

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.06 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 568



November 21, 1996

Rep Brian Porter
State Capitol
Juneau, Ak 99801-1182

Dear Brian:

Penair is involved right now in a scenario that clearly highlights the need for tort reform.

We lost a Goose ~~on a flight from Anchorage to Juneau~~. The one passenger was a highly compensated, ~~executive~~. He was relatively young, and left a wife and two daughters.

Enclosed is copy of the letter from her attorney, estimating purely economic value of \$2.7 million. (by the way, there will be no finding of any negligence on our part whatsoever).

In past years, we normally carried a \$20 million Combined Single Limit (CSL) for any accident. As you know, that sum is available for all the passengers collectively. If there were nine passengers, each estate would be entitled to over two million, or varying amounts as the case proved. In this case the entire twenty million would have been available.

Two years ago the London underwriters, primarily the BAIG, (British Aviation Insurance Group) simply refused to write any more Alaskan commuters, period. That leaves us with only two underwriters in the world, AIG (Aviation Insurance Group in Atlanta) and USAIG (US Aviation Insurance Group in New York, different company!).

They absolutely refuse to write the CSL any more, so we are now limited to one million dollars per seat. Most of the other operators only have \$500,000 per seat, and some of the real small operators are at \$150,000.

The reason given is not particularly related to the perceived accident rate or difficult operating conditions in Alaska. Rather the overwhelming problem is the fact, or at least perception, that Alaska has a history of the highest punitive damage jury awards in the nation.

PAGE TWO

So back to the letter from [REDACTED], you see him [REDACTED] about the punitive damages being 12 to 16 million. And this apparently is possible without any negligence by the defendant!

My first reaction was to realize that Fenair is exposed, so I examined our customer base to see where potential problems lay. That resulted in the enclosed letter to the Alaska Marine Pilot group. So a direct result of the insurance problem is impacting the ability of some companies to do business. I am preparing similar letters to other customers.

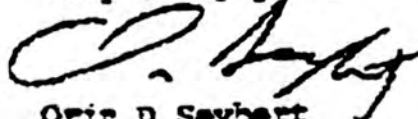
I have thought of another argument for reform. Since the limits are so low, there is actually less money available for the average Alaskan claimant. If we could just cap the punitive damages there would be more insurance coverage available.

For instance the Jisair crash at Lake Hood in September killed three tourists, but they only had \$150,000 per seat insurance. Since there were no other assets, it doesn't make any difference what the judgement is, but if it were easier for underwriters to write higher limits, there would then be more money available in cases such as that.

Anyway, as I told you I am now highly motivated to help write the bill this session, and I intend to be there.

I would like to ask for your help in letting me know when things are happening during the session, and who the key players are that I need to work on.

Very truly yours



Orin D Seybert
President

CC: Gail Phillips
Rick Halford



November 8, 1966

Capt. Stephan Moreno
Alaska Marine Pilots
2622 38th Ave S. W.
Seattle, Wa 98126

Dear Steve:

We recently concluded a very, very difficult insurance renewal. Not only did the price increase drastically, we were not able to get any increase in limits. We still have only one million dollars for passenger liability.

In view of our recent tragedy it has made me realize that Penair cannot afford to be put in such a position again.

So I am in the process of identifying charter groups and individuals where the resource generated does not justify the risk associated with the contract. Certainly the Alaska Marine Pilots (and any marine pilot) is a perfect example.

Therefore, I am sorry to say that effective immediately we will no longer be able to provide transportation to your group.

This limitation applies only to charter or contract operations involving the nine or less passenger planes. We were able to get proper limits on the larger aircraft operating the schedules out of Anchorage.

I am having our attorney look into the possibility of having a limitation of liability agreement the customer could execute which would limit the exposure in the event of an accident. If such becomes available we will contact your groups at that time for the purpose of discussing the resumption of service.

Very truly yours

Orin D Seybert
President

CC: Hal Snow



November 26, 1996

Magone Marine
P. O. Box 442
Dutch Harbor, Ak 99692

Dear Dan:

On September 30 we concluded a very, very difficult liability insurance renewal. Not only did the price increase drastically, but for the second year in a row we were unable to get passenger liability limits over one million dollars per passenger seat.

After our accident of August 11, it has become apparent that under present Alaska law judgements in wrongful death claims can be many millions of dollars, even without any negligence.

So I have been looking at each charter customer, trying to analyze the possible exposure of Penair. It occurs to me that your divers are probably young and highly compensated, which would lead to such an excessive award.

Therefore, I must decline to provide you with such charter services, we simply cannot accept the risk.

My attorney is working on some sort of "hold harmless" or limitation of liability that the passenger could execute, we hope to have that available in the next few weeks.

Meanwhile, the real problem is the present Alaska laws, this situation clearly illustrates the need for Tort reform. I intend to be working on this issue during the upcoming legislative session, and would appreciate any help you might be able to give.

Very truly yours,

Orin D Seybert
President

BISS AND HOLMES

ATTORNEYS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS, OF COUNSEL
ROGER F. HOLMES

3948 CLAY PRODUCTS DRIVE
ANCHORAGE, ALASKA 99517
TELEPHONE (907) 248-8013
FAX (907) 243-6695

WASILLA OFFICE
MC31 BOX 5111
WASILLA, ALASKA 99654
TELEPHONE (907) 376-5318

February 23, 1997

Representative Brian S. Porter
Alaska State Legislature
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: House Bill 58 (Sponsor substitute)

Dear Representative Porter:

This will confirm my conversation with Jim Sourant of your office concerning the Statute of Repose. I mentioned to Jim that all professionals in the State of Alaska are now covered by "claims made" professional liability insurance. This means that the claim must arise and be made during the policy period. When a professional retires the custom is to buy "tail insurance." This insurance covers the professional for claims made during the policy period but which do not arise until after the professional has retired and no longer carries insurance.

At the present time, most professional "tail" endorsements only cover three years into the future. In certain limited situations a five year "tail" endorsement is possible. You do not need much insurance savvy to figure out that without a statute of repose, all professionals who spend their lives practicing in Alaska have a substantial uninsurable risk in their retirement years.¹

Most professionals carry insurance to protect their clients (patients) as well as to protect themselves and their families. An uninsured loss over five years after retirement without adequate resources to combat the suit or income potential to recoup the loss is a devastating situation for the retired professional. Such a claim could result in the professional and his/her family requiring substantial state aid in their declining years.

¹The alternative if for the retired professional to continue to purchase "claims made" insurance for the remainder of his/her retirement years. For most professionals this is prohibitively expensive without income from the practice of their profession. For instance, some many physicians pay in excess of \$50,000 a year for "claims made" insurance.

Representative Brian S. Porter
February 23, 1997

Very truly yours,

BISS & HOLMES

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

Roger F. Holmes
/RFH

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
580 W. 7TH AVENUE, SUITE 1000
ANCHORAGE, ALASKA 99501-3510
(907) 274-0888

February 21, 1997

VIA FACSIMILE - (907) 465-3422

Marianne Burke
Commissioner of Insurance
State of Alaska
333 Willoughby Ave.
Juneau, AK 99811-1720

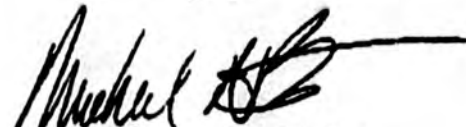
Dear Ms. Burke:

Thank you very much for talking with me yesterday about the proposed Sections 39 and 40 of SSHB58. I have attempted to find some published decision or article which discuss the abuses that these sections are intended to counter. Unfortunately, I have been unable to locate any such publication. I do, however, have very real firsthand knowledge of these abuses by independent counsel in specific cases. I have spoken with the clients that I have represented in those cases and while they are very comfortable with me providing the details, they are concerned about providing client names or case names.

I do harken back to our conversation, however, and your apparent opinion that independent counsel's bill for uncovered claims should not be the responsibility of the carrier. If that is the case, we presume that the Division would not object to codifying that concept rather than leaving it to the vagaries of the litigation process.

I would be most happy to provide whatever additional information I can. I will be in my office for the rest of this day and in our Juneau office Monday morning.

Very truly yours,



Michael A. Barcott

MAB/amf

AMF\C:\WP51\NOTTER\BURKE.LTR

Ketchum



AIR SERVICE, INC.

MAIL: P.O. BOX 190588

ANCHORAGE, ALASKA 99519-0588

On the North Shore of Lake Hood

907-243-5525

800-433-9114

FAX 907-243-8311

E-mail: ketchum@alaska.net

Rep. Brian Porter

2-21-97

Dear Congressman Porter,

We support HB 58 regarding Tort Reform. The escalating costs of litigating and the awards for aviation accidents continue to hamstring our industry.

It has become increasingly difficult to factor our costs due to the unpredictable insurance rates. Currently the market of available insurances are so limited that many small operators are being forced out of business or are uninsuring.

This added cost effects all other aspects of our business. This fluctuating cost detracts from maintenance, pilot training, new equipment acquisitions, payrolls, etc., etc.

We support protecting the traveling public with liability coverages comparable with the rest of the country.

