

SCOMM

101A:2

LESSMEIER & WINTERS

ATTORNEYS AT LAW

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1249

TELEPHONE: (907) 586-5912
FACSIMILE: (907) 463-3020

February 26, 1997

Representative Brian S. Porter
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

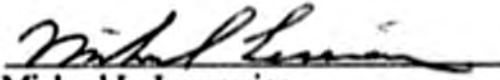
Dear Representative Porter:

I am writing simply to comment on two issues that came up in the testimony before the House Judiciary Committee regarding HB 58. During my testimony I indicated that State Farm Mutual Automobile Company had in the past refunded premiums to Alaskan policy holders when its loss experience was better than expected. On November 1, 1987, State Farm Mutual issued a 20% refund to Alaskan policy holders. This refund totaled \$3.3 million. On November 15, 1988, State Farm Mutual again issued a 20% premium refund to its Alaskan policy holders. This refund totaled \$3.1 million.

I did want to respond to an issue raised by Mr. Schneider regarding the several liability issue. Mr. Schneider testified to his concern that a plaintiff might end up in trial and for the first time be facing claims to allocate fault to unnamed persons and that it would be impossible to defend against such claims. There are several reasons why I do not believe this would occur. First, prior to the Benner decision, it was standard practice for judges to require identification of any unnamed person or entity a defendant thought might be at fault in a timely manner so a plaintiff could make a decision of whether to pursue a claim against that unnamed person. Second, the factual basis for such a claim would certainly have to be disclosed under the mandatory disclosure provisions of our new Civil Rule 26. Finally, the parties would always have the ability to identify any such claims through interrogatories in any event. For all of these reasons I do not believe there is any legitimate basis for the fear that a party might be faced with new attempts to allocate fault to unnamed persons for the first time at trial.

Sincerely,

LESSMEIER & WINTERS

By: 
Michael L. Lessmeier

MLL:jfe

BP22697.WPD

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

ANCHORAGE, ALASKA 99508

PHONE 907-562-4142

March 10, 1997

Mr. Gene Therriault
Co-Chairman, House Finances
State Capitol, Room 517/15
Juneau, AK 99801-1182

Dear Representative Therriault:

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

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

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

Page 2 - Gene Theriault

legislation has passed, everyone says tort reform is done, and since it's a controversial subject, they don't want to touch it again for the next four, five, or ten years. Meanwhile it's like having a bucket with ten holes in it, and one hole is plugged; the bucket still leaks at a very rapid rate.

A cap on non-economic damages, the prohibition of recovering from collateral sources and mandated structured periodic payments, are key elements to this tort reform. The MICRA Legislation included limitations on contingent fees. The pro-active way of making that statement is that in effect, more money is left for the truly injured client. The point is made in these articles, however, that that contingent fee is usually a fixed sum of money, regardless of risk involved in the case. A truly contingent fee would take less money from a case that was an open and shut case, as opposed to those in which there was considerable doubt. I can assure you that the standard practice in the Alaskan Legal Community is to take a fixed percentage of the case, regardless of risk. Those trial attorneys who are fortunate enough to be in the position of having the "Oh my God" case come through the door, are virtually assured of being millionaires as the result of the outcome of a single case. That seems a little unbalanced.

I'm enclosing, for your perusal, an analysis of a case that occurred in Alaska in 1987. Essentially Mr. Justice was involved in a bar fight, presented himself to the Emergency Room at Alaska Regional Hospital, which subsequently has become Columbia Hospital. He was thoroughly examined and sent home. He returned almost exactly 24 hours later, in the early morning hours, and was again examined and no material findings were produced. He then left to go to California. He was extensively evaluated in California, including CAT-scans and MRI's, for persistent headaches, and was admitted twice in California with no findings noted. On the third admission, he presented with symptoms of a cerebral hemorrhage, and was subsequently discovered to have a Berry aneurysm, which is a congenital malformation that he had prior to his altercation in the bar. It is noteworthy that he left Alaska neurologically intact, with the appropriate measures having been taken.

He elected to sue in California, which by then had enacted the MICRA Reform mentioned in the previous part of this letter. As a result of that, there was a cap on non-economic damages. He had mandated periodic payments for his economic damages. There were limitation on the amount of money that the attorney could recover, and he had no collateral source at that time from which to recover.

After having received the benefit of this life-time benefit in California, he returned to the State of Alaska. He sued the doctors and Alaska Regional Hospital, and shortly before trial, dropped the doctors. The jury was never permitted to know that he had received full compensation under the California Micra Act. The jury returned a verdict of "guilty", and assessed damages. We have enclosed an analysis of these damages, with those paid by California on the left, and those paid by Alaska on the right. You can see clearly that the

Page 3 - Gene Theriault

cost to settle the same case in California was one-third of that in Alaska. Another way of stating it is, that Alaska health care consumers pay three times as much to injured victims as California health care consumers do. In the end, all the money comes from the patients or their payors. This is a clear and egregious example of why collateral sources need to be limited. You will hear time and time again that "Tort Reformers" are trying to rig the Jury system. Nothing could be further from the truth. We'd simply like the Jury to know the whole truth and nothing but the truth, and if that were the case, we believe that they would come to a sensible verdict.

I appreciate the opportunity to present you with this information, and I would be most happy to discuss any part of it. (I have read the Justice file, including the examinations in the E.R. myself, and therefore I can promise you that it did happen as indicated.)

Sincerely,



David A. McGuire, M.D.

DAM:li

cc: Brian Porter

In November of 1987, MICA went to trial on the Justice v. Humana Hospital Case. MICA insured each of the three defendants including the hospital on a "tail" policy purchased when Humana brought Community Hospital. The two physician defendants were dropped the day before trial by the plaintiff's attorneys and the hospital became a single defendant.

CASE FACTS:

Justice was seen in the emergency room on two occasions in May of 1982 for injuries received from a fall in an Anchorage bar. The visits were both in the middle of the night and 25 hours apart. 48 hours later the patient presented himself to Los Angeles County Hospital where he was admitted and discharged the next day. He was admitted yet again five days later, discharged and finally readmitted twelve days later comatose with a right sided hemiplegia.

LEGAL ACTION:

Separate suits were filed in California and later in Alaska. L.A. County made a settlement with an agreement that if the plaintiff was successful in Alaska, L.A. County could recover 1/3 of the Alaska award to a maximum of \$300,000.

TRIAL RESULTS:

MICA tried to join L.A. County Hospital in a joint defense. Certainly they were responsible for the last and longest treatment. Our court would not allow this and further would not allow any negligence by L.A. County to be a defense. The outcome was a verdict with the plaintiff 10% negligent and Humana 90% negligent. The verdict was an award totaling \$1,304,244 with add-ons for prejudgement interest and Rule 82 increasing the award to in excess of \$2,000,000.

TORT REFORM EFFECTS:

The cost to Alaska to pay for the plaintiff who had already received retribution in California is substantial. Tort Reform legislation would have had an absolute impact on the results of this case. Under Tort Reform legislation-

- the extent of L.A. County's negligence would have to be considered;
- the percentage of fault for Humana would be affected under joint and several liability;
- collateral source from the L.A. settlement would have to be offset and;
- a cap on non-economic losses would have impacted the judgement.

MICA feels this is an excellent representation of the positive effects of California tort reform. Because of the positive effects of California tort reform. Because of our own laws, Alaskans paid in the extreme for a plaintiff that had been compensated elsewhere. Our analysis of the Justice case leads us to the irrevocable conclusion that tort reform legislation will decrease costs to Alaska and its citizens.

COMPARISON OF RESULTS IN JUSTICE With Mandated Structured Settlements

<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	\$ 305,619	Total jury verdict	\$ 1,449,160
\$75,000 payment on July 1, 1995.	28,113	Less plaintiffs 10% comparative negligence	(144,916) \$ 1,304,244
\$200,000 payment on July 1, 2005.	28,101	Present value of L. A. Hospital settlement as of July 1, 1985.	(210,201) \$ 1,094,043
\$400,000 payment on July 1, 2015.	22,125	Collateral benefits pursuant to AS 09.55.548(b)	(89,378)
Present value of future payment of total jury verdict of \$2,019,000 as of July 1, 1985.	\$ 383,958	Subtotal	\$ 1,004,665
Plus cash payment on July 1, 1985.	50,000	Prejudgment interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988.	683,534
Plus attorney fees present values as of July 1, 1985.	130,000	Rule 82(a) attorney fees	171,319
Plus costs	15,000		
Subtotal	\$ 578,958	Subtotal	\$ 1,859,518
Defense cost	unk	Insurance, Defense fees	501,605
Total	\$ 578,958	Total	\$ 2,361,123

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.



Philip R. Hinderberger
Vice President and
General Counsel

50 Fremont Street
San Francisco
California 94105-2235

(415) 777-4200
(800) 652-1051 TOLL-FREE
(415) 957-5600 FACSIMILE

March 11, 1997

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

RE: SSHB 58 (JUD) Tort Reform Bill

Dear Representative Therriault:

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

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

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

AMMIC-3/11/97

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

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

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

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

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

March 11, 1997

Page 3

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

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

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

We urge your support of SSHB 58.

Very truly yours,



PHILIP R. HINDERBERGER

PRH/rl

Enclosures

cc: Representative Brian Porter

March 11, 1997

Page 4

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

AMMIC-3/11/97

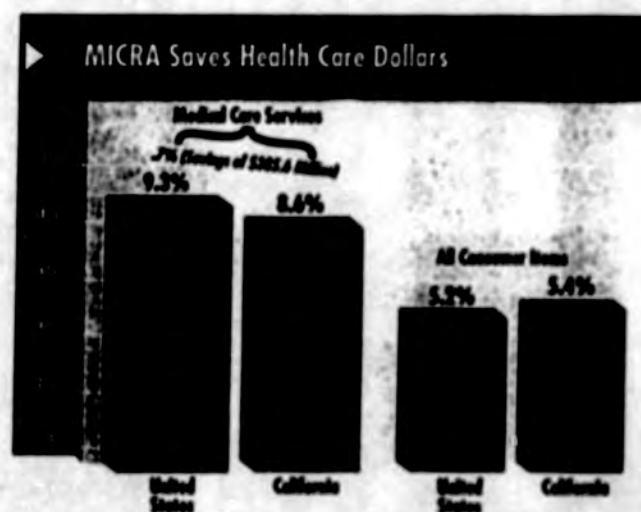
► After MICRA: Real Results

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

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



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



SOURCE: 1. Families USA
2. Source: Consumer Price Index for All Urban Consumers (CPI-U), 1981-1990, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C.

