

SB

303



Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Sponsor Statement Senate Bill 303 Workers' Compensation and Contractors

From statehood and for decades afterward, Alaska's workers' compensation statutes promoted safety in the workplace by providing for actions by injured employees against those on the jobsite, other than their own employer, whose fault caused the employee's injury.

Most Alaskans are shocked, then, to learn that the exclusive liability provisions of AS 23.30.055, established in 2004, protect a project owner or general contractor from any liability when a subcontractor's employee is injured or killed, even when the project owner or general contractor acts with criminal negligence, when that criminal negligence is defined, in part, as, "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senate Bill 303 seeks to return to the previous system which allowed for accountability and responsibility for wrongful conduct.

A fundamental principle when speaking to the concept of personal responsibility is: If you break it, you pay for it. This fundamental principle is thought of as a guiding standard and it is advanced as a family value worthy of passing from parent to child. We expect that if others do something wrong to us that the wrongdoer will be responsible and, correspondingly, if we do something wrong to another that we will be responsible.

In the common application of this fundamental principle to driving a vehicle, we expect that if we fail to stop for a red light and hurt someone that we will be responsible and that if someone else runs a red light that they will be responsible to us for the harm caused to a son, daughter, family member, or other loved one.

Just like responsible operators of motor vehicles know that they must follow the rules of the road (e.g., stopping for red lights), employers know that they must generally comply with state and federal codes, regulations, and laws relating to workplace safety, and are also subject to additional common law or statutory duties and responsibilities. Likewise, project owners, contractors and other entities have legal duties and responsibilities relating to the safety of workers.

Alaska has a system whereby the fault is apportioned so there can never be the worry that anyone will ever be responsible for more than their just share of the fault. However, where the project owner and/or contractor is at fault, but is nevertheless indemnified by the employer or granted immunity through legislation, the employer is left bearing the burden of the conduct of the project owner and/or contractor, and the project owner and/or contractor is not required to take any personal responsibility for its own actions.

In Juneau:

State Capitol, Juneau, AK 99801
(907) 465-3709 Office • (907) 465-4714 Fax

senator joe.paskvan@legis.state.ak.us

In Fairbanks:

1292 Sadler Way, Ste. 308 Fairbanks, AK 99701
(907) 451-4347 Office • (907) 451-4348 Fax

Workers compensation has always been a system under which harm is only partially compensated. For example, if an unmarried worker without children is killed, the compensation benefits are modest funeral expenses only.

A common argument against the system prior to 2004 relates to the objection to "double dipping." However, prior to 2004, the monies recovered by the injured employee reimbursed the employer's compensation carrier for the benefits paid to the injured employee under the workers' compensation system; therefore, eliminating any notion of "double dipping."

I urge your support of this legislation.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 303
 (S) Publish Date: 4/2/10

Identifier (file name): SB303-DOLWD-WC-03-22-10 Dept. Affected: Labor and Workforce Development
 Title: Workers' Compensation and Contractors RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: (S) L&C
 Requester: (S) L&C Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: None

POSITIONS

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Trena Heikes, Director
 Division: Workers' Compensation
 Approved by: Click Bishop, Commissioner
 Agency: Department of Labor and Workforce Development

Phone 465-6059
 Date/Time 3/22/10 8:44 AM
 Date 3/22/10

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 25, 2010

SUBJECT: Workers' compensation; exclusive liability for project owners and contractors (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum is in response to your request for a memo that provides short answers to the questions posed in the memorandum to your office dated March 23, 2010, and an additional question related to whether the exclusive remedy provisions of AS 23.30.055 apply when the actions of an owner or contractor constitute criminal negligence.¹

1. May an owner or general contractor assert the exclusive remedy of the Alaska Workers Compensation Act, based on the last sentence of AS 23.30.055, to avoid liability for an injury to an employee of a subcontractor that occurs during employment?

