

HB

58

HOUSE COMMITTEE REPORT

2/27/97

(7)
Date Referred to Committee: February 17, 1997

FURTHER REFERRALS:

Finance

HB 58 CIVIL LIABILITY

Date of Committee Action: 2/27/97

The JUDICIARY Committee considered:

SSHB 58

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58

CIVIL LIABILITY

"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 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

CS
Forth coming

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PRE

fiscal note(s) _____ fiscal note(s) _____

3 zero fiscal note(s) _____ zero fiscal note(s) _____

Adm, Law, DCED

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	CROFT		✓		
	ROKEBERG	✓			
	PORTER	✓			
	GREEN	✓			
	JAMES	✓			
	BUNDE	✓			
	BERKOWITZ		✓		
		(5)	(2)		

CHAIR'S SIGNATURE

Green

FISCAL NOTE

STATE OF ALASKA
997 LEGISLATIVE SESSION

BILL NO. HB 58

Revision Date: _____ 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	4.9	4.9	4.9	4.9	4.9	4.9
TRAVEL						
CONTRACTUAL	8.7	8.7	8.7	8.7	8.7	8.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.6	13.6	13.6	13.6	13.6	13.6

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	13.6	13.6	13.6	13.6	13.6	13.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	13.6	13.6	13.6	13.6	13.6	13.6

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: 02/19/97

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Date: 02/19/97

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Alaska Court SystemFiscal AnalysisHB 58Personal ServicesPositionSalaryBenefitsTotal

Pro Tem Judge, fully vested, Anchorage, PPT, 1 1/2 months

\$3,164

\$1,729

\$4,893

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

Estimated Total Cost

\$13,556

FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

BILL NO. HB58

Revision Date: 02/18/97 Dept. Affected: Alaska Judicial Council
 Title: Civil Actions & Attorneys Provided by BRU: _____
Insurance Company 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

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**

<u>California (WITH Tort Reform)</u>		<u>Alaska (WITHOUT Tort Reform)</u>	
(\$1,344,000) \$32,000 paid per year for life expectancy of 42 years	\$ 305,818	Total jury verdict	\$ 1,449,180
\$75,000 payment on July 1, 1995.	28,113	Less plaintiffs 10% comparative negligence	<u>(144,918)</u>
\$200,000 payment on July 1, 2005.	28,101		\$ 1,304,244
\$400,000 payment on July 1, 2015.	22,125	Present value of L. A. Hospital settlement as of July 1, 1985.	<u>(210,201)</u>
Present value of future payment of total jury verdict of \$2,019,000 as of July 1, 1985.	<u>\$ 383,958</u>		\$ 1,094,043
Plus cash payment on July 1, 1985.	50,000	Collateral benefits pursuant to AS 09.55.548(b)	(89,378)
Plus attorney fees present values as of July 1, 1985.	130,000	Subtotal	<u>\$ 1,004,665</u>
Plus costs	15,000	Prejudement interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988.	683,534
Subtotal	<u>\$ 578,958</u>	Rule 82(a) attorney fees	171,319
Defense cost	<u>unk</u>	Subtotal	<u>\$ 1,859,518</u>
Total	<u>\$ 578,958</u>	Insurance, Defense fees	<u>501,805</u>
		Total	<u>\$ 2,381,123</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.

Alaska State Medical Association

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

February 24, 1997

The Honorable Joseph Green
Chairman, House Judiciary Committee
House of Representatives
State Capital (MS 3100)
Juneau, AK 99801-1182

Subject: SSHB58 - Civil Justice Reform

Dear Representative Green:

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

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.

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 the unjust recovery of 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 nearly 20 years ago with one result being that overall medical malpractice insurance premiums in California are half of what they are here in Alaska.

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.

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

A Surgical Fix for Medical Malpractice

Reforms Work Best as a Package, Study Shows

By Jeffrey Speicher

A

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

harméd—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."

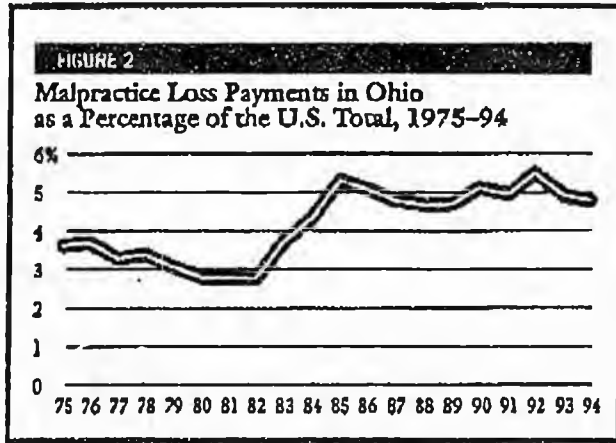
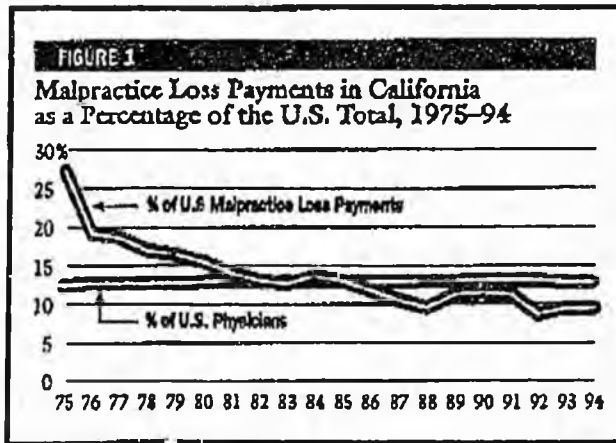
A group of those insurance experts, members of the American Academy of Actuaries, recently suggested an approach to make the system less costly. According to the Academy report, "Medical Malpractice Tort Reform: Lessons from the States," the mixed results of reform attempts by the states point the way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

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 58

BY REPRESENTATIVE GREEN

1 Page 16, following line 5:

2 Insert a new bill section to read:

3 **"* Sec. 35.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
5 electrical service to the public for compensation under a certificate of public
6 convenience and necessity issued by the Alaska Public Utilities Commission under
7 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
8 injury resulting from an act or omission of the utility.

9 (b) This section does not preclude liability for civil damages that are the result
10 of an intentional, reckless, or negligent act or omission."

11 Renumber the following bill sections accordingly.

*relating to the
production OR delivery
of electrical service*

Adopted as amended

2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: HB 58

1 Page 16, following line 5:

2 Insert a new bill section to read:

3 **"* Sec. 35.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
5 electrical service to the public for compensation under a certificate of public
6 convenience and necessity issued by the Alaska Public Utilities Commission under
7 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
8 injury resulting from an act or omission of the utility.

9 (b) This section does not preclude liability for civil damages that are the result
10 of an intentional, reckless, or negligent act or omission."

11 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: SSHB 58

BY REPRESENTATIVE CROFT #4

*Fails
2/27/97*

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Page 6, lines 3 - 20:

Delete all material.

Insert new subsections to read:

"(b) Except as provided in (c) of this section, the court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of three times the amount of compensatory damages or \$300,000.

(c) The court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of four times the amount of compensatory damages awarded or \$600,000, if

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a court or jury awards punitive damages under (a) of this section, the court shall require that 100 percent of the punitive damages award that exceeds the maximum amounts described under (b) or (c) of this section, as applicable, be deposited into the general fund or the Alaska permanent fund under AS 37.13.010. The party paying the punitive damages shall elect which fund shall receive the money required to be paid under this subsection.

(e) The provisions of this section do not grant the state the right to file or join

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: SSHB 58

- 1 Page 20, line 2, following "allocating":
- 2 Insert "fees and"

Adopt
2/27

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: SSHB 58

1 Page 10, lines 1 - 4:

2 Delete "The trier of fact may assign a percentage of fault to [DETERMINE THAT]
3 two or more persons [ARE TO BE TREATED AS A SINGLE PARTY] if their conduct was
4 a cause of the damages claimed and the separate act or omission of each person cannot be
5 distinguished."

6 Insert "[THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE
7 PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS
8 A CAUSE OF THE DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION
9 OF EACH PERSON CANNOT BE DISTINGUISHED.]"

*Passed
Adopted
2/27/97*

A M E N D M E N T

OFFERED IN THE HOUSE
TO: SSHB 58

BY REPRESENTATIVE PORTER

- 1 Page 7, line 8:
- 2 Delete "[FUTURE]"
- 3 Insert "future"

- 4 Page 8, line 1:
- 5 Delete "[FUTURE]"
- 6 Insert "future"

Adopt
2/27

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 27, 1997
To: Mike Ford, Legislative Legal
From: Lisa Kirsch, House Judiciary Committee
Re: Amendment to HB 58

HB 58 passed out of House Judiciary this morning with the following amendments.

1) Amendment 0-LS0056\H.1

Delete the period on line 8, after "utility" insert, "relating to the production or delivery of electrical service."

2) Rokeberg's amendment:

Page 8, line 13

Delete "Anchorage all items index"

Insert "U.S. City Average, all urban consumers, all items indices"

3) Amendment 0-LS0056\H.5--adopted as written

4) Amendment 0-LS0056\H.6--adopted as written

5) Amendment 0-LS0056\H.7--adopted as written

We need this in final form ASAP. I believe this is being read across as I write. Thanks very much.

Any problems or questions, call me at 4990.

WITHDRAWN

X #

0-LS0056H.8

Ford

2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: SSHB 58

1 Page 1, line 3:

2 Delete "and 95"

3 Insert "95, and 100"

4 Page 15, following line 29:

5 Insert a new bill section to read:

6 "* Sec. 34. AS 09.55 is amended by adding a new section to read:

7 **Article 10. Malpractice Action Against Design Professional.**

8 **Sec. 09.55.700. Mandatory mediation.** (a) A civil action against a design
9 professional seeking damages resulting from professional negligence shall be
10 submitted to mediation unless all the parties to the civil action agree to waive
11 mediation. The court shall order that mediation be conducted as provided under the
12 Alaska Rules of Civil Procedure, except that, if the court requires the costs of
13 mediation be paid by the party defending against the civil action, the provisions of
14 this section may be waived at the election of the party defending against the civil
15 action. If a party to the mediation is determined by the court to be indigent, the court
16 may impose the costs of mediation on another party. If more than one party is
17 defending against the civil action, waiver of mediation is not allowed unless all
18 defending parties agree to the waiver. For purposes of waiver allowed under this
19 subsection, "civil action" does not include a counterclaim, third-party claim, or cross
20 claim.

21 (b) In this section,

22 (1) "design professional" means an architect, engineer, or land surveyor
23 licensed in this state;

24 (2) "professional negligence" means a negligent act or omission by a

1 design professional in providing professional services;

2 (3) "professional services" means services provided by a design
3 professional that are within the scope of the services for which the design professional
4 is licensed."

5 Renumber the following bill sections accordingly.

6 Page 24, following line 28:

7 Insert a new bill section to read:

8 "* Sec. 62. AS 09.55.700, enacted by sec. 34 of this Act, has the effect of amending
9 Rule 100, Alaska Rules of Civil Procedure, by requiring, in a civil action against a design
10 professional, the parties to request mediation and the court to order mediation."

11 Renumber the following bill sections accordingly.



Alaska

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Association, Inc.

703 W. Tudor Rd., #200
 Anchorage, AK 99503-6650
 (907) 561-6103
 FAX (907) 561-5547

Electric Service for 357,000 Alaskans

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,

Eric P. Yould
 Executive Director

✓ cc: Rep. Joe Green



ARECA

Electric Service for 357,000 Alaskans

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Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503-6650
(907) 561-6103
FAX (907) 561-5547

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February 26, 1997

Rep. Eric Croft
State Capitol
Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

Dear Representative Croft:

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 state of Alaska. In addition, Representative Brian Porter requested similar information on cases in the Lower 48. 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,

Eric P. Yould
Executive Director

cc: Rep. Joe Green

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ROGER R. KEMPEL
RICHARD R. HUFFMAN
DONALD C. ELLIS

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(907) 277-1604
FAX (907) 278-2493

ANDREW J. FIERRO
BOBBY DEAN SMITH
REBECCA C. PAULI

WRITER'S E-MAIL ADDRESS:
rpk@khe.com

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

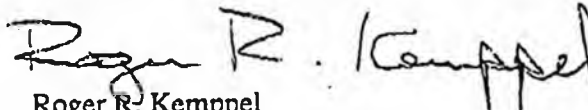
Dear Eric:

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

STRICT LIABILITY FOR THE SALE OF ELECTRICITY IN OTHER STATESWISCONSIN

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 4,800 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.

STRICT LIABILITY FOR THE SALE OF ELECTRICITY IN ALASKA

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.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Cowdery

Introduced:

Referred:

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

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claims that are otherwise valid but that were not filed within the time prescribed.

* Sec. 3. AS 09.10.050 is repealed and reenacted to read:

Sec. 09.10.050. **Certain property actions to be brought in six years.** Unless the action is commenced within six years, a person may not bring an action for waste or trespass upon real property.

* Sec. 4. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.053. **Contract actions to be brought in three years.** Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040 or as otherwise provided by law.

*current
6 yrs*

* Sec. 5. AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. **Statute of repose of eight years.** (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within eight years of the earlier of the date of

*current
15 yrs.*

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

(2) the last act alleged to have caused the personal injury, death, or property damage.

(b) This section does not apply if — **EXCEPTIONS**

(1) the personal injury, death, or property damage resulted from

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

(D) breach of an express warranty or guarantee; or

(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:

*Amend
7 →*

*Effective
2/1/00
Am. 6/28
01/00*

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.

*don't
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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, including a loss of consortium
 17 claim, arising out of a single injury or death may not exceed \$300,000.

500K

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

another person by the person from whom the punitive damages are sought.

* Sec. 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) of this section may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount is greater.

3X
or
300

(c) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or \$600,000, whichever amount is greater, if

4X
600

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

* Sec. 11. AS 09.17.040(a) is amended to read:

(a) In every case where damages for personal injury or death are awarded by the court or jury,

(1) the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

(A) [(1)] past economic loss;

(B) [(2)] past noneconomic loss;

(C) [(3)] future economic loss;

(D) [(4)] future noneconomic loss; [AND]

(E) [(5)] punitive damages; and

(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
 9 by periodic payments rather than by a lump-sum payment. If a portion of the
 10 judgment awarded is owed to an attorney under a contingent fee agreement, that
 11 portion of the judgment shall be reduced to present value, if necessary, and paid
 12 in a lump sum, and the remaining portion of the judgment shall be paid as
 13 provided 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
 2 or 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 Anchorage, all items index, compiled by the
 14 Bureau of Labor Statistics, United States Department of Labor.

15 * Sec. 15. AS 09.17.070 is repealed and reenacted to read:

16 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 17 injury or death may only recover damages that exceed amounts received by the
 18 claimant, or that with reasonable probability will be received in the future by the
 19 claimant, as compensation for the injuries from collateral sources, whether private,
 20 group, or governmental, and whether contributory or noncontributory, except when

21 (1) the collateral source is a federally funded program that by law must
 22 seek subrogation;

23 (2) the collateral source has a right of subrogation under federal law;

24 (3) the collateral source is the payment of a dependent child's medical
 25 bills by the injured child's parent that does not result from insurance coverage;

26 (4) the benefit consists of death benefits paid under life insurance; or

27 (5) the benefit consists of workers' compensation benefits received
 28 under AS 23.30.

29 (b) A person defending a claim may introduce into evidence at trial an amount
 30 paid or payable as a benefit to the claimant as a result of the personal injury or death
 31 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,

1 sickness, disability, accident, or income-disability insurance; insurance that provides
 2 health benefits or income-disability coverage; and a contract or agreement of a group,
 3 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 4 or reimburse the cost of medical, hospital, dental, or other health care services,
 5 disability, or lost wages. However, evidence of a collateral source described under
 6 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 7 defending a claim elects to introduce evidence described in this subsection, the
 8 claimant may introduce evidence of the amount that the claimant has paid or
 9 contributed to secure the claimant's right to the collateral benefit, including the cost
 10 to the claimant resulting from depleted or exhausted coverage.

11 (c) A person who provides a collateral benefit admissible under (b) of this
 12 section may not recover an amount against the claimant as reimbursement for those
 13 benefits and may not be subrogated to the rights of a claimant against a person
 14 defending a claim.

15 * Sec. 16. AS 09.17.080(a) is amended to read:

16 (a) In all actions involving fault of more than one person [PARTY TO THE
 17 ACTION], including third-party defendants and persons who have been released
 18 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 19 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 20 indicating

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

23 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 24 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 25 [AND] person who has been released from liability, or other person responsible for
 26 the damages to each claimant regardless of whether the other person, including
 27 an employer, is or could have been named as a party to the action [UNDER
 28 AS 09.16.040].

29 * Sec. 17. AS 09.17.080(b) is amended to read:

30 (b) In determining the percentages of fault, the trier of fact shall consider both
 31 the nature of the conduct of each person [PARTY] at fault, and the extent of the

fault
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1 causal relation between the conduct and the damages claimed. The trier of fact may
2 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO
3 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
4 claimed and the separate act or omission of each person cannot be distinguished.

5 * Sec. 18. AS 09.17.080(c) is amended to read:

6 (c) The court shall determine the award of damages to each claimant in
7 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
8 AS 09.16.040,] and enter judgment against each party liable. The court also shall
9 determine and state in the judgment each party's equitable share of the obligation to
10 each claimant in accordance with the respective percentages of fault as determined
11 under (a) of this section. Except as provided under AS 23.30.015(g), an
12 assessment of a percentage of fault against a person who is not a party may only
13 be used as a measure for accurately determining the percentages of fault of a
14 named party. Assessment of a percentage of fault against a person who is not a
15 party does not subject that person to civil liability in that action and may not be
16 used as evidence of civil liability in another action.

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17 * Sec. 19. AS 09.17.900 is amended to read:

18 Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions
19 that are in any measure negligent, [OR] reckless, or intentional toward the person or
20 property of the actor or others, or that subject a person to strict tort liability. The term
21 also includes breach of warranty, unreasonable assumption of risk not constituting an
22 enforceable express consent, misuse of a product for which the defendant otherwise
23 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
24 Legal requirements of causal relation apply both to fault as the basis for liability and
25 to contributory fault.

26 * Sec. 20. AS 09.20 is amended by adding a new section to read:

27 Sec. 09.20.185. Expert witness qualification. (a) In an action based on
28 professional negligence, a person may not testify as an expert witness on the issue of
29 the appropriate standard of care unless the witness is

30 (1) a professional who is licensed in this state or in another state or
31 country;

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1 (2) trained and experienced in the same discipline or school of practice
2 as the defendant or in an area directly related to a matter at issue; and

3 (3) certified by a board recognized by the state as having acknowledged
4 expertise and training directly related to the particular field or matter at issue; however,
5 this paragraph does not apply if a board does not exist that could certify the witness
6 in the particular field or matter at issue. *Berk Amund*

7 * Sec. 21. AS 09.30.065 is amended to read:

8 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
9 the trial begins, either the party making a claim or the party defending against a claim
10 may serve upon the adverse party an offer to allow judgment to be entered in complete
11 satisfaction of the claim for the money or property or to the effect specified in the
12 offer, with costs then accrued. If within 10 days after the service of the offer the
13 adverse party serves written notice that the offer is accepted, either party may then file
14 the offer and notice of acceptance together with proof of service, and the clerk shall
15 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
16 evidence of that offer is not admissible except in a proceeding to determine the form
17 of judgment after verdict. If the judgment finally entered on the claim as to which an
18 offer has been made under this section is at least five percent, less [NOT MORE]
19 favorable to the offeree than the offer, ~~the offeree, whether the party making the~~
20 claim or defending against the claim, shall pay all costs as allowed under the
21 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
22 incurred by the offeror from the date the offer was made, [THE INTEREST
23 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
24 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

25 (1) if the offer was served no later than 60 days after both parties
26 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
27 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
28 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
29 REDUCED BY FIVE PERCENT A YEAR];

30 (2) if the offer was served more than 60 days after both parties
31 made the disclosures required by the Alaska Rules of Civil Procedure but more

1 than 90 days before the trial began, the offeree shall pay 75 percent of the
 2 offeror's reasonable actual attorney fees:

3 (3) if the offer was served 90 days or less but more than 10 days
 4 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
 5 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 6 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 7 YEAR].

