

SCOMM

101A:18

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"Alaska Life and Disability Insurance Guaranty Association" in subsection (a) and in two places in subsection (b).

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Sec. 21.36.045. Notice of limited motor vehicle insurance. (a) An insurance policy that provides coverage only against property damage to a motor vehicle and that does not provide liability coverage required under AS 28.22.101(d) must contain the following statement printed in bold face type: "This policy provides insurance only against damage to the motor vehicle. This policy does not insure against bodily injury, death, or property damage liability and does not satisfy the mandatory motor vehicle liability insurance requirements of AS 28.22.011."

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(b) A person may not make a false entry in a book, report, or statement of a person in the insurance business, knowing it to be a false entry, or knowingly omit to make a true entry of a material fact pertaining to the business of a person in the insurance business in a book, report, or statement. (§ 1 ch 120 SLA 1966; am § 3 ch 163 SLA 1976)

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 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

TO: All majority Representatives and Senators

FM: Brian Porter

Subj: HB 58 tort reform

April 5, 1997

HERE THEY GO AGAIN!

The attached advertisement is the most recent piece of disinformation, to put it politely, that the tort lawyers are publishing statewide. Their goal is to inundate you with POMs in a well-financed and continuing effort to derail true tort reform.

What is wrong with the advertisement? Plenty! What the tort lawyers fail to tell you is that insurance rates are established in large part by the claims experience a company has in Alaska, and the number of insurance companies which are in competition in this state.

Take for example United Services Auto Association, the nation's fifth largest auto insurer, which writes about 12,000 automobile insurance policies in this state. On March 6 of this year, USAA mailed dividend checks totaling \$290 million to more than 2.6 million policyholders, including the 12,000 insureds in Alaska. See attached underwriter's report. USAA's claims experience **IN THIS STATE** has a significant bearing on the amount of premiums being refunded to its Alaskan insureds. With tort reform, even greater benefits will flow to its Alaskan policy holders. According to USAA's Senior Legislative Counsel:

"Among the proposed statutory changes in House Bill 58 that will have a significant impact on USAA's loss experience in Alaska, and in turn, a substantial effect on insurance premiums, are those which impose reasonable limits on punitive and non-economic damages, and those which reform the collateral benefits rules in order to prevent double recovery."

Similarly, State Farm Mutual Automobile Insurance Company, which has over 200,000 insurance policies in effect in Alaska, also has gone on record as saying that their insurance rates in Alaska are determined primarily by its loss experience. State Farm has represented in writing to this legislature that:

"The premiums it charges its Alaska policy holders are determined primarily by its loss experience in Alaska."

What else have the tort lawyers fail to disclose? That the Alaska State Division of Insurance has informed the legislature that the claims experience in this state has been so bad that there are absolutely no domestic insurers that will cover high risk areas in this state such as the marine highways. All American insurers have withdrawn from offering coverage in these areas, with the result that either no coverage is available at all, or that premiums of foreign insurers are prohibitively high because of lack of competition.

The well-orchestrated and sophisticated disinformation campaign has probably only just begun. In a court of law, lawyers are under a legal duty not to countenance falsehoods. The misrepresentations we are encountering are appalling.

**USAA RETURNING \$290 MILLION
DIVIDENDS ON AUTO POLICIES**

USAA, the nation's fifth-largest auto insurer, has mailed dividend checks worth \$290 million to more than 2.6 million policyholders.

"USAA is able to declare this policyholder dividend because of very good financial results over this past year," said Robert Herres, USAA's chairman and CEO. "Those results were driven by lower-than-predicted auto claims expenses and reduced growth in medical costs, combined with continued internal cost-savings during the past year."

The dividend was based on auto insurance premiums for a one-year period from May 1, 1995 to April 30, 1996.

"These dividends represent management's commitment to return any premiums that exceed what is necessary for the operating needs of the association," Herres said.

He said the dividend was in addition to the regular 10 percent dividend USAA pays to accident-free drivers in most states.



