HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

health care delivered to the patient. I have an ongoing medical malpractice case involving an on call specialist who provided negligent advise to the emergency department and then failed to see a patient notwithstanding his agreement to do so with the hospital. Under this particular section, since he did not render professional services per se, he would probably be insulated from a negligence claim.

On the other hand, if this is an attempt to codify the common law definition of medical negligence it is woefully inadequate.

Professional services definitionally would insulate hospitals from the negligent acts of their employees if they were done outside the scope of licensing provisions. Moreover, it would insulate doctors from a negligence claim if they operate outside the scope of their licensing requirements. Literally then, a doctor who is a G.P. who renders service as an orthopedist could be insulated. More troubling, how is a patient to know? This section would effectively allow the licensing provisions of the individual or institution to dictate medical negligence.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 20, 1995

SUBJECT: Civil actions - (CSHB 158(FIN))

TO: Representative Mark Hanley
Attn: Michelle

FROM: Michael F. Ford
Legislative Counsel

The attached CS contains the changes you requested. One change is the deletion of sec. 16 from the Judiciary version. This section would enact a provision of law that specifies the effect of a release given in a civil action. The section was one recommended by this office, in order to correct a problem created by the approval of the tort reform initiative in 1987. The initiative resulted in the repeal AS 09.16, relating to contribution between people who are jointly liable for a civil judgment. However, this repeal of AS 09.16 also resulted in elimination of law regarding the effect of giving a person who was liable for civil damages a release from liability. Section 16 of CSHB 158(JUD) was intended to correct this problem. I would recommend that you reinsert section 16 in order to clearly establish the legal effect of releasing a person from civil liability.

You should also note that in removing section 16 of CSHB 158(JUD), I also had to delete references to that section in sections 12 and 13 of CSHB 158(FIN), and had to reinsert existing references to AS 09.16.040, which is a provision of law that no longer exists.

Please contact me if you have further questions.

MFF:glc:klb
95-249.glc

Enclosure

ALASKA STATE HOSPITAL & NURSING
HOME ASSOCIATION

MARCH 1995

WHAT SECTION 24 OF CS FOR HOUSE BILL NO. 158 (JUD) RE CIVIL LIABILITY OF HOSPITALS FOR NON-EMPLOYEES DOES AND DOES NOT DO

WHAT IT DOES

It DOES return Alaska law to what it was before Jackson v. Power (1988) -- and what the law continues to be in virtually every other jurisdiction in the United States.

It DOES protect Alaska hospitals from having to pay substantial medical malpractice insurance premiums to cover a form of absolute liability without fault that is virtually unheard off in every other State of the Union.

It DOES protect municipal and non-profit hospitals from being named as deep pocket defendants in every case of physician negligence.

WHAT IT DOES NOT DO

It DOES NOT relieve the hospital of liability for permitting an incompetent physician to exercise staff privileges, or for any other error, omission, or act of negligence on the part of the hospital.

It DOES NOT relieve the hospital of liability for failing to fulfill any affirmative duty imposed by statute or regulation.

It DOES NOT relieve the hospital of liability if an injured patient had a reasonable expectation that a negligent doctor was acting as an agent for the hospital.

Roy A. Box, O.D., F.A.A.O.
Doctor of Optometry
Professional Plaza Suite A-102
9309 Glacier Hwy
Juneau, AK 99801

Telephone (907) 789-3175

3/10/95

Dear Carl—

Hi! I am writing to ask you to re think your position on Tort Reform HB 158. The insurance companies use this issue as a reason for constant rate increases. My suspicion is that there is quite a bit of smoke and mirrors in their justifications. Pass tort reform and put the ball in their court.

Sincerely

Roy Box

Hansen Engineering

Ronald G. Hansen, P.E
4117 Birch Lane
Juneau, Alaska 99801
Phone (907) 789-9167

March 17, 1895

TO: Senator Jim Duncan
Senator Loren Leman
Representative Kim Elton
Representative Caren Robinson
Representative Joe Green
Representative Brian Porter

RE: HB 158 Tort Reform

I support Representative Brian Porter's bill, HB 158 Tort Reform. I urge you to do so also. Tort reform is needed. The engineering societies have been working on tort reform for years. This bill substantially improves the existing laws relating to torts.

Sincerely,

Ronald G. Hansen

Ronald G. Hansen, P.E.
Consulting Civil Engineer

Chevron

Turnagain Chevron
1460 Old Seward Hwy
Anchorage, AK 99515
Phone 907 344 2153
Phone 907 349 2024
Fax 907 349 3135

March 17, 1995

Alaska Senators and Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Sirs/Madams:

House Bill 158 - Tort Reform is legislation that is long overdue. The independent, non-government businesses, which are so necessary to enhance Alaska's economic stability, can ill afford the liability insurance that has become necessary because of the outlandish and frivilous awards by the courts towards claims.

Government regulated user fees have also taken an aggressive toll on businesses. My business has absorbed many of these fees. With the awareness of the state's fiscal situation, I am asking you to vote in favor of this bill, which will bring the escalating costs and unreasonable legal actions under control.

Nine individuals of my 18 employees are eligible for a SEP distribution. This year is the first time in five years where I have been unable to fund the contribution.

We look to you for positive support towards this legislation. The health of the infrastructure our state promotes is greatly dependent on it.

Sincerely,

Turnagain Chevron

Dan Bylsma, Owner

STUTZMANN ENGINEERING ASSOC., INC.
P.O. BOX 71429
FAIRBANKS, ALASKA 99707
PHONE (907) 452-4094
FAX (907) 452-1034

March 14, 1995

The Honorable Representative John Davies
State Capital
Juneau, Alaska 99801-1182

Dear Representative Davies:

Yes, yes, yes. Vote for HB 158 -- Tort Reform. We have become a "sue happy" state and nation. We certainly need to limit this process. I am 100% in favor of each and every provision of the bill.

Sincerely,

Paul E. Stutzmann

Paul E. Stutzmann
hb

LAW OFFICES
TAYLOR & HANLON, P.C.
237 EAST FIREWEED LANE, SUITE 302 • ANCHORAGE, ALASKA 99503 • TELEPHONE (907) 276-6219 • FAX (907) 279-1136
Kneeland Taylor
James J. Hanlon

March 17, 1995

Representative Mark Hanley

By fax: 465-2418

Dear Representative Hanley:

I live in what used to be your district on Loussac Drive. I am a registered Republican, and in 1980 ran unsuccessfully for the State House. I have in the past been active in Common Sense for Alaska, but in recent years have focused on my family, and my law practice.

I write about what is called "tort reform". I can understand a system that says people must be responsible for themselves, and I philosophically support that. But I think that several parts of this years "tort reform" bill increase big brother's role, and reduce the importance of individual responsibility.

In particular I speak of (1) the proposed provision giving defendants the right to require plaintiffs to accept periodic payment; and (2) the strict limits on punitive damages.

If defendants have the right to elect that plaintiffs receive periodic payments for their losses, then we take from individual plaintiffs the right to make their own decisions. Several years ago I represented a woman who as a pedestrian was run over by a 16 year old drag-racing dopehead. She was crippled by her injuries, and no longer can get around without crutches and a lot of help. The woman received what amounted to policy limits, but after paying medical bills and legal expenses (only 15%) got about $180,000. She used this money to buy a home and two annuities so her kids could be assured of college educations.

If the defendant could have required my client to accept periodic payments, then she would not have been able to buy a house. She would, at best, have purchased a home with a large mortgage, in which case she would have a large monthly mortgage payment. Or she would still be renting. If the defendant defaulted, she could not pay her mortgage, or rent. She would be dependent on these payments for the rest of her life.

By giving her all her money, at once, she has had the opportunity to be independent, to be self reliant. Republicans do not want to take that away from her.

Another problem with allowing defendants to require that plaintiffs accept periodic payments is that many insurance companies fail. We will have more sleazy insurance companies in Alaska if you enact this provision. The result will be more government bureaucracy will be needed to police insurers.

I think that severely limiting punitive damages also promotes government bureaucracy, and limits individual responsibility. Recently I represented workers who were burned in an explosion on the North Slope. There were many OSHA violations which contributed to the accident, but DOSH did a very poor job of investigating. But the possibility of a large punitive damage award sparked their interest, and I believe the violations have been remedied.

If we remove, or severely limit the threat of punitive damages, what we are really saying is "let the government enforce these rules". In the final analysis, private litigation <u>privatizes</u> enforcement of many regulations, rules, etc. Incidentally, I do not oppose a high standard of proving entitlement to punitive damages. What I oppose is limiting them so much that big companies will fear only government regulators, i.e. big brother.

I wish you the best. I hope I may have been helpful.

Kneeland Taylor

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JUSTICE
907/276-1200
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March 17, 1995

Representative Mark Hanley, Co-Chair
State Capitol
Juneau, Alaska 99801-1182

VIA FACSIMILE
TO: (907) 465-2418

Re: House Bill 158

Dear Representative Hanley:

I am writing to respectfully urge you to vote no on House Bill 158.

Please recognize that the bill is a serious abrogation of the historical right to jury trial under both the United States and Alaska Constitutions and is a serious impediment to victims' rights.

The recent passage by the public of the constitutional amendment specifically recognizing victims' rights in the criminal arena underscores how sensitive we must be to victims' rights in the civil area.

A catastrophically injured plaintiff, or a widow, or child of a deceased parent who has been wronged by a tort feasor will have no realistic opportunity for just compensation under the bill.

The flood of publicity orchestrated by the insurance industry and others misrepresents the truth, namely that the present justice system does work to allow catastrophically injured plaintiffs to obtain some measure of justice.

Placing caps on jury verdicts for compensatory damages or caps on jury verdicts for punitive damages, or legislating statutes of repose and the other provisions of the bill simply legislates special privileges for wrongdoers at the expense of innocent victims.

I have been a practicing member of the trial bar for over 20 years and have personally represented numerous catastrophically injured plaintiffs, including quadriplegics, burn victims, widows and surviving children, and know, on a personal basis, how frightening the provisions of this bill are.

Moreover, it will simply shift a serious economic burden to the public from where it should reside, namely, from the tort feasors.

That is, the reality of the necessity of significant expenditures for continuing care, etc., as the result of a tort feasor's wrongdoing will not disappear simply because the right to recover for said harm is denied the plaintiff. The burden will then be shifted to the public coffers and the wrongdoers will, in essence, have the tax payers paying for the damages they have caused.

Please vote no on House Bill 158.

Sincerely yours,

WEIDNER & ASSOCIATES, INC.
A Professional Corporation

Phillip Paul Weidner

PPW/mm

cc:Mail for: Representative Mark Hanley

Subject: HB 148

From: 75714.2062@compuserve.com (Ben Esch) at CC2MHS1 3/17/95 12:21 AM

To: representative ben grussendorf at JNU_CAPITOL

To: representative richard foster at JNU_CAPITOL

To: representative mark hanley at JNU_CAPITOL

Please consider the issue of tort "reform" very carefully. There are few demonstratable abuses to address. If there is nothing broken, don't try to fix things. If your spouse of family member were turned into a quad, or suffered third degree burns, do you believe $500,000 would be enough to compensate for all the suffering? If you have any doubt that the limit is incorrect, why resolve that doubt in favor of non-Alaskan manufacturers and insurance companies?

One central issue in this discussion is whether or not your constitutients are going to benefit from your actions. Please think about explaining to them how limiting their or a family member's right to remedy wrongs done to them is a benefit. Explain how taking away a jury of their peer's ability to compensate them for damages done to them is in their interest. Please explain how protecting the pocketbooks of defendants corporations which harm them furthers the interest of the _individuals_ who voted for you. If you can do that vote for this bill. If you can't provide those explainations now, what are you going to do when go back to the voters and ask for their ballot?

STRUCTURED
FINANCIAL
ASSOCIATES, INC.®

NSSTA National Structured Settlements Trade Association Member

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March 13, 1995

Representative Mark Hanley
House Finance Committee
State Capitol, Room 507
MS 3101
Juneau, AK 99801-1182

Dear Representative Hanley,

I am writing you regarding House Bill 158, the Civil Liability Bill. Sections 10, 11, and 12 address periodic payments, which are more commonly known as structured settlements.

I have enclosed for your review, a brochure prepared by the National Structured Settlement Trade Association, that explains what "periodic payments" are, how they are used, and what the relevant tax rules provide in regards to tax exempt income.

Additionally enclosed is a brochure copy prepared by Mr. David Higgins of the firm Brobeck, Phleger and Harrison, which outlines some of the "Questions and Answers to Structured Settlements".

I believe this will provide you factual data that will be helpful in addressing any testimony or discussions on this provision of the Bill.

In the event you may have any questions, please feel free to call me at any time.

Very Truly,

A.L. Tamagni, Sr.
Settlement Consultant

Enclosures(2)

WHAT IS A STRUCTURED SETTLEMENT?

National Structured Settlements Trade Association

WHAT IS A STRUCTURED SETTLEMENT?