8 * Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

9 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
 10 of this section, that offeror shall be considered the prevailing party for purposes of an
 11 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
 12 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
 13 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
 14 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
 15 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
 16 this section. A party who receives attorney fees under this section may not also
 17 receive attorney fees under the Alaska Rules of Civil Procedure.

18 (c) If an offeror makes more than one offer of judgment, the last offer served
 19 on the adverse party shall be considered to be a revocation of any prior offer of
 20 judgment.

21 * Sec. 23. AS 09.30.070(a) is amended to read:

22 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 23 and decrees for the payment of money, including prejudgment interest, is three
 24 percentage points above the 12th Federal Reserve District discount rate in effect
 25 on January 2 of the year in which the judgment or decree is entered [10.5
 26 PERCENT A YEAR], except that a judgment or decree founded on a contract in
 27 writing, providing for the payment of interest until paid at a specified rate not
 28 exceeding the legal rate of interest for that type of contract, bears interest at the rate
 29 specified in the contract if the interest rate is set out in the judgment or decree.

30 * Sec. 24. AS 09.30.070 is amended by adding a new subsection to read:

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

2 * Sec. 25. AS 09.50.280 is amended to read:

3 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
4 rendered for the plaintiff, it shall be for the legal amount found due from the state with
5 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
6 DUE] and without punitive damages.

7 * Sec. 26. AS 09.55.440(a) is amended to read:

8 (a) Upon the filing of the declaration of taking and the deposit with the court
9 of the amount of the estimated compensation stated in the declaration, title to the estate
10 as specified in the declaration vests in the plaintiff, and that property is condemned
11 and taken for the use of the plaintiff, and the right to just compensation for it vests in
12 the persons entitled to it. The compensation shall be ascertained and awarded in the
13 proceeding and established by judgment. The judgment must include interest at the
14 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
15 awarded that [WHICH] exceeds the amount paid into court under the declaration of
16 taking. The interest runs from the date title vests to the date of payment of the
17 judgment.

18 * Sec. 27. AS 09.55.535(k) is amended to read:

19 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
20 apply to arbitrations under this section if they do not conflict with the provisions of
21 this section; arbitrations under this section shall be conducted in accordance with
22 procedures established by any rules of court which may be adopted and according to
23 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
24 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

25 * Sec. 28. AS 09.55.536(a) is amended to read:

26 (a) In an action for damages due to personal injury or death based upon
27 the provision of professional services by a health care provider, including a person
28 providing services on behalf of a governmental entity, when the parties have not
29 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
30 20 days after filing of answer to a summons and complaint a three-person expert
31 advisory panel unless the court decides that an expert advisory opinion is not necessary

1 for a decision in the case. When the action is filed, the court shall, by order,
 2 determine the professions or specialties to be represented on the expert advisory panel,
 3 giving the parties the opportunity to object or make suggestions.

4 * Sec. 29. AS 09.55.536(c) is amended to read:

5 (c) Not more than 30 days after selection of the panel, the panel [IT] shall
 6 make a written report to the parties and to the court, answering the following questions
 7 and other questions submitted to the panel by the court in sufficient detail to explain
 8 the case and the reasons for the panel's answers:

9 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
 10 WHICH THE PLAINTIFF CAME TO] medical care?

11 (2) Was a correct diagnosis made? If not, what was incorrect
 12 about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME
 13 WITHOUT MEDICAL CARE]?

14 (3) Was the treatment or lack of treatment [SELECTED] appropriate?
 15 If not, what was inappropriate about the treatment or lack of treatment [FOR
 16 THE CASE]?

17 (4) Was the claimant injured during the course of evaluation or
 18 treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE
 19 MEDICAL CARE]?

20 (5) If the answer to question 4 is "yes," what [WHAT] is the nature
 21 and extent of the medical injury?

22 (6) What specifically caused the medical injury?

23 (7) Was the medical injury caused by unskillful care? Explain.

24 (8) If a medical injury had not occurred, what would have been the
 25 likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S
 26 CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

27 * Sec. 30. AS 09.55.536(f) is amended to read:

28 (f) Discovery may not be undertaken in a case until the report of the expert
 29 advisory panel is received or 60 days after selection of the panel, whichever occurs
 30 first. However, the court may relax this prohibition upon a showing of good cause by
 31 any party. If the panel has not completed its report within the 30-day period

1 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
 2 an additional 30 days.

3 * Sec. 31. AS 09.55.536 is amended by adding a new subsection to read:

4 (i) This section applies regardless of whether a party in the action or the health
 5 care provider whose professional services are the subject of the action is a
 6 governmental entity or in the public or private sector.

7 * Sec. 32. AS 09.55.560(1) is amended to read:

8 (1) "health care provider" means an acupuncturist licensed under
 9 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
 10 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
 11 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
 12 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
 13 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
 14 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
 15 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
 16 hospital as defined in AS 18.20.130, including a governmentally owned or operated
 17 hospital; [AND] an employee of a health care provider acting within the course and
 18 scope of employment; an ambulatory surgical facility and other organizations
 19 whose primary purpose is the delivery of health care, including a health
 20 maintenance organization, individual practice association, integrated delivery
 21 system, preferred provider organization or arrangement, and a physical hospital
 22 organization.

23 * Sec. 33. AS 09.55.560 is amended by adding new paragraphs to read:

24 (4) "professional negligence" means a negligent act or omission by a
 25 health care provider in rendering professional services;

26 (5) "professional services" means service provided by a health care
 27 provider that is within the scope of services for which the health care provider is
 28 licensed and that is not prohibited under the health care provider's license or by a
 29 facility in which the health care provider practices.

30 * Sec. 34. AS 09.60 is amended by adding a new section to read:

31 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or

1 collects a contingency fee in connection with an action for personal injury, death, or
 2 property damage and the damages awarded by a court or jury include an award of
 3 punitive damages, the contingent fee due the attorney shall be calculated after that
 4 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
 5 from the total award of damages.

6 * Sec. 35. AS 09.65 is amended by adding a new section to read:

7 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 8 hospital is not liable for civil damages as a result of an act or omission by an
 9 emergency room physician who is not an employee or actual agent of the hospital if
 10 the hospital provides notice that the emergency room physician is an independent
 11 contractor and the emergency room physician is insured as described under (c) of this
 12 section. The hospital is responsible for exercising reasonable care in granting
 13 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 14 and for taking appropriate steps to revoke or restrict privileges in appropriate
 15 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 16 emergency room physician who is an independent contractor. The notice required by
 17 this subsection must be posted conspicuously in all admitting areas of the hospital,
 18 published at least annually in a newspaper of general circulation in the area, and must
 19 be in substantially the following form:

20 **Notice of Limited Liability**

21 The following emergency room physicians are independent
 22 contractors and are not employees of the hospital:

23 (List specific emergency room physicians)

24 (b) This section does not preclude liability for civil damages that are the
 25 proximate result of the hospital's negligence or intentional misconduct.

26 (c) A hospital is not immune from liability under (a) of this section for an act
 27 or omission of an emergency room physician who is an independent contractor unless
 28 the emergency room physician has liability insurance coverage in the amount of at
 29 least \$500,000 for each incident and the coverage is in effect and applicable to those
 30 health care services offered by the emergency room physician that the hospital is
 31 required to provide by law or by accreditation requirements.

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1 (d) In this section,

2 (1) "emergency room physician" means a physician who provides health
3 care services in a hospital emergency room;

4 (2) "hospital" has the meaning given in AS 18.20.130 and includes a
5 governmentally owned or operated hospital;

6 (3) "independent contractor" means an emergency room physician who
7 is not an employee or actual agent of the hospital in connection with the rendition of
8 the health care services.

9 * Sec. 36. AS 09.65.210 is repealed and reenacted to read:

10 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
11 **under the influence of alcohol or drugs.** A person who suffers personal injury or
12 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
13 recover damages for the personal injury or death if the injury or death occurred while
14 the person was

15 (1) engaged in the commission of a felony, the person has been
16 convicted of the felony, including conviction based on a guilty plea or plea of nolo
17 contendere, and the felony substantially contributed to the personal injury or death;

18 (2) engaged in conduct that would constitute the commission of an
19 unclassified felony, a class A, or a class B felony for which the person was not
20 convicted and the conduct

21 (A) substantially contributed to the personal injury or death; and

22 (B) is proven by the defendant in the civil trial by clear and
23 convincing evidence;

24 (3) fleeing after the commission, by that person, of conduct that would
25 constitute an unclassified felony, a class A felony, or a class B felony or being
26 apprehended for conduct that would constitute an unclassified felony, a class A felony,
27 or a class B felony if the conduct

28 (A) during the flight or apprehension substantially contributed
29 to the injury or death; and

30 (B) is proven by the defendant in the civil trial by clear and
31 convincing evidence;

1 (4) operating a vehicle, aircraft, or watercraft while under the influence
 2 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
 3 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
 4 the conduct substantially contributed to the personal injury or death; or

5 (5) engaged in conduct that would constitute a violation of
 6 AS 28.35.030 for which the person was not convicted if the conduct substantially
 7 contributed to the personal injury or death and the conduct is proven by the defendant
 8 in the civil trial by clear and convincing evidence.

9 * **Sec. 37.** AS 09.68 is amended by adding a new section to read:

10 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 11 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 12 information relating to the compromise or other settlement of all civil litigation. The
 13 information, including the case name and file number, a general description of the
 14 claims being settled, the dollar amount of the settlement, to whom the settlement was
 15 paid, and any nonmonetary terms, shall be collected on a form developed by the
 16 council for that purpose.

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

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

- 23 (1) divorce and dissolution;
 24 (2) adoption, custody, support, visitation, and emancipation of children;
 25 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
 26 cases under 47.12;
 27 (4) domestic violence protective orders under AS 18.66.100 -
 28 18.66.180;
 29 (5) estate, guardianship, and trust cases filed under AS 13;
 30 (6) small claims under AS 22.15.040.

31 * **Sec. 38.** AS 21.06 is amended by adding a new section to read:

1 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
 2 and shall compile information necessary to evaluate the effect of the measures enacted
 3 in this Act on the availability and cost of insurance in the state.

4 (b) Information described in (a) of this section shall be provided by all insurers
 5 doing business in this state in the format specified by the director and must include
 6 factual information stating premiums, claims, losses, expenses, and solvency of the
 7 company as a whole. Information shall be compiled by the division in a way that
 8 protects the identity of individual insureds.

9 (c) The director shall adopt regulations to implement and interpret this section,
 10 including requiring insurers doing business in the state to provide information
 11 necessary for the division to carry out its responsibilities under (a) and (b) of this
 12 section. If there are indications of market disruption, the director may waive all or
 13 part of the reporting requirements in this section.

14 (d) Beginning June 1, 2000, the information compiled under (a) of this section
 15 shall be reported annually to the governor and the judiciary committees of both houses
 16 of the legislature.

17 (e) The division may consult with the Alaska Judicial Council when
 18 determining what information to require to be reported under (a) - (c) of this section
 19 and when implementing the compilation required under (a) of this section.

20 * **Sec. 39.** AS 21.89.100(d) is amended to read:

21 (d) If the insured selects independent counsel at the insurer's expense, the
 22 insurer may require that the independent counsel have at least four years of experience
 23 in civil litigation, including defense experience in the general subject area at issue in
 24 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 25 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 26 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 27 course of business in the defense of a similar civil action in the community in which
 28 the claim arose or is being defended. **In providing independent counsel, the insurer**
 29 **is not responsible for the fees and costs of defending an allegation for which**
 30 **coverage is properly denied and shall be responsible only for the fees and costs**
 31 **to defend those allegations for which the insurer either reserves its position as to**

1 coverage or accepts coverage. The independent counsel shall keep detailed
 2 records allocating costs accordingly. A dispute between the insurer and insured
 3 regarding attorney fees that is not resolved by the insurance policy or this section shall
 4 be resolved by arbitration under AS 09.43.

5 * Sec. 40. AS 21.89.100 is amended by adding a new subsection to read:

6 (h) When an insured is represented by independent counsel, the insurer may
 7 settle directly with the plaintiff if the settlement includes all claims based upon the
 8 allegations for which the insurer previously reserved its position as to coverage or
 9 accepted coverage, regardless of whether the settlement extinguishes all claims against
 10 the insured.

11 * Sec. 41. AS 23.30.015(g) is amended to read:

12 (g) If the employee or the employee's representative recovers damages from
 13 the third person, the employee or representative shall promptly pay to the employer the
 14 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 15 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 16 and expenses. Any excess recovery by the employee or representative shall be
 17 credited against any amount payable by the employer thereafter. If the employer is
 18 allocated a percentage of fault under AS 09.17.080, the amount due the employer
 19 under this subsection shall be reduced by an amount equal to the employer's
 20 equitable share of damages assessed under AS 09.17.080(c).

21 * Sec. 42. AS 44.77.015(a) is amended to read:

22 (a) For the purposes of filing claims for medical services provided under
 23 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
 24 within six months after the date of service, or as provided in (b) of this section, if
 25 there is no third-party claim, or (2) within 12 months after the date of service if there
 26 is a third-party claim. Except as provided in (c) of this section, a claim may not be
 27 paid if it is not filed promptly; an inference to the contrary may not be drawn from
 28 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

29 * Sec. 43. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

30 (c) Motion to Set Trial and Certificate. Unless otherwise ordered by the
 31 court, a [A] motion to set trial may not be filed until after the meeting of parties

1 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
 2 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
 3 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
 4 set trial together with a certificate, signed by counsel, stating:

- 5 (1) That the issues in the case have actually been joined;
 6 (2) That all parties have completed discovery or have a reasonable
 7 opportunity to do so within the next 60 days;
 8 (3) That the procedure for listing witnesses and exhibits and providing
 9 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
 10 (4) Whether trial by jury has been timely demanded;
 11 (5) The estimated number of days for the trial, including estimates for
 12 each party's case and for jury selection;
 13 (6) The names, addresses and telephone numbers of all attorneys and
 14 pro se parties who are responsible for the conduct of the litigation;
 15 (7) Which, if any, statute or rule entitles the case to preference on the
 16 trial calendar;
 17 (8) That the parties have complied with [PARAGRAPH] (k) of this
 18 rule.

19 * Sec. 44. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

20 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 21 soon as practicable after the exchange of initial disclosures required under Rule
 22 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 23 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 24 their claims and defenses and the possibilities for a prompt settlement of the case and
 25 to develop a proposed discovery plan. The attorneys of record and all unrepresented
 26 parties that have appeared in the case are jointly responsible for arranging and being
 27 present or represented at the meeting, for attempting in good faith to agree on the
 28 proposed discovery plan, and for submitting to the court within 10 days after the
 29 meeting a written report outlining the proposed discovery plan. The proposed
 30 discovery plan shall indicate the parties' views and proposals concerning

- 31 (1) what changes should be made in the timing or forms of subsequent

1 disclosures under the rules, including a statement as to when the disclosures required
2 under Rule 26(a) were made;

3 (2) the subjects on which discovery may be needed, when discovery
4 should be complete, and whether discovery should be conducted in phases or be
5 limited to or focused upon particular issues;

6 (3) what changes should be made in the limitations on discovery
7 imposed under these rules and what other limitations should be imposed;

8 (4) whether a scheduling conference is unnecessary;

9 (5) whether there will be dispositive or partially dispositive motions
10 filed in the case and whether other deadlines should be set aside pending resolution of
11 the dispositive or partially dispositive motions by the court; and

12 (6) any other orders that should be entered by the court under Civil
13 Rule 16(b) and (c).

14 * Sec. 45. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
15 paragraph to read:

16 (3) **Settlement Information.** If a voluntary dismissal under this rule
17 is the result of compromise or other settlement of the parties, the parties shall submit
18 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
19 of dismissal made under (1)[a] of this subsection must be accompanied by a
20 certification signed by or on behalf of the plaintiff that the information required under
21 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
22 dismissal made under (1)[b] of this subsection must be accompanied by a certification
23 signed by or on behalf of all parties who have appeared in the action. The
24 requirements of this paragraph do not apply to the types of cases listed in
25 AS 09.68.130(c).

26 * Sec. 46. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

27 (g) **Discovery** Except by leave of court, no discovery may be conducted until
28 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
29 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
30 to occur, unless discovery is further stayed for good cause by order of the court.

31 * Sec. 47. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

1 (b) In addition to its authority under (a) of this rule and its power to punish
2 for contempt, a court may, after reasonable notice and an opportunity to show cause
3 to the contrary, and after hearing by the court, if requested, impose a fine not to
4 exceed \$10,000.00 [~~\$1,000.00~~] against any attorney who practices before it for failure
5 to comply with these rules or any rules promulgated by the supreme court.

6 * **Sec. 48.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
7 subsection to read:

8 (c) If the trier of fact determines that a party to a civil action has intentionally
9 made a false statement of a material fact in connection with the prosecution or defense
10 of a civil action, the court shall enter judgment against the party making the false
11 statement on the issue to which the false statement relates. If the civil action involves
12 multiple claims and the false statement does not apply to all claims, the judgment
13 required under this subsection shall apply only to those claims to which the false
14 statement relates.

15 * **Sec. 49.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
16 subsection to read:

17 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
18 result of compromise or other settlement between the parties, the parties shall submit
19 to the Alaska Judicial Council the information required under AS 09.68.130. A
20 dismissal by agreement under (a) of this rule must be accompanied by a certification
21 signed by the attorneys of record for all parties that the information required under
22 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
23 appellant or petitioner made under (b) of this rule must be accompanied by a
24 certification signed by the appellant's or petitioner's attorney of record. The
25 requirements of this subsection do not apply to the types of cases listed in
26 AS 09.68.130(c).

27 * **Sec. 50.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

28 * **Sec. 51.** AS 09.55.548 is repealed.

29 * **Sec. 52.** AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending
30 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
31 percentage of an award of punitive damages be deposited into the general fund.

1 * Sec. 53. AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending
2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
3 damages by certain tax rates in effect on the date of injury or death if taxable.

4 * Sec. 54. AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending
5 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
6 periodically if requested by a party, with a lump sum payment for certain attorney fees.

7 * Sec. 55. AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending
8 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
9 is paid by periodic payments.

10 * Sec. 56. AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending
11 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
12 increases for future inflation.

13 * Sec. 57. AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending
14 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
15 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
16 among the claimants, defendants, third-party defendants, persons who have been released from
17 liability, or other person who is responsible for the damages.

18 * Sec. 58. AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending
19 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
20 testifying as an expert witness.

21 * Sec. 59. AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of
22 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
23 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
24 eliminating provisions relating to interest and by providing that a subsequent offer revokes
25 prior offers.

