ALASKA LEGISLATURE 1629

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

CHANNEL CORPORATIONS

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

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

2/21/97 10:12 am

Facsimile transmittal to 465-4316

February 20, 1997

The Honorable Joe Green
Chairman, House Judiciary Committee
Alaska State House of Representatives
Juneau, Ak 99801

Dear Representative Green:

Please be advised that Channel Corporations supports House Bill No. 58 regarding tort reform.

Channel Corporations is four family-owned and -operated businesses which have been in operation for more than 20 years. The businesses provide diverse services such as disposal of garbage refuse, refuse and soils incineration, commercial and residential construction and demolition, a logging and sawmill enterprise, and equipment rental, service and sales.

The ever-increasing cost of personal injury cases and the unpredictability of juries in awarding damages have had a huge impact on small business. We believe this very important bill can control these costs, while assuring appropriate compensation for persons injured through the fault of others. We believe the legislation makes the civil justice system more fair, more efficient and less costly.

I would very much appreciate your support of House Bill No. 58. Thank you.

Very truly yours,

W. R. Tonsgard, Jr.
Chairman of the Board

WRT:dk

(907) 780-4288 • FAX 780-6336 • 5600 TONSGARD COURT • JUNEAU ALASKA 99801
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217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

February 21, 1997

Representative Brian Porter
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

Last year the AML urged the implementation of the Tort Reform bill. The AML continues its support of the adoption of a meaningful tort reform bill.

Municipalities have considerably broader liability exposures than almost any private business because of the extremely broad nature of municipal services and public safety responsibilities. Also, municipalities are seen as "deep pockets", however, a municipality must pass costs on to residents directly through taxes. It is clearly in the interest of residents of municipalities to reasonably limit their municipality's liability exposures.

Much of what SSHB 58 (JUD) proposes for general liability is similar to the way the Workers Compensation laws works, i.e. by more clearly defining liability and remedies, injured workers are more effectively served and protracted and expensive legal processes are kept to a minimum. The Workers Compensation laws were established because the existing process was too costly, complicated, and ineffective. It is time to apply similar principles more broadly to tort reform.

The AML Legislative Committee has not reviewed the provisions of the bill and may comment on specific provisions at a later date. Please keep the AML informed of any issues specifically relevant to municipalities and the AML will be pleased to continue to participate in the process.

Sincerely,

Kevin Ritchie
Executive Director

CC: AML Legislative Committee
C:Legcomm:297tortreformhb58

Alarms — Burglar, Fire
Intercom - Telephone

Your Full Line Electrical Supplier

Lighting Fixtures - Showroom
Residential - Commercial

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

February 20, 1997

To: Representative Brian Porter
Re: HB58 - Tort Reform

Dear Sir:

For the good of every citizen of the State of Alaska, as well as every small business, we support HB58.

This year we hope you can pass this bill, veto-proof.

Sincerely,

Glenn J. Kipp

FEB-20-97 03:18P P.01

G.T. Construction, Inc.
P.O. Box 190329
Anchorage, AK. 99519
(907) 248-9243
fax (907) 248-9341

FAX TO: Brian Porter

FAX FROM: Guy Turner

DATE: 2/20/97

1 pages including this page.

Reference: Support for HB 58

I have a small Mom + Pop Buisness. The ever increasing costs of personal injury cases have had a huge impact on small buisness, The ever increasing costs of Insurance, and the overhead has to come under control.

I would like your support for HB 58.

Sincerely,

[signature]

Guy Turner

NORTHERN PERFORMANCE

THUMPER & JULIE WILLIAMSON
e.mail - [illegible]
S.R. Box [illegible]
Mi. 44 Tok Hwy
[illegible], AK, [illegible]

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

February 20, 1997

Rep. Brian Porter
cc. NFIB/Alaska's state legislative office

Dear Representative,

Northern Performance is a small business in the Copper River Basin. We are an authorized Polaris dealership, handling snowmobiles and atv's. Our 1996 sales were $835,000. Our customer base is spread throughout Alaska, from the Canadian Boarder to Takotna, and Valdez to Delta Junction. We have no employees, the business is run by myself, and my husband Grant Williamson Jr. aka Thumper.

We feel that the HB 58: Tort Reform is vital to the continued success of small businesses like our own. Operating a business in the Alaskan bush is struggle enough without the threat of losing our hard earned livelihood to a lawsuit, because some person felt the need to sue. Lawsuits in this day and age are entirely out of hand. No person should be entitled to millions in damages because they refuse to accept responsibility for their own actions.

Thank you for your time and attention to this matter.

Sincerely

Julie Williamson
Owner

JW/jw
fc/ NFIB

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

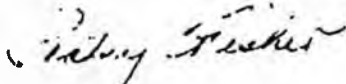
FEBRUARY 20, 1997

REP. BRIAN PORTER
ALASKA STATE CAPITAL
JUNEAU, ALASKA 99801

REPRESENTATIVE PORTER:

WE ARE A SMALL MARINE AND AUTO PARTS CORPORATION THAT DOES SERVICE WORK ON BOATS IN OUR AREA. WE SUPPORT HB 58: TORT REFORM. TORT REFORM IS VERY IMPORTANT TO THE SMALL AND INDEPENDENT BUSINESS COMMUNITY. WE REPRESENT THE ECONOMIC BACK BONE OF OUR NATION. PLEASE CONTINUE TO WORK TOWARD PROTECTING US IN COURT AGAINST THE EVER INCREASING COST OF PERSONAL INJURY CASES AND THE UNPREDICTABILITY OF JURIES IN AWARDING DAMAGES WHICH HAVE HAD HUGE IMPACT ON SMALL BUSINESS.

SINCERELY,



PATSY FISHER, SECRETARY

REP. JOE GREEN
REP. CON BUNDE
REP. NORM ROKEBERG
REP. JEANNETTE JAMES
REP. ERIC CROFT
REP. ETHAN BERKOWITZ

Radio Fairbanks

Division of
Communications
Equipment &
Service
Inc.

Radio Fairbanks Building
1010 College Road
Fairbanks, Alaska 99701
(907) 452-1049
FAX: (907) 451-7967

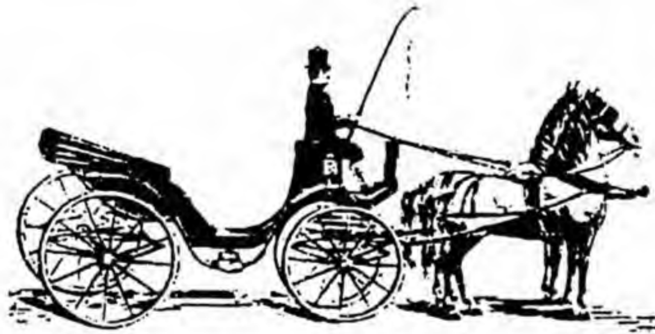
Reps- Porter, Green, Bunde, Rokeberg, James, Croft,
Berkowitz

I support HB58 - Reform of tort.

The unpredictability of juries and their awards of damages plus the costs increases of personal injury cases have had a huge adverse impact on small businesses. These costs need to be controlled. Compensation still needs to be made to some degree to persons injured if proven to be caused by others.

Please support this bill.

Sid Childers



HORSE-DRAWN CARRIAGE CO., INC.
P.O. Box 671316, 22012 Blair Ave. Chugiak, Alaska, 99567
(907) 688-6005, Fax 688-1218
Internet: http://www.goworldnet.com/carriage.htm

FEBRUARY 20, 1997

Rep. Brain Porter

I urge you to continue your efforts in tort reform in HB 58. As a small business owner, with very little or no profit margin, liabiltiy insurance is a major expense item. Since our state doesn't have Equine Liability Law our business is constantly exposed to protential law suits.

We have been doing carriage rides in downtown Anchorage since 1983. We do approximately $100,000.00 rth of sleigh, hay and carriage rides annually, and typically spend $10,000.00 to $20,000 more than that. I spend approximately $10,000.00 a year for liability insurance alone.

I find it appalling that our laws and lawyers representing those laws continue to feather their nest by supporting long drawn out trials and expensive litigation that only the big companies and very rich can afford. Please continue the fight to help small businesses in Alaska.

Jon Nauman, President

SOUTHEAST MARINE

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

February 20, 1997

Rep. Brian Porter

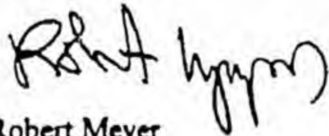
RE: HB 58 Tort Reform

Dear Mr. Porter;

I own a marine business here in Sitka and in Juneau. I wholeheartedly support your Tort Reform Bill HB 58. This bill will assist in keeping the cost of doing business down for insurance and unduely high damages awarded to unscrupulous people.

Sincerely,

SOUTHEAST MARINE INC.



Robert Meyer
Owner

ALASKA LAUNDRY INC.
1114 GLACIER AVE.
JUNEAU, AK 99801

REP. BRIAN PORTER
ALASKA HOUSE OF REPRESENTATIVES
JUNEAU, AK 99801

FEBRUARY 20, 1997

RE: HB 58

DEAR REP PORTER,

WE ARE A SMALL FAMILY OWNED LAUNDRY AND DRY-CLEANING BUSINESS THAT HAS BEEN IN BUSINESS IN ALASKA FOR OVER A CENTURY. HAVING JUST CLOSED OUR COMPANY BOOKS FOR LAST YEAR I AM QUITE AWARE OF THE COST OF LIABILITY INSURANCE. I APPLAUD YOUR EFFORTS TO BRING SOME SANITY TO TORT LAW AND HOPEFULLY SLOW THE RISE IN OUR INSURANCE PREMIUMS IF NOT REDUCE THEM.

BEYOND JUST THE COST OF INSURANCE THERE ARE THE COSTS INCURRED IN TRYING TO TORT PROOF OUR BUSINESS. IT IS A REAL SHAME WHEN MANY BUSINESS DECISIONS ARE DRIVEN BY EXPOSURE TO LIABILITY AND NOT ECONOMICS. WHERE FEAR OF FRIVOLOUS LAWSUITS OVERRIDES THE DESIRE TO EXPAND SERVICES AND PRODUCTS. THE ONLY WINNERS IN THE PRESENT SYSTEM ARE THE SHYSTER LAWYERS AND A FEW OF THEIR CLIENTS. THE REST OF THE PUBLIC ONLY GETS TO PAY FOR THEIR OUTRAGEOUS AWARDS. PLEASE BRING SOME SANITY TO THE SYSTEM AND PASS OUT TORT REFORM THIS YEAR.

SINCERELY YOURS,

E. NEIL MACKINNON
PRESIDENT

CC.	REP JOE GREEN	465-4316
	REP CON BUNDE	465-3871
	REP NORM ROKEBERG	465-2040
	REP JEANNETTE JAMES	465-2381
	REP ERIC CROFT	465-4419
	REP ETHAN BERKOWITZ	465-2137

Chilkat Guides, Ltd.

P.O. Box 170, Haines, Alaska 99827 • Ph 907-766-2491 • Fax 907-766-2409
E-Mail: RaftAlaska@eworld.com

To: Rep. Brian Porter, and the members of the House Judiciary Committee

RE: HB58

Dear members of the committee,

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

No one argues with the necessity to defend the interests of an injured person, but our system is now so askew that we have created a society that thrives on law suits.

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

Thank you,

Bart Henderson

Kennedy & Co. LLC

Dan F. Kennedy, CPA, MBA and Janet C. Kennedy CPA
Lakeview Professional Building
851 E. Westpoint Dr., Suite 108
Wasilla, Alaska 99654

work phone: 907.376-1272
fax: 907.373-1272
Internet Home Page: http://www.corecom.net/~kennedpp
Internet Email Address: kennedpp@corecom.net

February 22, 1997

To: Representatives of the Alaskan Legislature

Re: Support of HB 58 - Tort Reform

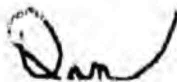
Thank you for your hard work on HB 58. We appreciate all of your efforts with helping Alaskans create a sensible tort framework.

Kennedy & Co. LLC is a family owned certified public accounting firm. We serve many small businesses. Kennedy & Co. LLC is a small firm that emphasizes the support of emerging businesses.

