

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.04 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 566

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, Owner
Wasilla Realty
Wasilla, Alaska

A L A S K A



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.

Service Oil & Gas, Inc.

Mi. 188.5 Glenn Highway
P.O. Box 276
Glennallen, Alaska 99588
Phone (907) 822-3373
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

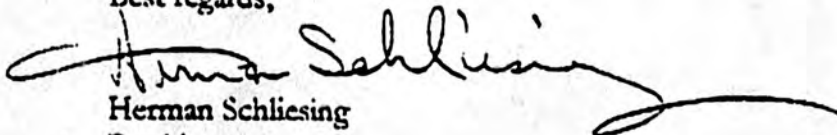
Reference: House Bill 58

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 , dated February 21, 1997
bill/subject

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 Wood Walter Wood
Testifier

Self
Representing (Optional)

P.O. Box 868, Valdez, ALASKA
Address

907-835-2408
Phone No.

HB 58

March 16, 1983

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

<u>Years Brought Within</u>	<u># of Claims</u>	<u>% of Claims</u>	<u>Cummulative Percentage</u>
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.

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

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

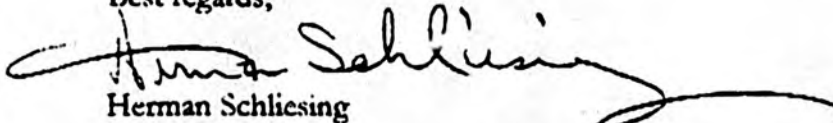
Reference: House Bill 58

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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

SCOMM

101A:5

Alaska State Medical Association

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

February 24, 1997

The Honorable Joseph Green
Chairman, House Judiciary Committee
House of Representatives
State Capital (MS 3100)
Juneau, AK 99801-1182

Subject: SSHB58 - Civil Justice Reform

Dear Representative Green:

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

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.

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 the unjust recovery of 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 nearly 20 years ago with one result being that overall medical malpractice insurance premiums in California are half of what they are here in Alaska.

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.

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

A Surgical Fix for Medical Malpractice

Reforms Work Best as a Package. Study Shows

By Jeffrey Speicher

A

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."

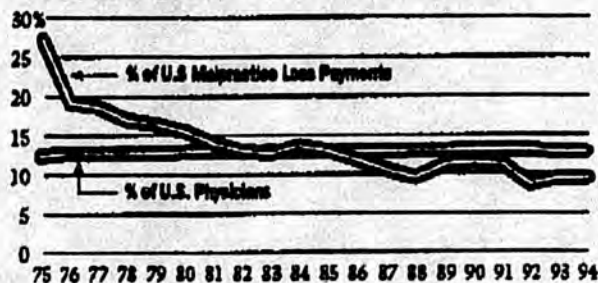
A Package Deal

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

FIGURE 1

Malpractice Loss Payments in California as a Percentage of the U.S. Total, 1975-94



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

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."

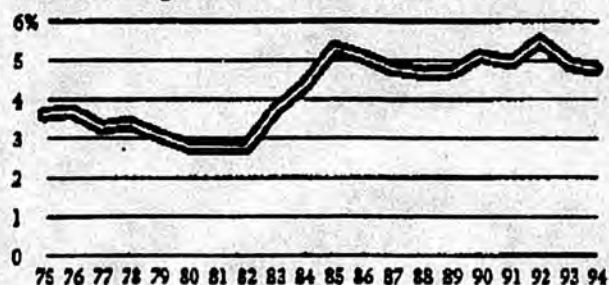
individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs," says Hurley.

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

FIGURE 2

Malpractice Loss Payments in Ohio as a Percentage of the U.S. Total, 1975-94



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

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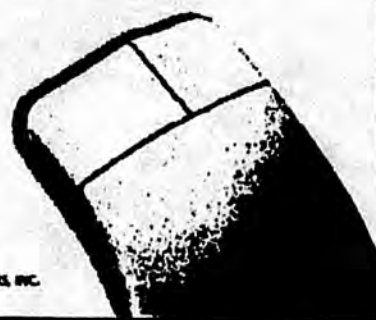
CPS-STAR is the customized life reinsurance administration software for Windows that gives you the power to process assumed business as well as self-administer ceded reinsurance.

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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 health-care providers have begun to bring medical spending under control. Effective medical malpractice reform is one way to keep the momentum going. □

Answer to Brain Drain, page 13:

The house number is 76.

*Saves
"Rule 68"*

Analysis of Section 22, dealing with Offers of Judgment

WHERE PLAINTIFF SUES DEFENDANT FOR \$100,000:

1. If defendant gives an offer for \$90,000, and at trial plaintiff gets \$90,000:

Even though plaintiff prevailed on the merits, and could otherwise claim Rule 82 attorney fees, the plaintiff has to pay defendant's actual attorney fees under Rule 68. Plaintiff may not try to set off the Rule 82 fees he otherwise would be entitled to against defendant's Rule 68 attorney fees.

2. If defendant gives an offer for \$90,000, and at trial plaintiff gets only \$50,000:

Although it would be arguable which is the prevailing party under Rule 82, plaintiff has to pay all of defendant's actual attorney fees under Rule 68. Plaintiff may not set off the Rule 82 fees even if plaintiff were the prevailing party.

3. If defendant gives an offer for \$90,000, and at trial plaintiff gets only \$10,000:

Defendant probably is both the prevailing party under Rule 82 and entitled to actual attorney fees under Rule 68. Defendant gets only the Rule 68 fees.

4. If defendant gives an offer for \$90,000, and at trial plaintiff gets zeroed, the result is same as example 3 above.

=====

5. If plaintiff gives an offer for \$90,000, and at trial plaintiff gets \$90,000:

Plaintiff is both a prevailing party under Rule 82 and entitled to actual attorney fees under Rule 68. Plaintiff gets only the Rule 68 fees.

6. If plaintiff gives an offer for \$90,000, and at trial plaintiff gets only \$50,000:

Although it would be arguable which is the prevailing party under Rule 82, defendant is not liable for plaintiff's attorney fees under Rule 68. Defendant is liable for plaintiff's Rule 82 fees if plaintiff is adjudged the prevailing party.

7. If plaintiff gives an offer for \$90,000, and at trial plaintiff gets only \$10,000:

Defendant probably is the prevailing party under Rule 82. Defendant is not liable for plaintiff's attorney fees under Rule 68. Plaintiff is probably liable to pay defendant Rule 82 attorney fees.

8. If plaintiff gives an offer for \$90,000, and at trial plaintiff gets zeroed, the result is the same as example 7 above.

JAN 28 12:45 PM '96
FBI - SFA

Structured Financial Associates, Inc.

SFA, Inc.
1205 E. Int'l Airport Rd.
Suite 205
Anchorage, AK 99518-1409

165 P02

Phone: (907) 562-7421
Fax: (907) 562-1366

Facsimile

To: Roger Holmes
@Fax: 248-8813
From: A.L. Tamagni, Sr.
Date: 12/23/96
Re: Civil Liability Bill
Pages: 2 including this

Roger:

1.

I have attached in regards to pre-judgement interest the Section of which we feel that interest should be based on Applicable Federal rates (AFRs) Section 1274(d)(1)(a) Short Term obligations (not exceeding 3 years) annual rate and begins to accrue at that rate from the date of accrual. Exclude future economic, non economic, punitive and Rule 82 fees and other costs.

2.

Section 09.17.040 (d) Change as follows: In an action to recover damages, the trier of fact at the request of any party electing to receive or pay future economic and or future non economic damages, enter judgment ordering that amounts awarded be paid to the maximum extent feasible by periodic payments in lieu of a lump sum.

Section 09.17.040 (e) If damages are to be paid on a periodic basis, the trier of fact shall require the defendant to purchase an annuity contract issued by a company licensed to do business as an authorized insurer in this state as defined under AS 21.90.900, or one or more obligations of the United States in order to assure the future payments of such periodic damage amounts for the discharge of its obligation. Such funding mechanisms shall not be purchased from defendants insurer or any ownership affiliates. (Roger, you may have to clean this last part up a little)

ⓧ

COMP-PARE

1995 Life Insurance Company Rating Definitions

A. M. BEST RATINGS EXPLANATIONS

A++ and A+ (Superior)

Assigned to companies which, in our opinion, have demonstrated superior overall performance when compared to the standards established by the A. M. Best Company. A++ and A+ companies have a very strong ability to meet their obligations to policyholders over a long period of time.

A and A- (Excellent)

Assigned to companies which, in our opinion, have demonstrated excellent overall performance when compared to the standards established by the A. M. Best Company. A and A- companies have a strong ability to meet their obligations to policyholders over a long period of time.

B++ and B+ (Very Good)

Assigned to companies which, in our opinion, have demonstrated very good overall performance when compared to the standards established by the A. M. Best Company. B++ and B+ companies have a good ability to meet their obligations to policyholders over a long period of time.

B and B- (Adequate)

Assigned to companies which, in our opinion, have demonstrated adequate overall performance when compared to the standards established by the A. M. Best Company. B and B- companies generally have an adequate ability to meet their obligations to policyholders, but their financial strength may be vulnerable to unfavorable changes in underwriting or economic conditions.

C++ and C+ (Fair)

Assigned to companies which, in our opinion, have demonstrated fair overall performance when compared to the standards established by the A. M. Best Company. C++ and C+ companies generally have a current ability to meet their obligations to policyholders, but their financial strength is vulnerable to unfavorable changes in underwriting or economic conditions.

C and C- (Marginal)

Assigned to companies which, in our opinion, have demonstrated marginal overall performance when compared to the standards established by the A. M. Best Company. C and C- companies have a current ability to meet their obligations to policyholders, but their financial strength is very vulnerable to unfavorable changes in underwriting or economic conditions.

D (Very Vulnerable)

Assigned to companies which, in our opinion, have demonstrated poor overall performance when compared to the standards established by the A. M. Best Company. D companies have a current ability to meet their obligations to policyholders, but their financial strength is extremely

vulnerable to unfavorable changes in underwriting or economic conditions.

E (Under State Supervision)

Assigned to companies which are placed by a state insurance regulatory authority under any form of supervision, control or restraint, such as a conservatorship or rehabilitation, but does not include liquidation. May be assigned to a company under a cease and desist order issued by a regulator from a state other than its state of domicile.

F (In Liquidation)

Assigned to companies which have been placed under an order of liquidation by a court of law or whose owners have voluntarily agreed to liquidate. Note: Companies that voluntarily liquidate or dissolve their charters are generally not insolvent.

NA-1 (Limited Data Filing)

Assigned primarily to small companies exempt from filing the standard NAIC annual statement. These company reports are based on selected financial data obtained by the A. M. Best Company.