26 * Sec. 60. AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending
27 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
28 awarded for future economic or noneconomic damages.

29 * Sec. 61. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
30 legislation to create a pilot alternative dispute resolution procedure within the existing civil
31 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil

1 disputes.

2 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
3 Association, review court sanctioned alternative dispute resolution programs in other states and
4 in the federal court system, and make recommendations to assist the legislature and the Alaska
5 Court System in the establishment of a pilot program for alternative dispute resolution within
6 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
7 legislature and to the Alaska Supreme Court within six months after the effective date of this
8 Act. The report must include specific types of programs, specific types of cases within each
9 program that are amenable to alternative dispute resolution, the cost to the parties and to the
10 Alaska Court System under these programs, and the qualifications of the neutral parties,
11 including nonlawyers, who will provide dispute resolution services under the program.

12 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
13 and early neutral evaluation.

14 * **Sec. 62. APPLICABILITY.** This Act applies to all causes of action accruing on or after
15 the effective date of this Act.

16 * **Sec. 63. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
17 application of a provision of this Act to any person or circumstance is held invalid, the
18 remainder of this Act and the application to other persons shall not be affected.

19 * **Sec. 64.** This Act takes effect July 1, 1997.

July 21, 1988

Distribution Of Claims By Year As Compared To Project Substantial Completion

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

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.

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.

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.



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.

BISS AND HOLMES

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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". The signature is fluid and cursive, with a large initial "R" and "H".

Roger F. Holmes
\\RFH

AMENDMENT

To: SSHB 58

BY: Rep. Rokeberg

Page 8, line 13

Delete: "Anchorage, all items index"

Insert: "U. S. City Average, all urban consumers, all items indexes"

*Change "indexes"
to "indices"*

*Adopted
2/26/97*

4 7

EB-1

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 5, line 17:

following "exceed",

delete "\$300,000", insert "\$500,000"

Page 5, line 19:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

Fails
2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 4, line 14:

following "provider",

delete "if the injured person is, on the date of the alleged negligent act or omission, less than six years of age unless the action is commenced before the person's eighth birthday",

insert "unless commenced within eight years of the date of the alleged negligent act"

*Fails
2/26/97*

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 6, line 11:

following "gain;"

delete "and", insert "or"

Fails
2/26/97

EB-4

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 10, lines 30-31:

delete lines 30-31,

Page 11, line 1:

preceeding "trained", delete "(2)",

Page 11, line 2:

following "issue", delete "; and", insert "."

Page 11, lines 3-6:

delete lines 3-6

*Failed
2*

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 7, lines 6-7:

following "of", delete "a party", insert "both parties"

Page 24, line 6:

following "by", delete "a party", insert "both parties"

fails

AMENDMENT

BY REPRESENTATIVE CROFT/ #1

OFFERED IN HOUSE JUDICIARY

TO: SSB 58

Page 5, line 21 following "(1)":

Delete "is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord"

Insert "suffers severe disfigurement or severe physical impairment"

— Amend. fails as written

5

AMENDMENT

BY REPRESENTATIVE CROFT/ #2

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 9, line 15 through page 10, line 16:

Delete all material

Renumber the following sections accordingly.

Page 20, line 11 through line 20:

Delete all material

*Amend #5
fails*

Renumber the following sections accordingly.

Page 24, lines 13-17:

Delete all material

Renumber the following sections accordingly.

6

AMENDMENT

BY REPRESENTATIVE CROFT/ #3

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 3, line 11 through page 4, line 10:

Delete all material

Renumber the following sections accordingly.

*fails
2/26/97*

AMENDMENT

BY REPRESENTATIVE CROFT/ #5

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 16, line 8 following "hospital" through page 16, line 31:

Delete all material

Insert "may not escape liability for the actions or inactions of emergency room physicians by contractual device, change in employment status, or purported notice to or waiver by emergency room patients. Nothing in this section is intended to modify the standard of care for emergency room physicians or apply to a physician that is independently hired and not associated with the hospital's provision of emergency services."

Renumber following sections accordingly.

*Fails
2/26/97*

AMENDMENT

BY REPRESENTATIVE CROFT/ #6

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 25, line 18 following "be affected":

Insert "**Sec. 64.** This Act sunsets if, on July 1, 2000, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been reduced by at least 10 percent from those filed on January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

Renumber the following section accordingly.

*Fails
2/27/97*

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT # 11

TO: SSHB 58

1 Page 6, lines 3 - 20:

2 Delete all material.

3 Insert new subsections to read:

4 "(b) Except as provided in (c) of this section, the court shall require deposit
5 into the general fund of 50 percent of that portion of the punitive damages award that
6 is equal to or less than the greater of three times the amount of compensatory
7 damages or \$300,000.

8 (c) The court shall require deposit into the general fund of 50 percent of that
9 portion of the punitive damages award that is equal to or less than the greater of four
10 times the amount of compensatory damages awarded or \$600,000, if

11 (1) the wrongful conduct or omission arose in connection with a
12 commercial activity motivated by financial gain; and

13 (2) the likelihood of death or serious bodily injury from the
14 commercial activity was previously known by the person responsible for making
15 policy decisions relating to the commercial activity and the knowledge was gained
16 from previous instances of death or serious bodily injury arising from the same
17 wrongful conduct or omission, regardless of where the previous wrongful conduct or
18 omission occurred.

19 (d) If a court or jury awards punitive damages under (a) of this section, the
20 court shall require that 100 percent of the punitive damages award that exceeds the
21 maximum amounts described under (b) or (c) of this section, as applicable, be
22 deposited into the general fund or the Alaska permanent fund under AS 37.13.010.
23 The party paying the punitive damages shall elect which fund shall receive the money
24 required to be paid under this subsection.

25 (e) The provisions of this section do not grant the state the right to file or join

1 a civil action to recover punitive damages."

2 Page 16, line 4:

3 Delete "due the state under AS 09.17.020(d)"

4 Insert "required to be deposited under AS 09.17.020"

5 Page 23, line 31, after "fund":

6 Insert "or the Alaska permanent fund"

To: Mike Ford

From: Jim Sourant

February 24, 1997

Re: Additional amendments to SSHB 58

Mike:

Representative Brian Porter has the following amendments for the bill:

1. Section 17, at top of page 10, lines 1 thru 4, delete the second sentence in its entirety, starting with the phrase: "The trier of fact....." and ending with "cannot be distinguished." Leave the rest of line 1 on that page intact.
2. Section 39, at top of page 20, line 2, insert the word "fees and" between the words "allocating" and "costs".
3. Section 12, page 7, line 8, do not take out the word "[FUTURE]". Leave that part of the statute the way it was before we made all the other changes.

Thanks for your help,



cc: Brian

✓ bcc: Lisa Kirsch
bcc: Mary Gore

(list: Meesse PASS to
JOE.
TKS.
Jim

BRIEFING

755 Sansome Street, #450

San Francisco, CA 94111

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E-Mail: PRIPP@aol.com



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.

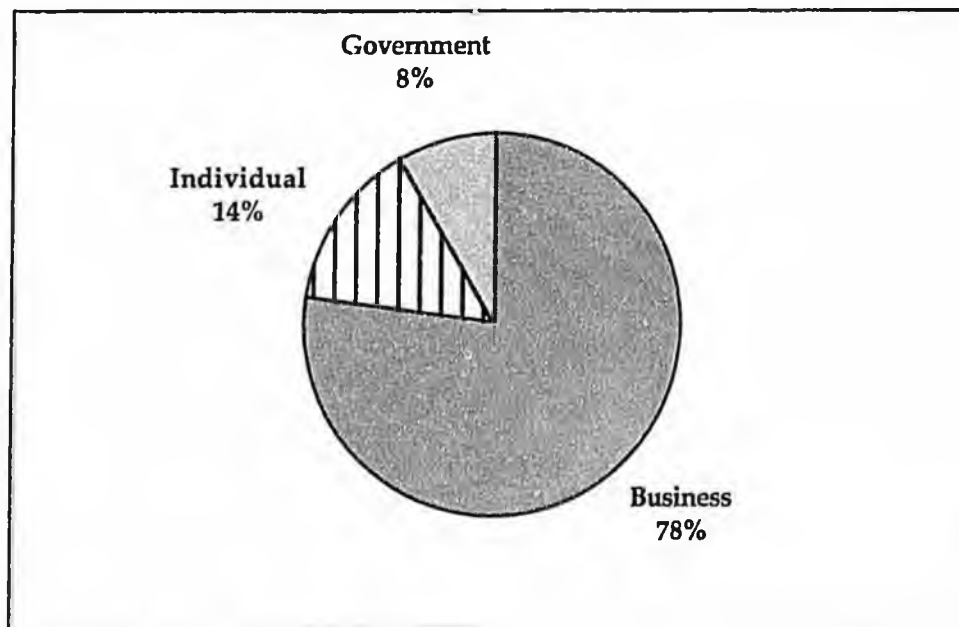
Of the 1,024 cases we examined, nine (9) cases were designated by the court as "sealed" and were unavailable for study. This left a pool of 1,015 lawsuits for study. 537 of these 1,015 cases, or 52.9 percent, were based on one of three principal causes of action where punitive damages are recoverable:

- 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%	(23/33)	

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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How About Some Politics?



by Daryl Nelson in collaboration with Bonnie Nelson on behalf of The Alaska Public Interest Research Group

The Alaska State Medical Association (ASMA) and Doctor David McGuire killed health care reform in Alaska because of their tort reform obsession. Affordable equitable health care as a right, rather than a privilege, would do more to get fair justice for all Alaskans than the current "civil justice" reform proposals being offered by ASMA. Having cradle to grave health care security would be a better alternative because it would reduce the litigation costs, the dollar amount of jury verdicts, the dollar amounts of settlements plus more people would have more incentive to get off welfare systems, go to work and pay taxes.

The problem is that the next legislature is going to pass a tort reform bill that is of the rich, by the rich, and for the rich. Gail Phillips, Speaker of the House, has said that their coalition has the numbers to get whatever they want. There will be no gridlock since they will be able to overturn a veto by the Governor. Poor people, disabled people, and the elderly will have no representation. Governor Tony Knowles has put together a Civil Justice Reform Task Force to help him write a bill to present to the legislature next session. But Gail Phillips said she would disregard the Task Force recommendations.

Tort means a civil wrong or injury resulting from a legal duty. The duty arises from society's expectations of interpersonal conduct rather than from a contract or other private relationship. Tort reform recommendations by ASMA were presented to the Governors Task Force on November 15, 1996. Doctors representing both the national and state medical association have repeatedly insisted that we

must have tort reform before health reform. Alaska Public Interest Research Group supports reform of Civil Justice, but not reforms that help wrongdoers at the expense of the blameless victims. The Alaska Public Interest Research Group refutes the following ASMA proposals, predicting that they will ignore the Task Force recommendations when their powerful lobbyists are in Juneau next session. Here are ASMA recommendations compared to the Alaska Public Interest Research Group (APIRG).

(1) ASMA recommends: Lower the current cap on non-economic damages such as pain and suffering to \$250,000, but leave the "no limit" on economic damages. ASMA says that "high unpredictable awards lead to more physicians going with out liability insurance because insurance premiums are based on jury verdicts."

APIRG recommends: The current \$500,000 statutory cap on non-economic damages should be repealed. The Constitution says that the jury should set damages, not the legislature. It actually would be fairer to cap economic damages because rich and poor should get the same compensation for the same kind of injury and negligence. Now they do not. If a child, an unemployed person, a disabled person, a retired person on Social Security or a person living a subsistence lifestyle becomes injured or further injured, they do not have as much economic value and their monetary award will be far less. Being disabled is a hardship regardless of one's status prior to becoming injured. Finally, most reports (such as the Rand Institute of Justice, Alaska Legislative Research, Alaska Division of Insurance, and the Alaska Judicial Council) are that insurance premiums are not based on litigation or settlement experience in Alaska, nor elsewhere. Instead, insurance premium rates are based on their investment success or failure in financial markets and also on predictable business cycles.

(2) ASMA recommends: The legislature should cap plaintiff attorney fees (if they are contingency). 40% of the first \$50,000
33 1/3% of the next \$50,000
25% of the next \$500,000
15% of any amount exceeding \$600,000

APIRG recommends: Capping only "contingency" fees discriminates against poor or middle class people because wealthy people pay attorneys at hourly rates or on retainer. Capping only plaintiff attorneys discriminates against injured persons who can pay them on an hourly basis or on retainer. Why not cap the hourly retainer rates that defense attorneys make so as to level the playing field. Or better yet the legislature should cap doctor and hospital fees (Health Reform Cost Containment) in exchange for a "no-fault" state health insurance for and by All Alaskans. And soon... before lower 48 multinational HMO's cap Alaska health care providers. Canadians are considering changing to a tow tiered health car system: one for the rick, and one for everyone else (like the United States). Instead of the U.S. becoming more humane like other countries, other countries now are becoming more mean-spirited like the U.S. Doctors and lawyers should make good money, but they should not be able to get rich off the injury and sickness of people.

(3) ASMA recommends: The jury should be allowed to know that the plaintiff received insurance, worker's compensation or other proceeds (collateral sources).

APIRG recommends: The current system requires that if there is money awarded for medical expenses which were paid by insurance or worker compensation, they this money must be paid back by the plaintiff (subrogation). There is no windfall to the plaintiff under the current system. To allow the jury to know collateral sources only lets negligent wrong does pay less. Disclosing collateral sources to the jury hurts the plaintiff because reducing the potential amount of an award may result in the possibility of an attorney not taking a case or in settling unjustly.

(4) ASMA recommends: The legislature should allow either partly to require that an award be paid in installments (periodic payment of future damages).

... Continued on pg. 6...

Available Scholarship

Alaska Sea Services Scholarship Fund—
\$1000 awarded to a dependent child of a Regular or Reserve Navy, Marine Corps, or Coast Guard member on active duty, retired with pay, deceased, missing-in-action, or in a drilling reservist status who is/was a legal resident of Alaska. Applicants must be at an accredited college attending full-time pursuing a Bachelor of Arts or Science degree. Deadline to apply is April 30th.*

20 Days for \$20!

by Cree Bol

Looking for something to do over the winter break? Want to get outside, take advantage of the winter daylight, and have fun? The Outdoor Program is running a special deal on cross country ski rentals for APU I.D. holders only. You can rent a pair of skis, boots, and poles from December 16 to January 4 for only twenty dollars. There is a limited supply, so you may want to come by and reserve them NOW!

If you have never cross country skied before this is the perfect opportunity to teach yourself how. Students have been coming in all fall and checking out skis for the first time. With the APU trail system so close by, there are plenty of skiing opportunities within walking distance from your dorm room.

If you would rather have instruction, it's not too late to sign up for cross country lessons. The Ski Program is offering lessons to students for only \$15 dollars. Take a lesson and then spend the next 20 days improving your technique.

For more information call the Outdoor Program at 564-8314.*

...Politics, cont. from pg. 5...

APIRG recommends: If a plaintiff was required to get an award in periodic payments, then a seriously disabled person would not be eligible to get benefits from Medicaid, Social Security or Aid to the disabled, ect. This would be a windfall for the government at the expense of the victim.

(5) ASMA recommends: Allow doctors to contract with patients for mandatory arbitration of malpractice claims.

APIRG recommends: Arbitration or mediation should not be mandatory, but voluntary. People should be able to go to trial "as well as," not instead of. Alaskans have a fundamental right to a jury given to us with the founding of our country and our state. And our current system already allows for voluntary mediation. The legislature should not impose more costs and delays to litigants, but rather make the court process more efficient.

(6) ASMA recommends: Maintain the current statute of limitations for injury or death of persons over the age of six. For children under the age six, an action should be brought before age eight or within two years, whichever is longer. However, the clock would stop if there was fraud, intentional concealment of facts, or if there exists an undiscovered foreign object in the body.

(7) ASMA recommends: Prohibit suits after eight years measured from the date of the act that caused the injury of death (Statute of Repose).

APIRG recommends: The statute of limitation should remain as it is. Currently a minor has until age 18 plus two years. And there is no statute of repose. According to Bruce

YOU WANT ME TO JUMP OFF WHAT?!

by Heidi Witt

On November, 16th, while many APU residents were still snoozing, 14 ROTC students from Colony Junior High were on route to APU. What for you ask? They came to spend the day participating in the APU Challenge Program. These students spent the day crossing chocolate rivers, swinging from vines carrying buckets full of nitroglycerin, climbing blindfolded, and diving into crowds of people. Sounds like fun huh?! Well you're right, it was. So much so, that the facilitators (Heidi Witt, Tonio Verzone, Josh Hedberg, and Jason Gleason) almost forgot we were getting paid! The Colony students spent the day doing all of these things and more. In fact, they had so much FUN some of them just darn near peed their pants from laughing so much! It was a great success for all. Now you might ask, "what the heck is going on here at APU and how can I join in the fun?!" Simple, it's the APU Challenge Program and heck yeah, you can get involved. Contact Heidi Witt (X8328) or Cree Bol (X8314) for further information. Woo Hoo!*

Great Job Turkey Trotters

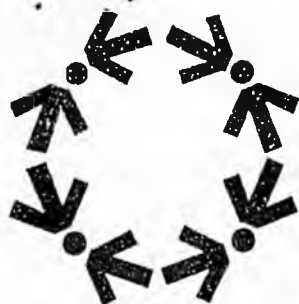
by Kim Brownsberger

A great time and prizes were had by all at the 1996 Annual Turkey Trot race. Paul Twardock (and buddy Roo), Marc Phillips, Jason Gleason, Rusty Myers, Nathan Meadows, Cree Bol, Karen Plentnikoff, Ulrica Olsson, and Charlie Fahl were the nine brave fleet-footed participants following the LARGE lunch we all had prior to the race. We look forward to even more participants in future races.*

Botelho, Attorney General, "The deletion of tolling for minors would violate due process if minors are deprived of their access to court. See, *Bush v. Reid*, 516 p. 2d 1215, 1219 (Alaska, 1973). A minor may not enforce legal rights in his or her own name or enter into a contract until the age of 18. AS 25.20.010. An additional concern is litigation by the former minor against the parent of guardian for failing to bring a personal injury action. This concern would especially impact the state acting as a child custodian. There may also be equal protection questions regarding different treatment of minors, who are incompetent to file suit by reason of minority and persons incompetent to file suit by reason of mental disability."

(8) ASMA recommends: Continue the medical review panel that has been in existence in Alaska since 1975, but change methods of choosing the three physicians, and change the questions asked.

APIRG recommends: The expert advisory panel should be eliminated because it is biased and it limits and injured person's legal rights to access justice by giving the doctors the power to decide if the case will go to a jury. This type of panel has been held unconstitutional in several other states. The Alaska Supreme Court upheld the validity of the medical review panel in *Keyes v. Humana Hosp. Alaska, Inc.* However, since it limited the scope of its holding to the facts of that particular case because she did not have enough statistics and factual evidence a future claim might differ. Keyes argued that Alaska Statutes section 09.55.536 violated her right to a jury trial, increased her burden of persuasion, deprived her of due process of law and violated separation of powers principles. She also claimed the panels were biased and bore no relation to their asserted goals (Alaska Law Review, Vol. 9:2, 1992).*



ALASKA PUBLIC INTEREST RESEARCH GROUP

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February 21, 1997

RECEIVED
FEB 25 1997

Representative Green
Representative Bunde
Representative James
Representative Porter
Representative Berkowitz
Representative Croft
Representative Dyson
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Judiciary Committee Members:

We have reviewed HB 58, and oppose many of its provisions.