The short answer is yes, based on the analysis in my prior memorandum.

2. Are the "intentional injury" and "illegally employed minor" exceptions the only recognized exception to the workers' compensation exclusive remedy statute?

The short answer is yes.²

3. Do the exclusive remedy provisions of AS 23.30.055 protect a project owner or general contractor from liability for the injuries to a subcontractor's employee if the owner or general contractor acts with criminal negligence?³

¹ My conclusions are based on existing law, not addressing the changes to AS 23.30.055 proposed in SB 303.

² My research of the Alaska case law did not reveal an additional exception to AS 23.30.055.

³ The material provided describes criminal negligence as follows: "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senator Joe Paskvan
March 25, 2010
Page 2

The short answer is yes.⁴

4. Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee, or who violates child labor law?

The short answer is no, based on the analysis in my previous memo.

If I may be of further assistance, please advise.

DCB:med
10-057.med

⁴ I am unable to locate caselaw, an administrative opinion, or an attorney general opinion in Alaska that addressed criminally negligent conduct in the context of a workers compensation claim. Absent intentional conduct, it is unlikely that a court would find criminally negligent conduct on the part of an employer to be the kind of conduct that should be outside of the operation of workers' compensation statutes. See 6-103 *Larson's Workers' Compensation Law*, sec. 103.03

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MEMORANDUM

March 23, 2010

SUBJECT: Questions regarding workers' compensation exclusive remedy provisions (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum responds to your questions concerning the exclusive liability provisions of the existing Alaska Workers' Compensation Act.

*May an owner or a general contractor assert the exclusive remedy provisions of the Alaska Workers' Compensation Act to avoid liability for an injury to an employee of a subcontractor that occurs during employment?*¹

AS 23.30.055 sets out the exclusive liability provisions in the Alaska Workers' Compensation Act; the section reads:

Sec. 23.30.055. Exclusiveness of liability.

The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence

¹ Workers' compensation is "payable irrespective of fault as cause for the injury." AS 23.30.045(b).

of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

Under AS 23.30.055, an employer's liability to secure workers' compensation under AS 23.30.045² is the exclusive liability of an employer for an injury to the employee. The last sentence of AS 23.30.055 adds to the definition of an "employer" a person who is potentially liable for securing workers' compensation payment. Under AS 23.30.045(a), a subcontractor, a contractor, or a project owner are each potentially liable for securing workers' compensation payments; therefore, any of them may assert the exclusive liability provisions of AS 23.30.055 as a defense.

Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee or who violates child labor laws?

The Alaska Supreme Court has recognized an intentional injury exception to the exclusive remedy provisions in AS 23.30.055. The Alaska Supreme court has

held that [the] exclusive remedy provision does not apply where an employee commits an intentional tort against a fellow worker. We found that the "socially beneficial purpose of the work[ers'] compensation law

² AS 23.30.045 provides:

Sec. 23.30.045. Employer's liability for compensation.

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(f) In this section,

(1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;

(2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

Senator Joe Paskvan
March 23, 2010
Page 3

would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability." We have permitted recovery for intentional torts "on the theory that the harm is not accidental and therefore not covered by the act."

Fenner v. Municipality of Anchorage, 53 P.3d 573, 575 (Alaska 2002) (internal cites omitted). The exception is limited to those cases where an employer has a specific intent to injure an employee. *Id.* at 577. See also *Williams v. Mammoth of Alaska*, 890 P.2d 581 (Alaska 1995) (exclusive remedy bars employee's common law tort claim against partner where partner's negligence arises within partnership business); *Elliott v. Brown*, 569 P.2d 1323 (Alaska 1977) (where employer hit and shoved employees, actions were intentional enough to take case outside workers' compensation system); *Van Bien v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1979) (aviation firm dispatching pilots without adequate sleep was gross negligence or wilful and knowing violation of FAA regulations, but not the type of intentional tort actionable outside of the workers' compensation system).