NA-2 (Less than Minimum Size)

Assigned to companies that file the standard NAIC annual statement but do not meet our minimum size requirement. To assure reasonable financial stability, we require a company to have a minimum policyholders' surplus of \$2.0 million for assignment of an initial letter rating. Exceptions include; a company that is virtually reinsured by a Best's rated affiliated company; is a member of a group participating in a business pooling arrangement; or is a company writing stable lines of business and has demonstrated a long history of above average performance when compared to Best's Rating standards. Companies assigned to the NA-2 rating category are eligible for assignment of Best's Financial Performance Rating (FPR).

NA-3 (Insufficient Operating Experience)

Assigned to companies which meet, or are anticipated will shortly meet, our minimum size requirement, but have not accumulated five consecutive years of representative operating experience. This requirement pertains to the age of the company's financial performance and not the actual experience of its management and includes consistency in both the types of coverages written and the relative volume of premium writings. Additional years of operating experience may be required if a company exhibits substantial premium growth or changes in product mix. NA-3 rated companies are eligible for assignment of Best's Financial Performance Rating (FPR).

NA-4 (Rating Procedure Inapplicable)

Assigned to companies whose business and/or operations are such that our normal rating procedure does not properly

apply. Examples are as follows: companies writing lines of business not common to the property/casualty or life/health fields; companies writing financial guaranty insurance; companies retaining only a small portion of their gross premiums written; companies which have discontinued writing new and renewal business and have a defined plan to run-off existing contractual obligations; companies that are effectively dormant or have no significant premium volume or in-force business; companies that are true captives; companies discounting loss reserves to the extent that the anticipated future investment income represents a significant part of their policyholders' surplus; and companies not soliciting business in the United States. This rating is also assigned to the life/health companies whose sole operation is the acceptance of business written directly by a parent, subsidiary or affiliated insurance company, or those writing predominantly property/casualty insurance under a dual charter.

NA-5 (Significant Change)

Assigned to previously letter-rated companies which experience a significant change in ownership, management or book of business, or other event which affects the nature of their operations and makes it impossible to render a rating opinion. Depending on the change, our rating procedure may require one to five years before the company is eligible for a rating.

NA-6 (Reinsured by Unrated Reinsurer)

Assigned to companies which have a substantial portion of their book of business reinsured by, or have reinsurance recoverables from, non-Best's rated reinsurers which represent a substantial portion of their policyholders' surplus. Exceptions are non-Best's rated foreign reinsurers that comply with our reporting requirements and satisfy our financial performance standards.

NA-7 (Below Minimum Standards)

Replaced by the Best's Rating of D.

NA-8 (Incomplete Financial Information)

Assigned to companies eligible for a ratings but which failed to submit complete financial information for the five-year period under review, including all domestic insurance subsidiaries in which the company's ownership exceeds 50%.

NA-9 (Company Request)

Assigned to companies eligible for ratings, but which request that the rating not be published because they disagree with our rating.

NA-10 (Under State Supervision)

Replaced by the Best's Rating of either E or F.

NA-11 (Rating Suspended)

Assigned to previously rated companies which have experienced sudden and significant events affecting their financial position and/or operating performance whose impact cannot be evaluated due to a lack of timely or adequate information.

STANDARD & POOR'S CLAIMS-PAYING ABILITY RATING DEFINITIONS

AAA

Insurers rates "AAA" offer superior financial security on both an absolute and relative basis. They possess the highest degree of safety and have an overwhelming capacity to meet policyholders obligations.

AA

Insurers rates "AA" offer excellent financial security, and their capacity to meet policyholder obligations differ only on a small degree from the insurers rates "AAA".

A

Insurers rates "A" offer a strong financial security, but their capacity to meet policyholder obligations is somewhat more susceptible to adverse changes in economic or underwriting conditions than more highly rated insurers.

BBB

Insurers rated "BBB" offer good financial security, but their capacity to meet policyholder obligations is considered more vulnerable to adverse economic or underwriting conditions than that of more highly rated insurers.

BB

Insurers rated "BB" offer adequate financial security for the "short-tail" or short-term policies, but their capacity to meet policyholder obligations is considered vulnerable to adverse economic conditions or underwriting conditions and may not be adequate for "long-tail" or long-term policies.

B

Insurers rated "B" are currently able to meet policyholder obligations, but their vulnerability to adverse economic or underwriting conditions is considered high.

CCC

Insurers rated "CCC" are vulnerable to adverse economic or underwriting conditions to the extent that their continued capacity to meet policyholder obligations is highly questionable unless a favorable environment prevails.

R (Regulatory Action)

As of the date indicated, the insurer is under supervision of insurance regulators following rehabilitation, receivership, liquidation, or any other action that reflects regulatory concern about the insurer's financial condition. Information on this status is provided by the National Association of Insurance Commissioners and other regulatory bodies. Although believed to be accurate, this information is not guaranteed. The R rating does not apply to insurers subject only to non-financial actions, such as market conduct violations.

"Quantitative" Ratings

A 'q' subscript indicates that the rating is based solely on quantitative analysis of publicly available data. In the case of claims-paying ability ratings, this is the statutory financial data filed with the National Association of Insurance Commissioners. These ratings are issued for each insurer on a standalone basis with out consideration for strength or weakness that might be added by a parent or affiliated companies. These new ratings which were effective July 31, 1995 replace Qualified Solvency Ratings, which are being discontinued.

**MOODY'S CLAIMS-PAYING
RATINGS DEFINITIONS**

Numeric modifiers are used to refer to the ranking within the groups below - one being the highest and three being the lowest. However, the financial strength of companies within a generic rating symbol is broadly the same.

Aaa

Highest quality.

Aa

High quality by all standards; long-term risks somewhat larger.

A

Upper medium grade; adequate security.

Baa

Medium grade; neither highly protected nor poorly secured.

Ba

Judged to have speculative elements.

B

Lack characteristics of the desirable investment.

Caa

May be in default or there may be present elements of danger with respect to principal or interest.

Ca

Speculative in a high degree; often in default.

C

Lowest rated class.

**DUFF & PHELPS CLAIMS-PAYING
ABILITY RATINGS DEFINITIONS**

AAA

Highest claims paying ability. Risk factors are negligible.

AA+, AA, AA-

Very high claims paying ability. Protection factors are strong. Risk is moderate, but may vary lightly over time due to economic and/or underwriting conditions.

A+, A, A-

High claims paying ability. Protection factors are average and there is an expectation of variability in risk over time due to economic and/or underwriting conditions.

BBB+, BBB, BBB-

Below average claims paying ability. Protection factors are average. However, there is considerable variability in risk over time due to economic and/or underwriting conditions.

BB+, BB, BB-

Uncertain claims paying ability and less than investment grade quality. However, the company is deemed likely to meet these obligations when due. Protection factors will vary widely with changes in economic and/or underwriting conditions.

B+, B, B-

Possessing risk that policyholder and contractholder obligations will not be paid when due. Protection factors will vary widely with changes in economic and/or underwriting conditions, or company fortunes.

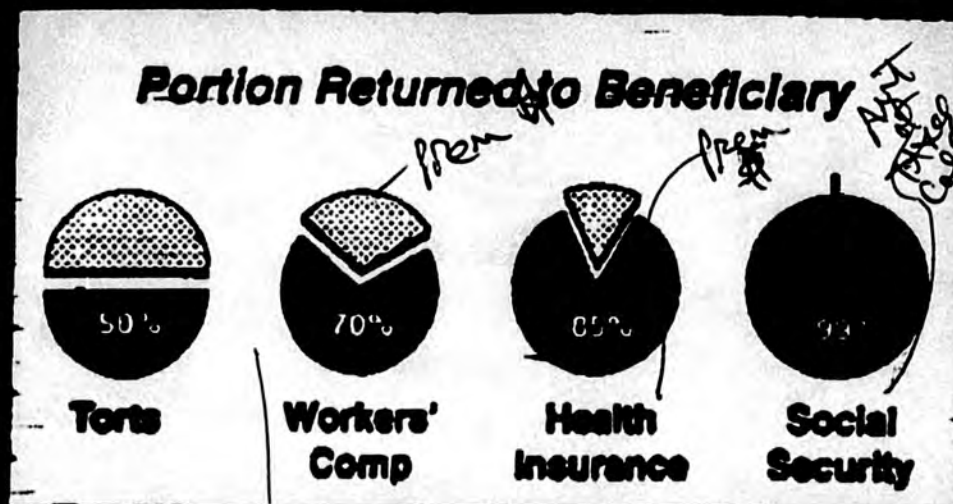
CCC

There is a substantial risk that policyholder and contractholder obligations will not be paid when due. Company has been or is likely to be placed in state insurance department supervision.

BRAN'S
file
#358

~~The Tort System~~ Does Not Effectively Serve Victims' Needs

Efficiency Comparisons



■ If the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient, because only half - or less - of the cost goes toward any form of compensation for victims. Unfair, because many victims receive no compensation at all.

uncertainty removed
no litigation cost component
people ahead of time what they need

Source: The Tillinghast Report, Towers Perrin Company

11/11/11

ATTN: Jim

FROM: Dick

0 of pages 0
Tamara
2011-11-11

To: Jim Sourant
From: Dick Cattnach

Re: Draft of Speech for 24th

Let me know if you see any problems or modifications to this.

Thanks

His
speech
Great!

Testimony before the
ALASKA STATE LEGISLATURE
JUDICIARY COMMITTEE

SSHB 58

February 24, 1997

Mr. Chairman, members of the Judiciary Committee, my name is Richard Cattanach, Chairman of the Legislative Committee of the Associated General Contractors. I appreciate the opportunity to testify before you today. I realize that time constraints require that the testimony be limited to 3 minutes and therefore I would like to address two issues that are of paramount importance to the construction industry.

The first deals with Section 8, the Statue of Repose. In 1992, Schinnerer Management Services Inc. reviewed four studies which measured when claims were brought on construction projects. The studies indicated that a vast majority of claims are filed within six years of substantial completion of a construction project. Claims filed more than six years after substantial completion almost always involve users of the project. In view of the complexity of the construction process, it is unrealistic to expect parties involved in the design and construction of any project to defend stale claims brought many years after their involvement with the project has ended. This section does not impose an unfair burden to an injured party because it allows them to seek redress from the owner or occupier of the project, the party most likely to be responsible for the injury and the one in the best position to have prevented it. The proposed Section provides protection to some injured parties by tolling the time period if the cause of action was the result of an intentional or fraudulent action which contributed to the cause of action.

In the Matter of Frederick W. Triem, the Alaska Supreme Court held that

"A five-year statute of limitations governs the filing of attorney grievances. This reflects a judgment that five years is the outer limit of time in which responding attorneys are able to fairly defend themselves against charges, given the loss of memory, evidence, and witnesses that occurs over time."

I don't believe that anyone would argue that the construction industry faces the same problems as the legal profession in defending itself from suits. Why then should the construction period have a longer period of time before they are free from litigation.

According to a report of Legislative Research, the 8 year period would be exceeded by only 4 states. In fact, Statutes of Repose of 3, 4 or 5 years are fairly common in other states and the proposed time frame of 8 years would seem to be more than adequate to provide the detection of any construction and design defects and allow the property owner to take action to remedy them.