EXHIBIT

Charts

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

Year	AK Premium Earned (Thous.)	% Change	U.S. Premium Earned (Millions)	% Change	CA Premium Earned (Millions)	% Change
1976	\$781		\$1,187		\$288	
1977	655	-16	1,266	+6.7	227	-21.2
1978	Not available		1,382	+9.2	249	+9.7
1979	2,233	+240.9	1,235	-10.6	239	-4.0
1980	1,798	-19.5	1,333	+7.9	230	-3.8
1981	2,125	+18.2	1,232	-7.6	204	-11.3
1982	2,276	+7.1	1,361	+10.5	211	+3.4
1983	2,609	+14.6	1,844	+35.5	287	+36.0
1984	3,483	+33.5	1,835	-.50	375	+30.7
1985	4,403	+26.4	2,261	+23.2	450	+20.0
1986	8,480	+92.6	3,435	+51.9	629	+39.8
1986	13,639	+60.8	4,450	+29.5	633	+0.6
1988	15,109	+10.8	5,080	+14.2	663	+4.7
1989	16,341	+8.2	5,120	+.80	633	-4.5
1990	14,983	-8.3	4,931	-3.7	605	-4.4
1991	13,371	-10.8	4,862	-1.4	529	-12.6
1992	13,439	+0.5	5,138	+5.7	526	-0.6
1993	14,723	+9.0	5,174	+1.0	563	+6.0
1994	13,940	-5.0	5,932	+15.0	577	+2.0

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

Conclusions:

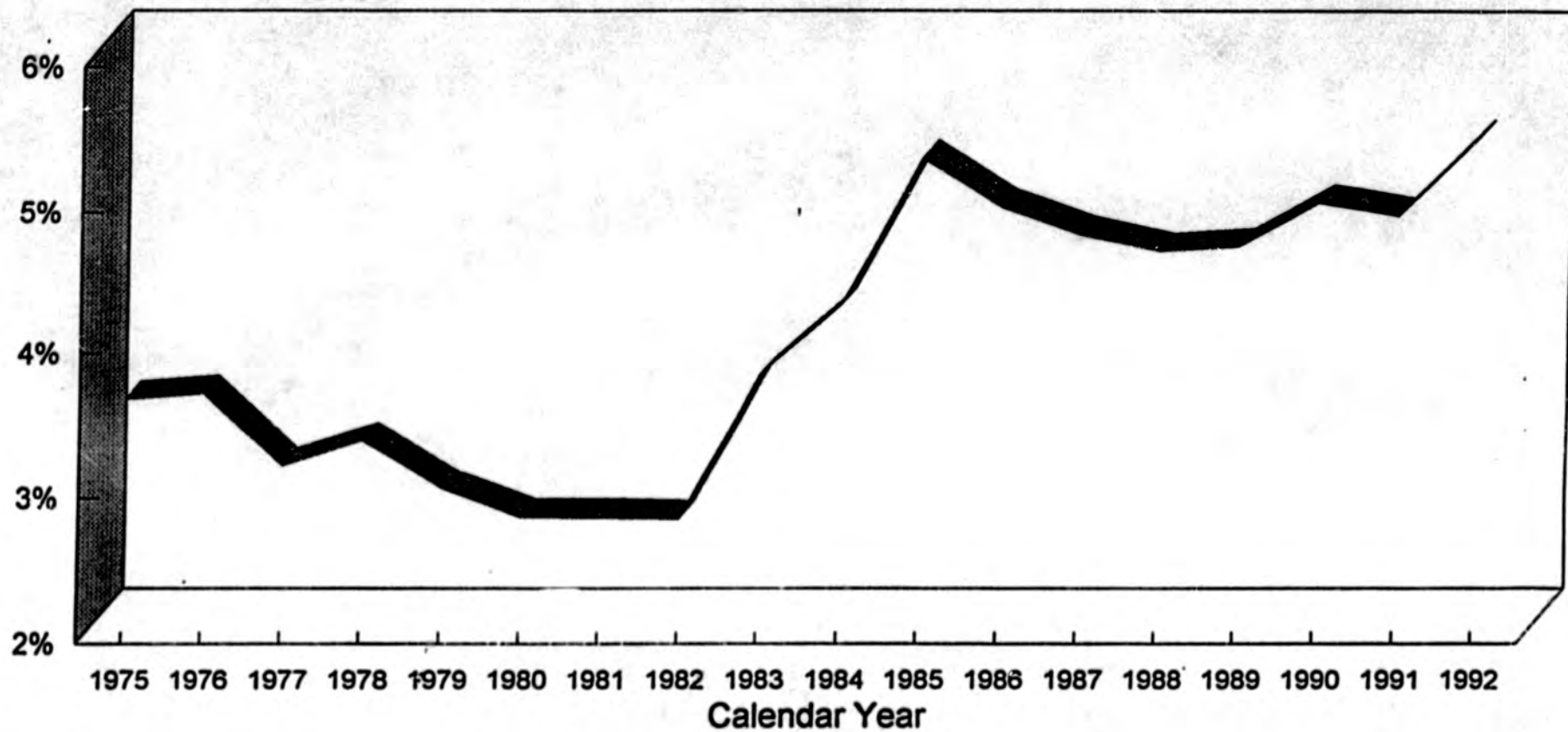
- Alaska medical malpractice premiums have increased from \$781,000 to \$13,940,000 for a total increase of \$13,159,000 or 1,684% overall at an average annual rate of 22%.
- U.S. medical malpractice premiums including Alaska have increased from \$1,187 billion to \$5,932 billion for a total increase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

AMMIC-3/11/97

EXHIBIT 2

EXHIBIT 3

Ratio of Ohio Paid Loss and LAE to Countrywide



Medical Liability Insurance Costs

California v. Alaska

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

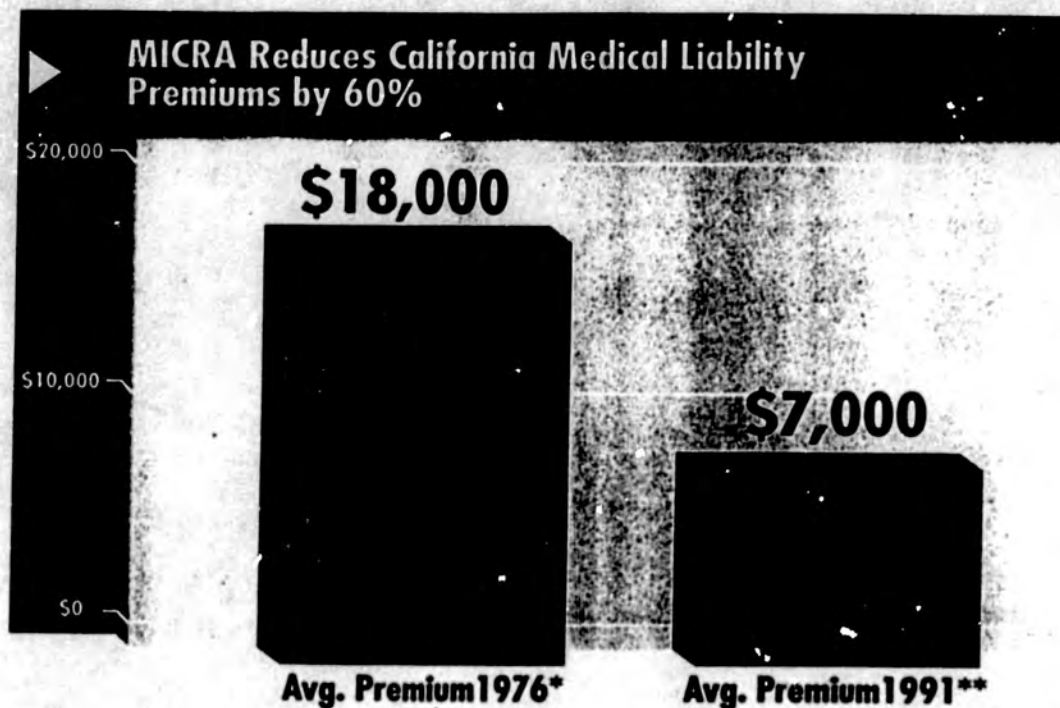
NOTE: NORCAL, Northern California and Alaska published premiums 1995.

EXHIBIT 4

Insurance Premiums Cut

MICRA Has Cut Medical Liability Insurance Premiums by 60%

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



— Shown in 1991 dollars

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

** Dividends from 1990 deducted from 1991 average premium

EXHIBIT 5

IMPACT OF LEGAL REFORMS ON MEDICAL MALPRACTICE COSTS

Background Paper
prepared by the

Health Program
Office of Technology Assessment

Clyde J. Behney, *Assistant Director, OTA*

Project Staff

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

Jacqueline A. Corrigan, *Study Director*

David Klingman, *Senior Analyst*

Leah Wolfe, *Analyst*

Philip T. Polishuk, *Research Assistant*

September 1993

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

EXHIBIT 6

EXPLANATION OF METHODS USED BY OTA TO COMPILE DATA

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

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

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

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

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

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

²These sources were: Fisk, M.C., "The Reform Juggernaut Slows Down," The National Law Journal 15(10):134-37, Nov. 9, 1992; American Nurses Association, "Report to ANA Board of Directors on Tort Reform, Part 3: Presentation of Selected Summary of State and Local Legislation Related to Tort Reform and Review of Insurance Company Practices and Policies Related to Nursing Negligence with Recommendations," December 1991.

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

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

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

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

^O = Provision overturned.

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

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

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

O = Provision overturned.

R = Provision repealed.

*See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

^O = Provision overturned. _____

* See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

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

Explanatory Notes for Table A-4

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

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

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

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

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

O = Provision overturned.

* See additional notes on following page.

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

SOURCE: Office of Technology Assessment, 1993.

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

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

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

R = Provision repealed
 O = Provision overturned

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

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

Sliding scale	Maximum %	Court-determined/ court approved	No statutory limits
CA: 40% of first \$50,000	IN-15%*	AZ	AK
33.33% of next \$50,000	MI-33.33%	HI	AL
25% of next \$50,000	OK-50%	IA	AR
15% damages that exceed \$600,000	TN-33.33%	KS	CO
	UT-33.33%	MD*	DC
CT: 33.33% of first \$300,000		NE	FL ^R
25% of next \$300,000		NH ^{O*}	GA
20% of next \$300,000		WA	ID
15% of next \$300,000			KY
10% damages that exceed \$1.2 million			LA
			MN
DE: 35% of first \$100,000			MO
25% of next \$100,000			MS
10% of damages that exceed \$200,000			MT
			NC
IL: *33.33% of first \$150,000			ND
25% of next \$850,000			NM
20% of damages exceeding \$1 million			NV
			OH
MA: 40% of first \$150,000			OR ^R
33.33% of next \$150,000			PA ^O
30% of next \$200,000			RI
25% of damages that exceed \$500,000*			SC
			SD
ME: 33.33% of first \$100,000			TX
25% of next \$100,000			VA
20% of damages that exceed \$200,000			VT
			WV
			WY
NJ: 33.33% of first \$250,000			
25% of next \$250,000			
20% of next \$500,000			
Amount shall not exceed 25% for a minor or an incompetent plaintiff			
NY: 30% of first \$250,000			
25% of next \$250,000			
20% of next \$500,000			
15% of next \$250,000			
10% of damages exceeding \$1.25 million			

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

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

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

O = Provision overturned.