The future of economic expansion and change will be fueled by such emerging businesses. These successful entrepreneurs are fearful of lawyers (truly) and of the current tort system. Please change it. In our discussions with clients there is overwhelming support for tort reform. Just do it! - is the message from small business and Kennedy & Co. LLC.

Please approve HB 58.

Sincerely,



Dan F. Kennedy CPA, MBA and Janet C. Kennedy CPA

WASILLA REALTY

P.O. Box 870237
Wasilla, Alaska 99687
Office: (907) 376-5346
Fax: (907) 373-2553

Saturday, February 22, 1997 7:44 AM

Alaska State Legislature
Juneau, Alaska

Dear Members of the Alaska House of Representatives:

We appreciate of all your efforts with respect to tort reform.

Wasilla Realty was formed in 1960. It has been successful and a corner stone in the Mat-Su Valley real estate industry. Wasilla Realty has been active in the development in both the City of Wasilla and Mat-Su Borough. I was mayor of Wasilla during the 1980's. I am an informed leader in this state.

During my 50+ years I have seen many instances of the threat and actual frivolous lawsuits. I have also seen court awards of "damages" beyond reason. I have been concerned for many years about the run-away legal system and the extreme hardship that it has caused small business owners like myself.

It is important to the next generation that we control the legal system before it strangles small business. Please do everything you can to pass HB 58 -- NOW. We were so close during the last legislative session. Many Alaskan small business were very disappointed with the Governor's veto of tort reform. Let's pass the bill as it currently read.

It is in the best interest of Alaska to pass HB 58.

Sincerely,

Harold S. Newcomb

Harold S. Newcomb, Owner
Wasilla Realty
Wasilla, Alaska

A L A S K A

NFIB

National Federation of Independent Business

National Federation of Independent Business

Statement of Support for HB 58 - Tort Reform

February 22, 1997

The Alaska Chapter of the National Federation of Independent Business has 4,400 members, making it the largest small-business advocacy group in the state. The typical NFIB/Alaska member is quite small, employing five workers and ringing up gross sales of about $181,000 per year. Yet, in aggregate, the membership is a potent economic force, employing more than 43,000.

Each year NFIB/Alaska polls its entire membership on a variety of state legislative and regulatory issues. The federation uses the poll results to set its legislative agenda and promote those positions approved by majority vote. NFIB/Alaska ballot results have shown overwhelming support for a number of the provisions contained in HB 58.

NFIB supports putting reasonable limits on non-economic and punitive damages. When there are no limits on damages, the unpredictability of what a jury may award often forces insurance companies to settle out of court too soon for too much money. This drives up the cost of liability insurance.

The costs of personal injury cases and the unpredictability of unlimited damage awards has had a large impact on small business. NFIB/Alaska believes HB 58 will help to control these costs while assuring appropriate compensation for persons injured through no fault of their own. This legislation will help make the civil justice system more fair, more efficient and less costly.

NFIB/Alaska urges support for HB 58.

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217 Second Street, Suite 206 . Juneau, AK 99801 . 907-463-5118 . Fax 907-463-5128

Service Oil & Gas, Inc.

Mi. 188.5 Glenn Highway
P.O. Box 276
Glennallen, Alaska 99588
Phone (907) 822-3375
Fax (907) 822-3511

523 South Valley Way
Palmer, Alaska 99645
Phone (907) 745-3776
Fax (907) 745-2876

February 24, 1997

Representative Brian Porter
Alaska State Legislature
Juneau, Alaska

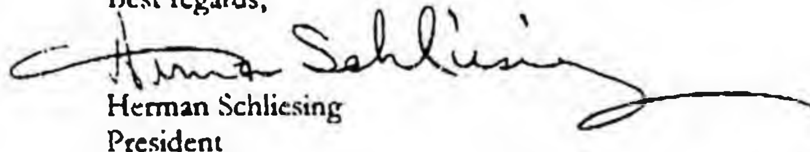
Reference: Ho[illegible]e Bill 58

Dear Representative Porter:

Service Oil & Gas, Inc. fully supports tort reform in general, and HB58 in particular. The trend toward placing blame on others and the move away from personal responsibility is disconcerting. The speed with which this has occurred is unnerving. The willingness of our courts and juries to allow damages to be claimed that have no basis in reality is in itself criminal. The results of these circumstances are less competition, loss of jobs and availability of services, and increased insurance premiums. In addition, the courts are flooded with unwarranted litigation.

Service Oil & Gas, Inc. operates as a fuel distributor in Palmer, Wasilla, Delta Junction, Glennallen, and Valdez. We employ over 50 employees and have been in business since 1975. The changing business environment with respect to liability is frightening. It threatens every business in every industry. Please take the steps necessary to rein in the runaway lawsuits and move us back toward personal responsibility and common sense.

Best regards,



Herman Schliesing
President

Alaska State Legislature

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

committee on HB 58 bill/subject, dated February 21, 1997.

1. I believe that there should not be any Punitive damages unless the action was proven to be premeditated.

2. Punitive Damages should be no more than 2 times compensatory.

Thank You,

Signed: Walter M. Wood — Walter Wood

Testifier

Self

Representing (Optional)

P.O. Box 868, Valdez ALASKA

Address

907-835-2408

Phone No.

Schinnerer & Company Inc

HB 58

March 16, 1983

VICTOR O. SCHINNERER & COMPANY INC.
SPECIAL CLAIM STUDY
DISTRIBUTION OF CLAIMS IN RELATIONSHIP TO SUBSTANTIAL COMPLETION

Years Brought Within	# of Claims	% of Claims	Cummulative Percentage
One	73*	45.9	45.9
Two	22	13.8	59.7
Three	13	8.2	67.9
Four	13	8.2	76.1
Five	12	7.5	83.6
Six	9	5.7	89.3
Seven	5	3.1	92.4
Eight	5	3.1	95.5
Nine	0	0	95.5
Ten	2	1.3	96.8
More Than Ten	5	3.1	99.9
	159	99.9	99.9

*Based on CNA's records, roughly 32.9% of these claims were brought prior to the date of substantial completion.

Study is based upon a review of 250 CNA files set up between December 1979 and October 1980.

The Date of Substantial Completion was established from information secured from CNA claim records.

159 files contained sufficient documentation which could be used for the purpose of this study.

July 21, 1989

Distribution Of Claims By Year As Compared To Project Substantial Completion

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

DISTRIBUTION OF CLAIMS BY YEAR WITHIN WHICH RECEIVED AFTER SUBSTANTIAL COMPLETION

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	NUMBER OF CLAIMS MADE WITHIN EACH YEAR	PERCENTAGE OF CLAIMS MADE WITHIN EACH YEAR	CUMULATIVE PERCENTAGE OF CLAIMS BY YEAR
1	106	33.13%	33.13%
2	45	14.06%	47.19%
3	41	12.81%	60.00%
4	30	9.38%	69.38%
5	23	7.19%	76.56%
6	20	6.25%	82.81%
7	9	2.81%	85.63%
8	7	2.19%	87.81%
9	12	3.75%	91.56%
10	4	1.25%	92.81%
11	8	2.50%	95.31%
12	2	0.63%	95.94%
13	7	2.19%	98.13%
14	1	0.31%	98.44%
15	0	0.00%	98.44%
16	0	0.00%	98.44%
17	2	0.63%	99.06%
18	2	0.63%	99.69%
19	0	0.00%	99.69%
20	0	0.00%	99.69%
21 +	1	0.31%	100.00%
TOTAL	320	100.00%	

This chart gives the number and percentage of claims by year within which claims are made after substantial completion. For example, the row of data with the first column entry of 10 represents all claims received at least 9 years after substantial completion but <u>less</u> than 10 years. Thus, if a 10 year statute of limitations had been in place, 92.81% of the claims would have been allowed and 7.19% would have been outside the time period.

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	NUMBER OF CLAIMS RESULTING IN AN INDEMNITY PAYMENT	PERECENT WITHIN GIVEN YEAR OF TOTAL OF SUCH CLAIMS	CUMULATIVE PERCENTAGE OF CLAIMS
1	12	30.77%	30.77%
2	5	12.82%	43.59%
3	9	23.08%	66.67%
4	1	2.56%	69.23%
5	1	2.56%	71.79%
6	3	7.69%	79.49%
7	1	2.56%	82.05%
8	4	10.26%	92.31%
9	1	2.56%	94.87%
10	0	0.00%	94.87%
11	2	5.13%	100.00%
12	0	0.00%	100.00%
13	0	0.00%	100.00%
14	0	0.00%	100.00%
15	0	0.00%	100.00%
16	0	0.00%	100.00%
17	0	0.00%	100.00%
18	0	0.00%	100.00%
19	0	0.00%	100.00%
20	0	0.00%	100.00%
21 +	0	0.00%	100.00%
TOTAL	39	100.00%	

This chart gives the number and percentage of claims resulting in an indemnity payment by the insurer for the year within which the claim is made after substantial completion. All examined claims resulting in indemnity payment, except for 2, were received within 10 years of substantial completion. For example, the row in which the left column has an entry of 10 provides the number and percentage of claims having an indemnity payment that were received at least 9 years after substantial completion, but less than 10 years. For year 10, there were 0 claims received that resulted in an indemnity payment. For claims received within year 11, 2 resulted in an indemnity payment; 2 equals 5.13 percent of the total number (39) of claims examined that resulted in an indemnity payment. Since no claims received after 11 years of substantial completion resulted in an indemnity payment, the cumulative percentage at year 11 is 100%; all claims resulting in an indemnity were filed by the end of the 11th year of substantial completion.

DISTRIBUTION OF CLAIMS BY TYPE OF CLAIMANT

YEAR WITHIN WHICH CLAIM MADE AFTER COMPLETION	PERCENT OF CLAIMS FROM PARTIES INVOLVED IN DESIGN, CONSTRUCTION, ETC.	NUMBER FROM PARTIES NOT SO INVOLVED
1	65.71%	34.29%
2	60.00%	40.00%
3	75.61%	24.39%
4	73.33%	26.67%
5	65.22%	34.78%
6	70.00%	30.00%
7	55.56%	44.44%
8	42.86%	57.14%
9	41.67%	58.33%
10	50.00%	50.00%
11	12.50%	87.50%
12	0.00%	100.00%
13	42.86%	57.14%
14	0.00%	100.00%
15	0.00%	0.00%
16	0.00%	0.00%
17	0.00%	0.00%
18	0.00%	100.00%
19	0.00%	100.00%
20	0.00%	0.00%
21 +	0.00%	100.00%
TOTAL	61.76%	38.24%

This chart gives the percentage of claims by parties involved in design and construction of a project and the percentages of parties not involved, by year within which the claims were made after substantial completion. For example, the row with the first column entry of 10 gives the percentage of claims received at least 9 years after substantial completion but less than 10 years for each type of claimant. For year 10, fifty percent were from claimants involved in the design and construction of the project and fifty percent were not so involved.

State Capitol
Juneau, AK 99801-1182

Statute of Repose/Limitations by State, 1993

State	Years Within Date of Discovery (Statute of Limitations)	Maximum # Years (Statute of Repose)
Alabama	6 months	4 years
Alaska	2 years	-
Arkansas	-	-
Arizona	2 years	-
California	1 year	3 years
Colorado	2 years	3 years
Connecticut	2 years	3 years
Delaware	3 years	-
Florida	2 years	4 years
Georgia	-	5 years
Hawaii	2 years	6 years
Idaho	-	-
Indiana	2 years	8 years
Kansas	2 years	4 years
Kentucky	1 year	5 years
Louisiana	1 year	3 years
Massachusetts	-	7 years
Maine	-	3 years
Maryland	3 years	-
Michigan	6 months	6 years
Minnesota	-	-
Mississippi	2 years	-
Missouri	2 years	10 years
Montana	3 years	5 years
Nebraska	1 year	10 years
Nevada	2 years	-
New Hampshire	3 years	-
New Jersey	2 years	-
New Mexico	-	-
New York	-	-
North Carolina	-	4 years
North Dakota	2 years	6 years
Ohio	1 year	-
Oklahoma	2 years	3 years
Oregon	2 years	5 years

Pennsylvania	2 years	-
Rhode Island	3 years	-
South Carolina	3 years	6 years
South Dakota	-	-
Tennessee	1 year	3 years
Texas	-	-
Utah	2 years	4 years
Vermont	2 years	7 years
Virginia	-	10 years
Washington	1 year	8 years
West Virginia	2 years	10 years
Wisconsin	1 year	5 years
Wyoming	2 years	-

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

The maximum period in which a claim can be brought, regardless of whether the limit is measured from the date of injury or act or the date of discovery.