The second area is Section 10, Punitive Damages. In Alaska, more than 95% of the businesses are classified as small, "mom and pop" firms or companies that employ fewer than 20 employees. To them the issue of punitive damages is very serious because punitive damages are not covered by insurance. The Court System has issued statistics that indicate that the award of punitive damages is rare in Alaska and therefore not really a serious problem. What is overlooked is the fact that these statistics do not report on the suits that are settled prior to going to Court. Punitive damages are requested in almost 30 percent of the civil cases and seem to be used as a means of "extortion" to drive the defendant to settle prior to trial. Defendants realize that their insurance company will defend their acts for the original claim but exclude the defense or payment of any punitive damage awards. Companies are therefore forced to choose between the belief of their innocence or settling to avoid the crippling costs of defending the punitive damages suit should the case get that far. For the small business this is a Hobson's choice. Do you instruct your insurance company to settle even though you believe that you are innocent or do you risk your business and savings defending yourself should a trial for punitive damages be necessary. Many cannot afford the luxury of the gamble and avoid the risk of losing everything they worked for their entire life. Such a system is unfair and we should not tolerate a system that rewards the unscrupulous behavior of such plaintiffs attorneys'.

I thank you for your time and would be happy to answer any questions you might have.



UNIT COMPANY, 8101 OLD SEWARD HWY, ANCHORAGE, AK 99518

FAX

Date: February 24, 1997

Number of Pages: _____

Project: _____

To: Jim Sourant

Company: _____

Phone: _____

Fax: _____

From: _____

Company: UNIT COMPANY

Phone: (907) 349-6666

Fax: (907) 522-3484

Remarks:

Attached is the information that was requested from my testimony. On the surface, the information may be a little difficult to understand, but I believe that I can easily explain the meaning.

In any event, I believe that the information shows that 8 years provides plenty of protection for most claims.

Dick

COPY FAXED TO: _____

FILE: _____



March 16, 1983

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

<u>Years Brought Within</u>	<u># of Claims</u>	<u>% of Claims</u>	<u>Cumulative Percentage</u>
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
	<u>159</u>	<u>99.9</u>	<u>99.9</u>

*Based on CNA's records, roughly 32.5% 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 less 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	PERCENT 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.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capital
Juneau, AK 99801-1142

Statute of Repose/Limitations by State, 1993

<u>State</u>	<u>Years Within Date of Discovery</u> (Statute of Limitations)	<u>Maximum # Years</u> (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	6 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

APDC LEGISLATIVE LIAISON COMMITTEE
HOUSE JUDICIARY COMMITTEE TESTIMONY
FEBRUARY 24, 1997

My name is Colin Maynard. I am a professional engineer representing 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 get to a court hearing. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials and the seemingly capricious decisions of juries. Suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement. Some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a quick 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. 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. Over 95 percent of the cases associated with construction are brought within eight years after substantial completion, over 98 percent within ten years. We believe that an eight year statute is more reasonable for four main reasons. First, 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, since his lack of maintenance is an on-going problem. Secondly, 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. Thirdly, we will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage. Finally, it is also 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. If you add a fifteen year tail to that, you get 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. If we can limit the "tail" for which we have to insure to eight years, we will make a considerable reduction in our insurance bills.

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 get them out of the system.** With this in mind, APDC is urging that an alternative dispute resolution method 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 the 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 also 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 also result in more money going to the injured rather than the lawyers and expert witnesses. It should slow down the shotgun approach to suits by removing defendants who are obviously not liable. 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.

Structured Financial Associates, Inc.

SFA, Inc.
1205 E. Int'l Airport Rd.
Suite 205
Anchorage, AK 99518-1409

Phone: (907) 562-7421
Fax: (907) 562-1366

§12, 13 & 14

Facsimile

To: Representative Brian Porter
@Fax: 1-907-465-3834
From: A.L. Tamagni, Sr.
Date: 2/19/97
Re: SSHB 58
Pages: 3, including this

I wish to comment on the above proposed legislation which is very much needed in this state to reduce the costs of litigation to deserving injured parties, and innocent defendants. Accordingly the following is in order.

SECTION 4: 09.10.053: This section apparently includes General Contractors, such as Engineers, Architects, Attorneys and all other written contracts either written or oral. This is a reduction particularly for Attorneys who are facing increased Legal Mal-Pratice rates, from their Owner Company (ALPS). This section generally makes sense only if the statue of repose under **Section 5** is changes to reflect the Statue of Repose for Legal General Contractors to be the same as other contractors.

SECTION 8: 09.17.010: This section provides **A Schedule of Benefits** payable for Non-Economic Damages. This is the concept as proposed by the American Bar Association's, The American Law Institute's Reporters Study titled, "Enterprise Responsibility for Personal Injury". The schedule sets a schedule for Death and other criteria at \$300,000.00 and sets a higher schedule of \$500,000.00 for other criteria. This change should in most death cases (Section B) and (Section C) cases reduce the need for most litigation particularly in cases where there is clear fault. These then become scheduled payments and would seem to more Constitutionally acceptable as all parties within Certain Categories are treated equal and entitled to the same equal compensation based on the type of damage. This also eliminates discriminatory awards based on the Skill or Lack of such

page 2

from the representing Attorneys. Alaska has no specialty licensing criteria for Attorneys. Thus a person living in Nome having a Section (C)(1) claim would receive the same damage award as a person living in Juneau. This should reduce Attorney Fees Costs on the Defense Side and Plaintiff Side.

SECTION 11: 09.17.040(a) This section mirrors Section 104(a)(2) of the Internal Revenue Code which provides that injuries and damages that flow from a direct personal injury are generally exempt from inclusion of Gross Income. This action reflects that allowance.

SECTION 12: 09.17.040(d). This Language is very important as proposed. The reasons are as follows:

1. A defendant can make an offer of periodic payments and that offer can then be presented to the Jury, which currently cannot be done.
2. A plaintiff by allowing open presentation must be advised of his or her options to either receive a partial lump sum , future lump sums and future periodic payments on a tax exempt basis.
3. This eliminates the potential for dissipation of the award, insures a steady income stream on a tax exempt basis and eliminates dependency on Social Programs. These payments can be custom tailored to meet the different needs of any individual claimant.
4. Most importantly it allows a person to retain their pride and dignity for their lifestyles.
5. More importantly is mandates that the injured party is made aware of their choices. **Currently it is estimated that about 95% of Injured Parties are not advised or properly advised on this issue.** In most cases it could amount from Thousands to Millions of dollars in increased Tax Benefits. It would certainly eliminate potential Legal Mal-Pratice cases.

SECTION 13: 09.17.040(e): This section is excellent as it allows claimants to Choose between a Structured Settlement funded by United States Government Obligations or an Annuity from a Life Insurance Company or Combination of Both. Additionally it mandates diversification from affiliated companies, allowing potential for Independent payment choice.

SUGGESTION: WOULD RECOMMEND THAT **AND OR** BE INSERTED AS SOURCE TO ALLOW COMBINATION CHOICES. The Government Obligations Structured Settlement Trust pays up to a Maximum of 30 years, while an annuity can provide for a Life Time of Benefit.

page 3

The rating concept is an excellent Addition as most Instances Defense Carriers presently Insist on this Rating Criteria.

SECTION 14: 09.17.040(f): Would recommend the following change. "INFLATION MEANS THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR ALL ITEMS, AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPT.. OF LABOR OR ANY SUCCESSOR AGENCY" This allows adjustments to be made on a United States Basis wherever and whenever living. Additionally it more closely meets the Internal Revenue Service Ruling dated June 7, 1994 which allows these increases to be exempt from Gross Income under Section 104(a)(2) of the code.

SECTION 21: 09.30.065: The language in this section is excellent as it forces both Parties to Realistically evaluate their case before trial. This should reduce the costs of litigation on both defense and plaintiff sides, and foster settlements in less time, thus providing **better service from the Court System to the Public**

SECTION 23: 09.30.070(a) This Language is excellent as it sets the yearly rate on a fixed date. More importantly is eliminates all unnecessary Attorney billings and arguments on how to calculate different periods and additionally as important a more realistic rate that is reflectively of Annual Market Conditions. If forces a focus on the merits of the case rather than trivia data.

SECTION 36: 09.65.210: This Section is needed particularly Section (4).

SECTION 44 through 61: These sections are excellent as the Availability of Legal Services for these cases under \$100,000.00 is virtually nonexistent and would provide a much needed enhancement and better Service to the Public. This is Patterned after a Pilot Program in New Hampshire, which was very successful as about 20 hours of time were on an average spent on both sides, Plaintiff and Defense .

This Bill is Sorely Needed by Alaska for all of it's people to provide uniform and more expeditious treatment for all parties, victims and innocent defendants. It will help forge the 3rd Branch of Government to Provide better service to the Public, which currently is lacking. **One only has to look at their average time to adjudicate an average Civil Trial. This figure is about 200% above the recommended time frames.**

BARTLETT REGIONAL HOSPITAL
3260 Hospital Drive, Juneau, Alaska 99801

Telephone: (907) 586-2611

Fax Number: (907) 463-4919

DATE:

2/19

TOTAL NUMBER OF PAGES

3

TO:

Guin

COMPANY:

FAX NUMBER:

FROM:

Robert Vaillant - 586-8438

COMMENTS:

Call Robert
re my 31

Mr. Chairman and Members of the Committee, my name is Robert Valliant, and I am representing the Alaska Hospital and Nursing Home Association. On behalf of the Association, we would like to go on record supporting the legislation before you. House Bill 58 contains two provisions that our 33 member Hospitals and Nursing Homes recognize as critical components in any Tort Reform legislation.

First is the provision for Relief from Civil Liability of hospitals for non-employees. The Hospitals and Nursing Homes take great care in credentialling both employees and non-employees to ensure certain standards of care are maintained. We believe that there is a duty by non-employees to maintain a certain level of responsibility for their own actions, and that Hospital and Nursing Homes should not be held liable for those negligent acts of non-employees over which it exercises little or no control.

The Second Provision also address the individual responsibility we feel the practitioner has to maintain a given level of liability insurance coverage. Hospitals and Nursing Homes become the deep pocket when uninsured or underinsured practitioners are sued; therefore, mandated minimum liability coverage for practitioners as a pre-requisite to immunity from Jackson vs Power for hospitals makes sense to us.

Finally, our gravest concern is that the Alaska Supreme Court Decision in the case of Jackson vs Power will be expanded to include institution liability for not just contracted practitioners but any practitioner that responds to a need for coverage at the Hospital or Nursing Home. We would like to prevent a Supreme Court ruling of this nature before it becomes a reality.

Once again, we strongly urge you to pass this bill out of your Committee.