R = Provision repealed.

* See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

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

R = Provision repealed

O = Provision overturned

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.



Cynthia Brooke, MD
A balance of treatment
and prevention.

Cynthia Brooke, M.D., F.A.C.O.G.

Diplomate of the American Board of Obstetrics and Gynecology

March 24, 1997

Senator Drue Pearce, Co-Chair of Senate Finance
716 West Fourth Avenue
Anchorage, Alaska 99501

Dear Senator Pearce,

I am OB-GYN in Anchorage, Alaska, and would like you to know of a grave situation which exists regarding medical research and our country's current legal system.

As an obstetrician and gynecologist, I have had occasion to interact with the court system, both as an observer and as a participant. Over the years, I think I have developed some insight into the interaction between medicine and the legal system. A great deal of problems seem to arise, and I think many of these problems result from the difference between science, medicine and the law. I think there is a definite problem in trying to solve scientific issues in the courtroom. To illustrate this point, I have a story to tell. I think this exemplifies what is wrong with our legal system today.

The story centers around a physician and scientific researcher named Dr. Marcia Angell. Dr. Angell is trained in internal medicine and is also the editor of *The New England Journal of Medicine*. Her job with *The New England Journal* is to evaluate the quality of studies and research submitted to the journal for publication. In this capacity, she had occasion to write an editorial in response to an article by Dr. David Kessler of the FDA who was considering declaring a ban on silicone breast implants. This ban was not going to be imposed, Dr. Kessler was carefully to say, because he thought they were unsafe, but only because he felt the company had an obligation to do more studies to prove they were safe. There have been rare cases of fatigue and other symptoms in women with these implants, but nothing significant had ever been reported in thirty years of use. Because of this, Dr. Angell told Dr. Kessler she did not think that the ban was a good idea. One million women at that time had breast implants, and she felt they would be unnecessarily alarmed. Again, these implants had been used for thirty years without any significant problems. Apparently Dr. Kessler wavered, but then he decided to go ahead and implement the ban on the implants. Unfortunately, the fact that Dr. Kessler said the implants were not unsafe did not make it through to the media or public at large. Women panicked. Lawsuits against Merrell-Dow burgeoned into the thousands. One jury verdict alone, in Houston, was for \$25 million. The average out-of-court settlement was \$1 million. Eventually Merrell-Dow, in desperation, settled the largest class action lawsuit in the history of the world at \$4.25 billion.

Two months after the settlement, the Mayo Clinic published the first rigorous study regarding breast implants and disease. This study found absolutely no association between disease and breast implants. This study was submitted to *The New England Journal of Medicine* for publication and was published on June 16, 1994. In that same publication, Dr. Angell wrote her second editorial on the subject. Like a good scientist, she pointed out the backwards sequence of events, in that first there was public opinion and then a ban and then lawsuits and then a huge class action settlement. Only after all this, was any evidence presented. This peculiar change of events, Dr. Angell dared to say, was due to some peculiar characteristics of the tort

Senator Drue Pearce

- 2 -

March 24, 1997

system in the United States of America which differs from any other tort system in the civilized world.

These differences include contingency fees of lawyers, which encourage a sort of lottery system where lawyers can build a case, then find clients to suit their case. For example, there are currently cases being built against Norplant which has a silicone base in penile implants. This is in spite of the Mayo Clinic study.

The second difference in the United States tort system is that the defendant pays no matter who wins. In Britain, Australia, Sweden, Canada, and the rest of the civilized world, loser pays. In the United States, Merrell-Dow was faced with a situation where even if they won every case, they would still have to pay out about \$200 million. This system encourages out-of-court settlements which are not justified by the facts or the evidence.

Also unique to our tort system in this country is the lack of scientific evidence presented to the jury. Expert witnesses are called to give biased testimony - in fact, that is their job! Judges often do not utilize the option to call neutral scientific witnesses to help them decide the issues based on the evidence, although this option is available to them. In addition, in Alaska we have an expert advisory panel which is sometimes utilized and sometimes not. In many cases, investigations by medical societies and other organizations have found some expert witnesses to be total charlatans. They may not even have a medical degree (that they do not buy out of the catalog). As a consequence, many of the scientific research experts at the top of their fields will not participate in court proceedings because they are not convinced it is about trying to find the truth. To them, it is a total circus atmosphere and a dramatic passion play which has nothing to do with scientific evidence.

Legal experts who have interviewed juries coming out of these cases note that juries do not even think the case is about weighing the scientific evidence. They think that the case is about which lawyer they like the most, which is the most dramatic, which is the most convincing. They often think it is a moral question between the poor victim and the big corporation - never mind the facts.

Needless to say, after Dr. Angell's editorial and when all of this was published, she received a significant response from the plaintiffs' attorneys involved in the implants class action case. She was served by two subpoenas within a year. The attorneys accused her of being paid by the implant manufacturers. They requested any records or communication between her and the manufacturers. Of course, none of these records existed because there had been no communication between Dr. Angell and any of the implant manufacturers. However, the harassment did not stop there. Dr. Angell was also asked to release confidential records which were used in the peer review process at *The New England Journal of Medicine*. She was taken to court twice, and both times the subpoenas were denied. Later she found that the Mayo Clinic, who had conducted the implant study published in *The New England Journal of Medicine* was also being harassed by subpoenas. Not only did they ask for records regarding the data published in the breast implant study, but they subpoenaed the entire data base at the Mayo Clinic which includes confidential names of patients and doctors, medical data which has been collected by the Mayo Clinic for 150 years in Olmstead County, Minnesota. Because this data base is so invaluable, not only to the Mayo Clinic but to the world at large, the Mayo Clinic

Senator Drue Pearce

- 3 -

March 24, 1997

understandably was reluctant to relinquish the data base to the attorneys. Also, as confidentiality of their research was threatened and doctors and patients pulled out of research studies, research, in general, was basically shut down at the Mayo Clinic, so the plaintiffs' attorneys got basically what they wanted: a moratorium on breast implant research. It was not worth it to the Mayo Clinic to risk all research. It was easier to give up doing breast implant research. Since the Mayo Clinic study was published in 1994, ten other peer-reviewed studies on breast implants have been conducted. None of these studies have found any link between breast implants and disease.

Now, what has happened in the aftermath of all this and what have we learned? Obviously, this has sent quite a strong message to the medical device industry and will, no doubt, have an incredible impact on anything which is silicone based including dialysis tubing, hydrocephalus shunts, Norplant, heart valves, artificial joints, not to mention the other supplies and devices which have been affected by the fallout of this huge class action suit. Dupont has already pulled out of the medical device industry and says it will no longer supply dacron graft materials for vascular grafts (used in heart surgery). The class action settlement against Dow collapsed, and Dow has now filed bankruptcy. The economic impact on this country as a result, one can only guess. The economic impact on plaintiffs' attorneys involved in the case is that they cleared \$1 billion in attorney fees. This has even caused ripples in some parts of the legal community, specifically the Yale School of Law, reportedly the #1 law school in the United States. There, an assistant professor, E. Donald Elliot, said that "the tort lawyers perpetuated a fraud" (earning them a billion dollars), and called the class action tort system "a public health issue."

Fewer and fewer pharmaceutical companies are willing to do research on contraception due to liability issues - contraception like birth control pills which saves the United States billions of health care dollars every year, not to mention thousand of lives. Fewer and fewer pharmaceutical companies are willing to make vaccines. There used to be twenty pharmaceutical companies who made vaccines, and now there are only four. Medical research in other medical arenas is practically strangled. As law professor Elliott states, "Economics drives the system, and until we address this, there will be no change in the tort system."

These same issues prompted Yale law professor John Langbein to state: "The American legal system is the laughing stock in the civilized world. We have a legal system that encourages people not to do business in this country. We have a legal system that gets ever more expensive and that causes us to pay monumental insurance premiums compared to the rest of the civilized world. We have a legal system that is a flop." He goes on to say: "We have lawyers running the system, and that is the problem. Lawyers do not have an obligation and a commitment to the truth. Lawyers have an obligation to win, so we have a combat system rather than a truth system." Professor Elliott echoes this by stating in his law review article of 1989 that "one of the problems with the present legal system is that it extends equal dignity to charlatans and Nobel Prize winners with only a lay jury to distinguish between the two." Dr. Angell's rather harrowing experience with the legal system has prompted her to write a book called *Science on Trial*, illustrating the danger to us as a public when we try to answer scientific questions in the absence of evidence.

March 24, 1997

This problem is not just a problem in the medical community alone; it is a problem cited among scientists at large. You need only to walk into Borders Books or Barnes & Nobles to see the shelves burgeoning with frustrated scientists and researchers who are dealing with a world and a society that turns to pseudo-science and superstition to answer important questions which may affect our lives, our children's lives, and our planet as a whole.

In Carl Sagan's recent book, which was a New York Times best seller for many weeks, called *The Demon-Haunted World: Science as a Candle in the Darkness*, he states how necessary science is in a healthy democracy. "The values of science and the values of democracy are concordant, in many cases indistinguishable. Science and democracy began in their civilized incarnations in the same time and place, Greece in the seventh and sixth centuries B.C. Science confers power on anyone who takes the trouble to learn it... Science thrives on, and indeed, requires the free exchange of ideas; its values are antithetical to secrecy. Science holds to no special vantage points or privileged positions. Both science and democracy encourage unconventional opinions and vigorous debate. Both demand adequate reason, coherent argument, rigorous standards of evidence and honesty. Science is a way to call the bluff of those who only pretend to knowledge."

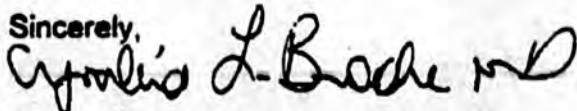
As a legislator, I ask that you make a vote for sanity and reason. Anyone, at this point, who argues that the current tort system is in the best interest of the community or the public at large has not looked at the facts. What is wrong with this system, they ask. Merrell-Dow is a big company - they can afford it, they can afford that kind of money. So what if there is no scientific evidence to back it up? Where is the harm?

The harm is women who are so frightened by the claims that they tried to cut out their own implants with razor blades. The harm is \$4.25 billion which could have been spent on something else besides lining the pockets of lawyers. What could we do with \$4.25 billion if that was pumped back into the public health system? Oh, let my imagination wander! But most of all, the harm is in the lie, the lie that has been perpetuated by fear, fear that is unsubstantiated by fact, the lie that might deprive you of a heart valve or your child of a shunt that might save his or her life, or untold fantastic treatments, devices and cures that might lie on the horizon. I cannot support a system that intimidates and harasses our brightest minds in medicine or that dictates what research will or will not be done based on whether or not they agree with the results. That is very dangerous. That is behavior that should not be tolerated by any state legislature. Only if we attack this problem, state by state, will it ever be solved on a national level.