Document produced by Porters office; info from Leg. Research

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046
http://www.state.ak.us/local/akpages/COURTS/AJC/home.htm E-Mail: 72302.1261@compuserve.com

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
David A. Dapcevich
Janice Lienhart
Vicki A. Otte

ATTORNEY MEMBERS
Thomas G. Nave
Robert H. Wagstaff
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

Facsimile Transmittal

To: Rep. Therriault
Attn: Sara Fisher

Fax #: 465-3884

Date: 2/28/97

Time: 11:40 am

From: Bill Cotton

Number of pages (including this cover sheet) 5

If you have any problems or questions, please contact Stephanie **at (907) 279-2526.**

Comments:

Sara: Attached is our fiscal note for HB58 - the tort reform legislation. While we sent it earlier, it apparently never got attached to the bill in House Judiciary. Could you make sure it gets to House Finance. Thanks! Bill Cotton

cc:Mail for: Representative Gene Therriault

Subject: [Fwd: [Fwd: HB 58]]
From: jeffjan@Alaska.NET (Jan Porterfield Jeff Friedman) at CC2MHS1 2/27/97 8:18 PM
To: Representative Eldon Mulder at LAA_TRANS
To: Representative Ben Grussendorf at JNU_CAPITOL
To: Representative Vic Kohring at LAA_TRANS
To: Representative Richard Foster at LAA_TRANS
To: Representative Mark Hanley at LAA_TRANS
To: Representative John Davis at JNU_LAA
To: Representative Gary Davies at JNU_LAA
bcc: Representative Gene Therriault at LAA_TRANS
To: Representative Carl Moses@Legis.Alaska at CC2MHS1

Attached are some thoughts about the problems with HB 58. Since this has now passed the judiciary committee, I don't know if you are concerned about the legal problems. The Finance Committee should be concerned about the extra cost to the state treasury this bill will cause.

While the purpose of this bill may be to save money, saying it doesn't make it true, even if you say it loudly.

If you limit suits against health care providers, then welfare will pick up the tab for the future medical care.

If you require all large judgments be paid by periodic payments, then when welfare has a subrogation right, they will also have to wait many years to be paid

The offer of judgment provision will have a large impact on the state. The AG's office is typically bad about accepting early offers of judgment. Thus, when the state finally loses the case, it will be obligated to pay 100% of the opposing party's attorney fees. Where will that money come from?

The collection of settlement information will cost money. It can not be done for free.

I hope you will reject, or at least significantly improve, this bill. It is good for insurance companies, but bad for the average citizen.

Alaska State Legislature

Please enter into the record my testimony to the HFIN
committee name

committee on HB 58, dated 2-28-97.
bill/subject

On February 26, 1997 I spent some non-quality time listening to a legislative teleconference of the House Judiciary Committee impassionately plotting their goals for tort reform (HB 58). I was soon conscious of a predisposed assumption that, as a legislator, one has an honored right to claim an inherent wisdom to evaluate and limit the value of all other persons' loss of body parts, pain, suffering, disfigurement and / or mental anguish. This implies a wisdom able to project a responsible "fits all" guess that is accepted as superior to the reflected discussion that is the cumulation of all of those who are privy to all relevant, timely facts.

These legislators have demanded, and are prepared to establish, their designed governmental controlled, price-fixing rules defining the parameters that establish liabilities and the extent of harmful loss inflicted on all victims. They questioned the extent of a real disabling handicap resulting from a disfigurement. To me this appears as an ignorance of the habitual intolerance in a society that refuses equal consideration for those who are viewed as different. The legislators discussed the comparable loss values of different body parts. One legislator offered an opinion that the loss of both eyes was more acceptable than the loss of both legs. At that point I wanted to puke into the teleconference microphone; instead, I got up and left.

I suggest that legislative hearings be assigned ratings. I believe this hearing's tape be labelled: "Warning! Contains explicit audio of man's inhumanity to man."

Signed by a bleeding heart liberal,

Dale Bondurant

HC1 Box 1197 Soldotna AK 99669
Address

262-0818
Phone No.

Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
(907) 276-0700 Fax: (907) 276-3887 e-mail: rdc@aonline.com

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March 10, 1997

Representative Gene Therriault, co-Chair
Representative Mark Hanley, co-Chair
House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Therriault and Hanley:

RE: Support for CSHB 58, Tort Reform legislation.

The Resource Development Council supports CSHB 58 and urges its passage. RDC has long supported liability reform efforts which will improve Alaska's business climate for natural resource development.

RDC is a statewide, membership-funded, non-profit, pro-development organization working on behalf of Alaska's basic industries, including oil and gas, mining, timber, fishing and tourism. RDC's membership, numbering in the thousands, includes the aforementioned industries, as well as the sectors which support those industries, such as construction, labor and other technical service providers, individuals, Native corporations, and a wide variety of Alaska communities.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Becky L. Gay
Executive Director

ALASKA STATE
HOSPITAL & NURSING HOME
ASSOCIATION

March 11, 1997

The Honorable Gene Therriault
Co-Chair Finance Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Representative Therriault:

I am writing this letter on behalf of the Alaska Hospital and Nursing Home Association in support of CS for Sponsor Substitute for House Bill 58 (Jud).

Our 33 member community hospitals and nursing homes from across the state join with other health care organizations, architects, engineers and the business community in asking the Legislature to pass and the Governor to sign CSSSHB58(Jud), the 1997 Comprehensive Liability Reform Bill.

It will not be possible to control costs within our health care system if we do not control the costs related to the inefficiency of the liability system. Tillinghast, a consulting actuarial firm, reported in 1992 that only 43% of tort costs of some $132 billion nationwide went to the injured party. The remaining 57% went to the cost of litigation (administrative costs, 24%; defense costs, 18%; and plaintiff costs, 15%).

Medical liability costs include the cost of insurance, defensive medicine and the costs borne by the manufacturers of medicines and medical supplies.

Between 1982 and 1992 medical malpractice insurance premiums in Alaska increased from 2,276,000 to 13,371,000. The following comparison between rates for the same level of liability insurance in Alaska and those in California, where components of CSSSHB58(Jud) are the law, demonstrates the savings that can be realized when tort reform legislation is enacted:

SPECIALITY	*CALIFORNIA*	*ALASKA*
Anesthesia	$10,000	$26,500
Family Practice	$ 7,000	$16,000
OB/GYN	$31,500	$64,500

319 SEWARD STREET #11 • JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573

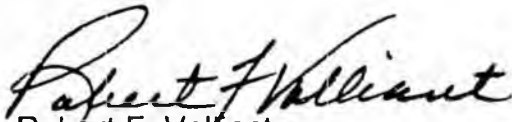
The cost associated with the practice of defensive medicine creates another unnecessary financial burden shifted to the patient. Defensive medicine can be defined as those procedures and tests ordered because of a perceived malpractice risk and those services not provided to patients because of the perceived liability risk to the provider. An example of the latter is the OB/GYN who provides gynecology services but not obstetrics.

Alaska's small rural communities continue to face the challenge of recruiting and retaining physicians particularly family physicians wishing to provide obstetrical care. The cost of liability insurance is a barrier to that recruitment process.

Section 36, on page 16, of CSSSHB58(Jud) is very important to Alaskan hospitals. Hospitals have become the deep pocket when uninsured or under-insured physicians are sued. An Alaska Supreme Court decision (Jackson vs Power) holds hospitals liable for emergency room physician actions, even though the hospital or its personnel did nothing wrong. Mandated minimum liability coverage for practitioners as a pre-requisite to immunity for Jackson vs Power for hospitals makes sense to us.

In conclusion, the Alaska Hospital and Nursing Home Association supports CSSSHB58(Jud) in its entirety with particular interest in the provisions outlined in Section 36.

Sincerely,



Robert F. Valliant
Hospital Administrator

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

March 10, 1997

apdc\lc\trnl1397

Representative Gene Therriault
Co-chair, House Finance Committee
Room 511, State Capitol
Juneau, AK 99801-1182

Re: HB58

Dear Representative Therriault:

I am writing to you and your committee as a professional engineer and as a representative of the Alaska Professional Design Council, commonly known as APDC. APDC is a consortium of professional societies representing architects, engineers, land surveyors, building code officials, and landscape architects. The ten member-organizations have a combined membership of over 1400 and represent approximately 5000 licensed professionals. APDC is very supportive of tort reform in general and HB58 in particular.

Our legal system needs modification! Over 90% of civil suits never go to trial. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials, the threat of punitive damages (which aren't covered by insurance) and the seemingly capricious decisions of juries. When suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement, some defendants end up spending a considerable amount of time and money to extricate themselves from cases in which they shouldn't be involved. In most cases, they get to contribute to the settlement, even though they have no fault, due to pressure from the other parties to the suit. Knowing this, some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a settlement. Millions of dollars are spent in the so called "discovery process" which almost always results in the defendants throwing in their insurance to stop the bleeding and make the case go away. Existing sanctions against frivolous suits are rarely used because they require that the plaintiff first lose at trial, a trial that rarely happens. Summary judgment is also very rare because appellate courts have almost always overturned such decisions, making trial judges wary of issuing such orders. Many settlements are due to fear of the perceived large down side of going to trial, including the expense involved and the tendency of some juries to ignore common sense and aid the "little guy" plaintiff by dipping into the so-called "deep pocket". All too often we read about large awards being reduced by the trial judge or on appeal or on the second appeal, all of which takes time and money. Some argue that these are rare, but they are not rare enough to take the gamble of a trial.

HB58 includes two sections which will help the situation for design professionals:

The first reduces the statute of repose for construction related suits from fifteen years to eight years and expands it to cover all suits. According to a study by Victor O. Schinnerer, over 83% of cases associated with construction are brought within 4 years after substantial completion, almost 90% percent of the cases are brought within eight years and 100% of claims which resulted in an indemnity payment were brought within nine years. We believe that an eight year statute is more reasonable than the current fifteen years for four main reasons:

1) Almost all of the cases brought after eight years are related to maintenance problems, rather than design or construction problems. The owner of the building would still be available for suit if his lack of maintenance is the cause of the damage, because that would be an on-going problem. Cases brought this late do not result in an indemnity payment on the behalf of the design professional. However, it does require expenditure of time and money which is rarely recovered by the designer.

2) It is impossible to defend, or prosecute, a case fifteen years after substantial completion due to the lack of witnesses, fading memories, and lack of documentation. Most of us would have a hard time remembering what we did fifteen days or months ago, never mind fifteen years.

3) Designers will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage, and pass the savings on to our clients.

4) It is unreasonable to expect an engineer or architect to pay tens of thousands of dollars a year in insurance premiums for fifteen years after they retire. Errors & omissions insurance for design professionals is on a claims-made basis: that is, it covers you for claims made during that year. Therefore, the longer a period you have to cover, the higher the premium. The firm in which I am a principal had a premium of nearly twenty thousand dollars in our first year, with no "tail" to cover. It was our third highest expense, after payroll and rent. Adding a fifteen year tail results in a considerably higher premium. It is not unheard of to have a premium of over a hundred thousand dollars with a deductible of a hundred thousand dollars for the million dollar policy required by the State of Alaska. If we can limit the "tail" for which we have to insure to eight years, we expect to see a reduction in our insurance bills.

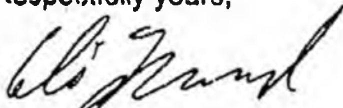
Many of the arguments for a statute of repose for construction related cases also apply to other cases and its application to those cases makes sense.