*John
will call
to get on
with the
test.*

JOHN WHEATLEY
V.P. POLICY
THE SUPPORT INDUSTRY ALLIANCE

THANK YOU FOR THE OPPORTUNITY TO PROVIDE PUBLIC TESTIMONY ON AN ISSUE SO IMPORTANT TO THE PEOPLE OF THE STATE OF ALASKA.

MY NAME IS JOHN WHEATLEY AND I AM TESTIFYING TODAY AS VICE PRESIDENT, POLICY OF THE SUPPORT INDUSTRY ALLIANCE. THE ALLIANCE HAS OVER 300 MEMBER, COMPANIES AND INDIVIDUALS SUPPORTING PETROLEUM MINING AND RESOURCE DEVELOPMENT IN THE STATE OF ALASKA.

AS A STATE, WE ARE COMPETING FOR INVESTMENT DOLLARS ON A GLOBAL BASIS. WE MUST CONTINUE TO SEND THE MESSAGE THAT WE ARE "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-LARGE AND SMALL. THE EVER-INCREASING PRODUCT LIABILITY, PERSONAL INJURY SUITS, AND UNPREDICTABILITY OF DAMAGE AWARDS HAS CAUSED COSTS TO SOAR. TORT REFORM LEGISLATION WILL HELP CONTROL THESE EXPENDITURES WHILE ASSURING APPROPRIATE COMPENSATION FOR PERSONS INJURED THROUGH THE FAULT OF OTHERS.

OVER THE YEARS THE TORT LITIGATION SYSTEM HAS BEEN INCREASINGLY CRITICIZED BY MANY PUBLIC AND PRIVATE SECTORS. EFFORTS TO INSTITUTE CHANGE TO REDUCE OPPORTUNITIES FOR ABUSE, HOWEVER HAVE BEEN HINDERED FEARING A CHANGE IN THE SYSTEM WOULD NOT ALLOW JUST COMPENSATION FOR INJURY.

THE ALLIANCE BELIEVES TORT REFORM SHOULD:

- LIMIT NONECONOMIC DAMAGES.
- PROHIBIT PUNITIVE DAMAGES UNLESS MALICE OR CONSCIOUS ACTS SHOWING DELIBERATE DISREGARD FOR ANOTHER PERSON CAN BE SHOWN.
- LIMIT PUNITIVE DAMAGES.

- ALLOW JURIES TO BE INFORMED ABOUT AWARDS ALREADY COLLECTED BY CLAIMANTS FOR SAME INJURIES.
- ALLOW COURTS TO DECIDE EACH PARTY'S SHARE OF ~~OBLIGATION~~ ^{DAMAGES.}
- PROVIDE MONETARY SANCTIONS AGAINST ANY ATTORNEY IN CIVIL CASES FOR FILING FRIVOLOUS, UNNECESSARY, AND/OR LEGALLY DEFICIENT PLEADINGS.
- BAR DAMAGE SUITS IF INJURES WERE RECEIVED WHILE COMMITTING A FELONY.
- ESTABLISH GUIDELINES FOR THE ^{QUALIFICATION} ~~USE~~ OF EXPERT WITNESSES.

WE BELIEVE THE ABILITY TO RECOVER COSTS AND DAMAGES, TO BE MADE WHOLE, SHOULD BE PROTECTED. ~~PENALTIES FOR CRIMES ARE PRE SET IN CRIMINAL LAW.~~ PUNITIVE DAMAGES SHOULD BE ~~A PRE SET~~ ^{Added by} ~~AS WELL,~~ AND ASSESSED WHEN WILLFUL NEGLIGENCE OR MALICIOUS INTENT IS PROVEN. IF THE INTENT OF PUNITIVE DAMAGES IS TO PUNISH RATHER THAN REWARD, IT WOULD FOLLOW THAT A PORTION OF PUNITIVE DAMAGES COULD BE ALLOCATED TO THE STATE. ^{JDJ}

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.

THE ALLIANCE BELIEVES COMPREHENSIVE TORT REFORM IS A POSITIVE STEP TOWARD IMPROVING THE BUSINESS ENVIRONMENT IN ALASKA. WE SUPPORT H.B. 58.

Excellent!
Jim

WILLIS CORROON



Fax Transmission

From John Wheatley

Date 2/20/97

Willis Corroon Corporation of Anchorage

Telephone 907-562-2266

4220 B Street, Anchorage, AK 99503

Fax 907-563-6483

For enquiries on transmissions call

To Jim SOURANT

Company

Town/Country

Fax 1-907-465-3834

Number of pages 3 (including this cover)

Subject/reference HB SB

Message

Jim -

attached is proposed testimony
hanks

Alaska Oil & Gas Association

121 W. Fireweed Lane, Suite 207

Anchorage, Alaska 99503

Judy Brady, Executive Director - Marilyn Crockett, Assistant Executive Director - Ardie Gray, Public Affairs Manager -
Theresa Rockhill, Administrator - Tamara Sheffield, Support Services

Date:

2/19/97

Total # of pages including cover sheet:

2

To:

Company

Rep. Brian Portis Office
ATTN: Jim

From:

Ardie Gray

MESSAGE: _____

If problems occur during transmission call 907/272-1481

ATTENTION: This communication may contain information which is confidential and/or legally protected by attorney-client privilege or a similar privilege or protection. If you are not the intended recipient or a person or agency responsible for delivering this communication to the intended recipient, you are hereby notified that any disclosure, distribution or copying of these materials is strictly prohibited. If you have received this communication in error, please notify the sender immediately to arrange for its return or proper disposal. Thank you for your cooperation.

**ALASKA OIL AND GAS ASSOCIATION
POSITION ON
TORT REFORM LEGISLATION
February, 1997**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

The Alaska Oil and Gas Association believes Alaska should adopt reforms to its civil justice system:

- The Alaska civil justice system gives juries and judges discretion to impose unlimited punitive damages awards, without adequate guidelines or criteria necessary to insure the constitutional protection of due process.**
- Alaska's civil justice system discourages investment in the state. Firms assessing whether to invest or to conduct business in Alaska rather than in another state or country must take into account the legal risks that Alaskan law allows, and the substantial legal risks that can be incurred even in defending against frivolous civil actions.**

A variety of reforms have been suggested to address these problems. The Alaska Oil and Gas Association believes the most important are:

- Limitations on punitive damages. This reform would make it clear that awards beyond those necessary to compensate plaintiffs for real damages would need to be justified by clear and convincing evidence of outrageous conduct, and would be capped - as are sentences in criminal law - so that juries and judges could not impose financially ruinous or unlimited awards.**
- Judgments should be proportionate to fault. It is fundamentally unfair to require a defendant to pay a much larger share of damages than the defendant's share of fault.**

Other legitimate and important reforms are appropriate. However, the two reform areas above are particularly significant to companies who are sensitive to the large risks they face from disproportionate awards and unlimited punitive judgments. Reform of these two areas would reduce business risks, establish a greater degree of fairness, and bring Alaskan law into line with that found in progressive states interested in fairness and a competitive business climate.

Adopted by the AOGA Board of Directors, February 10, 1997.

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
FIRST INTERSTATE CENTER
999 THIRD AVE., SUITE 2600
SEATTLE, WASHINGTON 98104
FAX (206) 340-0289
(206) 292-8008

JUNEAU OFFICE
302 GOLD STREET
JUNEAU, ALASKA 99801
(907) 586-2210

ANCHORAGE OFFICE
550 W. 7TH AVENUE, SUITE 1000
ANCHORAGE, ALASKA 99501-3510
(907) 274-0556

February 19, 1997

via FAX (907)465-3834

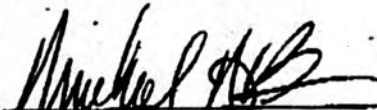
Jim Sourant
c/o Representative Brian S. Porter
Alaska State Legislature
District 20
State Capitol Building
Juneau, AK 99801-1182

Re: Sections 39 and 40
File No. 1795.6377

Dear Jim:

Attached are my proposed remarks to the Committee.

Very truly yours,


Michael A. Barcott

MAB:mb

Enclosure

BREACH OF WARRANTY	<u>4 years</u>
PRODUCT LIABILITY	<u>10 years</u> in all product liability actions
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

OHIO

PERSONAL INJURY	<u>2 years</u> for bodily injury; <u>1 year</u> for slander, libel, malicious prosecution, false imprisonment and medical malpractice (maximum <u>4 years</u> from occurrence); <u>4 years</u> for fraud.
WRONGFUL DEATH	<u>2 years</u>
PROPERTY DAMAGE	<u>2 years</u> ; <u>4 years</u> for recovery.

BREACH OF WARRANTY	<u>2 years</u> ; if contractual relationship; other - <u>2 years</u> .
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

OKLAHOMA

PERSONAL INJURY	<u>2 years</u> for injury to rights of another; <u>1 year</u> for assault, battery, libel, slander malicious prosecution, false imprisonment. <u>2 years</u> from discovery for medical malpractice.
WRONGFUL DEATH	<u>2 years</u>
PROPERTY DAMAGE	<u>2 years</u>
BREACH OF WARRANTY	<u>5 years</u>
PROFESSIONAL LIABILITY	<u>10 years</u> statute of repose for design professionals

OREGON

"STATUTE OF ULTIMATE REPOSE" Notwithstanding other longer statutory provisions as a result of tolling or delayed commencement or running of the statute of limitations, all actions for negligent injury to person or property must be brought within 10 years from the date of the act or omission complained of constitutionality upheld, Joseph v. Burns. Action accrues when injury manifests if injury not previously discoverable by exercise of due diligence, O'Gara v. Kaufman.

PERSONAL INJURY	<u>2 years</u> ; from discovery if fraud, deceit or medical malpractice (subject to 5 years max. unless fraud/deceit).
WRONGFUL DEATH	<u>3 years</u> from death-causing injury.
PROPERTY DAMAGE	<u>6 years</u>
BREACH OF WARRANTY	<u>4 years</u>
PRODUCT LIABILITY	<u>2 years</u> from date on which death, injury of damage occurs (from

SECTIONS 39 AND 40

Sections 39 and 40 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. Neither of these sections should be controversial.

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 either to be negligent or intentional. The Second is for unpaid wages. The Third is for breach of contract. The Fourth is for slander and 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. Thus, an insurer would typically issue a "reservation of rights" letter advising the defendant that it would be responsible for a negligently-caused bodily injury but would reserve its rights to deny coverage for an intentionally-caused bodily injury. The claims for unpaid wages, breach of contract, slander, and discrimination have no insurance coverage.

year for libel, slander, false imprisonment, malicious prosecution and 2 years from act for other professional malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 4 years, but within 10 years of injury or first sale, or 2 years from "being informed" if asbestos-related disease.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 10 years statute of repose in cases of latent defects.

NEVADA

PERSONAL INJURY 2 years except 3 years from discovery if fraud or mistake. Four years after injury or 2 years after discovery, whichever occurs first. Statute does not run if injury concealed. Minors: statute does not run until age 10 for brain damage or birth defects; if sterility alleged, statute runs 2 years after discovery.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals in cases of patent defects, 8 years statute of repose in cases of latent defects.