Sincerely,

Craig Ketchum
President



Home Page- <http://www.alaska.net/~ketchum/KETCHUMFLYINALASKA.html>

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Alaska State Legislature



Official Business
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State Capitol
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(907) 465-3720
(907) 465-2689

Speaker of the House of Representatives

February 19, 1997

Mr. Willem S. Van Hemert
CRW Engineering Group
3900 Arctic Blvd., Suite 203
Anchorage, AK 99503-5781

Dear Mr. Van Hemert:

Although I look forward to meeting with constituents and friends, sometimes the busy schedule here in Juneau and last minute changes make that impossible. I sincerely appreciate your taking the time to stop by and am glad that you were willing to meet with my aide, Judi Jordan, when I couldn't be there.

From what Judi tells me, the Alaska Professional Design Council emphasizes its support for a change to the Statute of Repose to 8 years as presented in Rep. Porter's bill as well as the mandatory arbitration provision in the Governor's version. In addition, she mentioned the need to extend the AELS for 6 years and to change the Mining Engineer position to a non-designated position. I will keep in mind AELS' desire to add the Landscape Architects for licensing under the AELS and the need for changing the current examiners position to an Executive Director position as well. Your position statement is very helpful, and I will refer to it often and the various issues come up during the session.

Again, I would like to thank you for bringing your concerns to my attention. I hope that you will continue to let me know the issues that are important to you. Whenever I can be of help, please feel free to call on me.

Sincerely,

A handwritten signature in cursive script, reading "Gail Phillips".
Gail Phillips
SPEAKER OF THE HOUSE

GP:jmj

cc: Representative Brian Porter - re: HB 58

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Fax (907) 224-3248

February 18, 1997

Representative Brian Porter
Alaska State Legislature
State Capitol
M/S 3100
Juneau, Alaska 99801-1182

FAXED & MAILED

Dear Representative Porter:

The City of Seward continues to support your tort reform legislation, including the revisions to-date. Municipalities and taxpayers are deeply impacted by rising costs associated with claims. Since 1986, insurance and claim costs have been a major factor in municipal tax increases and have, in some cases, influenced communities to limit or eliminate recreation and other public services.

We are concerned for our youth, yet due to the increase in public liability, municipalities are reducing and/or eliminating recreational facilities and activities, such as skateboard parks, that would provide our youth with constructive activities instead of idle time which causes many of our youth to get in trouble in their communities.

The City supports tort reform legislation that will:

- ▶ Relieve hospitals of liability for negligent acts of an emergency room contract physician if the doctor carries malpractice insurance.
- ▶ Decrease the statute of limitations from 6 to 3 years for contract disputes, attorney malpractice and damages to personal property.
- ▶ Set a "statute of repose" which is like a statute of limitations, at 8 years for damages caused by exposure to hazardous substances, defective products or fraud. The limit is currently 15 years.
- ▶ Establish a pilot program for alternative dispute resolution.
- ▶ Cap a punitive damage award by tying it to the compensatory award in the case, with limits.

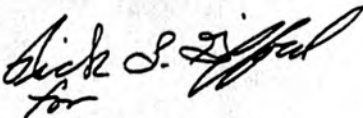
REPRESENTATIVE PORTER
Tort Reform Legislation
Page 2

We should work together to provide services the public wants in the safest, most cost-efficient manner. High insurance premiums and claims interfere with local government's ability to do our part of the job. We all want to do more for our citizens, but must not be afraid to provide needed services like skate parks because of punitive legal actions.

Thanks for your help!

Sincerely,

City of Seward

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

Ronald A. Garzini,
City Manager

RAG:rg

cc: Governor Tony Knowles
Senator John Torgerson
Representative Gary Davis
Seward Mayor and Council Members
Alaska Municipal League
Alaska Municipal League Joint Insurance Association



February 21, 1997

Representative Brian Porter
Alaska State Legislature
State Capital, Room 118
Juneau, AK 99801-1182

Dear Representative Porter:

The Ounalashka Corporation is a small village corporation in the land leasing business.

We are very supportive of HB58 for several reasons.

1. It puts a reasonable cap on punitive damages.

Almost all small businesses do not have insurance that covers punitive damages, therefore the outrageous award's being given can put a small business out of business.

2. It will most certainly keep nuisance lawsuits out of the court system.

3. I also believe that the legal cost per case will decline and therefore keep some cost control on insurance costs.

Please keep this bill on track and persuade the Governor to sign it this time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard L. Davis, Jr.", written over a horizontal line.

Richard L. Davis, Jr.
Chief Executive Officer

STUTZMANN ENGINEERING ASSOC., INC.

P.O. BOX 1429
FAIRBANKS, ALASKA 99707
(907) 452-4084

February 20, 1997

House Judiciary Committee

Re: HB 58, Tort Reform

Dear Sir:

Please support HB 58, the tort reform bill.

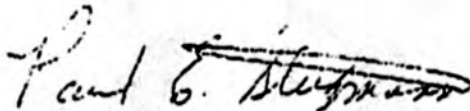
We are a small engineering firm and while we have not had legal problems, I do think there should be a limit in personal injury cases, especially where a plaintiff sues a firm that many not be even remotely connect with the injury. You will still be required to hire an attorney and defend yourself, which adds to the cost of business.

There should also be a time limit. Someone who sues years and years later should not be allowed to do so.

Many times an insurance company will pay just to get rid of the nuisance, which in turn makes business costs go up.

Lost wages and medical costs are not limited by this bill so please support it.

Sincerely,



Paul E. Stutzmann, President



CHANNEL CORPORATIONS

Channel Construction, Inc.
Channel Landfill

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

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

Facsimile transmittal to 465-4316

2/21/97
10:12 am

February 20, 1997

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

Dear Representative Green:

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

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

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

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

Very truly yours,



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

WRT:dk



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 21, 1997

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

Dear Representative Porter,

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

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

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

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

Sincerely,



Kevin Ritchie
Executive Director

CC: AML Legislative Committee
C:\Legcom\297\tortreformhb58

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

February 20, 1997

To: Representative Brian Porter
Re: HB58 - Tort Reform

Dear Sir:

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

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

Sincerely,

Glenn J. Kipp

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

Brian Porter

FAX TO: _____

FAX FROM: Guy Turner

DATE: 2/20/97

1 pages including this page.

Reference: Support for HB 58

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

I would like your support for
HB 58.

Sincerely,

Guy Turner
Guy Turner

NORTHERN PERFORMANCE

THUMPER & JULIE WILLIAMSON

e-mail - twwill@alaska.net

S.R. Box 300

Mt. 44 Fort Hay

Galena, Ak, 99501

Telephone 907-822-3545

Fax 907-822-3506

February 20, 1997

Rep. Brian Porter

cc. NFIB/Alaska's state legislative office

Dear Representative,

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

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

Thank you for your time and attention to this matter.

Sincerely



Julie Williamson

Owner

JW/jw

cc/ NFIB

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

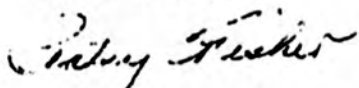
FEBRUARY 20, 1997

REP. BRIAN PORTER
ALASKA STATE CAPITAL
JUNEAU, ALASKA 99801

REPRESENTATIVE PORTER:

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

SINCERELY,



PATSY FISHER, SECRETARY

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

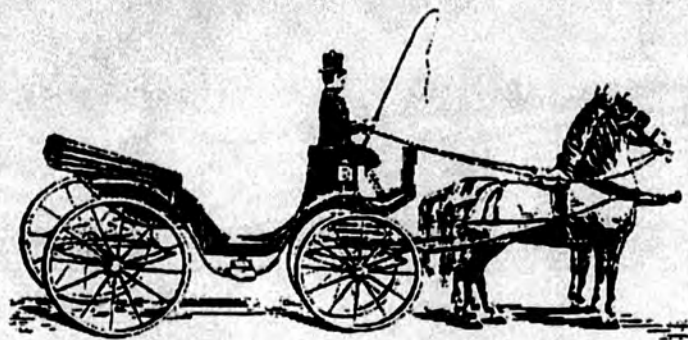
Rep - Porter, Green, Bunde, Rakeberg, James, Craft,
Berkowitz

✓ Support HB58 - Reform of tort.

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

Please Support this bill.

Sid Childers



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

FEBRUARY 20, 1997

Rep. Brain Porter

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

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

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

Jon Nauman, President

SOUTHEAST MARINE

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

February 20, 1997

Rep. Brian Porter

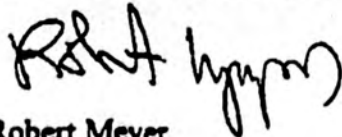
RE: HB 58 Tort Reform

Dear Mr. Porter;

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

Sincerely,

SOUTHEAST MARINE INC.

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

**Robert Meyer
Owner**

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

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

FEBRUARY 20, 1997

RE: HB 58

DEAR REP PORTER,

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

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

SINCERELY YOURS,

E. NEIL MACKINNON
PRESIDENT

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

Chilkat Guides, Ltd.

P.O. Box 100, Haines, Alaska 99827 • Ph. 907-766-2491 • Fax 907-766-2409
E-Mail: RaftAlaska@eworld.com



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

RE: HB58

Dear members of the committee,

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

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

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

Thank you,



Bart Henderson

Kennedy & Co. LLC

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

work phone: 907.376-1272
fax: 907.373-1272

Internet Home Page: <http://www.corecom.net/~kennedpp>
Internet Email Address: kennedpp@corecom.net

February 22, 1997

To: Representatives of the Alaskan Legislature

Re: Support of HB 58 - Tort Reform

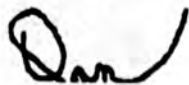
Thank you for your hard work on HB 58. We appreciate all of your efforts with helping Alaskans create a sensible tort framework.