Historically, money paid because of a personal injury law suit has been paid in the form of a lump sum at the time of settlement. This kind of payment, especially in very large catastrophic injury cases, places the claimant (or the family) in the position of managing a large sum of money which is intended to provide for a lifetime of medical and income needs. Most people are not experienced in handling large sums of money. As a result, the money often is spent quickly, leaving little or nothing to cover future needs of a seriously injured person. In order to create a more stable financial basis for the claimant, structured settlements were developed.

By definition, a STRUCTURED SETTLEMENT is the payment of money for a personal injury claim where at least part of the SETTLEMENT calls for future payment. The payments may be scheduled for any length of time — even as long as the claimant's lifetime, and may consist of installment payments and/or future lump sums. Payments can be in fixed amounts or they can vary. The schedule is STRUCTURED to meet the financial needs of the claimant.

These arrangements may be voluntary, as in a pre-trial settlement, or they may be required by law or a court order, as in a settlement involving a minor. The defendant may agree to make future payments or it may purchase an annuity contract from a life insurance company to fund the payments. Annuity contracts have been the preferred way of funding because of their pricing and flexibility for settlement design. An alternative, however, is a trust fund which invests only in United States treasury obligations. These trusts add the safety of investment in obligations issued by the U.S. Government.

There are some important benefits to the claimant in structuring the settlement:

1. The claimant receives money when it is needed. Instead of receiving a lump sum which has to be invested at risk, and managed for a fee, the money is paid out over time, better correlated with the actual need for funds.

2. The claimant does not have to pay income tax on the payments received, which includes an "internal buildup" of funds over time. A lump sum received also would be tax-free, but most later income from investing that money would be taxable.

Here is an example of how a structure might look when compared to a lump sum settlement. (Assume that the claimant is a man, age 45)

	TOTAL GUARANTEED	TOTAL EXPECTED
Single payment at settlement	$200,000	? (Depends on how the money is invested, and the taxes on its earnings)
or, for about the same cost		
$1300 per month for life with 20 years guaranteed	$312,000	$536,000 (Assuming a normal life expectancy)

In this illustration, money is received for as long as the claimant lives, with the first 20 years of payments made whether or not the claimant is alive. The total expected payments are tax-free.

In almost every bodily injury situation, a structured settlement should be considered. A more detailed description of these arrangements follows.

WHEN TO CONSIDER STRUCTURES:

* For cases involving the following situations:

  1. Temporarily or permanently disabled plaintiffs/claimants;
  2. Plaintiffs/claimants with limited investment or financial management skills;
  3. Guardianship cases, including minors or incompetents;
  4. Wrongful death cases where the surviving spouse and/or children need monthly or annual income;
  5. Severe injury, especially with shortened life expectancy, or mental incompetency.

* For plaintiffs with specific needs such as:

  1. Significant ongoing medical expenses;
  2. Rehabilitation or permanent care facility expenses;
  3. Deferred payments for college funds, retirement, down payment on a home, or mortgage payment;
  4. Replacement of monthly/annual income or supplemental income.

* Other types of cases to consider (these cannot be assigned, see qualified assignments):

  1. Workers Compensation claims;
  2. Personal injuries other than physical injury.

ADVANTAGES TO THE CLAIMANT/PLAINTIFF:

1. Income — tax-free guaranteed payments;*
2. Avoids risk of mismanagement — insurance industry statistics show that about 25 to 30% of all accident victims completely dissipate their judgments or settlements within two months of recovery, and 90% of them spend it all within five years;**
3. Avoids expense and worry with regard to financial loss — provides a secure, low-risk source of money;
4. Convenience of regular payments designed to meet the individual plaintiff's needs;
5. Claimant can receive more money over time than a lump sum settlement;
6. Competitive with other rates of return — see Internal Rate of Return illustration which shows before tax rate-of-return required to match the benefits offered by a structure;
7. Helps avert risk, expense and delay of going to trial;
8. Transfers the risk of outliving one's income to a life insurance company;
9. Benefits may be made higher if injury decreased life expectancy.

ADVANTAGES TO THE DEFENDANT/INSURER:

1. Earlier settlements — including assistance by structured settlement brokers with negotiations and settlement documents;
2. Reduced litigation costs;
3. May assign future liability;
4. Avoids risk and expense of a jury trial;
5. Can make low policy limits more attractive by making payments over time.

* Check with your own tax advisor for confirmation

** The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tener, "California Practice Guide: Personal Injury" (TRG 1992) Ch. 4

"QUALIFIED ASSIGNMENTS"

The defendant (or his/her liability insurance company) may transfer the responsibility to make the future payments to a third party by means of a "qualified assignment." The assignment is referred to as "qualified" because, if done properly, it qualifies for special tax treatment. The assignee then takes care of making the payments. This process relieves the defendant of further responsibility for the payments and also transfers the administration and record keeping responsibilities. The assignment company specializes in these activities, and may offer additional financial security.

OTHER USES OF PERIODIC PAYMENTS:

Although the concept of periodic payments has usually been applied to personal injury claims, there are other situations where payout obligations can be made on a periodic basis.

Property Loss Claims:

Periodic payments may be an excellent means of satisfying the claims of home owner groups, or others who are seeking reimbursement for construction defect claims. Instead of receiving a single large sum, payments are made over time in order to more closely match the time when repair costs are incurred.

ENVIRONMENTAL CLAIMS AND POLLUTION LIABILITY:

This area offers the greatest potential for the use of periodic payments outside of personal injury claims. From the superfund designated sites to the thousand of potential municipal and local sites, there is a need for clean-up funding.

When determination has been made that liability for pollution exists, and the terms for clean-up have been established and quantified, the future costs can be funded with an annuity or similar funding agreement offered by a life insurance company. By this means, the potentially responsible party can pay for its future obligations on a more economically efficient basis. It can also turn over to the life insurance company the administrative responsibilities of making the payments.

NOTE: The tax treatment of these alternative uses of structures is not necessarily the same as for the personal injury cases. A qualified tax expert should be consulted before any investment decisions or annuity purchases are made.

RELEVANT TAX RULES:

Structured settlements are governed by the Federal Internal Revenue Code (IRC) and offer tax advantages to the claimant and the assignee.

Section 104(a)(2) of the IRC states that compensation received on account of personal injury or sickness is exempt from gross income whether received in a lump sum or in periodic payments. The reason most often cited as justification for this exemption is that the claimants are merely being compensated monetarily for what they have lost physically or otherwise, and the payments are not a gain for the claimant. If the claimant invests these payments, the interest earned will be taxed. A structure, however, provides more money over time, and all payments received are tax-free.

Revenue Ruling 79-220 interprets Section 104(a)(2) and sets out the criteria that must be met in order to qualify for tax-exempt status under the law. The basic requirement is that the claimants can have no control over the investment that funds the periodic payments. They have only the right to receive future payments.

The Periodic Payment Settlement Act of 1982 gave statutory certainty to various tax rulings concerning personal injury damages paid by periodic payments. It also created Section 130 of the IRC.

Section 130 allows the party accepting the assignment of responsibility for future periodic payments to exclude the amount received for the assignment from gross income to the extent of the amount used to purchase specified funding vehicles. The process is called a "qualified assignment," and the funding vehicle is called a "qualified funding asset."

Section 130 is very specific regarding the requirements necessary to establish a qualified assignment:

1. The assignee assumes the liability from a party to the suit or agreement;
2. The payments are fixed and determinable;
3. The payments cannot be accelerated, deferred, increased or decreased, or otherwise changed after the agreement is reached;
4. The assignee's obligation is no greater than the obligation of the assignor;
5. The periodic payments are excludable from the recipient's gross income under Section 104(a)(2);
6. The injury must be a physical sickness or injury;
7. A qualified funding asset (an annuity or U.S. Government obligation) must be purchased.

SECURED CREDITOR:

Under a structured settlement, the IRC allows the claimant to have no more than a general creditor's interest in the assets of the defendant, to the extent of the future payments. If the liability to make the payments is assigned to a third party, however, the IRC permits the claimant to have a greater interest, i.e., a secured interest. This interest is secured by the annuity or U.S. government obligation purchased by the assignment company to fund its future obligations to the claimant. Should the assignment company fail to pay, the claimant, as a secured creditor, can become the owner of the assets which fund his/her payments. This ensures that the assignee's other creditors cannot use the assets to satisfy their claims against the company. Note that this secured interest applies to the assignment company, not to the life insurance company that issued the annuity contract.

Although the Internal Revenue Service has not ruled on the tax status of payments once an annuitant assumes ownership of the annuity, it is possible that a portion of subsequent amounts received would be subject to ordinary income taxation.

CONCLUSION:

A structured settlement is a proven, effective solution for the needs of personal injury claimants. Claims professionals, plaintiff attorneys, judges and defense attorneys advocate the use of structured settlements because they effectively meet a claimant's needs for security, as well as provide more benefits over time than a single, lump sum settlement. In addition, the periodic payment concept can be applied to a variety of other situations.

There are many other features of structured settlements that are worthy of consideration. If you would like additional information about structured settlements, please contact the Structured Settlement Consultant who provided you with this brochure, or the National Structured Settlement Trade Association at (202) 797-5108.

INTERNAL RATE OF RETURN COMPARISONS

The chart below demonstrates how much interest the self investor would have to earn to equal the payout of a non-taxable structured settlement. The tax brackets refer to the recipient's federal income tax level. The figures do not include state income taxes, which would make the differences even greater.

STRUCTURE RETURN RATE	15% TAX BRACKET	28% TAX BRACKET	31% TAX BRACKET	36% TAX BRACKET
5.00%	5.88%	6.94%	7.25%	7.81%
6.00%	7.06%	8.33%	8.69%	9.38%
7.00%	8.23%	9.72%	10.14%	10.94%
8.00%	9.41%	11.11%	11.59%	12.50%
9.00%	10.60%	12.52%	13.12%	14.06%

A. L. TAMAGNI SR.
Settlement Consultant

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STRUCTURED SETTLEMENT update

SEPTEMBER 1994

BROBE PHLEGE HARRIS ATTORNEYS A

QUESTIONS AND ANSWERS ABOUT THE CONSTRUCTIVE-RECEIPT DOCTRINE

General Questions and Answers

Q. What is "constructive receipt?"

A. It's a doctrine that taxes income before the income is actually received. The two other doctrine that tax income are the "actual receipt" doctrine (i.e., you really receive it) and the "economic benefit" doctrine (not applicable to structured settlements).

Q. Where can I find the doctrine in the law?

A. The constructive receipt doctrine is in the Treasury's regulations, as follows:

> "(a) General rule. Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions." Treas. Reg. § 1.451-2(a).

Q. Is it often a problem in litigation?

A. No. The two situations where the constructive receipt doctrine usually applies are (i) completed settlement negotiations and (ii) final judgments.

Q. How can it affect structured settlements?

A. If the settlement is complete or the judgment is final, then a structured settlement can't be used. The constructive-receipt doctrine would cause the present value of the settlement to be treated as the nontaxable compensation for the personal injury. Any interest earned on the annuity or bond that funded the settlement would be taxed to the plaintiff. Rev. Rul. 76-133, 1976-1 C.B. 34 (settlement deposited in court was tax free but interest earned was taxable to plaintiff); Rev. Rul. 65-29, 1965-1 C.B. 59 (actual receipt of present value of future damages is not taxable, but earnings are taxable).

Q. Where does it operate in daily life?

A. Savings account interest is an example. Such interest is taxed to you even if you haven't gone to the bank to pick it up. Such interest is constructively received by you, because there is no limitation on your ability to get it. On the other hand, if there is a substantial limitation on your ability to receive it (a penalty if you pick it up, for example), then you are not in constructive receipt of the interest until the limitation is removed.

Q. What's the general rule that governs each of the following examples?

A. The general rule is that the plaintiff cannot be in constructive receipt of the defendant's lump-sum offer if the plaintiff has not agreed to provide a release. Like a penalty imposed on receiving savings-account interest, the requirement that the plaintiff agree to release her claim is a "substantial limitation" that prevents the constructive-receipt doctrine from operating. If the plaintiff has agreed to give a release or drop an appeal, then the plaintiff is in constructive receipt of the offered money, assuming the money is collectible and no other limitations are present on its receipt.

PRE-VERDICT EXAMPLES

Q. Lump-sum offer.

The defense has offered a lump sum to settle the claim, which the plaintiff is considering. Does the plaintiff have a constructive receipt problem?

A. No. Mere negotiations do not trigger the constructive receipt doctrine. A structured settlement can be used to settle the claim.

Q. Lump sum conditioned on structure.

The plaintiff has agreed to the amount, conditioned on agreeing to a structured settlement using that amount. Is there a constructive receipt problem yet?

A. No. Discussing the amount the defendant will spend on the structured settlement will not cause the plaintiff to be in constructive receipt of that amount. Priv. Ltr. Rul. 83-33-035 (May 16, 1983) ("disclosure by defendant of the existence, cost, or present value of the annuity will not cause you to be in constructive receipt of the present value of the amount invested in the annuity"); Priv. Ltr. Rul. 90-17-011 (Jan. 24, 1990) ("knowledge of the existence, cost, and present value of the annuity contract used to fund the settlement offer . . . will not cause the family to be in constructive receipt of the amount payable under the annuity contract or the amount invested in the annuity contract").