1. The Punitive damages provision can be amended to satisfy everyone's concerns.

AKPIRG proposes an effective compromise provision on punitive damages that will protect everyone's interests. There has been a fair amount of debate in this state about whether the law governing punitive damages should be amended. Generally, the consensus has been that the idea of behind punitive damages - to punish exceedingly callous conduct that threatens severe public and individual harm - is good policy. However, the perceived problem is that punitive damages might, in a particular case, cause a business to go bankrupt or to face an unfair amount of hardship.¹ An absolute punitive damages cap has been proposed by some in the past to prevent this occurrence. However, a flat cap would be devastating to small businesses, and absolutely ineffective against large corporate actors.

There is a very fair and very effective compromise position between those who feel a flat cap will provide an inadequate deterrent for the largest corporate actors, and those who feel a cap to protect smaller Alaskan businesses is necessary. Punitive damages can continue to properly deter and punish egregious conduct if they are capped, for the most egregious cases, at the defendant's 5-year average gross annual income. AKPIRG

¹ We have never seen any evidence that in this State that courts, after reviewing jury awards for constitutional soundness, are awarding too much in the way of punitive damages. However, if the Legislature determines that such evidence exists, then it should consider a fair and flexible cap proposal that reflects the reality that some defendants can and need to be punished and deterred more than others. A fair proposal should provide adequate deterrence and punishment, but should not threaten to put small Alaskan companies out of business.

supports this concept, as should all those on the various sides of this issue who wish for an effective compromise.

This cap would work as follows, and would protect small business much better than a flat dollar cap. A flat dollar cap of, for example, \$500,000, would threaten devastation for most local family businesses.

Punitive Damages Cap:

(a) Punitive damages awarded pursuant to existing law may not exceed the greater of: 1) the defendant's, or the defendant's owner's, gross income for the calendar year the plaintiff suffered injury; or 2) the defendant's insurance policy limits.

(b) In the case where a defendant company or corporation is owned by another, the gross income of the owner shall constitute the defendant's "Gross income". An "owner" under this section is a person or entity that holds a 95% or greater ownership interest in the defendant.

* * * *

Section (b) addresses an issue of accountability that is fought in every case. A corporation should not be able to hide its income for punitive damages purposes by creating "sub" corporations which have little in the way of assets or income on paper. This is a shell game that frequently gets played in the courts - but which courts that have addressed the subject have often said should not be played. The goal of punitive damages is to fairly punish the owner of the company. If a corporation is owned by Donald Trump, he should not avoid scrutiny by arguing that the corporation is owned by another corporation, which he in turn owns. See TXO Production Corp. v. Alliance Resources Corp., 419 S.E.2d 870, 890 (W. Va. 1992), aff'd, 113 S. Ct. 2711 (1993); Mihara v. Dean Witter & Co., Inc., 619 F.2d 814, 824 (9th Cir. 1980); Riley v. Empire Airlines, Inc., 823 F. Supp. 1016, 1023 (N.D. N.Y. 1993); Dushaw v. Roadway Exp., Inc., 816 F.Supp. 1229, 1239 (N.D. Ohio 1992) (court takes judicial notice of parent's wealth is affirming punitive damage award).

2. Apportionment of Fault to Invisible Parties - A Shell Game.

HB 58 grants wrongdoers another weapon to use against innocent citizens. Currently, if a wrongdoer claims a third person is partially responsible for harming a citizen, it must make that party part of the suit. Damages will be split among all the responsible parties. A new provision allows defendants to play the game of never mentioning that a third party is responsible until it the time has passed to name the third party. It is unfair to allow a defendant, who has caused a plaintiff's injury, to deprive a plaintiff of compensation by strategically pointing at someone it knows cannot be named as a party. This is gamesmanship, not justice.

HB 58 then goes so far as to punish victims of malicious conduct and other wrongs. If a victim wins a case, s/he only gets *partial* attorneys fees, at best. Under HB 58, if a person proves s/he has been victimized by malicious or other wrong conduct, *the wrongdoer* may recover *full* attorneys fees *against the victim*. This will occur if a jury awards her/him one dollar less than what the wrongdoer offered to pay to prevent her/him from taking the case public to a jury. Given the provision's pre-judgment interest provision, this penalty will be imposed even where, adjusted for inflation/interest, a jury awards the plaintiff *more* than what is offered. Thus, someone who proves a \$50,000 claim of fraud may have to pay \$400,000 in attorney's fees for time billed at \$250/hour by a corporate defense firm. This is an injustice.

3. Statute of Repose

A few years ago in the North Slope Borough a house burned down, killing and injuring innocent children and family members. It burned down because the builder, 12 years earlier, built the home with sub-code wiring. Under HB 58's statute of repose, the survivors in this case would have no recourse.

The law today is not abusive. It is fair. It says that once a tort victim has reason to begin looking into his or her claim, s/he has two years to bring suit. The statute of repose punishes innocent victims who, like the fire victims in the North Slope Borough, do not know of the defendant's misconduct until after it has been committed.

Likewise, victims of many acts injurious to their health do not learn of misconduct until a disease, such as cancer, shows itself. This will normally be more than 8 years after the defendant's misconduct. This provision should be deleted.

4. Non-Economic Damages Cap.

One already exists. HB 58's cap insults the dignity of victims whose loved ones have died, capping the value of a person's life as if death were no more serious than a broken nose. The purpose of pain and suffering caps is to make sure people with minor injuries do not receive a windfall. A cap on non-serious injuries is appropriate. A cap on serious injuries is not appropriate. Courts have accordingly struck down caps similar caps as unconstitutional.

5. Damages reduced by taxes.

Currently injured people pay taxes on their recoveries, unless the recovery is to compensate for a physical injury. A wrongdoer then often deducts his liability on his taxes. Anything more than what exists is but a windfall to a wrongdoer. It also threatens to double tax victims, who will pay taxes to the person who injured them, and then again to the government.

6. Sending 50% of punitive Damages To The State Is reasonable.

It leaves victims with the financial incentive to punish society's worst actors. Anything more than 50% would be counterproductive.

7. Offers of Judgment/Pre-Judgment Interest

The existing rules should not be altered. They already favor rich people over average Alaskans. A person who has been victimized should never have to pay fees to a wrongdoer after s/he wins a case. Under these proposals, payments to wrongdoers, both indirectly and directly, would increase.

8. SLAP Suit Provision

It is out understanding that some legislators are considering a suit that imposes damages against anyone who brings a suit that is later found to be groundless. Big companies and Government use such provisions in the lower 48 to threaten publicly spirited citizens, conservative and liberal alike, from challenging their conduct. The right to free speech is too important to alter with a SLAPP suit provision.

Currently, people who bring frivolous lawsuits are on the hook to pay a defendants' FULL attorney's fees and costs. This is enough of a deterrent.

9. Promises of Lower Insurance Rates Have Never Been Honored, And Never Will be Honored.

On short notice, we have not had the time to review the remaining aspects of the Bill. However, we would remind the Legislature that this State has already enacted Tort Reform Statutes twice, in 1986 and 1988. We already have damage caps, and some of the most restrictive tort rules in the country. The promises have always been that insurance rates would go down after the laws were enacted. Insurance rates have never gone down as a result of Tort Reform, and never will. Insurance companies have proven that they keep extra profits - they do not share them with the community.

We oppose HB 58.

Sincerely,



Les Gara, Board Member
Steve Conn, Director

**APDC LEGISLATIVE LIAISON COMMITTEE
HOUSE JUDICIARY COMMITTEE TESTIMONY
FEBRUARY 24, 1997**

My name is Colin Maynard. I am a professional engineer representing 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 get to a court hearing. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials and the seemingly capricious decisions of juries. Suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement. Some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a quick 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. 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. Over 95 percent of the cases associated with construction are brought within eight years after substantial completion, over 98 percent within ten years. We believe that an eight year statute is more reasonable for four main reasons. First, 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, since his lack of maintenance is an on-going problem. Secondly, 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. Thirdly, we will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage. Finally, it is also 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. If you add a fifteen year tail to that, you get 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. If we can limit the "tail" for which we have to insure to eight years, we will make a considerable reduction in our insurance bills.

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 to get them out of the system.** With this in mind, APDC is urging that an alternative dispute resolution method 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 the 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 also 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 also result in more money going to the injured rather than the lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable. 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.

Subject : Tort Reform

I am against tort reform ,it's a measure against the general public ;to discourage the average citizen from filing a suit against large and powerful corporations such as tobacco companys ,doctors , insurance companys , oil companys and large entities who would like to manipulate the law in their favor.

Some people can hire a lawyer on a contingency basis, if tort reform were in effect ,a lot of these cases would never be filed simply because of lack of funds, so it gives an edge to people who do have funds to do so. In other words we would not all be equal in a court of law. Justice would depend on how much money you had. It's too much that way already.

Is there a need for tort reform ,NO! ,The cases that might be considered frivolous are somewhere between one tenth of one per cent to one per cent ,and even that is doubtful as there is a judge and jury to determine whether they are frivolous or not. We must remember that we were not present when these cases were determined ,but the judge and jury were . It appears to me there are already safeguards in place ...the judge and jury ,we also have a law against filing a frivolous cases... punishable by law.

The people who would benefit by the "watering down" of Punitive damages would become so powerful they would consider the price of paying the law for their wrongdoing just another expense of doing business and for the plaintiffs ,the odds would be so much against them they would not be able to afford the expensive price of justice.

It's too bad that we have legislators ,politicians and governor who would even entertain the idea.

G. Kendall
P.O.Box 2523
Soldotna, Alaska 99669

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

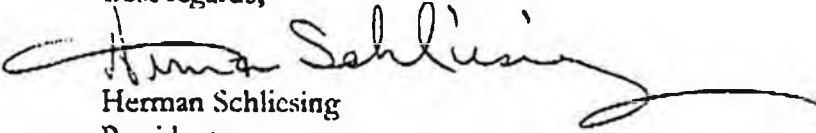
Reference: House Bill 58

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 to 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

APPENDIX

Alaska State Library
Alaska Historical Collections
P.O. Box 110571
AK 99511-0571

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

BALLOT MEASURE NO. 2

**Initiative No. 87TOR2
Civil Liability**

BALLOT LANGUAGE

(As it will appear on the November 8, 1988
General Election Ballot)

This initiative changes the way damages can be collected from parties to lawsuits who share fault for injury to persons or property. The law now says that a party more than half responsible could be liable for the total judgment. Parties may collect from each other amounts paid over their share. Parties less than half responsible pay only up to twice their fault.

The initiative would make each party liable only for damages equal to his or her share of fault, and repeal the law concerning reimbursement from other parties.

Shall this initiative become law?

YES

NO

**LEGISLATIVE AFFAIRS
AGENCY SUMMARY**

This measure will affect lawsuits in which two or more persons are at fault.

The new law would tell the court to enter judgment against each person at fault, but only in an amount that represents that person's share of the fault.

Existing law now tells the court to enter judgment against each person at fault in an amount equal to the total liability of all persons at fault. Those at fault are required to share the total cost of the fault. The measure repeals that law.

The measure applies to suits based on acts occurring after its effective date.

**FULL TEXT OF PROPOSED
AMENDMENT**

What follows is the actual text of the amendments to Title 9 of the Alaska Statutes proposed by this initiative which would become law if the measure is passed by the voters. Capitalized words appearing in brackets are those in the current law which would be deleted. Words that are underlined would be added to the current law.

*Section 1 AS 09.17.080(d) is amended to read:

(d) The court shall enter judgment against each party liable on the basis of [JOINT AND] several liability [, EXCEPT THAT A PARTY WHO IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENTAGE OF FAULT ALLOCATED TO THAT PARTY] in accordance with that party's percentage of fault.

*Sec. 2. AS 09.16 is repealed.

*Sec. 3. Underlined material in this Act indicates text that is being added to the law, and bracketed material in capital letters in this act indicates deletions from the law.

*Sec. 4. Sections 1-2 of this Act apply to all causes of action occurring after the effective date of this Act.

*Sec. 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

JK
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Alaska State Library
Alaska Historical Collections
P O Box 110571
Juneau AK 99811-0571

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT

Supporters of this ballot measure believe it isn't fair to hold people responsible for things that aren't their fault. Yet, under current law, defendants found liable in a civil suit can be forced to pay damages equal to twice the amount of their fault. In other words, if you are 50 percent responsible for an injury you could be forced to pay 100 percent of the damages.

The current law - called joint and several liability - is simply unfair. It forces people to pay for damages caused by somebody else, and it contributes to inflated damage awards and encourages lawsuits based on who has money instead of who's at fault.

If Ballot Measure No. 2 is passed and you do something wrong, you pay for it. But you would not be forced to pay for something you didn't do - which could happen under present law.

This initiative will make the civil justice system more fair by assessing damages on the basis of a person's degree of fault, instead of on how much money or insurance he/she has. Thus, if you are found to be 20 percent responsible for someone's injury or property damage, you pay only 20 percent of the award.

Ballot Measure No. 2 will make the civil justice system more fair, while ensuring that people are held accountable for injuries or damage they cause.

Please vote YES on Ballot Measure No. 2.

Citizens' Coalition for Fair Reform
PO Box 201668
Anchorage, Alaska 99520

STATEMENT IN OPPOSITION

In Alaska, when drunk drivers, criminals, careless corporations or polluters harm a person or his property, that person has the right to seek repayment for the wrong done to him. Ballot Measure No. 2 drastically limits this basic right to protect ourselves and our property from such wrongdoers.

Here is how it works. If two drunk drivers hit a car and cripple a little girl, the child can seek payment from both drivers. But if one driver has no money, who should pay the child's lifetime doctor bills - the other drunk driver, who is insured, or the child and her parent?

In 1986, our legislature dealt with this problem. It said the drunk driver with insurance and the young girl who was injured should share the problem created by the drunk driver without insurance.

Ballot Measure No. 2 eliminates that sharing, and places the entire burden on the innocent victim. In the example of the drunk driver, the crippled child would recover only half her medical bills. The injured child and her parents would have to pay the rest. Under Ballot Measure No. 2, the drunk driver's insurance company will not have to pay all the child's medical bills. The insurance companies win, and we lose. That's unfair.

Even under current law, the innocent victim loses when one of the wrongdoers can't pay. For instance, suppose a corporate polluter is 10% at fault, and a penniless company is 90% at fault. Today, the corporate polluter shares the problem by paying only 20%. The innocent victims of the polluters, such as homeowners and fishermen, share the problem because they cannot recover 80% of their loss. That may be unfair to victims, but Ballot Measure No. 2 is even worse. Ballot Measure No. 2 would eliminate the sharing, and penalize only the victims.

The insurance companies pushing Ballot Measure No. 2 are telling us wrongdoers should only pay their own share of the loss. That sounds good. But the insurance companies are not telling us what happens when one of the wrongdoers cannot pay anything. This is a common problem. Under Ballot Measure No. 2, the insurance company wins, and the victim loses.

Who benefits from Ballot Measure No. 2? The answer is simple: insurance companies. Who loses under Ballot Measure No. 2? The citizens of the State of Alaska. Will we pay less for insurance if the law is changed? No. Not even one insurance company has promised to lower its rates if Ballot Measure No. 2 passes. And you can bet it won't happen. Do not be misled by the insurance companies' propaganda. Vote NO on Ballot Measure No. 2.

Alaskans For Fairness
PO Box 103363
Anchorage, Alaska 99510

1987 INIT. NO. 2

STATE OF ALASKA
INITIATIVE NO. 87-2

1988



* Section 1. AS 09.17.080(d) is amended to read:

(d) The court shall enter judgment against each party liable on the basis of [JOINT AND] several liability (, EXCEPT THAT A PARTY WHO IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENTAGE OF FAULT ALLOCATED TO THAT PARTY) in accordance with that party's percentage of fault.

* Sec. 2. AS 09.16 is repealed.

* Sec. 3. Underlined material in this Act indicates text that is being added to the law, and bracketed material in capital letters in this Act indicates deletions from the law.

* Sec. 4. Sections 1 - 2 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

Testimony of Ross Mullins Opposing Certain Aspects of HB58
Mr Mullins Testifying For Himself and as Chairman of the Prince
William Sound Fishermen Plaintiffs Committee-2/21/97 at
Cordova LIO Office.

Thank you for this opportunity to speak Mr. Chairman. I am representing myself as well as several thousand commercial fishermen plaintiffs in the Exxon Valdez oil spill.

I fully endorse the comments of Cheri Shaw, Executive Director of the Cordova District Fishermen United, the preceding speaker from Cordova. I just regret that thousands of other state residents are not listening to Representative Porter and the other oil industry and insurance company lackeys describe the wonderful characteristics of HB58. The lack of faith in the sensibility of our states jury system to make well reasoned awards to injured and damaged plaintiffs in civil torts is appalling to me and, I would hope to thousands of others. In a misguided attempt to control what apparently appears in their minds, as a problem of great magnitude, civil litigation run amok, it seems to me that this bill will very likely promote that very thing. When Representative Porter stated earlier in his review of HB58 that out of a universe of plaintiffs in Alaska only about 5% end with a trial and that 95% are settled out of court before a trial occurs. That seems to me a most interesting statistic in that with our current system, without legislative meddling, and no caps on the various types of damages, the wrongdoers, malfeasors, insurance companies and etc, are prone to settle to avoid litigation that might possibly result in an unknown level of economic consequence. If this is in fact the reason that the great preponderance of tort cases end in out of court settlements then it logically seems to follow that if this bill becomes law that wrong doer as well as the injured will very likely be more ready to go to trial. Would this result not serve to clog up the court system and create a system where "justice delayed is justice denied" as the final result. Should even 25-30% of cases now settling out of court proceed to trial as a result of this bill our court system could very well be clogged and impeded

by the weight of this proliferation of trial cases.

Of course, perhaps our noble legislators address this problem in sec. 21 of the proposed bill, regarding offers of settlement, so that the unsophisticated, fearful, naive and injured plaintiff will become so intimidated by the consequences of the draconian shift of the cost of the trial, attorneys fees and interest penalties to the injured plaintiff in the event that the result of the trial did not exceed the insurance company's or malfeasor's offer of settlement, that might ensure that the injured plaintiff will feel such punitive pressure that s(he) will be unlikely to go to trial. This could only serve to deprive society and the citizens of Alaska of the opportunity to achieve a fair determination of the value of an injured parties damages by a jury of their peers. But, it might certainly prevent cases from proceeding to trial. Perhaps this coercive provision would even increase the number of cases that settle out of court- not because the recipient of the offer felt the offer fair and just but rather because of the onerous statutory penalties and pressure created by this bill.

I have no idea why this bill is necessary when ever Rep. Porter agrees that only about 5% of cases proceed to trial and of that 5% that do end in trial only one in twenty of those result in the award of punitive damages awards. To put this in perspective this means that out of every 2000 cases, 1900 settle out of court, 100 go to trial, and approximately 5 of those would result in punitive damages being awarded. I would assume that the trial cases are the most seriously injured and damaged plaintiffs. It is unclear if the few punitive awards exceeded the punitive caps being proposed in this bill but, if they did I am certain that this would have been brought forward and it wasn't.

