not enough was done. Representative Porter's SSHB58, will certainly go a long way towards solving the problems that present us.

While it may be true that in 1976 only doctors and other small groups were affected, it is now the case that absolutely everyone in Society is affected. I most recently had a conversation with Orin Seybert of Peninsula Air. They had the unfortunate occurrence of an airplane disappearing with its passenger on board. The passenger's economic value is computed to be more than one million dollars. Unfortunately, Orin is in the unenviable position of being completely unable to obtain more than one million dollars in insurance. It is not only the cost interests of insurance, but the availability, that often affects decisions of businesses and professions in the State of Alaska.

Mr. Jim Jordon, of the Alaska State Medical Association, has been kind enough to forward two articles which I would like to bring to your attention. They are written by the American Academy of Actuaries. Once in my life I wanted to be an actuary, until I found out how little contact actuaries have with their fellow human beings. Having said that, they are very excellent at analyzing numbers in a dispassionate way. This analysis would appear to confirm what many of us have been thinking and saying for a long time. MICRA Reform in California has been demonstrably effective. California doctors now pay less for the same level of malpractice insurance than Alaska Doctors pay. No one, I think, would believe that Californians are less litigious than Alaskans. It simply shows the effectiveness of the Tort Reform legislation passed in 1975. The article also points out that tort reforms are ineffective when passed piece-meal. We have heard numerous arguments over the years that tort reform should be incremental, that we should do a little bit at a time. I for one have resisted those arguments because every time a small piece of

Page 2 - Gene Theriault

legislation has passed, everyone says tort reform is done, and since it's a controversial subject, they don't want to touch it again for the next four, five, or ten years. Meanwhile it's like having a bucket with ten holes in it, and one hole is plugged; the bucket still leaks at a very rapid rate.

A cap on non-economic damages, the prohibition of recovering from collateral sources and mandated structured periodic payments, are key elements to this tort reform. The MICRA Legislation included limitations on contingent fees. The pro-active way of making that statement is that in effect, more money is left for the truly injured client. The point is made in these articles, however, that that contingent fee is usually a fixed sum of money, regardless of risk involved in the case. A truly contingent fee would take less money from a case that was an open and shut case, as opposed to those in which there was considerable doubt. I can assure you that the standard practice in the Alaskan Legal Community is to take a fixed percentage of the case, regardless of risk. Those trial attorneys who are fortunate enough to be in the position of having the "Oh my God" case come through the door, are virtually assured of being millionaires as the result of the outcome of a single case. That seems a little unbalanced.

I'm enclosing, for your perusal, an analysis of a case that occurred in Alaska in 1987. Essentially Mr. Justice was involved in a bar fight, presented himself to the Emergency Room at Alaska Regional Hospital, which subsequently has become Columbia Hospital. He was thoroughly examined and sent home. He returned almost exactly 24 hours later, in the early morning hours, and was again examined and no material findings were produced. He then left to go to California. He was extensively evaluated in California, including CAT-scans and MRI's, for persistent headaches, and was admitted twice in California with no findings noted. On the third admission, he presented with symptoms of a cerebral hemorrhage, and was subsequently discovered to have a Berry aneurysm, which is a congenital malformation that he had prior to his altercation in the bar. It is noteworthy that he left Alaska neurologically intact, with the appropriate measures having been taken.

He elected to sue in California, which by then had enacted the MICRA Reform mentioned in the previous part of this letter. As a result of that, there was a cap on non-economic damages. He had mandated periodic payments for his economic damages. There were limitation on the amount of money that the attorney could recover, and he had no collateral source at that time from which to recover.

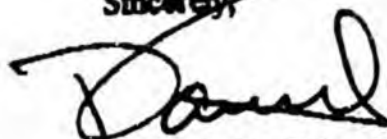
After having received the benefit of this life-time benefit in California, he returned to the State of Alaska. He sued the doctors and Alaska Regional Hospital, and shortly before trial, dropped the doctors. The jury was never permitted to know that he had received full compensation under the California Micra Act. The jury returned a verdict of "guilty", and assessed damages. We have enclosed an analysis of these damages, with those paid by California on the left, and those paid by Alaska on the right. You can see clearly that the

Page 3 - Gena Therriault

cost to settle the same case in California was one-third of that in Alaska. Another way of stating it is, that Alaska health care consumers pay three times as much to injured victims as California health care consumers do. In the end, all the money comes from the patients or their payors. This is a clear and egregious example of why collateral sources need to be limited. You will hear time and time again that "Tort Reformers" are trying to rig the Jury system. Nothing could be further from the truth. We'd simply like the Jury to know the whole truth and nothing but the truth, and if that were the case, we believe that they would come to a sensible verdict.

I appreciate the opportunity to present you with this information, and I would be most happy to discuss any part of it. (I have read the Justice file, including the examinations in the E.R. myself, and therefore I can promise you that it did happen as indicated.)

Sincerely,



David A. McGuire, M.D.

DAM:li

cc: Brian Porter

In November of 1987, MICA went to trial on the Justice v. Humana Hospital Case. MICA insured each of the three defendants including the hospital on a "tail" policy purchased when Humana brought Community Hospital. The two physician defendants were dropped the day before trial by the plaintiff's attorneys and the hospital became a single defendant.

CASE FACTS:

Justice was seen in the emergency room on two occasions in May of 1982 for injuries received from a fall in an Anchorage bar. The visits were both in the middle of the night and 25 hours apart. 48 hours later the patient presented himself to Los Angeles County Hospital where he was admitted and discharged the next day. He was admitted yet again five days later, discharged and finally readmitted twelve days later comatose with a right sided hemiplegia.

LEGAL ACTION:

Separate suits were filed in California and later in Alaska. L.A. County made a settlement with an agreement that if the plaintiff was successful in Alaska, L.A. County could recover 1/3 of the Alaska award to a maximum of \$300,000.

TRIAL RESULTS:

MICA tried to join L.A. County Hospital in a joint defense. Certainly they were responsible for the last and longest treatment. Our court would not allow this and further would not allow any negligence by L.A. County to be a defense. The outcome was a verdict with the plaintiff 10% negligent and Humana 90% negligent. The verdict was an award totaling \$1,304,244 with add-ons for prejudgement interest and Rule 82 increasing the award to in excess of \$2,000,000.

TORT REFORM EFFECTS:

The cost to Alaska to pay for the plaintiff who had already received retribution in California is substantial. Tort Reform legislation would have had an absolute impact on the results of this case. Under Tort Reform legislation-

- the extent of L.A. County's negligence would have to be considered;
- the percentage of fault for Humana would be affected under joint and several liability;
- collateral source from the L.A. settlement would have to be offset and;
- a cap on non-economic losses would have impacted the judgement.

MICA feels this is an excellent representation of the positive effects of California tort reform. Because of the positive effects of California tort reform. Because of our own laws, Alaskans paid in the extreme for a plaintiff that had been compensated elsewhere. Our analysis of the Justice case leads us to the irrevocable conclusion that tort reform legislation will decrease costs to Alaska and its citizens.

COMPARISON OF RESULTS IN JUSTICE With Mandated Structured Settlements

California (WITH Tort Reform)	Alaska (WITHOUT Tort Reform)
(\$1,344,000) \$32,000 paid per year for life expectancy of 42 years \$ 305,819	Total jury verdict \$ 1,449,160
\$75,000 payment on July 1, 1995. 28,113	Less plaintiffs 10% comparative negligence <u>(144,918)</u> \$ 1,304,244
\$200,000 payment on July 1, 2005. 28,101	Present value of L. A. Hospital settlement as of July 1, 1985. <u>(210,201)</u> \$ 1,094,043
\$400,000 payment on July 1, 2015. 22,125	Collateral benefits pursuant to AS 09.55.546(b) (89,378)
Present value of future payment of total jury verdict of \$2,019,000 as of July 1, 1985. <u>\$ 383,958</u>	Subtotal <u>\$ 1,004,665</u>
Plus cash payment on July 1, 1985. 50,000	Prejudgment interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988. 683,534
Plus attorney fees present values as of July 1, 1985. 130,000	Rule 82(a) attorney fees 171,319
Plus costs 15,000	
Subtotal <u>\$ 578,958</u>	Subtotal <u>\$ 1,859,518</u>
Defense cost <u>unk</u>	Insurance, Defense fees <u>501,605</u>
Total <u>\$ 578,958</u>	Total <u>\$ 2,361,123</u>

DOES TORT REFORM WORK?

The effect of mandated structured settlements:

In California, the plaintiff received \$2,214,000 from a structured settlement for a present cost of \$578,958.

In Alaska, the plaintiff received \$1,859,518 with a present cost of \$1,859,518.

The present cost to health care consumers in Alaska is 3.2 times the amount in California.

Richard Cattanach



March 10, 1997

Representative Mark Hanley, Co-Chairman
Representative Gene Therriault, Co-Chairman ✓
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: SSHB 58

Dear Representatives Hanley & Therriault:

As Chairman of the Legislative Committee of the Associated General Contractors. I appreciate the opportunity to present our views on this very important piece of legislation. I realize that this is a complex bill and therefore I would like to address two issues that are of paramount importance to the construction industry.

Before addressing these issues, I would like to present an overall observation as to the problems with the Civil Justice System in the State. First of all, the Civil Justice System is a very inefficient system for dealing with important legal issues. As an illustration of the inefficiency of the system, Towers Perrin Company analyzed the distribution of funds to the ultimate recipient. Their study found that Social Security returned 99% of the funds received to the beneficiaries, health insurance returned 85%, workers compensation returned 70%, but the Civil Justice system returned only 50%. A copy of this summary is attached to this letter. In addition, the findings of the Governor's Task Force needs to be examined. The structure of the committee was weighed heavily in favor of the legal profession and contained no members of the State Chamber of Commerce, the NFIB, the construction industry, the travel industry, the trucking industry, the mining industry, the liquor and food industry, the hospital association, the insurance industry and the many other organizations that have been fighting for reform for many years. The results of the Task Force were easily predicable and did not deal with the many concerns of the various organizations. The findings were at best incomplete and at worst a sham perpetrated against the many organizations that have worked so hard to deal with the inadequacies of the current system. While it may be inappropriate to presume that the Task Force members that were attorneys are biased against significant tort reform, I have included a copy of a recent Wall Street Journal editorial that dealt with the anti-business attitude

bias of the American Bar Association. It is impossible to determine the degree to which the attitude of the ABA reflects the opinions of the members of the Task Force, but the potential issue of vested, self-serving interest should not be ignored.

In terms of the concerns of AGC, the first deals with Section 8, the Statue of Repose. In 1992, Schinnerer Management Services Inc. reviewed four studies which measured when claims were brought on construction projects. The studies indicated that a vast majority of claims are filed within six years of substantial completion of a construction project. (Copies attached) Claims filed more than six years after substantial completion almost always involve users of the project. In view of the complexity of the construction process, it is unrealistic to expect parties involved in the design and construction of any project to defend stale claims brought many years after their involvement with the project has ended. This section of the bill does not impose an unfair burden to an injured party because it allows them to seek redress from the owner or occupier of the project, the party most likely to be responsible for the injury and the one in the best position to have prevented it. The proposed Section provides protection to some injured parties by tolling the time period if the cause of action was the result of an intentional or fraudulent action which contributed to the cause of action.

In the Matter of Frederick W. Triem, the Alaska Supreme Court held that

"A five-year statute of limitations governs the filing of attorney grievances. This reflects a judgment that five years is the outer limit of time in which responding attorneys are able to fairly defend themselves against charges, given the loss of memory, evidence, and witnesses that occurs over time."

I believe that the construction industry faces the same problems as the legal profession in defending itself from suits. Why then should the construction period have a longer period of time before they are free from litigation.

According to a report of Legislative Research, the 8 year period would be exceed by only 4 states. In fact, Statutes of Repose of 3, 4 or 5 years are fairly common in other states and the proposed time frame of 8 years would seem to be more than adequate to provide the detection of any construction and design defects and allow the property owner to take action to remedy them.

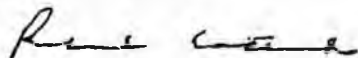
The second area of concern is Section 10, Punitive Damages. In Alaska, more than 95% of the businesses are classified as small, "mom and pop" firms or companies that employ fewer

than 20 employees. To them the issue of punitive damages is very serious because punitive damages are not covered by insurance. The Court System has issued statistics that indicate that the award of punitive damages is rare in Alaska and therefore not really a serious problem. What is overlooked is the fact that these statistics do not report on the suits that are settled prior to going to Court. Punitive damages are requested in almost 30 percent of the civil cases and seem to be used as a means of "extortion" to drive the defendant to settle prior to trial. Defendants realize that their insurance company will defend their acts for the original claim but exclude the defense or payment of any punitive damage awards. Companies are therefore forced to choose between the belief of their innocence or settling to avoid the crippling costs of defending the punitive damages suit should the case get that far. For the small business this is a Hobson's choice. Do you instruct your insurance company to settle even though you believe that you are innocent or do you risk your business and savings defending yourself should a trial for punitive damages be necessary. Many cannot afford the luxury of the gamble and avoid the risk of losing everything they worked for their entire life. Such a system is unfair and we should not tolerate a system that rewards the unscrupulous behavior of such plaintiffs attorneys'.

While the bill is complex, it deals with many issues that are of important to many sectors of Alaska's economy. The recommendations of the Governor's task force were also considered and many were included since they dealt with many issues that had not been addressed previously. I encourage your support of this bill and hope that you can move the bill rapidly through your committee so that we can get it out of the House and over to the Senate.

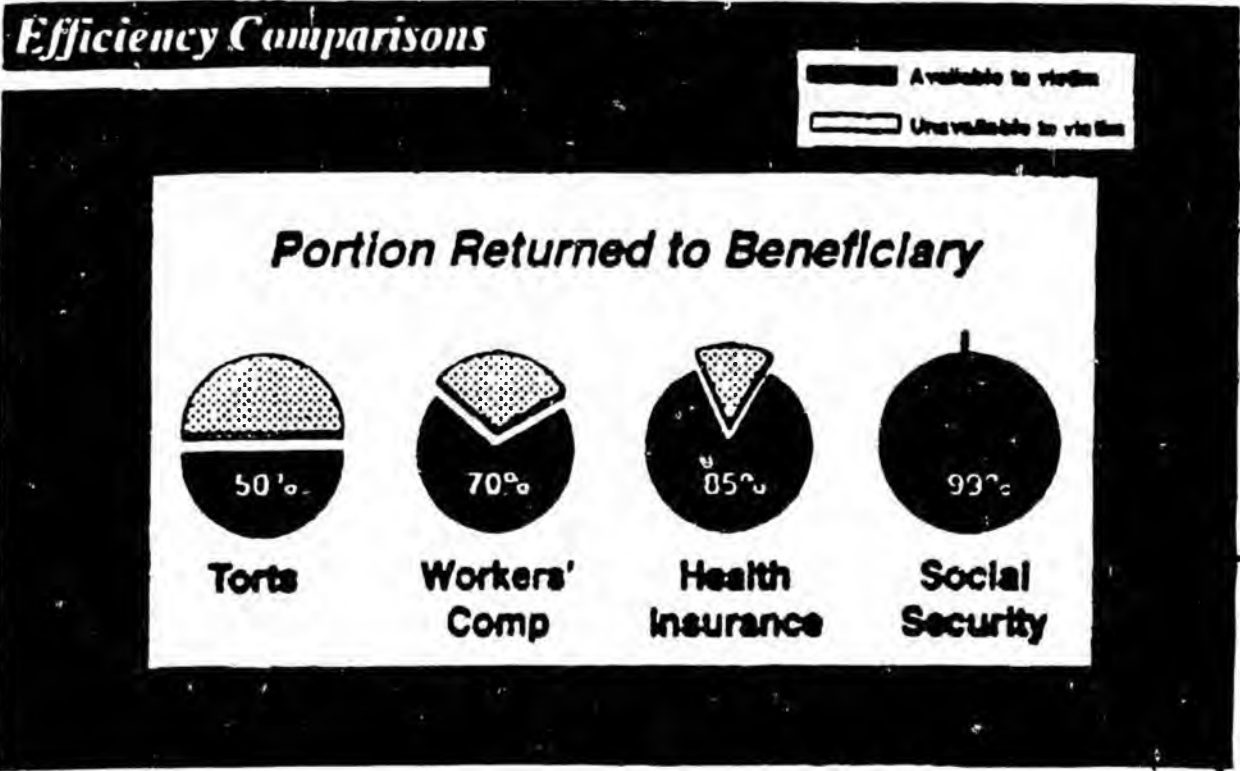
If I can provide any additional insight into this bill please do not hesitate contacting me.

Sincerely,



Richard Cattanach

In the Tillingbast Analysis, the Tort System Does Not Effectively Serve Victims' Needs



■ If the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient, because only half – or less – of the cost goes toward any form of compensation for victims. Unfair, because many victims receive no compensation at all.

Source: The Tillingbast Report, Towers Perrin Company

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THE WALL STREET JOURNAL

REVIEW & OUTLOOK

ABA v. Business

The American Bar Association has gotten a lot of heat, and deservedly so, for its loony forays into non-legal matters. What's the ABA doing supporting abortion rights, endorsing affirmative action and now calling for a death penalty moratorium? Congressman Chris Cox wrote a trenchant article for the *Weekly Standard* recently exposing in detail how the ABA's liberal agenda skews its evaluations of judicial nominees. But another area where the nation's largest organization of lawyers has gone off the tracks hasn't gotten nearly enough attention—the ABA is actively promoting an anti-business agenda.

At the same meeting earlier this month where the ABA adopted the anti-death penalty plank, its House of Delegates also endorsed a resolution on class actions. The resolution favors making it easier to certify class actions for settlement purposes, and opposes a proposal to rein in "coupon" settlements unless the "litigation's probable deterrence value" is taken into account. In other words the ABA thinks the public is being well-served by settlements—such as those in the notorious Ford Bronco II and airline price-fixing cases—where the plaintiffs' lawyers reap millions while their ostensible clients collect coupons worth almost nothing.

Nobody should be surprised, since the ABA has a long record of opposing any effort to improve the tort system. According to a summary compiled by the Federalist Society, the ABA opposes a loser pays rule; opposes any limits on pain and suffering awards; opposes a "ceiling" on medical malpractice damages; and opposes product liability reform. In effect, then, the ABA wants to let plaintiffs' lawyers continue extorting billions from American companies.

As if to add insult to (personal) injury, the ABA has also gone on record favoring a long list of government mandates on business: universal health care, protection from discrimination for HIV patients, the Family and Medical Leave Act and the like. The group has even called for the creation of "a federal agency to advocate the views of consumers," a long-standing Naderite pipe dream. Is there any *pro-business* idea that finds favor with the pooh-bahs of the ABA? Oh yes, there is one: The ABA supported *Nafta*.

The ABA resolutions aren't just empty words. The ABA has a corps of paid lobbyists who are authorized to support the stances taken by its House of Delegates. And these lobbyists were active in opposing Republican efforts

to pass civil justice reform as part of the "Contract with America." Who can forget the ABA president describing the new GOP Congressional majority in 1995 as "reptilian bastards."

Some will no doubt say: Well what do you expect from a bunch of lawyers? They want to preserve their honey pot, so they don't want to change the tort system. A realistic, if cynical, assessment. But the ABA itself claims that it's not merely a special plender for lawyers; after all, it somehow finds the moral authority to instruct the rest of America on how to run foreign and social policy. The group even has a quasi-governmental function: It certifies lawyers and law schools, and regulates their conduct. The ABA also formally advises the President and Senate on judicial nominations. By backing the plaintiffs' bar, the ABA is not only casting doubt on its ability to carry out these functions fairly and impartially, but it's also sticking it to a large portion of its membership: lawyers who work for businesses.

A bunch of Fortune 500 general counsels were sufficiently alarmed about the ABA's drift that they convened a summit meeting last year with the organization's leaders. The powwow didn't accomplish much. The ABA, for instance, still refuses to adopt a proposal limiting contingency fees endorsed by heavyweights ranging from Robert Bork to Robert Pitofsky. This group wants the ABA, which already bars "unreasonable" fees, to stipulate that it's unethical for a lawyer to take one-third of a plaintiff's award if the case was so simple that he didn't have to do much work or take much risk. No dice. Apparently the ABA is more interested in opposing nuclear weapons than contingency fees, which happen to be the engine driving much of the liability explosion of recent decades.

But then the ABA doesn't believe there is a liability explosion. Not long ago, the group put out a lengthy pamphlet of "Facts About the Civil Justice System," which claims there hasn't been an increase in personal injury suits. As evidence, the pamphlet points out that tort litigation has slightly decreased since 1990. The brochure doesn't bother to mention another fact: tort filings have increased dramatically since 1984.

Such selective use of evidence reveals the ABA's deep and abiding bias in favor of runaway litigation. Given that slant, it's hard for us to see why anybody should take seriously the ABA's opinions on judges or any other subject.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

State Capital
Juneau, AK 99801-1182

Statute of Repose/Limitations by State, 1993

<u>State</u>	<u>Years Within Date of Discovery</u> (Statute of Limitations)	<u>Maximum # Years</u> (Statute of Repose)
Alabama	6 months	4 years
Alaska	2 years	-
Arkansas	-	-
Arizona	2 years	-
California	1 year	3 years
Colorado	2 years	3 years
Connecticut	2 years	3 years
Delaware	3 years	-
Florida	2 years	4 years
Georgia	-	5 years
Hawaii	2 years	6 years
Idaho	-	-
Indiana	2 years	6 years
Kansas	2 years	4 years
Kentucky	1 year	5 years
Louisiana	1 year	3 years
Massachusetts	-	7 years
Maine	-	3 years
Maryland	3 years	-
Michigan	6 months	6 years
Minnesota	-	-
Mississippi	2 years	-
Missouri	2 years	10 years
Montana	3 years	5 years
Nebraska	1 year	10 years
Nevada	2 years	-
New Hampshire	3 years	-
New Jersey	2 years	-
New Mexico	-	-
New York	-	-
North Carolina	-	4 years
North Dakota	2 years	6 years
Ohio	1 year	-
Oklahoma	2 years	3 years
Oregon	2 years	5 years

Pennsylvania	2 years	.
Rhode Island	3 years	.
South Carolina	3 years	6 years
South Dakota	-	.
Tennessee	1 year	3 years
Texas	-	.
Utah	2 years	4 years
Vermont	2 years	7 years
Virginia	-	10 years
Washington	1 year	8 years
West Virginia	2 years	10 years
Wisconsin	1 year	5 years
Wyoming	2 years	.

The statutory time limit for bringing suit is measured from the time at which the plaintiff could have reasonably discovered the injury. Often States allow the time limit to run from either the time of injury or the time of discovery, depending on the nature of the injury.

The maximum period in which a claim can be brought, regardless of whether the limit is measured from the date of injury or act or the date of discovery.

document produced by Parkers office; info from Leg. Research

FAX TRANSMITTAL

TO: Representative Therriault, 465-3884

Pages (including cover) 4

SECTIONAL ANALYSIS

OF

HOUSE BILL 58

Prepared by:

Alaska Action Trust
P.O. Box 102323
Anchorage, Alaska 99510
(907) 258-4040

March 13, 1997

SECTIONAL ANALYSIS OF CSSS H.B. 58

Alaska Academy of Trial Lawyers
Alaska Action Trust

The Governor's Advisory Task Force on Civil Justice Reform studied court statistics on cases in Alaska and heard from two nationally recognized experts on civil justice reform. Contrary to the stated need for H.B. 58, the Task Force found that there was no explosion in the number of tort cases filed, no evidence of high jury awards, and no evidence of significant numbers of frivolous lawsuits. The Task Force found no evidence of any crisis in insurance cost or availability, or that tort reform in Alaska would have any effect on insurance rates for Alaskans. The following explains why H.B. 58 neither helps Alaskans nor follows the recommendations of the Governor's Task Force.

Section 5: Reduces the ability of those injured by faulty design or construction to recover for their injury by prohibiting claims after eight years from completion of the construction, even if the negligent work is not discovered until after then. *The Governor's Task Force did not recommend any changes to the statute of repose. This provision will prevent local governments, school districts and homeowners from recovering damages for faulty construction which is typically not discovered until a fire, roof collapse or other event occurs long after completion of the project.*

Section 6: Gives only doctors and other health care professionals special protection when their negligence injures young children. This section requires malpractice actions affecting children under six years of age to be filed by the child's eighth birthday, even if the effect of the doctor's negligence can't be recognized because of the infant's age. No other person or professional is given this special protection. *The Governor's Task Force did not recommend any changes regarding when lawsuits must be filed for injuries to children.*

Section 8: This provision reduces the existing cap on non-economic damages. Section 8 not only limits the non-economic damages which can be recovered for all claims to \$300,000 in most situations, but also does not allow non-economic damages to exceed \$500,000, even when someone is quadriplegic and has suffered permanent brain damage. Current law at least allows the cap to be exceeded when injuries are serious. *The Governor's Task Force did not recommend reductions to the cap on non-economic damages because this only harms those who are most severely injured.*

Section 9: This section changes the current legal definition for punitive damages by eliminating reckless conduct as the basis for an award of punitive damages. This means that punitive damages cannot be assessed against a drunk driver and could not have been assessed against Exxon for the oil spill. *The Governor's Task Force did not recommend any changes in the definition of punitive damages.*

Section 10: Section 10 places an absolute cap on punitive damages regardless of the wealth of the wrongdoer or the nature of the wrongdoer's conduct. This section also requires 50% of punitive damages to be deposited to go to the state. This section only benefits large multi-national corporations, like Exxon, against whom a punitive damage award of \$600,000 would have no effect. *The proposal of the Governor's Task Force on punitive damages allowed for consideration of the financial gain of the defendant and did not recommend that punitive damages go to the state.*

Section 11: This section reduces all damages an injured person might receive by a federal income tax rate, even though these damages are not taxed under state or federal law. This unfair provision means that an injured person's recovery is automatically reduced 20%-30%. *No such proposal was made by the Governor's Task Force.*

Sections 12 - 14: Force an injured person to accept any damages which are awarded for past injury as installment payments to be paid over time in the future. This takes away the choice of injured Alaskans to decide for themselves whether periodic payments are fair, or meet their needs. *This proposal was rejected by the Governor's Task Force.*

Section 15: This section requires a jury to reduce the damages an injured person can receive by the amount of insurance payments the person has received for the injury, or might receive in the future. *The Governor's Task Force concluded that such a proposal would increase the cost of insurance and rejected the idea.* This provision in HB 158 will only make trials more time consuming and complicated.