With regard to your question concerning the application of child labor laws to the exclusive liability provisions of the Alaska Workers' Compensation Act, if an employer violates child labor laws, AS 23.30.055 does not bar a common law action for damages brought against an employer by a person who was employed in violation of child labor laws at the time of the injury. *Whitney-Fidalgo Seafoods, Inc. v. Beukers*, 554 P.2d 250 (Alaska 1976).

In the *Beukers* case, the Alaska Supreme Court found that the Alaska Workers' Compensation Act does not specifically address the question which remedies are available to illegally employed minors injured in the course of their employment. *Id.* at 252. However, the court held, as a matter of public policy, that

where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of the workmen's compensation act, so that the child can no longer assert its common law rights against the employer.

Id. at 253.

If I may be of further assistance, please advise.

DCB:ljw
10-207.ljw

Patrick A. Thompson
3814 Spring Coulee Rd
Bellingham, WA 98226
(360) 933-1210
patthompson58@yahoo.com

Re: Senate Bill 303

Dear Senator Paskvan:

First let me thank you for your efforts in trying to correct an unfair provision in the worker's compensation law, passed during the corrupt reign of Bill Allen, which provides immunity to project owners or general contractors from fairly compensating a worker injured by the direct negligence of a project owner or general contractor.

My name is Pat Thompson, age 52, and I am an example of how this law you are trying to change can destroy a working man's life.

I worked in the oil fields in Alaska my entire adult life and was proud to do so and was treated well.

On October 4 of 2006 I worked for PEAK Oilfield Services. On that day I was assigned a fire truck to help clean a Vac truck at the Beluga waste disposal facility which is owned and operated by Conoco Phillips. During the cleaning, I suffered a devastating electrical shock when I touched the Vac truck. These trucks are supposed to be grounded to protect against static electricity. Conoco failed to provide any kind of ground. If the ground had been provided, I would have used it.

I now live with a brain injury. My partner, Tory Sandoz, has helped me compose this letter as I am unable to do this on my own. I am unable to provide a living for myself due to inability to organize, recall recent information, and physically move about for more than an hour or two without rest. I must take medicine to manage depression, nerve pain, stabilize mood. My relationships are suffering as they are weary of my constant pain. I feel like I am an 80 year old man.

As you know, the worker's comp system is pretty bad. I paid over \$20,000 from my life savings to get a proper diagnosis and treatment from specialists in Chicago. The work comp matter grinds on with no help in sight. I have no income and must tap into my very rapidly dwindling retirement account.

God bless you and the other compassionate legislators for trying to undo this horrible legislative mistake.

Very truly yours,

Patrick A. Thompson

RECEIVED

APR 14 2010



Alaska Independent
Insurance Agents & Brokers, Inc.

April 14th, 2010

To Whom It May Concern:

Re: SB 303

To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor that is provided by statute through workers compensation.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,



John Grummett

National Director Alaska Independent Agents and Brokers

P.O. Box 112908 • Anchorage, Alaska 99511-2908 • Tel: (907) 349-2500 • Fax: (907) 349-1300



Alaska Timber Insurance Exchange

2417 Tongass Avenue, Suite 214
Ketchikan, Alaska 99901
FAX (907) 225-9454
(907) 225-9451

March 22, 2010

The Honorable Senator Paskvan
State Capitol Room 7
Juneau AK, 99801

Re: Senate Bill 303

Dear Senator Paskvan:

This letter is to express concerns that the Alaska Timber Insurance Exchange has about Senate Bill 303.

Senate Bill 303 would weaken the exclusive remedy provision in the Alaska workers' compensation statutes. The exclusive remedy provisions currently in place prevent, in most instances, an employee of a subcontractor or a contractor from bringing a third party action against either a project owner or contractor that their employer is working for.