The second section in which we have an interest is the section regarding alternative dispute resolution. **It is time to develop a system which identifies patently frivolous and meritorious suits early, so we can to get them out of the system.** With this in mind, APDC is urging that alternative dispute resolution be included in any tort reform action by the legislature. A mandatory mediation or independent early evaluation system would reduce the number and costs of frivolous suits by letting the plaintiff and their attorney know early on if a case has no merit. They will be less willing to press the case as the likelihood of recovery will be decreased and the likelihood of court sanction for bringing a frivolous suit will be increased. On the other hand, it will encourage defendants to settle valid claims early by giving them an independent opinion of the validity of the claim against them. It will reduce the costs of litigation by resolving cases before the lengthy, expensive, discovery process which may result in more money going to the injured, rather than lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable. It is our understanding that approximately 80% of cases sent to mediation in Washington are resolved during or soon after the mediation process. Fewer, smaller, and shorter cases should provide relief to an overtaxed court system. A bill which would have established mandatory mediation in suits against design professionals passed the House last year, 37-3. The trial attorneys, who have generally not been proponents of tort reform, testified on that bill that they would support mandatory mediation, if it was mandatory for all suits. We would have no objection to this approach.

In closing, it is our belief that Representative Porter has worked hard with all of the parties interested in this action and has crafted a bill which resolves many of the concerns with the legal system without infringing on anybody's ability to have their wrongs redressed. We urge that your committee move HB58 with a recommendation of "do pass".

If you have any questions, I can be reached by phone at (907) 274-2236, by fax at (907) 274-2520, or by e-mail at bbfm@alaska.net.

Respectfully yours,



Colin Maynard, PE

cc: Rep. Brian Porter

March 11, 1997

The Honorable Gene Therriault
Co-Chairman, House Finance Committee
Alaska House of Representatives
State Capitol
Juneau AK

Subject: House Bill 58 / USAA Policyholders

Dear Chairman Therriault:

As you may know, USAA is a worldwide insurance and diversified services company meeting the needs of members of the armed forces and their families. USAA members insure one another and our membership consists primarily of present and former military officers and their families. In the state of Alaska, USAA has approximately 12,000 automobile insurance policyholders (insureds) and, in addition, has nearly 5,000 homeowner insureds there. Most of the homeowner insureds will also be automobile insureds. The information I am providing is merely designed to inform you of USAA's method of serving its insureds and to show how those insureds can be better served by the adoption of House Bill 58. Additionally, I would recommend you seek similar input from other insurers.

As a reciprocal insurer, USAA pays dividends to its members which are based, in part, on the loss experience in their state for the previous year. Since 1980, with the exception of 1992, when no dividends were paid because of losses due to natural catastrophes, USAA's Alaska safe driver insureds have received a 10% dividend each year in recognition of their safe driving. In addition to the safe driver dividend, a special dividend has been paid to USAA insureds. In 1995 the dividend was 15% and in 1996 it was 8%. In 1996, our Alaska insureds received a 6% payout from their individual Subscriber Savings Account (SSA). It should be noted that only members of the United Services Automobile Association are holders of SSA's. Persons, such as former dependents and spouses, insured by the subsidiary USAA Casualty and Indemnity (CIC) did not receive the SSA distribution.

As a true reciprocal, USAA members insure each other and they are the owners of the Association. Since 1969, USAA has employed the SSA to represent a measure of a members ownership in the Association. A member's SSA balance grows based on both the members participation (number of policies and premiums in effect) and the Association's performance. The SSA serves an important role in the Association's financial structure by providing the flexibility to retain sufficient funds to cover large, unexpected losses and the

USAA State Legislative Affairs 915 L Street, Suite 1100 Sacramento, CA 95814
TELEPHONE (916) 552-6716 FACSIMILE (916) 442-1328

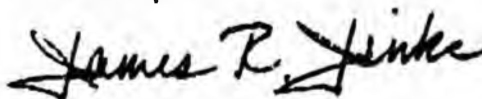
financial resources necessary to grow. The SSA is one of the unique aspects of USAA as a reciprocal inter-insurance exchange. The amount in each member's SSA is returned to the member upon leaving the association.

SSA funds are held on account by the Association on behalf of the members. The funds comprise a portion of USAA's surplus and are available for use by the Association should the need arise. The amount of retained surplus is important to insurance regulators and rating agencies. Each year, the Board of Directors determines the appropriate level of surplus needed to provide adequate assurance that all financial obligations can be met. SSA funds not needed by the Association are paid to the members. SSA payments are the combination of a percentage of the members SSA balance from previous years and a percentage of the premium paid in the previous year. Worldwide, SSA payments since 1969 have varied from an annual average of 34.67% (high) to none. In 1996, the average was nearly 11%.

Obviously, insurance companies will vary widely in their business practices and products. For example, stock insurance companies will disburse any profits to the shareholders. Reciprocal and mutual insurers such as USAA and State Farm will share their profits in the form of policyholder dividends. No matter what type of ownership an insurer may have, however, there are a number of statutory and regulatory changes which can affect insurance premiums. Among the proposed statutory changes in House Bill 58 that will have a significant impact on USAA's loss experience in Alaska and, in turn, a substantial effect on insurance premiums, are those which impose reasonable limits on punitive and non-economic damages, and those which reform the collateral benefits rules in order to prevent double recovery.

Tort reform can have a major effect on insurance premiums, both directly and in the form of increased dividends and higher SSA distributions. In Alaska, USAA policy holders will be directly benefited by adoption of House Bill 58. As this bill moves forward, I would be pleased to assist you in any way possible.

Sincerely



James R. Jinks, AVP
Senior Legislative Counsel

JRJ:djn

cc: Representative Brian Porter

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March 11, 1997

The Honorable Gene Therriault
Co-Chair of the House Finance Committee
House of Representatives
State Capitol, MS 3100
Juneau, AK 99801-1182

Re: CS for Sponsor Substitute for House Bill No. 58(JUD)
File No. 1795.6377

Dear Representative Therriault:

I am writing to provide my support for CS for Sponsor Substitute for House Bill No. 58(JUD). The specific provisions which I am addressing are Sections 40 and 41 relating to independent counsel. A significant portion of my practice entails providing legal advice to insurers doing business in the State of Alaska. We are very pleased with the Bill offered by the Committee and appreciate Representative Porter's efforts in this regard.

Sections 40 and 41 of this Bill address significant problems which remain in the wake of the Supreme Court's decision in CHI of Alaska, Inc. v. Employers Reinsurance Corporation, the decision which gave a defendant the right to select its own independent counsel when an insurance company had issued a reservation of rights on coverage.

The situation addressed by these sections arises when a claim for which there may be insurance coverage is joined with several for which there clearly is not insurance coverage. The example I will utilize is a lawsuit in which a plaintiff has sued a defendant in five separate counts. The First is for injury, which is alleged to be negligent. The Second is for injury alleged to be either negligent or intentional. The Third is for unpaid wages. The Fourth is for breach of contract. The Fifth is for discrimination. If the defendant is a typical business it has insurance for the injury claim, but that insurance will not cover the injury claim if it was intentionally caused. The first count - injury negligently caused - is clearly covered. However, an insurer would typically issue a "reservation of rights" letter on the Second count advising the defendant that it would be

responsible for defending a negligently-caused bodily injury but would reserve its rights not to pay for a judgment on this Count if the jury found it was intentionally caused. The claims for unpaid wages, breach of contract, and discrimination have no insurance coverage. I have attached a chart demonstrating this scenario.

Because the insurer has issued a reservation of rights letter on the Second Count, the defendant is entitled to select its own counsel and, under current practice in Alaska, that lawyer would defend Counts 1-5 and submit his/her entire bill for that defense to the insurance company. Because the insurance company has no control over the independent counsel it has been the experience of many of my clients that these bills are extraordinarily high. In one case with which I am personally familiar the bills were $80,000 per month and totaled $800,000 with most of that time devoted to the non-covered claims. Counsel for other insurers have advised me that this experience is not unique. I have knowledge of a second case which is almost identical to the example I am using in which the fees totalled in excess of $1,000,000. "Independent counsel" use the checkbook of the insurance carrier to provide a gold plated defense to claims for which there has never been insurance coverage.

Section 40 of this Bill provides that the insurance carrier in this situation need only pay for the costs of defending the First and Second Counts. Because these are the only counts for which insurance coverage was ever purchased, the defendant is getting precisely what it bargained for when it bought insurance. This is a resolution which has been brought about judicially in California, in <u>Horace Mann Insurance Co. v. Barbara B</u>, 846 P.2d 792 (1993). Alaska has modeled much of its judicial and statutory law in this area upon California precedent.

I have had conversations with Marianne Burke, the Director of the Division of Insurance, and she has advised that it is the Division's understanding that insurance carriers did not pay for the defense of uncovered claims in this situation. While we appreciate the position of the Division, threats of bad faith litigation against the insurers make the practice in Alaska different than that understood by the Division. Ms. Burke was aghast when I conveyed to her the magnitude of the attorneys fees which had been incurred in these cases. Because it is Ms. Burke's belief that insurers do not at present pay for the costs of defense for the uncovered claims, we anticipate no objection from the Division to these provisions.

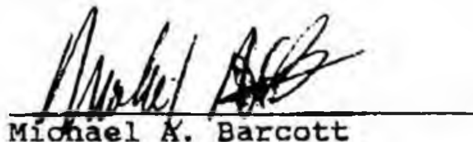
MAR-11-1997 16:14 FROM SEATTLE 206 340 8259 P.04

I would not expect the plaintiff's bar to have difficulty with this proposal. When a defendant is represented by independent counsel, that independent counsel frequently takes a "scorched-earth" approach to litigation because of the lack of real financial constraints on the defense activity. In the case I have utilized here, one would expect the independent counsel to defend Counts 3-5 with extensive discovery and motion tactics that run up the costs of litigation for the plaintiff who must respond to these tactics. By requiring the defendant individually to shoulder the burden of expense for defending Counts 3-5, there is a realistic fiscal check on the activities of independent counsel.

Section 41 of this Bill provides a mechanism by which the insurance carrier can deal directly with the plaintiff in settling these types of cases. In the example we have utilized the only claims giving rise to the obligation for defense are Counts 1 and 2. Section 41 makes it clear that the insurer can deal directly with the plaintiff to settle the injury claims. Once those claims are settled, all that remain are claims for which there is no coverage and the obligation to provide independent counsel is eliminated. At present, there is a fear among insurance carriers that if they deal directly with the plaintiff, that they run the risk of a bad faith lawsuit by their insured. Once again the insurance carrier is providing all that it contracted to provide as it is settling the claims for which there is potentially coverage and eliminating a risk to the defendant. The plaintiff's bar should have no opposition to this as it allows plaintiffs to settle cases but obviously does not require them to do so. This is a section which is only implicated where both the plaintiff's counsel and the insurance carrier are in agreement on the settlement.

Thank you very much for considering these matters.

Very truly yours,



Michael A. Barcott

MAB:mb

Enclosure

cc: Representative Brian Porter

Defendant

I.
Injury
Negligent

Covered

II.
Injury
Negligent/Intentional

Reservation of Rights

III.
Unpaid Wages

IV.
Breach of Contract

V.
Discrimination

Denial of Coverage

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Udelhoven Oilfield System Services
Bill Webb
Trading Bay Energy Corporation

STAFF
Karen Cowart
General Manager

THE ALLIANCE

4220 'B' Street, Suite 200 • Anchorage, Alaska 99503-5911
Phone (907) 563-2226 • Fax (907) 561-8870

Transmittal by Fax

March 11, 1997

Representative Gene Therriault
Finance Co-Chairman
Alaska State Legislature
Room 511
Juneau, AK 99801

Dear Representative Therriault:

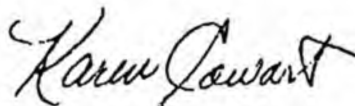
The Alaska Support Industry Alliance is a non-profit trade association representing a broad-based membership doing business within the oil, gas and mining industries. Our mission is to foster and promote the safe and environmentally sound development of natural resources, and to enhance and stimulate the business climate for our 300+ members. Comprised of oilfield service companies, transportation, wholesale and retail sales, professional services, and private citizens, The Alliance is one of the most effective and dominant voices for business in Alaska.

As a state, we are competing for investment dollars on a global basis. We must continue to send the message to potential investors that Alaska is "Open for Business". We can do this by stabilizing the economic climate through fiscal restraint and by stabilizing the legal climate through comprehensive tort reform.

The cost of litigation and liability insurance has a dramatic impact on businesses -- both small and large. The ever-increasing product liability, personal injury suits, and unpredictability of damage awards have caused costs to soar. Tort reform legislation will help control these expenditures while assuring appropriate compensation for persons injured through the fault of others.