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

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

Please approve HB 58.

Sincerely,



Janet

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

Feb-22-97 07:50A

907 373-2553

P.01

**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



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) 822-3375
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

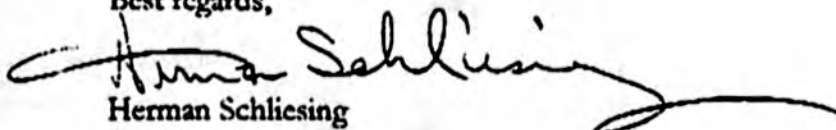
Reference: House Bill 58

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>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
	159	99.9	99.9

*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.

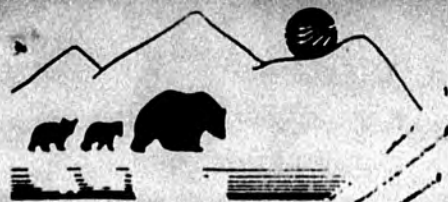
159 files contained sufficient documentation which could be used for the purpose of this study.

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



ARECA

Electric Service for 357,000 Alaskans

Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503-6650
(907) 561-6103
FAX (907) 561-5547

February 26, 1997

Rep. Brian Porter
State Capitol
Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

Dear Representative Porter:

Pursuant to my testimony before the House Judiciary Committee regarding House Bill 58 on Tort Reform on February 22, 1997, you requested that I provide you with information regarding Strict Liability cases that have arisen in the Lower 48. In addition, Representative Eric Croft requested similar information on cases in the state of Alaska. Enclosed is preliminary research performed by our attorneys on both of these subjects. Please let me know if you require any additional information.

We very much appreciate your consideration of our amendment.

Sincerely,

Eric P. Yould
Executive Director

cc: Rep. Joe Green

DEMOCRACY IN ACTION

LAW OFFICES OF
KEMPEL, HUFFMAN AND ELLIS
A PROFESSIONAL CORPORATION

ROGER R. KEMPEL
RICHARD R. HUFFMAN
DONALD C. ELLIS

ANDREW J. FIERRO
BOBBY DEAN SMITH
REBECCA C. PAULI

255 E. FIREWEED LANE, SUITE 200
ANCHORAGE, ALASKA 99503-2025
(907) 277-1684
FAX (907) 276-2493

WRITER'S E-MAIL ADDRESS:
rrk@khe.com

February 24, 1997

Eric Yould
Executive Director
Alaska Rural Electric
Cooperative Association, Inc.
703 W. Tudor Road, Suite 200
Anchorage, AK 99503

VIA FACSIMILE: 561-5547

Subject: 1997 Legislation--Strict Liability

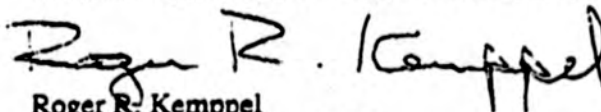
Dear Eric:

At your request, I am enclosing a short summary of some of the other states that have addressed the strict liability issue. Due to the time frame involved, the listing is not exhaustive but should provide some assistance to you in your testimony.

Please call if you have questions.

Sincerely yours,

KEMPEL, HUFFMAN AND ELLIS, P.C.



Roger R. Kempel
General Counsel for ARECA

:lka

Attachment

WISCONSIN

Ransome v. Wisconsin Electric Power Company, 275 N.W.2d 641 (Wis. 1979).

Lightning struck an electric line near a transformer. An electrical insulator was damaged, but power was not interrupted. Four days later, there was a heavy rainstorm. The transformer exploded, and the electricity going to a nearby house was estimated to be in the range of 1,000 to 4,800 Volts instead of the normal 120-140 Volt service. The house caught fire. The investigator from the fire department believed the fire was caused by an overload of electricity in the service entrance of the house.

Through the application of strict liability, the electric company was liable for the damage to the house. The court said the electricity was unreasonable dangerous and defective when delivered to the house by the electric company.

ILLINOIS

Elgin Airport Inn, Inc. v. Commonwealth Edison, 410 N.E.2d 620 (C.A. 2d Dist. 1980).

During routine testing of a line that service the inn, electric service was switched to an alternate line and then back to the regular line. When service was switched back to the regular line, a switching mechanism failed. The switching mechanism had been tested once a year for the previous five years and was always found to be in good operating condition. The last test had been done about one month prior to the incident. The defect that occurred could not have been discovered by the inspections that took place. The defect caused low voltage which damaged air conditioning motors at the inn. The problem was corrected in five minutes. The court said the electric company was not negligent but could, through strict liability, be liable for the damages.

OHIO AND NEW YORK

Courts in these states have decided not to apply strict products liability to electricity. These decisions are based upon the acknowledgement that the sale and delivery of electricity by a power company is a service and not the sale of a product. These courts reason that the amount a customer pays is dependent upon the length of time the electricity flows through the customer's meter. If the amount paid is tied to the amount of usage, this is more like a service than a product.

STRICT LIABILITY FOR THE SALE OF ELECTRICITY IN ALASKA

The Alaska Supreme Court has not been asked to decide if it would apply the doctrine of strict liability to the sale of electricity. There are trial courts which have been presented with strict liability claims. For example, in *Fancyboy v. Alaska Village Electric Cooperative, Inc.*, Case No. 4BE-94-97 Civil, the assertion was made that the electric company should be held strictly liable for allegedly defective electric service delivered to the plaintiffs' house. In that case, the plaintiffs had received electricity to their house by running a length of 12/2 Romex wire from a neighboring house. The plaintiffs' house caught fire, and it has been alleged that the fire was caused because of low voltage. The trial court dismissed the strict liability claim when the testimony showed that the electrical service was not defective as of the time AVEC delivered the electricity to the neighbor's house.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 58

Revision Date:

Title:

Tort Reform

Dept. Affected: Alaska Court System

BRU:

Trial Courts

Component:

Sponsor:

Rep. Porter

Requestor:

House Judiciary

COMPONENT SERIAL NO.

768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	4.9	4.9	4.9	4.9	4.9	4.9
TRAVEL						
CONTRACTUAL	8.7	8.7	8.7	8.7	8.7	8.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.6	13.6	13.6	13.6	13.6	13.6

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.6	13.6	13.6	13.6	13.6	13.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	13.6	13.6	13.6	13.6	13.6	13.6

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 284-8228

Date: 02/19/97

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 02/19/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

10:01 AM

Rev 1/97

Page 1 of 3

Alaska Court System
Fiscal Analysis
HB 58

HB 58 proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

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

Section 15 of HB 58 repeals and reenacts AS 09.17.070, relating to collateral benefits. This amendment essentially provides that the amount which a defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, at the present time only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

HB 58 can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by HB 58. In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 96, there were 1005 tort cases filed. Approximately 42 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 53 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 42 default judgments entered, with all entered for the plaintiff. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 96, there were 515 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System
Fiscal Analysis
HB 58

Personal Services**Position****Salary****Benefits****Total**

Pro Tem Judge, fully vested, Anchorage, PPT, 1 1/2 months

\$3,164

\$1,729

\$4,893

Contractual Services**Jury Fees****8,663****Superior Court-**42 - 1/2 day length collateral benefit hearings with 13
jurors at \$12.50 a half day (from trials)

6,825

District Court-21 - 1/2 day length collateral benefit hearings with 7
jurors at \$12.50 a half day (from trials)

1,838

Estimated Total Cost**\$13,556**

SCOMM

101A:8

Witness list for HB 58 before House finance committee on March 13, 1997

- ✓1. David McGuire, MD: Physicians (Anchorage office via telephone)
- ✓2. Pam LaBolle: Alaska Chamber of Commerce
- ✓3. Frank Dillon: Alaska Trucker's Association (Anchorage LIO)
- ✓4. Karen Cowart: The Alliance (Anchorage LIO)
- ✓5. Dick Cattanach: AGC (Anchorage LIO)
- ✓6. Mike Lessmeier: State Farm Insurance Company

ON Deck

Al Taniguchi
Olin Seybert

BRIEFING



755 Sansome Street, #450

San Francisco, CA 94111

Phone: (415) 989-0833

Fax: (415) 989-2411

E-Mail: PRIPP@aol.com

The Role of Punitive Damages in Civil Litigation: New Evidence from Lawsuit Filings

By Steven Hayward[†]

HIGHLIGHTS:

- This study offers new data on the frequency and the effects of punitive damages, based on a detailed review of more than 1000 lawsuits filed and concluded in San Francisco County Superior Court.
- Punitive damages are demanded in 27 percent of all cases where they are conceivably recoverable.
- Lawsuit filing data show that business and government defendants are four times as likely as an individual defendant to face a lawsuit that demands punitive damages.
- Lawsuits that include punitive damage demands take one-third longer to resolve than suits without these demands. The average lawsuit in our 1000 case sample took 15 months to resolve; cases with punitive damage demands took an average of 21 months to resolve.

[†] Steven Hayward is vice president, research for the Pacific Research Institute. William S. Loughman, an attorney and senior fellow in legal studies for the Pacific Research Institute, conducted the research into lawsuit filings.

- Punitive damage demands play a significant role in the out-of-court settlement process, where the vast majority of lawsuits are settled. Punitive damage demands tilt the playing field in favor of demanding parties, and increase out-of-court settlement amounts.
- Studies of punitive damage jury verdicts have been interpreted to suggest that the risk of receiving an adverse punitive damage judgment is remote. Closer scrutiny of the data, we argue, will show that the probability of punitive damage awards is vastly understated by these studies, in part because the data have been improperly qualified.