Q. Discussion of periodic payments.

The plaintiff has rejected the amount that was offered. The plaintiff has countered with a higher amount, conditioned on agreeing to a structured settlement. The defendant has agreed to the higher amount. We are now discussing the timing and amount of the periodic payments. Any problem yet?

A. No. As long as the plaintiff has not agreed to release the claim, the negotiations can continue without a constructive receipt problem.

Q. Conditioned on a settlement agreement.

We have agreed on the amount the defendant will spend. We have also agreed on the timing and amount of each periodic payment. The plaintiff has agreed to release the claim if a mutually acceptable settlement agreement can be drafted. Can the structured settlement still be modified?

A. Yes. Conditioning the release on a mutually acceptable settlement agreement will prevent the constructive-receipt doctrine from operating. Until the settlement is final, the parties can continue to negotiate.

POST-VERDICT EXAMPLES

Q. Verdict reached.

A verdict has been reached. Is the plaintiff in constructive receipt of the verdict amounts?

A. No. Verdict findings cannot be reduced to the plaintiff's possession and the doctrine therefore does not operate. A structured settlement can still be used.

Q. Judgment entered.

The judgment has been entered in the amounts found by the jury. Is the plaintiff in constructive receipt of the judgment amounts?

A. No. The judgment must be final and non-appealable. A structured settlement can still be used if good faith appellate issues exist that would put the amount of the judgment in doubt.

Q. Judgment is final.

The judgment has been entered and the time within which to seek reconsideration of the judgment or to appeal the judgment has expired. Is the plaintiff in constructive receipt of the judgment amounts?

A. Yes. If the defendant is willing and able to pay the amount of the judgment, then the plaintiff is in constructive receipt of the judgment amount. A structured settlement cannot be used in those circumstances.

Q. Effect of appeal.

How does an appeal affect the constructive receipt doctrine?

A. A good-faith appeal that puts the amount of the judgment in doubt prevents the constructive receipt doctrine from operating. A structured settlement can be used to settle the case during such an appeal.

Q. Appeal to negotiate.

Can the parties file an appeal solely to allow more time to negotiate a structured settlement?

A. No. A tax-motivated appeal will probably be ignored by the Internal Revenue Service. The appeal must be a good-faith appeal that puts the amount of the judgment in doubt.

Q. Offer to pay judgment.

The defendant has offered to pay the judgment if the appeal is dropped. Is the plaintiff in constructive receipt of either the judgment amount or the offered amount?

A. No. Conditioning the payment on dropping the appeal prevents the constructive receipt doctrine from operating, in the same way that a pre-verdict settlement offer conditioned on a release prevents it from operating. A structured settlement can still be used to settle the appeal.

Q. No-strings offer to pay.

What if the defendant offers to pay part of the judgment with no strings attached while the appeal is pending ?

A. If the plaintiff refuses a no-strings offer to pay, then the plaintiff will be in constructive receipt of the amount offered. Such offers are rare, however. Normally, a defendant will condition such an offer on dropping further appeals. Where no such condition is present, however, the amount offered will trigger the constructive receipt doctrine. See, e.g., *Howard A. Fromson v. U.S.*, No. 92-98T (Cl. Ct. Aug. 11, 1994) (check received in 1986 from judgment debtor, with no strings attached, was taxable in 1986, even though cashed by the plaintiff in 1987).

Copies of the cases, regulations and other materials mentioned in the *Structured Settlement Update*, as well as copies of current or past issues, are free for the asking. The *Update* can be reproduced on your stationery for distribution for your clients. Call David M. Higgins (213/745-3464).

To change an address or add individuals in your office to our mailing list, please complete the following and return it to:

David M. Higgins
Brobeck, Phleger & Harrison
550 South Hope Street
Los Angeles, CA 90071-2604
Re: *Structured Settlement Update*
September 1994

☐ Change of address

☐ Addition to mailing list

NAME: _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

STRUCTURED SETTLEMENT *Update*

The *Structured Settlement Update* is prepared by the Structured Settlement Law Group of Brobeck, Phleger & Harrison. It is provided for information purposes to clients and others interested in the subject matter and is not intended as legal advice. Readers should not act upon information in this publication without seeking professional legal counseling. For further information, please feel free to call David M. Higgins in our Los Angeles office at (213)745-3464; Grady M. Bolding in our San Francisco office at (415)442-0900; Richard L. Kintz in our San Diego office at (619)234-1966; or Steven R. Franklin in our Palo Alto office at (415)424-0160.

Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

March 17, 1995

Representative Mark Hanley
Representative Richard Foster
Co-Chairs
House Finance Committee
State Capitol
Juneau, AK 99801

Via Facsimile: 465-2418; 465-3242

Dear Representatives Hanley and Foster:

On behalf of Trustees for Alaska I would like to register our strong opposition to proposed House Bill 158, the omnibus tort reform bill. Excepting the changes made in section 2 regarding prolonged exposure to hazardous waste, we have essentially the same concerns at this time as we did last year when we opposed this legislation, then labeled HB 292 (see attached letter from Trustees for Alaska, dated February 3, 1994).

HB 158, if passed, will have significant adverse environmental and human health consequences. While we have not yet completed our review of HB 158, several concerns come immediately to mind:

*The eight year statute of repose encourages the concealment of pollution. The polluter has incentive to cover up its wrongdoing.

*Although victims of prolonged exposure to hazardous waste would be excepted from the statute, the definition of what constitutes hazardous waste is unclear.

*Limiting punitive damages to victims of environmental torts diminishes incentive for polluters not to pollute. The test for malice or conscious acts would also make it virtually impossible for the award of punitive damages in cases such as the Exxon Valdez oil spill. These restrictions on punitive awards would not deter polluters when potential profits are far greater than the possible damages.

In essence, HB 158 would be a large step backward in holding polluters and manufacturers accountable for their actions.

Thank you for your consideration of our concerns. We would greatly appreciate it if you would share this letter and attachment with the other committee members.

Sincerely,

Peter Van Tuyn
Litigation Director

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501 (907) 276-4244 Fax (907) 276-7110

ALASKA STATE HOSPITAL AND
NURSING HOME ASSOCIATION
March 1995

LEGISLATIVE SUMMARY -- SECTION 24 of CS
FOR HOUSE BILL NO. 158 (JUD) RE LIABILITY
OF HOSPITALS FOR NON-EMPLOYEE PHYSICIANS AND
OTHER HEALTH CARE PROVIDERS

On October 16, 1987, the Alaska Supreme Court ruled in Jackson v. Power, 743 P.2d 1376 (Alaska 1987) that a general acute care hospital has a nondelegable duty to provide emergency room services, and therefore, the hospital is vicariously liable for the negligence of an emergency room physician.

** The Jackson decision runs counter to modern trends of apportioning liability according to fault. Recent tort reforms -- including the abolition of joint and several liability -- were aimed at the once common injustice of holding a public entity (or other "deep pocket" defendant) whose negligence contributed to only 1% of the damage liable for the entire judgment. Jackson v. Power created a brand new kind of tort liability, unique to Alaska, in which a public hospital that is 0% negligent will be held 100% liable.

** The Jackson case insures that municipally owned and non-profit hospitals are named as deep pocket defendants in every case involving physicians' negligence, even though the hospital was not negligent and has done everything within its power to comply with statutory and regulatory requirements.

** The ruling does not improve hospital and emergency room care because, by definition, the Jackson rule applies where there is no negligence or fault on the part of the hospital. Hospitals have always been liable for their own negligence, and would continue to be so liable under Section 24 of CS for H.B. No. 158.

** The Jackson ruling negatively impacts hospital and emergency room response time because it forces hospitals to require emergency room physicians to practice more "legal" or "defensive medicine" -- more tests, more consultations, etc. Emergency situations are inherently risky. The legislature, for example, has granted immunity to EMTs, paramedics and ordinary citizens acting in emergency situations. These legislative choices reflect a policy decision that the need for swift action in emergency situations outweighs the policy of compensating injured plaintiffs. The Jackson decision undercuts this legislative policy.

** Hospital and Emergency room operating costs are also negatively impacted when hospitals impose more "defensive medicine" requirements.

** Unless hospitals dramatically restructure their relationship to physicians (by requiring them to become hospital employees, for example) the net result of the Jackson decision increases insurance costs by requiring both hospital and doctor to insure to cover the same risk.

** There is no evidence that medical malpractice plaintiffs before the Jackson decision experienced difficulty collecting their judgments. Historically, most physicians have carried adequate malpractice insurance. The addition of a "deep pocket" corporate hospital to the cast of defendants, however, has an inevitable tendency to increase the size of jury verdicts and settlements.

** The burden of the Jackson decision falls on municipally owned and non-profit hospitals, which are already caught in a cost squeeze from state and federal regulatory and rate requirements.

For more information, contact:

Harlan Knudson, Executive Director
Alaska State Hospital and
Nursing Home Association - 586-1790

David Crosby, Attorney
Alaska State Hospital and
Nursing Home Association - 586-6262

Alaska State Legislature

Please enter into the record my testimony to the HOUSE FINANCE committee name

committee on H.B 158 bill/subject, dated 3-17-95.

I am opposed to H.B. 158. As a small business owner in Alaska I am well aware of both sides of the tort reform issue. Small business operations expose me to both liability for my operations and the risks imposed by the operations of others.

I take exception with two main points in this bill.

1. The limits imposed on punitive damages. Section 8 clearly imposes a much greater burden on small business and individuals than on big business and insurance companies. Punitive damages are to punish and the limits in this bill are not pun[illegible]ent if your pockets are deep enough.

2. The apportionment of fault statute. The effect of Sections 14-15 would be to greatly reduce oversight on the actions of employees and contractors. I believe parties have a responsibilty for actions taken on their behalf.

I am in favor of true tort reform for many of the reasons outlined in Section 1 of the bill. This bill as written is biased towards insurance companies and big business. I do not believe that it will result in a general benefit to society but rather it is in the interest of these parties.

Signed: Philip Squires
Testifier

Philip Squires

SELF
Representing (Optional)

P.O. BOX 1231 KENAI AK 99611
Address

(907) 283-7457
Phone No.

TESTIMONY NOTES
HB 158 - CIVIL LIABILITY
HOUSE FINANCE HEARING

March 17, 1995

Introduction

My name is Richard Ritter. I am the president of a Juneau Architectural firm, and a member of the Alaska Professional Design Council Legislative Liaison Committee. The Design Council represents 9 professional societies in the State of Alaska including architects, engineers, land surveyors, and building officials. I am here to testify in favor of the statute of repose included with HB 158.

General Background

- A 6 year statute of repose for architects and engineers was enacted by the Alaska Legislature in 1967.

- This statute of repose was declared unconstitutional by the Alaska Supreme Court in April of 1988. Because the primary reason for this action was the shifting of liability, therefore violating the State Constitution's equal protection clause, the passing of an the initiative abolishing joint and several liability substantially addressed the Court's concern.

- Governor Walter J. Hickel signed HB 160S AM into law May 7, 1994. This new statute of repose was written to fully address the Supreme Court's concerns. Alaska joined Florida and Iowa as the only states with a 15 year statute of repose. New York and Vermont are the only states without a statute of repose.

Purpose

- The primary purpose of a statute of repose is to balance the rights of plaintiffs to bring suit against the rights of design professionals to be protected from meritless and expensive legal actions.

- A statute of repose does not restrict access to the courts, but instead sets a fair time limit to bring suit, beyond which the likelihood of success is remote.

Recent Studies and Conclusion

- A recent study by Victor O. Schinnerer & Co., Inc. of claims brought in the State of New York found that 95% of claimants who received payments sustained actual or alleged damage or harm within 9 years of project completion. There were no successful claims after 11 years. This indicates that a statute of repose is a reasonable and fair to protect the rights of both potential plaintiffs and defendants.

Alaska Court System
State of Alaska

CHRISTINE E. JOHNSON
Court Rules Attorney

OFFICE OF ADMINISTRATIVE DIRECTOR
303 K STREET
ANCHORAGE, ALASKA 99501

(907) 264-8239

Equitable Apportionment Under AS 09.17.080

Request for Comments

In 1988 Alaska voters approved the "Tort Reform Ballot Initiative." This initiative amended AS 09.17.080(d) to read, "[T]he court shall enter judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault." The initiative also repealed AS 09.16.010, which provided for a right of contribution among tortfeasors.

Last spring, in Benner v. Wichman, 874 P.2d 949, 958 (Alaska 1994), the supreme court concluded that AS 09.17.080(d) only allows fault to be apportioned among parties to the action. The court noted, however, that there is no mechanism in the Civil Rules for a *defendant* to bring in non-parties who are potentially liable to the *plaintiff*. Id. at 956-57 n.17.