Government officials must continue to search for ways to reduce the cost of doing business in Alaska, including a comprehensive review of liability laws affecting the economics of business. We believe House Bill #58, sponsored by Representative Brian Porter, addresses this critical problem with a fair and equitable solution. The Alliance strongly supports HB #58, and ask the House Finance Committee to pass this legislation out of committee, and on to the House floor.

Sincerely,



Karen Cowart
General Manager

cc: Representative Brian Porter

A L A S K A

March 11, 1997

Representative Mark Hanley, Co-chairman
Representative Gene Therriault, Co-chairman
House Finance Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Hanley and Representative Therriault,

HB 58, making important changes in Alaska's tort law, will be before the Finance Committee this week. This is a priority issue for the National Federation of Independent Business. With 4,400 Alaska members, NFIB/Alaska is the states largest small-business advocacy organization. NFIB represents the entire spectrum of independent businesses, from one person "cottage" operations to quite substantial enterprises.

NFIB is interested in changing Alaska's tort laws to make the .vil justice system more fair, more efficient and less costly. That is the purpose of HB 58. This bul allows for appropriate compensation for persons injured through the fault of others. There is no limit on economic damages such as medical costs and lost wages. It does put a reasonable cap on additional awards for damages such as pain and suffering. It prohibits punitive damages unless deliberate disregard for another person is shown. It also puts sensible limits on punitive damage awards.

NFIB/Alaska strongly supports putting reasonable limits on non-economic and punitive damages. When there are no limits on damages, any business may be just one lawsuit away from being put out of business. The unpredictability of what a jury may award often forces insurance companies to settle out of court too soon for too much money. This drives up the cost of liability insurance.

NFIB/Alaska believes HB 58 will help control the costs of personal injury cases while assuring appropriate compensation for persons injured through no fault of their own. NFIB/Alaska urges support for HB 58.

Sincerely,

Thyes J. Shaub
on behalf of NFIB/Alaska

217 Second Street, Suite 206 · Juneau, AK 99801 · 907-463-5118 · Fax 907-463-5128

The Guardian of Small Business for Fifty Years

Philip R. Hinderberger
Vice President and
General Counsel

50 Fremont Street
San Francisco
California 94105-2235

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

March 11, 1997

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

RE: SSHB 58 (JUD) Tort Reform Bill

Dear Representative Therriault:

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

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

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

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

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

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

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

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

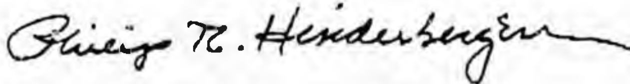
source rule, 50 states have statute of limits and 22 states control the amount of attorney contingency fees (Exhibit 6).

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

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

We urge your support of SSHB 58.

Very truly yours,



PHILIP R. HINDERBERGER

PRH/rl

Enclosures

cc: Representative Brian Porter

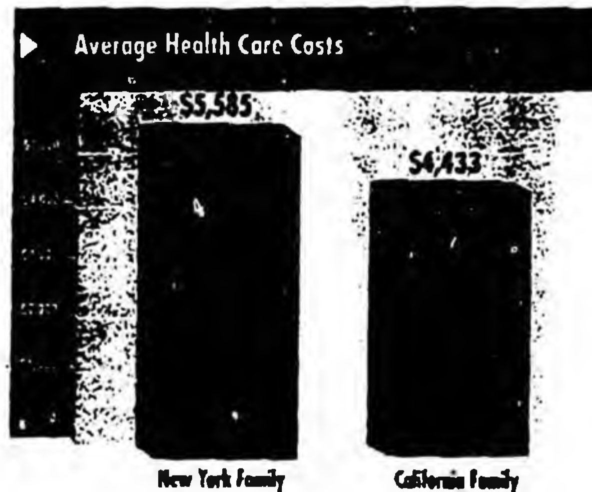
bc: Richard Cattanach, Alaskans for Liability Reform
Steven S. Fountain, M.D., NORCAL Mutual Insurance Company
Roger Holmes, Biss & Holmes
Janet Johnston, NORCAL Mutual Insurance Company - Alaska
Jim Jordan, Alaska State Medical Association
Harlan Knudson, Alaska State Hospital and Nursing Association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

Chart 2-10

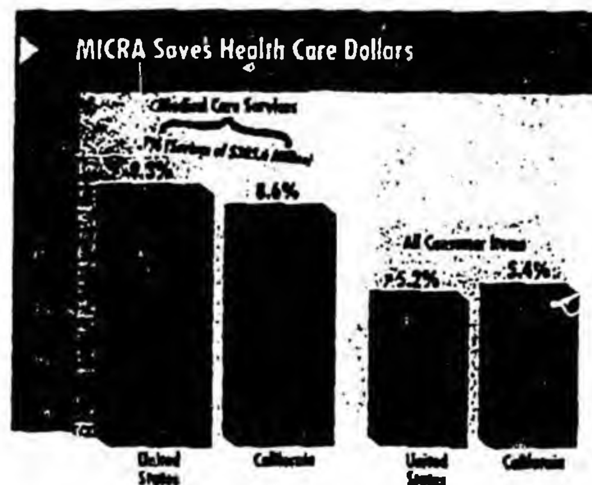
After MICRA: Real Results

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

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



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



SOURCE:
1. Families USA
2. Source: Consumer Price Index for All Urban Consumers (CPI-U), 19[illegible]-1990 [illegible] the Los Angeles and San Francisco Bay Area indexes.

EXHIBIT

Charts

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

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

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

Conclusions:

·Alaska medical malpractice premiums have increased from $781,000 to $13,940,000 for a total increase of $13,159,000 or 1,684% overall at an average annual rate of 22%.

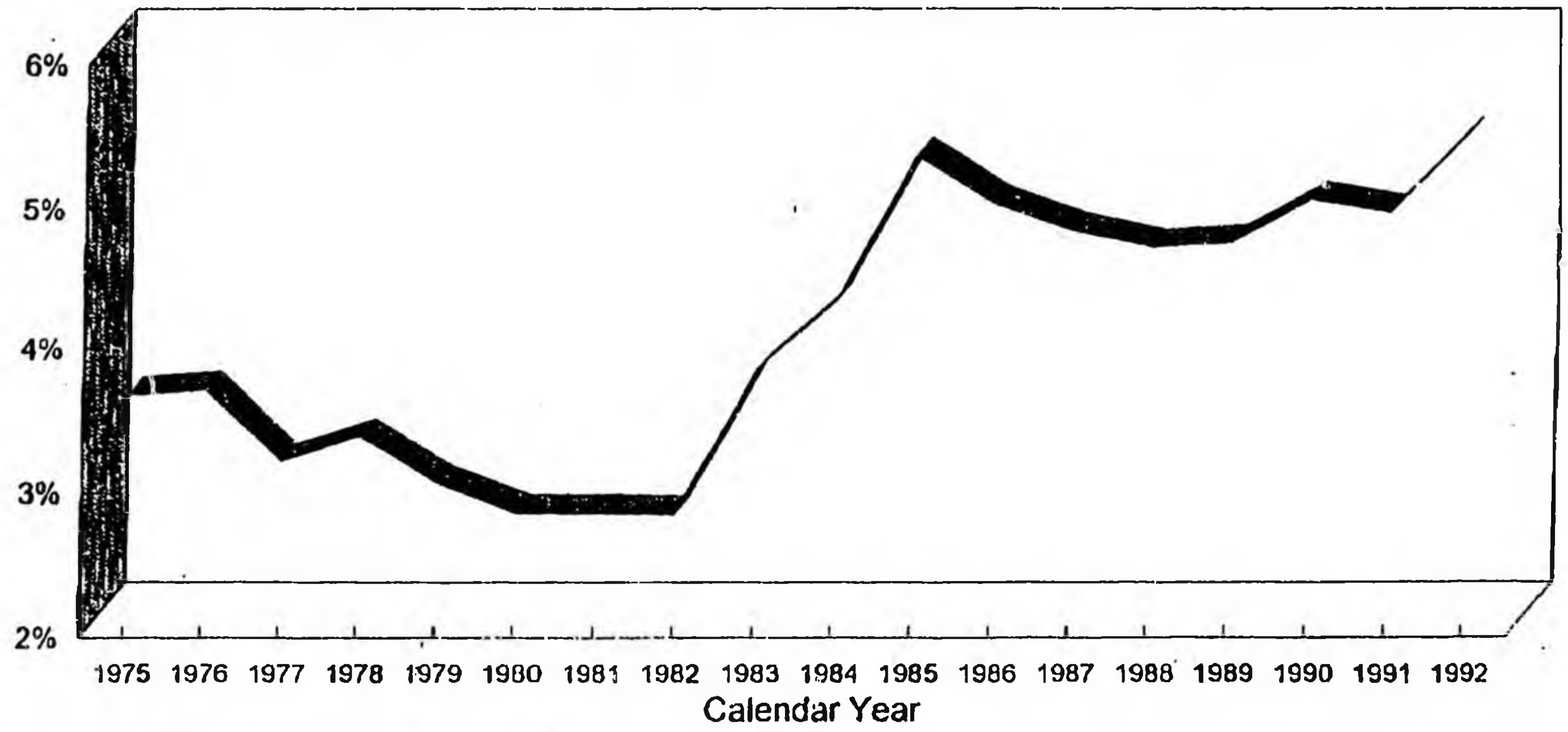
·U.S. medical malpractice premiums including Alaska have increased from $1,187 billion to $5,932 billion for a total increase of $4,745 billion or 400% overall at an average annual increase of 7.8%.

·California medical malpractice premiums have increased from $288 million to $577 million for a total increase of $289 million or 100% overall at an annual average increase of 2.7%.

AMMIC-3/11/97

EXHIBIT 2

EXHIBIT 3



Medical Liability Insurance Costs

California v. Alaska

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

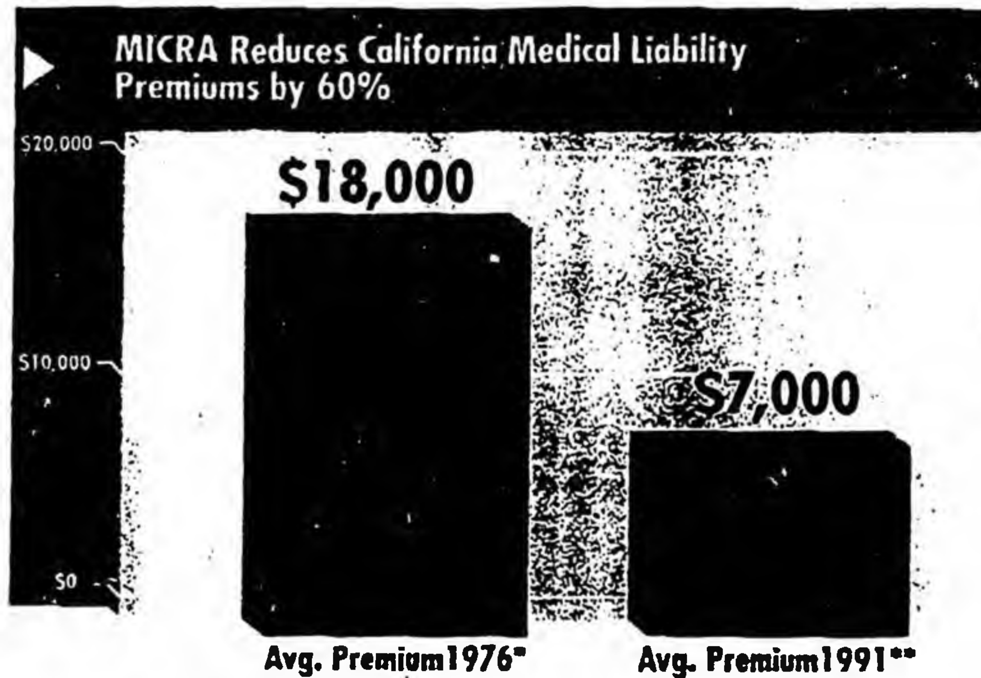
NOTE: NORCAL, Northern California and Alaska published premiums 1995.