An entity that qualifies as a project owner under the Alaska workers' compensation statutes is considered an employer for exclusive remedy purposes for the employees of either a contractor or subcontractor working for them. This also applies to a contractor in relation to a subcontractor.

Senate Bill 303 would take away these exclusive remedy protections from project owners or contractors even if they were liable for the workers' compensation benefits of an injured employee of a contractor or subcontractor. Currently, a project owner or contractor can become liable for the workers' compensation benefits of a contractor or subcontractor's employees if the contractor or subcontractor does not have workers' compensation insurance.

Prior to the passage of Senate Bill 323 in 2004, project owners and contractors were not treated as employers for exclusive remedy purposes, i.e. an injured employee of a contractor or subcontractor could bring a third party action against a project owner that hired the contractor and subcontractor. Likewise, an injured

Alaska Timber Insurance Exchange

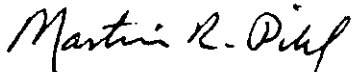
RE: Senate Bill 303

Page 2

employee of a subcontractor could bring a third party action against the contractor that hired their employer.

The Alaska Timber Insurance Exchange feels that the existing workers' compensation laws in Alaska provide fair benefits for injured workers without exposing employers, contractors or project owners to excessive liabilities. The proposed changes contained in Senate Bill 303 would add uncertainty and possible expense for those entities that hire contractors or subcontractors to do work for them.

Sincerely,



Martin Pihl

Chairman, Alaska Timber Insurance Exchange Board of Governors

cc: Alaska Timber Insurance Exchange Board of Governors
Alaska Timber Exchange Management Corporation Board of Directors

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 323 Sponsor Statement

“An Act relating to a project’s liability for worker’s compensation and the exclusiveness of liability for worker’s compensation.”

Senate Bill 323 revises the Worker’s Compensation Act as it applies to contractors and subcontractors. The two principal modifications are as follows:

1. Responsibility for payment of workers’ compensation is extended up the chain of contracts to include project owners; and,
2. Injured parties in receipt of benefits under the Worker’s Compensation Act would be barred from “double dipping” via a tort liability claim.

Under AS 23.30.045(a), an injured employee only has recourse for workers’ compensation benefits against his immediate employer and if the employer is a subcontractor, against the contractor who retained the subcontractor. The proposed legislation allows recourse for the payment of compensation benefits against *project owners*, as well as contractors and subcontractors.

This extension of the rights of injured employees is sensible inasmuch as the project owner is the beneficial user of the work performed by the injured employee. It should be noted that a project owner does not include individuals who have engaged the services of contractors to build or renovate a residential home.

Finally, the proposed legislation extends the exclusivity protection set forth in AS 23.30.055 to all parties in the contracting chain relating to a project. This includes the employer of the injured employee, and those parties, which are upstream in the chain of contracts from the employer of the injured employee.

In other words, if an injured employee works for a subcontractor, then the subcontractor, the contractor and the project owner would be free of tort liability so long as the injured employee receives the benefits set forth in the Alaska Workers’ Compensation Act.

Senate Bill 323 will encourage all parties participating in a project to identify and enforce strict safety standards for the benefit of all workers rather than deflecting responsibility through the use of indemnity agreements as is common practice currently. At the same time, it ensures that injured workers will receive all benefits available under the Alaska Workers’ Compensation Act.

SEEKINS BILL

23-LS1498\SA.A

CS FOR SENATE BILL NO. 323(JUD) am H
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/5/04
Offered: 4/16/04

Sponsor(s): SENATOR SEEKINS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to a subcontractor's, contractor's, and project owner's liability for
2 workers' compensation, to sole proprietors and partnerships without employees, and
3 managers or managing members of limited liability companies, and to the exclusiveness
4 of liability for workers' compensation."