So, I ask for your vote: I ask for your vote for reform. I ask for your vote for sanity. I ask for your vote for reason. I ask you to support science, the candle in the darkness that is flickering before you. Please, please do not let it go out!

Thank you very much for your consideration.

Sincerely,



Cynthia L. Brooke, MD

/plc

To: Legislative aides to:
Senator Drue Pearce
Senator Bert Sharp
Senate Finance Committee

Fm: Jim Sourant, legislative aide to:
Representative Brian Porter

Date: March 29, 1997
Re: HB 58 Tort reform

I bring to your attention a very important matter which has not been publicly disclosed during this session about the Governor' Task Force on Civil Justice Reform. At every stage through the House, the opponents of HB 58 have touted the recommendations of the task force as being the product of a blue ribbon bipartisan group which represents "the interests of large and small businesses, doctors...." This assertion has gone unchallenged to the present time. The fact of the matter is that nothing could be further from the truth.

The best evidence of misrepresentation is found in the attached letter from State Farm Insurance Company, which has over 200,000 automobile and homeowner insurance policies in effect in the state. The letter was written after the task force was created, but several months before the first meetings ever took place. The letter speaks for itself, but it is clear that State Farm was asking to be put on the task force. The "oversight" was not corrected, even though there was ample time to do so. Consequently, there were no representatives of the insurance industry on the task force.

Also conspicuously absent from the task force was the Division of Insurance. Had it been directly represented, there would have been evidence that over the past few years, ALL domestic insurance companies have withdrawn from high risk areas of coverage, such as the marine highway.

The task force then erroneously concluded that there was "no evidence of a crisis in insurance cost or availability, nor did it hear from the insurance industry in the course of its debate." Pages 2 and 7 of the task force report. First the insurance industry was arrogantly excluded from participation on the task force, then the task force cavalierly implied that the insurance industry was not interested in participating. Whatever the Division of Insurance could have contributed was not heard.

On those same pages of the task force report, the task force erroneously concluded that since insurance rates are not set by claims experience within Alaska, "the task force found no evidence that changes in Alaska law would affect Alaska insurance rates."! A look at the compendium of 25 letters

P.S.
BRIAN
AUTHORIZED ME
TO RELEASE THE
LETTER ATTACHED,
BUT THAT'S ALL?
THE EXPLANATION OF THE
IMPLICATIONS OF THAT
LETTER IS MY IDEA
AND RESPONSIBILITY TO
BEST TAKE FULL
ANYTHING COORDINATE
WITH BROWN
BEFORE

DO YOU
IT?
IT MAY BE
BRIAN
LET
THIS
STEEPING
FOR
VERY
GOOD
REASONS.
Jim

(USAA Insurance Company's letter and Mike Lessmeier's letter for State Farm) previously furnished to your offices makes clear that just the opposite is true: insurance rates in Alaska are determined in part by claims experience in Alaska, and insurance rates and rebates will benefit from HB 58!

These egregious misrepresentations go a lot further than mere "spinmeistering"; they appear to be intentionally false and misleading. This is much more than "politics as usual" in my book.

It is also clear that the one physician on the task force did not represent the 500 physicians who belong to the Alaska State Medical Association. Also conspicuously absent from the composition of the task force were the 100 airlines represented by the Alaska Air Carriers Association; the 4500 Alaska small business members of the NFIB; the 700 businesses statewide represented by the Alaska State Chamber of Commerce; the 25 companies represented by the Alaska Trucker's Association; the 250 companies represented by the Alaska Forest Association; the 1000 members of the Alaska Miner's Association; the 135 municipalities represented by the Alaska Municipal League; 18 electric utility cooperatives statewide; the 33 hospitals and nursing homes represented by the Alaska State Hospital and Nursing Home Association; and the 550 general contractors represented by the Association of General Contractors.

These groups, and the tens of thousands of employees they represent, were not given a slot on the task force. The composition of the task force was skillfully skewed. Add to that a 2/3 majority required to pass meaningful tort reform measures, and it becomes apparent that the deck was carefully stacked to prevent a result not favored by the trial lawyers.

Don't be fooled. If someone starts touting the recommendations of the task force, just ask them if it is not true that the insurance industry wanted to be a part of it. If anyone denies it, show them the letter. If anyone admits it, ask them why the insurance industry was not allowed to participate. The answer will be interesting, especially since the trial lawyers were not only allowed to participate, but were allowed to dominate and write the report.

The point is that the recommendations of the task force are not credible. To date, the touting of the objectivity of the task force has gone unchallenged during this session. It is speculation on my part, but if the governor wants to veto this bill, he will do it under the political cover of the task force recommendations. Whether you or your bosses choose to preempt the governor's ability to shield himself is up to you. But record should be corrected sometime, and this is the only chance we'll have to do it.

cc: Portia Parker
cc: Annette Kreitzer

bcc: Tim Kelly

State Farm Insurance Companies

GARY L. METHNER
REGIONAL VICE PRESIDENT
PACIFIC NORTHWEST OFFICE

1000 WILMINGTON DRIVE
DUPONT, WASHINGTON 20027

4800 25TH AVENUE, NORTHEAST
SALEM, OREGON 97313

July 18, 1996

The Honorable Tony Knowles
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

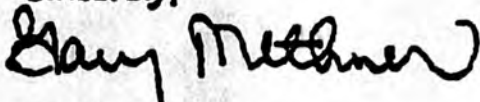
Dear Governor Knowles,

On behalf of Alaskans holding over 200,000 State Farm Insurance policies, I wish to express my disappointment at the composition of the Governor's Advisory Task Force on Civil Justice Reform (Advisory Task Force) that you created by means of Administrative Order Number 163.

In spite of the facts that insurance provides most of the money used to pay civil liability claims; that the Advisory Task Force is directed to assess the effects of insurance reforms on insurance rates in both Alaska and the Nation; and that State Farm and other insurers played a major role in the passage of HB 158, the Advisory Task Force has no direct representation from any member of the insurance industry. This omission is troubling and challenges the balance of the Advisory Task Force. None of the other members selected, business or otherwise, has the background, information, or concern to represent adequately the interests of policyholders and their insurers.

Failure to grant insurers seats on the Advisory Task Force has denied a voice to the hundreds of thousands of Alaskans whose premiums pay for the civil justice system that the Governor agrees needs reformation. Hopefully, you will recognize the gravity of this oversight and expand the Advisory Task Force to include as many of Alaska's major insurers as wish to participate. State Farm, for one, volunteers to sit on the Advisory Task Force should you choose to expand it. I await your response.

Sincerely,



Gary Methner

GM:la

To: Legislative aides to:
Senator Drue Pearce
Senator Bert Sharp
Senate Finance Committee

Fm: Jim Sourant, legislative aide to:
Representative Brian Porter

Date: March 29, 1997
Re: HB 58 Tort reform

I bring to your attention a very important matter which has not been publicly disclosed during this session about the Governor' Task Force on Civil Justice Reform. At every stage through the House, the opponents of HB 58 have touted the recommendations of the task force as being the product of a blue ribbon bipartisan group which represents "the interests of large and small businesses, doctors...." This assertion has gone unchallenged to the present time. The fact of the matter is that nothing could be further from the truth.

The best evidence of misrepresentation is found in the attached letter from State Farm Insurance Company, which has over 200,000 automobile and homeowner insurance policies in effect in the state. The letter was written after the task force was created, but several months before the first meetings ever took place. The letter speaks for itself, but it is clear that State Farm was asking to be put on the task force. The "oversight" was not corrected, even though there was ample time to do so. Consequently, there were no representatives of the insurance industry on the task force.

Also conspicuously absent from the task force was the Division of Insurance. Had it been directly represented, there would have been evidence that over the past few years, ALL domestic insurance companies have withdrawn from high risk areas of coverage, such as the marine highway.

The task force then erroneously concluded that there was "no evidence of a crisis in insurance cost or availability, nor did it hear from the insurance industry in the course of its debate." Pages 2 and 7 of the task force report. First the insurance industry was arrogantly excluded from participation on the task force, then the task force cavalierly implied that the insurance industry was not interested in participating. Whatever the Division of Insurance could have contributed was not heard.

On those same pages of the task force report, the task force erroneously concluded that since insurance rates are not set by claims experience within Alaska, "the task force found no evidence that changes in Alaska law would affect Alaska insurance rates."! A look at the compendium of 25 letters

P.S.
BRIAN
AUTHORIZED ME
TO RELEASE THE
LETTER ATTACHED,
BUT THAT'S ALL?
THE EXPLANATION OF THE
IMPLICATIONS OF THAT
LETTER IS MY IDEA
AND I TAKE FULL
RESPONSIBILITY FOR IT
BEST TO COOPERATE
ANYTHING YOU DO
WITH BEFORE
DO YOU
IT MAY BE
IF MAY BE
THAT BRIAN
WILL LET
THIS STEERING
FOR
DOING
VERY
GOOD
REASONS.
Jim

(USAA Insurance Company's letter and Mike Lessmeier's letter for State Farm) previously furnished to your offices makes clear that just the opposite is true: insurance rates in Alaska are determined in part by claims experience in Alaska, and insurance rates and rebates will benefit from HB 58!

These egregious misrepresentations go a lot further than mere "spinmeistering"; they appear to be intentionally false and misleading. This is much more than "politics as usual" in my book.

It is also clear that the one physician on the task force did not represent the 500 physicians who belong to the Alaska State Medical Association. Also conspicuously absent from the composition of the task force were the 100 airlines represented by the Alaska Air Carriers Association; the 4500 Alaska small business members of the NFIB; the 700 businesses statewide represented by the Alaska State Chamber of Commerce; the 25 companies represented by the Alaska Trucker's Association; the 250 companies represented by the Alaska Forest Association; the 1000 members of the Alaska Miner's Association; the 135 municipalities represented by the Alaska Municipal League; 18 electric utility cooperatives statewide; the 33 hospitals and nursing homes represented by the Alaska State Hospital and Nursing Home Association; and the 550 general contractors represented by the Association of General Contractors.

These groups, and the tens of thousands of employees they represent, were not given a slot on the task force. The composition of the task force was skillfully skewed. Add to that a 2/3 majority required to pass meaningful tort reform measures, and it becomes apparent that the deck was carefully stacked to prevent a result not favored by the trial lawyers.

Don't be fooled. If someone starts touting the recommendations of the task force, just ask them if it is not true that the insurance industry wanted to be a part of it. If anyone denies it, show them the letter. If anyone admits it, ask them why the insurance industry was not allowed to participate. The answer will be interesting, especially since the trial lawyers were not only allowed to participate, but were allowed to dominate and write the report.

The point is that the recommendations of the task force are not credible. To date, the touting of the objectivity of the task force has gone unchallenged during this session. It is speculation on my part, but if the governor wants to veto this bill, he will do it under the political cover of the task force recommendations. Whether you or your bosses choose to preempt the governor's ability to shield himself is up to you. But record should be corrected sometime, and this is the only chance we'll have to do it.

cc: Portia Parker
cc: Annette Kreitzer

bec: Tim Kelly.