Sections 16 - 19: These sections allow responsibility for injury to be allocated to a person or corporation which is not even brought into the lawsuit or into the courtroom. This means that someone at fault can shift blame to an "empty chair" without the jury ever hearing evidence to the contrary. *The Governor's Task Force rejected this proposal because innocent victims might be denied full recovery.* Section 19 even allows punitive damages to be allocated to someone who is not in the courtroom.

Section 21: This section forces injured persons to guess about the outcome of their case with near certainty at the risk of having to pay all of the defendants' actual attorney's fees. This section and

Section 16 encourage a negligent defendant to delay disclosing actors who may be at fault. *The changes to Section 21 are far harsher to victims than the recommendations about offers of judgment made by the Governor's Task Force.*

Other Sections make it more difficult for those injured to have experts testify on their behalf (Sec. 20); give special protection to hospitals (Sec. 35); limit attorney fee recoveries in punitive damage cases (Sec. 34); and make trials more complicated (Sec. 49). *None of these changes were recommended by the Governor's Task Force.*

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**TESTIMONY IN SUPPORT OF HOUSE BILL 58
 PRESENTED BY KAREN COWART, GENERAL MANAGER
 MARCH 13, 1997**

THANK YOU MR. CHAIRMAN AND COMMITTEE MEMBERS FOR PROVIDING THIS OPPORTUNITY TO SPEAK IN SUPPORT OF HOUSE BILL # 58. MY NAME IS KAREN COWART. I AM THE GENERAL MANAGER OF THE ALASKA SUPPORT INDUSTRY ALLIANCE. THE ALLIANCE IS A NON-PROFIT TRADE ASSOCIATION REPRESENTING A BROAD-BASED MEMBERSHIP ENGAGED IN BUSINESS WITHIN THE OIL, GAS AND MINING INDUSTRIES. OUR MISSION IS TO FOSTER AND PROMOTE THE SAFE AND ENVIRONMENTALLY SOUND DEVELOPMENT OF NATURAL RESOURCES, AND TO ENHANCE AND STIMULATE THE BUSINESS CLIMATE FOR OUR 300+ MEMBERS. WE ARE COMPRISED OF OILFIELD SERVICE COMPANIES, TRANSPORTATION, WHOLESALE AND RETAIL SALES, PROFESSIONAL SERVICES, AND PRIVATE CITIZENS.

OUR 1997 LEGISLATIVE PRIORITIES CONTAIN ONLY THREE ISSUES:

- CONTINUE TO CLOSE ALASKA'S FISCAL GAP;
- SUPPORT LEGISLATION THAT PROMOTES SOUND DEVELOPMENT OF OIL AND GAS; AND
- SUPPORT THE PASSAGE OF COMPREHENSIVE TORT REFORM

FOR REVIEW, I HAVE ATTACHED A COPY OF OUR LEGISLATIVE PRIORITIES PAMPHLET.

STAFF

Karen Cowart
 General Manager

WE ARE COMPETING IN TODAY'S MARKET ON A GLOBAL BASIS. IF ALASKA AND OUR INDEPENDENT BUSINESSES ARE TO MEET THE DEMANDS OF THIS GLOBAL ECONOMY, WE BELIEVE WE MUST STABILIZE OUR ECONOMY THROUGH FISCAL RESTRAINT, A BALANCED BUDGET AND A HEALTHY ENVIRONMENT FOR BUSINESS. COMPREHENSIVE TORT REFORM LEGISLATION IS A CRITICAL COMPONENT NECESSARY FOR OUR FUTURE.

THE COST OF LITIGATION AND LIABILITY INSURANCE HAS A DRAMATIC IMPACT ON BUSINESS- BOTH LARGE AND SMALL. THE EVER-INCREASING PRODUCT LIABILITY, PERSONAL INJURY SUITS , AND UNPREDICTABILITY OF DAMAGE AWARDS HAS CAUSED COSTS TO SOAR.

OVER THE YEARS THE TORT LITIGATION SYSTEM HAS BEEN INCREASINGLY CRITICIZED BY MANY PUBLIC AND PRIVATE SECTORS. EFFORTS TO INSTITUTE CHANGE TO REDUCE OPPORTUNITIES FOR ABUSE, HOWEVER, HAVE BEEN HINDERED FEARING A CHANGE IN THE SYSTEM WOULD NOT ALLOW JUST COMPENSATION FOR INJURY.

THE ALLIANCE BELIEVES TORT REFORM SHOULD:

- LIMIT NON ECONOMIC DAMAGES.
- PROHIBIT PUNITIVE DAMAGES UNLESS MALICE OR CONSCIOUS ACTS SHOWING DELIBERATE DISREGARD FOR ANOTHER PERSON CAN BE SHOWN.
- LIMIT PUNITIVE DAMAGES.
- ALLOW JURIES TO BE INFORMED ABOUT AWARDS ALREADY COLLECTED BY CLAIMANTS FOR THE SAME INJURIES.
- ALLOW COURTS TO DECIDE EACH PARTY'S SHARE OF DAMAGES.
- PROVIDE MONETARY SANCTIONS AGAINST ANY ATTORNEY IN CIVIL CASES FOR FILING FRIVOLOUS, UNNECESSARY, AND/OR LEGALLY DEFICIENT PLEADINGS.
- BAR DAMAGE SUITS IF INJURIES WERE RECEIVED WHILE COMMITTING A FELONY.

- ESTABLISH GUIDELINES FOR THE QUALIFICATION OF EXPERT WITNESSES.

WE BELIEVE THE ABILITY TO RECOVER COSTS AND DAMAGES, TO BE MADE WHOLE, SHOULD BE PROTECTED. PUNITIVE DAMAGES SHOULD BE CAPPED BY A MULTIPLE OF ACTUAL DAMAGES, AND ASSESSED WHEN WILLFUL NEGLIGENCE OR MALICIOUS INTENT IS PROVEN. IF THE INTENT OF PUNITIVE DAMAGES IS TO PUNISH RATHER THAN REWARD, IT WOULD FOLLOW THAT A PORTION OF THE PUNITIVE DAMAGES COULD BE ALLOCATED TO THE STATE.

WE AGREE WITH THE GOVERNOR THAT ALASKA NEEDS TO SEND THE GLOBAL MESSAGE THAT WE'RE "OPEN FOR BUSINESS". THE ALLIANCE BELIEVES COMPREHENSIVE TORT REFORM IS A POSITIVE STEP TOWARD IMPROVING OUR BUSINESS ENVIRONMENT IN ALASKA.

THE ALASKA SUPPORT INDUSTRY ALLIANCE STRONGLY SUPPORTS HOUSE BILL #58.



THE ALLIANCE

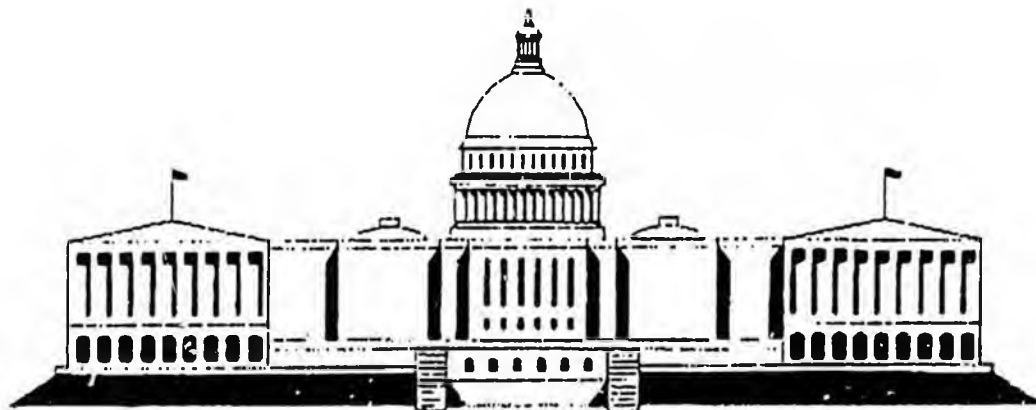
4220 'B' Street, Suite 200 / Anchorage, Alaska 99503-5911

1997 Public Policy Priorities

Continue to Close Alaska's Fiscal Gap

**Develop Legislation to Encourage
Oil and Gas Exploration,
Development, and Production**

**Develop Comprehensive
Tort Reform Legislation**



Continue to Close Alaska's Fiscal Gap

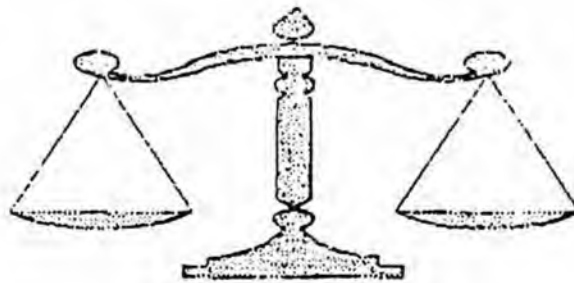
Alliance members believe the health of Alaska's economy will be better served by closing the state's fiscal gap and balancing the budget. Well defined fiscal restraint will provide a stable environment that allows businesses to plan for the future with confidence. It will encourage and promote business development and economic investment.

Our Legislature and Administration have made solving the state budget gap a priority. They have rallied to the concerns of the people of Alaska. Fiscal responsibility is a priority! They realize their obligation to provide a stable economy in Alaska. State revenues depend on substantial private investments that will aid in closing our fiscal gap without the threat of imposing new taxes or fees. Such investments in our natural resources will fuel the economy and provide Alaskans with jobs.

The Alliance supports this commitment to close the fiscal gap and balance the budget. We believe this action is necessary to insure continued growth in the days of declining oil revenues

A successful fiscal plan will require the state to develop and execute its budget without depleting its cash reserves. The Alliance will oppose any efforts to fill the fiscal gap by imposing new taxes or fees without the prior implementation of substantial spending reductions.

The Alliance supports the aggressive implementation of a balanced budget. We believe that this issue should be the first order of business and the highest legislative priority for Alaska!



Develop Legislation to Encourage Oil and Gas Exploration, Development, and Production

Since Alaska must compete for petroleum and mineral investment dollars with other states and nations, our leaders must continue to devise attractive and innovative programs that will encourage environmentally safe exploration, development, production, and sales of Alaska's oil, gas, and mineral resources.

The state must realize that oil and gas development presents unique economic opportunities that can continue to be a viable source of revenue to the state. Continuing to explore incentive programs, regulatory review, and the permitting process are integral to the encouragement of investment in Alaska.

The Alliance believes new innovative oil and gas exploration development programs will benefit Alaska and industry by increasing state revenues and creating jobs for Alaskans.

Develop Comprehensive Tort Reform Legislation

Government officials must continue to search for ways to reduce the cost of doing business in Alaska, including a comprehensive review of liability laws affecting the economics of business.

The cost of litigation and liability insurance has a dramatic impact on businesses-large and small. The ever-increasing product liability, personal injury suits, and unpredictability of damage awards has caused costs to soar. Tort reform legislation will help control these expenditures while assuring appropriate compensation for persons injured through the fault of others.

The Alliance believes tort reform should:

- Limit noneconomic damages.
- Prohibit punitive damages unless malice or conscious acts showing deliberate disregard for another person can be shown.
- Limit punitive damages.
- Allow juries to be informed about awards already collected by claimants for same injuries.
- Allow courts to decide each party's share of obligation.
- Provide monetary sanctions against any attorney in civil cases for filing frivolous, unnecessary, and/or legally deficient pleadings.
- Bar damage suits if injuries were received while committing a felony.
- Establish guidelines for the use of expert witnesses.

The Alliance believes comprehensive tort reform is a positive step toward improving the business environment in Alaska.



March 10, 1996

Representative Gene Therriault
 State Capitol
 Juneau, Ak 99801-1182

Dear Rep Therriault:

This letter is to support HB 58. I am writing you because I understand your committee is soon to have a hearing on it.

Besides Penair, I have been delegated by the Alaska Air Carriers Association to work towards the approval of HB 58.

The Alaska Air Carriers membership is well over one hundred air carriers throughout the State, all the way from Alaska Airlines to the smallest one aircraft operator. I can not think of any significant airline that does not belong.

There are over 200 communities throughout the State that are not on any road system, thus are totally dependent on our collective services for all their transportation needs.

We are being greatly impaired by a lack of insurance underwriting capacity. The problem dramatically escalated a little over two years ago when the BAIG (British Aviation Insurance Group) made a corporate decision to cease writing commuter airline insurance in Alaska. There is now no underwriter in Europe, including Lloyd's, that will touch us.

This is a direct result of the knowledge that Alaska has a potential for the highest punitive damage awards in the nation, second only to Alabama.

The plaintiffs attorneys will tell you that relatively few cases go to jury trial, and when they do the amounts awarded have not been excessive. There are answers for both statements.

Most cases are settled out of court because, for example, a death loss with an economic value of two million dollars will be settled for four million because the defendants are well aware they risk a much higher award, maybe eight million, if it gets to a jury in Alaska. This is possible even without any finding of gross negligence or willful misconduct! So the result was it still cost the defendant (underwriter) twice as much as it should have.

Penair is in the middle of just such a scenario. The initial letter from the plaintiff attorney estimated economic damage of 2.8 million, then brags that he should be able to get 12 to 16 million in punitives, if it gets to a jury!

PAGE TWO

As to the past awards, I suspect the only cases that do get to the trial stage are the ones where the defendant has a strong case.

Most of us mid-sized carriers traditionally carried twenty million dollar CSL (combined single limit) passenger liability coverage. But since the BAIG pulled out CSL is not available at any cost. Penair has been limited to one million per seat for the last two years, and our cost for the last renewal was over three million dollars annually, or ten percent of our gross revenue! Many of the smaller carriers have only five hundred thousand per seat, and some only one hundred fifty thousand.

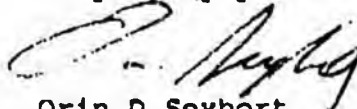
If HB 58 is passed, it will actually make more money available to compensate a citizen hurt or killed in an aircraft accident. That is because underwriters will make higher limits easier and cheaper to obtain. Consider a one-plane operator with one hundred fifty thousand per seat, when he crashes and kills someone there are no other assets, so no matter what the economic value is there is no other money available.

In the Penair case, the economic value alone is higher than our insurance available, (and there is no evidence of gross negligence on our part). A direct result of that is we have examined our customer base to see where we may be exposed, in other words looking for high value people, if you will. We have actually refused service to some such customers, so some companies ability to do business in Alaska is being restricted by this insurance problem.

Enclosed are copies of my correspondence regarding this situation, as well as a resolution passed by the AACCA general membership at our recent convention.

We will certainly appreciate any assistance you can give, believe me HB 58 will go a long way towards benefiting anyone in the State who has to use aircraft services.

Very truly yours



Orin D Seybert
President

Enclosures (4)

CC: Rep Porter

ALASKA AIR CARRIERS ASSOCIATION
RESOLUTION 97-1

DRAFT

RESOLUTION supporting sponsor substitute for HB58.

WHEREAS, the purpose for State involvement in aviation is to promote, encourage and develop aviation, (AS 02.15.010); and

WHEREAS, Alaskans rely on the aviation industry as their primary transportation source for persons, mail, food, shelter, health care and goods and services in general; and

WHEREAS, in the past decade the Alaska aviation industry has made significant progress and investment in developing a system which better meets the transportation needs of our vast state; and

WHEREAS, the commercial air carrier industry in Alaska is suffering from a lack of insurance underwriting capacity with insufficient limits of liability to compensate injured parties.

WHEREAS, passage of this bill will benefit the traveling public by allowing more funds to be available to properly compensate injured parties for economic and non-economic damages,

THEREFORE BE IT RESOLVED, the Alaska Air Carriers Association supports passage of sponsor substitute HB58.

3/11/97
ANCHORAGE Daily NEWS

*
JURY WEIGHS MAN'S CLAIM OF EAR DAMAGE

By LIZ RUSKIN
Daily News reporter

A man who was a passenger on a 1990 flight to Prudhoe Bay is asking an Anchorage jury for more than \$13 million in damages for injury to his ears he says he suffered because the plane's cabin was not properly pressurized.

Mickey Barrett, now 50, was a welder but says he can't work because of a ringing in his ears, dizziness and balance problems. He claims the injuries resulted from a descent into Deadhorse on Christmas Day aboard a Convair 580. He is suing Era Aviation, the operator of the charter flight.

His lawyer, Andrew Kurzmann, told a Superior Court jury during closing arguments Monday that the injuries cost Barrett his job, his family, and his ability to relate to his young son. Era Aviation has stripped Barrett of his dignity and self-respect, condemning him to a sad, lonely life for his remaining years, Kurzmann said.

But Era's lawyer said Barrett's problems aren't related to the flight. The crew, attorney Robert Richmond said, noted nothing unusual in the cabin pressure, and there's no reliable evidence of problems aboard the flight.

"At no point during the flight ... was there ever any complaint made," Richmond told the jury.

Barrett's trouble began before he got on the plane, Richmond said. He had already separated from his wife, and he'd received a job evaluation that said he had difficulty concentrating on his work, Richmond said. Barrett also had a cold and an ear infection when he got on the plane, the lawyer said. When you have a cold, it's hard for your ears to handle flying under normal pressure conditions, and they will hurt, Richmond said.

Several of Barrett's co-workers were among the 40 passengers on the plane. A couple of them corroborated his claim in court. One woman who was on the flight testified that the pressure felt as if someone had put a hose in her mouth and turned it on.

Kurzmann said Barrett bears the hallmarks of an injury to the vestibule of the inner ear: vertigo, hearing loss, pressure, ringing.

"He plays the radio 24 hours a day just to (mask the noise,)" Kurzmann said.

Richmond pointed out that Barrett continued working for the two weeks following the Dec. 25 flight, then took two weeks off in Oklahoma. When he returned to the North Slope, he was fired from his job with Atlas Wireline for smoking a cigarette in a room

where explosives are stored, Richmond said. Then he returned to Oklahoma and applied for unemployment compensation, claiming he was fit and ready to return to work, Richmond said.

Kurzmann asked for punitive damages equal to one year of Era's profits. As for assigning a value to Barrett's pain and suffering, Kurzmann said he once heard a seasick angler offer a skipper \$200 to turn the boat around and return to the Homer harbor. Using that analogy, Kurzmann argued the jury should make Era pay \$200 a day for the 25 years of Barrett's remaining life expectancy.

The jury began its deliberations Monday afternoon.

*

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

Jeff Bush
TONY KNOWLES, GOVERNOR

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March 7, 1997

The Honorable Brian Porter
Alaska State House of Representatives
Capital Room 216
Juneau, Alaska

Re: CS SSHB 58 (Judiciary) (Tort Reform)

Dear Representative Porter:

You requested my comments on various items in the current version of the tort reform bill, CSSSHB 58 (Jud) ("HB 58"), which I believe represent drafting errors and are not necessarily consistent with your intent, as expressed in your testimony and comments in the House Judiciary Committee.

In addition, I would like to take this opportunity to set out several of the significant policy concerns raised by this bill. As I testified before the Judiciary Committee, I firmly believe that the bill developed by the Task Force and introduced by the Governor represents an effective, comprehensive, and meaningful approach to tort reform. That bill was arrived at after several comprehensive meetings, a great deal of debate, and with the input and research of experts in the field. It is the product of significant compromise on the part of representatives of all competing interests in this debate, and it is, quite frankly, disheartening to have this product cast off without appropriate legislative consideration. To the extent HB 58 differs from that approach, these differences generally tend to be poorly conceived and represent extreme views, contrary to public policy and the interests of most Alaskans.

Technical Issues:

Section 5: Statute of Repose. In previous versions of the tort reform legislation, the statute of repose proposal has included a provision permitting a contractual override of the time limit, an exemption that I understand the state and several municipalities routinely rely upon. At the hearing, you indicated that this was intended here. However, it is not included in the language currently in the bill, and there is some concern that without it a contractual override is impermissible.

Section 6: Special Statute of Repose for Minors. You stated that the intention of this change is to impact the statute of limitations for minors, not the statute of repose. But as drafted, it is a limiting statute of repose, more restrictive than the general one for adults contained in section 5. It is, in short, anti-children, and the Department of Law believes that it is very likely unconstitutional on that ground.

I think that this change is unnecessary and that your concerns are already addressed in the bill. The general statute of repose of eight years would be applied to children as well as adults irrespective of the statute of limitations, meaning that a child's cause of action for birth injuries would be extinguished at age eight. To make sure that this would be the court's interpretation, you could even make an amendment to AS 09.10.140 to clarify that the tolling of the statute of limitations for minority does not extend the statute of repose.

Section 9: Standard for Punitive Damages. The phrase being inserted should say "deliberate disregard of another person's rights" instead of "deliberate disregard of another person." This is consistent with the case law, as most recently expressed in the *Chizmar* case.

Section 11: Taxes on Award. I believe this section, allowing a defendant a deduction for taxes that would otherwise be payable were the award taxable, should only apply to damages for traditionally taxable compensatory damages, such as damages for lost wages. It should not apply to compensation for medical costs incurred. As written, a verdict for medical reimbursement only could have a deduction applied, leaving the victim without full compensation for his medical expenses.

Section 15: Collateral Benefits. The last sentence in proposed AS 09.17.070(b), which allows a plaintiff to submit evidence of payments made for the purchase of the collateral source, is apparently meaningless and probably should be removed. Under (a) and the first part of (b), the amount paid by the collateral source is automatically deducted from the judgment, irrespective of the amount paid by the plaintiff for the benefit.

Sections 20: Expert Witness Qualifications. This section is unclear and needs substantial work. Is this section targeting medical malpractice, or all professional malpractice? And who is a "professional"; is the term linked to licensure (e.g., barbers and hairdressers, architects, marine pilots); does it include attorneys? And since Alaska does not have any such thing as "board certification" (in most profession, that is done by private associations), what is meant by "recognized by the state"? If this contemplates that the Division of Occupational Licensing will be required to evaluate and "recognize" various professional associations' certification programs, it will require expertise and analysis far beyond that which the division currently has, and there will be a substantial fiscal note attached to this bill.

This section is also troubling in its application. When the Task Force reviewed these concepts, Dr. Wilson noted the problems associated with its implementation in a state as small as Alaska. For example, he stated that there are only three neurosurgeons in Alaska, and two are partners. Thus, if any one of the three is involved in a lawsuit, the pool of available experts is either one or two, they will certainly have a conflict of interest, and they may be unwilling or unable to testify. Under current law, the other party could hire an internist or other surgeon to testify. But if this provision is adopted, the only option would be to find a "hired gun" from Outside, which even you have admitted is not a desirable situation.

The solution is really quite simple: remove proposed AS 09.20.185(a)(1) and (3), but leave in (2), thereby requiring that the expert be trained and experienced in the relevant discipline, but not necessarily "licensed" or "board certified."

Significant Policy Concerns:

Sections 5 & 6: Statutes of Repose. As you know, Governor Knowles vetoed last year's tort reform legislation, stating that although he supports meaningful tort reform, it must preserve the ability of Alaskan victims to be compensated for injuries caused by others. Nothing flies in the face of this goal more than statutes of repose, which can cut off a person's right to compensation even before they are injured. Such statutes are likely unconstitutional and certainly bad public policy. As discussed above, the special, shorter statute of repose for children is particularly troubling. In addition, the exceptions for "fraud or collusion" of parents or guardians will likely lead to litigation between parents and their children, and against the state in cases where the state has (or had) custody of the injured child.

Section 8: New Cap on Noneconomic Damages. These proposed caps on non-economic damages are irresponsibly low, designed to penalize not the victim of a minor injury (who will be fully compensated in any event), but only those severely injured by another's wrongdoing. Furthermore, the exceptions for spinal injuries are irrational; why should someone have a higher cap if one loses the use of a limb due to a spinal injury, but not if the limb is cut off? Why is the use of one arm deemed more serious than the loss of one's sight? I believe that if the legislature is going to impose a graduated scale of caps, either the application of the scale to individual cases should be left with the jury, as under current law, or the scale has to bear some rational relationship to the severity of the injury, as is done under the workers' compensation system. Finally, it must be noted that empirical studies have demonstrated no connection between the existence of damage caps and the amount paid for liability insurance rates.