Introduction

The controversy over punitive damages in civil litigation has centered around the number of punitive damage awards, and the dollar amounts of such awards. Comprehensive data on this issue are scarce because there is no complete statistical database of trial verdicts. However, we believe that the focus of research on the number of punitive damage verdicts is misplaced to some extent. Focusing only on trial verdicts understates the scope and nature of the problem because the overwhelming majority of all lawsuits are resolved out of court. According to surveys of lawsuits, less than 2 percent of all cases go to trial. Looking only at the 2 percent of cases that reach a jury is like looking only at the visible tip of a large iceberg: it ignores the larger unseen part below the water line that may do more harm. Thus, to argue that punitive damage awards are rare is to miss an obvious point: *jury verdicts of any kind are rare*. No one would say, however, that because jury verdicts are rare, lawsuits themselves are insignificant or costless. Yet this is the inference that has been drawn from various punitive damage studies that focus only on trial verdicts.¹

The right question to ask about the civil litigation process is: *what is occurring in the other 98 percent of cases that are resolved out-of-court?* Because 98 percent of cases are resolved out of court, it is important for researchers and for public policy makers to understand what is going on in these cases, and how the legal rules, including the relative probability of punitive damages, affect the outcomes of the negotiation process for out-of-court settlements.

A large proportion of lawsuits today include punitive damage demands. Because 98 percent of lawsuits are resolved out-of-court, an important threshold question to answer is: *Do punitive damage demands in lawsuit filings have a significant effect on the out-of-court settlement process?*

¹ For example, the recent federal Department of Justice estimates of civil suit verdicts in state courts, discussed below, generated numerous newspaper headlines to the effect that "punitive damages are rarely awarded."

In an attempt to shed light on this question, the Pacific Research Institute conducted a detailed examination of more than 1000 lawsuit filings in San Francisco County Superior Court. We conclude that punitive damages are used as a weapon to generate more favorable out-of-court settlements, especially against business and government defendants.

What Lawsuit Filings Data Tell Us

Most punitive damage studies focus on verdicts in the handful of cases that proceed to trial. There are no empirical studies that examine how often, and against whom, punitive damage demands are employed.

In an attempt to shed light on these issues, we have scrutinized a month's worth of lawsuits filed between January 2, 1991 and February 1, 1991 in the Civil Division of the California Superior Court for the County of San Francisco. There were 1,024 lawsuits filed in this venue during this time period. Our analysis seeks to determine what patterns exist with respect to the distribution of claims for punitive damages and statutorily mandated multiple damages. We reviewed each case to determine the type of case, the principal cause of action claimed, whether punitive damages were demanded, how the case was resolved, and how long it took to resolve. We picked cases from 1991 because over 98 percent of cases from this time period had been resolved, either by trial, settlement, or dismissal, so most could be traced out to their conclusion. (A complete description of the methodology used in surveying and classifying these cases is available upon request.)

The highlights of the analysis of these cases include:

- **78 percent of all punitive damage demands were filed against a business defendant. (See Figure 1 below.)**
- **Government defendants face punitive demands in more than one-third of lawsuits filed against government agencies. (See Table 1 below.)**
- **Lawsuits that include punitive damage demands take about six months longer to resolve than lawsuits that do not include punitive damage demands.**
- **The probability of a punitive damage award if a case proceeds to trial is 14 percent or higher. For business defendants, the probability is more than 20 percent.**

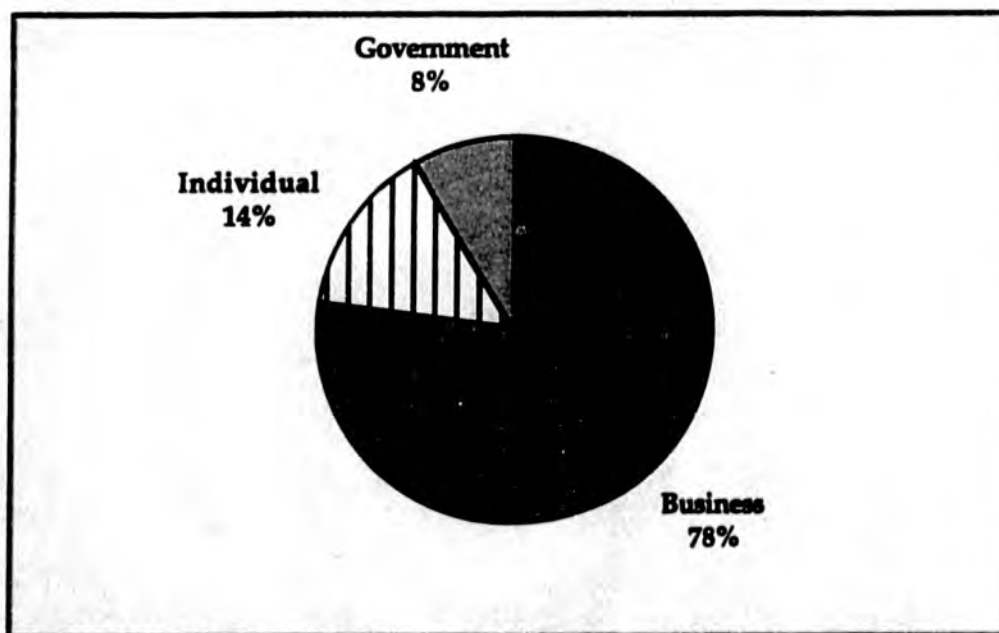
Of the 1,024 cases we examined, nine (9) cases were designated by the court as "sealed" and were unavailable for study. This left a pool of 1,015 lawsuits for study. 537 of these 1,015 cases, or 52.9 percent, were based on one of three principal causes of action where punitive damages are recoverable:

- 1) common law tort;
- 2) statutory tort or other statutory civil action; or
- 3) contract.*

The remaining civil filings within this pool—478 cases—consisted of civil law categories where punitive damages are not available or only very rarely available. These categories include equity causes of action (such as requests for a temporary restraining order); family law matters (chiefly dissolution of marriage proceedings); and civil petitions (such as a name change, to confirm an arbitration award, or to compel an audit entry).

Punitive damage demands were included in 145 of the lawsuits. This represents only 14 percent of the total pool of lawsuits, but 27 percent of the suits in areas where punitive damages are generally available (145 out of 537). Of these 145 filings, 112 or 78 percent were filed against a business defendant. This breakdown is displayed in Figure 1 below.

Figure 1: Distribution of Punitive Damage Demands by Type of Defendant



* Although punitive damages are not normally recoverable in contract lawsuits, many contract suits nowadays include secondary causes of action, such as fraud or "bad faith," which can suffice as a basis for punitive damages. For this reason, contract cases have been included in the pool of cases which can potentially involve a viable claim for punitive or statutory damages.

Of the 1,015 cases reviewed, only 22 went to trial, or 2.1 percent. This is comparable to the trial rate estimated in the Department of Justice study, and is consistent with most studies of lawsuits. Seventeen of these 22 cases were tort, statutory, or contract cases (in which punitive damages may be alleged). Of these 17 cases, seven were court trials (heard by a judge instead of a jury) and 10 were jury trials. Business entities were the primary defendant in 11 of the 17 trials; government entities and individuals were named as the primary defendants in three trials. Six of the 17 cases (two court trials, and four jury trials) included punitive damage demands. Two of the 17 cases settled during trial. Of the remaining 15 cases, plaintiffs won in seven of the trials, while defendants won eight. No punitive damages were awarded in these verdicts.

Table 1 categorizes cases according to the type of primary designated defendant (individual, business entity, government entity, and non-profit organization). Table 2 displays the same data according to type of case instead of type of defendant. The data in these tables demonstrate that punitive damages are overwhelmingly alleged against business entities. Businesses face punitive damage demands roughly four times as often as individuals.

Government Agencies Frequently Targeted

Another remarkable feature is apparent in Table 1: Government entities face punitive damage demands more than one-third of the time (35 percent). While defenders of punitive damages argue that punitive awards are necessary to prevent allegedly gross negligence, malice, or willful harm by businesses, such malicious behavior can hardly be just as frequently alleged in government. But government entities, like businesses, are perceived to have "deep pockets" and make attractive targets for punitive damage demands. Thus, taxpayers, and not just business interests, bear the direct cost of punitive damages. Many of the lawsuits brought against government, and defended at taxpayers' expense, are patently frivolous. For example, in one case from our research, *Buford v. California Department of Real Estate*, the plaintiff demanded \$3 million in punitive damages because the agency had refused to grant him a real estate license. The Department of Real Estate had to answer the suit in court, pointing out that the plaintiff was a convicted felon.

Another notable suit was *Shervin v. California State Police*. Alleging that five state police officers had burst into his home without a warrant but on the direct orders of Governor Deukmejian, Shervin demanded punitive damages based on seven different allegations, including "organized conspiracy, racketeering and/or extortion, to subvert the court and to obstruct justice."

Additional allegations included "torture," and the accusation that the California State Police were engaged in "an extensive, continued and perpetual gigantic organized conspiracy" of an unspecified nature. This was the *fourth* such lawsuit Shervin had brought against various government agencies in recent years, all defended at taxpayer expense.