NEW HAMPSHIRE

PERSONAL INJURY 3 years for all personal actions including medical malpractice (from discovery of injury and causal relationship).

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY Sales contract - 4 years

PRODUCT LIABILITY 3 years from injury, but not more than 12 years after product left control of manufacturer. 12 year statute of repose held unconstitutional, Heath v. Sears, Roebuck & Co. 464 A.2d 288 (N.H. 1983).

PROFESSIONAL LIABILITY 8 years statute of repose for design professionals

NEW JERSEY

PERSONAL INJURY 2 years for injury to person from wrongful act, neglect or default. Two years from accrual of claim (discovery).

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 6 years

Because the insurer has issued a reservation of rights letter on the First Count, the defendant is entitled to select its own counsel and, under current practice in Alaska, that lawyer will 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.

Section 39 of this Bill provides that the insurance carrier in this situation need only pay for the costs of defending the First Count. Because that is the only count 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, upon which Alaska has modeled much of its judicial and statutory law in this area.

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 take a "scorched-earth" approach to litigation because of the lack of real financial constraints. In the case I have utilized here, it would be realistic to expect the independent counsel to defend Counts 2-5 with extensive discovery and motion tactics that run up the costs of litigation for the plaintiff who must respond to

PRODUCT LIABILITY

6 years

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

MARYLAND

PERSONAL INJURY

3 years for "all civil actions", except 1 year for assault, battery, libel, slander and 5 years from injury or 3 years from discovery for medical malpractice.

WRONGFUL DEATH

3 years

PROPERTY DAMAGE

3 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

3 years

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

MASSACHUSETTS

PERSONAL INJURY

3 years for torts, contract (personal injuries), replevin medical malpractice, assault, battery, libel, slander, false imprisonment.

WRONGFUL DEATH

3 years (death must occur within two years of death--causing injury).

PROPERTY DAMAGE

3 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

3 years

PROFESSIONAL LIABILITY

6 years statute of repose for design professionals

MICHIGAN

PERSONAL INJURY

2 years, except 1 year for slander or libel. Medical malpractice claims subject to 6 year statute of repose from date of occurrence. For minors injured before 8th birthday, medical liability claims must be brought within 6 years of event with exceptions of some claims brought after 10th birthday and injuries to reproductive system.

WRONGFUL DEATH

3 years (death must occur within two years of death--causing injury).

PROPERTY DAMAGE

3 years

BREACH OF WARRANT

3 years

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

MINNESOTA

PERSONAL INJURY

2 years - medical malpractice and torts resulting in personal injury.

these tactics. By requiring the defendant individually to shoulder the burden of expense for defending Counts 2-5, there is a realistic fiscal check on the activities of independent counsel.

Section 40 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 claim giving rise to the obligation for defense is Count 1. Section 40 makes it clear that the insurer can deal directly with the plaintiff to settle the injury claim. Once that case is 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 claim 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.

BREACH OF WARRANTY

4 years - Sales. 2 years - Personal injury or death.

PROFESSIONAL LIABILITY

6 years statute of repose for design professionals

ILLINOIS

PERSONAL INJURY

2 years; 1 year - slander or libel. Two years from injury. Foreign object: 1 year from discovery or 2 years from injury whichever is later. Idaho Supreme Court upheld constitutionality of this statute in Holmes v. IWASA, 657 P.2d 476 (1983).

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

5 years

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

Amended 1995. Action is barred in all product liability actions after 12 years from first sale or 10 years from first sale to a user or consumer.

2 years from date of known injury of 8 years if unknown; in no case more than 12 years from date product leaves possession of manufacturer, or 10 years from date of first possession by initial owner, whichever period expires earlier; 12-year limitation not applicable to negligence actions, Dintelman v. Alliance Machine Co. constitutionality of statute of repose upheld, Thorton v. Mono Manufacturing Co.

PROFESSIONAL LIABILITY

4 years statute of repose for design professionals in cases of patent defects, 10 years statute of repose in cases of latent defects.

INDIANA

PERSONAL INJURY

2 years for injury to person, character or personal property. 6 years for fraud. Two years from discovery for medical malpractice.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

6 years - Realty 2 year - Personalty.

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

2 years after cause of action accrues or 10 years after delivery of the product to initial user, provided that if action accrues more than 8 but less than 10 years after initial delivery, it may be brought any time within 2 years of accrual.

PROFESSIONAL LIABILITY

10 years statute of repose for design professionals

IOWA

PERSONAL INJURY

2 years for injury to person or reputation, whether contract or tort; discovery accrual for medical malpractice.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

5 years

SCOMM

101A:6

To: Roger Holmes and Mike Lessmeier

Fm: Jim Sourant

Re: Jeff Bush letter (attached)

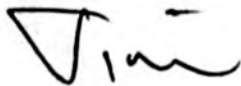
March 8, 1997

Brian just had time to review the first few pages of the attached letter. He agrees with some of it, and wants to think about the rest of it after he has read and analyzed it.

In the meantime, he wants both of you to read the criticisms and proposed substantive changes. If we can make any changes without undermining our own objectives, Brian wants you to propose some specific language.

Let's talk about it. House Finance Committee hears testimony Thursday, and will vote on amendments on Friday.

Thanks for your help.

A handwritten signature in dark ink, appearing to read "Jim", with a stylized flourish at the end.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442
TDD: (907) 465-5437

March 7, 1997

The Honorable Brian Porter
Alaska State House of Representatives
Capital Room 216
Juneau, Alaska

Re: CS SSHB 58 (Judiciary) (Tort Reform)

Dear Representative Porter:

You requested my comments on various items in the current version of the tort reform bill, CSSSHB 58 (Jud) ("HB 58"), which I believe represent drafting errors and are not necessarily consistent with your intent, as expressed in your testimony and comments in the House Judiciary Committee.

In addition, I would like to take this opportunity to set out several of the significant policy concerns raised by this bill. As I testified before the Judiciary Committee, I firmly believe that the bill developed by the Task Force and introduced by the Governor represents an effective, comprehensive, and meaningful approach to tort reform. That bill was arrived at after several comprehensive meetings, a great deal of debate, and with the input and research of experts in the field. It is the product of significant compromise on the part of representatives of all competing interests in this debate, and it is, quite frankly, disheartening to have this product cast off without appropriate legislative consideration. To the extent HB 58 differs from that approach, these differences generally tend to be poorly conceived and represent extreme views, contrary to public policy and the interests of most Alaskans.

Technical Issues:

Section 5: Statute of Repose. In previous versions of the tort reform legislation, the statute of repose proposal has included a provision permitting a contractual override of the time limit, an exemption that I understand the state and several municipalities routinely rely upon. At the hearing, you indicated that this was intended here. However, it is not included in the language currently in the bill, and there is some concern that without it a contractual override is impermissible.

Section 6: Special Statute of Repose for Minors. You stated that the intention of this change is to impact the statute of limitations for minors, not the statute of repose. But as drafted, it is a limiting statute of repose, more restrictive than the general one for adults contained in section 5. It is, in short, anti-children, and the Department of Law believes that it is very likely unconstitutional on that ground.

I think that this change is unnecessary and that your concerns are already addressed in the bill. The general statute of repose of eight years would be applied to children as well as adults irrespective of the statute of limitations, meaning that a child's cause of action for birth injuries would be extinguished at age eight. To make sure that this would be the court's interpretation, you could even make an amendment to AS 09.10.140 to clarify that the tolling of the statute of limitations for minority does not extend the statute of repose.

Section 9: Standard for Punitive Damages. The phrase being inserted should say "deliberate disregard of another person's rights" instead of "deliberate disregard of another person." This is consistent with the case law, as most recently expressed in the *Chizmar* case.

*or Acc future
Med
taxi*
Section 11: Taxes on Award. I believe this section, allowing a defendant a deduction for taxes that would otherwise be payable were the award taxable, should only apply to damages for traditionally taxable compensatory damages, such as damages for lost wages. It should not apply to compensation for medical costs incurred. As written, a verdict for medical reimbursement only could have a deduction applied, leaving the victim without full compensation for his medical expenses. *??*

??
Section 15: Collateral Benefits. The last sentence in proposed AS 09.17.070(b), which allows a plaintiff to submit evidence of payments made for the purchase of the collateral source, is apparently meaningless and probably should be removed. Under (a) and the first part of (b), the amount paid by the collateral source is automatically deducted from the judgment, irrespective of the amount paid by the plaintiff for the benefit. *Call*

Sections 20: Expert Witness Qualifications. This section is unclear and needs substantial work. Is this section targeting medical malpractice, or all professional malpractice? And who is a "professional"; is the term linked to licensure (e.g., barbers and hairdressers, architects, marine pilots); does it include attorneys? And since Alaska does not have any such thing as "board certification" (in most profession, that is done by private associations), what is meant by "recognized by the state"? If this contemplates that the Division of Occupational Licensing will be required to evaluate and "recognize" various professional associations' certification programs, it will require expertise and analysis far beyond that which the division currently has, and there will be a substantial fiscal note attached to this bill.

This section is also troubling in its application. When the Task Force reviewed these concepts, Dr. Wilson noted the problems associated with its implementation in a state as small as Alaska. For example, he stated that there are only three neurosurgeons in Alaska, and two are partners. Thus, if any one of the three is involved in a lawsuit, the pool of available experts is either one or two, they will certainly have a conflict of interest, and they may be unwilling or unable to testify. Under current law, the other party could hire an internist or other surgeon to testify. But if this provision is adopted, the only option would be to find a "hired gun" from Outside, which even you have admitted is not a desirable situation.

The solution is really quite simple: remove proposed AS 09.20.185(a)(1) and (3), but leave in (2), thereby requiring that the expert be trained and experienced in the relevant discipline, but not necessarily "licensed" or "board certified."

Significant Policy Concerns:

charge *Even if we* *children* *state of repose, they'll attack it as state* *of other state of repose, absent after state*

Sections 5 & 6: Statutes of Repose. As you know, Governor Knowles vetoed last year's tort reform legislation, stating that although he supports meaningful tort reform, it must preserve the ability of Alaskan victims to be compensated for injuries caused by others. Nothing flies in the face of this goal more than statutes of repose, which can cut off a person's right to compensation even before they are injured. Such statutes are likely unconstitutional and certainly bad public policy. As discussed above, the special, shorter statute of repose for children is particularly troubling. In addition, the exceptions for "fraud or collusion" of parents or guardians will likely lead to litigation between parents and their children, and against the state in cases where the state has (or had) custody of the injured child.

the women *do comp for* *to* *sample*

Section 8: New Cap on Noneconomic Damages. These proposed caps on non-economic damages are irresponsibly low, designed to penalize not the victim of a minor injury (who will be fully compensated in any event), but only those severely injured by another's wrongdoing. Furthermore, the exceptions for spinal injuries are irrational; why should someone have a higher cap if one loses the use of a limb due to a spinal injury, but not if the limb is cut off? Why is the use of one arm deemed more serious than the loss of one's sight? I believe that if the legislature is going to impose a graduated scale of caps, either the application of the scale to individual cases should be left with the jury, as under current law, or the scale has to bear some rational relationship to the severity of the injury, as is done under the workers' compensation system. Finally, it must be noted that empirical studies have demonstrated no connection

Sec. 6. of damage caps and the amount paid for liability insurance rates.