Section 10: Punitive Damages. Although much like the proposal put forth by the Task Force, your proposal has a serious flaw that I believe should be reconsidered. As drafted, the higher caps on punitive damages would only apply where prior serious injury had occurred due to similar, profit-motivated, actions. What is the rationale for the repeat offense requirement? If a person consciously, knowingly, and maliciously constructs a bridge or a roof contrary to legitimate requirements, simply to pocket the material or construction savings and in spite of known risks of potential serious injury or death, that person should not be able claim the lower caps.

Also, the provision for the transfer of 50% of any punitive damages to the state treasury, although perhaps reasonable public policy, has a practical problem. Any time a jury awards punitive damages, the state's portion becomes simply a settlement fund to be split between the parties. For instance, if a jury awards \$200,000 in punitive damages, the defendant's attorney will simply call the other party and agree to settle for \$150,000 (splitting the state's share), with an agreement that the entire amount will be considered compensatory damages. I seriously doubt whether the state would ever realize any recoveries under the provision in this bill.

Section 15: Collateral Benefits. What is the problem that this section is trying to fix? The elimination of subrogation rights is merely a tradeoff between various insurance companies. To the extent that there may be savings realized to the property and casualty carriers, they will be at the expense of the health insurers. In fact, because the state is the largest health insurer in the state (and is moving toward self-insurance for health), this section may have a significant unintended consequence of raising health insurance costs and premiums for the state and its employees.

Sections 16-18: Apportionment of Fault. As you know, the Task Force struggled with these issues at length, eventually rejecting them. Of principal concern is the allowance that non-parties *who are not even subject to the court's jurisdiction* can be found partly responsible, thereby reducing the plaintiff's rightful

compensation. As Representative Croft pointed out, this section invites abuse by defense lawyers, making false accusations about any number of non-parties in order to reduce their own client's responsibility.

These provisions are especially onerous in light of the proposed changes to the offers of judgment rules. This best can be demonstrated by example. Assume P sues D for injuries sustained when D struck P with his automobile. D then claims that the state should be liable because the road was not properly maintained, or alternatively that the responsibility lies with the Seattle used car salesman or the Japanese automaker because the steering mechanism was defective (a good defense lawyer could come up with any number of possibilities). To the extent that the people D accuses are beyond the reach of the court, such as the salesman and possibly the automaker, D has a free rein to claim anything. As for the condition of the road, P is left little choice but to sue the state. The state's attorney, however, will then immediately serve an offer of judgment in the amount of \$100. P's dilemma is this: if he accepts the offer and dismisses the state (because he actually agrees that the state is not responsible), D will continue to assert the state's fault, and P will have to try to defend against that position without the state's help. On the other hand, if P rejects the offer in order to keep the state in the case, even though he thinks there is no state responsibility, he risks having to pay the state's full attorney fees and costs. As the Task Force rightly concluded, this is unfair.

Section 21: Offers of Judgment. Although the goal of encouraging early settlements is laudable, this section goes too far. It is not uncommon for defense attorneys to expend far in excess of a case's value, simply to "prove a point" (plaintiffs' attorneys do not have the same incentives, so the same cannot generally be said of them). Our current system, with definite awards under Rule 82 in most cases, acts as a reasonable but not unfair disincentive to so-called "frivolous" lawsuits. To create a situation where a party is at risk for fees far in excess of the potential value of the case makes it virtually impossible for the small guy to bring even valid claims, and grants the large insurance carriers a tool to coerce beneficial but unjustified settlements.

Section 36: ER Doctors. This provision, overruling *Jackson v. Powers*, was also rejected by the Task Force, because when people go to an emergency ward, they expect to receive treatment from the hospital, not a particular doctor. But even more disturbing is the very low insurance requirement contained in the bill. In the emergency room, we are likely dealing with serious injuries, and the medical expenses of an injury incurred there could easily use up \$500,000 before any consideration is made for other compensatory damages. The Task Force, in considering this provision, learned that the hospitals in Anchorage already require their ER doctors to carry \$1 million/\$2 million in E&O coverage, and we were told by the medical community that insurance in those amounts was readily available to any ER doctor in Alaska. Requiring anything less, especially where the hospital will not be able to be held liable, is unconscionable and can only be designed to hurt victims in serious cases.

Section 62: ADR. I must also make a pitch for inclusion of an ADR pilot program in the bill. I understand that the Court System has threatened a significant fiscal note if the provisions contained in the Task Force bill are adopted. Suffice it to say that their threats are unfounded. You have indicated to me that you support ADR; if so, why not include it here, in a bill that has a reasonably good chance of passage? In crafting the proposal for the Task Force, the Procedures Subcommittee was very much aware of the Court System's threats, and we worked very hard to minimize the financial impact of the pilot program. If a pilot program is included in this bill, I would be very happy to work with you in

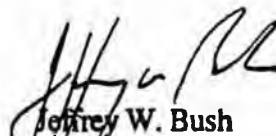
reviewing and analyzing any fiscal notes relating to this section, in order to minimize any impact on the state treasury.

I must also respectfully disagree with some comments you made at the conclusion of the Judiciary hearing (and which I have since heard you repeat on *Gavel-to-Gavel* and before the AARP board), in which you stated that the reason the Task Force did not come up with more recommendations was because of the requirement of approval by a super-majority before a recommendation could go forward. It was unfortunate that you were unable to attend the final Task Force meetings, when the votes on these important issues were taken. I have, in my file, the voting results for each item on the Task Force agenda. Only once was a recommendation rejected where the recommendation received more than half of the votes. That recommendation related to the statute of repose, where the vote was 10-7 in favor; but that was a far less onerous proposal than the one in this bill: it was for a 10-year statute of repose that tolled for minors and incompetents. Provisions relating to allocation of fault were rejected 8-9, and the section to overrule *Jackson v. Powers* was withdrawn by unanimous consent. No other recommendations even made it out of committee, nor were any that were rejected in committee offered to the full Task Force. The proposal relating to expert witness qualifications was rejected *unanimously* by the Procedures Committee, and proposals relating to collateral benefits and periodic payments were rejected *unanimously* by the Damages Committee.

I think we both agree that tort reform is necessary. However, I firmly believe that the general approach adopted by the Task Force -- to reduce the time and expense of litigation for all parties while continuing to protect the rights of all Alaskans -- is superior to the approach taken in HB 58, which appears designed more to protect insurance companies at the expense of innocent Alaska victims. I encourage you to rethink your approach.

Please feel free to contact me at any time to discuss these or related issues.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

cc: Representative Mark Hanley, Co-Chair, House Finance Committee
Pat Pourchot, Legislative Director, Governor's Office
Attorney General Bruce Botelho

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March 12, 1997

Representative Gene Therriault
Co-Chair, House Finance Committee
Alaska House of Representatives
State Capital
Juneau, Alaska 99801

Re: HB 58

Dear Representative Therriault:

I am writing to you on behalf of State Farm Mutual Automobile Insurance Company and State Farm Fire & Casualty Company. State Farm Mutual presently has approximately 32 percent of the automobile insurance market in the state of Alaska. State Farm Fire & Casualty has approximately 43 percent of the homeowners' market. Collectively State Farm has had significant experience with Alaska's civil justice system which goes back for at least 25 years. It is from this perspective that we offer our comments regarding the bill presently before you.

State Farm Mutual is a mutual company, which means it is owned by its policy holders. The premiums it charges its Alaska policy holders are determined primarily by its loss experience in Alaska. When State Farm's loss experience in Alaska has been better than expected, State Farm has returned premiums to its policy holders. In November of 1987 State Farm Mutual returned 3.3 million dollars to its Alaska policy holders. In November of 1988, State Farm Mutual returned 3.1 million dollars to its Alaska policy holders. Since then, State Farm's loss experience in Alaska has worsened. Over the years 1992-96 State Farm Mutual experienced a pure underwriting loss of approximately 1.8 million dollars. Over the same years, State Farm Fire and Casualty experienced a pure underwriting loss of approximately 23 million dollars. Although there are signs that this trend is changing, these losses have been disturbing.

We offer this information because there has been testimony that insurance rates in Alaska are set on a national level and that nothing done in Alaska will affect the price of insurance in Alaska. We strongly disagree with this proposition. As set forth above, our rates in Alaska are determined primarily by our loss experience in Alaska. The fact that we have returned significant amounts of money to our Alaska policy holders is irrefutable evidence of this. Other mutual companies have also returned money to their Alaska policy holders.

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We believe this legislation will improve our loss experience in Alaska. Improvement in our loss experience will be reflected in the premiums we must charge for our products. We believe this to be true for many other companies as well.

There are several provisions of this legislation we wish to comment specifically on. One of the sections we feel strongly about is Section 10, which is the limit on punitive damages. We see punitive damage claims frequently. Without exception these claims are time consuming and expensive to defend. Although these cases are most often successfully defended, they nonetheless impose a tremendous burden. The limitation contained in this bill, which we fully support, would lessen this burden.

In prior hearings there has been much argument to the effect there are not documented instances of adverse jury verdicts indicating there is a problem with punitive damages. We have enclosed a copy of a study by Steven Hayward, The Role of Punitive Damages in Civil Litigation: New Evidence From Lawsuit Filings. This paper provides empirical support for what we have been saying all along: the issue is not necessarily the number of adverse verdicts, but the number of claims which are made. Each such claim has to be defended. Each has the potential of effecting the value of the underlying claim for compensatory damages. Each imposes a cost. It is no surprise to us that this study found that punitive damages claims on average take one-third longer to resolve and play a significant role in the settlement process. This reality is ignored by those who choose to focus only on actual verdicts.

The second issue we feel strongly about is the several liability provision contained in Sections 16-18. In 1988, the voters in Alaska adopted pure several liability through the initiative process. The ballot told the voters that the "initiative would make each party liable only for damages equal to his or her share of fault". This initiative was approved by approximately 75% of the voters. Five years later the Supreme Court ruled that fault could be apportioned only to those who were formally named as parties to the action. Thus instead of a party being liable only for damages he or she caused, a party can now be held liable for damages caused by the fault of another. We believe this to be contrary what the voters were told in 1988.

We have heard the argument that if these changes are adopted, a defendant may try to blame a non-party for a loss and that a plaintiff will be forced to defend an "empty chair" from claims that are for the first time made at trial. We believe this is a specious argument. The basis for any such claim would have to be disclosed at the very outset by Rule 26 of the Rules of Civil Procedure. The usual discovery would also require disclosure of such a claim. There is simply no basis for the argument that such claims could be raised for the first time at trial.

Representative Gene Therriault
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The essence of several liability is that each party should be held liable only for his or her share of fault and no more. Although it is difficult to argue with the fairness of such a fundamental proposition, the overwhelming approval the voters gave to the 1988 initiative shows the public's agreement with this proposition. Any mechanism which serves to reallocate fault so that one party ends up bearing the consequences of someone else's conduct is unfair and contrary to the expressed intent of the voters. Sections 16 and 17 will simply insure that the intent of the voters is implemented and accordingly is a provision we fully support.

Section 21 of this bill will dramatically change the law on offers of judgment so there is a significant incentive to evaluate one's position early and in a responsible way. This section simply provides that if a party betters by more than 5% an offer of judgment entered within 60 days of initial disclosures, that party may recover reasonable actual attorney fees. There is no such present incentive in the law.

The final section we wish to comment on is Section 48, which provides a certain deterrent for those that come to court and intentionally make false statements of material fact. We do not believe this provision to be controversial and again believe it is hard to argue with the logic of such a concept.

There are other portions of this legislation that are important in that they remove windfalls which are currently in the system. Examples of this include Section 23, which provides for a floating rate of prejudgment interest, Section 24, which provides that prejudgment interest may not be awarded on future damages and Section 11, which reduces future wage loss claims by the amount one would have to pay for income taxes. Each of these provisions is fair. Each will reduce a windfall currently present in the system. Each will help to further the goals this legislation seeks to accomplish.

We thank you for the opportunity to comment on this legislation. If you have questions, please let us know as we will be happy to respond.

Sincerely,
LESSMEIER & WINTERS

By: 
Michael L. Lessmeier

cc: Rep. Brian Porter

BRIEFING

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The Role of Punitive Damages in Civil Litigation: New Evidence from Lawsuit Filings

By Steven Hayward†

HIGHLIGHTS:

- **This study offers new data on the frequency and the effects of punitive damages, based on a detailed review of more than 1000 lawsuits filed and concluded in San Francisco County Superior Court.**
- **Punitive damages are demanded in 27 percent of all cases where they are conceivably recoverable.**
- **Lawsuit filing data show that business and government defendants are four times as likely as an individual defendant to face a lawsuit that demands punitive damages.**
- **Lawsuits that include punitive damage demands take one-third longer to resolve than suits without these demands. The average lawsuit in our 1000 case sample took 15 months to resolve; cases with punitive damage demands took an average of 21 months to resolve.**

† Steven Hayward is vice president, research for the Pacific Research Institute. William S. Loughman, an attorney and senior fellow in legal studies for the Pacific Research Institute, conducted the research into lawsuit filings.

- Punitive damage demands play a significant role in the out-of-court settlement process, where the vast majority of lawsuits are settled. Punitive damage demands tilt the playing field in favor of demanding parties, and increase out-of-court settlement amounts.
- Studies of punitive damage jury verdicts have been interpreted to suggest that the risk of receiving an adverse punitive damage judgment is remote. Closer scrutiny of the data, we argue, will show that the probability of punitive damage awards is vastly understated by these studies, in part because the data have been improperly qualified.

Introduction

The controversy over punitive damages in civil litigation has centered around the number of punitive damage awards, and the dollar amounts of such awards. Comprehensive data on this issue are scarce because there is no complete statistical database of trial verdicts. However, we believe that the focus of research on the number of punitive damage verdicts is misplaced to some extent. Focusing only on trial verdicts understates the scope and nature of the problem because the overwhelming majority of all lawsuits are resolved out of court. According to surveys of lawsuits, less than 2 percent of all cases go to trial. Looking only at the 2 percent of cases that reach a jury is like looking only at the visible tip of a large iceberg: it ignores the larger unseen part below the water line that may do more harm. Thus, to argue that punitive damage awards are rare is to miss an obvious point: *jury verdicts of any kind are rare*. No one would say, however, that because jury verdicts are rare, lawsuits themselves are insignificant or costless. Yet this is the inference that has been drawn from various punitive damage studies that focus only on trial verdicts.¹

The right question to ask about the civil litigation process is: *what is occurring in the other 98 percent of cases that are resolved out-of-court?* Because 98 percent of cases are resolved out of court, it is important for researchers and for public policy makers to understand what is going on in these cases, and how the legal rules, including the relative probability of punitive damages, affect the outcomes of the negotiation process for out-of-court settlements.

A large proportion of lawsuits today include punitive damage demands. Because 98 percent of lawsuits are resolved out-of-court, an important threshold question to answer is: *Do punitive damage demands in lawsuit filings have a significant effect on the out-of-court settlement process?*

¹ For example, the recent federal Department of Justice estimates of civil suit verdicts in state courts, discussed below, generated numerous newspaper headlines to the effect that "punitive damages are rarely awarded."

In an attempt to shed light on this question, the Pacific Research Institute conducted a detailed examination of more than 1000 lawsuit filings in San Francisco County Superior Court. We conclude that punitive damages are used as a weapon to generate more favorable out-of-court settlements, especially against business and government defendants.

What Lawsuit Filings Data Tell Us

Most punitive damage studies focus on verdicts in the handful of cases that proceed to trial. There are no empirical studies that examine how often, and against whom, punitive damage demands are employed.

In an attempt to shed light on these issues, we have scrutinized a month's worth of lawsuits filed between January 2, 1991 and February 1, 1991 in the Civil Division of the California Superior Court for the County of San Francisco. There were 1,024 lawsuits filed in this venue during this time period. Our analysis seeks to determine what patterns exist with respect to the distribution of claims for punitive damages and statutorily mandated multiple damages. We reviewed each case to determine the type of case, the principal cause of action claimed, whether punitive damages were demanded, how the case was resolved, and how long it took to resolve. We picked cases from 1991 because over 98 percent of cases from this time period had been resolved, either by trial, settlement, or dismissal, so most could be traced out to their conclusion. (A complete description of the methodology used in surveying and classifying these cases is available upon request.)

The highlights of the analysis of these cases include:

- 78 percent of all punitive damage demands were filed against a business defendant. (See Figure 1 below.)
- Government defendants face punitive demands in more than one-third of lawsuits filed against government agencies. (See Table 1 below.)
- Lawsuits that include punitive damage demands take about six months longer to resolve than lawsuits that do not include punitive damage demands.
- The probability of a punitive damage award if a case proceeds to trial is 14 percent or higher. For business defendants, the probability is more than 20 percent.

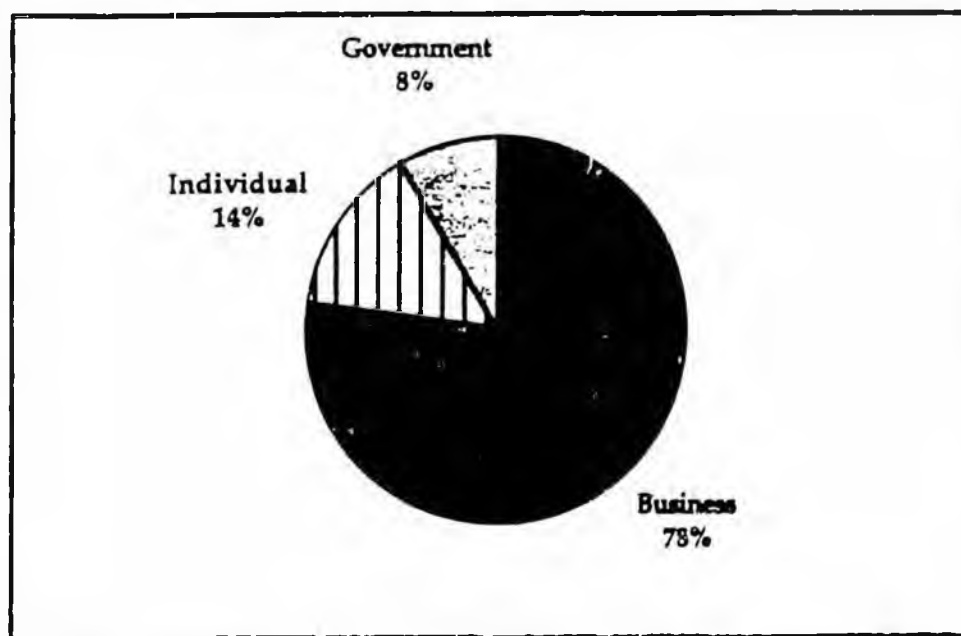
Of the 1,024 cases we examined, nine (9) cases were designated by the court as "sealed" and were unavailable for study. This left a pool of 1,015 lawsuits for study. 537 of these 1,015 cases, or 52.9 percent, were based on one of three principal causes of action where punitive damages are recoverable:

- 1) common law tort;
- 2) statutory tort or other statutory civil action; or
- 3) contract.*

The remaining civil filings within this pool—478 cases—consisted of civil law categories where punitive damages are not available or only very rarely available. These categories include equity causes of action (such as requests for a temporary restraining order); family law matters (chiefly dissolution of marriage proceedings); and civil petitions (such as a name change, to confirm an arbitration award, or to compel an audit entry).

Punitive damage demands were included in 145 of the lawsuits. This represents only 14 percent of the total pool of lawsuits, but 27 percent of the suits in areas where punitive damages are generally available (145 out of 537). Of these 145 filings, 112 or 78 percent were filed against a business defendant. This breakdown is displayed in Figure 1 below.

Figure 1: Distribution of Punitive Damage Demands by Type of Defendant



* Although punitive damages are not normally recoverable in contract lawsuits, many contract suits nowadays include secondary causes of action, such as fraud or "bad faith," which can suffice as a basis for punitive damages. For this reason, contract cases have been included in the pool of cases which can potentially involve a viable claim for punitive or statutory damages.

Of the 1,015 cases reviewed, only 22 went to trial, or 2.1 percent. This is comparable to the trial rate estimated in the Department of Justice study, and is consistent with most studies of lawsuits. Seventeen of these 22 cases were tort, statutory, or contract cases (in which punitive damages may be alleged). Of these 17 cases, seven were court trials (heard by a judge instead of a jury) and 10 were jury trials. Business entities were the primary defendant in 11 of the 17 trials; government entities and individuals were named as the primary defendants in three trials. Six of the 17 cases (two court trials, and four jury trials) included punitive damage demands. Two of the 17 cases settled during trial. Of the remaining 15 cases, plaintiffs won in seven of the trials, while defendants won eight. No punitive damages were awarded in these verdicts.

Table 1 categorizes cases according to the type of primary designated defendant (individual, business entity, government entity, and non-profit organization). Table 2 displays the same data according to type of case instead of type of defendant. The data in these tables demonstrate that punitive damages are overwhelmingly alleged against business entities. Businesses face punitive damage demands roughly four times as often as individuals.

Government Agencies Frequently Targeted

Another remarkable feature is apparent in Table 1: Government entities face punitive damage demands more than one-third of the time (35 percent). While defenders of punitive damages argue that punitive awards are necessary to prevent allegedly gross negligence, malice, or willful harm by businesses, such malicious behavior can hardly be just as frequently alleged in government. But government entities, like businesses, are perceived to have "deep pockets" and make attractive targets for punitive damage demands. Thus, taxpayers, and not just business interests, bear the direct cost of punitive damages. Many of the lawsuits brought against government, and defended at taxpayers' expense, are patently frivolous. For example, in one case from our research, *Buford v. California Department of Real Estate*, the plaintiff demanded \$3 million in punitive damages because the agency had refused to grant him a real estate license. The Department of Real Estate had to answer the suit in court, pointing out that the plaintiff was a convicted felon.

Another notable suit was *Shervin v. California State Police*. Alleging that five state police officers had burst into his home without a warrant but on the direct orders of Governor Deukmejian, Shervin demanded punitive damages based on seven different allegations, including "organized conspiracy, racketeering and/or extortion, to subvert the court and to obstruct justice."

Additional allegations included "torture," and the accusation that the California State Police were engaged in "an extensive, continued and perpetual gigantic organized conspiracy" of an unspecified nature. This was the *fourth* such lawsuit Shervin had brought against various government agencies in recent years, all defended at taxpayer expense.

Table 1: Civil Litigation Filings in Common Law Tort, Statutory Tort, and Contract Cases, and Punitive or Statutory Damage Claims Frequency by Category of Primary-Designated Defendant, 1991

INDIVIDUALS (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	169	16
Statutory tort/actions:	1	0
Contract:	34	5
Totals:	204	21
Frequency of punitive damage claims:		10.29%

BUSINESSES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	184	74
Statutory tort/actions:	26	19
Contract:	80	20
Totals:	290	113
Frequency of punitive damage claims:		38.97%

GOVERNMENT ENTITIES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	25	6
Statutory tort/actions:	6	4
Contract:	6	3
Totals:	37	13
Frequency of punitive damage claims:		35.14%

NON-PROFIT ENTITIES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	5	0
Statutory tort/actions:	0	0
Contract:	1	0
Totals:	6	0
Frequency of punitive damage claims:		0%

Table 2: Distribution of Punitive and Statutory Damages Claims Among Civil Filings by Category of Lawsuit, 1991

Common Law Tort Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	169 (16)	184 (74)	25 (6)	4 (0)
P.D.s as %	9.47%	40.22%	24.0%	0%
PDs for all common law tort cases:		24.87%	(96/382)	

Statutory Tort Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	1 (0)	26 (19)	6 (4)	0 (0)
P.D.s as %	0%	73%	66%	0%
PDs for all statutory tort cases:		66%	(13/33)	

Contract Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	34 (5)	80 (20)	6 (3)	1 (0)
P.D.s as %	14.71%	25%	50%	0%
PDs for all contract cases:		23.14%	(28/121)	

Duration: Punitive Cases Take Longer to Resolve

Another significant finding of this sample of lawsuit filings concerns the average duration of the cases. We assigned a duration value to each case in the sample. The purpose of this analysis was to gauge the length of time until each case was resolved, and to see whether lawsuits that included punitive damage demands were concluded more quickly or less quickly than lawsuits that did not demand punitive damages. Our analysis of the duration of cases showed that lawsuits that did not include a punitive damage demand were concluded in an average of 15 months, while punitive damage lawsuits required an average of 21 months to conclude—a six month difference.

It is difficult to know whether this distribution of case filings, punitive damage demands, and average duration to resolution holds constant in the

case filings in other jurisdictions. But for *purposes of illustration* only, if this distribution were roughly similar in all the jurisdictions covered in the Department of Justice estimates, it would suggest that a business defendant facing a punitive damage demand would have about a 14 percent probability of receiving an adverse punitive damage judgment at trial—substantially higher than the 5.9 percent of trials that resulted in punitive damages in all of the trial verdicts considered as a whole in the DoJ study.² It should be emphasized here that many of the 75 counties included in the DoJ study, such as Washington state counties, do not allow or severely restrict punitive damages, so the overall probability in areas allowing punitive damages is certainly much higher than 14 percent.

Asking the Right Questions: The Dynamics of Lawsuit Settlement

To appreciate fully the significance of the findings of our analysis of lawsuit filings, it is necessary to understand how punitive damage demands may affect the calculus of out-of-court settlement demands. A review of the scholarship about this subject will establish the following conclusions:

1. The *unpredictability* of a prospective punitive damage award contributes significantly to the *uncertainty* (and therefore the *risk*) of a court trial outcome.
2. Both the uncertainty posed by the prospect of unlimited punitive damages, combined with the relative probability of a punitive damage award if a case goes to jury trial, provide litigants who demand punitive damages with potent leverage against risk-averse defendants, and tip the balance in settlement bargains in favor of litigants with weak or even frivolous cases.