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

6 * Section 1. AS 23.30.045(a) is amended to read:

7 (a) An employer is liable for and shall secure the payment to employees of the
8 compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and
9 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the
10 payment of compensation to its employees, the contractor is liable for and shall
11 secure the payment of the compensation to employees of the subcontractor. If the
12 employer is a contractor and fails to secure the payment of compensation to its
13 employees or the employees of a subcontractor, the project owner is liable for
14 and shall secure the payment of the compensation to employees of the contractor

- decision to
insert contract
into subp
- already in
Sec 10 -

1 and employees of a subcontractor, as applicable [UNLESS THE
2 SUBCONTRACTOR SECURES THE PAYMENT].

3 * Sec. 2. AS 23.30.045(f)(1) is amended to read:

4 (1) "contractor" means a person who undertakes by contract
5 performance of certain work for another but does not include a vendor whose
6 primary business is the sale or leasing of tools, equipment, other goods, or
7 property; and

8 * Sec. 3. AS 23.30.045(f) is amended by adding a new paragraph to read:

9 (3) "project owner" means a person who, in the course of the person's
10 business, engages the services of a contractor and who enjoys the beneficial use of the
11 work.

12 * Sec. 4. AS 23.30.055 is amended to read:

13 **Sec. 23.30.055. Exclusiveness of liability.** The liability of an employer
14 prescribed in AS 23.30.045 is exclusive and in place of all other liability of the
15 employer and any fellow employee to the employee, the employee's legal
16 representative, husband or wife, parents, dependents, next of kin, and anyone
17 otherwise entitled to recover damages from the employer or fellow employee at law or
18 in admiralty on account of the injury or death. The liability of the employer is
19 exclusive even if the employee's claim is barred under AS 23.30.022. However, if an
20 employer fails to secure payment of compensation as required by this chapter, an
21 injured employee or the employee's legal representative in case death results from the
22 injury may elect to claim compensation under this chapter, or to maintain an action
23 against the employer at law or in admiralty for damages on account of the injury or
24 death. In that action the defendant may not plead as a defense that the injury was
25 caused by the negligence of a fellow servant, or that the employee assumed the risk of
26 the employment, or that the injury was due to the contributory negligence of the
27 employee. In this section, "employer" includes, in addition to the meaning given
28 in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially
29 liable for securing payment of compensation.

March 25, 2010

Senator Joe Paskvan, Chair
Senate Labor & Commerce Committee
State Capitol
Juneau, AK 99802

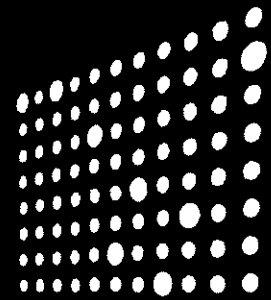
RE: SB 303

Chair Paskvan and Members of the Senate Labor & Commerce Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

Current law obligates the immediate employer and other project participants to pay an injured employee's workers' compensation benefits regardless of fault. In the unfortunate circumstance of an injury, a worker has clear understanding about remedies being provided under the workers' compensation system. Prior to 2004, many subcontractors employed by a larger company (project owner) or employer, were not required to carry worker's compensation insurance. Under current law, which passed in 2004, all employees including subcontractors now carry worker's compensation insurance. This requirement now insures all workers working on the job regardless of who may be their direct employer. Correspondingly, workers' compensation benefits-the employers associated with the project-is the exclusive remedy for potentially liability

Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, Moloso v. State, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.



ALASKA STATE
CHAMBER
OF COMMERCE

Headquarters
217 2nd Street
Suite 201
Juneau
Alaska 99801
(907) 586-2323
FAX 463-5515

Regional Office
601 W. 5th Ave.
Suite 700
Anchorage
Alaska 99501
(907) 278-2722
FAX 278-6643

www.alaskachamber.com

In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

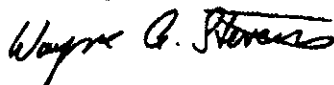
Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

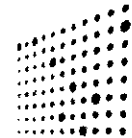
The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,



Wayne A. Stevens
President/CEO



**Alaska State Chamber of Commerce
2010 Position**

Support Workers' Compensation Exclusive Liability Statute

The Chamber supports current Alaska law making compensation benefits an injured worker's exclusive remedy for on-the-job injuries. The State Chamber will oppose any legislation introduced to remove the exclusive liability language described above.