Some People Love Tort Reform

The Tort Reform legislation, House Bill 58, guarantees that insurance companies will earn even more money in Alaska. It allows the biggest, most profitable corporations in the world to pay less money to accident victims in our state. However, businesses will not see corresponding reductions in their premiums. Insurance companies don't think the public will notice.

The multi-national insurance industry has spent over ten years and millions of dollars trying to pass special

legislation to take away the rights of juries to decide what is fair and just in civil court cases. The term "Tort Reform" was coined by a Madison Avenue ad agency as a way to convince the public that what they are attempting would improve the court system. It doesn't.

Stop the insurance industry's grab for cash. Phone your legislators now and tell them to vote down Tort Reform. If you don't call today, this is where your money could end up tomorrow.

To send a Public Opinion Message to your legislators, call 1-907-258-8111.
Send the Governor a message (up to 25 words) by phoning 1-907-269-7450.

CITIZENS FOR CIVIL JUSTICE, A COMMITTEE OF THE ALASKA ACTION TRUST • P.O. BOX 102323, ANCHORAGE, ALASKA 99510

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DIVIDENDS ON AUTO POLICIES**

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He said the dividend was in addition to the regular 10 percent dividend USAA pays to accident-free drivers in most states.

IT'S BAAACK.

A jury of Alaskans dealt out \$5 billion in penalties to the owners of the Exxon Valdez for the devastation caused by the '89 oil spill. After weighing evidence from both sides, the jury believed these stiff penalties to be just. Now the Exxon Valdez is ready to sail into Prince William Sound again, under a new name, and our state legislature is getting ready to launch Tort Reform again, under the same old name.

So-called Tort "Reform" turns the tide against the jury process when determining punitive damages. It could cap penalties at insignificant amounts if another big spill occurred. It could even lead to a reversal of the \$5 billion Exxon still owes and is currently appealing.

If you believe control over cases like this belongs with a jury of Alaskans rather than with big corporations and their insurance companies, call your legislator now. Because you don't get to vote on Tort Reform. Only the politicians do. And that vote may sail through Juneau very quickly.



CITIZENS FOR CIVIL JUSTICE, A COMMITTEE OF THE ALASKA ACTION TRUST - P.O. Box 102323, ANCHORAGE, ALASKA 99510

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

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.

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Daily News 4/17

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CRITICS 'APPALLED' BY GROUP'S TORT-REFORM AD

By NATALIE PHILLIPS
Daily News reporter

A group of trial lawyers fighting efforts in the Legislature to change state laws governing civil injury lawsuits has come under fire for a newspaper advertisement critics are calling misleading.

"We're appalled, incensed and sickened" by the ad, said Pamela LaBolle, president of the Alaska State Chamber of Commerce, an avid supporter of tort reform. "We just thought it was pretty dirty pool."

The advertisement features a young girl named "Sara" who is pictured in a wheelchair and said to have been injured when a school roof collapsed on her and her school friends. The advertisement, paid for by the Alaska Action Trust, states that under the tort-reform bill being considered in Juneau, "Sara" would "never get her day in court" because the building was more than 8 years old.

"Sara" is actually a local girl named Emily who is not dependent on a wheelchair.

The Alaska Action Trust admits that the advertisement portrayed a hypothetical girl, but contends the point the ad makes is accurate. The ad has run several times in the Anchorage Daily News over the past couple of weeks as the debate over House Bill 58 has intensified.

"It was a mistake and we plead guilty," said Michael Schneider, president of the lawyers group.

"But that has nothing to do with the message. And the message is absolutely accurate in terms of the effect this bill will have on future claims," he added.

When the ad first appeared, HB 58 included a statute of repose of eight years. That means that a suit could be filed if the building were built no longer than eight years ago. The bill was amended by the Senate Rules Committee on Tuesday to extend the time period to 10 years.

In its current version, the bill also limits awards for noneconomic damages such as pain and suffering to \$500,000 but allows a higher limit of \$1.5 million in civil suits involving severe injuries. Economic damages such as lost wages or medical expenses would remain unlimited.

The full Senate is expected to vote on the bill today. Gov. Tony Knowles opposes the measure.