Table 1: Civil Litigation Filings in Common Law Tort, Statutory Tort, and Contract Cases, and Punitive or Statutory Damage Claims Frequency by Category of Primary-Designated Defendant, 1991

INDIVIDUALS (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	169	16
Statutory tort/actions:	1	0
Contract:	34	5
Totals:	204	21
Frequency of punitive damage claims:		10.29%

BUSINESSES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	184	74
Statutory tort/actions:	26	19
Contract:	80	20
Totals:	290	113
Frequency of punitive damage claims:		38.97%

GOVERNMENT ENTITIES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	25	6
Statutory tort/actions:	6	4
Contract:	6	3
Totals:	37	13
Frequency of punitive damage claims:		35.14%

NON-PROFIT ENTITIES (as primary-designated defendant)		
Category of case:	Total # of cases:	Punitive damages demand included:
Common law tort:	5	0
Statutory tort/actions:	0	0
Contract:	1	0
Totals:	6	0
Frequency of punitive damage claims:		0%

Table 2: Distribution of Punitive and Statutory Damages Claims Among Civil Filings by Category of Lawsuit, 1991

Common Law Tort Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	169 (16)	184 (74)	25 (6)	4 (0)
P.D.s as %	9.47%	40.22%	24.0%	0%
PDs for all common law tort cases: 24.87% (96/382)				

Statutory Tort Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	1 (0)	26 (19)	6 (4)	0 (0)
P.D.s as %	0%	73%	66%	0%
PDs for all statutory tort cases: 66% (23/33)				

Contract Cases				
	Primary Designated Defendant (Punitive Damage Claims in Parenthesis)			
	Individual	Business	Gov't Entity	Non-Profit
Totals	34 (5)	80 (20)	6 (3)	1 (0)
P.D.s as %	14.71%	25%	50%	0%
PDs for all contract cases: 23.14% (28/121)				

Duration: Punitive Cases Take Longer to Resolve

Another significant finding of this sample of lawsuit filings concerns the average duration of the cases. We assigned a duration value to each case in the sample. The purpose of this analysis was to gauge the length of time until each case was resolved, and to see whether lawsuits that included punitive damage demands were concluded more quickly or less quickly than lawsuits that did not demand punitive damages. Our analysis of the duration of cases showed that lawsuits that did not include a punitive damage demand were concluded in an average of 15 months, while punitive damage lawsuits required an average of 21 months to conclude—a six month difference.

It is difficult to know whether this distribution of case filings, punitive damage demands, and average duration to resolution holds constant in the

case filings in other jurisdictions. But for *purposes of illustration* only, if this distribution were roughly similar in all the jurisdictions covered in the Department of Justice estimates, it would suggest that a business defendant facing a punitive damage demand would have about a 14 percent probability of receiving an adverse punitive damage judgment at trial—substantially higher than the 5.9 percent of trials that resulted in punitive damages in all of the trial verdicts considered as a whole in the DoJ study.² It should be emphasized here that many of the 75 counties included in the DoJ study, such as Washington state counties, do not allow or severely restrict punitive damages, so the overall probability in areas allowing punitive damages is certainly much higher than 14 percent.

Asking the Right Questions: The Dynamics of Lawsuit Settlement

To appreciate fully the significance of the findings of our analysis of lawsuit filings, it is necessary to understand how punitive damage demands may affect the calculus of out-of-court settlement demands. A review of the scholarship about this subject will establish the following conclusions:

1. **The *unpredictability* of a prospective punitive damage award contributes significantly to the *uncertainty* (and therefore the *risk*) of a court trial outcome.**
2. **Both the uncertainty posed by the prospect of unlimited punitive damages, combined with the relative probability of a punitive damage award if a case goes to jury trial, provide litigants who demand punitive damages with potent leverage against risk-averse defendants, and tip the balance in settlement bargains in favor of litigants with weak or even frivolous cases.**

As mentioned previously, concentrating on trial verdicts overlooks “where the action is” in civil litigation: out-of-court settlements. We are not suggesting that verdicts are unimportant. To the contrary, punitive damage verdicts are like the tip of the proverbial iceberg. The small number of trials affect decisions in the vast majority of lawsuits that do not proceed to trial. Verdicts are “information signals” for litigants. Even Stephen Daniels and

² The calculation for this figure is as follows: In our case sample, 38.5 percent of business cases include a punitive damage demand. The Department of Justice report estimated that there were 5,240 tort cases against a business defendant in its sample of cases from 75 counties. Holding constant from our sample, this would suggest that 2,017 of these cases included punitive damage demands (38.5% of 5,240 cases). If we assume that the proportion of punitive verdicts is in parity with the distribution of punitive demands (i.e., 78 percent against business), then 284 of the 364 punitive verdicts in the DoJ study were against business defendants. These 284 verdicts represent 14 percent of the 2,107 cases.

Joanne Martin, who are strong proponents of punitive damage awards, note that "jury verdicts in the minority of matters actually adjudicated play an important role in determining the worth, or settlement value, of civil matters filed but not tried."³

To get a proper perspective on how this process works requires a consideration of the basic dynamics of a lawsuit. There is growing scholarly literature that offers several models of decision-making in the litigation process, especially in cases involving doubtful or even frivolous legal claims. "Situations involving litigation are a paradigmatic case of bargaining conflict," Kip Viscusi has written, and hence susceptible to illumination through game-theory and decision-tree models.⁴ As professors Robert Cooter and Daniel Rubinfeld of U.C. Berkeley have noted, "The attributes of litigation bargaining—rivalry, communication, side payments, interdependency, and uncertainty—characterize bargaining games as analyzed in microeconomics."⁵ This approach can help clarify the role of punitive damages in changing the calculus of settlement between litigating parties.

The first thing to understand about lawsuits under American law is that the plaintiff has the opening strategic advantage: even a plaintiff with a weak case places the defendant in the position of having to defend himself (and therefore incurring legal costs), or else the defendant will be liable for the full claim on a default judgment. Hence, even a defendant facing a suit without merit is often willing to pay an amount that is less than his prospective defense costs to settle the case and "make it go away." According to various studies, the cost of defense in an *average* tort lawsuit ranges from \$6000 to \$10,000, depending on the kind of suit.⁶ A litigant with even a mildly plausible basis for an average suit can often expect a nuisance settlement value within this range. Professors David Rosenberg and Stephen Shavell of Harvard Law School comment: "By filing a claim, any plaintiff, and thus the plaintiff with a weak case, places the defendant in a position where he will be held liable for the full judgment demanded unless he defends himself. Hence, the defendant should be willing to pay a positive amount in settlement to the plaintiff with the weak case—despite the defendant's knowledge that were he to defend himself, such a plaintiff would withdraw."⁷ University of Michigan economist Avery Katz adds that in

³ Stephen Daniels and Joanne Martin, "Myth and Reality in Punitive Damages," 75 *Minnesota Law Review* 1-64 (October 1990), p. 28.

⁴ W. Kip Viscusi, "Product Liability Litigation with Risk Aversion," *Journal of Legal Studies*, Vol. XVII (January 1988) p. 120.

⁵ Robert D. Cooter and Daniel L. Rubinfeld, "Economic Analysis of Legal Disputes and Their Resolution," *Journal of Economic Literature*, Vol. XXVII (September 1989), p. 1069.

⁶ J. Kakalik and N. Pace, *Costs and Compensation Paid in Tort Litigation* (Santa Monica: RAND Corporation Institute for Civil Justice, 1986).

⁷ D. Rosenberg & S. Shavell, "A Model in Which Suits Are Brought for Their Nuisance Value," 5 *International Review of Law and Economics* (1983), p. 3.

many cases "the defendant is willing to pay a settlement up to the amount of his defense costs in order to avoid having to respond to the plaintiff's complaint."⁸

The main determining factor of whether a filed lawsuit will yield a settlement to the plaintiff is the "threat credibility" of the suit, i.e., what is the probability of a verdict favorable to the plaintiff if the case goes to trial, and what is the likely amount of damages that the plaintiff could win? The scholarly models of the out-of-court negotiation process suggest that an increase in the prospective amount of a jury verdict increases the likelihood of a settlement offer by the defendant, and tends to increase the amount of such settlements. Professors Kathleen Engelmann and Bradford Cornell argue that "it is almost invariably the case that increasing the cost of litigation increases the probability of settlement."⁹ Professor Barry Nalebuff of Princeton University concurs, noting that "an increase in the court award . . . raises the probability of settlement."¹⁰

This can be true even in frivolous or marginal lawsuits, or lawsuits with a doubtful chance of success at a trial. Professor Katz comments: "The main reason that frivolous suits are not always met with a blanket denial and refusal to negotiate, of course, is that the defendant rarely knows the merits of the claim with certainty. Since refusing to take a valid claim seriously can be quite costly, a frivolous plaintiff may be able to take advantage of the defendant's uncertainty regarding the claim's validity to extract a substantial settlement." Moreover, Katz adds, "higher trial costs raise the defendant's benefit from settling with valid claimants and makes him more willing to tolerate the cost of settling with strike suitors."¹¹

The point is: punitive damage demands will often tip the balance of power in bargaining to the plaintiff, even one with a weak or frivolous case. It does so in two ways: by increasing the size of a prospective jury award (by an unpredictable and potentially enormous amount) if the case is taken to trial, and by increasing the legal costs that a defendant will have to incur to fight the suit at trial. First, to use a hypothetical example: while a \$50,000 lawsuit with arguable merit might have a settlement value of \$20,000 or \$30,000, a \$50,000 lawsuit that also demands \$200,000 in punitive damages is no longer a

⁸ Avery Katz, "The Effect of Frivolous Lawsuits on the Settlement of Litigation," *International Review of Law and Economics*, Vol 10 (1990), p. 4.