38

Sec.. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the amount of damages awarded by a court or a jury under (a) of this section for all claims of a party to the action, including a loss of consortium claim, arising out of a single injury or death may not exceed \$300,000.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (a) of this section may not exceed \$500,000 when the claimant, as a result of the injury;

(1) is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord;

(2) has lost both arms or both legs or an arm and a leg;

(3) has permanently impaired cognitive capacity, is incapable of making independent, responsible decisions, and is permanently incapable of independently performing the activities of normal, daily living;

(4) is both deaf and blind; or

(5) has third degree burns over one half or more of the claimant's body.

(d) The limit under (b) or (c) of this section does not apply to noneconomic damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony, if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(e) Multiple injuries sustained as a result of a single incident shall be treated as a single injury

compensation. As Representative Croft pointed out, this section invites abuse by defense lawyers, making false accusations about any number of non-parties in order to reduce their own client's responsibility.

These provisions are especially onerous in light of the proposed changes to the offers of judgment rules. This best can be demonstrated by example. Assume P sues D for injuries sustained when D struck P with his automobile. D then claims that the state should be liable because the road was not properly maintained, or alternatively that the responsibility lies with the Seattle used car salesman or the Japanese automaker because the steering mechanism was defective (a good defense lawyer could come up with any number of possibilities). To the extent that the people D accuses are beyond the reach of the court, such as the salesman and possibly the automaker, D has a free rein to claim anything. As for the condition of the road, P is left little choice but to sue the state. The state's attorney, however, will then immediately serve an offer of judgment in the amount of \$100. P's dilemma is this: if he accepts the offer and dismisses the state (because he actually agrees that the state is not responsible), D will continue to assert the state's fault, and P will have to try to defend against that position without the state's help. On the other hand, if P rejects the offer in order to keep the state in the case, even though he thinks there is no state responsibility, he risks having to pay the state's full attorney fees and costs. As the Task Force rightly concluded, this is unfair.

Section 21: Offers of Judgment. Although the goal of encouraging early settlements is laudable, this section goes too far. It is not uncommon for defense attorneys to expend far in excess of a case's value, simply to "prove a point" (plaintiffs' attorneys do not have the same incentives, so the same cannot generally be said of them). Our current system, with definite awards under Rule 82 in most cases, acts as a reasonable but not unfair disincentive to so-called "frivolous" lawsuits. To create a situation where a party is at risk for fees far in excess of the potential value of the case makes it virtually impossible for the small guy to bring even valid claims, and grants the large insurance carriers a tool to coerce beneficial but unjustified settlements. No.

Section 36: ER Doctors. This provision, overruling *Jackson v. Powers*, was also rejected by the Task Force, because when people go to an emergency ward, they expect to receive treatment from the hospital, not a particular doctor. But even more disturbing is the very low insurance requirement contained in the bill. In the emergency room, we are likely dealing with serious injuries, and the medical expenses of an injury incurred there could easily use up \$500,000 before any consideration is made for other compensatory damages. The Task Force, in considering this provision, learned that the hospitals in Anchorage already require their ER doctors to carry \$1 million/\$2 million in E&O coverage, and we were told by the medical community that insurance in those amounts was readily available to any ER doctor in Alaska. Requiring anything less, especially where the hospital will not be able to be held liable, is unconscionable and can only be designed to hurt victims in serious cases. }

Section 62: ADR. I must also make a pitch for inclusion of an ADR pilot program in the bill. I understand that the Court System has threatened a significant fiscal note if the provisions contained in the Task Force bill are adopted. Suffice it to say that their threats are unfounded. You have indicated to me that you support ADR; if so, why not include it here, in a bill that has a reasonably good chance of passage? In crafting the proposal for the Task Force, the Procedures Subcommittee was very much aware of the Court System's threats, and we worked very hard to minimize the financial impact of the pilot program. If a pilot program is included in this bill, I would be very happy to work with you in

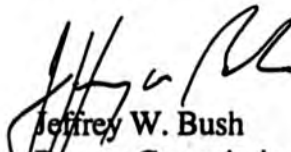
reviewing and analyzing any fiscal notes relating to this section, in order to minimize any impact on the state treasury.

I must also respectfully disagree with some comments you made at the conclusion of the Judiciary hearing (and which I have since heard you repeat on *Gavel-to-Gavel* and before the AARP board), in which you stated that the reason the Task Force did not come up with more recommendations was because of the requirement of approval by a super-majority before a recommendation could go forward. It was unfortunate that you were unable to attend the final Task Force meetings, when the votes on these important issues were taken. I have, in my file, the voting results for each item on the Task Force agenda. Only once was a recommendation rejected where the recommendation received more than half of the votes. That recommendation related to the statute of repose, where the vote was 10-7 in favor; but that was a far less onerous proposal than the one in this bill: it was for a 10-year statute of repose that tolled for minors and incompetents. Provisions relating to allocation of fault were rejected 8-9, and the section to overrule *Jackson v. Powers* was withdrawn by unanimous consent. No other recommendations even made it out of committee, nor were any that were rejected in committee offered to the full Task Force. The proposal relating to expert witness qualifications was rejected *unanimously* by the Procedures Committee, and proposals relating to collateral benefits and periodic payments were rejected *unanimously* by the Damages Committee.

I think we both agree that tort reform is necessary. However, I firmly believe that the general approach adopted by the Task Force -- to reduce the time and expense of litigation for all parties while continuing to protect the rights of all Alaskans -- is superior to the approach taken in HB 58, which appears designed more to protect insurance companies at the expense of innocent Alaska victims. I encourage you to rethink your approach.

Please feel free to contact me at any time to discuss these or related issues.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

cc: Representative Mark Hanley, Co-Chair, House Finance Committee
Pat Pourchot, Legislative Director, Governor's Office
Attorney General Bruce Botelho

FAX TRANSMITTAL

TO: Representative Therriault, 465-3884

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SECTIONAL ANALYSIS
OF
HOUSE BILL 58

Prepared by:

Alaska Action Trust
P.O. Box 102323
Anchorage, Alaska 99510
(907) 258-4040

March 13, 1997

Mary LONG
~~ATL~~
= AL Academy
of
Trial Lawyers

SECTIONAL ANALYSIS OF CSSS H.B. 58

Alaska Academy of Trial Lawyers Alaska Action Trust

The Governor's Advisory Task Force on Civil Justice Reform studied court statistics on cases in Alaska and heard from two nationally recognized experts on civil justice reform. Contrary to the stated need for H.B. 58, the Task Force found that there was no explosion in the number of tort cases filed, no evidence of high jury awards, and no evidence of significant numbers of frivolous lawsuits. The Task Force found no evidence of any crisis in insurance cost or availability, or that tort reform in Alaska would have any effect on insurance rates for Alaskans. The following explains why H.B. 58 neither helps Alaskans nor follows the recommendations of the Governor's Task Force.

Section 5: Reduces the ability of those injured by faulty design or construction to recover for their injury by prohibiting claims after eight years from completion of the construction, even if the negligent work is not discovered until after then. *The Governor's Task Force did not recommend any changes to the statute of repose.* This provision will prevent local governments, school districts and homeowners from recovering damages for faulty construction which is typically not discovered until a fire, roof collapse or other event occurs long after completion of the project.

Section 6: Gives only doctors and other health care professionals special protection when their negligence injures young children. This section requires malpractice actions affecting children under six years of age to be filed by the child's eighth birthday, even if the effect of the doctor's negligence can't be recognized because of the infant's age. No other person or professional is given this special protection. *The Governor's Task Force did not recommend any changes regarding when lawsuits must be filed for injuries to children.*

Section 8: This provision reduces the existing cap on non-economic damages. Section 8 not only limits the non-economic damages which can be recovered for *all* claims to \$300,000 in most situations, but also does not allow non-economic damages to exceed \$500,000, even when someone is quadriplegic and has suffered permanent brain damage. Current law at least allows the cap to be exceeded when injuries are serious. *The Governor's Task Force did not recommend reductions to the cap on non-economic damages because this only harms those who are most severely injured.*

Section 9: This section changes the current legal definition for punitive damages by eliminating reckless conduct as the basis for an award of punitive damages. This means that punitive damages cannot be assessed against a drunk driver and could not have been assessed against Exxon for the oil spill. *The Governor's Task Force did not recommend any changes in the definition of punitive damages.*

Section 10: Section 10 places an absolute cap on punitive damages regardless of the wealth of the wrongdoer or the nature of the wrongdoer's conduct. This section also requires 50% of punitive damages to be deposited to go to the state. This section only benefits large multi-national corporations, like Exxon, against whom a punitive damage award of \$600,000 would have no effect. *The proposal of the Governor's Task Force on punitive damages allowed for consideration of the financial gain of the defendant and did not recommend that punitive damages go to the state.*

Section 11: This section reduces all damages an injured person might receive by a federal income tax rate, even though these damages are not taxed under state or federal law. This unfair provision means that an injured person's recovery is automatically reduced 20%-30%. *No such proposal was made by the Governor's Task Force.*

Sections 12 - 14: Force an injured person to accept any damages which are awarded for past injury as installment payments to be paid over time in the future. This takes away the choice of injured Alaskans to decide for themselves whether periodic payments are fair, or meet their needs. *This proposal was rejected by the Governor's Task Force.*

Section 15: This section requires a jury to reduce the damages an injured person can receive by the amount of insurance payments the person has received for the injury, or might receive in the future. *The Governor's Task Force concluded that such a proposal would increase the cost of insurance and rejected the idea.* This provision in HB 158 will only make trials more time consuming and complicated.

Sections 16 - 19: These sections allow responsibility for injury to be allocated to a person or corporation which is not even brought into the lawsuit or into the courtroom. This means that someone at fault can shift blame to an "empty chair" without the jury ever hearing evidence to the contrary. *The Governor's Task Force rejected this proposal because innocent victims might be denied full recovery.* Section 19 even allows punitive damages to be allocated to someone who is not in the courtroom.

Section 21: This section forces injured persons to guess about the outcome of their case with near certainty at the risk of having to pay all of the defendants' actual attorney's fees. This section and

Section 16 encourage a negligent defendant to delay disclosing actors who may be at fault. *The changes to Section 21 are far harsher to victims than the recommendations about offers of judgment made by the Governor's Task Force.*

Other Sections make it more difficult for those injured to have experts testify on their behalf (Sec. 20); give special protection to hospitals (Sec. 35); limit attorney fee recoveries in punitive damage cases (Sec. 34); and make trials more complicated (Sec. 49). *None of these changes were recommended by the Governor's Task Force.*

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Re Bush H.R.