EXHIBIT 4

Insurance Premiums Cut

MICRA Has Cut Medical Liability Insurance Premiums by 60%

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



— Shown in 1991 dollars

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

** Dividends from 1990 deducted from 1991 average premium

EXHIBIT 5

SOURCE: Physicians Insurance Association of America

IMPACT OF LEGAL REFORMS ON MEDICAL MALPRACTICE COSTS

Background Paper
prepared by the

Health Program
Office of Technology Assessment

Clyde J. Behney, *Assistant Director, OTA*

Project Staff

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

Jacqueline A. Corrigan, *Study Director*

David Klingman, *Senior Analyst*

Leah Wolfe, *Analyst*

Philip T. Polishuk, *Research Assistant*

September 1993

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

EXHIBIT 6

EXPLANATION OF METHODS USED BY OTA TO COMPILE DATA

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

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

After compiling information from these sources into summary tables, OTA sent draft copies of the information to the attorneys general in all 50 States on March 24, 1993, for confirmation or amendment. Information was changed to reflect respondents' comments. Where conflicts arose between the attorney general response and information found elsewhere, the attorneys general's responses were favored. Unresolved questions were addressed through follow-up phone conversations with attorney general respondents and statutory research. The revised drafts were sent again to all 50 State attorneys general on June 25, 1993, for a final review and any corrections were incorporated.

For States that responded to the first survey only, information is current to March 1993. For States that responded to the second survey, information is current to June 1993. For the 10 States[3] that did not respond to either review and the District of Columbia, information was cross-checked and supplemented through followup telephone calls and/or review of the relevant State codes where possible. Where confirmation was not possible, information in this appendix reflects that presented in the 1993 edition of the AHCPR compendium.

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

[2] These sources were: Fisk, M.C., "The Reform Juggernaut Slows Down," The National Law Journal 15(10):1,34-37, Nov. 9, 1992; American Nurses Association, "Report to ANA Board of Directors on Tort Reform, Part 3: Presentation of Selected Summary of State and Local Legislation Related to Tort Reform and Review of Insurance Company Practices and Policies Related to Nursing Negligence with Recom-mendations," December 1991.

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

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

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

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

O = Provision overturned.

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

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

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

O = Provision overturned.

R = Provision repealed.

*See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

Table A-3–Periodic Payment of Awards,[a] by State, 1993

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

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

O = Provision overturned.

* See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

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

Explanatory Notes for Table A-4

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

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

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

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

[a]This table does not cover special provisions for minors, disabled plaintiffs or cases involving fraud or concealment on the part of the healthcare provider.

O = Provision overturned.

* See additional notes on following page.

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

SOURCE: Office of Technology Assessment, 1993.

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

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

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

R = Provision repealed
O = Provision overturned

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

MAR-11-1997 16:36 FROM NOR CAL MUTUAL INSURANCE TO 19074653834 P.20/22

Table A-6--Attorney Fee Limits,[a] by State, 1993

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

Table A-6--Attorney Fee Limits,[a] by State, 1993 (Continued)

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

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

O = Provision overturned.
R = Provision repealed.

* See additional notes on following page.

SOURCE: Office of Technology Assessment, 1993.

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

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

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

[b]Many States have adopted the Uniform Arbitration Act (UAA) (Uniform Arbitration Act, Uniform Laws Annotated (Vol. 7) (St. Paul, MN: West Publishing Company, 1932)).

R = Provision repealed
O = Provision overturned

* See additional notes on following pages.

SOURCE: Office of Technology Assessment, 1993.

KETCHIKAN MEDICAL CLINIC, INC.
3612 Tongass Avenue
Ketchikan, Alaska 99901-5637

H.J. Henrickson, MD, FAAFP (1967-1996)
David E. Johnson, MD, FAAP
Diane L. Liljegren, MD, FAAFP
Vicky Malurkar, MD
Jeanne Snyder, MD, FAAFP

Phone (907) 225-5144
Fax (907) 247-0920

11 March 1997

Honorable Gene Therriault
Finance Committee
Alaska House of Representatives
Juneau, Alaska

Dear Representative Therriault:

I am writing on behalf of the Alaska State Medical Association Board of Trustees in support of House Bill 58. I would particularly like to address Section 6 regarding the statute of limitations, Section 8 regarding noneconomic damages, and Sections 29 and 30 regarding the expert advisory panels.

We support a statute of limitations of two years, except for infants. Waiting until two years after the incident or age eight, whichever is later, provides time for parents to watch their children through most of their developmental milestones. Contact with the school system comes within a few weeks of the child's sixth birthday at the latest, and that provides a societal back-up to the parents' observations. Early injuries do not have quiet interludes before expression: brain injury is not a discontinuous event.

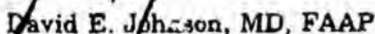
Unpredictability of noneconomic damages is the single most expensive aspect of insuring against liability, and the unpredictability in unlimited damages makes it possible to justify almost any insurance premium a company might want. With medical expenses and lost economic value paid, a limitation on the lottery aspect of noneconomic damages makes the system more predictable and thus less expensive for everyone.

Steps to more sharply focus and to define timelines more clearly will strengthen the expert advisory panel system. As currently constituted the panel system is being distorted by preemptory challenges by counsel from its intended role as advisory to the court. We believe that the expert advisory panel system has been a useful tool for sorting through the complexities of medical liability cases, and that the system should be preserved.

Thank you for the opportunity to present our ideas on House Bill 58. I would be happy to address both any aspect of what I have presented here and any other questions regarding this important piece of legislation.

The Alaska State Medical Association supports House Bill 58.

Yours truly,



David E. Johnson, MD, FAAP

Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: 154 Fairbanks Dr. / P.O. Box 3089 / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

March 11, 1997

House Finance Committee:

Rep. Mark Hanley, Co-Chair
Rep. Eldon Mulder
Rep. Richard Foster
Rep. Vic Kohring
Rep. John Davies
Rep. Carl Moses
Rep. Gene Therriault, Co-Chair
Rep. Gary Davis
Rep. Pete Kelly
Rep. Terry Martin
Rep. Ben Grussendorf

Re: HB 58

The Prince William Sound Regional Citizens' Advisory Council (RCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Alyeska terminal and associated tankers. RCAC's 18 member organizations are communities and boroughs impacted by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental representatives.

As a general matter, RCAC has no interest in the statutory guidelines for negligence suits. We are pleased to see that the retroactive provision of last year's bill has been dropped.

However, we are very concerned that the proposed cap on punitive damages – $300,000 or three times the actual damages – will have the unintended effect of removing what are now compelling incentives for oil shippers to prevent oil spills.

In the last seven years, we have seen very significant progress toward effective spill prevention. There can be little doubt that a major motivation behind spill prevention programs adopted by major oil companies and shippers is the potential of substantial punitive damages such as those awarded in the Exxon Valdez case. The value of oil shipped is so substantial as to make potential penalties of $300,000 meaningless. Punitive damages must be potentially high enough to make a serious impression on the shippers.

Printed on Recycled Paper

The provision for higher punitive awards – $600,000 or four times the actual damages – in certain cases (where wrongful conduct arose in connection with commercial activities and was motivated by financial gain) is small comfort. It doesn't go far enough and even if it did, the burden of proving motivation would likely make such cases very difficult to prosecute.

The whole point of punitive damages is that they must hurt; punitive damages should provide sufficient "ouch factor" to both discourage a repeat of the injurious action and to discourage others. To be effective, punitive damages must take into account the net worth of the defendant. A punitive award of $600,000 would not even knick the fingernail of a Bill Gates.

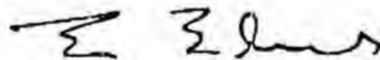
Under current law, a jury can tailor its punitive damages to the financial status of the defendant, making sure that the sanction is adequate to give an incentive to the defendant to avoid such conduct in the future. That ability is lost under the bill. The jury will be unable to vary its damage award to take into account whether the defendant is a Mom-and-Pop local business or an international conglomerate worth billions. The cap on punitives is the same for both of them.

We propose HB 58 be amended to incorporate language from HB 60, tieing punitive damages to either average net annual income or two times the financial gain, in cases where the defendant's action was motivated by financial gain. While not ideal, this compromise would provide stronger discentives against injurious conduct.

RCAC also opposes the Section 10 requirement that half of all punitive damages be paid to the state. This provision would discourage legitimate victims of an oil spill from spending the time, effort and money to collect those funds. As demonstrated in the Exxon Valdez case, after costs and attorneys' fees, even an award of punitive damages does not always make a party whole. We recommend this provision be dropped.

We appreciate the opportunity to provide input on this important issue and hope you will consider our suggestion.

Sincerely,



Louis "Tex" Edwards, President

cc: Sen. Georgianna Lincoln, Sen. Jerry Ward, Rep. Alan Austerman, RCAC Board of Directors, Sen. Jerry Mackie, Rep. Gene Kubina, Rep. Gail Phillips, Paul Richards, Alyeska Pipeline Service Co., Sen. John Torgerson, Rep. Mark Hodgins

Alaska Forest Association, Inc.

111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

March 12, 1997

Honorable Mark Hanley, Co-chairman
Honorable Gene Therriault, Co-chairman
House Finance Committee
State Capitol
Juneau, Alaska 99801

Subject: Support for HB 58 - Tort Reform

Dear Gentlemen,

The Alaska Forest Association (AFA) is a private, non-profit corporation comprised of member companies engaged in activities related to the forest industry. We currently have over 250 member companies representing all aspects of the industry. Our membership includes logging companies, road building companies, towing companies, wood processing facilities, and a wide variety of firms that deliver goods and services in support of the timber industry.

The time is long overdue for meaningful changes in Alaska's tort laws. There have been many individuals over the last 15 years working hard for legal liability reform. It is a complex system that has been abused too often. The Alaska Forest Association supports House Bill 58 sponsored by Representative Brian Porter because it is a step in the right direction to make the civil justice system more fair and less costly.

AFA supports reasonable compensation for valid personal injury cases. This bill allows a person to be "made whole" with no limits on medical costs and lost wages. One of the problems with the current system is that there are no real limits on "non-compensatory" damages such as pain and suffering and punitive damages. It is this "sky is the limit" system that is rife for abuse. Representative Porter's legislation includes reasonable limits on these damage awards as well as other provisions that make the system more fair.

Please move this bill expeditiously through the process for passage this year.

Sincerely,

Jack Phelps, Executive Director

2̇7 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907)586-1325, Fax (907)463-5480

March 10, 1997

Representative Brian Porter
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

Thank you for your continued hard work on tort reform. Last year the AML urged the implementation of the Tort Reform bill. **The AML continues its support of the adoption of a meaningful tort reform bill.** The provisions of CS of SSHB 58 (JUD) appear to fulfill this goal.

Municipalities have considerably broader liability exposures than almost any private business because of the extremely broad nature of municipal services and public safety responsibilities. Also, municipalities are seen as "deep pockets", however, a municipality must pass costs on to residents directly through taxes. It is clearly in the interest of residents of municipalities to reasonably limit their municipality's liability exposures.

In CS for SSHB 58 (JUD), a good example of a direct benefit for municipalities is the liability reduction for non-negligent actions of an electric utility. As a broader example, the provisions that limit liability to more reasonable sums, encourage early settlements, and discourage the proliferation of "nuisance" suits, will benefit taxpayers by reducing the legal and other costs of claims. These same provisions will require that municipalities become more efficient in submitting their own claims, especially in cases such as the discovery of latent defects in construction work. On balance, **a more defined legal system, as proposed by this bill, will have benefits for municipal taxpayers.**

While the AML endorsed last year's tort reform bill, the AML Legislative Committee has not yet formally approved the provisions of this bill and may comment on specific provisions after the AML/Alaska Conference of Mayors Legislative Conference on April 1 and 2 in Juneau. You are invited to present the bill to municipal officials on Tuesday April 1. Please keep the AML informed of any issues specifically relevant to municipalities and the AML will be pleased to continue to participate in the process.

Sincerely,

Kevin Ritchie
Executive Director

CC: AML Board of Directors
AML Legislative Committee
C:Legcomm:297tortreformhb58

Alaska Rural Electric Cooperative Association, Inc.

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

Electric Service for 300,000 Alaskans

March 11, 1997

Representative Gene Therriault
Co-Chairman
House Finance Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Subject: House Bill 58—Tort Reform Legislation

Dear Representative Therriault:

I am writing this letter to express support for the tort reform legislation that is currently moving through the House of Representatives. House Bill 58, introduced by Representative Brian Porter, is a piece of legislation that deserves the Senate's consideration and support.