Alaska Independent
Insurance Agents & Brokers, Inc.

April 8th, 2010

To Whom It May Concern:

Re: SB 303

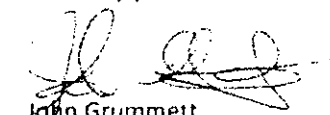
To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,



John Grummett

National Director Alaska Independent Agents and Brokers

April 16, 2010

Representative Jay Ramras, Chair
House Judiciary Committee
State Capitol
Juneau, AK 99802

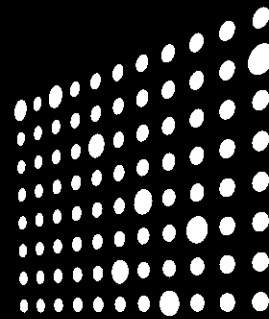
RE: SB 303

Chair Ramras and Members of the House Judiciary Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

Current law obligates the immediate employer and other project participants to pay an injured employee's workers' compensation benefits regardless of fault. In the unfortunate circumstance of an injury, a worker has clear understanding about remedies being provided under the workers' compensation system. Prior to 2004, many subcontractors employed by a larger company (project owner) or employer, were not required to carry worker's compensation insurance. Under current law, which passed in 2004, all employees including subcontractors now carry worker's compensation insurance. This requirement now insures all workers working on the job regardless of who may be their direct employer. Correspondingly, workers' compensation benefits-the employers associated with the project-is the exclusive remedy for potentially liability

Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, Moloso v. State, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.



ALASKA STATE
CHAMBER
OF COMMERCE

Headquarters
217 2nd Street
Suite 201
Juneau
Alaska 99801
(907) 586-2323
FAX 463-5515

Regional Office
601 W. 5th Ave.
Suite 700
Anchorage
Alaska 99501
(907) 278-2722
FAX 278-6643

In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

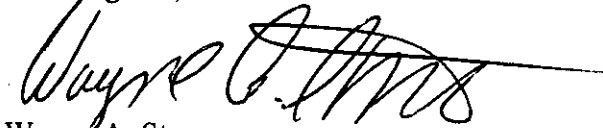
Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

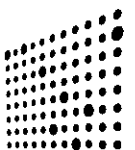
The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,



Wayne A. Stevens
President/CEO





CONTRACTORS & THE



By ROBERT J. DICKSON

Workers' compensation inequity against general contractors fixed

The Alaska Supreme Court has recently approved the Legislature's 2004 fix of an inequality toward general contractors under the workers' compensation statutes. By way of background, the basic premise of the workers' compensation statutes is that in place of a worker's right to sue his employer for negligently caused injuries to the employee, the employee is given a statutory right to payment for medical care and a partial replacement of lost earned wages in all cases, not just those where the employer is negligent.

Thus, while the worker is deprived of his ability to recover big damages when the employer is negligent, in place of that right, he is given a reduced recovery in all cases regardless of whether the employer was negligent. At the same time, part of the quid pro quo, is the statute immunizes the employer from any and all tort claims by the injured employee and his family and representatives. The employer and its insurance carrier are liable for workers' compensation benefits, but not for tort damages.

All workers' compensation statutes provided that in the case of a general construction contractor with subcontractors, the general contractor were responsible for all benefits required by the workers' compensation law to the subcontractor's injured employees if the subcontractor failed to provide workers' compensation insurance for the sub's employees. Consequently, when a sub went without workers' compensation insurance and its employee was injured, the injured employee could recover workers' compensation benefits from the general contractor. While the statutes required the general contractor to carry workers' compensation both for its employees and potentially for uninsured subcontractors' employees, the statutes, including Alaska's, was silent on whether the general contractor was also immunized from tort liability to the sub's employees in the same way as an employer with workers' compensation insurance was immune.