⁹ Kathleen Engelmann and Bradford Cornell, "Measuring the Cost of Corporate Litigation: Five Case Studies," *Journal of Legal Studies*, Vol. XVII (June 1988), p. 397. For a general discussion of this point, see John P. Gould, "The Economics of Legal Conflicts," *Journal of Legal Studies*, Vol. 2, No. 2 (June 1973), pp. 279-300; Lucian Arye Bebchuk, "Suing Solely to Extract a Settlement Offer," *Journal of Legal Studies*, Vol. XVII (June 1988), pp. 437-450; Cooter and Rubinfeld, *op cit.*

¹⁰ Barry Nalebuff, "Credible Pretrial Negotiation," *RAND Journal of Economics*, Vol. 18, No. 2 (Summer 1987), p. 208.

¹¹ Katz, *op cit.*, p. 4, 5.

\$50,000 lawsuit for purposes of settlement. The presence of a punitive damage demand provides leverage for the plaintiff to force a higher settlement value from the suit. Second, the presence of a punitive damage demand often requires a more extensive, more costly, and more time-consuming defense by the defendants. Most punitive damage demands are based on claims of intentional wrongdoing or "conscious disregard" of the rights of the litigant. Defending against such extraordinary claims usually requires a more expensive discovery process than ordinary damage claims. In addition to a discovery process about the basic facts of the injury or fraud involved in the tort allegation, determining the malicious intent of the defendant will involve more extensive, and therefore more expensive, document searches and depositions.

The key dynamic of the out-of-court settlement process is *uncertainty*. Obviously if the outcome of jury trials were highly predictable, few if any cases would ever go to trial. The parties would always settle. It is the uncertainty of trial outcomes that has led to a thriving market for jury verdict data services, which are intended to provide at least some guidance to litigating parties to help estimate the risks of trial and the parameters of a reasonable settlement. Punitive damage demands add dramatically to the uncertainty of out-of-court settlement deliberations. The inclusion of a punitive damage demand increases the potential amount of an adverse jury award by an unpredictable degree, since punitive damages are unlimited.

To judge how serious a factor this is, it is necessary to consider the probability of receiving a punitive damage verdict if a case is taken to trial. The plaintiff's leverage is only effective if the threat of extracting punitive damages from a trial is credible. What makes a punitive damage demand credible in the eyes of a defendant? The studies that minimize the number of punitive damage awards are highly misleading on this point.

For example, the recent Department of Justice study's estimates on civil lawsuits seems to suggest that because so few cases result in punitive damages (364 out of 762,000 cases filed, or .0004 percent), the threat of a punitive damage demand in a lawsuit pleading is not very credible.¹² But this is to miss something rather obvious in the DoJ statistics: because only 1.5 percent of the lawsuits actually went to trial, the relevant question to ask is: *what is*

¹² "Civil Jury Cases and Verdicts in Large Counties," U.S. Department of Justice, Bureau of Justice Statistics, Special Report NCJ-154346, July 1995. It is important to take note of the methodological difficulties with this study. While the study purports to represent a review of 762,000 case filings and 12,000 jury verdicts, in fact the Department of Justice only scrutinized a sample of these cases. It is from these samples that extrapolations are made in the various tables in the study. The sample size is not divulged. This is why we have consistently referred to the DoJ's figures as "estimates." Finally, the Department of Justice study does not provide a state-by-state breakdown, so it is impossible to offer observations specific to California based on their estimates.

the risk of receiving a punitive damage judgment if a case is brought to trial? The 364 punitive damage verdicts in the DoJ estimates take on a new significance if pondered in this fashion: they amount to 3 percent of the 12,000 cases tried, or 5.9 percent of verdicts in which the plaintiff was the winner. Three percent, or even 5.9 percent, still may not seem very substantial to outside observers who do not bear the risk themselves, but it is crucial to remember, however, that many if not a majority of these cases that went to trial *did not include a punitive damage demand as a part of their pleading*. Secondly, the DoJ statistics do not tell how many of the suits that included punitive damage demands, or how many of the verdicts that included punitive damages, were suits brought against *businesses* as opposed to *individuals*. (The Department of Justice has the data to make this breakdown, but chose not to report it in its study.)

The disaggregated figures in Table 3 below, taken from the Department of Justice estimates, tell the story more clearly.¹³ Although the DoJ estimates are severely limited because they do not tell us whether the defendant in these verdicts is an individual or a business, and does not tell us what proportion of the cases that went to trial sought punitive damages, they do confirm that the probability of receiving a punitive damage award is significant.¹⁴ For example, in employment law cases (nearly all of which were brought against business defendants), we see that 26.8 percent of all verdicts included punitive damages, with a hefty median punitive award of \$179,000.

¹³ These data appear as Table 8 on page 8 in the Department of Justice study.

¹⁴ As pointed out above, the DoJ did not actually analyze 762,000 cases on a case-by-case basis. It would take years to conduct such an analysis. But unless a substantial sample of cases is analyzed closely, it is impossible to answer some key questions about what is happening. The DoJ does not estimate how many of the 762,000 suits requested punitive damages as a part of their filing, or how many of the 12,000 that went to trial included punitive damage demands. But without knowing this, it is difficult to judge the significance of some of the DoJ findings. For example, while the DoJ study notes that only 13 out of 403 medical malpractice verdicts included punitive damages, the study does not say—because the DoJ does not know—how many of those 403 cases demanded punitive damages as a part of their case filing. Although the DoJ estimates do break down suits filed against individuals and filed against business, it does not reveal how many of the suits against business that went to trial included punitive damage demands. Again, the DoJ cannot know this without actually examining each and every case filing. Because the DoJ study is based on estimates instead of a hard count of actual cases, it cannot tell us much that is meaningful about the relative risk posed to defendants who face punitive damage demands.

Table 3: Punitive Damage Awards for Plaintiff Winners in Civil Jury Cases in State Courts in the Nation's 75 Largest Counties, 1992

	Plaintiff winner cases		Amount of punitive damages awarded to plaintiff winners			% of plaintiff winner cases with punitive damages	
	No. awarded punitive damages	% of cases receiving punitive damages	Total	Median	Mean	Over \$250K	Over \$1 mill.
Case type:							
All jury cases	364	5.9	\$267,879,000	\$50,000	\$735,000	23.7	11.6
Tort cases	190	4.0	91,477,000	36,000	481,000	22.7	10.1
Automobile	55	2.4	35,535,000	25,000	641,000	19.9	7.5
Premises liability	15	1.7	1,272,000	40,000	87,000	0	0
Product liability	3	2.2	40,000	9,000	12,000	0	0
Intentional tort	38	18.5	10,926,000	25,000	286,000	13.8	8.5
Medical malpractice	13	3.1	3,120,000	199,000	245,000	31.8	0
Profsnl malpractice	15	15.7	6,077,000	250,000	412,000	44.0	8.5
Slander/libel	8	29.8	1,341,000	47,000	164,000	34.2	0
Toxic substance	13	6.2	26,420,000	1,692,000	1,994,000	54.7	54.7
Other tort	30	7.2	6,746,000	100,000	226,000	20.9	10.9
Contract cases	169	12.2	169,528,000	52,000	1,003,000	24.4	12.6
Fraud	38	21.2	7,339,000	45,000	191,000	18.9	10.4
Seller plaintiff	24	5.6	1,221,000	22,000	51,000	0	0
Buyer plaintiff	47	12.4	27,446,000	27,000	581,000	28.6	11.1
Employment	46	26.8	132,759,000	179,000	2,875,000	42.1	26.1
Rental/lease	11	11.3	399,000	50,000	37,000	0	0
Other contract	2	1.8	365,000	145,000	162,000	44.4	0
Real property cases	5	11.7	6,873,000	85,000	1,375,000	40.0	40.0

Another point should be made from the DoJ estimates. While defenders of unlimited punitive damages prefer to use *median* punitive award figures because a few large awards can skew *average* award figures, this point can be turned on its head. The large disparity between median punitive award amounts and average award amounts (\$50,000 and \$735,000 respectively in the DoJ estimates) highlights the unpredictability of punitive awards. As our previous report on punitive damages in California showed, there was a huge range in punitive damages awarded between 1990 and 1994, demonstrating that punitive damages are unpredictable and arbitrary.¹⁵ In California cases during this period, the range of punitive awards runs from 710 times compensatory damages to .0001 times compensatory damages. (In one case, a defendant who was not assessed any compensatory damages was nevertheless

¹⁵ *Punitive Damages in California: A Preliminary Report* (San Francisco: Pacific Research Institute, 1995).

hit with \$62,000 in punitive damages.) It is precisely this uncertainty that provides the plaintiff with additional leverage in the settlement process.

Conclusions

The California statutes governing punitive damages use exceptionally strong language to prescribe when punitive damages are appropriate. Punitive damages should be awarded where there is "clear and convincing evidence" that a defendant has behaved with "malice," or has engaged in "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Other descriptions include "oppression, intentional misrepresentation, deceit, or concealment of a material fact. . ." Unless it is implausibly assumed that such extraordinary behavior is rampant and pervasive in California, the frequent appearance of punitive damage demands in lawsuit filings is evidence that they have become simply a regular litigation tactic.