State Farm Insurance Companies

GARY L. METHNER
REGIONAL VICE PRESIDENT
PACIFIC NORTHWEST OFFICE

1000 WILMINGTON DRIVE
DUPONT, WASHINGTON 98527

4800 25TH AVENUE, NORTHEAST
SALEM, OREGON 97313

July 18, 1996

The Honorable Tony Knowles
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

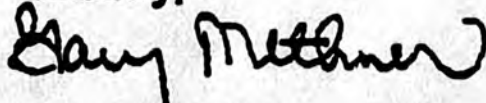
Dear Governor Knowles,

On behalf of Alaskans holding over 200,000 State Farm Insurance policies, I wish to express my disappointment at the composition of the Governor's Advisory Task Force on Civil Justice Reform (Advisory Task Force) that you created by means of Administrative Order Number 165.

In spite of the facts that insurance provides most of the money used to pay civil liability claims; that the Advisory Task Force is directed to assess the effects of insurance reforms on insurance rates in both Alaska and the Nation; and that State Farm and other insurers played a major role in the passage of HB 158, the Advisory Task Force has no direct representation from any member of the insurance industry. This omission is troubling and challenges the balance of the Advisory Task Force. None of the other members selected, business or otherwise, has the background, information, or concern to represent adequately the interests of policyholders and their insurers.

Failure to grant insurers seats on the Advisory Task Force has denied a voice to the hundreds of thousands of Alaskans whose premiums pay for the civil justice system that the Governor agrees needs reformation. Hopefully, you will recognize the gravity of this oversight and expand the Advisory Task Force to include as many of Alaska's major insurers as wish to participate. State Farm, for one, volunteers to sit on the Advisory Task Force should you choose to expand it. I await your response.

Sincerely,



Gary Methner

GM:la

March 21, 1997

Re: HB 58 Tort reform bill

Dear Ms. Ross:

Thank you for your faxed letter of March 20. I respond to the questions in the order set out in your letter.

1. What led me to see a need for a comprehensive tort reform.

First, studies have shown that a piecemeal approach to tort reform does not work. What is necessary is a comprehensive package of tort reforms to do the job. HB 58 accomplishes this goal in its 25 pages containing 65 sections.

The lack of a cap on punitive damages and certain non economic damages ("disfigurement or severe physical impairment") has created among businesses of all sizes, as well of individuals, a perceived threat of unlimited liability. This threat causes 95% of tort cases to settle without going to trial, depriving Alaskans of their day in court before a jury of their peers. Few can afford to roll the dice when faced with virtually unlimited liability. This is often the case even when liability is in doubt.

The problem is made worse by the fact that after the attorney fees (commonly as high as 40%, but hardly ever less than 33.3%) and litigation costs are deducted, the injured person receives only about 50% of what he or she should have recovered. The current system is grossly inefficient compared to worker's compensation or health care insurance.

As a consequence of just these abuses, let alone many others too complicated to explain here, the liability insurance companies are forced to raise premiums based on their costly claims experience. In some economic sectors of this state, such as small an medium sized air carriers, liability insurance coverage now is only available in amounts inadequate to compensate an injured person. One medium sized airline now pays \$3 million a year in premiums for one tenth the insurance coverage it had a few years ago for a much smaller premium. It is for that reason refusing service to passengers who are highly compensated young individuals with dependents. Over the past few years, some insurance companies have ceased doing business in Alaska altogether, thereby causing rates to increase due to lack of competition. In some areas of risk in this state, such as marine highways, there is no insurance available at all.

The current civil justice system condones frivolous lawsuits, which not only makes life miserable and expensive for those being sued, but causes insurance premiums to go up more than they should. To ERA aviation, the costs of successfully defending a recent suit seeking \$13 million in punitive damages (for hearing loss claim allegedly caused by improper cabin pressure) was several hundred thousand dollars. When physicians are sued

in Alaska, in more than 80% of the cases going to trial, the physicians win defense verdicts, but only after the very significant expenditure of time and money. Something is terribly wrong with the system.

In all of this, there is a cost to the State of Alaska, in the form of more state employees (judges, clerks, guards and other staff). How much did the new courthouse in Anchorage cost?

The overall effect of the above is to create a significant disincentive for businesses, especially for small and medium sized businesses, to do business in Alaska. Without tort reform, creating an environment conducive to rational economic development, the creation of jobs, and a higher standard of living for all Alaskans is being undermined. Without a healthy and vibrant private sector, our economy cannot flourish.

2. What information weighed most heavily in my decision to vote for HB 58.

The tort reform bill does absolutely nothing to diminish the amount of worker's compensation or economic damages (past and future wages, past and future medical expenses, etc.) available to injured persons. The ability of injured persons to be made whole is not impaired for their economic losses.

What struck me was the wide and deep support of tort reform by just about every sector except the legal industry in this state: The 100 airlines and air taxi companies doing business in Alaska; the 4500 Alaskan small business members of the National Federation of Independent Businesses; the seven hundred businesses and their 70,000 employees statewide represented by the Alaska State Chamber of Commerce; 25 trucking companies operating in the state; the 250 companies in the timber industry; the 1000 miner members of the Alaska Miner's Association; the 135 municipalities which make up the Alaska Municipal League; everyone involved in the oil and gas industry; over 1400 licensed professional engineers, architects, surveyors, building code officials, and landscape architects; 18 electric utility cooperatives statewide; 33 community hospitals and nursing homes all over the state; the 500 physicians who are members of the Alaska State Medical Association; the 550 general contractors and their approximate 11,000 employees who do business in this state; and many others. What these people have to say is worth listening to, and I urge you to talk to them. The ones who have the most to lose by tort reform are the plaintiffs' lawyers.

Finally, the nuts and bolts contained in HB 58 have to be read, analyzed and understood to be appreciated. I commend it to your reading.

3. My constituents will benefit from passage of HB 58 for all the reasons stated above. Since we cannot all be government employees, it is the private sector which must be treated fairly if we expect to create jobs and a higher standard of living for all Alaskans. Unless the tort system is reformed, these beneficial goals will, over time, be at risk.

SUSAN ROSS
FAX: 262-8482 or 283-9007

RECEIVED
MAR 20 1997

March 20, 1997

Dear Representative:

I have attempted to contact you via phone on Wednesday and Thursday with a few questions regarding your vote on HB 58. I intended to use your comments in an upcoming article in The Peninsula Marketplace. Perhaps it would be easier for you to respond to my questions via fax; I would appreciate your response by Saturday, March 22.

- (1) What lead you to see a need for a comprehensive tort reform bill in Alaska?
- (2) What information / source of information weighed most heavily in your decision to vote for HB 58?
- (3) How will your constituents benefit from passage of HB 58?

THANK YOU FOR YOUR TIMELY RESPONSE TO THESE QUESTIONS.

Susan Ross

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 (1996)

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

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

LIEFF CABRER & HEIMANN
WILLIAM HIRSCH
(415) 956-1000

ASHBURN & MASON
A. WILLIAM SAUPE
(907) 276-4331

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

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

March 12, 1997

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

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.

① WRONG!

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.

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: Portia Parker

Fm: Jim Sourant

March 10, 1997

Tort Reform: The highlights of HB 58

*CHNR
etc.*

1. HB 58 v. Governor's Task Force Recommendations.

a. Governor's Task Force was "stacked" with five trial lawyers and others opposed to true tort reform, so the **credibility and recommendations of the task force must be closely scrutinized.**

(1) What is noteworthy is who was **NOT** invited to participate as a member of the Task Force. Not invited were representatives of the State Chamber of Commerce, the National Federation of Independent Business, the construction industry, the aviation industry, the travel industry, the trucking industry, the mining industry, the insurance industry, the Alaska State Medical Association, and the Alaska State Hospital and Nursing Association. These organizations represent tens of thousands of Alaskan individuals and businesses which are the most affected by tort reform, and they were not invited and were not consulted.

2. What the Governor's Task Force opposed in its recommendations.

a. **Reasonable qualifications for expert witnesses in professional malpractice suits.** HB 58 proposes that if a doctor, lawyer, architect, or engineer is sued for malpractice, expert witnesses used by either side must be licensed in that profession in this state or in another state. The Governor's Task Force wants to leave existing law, which does not require an expert witness to have a particular license or academic degree to qualify as an expert. In other words, the Task Force does not object to "hired guns" possessing dubious qualifications to be allowed to make a charade of the judicial system.

b. **Allowing a jury to know of plaintiff's recoveries from collateral sources.** Under existing law, a jury is not allowed to learn that the plaintiff had an earlier recovery somewhere else for the same injuries. HB 58 allows the jury to become aware of such earlier recoveries before reaching a verdict on the amount of damages. The Governor's Task Force wants to leave existing law as it is.

An example of what has happened in the past is the **Justice v. Humana Hospital** case. There Mr. Justice was injured in an Anchorage bar fight one night. He was thoroughly examined at Humana Hospital and sent home. He moved to California, where he was examined with Cat-scans and MRI's with no findings noted. Later he presented signs of cerebral hemorrhage

from a congenital aneurysm. Mr. Justice sued the California health care providers in California, and received \$2.2 million of future payments (present value of \$579,000) over the next 42 years, which should have made him whole. He then returned to Alaska to sue the Alaska doctors and Humana Hospital for a second bite out of the apple. A sympathetic Alaska jury, ignorant of the earlier California action and \$2.2 million award, awarded \$1.9 million. The trial judge incorrectly further reduced the \$579,000 to present value before offsetting against it against the \$1.9 million Alaska award. However, the existing law does not let the jury know about the previous recoveries until after the verdict is in, with the result that the jury generally makes higher awards than it would have with full disclosure of the facts. The Governor's Task Force wants to continue keeping Alaskan juries in the dark about collateral benefit recoveries until after the jury becomes powerless to consider the true state of affairs.

c. **Allocating fault to people who are not parties to the action.** Under a voters' initiative in 1987, it was made clear that henceforth it was unfair to allow plaintiffs to go after "deep pocket" defendants for the entire amount of a person's damages, no matter how much or little the deep pocket was at fault. The people's wishes, however, were thwarted in an Alaska Supreme Court decision: **Benner v. Wichman**. HB 58 now attempts to restore the will of the people by making the statute absolutely clear that state courts shall determine each person's share of the fault, whether or not that person is a party to the suit. The Governor's Task Force wants to keep existing law allowing deep pocket defendants to be liable for more than their share of the fault.

3. What the Governor's Task Force made even worse.

a. **Caps on punitive damages.** Under existing law, there are no limits to the amount of punitive damages which may be assessed against a defendant. This state of the law has the effect of terrorizing defendants into very large settlements. HB 58 seeks to cap punitive damages at the greater of three times compensatory damages or \$300,000. In extreme cases, the cap is the greater of four times compensatory damages or \$600,000. If this were the law when the Exxon Valdez incident occurred, assuming \$1 billion in compensatory damages, a jury could have found another \$4 billion of punitive damages.