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CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/27/97

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and
5 providing for an effective date."

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

7 * **Section 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this
8 legislature as a matter of public policy to

9 (1) encourage the efficiency of the civil justice system by discouraging
10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses, resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
15 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

16 (7) ensure that one of several tortfeasors is not held responsible for the
17 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
18 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

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

21 (9) ensure that in actions involving the fault of more than one person, the fault
22 of each claimant, defendant, third-party defendant, person who has been released from
23 liability, or other person responsible for the damages be determined and awards be allocated
24 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
25 (Alaska 1994); and

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

29 * Sec. 2. AS 06.05.473(h) is amended to read:

30 (h) After the payment of all other claims, including interest at the rate of 10.5
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

2 * Sec. 3. AS 09.10.050 is repealed and reenacted to read:

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

11 * Sec. 5. AS 09.10.055 is repealed and reenacted to read:

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

25 (b) This section does not apply if

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

- 27 (A) prolonged exposure to hazardous waste;
28 (B) an intentional act or gross negligence;
29 (C) fraud or fraudulent misrepresentation;
30 (D) breach of an express warranty or guarantee; or
31 (E) a defective product; in this subparagraph, "prod

al injury, death, or

resulted from

tee; or

h, "product" means

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an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

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

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.065. Limitation of actions against health care providers. (a)

Notwithstanding the disability of minority described under AS 09.10.140(a), an action based on professional negligence may not be brought against a health care provider if the injured person is, on the date of the alleged negligent act or omission, less than six years of age unless the action is commenced before the person's eighth birthday.

(b) The limitation imposed under (a) of this section is tolled during any period in which there exists

(1) fraud, including fraud or collusion by a parent, guardian, insurer, or health care provider, resulting in the failure to bring an action on behalf of an injured minor;

(2) intentional concealment of facts that would give notice of a potential action; or

(3) the undiscovered presence of a foreign object that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign object.

(c) In this section,

(1) "health care provider" has the meaning given in AS 09.55.560;

(2) "professional negligence" has the meaning given in AS 09.55.560;

(3) "professional services" has the meaning given in AS 09.55.560.

* Sec. 7. AS 09.10.070(a) is amended to read:

of a person -- on

Building
of a child
of a child

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O-6

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 8. AS 09.17.010 is repealed and reenacted to read:

Sec. 09.17.010. Noneconomic damages. (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$300,000.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$500,000 when the claimant, as a result of the injury,

(1) is a hemiplegic, paraplegic, or quadriplegic and has permanent functional ~~limbs resulting from injury to the spine or spinal cord,~~ or ~~is incapable of making~~ ~~of a single incident~~ shall be

* Sec. 9. /

ay not be awarded in reported by clear and liberate disregard of

Right
 1 another person by the person from whom the punitive damages are sought.

2 * Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

3 (b) Except as provided under (c) of this section, the amount of punitive
 4 damages awarded by a court or jury under (a) of this section may not exceed three
 5 times the amount of compensatory damages awarded or \$300,000, whichever amount
 6 is greater.

7 (c) The amount of punitive damages awarded by a court or jury under (a) of
 8 this section may not exceed four times the amount of compensatory damages awarded
 9 or \$600,000, whichever amount is greater, if

10 (1) the wrongful conduct or omission arose in connection with a
 11 commercial activity motivated by financial gain; and

12 (2) the likelihood of death or serious bodily injury from the commercial
 13 activity was previously known by the person responsible for making policy decisions
 14 relating to the commercial activity and the knowledge was gained from previous
 15 instances of death or serious bodily injury arising from the same wrongful conduct or
 16 omission, regardless of where the previous wrongful conduct or omission occurred.

17 (d) If a person receives an award of punitive damages, the court shall require
 18 that 50 percent of the award be deposited into the general fund of the state. This
 19 subsection does not grant the state the right to file or join a civil action to recover
 20 punitive damages.

21 * Sec. 11. AS 09.17.040(a) is amended to read:

22 (a) In every case where damages for personal injury or death are awarded by
 23 the court or jury,

24 (1) the verdict shall be itemized between economic loss and
 25 noneconomic loss, if any, as follows:

26 (A) [(1)] past economic loss;

27 (B) [(2)] past noneconomic loss;

28 (C) [(3)] future economic loss;

29 (D) [(4)] future noneconomic loss; [AND]

30 (E) [(5)] punitive damages; and

31 (2) the amount of damages awarded shall be reduced by the

1 amount of federal and state income tax that would have been paid on damages
2 contained in the verdict under tax rates in effect on the date of the injury or
3 death; this paragraph does not apply to an award of damages if the damages are
4 taxable under federal or state law.

5 * Sec. 12. AS 09.17.040(d) is amended to read:

6 (d) In an action to recover damages, the court shall, at the request of a [AN
7 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
8 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
9 periodic payments rather than by a lump-sum payment. If a portion of the judgment
10 awarded is owed to an attorney under a contingent fee agreement, that portion
11 of the judgment shall be reduced to present value, if necessary, and paid in a
12 lump sum, and the remaining portion of the judgment shall be paid as provided
13 under this subsection.

14 * Sec. 13. AS 09.17.040(e) is amended to read:

15 (e) Except as provided in this subsection, if a judgment is paid by
16 structured settlement type periodic payments, the [THE] court shall [MAY] require
17 security be posted in the form of United States government obligations [,] in order
18 to ensure that funds are available as periodic payments become due. The court may
19 not require security to be posted if the state, a self-insured municipality, or an
20 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
21 obligation to discharge the judgment, provided that an authorized insurer must be
22 rated by two nationally recognized independent rating agencies to be in the two
23 highest categories of quality and financial soundness. If a judgment is paid by
24 annuity type period payments, the court shall require the annuity be purchased
25 from an authorized insurer that is rated by two nationally recognized independent
26 rating agencies to be in the two highest categories of quality and financial
27 soundness. The injured party shall determine whether a structured settlement or
28 an annuity is the source of the periodic payments. The injured party may not be
29 required to accept a structured settlement or annuity from the defendant's or
30 other party's insurer or from any affiliated companies of the insurer.

31 * Sec. 14. AS 09.17.040(f) is amended to read:

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

* Sec. 15. AS 09.17.070 is repealed and reenacted to read:

Sec. 09.17.070. Collateral benefits. (a) A claimant in an action for personal injury or death may only recover damages that exceed amounts received by the claimant, or that with reasonable probability will be received in the future by the claimant, as compensation for the injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except when

(1) the collateral source is a federally funded program that by law must seek subrogation;

(2) the collateral source has a right of subrogation under federal law;

(3) the collateral source is the payment of a dependent child's medical bills by the injured child's parent that does not result from insurance coverage;

(4) the benefit consists of death benefits paid under life insurance; or

(5) the benefit consists of workers' compensation benefits received under AS 23.30.

(b) A person defending a claim may introduce into evidence at trial an amount paid or payable as a benefit to the claimant as a result of the personal injury or death

1 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 2 sickness, disability, accident, or income-disability insurance; insurance that provides
 3 health benefits or income-disability coverage; and a contract or agreement of a group,
 4 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 5 or reimburse the cost of medical, hospital, dental, or other health care services,
 6 disability, or lost wages. However, evidence of a collateral source described under
 7 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 8 defending a claim elects to introduce evidence described in this subsection, the
 9 claimant may introduce evidence of the amount that the claimant has paid or
 10 contributed to secure the claimant's right to the collateral benefit, including the cost
 11 to the claimant resulting from depleted or exhausted coverage.

12 (c) A person who provides a collateral benefit admissible under (b) of this
 13 section may not recover an amount against the claimant as reimbursement for those
 14 benefits and may not be subrogated to the rights of a claimant against a person
 15 defending a claim.

16 * Sec. 16. AS 09.17.080(a) is amended to read:

17 (a) In all actions involving fault of more than one person [PARTY TO THE
 18 ACTION], including third-party defendants and persons who have been released
 19 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 20 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 21 indicating

22 (1) the amount of damages each claimant would be entitled to recover
 23 if contributory fault is disregarded; and

24 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 25 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 26 [AND] person who has been released from liability, or other person responsible for
 27 the damages to each claimant regardless of whether the other person, including
 28 an employer, is or could have been named as a party to the action [UNDER
 29 AS 09.16.040].

30 * Sec. 17. AS 09.17.080(b) is amended to read:

31 (b) In determining the percentages of fault, the trier of fact shall consider both

1 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 2 causal relation between the conduct and the damages claimed. [THE TRIER OF
 3 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 4 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
 5 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
 6 PERSON CANNOT BE DISTINGUISHED.]

7 * Sec. 18. AS 09.17.080(c) is amended to read:

8 (c) The court shall determine the award of damages to each claimant in
 9 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
 10 AS 09.16.040,] and enter judgment against each party liable. The court also shall
 11 determine and state in the judgment each party's equitable share of the obligation to
 12 each claimant in accordance with the respective percentages of fault as determined
 13 under (a) of this section. Except as provided under AS 23.30.015(g), an
 14 assessment of a percentage of fault against a person who is not a party may only
 15 be used as a measure for accurately determining the percentages of fault of a
 16 named party. Assessment of a percentage of fault against a person who is not a
 17 party does not subject that person to civil liability in that action and may not be
 18 used as evidence of civil liability in another action.

19 * Sec. 19. AS 09.17.900 is amended to read:

20 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
 21 that are in any measure negligent, [OR] reckless, or intentional toward the person or
 22 property of the actor or others, or that subject a person to strict tort liability. The term
 23 also includes breach of warranty, unreasonable assumption of risk not constituting an
 24 enforceable express consent, misuse of a product for which the defendant otherwise
 25 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
 26 Legal requirements of causal relation apply both to fault as the basis for liability and
 27 to contributory fault.

28 * Sec. 20. AS 09.20 is amended by adding a new section to read:

29 **Sec. 09.20.185. Expert witness qualification.** (a) In an action based on
 30 professional negligence, a person may not testify as an expert witness on the issue of
 31 the appropriate standard of care unless the witness is

1 (1) a professional who is licensed in this state or in another state or
2 country;

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

5 (3) certified by a board recognized by the state as having acknowledged
6 expertise and training directly related to the particular field or matter at issue; however,
7 this paragraph does not apply if a board does not exist that could certify the witness
8 in the particular field or matter at issue.