To fix punitive caps does not serve the best interest of the citizens of Alaska. Today's dollar is worth approximately thirty eight cents in terms of the value of the dollar in 1970. A fixed cap will only serve the interests of wrongdoers over time. Particularly wrong doer who have the potential capacity to devastate the natural environment and common property resources of Alaska and of those Alaskans that depend on them for their livelihood. It will clearly reduce the financial risk of doing business for the major oil corporations and their insurers but is that what we

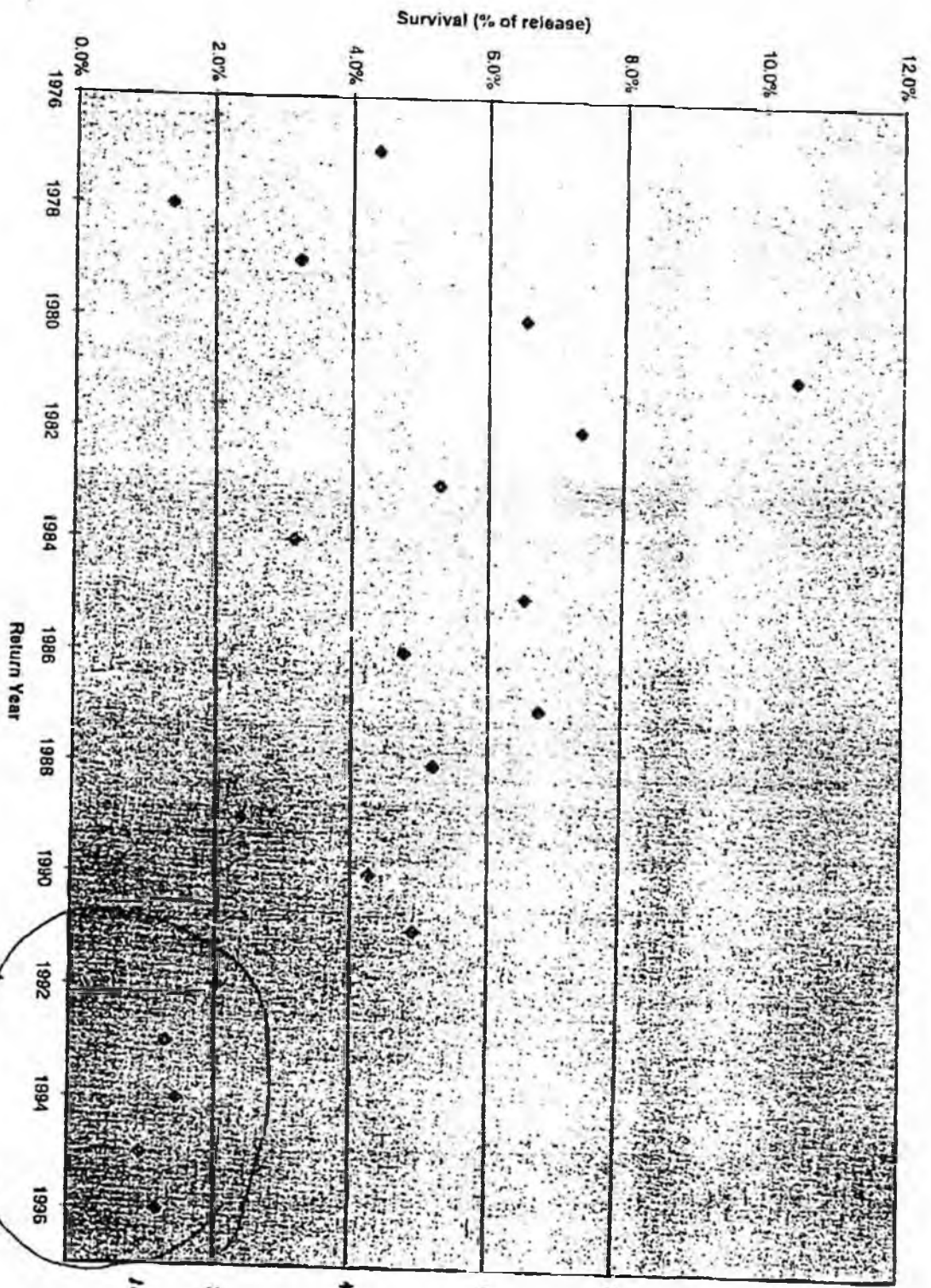
want in Alaska. The possibility of large punitive damages awards is in large measure why major oil is now seriously attempting to improve their marine transportation operations. When the cost of compliance rises above the possible consequences then I fear that we will no longer see big oil complying with what is best for Alaska and its citizens.

Finally, in regard to the concept of periodic payments. It seems ludicrous to me that if a plaintiff gets through an often multi-year period to trial and then very likely, a lengthy appeal and finally prevails, then to realize that the money due that plaintiff, should be doled out by some big brother scheme that deprives the person or entity the opportunity to determine for themselves the best application of that award is arrogant in the extreme and indicates the lack of concern. This clearly indicates the lack of concern that the drafters of this bill hold for the choice of the individual plaintiff and of the interests of the general public. It seems more likely again that the interests of the insurance industry is best being served by this bill. I am saddened and very concerned that this is the conclusion that I have been forced to arrive at by studying this anti-democratic and obviously special interest oriented proposal that is HB58.

Thank you very much Mr. Chairman for the opportunity to make my comment available to you today.

Exhibit as part of Ross Mullins testimony 2/24/97

AFK PINK SALMON MARINE SURVIVAL



Major Ecosystem Damage - Documented Genetic Impacts. Possible Food Chain Disruptions Resulting in Major Increase in Predation by Previous Assent Predators.

8 Million Fish Return
 6 Million Fish Return
 4 Million Fish Return
 2 Million Return
 1.3 Million Fish Return



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.



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 ~~on November 14, 1996~~. The one passenger was a highly compensated, ~~executive~~. 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 ██████████, you see his ██████████ 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 Wanair 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.

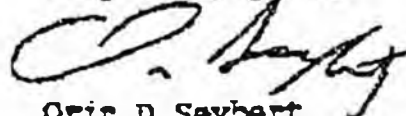
I have thought of another argument for reform. Since the limits are so low, there is actually less money available for the average Alaskan claimant. If we could just cap the punitive damages there would be more insurance coverage available.

For instance the Jinair 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 when 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

A handwritten signature in dark ink, appearing to read "Orin D Seybert", written in a cursive style.

Orin D Seybert
President

CC: Hal Snow



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.

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,

A handwritten signature in dark ink, appearing to read "Orin D Seybert". The signature is fluid and cursive, written over the typed name.

Orin D Seybert
President



American Tort Reform Association

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005-3987
(202) 682-1163 • Fax (202) 682-1022

As of June 30, 1996

www.atra.org/atra

STATE STATUTES OF LIMITATION AND REPOSE

ALABAMA

PERSONAL INJURY

1 year for trespass on the case; 2 years malicious prosecution, libel, slander, fraud (from discovery); 6 years for trespass. Two years from date of injury, unless injury not discovered or reasonably discoverable; 6 months from discovery. No suit may be brought more than 4 years after date of injury. Minors under 4: by 8th birthday if statute would have otherwise expired by that time. The Alabama Supreme Court has upheld the constitutionality of this statute. Barlow v. Humana, 495 So. 2d 1048 (Ala. 1986) Tucker v. Nichols, 431 So. 2d 1263 (1983); Reese v. Ranklin Fite Memorial Hospital, 403 So. 2d 158 (1981).

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

1 year for trespass on the case.

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

1 year; 10 year statute of repose held unconstitutional (Lankford v. Sullivan, Long & Hagarty).

PROFESSIONAL LIABILITY

2 years for actions against architects and engineers, not to exceed 13 years after substantial completion of work.

ALASKA

PERSONAL INJURY

2 years; if fraud, accrues on discovery. Two years from date cause of action arises (discovery of injury); tolled by disability.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

6 years

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

6 years for actions of designs and construction professionals, not to exceed 15 years from substantial completion of work.

ARIZONA

PERSONAL INJURY

2 years; except 1 year (from discovery) for libel, slander, false imprisonment and 3 years for fraud. Two years from date of injury. Foreign object or intentional fraud: 1 year from discovery. 1984

Ariz. Rev. Stat. Ann. Sec. 12-502) Period of disability (minor or unsound mind) shall not be deemed a portion of the period limited for commencement of action. Statute begins upon removal of disability.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years

BREACH OF WARRANTY 6 years - written; 3 years - oral.

PRODUCT LIABILITY 2 years, but no more than 12 years after the product was first sold for use and consumption.

CIVIL ACTIONS 12 years statute of repose for all civil actions and 1 year statute of repose for all civil actions against the state in 1993, subject to constitutional restraints.

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

ARKANSAS

PERSONAL INJURY 3 years; 1 year for assault, battery, false imprisonment, slander. In cases by minors against OB-GYNs. Two years from the date of injury. Foreign object: 1 year from discovery. Minors: by 9th birthday (1991 amendment). Adjudicated incompetent plaintiff must bring suit within one year from date of removal of disability.

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 5 years statute of repose for design professionals

CALIFORNIA

PERSONAL INJURY 1 year - general (includes libel and slander); if medical malpractice 3 years from injury or 1 year from discovery. Three years after injury or 1 year after discovery, whichever occurs first. In no event more than 3 years after injury, unless caused by fraud, concealment, or a foreign object. Minor under 6: 3 years or before 8th birthday, whichever is longer.

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years - does not apply to actions for personal injury, Becker v. Volkswagon of America, Inc.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 10 years statute of repose in cases of latent defects.

COLORADO

ALL TORTS 2 years for all torts (regardless of theory of recovery).

BREACH OF WARRANTY 4 years
PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

CONNECTICUT

PERSONAL INJURY 3 years for any action founded on tort; 2 years from date of discovery of injury, injury to person or property (negligence/recklessness, wanton misconduct or malpractice), maximum 3 years from act or omission. Two years from discovery, but not more than three years after act.

WRONGFUL DEATH 2 years from date injury sustained or discovered, maximum 3 years from act or omission.

PROPERTY DAMAGE See PERSONAL INJURY above.

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 3 years from discovery of injury, but no more than 10 years from date of sale, lease or bailment, unless still within "useful life" or express warranty present.

PROFESSIONAL LIABILITY 7 years statute of repose for design professionals

DELAWARE

PERSONAL INJURY 2 years; if medical malpractice and not discoverable within 2 years, 3 years from injury.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years - Personal property; 3 years - Realty.

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

DISTRICT OF COLUMBIA

PERSONAL INJURY 3 years - from injury for negligence; 1 year for battery. Disability tolls statute.

WRONGFUL DEATH 1 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

FLORIDA

PERSONAL INJURY 4 years for any action founded on negligence; professional malpractice accrues on discovery (due diligence); 2 years from discovery (due

diligence) but not more than 4 years from occurrence/incident for medical malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 4 years, but must be within 12 years of date of delivery of completed product to original purchaser.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 15 years statute of repose in cases of latent defects.

GEORGIA

PERSONAL INJURY 2 years for general injury to person; 1 year for injury to reputation; 4 years for loss of consortium. Two years from injury or death, in no event longer than 5 years from act or death. Foreign object: 1 year after discovery. Minor under 5: 2 years from date of 5th birthday, in no event later than 10th birthday or 5 years from date of negligence if under 5 years at time. Agreement by parties to arbitrate tolls statute.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY Maximum 10 years, from first sale.

PROFESSIONAL LIABILITY 8 years statute of repose for design professionals

HAWAII

PERSONAL INJURY 2 years Accrues when act, damage and causal connection discovered or should have been discovered (reasonable diligence) includes medical malpractice actions by minors subject to maximum of 6 years from act/omission or by 10th birthday.

WRONGFUL DEATH 2 years from death

PROPERTY DAMAGE 2 years for personal property

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

IDAHO

PERSONAL INJURY 2 years Discovery accrual for fraud, and medical malpractice if fraudulent concealment or foreign object.

WRONGFUL DEATH 2 years from occurrence, act, or omission.

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years - Sales. 2 years - Personal injury or death.

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

ILLINOIS

PERSONAL INJURY 2 years: 1 year - slander or libel. Two years from injury. Foreign object: 1 year from discovery or 2 years from injury whichever is later. Idaho Supreme Court upheld constitutionality of this statute in Holmes v. IWASA, 657 P.2d 476 (1983).

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 5 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY Amended 1995. Action is barred in all product liability actions after 12 years from first sale or 10 years from first sale to a user or consumer.

2 years from date of known injury of 8 years if unknown; in no case more than 12 years from date product leaves possession of manufacturer, or 10 years from date of first possession by initial owner, whichever period expires earlier; 12-year limitation not applicable to negligence actions, Dintelman v. Alliance Machine Co. constitutionality of statute of repose upheld, Thorton v. Mono Manufacturing Co.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 10 years statute of repose in cases of latent defects.

INDIANA

PERSONAL INJURY 2 years for injury to person, character or personal property. 6 years for fraud. Two years from discovery for medical malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 6 years - Realty 2 year - Personalty.

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 2 years after cause of action accrues or 10 years after delivery of the product to initial user, provided that if action accrues more than 8 but less than 10 years after initial delivery, it may be brought any time within 2 years of accrual.

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

IOWA

PERSONAL INJURY 2 years for injury to person or reputation, whether contract or tort; discovery accrual for medical malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 5 years

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

KANSAS

PERSONAL INJURY

2 years from injury or discovery (reasonably ascertainable), maximum of 10 years from the act; medical malpractice - maximum of 4 years from act.

WRONGFUL DEATH

2 years from injury discovery, maximum of 10 years.

PROPERTY DAMAGE

2 years from injury discovery, maximum of 10 years.

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

KENTUCKY

PERSONAL INJURY

1 year; 5 years for fraud. Accrues on discovery if fact of injury not reasonably ascertainable. One year from discovery but not more than 5 years after act.

WRONGFUL DEATH

1 year

PROPERTY DAMAGE

2 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

3 years

PROFESSIONAL LIABILITY

5 years statute of repose for design professionals

LOUISIANA

ALL TORTS

1 year for medical malpractice, but not more than 3 yrs. from date of injury.

WRONGFUL DEATH

1 year

PROPERTY DAMAGE

1 year

BREACH OF WARRANTY

1 year - sales.

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

MAINE

PERSONAL INJURY

6 years - all civil actions, except 2 years for assault and battery, false imprisonment, slander, libel. 3 years for medical malpractice.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

6 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY 6 years
PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

MARYLAND

PERSONAL INJURY 3 years for "all civil actions", except 1 year for assault, battery, libel, slander and 5 years from injury or 3 years from discovery for medical malpractice.

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 3 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

MASSACHUSETTS

PERSONAL INJURY 3 years for torts, contract (personal injuries), replevin medical malpractice, assault, battery, libel, slander, false imprisonment.

WRONGFUL DEATH 3 years (death must occur within two years of death-causing injury).

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 3 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

MICHIGAN

PERSONAL INJURY 2 years, except 1 year for slander or libel. Medical malpractice claims subject to 6 year statute of repose from date of occurrence. For minors injured before 8th birthday, medical liability claims must be brought within 6 years of event with exceptions of some claims brought after 10th birthday and injuries to reproductive system.

WRONGFUL DEATH 3 years (death must occur within two years of death-causing injury).

PROPERTY DAMAGE 3 years

BREACH OF WARRANT 3 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

MINNESOTA

PERSONAL INJURY 2 years - medical malpractice and torts resulting in personal injury.

WRONGFUL DEATH	<u>3 years</u> from death, but no more than <u>6 years</u> after act or omission except, 2 years if medical malpractice
PROPERTY DAMAGE	<u>6 years</u>
BREACH OF WARRANTY	<u>4 years</u>
PRODUCT LIABILITY	<u>4 years</u>
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

MISSISSIPPI

PERSONAL INJURY Reduced to 3 years in 1989 except 1 year for assault, battery, maiming, false imprisonment, slander, libel and 2 years for medical malpractice

WRONGFUL DEATH	<u>6 years</u>
PROPERTY DAMAGE	<u>6 years</u>
BREACH OF WARRANTY	<u>6 years</u>
PROFESSIONAL LIABILITY	<u>6 years</u> statute of repose for design professionals.

MISSOURI

PERSONAL INJURY 5 years for injury to person or rights of another (from discovery, if fraud, subject to 10 year maximum, except 2 years for libel, slander, assault, battery, false imprisonment, etc. and 2 years for medical malpractice (from discovery if foreign object).

WRONGFUL DEATH	<u>3 years</u>
PROPERTY DAMAGE	<u>5 years</u>
BREACH OF WARRANTY	<u>4 years</u>
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

MONTANA

PERSONAL INJURY 3 years for actions on liability not founded upon an instrument; from discovery for medical malpractice except 2 years for libel, slander, assault, battery, false imprisonment or seduction and fraud or mistake.

WRONGFUL DEATH	<u>3 years</u>
PROPERTY DAMAGE	<u>2 years</u>
BREACH OF WARRANTY	<u>8 years</u> if written obligation or <u>4 years</u> if contract for sale.
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

NEBRASKA

PERSONAL INJURY 4 years for injury to rights not arising on contract (from discovery for fraud) except 1 year from discovery for professional malpractice and 1

year for libel, slander, false imprisonment, malicious prosecution and 2 years from act for other professional malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 4 years, but within 10 years of injury or first sale, or 2 years from "being informed" if asbestos-related disease.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 10 years statute of repose in cases of latent defects.

NEVADA

PERSONAL INJURY 2 years except 3 years from discovery if fraud or mistake. Four years after injury or 2 years after discovery, whichever occurs first. Statute does not run if injury concealed. Minors: statute does not run until age 10 for brain damage or birth defects; if sterility alleged, statute runs 2 years after discovery.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals in cases of patent defects, 8 years statute of repose in cases of latent defects.

NEW HAMPSHIRE

PERSONAL INJURY 3 years for all personal actions including medical malpractice (from discovery of injury and causal relationship).

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY Sales contract - 4 years

PRODUCT LIABILITY 3 years from injury, but not more than 12 years after product left control of manufacturer. 12 year statute of repose held unconstitutional, Heath v. Sears, Roebuck & Co. 464 A.2d 288 (N.H. 1983).

PROFESSIONAL LIABILITY 8 years statute of repose for design professionals

NEW JERSEY

PERSONAL INJURY 2 years for injury to person from wrongful act, neglect or default. Two years from accrual of claim (discovery).

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 6 years

BREACH OF WARRANTY	<u>4 years</u>
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professional
<u>NEW MEXICO</u>	
PERSONAL INJURY	<u>3 years</u> for injury to person or reputation.
WRONGFUL DEATH	<u>3 years</u>
PROPERTY DAMAGE	<u>4 years</u>
BREACH OF WARRANTY	<u>4 years</u> . But see, <u>Chavez v. Kirsch</u> , 374 P.2d 497 (1962) - court applied the 3-year period in a personal injury action prosecuted under warranty.
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals
<u>NEW YORK</u>	
PERSONAL INJURY	<u>3 years</u> ; <u>1 year</u> for assault, batter, false imprisonment, slander, libel; <u>2 years and 6 months</u> for medical malpractice (from discovery for foreign object).
WRONGFUL DEATH	<u>2 years</u>
PROPERTY DAMAGE	<u>3 years</u>
BREACH OF WARRANTY	Sale - <u>4 years</u> ; Other - <u>6 years</u>
<u>NORTH CAROLINA</u>	
PERSONAL INJURY	<u>3 years</u> for injury to person or rights of another; accrues when injury was or should have been apparent. Three years from date of injury but not more than 4 years after injury. Foreign object: 1 year from discovery, but not more than 10 years from last act. The North Carolina Court of Appeals upheld the constitutionality of the statute in <u>Roberts v. Durham County Hospital Corp.</u> , 289 S.E. 2d 875 (N.C. App. 1982)
WRONGFUL DEATH	<u>2 years</u>
PROPERTY DAMAGE	<u>6 years</u>
BREACH OF WARRANTY	<u>4 years</u>
PRODUCT LIABILITY	<u>6 years</u> ; from initial purchase for use or consumption
PROFESSIONAL LIABILITY	<u>6 years</u> statute of repose for design professionals
<u>NORTH DAKOTA</u>	
PERSONAL INJURY	<u>6 years</u> ; <u>2 years</u> for libel, slander, assault, false imprisonment and 2 years from discovery for medical malpractice
WRONGFUL DEATH	<u>2 years</u>
PROPERTY DAMAGE	<u>6 years</u>

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 10 years in all product liability actions

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

OHIO

PERSONAL INJURY 2 years for bodily injury; 1 year for slander, libel, malicious prosecution, false imprisonment and medical malpractice (maximum 4 years from occurrence); 4 years for fraud.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years; 4 years for recovery.