The Governor's Task Force proposed "cap" on punitive damages does little to put any kind of a "cap" on punitives. When carefully read, the Task Force recommendation places a company at risk of paying up to one year's "net annual income" as punitive damages, even for as little as two or more wrongful employment hirings, promotions, demotions or terminations! For one unnamed oil company doing business in Alaska, that could have been up to \$260 million. For one multi-national pharmaceutical company, the "cap" could have been between \$4.87 billion and \$3.17 billion, depending upon how the courts interpret "net annual income." Similar to the litigation interpreting the infamous Section 7(i) of the Alaska Native Claims

Settlement Act, determining the meaning of "net annual income" will likely require a costly, burdensome and time consuming effort. Add to that uncertainties generated by likely litigation over the efficacy of subsidiary corporation protection to the parent company, and it becomes more clear why companies wanting to do business in Alaska cannot make investment plans. How can Alaska project a business friendly face with that kind of law on the books? The Task Force's attempt to slip through such an outrageous provision completely undermines its credibility as well as whatever public confidence was once reposed in the Task Force. One must ask who benefits most from the Task Force version, and the answer must be the 1/3 contingent fee attorneys, courtesy of the five trial attorneys on the Task Force.

b. Caps on noneconomic damages, such as pain, suffering, physical impairment, loss of enjoyment of life. Under existing law, there is no cap on damages for disfigurement or severe physical impairment, although there is a cap of \$500,000 for other types of noneconomic losses. HB 58 seeks to cap noneconomic damages at \$300,000, except that a cap of \$500,000 will apply to certain enumerated serious situations. The Governor's Task Force wants to keep existing law in place, with no limit whatsoever for damages for "severe disfigurement or severe physical impairment."

4. What arose after the Governor's Task concluded its objective.

a. Independent counsel abuses. Under existing Alaska law, whenever an insured is sued, and the insurance company agrees that coverage exists for a part of the injured party's claim, but reserves its rights to deny coverage at a later date for another part of the claim, at that moment the insured has a right to an independent counsel. The fees of the independent counsel are paid by the insurance company. The abuses arise when the independent counsel runs up exorbitant fees defending against claims that are clearly not covered by the insurance policy. In two recent Alaska instances, independent counsel have run up fees in excess of \$700,000 and \$800,000 respectively.

HB 58 simply seeks to make the insurance company 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.

Alaska State Legislature

Legislative Affairs Agency

Office of the Executive Director

130 Seward Street, Suite 313 Juneau, Alaska 99801-2197 Phone (907)465-3800

Fax (907)465-3234



March 5, 1997

Mr. Hugh Fleischer, President
Board of Directors of AKPIRG
1401 W. 11th Avenue
Anchorage, AK 99501

Dear Mr. Fleischer:

I am writing to make you aware of an incident that occurred in our legislative offices February 24, 1997. It is most distressing that a representative of AKPIRG, Mr. Stephen Conn, conducted himself in a harassing, disruptive and assaultive manner during a legislative teleconferenced committee meeting.

Here is a report of what happened:

"Frank Dillion made a comment across the table to another man. At that point Stephen Conn broke in and told Frank he was 'scum'. He didn't get much of a response from Frank, meaning Frank just looked at him and shrugged. Stephen then said something to the effect, 'do you want to take it outside?' Frank didn't respond and nothing more was said. Later in the meeting Stephen walked over and interrupted Mike Burns, who was giving testimony. Stephen said three or four words to him and slapped a book on the table next to him to look at. Stephen also called Al Tamangi a 'shithead'. At the end of the meeting Mr. Dillion walked over to Mr. Conn and asked 'do you want to take it outside?' At this point Mr. Conn struck Mr. Dillion's chin. Mr. Dillion responded by a slap on the shoulder. We were going to call the police but the assault did not escalate and Mr. Dillion left the room. Our LIO person walked over to talk to Mr. Conn, who at first was belligerent, saying 'none of this was his fault and everyone else had provoked it and they were scum.' Mr. Conn was asked to leave."

I would hope your organization takes note of this incident when you review Mr. Conn's performance. An anger management class or conflict resolution class should be taken by Mr. Conn. For your information, a conflict resolution class is offered May 16 in Anchorage. I have enclosed a copy.

If Mr. Conn does not adhere to our Legislative Information Office protocol in the future, he will be banned from the LIO.

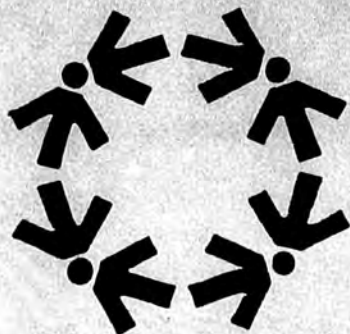
Sincerely,

A handwritten signature in cursive script that reads "Pamela A. Varni".

Pamela A. Varni
Executive Director

Enclosure

cc: Legislative Council Members
AKPIRG Board of Directors



AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 101093 / Anchorage, Alaska 99510-1093

(907) 278-3661 FAX (907) 278-9300

Ms. Lynn C. Morley
Manager
Legislative Affairs Agency
Information and Teleconferencing
130 Seward St., Suite 313
Juneau, Alaska 99801
March 3, 1997
Dear Ms. Morley:

*FYI - not
enclosed in letter
to Fleischer*

I am in receipt of your letter of February 26, 1997 regarding behavior in teleconferenced committee hearings. As I told your Anchorage staff, I agree entirely with you that my conduct and others must adhere to criteria that allow for mutual respect and a free exchange of ideas. To the extent that my own behavior deviated from that norm, I promise you as I promised your associates that it will never happen again.

As to your allusions to my behavior, I must clarify a point or two. When witness Mike Burns was asked about a point related to his participation on the Governor's Task Force on Civil Justice, he said that he had not brought a copy of the final report to the hearing for reference. Since I had a copy, I lent it to Burns. One of the other witnesses thought that I was interfering with Burns. To the contrary, I spent many days with Burns at meetings of the Task Force and enjoy a congenial relationship with him. He happens to be my banker. That same person slandered me after the hearing and apparently lied to the press about my encounter with Mr. Dillon. On the matter of physical contact with Dillon, Dillon approached me, asked if I wanted to go outside and hit me in the face after I reflexively touched his face with my finger.

I trust that the criteria you describe will be communicated to the persons who slandered and assaulted me and we can work together to insure the dignity of the legislative hearing process. I intend to fully abide by the protocols you have articulated.

Most respectfully,

Stephen Conn

Essential training for today's collaborative,
team-oriented workplace ...

Conflict Resolution and Confrontation Skills™



How to keep your cool, stand your ground
and reach a positive solution

One-day seminar coming to your area

ALASKA

Anchorage - May 16 (#01048)
Fairbanks - May 14 (#01049)
Juneau - May 12 (#01050)

INDIANA

Bloomington - May 28 (#01068)
Fort Wayne - May 7 (#01069)
Indianapolis - May 5 (#01070)
Indianapolis - May 30 (#01071)
Terre Haute - May 29 (#01073)
West Lafayette - May 6 (#01072)

WISCONSIN

Eau Claire - May 15 (#01091)
Fond du Lac - May 12 (#01098)
Green Bay - May 13 (#01092)
La Crosse - May 19 (#01093)
Madison - May 9 (#01094)
Madison - May 20 (#01095)
Milwaukee - May 8 (#01097)
Pewaukee - May 21 (#01096)
Sheboygan - May 7 (#01099)
Wausau - May 14 (#01100)

**You'll be more relaxed and in control when
you learn these key communication skills:**

1. The 5 classic conflict resolution strategies — and how to use each one
2. How to "confront" people in a way that minimizes defensiveness and hostility
3. The secrets to controlling your own anxiety, fear and anger
4. Proven ways to prevent conflicts from escalating
5. 5 essential rules for open communication
6. How to help others resolve their conflicts (essential for managers and parents)
7. Specific ways to deal with manipulative tactics, such as blaming ... sarcasm ... sulking ... one-upmanship ... nit-picking ... interrupting ... and threats (spoken and unspoken)

Develop a calmer, more productive
workplace — and work life.

See inside for more ...

3 reasons this seminar is a wise investment ...

Conflicts can have a devastating effect — on productivity, morale, teamwork and, ultimately, your organization's bottom line.

This seminar does not promise an end to conflict. That's impossible. But it will give you and your co-workers a proven approach you can easily use whenever a conflict does arise. You will learn that conflict can actually be healthy for an organization. Here's how:

1. **Conflict produces change.** Conflict is often the first step for getting rid of outdated procedures, revising regulations and fostering innovation and creativity.
2. **Conflict leads to unity.** Addressing rather than suppressing conflict opens the lines of communication, gets people talking to each other (instead of about each other) and makes people feel like they're part of a team that cares.
3. **Conflict promotes collaboration.** People learn how to work harmoniously, come up with creative solutions and reach outcomes that benefit everyone.

Conflicts are inevitable. Anger, grudges, hurt and blame are not.

Why can't work — and life — be easier?

They can. Fact is, most conflicts can be resolved fairly easily. Without shouting, competition or anger. Even better, you can solve conflicts in a way that actually benefits all concerned. This seminar will show you how.

In one day you'll learn a system of psychologically sound techniques proven to work in a variety of conflict situations. Even potentially destructive situations like temper tantrums ... tensions, anxiety and fear ... one-upmanship ... out-and-out lying ... and more.

The result? You'll be able to focus more on your work, instead of your anger. Your relationships with your team, boss and other business associates will improve dramatically. You'll feel less stressed. And your overall sense of well-being will be stronger, because you'll see that things really *can* be worked out.

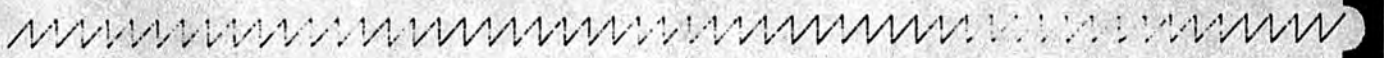
Sound interesting? Then please join us at *Conflict Resolution and Confrontation Skills*. Add a little peace to your life.