The supreme court is considering an amendment to Civil Rule 14 that would address this situation. This change would allow a defendant to use the procedure set out in Rule 14(a) to bring in a person who may be wholly or partially liable to the plaintiff. Judgment could be entered against this third-party defendant in accordance with the third-party defendant's respective percentage of fault, regardless of whether the plaintiff elected to assert a direct claim against the third-party defendant. The proposed change is shown on the back of this memorandum.

The court is soliciting comments on the proposed change. Comments are due Friday, March 17 and should be sent to the court rules attorney at the address shown above.

The court is also considering the possibility of adopting a rule that would address recovery of attorney fees when third party defendants are impleaded under the proposed new rule. The court is posing the following questions to bar members:

(1) Should there be a rule change concerning attorney fees at this time?

(2) If so, what should that change be?

Again, responses are due Friday, March 17. Thank you for your assistance.

Looking Out For Business...

Third in a series of articles by the Alaska State Chamber addressing issues of major importance to Alaska's business community

ALASKA STATE CHAMBER OF COMMERCE

For the past few decades, the tort litigation system has been increasingly criticized by legal scholars, public policy experts, and the public at large. Past efforts to change the system and eliminate the opportunities for abuse have met with defeat. The fear is that in changing the system, we will be taking away the ability for people who have suffered an injury or loss to receive just compensation. We all believe the ability to recover costs and damages in civil suits, to be made whole again, is - and should be - every Alaskan's right.

However, protection from frivolous lawsuits, from accusations over alleged actions that took place decades ago, and from unreasonably high legal costs and court settlements should also be the right of every citizen and business. Many individuals and businesses have experienced the nightmare of suits that drag on for years, accompanied by crippling legal costs. More and more frequently stories are brought forth from around the country of frivolous lawsuits and outrageous awards for damages.

Litigation is an exorbitantly expensive mechanism for compensating the injured parties. Outcomes are random and unpredictable, which is why the tort litigation system is so frequently described as a lottery. In many cases, the unpredictability of the system causes out of court settlements, even when wrong-doing does not exist, which in turn fosters the continuation of an unfair system.

The Alaska State Chamber of Commerce believes that business within the state is being jeopardized by present tort law, particularly in the area of punitive damages. ASCC's position is that punitive damages should have a preset standard and should only be assessed when malicious intent or willful neglect is proven.

To the point of preset standards, let's compare criminal or administrative law to the tort litigation system. In criminal and in administrative law, society has established the parameters of what is considered to be just punishment for an offense. Upon establishing guilt in criminal law, the jury and the court know the range of punishment for the crime, as in the maximum jail term carried by the offense and the maximum monetary fine that can be assigned to the offender. This also holds true in administrative law. In tort law, however, punitive damages are a wild card, and the luck lies in the "draw", or the selection of the jury, and in the talents of persuasion held by the attorneys for either side. ASCC believes that punitive damages should be held to a preset multiple of the actual damages, and we suggest as reasonable a multiple of three times the actual damages.

Regarding the criteria for assessment of punitive damages, ASCC believes that punitive damages are intended as punishment for a behavior deemed to be unacceptable by society. They are also intended to serve as a deterrent against the continuing practice of such behavior. Society does not generally punish unintentional acts that are beyond anyone's control. Therefore, a determination of intent or willful neglect should exist before punitive damages are considered.

House Bill 158, Civil Liability, sponsored by Rep. Brian Porter (R-Anchorage), would enact reforms that create a more equitable distribution of the cost and risk of injury in civil lawsuits. The bill would reduce costs associated with the system, including frivolous suits, while ensuring that adequate and appropriate compensation for persons injured through the fault of others is available. **House Bill 252, Punitive Damages, sponsored by Rep. Jerry Sanders** (R-Anchorage), specifically addresses the State Chamber's concerns regarding punitive damages. **ASCC encourages the support of these bills.**

DAVID E. ROGERS, ESQUIRE
211 FOURTH STREET, SUITE 108
P.O. BOX 33932
JUNEAU, ALASKA 99803

TELEPHONE (907) 586-1107
FAX (907) 586-1097

HB 197

March 21, 1995

House Finance Committee
Capitol Building
Juneau, Alaska 99811

Dear Committee Members:

This letter is submitted on behalf of the Council of Alaska Producers (Producers Council) in support of CS for HB 197. The Producers Council is a non-profit Alaska corporation whose members include: Alaska Gold Company; Cominco Alaska Incorporated; Cominco Alaska Exploration; Echo Bay Alaska, Inc.; Fairbanks Gold Mining, Inc.; CIRI Energy and Minerals; Greens Creek Mining Company; American Copper and Nickel Company, Inc.; Cambior Alaska; and the Alaska Miners Association, an ex-officio non-voting member.

HB 197 follows the lead already taken by the Knowles Administration and last year's legislature in other arenas to encourage the development of our natural resources and stimulate responsible economic growth in the Great Land. In a recent Sunday Daily News column Tim Bradner couldn't have said it better:

> "It's politically fashionable sometimes to snort at public investment in economic development, calling it a subsidy. But if we're serious about diversifying our economy and creating jobs, every development idea should be taken seriously. A little seed corn sprinkled around in strategic locations can sometimes yield a pretty good harvest."

Mr. Chairman, think of HB 197 as seed corn. It is not intended as a reward or windfall for those currently doing business in Alaska. The primary purpose of this bill is to send a positive message to industry and encourage companies to do something they weren't going to do already by creating attractive economic incentives to explore for and develop coal and mineral deposits in Alaska.

This proposal, a version of which died in the House limbo file in the final minutes of last session, was

recommended in concept by the Alaska Minerals Commission in their January 1995 Report. According to the Commission:

> "The Alaska minerals industry competes in a global market for mineral and exploration and development dollars. Although Alaska is blessed with an abundance of geologically favorable terrain, it has suffered because of its remoteness, the lack of transportation, infrastructure, and seasonal constraints. Equally important is the industry's perception that State and Federal agencies are not supportive of mineral development in Alaska.
>
> Throughout the world there are countries actively seeking exploration and development investment by providing economic incentives for resource industries. Incentive programs have been successful in Chile and Mexico where privatization and tax incentives have revitalized their mining industries. Appropriate incentives could be especially effective in drawing industry attention to Alaska. This is because many companies currently view the lower 48 to be unattractive from the regulatory perspective and are looking elsewhere for new exploration opportunities.
>
> The Governor and the Legislature should create economic incentives (including credits for exploration expenditures that can be deducted from claim rents, the mining license tax, production royalties and income taxes) that will provide financial encouragement and help offset some of the real and perceived problems facing exploration and development in Alaska."

Passage of this bill should yield two very significant net benefits to Alaska. First, if this strategy is successful there will be a near term infusion of cash into local economies. Second, new exploration activities that may be stimulated by this incentive may ultimately lead to new producing mines. This means new good jobs for Alaskans and new taxes and royalties the state might not otherwise receive. It is important to keep these benefits firmly in mind when you evaluate this legislation and similar economic diversification efforts.

HB 197 is our highest priority this session. It will not solve all the world's problems but it is one of several things the state can and should be doing to encourage responsible mineral development. Will it work? We think so. According to one of our members, who just returned from a meeting in Denver, things like incentives and mapping programs in conjunction with the geology get the attention

of upper level management when they plan their worldwide exploration strategies.

The Producers Council would like to thank bill sponsor Rep. Foster and co-sponsor Rep. Vezey for introducing HB 197 and the House Finance Committee for giving it an early hearing. We urge passage of this important "seed corn" legislation.

Yours truly,

David E. Rogers

Faye Stevens
5200 Leslie, No. 1
Anchorage, Alaska 99508

March 14, 1995

Rep. Mark Hanley
State Capitol
Juneau, Alaska 99801-1182

Re: **House Bill 158**

Dear Rep. Hanley:

I'm sending this letter to express my concern to you about House Bill 158. I urge you to vote against HB 158, as I believe the only ones who will benefit from this Bill are insurance companies, construction companies, oil companies, the airline industry, and other industries which cause harm to "regular people" like me and my friends and family. I've seen what can happen when a person receives a catastrophic injury. You see, my boyfriend was burned over 70% of his body several years ago and spent one year in two different hospitals. Fortunately for him, he lived. But, his medical expenses alone were close to $1,000,000. The only positive thing about his injury was that it happened on the job, so his medicals were covered.

What about the guy who is in a car accident and, through no fault of his own, suffers a broken neck and ends up a quadriplegic? Do you really believe that $500,000 is going to be enough to cover his medical expenses for the rest of his life? What is he supposed to do if HB 158 passes and there's a $500,000 cap on catastrophic injuries? Who's going to pay for his care for the rest of his life -- the insurer for the person who caused his injury or the people of the State of Alaska?

What if this happened to your child? How would you explain to him or her that, because of the way you voted on HB 158, your child is going to have to go on welfare so he or she can receive the medical care they need? Or, what if you had six small children and you were killed in a plane crash and the plane was more than eight years old? Who would provide for your children? The citizens of the State of Alaska?

Please do the right thing and vote NO on HB 158. There must be another way to satisfy everyone -- not just big business.

Sincerely,

Faye Stevens

C+D
HB158

ARCTIC FOUNDATIONS, INC.

5621 ARCTIC BLVD. • ANCHORAGE, ALASKA 99518-1667 • (907) 562-2741 • FAX 562-0153

March 17, 1995

The Honorable Representative Mark Hanley
State Capitol
Juneau, AK 99801-1182

Re: HB 158 – Tort Reform

Dear Representative Hanley:

I am in favor of all of the key provisions of this much needed bill except that requiring one-half of punitive damages to be deposited into the general fund of the state. ALL punitive damages awarded should be deposited into the general fund of the state.

Sincerely,

Erv Long

Erv Long, P. E.
President

dal

cc: NFIB, Juneau

MALONEY & HAGGART
ATTORNEYS AT LAW
P. DENNIS MALONEY, P.C.
RICHARD G. HAGGART, P.C.
2525 "C" STREET, SUITE 420
ANCHORAGE, ALASKA 99503
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(907) 277-0007
TELEFAX
(907) 277-0015

March 15, 1995
VIA Facsimile
465-2418

Representative Mark Hanley
House Finance Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Hanley:

House Bill 158 severely restricts the rights of your constituents.

If there is a hidden defect in a house or building which is not discovered for eight years, the builder, not the innocent purchaser of the property or those occupying it such as small children who might be injured if a portion of the building collapses or otherwise causes injury to an innocent victim, would not be required to bear the costs. The innocent would be required to pay for their loss which was caused entirely by the negligence of the person or entity which constructed the building.

A person who is paralyzed for life and is required to sit on a table looking at a television set and sucking liquid through a tube is limited to $500,000 for the pain and suffering that individual suffers throughout his or her lifetime. Why?

With respect to both of the foregoing paragraphs: insurance covers these claims. What problem exists? What actual cases can those who propose the legislation point to which resulted in an unjust finding? Please demand concrete examples of unjust results in Alaska before denying your constituents their constitutional right for a jury trial.

Insurance companies regularly fail to pay claims in a timely manner. State Farm is an example. In my office currently, I have over five cases where State Farm has not paid all of the medical costs incurred by its own insured under the medical pay provisions of the policy when the policyholder undertook the treatments their doctor suggested following an automobile accident. Requiring that these people prove malice or conscious acts showing deliberate disregard for the rights of the policyholders puts an undue burden on the insureds when dealing with companies such as State Farm who deserve to have punitive damages awarded against them.

MSH

Again, has anyone provided you with evidence of the injustice done using the current burden of plaintiff of proof for punitive damage cases which is clear and convincing evidence?

With respect to the proposed cap on punitive damages, why should it be limited to three times compensatory damages or $300,000? As an example, General Motors was "wacked" with $100,000,000 in punitive damages in Georgia. They were "wacked" after GM deliberately built its pickup trucks with gas tanks outside of the frame allowing the gas tanks to explode in side collisions. GM did this knowing that these damages would occur and that innocent people would be burned to death. Ford and Chrysler chose not to do that. When it became apparent that people were being burned to death in the vehicles in side collisions in GM pickup trucks, GM's engineers proposed a fix. GM, rather than undertake the $100,000,000 to repair this defect, instead determined that each burned to death victim would only cost them $500,000 and that there would be approximately 100 for a $50,000,000 savings to GM. Is this the kind of corporate thinking that we want to encourage in Alaska? I don't think so.

Please do not limit punitive damages. It makes insurance companies and manufacturers live up to their obligations to the public.

The proposal on periodic payments at the defendant's request would allow people to discontinue having insurance and after filing bankruptcy, injured parties would not be able to receive the funds to which they were entitled in a jury trial.

There have not been significant insurance premium decreases in the past several years since the legislature's last tort reform package passed. Medical care costs have not dropped. Insurance costs have not dropped and those proposing further reform cannot cite **any** individual case that stands for the propositions that they propose.

No further tort reform is needed.