BREACH OF WARRANTY 2 years; if contractual relationship; other - 2 years.

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

OKLAHOMA

PERSONAL INJURY 2 years for injury to rights of another; 1 year for assault, battery, libel, slander malicious prosecution, false imprisonment. 2 years from discovery for medical malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years

BREACH OF WARRANTY 5 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

OREGON

"STATUTE OF ULTIMATE REPOSE" Notwithstanding other longer statutory provisions as a result of tolling or delayed commencement or running of the statute of limitations, all actions for negligent injury to person or property must be brought within 10 years from the date of the act or omission complained of constitutionality upheld, Joseph v. Burns. Action accrues when injury manifests if injury not previously discoverable by exercise of due diligence, O'Gara v. Kaufman.

PERSONAL INJURY 2 years; from discovery if fraud, deceit or medical malpractice (subject to 5 years max. unless fraud/deceit).

WRONGFUL DEATH 3 years from death-causing injury.

PROPERTY DAMAGE 6 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 2 years from date on which death, injury of damage occurs (from

discovery if asbestos related), but not later than 8 years after first purchase of product.

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

PENNSYLVANIA

PERSONAL INJURY

2 years from injury or discovery. If filed after 4 years, claim will be defended and paid by Medical Professional Liability Catastrophe Fund.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

2 years

BREACH OF WARRANTY

4 years. But, 2 years for third-party personal injury actions based upon warranty. See Salvador v. Atlantic Steel Boiler Co.

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

RHODE ISLAND

PERSONAL INJURY

10 years for all civil actions; 3 years for injuries to the person - from discovery for medical malpractice; 1 year for actions for words spoken.

WRONGFUL DEATH

3 years

PROPERTY DAMAGE

10 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

Personal injury - 3 years; Property damage - 6 years; Statute of Repose - 10 years from date of first purchase for consumption - unconstitutional, Kennedy v. Cumberland Co., Inc.

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

SOUTH CAROLINA

PERSONAL INJURY

3 years for injury to person or rights of another; 3 years from reasonable discovery if medical malpractice; 2 years for libel, slander, assault, battery, false imprisonment.

WRONGFUL DEATH

3 years

PROPERTY DAMAGE

3 years

BREACH OF WARRANTY

3 years

PROFESSIONAL LIABILITY

13 years statute of repose for design professionals

SOUTH DAKOTA

PERSONAL INJURY

3 years for personal injury; 6 years for other injury to rights of another not arising on contract and for fraud; 2 years for libel, slander, assault, battery or false imprisonment; 3 years for legal malpractice. 2 years

from injury for medical malpractice.

WRONGFUL DEATH 3 years
PROPERTY DAMAGE 6 years
BREACH OF WARRANTY 6 years
PRODUCT LIABILITY 3 years from injury, death or damage
PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

TENNESSEE

PERSONAL INJURY 1 year from discovery for medical malpractice, not more than 3 years from date of injury.

WRONGFUL DEATH 1 year

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY Governed by personal injury and property damage limitations periods but must be brought within 6 years of date of injury, 10 years from first purchase or 1 year of expiration of anticipated life of products; whichever is shorter.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals

TEXAS

PERSONAL INJURY 2 years; 1 year for malicious prosecution, slander, libel. Two years from occurrence (discovery—see note below). Minors under 12: until 14th birthday to file suit. Otherwise applies to all regardless of minority or disability. The Texas Supreme Court struck down the original interpretation of the statute of limitations as unconstitutional, essentially changing Texas to a discovery rule state, in Meagle v. Nelson, No. C-2576, slip. op. January 30, 1985; see also Sax v. Votteler, 645 S.W. 2d 661 (Tex. 1983).

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 15 years statute of repose fractions against manufacturers or sellers of manufacturing equipment.

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

UTAH

PERSONAL INJURY 4 years for actions not otherwise covered; 2 years for civil rights actions; 1 year for libel, slander, assault, battery, false imprisonment. Two years from discovery but not more than 4 years from act. Foreign

object or fraud: 1 year from discovery. Applies regardless of minority or disability. The minority provision was held unconstitutional by the Utah Supreme Court in Lee v. Dr. Lynn Craufin; Griffith v. Dr. J. Dallas Van Wagoner, nos. 20995, 21063, 90095, Utah Supreme Court, Nov. 30, 1993. This reversed an earlier decision in Ailen v. International Health Care, Inc., 635 p. 2d 30 (1981)

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY Governed by personal injury and property damage limitations periods. but must be brought within 6 years of initial purchase or 10 years of manufacture.

PROFESSIONAL LIABILITY 12 years statute of repose for design professionals

VERMONT

PERSONAL INJURY 3 year from discovery; medical malpractice - 3 years from incident or 2 years from reasonable discovery.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 3 years - Personalty. 6 years - Realty

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 12 years statute of limitations from date of discovery for actions against architects, engineers and builders but not more than 10 years after substantial completion 6 years from date of completion for breach of contract or warranty, and 8 years statute of repose for design professionals held unconstitutional in Condon v. Taggart Brothers Inc. (1989)

VIRGINIA

PERSONAL INJURY 2 years - 1 year for medical malpractice runs from date of discovery, not exceed 10 years from accrual of claim.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 5 years

BREACH OF WARRANTY 2 years

PRODUCT LIABILITY No general product liability statute of limitations. 10 year statute of repose for construction materials.

PROFESSIONAL LIABILITY 5 years statute of repose for design professionals

WASHINGTON

PERSONAL INJURY 3 years for injury to person or rights of another - fraud accrues on

discovery; 2 years for libel, slander, assault, battery, false imprisonment. Three years from injury or 1 year from discovery, but not more than 8 years after act. Fraud or concealment tolls statute. Foreign object: 1 year from discovery. The Washington Appellate Court has upheld the statute on constitutional ground. Duffy v. King Chiro. Practice Clinic, 565 P.2d 435 (Wash. App. 1977).

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

3 years - Personalty 6 years - Realty

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

6 years statute of repose for design professionals

WEST VIRGINIA

ALL TORTS

2 years within date of injury or discovery, whichever occurs last. In no event longer than 10 years after date of injury. Minors under 10: 2 years from injury or by 12th birthday, whichever provides a longer period. Statute tolled for any period during which fraud or concealment prevents discovery.

BREACH OF WARRANTY

4 years - Sales; 2 years - Personal injury

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

WISCONSIN

PERSONAL INJURY

6 years for injury to character or rights of another; 3 years from injuries to the person; 3 years from injury or 1 year from reasonably diligent discovery, subject to maximum of 5 years from act for medical malpractice; 2 years for intentional torts. Discovery rule adopted for all torts, Hansen v. A.H. Robins.

WRONGFUL DEATH

3 years

PROPERTY DAMAGE

6 years

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

10 years statute of repose for builders making improvements on real property. Actions arising between the 8th and 10th years are subject to a 3 year statute of limitation. 6 year statute of repose for actions brought against accountants, which may be extended to one year if harm discovered during the 6th year of the statute.

WYOMING

PERSONAL INJURY

4 years for injury to rights; 1 year for slander, libel, assault, battery, false imprisonment. Two years from injury but if discovered in 2nd year plaintiff gets 6 mos. extension. If discovered after 2 years, plaintiff has 2 years from discovery.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE	<u>4 years</u>
BREACH OF WARRANTY	<u>4 years</u>
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

NOTE: For more details on medical liability statutes of limitations, especially medical liability statute of limitation for minors, see ATRA's chart.

Sources:

"Analysis of State Statutes of Repose." The American Institute of Architects State & Local Government Affairs, May 1994.

Department of Health and Human Services, Agency for Health Care Policy & Research, Compendium of State Systems for Resolution of Medical Injury Claims, (1991).

"Product Liability at a Glance--1990," Law and Economics Center, University of Miami, 1990.

"Report of the Joint Subcommittee Studying Statutes of Limitations and Accrual of Actions," HD 55, Commonwealth of Virginia, 1989.

Updated with materials from the American Tort Reform Association, Washington, DC, 1994. Compiled by Anne Allen, Legislative Director, May 1994.

STATUTES OF LIMITATIONS

How Does ALASKA COMPARE?

Includes statute section number

	Fraud	Conversion	Written Contract	Recovery of Land	Malpractice	Attorney	Oral Contract	Wrongful Death	Delegation of Real Property	Account/Debt	Personal Injury	Forum/Foreign	Judgment	Malpractice	Medical	Property Damage	Forfeiture/Penalty	Libel/Slander	Tortious
Alaska	6/10 1 yr	no info	6 yr	10 yr	6 yr	6 yr	6 yr	6/2 yr †	6 yr	1 yr	6/2 yr †	10 yr	2 yr	2 yr	6 yr	3/2 yr †	12 yr	6 yr	
Arizona	3 yr	2 yr	6 yr	10 yr	2 yr	3 yr	2 yr	8 yr	3 yr	2 yr	4 yr	1 yr	2 yr	no info	no info	1 yr	2 yr		
California	3 yr	3 yr	4 yr	no info	1 yr	2 yr	1 yr	10 yr	4 yr	1 yr	10 yr	no info	3 yr	3 yr	1 yr	1 yr	3 yr		
Colorado	3 yr	3 yr	3 yr	no info	no info	3 yr	2 yr	2 yr	6 yr	2 yr	no info	2 yr	2 yr	2 yr	1 yr	6 yr	no info		
Connecticut	3 yr	3 yr	6 yr	15 yr	3 yr	3 yr	2 yr	7 yr	6 yr	3 yr	20 yr	no info	2 yr	2 yr	1 yr	2 yr	3 yr		
Florida	4 yr	no info	5 yr	no info	2 yr	4 yr	2 yr	4 yr	no info	4 yr	5/20 yr	4 yr	2 yr	4 yr	4 yr	4 yr	2 yr	4 yr	
Georgia	2 yr	4 yr	6 yr	no info	no info	4 yr	2 yr	8 yr	4 yr	2 yr	5 yr	2 yr	2 yr	4 yr	1 yr	1 yr	4 yr		
Illinois	5 yr	5 yr	10 yr	no info	2 yr	5 yr	2 yr	10 yr	no info	2 yr	20 yr	2 yr	2 yr	5 yr	no info	1 yr	no info		
Indiana	6 yr	no info	6 yr	no info	2 yr	6 yr	2 yr	10 yr	6 yr	2 yr	10 yr	2 yr	2 yr	6 yr	2 yr	2 yr	6 yr		
Massachusetts	3 yr	3 yr	6 yr	no info	3 yr	6 yr	3 yr	3 yr	no info	3 yr	6 yr	no info	3 yr	3 yr	1 yr	3 yr	3 yr		
Michigan	6 yr	no info	6 yr	no info	2 yr	6 yr	3 yr	6 yr	no info	3 yr	10 yr	2 yr	2 yr	3 yr	2 yr	1 yr	no info		
Missouri	5 yr	no info	5 yr	10 yr	5 yr	5 yr	3 yr	10 yr	5 yr	5 yr	5 yr	2 yr	2 yr	5 yr	3 yr	2 yr	5 yr		
New Jersey	6 yr	6 yr	6 yr	20 yr	6 yr	6 yr	2 yr	10 yr	6 yr	2 yr	20 yr	6 yr	2 yr	6 yr	2 yr	1 yr	6 yr		
New York	6 yr	6 yr	6 yr	10 yr	3 yr	6 yr	2 yr	no info	no info	3 yr	20 yr	1 yr	2.5 yr	3 yr	3 yr	1 yr	1 yr		
North Carolina	3 yr	3 yr	3 yr	20 yr	no info	3 yr	2 yr	6 yr	no info	3 yr	10 yr	no info	3 yr	3 yr	1 yr	1 yr	3 yr		
Ohio	4 yr	4 yr	15 yr	21 yr	1 yr	6 yr	2 yr	10 yr	no info	2 yr	no info	1 yr	1 yr	2 yr	1 yr	1 yr	4 yr		
Pennsylvania	2 yr	2 yr	4 yr	21 yr	2 yr	4 yr	2 yr	12 yr	no info	2 yr	4 yr	2 yr	2 yr	2 yr	2 yr	1 yr	2 yr		
Texas	2 yr	2 yr	4 yr	no info	2 yr	2 yr	2 yr	10 yr	4 yr	2 yr	10 yr	1 yr	2 yr	2 yr	no info	1 yr	2 yr		
Virginia	2 yr	no info	5 yr	15 yr	no info	3 yr	2 yr	5 yr	no info	2 yr	20 yr	2 yr	2 yr	5 yr	no info	no info	5 yr		
Washington	3 yr	3 yr	6 yr	10 yr	3 yr	3 yr	3 yr	6 yr	no info	3 yr	10 yr	no info	no info	3 yr	3 yr	2 yr	3 yr		
Wisconsin	6 yr	6 yr	6 yr	30 yr	6 yr	6 yr	3 yr	no info	no info	3 yr	20 yr	6 yr	3 yr	6 yr	2 yr	2 yr	6 yr		

OTHER STATES KEY:
 * Foreign
 ** Forum
 * 6 Real/2 Personal
 **** Personal

† ALASKA KEY:
 Fraud - 6 yr=09.10.1206 (state, political or public corp), 10 yr=09.10.230 (land patent)
 - 1 yr after discovery=12.10.020 (breach of fiduciary, misconduct by police)
 Wrongful Death - 6 yr=09.10.55 (construction) statute ruled unconstitutional by Sup.Ct. Op. 3290, 2 yr=09.55.580
 Debit - 09.10.055 statute ruled unconstitutional by Sup.Ct. Op. 3290
 Personal Injury - 6 yr=09.10.055 (construction) statute ruled unconstitutional by Sup.Ct. Op. 3290, 2 yr=09.10.070
 Medical Malpractice - 09.10.070 (after age of majority, 09.10.040 for minors)
 Forfeiture - 3 yr=09.10.060, 2 yr=09.10.070

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Carol R. Byayuk
P.O. Box 171
Togiak, AK 99678

RECEIVED
FEB 14 1997

HB58
file

February 5, 1997

Representative Joe Green
House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: "Tort Reform"

Dear Representative Green:

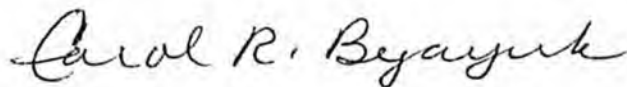
No one expects to be a victim of an accident. It is always some other family that is involved in an accident. You never are prepared for the financial or emotional problems that follow.

My 15 year-old son is a victim of an accident. He was a avid basketball player and his high-school grades were excellent. Because of his accident, he can never play basketball again and his grades are below average and failing. He can never enjoy all the sports he enjoyed so much and will always walk with a limp.

I have been informed that the insurance companies are trying to get a bill passed in the Legislature that would reduce the rights of injured people. Although I do not think any new bills would affect my son because his accident already happened, I am worried about other people who might be injured later. I never really thought about these things before, but I would not want to see other people get cheated out of what is fair because insurance companies do not want to pay. Even if it is not perfect I believe in a system that allows injured people to get fair compensation.

Tort "reform" is an assault on our civil juries by the insurance companies. Please vote against tort reform, a vote against tort reform is a vote for the people.

Sincerely,



Carol R. Byayuk



ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 240609 • ANCHORAGE, ALASKA 99524-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

18. February 1997

To
The Honorable Joseph Green
Chm. House Judiciary Committee
House of Representatives
Juneau, AK.

FAX 1-907-465-4316

Subject: SS HB 58 "TORT-reform"

Dear Representative Green:

Please be advised that AGC of Alaska supports the sponsor substitute version of this bill as it is now in your committee. Please enter this letter into the committee record.

Sincerely,

Heinrich Springer
Exec. Director

to L105 2/17/97

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

UNITED
INSURANCE

P.O. Box 33519
JUNEAU, ALASKA 99803
(907) 789-5208
FAX: (907) 789-1858

February 20, 1997

Rep. Joe Green
Legislative Office Building
Juneau, Alaska 99811

Re: HB 58: Tort Reform

Dear Rep. Green:

I understand that HB 58, Tort Reform legislation is up for consideration again this year and is scheduled to come before the House Judiciary Committee tomorrow, Feb. 21st and Monday, Feb. 24th.

The ever increasing cost of personal injury cases and the unpredictability of juries in awarding damages has had a huge impact on small business in Alaska. I see it in my business, especially when insurance companies are reluctant to quote on liability insurance where there is any product liability involved. If they do quote, the premium is high, and in many cases they refuse to quote. This makes it difficult for the small business person.

I understand this bill does not limit economic damages such as medical costs and lost wages, but it does put a reasonable cap on additional awards for damages such as pain and suffering. I think this bill will make the civil justice system more fair, efficient and less costly.

The bill may not lower the cost of insurance in all cases, but I do think it will help with the availability of insurance, especially product liability coverage.

Sincerely,

Dave Moe

a memo from
David Murrow

MURROW

M E D I A

Date: Thu, Feb 20, 1997 3:44 PM

To: Rep. Joe Green

RE: Tort Reform Bill

Dear Joe:

I'm sure you agree that the Tort Reform bill is one of the most important facing the legislature this year. From what I can tell, Rep. Porter's bill is a winner. I urge you to vote for it, as I'm sure you will.

Please give my warmest regards to Jeanne.



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

February 20, 1997

To: Representative Joe Green
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

NORTHERN PERFORMANCE**THUMPER & JULIE WILLIAMSON**

e.mail + tccard@alaska.net

S.R. Bpx 300

Mt. 44 Tok Mary

Gakona, Ak, 99345

Telephone 907-822-3545

Fax 507-822-3565

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 Takotna, 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

fc/ NFIB

Chilkat Guides, Ltd.

P.O. 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,

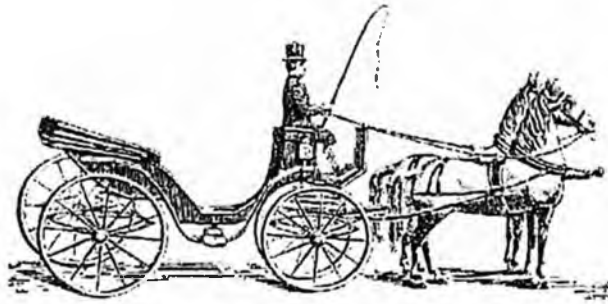
Tort reform is long over due! The present system and it's uncertainty is dragging us all under in an avalanche of insurance and legal costs. Those costs are added to everything we buy and sell, reducing everyone's ability to invest in worthwhile enterprise.