In 1981, the Alaska Supreme Court ruled that even though a general contractor would have to pay workers' compensation benefits if the sub failed to do so, the general contractor was NOT immunized from tort liability. Consequently the injured subcontractor's employee had the ability to obtain workers' compensation benefits from the general contractor if there was no negligence involved, or sue the general contractor in tort if the general was allegedly negligent. Thus the general contractor had the worst of both sides

of the original concept – liability for workers' compensation benefits of employees not its own, as well as exposure to tort liability to those same workers.

Prior to 2004, any company working on a project site, other than the subcontractor whose employee was injured, was fully exposed to a claim by the subcontractor's employee for tort negligence. This meant even though the general contractor was potentially liable for the sub's employees if the sub had been uninsured, the general was also always a potential target for a liability suit when a subcontractor's employee was injured. The project owner was also a prime target for such liability suits.

But all owner-general contractor contracts provided that the contractor would indemnify the project owner for any claims against the owner by the general's or sub's employees. The subcontracts also provided same protection for the general with respect to the sub's employees. As a result, a subcontractor who provided workers' compensation insurance would have to pay (through its insurer) workers' compensation benefits to an injured employee; and then when the employee sued the general contractor, the sub would also have to pay whatever tort recoveries or settlements were recovered against the general.

The same mechanism operated between general contractors and project owners. Consequently, through contracts working together with the statutes, responsible general contractors or subcontractors often paid twice. That result was in addition to responsible general contractors being faced with exposure to both workers' compensation benefits to an uninsured subcontractor's employees and exposure to tort liability to the same workers.

But in 2004, the Alaska Legislature moved to correct that inequity; the ability of a subcontractor's injured employee to sue the general contractor and the project owner was eliminated. The Legislature expanded the potential liability for workers' compensation benefits to not only the general contractor but also to the project owner. The Legislature provided that if a general contractor failed to obtain worker's compensation insurance for its employees or the employees of a subcontractor, the project owner was liable for workers' compensation benefits for the general's employees and even for the subcontractor's employees if the subcontractor was uninsured. At the same time, however, the Legislature also immunized the project owner from tort liability. Further, the

Legislature corrected the gap created back in 1981 by also immunizing the general contractor from tort liability to uninsured subcontractor's employees.

In the case recently decided, an employee of a general contractor operating a drill platform for one of the oil companies was injured on the platform. The general contractor had provided workers' compensation insurance and thus the platform owner was not going to be liable for any workers' compensation benefits to the employee. Predictably, the employee sued the project owner any way, claiming the 2004 statute unconstitutionally deprived him of valid causes of action. In a November 2009 decision, the Alaska Supreme Court upheld the constitutionality of the new legislative scheme.

The case represents one of those situations where the Alaska Supreme Court accepted the public policy judgment of the Alaska State Legislature.

Robert J. (Bob) Dickson is a partner of the Anchorage law firm Atkinson, Conway and Gagnon Inc.



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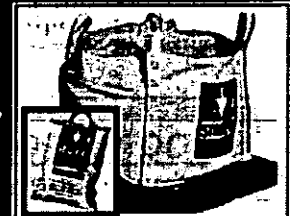


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April 15, 2010

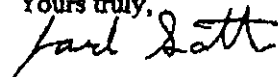
To Whom It May Concern:

My brother, Derek Sather, tragically died on March 20, 2008 while working on a construction project in Skagway, Alaska. He was crushed by the weight of a front loader that rolled backward down a steep road, pinning his body to the front of a cement truck. The front loader was not operated by his employer, but rather the general contractor.