Sincerely,

MALONEY & HAGGART

P. Dennis Maloney

PDM/da

Robert B. Stephenson
P.O. Box 81314
College, Alaska 99708
(907) 455-6073

March 17, 1995

Please distribute to
Members of the House Finance Committee:

It is my understanding that HB 158 would severely limit Alaskans' right to recovery from accidents and negligence.

In 1988, I and two others suffered massive 3rd degree burns from a 500 gallon propane spill and explosion near Fairbanks. Untrained workers were directed to move a large propane tank (1,200 gal. cap., 3' x 18') containing about 500 gallons of liquid propane. That's illegal. They broke a bottom valve, and all 500 gallons leaked out and exploded within minutes. In addition, the resulting fire burned down a huge warehouse, a loss of several million dollars.

I spent a month in the hospital, including two weeks in the intensive care burn unit, and did not recover from my burns and skin grafts for about three years. In fact, my skin will never be the same as it was. My hospital and doctor bills for the first month alone were well over $100,000. None of us will ever be the same after these burns and emotional injuries.

This accident was a result of improper handling of a propane tank. The owner of the tank did not want to remove the propane from the tank BEFORE moving it, as is required.

My burns and skin grafts have healed now, but I will never be the same, as I am sure you can understand.

It was more than a year after the explosion that symptoms of Post Traumatic Stress Disorder (PTSD) began to surface. Nightmares, sleeplessness, fear of the workplace, just to name a few, were common.

I still have flashbacks and nightmares of amputation and death squads.

43% of my body had little or no skin. I could only begin to describe the pain of being lowered into a whirlpool for debriding (dead skin scrubbed off). No amount of morphine can prevent the screaming and the horrible pain.

No amount of money can compensate for that pain, which took place once a day for thirty days. Would you go through that for $10,000 a day? How about $20,000? What's YOUR price? If this happened to your son or daughter or family member, would you want to cap their recovery for pain and suffering?

It would be my recommendation for industry to be regulated by stricter standards and be made to follow existing standards. In my opinion, this would limit the negligence and the injuries to Alaska's work force.

Let's stop the negligence, not prevent the fair recoveries for injured Alaskans. Let's stop focusing on bizarre cases and let's remember the Alaskan workers who are frequently injured because of industry's negligence.

I believe that HB 158 is completely unfair to innocent victims in Alaska. It would have serious consequences to the citizens of Alaska, your constituents. I strongly urge you to vote against such tort reform bills.

Your response would be greatly appreciated.

Sincerely,

Robert B. Stephenson

Robert B. Stephenson

Are Lawyers Burning America?

HB 154

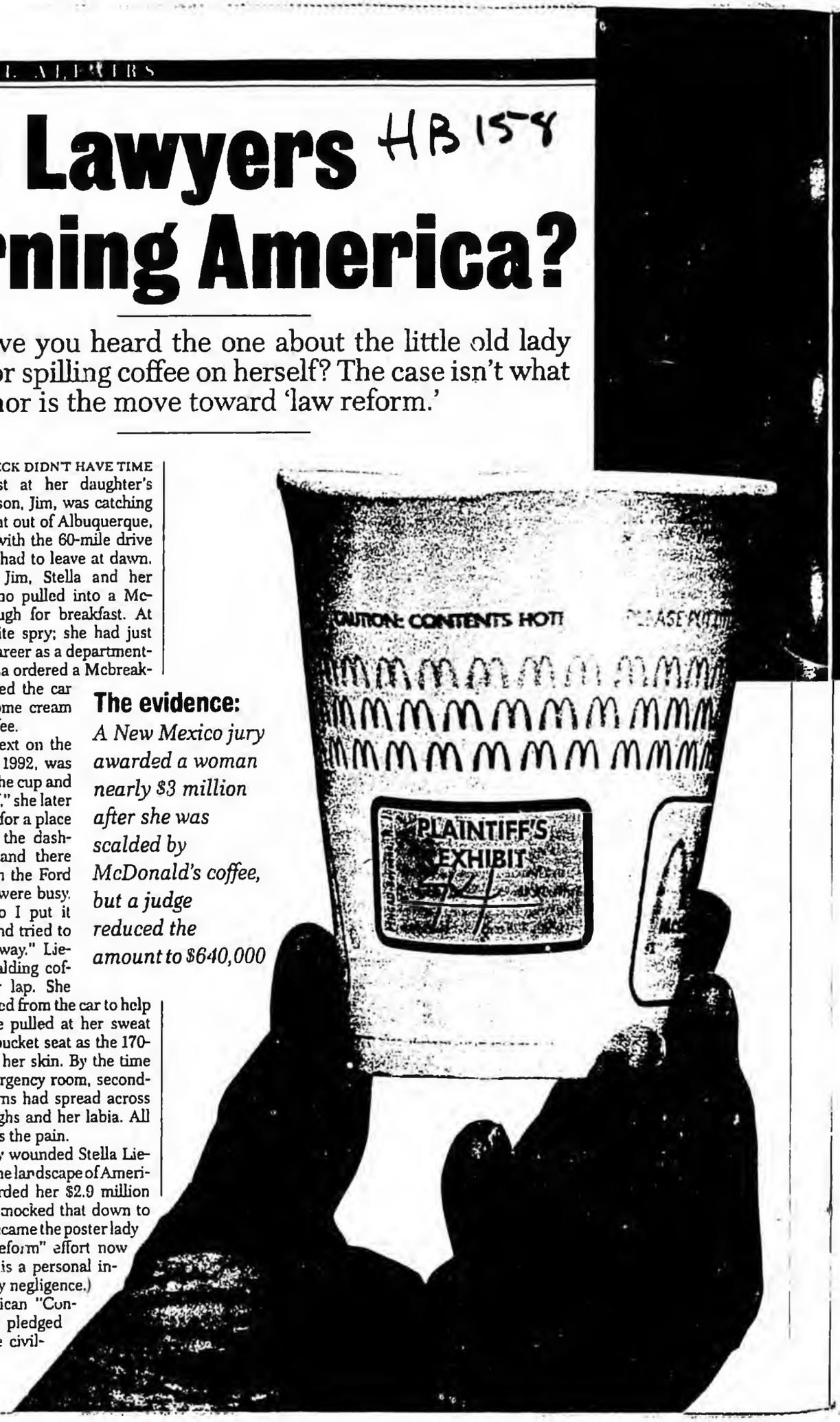
Justice: Have you heard the one about the little old lady who sued for spilling coffee on herself? The case isn't what you think, nor is the move toward 'law reform.'

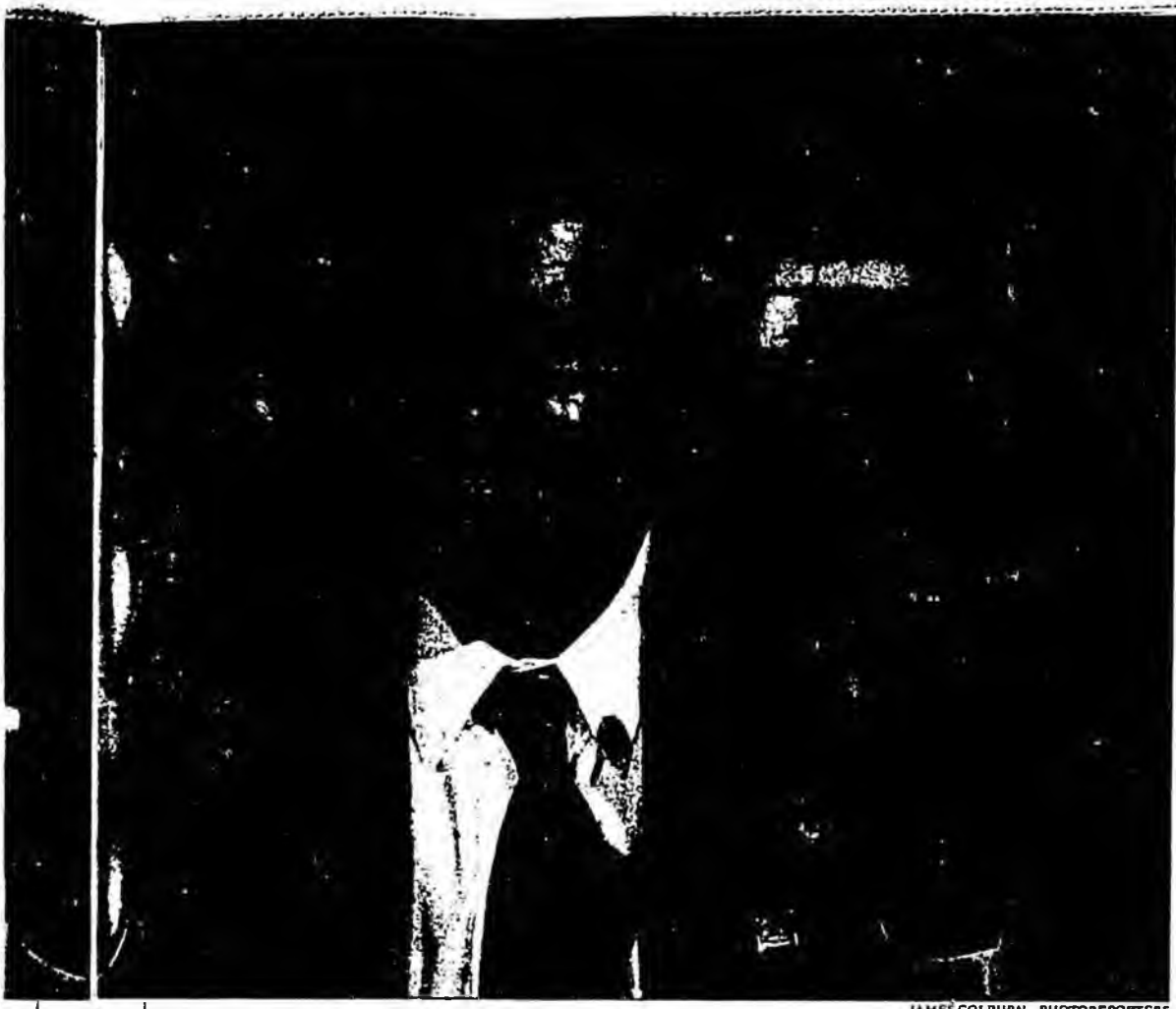
STELLA LIEBECK DIDN'T HAVE TIME for breakfast at her daughter's house. Her son, Jim, was catching an early flight out of Albuquerque, N.M., and, with the 60-mile drive from Santa Fe, they had to leave at dawn. After dropping off Jim, Stella and her grandson Chris Tiano pulled into a McDonald's drive-through for breakfast. At 79, Liebeck was quite spry; she had just retired after a long career as a department-store salesclerk. Stella ordered a Mcbreakfast, and Chris parked the car so she could add some cream and sugar to her coffee.

The evidence: *A New Mexico jury awarded a woman nearly $3 million after she was scalded by McDonald's coffee, but a judge reduced the amount to $640,000*

What happened next on the morning of Feb. 27, 1992, was an accident. "I took the cup and tried to get the top off," she later testified. She looked for a place to set it down, but the dashboard was slanted and there was no cup-holder in the Ford Probe. "Both hands were busy. I couldn't hold it so I put it between my knees and tried to get the top off that way." Liebeck tugged, and scalding coffee gushed into her lap. She screamed. Chris leaped from the car to help her. Desperately, she pulled at her sweat suit, squirming in a bucket seat as the 170-degree coffee seared her skin. By the time they reached an emergency room, second- and third-degree burns had spread across her buttocks, her thighs and her labia. All that she remembers is the pain.

The spill that badly wounded Stella Liebeck is now scarring the landscape of American law. A jury awarded her $2.9 million after a trial; a judge knocked that down to $640,000. Then she became the poster lady for the bitter "tort reform" effort now in Congress. (A tort is a personal injury usually caused by negligence.) Last fall the Republican "Contract With America" pledged major changes in the civil-





JAMES COLBURN—PHOTOREPORTERS

The politics: *For House Republicans looking for signs of an 'explosion' in negligence cases, the McDonald's verdict was made to order*

justice system aimed at curbing the number of lawsuits and the size of damage awards. Last week the House of Representatives did just that, passing three pieces of legislation that would cap some jury verdicts, deter some court actions and force some losing litigants to pay the legal fees of their opponents. Most important, Congress set national limits on awards for punitive and medical-malpractice damages, until now the province of state courts (box). "This represents the first significant regulation of lawsuits and lawyers from the perspective of nonlawyers," says Rep. Christopher Cox of California. "If there's a Robin Hood aspect, it is to take from the lawyers and give to the average working American."

It was the most hard-fought battle of the new Congress. The limousines of lobbyists idled outside the Capitol, while their passengers worked the congressional hallways and hideaways, giving the House the feel of a souk with cellular phones. The foes operated from different premises, born of wildly divergent self-images. Business, trade and medical associations lined up on one side, pressing their advantage with the GOP majority. They pleaded their case as hamstrung Gullivers, tied down by greedy lawyers and their foolish clients. Against them were consumer groups and the Association of Trial Lawyers, one of the shrewdest and best-funded political operations in Washington. They argued as noble paladins, battling scandalous corporate misconduct on behalf of average Americans.