This letter is being written on behalf of the members of the Alaska Rural Electric Cooperative Association, Inc. ("ARECA"). The active members of ARECA comprise 18 electric cooperatives situated throughout the state of Alaska. These electric cooperatives serve a large percentage of the state's population. The cooperatives represent an effort by citizens of the state to provide the best possible electric service to their communities at the lowest possible cost. The members of ARECA are in support of tort reform legislation and believe it would be beneficial if tort reform were accomplished during this legislative session.

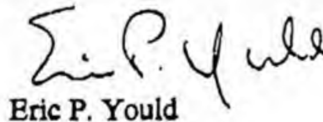
One section of the legislation is of particular importance to the members of ARECA. Over the years, the electric cooperatives have been subject to many claims by plaintiffs' attorneys attempting to impose strict liability on an electric utility for any and all electric service. The argument is made that the electric utility should be responsible for any injuries or damages arising from electricity even if the utility was not negligent in any way. For example, in one situation a claim has been made that an electric utility should be strictly liable for the quality of electric service even though the injured individual had obtained electricity only by running his own wiring from a neighboring house. The provision of the tort reform legislation desired by the electric cooperatives would ensure that utilities are held accountable only in situations in which an injured party can establish how the utility may have been at fault.

fs\ARECA\Legis\3-11-97\f

Thank you for your time and attention. I will of course be available to provide testimony to the appropriate committee or committees which consider this important piece of legislation.

Sincerely yours,

ALASKA RURAL ELECTRIC
COOPERATIVE ASSOCIATION, INC.



Eric P. Yould

:lka

cc: ARECA Active Members
Larry Markley
Roger R. Kemppel, Esq.

F:\ARECA\Legis\3-11-97\f

Resolution 97-3-2

A Resolution Supporting Tort Reform

ARECA supports tort reform and especially passage of section 35 of CSSSHB 58 as currently written; the section clarifies the liability of utilities for providing electric service.

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

March 12, 1997

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

Re: SSHB58 - Tort Reform Legislation

Dear Representative Therrault:

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

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

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

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

2. Section 8. AS 09.10.070 Non-economic damages. The changes proposed to this section are fair and would result in reasonable compensation to Alaskans who are injured by the negligent acts of others. The current law results in excessive damage claims that are typically unsupported by facts.

3. Section 9. AS 09.17020 Punitive damages. The Alaska Supreme Court has ruled that municipalities are exempt from liability for punitive damages. In an effort to circumvent this law, plaintiffs' attorneys attempt to avoid Anchorage's immunity for punitive damages by suing employees individually and alleging punitive damages against them. There has been a significant increase in such claims in recent years. A legislative change which would streamline litigation by preventing meritless punitive damage claims is strongly supported by Anchorage.

4. Section 18. AS 09.17.080(c) Anchorage supports changes to the current law that would allow any person responsible for damages to be assessed a percentage of fault regardless of whether the person is named in a lawsuit. Anchorage has often found itself in a position of acting as a third-party plaintiff to bring the appropriate parties into a lawsuit for a fair determination of fault. This is expensive and time consuming and the proposed legislation would obviate this need and would reduce the costs of defending litigation while at the same time ensuring a just result.

5. Section 36. AS 09.65.210 Anchorage strongly supports repeal and reenactment of AS 09.65.210 to eliminate potential recovery of damages for personal injury or death if the injury or death occurred while the person was engaged in the commission of a felony. Further, since alcohol and other controlled substances have become an increasing problem in Alaska and across the country, Anchorage encourages the passage of both sections AS 09.65.210(4) and (5) which would reduce or eliminate the need to defend against claims brought by impaired persons who have substantially contributed or caused their own injuries.

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

MAR -12 97(WED) 12:10 MUNICIPAL ATTORNEY TEL 907-343-4550 P. 003

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

Very truly yours,

Stephanie Galbraith Moore
Assistant Municipal Attorney

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

Alaska State Medical Association

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

March 13, 1997

The Honorable Mark Hanley, Co-Chairman
The Honorable Gene Therriault, Co-Chairman
Finance Committee
Alaska House of Representative
State Capitol (MS3100)
Juneau, AK 99801

Subject: SSHB58

Dear Representatives Hanley and Therriault:

The Alaska State Medical Association (ASMA) is comprised of nearly 500 physicians located throughout Alaska. The ASMA House of Delegates and Board of Trustees would like to thank you for providing the opportunity for ASMA to testify on its recommendations for modifications to the civil justice system.

Physicians in Alaska practice in unique and challenging circumstances. Our goal is to provide the most appropriate and best medical care possible to our patients. Our profession is facing increasingly complex issues involving new technology, moral and ethical situations, and fiscal pressures from all fronts.

The practice of medicine in Alaska is typified by the sole practitioner or small clinic practices which are essentially small businesses. But this too is changing with managed care appearing throughout Alaska which brings its own special considerations. Questions arise as to quality of care in a managed care setting that is driven perhaps more by fiscal considerations than by the medical condition of the patient. These fiscal considerations are being driven by others than the treating physicians. Such circumstances provide for further complications and uncertainties in the applications of the civil justice system to the practice of medicine.

ASMA has been on record for many years supporting changes in the civil justice system that provide for less uncertainties in the system while not keeping any person from the courthouse. Those changes are as follows:

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

No caps or extremely high ceilings for non-economic damages provides for a system along the lines of a lottery. Uncertain, extremely high potential awards lead to high professional liability insurance rates which in turn leads to more physicians going without such coverage. An uninsured doctor may not have the assets to satisfy a judgment for loss of earnings and future medical expenses let alone an award for non-economic damages.

2. Limits on Attorney Fees
   A sliding attorney's contingency fee schedule is recommended as follows:
   - 40% of the first $50,000
   - 33 1/3% of the next $50,000
   - 25% of the next $500,000
   - 15% of any amounts in excess of $600,000

   Sufficient, appropriate net compensation to the injured party is the goal of the recommendation while providing for just compensation to the injured party's attorney. More compensation to the patient is the result.

3. Collateral Source Evidence
   Allow a defendant (e.g., physician) to introduce evidence pertaining to amounts of other proceeds received by a plaintiff due to the situation that resulted in the lawsuit. Examples of those proceeds are insurance proceeds and workers compensation payments. This prevents duplicate payments for the same loss.

4. Periodic Payment of Future Damages
   When an award for future damages exceeds $50,000, allow either party to require the court to provide that the judgment be paid in installments over the term of the plaintiff's disability.

   This allows for the purchase of an annuity to make future payments as and when they arise - a significant savings over an immediate lump-sum payment of an entire award.

5. Arbitration
   Allow physicians to contract with patients for mandatory arbitration of malpractice claims.

6. Statute of Limitation
   Maintain a statute of limitation that requires an action for injury or death against a physician to be filed within 2 years of when the person knows or should have known of the injury. However, for children under age six, require that action be brought before age eight or within two years, whichever is longer. But, the clock stops if there is fraud, intentional concealment of facts, or if there exists an undiscovered foreign body (of no therapeutic or diagnostic purpose) in the body of the injured child and the action is based on the presence of the foreign body.

7. Statute of Repose
   Incorporate a general statute of repose that prevents suits from being brought after eight years measured from the date of the act that caused the injury or death. The statute of repose applies without regard to the statute of limitation. However, any statute of repose should not apply in cases involving intentional acts or if intentional concealment of facts occurred that resulted in a delay of more than eight years before the basis for the legal action was known.

8. Panel System
   ASMA recommends the continuation of the panel system. Although, complete and credible empirical data which would indicate the impact of the panel system is impossible to develop, anecdotally many ASMA member physicians feel it is important and worthwhile for the panel system to remain in place. ASMA would consider a change in the method of selection of the panel to allow each side to choose a physician member with then those two members selecting a third physician. However, the physicians chosen should be physicians both licensed and actively practicing medicine in Alaska.

   ASMA would also recommend that the "bias" questionnaire be changed so as to ferret out only real conflicts of interests as opposed to perceived conflicts. It would also appear that the existing questionnaire may be easily "gamed" by physicians not wanting to serve.

   ASMA's experience is that it is not unusual for 40 suits involving medical malpractice to be filed each year which tend to take approximately two years to be adjudicated. Therefore, at any given point in time approximately 240 Alaska physicians are impaneled. This is over 20% of all physicians in Alaska, a significant contribution to the system for which, in most cases, the service is done pro bono.

The above are outlines of the features of civil justice reform that ASMA member physicians feel should be adopted. Many of the above are incorporated in SSHB58. For those that aren't, ASMA recommends amending SSHB58 to include them. Specifically, the absolute cap of $250,000 on non-economic damages is recommended to be incorporated. The general concepts underlying SSHB58 are supported by ASMA.

The underlying purpose in the above is to provide some certainty where little certainty currently exists. Imposition of certainty provides for greater predictability and should result in reduced premium rates for professional liability coverage. Similar measures were adopted in California over 20 years ago with one result being that overall medical malpractice insurance premiums in California are half of what they are here in Alaska. Attached is a copy of an article that appeared in January/February 1997 issue of Contingencies the bi-monthly journal of the American Academy of Actuaries. Also, included is the "Issue Brief" cited in the article. As you can see, the impact of the MICRA has been significant in California; The Academy work group concludes that a

package of reforms is more effective than individual reforms, and key among the reforms are a cap on non-economic damages and a mandatory collateral-source offset rule.

Lower rates should result in more physicians having professional liability insurance coverage with sufficiently high limits. This result should provide for added peace of mind to patients. We believe it can be expected that lower costs for professional liability will have a marginally greater impact on the likelihood of private practice physicians practicing in rural communities having coverage with sufficient limits than those physicians practicing in urban areas.

Should you have any questions or comments you may direct them to any of the following people:

ASMA Board of Trustees

Paul Raymond MD, President,
235-7000, fax 235-4050
John J. Smith MD,
276-5222, fax 278-9044
Kevin M. Tomera MD,
276-2903, fax 278-8052
Lee Schlosstein MD,
563-3929, fax 562-2848
James J. Jordan, Executive Director, ASMA,
562-2662, fax 561-2063

Cynthia Brooke MD,
563-8588, fax 563-6903
Patrick Brady MD,
261-3102, fax 261-4882
Douglas G. Smith MD,
272-2571, fax 272-6751
David E. Johnson MD,
225-5144, fax 247-0920

Thank you again for opportunity to provide testimony.

Sincerely,

James J. Jordan
Executive Director

cc: Representative Brian Porter
Alaska House of Representatives
State Capitol, Mail Stop 3100
Room 216
Juneau, AK 99801-1182

A Surgical Fix for Medical Malpractice

Reforms Work Best as a Package, Study Shows

By Jeffrey Speicher

Almost everyone agrees: The medical malpractice system in the United States serves no one well. Although a few multimillion dollar settlements draw public attention, most individuals who suffer real injury at the hands of their physician or hospital accept less than the full value of their claim—and endure long delays before receiving compensation. Those most harmed—people left with lifelong medical needs or permanent loss of income—are most likely to be underpaid.

Physicians, who in the 1950s faced a 1-in-7 chance of being sued over the course of a career, now see the odds reduced to 1-in-7 *per year*. As a result malpractice insurance premiums have skyrocketed, causing many practitioners to abandon their specialties or adopt costly defensive-medicine procedures. Many insurers, buffeted since the early '70s by recurrent cycles of higher claims frequency and larger jury awards, have withdrawn from the market, which has reduced availability of coverage and further driven up costs. And as for attorneys . . . . well, even some thoughtful legal scholars believe the system is out of whack.

According to Randall Bovbjerg of Washington's Urban Institute, author of numerous studies on medical malpractice, many of the system's problems arise from a basic difference between doctors and lawyers: Physicians think about healing injuries, attorneys about resolving disputes. Says Bovbjerg, "Doctors see medical malpractice as a way to make injured patients whole—financially as well as physically. Lawyers come into the process after a conflict arises, and their focus is on justice for their client."

Jeffrey Speicher is manager of member communications for the Academy and an editor for Contingencies.