It is not persuasive to say that the frequency of punitive damage demands have little or no effect on the cost and outcomes of litigation. The uncertainty and risk posed by potential punitive damage awards magnifies the leverage of such demands in out-of-court settlements. The prospect of "runaway juries" is far from fanciful. Even judges have felt compelled to speak out about this phenomena. In a recent California trial involving an employment dispute that resulted in an \$80 million punitive damage award, the trial judge set aside the verdict, noting:

"This award is so disproportionate to the injuries, damages and conduct, and so unsupported by the evidence it shocks the conscience of this court to the point that the court cannot countenance such a result and feels compelled, despite its respect for the jury process, to grant a new trial . . . Punitive damages award is excessive and clearly motivated by passion and prejudice [of the jury]. The award does not bear a reasonable relationship to the nature of defendant's action and the extent of plaintiffs' injuries."¹⁶

Despite the admonitions of California statutes that there be "clear and convincing evidence" of extraordinarily deliberate malicious behavior, it is clear that new guidelines and limitations on punitive damages are needed.

¹⁶ *Lane v. Hughes Aircraft Company*, Los Angeles County Superior Court Case No. BC 075 519 (December 15, 1994).

THE ROLE OF PUNITIVE DAMAGES IN CIVIL LITIGATION: NEW EVIDENCE FROM LAWSUIT FILINGS



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Nothing contained in this briefing is to be construed as necessarily reflecting the views of the Pacific Research Institute for Public Policy or as an attempt to thwart or aid the passage of any legislation.

SCOMM

101A:9

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



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INDEX OF LETTERS IN SUPPORT OF TORT REFORM HB 58

1. ALASKA AIR CARRIERS ASSOCIATION
2. ALASKA STATE CHAMBER OF COMMERCE
3. ALASKA TRUCKING ASSOCIATION
4. ALASKA FOREST ASSOCIATION
5. ALASKA MINERS ASSOCIATION
6. ALASKA MUNICIPAL LEAGUE
7. ALASKA OIL AND GAS ASSOCIATION
8. ALASKA PROFESSIONAL DESIGN COUNCIL
9. ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION
10. ALASKA STATE HOSPITAL & NURSING HOME ASSOCIATION
11. ALASKA STATE MEDICAL ASSOCIATION
12. ASSOCIATED GENERAL CONTRACTORS
13. MICHAEL A. BARCOTT
14. CITY OF SEWARD
15. PHILIP R. HINDERBERGER (NORCAL MUTUAL INSURANCE CO)
16. ROGER HOLMES
17. DAVID E. JOHNSON, MD
18. MICHAEL L. LESSMEIER (STATE FARM MUTUAL INSURANCE CO)
19. NATIONAL FEDERATION OF INDEPENDENT BUSINESS/ALASKA
20. DAVID A. MCGUIRE (2)
21. MUNICIPALITY OF ANCHORAGE
22. RESOURCE DEVELOPMENT COUNCIL FOR ALASKA
23. A. L. TAMAGNI, SR (STRUCTURED FINANCIAL ASSOCIATES)
24. THE ALLIANCE (2)
25. UNITED SERVICES AUTOMOBILE ASSOCIATION



March 10, 1996

Representative Gene Therriault
State Capitol
Juneau, Ak 99801-1182

Dear Rep Therriault:

This letter is to support HB 58. I am writing you because I understand your committee is soon to have a hearing on it.

Besides Penair, I have been delegated by the Alaska Air Carriers Association to work towards the approval of HB 58.

The Alaska Air Carriers membership is well over one hundred air carriers throughout the State, all the way from Alaska Airlines to the smallest one aircraft operator. I can not think of any significant airline that does not belong.

There are over 200 communities throughout the State that are not on any road system, thus are totally dependent on our collective services for all their transportation needs.

We are being greatly impaired by a lack of insurance underwriting capacity. The problem dramatically escalated a little over two years ago when the BAIG (British Aviation Insurance Group) made a corporate decision to cease writing commuter airline insurance in Alaska. There is now no underwriter in Europe, including Lloyd's, that will touch us.

This is a direct result of the knowledge that Alaska has a potential for the highest punitive damage awards in the nation, second only to Alabama.

The plaintiffs attorneys will tell you that relatively few cases go to jury trial, and when they do the amounts awarded have not been excessive. There are answers for both statements.

Most cases are settled out of court because, for example, a death loss with an economic value of two million dollars will be settled for four million because the defendants are well aware they risk a much higher award, maybe eight million, if it gets to a jury in Alaska. This is possible even without any finding of gross negligence or willful misconduct! So the result was it still cost the defendant (underwriter) twice as much as it should have.

Penair is in the middle of just such a scenario. The initial letter from the plaintiff attorney estimated economic damage of 2.8 million, then brags that he should be able to get 12 to 16 million in punitives, if it gets to a jury!

PAGE TWO

As to the past awards, I suspect the only cases that do get to the trial stage are the ones where the defendant has a strong case.

Most of us mid-sized carriers traditionally carried twenty million dollar CSL (combined single limit) passenger liability coverage. But since the BAIG pulled out CSL is not available at any cost. Penair has been limited to one million per seat for the last two years, and our cost for the last renewal was over three million dollars annually, or ten percent of our gross revenue! Many of the smaller carriers have only five hundred thousand per seat, and some only one hundred fifty thousand.

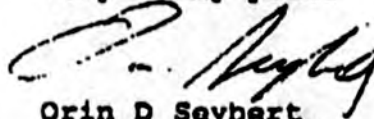
If HB 58 is passed, it will actually make more money available to compensate a citizen hurt or killed in an aircraft accident. That is because underwriters will make higher limits easier and cheaper to obtain. Consider a one-plane operator with one hundred fifty thousand per seat, when he crashes and kills someone there are no other assets, so no matter what the economic value is there is no other money available.

In the Penair case, the economic value alone is higher than our insurance available, (and there is no evidence of gross negligence on our part). A direct result of that is we have examined our customer base to see where we may be exposed, in other words looking for high value people, if you will. We have actually refused service to some such customers, so some companies ability to do business in Alaska is being restricted by this insurance problem.

Enclosed are copies of my correspondence regarding this situation, as well as a resolution passed by the AACA general membership at our recent convention.

We will certainly appreciate any assistance you can give, believe me HB 58 will go a long way towards benefiting anyone in the State who has to use aircraft services.

Very truly yours



Orin D Seybert
President

Enclosures (4)

CC: Rep Porter

ALASKA AIR CARRIERS ASSOCIATION**RESOLUTION 97-1****DRAFT**

RESOLUTION supporting sponsor substitute for HB58.

WHEREAS, the purpose for State involvement in aviation is to promote, encourage and develop aviation, (AS 02.15.010); and

WHEREAS, Alaskans rely on the aviation industry as their primary transportation source for persons, mail, food, shelter, health care and goods and services in general; and

WHEREAS, in the past decade the Alaska aviation industry has made significant progress and investment in developing a system which better meets the transportation needs of our vast state; and

WHEREAS, the commercial air carrier industry in Alaska is suffering from a lack of insurance underwriting capacity with insufficient limits of liability to compensate injured parties,

WHEREAS, passage of this bill will benefit the traveling public by allowing more funds to be available to properly compensate injured parties for economic and non-economic damages,

THEREFORE BE IT RESOLVED, the Alaska Air Carriers Association supports passage of sponsor substitute HB58.



November 8, 1966

Capt. Stephan Moreno
Alaska Marine Pilots
2622 38th Ave S. W.
Seattle, Wa 98126

Dear Steve:

We recently concluded a very, very difficult insurance renewal. Not only did the price increase drastically, we were not able to get any increase in limits. We still have only one million dollars for passenger liability.

In view of our recent tragedy it has made me realize that Penair cannot afford to be put in such a position again.

So I am in the process of identifying charter groups and individuals where the resource generated does not justify the risk associated with the contract. Certainly the Alaska Marine Pilots (and any marine pilot) is a perfect example.

Therefore, I am sorry to say that effective immediately we will no longer be able to provide transportation to your group.

This limitation applies only to charter or contract operations involving the nine or less passenger planes. We were able to get proper limits on the larger aircraft operating the schedules out of Anchorage.

I am having our attorney look into the possibility of having a limitation of liability agreement the customer could execute which would limit the exposure in the event of an accident. If such becomes available we will contact your groups at that time for the purpose of discussing the resumption of service.

Very truly yours

Orin D Seybert
President

CC: Hal Snow



November 26, 1996

Magone Marine
P. O. Box 442
Dutch Harbor, Ak 99692

Dear Dan:

On September 30 we concluded a very, very difficult liability insurance renewal. Not only did the price increase drastically, but for the second year in a row we were unable to get passenger liability limits over one million dollars per passenger seat.

After our accident of August 11, it has become apparent that under present Alaska law judgements in wrongful death claims can be many millions of dollars, even without any negligence.

So I have been looking at each charter customer, trying to analyze the possible exposure of Penair. It occurs to me that your divers are probably young and highly compensated, which would lead to such an excessive award.

Therefore, I must decline to provide you with such charter services, we simply cannot accept the risk.

My attorney is working on some sort of "hold harmless" or limitation of liability that the passenger could execute, we hope to have that available in the next few weeks.