As mentioned previously, concentrating on trial verdicts overlooks “where the action is” in civil litigation: out-of-court settlements. We are not suggesting that verdicts are unimportant. To the contrary, punitive damage verdicts are like the tip of the proverbial iceberg. The small number of trials affect decisions in the vast majority of lawsuits that do not proceed to trial. Verdicts are “information signals” for litigants. Even Stephen Daniels and

² The calculation for this figure is as follows: In our case sample, 38.5 percent of business cases include a punitive damage demand. The Department of Justice report estimated that there were 5,240 tort cases against a business defendant in its sample of cases from 75 counties. Holding constant from our sample, this would suggest that 2,017 of these cases included punitive damage demands (38.5% of 5,240 cases). If we assume that the proportion of punitive verdicts is in parity with the distribution of punitive demands (i.e., 78 percent against business), then 284 of the 364 punitive verdicts in the DoJ study were against business defendants. These 284 verdicts represent 14 percent of the 2,107 cases.

Joanne Martin, who are strong proponents of punitive damage awards, note that "jury verdicts in the minority of matters actually adjudicated play an important role in determining the worth, or settlement value, of civil matters filed but not tried."³

To get a proper perspective on how this process works requires a consideration of the basic dynamics of a lawsuit. There is growing scholarly literature that offers several models of decision-making in the litigation process, especially in cases involving doubtful or even frivolous legal claims. "Situations involving litigation are a paradigmatic case of bargaining conflict," Kip Viscusi has written, and hence susceptible to illumination through game-theory and decision-tree models.⁴ As professors Robert Cooter and Daniel Rubinfeld of U.C. Berkeley have noted, "The attributes of litigation bargaining—rivalry, communication, side payments, interdependency, and uncertainty—characterize bargaining games as analyzed in microeconomics."⁵ This approach can help clarify the role of punitive damages in changing the calculus of settlement between litigating parties.

The first thing to understand about lawsuits under American law is that the plaintiff has the opening strategic advantage: even a plaintiff with a weak case places the defendant in the position of having to defend himself (and therefore incurring legal costs), or else the defendant will be liable for the full claim on a default judgment. Hence, even a defendant facing a suit without merit is often willing to pay an amount that is less than his prospective defense costs to settle the case and "make it go away." According to various studies, the cost of defense in an *average* tort lawsuit ranges from \$6000 to \$10,000, depending on the kind of suit.⁶ A litigant with even a mildly plausible basis for an average suit can often expect a nuisance settlement value within this range. Professors David Rosenberg and Stephen Shavell of Harvard Law School comment: "By filing a claim, any plaintiff, and thus the plaintiff with a weak case, places the defendant in a position where he will be held liable for the full judgment demanded unless he defends himself. Hence, the defendant should be willing to pay a positive amount in settlement to the plaintiff with the weak case—despite the defendant's knowledge that were he to defend himself, such a plaintiff would withdraw."⁷ University of Michigan economist Avery Katz adds that in

³ Stephen Daniels and Joanne Martin, "Myth and Reality in Punitive Damages," 75 *Minnesota Law Review* 1-64 (October 1990), p. 28.

⁴ W. Kip Viscusi, "Product Liability Litigation with Risk Aversion," *Journal of Legal Studies*, Vol. XVII (January 1988) p. 120.

⁵ Robert D. Cooter and Daniel L. Rubinfeld, "Economic Analysis of Legal Disputes and Their Resolution," *Journal of Economic Literature*, Vol. XXVII (September 1989), p. 1069.

⁶ J. Kakalik and N. Pace, *Costs and Compensation Paid in Tort Litigation* (Santa Monica: RAND Corporation Institute for Civil Justice, 1986).

⁷ D. Rosenberg & S. Shavell, "A Model in Which Suits Are Brought for Their Nuisance Value," 5 *International Review of Law and Economics* (1983), p. 3.

many cases "the defendant is willing to pay a settlement up to the amount of his defense costs in order to avoid having to respond to the plaintiff's complaint."⁸

The main determining factor of whether a filed lawsuit will yield a settlement to the plaintiff is the "threat credibility" of the suit, i.e., what is the probability of a verdict favorable to the plaintiff if the case goes to trial, and what is the likely amount of damages that the plaintiff could win? The scholarly models of the out-of-court negotiation process suggest that an increase in the prospective amount of a jury verdict increases the likelihood of a settlement offer by the defendant, and tends to increase the amount of such settlements. Professors Kathleen Engelmann and Bradford Cornell argue that "it is almost invariably the case that increasing the cost of litigation increases the probability of settlement."⁹ Professor Barry Nalebuff of Princeton University concurs, noting that "an increase in the court award . . . raises the probability of settlement."¹⁰

This can be true even in frivolous or marginal lawsuits, or lawsuits with a doubtful chance of success at a trial. Professor Katz comments: "The main reason that frivolous suits are not always met with a blanket denial and refusal to negotiate, of course, is that the defendant rarely knows the merits of the claim with certainty. Since refusing to take a valid claim seriously can be quite costly, a frivolous plaintiff may be able to take advantage of the defendant's uncertainty regarding the claim's validity to extract a substantial settlement." Moreover, Katz adds, "higher trial costs raise the defendant's benefit from settling with valid claimants and makes him more willing to tolerate the cost of settling with strike suitors."¹¹

The point is: punitive damage demands will often tip the balance of power in bargaining to the plaintiff, even one with a weak or frivolous case. It does so in two ways: by increasing the size of a prospective jury award (by an unpredictable and potentially enormous amount) if the case is taken to trial, and by increasing the legal costs that a defendant will have to incur to fight the suit at trial. First, to use a hypothetical example: while a \$50,000 lawsuit with arguable merit might have a settlement value of \$20,000 or \$30,000, a \$50,000 lawsuit that also demands \$200,000 in punitive damages is no longer a

⁸ Avery Katz, "The Effect of Frivolous Lawsuits on the Settlement of Litigation," *International Review of Law and Economics*, Vol 10 (1990), p. 4.

⁹ Kathleen Engelmann and Bradford Cornell, "Measuring the Cost of Corporate Litigation: Five Case Studies," *Journal of Legal Studies*, Vol. XVII (June 1988), p. 397. For a general discussion of this point, see John P. Gould, "The Economics of Legal Conflicts," *Journal of Legal Studies*, Vol. 2, No. 2 (June 1973), pp. 279-300; Lucian Arye Bebchuk, "Suing Solely to Extract a Settlement Offer," *Journal of Legal Studies*, Vol. XVII (June 1988), pp. 437-450; Cooter and Rubinfeld, *op cit.*

¹⁰ Barry Nalebuff, "Credible Pretrial Negotiation," *RAND Journal of Economics*, Vol. 18, No. 2 (Summer 1987), p. 208.

¹¹ Katz, *op cit.*, p. 4, 5.

\$50,000 lawsuit for purposes of settlement. The presence of a punitive damage demand provides leverage for the plaintiff to force a higher settlement value from the suit. Second, the presence of a punitive damage demand often requires a more extensive, more costly, and more time-consuming defense by the defendants. Most punitive damage demands are based on claims of intentional wrongdoing or "conscious disregard" of the rights of the litigant. Defending against such extraordinary claims usually requires a more expensive discovery process than ordinary damage claims. In addition to a discovery process about the basic facts of the injury or fraud involved in the tort allegation, determining the malicious intent of the defendant will involve more extensive, and therefore more expensive, document searches and depositions.

The key dynamic of the out-of-court settlement process is *uncertainty*. Obviously if the outcome of jury trials were highly predictable, few if any cases would ever go to trial. The parties would always settle. It is the uncertainty of trial outcomes that has led to a thriving market for jury verdict data services, which are intended to provide at least some guidance to litigating parties to help estimate the risks of trial and the parameters of a reasonable settlement. Punitive damage demands add dramatically to the uncertainty of out-of-court settlement deliberations. The inclusion of a punitive damage demand increases the potential amount of an adverse jury award by an unpredictable degree, since punitive damages are unlimited.

To judge how serious a factor this is, it is necessary to consider the probability of receiving a punitive damage verdict if a case is taken to trial. The plaintiff's leverage is only effective if the threat of extracting punitive damages from a trial is credible. What makes a punitive damage demand credible in the eyes of a defendant? The studies that minimize the number of punitive damage awards are highly misleading on this point.

For example, the recent Department of Justice study's estimates on civil lawsuits seems to suggest that because so few cases result in punitive damages (364 out of 762,000 cases filed, or .0004 percent), the threat of a punitive damage demand in a lawsuit pleading is not very credible.¹² But this is to miss something rather obvious in the DoJ statistics: because only 1.5 percent of the lawsuits actually went to trial, the relevant question to ask is: *what is*

¹² "Civil Jury Cases and Verdicts in Large Counties," U.S. Department of Justice, Bureau of Justice Statistics, Special Report NCJ-154346, July 1995. It is important to take note of the methodological difficulties with this study. While the study purports to represent a review of 762,000 case filings and 12,000 jury verdicts, in fact the Department of Justice only scrutinized a sample of these cases. It is from these samples that extrapolations are made in the various tables in the study. The sample size is not divulged. This is why we have consistently referred to the DoJ's figures as "estimates." Finally, the Department of Justice study does not provide a state-by-state breakdown, so it is impossible to offer observations specific to California based on their estimates.

the risk of receiving a punitive damage judgment if a case is brought to trial? The 364 punitive damage verdicts in the DoJ estimates take on a new significance if pondered in this fashion: they amount to 3 percent of the 12,000 cases tried, or 5.9 percent of verdicts in which the plaintiff was the winner. Three percent, or even 5.9 percent, still may not seem very substantial to outside observers who do not bear the risk themselves, but it is crucial to remember, however, that many if not a majority of these cases that went to trial *did not include a punitive damage demand as a part of their pleading.* Secondly, the DoJ statistics do not tell how many of the suits that included punitive damage demands, or how many of the verdicts that included punitive damages, were suits brought against *businesses* as opposed to *individuals.* (The Department of Justice has the data to make this breakdown, but chose not to report it in its study.)

The disaggregated figures in Table 3 below, taken from the Department of Justice estimates, tell the story more clearly.¹³ Although the DoJ estimates are severely limited because they do not tell us whether the defendant in these verdicts is an individual or a business, and does not tell us what proportion of the cases that went to trial sought punitive damages, they do confirm that the probability of receiving a punitive damage award is significant.¹⁴ For example, in employment law cases (nearly all of which were brought against business defendants), we see that 26.8 percent of all verdicts included punitive damages, with a hefty median punitive award of \$179,000.

¹³ These data appear as Table 8 on page 8 in the Department of Justice study.

¹⁴ As pointed out above, the DoJ did not actually analyze 762,000 cases on a case-by-case basis. It would take years to conduct such an analysis. But unless a substantial sample of cases is analyzed closely, it is impossible to answer some key questions about what is happening. The DoJ does not estimate how many of the 762,000 suits requested punitive damages as a part of their filing, or how many of the 12,000 that went to trial included punitive damage demands. But without knowing this, it is difficult to judge the significance of some of the DoJ findings. For example, while the DoJ study notes that only 13 out of 403 medical malpractice verdicts included punitive damages, the study does not say—because the DoJ does not know—how many of those 403 cases demanded punitive damages as a part of their case filing. Although the DoJ estimates do break down suits filed against individuals and filed against business, it does not reveal how many of the suits against business that went to trial included punitive damage demands. Again, the DoJ cannot know this without actually examining each and every case filing. Because the DoJ study is based on estimates instead of a hard count of actual cases, it cannot tell us much that is meaningful about the relative risk posed to defendants who face punitive damage demands.

Table 3: Punitive Damage Awards for Plaintiff Winners in Civil Jury Cases in State Courts in the Nation's 75 Largest Counties, 1992

	Plaintiff winner cases		Amount of punitive damages awarded to plaintiff winners			% of plaintiff winner cases with punitive damages	
	No. awarded punitive damages	% of cases receiving punitive damages	Total	Median	Mean	Over \$250K	Over \$1 mill.
Case type:							
All jury cases	364	5.9	\$267,879,000	\$50,000	\$735,000	23.7	11.6
Tort cases	190	4.0	91,477,000	36,000	481,000	22.7	10.1
Automobile	55	2.4	35,535,000	25,000	641,000	19.9	7.5
Premises liability	15	1.7	1,272,000	40,000	87,000	0	0
Product liability	3	2.2	40,000	9,000	12,000	0	0
Intentional tort	38	18.5	10,926,000	25,000	286,000	13.8	8.5
Medical malpractice	13	3.1	3,120,000	199,000	245,000	31.8	0
Profsnl malpractice	15	15.7	6,077,000	250,000	412,000	44.0	8.5
Slander/libel	8	29.8	1,341,000	47,000	164,000	34.2	0
Toxic substance	13	6.2	26,420,000	1,692,000	1,994,000	54.7	54.7
Other tort	30	7.2	6,746,000	100,000	226,000	20.9	10.9
Contract cases	169	12.2	169,528,000	52,000	1,003,000	24.4	12.6
Fraud	38	21.2	7,339,000	45,000	191,000	18.9	10.4
Seller plaintiff	24	5.6	1,221,000	22,000	51,000	0	0
Buyer plaintiff	47	12.4	27,446,000	27,000	581,000	28.6	11.1
Employment	46	26.8	132,759,000	179,000	2,875,000	42.1	26.1
Rental/lease	11	11.3	399,000	50,000	37,000	0	0
Other contract	2	1.8	365,000	145,000	162,000	44.4	0
Real property cases	5	11.7	6,873,000	85,000	1,375,000	40.0	40.0

Another point should be made from the DoJ estimates. While defenders of unlimited punitive damages prefer to use *median* punitive award figures because a few large awards can skew *average* award figures, this point can be turned on its head. The large disparity between median punitive award amounts and average award amounts (\$50,000 and \$735,000 respectively in the DoJ estimates) highlights the unpredictability of punitive awards. As our previous report on punitive damages in California showed, there was a huge range in punitive damages awarded between 1990 and 1994, demonstrating that punitive damages are unpredictable and arbitrary.¹⁵ In California cases during this period, the range of punitive awards runs from 710 times compensatory damages to .0001 times compensatory damages. (In one case, a defendant who was not assessed any compensatory damages was nevertheless

¹⁵ *Punitive Damages in California: A Preliminary Report* (San Francisco: Pacific Research Institute, 1995).

hit with \$62,000 in punitive damages.) It is precisely this uncertainty that provides the plaintiff with additional leverage in the settlement process.

Conclusions

The California statutes governing punitive damages use exceptionally strong language to prescribe when punitive damages are appropriate. Punitive damages should be awarded where there is "clear and convincing evidence" that a defendant has behaved with "malice," or has engaged in "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Other descriptions include "oppression, intentional misrepresentation, deceit, or concealment of a material fact. . ." Unless it is implausibly assumed that such extraordinary behavior is rampant and pervasive in California, the frequent appearance of punitive damage demands in lawsuit filings is evidence that they have become simply a regular litigation tactic.

It is not persuasive to say that the frequency of punitive damage demands have little or no effect on the cost and outcomes of litigation. The uncertainty and risk posed by potential punitive damage awards magnifies the leverage of such demands in out-of-court settlements. The prospect of "runaway juries" is far from fanciful. Even judges have felt compelled to speak out about this phenomena. In a recent California trial involving an employment dispute that resulted in an \$80 million punitive damage award, the trial judge set aside the verdict, noting:

"This award is so disproportionate to the injuries, damages and conduct, and so unsupported by the evidence it shocks the conscience of this court to the point that the court cannot countenance such a result and feels compelled, despite its respect for the jury process, to grant a new trial . . . Punitive damages award is excessive and clearly motivated by passion and prejudice [of the jury]. The award does not bear a reasonable relationship to the nature of defendant's action and the extent of plaintiffs' injuries."¹⁶

Despite the admonitions of California statutes that there be "clear and convincing evidence" of extraordinarily deliberate malicious behavior, it is clear that new guidelines and limitations on punitive damages are needed.

¹⁶ *Lane v. Hughes Aircraft Company*, Los Angeles County Superior Court Case No. BC 075 519 (December 15, 1994).

THE ROLE OF PUNITIVE DAMAGES IN CIVIL LITIGATION: NEW EVIDENCE FROM LAWSUIT FILINGS



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Looking Out For Business...

Second in a series of articles by the Alaska State Chamber addressing issues of major importance to Alaska's business community.



Could this be the year when meaningful reform of Alaska's civil justice system is finally realized?

For the first time in more than a decade of effort, both the legislature and the governor have introduced legislation in support of tort reform. The Governor's goals for tort reform are precisely those of the Alaska State Chamber and others who have led the fight for reform:

- To decrease the costs of resolving cases
- To discourage frivolous litigation
- To promote fair compensation for injured parties
- To promote the predictability of outcomes

With this being the case, it would seem to be only a matter of sorting out some definitions and a few differences in approach before achieving the desired results. But as it is often said, the devil is in the details.

Although there are numerous issues within tort law that will be addressed in the tort reform effort, the issue of punitive damages has been one of primary concern to Alaska's businesses, both large and small. Under the present tort system there are no guidelines or parameters for establishing punitive damages. Although the term "punitive" means "concerned with, or to inflict punishment," under today's tort system punitive damages can be assessed even when there has been no willful act or intentional wrongdoing on anyone's part. In addition, although in criminal or administrative law the level of punishment is pre-established, under tort law there are no established limits on the level of punishment.

This is why punitive damages are known as "litigation lottery", and also as a tool for blackmail. An example of this was provided to us recently by one of our members, a small airline that was being sued as a result of a plane crash in which there was a fatality. Although it had been determined that the airline was not at fault in the acci-

dent, the law firm representing the estate of the deceased bragged and threatened in a letter to the company that their firm had been "extremely successful" in obtaining punitive damages from Alaskan juries, named the amounts of those victories in the multi-millions of dollars, and went on to say that they had settled several cases in which the *prospect of punitive damages* led to settlements "vastly exceeding" the economic loss. They were suggesting that a high out-of-court settlement would be to the benefit of this airline.

These "pay up or take the chance of losing everything you ever owned or ever hoped to own" cases usually are settled out of court. Therefore, the number of lawsuits of this nature are not accurately reflected in the statistics.

Punitive damages are known as "litigation lottery", because they can be assessed without intentional wrongdoing on anyone's part...and the sky is the limit.

This is one of the most flagrant abuses of justice existing in Alaska's tort law system today, and also one of the most expensive. If this airline ends up meeting the exorbitant demands in the case just cited, rather than bet against the odds, the costs will have to be passed on to their customers in order for them to stay in business. Can we even begin to assess the liability costs we pay everyday as consumers? And is this how we think the justice system should work?

The Alaska State Chamber wants to see parameters put in place. We believe punitive damages should only be assessed when there is clear and convincing evidence of malicious intent, outrageous conduct, or reckless indifference. The penalty for such actions should be pre-established and not exceed three times the amount of compensatory damages awarded, or \$300,000, whichever is greater. We also believe that 75% of the penalty should go to the state, thereby helping to support the cost of justice rather than serving as a windfall for those who would use the system to their own ends.

Looking Out For Business...

One in a series of articles by the Alaska State Chamber addressing issues of major importance to Alaska's business community



Alaskans Support Tort Reform. A new statewide survey of Alaskan voters shows that 83% favor changing Alaska's liability laws. In the January poll commissioned by the Alaska State Chamber of Commerce, a random sample of 500 Alaskans taken from state voting lists were interviewed by a national polling firm out of San Francisco regarding the civil legal system.

The three top concerns expressed were that too much money is being awarded in civil lawsuits, limits or established guidelines are needed, and it is too easy to file lawsuits. Sixty-seven percent of those surveyed believe there are too many lawsuits being filed these days, while only 15 percent feel not enough people exercise their right to sue. Sixty-two percent think people

are taking unfair advantage of the system in order to receive large awards they don't deserve.

The majority of those surveyed believe frivolous lawsuits, those that are unnecessary in many people's views, are thought to cause higher insurance premiums for everyone (87%), have raised health care costs (80%), and delay compensation to legitimate victims (73%) by clogging the courts.

The State Chamber commissioned the survey to show legislators and the Governor the degree of public support for the present legislative efforts to reform the tort legal system. House Bill 158, Civil Liability, sponsored by Representative Brian Porter of Anchorage, includes those changes to the system most supported by the public, but the bill is vehemently opposed by the powerful Alaska Trial Lawyers Association. After narrowly passing the House last session, the bill is now in the Senate Judiciary Committee, chaired by Senator Robin Taylor, a former judge and an attorney who has not looked with favor upon the bill.

According to the survey, three out of four believe small businesses, doctors, taxpayers, and people with legitimate lawsuits would be most helped by the proposed changes to the system. The survey participants believe, by a ratio of eight to one, that those who would be most hurt by the new law are people with frivolous lawsuits and personal injury lawyers.

A statewide survey of Alaskan voters shows that 83% favor changing Alaska's liability laws.

The State Chamber believes unjustifiable litigation disrupts commerce at every level, and legal expenses constitute a large and growing cost of doing business in Alaska. Threatened or actual litigation and the associated defense costs jeopardize the existence of small and medium sized businesses.

The poll also revealed that political candidates accepting financial support from personal injury lawyers could experience a backlash if that support becomes known. In fact, 69 percent of those surveyed said they would likely vote against candidates who receive support from personal injury lawyers.

Upon clearing the Senate Judiciary committee, House Bill 158 will be heard in the Senate Labor & Commerce and Finance committees before being voted on by the whole Senate. Any changes the Senate makes to the bill will have to be approved by the House. It is not known if the Governor would approve the bill, but the survey showed there is broad consensus--83 percent agreement--that if the Legislature passes a liability reform bill aimed at reducing frivolous lawsuits, the Governor should sign it.

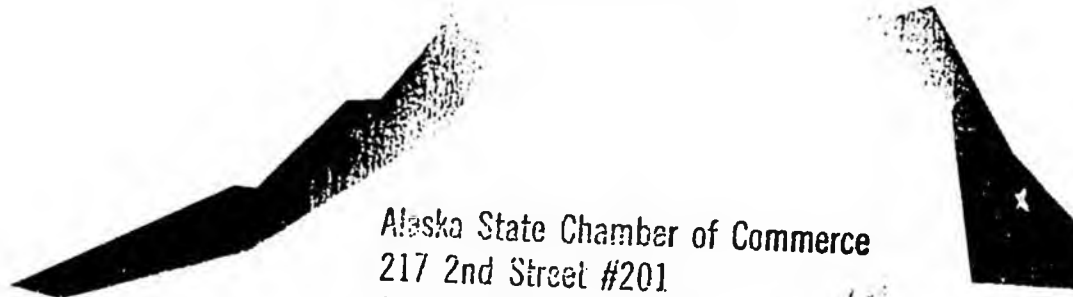
For more information contact the Alaska State Chamber of Commerce at (907)586-2323 or Fax (907)463-5515.