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 58 as a first step in reigning in the runaway train before it plunges over the edge.

Thank you


Bart Henderson



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. Joe Green;

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

Radio 
Fairbanks

Division of
Communications
Equipment &
Service
Inc.

Radio Fairbanks Building
1010 College Road
Fairbanks, Alaska 99701
(907) 452-1049
FAX: (907) 451-7987

Repz - Porter, Green, Bunde, Rokeberg, 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



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

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. Joe Green

2-21-97

Dear Congressman Green,

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 ccmparable with the rest of the country.

Sincerely,

Craig Ketchum
President

ACVB

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

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Channel Landfill

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

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

Facsimile transmittal to 465-4316

*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

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

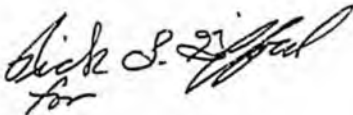
Page 2

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. Zippel".

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

Alaska State Legislature



Official Business
Fax: (907) 465-3472

State Capitol
Juneau, AK. 99801-1182
(907) 465-3720
(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

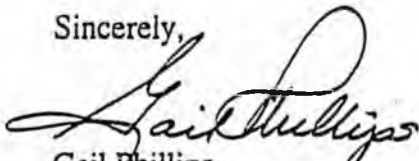
Dear Mr. Van Hemert:

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

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

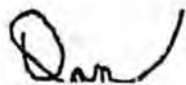
Thank you for your hard work on HB 58. We appreciate all of your efforts with helping Alaskans create a sensible tort framework.

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



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,

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

Kevin Ritchie

Executive Director

CC: AML Legislative Committee
C:Legcomm:297tortreformhb58

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

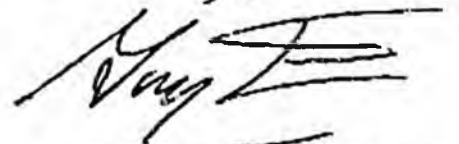
1 pages including this page.

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 - thumper@alaska.net
S.R. Box 300
Mt. 44 Tok Hwy
Galena, Ak, 99501

Telephone 907-822-3545
Fax 907-822-3565

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 Takotna, 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
fc/ NFIB

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

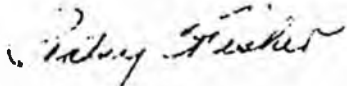
FEBRUARY 20, 1997

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 AWARDED 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

SOUTHEAST MARINE

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

February 20, 1997

Rep. Brian Porter

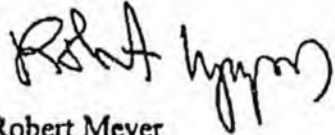
RE: HB 58 Tort Reform

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.



Robert Meyer
Owner

Cordova District Fishermen United

Celebrating 62 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

February 21, 1997

Oral testimony given to House Judiciary Committee re: HB 58 (Tort Reform)
Sent via facsimile to (907) 465-4316

Good afternoon. Mr. Chairman and committee members, my name is Cheri Shaw. I hold the position of executive director for Cordova District Fishermen United and occupy the chairmanship of the tort reform committee for United Fishermen of Alaska. I will be speaking on behalf of both organizations today.

Neither CDFU nor UFA support HB 58. The punitive damage portion of this bill we find to be the major problem in the drafting. Section 9 states punitive damages will not be awarded, "unless supported by clear and convincing evidence of malice or conscious acts showing deliberate disregard of another person by the person from whom the punitive damages are sought." To prove clear and convincing malice in court is almost an impossibility.

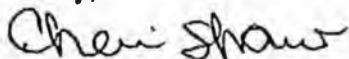
In discussing HB 58 with other UFA committee members, it was decided that if this bill were to pass as is, it would open the door for Exxon in the appellate court. Exxon's attorney's will cite the legislation as support for their argument that the punitive damages award in this case is a violation of public policy. Even without a retroactive clause, this argument can *and will* be used by their counsel.

We would like to recommend language to be included in this bill making an exception for damage to natural resources. Three to four times the amount of compensatory damages or \$300,000 to \$600,000, whichever is greater, will not be sufficient in punishing for a disaster such as the Exxon Valdez incident. This type of natural resource disaster effects so many people for a very long time and should not be held to the confines of the punitive portion of this bill. We would be happy to lend support in the drafting of such an amendment.

May I direct you to Section 10 (d) which states "If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state." If you read the sponsor statement which accompanies this bill, Representative Porter states that a consulting firm reported in 1992 that "only about 50 percent of damage awards of some \$132 billion nationwide went to the injured party. The remaining 50 percent 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." If Rep. Porter sees this as unjust, how can he draft in his bill that the State will receive 50 percent of punitive damage awards. Do attorney fees and litigation costs come from the remaining 50 percent of the victims share? This seems to me to be more unfair than the status quo.

Mr. Chairman and committee members, please take this testimony into consideration when voting on this bill. I urge you not to pass this out of committee. I will be happy to answer any questions you may have. Thank you for the opportunity to testify.

Sincerely,



Cheri Shaw, Executive Director
Cordova District Fishermen United

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



SESSION:
STATE CAPITOL, ROOM 216
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-0930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2134
PHONE: (907) 258-8197
FAX: (907) 258-5510

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE

DISTRICT 20

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.

Tilinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards of 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.

Kirsch

HOUSE MAJORITY LEADER



SESSION
STATE CAPITOL ROOM
JUNEAU, ALASKA 99801
PHONE (907) 465-4000
FAX (907) 465-4004

CLERK
700 K CHAVEA SUITE
450 HOOPER AVENUE
JUNEAU, ALASKA 99801
PHONE (907) 248-5107
FAX (907) 248-5100

MEMBER
HOUSE FINANCIAL COMMITTEE
HOUSE REVENUE COMMITTEE
HEALTH CARE & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL ON GOVERNMENT

DISTRICT 20

Sectional Summary
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 AS09.10.070(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.

Handwritten note: This doesn't add up.

Handwritten notes: 09.17.010
 09.17.010
 09.17.010
 09.17.010
 09.17.010

Handwritten note: also includes PI & death

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.

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 U.S. 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.

TAX REDUCTION

Tax

benefit to Δ
would have
paid
tax

SECURITY FOR PAYMENTS

→ em, if increase periodic pmts.

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.

INFLATION ADJUST

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.

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.

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.

ATTORNEY FEES

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.

FLOATING INT.

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).

Risk
now
8%

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. 441, 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 set offs 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 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 36. 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 37. 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 38. 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.

Section 39. 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 40. 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 41. 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 42. 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 43. Alaska Rule of Civil Procedure 16.1(k)(4). This section is repealed as a consistency change to the foregoing section 42.

Section 44. 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 45. 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 46. 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 47. **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 48. **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 49. **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 50. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 42.

09.55.548 < Section 51. **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 51. **Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 52 - Section 60. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 61. **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 62. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 63. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 64. **Effective date.** This Act takes effect July 1, 1997.

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

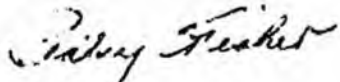
FEBRUARY 20, 1997

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 INCRASING COST OF PERSONAL INJURY CASES AND THE UNPREDICTABILITY OF JURIES IN AWARDDING 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



Alaska State Legislature

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

committee on H.B. 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.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
 committee on HB 65, dated Feb 21, 1997.
 bill/subject

Please give enthusiastic support to HB 65. Partial-birth infanticide exists for two heinous reasons. One; for money. The fetal tissue research program will pay big bucks for the organs of unborn children. This is a big money industry that Clinton has ear-marked our tax dollars for, that masquerades as a developer of wonderful cures for heretofore untreatable conditions with fetal tissues. Claims that these tissues help Parkinsons and other diseases is totally unsubstantiated. These organs are barbarously ripped out of living, feeling, viable unborn babies for profit!

The other reason is that other abortion methods sometimes result in a live birth. Partial birth procedures assure infanticide.

Signed: Rebecca Perry
 Testifier

Kenai Soldatna Right to Life
 Representing (Optional)

PO Box 3623, Soldatna, AK 99669
 Address

907-260-3887
 Phone No.

GREGORY J. GREBE**ATTORNEY AT LAW****1015 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501****(907) 277-0077
FAX (907) 277-4864**

February 21, 1997

Representative Green
House Judiciary Committee

Dear Representative Green:

Let me see if I got this right about tort reform. The insurance company will not agree to reduce premiums with the passage of tort reform legislation. However, individual plaintiffs who have been catastrophically injured and others will have their rights lessened or eliminated by the tort reform legislation.

Those least able to handle evisceration of their rights will have their claims gutted. In exchange for this individual punishment, society as a whole receives zero benefit.

That is not what I call legislative responsibility. If I am missing the picture some how, I would like to have it explained to me how society in general or Anchorage in particular can receive some measurable benefit from this legislation if the insurance companies will not agree to lower their premiums. And if the insurance companies will not agree to lower the premiums, aren't we just making sure that the insurance companies will receive regular and large profits from the citizenry?

I would appreciate your thoughts.

Very truly yours,

LAW OFFICE OF GREGORY J. GREBE

Gregory J. Grebe

Rep/GJG:sc

To: Representative Joe Green and Lisa Kirsch
From: Jim Sourant

February 20, 1997

Re: HB 58

Lisa:

Please note the following witnesses will appear on the following days in support of HB 58:

A. Friday, February 21:

1. David McGuire, MD. *Andh*

Jeff Bush

Tom Stewart

~~Frank Ertle~~

Yould

B. Monday, February 24

Ketch → 1. David Johnson, MD. *Ketch*

↑ - 2. Dick Cattnach - *Amor*

↑ - 3. Ardie Gray - *A*

4. Mike Lessmeier

5. Mike Barcott

A - 6. A.L. Tamagni Sr.

7. Marianne K. Burke

8. Robert Valliant

A - 9. John Wheatley

A - 10. Colin Maynard

A - 11. Orin Seibert

A - 12. Glen Smith

13. Kevin Richie

A - 14. Steffani Galbraith-Moore

A → 15. Frank Dillon

16. Pam La Bolle

17. Neal McKinnon

A - Steve Burrell

cc: Brian Porter

Marlene Johnson

Mike Burns

Charlie Cole

2/24 Kent Dawson

Mike Schneider

HOUSE JUDICIARY COMMITTEE MEETING 2/26/97

HB 58

REP. GREEN - "H-1 has to do with the civil liability of electrical utility companies. I would like to amend this amendment, on line 8, remove the (.) after utility and add the following words: relating to the production and delivery of electrical service.

1014

REP. PORTER - Move the amendment to the amendment

1030

REP. PORTER - there has not been a case in this state that has determined that a electrical utility is strictly liable for the incidence resulting from their delivery and production of electrical service, but there have been some in the states. It has been that finding seems to be contrary to our law. There is a case currently in the state that has not yet been decided. That this allegation is being made, this obviously would not affect that case but it is for that reason that the utilities thought it appropriate to think ahead instead of waiting for the ax to fall. The additional language relating to the production and delivery of electrical services is basically added so that we're sure that we're not exempting the utilities from other strict liability they may have in relation to some other activity that their utilities might find themselves involved in. I don't know what other strict liability they may have but obviously here we're only referring to the production & delivery of their electrical service not some leaky storage tank that for whatever other federal consideration might provide some other standard.

1122

REP. GREEN - It is actually a little bit of belt and suspenders. We do have the (b) section which would probably exclude any of those, but it's innocuous and it does make sure that we are talking about only those generating electricity.

1137

REP. BERKOWITZ - I don't.. It's been along time since I've played in the realm of strict liability. I seem to recall that if there was inherently dangerous

material that created a problem, and usually the case is dynamite that explodes somewhere then strict liability attaches.

1161

REP. PORTER- That is in many cases the truth. Having read the Hornbook recitation. That recitations thought is that in many instances they do not find strict liability in the providing of the service that is required and regulated. As opposed to handling something that is inherently dangerous because you choose too. Utility service is regulated and it is a requirement that it be provided.

GREEN - Substations would follow under the same category they're inherently dangerous

1210

REP. CROFT - That was part of my concern too, on strict liability that there are inherently dangerous activities and it's too late in the game for Rep. Porter to be doing the 'ahw shucks I'm not a lawyer but' (ha ha ha) it's obvious he's been studying Prosser at night. I guess we can limit this sort of by our discussion here today. We understand the intent to be that electricity that providing electricity is a service rather than a product under the strict product liability rules and although I think we're jumping the gun a little seeing as there's no case that's determined otherwise and ah, this wouldn't affect the case that is, ah, it doesn't cause me much problem. I'd be more comfortable with language that talked about strict products liability rather than all the other portions liability, section (b) comes some ways towards that. But, not um gonna fight about this language with the understanding, that we're putting on the record that we're really talking about products liability and that we think of electricity as a service rather than a product.

GREEN - "That's right" Any other discussion? Rep. Berkowitz

1273

REP. BERKOWITZ - One other, and you can tell by the way I'm going to say this, that it's something that happens alot in the law. Is that in the amendment that Mr. Chair, you put forward, you talked about the production and delivery of electrical services. I'm always real leery of the conjunctive "and" instead of the disjunctive "or". And I, ... no hypothetical springs to mind but I'd much prefer "or" because what you do when you have "and" is that you impose two elements of proof on somebody instead of one.

1303

REP. GREEN - I would accept that as a friendly amendment. Any other discussion? Would there... are you offering that as an amendment?

BERKOWITZ - it's a friendly amendment

REP. GREEN - Is there objection to changing the conjunction "and" to "or"? Hearing none, we have modified that. What is the wish of the committee about this amendment?

REP. BUNDE - Has the amendment been moved? I thought the amendment was moved. Amendment #1

REP. GREEN - Is there objection? Hearing none that amendment is adopted. We go to amendment #2. It is entitled Rokeberg



Alaska State Legislature

Please enter into the record my testimony to the HJUD
 committee name
 committee on HB 58, dated 2-26-97
 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,

Nale Bondurant

HCI Box 1197 Soldotna AK 99669

Address

262-0818

Phone No.



**LEGISLATIVE AFFAIRS AGENCY
INFORMATION & TELECONFERENCING**

130 Seward St., Suite 313

Juneau, AK 99801

Phone: 465-4648 Fax: 465-2864

February 26, 1997

Mr. Stephen Conn
PO Box 101093
Anchorage, Alaska 99510

Dear Mr. Conn:

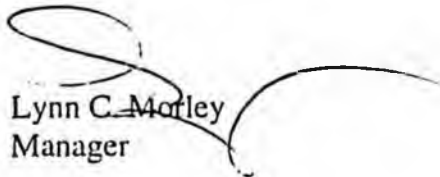
To ensure that everyone is treated respectfully and without prejudice at the Legislative Information Offices, there are certain criteria established for participating in a teleconferenced committee hearing.

First and foremost, teleconferences are extensions of the formal committee hearings and the chair of a committee determines the parameters of the meeting. We at the LIO do our utmost to enforce his or her wishes to enable those testifying to speak to the issues. Furthermore, when another person is testifying - whether you agree with what they are saying or not - you are not to disrupt them: This includes passing them notes, or interfering with their testimony in other ways.

On Friday, February 21, you participated in a House Judiciary Committee meeting via teleconference without incident. On Monday, February 24, you attended another meeting of the committee. Testimony pertaining to HB58 continued to be taken and it is my understanding that at that time not only did you interfere with a testifier, you directed inappropriate language toward other participants in the Anchorage meeting room, and finally made physical contact with Mr. Frank Dillon. Although you apologized to the LIO, I have instructed the Anchorage Legislative Information Office to ask you to leave should a situation such as this arise again.

Your cooperation in adhering to the protocols during teleconferences would be greatly appreciated.

Sincerely,


Lynn C. Motley
Manager

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 26, 1997

To: Becky Hulse, Juneau LIO Office
Fax: 465-2864

From: Lisa Kirsch, House Judiciary Committee
Fax: 465-4316

Re: HCR 11 & HB 58
Meeting Today, 2/26/97, 1pm--Backup material

TCN No.: 70316

These materials are for the LIOs for today's meeting
Thanks for your assistance.

~~18 PAGES on HCR 11~~ SENT
10 → PAGES on HB 58

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 25, 1997

To: Becky Hulse, Juneau LIO Office
Fax: 465-2864

From: Lisa Kirsch, House Judiciary Committee
Fax: 465-4316

Re: **HB 58**
Meeting Tomorrow, 2/26/97, 1pm--Backup material

TCN No.: 70316

These materials are for the LIOs for today's meeting
Thanks for your assistance.

31 PAGES TOTAL
→ 15 PAGES IN THIS GROUP



Alaska State Legislature

Written Testimony Form

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
(committee name)

committee on HB 50, dated 2/24/1997
(bill/subject)

TO: HOUSE
RECORDS
465 2267
FROM: HOUSE
JUDICIARY
465-4316

Signed: ROSS MULLINS
Testifier Name

PWS FISHERMANS PLAINTIFF'S COMMITTEE + SELF
Representing (Optional)

P.O. BOX 1249 CORDOVA, AK, 99574
Address

907-424-3664 Fax 424-3937
Phone Number



Alaska State Legislature

Please enter into the record my testimony to the HJUD
 committee name
 committee on HB 58, dated 2-24-97
 bill/subject

I am against HB 58. I am not thoroughly up to speed on the issue, but I think it is wrong that the state would make money off of an individual's litigation and / or problems. A \$300,000. cap on litigation only hurts the "little man." It would wipe me out financially, but a big company of rich individuals would not be hurt proportionately. There needs to be something in the bill that addresses damages to nature or the environment. A great example would be the Exxon litigation. And finally, I would not want this legislation to be retroactive back to litigation that is currently in progress.

Signed: Gay L. Walker
 Testifier —self—

Representing (Optional)
P.O. Box 2965 Seldovia - AK 99665
 Address

Phone No. _____



Alaska State Legislature

Written Testimony Form

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

committee on HR 58, dated 2/24/97
(bill/subject)

Signed: Chen Show
Testifier Name

CDFW + UFA
Representing (Optional)

P.O. Box 939, Cordova
Address

907-424-3447
Phone Number

02/24/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1401
08:00:46 N CONFERENCE DISPLAY PAGE 01 - ORDER SUMMARY L357
TCN 70308 T/C DATE: 02/24/97 TIME: 13:00 to 15:00 STATUS: 3 ANNOUNCED

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC-HEARING LEGISLATIVE
1ST ITEM: HB 58 CIVIL ACTIONS & ATTY PROVIDED BY INS CO. 1 ITEMS ON AGENDA
CONTACT: LISA KIRSCH TEL: (907)465-4990 MODERATOR: ZZZ
LOCATION STAFF
CHAIRING SITE: JUNEAU CAPITOL ROOM: CAP120 PRINTER: L900
PARTICIPATING LIOS: 4 VOLUNTEER SITES: 0 OFFNETS: 0

SPONSOR REMARKS(PUBLIC): TESTIMONY ALLOWED: Y 3 MINUTE LIMIT:
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.
SEE COMMITTEE SCHEDULE IN BASIS
BACKUP MATERIAL: N

UPDATE NO: 2 ENTERED BY: LHSCJUD LAST UPDATED BY: LIOCBLK
REQUESTED ON: 02/18/97 ON: 02/18/97 ON: 02/21/97

MSG:
ENTER Pg# 02 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF6 Print PF12 Quit

*Anon
Junoau
Kenai
Ketelikan*

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 24, 1997

To: Becky Hulse, Juneau LIO Office
Fax no. 465-2864

From: Lisa Kirsch, House Judiciary Committee
Fax no. 465-4316

Re: HB 58
Meeting Today 1pm--Backup material

These materials are for the LIOs for today's meeting

Thanks for your assistance.