Derek was deeply loved and relied upon by his extended family, including his mother, two brothers, sister, nieces and nephews, and fiancé. Derek cannot be replaced. The current state of Alaska Law would limit benefits available to my family in the amount of \$5,000 for funeral expenses. This is unacceptable and unjust.

General contractors who negligently cause harm to workers in Alaska should not be immune from liability. They need to be held accountable for their acts, which will create a safer workplace for all individuals working in Alaska. It will also provide for reasonable compensation for families who have suffered greatly from these negligent acts.

Yours truly,



Jared Sather

Before 2004



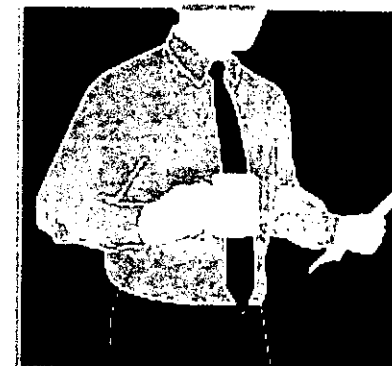
- Project owner employee
- WC policy in place



- Project Contractor
- WC policy in place



- Project Subcontractor
- WC policy in place



- Visitor
- WC policy in place

If injured simultaneously on project, and PROJECT OWNER is at fault, remedies available:

- WC

- WC
- tort claim

- WC
- tort claim

- WC
- tort claim

Today



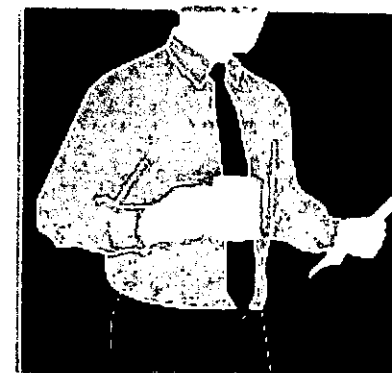
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THE ALLIANCE

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

646 West Fourth Ave., Suite 200 * Anchorage, AK 99501 * Phone (907) 563-2226 * Fax (907) 561-8870

HOUSE JUDICIARY TESTIMONY

on SB 303

April 16, 2010

Chairman Ramras, members of the House Judiciary Committee, I'm Paul Laird, general manager & testifying on behalf of the Alaska Support Industry Alliance against Senate Bill 303.

Our 500 member organizations provide more than 40,000 Alaskan jobs as contractors and suppliers to the Alaska's oil, gas & mining industries. Many would be directly & adversely affected by SB 303, which would subject them to increased costs & risks. They would face the double jeopardy of workers' comp liability and liability lawsuits - a boon to trial lawyers, a bane to business.

Reforms adopted in 2004 have worked. All employees now carry workers' compensation insurance and are eligible for benefits regardless of fault. Project owners, contractors and subcontractors now coordinate safety programs, resulting in better safety performance.

Alaska's oil & gas industry has lost 1,500 jobs in the past year. Investment is down, oil & gas contractors are losing business, and margins are squeezed on what business remains. SB 303 would be one more threat to their futures.

We strongly oppose Senate Bill 303. Thank you.



Alaska Independent
Insurance Agents & Brokers, Inc.

April 14th, 2010

To Whom It May Concern:

Re: SB 303


To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor that is provided by statute through workers compensation.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,



John Grummett

National Director Alaska Independent Agents and Brokers

Sec. 23.30.045. Employer's liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 — 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training, work readiness, work therapy experience, or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section.

(d) A contract may not be awarded by the state or a home rule or other political subdivision of the state unless the person to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The person to whom the contract is awarded shall keep the workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on behalf of the employer in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies that the state or political subdivision may have against the employer.

(f) In this section,

(1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;

(2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking. (§ 3 ch 193 SLA 1959; am § 1 ch 46 SLA 1967; am § 3 ch 166 SLA 1972; am §§ 4, 5 ch 93 SLA 1982; am §§ 1 — 3 ch 80 SLA 2004)