"Given the magnitude of that public policy issue, I think to a focus on whether Sara is really Emily and really is in a wheelchair misses the boat," Schneider said.

Post-it* Fax Note		7671	Date	# of pages
To	Mike Lessmeier		From	Schneider
Co./Dept.			Co.	
Phone #	4633020		Phone #	
Fax #			Fax #	465-3834

The Associated Press contributed to this report.

*

Anchorage Daily News

4/16/97

Poster child

Anti-tort reform ad misleads Alaskans

In recent weeks, lawyers fighting state tort reform proposals have trotted out a poster child named Sara. A newspaper ad features this forlorn young girl sitting in a wheelchair, staring sadly at readers.

"Sara and many of her friends were severely injured when the roof collapsed over their school cafeteria," reads the text. "It collapsed because a greedy contractor cut corners when the school was built."

The ad goes on to assail "the Tort Reform bill, HB 58," because it "denies Sara, other injured children and their parents the right to sue the contractor."

As your blood begins to boil because of this rank injustice, you stop for a second. Hmm ... I don't remember hearing about such a horrible accident; did I miss something?

Actually, no.

In their rush to inflame passions against tort reform, a group called Citizens For Civil Justice has taken considerable liberties with reality. Sara has no more substance than the spaceship the Heavens Gate cult thought was trailing the Hale-Bopp comet.

Let's check in with the mastermind of the ad, prominent Alaska trial attorney Ames Luce.

"It's hypothetical, not an actual situation," Mr. Luce said. "We were trying to dramatize an event that would occur if in fact your child or mine or the hypothetical Sara were injured. ... If the impression is that Sara is an actual person, we didn't mean to imply that."

Gee, could have fooled us.

The girl is shown in a wheelchair and identified by name. The text says she and friends "were injured." The text says that thanks to tort reform, Sara "will never get her day in court."

Granted, Mr. Luce quickly agreed the ad "probably was poorly worded. ... We probably will change it if we run it again." But this dose of slippery ad rhetoric calls his group's whole case against tort reform into question.

Measured tort reform can bring more certainty to the legal process without unduly harming the rights of victims. On the other hand, it's possible for reformers to overreach, pushing overhyped, ill-considered ideas that will do little to reduce insurance rates.

The challenge for Alaskans and their elected officials is to find the right balance. Attacking tort reform with tear-jerk ads about made-up accidents has no place in this important debate.

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TO: All majority Representatives and Senators

April 4, 1997

FM: Brian Porter

Subj: HB 58 tort reform

DON'T BE FOOLED AND DON'T BE MANIPULATED!

The opponents of tort reform have just started a well-orchestrated and sophisticated disinformation campaign with the goal of inundating you with hostile POMs in a last ditch hope of derailing true tort reform. Besides the advertisements in the newspapers, the trial lawyers are manipulating the fishermen/ beneficiaries of the Exxon Valdez litigation into acting as their tool for subverting the voters' desire for tort reform. The attached letters demonstrate the sophistication and depth of this campaign.

The truth of the matter, as to the points raised in the attached letters, is:

* HB 58 is not a radical piece of legislation favoring big business and insurance companies. It benefits small and medium sized businesses by freeing them from the harassment of frivolous litigation and the threat of unlimited punitive damage awards. It does not deprive Alaskans of their right to jury trials,; if anything it will lessen the cost and increase their access to fair compensation.

* The tort reform in the Governor's Advisory Task Force bill and SB 15 is tort reform in name only. It was written by the trial lawyers, who dominated the task force. The task force was skillfully composed to completely exclude those most effected by tort reform: the doctors, the insurance industry, the air carriers, the truckers, and thousands of small businesses in Alaska. The punitive damages provisions of the task force are more onerous to businesses of any size in Alaska. The task force was a stacked deck, and its recommendations should be viewed accordingly.

*HB 58 creates a big incentive for businesses of any size to prevent future environmental disasters. Such disasters by definition come with a huge clean up price tag. If the Exxon Valdez situation were governed by HB 58 [which it would not, since federal maritime law preempts Alaska law], the

amount of punitive damages could have been as high as \$4.8 billion, not far from the \$5 billion actually awarded.