This difference in worldview intertwines medical malpractice with the legal system. Malpractice must balance the need to compensate deserving claimants, deter future violations by making doctors more careful, and obtain justice for both patients and medical providers. All this from what Bovbjerg defines as "mainly an insurance system run by experts."

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

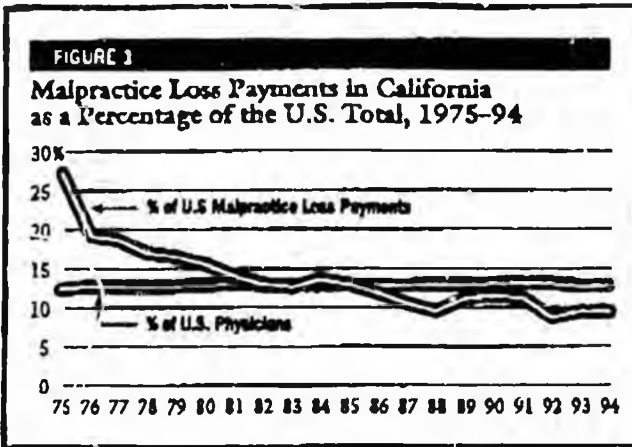
"Congress should adopt a comprehensive approach to tort reform by adopting a package of measures," says Jim Hurley, an actuary with Tillinghast/Towers Perrin and leader of the Academy group. "Our report provides a synthesis of measures that have been effective at the state level."

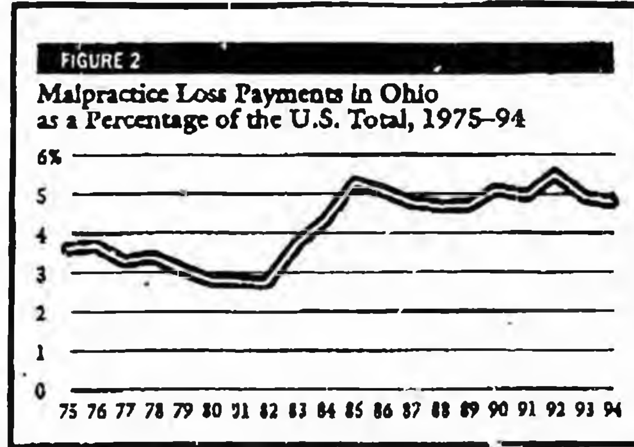
A Package Deal

The California Medical Injury Compensation Reform Act (MICRA) of 1975 shows the success of the package approach. Before MICRA's adoption, the state's percentage of total U.S. loss payments was significantly higher than its proportion of the nation's physicians. By 1981, California's loss payments had dropped and were about even with its percentage of physicians. Costs continue to fall, even as California's share of physicians remains stable. Writes the Academy group: "The relationship of decreased relative costs to the timing of reform provides strong evidence for the effectiveness of the MICRA package." [See Figure 1.]

At the head of the Academy's list for lawmakers is a nationwide cap on jury awards for noneconomic damages such as pain and suffering. As evidence, Hurley points to Ohio where malpractice costs fell after a 1975 cap on damages, only to rise dramatically after court challenges led to a 1985

American Academy of Actuaries Bi-Monthly





ruling that overturned the cap. [See Figure 2.]

Such a cap should be established on a per-medical-injury basis at a level low enough to have an impact—at $250,000, for example. In addition, a mandatory collateral-source offset rule is needed to ensure that double and triple indemnification cannot be collected through multiple suits. Under this rule, a jury or judge would have to consider compensation paid from other sources.

Above all, the Academy report warns against piecemeal or faulty changes. Loss experience in New York shows that the individual tort reform measures adopted in that state over the past two decades did not improve costs relative to the U.S. total. "Poorly crafted malpractice reform—either individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs," says Hurley.

> Above all, the Academy report warns against piecemeal or faulty changes. "Poorly crafted malpractice reform – either individual measures that are too limited or broad transformations that are too far-reaching – can have unintended consequences that drive up costs."

The Academy's suggested approach involves what medical malpractice experts call "takeaway" reforms—preserving the current reliance on the tort system, but eliminating some of the costliest and most abused features.

Other voices in the debate, including representatives of the medical community, call for a back-to-the-drawing-board approach. Unfortunately, the design that comes back often relies on a no-fault model. While no-fault medical malpractice insurance would largely untangle the process from the legal system, no-fault often rewards individuals whose claims would otherwise be denied. Says Hurley, "No-fault would drive frequency of claims through the roof—some argue by a factor of at least two and perhaps by a factor of eight or more. It's scary how many things can be compensated under the typical no-fault system."

Frequency of claims, according to Hurley, is the key driver of costs. "Over the past two decades, the plateaus and surges of claims frequency have been difficult to anticipate and measure, but the long-term trend has been up," says Hurley. Size of claims also is an important cost factor, but dollar amounts in settlements have been increasing in a more predictable fashion over time.

No-fault also would take most cases out of court and make malpractice a transaction between insurer and claimant. Advocates claim that this would cut legal costs—which are enormous. For example, according to the Insurance Services Office, legal defense costs for insurers alone accounted for 14 percent of total tort costs in 1992.

However, experience in Florida and Virginia, where no-fault for obstetric cases is already in place, does not show substantially reduced costs or less need for legal counsel. Says Bovberg, "*Everyone* who uses the no-fault system in Florida and Virginia consults a lawyer."

Other options exist. A proposal by Jeffrey O'Connell, professor at the University of Virginia School of Law, seeks a middle way between no-fault and status quo. He would shorten the process and lower costs through an early offer of payment of noneconomic damages.

O'Connell is blunt about his disgust with the current state of affairs. "Medical malpractice is a nightmare of useless circularity," he says. However, according to O'Connell, the system is not consistently biased against defendants. Most proposed changes, on the other hand, invariably favor the defendant. Justice—as well as political reality— requires benefits for the plaintiff as well.

"Reform requires a quid pro quo," says O'Connell. "While the Academy has described quite lucidly the options for takeaway reform, such measures could not get through Congress without being so watered down as to be meaningless," says O'Connell. "True reform should involve a fair trade: making it easier for claimants to be paid, but paying them less, as under workers compensation laws."

An Offer You Can't Refuse

O'Connell's ideas have found sponsorship on Capitol Hill. A bill introduced in the 104th Congress by Sen. Mitch Mc-

Connell (R-Ky.) would create an early-offer plan for all tort claims, including medical malpractice. Under the proposal, a defendant in a personal injury claim is given the option of offering payment to the injured party within 180 days of the claim. The defendant purchases for the claimant a comprehensive major medical insurance policy that covers medical expenses, rehabilitation, and lost wages beyond monies received from collateral sources. In addition, reasonable hourly fees for the claimant's attorney would be paid.

Claimants who are offered such a settlement within 180 days of the claim would be obliged to accept. This won't get egregious medical offenders off the hook, however. A normal tort claim could be pursued for noneconomic damages, but with a higher-than-current standard of evidence.

> Medical malpractice is a nightmare of useless circularity.

The plaintiff must prove that the medical provider's misconduct was wanton or intentional.

Because the defendant would not be forced to offer a settlement, physicians and their insurers could take their chances in court in the case of bogus claims. However, the risk might be too great. O'Connell cites a prominent medical malpractice defense lawyer who estimates that he'd make an early offer in 200 of the his firm's 250 current cases. So the balance is tipped toward the defendant, but not without providing a substantial benefit to the plaintiff: Timely resolution and quick settlement.

The limit on legal fees would discourage what O'Connell calls "the unconscionable abuse of the system by some members of my profession." Among other criticisms, the Virginia professor points out that contingent fees are often not truly contingent on risk. Attorneys take the same settlement percentage from open-and-shut cases as from complex cases, a practice that subsidizes work on failed litigation and which O'Connell denounces as an illegal tax on deserving claimants.

Hurley gives O'Connell's proposal a mixed review. "To its credit, the early-offer plan is not mandatory for defendants, which leaves the tort system in place to challenge claims perceived as nonmeritorious," says Hurley. He also notes that periodic insurance payment to claimants allows compensation to be made as costs are incurred, eliminating the burden of large lump-sum payouts. Also, O'Connell's plan emphasizes two fundamentals that the Academy report identified: mandatory recognition of collateral benefits and controlling noneconomic damage costs. In fact, the O'Connell plan eliminates consideration of noneconomic damages altogether unless the case goes to court.

However, Hurley notes, the periodic payment plan theoretically would have to remain in force for decades. Will claimants be out in the cold after the disability policy limits are reached, or will the insurer face unlimited exposure? Another concern: Like no-fault, the early-offer plan could give incentives for unmerited claims. Insurers may pay a doubtful claim rather than incur expensive litigation costs and risk a large judgment award. In addition to increased costs, Hurley worries about a basic question: "Is it the right message to send to individuals who think doctors and insurers have deep pockets? The system may have practical advantages, but in terms of equity, it is hardly fair."

No matter which remedy is tried, no action will slash premium costs immediately, Hurley cautions. "Tying tort reform to premium reductions, as has been done in some states, is unrealistic," he says. "There is little evidence that the cost savings can be translated directly into lower costs for health care providers. More likely, reform will slow the rate of premium cost increases."

The course of reform will be determined by elected officials at the state and federal levels. The debate will be long, no matter which option—if any—is approved. In the meantime, the cost of inaction continues to be passed on to the public in the form of increased medical fees and reduced services.

By working together in recent years, insurers and healthcare providers have begun to bring medical spending under control. Effective medical malpractice reform is one way to keep the momentum going. □

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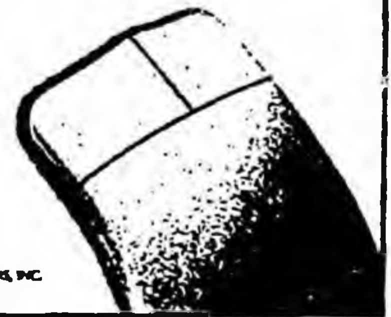

Answer to Brain Drain, page 13: The house number is 76.

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Copy

March 10, 1997

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

Dear Representative Therriault:

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

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

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

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

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

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

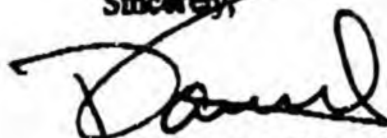
He elected to sue in California, which by then had enacted the MICRA Reform mentioned in the previous part of this letter. As a result of that, there was a cap on non-economic damages. He had mandated periodic payments for his economic damages. There were limitation on the amount of money that the attorney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

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

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

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

Sincerely,



David A. McGuire, M.D.

DAM:li

cc: Brian Porter

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

CASE FACTS:

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

LEGAL ACTION:

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

TRIAL RESULTS:

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

TORT REFORM EFFECTS:

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

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

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

COMPARISON OF RESULTS IN JUSTICE
With Mandated Structured Settlements

California (WITH Tort Reform)	
($1,344,000) $32,000 paid per year for life expectancy of 42 years	$ 305,619
$75,000 payment on July 1, 1995.	28,113
$200,000 payment on July 1, 2005.	28,101
$400,000 payment on July 1, 2015.	22,125
Present value of future payment of total jury verdict of $2,019,000 as of July 1, 1985.	$ 383,958
Plus cash payment on July 1, 1985.	50,000
Plus attorney fees present values as of July 1, 1985.	130,000
Plus costs	15,000
Subtotal	$ 578,958
Defense cost	unk
Total	$ 578,958

Alaska (WITHOUT Tort Reform)	
Total jury verdict	$ 1,449,160
Less plaintiffs 10% comparative negligence	(144,916)
	$ 1,304,244
Present value of L. A. Hospital settlement as of July 1, 1985.	(210,201)
	$ 1,094,043
Collateral benefits pursuant to AS 09.55.548(b)	(89,378)
Subtotal	$ 1,004,665
Prejudgment interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988.	683,534
Rule 82(a) attorney fees	171,319
Subtotal	$ 1,859,518
Insurance, Defense fees	501,605
Total	$ 2,361,123

DOES TORT REFORM WORK?

The effect of mandated structured settlements:

In California, the plaintiff received $2,214,000 from a structured settlement for a present cost of $578,958.

In Alaska, the plainteff received $1,859,518 with a present cost of $1,859,518.

The present cost to health care consumers in Alaska in 3.2 times the amount in California.