PLEASE DELIVER

TO: Joe Green, Alaska State Legislature - House Judiciary Com.
Fax number: 1907-465-4316
From: Wasilla Realty - Wasilla, Alaska
Total number of pages: 2



Saturday, February 22, 1997

Tort reform is extremely important to Alaska. I hope you consider my attached comments.



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Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 21, 1997
To: Legislative Legal
From: Lisa Kirsch, House Judiciary Committee
Re: Amendment to HB 58

Representative Green has asked that you put the following proposed amendment in proper form.

AS 09.65.____ Civil liability of electric utilities

(a) A public utility providing electric service to consumers pursuant to a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission may not be held strictly liable for any property damage, death or personal injury suffered by any person as a result of the acts or omissions of the public utility.

(b) Nothing in this section shall be read to preclude the recovery of damages for the intentional, reckless or negligent acts or omissions of the electric utility.

We need this amendment by Monday afternoon. Thanks very much. Any problems or questions, call me at 4990.

to the pub
Samuel
92.05.22

MEMORANDUM

HB 58 file

Date: February 20, 1997
To: Joe Green
From: Lisa Kirsch
Re: **HB 58**
Proposed amend from Larry Markley for
Alaska Rural Electric Cooperative

Larry says he gave you a copy of the attached amendment proposal and you were considering sponsoring it. Is this true? Do you want me send it down to legislative. legal and request a draft?

He talked to me about this, but he suggested it was a definition change, not an immunity clause like the attached. the idea he gave me was that it the amend changed the definition of "electricity" from "a product" (which invokes strict liability) to "a service" (which invokes negligence--a higher hurdle for plaintiff).

The first obvious problem I see is the use of the phrase, "**shall not** be strictly liable... ." As you recall, that "shall not" violates the drafting rules. The next problem I see is that we may be giving the utility more protection than it needs to operate effectively. This amendment appears to be a grant assuring that the utility would **never** be strictly liable. Say the utility's power plant malfunctions somehow and people are injured. What if the injured people can show that the plant must be the source of the problem and that a well maintained plant wouldn't have this problem, but no one can pinpoint the exact cause because the system is so complex?

Electricity is inherently dangerous energy; the existing law may have been designed to hold a power utility to higher standard to assure that they will be motivated to take adequate precautions to protect the public. There may be circumstances where it would be good public policy to hold the utility strictly liable for injuries, even if the injured party cannot prove negligence and causation.

Perhaps the motivation of this amend comes from the clause "certificate of public convenience." Perhaps this certificate already provides for some accountability on the part of the utility that would be adequate to protect the public.

Let me know if you want me to dig deeper or send this to legislative legal for a draft.

1/27
BP - fax to
Harry Markley -
Thanks -
H

AMENDMENT TO TORT REFORM BILL
Proposed by Alaska Rural Electric Cooperative Association (ARECA)

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

AS 09.65 is amended by adding a new section to read:

AS 09.65.*** Civil liability of electric utilities.

(a) A public utility providing electric service to consumers pursuant to a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission shall not be strictly liable for any property damage, death, or personal injury suffered by any person as a result of the acts or omissions of the public utility.

(b) Nothing in this section shall be read to preclude the recovery of damages for the intentional, reckless or negligent acts or omissions of the electric utility.

Joe - Would you please include this language in the Tort Reform bill - makes a lot of sense - requested by the Utilities. Thanks -
(Markley) Gail

Gail was - talked to
in patches and it
been returned
Gail

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 21, 1997

To: Becky Hulse, Juneau LIO Office
Fax: 465-2864

From: Lisa Kirsch, House Judiciary Committee
Fax: 465-4316

Re: **HB 58**
Meeting Today, 2/21/97, 1pm--Backup material

TCN No.: ~~70281~~ 70282

These materials are for the LIOs for today's meeting
Thanks for your assistance.

02/14/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1401
10:24:13 N CONFERENCE DISPLAY PAGE 01 - ORDER SUMMARY L357
TCN 70282 T/C DATE: 02/21/97 TIME: 13:00 to 15:00 STATUS: 1 REQUESTED

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC-HEARING LEGISLATIVE
1ST ITEM: HB 58 CIVIL LIABILITY 1 ITEMS ON AGENDA
CONTACT: LISA KIRSCH TEL: (907)465-4990 MODERATOR: ZZZ
LOCATION STAFF

CHAIRING SITE: JUNEAU CAPITOL ROOM: CAP120 PRINTER: L900
PARTICIPATING LIOS: 3 VOLUNTEER SITES: 0 OFFNETS: 0

SPONSOR REMARKS(PUBLIC): TESTIMONY ALLOWED: Y 2 MINUTE LIMIT:
SEE COMMITTEE SCHEDULE IN BASIS
SEE COMMITTEE SCHEDULE IN BASIS
BACKUP MATERIAL: Y

UPDATE NO: 0 ENTERED BY: LHSCJUD LAST UPDATED BY: LHSCJUD
REQUESTED ON: 02/14/97 ON: 02/14/97 ON: 02/14/97

MSG:
ENTER Pg# 02 PF2 NexCC# ynnnn PF3 Exit PF4 Menu PF6 Print PF12 Quit

HB 58
FRIDAY

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 20, 1997
To: Juneau LIO Office
Fax: 465-2864
From: Lisa Kirsch, House Judiciary Committee
TCN: 70282
Re:

Here are some additional backup materials for tomorrow's meeting.
Thanks for your assistance.

*THIS IS 2 SIDED
YOU WILL GET ODD PAGES
— THEN THE EVEN ONES*

02/14/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1401
10:21:35 N CONFERENCE DISPLAY PAGE 01 - ORDER SUMMARY L357
TCN 70281 T/C DATE: 02/19/97 TIME: 13:00 to 15:00 STATUS: 3 ANNOUNCED

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC-HEARING LEGISLATIVE
1ST ITEM: HB 58 CIVIL LIABILITY 4 ITEMS ON AGENDA
CONTACT: LISA KIRSCH TEL: (907)465-4990 MODERATOR: ZZZ
LOCATION STAFF

CHAIRING SITE: JUNEAU CAPITOL ROOM: CAP120 PRINTER: L900
PARTICIPATING LIOS: 3 VOLUNTEER SITES: 0 OFFNETS: 0

SPONSOR REMARKS(PUBLIC): TESTIMONY ALLOWED: N 0 MINUTE LIMIT:
THIS IS LISTEN ONLY.
SEE COMMITTEE SCHEDULE IN BASIS
BACKUP MATERIAL: N

UPDATE NO: 1 ENTERED BY: LHSCJUD LAST UPDATED BY: LIOCLBK
REQUESTED ON: 02/14/97 ON: 02/14/97 ON: 02/14/97

MSG:
ENTER Pg# 02 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF6 Print PF12 Quit

HB 58

02/19/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1401
08:45:25 N CONFERENCE DISPLAY PAGE 01 - ORDER SUMMARY L357
TCN 70281 T/C DATE: 02/19/97 TIME: 13:00 to 15:00 STATUS: 3 ANNOUNCED

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC-HEARING LEGISLATIVE
1ST ITEM: HB 58 CIVIL ACTIONS& ATTY PROVIDED BY INS CO. 4 ITEMS ON AGENDA
CONTACT: LISA KIRSCH TEL: (907)465-4990 MODERATOR: ZZZ
LOCATION STAFF
CHAIRING SITE: JUNEAU CAPITOL ROOM: CAP120 PRINTER: L900
PARTICIPATING LIOs: 6 VOLUNTEER SITES: 0 OFFNETS: 1

SPONSOR REMARKS(PUBLIC): TESTIMONY ALLOWED: N 0 MINUTE LIMIT:
THIS IS LISTEN ONLY.
SEE COMMITTEE SCHEDULE IN BASIS
BACKUP MATERIAL: Y

UPDATE NO: 5 ENTERED BY: LHSCJUD LAST UPDATED BY: LIOCBLK
REQUESTED ON: 02/14/97 ON: 02/14/97 ON: 02/18/97

MSG:
ENTER Pg# 02 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF6 Print PF12 Quit

02/19/97 LEGISLATIVE TELECONFERENCE NETWORK LTN1403
08:46:04 N CONFERENCE DISPLAY PAGE 03 - PARTICIPATING LIOs L357
TCN 70281 T/C DATE: 02/19/97 TIME: 13:00 to 15:00 STATUS: 3 ANNOUNCED

* LIO	NAME	ROOM ADDRESS	ROOM#	MODERATOR
ANC	ANCHORAGE	716 W 4TH, #200	ZZZ	ZZZ LOCATION STAFF
BAR	BARROW	COURTHOUSE #305	ZZZ	ZZZ LOCATION STAFF
COR	CORDOVA	705 2ND STREET	ZZZ	ZZZ LOCATION STAFF
FBX	FAIRBANKS	119 N CUSHMAN ST	ZZZ	ZZZ LOCATION STAFF
* JNU	JUNEAU	CAPITOL	CAP120	ZZZ LOCATION STAFF
KEN	KENAI LIO	145 MAIN ST LOOP	ZZZ	ZZZ LOCATION STAFF

MSG: 1410 NO FURTHER INFORMATION
ENTER Pg# 04 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF5 Update PF7 Bwd PF8 Fwd

02/19/97

LEGISLATIVE TELECONFERENCE NETWORK

LTN1402

08:45:49 N

CONFERENCE DISPLAY PAGE 02 - AGENDA

L357

TCN 70281

T/C DATE: 02/19/97 TIME: 13:00 to 15:00

STATUS: 3 ANNOUNCED

REF#	BILL	BILL TITLE/SUBJECT
01	HB 58	CIVIL ACTIONS& ATTY PROVIDED BY INS CO.
02	HB 3	DISCLOSURES RE FELONY ARRESTS OF MINORS
03	HB 6	RELEASE OF INFORMATION ABOUT MINORS
04	HCR 4	SEPARATE RECORDS FOR DELINQUENTS & CINA

MSG:

ENTER Pg# 03 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF5 Update

PF12 Quit

Lisa -

I didn't want to break in
on Daved's briefing -

We'd like to have (for ^{HB 58}
hearings) ~~Jeff Bush~~

Jeff Bush

+ Judge Tom Stewart -
Chair of Task Force

testify on Friday.

Please schedule Markere Johnson
for Monday. She was TF Vice Chair

I may have Mike Burns +/or
Charlie Cole to work in too -
or maybe they've called directly

to you - Thanks -

Crystal Smith

x 2132

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

BBFM
Engineers Inc.

510 L Street, Suite 200
P.O. Box 91139
Anchorage, AK 99509-1139
(907) 274-2236
(907) 274-2520 FAX

Facsimile Cover Sheet

To: REP. JOE GREEN Fax No.: _____

Company: ALASKA HOME OF REP. Project No.: HBSB

From: COLIN MAYNARD Project Name: TORT REFORM

Pages including Cover Page: 2 Date/Time: _____

Comments: _____

CC: SHARON MACKLIN, DWAYNE ADAMS

Dennis L. Berry, PE

Forrest Braun, PE

Troy J. Feller, PE

Colin Maynard, PE



UNIT COMPANY, 8101 OLD SEWARD HWY, ANCHORAGE, AK 99518

FAX

Date: February 24, 1997

Number of Pages: _____

Project: _____

To: Jim Sourant

Company: _____

Phone: _____

Fax: _____

From: _____

Company: UNIT COMPANY

Phone: (907) 349-6666

Fax: (907) 522-3484

Remarks:

Attached is the information that was requested from my testimony. On the surface, the information may be a little difficult to understand, but I believe that I can easily explain the meaning.

In any event, I believe that the information shows that 8 years provides plenty of protection for most claims.

Dick

COPY FAXED TO: _____

FILE: _____



Alaska State Legislature

Please enter into the record my testimony to the All House Members
committee name .

committee on HB 65 / Partial Birth Abortion dated 3/3/97
bill/subject

It occurs to me that the trend is going
toward if the umbilical cord is attached abortion
is still an option.

Do Not Allow Partial Birth, or any other
type of Abortions.

Signed: M. W. S. Quinn M. W. Laburne.
Testifier

Representing (Optional)

Box 6369 Sitka AK 99835

Address

907 747-4850

Phone No.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



DISTRICT 20

SESSION:
STATE CAPITOL ROOM 216
JUNEAU, ALASKA 99501-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 300
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

To: All majority Representatives and Senators

Fm: Brian Porter *Brian*

Subj: HB 58 tort reform

April 9, 1997

No doubt each of you have received a copy of Representative Berkowitz's April 8 memorandum about the standards for punitive damages.

Suffice it to say, his interpretation of the standards for the imposition of punitive damages in *Cummings v. Sea Lion Corporation* makes a distinction without a difference. In any event, to the extent there is a difference, an amendment was already in the works which will satisfy his concerns.

This is a non-issue. Let us move forward.

LAW OFFICES OF,
COWAN GERRY & AARONSONRobert Merle Cowan
Daniel L. Aaronson909 Cook Avenue • Kenai, AK 99611
110 Laurel St. • San Diego, CA 92101-1486Telephone 907-283-7187
Facsimile 907-283-4753Richard F. Gerry*
of Counsel
*not admitted in Alaska

April 9, 1997

MEMORANDUM*Corrected copy
3rd paragraph
2nd sentence*

TO: Representative Brian Porter
FROM: Robert M. Cowan, Exxon Plaintiffs Committee
SUBJECT: H.B. 58, Tort Reform and Rep. Porter's memo of April 4, 1997 on said subject.

Dear Representative Porter:

I received a copy of your April 4, 1997 memorandum to all majority Representatives and Senator's regarding H.B. 58 and have been asked to respond to some of the legal contentions contained therein. First, we would like to state that we do not adopt the governors advisory Task Force Bill either. The Exxon plaintiffs feel that it is unneeded and unnecessary legislation. Secondly we would note that we do not believe this task force was dominated by trial lawyers, in as much as no Exxon attorneys were even invited to participate. Nor were any fisherman or other of our clients invited to participate and Bill Allen, Judith Brady & Mike Burus were members of the task force. We also disagree with its recommendations as going too far and doing too much.

You also state in your memorandum that H.B. 58 would not apply to an Exxon Valdez situation, because Federal Maritime law preempts Alaska law. Someone has provided you with absolutely incorrect legal advise regarding this issue. The Alaska Supreme court on March 7, 1997 of this year handed down a decision in Hughes v. Foster Wheeler Company, (Supreme Court Number S-6928) [No. 4790 - March 7, 1997], which clearly stated that Alaska state law would be applied in a Federal Maritime law context, such as the Exxon Valdez, so long as there was no direct federal maritime or admiralty law with which it conflicted. In this case, there is none, that H.B. 58 directly conflicts with. Therefore, H.B. 58 could in fact be applied in a future Exxon Valdez situation unless it is re-written.

Your memorandum also indicates that under the terms of H.B. 58 that damages in an Exxon Valdez situation would be not affected. Once again we believe that you have been given incorrect legal advice regarding this issue. H.B. 58 would not allow for the inclusion of any settlements, such as those the State of Alaska entered into. Take away the 50% that would go to the State of Alaska, the leftover balance under H.B. 58 for the Exxon Valdez case would be significantly less than you project!

The next thing we would like to take issue with is what we have called the "Hazelwood Exception" in H.B. 58. This is section 09.17.020, which requires malice or conscious acts showing deliberate disregard of another person by the person from whom the punitive damages are sought". We again believe that you have been given incorrect legal advice regarding what the Alaska Supreme Court's holding was in the case of, Cummings v. Sea Lion Corporation, 924 P.2d 1011 (Alaska 1996). That case clearly stands for the proposition that malice and reckless indifference are two separate concepts and are treated as such by the Alaska Supreme Court. If it is your contention that H.B. 58 stands for that proposition, then there should be no objection to amending that Bill to clearly state that malice includes reckless indifference to the rights of others.

The Exxon Valdez plaintiffs respectfully request you seek additional and supplementary legal advice relating to the issues we have raised in our memorandum. H.B. 58 is presently structured to be potentially disastrous to not only the pending appeals in the Exxon Valdez litigation, but to any future similar disaster that may occur. By the way, there are over 400 attorneys involved in the Exxon case and over 60 law firms.

Thank you for your consideration.

Sincerely,



Robert Merle Cowan
Exxon Valdez Plaintiffs

cc: All Representatives
All Senators
Governor's Office

Alaska State Legislature

House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-888-465-4919 (toll free)
1-907-465-2137 (fax)



Interim address:
716 West 4th Avenue
Anchorage, Alaska 99501-2133
1-907-258-8195

Representative Ethan Berkowitz
District 13

*Lisa
F.I.
Very logical
Presentation*

Date: April 8, 1997
To: Majority Legislators
From: Ethan Berkowitz
Re: Standards for Punitive Damages

You recently received a circular from the House Majority Leader urging support of his "Tort Reform", HB 58. While I take issue with many sections of the bill, the section of the circular describing punitive damages merits a response, because the opinions stated appear to result from a misinterpretation of case law.

Section 10 of HB 58 describes that punitive damages may not be awarded unless supported by "clear and convincing evidence of malice or conscious acts showing deliberate disregard of another person's rights by the person from whom the punitive damages are sought." I and other opponents argue that HB 58 precludes punitive damages when the cause of action stems from a reckless act. The importance of this distinction is that "malice" requires a higher state of mind -- intent -- than is required to prove recklessness: "[R]ecklessness clearly does not require malice. . . . Reckless misconduct differs from intentional wrongdoing in a very important particular. While an act to be reckless must be intended by the actor, the actor does not intend to cause the harm which results from it. Restatement (Second) of Torts, Section 500, comment f (1964)." *Clary Ins. Agency v. Doyle*, 610 P.2d 194 (Alaska 1980).

In his circular, the Majority Leader wrote:

The assertion that HB 58 will not permit punitive damages where reckless conduct causes an environmental disaster is [wrong]. HB 58 requires a showing of "malice" for punitive damages. The Alaska Supreme Court interprets "malice" to include "reckless indifference to the rights of other [sic]." If that is not reckless conduct, what is? *Cummings v. Sea Lion Corporation*, 924 P.2d 1011 (Ak. 1996).

Closer scrutiny of the case shows that "malice" and "reckless conduct" are two entirely separate legal creatures. In *Cummings*, the Alaska Supreme Court described the

prerequisites for recovery of punitive damages, quoting from *Barber v. National Bank*, 815 P.2d 857, 864 (Alaska 1991) (citations omitted):

[T]he plaintiff must prove that the wrongdoer's conduct was outrageous, such as acts done with malice or bad motives or reckless indifference to the interests of another. Actual malice need not be proved. Rather, reckless indifference to the rights of others, and conscious action in deliberate disregard of them . . . may provide the necessary state of mind to justify punitive damages. Punitive damages require proof by clear and convincing evidence.

Analyzing the construction of the sentence reveals that "malice" is distinguished from "bad motives", which, in turn, is distinguished from "reckless indifference". In no way is "malice" equated with "reckless indifference." Consequently, HB 58's requirements for punitive damages do not permit recovery based on a reckless act. This means that drunk drivers, among others, do not have to pay punitive damages when they cause accidents. If the federal court had used the standard proposed in HB 58, Exxon and Joe Hazelwood would not be on the hook. Finally, it would be reckless, not malicious, to endorse HB 58.