* The assertion that HB 58 will not permit punitive damages where reckless conduct causes an environmental disaster is an outright inflammatory lie, the egregiousness of which undermines everything the opponents are contending. 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". If that is not reckless conduct, what is? *Cummings v. Sea Lion Corporation*, 924 P.2d 1011 (Ak. 1996).

*Contrary of what the trial lawyers imply, the attorney fees attributable to the one-half of punitive damages going to the state are NOT paid by the injured person. No one pays any attorney fees for that one-half. The trial lawyers are upset that they cannot share more fully in any punitive windfalls. Although not in any way affected by HB 58, the 60 attorneys who are splitting \$1 billion in the Exxon Valdez case obviously don't want their future gravy train disrupted.



Cordova District Fishermen United

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3447 FAX (907) 424-3430

April 2, 1997

URGENT ACTION NEEDED!

Radical tort reform legislation (House bill 58) is now being passed by the Alaska Legislature. If HB 58 is enacted it could be used to jeopardize our compensation for damages caused by large environmental disasters.

POINTS to CONSIDER about HB 58

- HB 58 is a radical piece of legislation that favors insurance companies and large corporations. It deprives Alaskans of existing legal rights to pursue fair compensation for injuries they have sustained at the hands of others.
- As a fair and responsible alternative to HB 58, we should support the tort reform recommendations of the Governor's Advisory Task Force Bill and SB 15.
- HB 58 would largely eliminate the incentive for big corporations to prevent future environmental disasters by restricting punitive damage awards (similar to handing out 10 cent speeding tickets).
- HB 58 will not permit punitive damages where reckless conduct causes an injury - the very situation in the Exxon Valdez disaster.
- Even when permitted, under HB 58 punitive damages would be limited to \$300,000 and \$600,000 in exceptional cases and again, would be directly contrary to the Exxon Valdez verdict.
- HB 58 would require that one-half of all punitive damages go to the State, not the victims. The attorney fees would be taken from the remainder.

WHAT CAN WE DO?

1. Help STOP HB 58 send a POM (Public Opinion Message) to all legislators.
2. URGE Governor Knowles to VETO the bill after it passes. Contact Governor Knowles at (907)465-3500 or FAX him a letter at (907)465-3532
3. Finally, we need to PERSUADE all legislators NOT to override the Governor's veto.
4. Keep a steady stream of messages, faxes and letters pouring out.

It is worth the effort no matter how busy you think you are.

**ACT NOW AND CONTINUOUSLY OVER THE NEXT 45 DAYS TO
ATTEMPT TO PREVENT A VETO OVERRIDE.**

KELLER ROHRBACK
LYNN LINCOLN SARNO
MICHAEL WOERNER
(800) 397-7455

DICKSTEIN SHAPIRO & MORIN
KEN ADAMS
CHARLES MILLER
(202) 785-9700

LIEFF CARRASER & HEIMANN
WILLIAM HIRSCH
(415) 936-1000

ASHEBURN & MASON
A. WILLIAM SAHPE
(907) 276-4331

JAMIN, EBELL, BOLGER & GENTRY
MATTHEW D. JAMIN
(907) 486-6024

DAVIS WRIGHT TREMAINE
DAVID W. OESTING
(907) 276-4488

March 12, 1997

Dear Claimant:

Re: Exxon Valdez Oil Spill Litigation

The Alaska Legislature is again considering passage of legislation that Exxon may use in its efforts to persuade the Ninth Circuit Court of Appeals or the United States Supreme Court to reduce or overturn the five billion dollar punitive damage award the Exxon Valdez Oil Spill plaintiffs obtained in September 1994. The current version of HB 58 (Sponsor Substitute for House Bill No. 58, entitled "An Act Relating to Civil Actions") would impose a low cap on punitive damages. Further, it would require half of the punitive damage award to be paid to the general fund of the State. Governor Knowles vetoed a similar bill last year, in part as a result of letters from Exxon claimants. In addition, the current bill contains a new provision that would prevent the award of punitive damages for reckless conduct. This, as you know, was the basis for the award of punitive damages against Exxon.