Seminar content

24 ways this seminar will keep you cool, calm and in control

1. Why conflict is inevitable, and a fresh, positive way to look at it
2. The 2 primary reasons conflicts occur (and how understanding them leads to quicker resolution)
3. Why people become enemies, and how to break the behaviors that lead us there
4. Red flags that warn conflict is brewing, and what you can do to prevent escalation
5. Specific ways to create a more positive and cooperative climate for conflict resolution

- 
- 
6. What to say to get what you need: the 5 classic conflict resolution strategies, and how to use each
 7. The 5 rules that keep communication open
 8. When your conflict is very complicated or "too big" — how to narrow the focus and start making progress
 9. Separating the person from the problem: what it really means and how to do it
 10. What to do when you feel misunderstood
 11. "Buying concessions" — how to get a concession from the other party without giving up too much
 12. A gentle technique for clarifying the issues that are in conflict
 13. What to do when someone refuses to discuss the issue (and what *not* to do)
 14. How to break the automatic link between your emotions and your actions
 15. The least productive ways to deal with conflict (and how to respond if someone tries them on you)
 16. When to give in and when to insist
 17. The #1 misstep that keeps people at each other's throats
 18. Effective ways to resolve conflicts between teams and departments
 19. How to deal with contentious tactics, including ...
 - ... Manipulation: making you feel guilty through blaming, sarcasm, sulking, etc.
 - ... Back-stabbing, lying and sabotage
 - ... One-upmanship, like making you wait, interrupting you — anything to get you flustered
 - ... Ingratiation: making promises that sound too good to be true
 - ... Threats, both spoken and unspoken
 20. Mediation: knowing when a third party is useful, and how to recruit one (or be one)
 21. How to generate new options when both sides are stuck
 22. The best ways to resolve conflicts with your managers
 23. From conflict to problem solving: 4 steps that make it happen
 24. How to help others resolve their conflicts (essential for managers and parents)

Having conflict with one particular person?

Invite him or her along!

Perhaps it's a co-worker or teammate ... or even a family member or spouse.

Attend together and take a giant step toward resolution and peace. You'll discover the roots of your conflicts ... how each of you gets off track ... and how to find common ground.

This training will help you understand each other better, communicate more easily and develop a more satisfying relationship.

Attend with your team

Conflict management skills are considered *essential* for teamwork. This seminar is an easy, convenient way for your team to gain these skills.

Teams save money too! Tuition is just \$69 each for groups of five or more. (Groups can consist of people from different locations attending various seminar dates.)

**To register, phone
1-800-334-6780 or
fax/mail page 7**



**Consider
bringing this
powerful training
directly to your
organization**

Left unchecked, workplace conflict can bring a department, team, even an entire organization to its knees quicker than most anything.

Bringing a program like this in-house can help reduce the severity and frequency of conflicts and confrontations, because everyone learns these peace-keeping skills simultaneously.

A member of our On-Site staff will assess your needs, prepare an action plan, pair you up with the trainer who's right for you, and deliver a program that's tailor-made for your people.

Phone us today for more information on how we might work together to train your people in these crucial skills — either in your own familiar surroundings or off-site if you prefer.

For a no-obligation consultation, please phone

1-800-325-5854.

One of our experienced training advisors will gladly answer any questions you might have.

**“Taught me how to
confront without causing
more hard feelings.”**

Gerri Keene, Pharmacist, Medical Center Hospital

“I closed my entire law firm today for this seminar. It exceeded expectations.”

Glen Aaron, President, Glen Aaron PC

“One of the most rewarding experiences I have had in a long time. It has helped me to better deal with conflict and confrontation, not only with my staff, but also with upper management.”

Tammy Albers, Cafeteria Manager, Marriott Corp.

“As an educator, I plan to use this information in the coming year. I have developed new skills in dealing with problems — skills I didn't realize existed.”

Carol Sanders, Teacher, River Road ISD

“I walk away feeling good and empowered, with tools and guidelines to put into action changes in my life.”

Constance M. Bessette, Patient Relations, Rand Eve Institute

“... highlighted the need to overcome our fears in dealing with conflict and confrontation, for a 'positive' outcome for all.”

H. Bokalo, Manager-Customer Service, Bell Canada

“I have learned today that any problem can be solved ... I can better confront and handle any situation that may arise.”

Dana Yamada, Refugee Coordinator, Malton Neighborhood Services

Take home a detailed reference book

Your tuition includes a comprehensive workbook.

After the program, it will be a valuable desktop reference that helps you implement your new conflict management skills.

**Our no-risk guarantee protects you
for a full year ...**

If you don't gain everything we promise — and all that you expected — from this program, we'll refund your tuition in full. Promptly and courteously, no quibbling whatsoever. And you have a full year to decide!

Curious, but not yet convinced?

Consider this: In one fast-paced day, you'll gain an advantage that will continue to pay off for years to come ... starting the very next day. If that's not incentive enough, here are five more reasons to sign up now:

1. **It's really a small price to pay for what you'll get.** You already know how costly personal squabbles can be — in downtime, hurt feelings, dampened enthusiasm, lack of cooperation. But did you also know that conflict — when handled the right way — can actually energize and even bring together opposing parties? Odds are, you'll see payback (in reduced stress alone) the first time you use what you learn at this seminar.
2. **In a single day you will gain proven peace-keeping skills that will serve you throughout your career.** This seminar is full of specific ideas you can put to use right away — you'll leave eager to try them and confident that they'll work.
3. **You'll learn skills that others will notice — and will want to copy themselves.** After all, "keeping your cool" is an enviable workplace trait. In no time at all, you'll see a marked improvement in how you handle yourself either as a participant or a mediator in conflicts.
4. **Your day will fly by.** When learning is fun, time goes fast and what you hear sticks. Your seminar leader is highly skilled at creating a lively and entertaining learning experience.
5. **We guarantee your satisfaction.** If for any reason you find this seminar isn't for you, feel free to leave at any time. Just let us know and we'll refund your tuition in full, no matter how long you stayed. You really have nothing to lose.

This seminar is a great opportunity for you to build your personal power and benefit your company or organization in the process. We hope you'll plan now to attend.



John Ball
Vice President of Marketing and Development



CareerTrack's name change signals a new era in training ...

CareerTrack has recently joined with ETC, the new training division of Telecommunications Inc.

ETC was formed to introduce the latest learning technology into workplaces, classrooms and homes worldwide. Through its vast telecommunication capabilities, ETC will be able to reach millions of people at home and at work every day. Couple that with CareerTrack's extensive line of seminars and instructional tapes, and the training possibilities become virtually limitless.

In the months ahead, you'll be hearing more about ETC and its mission. For now, though, we just want to assure you that we will continue to offer you the high-quality training products and personal service you've come to expect from us over the years.



Registration information

AFFORDABLE TUITION • GROUP DISCOUNT

\$79 per person; \$69 each for groups of five or more.

Payment is due before the program.

PROGRAM SCHEDULE

Check-in: 8:15 am – 9:00 am

Program: 9:00 am – 4:00 pm

Lunch: 11:45 am – 1:00 pm

CANCELLATION/SUBSTITUTION

There is no fee for substituting or canceling. If you can't attend but can send a substitute, just phone us. If you need to cancel, phone us and we'll convert your tuition to a credit, good for a full year, that you can use for a future seminar or product purchase. Or, if you prefer, we'll send a refund.

PLEASE NOTE

- We will mail your Express Check-In ticket within 10 days after you register
- If you don't receive your ticket before the program, please phone us
- Walk-in registrations will be accepted as space allows
- Please, no audio or video recording
- Lunch and parking are not included
- If using a purchase order, it must be attached to a completed registration form
- You will receive an attractive take-home Certificate of Attendance at the program

CONTINUING EDUCATION HOURS

Attn: Nurses, accountants and other professionally licensed personnel. By attending one of our programs, you may be eligible to receive six contact hours (.6 CEUs) or six CPE credits (Registered Sponsorship NASBA). To verify credits for your profession, simply phone us. Your certificate will arrive within four weeks after the program. CareerTrack is an authorized CEU sponsor member of the International Association for Continuing Education and Training (IACET).

MAILING ADDRESS INFORMATION

We strive to keep our mailing list as up-to-date and accurate as possible. If you are receiving duplicates or if the mailing label on this brochure is incorrect, please phone 1-800-837-4398. Or, note corrections on the labels and fax them to 1-800-788-5478, or mail them to us, attention: MS34-1. Please allow 15 weeks for processing. We occasionally make our mailing list available to other carefully screened companies. If you do not want to receive these offers, please notify us in writing and include a copy of your mailing label.

1997 PROGRAM LOCATIONS

The specific meeting room will be posted in the lobby on the day of the program.

Anchorage, AK – May 16 (#01048)

William A. Egan Convention Center
555 West Fifth Avenue

Fairbanks, AK – May 14 (#01049)

Westmark of Fairbanks • 813 Noble Street

Juneau, AK – May 12 (#01050)

Centennial Hall Convention Center
101 Egan Drive

Bloomington, IN – May 28 (#01068)

Convention Center
302 South College Avenue

Fort Wayne, IN – May 7 (#01069)

Holiday Inn Northwest
3330 West Coliseum Boulevard

Indianapolis, IN – May 5 (#01070)

Hyatt Regency Indianapolis
One South Capitol Avenue

Indianapolis, IN – May 30 (#01071)

Hyatt Regency Indianapolis
One South Capitol Avenue

Terre Haute, IN – May 29 (#01073)

Holiday Inn-Terre Haute
3300 U.S. 41 South

West Lafayette, IN – May 6 (#01072)

Holiday Inn Lafayette
5600 State Road 43 North

Eau Claire, WI – May 15 (#01091)

Best Western Midway Hotel
2251 Hendrickson Drive

Fond du Lac, WI – May 12 (#01098)

Holiday Inn • 625 Rolling Meadows Drive

Green Bay, WI – May 13 (#01092)

Regency Suites • 333 Main Street

La Crosse, WI – May 19 (#01093)

Midway Hotel Resort and
Convention Center
1835 Rose Street

Madison, WI – May 9 (#01094)

Radisson Inn Madison
517 Grand Canyon Drive

Madison, WI – May 20 (#01095)

Sheraton Madison Hotel
706 John Nolen Drive

Milwaukee, WI – May 8 (#01097)

Milwaukee Hilton
509 West Wisconsin Avenue

Pewaukee, WI – May 21 (#01096)

Country Inn Hotel and Conference Center
2819 Golf Road

Sheboygan, WI – May 7 (#01099)

Ramada Inn • 723 Center Avenue

Wausau, WI – May 14 (#01100)

Wausau Inn and Conference Center
2001 North Mountain Road

To register, phone 1-800-334-6780



PHONE

1-800-334-6780 or
(303) 447-2300

7 am to 7 pm weekdays and 8 am to 5 pm
Saturdays, except major U.S. holidays. Have your
address label and program number available.



FAX completed registration
form to 1-800-832-9489
or (303) 447-1696

24 hours a day, 7 days a week. We will mail,
not fax, your confirmation.



MAIL completed
registration form to

ETC w/CareerTrack MS2
3085 Center Green Drive
Boulder, CO 80301-5408



YES!

Please register me for the one-day, \$79 *Conflict Resolution and Confrontation Skills* seminar I've checked below.
(Tuition drops to \$69 each for groups of five or more.)