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ALASKA VOTERS: LAWSUIT ABUSE SURVEY

JANUARY, 1996



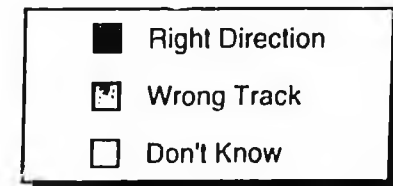
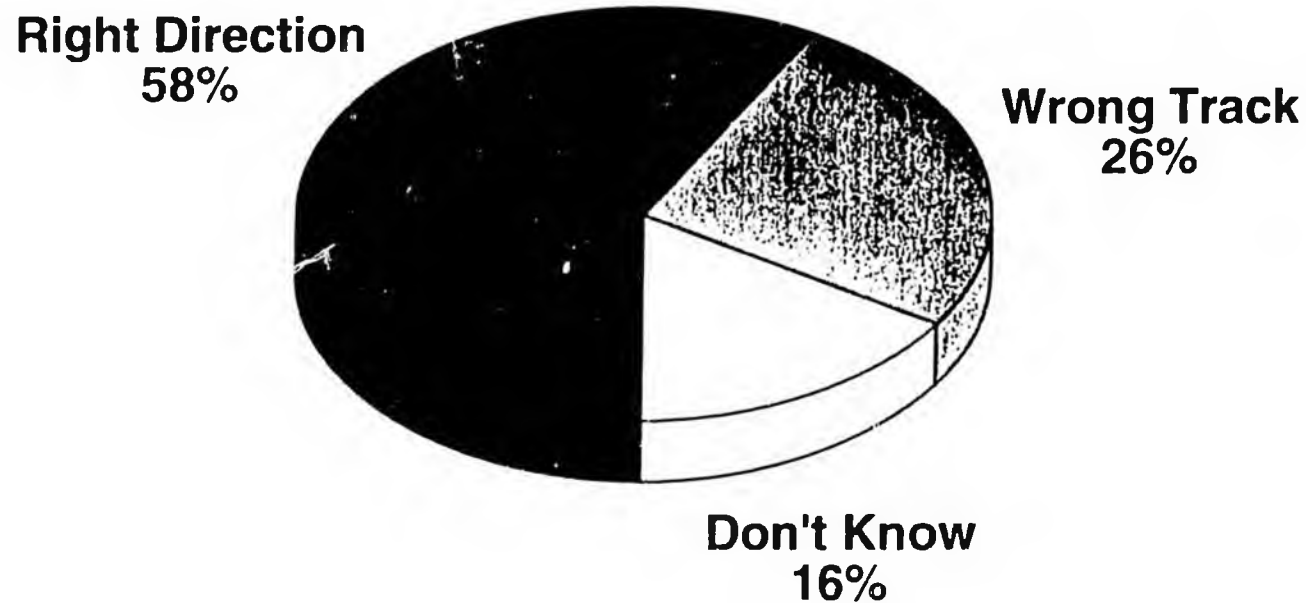
Alaska State Chamber of Commerce
217 2nd Street #201
Juneau, Alaska 99801

Methodology

MODE	Telephone Survey
UNIVERSE	Alaska Registered Voters
SAMPLE SIZE	N=500
MARGIN OF ERROR	+/- 4.4%
FIELD DATES	January 12, 13, 14, 16
LENGTH	56 questions; Approximately 15 minutes

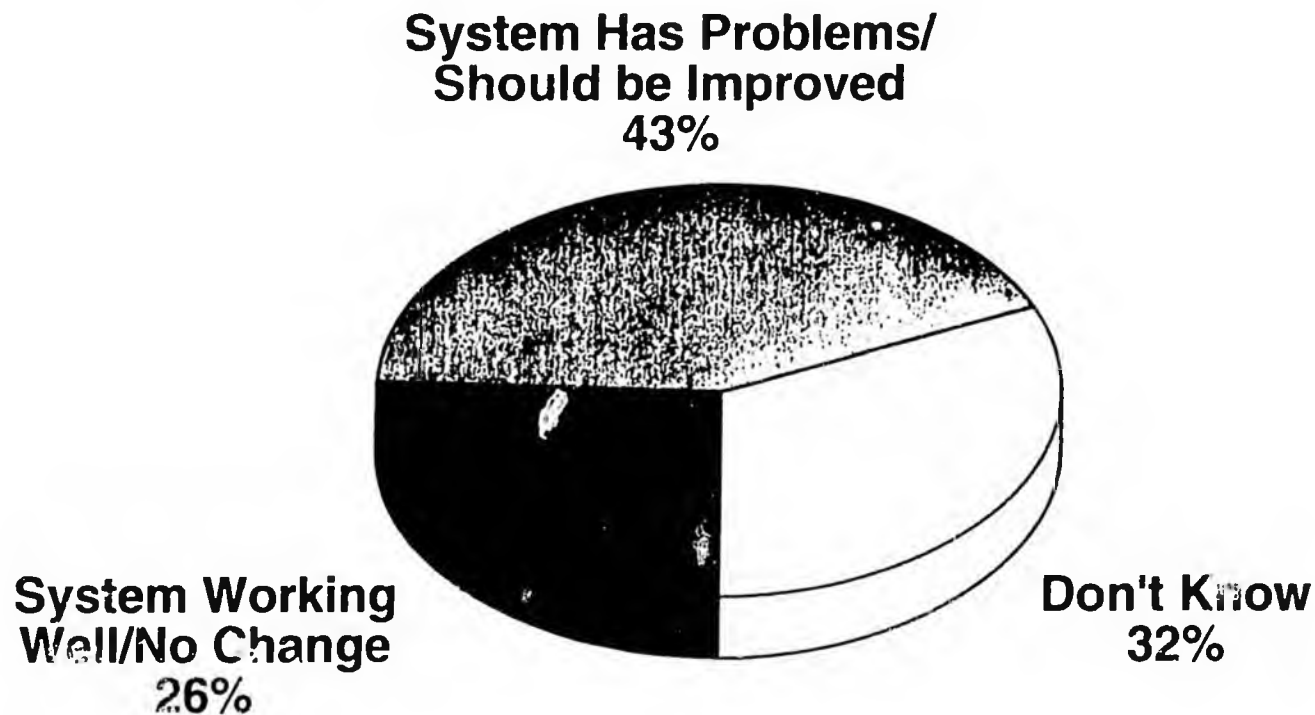
Mood of Alaska

Do you feel things in Alaska are generally going in the right direction or do you feel things have pretty seriously gotten off on the wrong track? (Q1)



Liability System Status

Thinking about the legal system here in Alaska, do you feel the present liability system is working well and should not be changed, or do you feel the present liability system has problems and should be improved? (Q2)



- System working well/no change
- ▨ System has problems/ should be improved
- Don't Know

Problems with Liability Court System

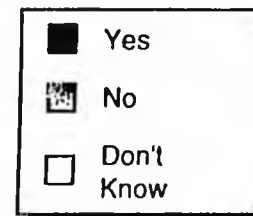
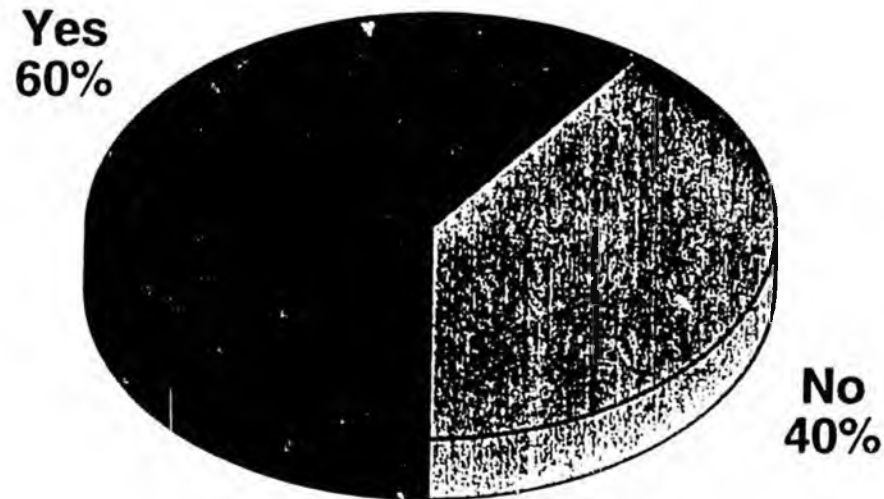
What are some of the problems with Alaska's liability court system that should be changed or improved? (Q3)

n=214

	<u>First</u> <u>Mentions</u> %	<u>Second</u> <u>Mentions</u> %
Too much money rewarded	17	17
Need new laws	14	27
Too easy to file lawsuits	14	22
Too many lawsuits	9	11
Fraud/Personal greed	9	9
Greedy//Unethical lawyers	7	10
Ties up the courts	7	8
Take resources away from real problems	3	4
Hurts innocent people	2	4
Everything	*	*
Other mentions	4	4
Don't know/refused	14	14

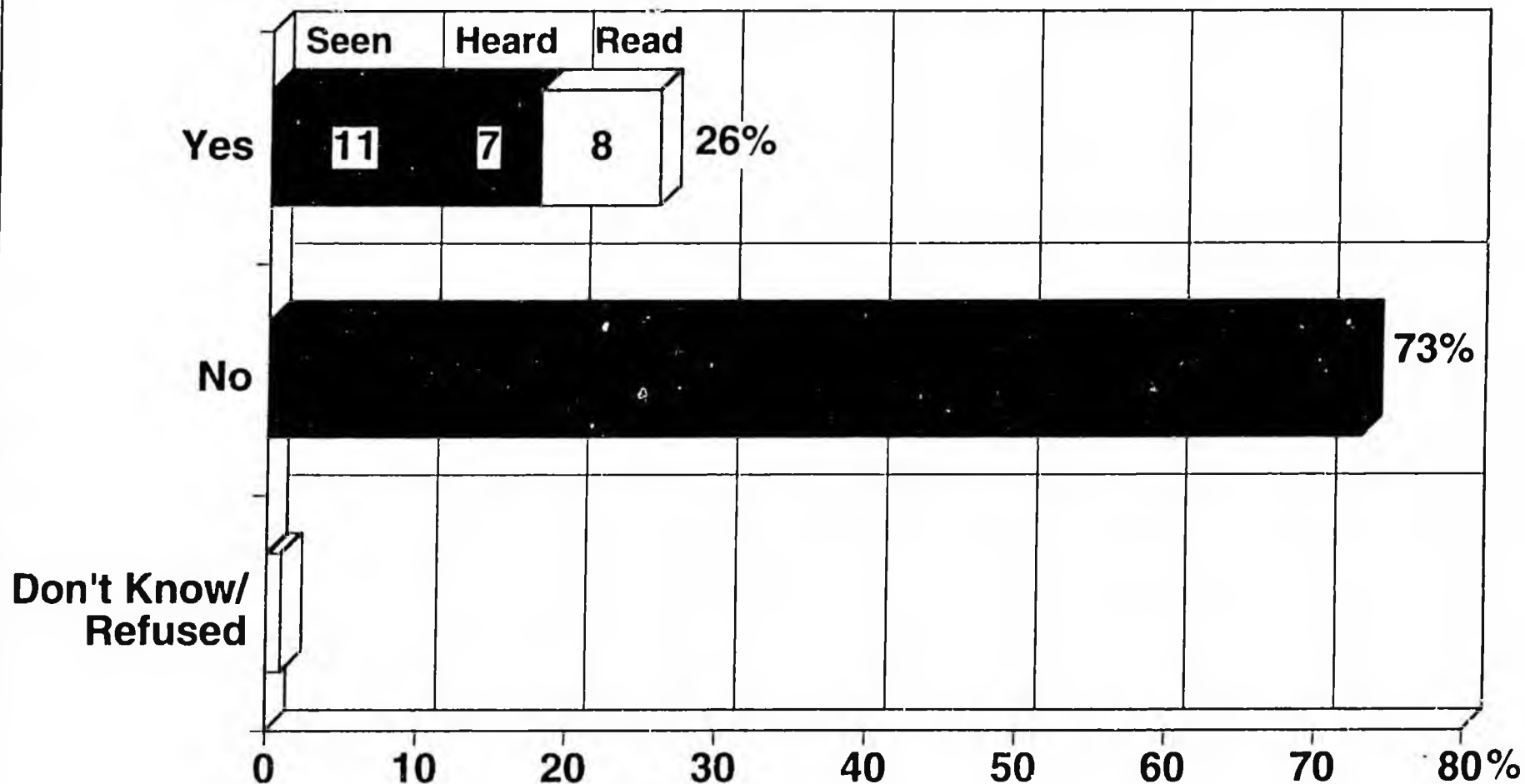
Recall: Lawyer Advertisements

On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently? (Q4)



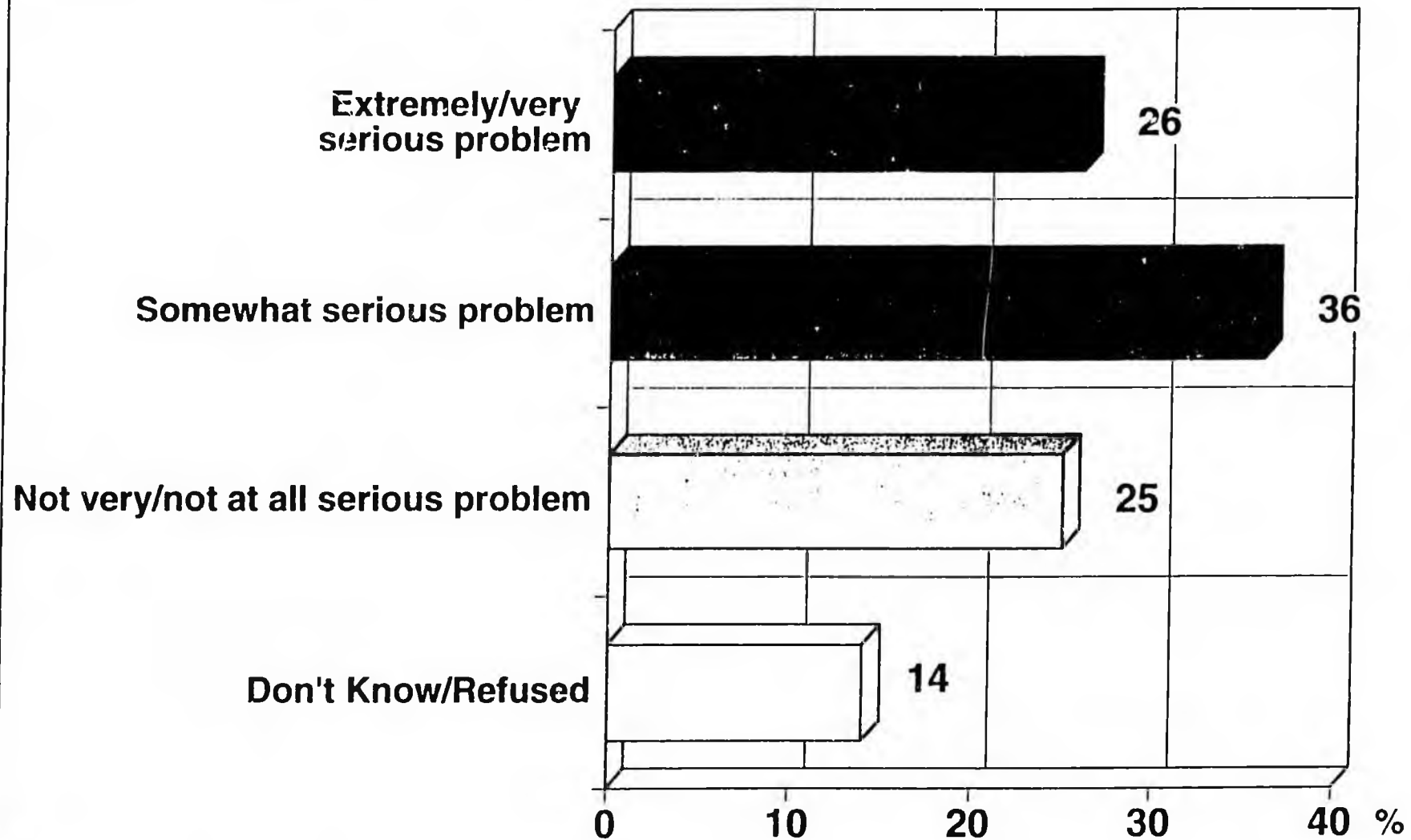
Recall: Legal System Reform

One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately? (Q5)



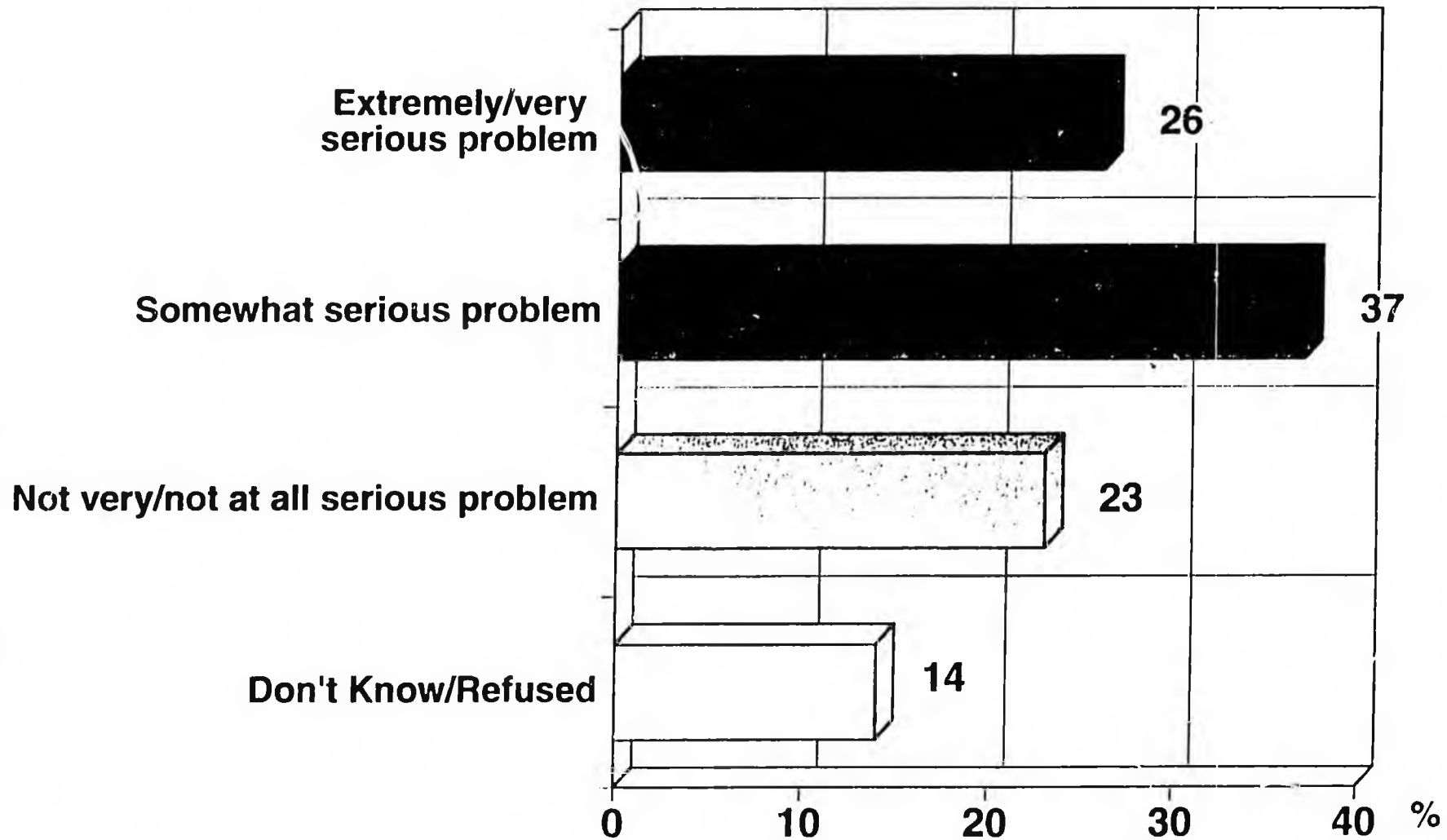
Frivolous Lawsuits Problem in Alaska

From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits... (Q6)



Negative Impact of Frivolous Lawsuits on Alaska Economy

Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do you think frivolous lawsuits are having on the Alaska economy? Would you say they are having... (Q7)



Too Many Lawsuits vs. Not Enough People Exercising Right

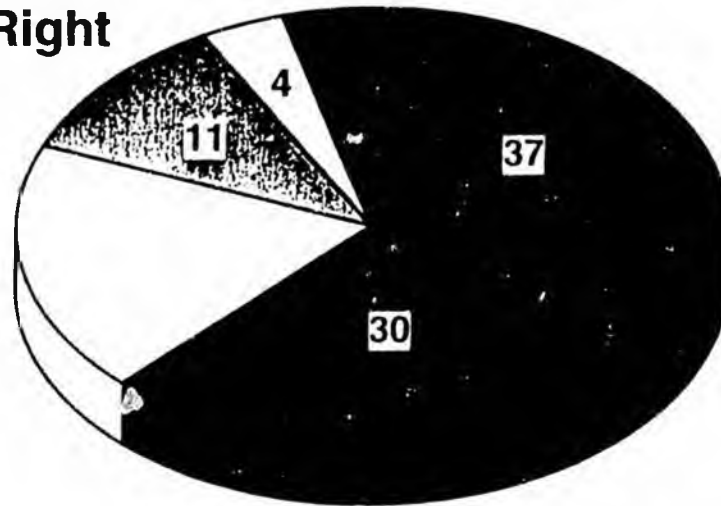
Which of the following statements comes closer to your opinion regarding the liability law system? And would that be strongly or somewhat more like your opinion? (Q8)

Some people say: There are too many lawsuits being filed in Alaska these days.

Other people say: Not enough people in Alaska are exercising their right to sue.

**Not Enough
Exercising Their Right**
15%

**Don't
Know**
19%



**Too Many
Lawsuits**
67%

- Too many lawsuits/strongly
- Too many lawsuits/somewhat
- Don't Know
- Not enough exercising their right/somewhat
- Not enough exercising their right/strongly

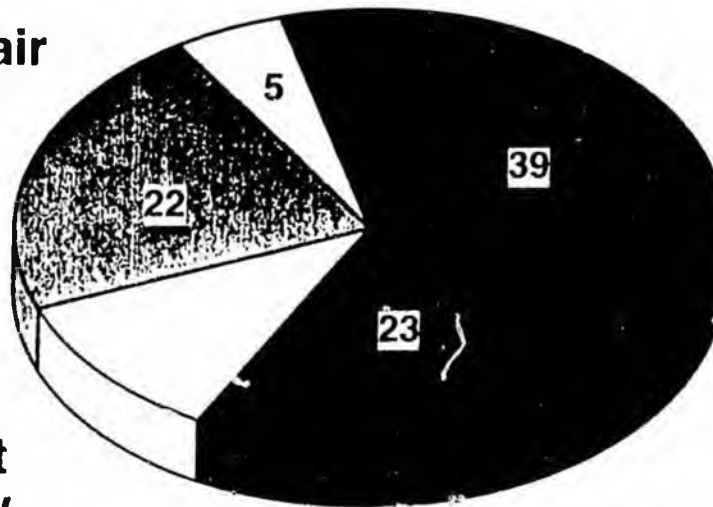
People Taking Advantage vs. System is Fair

Which of the following statements comes closer to your opinion? And would that be strongly or somewhat more like your opinion? (Q9)

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

System is Fair
27%



Too Many People Taking Advantage
62%

Don't Know
11%

- Too many people taking advantage/strongly
- Too many people taking advantage/somewhat
- Don't Know
- System is fair/somewhat
- System is fair/strongly

Agree/Disagree Statements *Ranked by Agree*

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have caused higher insurance premiums for everyone. (Q15)	87 (64)*	8	5
Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs. (Q14)	80 (55)	13	7
The number of frivolous lawsuits delays compensation to legitimate victims. (Q16)	73 (44)	15	12
Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed. (Q10)	68 (37)	19	13

* Strongly Agree

Agree/Disagree Statements (p. 2) Ranked by Agree

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have increased the cost of medical care in Alaska. (Q11)	66 (40) *	18	16
I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit. (Q12)	61 (28)	31	9
Frivolous lawsuits have increased the cost of consumer products in Alaska. (Q13)	55 (27)	27	18

* Strongly Agree

Proposals to Address Frivolous Lawsuits

Ranked by Favor

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge. (Q24)	86 (68) *	10	5
A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more. (Q27)	84 (59)	9	7
A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation. (Q21)	83 (58)	9	8

* Favor Strongly

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.2)

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony. (Q28)	80 (61)*	12	8
A proposal to limit medical expert witnesses who can testify in trials to currently licensed doctors who have practiced the medical specialty being questioned sometime within the last ten years. (Q26)	80 (56)	12	8
A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit. (Q22)	80 (53)	14	6
A proposal to limit the percentage a personal injury trial lawyer can receive as a fee from any settlement or award from the client. (Q17)	78 (53)	15	6

* Favor Strongly

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.3)

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to limit the ability of convicted felons in prison to bring liability lawsuits. (Q23)	76 (58)*	18	5
A proposal that would reduce to TEN years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29B)**	75 (53)	17	8
A proposal that would reduce to SIX years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29A)**	73 (49)	20	8

* *Favor Strongly*

** *Split Sample*

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.4)

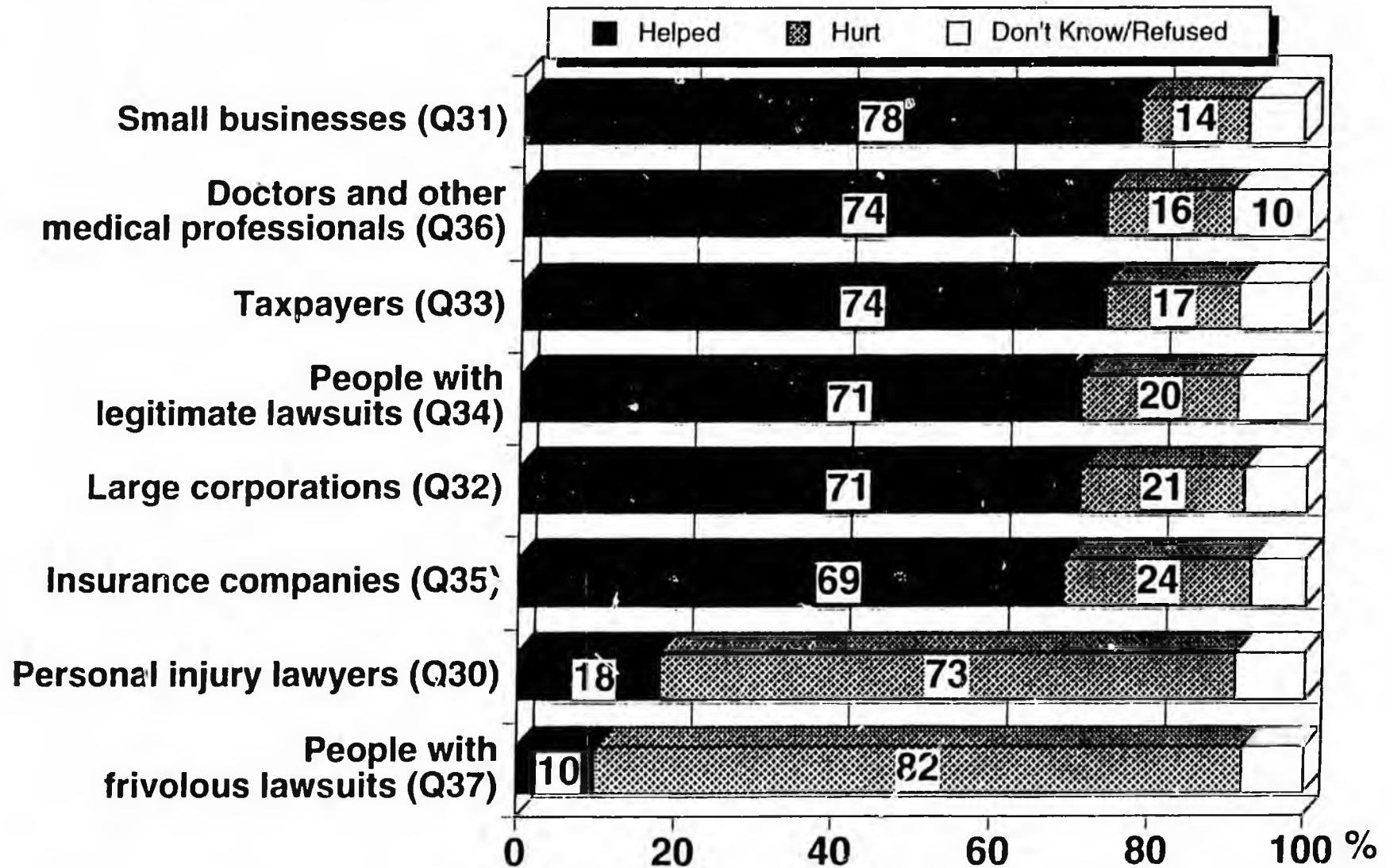
People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial. (Q20)	73 (44)*	17	10
A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages. (Q25)	66 (38)	19	15
A proposal requiring the loser of a lawsuit to pay legal fees for both sides. (Q19)	63 (35)	28	9
Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault. (Q18)	49 (24)	39	13