HB 58 would be applicable to the Alaska State courts. Although the bill would not apply directly to the current Exxon litigation in the federal court system, Exxon has argued that the Exxon Valdez oil spill plaintiffs' punitive damage award was unjustified, excessive, and contrary to public policy. These arguments will be repeated as Exxon appeals the award to the Ninth Circuit Court of Appeals. HB 58 would give Exxon an argument that the Alaska Legislature, the voice of the people in Alaska, is against the five billion dollar punitive damage award as unjustified and excessive, that it is contrary to public policy, and that half of any punitive damage award should go to the State, not to individual plaintiffs. If enacted, this bill might have a compelling effect on the federal courts.

We believe that you should contact the Alaska Legislature immediately to express your opposition to this bill. You can phone in a personal opinion message, which will go to all legislators, simply by calling your local state Legislative Information Office (Anchorage: 258-8111, Cordova: 424-5461, Homer: 235-7878, Juneau: 465-4648, Kenai Peninsula: 283-2030, Kodiak: 486-8116, Seward: 224-5066, Valdez: 835-2111).

We also believe you should contact Governor Knowles to urge him to veto the bill. Telephone his office at (907) 465-3500 or fax him a letter at (907) 465-3532.

If you would like a copy of the full text of HB 58 or if you have any questions, please call any of us.

Time is of the essence. Please take action immediately.

HB 58 DOES Allow Punitive Damages
for "reckless" conduct.
"Malice" = "reckless indifference"
Cummins v. Sea Lion Corp
924 P.2d 1011 (AK 1996).

To:

Fm: Jim

Re: POMs

1. There has been a lot of disinformation about the impact of HB 58 on the Exxon case. The truth of the matter is that the Exxon case is on appeal in a federal court from another federal court which applied federal laws, and not Alaska laws. The point is that no matter what Alaska law says about punitive damages, it has absolutely no bearing on the Exxon case. If Alaska punitive damage law was not applied at the trial level in the federal court, it can in no way be applied in the same federal court system on appeal.

Aside from the total inapplicability of Alaska law on the Exxon punitive damages issue, HB 58 does not apply retroactively. It applies only to cases arising 90 days after HB 58 becomes law.

Even assuming that Alaska law could somehow be applied in a future Exxon type of case, three or four times compensatory damages will be a huge number. Exxon paid out 287 million in claims to fishermen, but it also paid \$900 million into a trust for restoration. Attorneys involved in the case tell us that the \$900 million was compensatory. If so, that makes about \$1.2 billion right there. Times 3 is \$3.6 billion. Times 4 is \$4.8 billion. \$5 billion is the amount of punitives which were entered in the federal case, so what is the big to do about?

You have to ask yourself frankly if the opposition is being stirred up because the trial lawyers want to keep on extracting their exorbitant fees under the present system, with no caps on punitive damages and on certain types of noneconomic damage under Alaska state law. In the federal Exxon case, the plaintiffs' lawyers have recently asked the court to award them "only" 20 % of the amount of the judgment. That pencils out to over \$1 billion dollars. Ask yourself this question, and try to be objective. Who stands to gain the most from keeping things like they are? I bet you can give me the answer, and it has to be the tort legal industry. If we want a vibrant economy with real jobs, we cannot be chasing businesses of all sizes out of the state.

2. The attached letter is an example of the disinformation being put out by the Trial lawyers. They say HB 58 would prevent the award of punitive damages for reckless conduct. They should know better than to say that. HB 58 requires a showing of "malice" for punitives, but that word has always been defined by the Alaska Supreme Court to mean "reckless indifference". There is no change in existing law, and reckless conduct may serve as the basis for a punitive damages award. Why the information? Follow the money. Cummins v. SEA LION CORP, 924 P.2d 1011 (AK 1996)

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ASHBURN & MASON
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MATTHEW D. JAMIN
(907) 486-6024

DAVIS WRIGHT TREMAINE
DAVID W. OESTING
(907) 276-4488

March 12, 1997

① "MALICE" = "reckless indifference"
Cummings v. Seelion Corp.
924 P.2d 1011 (AK 1996)

Dear Claimant:

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① wrong!