Both sides were deluding themselves. Last week's bills, which will likely be changed in the U.S. Senate, were really about changing the balance of power in courthouses. Since World War II, a revolution in American legal doctrine and practice has made it easier for consumers and workers to sue and collect for injuries (page 36). These changes have yielded what has come to be known as "the litigation explosion," the purported epidemic of lawsuits that is much brooded over by chambers of commerce. But there is little agreement over what the dimensions of the crisis might be or over how the various reform proposals might cure the ills. The absence of facts did not slow the legislative wheels. Instead, Congress—where 229 of 535 admit to being lawyers—and the interest groups on both sides relied on half-truths, distortions and argument by anecdote. Consider:

Horror stories: Reform proponents, up to Speaker Newt Gingrich, seized on the fact that it takes profits from 87,000 boxes of cookies sold by Washington-area Girl Scouts to cover the organization's liability insurance. True, say the Scouts, but they've never been sued, have no position on tort reform and don't want to politicize their annual drive. A tort-reform group had hoped to use a model dressed as a Scout in an ad. When the scoutmasters refused to go along, the Associated Press reported, the girl became a Little League player instead, and the ad became a staple of the Washington campaign.

How big is the problem? Reform advocates say the economy is drained of at least $130 billion by the civil-justice system. But that figure is way too broad. It includes every insurance claim paid in the United States and the administrative costs of processing them, as well as the minority of cases that involve lawyers and court actions. Nothing Congress does, short of outlawing the insurance business, will make a dent in that $130 billion figure. There's no debate that the United States has experienced a huge growth in lawyers, but none of the reforms would roll that back, either.

Personal-injury cases: All of last week's action focused on tort cases. These are billed as

'Common Sense' Reforms

The GOP plan tries to reduce frivolous lawsuits by limiting the chances of big jury verdicts:

Punitive damages: In most cases of corporate negligence, juries could award no more than three times the cost of medical bills and lost earnings.

Loser pays: In some types of financial lawsuits, the loser could be forced to pay the legal costs of the winner.

Medical malpractice: Juries could not award more than $250,000 for "noneconomic" injuries—like loss of fertility or emotional distress.

'Fair share': Would curb "joint liability," in which a deep-pocket company only partly to blame for an injury might have to pay all of the damages.

Federal standards: Would wipe out major state laws governing litigation, imposing national standards in key areas for the first time.

TONY O'BRIEN—JB PICTURES (LEFT)

the cutting edge of the litigation explosion. But a major new study indicates that cases filed against roughly 2,000 of the largest U.S. corporations have grown only gradually over the last 20 years. The exceptions: disputes between the firms themselves; suits alleging discrimination and other statutory violations, and claims from special injuries such as those caused by asbestos manufacturers. "It's kind of curious that we have all the furor focused on the one area not exploding at all," says University of Wisconsin law professor Marc Galanter.

Deceptive numbers: According to figures from the National Center for State Courts, suits grew in 13 states and fell in 13 others between 1990 and 1992. In the period from 1985 to 1992, suits were up in 14 states and down in six others. These figures prove conclusively that better record-keeping is necessary.

Punitive damages: The trial lawyers cited studies indicating that juries seldom make such awards, which are designed to punish defendants for gross behavior. And judges usually reduce these verdicts anyway. But the specter of these few cases strongly influences settlement negotiations, where three quarters of all cases get resolved.

Whatever the course of the debate last week, inevitably someone would refer to Stella Liebeck and her hot-coffee spill. "Nightline" featured her story. She and her family of self-described conservative Republicans delivered a statement at a Public Citizen press conference. In rebuttal, pro-reformers marched on the Capitol grounds with a banner reading SHE SPILLED IT ON

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Someone Hear an Explosion?

TONY O'BRIEN—IB PICTURES

The juror: *At first Betty Farnham thought the case was frivolous, but by the end she pushed for a $9.6 million award*

PAM FRANCIS

The attorney: *Reed Morgan had sued McDonald's before over hot coffee and won*

TONY O'BRIEN—IB PICTURES

The judge: *Robert H. Scott, a Republican, sought to 'punish and deter' McDonald's*

teacher. "The whole thing sounded ridiculous to me." According to several jurors interviewed by NEWSWEEK, three witnesses turned the case around. First there were the photos of Liebeck's charred skin and the testimony of Dr. Charles Baxter, a renowned burn expert from Southwestern Medical School in Dallas. He testified that coffee at 170 degrees would cause second-degree burns within 3.5 seconds of hitting the skin.

Two defense witnesses inadvertently helped Liebeck, too. Christopher Appleton, a quality-assurance supervisor at McDonald's headquarters, testified that the company had not lowered the heat under the coffee despite receiving 700 burn complaints over 10 years. Safety consultant Robert Knaff asserted that 700 complaints—which amounted to about one in 24 million cups—was "basically trivially different from zero." Later he misspoke: "It's just that a burn is a very trivial thing—a burn is a very terrible thing." The damage was done. "Each statistic is somebody badly burned," says juror Betty Farnham. "That really made me angry." She also wasn't impressed by the tiny CAUTION: CONTENTS HOT label on the McDonald's cup. To read it, Farnham said she needed her glasses. She had started the case thinking the suit was frivolous. By the end, Farnham pushed for a total award of $9.6 million.

Stern warning: McDonald's had one more shot: the closing argument of defense lawyer Tracy E. McGee. She acknowledged that the coffee was hot; that's how customers want it. She insisted that Liebeck had only herself to blame. She was "unwise" to put the cup between her knees. She failed to leap out of the bucket seat after the spill. "The real question," McGee concluded, ". . . is how far you want our society to go to restrict what most of us enjoy and accept."

After deliberating for about four hours, the jury found for Liebeck. Her compensatory damages—out of pocket plus pain and suffering—were set at $200,000. To be fair, the jurors knocked off 20 percent because she had contributed to the accident. Then they hit McDonald's with a stern warning: $2.7 million in punitive damages. "It was our way of saying, 'Hey, open your eyes. People are getting burned'," recalls juror Bell. A month later, trial Judge Robert H. Scott reduced the award to $640,000, calculating punitive damages at three times compensatory. He, too, wanted to deliver a message to McDonald's that it "was appropriate to punish and deter" its corporate coffee policy. Scott, another self-described conservative Republican, insists the case was "not a runaway. I was there." After further post-trial skirmishing, the two sides settled out of court. Part of their deal includes keeping secret the final amount.

As everyone knows, there was an immediate uproar. Jay Leno told jokes; editorialists harrumphed; tort reformers rubbed their hands. They had an example they could cite repeatedly of the courts gone crazy, especially when they only had to give the headline and none of the details. The American Tort Reform Association bought radio ads in the Washington area using the Liebeck case as its key example of an "outrageous" lawsuit. The case was chosen because "it points out a lot of the problems with the system," says Sherman Joyce, ATRA's president. "It demonstrates that the system needs reform."

How would the bills passed by the House last week change the outcome of the McDonald's case? Not at all. Even the controversial punitive-damage award would go undisturbed because Judge Scott applied exactly the formula—three times out-of-pocket damages—that was in the "reform" bill.

None of this is to say that the legal system does not have serious problems. One idea that may address an important issue has already been introduced in the U.S. Senate. This proposal would change the contingency-fee arrangements used in civil lawsuits. Typically, plaintiffs' lawyers receive one third of any verdict or settlement plus expenses. That's a high percentage, but one designed to reward lawyers willing to gamble on clients who otherwise would be locked out of court. The problem is that many cases are not very risky but the lawyers are still collecting big fees. Under the reform idea, fees would be capped at 10 percent of the first $100,000 and 5 percent of anything more, if a case settles quickly. If the settlement offer is rejected, the lawyer can collect his normal one-third fee only on the amount of the ultimate award that is greater than the first offer. This plan would encourage early, generous offers and would put most of the money in the hands of injured people. "All we're trying to do is see that contingency fees are paid in cases that are truly contingent," says Jeffrey O'Connell, a law professor at the University of Virginia and co-inventor of no-fault insurance.

No plan—short of shuttering the courts—will stop the regular advance of stupid and wasteful lawsuits. It's little comfort, but that may be the price the system and the nation pay for encouraging people to settle disputes in a peaceful, if tedious, manner. It's too easy to blame only the lawyers. If there are too many suits, there is another reason: there are too many clients, too.

ARIC PRESS *with* GINNY CARROLL *in New Mexico and* STEVEN WALDMAN *in Washington*

Denali Drilling

HB 158

March 21, 1995

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Mark Hanley	From
Co.	Co. Denali Drilling
Dept.	Phone # 562-2312
Fax # 465-2418	Fax # 562-5971

We are in support of HB 158, State Level Tort Reform Legislation, to control litigation and lawsuit costs.

Please vote in favor of HB 158.

Sincerely,
DENALI DRILLING, INC.

Hal Ingalls
President

Sincerely,
DENALI DRILLING, INC.

Ron Pichler
Vice President

Lally & Associates
Real Estate Appraisers

Fax Transmission

To:	Mark Hanley	**From:**	BENJAMIN C. LALLY
Company:		**Date:**	March 21, 1995
Fax #:	465-2418		

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Message:

PLEASE SUPPORT HB 158

The cost of litigation and liability insurance has a huge impact on a small business. It is my understanding that this bill will protect a small business from frivolous lawsuits and promote early settlements.

Thank you for your consideration of this request.

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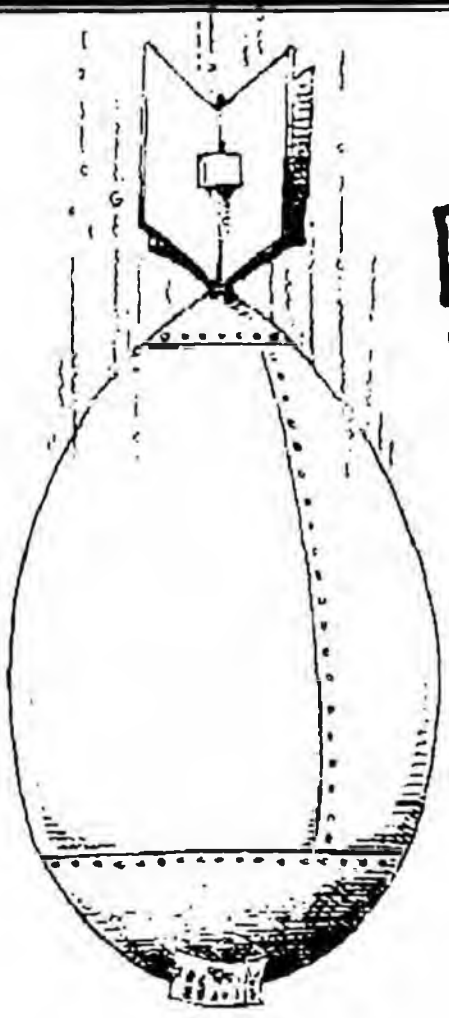

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Support HB 158

Most Sincerely,

Christine & Duane Hill

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From: Duane & Christine Hill

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FACSIMILE COVER PAGE

To: REP MARK HANLEY

From: R. JACOBSEN

Time: 16:42:34 Date: 3/21/95

Pages (including cover): 1

GREETINGS:

I WRITE IN SUPPORT OF HB 158. OUR COMPANY'S SURVIVAL IS DEPENDENT ON AFFORDABLE INSURANCE PREMIUMS. THE PRESENT LOTTERY SYSTEM WE HAVE FOR AWARDS IS OUT OF CONTROL AND IN SERIOUS NEED OF REFORM.

AS YOU MAY KNOW, AVIATION PREMIUMS HAVE BEEN ESCALLATING WORLDWIDE. DUE TO THE LITIGIOUS NATURE OF OUR SOCIETY, WINGS UNDERWRITER, (AND A NUMBER OF OTHER ALASKA AVIATION OPERATORS), DECIDED LAST OCTOBER TO QUIT WRITING G.A. INSURANCE IN NORTH AMERICA. THAT DECISION HAS LEFT MANY ALASKAN OPERATORS SEARCHING FOR COVERAGE. RATE INCREASES ARE SUBSTANTIAL. IF THE OPERATOR CAN FIND ADEQUATE COVER AT ALL. UPON RENEWAL APRIL 1, I AM EXPECTING AN INCREASE OF BETWEEN 80% TO 90%; WE'RE STILL NEGOTIATING. (PRAYING THAT IS) THE INCREASE IS PRIMARILY DUE TO MARKET CONDITIONS AND NOT OUR TRADGEDY LAST YEAR.

THE SMALL REFORMS PROPOSED IN HB 158 ARE A GOOD FIRST STEP TO BRING SOME NECESSARY BALANCE TO THE JUDICIAL LOTTERY. I SUSPECT THE REFORMS WILL HAVE A POSITIVE EFFECT ON RATES OVER TIME WHILE NOT COMPROMISING FAIR AND EQUITABLE SETTLEMENTS OR AWARDS

I HOPE WE CAN COUNT ON YOU TO STAND UP FOR SMALL BUSINESSES AND THEIR EMPLOYEES ACROSS ALASKA. PLEASE VOTE FOR PASSAGE OF HB 158.