* *Favor Strongly*

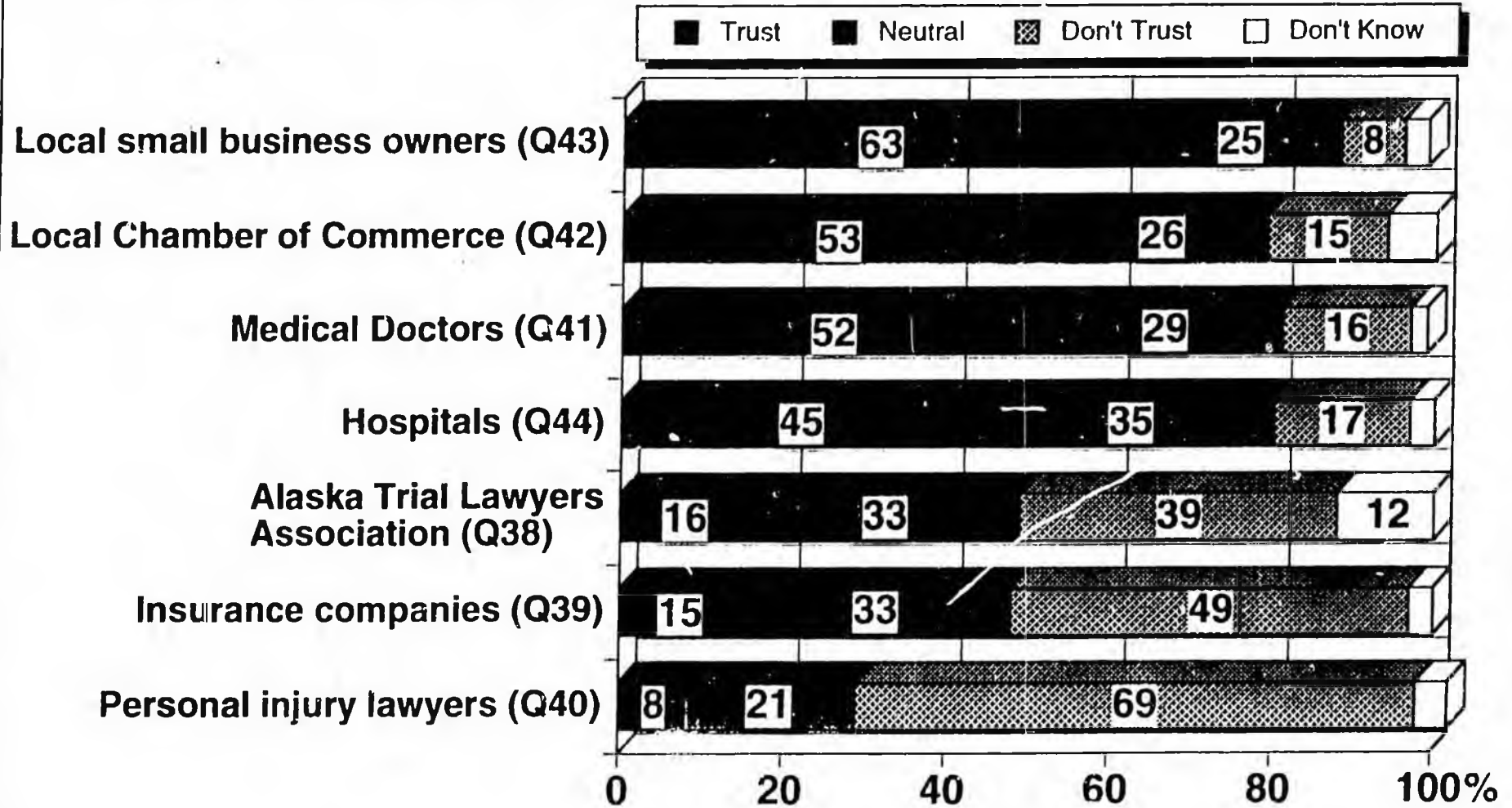
Impact of Lawsuit Reforms

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you. (Q30-37)



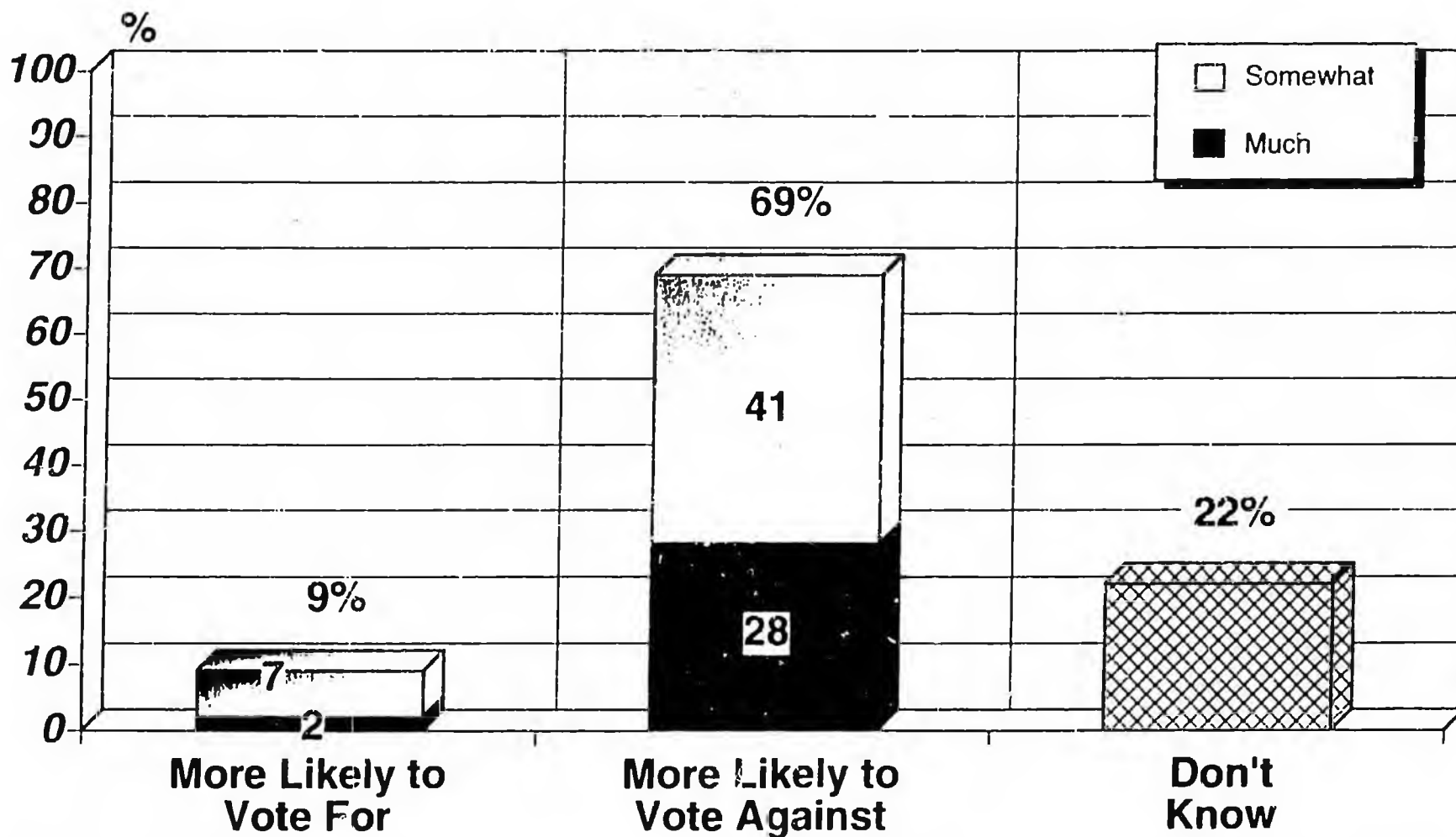
Name I.D. / Favorability

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. (Q38-44)



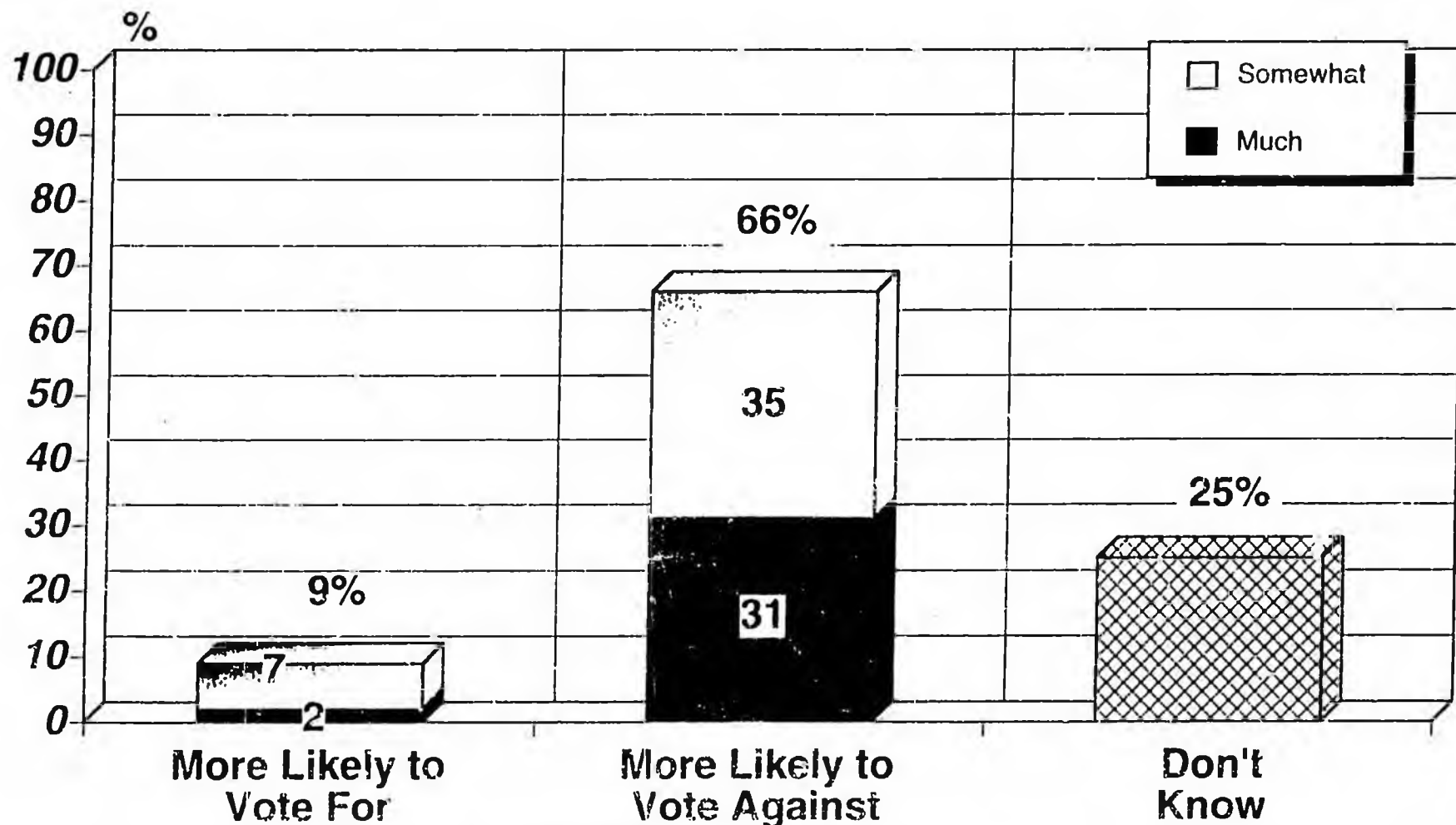
Candidate Endorsed by Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45A)



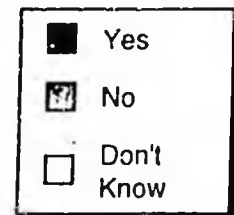
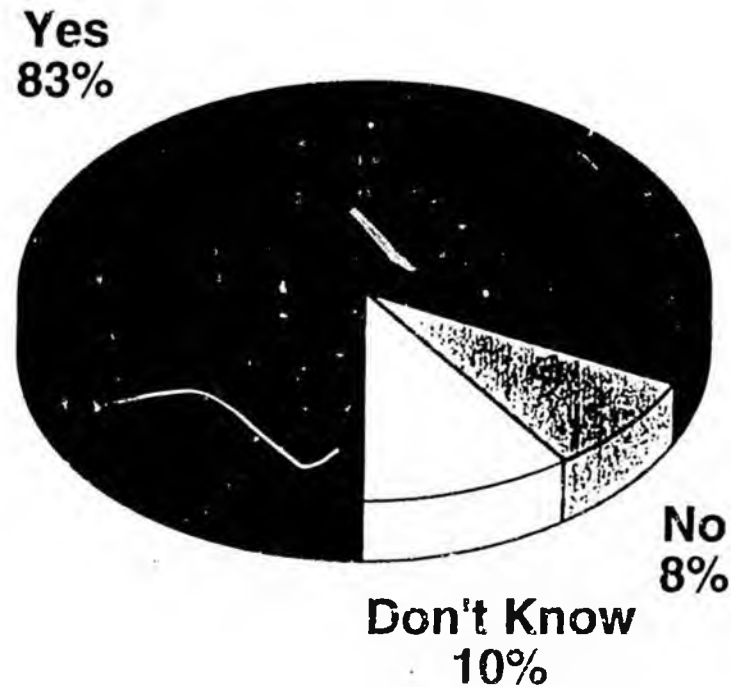
Candidate Accepting Campaign Contributions from Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45B)



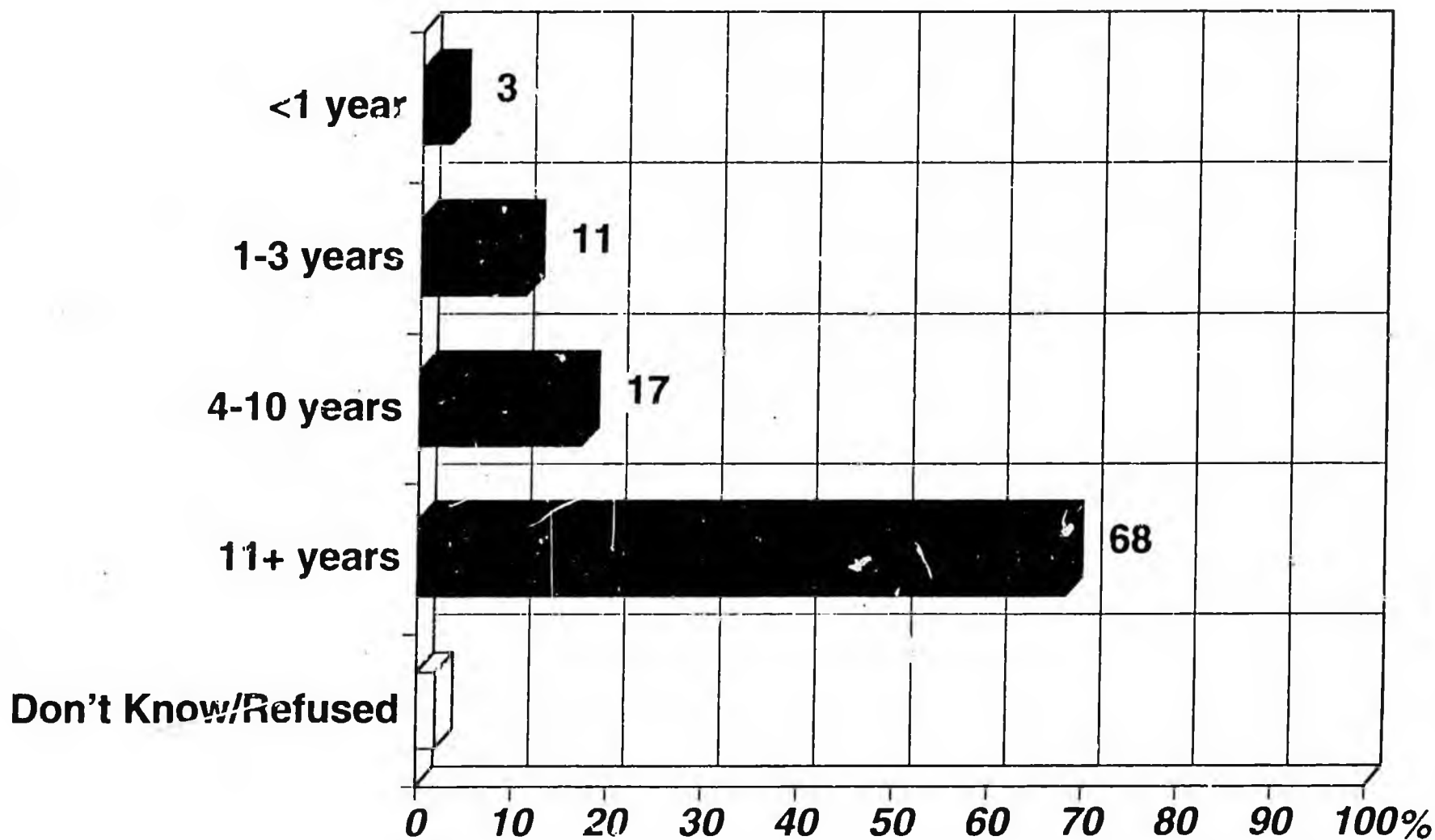
Should Governor Sign Frivolous Lawsuit Reform?

If the State Legislature passes a liability reform measure aimed at reducing frivolous lawsuits, do you think the governor should sign it? (Q46)



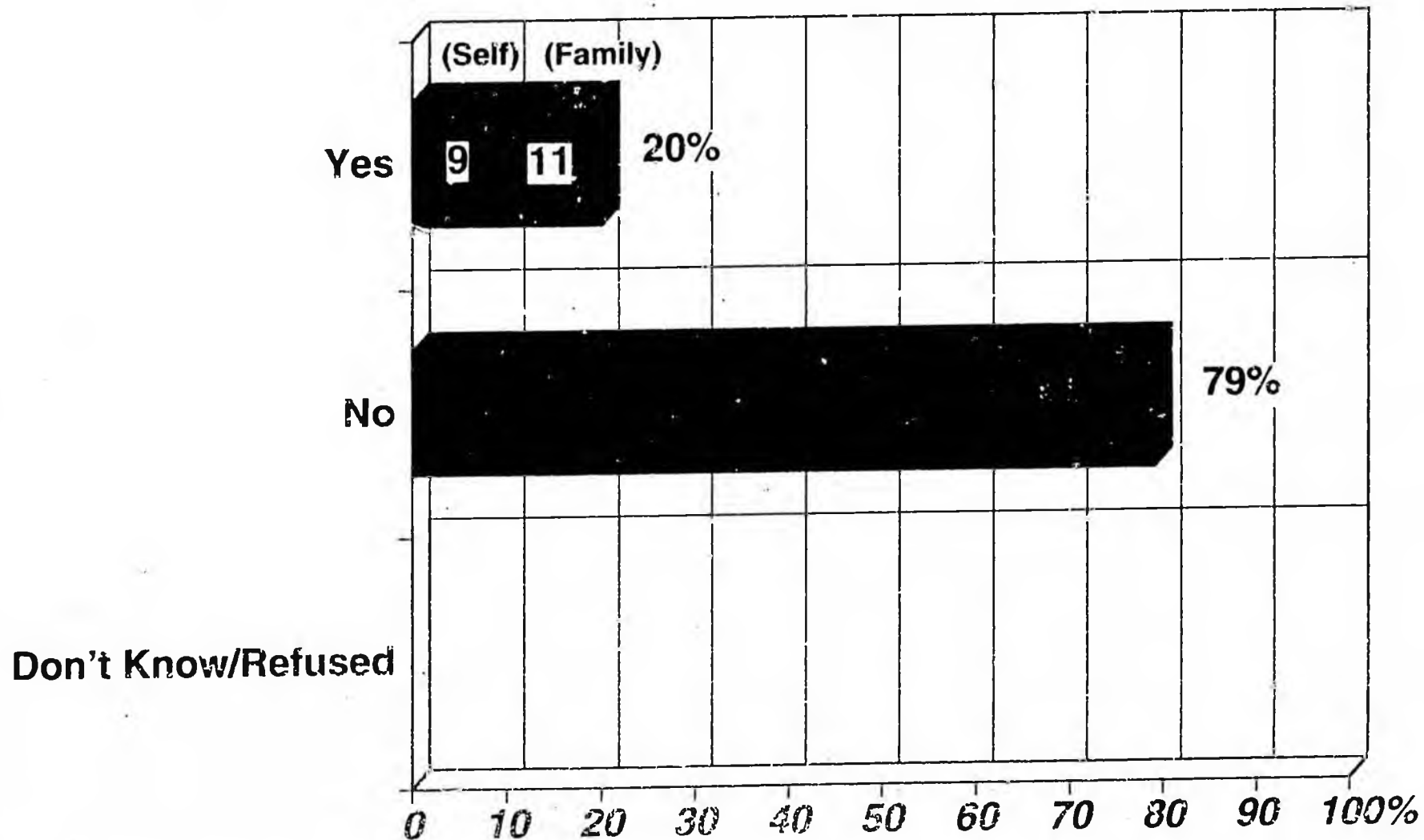
Time Lived in Alaska

How long have you lived in Alaska? (Q47)



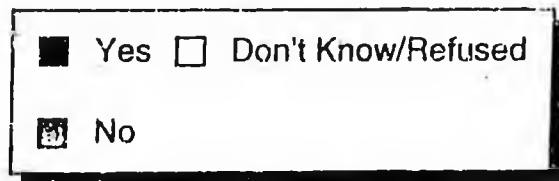
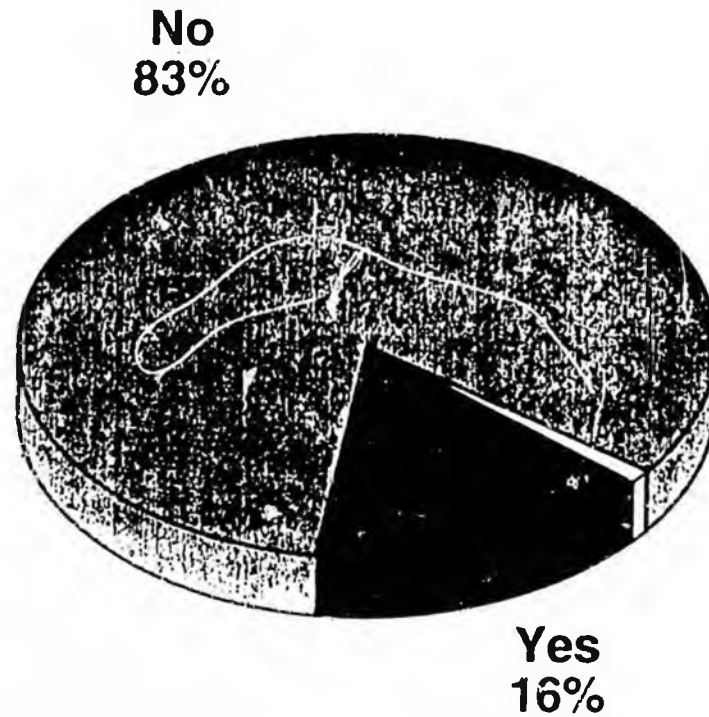
Ever Involved in Personal Injury Lawsuit

Have you or anyone in your household ever been involved in a personal injury lawsuit? (Q48)



Ever Served on a Jury

Have you ever served on a jury in a civil — that is, a non-criminal — court case? (Q49)



Favorite Radio Station

What type of radio station do you listen to most? (Q50)

Country & western music	26%
Classic rock and roll	21
News talk/sports talk	17
Oldies/easy listening	16
Public radio/NPR	15
Contemporary pop music	9
Classical music	7
Christian radio	7
Modern/new wave/alternative rock	7
Jazz	5
Soul/Rap	4
Other	3
Don't Know/Refused	6

CHARLTON RESEARCH COMPANY

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San Francisco, California 94104
415/981-2343 • Fax 415/981-4850

PERSONAL AND CONFIDENTIAL

#624
ALASKA: LAWSUIT ABUSE
AGGREGATE
November 1995
(n=500)

Interviewer: _____

Date: _____

Time Start: _____

Time End: _____

Record:

Male - 48%
Female - 52

=====

A. Is [ASK FOR NAME ON LIST] available?

Yes ----- 1 [CONTINUE]
No ----- 2

[ASK WHEN WOULD BE A GOOD TIME TO REACH
HIM/HER]

Hi, I'm _____ from the Charlton Research Company, a national research firm.
We're talking with people in your area today and would like to ask you a few questions.