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If you would like a copy of the full text of HB 58 or if you have any questions, please call any of us.

Time is of the essence. Please take action immediately.

② $3 \times 1.2B = 3.6B$
 $4 \times 1.2B = 4.8B$ } under HB 58.
EXXON PUNITIVES
WERE \$5.0B

② Speculative: A Trumped-up excuse to kill HB 58.

To: Senator Tim Kelly

Fm: Jim Sourant

April 16, 1997

Re: Jeff Friedman's letter of 4/15

Mr. Friedman makes two glaring misrepresentations in the second paragraph of his letter.

First, he states the Governor's Task Force had representatives from the insurance industry. As you know from my confidential memo, State Farm specifically asked to be a part of the Task Force last summer, and was rejected. State Farm has over 200,000 policies in effect in Alaska, and it is an outrage that they could have been excluded.

Secondly, he states the Governor's Task Force had representatives from the medical profession. Dr. Rodman Wilson, a political friend of the Governor's, was on the Task Force, but he was not representing the 500 physicians represented by the Alaska State Medical Association.

Parenthetically, Roger Holmes was not representing the Alaska State Medical Association last weekend. See attached letter.

cc: Senator Lemay

16-97 WED 8:49

LESSMEIER & WINTERS

FAX NO. 9074633020

P. 01

APR-16-97 WED 7:59 AM

From Friedman/Porterfield to 19074633020

at 04/15/97 08:14AM

P. 1

Jeffrey Friedman
P.O. Box 111841
Anchorage, AK 99511-1841

jelljan@alaska.net

April 15, 1997

Dear Senator:

The most recent substitute version for House Bill 58 being considered by the Senate is a hastily and poorly written bill. It is being offered as a compromise bill. It is not. It is a bill written primarily by State Farm Insurance Company, and its hired agent Michael Lessmeier. I think it fair to say State Farm did not have the best interests of Alaskans in mind when it proposed this bill.

There have been several attempts to draft a reasonable compromise on tort reform. The Governor's task force had representatives from the insurance, medical, and business communities. It was created to propose a reasonable tort reform bill. Trial lawyers participated in that process even though they did not believe any reform was needed. This compromise was rejected by Representative Porter when he originally submitted HB 58.

Since then, there have been other attempts to negotiate and reach a compromise. Each time, the good faith efforts to reach agreement were rejected without any consideration. As recently as this last weekend, Roger Holmes who has been supporting major tort reform efforts for years, proposed a reasonable solution. Again, reason was ignored.

The current version of HB 58 is bad for many reasons. Essentially, it will harm children and middle class Alaskans who can least afford to pay this price. It will also drastically increase litigation.

- **Section 5.** Many injuries to children do not manifest themselves until they reach certain developmental stages. This change would prevent children from ever making a claim for these sorts of injuries since you can not sue before the injury occurs. It would also preclude any state cause of action if the Alyeska Pipeline ever leaked, since it is more than 10 years old.

Alaska State Medical Association

4107 Laurel Street

Anchorage, Alaska 99508

(907) 562-2662

(Fax) 561-2063

April 14, 1997

Honorable Brian Porter
Alaska State House of Representatives
State Capitol, Room 216
Juneau, Alaska 99801

Post-It® Fax Note	7871	Date	4/14/97	Time	1:58 PM
To	Geoff Bullock	From	Jim Jordan		
Co/Dept		Co			
Phone #		Phone #	561-2662		
Fax #		Fax #	561-2063		

RE: Work Draft dated 4/14/97
For SCS CSSSHB 58 ()

Dear Representative Porter:

We have received a copy of your work draft referenced above late this afternoon so consequently had not a great deal of time to study each section. However, the revised section pertaining to noneconomic damages is problematic.