- | | | |
|---|--|---|
| ☐ Anchorage, AK - May 16 (#01048) | ☐ Terre Haute, IN - May 29 (#01073) | ☐ Madison, WI - May 20 (#01095) |
| ☐ Fairbanks, AK - May 14 (#01049) | ☐ West Lafayette, IN - May 6 (#01072) | ☐ Milwaukee, WI - May 8 (#01097) |
| ☐ Juneau, AK - May 12 (#01050) | ☐ Eau Claire, WI - May 15 (#01091) | ☐ Pewaukee, WI - May 21 (#01096) |
| ☐ Bloomington, IN - May 28 (#01068) | ☐ Fond du Lac, WI - May 12 (#01098) | ☐ Sheboygan, WI - May 7 (#01099) |
| ☐ Fort Wayne, IN - May 7 (#01069) | ☐ Green Bay, WI - May 13 (#01092) | ☐ Wausau, WI - May 14 (#01100) |
| ☐ Indianapolis, IN - May 5 (#01070) | ☐ La Crosse, WI - May 19 (#01093) | |
| ☐ Indianapolis, IN - May 30 (#01071) | ☐ Madison, WI - May 9 (#01094) | |

IMPORTANT INFORMATION



Record the codes from your mailing label in the boxes below (even if this brochure was not addressed to you).

HR27

PRIORITY CODE

--	--	--	--	--	--	--	--

CUSTOMER NUMBER

--	--	--	--	--	--	--	--

ORGANIZATION SIZE



What is the total number of employees at your specific location?

#1 ☐ 5 or fewer #2 ☐ 6-19 #3 ☐ 20-49 #4 ☐ 50-99 #5 ☐ 100-249 #6 ☐ 250-500 #7 ☐ Over 500

NAMES OF ATTENDEES (Please list additional names on a separate sheet.)



#1 ATTENDEE'S NAME

Mr.
Ms.
Mx.

JOB TITLE

PROGRAM NUMBER

#2 ATTENDEE'S NAME

Mr.
Ms.
Mx.

JOB TITLE

PROGRAM NUMBER

ORGANIZATION INFORMATION



APPROVING MANAGER'S NAME

TITLE

ORGANIZATION NAME

MAILING ADDRESS

☐ BUSINESS

☐ HOME

CITY

STATE

ZIP CODE

DAYTIME TELEPHONE NUMBER

()

FAX NUMBER

()

METHOD OF PAYMENT (Payment is due before the program.)



Please add applicable state and local tax to your payment for programs held in Hawaii, New Mexico and South Dakota. If you are tax-exempt,
enter your tax-exempt number here _____ and attach a copy of your tax-exempt certificate.

Total amount due: \$ _____

☐ Check # _____ (payable to ETC w/CareerTrack) is enclosed

☐ Bill my organization. Attn: _____

☐ Purchase order # _____ (Attach purchase order to completed registration form.)

☐ Charge to:

☐ MC ☐ VISA ☐ AMEX ☐ DISCOVER ☐ DINERS CLUB

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

EXPIRATION DATE

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

EXPIRATION DATE

Un cashed refund checks and excess payments will be treated as a credit that is good for a full year.

To: Mary Gore and Portia Parker

Fm: Jim Sourant

February 26, 1997

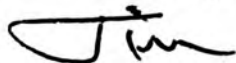
Dear Mary and Portia:

I appreciate how "swamped" both of you are. I know the feeling. Brian Porter informs me that his understanding with Senator Miller is that both of you are involved in tort reform on the Senate side.

Accordingly, I renew my offer to help in any way I can. I have previously provided your office with copies of SSHB 58, the Sponsor Statement, and the Sectional Analysis. Let me know what I can do.

Heads up, for today we hope to pass SSHB 58 out of the House Judiciary Committee. That should be helpful for you, since the documents people on the first floor should have SSHB 58 with all amendments already incorporated into it (at the judiciary committee level) by tomorrow, or at the latest, by Friday. This means that to keep up our momentum, you could call Mike Ford today or tomorrow, and get him alerted to recaptioning SSHB 58 to the Senate version during the upcoming break.

Thanks again for all your help. I'll look forward to working with you on this.



cc: Brian Porter

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

David Jones and George Suddock
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear David and George:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Please coordinate with Jim Sourant who will testify before the judiciary committee regarding Sections 31 and 32.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Brian".

Brian Porter

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

Judy Brady
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear Judy:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian".

Brian Porter

Post-it™ Fax Note	7671	Date	1/27	# of pages	23
To	Judy Brady	From	Jim Stewart		
Co./Dept.	NOGA	Co.	Rep Porter		
Phone #	272-1481	Phone #	258-8197		
Fax #	279-8114	Fax #	465-8434		

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

David McGuire, M.D.
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear Dave:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian".

Brian Porter

Post-It™ Fax Note	7671	Date	1/27	# of pages	23
To	David McGuire	From	Jim Saurant		
Co./Dept.		Co.	Rep Porter		
Phone #	562-4142	Phone #	258-8197		
Fax #	563-8824	Fax #			

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

Bill Allen
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear Bill:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian".

Brian Porter

Post-it™ Fax Note 7671		Date 1/27	# of pages 23
To Bill Allen	From Jim		
Co./Dept. Vero	Co. Rep Porter		
Phone # 277-5309	Phone # 258-8197		
Fax # 264-8130	Fax # 265-8434		

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

Roger Holmes, Esquire
Anchorage, Alaska
January 27, 1997

Sent via Fax: 243-6695

Dear Roger:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Jim Sourant has questions for you about sections 7(b), 12, 13, 14, 19, 20, 28, 30, 31, 32 and 33. Please call him when you are ready to talk about those sections. Thanks!

Sincerely yours,

A handwritten signature in cursive script that reads "Brian".

Brian Porter

Post-It Fax Note		7671	Date	1/27	# of pages	23
To	Rogers	From	Jim Porter			
Co/Dept.		Co.	Rep Porter			
Phone #	248-8013	Phone #	465-4930			
Fax #	243-6695	Fax #	465-8434			

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

Dick Cattanch
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear Dick:

Here is our office draft of the Sponsor substitute for HB 58 (this year's HB 158). As you remember, we prefiled the initiative so as to get a bill going and have a lower number than the governor.

It basically contains a composite of:

1. HB 158 as it passed the House Judiciary Committee.
2. Refinements on some points developed since then.
3. Portions of the recommendations of the Governor's Task Force.

Please let me know, as soon as you can, if there are any items that create a problem, or any omissions.

Sincerely yours,

Brian
Brian Porter

Post-It™ Fax Note		7671	Date	1/27	# of pages	23
To	Dick Cattanch		From	Jim		
Co/Dept.			Co.	Rep Porter		
Phone #	349-6464		Phone #	258-8197		
Fax #	522-3464		Fax #	522-3464		

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

Post-It™ Fax Note	7671	Date	1/27	# of pages	3
To	Art Snowden				
Co./Dept.	AK Const				
Phone #	264-0547				
Fax #	264-2881				
From	Brian Porter				
Co.	AK Const				
Phone #	4930				
Fax #	5834				

Art Snowden
Anchorage, Alaska
January 27, 1997

Sent via Fax

Dear Art:

Here is the Alternative Dispute Resolution language we have drafted for inclusion in the Sponsor substitute for HB 58.

Please let me know, as soon as you can, if there are any items that create any problems, or any omissions.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian".

Brian Porter

ADR:

WORKING COPY #1

Sec. 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.**

(a) The Alaska Judicial Council shall establish a pilot program under this chapter for the submission of no more than ___% of the tort and ___% of the contract cases filed after January 1, 1998 in the Superior Court for the Third Judicial District. The program shall operate for ___ years.

(b) In establishing the pilot program, the Alaska Judicial Council shall confer with the Alaska Supreme Court, the Alaska Court System, the Alaska Dispute Settlement Association, other states which have alternative dispute resolution programs, and whomever else may be appropriate to contribute to the successful establishment of the program.

(c) The Alaska Judicial Council shall develop the minimum qualifications for a person to be listed on the roster of persons determined to meet those qualifications, together with a schedule of fees to be charged. Nonlawyers shall, if they meet the minimum qualifications, be permitted to be listed on the roster.

(d) All persons who are listed on the roster in subsection (c) above have judicial immunity for conducting the alternative dispute resolution procedures to the same extent as judges have immunity in Alaska.

(e) The Alaska Judicial Council shall establish procedures for ensuring the confidentiality of all matters disclosed during alternative dispute resolution. Matters disclosed during alternative dispute resolution proceedings are not admissible in subsequent proceeding in the event of no resolution under this chapter, unless such matters are discoverable under the Alaska Rules of Civil Procedure.

(f) Fees and costs to conduct an alternative dispute resolution proceeding under this chapter shall be shared equally among the parties to the case, unless a party is determined to be an indigent by the trial court, in which case payment shall be made at public expense under procedures to be developed by the Alaska Judicial Council. Fees and costs borne at public expense under this subsection shall constitute a lien on any recovery by the indigent party. Reimbursement shall be paid first from the recovery.

(g) The procedures to be developed shall establish standards for the timely referral to alternate dispute resolution by the trial court. The alternative dispute resolution shall terminate no more than 100 days after the defendant's answer is served, unless the trial court grants a time extension in an exceptional case for good cause shown. The alternative dispute resolution proceeding shall be limited to no more than 12 hours, unless the parties mutually agree to a longer period.

(h) The Alaska Judicial Council shall evaluate the alternate dispute resolution procedure annually, and submit a written report to the Governor and to the judiciary committees of both houses of the Alaska Legislature. The evaluation shall measure the overall success of the project

in terms of its ability to quickly, inexpensively and efficiently resolve civil disputes. It shall also report on the satisfaction of the parties to the cases, and the expenditure of court resources, including amounts paid at public expense for the benefit of indigents and the recoupment under subsection (f) of this section.

Sec. 09.42.030. **Definitions.** In this chapter,

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

*Sec. 34. AS 09.55.536(c) is amended to read:

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

(1) Why did the claimant come [WHAT WAS THE DISORDER FOR WHICH PLAINTIFF CAME] to medical care?

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

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

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

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

(6) What specifically caused the medical injury?

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

Explain.

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

*Sec. 35. AS 09.55.536(f) is amended to read:

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

*Sec. 36. AS 09.55.536 is amended by adding a new subsection to read:

Municipality of Anchorage



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

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

March 12, 1997

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

Re: SSHB58 - Tort Reform Legislation

Dear Representative Therrault:

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

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

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

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

Implants
Pro
Electric

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

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

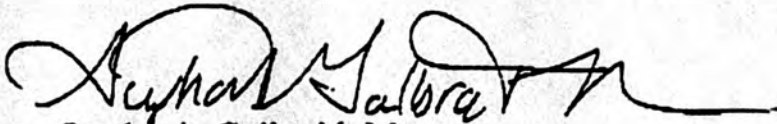
The Honorable Gene Therrault

March 12, 1997

Page 2 of 3

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

Very truly yours,



Stephanie Galbraith Moore

Assistant Municipal Attorney

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