9 * Sec. 21. AS 09.30.065 is amended to read:

10 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
11 the trial begins, either the party making a claim or the party defending against a claim
12 may serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. If within 10 days after the service of the offer the
15 adverse party serves written notice that the offer is accepted, either party may then file
16 the offer and notice of acceptance together with proof of service, and the clerk shall
17 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
18 evidence of that offer is not admissible except in a proceeding to determine the form
19 of judgment after verdict. If the judgment finally entered on the claim as to which an
20 offer has been made under this section is at least five percent, less [NOT MORE]
21 favorable to the offeree than the offer, the offeree, whether the party making the
22 claim or defending against the claim, shall pay all costs as allowed under the
23 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
24 incurred by the offeror from the date the offer was made, [THE INTEREST
25 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
26 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

27 (1) if the offer was served no later than 60 days after both parties
28 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
29 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
30 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
31 REDUCED BY FIVE PERCENT A YEAR];

1 (2) if the offer was served more than 60 days after both parties
2 made the disclosures required by the Alaska Rules of Civil Procedure but more
3 than 90 days before the trial began, the offeree shall pay 75 percent of the
4 offeror's reasonable actual attorney fees;

5 (3) if the offer was served 90 days or less but more than 10 days
6 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
7 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
8 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
9 YEAR].

10 * Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

11 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
12 of this section, that offeror shall be considered the prevailing party for purposes of an
13 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
14 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
15 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
16 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
17 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
18 this section. A party who receives attorney fees under this section may not also
19 receive attorney fees under the Alaska Rules of Civil Procedure.

20 (c) If an offeror makes more than one offer of judgment, the last offer served
21 on the adverse party shall be considered to be a revocation of any prior offer of
22 judgment.

23 * Sec. 23. AS 09.30.070(a) is amended to read:

24 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
25 and decrees for the payment of money, including prejudgment interest, is three
26 percentage points above the 12th Federal Reserve District discount rate in effect
27 on January 2 of the year in which the judgment or decree is entered [10.5
28 PERCENT A YEAR], except that a judgment or decree founded on a contract in
29 writing, providing for the payment of interest until paid at a specified rate not
30 exceeding the legal rate of interest for that type of contract, bears interest at the rate
31 specified in the contract if the interest rate is set out in the judgment or decree.

1 * Sec. 24. AS 09.30.070 is amended by adding a new subsection to read:

2 (c) Prejudgment interest may not be awarded for future economic damages,
3 future noneconomic damages, or punitive damages.

4 * Sec. 25. AS 09.50.280 is amended to read:

5 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
6 rendered for the plaintiff, it shall be for the legal amount found due from the state with
7 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
8 DUE] and without punitive damages.

9 * Sec. 26. AS 09.55.440(a) is amended to read:

10 (a) Upon the filing of the declaration of taking and the deposit with the court
11 of the amount of the estimated compensation stated in the declaration, title to the estate
12 as specified in the declaration vests in the plaintiff, and that property is condemned
13 and taken for the use of the plaintiff, and the right to just compensation for it vests in
14 the persons entitled to it. The compensation shall be ascertained and awarded in the
15 proceeding and established by judgment. The judgment must include interest at the
16 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
17 awarded that [WHICH] exceeds the amount paid into court under the declaration of
18 taking. The interest runs from the date title vests to the date of payment of the
19 judgment.

20 * Sec. 27. AS 09.55.535(k) is amended to read:

21 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
22 apply to arbitrations under this section if they do not conflict with the provisions of
23 this section; arbitrations under this section shall be conducted in accordance with
24 procedures established by any rules of court which may be adopted and according to
25 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
26 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

27 * Sec. 28. AS 09.55.536(a) is amended to read:

28 (a) In an action for damages due to personal injury or death based upon
29 the provision of professional services by a health care provider, including a person
30 providing services on behalf of a governmental entity, when the parties have not
31 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within

20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

* Sec. 29. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

(6) What specifically caused the medical injury?

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

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

* Sec. 30. AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs

1 **first.** However, the court may relax this prohibition upon a showing of good cause by
 2 any party. If the panel has not completed its report within the 30-day period
 3 prescribed in (c) of this section, the court may, upon application, grant **the panel** [IT]
 4 an additional 30 days.

5 * **Sec. 31.** AS 09.55.536 is amended by adding a new subsection to read:

6 (i) This section applies regardless of whether a party in the action or the health
 7 care provider whose professional services are the subject of the action is a
 8 governmental entity or in the public or private sector.

9 * **Sec. 32.** AS 09.55.560(1) is amended to read:

10 (1) "health care provider" means an acupuncturist licensed under
 11 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
 12 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
 13 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
 14 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
 15 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
 16 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
 17 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
 18 hospital as defined in AS 18.20.130, including a governmentally owned or operated
 19 hospital; [AND] an employee of a health care provider acting within the course and
 20 scope of employment; **an ambulatory surgical facility and other organizations**
 21 **whose primary purpose is the delivery of health care, including a health**
 22 **maintenance organization, individual practice association, integrated delivery**
 23 **system, preferred provider organization or arrangement, and a physical hospital**
 24 **organization.**

25 * **Sec. 33.** AS 09.55.560 is amended by adding new paragraphs to read:

26 (4) "professional negligence" means a negligent act or omission by a
 27 health care provider in rendering professional services;

28 (5) "professional services" means service provided by a health care
 29 provider that is within the scope of services for which the health care provider is
 30 licensed and that is not prohibited under the health care provider's license or by a
 31 facility in which the health care provider practices.

1 * Sec. 34. AS 09.60 is amended by adding a new section to read:

2 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
3 collects a contingency fee in connection with an action for personal injury, death, or
4 property damage and the damages awarded by a court or jury include an award of
5 punitive damages, the contingent fee due the attorney shall be calculated after that
6 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
7 from the total award of damages.

8 * Sec. 35. AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
10 electrical service to the public for compensation under a certificate of public
11 convenience and necessity issued by the Alaska Public Utilities Commission under
12 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
13 injury resulting from an act or omission of the utility relating to the production or
14 delivery of electrical service.

15 (b) This section does not preclude liability for civil damages that are the result
16 of an intentional, reckless, or negligent act or omission.

17 * Sec. 36. AS 09.65 is amended by adding a new section to read:

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
19 hospital is not liable for civil damages as a result of an act or omission by an
20 emergency room physician who is not an employee or actual agent of the hospital if
21 the hospital provides notice that the emergency room physician is an independent
22 contractor and the emergency room physician is insured as described under (c) of this
23 section. The hospital is responsible for exercising reasonable care in granting
24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
25 and for taking appropriate steps to revoke or restrict privileges in appropriate
26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
27 emergency room physician who is an independent contractor. The notice required by
28 this subsection must be posted conspicuously in all admitting areas of the hospital,
29 published at least annually in a newspaper of general circulation in the area, and must
30 be in substantially the following form:

31 Notice of Limited Liability

1 The following emergency room physicians are independent
2 contractors and are not employees of the hospital:

3 (List specific emergency room physicians)

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

6 (c) A hospital is not immune from liability under (a) of this section for an act
7 or omission of an emergency room physician who is an independent contractor unless
8 the emergency room physician has liability insurance coverage in the amount of at
9 least \$500,000 for each incident and the coverage is in effect and applicable to those
10 health care services offered by the emergency room physician that the hospital is
11 required to provide by law or by accreditation requirements.

12 (d) In this section,

13 (1) "emergency room physician" means a physician who provides health
14 care services in a hospital emergency room;

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

17 (3) "independent contractor" means an emergency room physician who
18 is not an employee or actual agent of the hospital in connection with the rendition of
19 the health care services.

20 * Sec. 37. AS 09.65.210 is repealed and reenacted to read:

21 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
22 **under the influence of alcohol or drugs.** A person who suffers personal injury or
23 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
24 recover damages for the personal injury or death if the injury or death occurred while
25 the person was

26 (1) engaged in the commission of a felony, the person has been
27 convicted of the felony, including conviction based on a guilty plea or plea of nolo
28 contendere, and the felony substantially contributed to the personal injury or death;

29 (2) engaged in conduct that would constitute the commission of an
30 unclassified felony, a class A, or a class B felony for which the person was not
31 convicted and the conduct

1 (A) substantially contributed to the personal injury or death; and
2 (B) is proven by the defendant in the civil trial by clear and
3 convincing evidence;

4 (3) fleeing after the commission, by that person, of conduct that would
5 constitute an unclassified felony, a class A felony, or a class B felony or being
6 apprehended for conduct that would constitute an unclassified felony, a class A felony,
7 or a class B felony if the conduct

8 (A) during the flight or apprehension substantially contributed
9 to the injury or death; and

10 (B) is proven by the defendant in the civil trial by clear and
11 convincing evidence;

12 (4) operating a vehicle, aircraft, or watercraft while under the influence
13 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
14 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
15 the conduct substantially contributed to the personal injury or death; or

16 (5) engaged in conduct that would constitute a violation of
17 AS 28.35.030 for which the person was not convicted if the conduct substantially
18 contributed to the personal injury or death and the conduct is proven by the defendant
19 in the civil trial by clear and convincing evidence.

20 * Sec. 38. AS 09.68 is amended by adding a new section to read:

21 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
22 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
23 information relating to the compromise or other settlement of all civil litigation. The
24 information, including the case name and file number, a general description of the
25 claims being settled, the dollar amount of the settlement, to whom the settlement was
26 paid, and any nonmonetary terms, shall be collected on a form developed by the
27 council for that purpose.

28 (b) The information received by the council under (a) of this section is
29 confidential. This restriction does not prevent the disclosure of summaries and
30 statistics in a manner that does not allow the identification of particular cases or
31 parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

* Sec. 39. AS 21.06 is amended by adding a new section to read:

Sec. 21.06.087. Insurance report. (a) The director shall require reporting of and shall compile information necessary to evaluate the effect of the measures enacted in this Act on the availability and cost of insurance in the state.

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

(c) The director shall adopt regulations to implement and interpret this section, including requiring insurers doing business in the state to provide information necessary for the division to carry out its responsibilities under (a) and (b) of this section. If there are indications of market disruption, the director may waive all or part of the reporting requirements in this section.

(d) Beginning June 1, 2000, the information compiled under (a) of this section shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

(e) The division may consult with the Alaska Judicial Council when determining what information to require to be reported under (a) - (c) of this section and when implementing the compilation required under (a) of this section.

* Sec. 40. AS 21.89.100(d) is amended to read:

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance policy, the obligation of the insurer to pay the fee charged by the independent counsel is limited to the rate that is actually paid by the insurer to an attorney in the ordinary course of business in the defense of a similar civil action in the community in which the claim arose or is being defended. In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly. A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

* Sec. 41. AS 21.89.100 is amended by adding a new subsection to read:

(h) When an insured is represented by independent counsel, the insurer may settle directly with the plaintiff if the settlement includes all claims based upon the allegations for which the insurer previously reserved its position as to coverage or accepted coverage, regardless of whether the settlement extinguishes all claims against the insured.

* Sec. 42. AS 23.30.015(g) is amended to read:

(g) If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)] of this section [,] insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter. If the employer is allocated a percentage of fault under AS 09.17.080, the amount due the employer under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).