REGARDS,

BOB JACOBSEN

Produced by Rep. Porter's office

Attachment #1
3/18/95

The Following Have Spoken in Support of Tort Reform

Business & Associations:

Alaska Distributors Co.
Bunford Concrete Products
Arete Construction, Inc.
Alaska Professional Design Council
Alaska Society of Professional Engineers
Alaska State CHARR
Alaska Trailer Court Association
Alaska Truckers Association
Alaska Visitors Association
American Factory Trawlers Association
Anchorage Board of Realtors
Association of Regional Aqua culture
Associated General Contractors
Bristol Bay Driftnetters Association
Chugach Electric Association
Common Senesce for Alaska
The Alliance
National Federation of Independent Business
ARCO Alaska, Inc.
Alaska Forest Association, Inc.
Alaska Credit Union League
Alaska Exchange Carriers Association
Wick Air Inc.
Alaska Association of Realtors
Triangle Club
Alaska Coal Association
Alaska Peace Officers Association
Ronnegard Construction
Aero Twin, Inc.
Alaska Coastal Homes
Alaska Telephone Association
Alaska Underground Tank Owners
Alaska Wine and Spirits Wholesalers
Alaska Air Carrier Association
Alaska Airman's Association
Alaska Association of Realtors
Alaska Broadcasters Association
John L. George & Associates
Arctic Power

Alaska Bankers Association
Alaska Cable TV Association
Westland Associates
Alaskans For Liability Reform
Alaska Mobile Home Association
Juneau Racquet Club
Consulting Engineers Council
National Federation of Independent Business
National Electrical Contractors Association
Alaska Refuse Utilities Association
Lynden Incorporated
Altrol, Inc.
Cordova District fisheries
Alaska Rural Electric Co-Op
Petro Star, Inc.
Workers Compensation Committee
United Southeast Alaska Gillnetters
Ketchikan Pulp Company
SE/SW Ak Marine Pilots Association
SE Alaska Seiners Association
Southeast Alaska Auto Dealers Association
Alaska Hotel Motel & Lodging Association
Alaska Inventors and Entrepreneurs
Klukwan, Inc.
Alaska Miner's Association, Inc.
Lessmeier & Winters, Attorneys at Law
Alaska Oil And Gas Association
Alaska Outdoor Council
Alaska Rental Association
Downtown Anchorage Association
Highway Users Federation
Resource Development Association
Alaska Trucking Association

Government:

Commonwealth North
Alaska State Chamber of Commerce
Alaska Municipal League
Anchorage Chamber of Commerce
Anchorage Municipal League
Municipality of Anchorage

Insurance:

Insurance Association of Alaska

Life Underwriters
Alaska Independent Insurance Agents & Brokers, Inc.
Norcal Mutual Insurance Company

Medical Community:

Alaska Academy of Physicians Assistants
Alaska Chiropractic Society
Alaska State Dental Hygienists
Juneau Medical Society
North Central District Dental
Glenn Stewart M.D.
Anchorage Nurses Association
Sherman Beacham, M.D
Fairbanks Memorial Hospital
Alaska Dental Society
Paul M. Worrell, M.D.
Alaska State Hospital & Nursing Home Association
Providence Hospital
Alaska State Medical Association
Alaska Regional Hospital
David S. Killebrew, M.D.
William Pease, M.D.
Jeff Brand, M.D.

Individuals:

John T. Connally
Harold D. Iler
Donald N. Anderson
Charles Grasso
Patricia Berg
Don Rogers
Donald M. Graves
Roger Holmes
Keith Burke

HB

158

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/96 DATE TURNED INTO OFFICE: 4/9/96

The Finance Committee considered CS FOR HOUSE BILL NO. 158(FIN) am(ct rls pfld)(efd fld)

Relating to civil actions; amending Alaska Rule of Civil Procedure 95.

SCS(Fin) coming

and recommends:

[ ] be replaced with 5 CS CS HB 158 (FIN)

[ ] adopt **previous** ____ CS _____ (____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical change
[ ] new: SCR#____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
	✓				
	✓				
Co-Chair:	✓	*Co-Chair:*			
Co-Chair: Kim Halford	✓	*Co-Chair:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

	Department	Date	Zero	Fiscal
#6	DOLAW	3/1/96	0	
#7	DCED	3/1/96	0	
#8	DOA	3/4/96	0	
#9	Courts	3/12/96	0	

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

No. 9

Bill Version: SCS CS HB 158(JUD)

(S) Publish Date: 3-20-96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 03/12/96
Title: Tort Reform
Sponsor: Rep. Porter
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES				5.0	10.0	10.0
TRAVEL						
CONTRACTUAL				431.0	852.0	852.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	436.0	862.0	862.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	436.0	862.0	862.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	436.0	862.0	862.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 03/12/96

Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/12/96
Agency: Alaska Court System

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12:24 PM
Rev 1/96

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

SCS CSHB 158 (JUD) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

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

Section 11 modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed over 10,000 times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 12 requires all tort claims of $100,000 or less to be submitted to non-binding arbitration. A total of 1,422 tort claims were filed in superior and district court in FY 95. An estimated 1,067 would be subject to mandatory arbitration. Arbitrators in Anchorage who are attorneys or former judges typically charge $150 - $175 per hour for their services. Arbitrators specializing in tort arbitration advise that this process can be expected to last two to five days (including time for drafting a decision, making decisions on allowable discovery, etc.), for a charge of $2400 to $7000. The supreme court will adopt rules requiring parties to pay the costs of arbitration. However, the state will still incur substantial costs from this process because if arbitration is mandatory, the state will be required to pay the costs for those plaintiffs and defendants who are legally indigent. This fiscal note assumes that the average arbitration will cost $4000, and that 20 percent of litigants will be indigent. Note that 95 percent of all tort cases already settle before trial, and thus arbitration will not appreciably reduce court costs for those cases. The cases which go to trial are those in which after full discovery, the parties still can not agree on the value a jury will put on a claim. Those cases are unlikely to settle as a result of an arbitrator's opinion rendered early in the process. Thus, this section will probably not reduce the state's costs of running the civil justice system.

Section 17 essentially codifies Civil Rule 11, with one significant difference. CR 11 gives a judge the discretion to impose sanctions in any civil case (not just tort cases)

in which a party has engaged in improper practice. Section 17, on the other hand, would require a judge to impose sanctions in such cases. The federal courts imposed a similar requirement from 1983 to 1993. They experienced a tremendous increase in the number of requests for hearings and sanctions, as attorneys used this as a tool to gain advantage in litigation. As a result of this increase, the federal courts went back to a system almost identical to CR 11. This note assumes that the federal experience will be repeated in Alaska, and that additional judicial time will be spent in a significant percentage of the 24,000 civil cases filed per year.

SCS CSHB 158 (JUD) am can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by SCS CSHB 158 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

Personal Services

Position	Salary	Benefits	Total
Additional judicial time necessitated by Section 17 to impose sanctions			$10,000

Contractual Services

Cost of mandatory arbitration for indigent parties. This fiscal note assumes that 20% of the litigants (2 litigants per case) in the 1,067 cases subject to mandatory arbitration will be indigent and that arbitration will cost $2,000 per litigant.	$852,000
Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce the personnel costs of entering interest rate information. This is a one-time cost.	5,000
Total Contractual Cost	857,000
Estimated Total Cost	$867,000

FISCAL NOTE

No. 8

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: SCS CSHB 158(Jud)
(S) Publish Date: 3/8/96

Revision Date:
Title: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 68, and 95....."
Sponsor: Rep. Porter
Requestor: (S) JUD

Department Affected: Administration
BRU: Risk Management
Component: Risk Management

COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 96) cost: $-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

Risk Management loss funding is collected solely through interagency receipts of premiums assessed each State agency.

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

Prepared by: J. Brad Thompson, Director
Division: Risk Management
Phone: 465-5723
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 3/4/96

PREPARER TO F[redacted]EGISLATIVE OFFICE
For [redacted] Office

No. 2

FISCAL NOTE

Bill Version: SCS CSHB 158 (Jud)

(S) Publish Date: 3/8/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: Civil Liability

BRU: Insurance

Component: Operations

Sponsor: Reps. Porter, Toohey, Mulder, Ogan

Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. #354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.8	0.8	0.8	0.8		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.8	0.8	0.8	0.8	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated Pro. Rec.	0.8	0.8	0.8	0.8		
TOTAL	0.8	0.8	0.8	0.8	0.0	0.0

Estimate of any current year (FY 96) cost: $ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The only additional cost the division would incur is mailing notification to the affected companies twice per year through the implementation year.

500 companies x 2 x $.32 postage = $320

Plus estimated printing costs of $250 x 2 = $500

While it is likely the number of companies in the subsequent mailings would decrease over the four-year period, there is no way to anticipate when companies would submit the rate reduction filings, so no fiscal change is reflected year-to-year.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597

Division: Insurance Date: 3/1/96

Approved by Commissioner: William L. Hensley Date: 3-1-96

Agency: Commerce and Economic Development

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No. 6

FISCAL NOTE

Bill Version: SCS CS HB 158 (Jud)

(S) Publish Date: 3/8/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 3/1/96
Title: "...relating to civil actions; amending Rules 68, 82(b) and 95..."
Sponsor: Representative Porter
Requester: Senate Judiciary Committee

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services

COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee substitute for HB 158 amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible.

Richard L Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: 3/1/96

Richard L. Pegues / FORT

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 3/1/96

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4-4-96
SR
9-LS0328\R.3 Moved
Ford
3/25/96 Adopted

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 1
Bill Number: SCS (JUD)
Sponsor: _____ Date: 4-1-96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 11, line 19:

Delete "09.55.548,"

4-4-96
SR

9-LS0328\R.5 Moved
Ford
4/1/96 Adopted

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 3
Bill Number: SCS CSHB 158(JUD)
Sponsor: _____ Date: 4/5/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 2, line 23:

Delete "one-half"

Insert "90 percent"

Page 5, line 3:

Delete "one-half"

Insert "90 percent"

4/4/96 SR

9-LS0328\R.6 - Ford 4/1/96 Moved Adopted 4-2

SENATE FINANCE COMMITTEE
Amendment Number: 4
Bill Number:
Sponsor: Date: 4/2/96
Logged In By:

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 2, line 29, after "damage":

Insert "based on a defect in the design, planning, supervision, construction, or observation of an improvement to real property"

Page 3, line 3, after "specifications":

Insert ", construction standards prevailing at the time of construction,"

Page 3, lines 27 - 29:

Delete all material.

Reletter the following subsection accordingly.

4-4-96
3R
Moved
Adopted
4-2

9-LS0328\R.7
Ford
4/1/96

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 5
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 5, line 9:

Delete "[THE COURT MAY NOT"

Insert "The court may <u>waive this requirement if the person in whose favor judgment is entered agrees to waive the posting of security and the court determines that waiver is prudent in the action</u> [NOT"

Page 5, line 12:

Delete "."

Insert "]."

4-4-96
SR moved
A Lyoles 4-2

9-LS0328\R.8
Ford
4/1/96

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 6
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 5, line 16, following "inflation":

Insert "or the formula for the increases"

Page 5, lines 25 - 27:

Delete "In this subsection, "inflation" means the change in the Consumer Price Index for Anchorage, all items index, complied by the Bureau of Labor Statistics, United States Department of Labor."

4/9/96 pm
SR moved
Adopted

9-LS0328\R.10
Ford
4/1/96

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 8
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 6, line 15, following "made.":

Insert "In comparing the offer to judgment finally entered, the court may not consider prejudgment interest payable under the judgment during the period between when payment would have been made under the offer and the date of entry of judgment."

4/9/96 pm

9-LS0328\R.11 SR
Ford moved
4/1/96 A Layton

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 9
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 6, lines 15 - 17:

Delete ". This section does not apply to an offer made by a defendant in an action in which there are two or more defendants, unless all the defendants join in the offer"

4/9/96
SR
moved
Adopted
P.M

9-LS0328\R.12
Ford
4/1/96

SENATE FINANCE
COMMITTEE
Amendment Number: 10
Bill Number:
Sponsor: Date: 4/2/96
Logged In By:

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 7, line 10, following "before":

Insert "or after"

4/9/96 pm

9-LS0328\R.13 =R
Ford Moved
4/1/96 Adopted

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 11
Bill Number:
Sponsor: Date: 4/2/96
Logged In By:

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 7, line 21, following "experience":

Insert "or who meet other qualifications as prescribed by the court"

4/9/96
pm
=R
Moved
Adopted

9-LS0328\R.14
Ford
4/1/96

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 12
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 8, line 9, following "photographs.":

Insert "This paragraph may not be construed to require the arbitrator to use or rely on any documents that the arbitrator has reason to doubt as to the document's authenticity or accuracy."