1. Do you feel things in Alaska are generally going in the right direction or do you feel things
have pretty seriously gotten off on the wrong track?

Right Direction----- 58%
Wrong Track----- 26
Don't Know [DO NOT READ] ----- 16

Now I'd like you to think about the issue of liability lawsuits -- the lawsuits where a person claims
to be injured and sues for money to pay for damages.

2. Thinking about the legal system here in Alaska, do you feel the present liability system is
working well and should not be changed, or do you feel the present liability system has
problems and should be improved?

System working well/no change----- 26% [SKIP TO Q4]
System has problems/should be improved ----- 43
Don't Know [DO NOT READ] ----- 32 [SKIP TO Q4]

[IF HAS PROBLEMS IN Q2, ASK:]

3. What are some of the problems with Alaska's liability court system that should be changed or improved? **[PROBE:]** Is there anything else? **[n=214]**

	<u>First Mentions</u>	<u>Total Mentions</u>
Too much money rewarded -----	17%	17%
Need new laws -----	14	27
Too easy to file lawsuits-----	14	22
Too many lawsuits -----	9	11
Fraud/Personal greed -----	9	9
Greedy//Unethical lawyers -----	7	10
Ties up the courts-----	7	8
Take resources away from real problems-----	3	4
Hurts innocent people-----	2	4
Everything-----	*	*
Other mentions-----	4	4
Don't know/refused-----	14	14

4. On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently?

Yes -----	60%
No-----	40
Don't Know [DO NOT READ] -----	*

5. One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately?

Yes/seen -----	11%
Yes/heard -----	7
Yes/read -----	8
No-----	73
Don't Know/Refused [DO NOT READ] -----	1

6. From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits...**[READ LIST:]**

An extremely serious problem -----	8%
A very serious problem-----	18
A somewhat serious problem -----	36
Not a very serious problem -----	19
Not at all a serious problem -----	6
Don't Know/Refused [DO NOT READ] -----	14

7. Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do *you* think frivolous lawsuits are having on the Alaska economy? Would you say they are having...

An extremely negative impact -----	8%
A very negative impact -----	18
A somewhat negative impact -----	37
Not a very negative impact -----	15
No negative impact -----	8
Don't Know/Refused [DO NOT READ]-----	14

8. Which of the following statements comes *closer* to your opinion regarding the liability law system? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: There are too many lawsuits being filed in Alaska these days.

Other people say: Not enough people in Alaska are exercising their right to sue.

Too many lawsuits/strongly-----	37%	67%
Too many lawsuits/somewhat -----	30	
Don't Know [DO NOT READ] -----	19	
Not enough exercising their right/somewhat-----	11	
Not enough exercising their right/strongly -----	4	15%

9. Which of the following statements comes *closer* to your opinion? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

Too many people taking advantage/strongly -----	39%	62%
Too many people taking advantage/somewhat-----	23	
Don't Know [DO NOT READ] -----	11	
System is fair/somewhat-----	22	
System is fair/strongly -----	5	27%

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. [WAIT FOR RESPONSE, ASK:] And would that be a somewhat or strongly (agree/disagree)? [ROTATE Q10 - Q16]

10. Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed.

Agree/strongly -----	37%	68%
Agree/somewhat-----	31	
Don't Know [DO NOT READ] -----	13	
Disagree/somewhat-----	13	
Disagree/strongly -----	6	19%

11. Frivolous lawsuits have increased the cost of medical care in Alaska.

Agree/strongly -----	40%	66%
Agree/somewhat-----	26	
Don't Know [DO NOT READ] -----	16	
Disagree/somewhat-----	13	
Disagree/strongly -----	5	18%

12. I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit.

Agree/strongly -----	28%	61%
Agree/somewhat-----	33	
Don't Know [DO NOT READ] -----	9	
Disagree/somewhat-----	20	
Disagree/strongly -----	11	31%

13. Frivolous lawsuits have increased the cost of consumer products in Alaska.

Agree/strongly -----	27%	55%
Agree/somewhat-----	28	
Don't Know [DO NOT READ] -----	18	
Disagree/somewhat-----	19	
Disagree/strongly -----	8	27%

14. Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs.

Agree/strongly -----	55%	80%
Agree/somewhat-----	25	
Don't Know [DO NOT READ] -----	7	
Disagree/somewhat-----	7	
Disagree/strongly -----	6	13%

15. Frivolous lawsuits have caused higher insurance premiums for everyone.

Agree/strongly -----	64%	87%
Agree/somewhat-----	23	
Don't Know [DO NOT READ] -----	5	
Disagree/somewhat-----	5	
Disagree/strongly -----	3	8%

16. The number of frivolous lawsuits delays compensation to legitimate victims.

Agree/strongly -----	44%	73%
Agree/somewhat-----	29	
Don't Know [DO NOT READ] -----	12	
Disagree/somewhat-----	10	
Disagree/strongly -----	5	15%

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. [WAIT FOR RESPONSE, ASK:] And would that be somewhat or strongly (favor/oppose)? [ROTATE Q17 - Q29]

17. A proposal to limit the percentage that a personal injury trial lawyer can receive as a fee from any settlement or award from his or her client.

Favor/strongly -----	53%	78%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	6	
Oppose/somewhat-----	9	
Oppose/strongly -----	6	15%

18. Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault.

Favor/strongly -----	24%	49%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	13	
Oppose/somewhat-----	18	
Oppose/strongly -----	21	39%

19. A proposal requiring the loser of a lawsuit to pay legal fees for both sides.

Favor/strongly -----	35%	63%
Favor/somewhat-----	28	
Don't Know [DO NOT READ]-----	9	
Oppose/somewhat-----	16	
Oppose/strongly -----	12	28%

20. A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial.

Favor/strongly -----	44%	73%
Favor/somewhat-----	29	
Don't Know [DO NOT READ]-----	10	
Oppose/somewhat-----	9	
Oppose/strongly -----	8	17%

21. A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation.

Favor/strongly -----	58%	83%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	5	
Oppose/strongly -----	4	9%

22. A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit.

Favor/strongly -----	53%	80%
Favor/somewhat-----	27	
Don't Know [DO NOT READ]-----	6	
Oppose/somewhat-----	9	
Oppose/strongly -----	5	14%

23. A proposal to limit the ability of convicted felons in prison to bring liability lawsuits.

Favor/strongly -----	58%	76%
Favor/somewhat-----	18	
Don't Know [DO NOT READ]-----	5	
Oppose/somewhat-----	7	
Oppose/strongly -----	11	18%

24. A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge.

Favor/strongly -----	68%	86%
Favor/somewhat-----	18	
Don't Know [DO NOT READ]-----	5	
Oppose/somewhat-----	5	
Oppose/strongly -----	5	10%

25. A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages.

Favor/strongly -----	38%	66%
Favor/somewhat-----	28	
Don't Know [DO NOT READ]-----	15	
Oppose/somewhat-----	10	
Oppose/strongly -----	9	19%

26. A proposal to limit the kinds of medical expert witnesses who are asked to testify in trials. This proposal will only permit medical expert witnesses to testify who are currently licensed doctors, and who have also practiced the same kind of medical specialty that is being questioned in the trial, and actively practiced that specialty sometime within the last 10 years.

Favor/strongly -----	56%	80%
Favor/somewhat-----	24	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	6	
Oppose/strongly -----	6	12%

27. A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more.

Favor/strongly -----	59%	84%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	7	
Oppose/somewhat-----	4	
Oppose/strongly -----	5	9%

28. A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony.

Favor/strongly -----	61%	80%
Favor/somewhat-----	19	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	5	
Oppose/strongly -----	7	12%

[SPLIT SAMPLE Q29]

29A. A proposal that would reduce to **SIX** years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly -----	49%	73%
Favor/somewhat -----	24	
Don't Know [DO NOT READ] -----	8	
Oppose/somewhat -----	8	
Oppose/strongly -----	12	20%

29B. A proposal that would reduce to **TEN** years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly -----	53%	75%
Favor/somewhat -----	22	
Don't Know [DO NOT READ] -----	8	
Oppose/somewhat -----	8	
Oppose/strongly -----	9	17%

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you.
[ROTATE Q30-37]

30. Personal injury lawyers

Helped -----	18%
Hurt -----	73
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	1

31. Small businesses

Helped -----	78%
Hurt -----	14
Don't Know [DO NOT READ] -----	7
Refused [DO NOT READ] -----	*

32. Large corporations

Helped -----	71%
Hurt -----	21
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	*

33. Taxpayers

Helped -----	74%
Hurt -----	17
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	1

34. People with legitimate lawsuits

Helped -----	71%
Hurt -----	20
Don't Know [DO NOT READ] -----	9
Refused [DO NOT READ] -----	*

35. Insurance companies

Helped -----	69%
Hurt -----	24
Don't Know [DO NOT READ] -----	7
Refused [DO NOT READ] -----	*

36. Doctors and other medical professionals
- | | |
|--------------------------------|-----|
| Helped ----- | 74% |
| Hurt ----- | 16 |
| Don't Know [DO NOT READ] ----- | 10 |
| Refused [DO NOT READ]----- | * |
37. People with frivolous lawsuits
- | | |
|--------------------------------|-----|
| Helped ----- | 10% |
| Hurt ----- | 82 |
| Don't Know [DO NOT READ] ----- | 7 |
| Refused [DO NOT READ]----- | 1 |

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. [READ LIST:] [ROTATE]

	Don't Trust At All			Trust Completely		Don't Know
38. Alaska Trial Lawyers Association-----	20%	19%	33%	10%	6%	12%
39. Insurance companies-----	24	25	33	11	4	3
40. Personal injury lawyers -----	44	23	21	6	2	4
41. Medical Doctors -----	6	10	29	36	16	2
42. Your local Chamber of Commerce-----	6	9	26	34	19	6
43. Local small business owners -----	3	5	25	42	21	3
44. Hospitals -----	7	10	35	32	13	3

[SPLIT SAMPLE Q45]

45A. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers.[WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much -----	2%	9%
More likely to vote for/somewhat -----	7	
Don't Know [DO NOT READ] -----	22	
More likely to vote against/somewhat-----	41	
More likely to vote against/much -----	28	69%

45B. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers.[WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much -----	2%	9%
More likely to vote for/somewhat -----	7	
Don't Know [DO NOT READ] -----	25	
More likely to vote against/somewhat-----	35	
More likely to vote against/much -----	31	66%

46. If State Legislature passes a liability reform measure aimed at reducing frivolous law suits, do you think the governor should sign it?	
Yes -----	83%
No-----	8
Don't Know [DO NOT READ] -----	10

Now we have a few questions for statistical purposes....

47. How long have you lived in Alaska?	
Less than one year-----	3%
One to three years -----	11
Four to ten years-----	17
Eleven or more years-----	68
Don't Know [DO NOT READ] -----	1
Refused [DO NOT READ]-----	1
48. Have you or anyone in your household ever been involved in a personal injury lawsuit?	
Yes/self -----	9%
Yes/family member-----	11
No-----	79
Don't Know [DO NOT READ] -----	*
Refused [DO NOT READ]-----	-
49. Have you ever served on a jury in a civil -- that is a non-criminal -- court case?	
Yes -----	16%
No-----	83
Don't Know/Refused [DO NOT READ]-----	1
50. What type of radio station do you listen to most ? [ACCEPT UP TO 3 RESPONSES]	
Country Western music-----	26%
Classic Rock and Roll -----	21
News talk/sports talk-----	17
Oldies/Easy listening-----	16
Public radio/NPR-----	15
Contemporary Pop music -----	9
Classical music -----	7
Christian radio -----	7
Modern/New Wave/alternative Rock-----	7
Jazz-----	5
Soul/Rap-----	1
Other -----	3
Don't Know/Refused [DO NOT READ]-----	6
51. Would you generally describe yourself as <u>conservative</u> or <u>liberal</u> ? [IF SAY MODERATE OR NEITHER:] Well which way do you lean?	
Conservative -----	48%
Lean Conservative-----	13
Moderate/Neither [DO NOT READ]-----	14
Lean Liberal-----	9
Liberal -----	14
Don't Know [DO NOT READ] -----	2

52. What is the highest level of education you have completed? [READ IF NECESSARY]

Less than High School-----	5%
High School Graduate -----	25
Some College/Vocational-----	35
College Graduate -----	24
Post-Graduate-----	11
Refused/Don't Know [DO NOT READ]-----	*

53. Which of the following groups includes your estimated total family income for 1995?
[READ LIST]

Less than \$20,000-----	10%
\$20,000 to \$39,999-----	27
\$40,000 to \$59,999-----	25
\$60,000 to \$99,999-----	20
\$100,000 or more -----	7
Refused [DO NOT READ]-----	10

54. What do you consider to be your racial or ethnic background? [READ, IF NECESSARY]

White/Caucasian -----	82%
Black-----	3
Hispanic/Spanish/Latino -----	2
Asian -----	2
Native Alaskan-----	7
Other [DO NOT READ]-----	2
Refused [DO NOT READ]-----	2

[RECORD DEMOGRAPHIC INFO FROM SAMPLE]

55. Party Affiliation

Republican -----	34%
Democrat -----	17
Independent/Other-----	44
Don't Know [DO NOT READ] -----	5

56. Age

18 - 24 -----	10%
25 - 34 -----	21
35 - 44 -----	28
45 - 54 -----	23
55 - 64 -----	10
65 or older-----	7
No Age Data on Sample -----	1

57. City: _____ Code: _____

58. Zip Code: _____

+++++

RESPONDENT'S NAME: _____

TELEPHONE NUMBER: _____

I HAVE RE-READ THIS COMPLETED QUESTIONNAIRE AND CERTIFY THAT ALL QUESTIONS REQUIRING ANSWERS HAVE BEEN APPROPRIATELY FILLED AND THAT THIS INTERVIEW HAS BEEN OBTAINED FROM THE INDIVIDUAL DESIGNATED.

INTERVIEWER: _____ DATE: _____

NOTE: THIS INTERVIEW IS THE SOLE PROPERTY OF CHARLTON RESEARCH COMPANY. ANY ATTEMPT TO DUPLICATE OR SELL THE CONTENTS CONSTITUTES AN ILLEGAL ACT AND IS SUBJECT TO PROSECUTION.

Amended
pg 5

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/27/97

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and
5 providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this
8 legislature as a matter of public policy to

9 (1) encourage the efficiency of the civil justice system by discouraging
10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
15 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

16 (7) ensure that one of several tortfeasors is not held responsible for the
17 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
18 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

19 (8) enact a statute of repose that meets the tests set out in Turner Construction
20 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

21 (9) ensure that in actions involving the fault of more than one person, the fault
22 of each claimant, defendant, third-party defendant, person who has been released from
23 liability, or other person responsible for the damages be determined and awards be allocated
24 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
25 (Alaska 1994); and

26 (10) reduce the amount of litigation proceeding to trial by modifying the
27 allocation of attorney fees and court costs based on the offer of judgment and the final court
28 award, thereby providing a financial incentive to both parties to settle the dispute.

29 * Sec. 2. AS 06.05.473(h) is amended to read:

30 (h) After the payment of all other claims, including interest at the rate of 10.5
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

1 claims that are otherwise valid but that were not filed within the time prescribed.

2 * **Sec. 3.** AS 09.10.050 is repealed and reenacted to read:

3 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
4 the action is commenced within six years, a person may not bring an action for waste
5 or trespass upon real property.

6 * **Sec. 4.** AS 09.10 is amended by adding a new section to read:

7 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
8 action is commenced within three years, a person may not bring an action upon a
9 contract or liability, express or implied, except as provided in AS 09.10.040 or as
10 otherwise provided by law.

11 * **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

12 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
13 disability of minority described under AS 09.10.140(a), a person may not bring an
14 action for personal injury, death, or property damage unless commenced within eight
15 years of the earlier of the date of

16 (1) substantial completion of the construction alleged to have caused
17 the personal injury, death, or property damage; however, the limitation of this
18 paragraph does not apply to a claim resulting from an intentional or reckless disregard
19 of specific project design plans and specifications or building codes; in this paragraph,
20 "substantial completion" means the date when construction is sufficiently completed
21 to allow the owner or a person authorized by the owner to occupy the improvement
22 or to use the improvement in the manner for which it was intended; or

23 (2) the last act alleged to have caused the personal injury, death, or
24 property damage.

25 (b) This section does not apply if

26 (1) the personal injury, death, or property damage resulted from

27 (A) prolonged exposure to hazardous waste;

28 (B) an intentional act or gross negligence;

29 (C) fraud or fraudulent misrepresentation;

30 (D) breach of an express warranty or guarantee; or

31 (E) a defective product; in this subparagraph, "product" means

1 an object that has intrinsic value, is capable of delivery as an assembled whole
2 or as a component part, and is introduced into trade or commerce;

3 (2) the facts that would give notice of a potential cause of action are
4 intentionally concealed;

5 (3) a shorter period of time for bringing the action is imposed under
6 another provision of law.

7 (c) The limitation imposed under (a) of this section is tolled during any period
8 in which there exists the undiscovered presence of a foreign body that has no
9 therapeutic or diagnostic purpose or effect in the body of the injured person and the
10 action is based on the presence of the foreign body.

11 * Sec. 6. AS 09.10 is amended by adding a new section to read:

12 **Sec. 09.10.065. Limitation of actions against health care providers.** (a)
13 Notwithstanding the disability of minority described under AS 09.10.140(a), an action
14 based on professional negligence may not be brought against a health care provider if
15 the injured person is, on the date of the alleged negligent act or omission, less than six
16 years of age unless the action is commenced before the person's eighth birthday.

17 (b) The limitation imposed under (a) of this section is tolled during any period
18 in which there exists

19 (1) fraud, including fraud or collusion by a parent, guardian, insurer,
20 or health care provider, resulting in the failure to bring an action on behalf of an
21 injured minor;

22 (2) intentional concealment of facts that would give notice of a
23 potential action; or

24 (3) the undiscovered presence of a foreign object that has no
25 therapeutic or diagnostic purpose or effect in the body of the injured person and the
26 action is based on the presence of the foreign object.

27 (c) In this section,

28 (1) "health care provider" has the meaning given in AS 09.55.560;

29 (2) "professional negligence" has the meaning given in AS 09.55.560;

30 (3) "professional services" has the meaning given in AS 09.55.560.

31 * Sec. 7. AS 09.10.070(a) is amended to read:

1 (a) Except as otherwise provided by law, a [A] person may not bring an
 2 action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2)
 3 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights
 4 of another not arising on contract and not specifically provided otherwise; (3) for
 5 taking, detaining, or injuring personal property, including an action for its
 6 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
 7 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
 8 the action is commenced within two years of the accrual of the cause of action.

9 * Sec. 8. AS 09.17.010 is repealed and reenacted to read:

10 **Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages
 11 for personal injury or wrongful death, all damage claims for noneconomic losses shall
 12 be limited to compensation for pain, suffering, inconvenience, physical impairment,
 13 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
 14 damage.

15 (b) Except as provided under (c) of this section, the damages awarded by a
 16 court or a jury under (a) of this section for all claims, ^{"of a person"} including a loss of consortium
 17 claim, arising out of a single injury or death may not exceed \$300,000.

18 (c) In an action for personal injury, the damages awarded by a court or jury
 19 that are described under (b) of this section may not exceed \$500,000 when the
 20 claimant, as a result of the injury,

21 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
 22 functional loss of one or more limbs resulting from injury to the spine or spinal cord;
 23 or

24 (2) has permanently impaired cognitive capacity and is incapable of
 25 making independent, responsible decisions.

26 (d) Multiple injuries sustained by one person as a result of a single incident
 27 shall be treated as a single injury for purposes of this section.

28 * Sec. 9. AS 09.17.020 is amended to read:

29 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
 30 an action, whether in tort, contract, or otherwise, unless supported by clear and
 31 convincing evidence of malice or conscious acts showing deliberate disregard of

1 another person by the person from whom the punitive damages are sought.

2 * Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

3 (b) Except as provided under (c) of this section, the amount of punitive
4 damages awarded by a court or jury under (a) of this section may not exceed three
5 times the amount of compensatory damages awarded or \$300,000, whichever amount
6 is greater.

7 (c) The amount of punitive damages awarded by a court or jury under (a) of
8 this section may not exceed four times the amount of compensatory damages awarded
9 or \$600,000, whichever amount is greater, if

10 (1) the wrongful conduct or omission arose in connection with a
11 commercial activity motivated by financial gain; and

12 (2) the likelihood of death or serious bodily injury from the commercial
13 activity was previously known by the person responsible for making policy decisions
14 relating to the commercial activity and the knowledge was gained from previous
15 instances of death or serious bodily injury arising from the same wrongful conduct or
16 omission, regardless of where the previous wrongful conduct or omission occurred.

17 (d) If a person receives an award of punitive damages, the court shall require
18 that 50 percent of the award be deposited into the general fund of the state. This
19 subsection does not grant the state the right to file or join a civil action to recover
20 punitive damages.

21 * Sec. 11. AS 09.17.040(a) is amended to read:

22 (a) In every case where damages for personal injury or death are awarded by
23 the court or jury,

24 (1) the verdict shall be itemized between economic loss and
25 noneconomic loss, if any, as follows:

26 (A) [(1)] past economic loss;

27 (B) [(2)] past noneconomic loss;

28 (C) [(3)] future economic loss;

29 (D) [(4)] future noneconomic loss; [AND]

30 (E) [(5)] punitive damages; and

31 (2) the amount of damages awarded shall be reduced by the

1 amount of federal and state income tax that would have been paid on damages
2 contained in the verdict under tax rates in effect on the date of the injury or
3 death; this paragraph does not apply to an award of damages if the damages are
4 taxable under federal or state law.

5 * Sec. 12. AS 09.17.040(d) is amended to read:

6 (d) In an action to recover damages, the court shall, at the request of a [AN
7 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
8 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
9 periodic payments rather than by a lump-sum payment. If a portion of the judgment
10 awarded is owed to an attorney under a contingent fee agreement, that portion
11 of the judgment shall be reduced to present value, if necessary, and paid in a
12 lump sum, and the remaining portion of the judgment shall be paid as provided
13 under this subsection.

14 * Sec. 13. AS 09.17.040(e) is amended to read:

15 (e) Except as provided in this subsection, if a judgment is paid by
16 structured settlement type periodic payments, the [THE] court shall [MAY] require
17 security be posted in the form of United States government obligations [,] in order
18 to ensure that funds are available as periodic payments become due. The court may
19 not require security to be posted if the state, a self-insured municipality, or an
20 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
21 obligation to discharge the judgment, provided that an authorized insurer must be
22 rated by two nationally recognized independent rating agencies to be in the two
23 highest categories of quality and financial soundness. If a judgment is paid by
24 annuity type period payments, the court shall require the annuity be purchased
25 from an authorized insurer that is rated by two nationally recognized independent
26 rating agencies to be in the two highest categories of quality and financial
27 soundness. The injured party shall determine whether a structured settlement or
28 an annuity is the source of the periodic payments. The injured party may not be
29 required to accept a structured settlement or annuity from the defendant's or
30 other party's insurer or from any affiliated companies of the insurer.

31 * Sec. 14. AS 09.17.040(f) is amended to read:

1 (f) A judgment ordering payment of future damages for personal injury or
 2 death by periodic payment shall specify the recipient, the dollar amount of the
 3 payments, including any increases in future payments for anticipated inflation, the
 4 interval between payments, and the number of payments or the period of time over
 5 which payments shall be made. Payments may be modified only in the event of the
 6 death of the judgment creditor, in which case payments may not be reduced or
 7 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 8 of support, as provided by law, immediately before death. In the event the judgment
 9 creditor owed no duty of support to dependents at the time of the judgment creditor's
 10 death, the money remaining shall be distributed in accordance with a will of the
 11 deceased judgment creditor accepted into probate or under the intestate laws of the
 12 state if the deceased had no will. In this subsection, "inflation" means the change
 13 in the consumer price index for United States city average, all urban consumers,
 14 all items indices, compiled by the Bureau of Labor Statistics, United States
 15 Department of Labor.