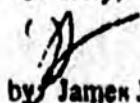
Section 9 on p. 5 of your work draft provides for a two tiered system with two tiers internal to each of those tiers. It would seem that the internal tiers would cause more extensive litigation as arguments would ensue as to what a person's life expectancy would be. For example, would the injured or deceased person's life expectancy always be that of a normal person, without regard to his or her health status prior to the incident that caused the legal action (e.g., what if the person had terminal cancer prior to the auto accident that caused the injury or death at action?) An absolute cap similar to those in the version which passed out of Senate Finance this past Friday does not present such difficulties.

As the Alaska State Medical Association provided in its written testimony in both the House and Senate, the study done by the American Academy of Actuaries found that the most important factor in meaningful tort reform was an absolute cap on noneconomic damages. Additionally the same study also concluded:

"For the reform to be effective in reducing costs, the cap on noneconomic awards should be established on a per-medical-injury basis at a level low enough to have an impact (e.g., \$250,000)."

It would seem we should try to avoid increasing the transactional costs as this section would seem to do.

Sincerely,



by James J. Jordan
For: Alaska State Medical Association
cc: Board of Trustees

LESSMEIER & WINTERS

LAWYERS - LLC

**ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1249**

**TELEPHONE: (907) 586-3912
FACSIMILE: (907) 463-3020**

**MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS
BETH LEIBOWITZ
*MICHIGAN**

April 16, 1997

Senators

Dear Senator:

I am writing on behalf of State Farm to respond to Jeff Friedman's letter of April 15, 1997. In that letter Mr. Friedman states that the most recent version of HB58 is a bill that was written primarily by State Farm Insurance Company. This is simply not true. A simple comparison between the Senate Rules Committee Substitute and the Senate Finance Committee Substitute shows that the bills are the same in most respects. The changes that do appear in almost every instance were made by the sponsor of this legislation in an effort to reach compromise. For example, the statute of repose was increased from 8 years to 10 years. The non-economic damages limits were raised from three hundred to five hundred thousand dollars for the lower limit, and from five hundred thousand to 1.5 million for the upper limit. The punitive damage limit was raised. Provisions regarding collateral benefits, periodic payments and reduction of awards by the amount one would pay for federal income taxes were deleted. The allocation of fault provision was modified again in an effort to respond to the critics of this legislation. The vast majority of these changes were either suggested by the administration, the trial lawyers or were made in an effort to respond to other concerns. It is neither fair nor accurate to say this bill contains significant new language that either was not part of the Senate Finance Committee Substitute or contained in one of the other related bills before the legislature.

Sincerely,

LESSMEIER & WINTERS

By: 
Michael L. Lessmeier

MLL/blw

**

OPINION SECTION:

*

POSTER CHILD

ANTI-TORT REFORM AD MISLEADS ALASKANS

By Daily News editorial staff

In recent weeks, lawyers fighting state tort reform proposals have trotted out a poster child named Sara. A newspaper ad features this forlorn young girl sitting in a wheelchair, staring sadly at readers.

"Sara and many of her friends were severely injured when the roof collapsed over their school cafeteria," reads the text. "It collapsed because a greedy contractor cut corners when the school was built."

The ad goes on to assail "the Tort Reform bill, HB 58," because it "denies Sara, other injured children and their parents the right to sue the contractor."

As your blood begins to boil because of this rank injustice, you stop for a second. Hmm ... I don't remember hearing about such a horrible accident; did I miss something?

Actually, no.

In their rush to inflame passions against tort reform, a group called Citizens For Civil Justice has taken considerable liberties with reality. Sara has no more substance than the spaceship the Heavens Gate cultthought was trailing the Hale-Bopp comet.

Let's check in with the mastermind of the ad, prominent Alaska trial attorney Ames Luce.

"It's hypothetical, not an actual situation," Mr. Luce said.

"We were trying to dramatize an event that would occur if in fact your child or mine or the hypothetical Sara were injured. ... If the impression is that Sara is an actual person, we didn't mean to imply that."

Gee, could have fooled us.

The girl is shown in a wheelchair and identified by name. The text says she and friends "were injured." The text says that thanks to tort reform, Sara "will never get her day in court."