4/9/96 pm

9-LS0328\R.15 v SR
Ford
4/1/96 Moved as amended A Lyster

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 13
Bill Number:
Sponsor: Date: 4/9/96
Logged In By:

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 6, lines 1 - 24:

Delete all material and insert:

"* Sec. 10. AS 09.30.065 is repealed and reenacted to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. (a) At any time more than 10 days before the trial begins either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict.

(b) If the judgment finally entered on the claim as to which an offer has been made under this section is at least five percent less favorable to the offeree than the offer, the offeree shall pay costs as allowed under the Alaska Rules of Civil Procedure and all reasonable attorney fees incurred by the offeror from the date the offer was made. ~~This section does not apply to an offer made by a defendant in an action in which there are two or more defendants, unless all the defendants join in the offer.~~"

Page 8, line 27:

Delete "AS 09.30.065"

Insert "AS 09.30.065(b)"

4/9/96 pm Last Sentence deleted.

4-9-96
pm
Adopted

9-LS0328\R.16
Ford
4/1/96

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

SENATE FINANCE COMMITTEE
Amendment Number: 14
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

Page 9, line 22:

Delete "staff"

Page 10, line 1, following "services":

Insert "offered by the health care provider"

Page 10, line 10:

Delete "is a member of a hospital's medical staff or who has otherwise"

Insert "has"

4/9/96
pm
JR
Adopted

9-LS0328\R.17
Ford
4/1/96

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 15
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

Page 1, lines 3 - 4:

Delete "; **and providing for an effective date**"

Page 12, lines 12 - 18:

Delete all material.

4/9/96 pm

SR

9-LS0328\R Amend. #16 p. 7, line 8 Adopted

SENATE CS FOR CS FOR HOUSE BILL NO. 158(~~JUD~~ FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/8/96
Referred: L&C, FIN

Sponsor(s): REPRESENTATIVES PORTER, Toohey, Mulder, Ogan

A BILL

FOR AN ACT ENTITLED

"An Act relating to civil actions; amending Rules 68, 82(b), and 95, Alaska Rules of Civil Procedure, repealing Rule 72.1, Alaska Rules of Civil Procedure, and amending Rule 601, Alaska Rules of Evidence; and providing for an effective date."

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

* Section 1. PURPOSE. It is the purpose of this Act to

(1) enact further reforms that create a more equitable distribution of the cost and risk of injury;

(2) reduce costs associated with the civil justice system, while ensuring that adequate and appropriate compensation for persons injured through the fault of others is available;

(3) help match losses with compensation by helping to

(A) ensure that money paid to an injured person is available when anticipated expenses or losses occur;

(B) ensure that a claimant with substantial injury requiring long-term treatment will have money available for future medical care;

(C) reduce reparation system costs by eliminating those portions of awards that are not needed to compensate the claimant;

(D) eliminate duplicate recoveries;

(E) reduce the costs of litigation;

(F) establish appropriate thresholds for a damage award in order to allow predictability of liability exposure; and

(G) reduce the ultimate costs to the state and to local governments of providing medical services to those who cannot otherwise afford those services;

(4) reduce the amount of litigation proceeding to trial by modifying the allocation of attorney fees and court costs based on the offer of judgment and the final court award thereby providing a financial incentive to both parties to settle the dispute;

(5) enact a statute of repose that meets the tests set out in Turner Construction Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

(6) clarify the circumstances in which hospitals are held directly liable for the actions of health care providers not employed by the hospital;

(7) encourage health care providers to provide quality medical care in all areas of this state at a cost that is affordable;

(8) stabilize the rapidly escalating costs of health care by curtailing the rapid escalation in malpractice premiums and thereby make broader based health care available to more residents of the state;

(9) require that one-half of punitive damages awarded by a court be deposited into the general fund for the benefit of the public welfare and to deter future harm to the public.

* **Sec. 2.** AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. STATUTE OF REPOSE OF 15 YEARS. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within 15 years of the earlier of the date of

(1) substantial completion of the construction alleged to have caused

the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; or

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

(b) This section does not apply if

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

(A) exposure to a hazardous substance; in this subparagraph, "hazardous substance" means an element or compound that, when it enters into the air or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to public or individual health and welfare;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce; "product" includes an element or compound that if ingested by humans or if humans are exposed to, or are in contact with the element compound or product, poses a threat to human health;

(2) facts that would give notice of a potential cause of action are intentionally concealed;

(3) a shorter period of time for bringing the action is imposed under another provision of law; or

(4) a longer period of time for bringing the action was provided under a contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the presence of a foreign body in the body of the injured person and the action is based on the presence of the foreign body.

(d) In this section, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to

occupy the improvement or to use the improvement in the manner for which it was intended.

* **Sec. 3.** AS 09.10.070 is amended to read:

Sec. 09.10.070. ACTIONS FOR CERTAIN TORTS AND CERTAIN STATUTORY LIABILITIES TO BE BROUGHT IN TWO YEARS. **Except as otherwise provided by law, a** [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, **or** false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years.

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

Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO PERSON OR PROPERTY. (a) A person may not bring an action for personal injury, death, property damage, or injury to the rights of another not arising on contract, unless the action is brought within two years of the accrual of the action.

(b) This section does not apply if a shorter period of time for bringing the action is imposed under another provision of law.

* **Sec. 5.** AS 09.17.020 is amended to read:

Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence **of outrageous conduct, including acts done with malice or bad motives, or reckless indifference to the interest of another person**.

* **Sec. 6.** AS 09.17.020 is amended by adding new subsections to read:

(b) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed three times the amount of compensatory damages awarded or $300,000, whichever amount is greater.

(c) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the

injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

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

* Sec. 7. AS 09.17.040(e) is amended to read:

(e) **If a judgment is paid by periodic payments, the** [THE] court **shall** [MAY] require security be posted [,] in order to ensure that funds are available as periodic payments become due. [THE COURT MAY NOT REQUIRE SECURITY TO BE POSTED IF AN AUTHORIZED INSURER, AS DEFINED IN AS 21.90.900, ACKNOWLEDGES TO THE COURT ITS OBLIGATION TO DISCHARGE THE JUDGMENT.]

* Sec. 8. AS 09.17.040(f) is amended to read:

(f) A judgment ordering payment of future damages **for personal injury or death** by periodic payment shall specify the recipient, the dollar amount of the payments, **including any increases in future payments for anticipated inflation,** the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will. **In this subsection, "inflation" means the change in the Consumer Price Index for Anchorage, all items index, compiled by the Bureau of Labor Statistics, United States Department of Labor.**

* Sec. 9. AS 09.17.080 is amended by adding a new subsection to read:

(e) Notwithstanding any other provision of this section, fault may not be allocated to a person against whom an action cannot be brought as a result of application of a statute of repose, including AS 09.10.055.

* **Sec. 10.** AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days before the trial begins either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is **at least five percent less** [NOT MORE] favorable to the offeree than the offer, **the offeree shall pay costs as allowed under the Alaska Rules of Civil Procedure and all reasonable attorney fees incurred by the offeror from the date the offer was made. This section does not apply to an offer made by a defendant in an action in which there are two or more defendants, unless all the defendants join in the offer** [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A YEAR].

* **Sec. 11.** AS 09.30.070(a) is amended to read:

(a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments and decrees for the payment of money**, including prejudgment interest,** is **three percent above the interest rate set by the United States Bureau of the Public Debt for five-year treasury notes in effect on the day on which the judgment or decree is entered** [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in

the contract if the interest rate is set out in the judgment or decree.

* **Sec. 12.** AS 09.55.535 is repealed and reenacted to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an action for personal injury, death, or property damage shall also submit the claim to the court for arbitration, unless the action is excluded under (b) of this section.

(b) A person is not required to comply with (a) of this section if the

(1) amount in controversy, excluding interest, costs, and attorney fees, exceeds $100,000; this paragraph does not apply if, for purposes of arbitration only, the person bringing the claim waives the amount in controversy that exceeds $100,000;

(2) parties have, under a written agreement made before the accrual of the action, agreed to submit the claim to arbitration; or

(3) action

(A) is a class action;

(B) seeks equitable or declaratory relief;

(C) concerns the title to real property;

(D) is a probate action;

(E) is an appeal from a court of limited jurisdiction;

(F) involves divorce or domestic relations;

(G) is an appeal from action by an administrative agency.

(c) The court shall maintain a list of attorneys with at least five years of civil practice experience, or retired judges, who have consented to serve as arbitrators. From the list of attorneys or retired judges the court shall appoint an arbitrator to review the claim and conduct the hearing. Each party may exercise a peremptory challenge of an arbitrator appointed by the court.

(d) A party to arbitration shall comply with the Alaska Rules of Civil Procedure regarding mandatory discovery and may also take the deposition of an opposing party or conduct a mental or physical examination as allowed under the Alaska Rules of Civil Procedure. A party may not conduct further discovery except as allowed by the arbitrator or as allowed by agreement between the parties. Discovery shall be completed within 30 days after the arbitrator is selected, except as otherwise allowed by the arbitrator.

(e) The arbitrator shall set a date for a hearing on the claim. The hearing date

shall be as soon as feasible, but not more than 60 days after the selection of the arbitrator, except as allowed by the arbitrator.

(f) The arbitrator shall conduct the hearing as necessary to ascertain facts in a timely manner. A witness may testify telephonically if allowed by the arbitrator. The Alaska Rules of Evidence do not apply to an arbitration hearing, except as determined by the arbitrator or by the Alaska Supreme Court. The Alaska Supreme Court shall establish a list of documents that shall be presumptively admissible in an arbitration hearing without prior establishment of authenticity or foundation, including bills, reports, medical records, or photographs.

(g) An arbitrator shall render a decision within 30 days after hearing a claim under (e) of this section. The decision must contain findings of fact, conclusions of law, and an award or denial of damages. The decision of the arbitrator may be rejected by a party.

(h) Not more than seven days after the decision of the arbitrator is issued, a party may reject the decision of the arbitrator and file a request with the appropriate court for a trial on all issues raised by the claim. A timely filed request for trial shall proceed in the appropriate court.

(i) In a trial of a claim that has been arbitrated under this section, the decision of the arbitrator is admissible to the extent allowed under applicable rules of court, but the arbitrator may not be called as a witness. If a party rejects the decision of the arbitrator and litigates the claim in court, but fails to improve that party's position, the court shall award costs as allowed by law or under the Alaska Rules of Civil Procedure and reasonable attorney fees to the opposing party.

(j) The Alaska Supreme Court shall adopt rules necessary to implement this section.

(k) Notwithstanding AS 09.30.065, a claim subject to arbitration under this section is not subject to the offer of judgment provisions of AS 09.30.065.

*** Sec. 13.** AS 09.55 is amended by adding a new section to read:

Sec. 09.55.551. EXPERT WITNESS QUALIFICATION. In an action based upon professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is a professional who is licensed in this state or is licensed in another state or country and

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

(2) is certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue.

* **Sec. 14.** AS 09.55.560 is amended by adding a new paragraph to read:

(4) "professional negligence" means a negligent act or omission in rendering professional services.

* **Sec. 15.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES. (a) A hospital is not liable for civil damages as a result of an act or omission by a health care provider who is not an employee or actual agent of the hospital if the hospital provides notice that the health care provider is an independent contractor and the health care provider is insured as described under (c) of this section. The notice required by this subsection must be posted conspicuously in all admitting areas of the hospital, published at least annually in a newspaper of general circulation in the area, and must be in substantially the following form:

Notice of Limited Liability

The following health care providers are independent contractors and are not employees of the hospital:

(List specific health care providers)

The hospital is responsible for exercising reasonable care in granting staff privileges to practice in the hospital, for reviewing those privileges on a regular basis, and for taking appropriate steps to revoke or restrict privileges in appropriate circumstances. The hospital is not otherwise liable for the acts or omissions of a health care provider who is an independent contractor.

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

(c) A hospital is not immune from liability under (a) of this section for an act or omission of a health care provider who is an independent contractor unless the health care provider has liability insurance coverage in the amount of at least $2,500,000 per incident and the coverage is in effect and applicable to those health

care services that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "health care provider" means a doctor of medicine, psychologist, osteopath, dentist, optometrist, chiropractor, optician, pharmacist, podiatrist, or certified registered nurse anesthetist, who is licensed in this state;

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

(3) "independent contractor" means a licensed health care provider who ~~is a member of a hospital's medical staff or who has otherwise~~ been granted specified privileges to render health care services directly or indirectly to patients at the hospital, but who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

* Sec. 16. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A FELONY. (a) A person who suffers personal injury or property damage may not recover damages for the personal injury or property damage if the injury occurred while the person was committing or attempting to commit a felony, or fleeing from the commission of a felony, and the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or property damage.

(b) The personal representative of a deceased person may not recover damages for the person's death if the court determines by clear and convincing evidence that the death occurred while the person was committing or attempting to commit a felony, or fleeing from the commission of a felony, and that the felony substantially contributed to the death.

* Sec. 17. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's