16 * Sec. 15. AS 09.17.070 is repealed and reenacted to read:

17 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 18 injury or death may only recover damages that exceed amounts received by the
 19 claimant, or that with reasonable probability will be received in the future by the
 20 claimant, as compensation for the injuries from collateral sources, whether private,
 21 group, or governmental, and whether contributory or noncontributory, except when

22 (1) the collateral source is a federally funded program that by law must
 23 seek subrogation;

24 (2) the collateral source has a right of subrogation under federal law;

25 (3) the collateral source is the payment of a dependent child's medical
 26 bills by the injured child's parent that does not result from insurance coverage;

27 (4) the benefit consists of death benefits paid under life insurance; or

28 (5) the benefit consists of workers' compensation benefits received
 29 under AS 23.30.

30 (b) A person defending a claim may introduce into evidence at trial an amount
 31 paid or payable as a benefit to the claimant as a result of the personal injury or death

1 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 2 sickness, disability, accident, or income-disability insurance; insurance that provides
 3 health benefits or income-disability coverage; and a contract or agreement of a group,
 4 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 5 or reimburse the cost of medical, hospital, dental, or other health care services,
 6 disability, or lost wages. However, evidence of a collateral source described under
 7 (c)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 8 defending a claim elects to introduce evidence described in this subsection, the
 9 claimant may introduce evidence of the amount that the claimant has paid or
 10 contributed to secure the claimant's right to the collateral benefit, including the cost
 11 to the claimant resulting from depleted or exhausted coverage.

12 (c) A person who provides a collateral benefit admissible under (b) of this
 13 section may not recover an amount against the claimant as reimbursement for those
 14 benefits and may not be subrogated to the rights of a claimant against a person
 15 defending a claim.

16 * Sec. 16. AS 09.17.080(a) is amended to read:

17 (a) In all actions involving fault of more than one person [PARTY TO THE
 18 ACTION], including third-party defendants and persons who have been released
 19 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 20 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 21 indicating

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

24 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 25 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 26 [AND] person who has been released from liability, or other person responsible for
 27 the damages to each claimant regardless of whether the other person, including
 28 an employer, is or could have been named as a party to the action [UNDER
 29 AS 09.16.040].

30 * Sec. 17. AS 09.17.080(b) is amended to read:

31 (b) In determining the percentages of fault, the trier of fact shall consider both

1 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 2 causal relation between the conduct and the damages claimed. [THE TRIER OF
 3 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 4 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
 5 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
 6 PERSON CANNOT BE DISTINGUISHED.]

7 * Sec. 18. AS 09.17.080(c) is amended to read:

8 (c) The court shall determine the award of damages to each claimant in
 9 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
 10 AS 09.16.040,] and enter judgment against each party liable. The court also shall
 11 determine and state in the judgment each party's equitable share of the obligation to
 12 each claimant in accordance with the respective percentages of fault as determined
 13 under (a) of this section. Except as provided under AS 23.30.015(g), an
 14 assessment of a percentage of fault against a person who is not a party may only
 15 be used as a measure for accurately determining the percentages of fault of a
 16 named party. Assessment of a percentage of fault against a person who is not a
 17 party does not subject that person to civil liability in that action and may not be
 18 used as evidence of civil liability in another action.

19 * Sec. 19. AS 09.17.900 is amended to read:

20 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
 21 that are in any measure negligent, [OR] reckless, or intentional toward the person or
 22 property of the actor or others, or that subject a person to strict tort liability. The term
 23 also includes breach of warranty, unreasonable assumption of risk not constituting an
 24 enforceable express consent, misuse of a product for which the defendant otherwise
 25 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
 26 Legal requirements of causal relation apply both to fault as the basis for liability and
 27 to contributory fault.

28 * Sec. 20. AS 09.20 is amended by adding a new section to read:

29 **Sec. 09.20.185. Expert witness qualification.** (a) In an action based on
 30 professional negligence, a person may not testify as an expert witness on the issue of
 31 the appropriate standard of care unless the witness is

1 (1) a professional who is licensed in this state or in another state or
2 country;

3 (2) trained and experienced in the same discipline or school of practice
4 as the defendant or in an area directly related to a matter at issue; and

5 (3) certified by a board recognized by the state as having acknowledged
6 expertise and training directly related to the particular field or matter at issue; however,
7 this paragraph does not apply if a board does not exist that could certify the witness
8 in the particular field or matter at issue.

9 * **Sec. 21.** AS 09.30.065 is amended to read:

10 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
11 the trial begins, either the party making a claim or the party defending against a claim
12 may serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. If within 10 days after the service of the offer the
15 adverse party serves written notice that the offer is accepted, either party may then file
16 the offer and notice of acceptance together with proof of service, and the clerk shall
17 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
18 evidence of that offer is not admissible except in a proceeding to determine the form
19 of judgment after verdict. If the judgment finally entered on the claim as to which an
20 offer has been made under this section is at least five percent, less [NOT MORE]
21 favorable to the offeree than the offer, ~~the offeree, whether the party making the~~
22 claim or defending against the claim, shall pay all costs as allowed under the
23 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
24 incurred by the offeror from the date the offer was made, [THE INTEREST
25 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
26 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

27 (1) if the offer was served no later than 60 days after both parties
28 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
29 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
30 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
31 REDUCED BY FIVE PERCENT A YEAR];

1 (2) if the offer was served more than 60 days after both parties
 2 made the disclosures required by the Alaska Rules of Civil Procedure but more
 3 than 90 days before the trial began, the offeree shall pay 75 percent of the
 4 offeror's reasonable actual attorney fees;

5 (3) if the offer was served 90 days or less but more than 10 days
 6 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
 7 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 8 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 9 YEAR].

10 * Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

11 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
 12 of this section, that offeror shall be considered the prevailing party for purposes of an
 13 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
 14 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
 15 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
 16 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
 17 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
 18 this section. A party who receives attorney fees under this section may not also
 19 receive attorney fees under the Alaska Rules of Civil Procedure.

20 (c) If an offeror makes more than one offer of judgment, the last offer served
 21 on the adverse party shall be considered to be a revocation of any prior offer of
 22 judgment.

23 * Sec. 23. AS 09.30.070(a) is amended to read:

24 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 25 and decrees for the payment of money, including prejudgment interest, is three
 26 percentage points above the 12th Federal Reserve District discount rate in effect
 27 on January 2 of the year in which the judgment or decree is entered [10.5
 28 PERCENT A YEAR], except that a judgment or decree founded on a contract in
 29 writing, providing for the payment of interest until paid at a specified rate not
 30 exceeding the legal rate of interest for that type of contract, bears interest at the rate
 31 specified in the contract if the interest rate is set out in the judgment or decree.

1 * **Sec. 24.** AS 09.30.070 is amended by adding a new subsection to read:

2 (c) Prejudgment interest may not be awarded for future economic damages,
3 future noneconomic damages, or punitive damages.

4 * **Sec. 25.** AS 09.50.280 is amended to read:

5 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
6 rendered for the plaintiff, it shall be for the legal amount found due from the state with
7 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
8 DUE] and without punitive damages.

9 * **Sec. 26.** AS 09.55.440(a) is amended to read:

10 (a) Upon the filing of the declaration of taking and the deposit with the court
11 of the amount of the estimated compensation stated in the declaration, title to the estate
12 as specified in the declaration vests in the plaintiff, and that property is condemned
13 and taken for the use of the plaintiff, and the right to just compensation for it vests in
14 the persons entitled to it. The compensation shall be ascertained and awarded in the
15 proceeding and established by judgment. The judgment must include interest at the
16 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
17 awarded that [WHICH] exceeds the amount paid into court under the declaration of
18 taking. The interest runs from the date title vests to the date of payment of the
19 judgment.

20 * **Sec. 27.** AS 09.55.535(k) is amended to read:

21 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
22 apply to arbitrations under this section if they do not conflict with the provisions of
23 this section; arbitrations under this section shall be conducted in accordance with
24 procedures established by any rules of court which may be adopted and according to
25 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
26 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

27 * **Sec. 28.** AS 09.55.536(a) is amended to read:

28 (a) In an action for damages due to personal injury or death based upon
29 the provision of professional services by a health care provider, including a person
30 providing services on behalf of a governmental entity, when the parties have not
31 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within

1 20 days after filing of answer to a summons and complaint a three-person expert
 2 advisory panel unless the court decides that an expert advisory opinion is not necessary
 3 for a decision in the case. When the action is filed, the court shall, by order,
 4 determine the professions or specialties to be represented on the expert advisory panel,
 5 giving the parties the opportunity to object or make suggestions.

6 * Sec. 29. AS 09.55.536(c) is amended to read:

7 (c) Not more than 30 days after selection of the panel, the panel [IT] shall
 8 make a written report to the parties and to the court, answering the following questions
 9 and other questions submitted to the panel by the court in sufficient detail to explain
 10 the case and the reasons for the panel's answers:

11 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
 12 WHICH THE PLAINTIFF CAME TO] medical care?

13 (2) Was a correct diagnosis made? If not, what was incorrect
 14 about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME
 15 WITHOUT MEDICAL CARE]?

16 (3) Was the treatment or lack of treatment [SELECTED] appropriate?
 17 If not, what was inappropriate about the treatment or lack of treatment [FOR
 18 THE CASE]?

19 (4) Was the claimant injured during the course of evaluation or
 20 treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE
 21 MEDICAL CARE]?

22 (5) If the answer to question 4 is "yes," what [WHAT] is the nature
 23 and extent of the medical injury?

24 (6) What specifically caused the medical injury?

25 (7) Was the medical injury caused by unskillful care? Explain.

26 (8) If a medical injury had not occurred, what would have been the
 27 likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S
 28 CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

29 * Sec. 30. AS 09.55.536(f) is amended to read:

30 (f) Discovery may not be undertaken in a case until the report of the expert
 31 advisory panel is received or 60 days after selection of the panel, whichever occurs

1 first. However, the court may relax this prohibition upon a showing of good cause by
 2 any party. If the panel has not completed its report within the 30-day period
 3 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
 4 an additional 30 days.

5 * Sec. 31. AS 09.55.536 is amended by adding a new subsection to read:

6 (i) This section applies regardless of whether a party in the action or the health
 7 care provider whose professional services are the subject of the action is a
 8 governmental entity or in the public or private sector.

9 * Sec. 32. AS 09.55.560(1) is amended to read:

10 (1) "health care provider" means an acupuncturist licensed under
 11 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
 12 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
 13 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
 14 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
 15 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
 16 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
 17 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
 18 hospital as defined in AS 18.20.130, including a governmentally owned or operated
 19 hospital; [AND] an employee of a health care provider acting within the course and
 20 scope of employment; an ambulatory surgical facility and other organizations
 21 whose primary purpose is the delivery of health care, including a health
 22 maintenance organization, individual practice association, integrated delivery
 23 system, preferred provider organization or arrangement, and a physical hospital
 24 organization.

25 * Sec. 33. AS 09.55.560 is amended by adding new paragraphs to read:

26 (4) "professional negligence" means a negligent act or omission by a
 27 health care provider in rendering professional services;

28 (5) "professional services" means service provided by a health care
 29 provider that is within the scope of services for which the health care provider is
 30 licensed and that is not prohibited under the health care provider's license or by a
 31 facility in which the health care provider practices.

1 * **Sec. 34.** AS 09.60 is amended by adding a new section to read:

2 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
3 collects a contingency fee in connection with an action for personal injury, death, or
4 property damage and the damages awarded by a court or jury include an award of
5 punitive damages, the contingent fee due the attorney shall be calculated after that
6 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
7 from the total award of damages.

8 * **Sec. 35.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
10 electrical service to the public for compensation under a certificate of public
11 convenience and necessity issued by the Alaska Public Utilities Commission under
12 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
13 injury resulting from an act or omission of the utility relating to the production or
14 delivery of electrical service.

15 (b) This section does not preclude liability for civil damages that are the result
16 of an intentional, reckless, or negligent act or omission.

17 * **Sec. 36.** AS 09.65 is amended by adding a new section to read:

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
19 hospital is not liable for civil damages as a result of an act or omission by an
20 emergency room physician who is not an employee or actual agent of the hospital if
21 the hospital provides notice that the emergency room physician is an independent
22 contractor and the emergency room physician is insured as described under (c) of this
23 section. The hospital is responsible for exercising reasonable care in granting
24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
25 and for taking appropriate steps to revoke or restrict privileges in appropriate
26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
27 emergency room physician who is an independent contractor. The notice required by
28 this subsection must be posted conspicuously in all admitting areas of the hospital,
29 published at least annually in a newspaper of general circulation in the area, and must
30 be in substantially the following form:

31 Notice of Limited Liability

1 The following emergency room physicians are independent
2 contractors and are not employees of the hospital:

3 (List specific emergency room physicians)

4 (b) This section does not preclude liability for civil damages that are the
5 proximate result of the hospital's negligence or intentional misconduct.

6 (c) A hospital is not immune from liability under (a) of this section for an act
7 or omission of an emergency room physician who is an independent contractor unless
8 the emergency room physician has liability insurance coverage in the amount of at
9 least \$500,000 for each incident and the coverage is in effect and applicable to those
10 health care services offered by the emergency room physician that the hospital is
11 required to provide by law or by accreditation requirements.

12 (d) In this section,

13 (1) "emergency room physician" means a physician who provides health
14 care services in a hospital emergency room;

15 (2) "hospital" has the meaning given in AS 18.20.130 and includes a
16 governmentally owned or operated hospital;

17 (3) "independent contractor" means an emergency room physician who
18 is not an employee or actual agent of the hospital in connection with the rendition of
19 the health care services.

20 * **Sec. 37.** AS 09.65.210 is repealed and reenacted to read:

21 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
22 **under the influence of alcohol or drugs.** A person who suffers personal injury or
23 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
24 recover damages for the personal injury or death if the injury or death occurred while
25 the person was

26 (1) engaged in the commission of a felony, the person has been
27 convicted of the felony, including conviction based on a guilty plea or plea of nolo
28 contendere, and the felony substantially contributed to the personal injury or death;

29 (2) engaged in conduct that would constitute the commission of an
30 unclassified felony, a class A, or a class B felony for which the person was not
31 convicted and the conduct

1 (A) substantially contributed to the personal injury or death; and
2 (B) is proven by the defendant in the civil trial by clear and
3 convincing evidence;

4 (3) fleeing after the commission, by that person, of conduct that would
5 constitute an unclassified felony, a class A felony, or a class B felony or being
6 apprehended for conduct that would constitute an unclassified felony, a class A felony,
7 or a class B felony if the conduct

8 (A) during the flight or apprehension substantially contributed
9 to the injury or death; and

10 (B) is proven by the defendant in the civil trial by clear and
11 convincing evidence;

12 (4) operating a vehicle, aircraft, or watercraft while under the influence
13 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
14 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
15 the conduct substantially contributed to the personal injury or death; or

16 (5) engaged in conduct that would constitute a violation of
17 AS 28.35.030 for which the person was not convicted if the conduct substantially
18 contributed to the personal injury or death and the conduct is proven by the defendant
19 in the civil trial by clear and convincing evidence.

20 * Sec. 38. AS 09.68 is amended by adding a new section to read:

21 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
22 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
23 information relating to the compromise or other settlement of all civil litigation. The
24 information, including the case name and file number, a general description of the
25 claims being settled, the dollar amount of the settlement, to whom the settlement was
26 paid, and any nonmonetary terms, shall be collected on a form developed by the
27 council for that purpose.

28 (b) The information received by the council under (a) of this section is
29 confidential. This restriction does not prevent the disclosure of summaries and
30 statistics in a manner that does not allow the identification of particular cases or
31 parties.

1 (c) The requirements of (a) of this section do not apply to the following types
2 of cases:

- 3 (1) divorce and dissolution;
4 (2) adoption, custody, support, visitation, and emancipation of children;
5 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
6 cases under 47.12;
7 (4) domestic violence protective orders under AS 18.66.100 -
8 18.66.180;
9 (5) estate, guardianship, and trust cases filed under AS 13;
10 (6) small claims under AS 22.15.040.

11 * Sec. 39. AS 21.06 is amended by adding a new section to read:

12 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
13 and shall compile information necessary to evaluate the effect of the measures enacted
14 in this Act on the availability and cost of insurance in the state.

15 (b) Information described in (a) of this section shall be provided by all insurers
16 doing business in this state in the format specified by the director and must include
17 factual information stating premiums, claims, losses, expenses, and solvency of the
18 company as a whole. Information shall be compiled by the division in a way that
19 protects the identity of individual insureds.

20 (c) The director shall adopt regulations to implement and interpret this section,
21 including requiring insurers doing business in the state to provide information
22 necessary for the division to carry out its responsibilities under (a) and (b) of this
23 section. If there are indications of market disruption, the director may waive all or
24 part of the reporting requirements in this section.

25 (d) Beginning June 1, 2000, the information compiled under (a) of this section
26 shall be reported annually to the governor and the judiciary committees of both houses
27 of the legislature.

28 (e) The division may consult with the Alaska Judicial Council when
29 determining what information to require to be reported under (a) - (c) of this section
30 and when implementing the compilation required under (a) of this section.

31 * Sec. 40. AS 21.89.100(d) is amended to read:

1 (d) If the insured selects independent counsel at the insurer's expense, the
 2 insurer may require that the independent counsel have at least four years of experience
 3 in civil litigation, including defense experience in the general subject area at issue in
 4 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 5 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 6 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 7 course of business in the defense of a similar civil action in the community in which
 8 the claim arose or is being defended. In providing independent counsel, the insurer
 9 is not responsible for the fees and costs of defending an allegation for which
 10 coverage is properly denied and shall be responsible only for the fees and costs
 11 to defend those allegations for which the insurer either reserves its position as to
 12 coverage or accepts coverage. The independent counsel shall keep detailed
 13 records allocating fees and costs accordingly. A dispute between the insurer and
 14 insured regarding attorney fees that is not resolved by the insurance policy or this
 15 section shall be resolved by arbitration under AS 09.43.

16 * Sec. 41. AS 21.89.100 is amended by adding a new subsection to read:

17 (h) When an insured is represented by independent counsel, the insurer may
 18 settle directly with the plaintiff if the settlement includes all claims based upon the
 19 allegations for which the insurer previously reserved its position as to coverage or
 20 accepted coverage, regardless of whether the settlement extinguishes all claims against
 21 the insured.

22 * Sec. 42. AS 23.30.015(g) is amended to read:

23 (g) If the employee or the employee's representative recovers damages from
 24 the third person, the employee or representative shall promptly pay to the employer the
 25 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 26 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 27 and expenses. Any excess recovery by the employee or representative shall be
 28 credited against any amount payable by the employer thereafter. If the employer is
 29 allocated a percentage of fault under AS 09.17.080, the amount due the employer
 30 under this subsection shall be reduced by an amount equal to the employer's
 31 equitable share of damages assessed under AS 09.17.080(c).

1 * Sec. 43. AS 44.77.015(a) is amended to read:

2 (a) For the purposes of filing claims for medical services provided under
3 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
4 within six months after the date of service, or as provided in (b) of this section, if
5 there is no third-party claim, or (2) within 12 months after the date of service if there
6 is a third-party claim. Except as provided in (c) of this section, a claim may not be
7 paid if it is not filed promptly; an inference to the contrary may not be drawn from
8 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

9 * Sec. 44. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

10 (c) **Motion to Set Trial and Certificate.** Unless otherwise ordered by the
11 court, a [A] motion to set trial may not be filed until after the meeting of parties
12 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
13 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
14 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
15 set trial together with a certificate, signed by counsel, stating:

- 16 (1) That the issues in the case have actually been joined;
- 17 (2) That all parties have completed discovery or have a reasonable
18 opportunity to do so within the next 60 days;
- 19 (3) That the procedure for listing witnesses and exhibits and providing
20 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- 21 (4) Whether trial by jury has been timely demanded;
- 22 (5) The estimated number of days for the trial, including estimates for
23 each party's case and for jury selection;
- 24 (6) The names, addresses and telephone numbers of all attorneys and
25 pro se parties who are responsible for the conduct of the litigation;
- 26 (7) Which, if any, statute or rule entitles the case to preference on the
27 trial calendar;
- 28 (8) That the parties have complied with [PARAGRAPH] (k) of this
29 rule.

30 * Sec. 45. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

31 (1) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as

1 soon as practicable after the exchange of initial disclosures required under Rule
2 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
3 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
4 their claims and defenses and the possibilities for a prompt settlement of the case and
5 to develop a proposed discovery plan. The attorneys of record and all unrepresented
6 parties that have appeared in the case are jointly responsible for arranging and being
7 present or represented at the meeting, for attempting in good faith to agree on the
8 proposed discovery plan, and for submitting to the court within 10 days after the
9 meeting a written report outlining the proposed discovery plan. The proposed
10 discovery plan shall indicate the parties' views and proposals concerning

11 (1) what changes should be made in the timing or forms of subsequent
12 disclosures under the rules, including a statement as to when the disclosures required
13 under Rule 26(a) were made;

14 (2) the subjects on which discovery may be needed, when discovery
15 should be completed, and whether discovery should be conducted in phases or be
16 limited to or focused upon particular issues;

17 (3) what changes should be made in the limitations on discovery
18 imposed under these rules and what other limitations should be imposed;

19 (4) whether a scheduling conference is unnecessary;

20 (5) whether there will be dispositive or partially dispositive motions
21 filed in the case and whether other deadlines should be set aside pending resolution of
22 the dispositive or partially dispositive motions by the court; and

23 (6) any other orders that should be entered by the court under Civil
24 Rule 16(b) and (c).

25 * **Sec. 46.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
26 paragraph to read:

27 (3) **Settlement Information.** If a voluntary dismissal under this rule
28 is the result of compromise or other settlement of the parties, the parties shall submit
29 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
30 of dismissal made under (1)[a] of this subsection must be accompanied by a
31 certification signed by or on behalf of the plaintiff that the information required under

1 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
2 dismissal made under (1)[b] of this subsection must be accompanied by a certification
3 signed by or on behalf of all parties who have appeared in the action. The
4 requirements of this paragraph do not apply to the types of cases listed in
5 AS 09.68.130(c).

6 * **Sec. 47.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

7 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
8 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
9 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
10 to occur, unless discovery is further stayed for good cause by order of the court.

11 * **Sec. 48.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

12 (b) In addition to its authority under (a) of this rule and its power to punish
13 for contempt, a court may, after reasonable notice and an opportunity to show cause
14 to the contrary, and after hearing by the court, if requested, impose a fine not to
15 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
16 to comply with these rules or any rules promulgated by the supreme court.

17 * **Sec. 49.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
18 subsection to read:

19 (c) If the trier of fact determines that a party to a civil action has intentionally
20 made a false statement of a material fact in connection with the prosecution or defense
21 of a civil action, the court shall enter judgment against the party making the false
22 statement on the issue to which the false statement relates. If the civil action involves
23 multiple claims and the false statement does not apply to all claims, the judgment
24 required under this subsection shall apply only to those claims to which the false
25 statement relates.

26 * **Sec. 50.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
27 subsection to read:

28 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
29 result of compromise or other settlement between the parties, the parties shall submit
30 to the Alaska Judicial Council the information required under AS 09.68.130. A
31 dismissal by agreement under (a) of this rule must be accompanied by a certification

1 signed by the attorneys of record for all parties that the information required under
2 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
3 appellant or petitioner made under (b) of this rule must be accompanied by a
4 certification signed by the appellant's or petitioner's attorney of record. The
5 requirements of this subsection do not apply to the types of cases listed in
6 AS 09.68.130(c).

7 * **Sec. 51.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

8 * **Sec. 52.** AS 09.55.548 is repealed.

9 * **Sec. 53.** AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending
10 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
11 percentage of an award of punitive damages be deposited into the general fund.

12 * **Sec. 54.** AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending
13 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
14 damages by certain tax rates in effect on the date of injury or death if taxable.

15 * **Sec. 55.** AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending
16 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
17 periodically if requested by a party, with a lump sum payment for certain attorney fees.

18 * **Sec. 56.** AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending
19 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
20 is paid by periodic payments.

21 * **Sec. 57.** AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending
22 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
23 increases for future inflation.

24 * **Sec. 58.** AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending
25 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
26 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
27 among the claimants, defendants, third-party defendants, persons who have been released from
28 liability, or other person who is responsible for the damages.

29 * **Sec. 59.** AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending
30 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
31 testifying as an expert witness.

1 * **Sec. 60.** AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of
2 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
3 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
4 eliminating provisions relating to interest and by providing that a subsequent offer revokes
5 prior offers.

6 * **Sec. 61.** AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending
7 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
8 awarded for future economic or noneconomic damages.

9 * **Sec. 62. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
10 legislation to create a pilot alternative dispute resolution procedure within the existing civil
11 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
12 disputes.

13 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
14 Association, review court sanctioned alternative dispute resolution programs in other states and
15 in the federal court system, and make recommendations to assist the legislature and the Alaska
16 Court System in the establishment of a pilot program for alternative dispute resolution within
17 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
18 legislature and to the Alaska Supreme Court within six months after the effective date of this
19 Act. The report must include specific types of programs, specific types of cases within each
20 program that are amenable to alternative dispute resolution, the cost to the parties and to the
21 Alaska Court System under these programs, and the qualifications of the neutral parties,
22 including nonlawyers, who will provide dispute resolution services under the program.

23 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
24 and early neutral evaluation.

25 * **Sec. 63. APPLICABILITY.** This Act applies to all causes of action accruing on or after
26 the effective date of this Act.

27 * **Sec. 64. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
28 application of a provision of this Act to any person or circumstance is held invalid, the
29 remainder of this Act and the application to other persons shall not be affected.

30 * **Sec. 65.** This Act takes effect July 1, 1997.