Granted, Mr. Luce quickly agreed the ad "probably was poorly worded. ... We probably will change it if we run it again." But this dose of slippery ad rhetoric calls his group's whole case against tort reform into question.

Measured tort reform can bring more certainty to the legal process without unduly harming the rights of victims. On the other hand, it's possible for reformers to overreach, pushing overhyped, ill-considered ideas that will do little to reduce insurance

rates.

The challenge for Alaskans and their elected officials is to find the right balance. Attacking tort reform with tear-jerk ads about made-up accidents has no place in this important debate.

*



Poster child

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APR-16-97 WED 8:49

LESSMEIER & WINTERS

FAX NO. 9074633020

P. 01

APR-16-97 WED 7:59 AM

From Friedman/Porterfield to 19074633020

at 04/15/97 08:40p

P. 1

Jellroy Friedman
P.O. Box 111841
Anchorage, AK 99511-1841

jellj@alaska.net

April 15, 1997

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The current version of HB 58 is bad for many reasons. Essentially, it will harm children and middle class Alaskans who can least afford to pay this price. It will also drastically increase litigation.

- **Section 5.** Many injuries to children do not manifest themselves until they reach certain developmental stages. This change would prevent children from ever making a claim for these sorts of injuries since you can not sue before the injury occurs. It would also preclude any state cause of action if the Alyeska Pipeline ever leaked, since it is more than 10 years old.

- **Section 9.** This section is unconstitutional since it makes arbitrary distinctions between different sorts of injuries. There is no reason to treat loss of an arm different than loss of several internal organs.
- **Section 10.** An arbitrary cap on punitive damages makes no sense. It means average people of modest means can be financially ruined while large corporations, like State Farm, pay less than one day's worth of profit.
- **Limiting discovery on punitive issues until after trial means increased costs for the court system.** Most judges won't keep a jury waiting for a week or two while the parties conduct discovery. In most punitive cases, it will take that long just to read the documents even if they are immediately produced. Accordingly, a second jury will be selected, and much of the same evidence will be presented twice.
- **Sections 11 - 13.** A similar provision was held to be unconstitutional in Montana. It will be held unconstitutional here. When fault can be attributed to non-parties, you increase the risk of fraud. It is easy to find someone to accept the blame when they are not a party and any fault attributed against them can not be used against them in future litigation. Under current law, a defendant can name additional defendants if it thinks someone else caused the harm. That way, all parties potentially at fault are before the court and can be questioned before the jury.
- **Section 15.** Plumbers and electricians are licensed professionals in Alaska, but there is no board certification. Under this provision, you could not use an expert to testify that an electrician acted negligently. Similarly, lawyers are licensed, but there is no board certification. That means no expert witnesses in a legal malpractice case.
- **Section 16.** This dramatically increases the penalty for failing to accept an offer of judgment. The State of Alaska, and other large organizations, will often pay this penalty. People with no money, won't care because you can't get blood from a stone. The average Alaskan with a retirement fund or other savings will not be able to take this risk, however. They will be forced to settle valid claims because they can not afford to risk everything even if they are 90% sure of winning. This provision will affect all claims equally. Since less than 1% of all claims are frivolous, this means that 99% of the claims dropped because of this threat will be valid claims. Defendants will be blackmailed into settling claims rather than risk paying full attorney fees to the plaintiff.
- **Section 30.** \$500,000 in malpractice insurance is not enough. Given the high cost of medical care needed by victims of

APR-16-97 WED 8:50

LESSMEIER & WINTERS

FAX NO. 9074633020

P.03

APR-16-97 WED 8:00 AM

From Friedman/Porterfield to 19074663805

at 04/16/97 08:00 AM

P. 3

medical malpractice, at least \$1 million should be required. This level of insurance is available to any doctor anywhere in Alaska.

- Section 44. This will turn every trial into a lengthy circus. There will be numerous "mini-trials" on whether false statements were made. A trial that otherwise would be completed in a week would take two weeks to complete. In other words, you will need to double the number of civil judges and courtrooms if this passes.

Sincerely,

Jeff Friedman