Meanwhile, the real problem is the present Alaska laws, this situation clearly illustrates the need for Tort reform. I intend to be working on this issue during the upcoming legislative session, and would appreciate any help you might be able to give.

Very truly yours,

Orin D Seybert
President

3/11/97
ANCHORAGE Daily NEWS

*
JURY WEIGHS MAN'S CLAIM OF EAR DAMAGE

By LIZ RUSKIN

Daily News reporter

A man who was a passenger on a 1990 flight to Prudhoe Bay is asking an Anchorage jury for more than \$13 million in damages for injury to his ears he says he suffered because the plane's cabin was not properly pressurized.

Mickey Barrett, now 50, was a welder but says he can't work because of a ringing in his ears, dizziness and balance problems. He claims the injuries resulted from a descent into Deadhorse on Christmas Day aboard a Convair 580. He is suing Era Aviation, the operator of the charter flight.

His lawyer, Andrew Kurzmann, told a Superior Court jury during closing arguments Monday that the injuries cost Barrett his job, his family, and his ability to relate to his young son. Era Aviation has stripped Barrett of his dignity and self-respect, condemning him to a sad, lonely life for his remaining years, Kurzmann said.

But Era's lawyer said Barrett's problems aren't related to the flight. The crew, attorney Robert Richmond said, noted nothing unusual in the cabin pressure, and there's no reliable evidence of problems aboard the flight.

"At no point during the flight ... was there ever any complaint made," Richmond told the jury.

Barrett's trouble began before he got on the plane, Richmond said. He had already separated from his wife, and he'd received a job evaluation that said he had difficulty concentrating on his work, Richmond said. Barrett also had a cold and an ear infection when he got on the plane, the lawyer said. When you have a cold, it's hard for your ears to handle flying under normal pressure conditions, and they will hurt, Richmond said.

Several of Barrett's co-workers were among the 40 passengers on the plane. A couple of them corroborated his claim in court. One woman who was on the flight testified that the pressure felt as if someone had put a hose in her mouth and turned it on.

Kurzmann said Barrett bears the hallmarks of an injury to the vestibule of the inner ear: vertigo, hearing loss, pressure, ringing.

"He plays the radio 24 hours a day just to (mask the noise)," Kurzmann said.

Richmond pointed out that Barrett continued working for the two weeks following the Dec. 25 flight, then took two weeks off in Oklahoma. When he returned to the North Slope, he was fired from his job with Atlas Wireline for smoking a cigarette in a room

where explosives are stored, Richmond said. Then he returned to Oklahoma and applied for unemployment compensation, claiming he was fit and ready to return to work, Richmond said.

Kurzmann asked for punitive damages equal to one year of Era's profits. As for assigning a value to Barrett's pain and suffering, Kurzmann said he once heard a seasick angler offer a skipper \$200 to turn the boat around and return to the Homer harbor. Using that analagy, Kurzmann argued the jury should make Era pay \$200 a day for the 25 years of Barrett's remaining life expectancy.

The jury began its deliberations Monday afternoon.

*

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



March 10, 1997

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

Subject: Support for HB 58 - Tort Reform

Dear Representative Therriault:

The Alaska State Chamber of Commerce represents approximately seven hundred member businesses statewide which provide jobs to nearly 70,000 employees. Indirectly, through our network of the 35 local Chambers of Commerce throughout Alaska, we represent an additional 6000 businesses. Eighty-five percent of our membership consists of small businesses. As the Voice of Business, the State Chamber's mission is to create a climate in Alaska that is conducive to a strong private sector economy.

Reform of Alaska's civil justice system is one of the highest priorities for this organization. It is also of significant importance to the voters of Alaska. In a statewide survey of registered voters conducted by ASCC in January, 1996, four out of five Alaskan voters favored changing Alaska's tort system. Three out of four believed that those who would be most helped by the proposed changes to the system would be small businesses, doctors, taxpayers, and people with legitimate lawsuits. By a ratio of eight to one, those surveyed believed that those who would find the changes disadvantageous would be people with frivolous lawsuits and personal injury lawyers.

The issue of greatest concern to the State Chamber is that of punitive damages, because they can be assessed on a business or individual even without intentional wrongdoing or willful neglect, and the sky is the limit. ASCC believes there should be parameters, or established criteria for assessment of punitive damages. ASCC also believe the penalty should be pre-established as a multiple of the compensatory damage caused. We support the formula established in SSHB 58.

We strongly urge the support of the House Finance Committee and all members of the State Legislature of SSHB 58.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle
President

ALASKA TRUCKING ASSOCIATION, INC.**3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946**

March 12, 1997

Representative Gene Therriault
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Therriault:

Members of Alaska Trucking Association strongly urge you to support H.B. 58. We believe that America is drowning in a sea of judicial abuse. It seems apparent to anyone outside of the legal system that "legal thinking" and "common sense" have parted company. H.B. 58 is a small, but much needed step towards a complete reconstruction of our legal system. Don't succumb to the arguments that will surely attempt to kill the bill or at least amend it into ineffectiveness.

Also attached, for your information, is one of the more egregious trucking cases. Unfortunately, this is not an extremely unusual case. ATA's members hope that one day they may run their businesses, for at least one day, without thinking of lawyers. Thank you for your time and attention on this very important issue.

Sincerely,



Frank J. Dillon
Executive Director



ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

ATA Officers and Board of Directors 1996-1997

<u>Representative</u>	<u>Company</u>	<u>Phone / Fax</u>	
President Jimmy Doyle	Weaver Bros., Inc	278-4526/276-4316	
1st V-President Bill Deaver	Sea-Land Service, Inc	263-5600	
2nd V-President Jeff Gregory	Sourdough Express, Inc	800-478-3976/431-8188	Fax 263-5600
Sec/Treas Ted DeBoer	Totem Ocean Trailer Exp, Inc	276-5868/278-0461	
Ron Locke	Wilder Construction Co.	344-2593/522-8645	
Gordon Hurang	Arrowhead Transfer, Inc	747-8647/747-6433	
Bob Hopf	Kenworth Alaska, Inc	279-0602/258-6639	
Edith Montpetit	Sig Wold Storage & Tran	274-7535/272-1296	
Billy Reed	Reed Trucking Co	344-9093/ nope	
Lefty Prickett	Lefty's Trucking Co	745-3328/745-7374	
Dale Morman	Anchorage Sand & Gravel	349-3333/344-2844	
Peter Blanas	Muleskinners, Ltd	344-7887/522-3389	
Steve Saunders	Inlet Petroleum Co	274-3835/272-8151	
Thomas Culhane	Anchorage Refuse, Inc	563-3717/563-3932	
Albert Snelling	Samson Tug & Barge Co, Inc	747-8559/747-5370	
Fred Stauber	Fred's Towing & Recovery	243-4037/ nope	
Duane Congdon	Valley Transport & Storage	745-7733/745-7734	
Richard Asay	Asay Trucking, Inc	349-4774/349-6047	
M. Kathryn Thomas	ArcTech Services, Inc	776-5480/776-5132	
Charlotte Emerson	World Equipment, Inc	563-3557/563-3558	
Jasper Hall	Service Oil & Gas	822-3375/822-3511	
Harry McDonald	Carlile Ent/K&W Trucking	276-7797/278-7301	
Dean McKenzie	Alaska West/Frontier Trans	279-9515/272-8152	
Greg Wakefield	Alaska Mover's Assoc, Inc	276-3506/258-3986	
Blaine Ghan	Lynden Transport, Inc	276-4800/257-5155	

Award in ADA Case Sets Record

EEOC Filed Lawsuit for Former Ryder Driver

By Daniel P. Bearth
Staff Writer

A jury verdict in Detroit is sending shivers down the spines of trucking industry lawyers.

A former truck driver who lost his job after suffering an epileptic seizure in 1989 was awarded \$5.5 million because his employer — Ryder System — refused to offer him comparable work.

Thomas Lewis, 45, an employee of Ryder's Complete Auto Transit subsidiary in Flint, Mich., was awarded \$192,000 in back pay, \$960,000 in compensatory damages and about \$4.4 million in

punitive damages.

Although a \$300,000 federal cap on damages in employment claims reduced the judgment to \$492,000, the jury award ranks as the largest amount ever won on behalf of a single plaintiff in a disability case, according to the U.S. Equal Employment Opportunity Commission, which filed the lawsuit on behalf of Mr. Lewis.

Fred Batten, an attorney for Ryder, said he will ask for a new trial.

He said Mr. Lewis has been on medical leave since the first seizure and, in fact, suffered a second seizure in April 1996 while working as a truck driver for another com-

pany.

According to Mr. Batten, Mr. Lewis lost his federal certification to drive after the first seizure and then falsified his medical card to get another driving job.

Ryder made a good faith effort to accommodate Mr. Lewis, but could not find a suitable job, Mr. Bratten said.

Mr. Lewis had asked to be transferred from his previous job of hauling cars over-the-road to dealerships to a job loading cars from the auto assembly plant onto rail cars.

That job would have required him to drive and to work at heights up to 18 feet. The company maintained that was an unreasonable risk.

"An employer should have the right to make that decision," Mr. Batten said. "The judge in this case told the jury, 'You decide.'"

Mr. Lewis took his case to the EEOC in 1993 and filed a claim under the 1992 Americans With Disabilities Act, which requires employers to attempt to accommodate disabled workers.

William H. Herrmann, American Trucking Associations' labor counsel, said he found the facts in the Lewis case to be "disturbing."

"If a company puts this guy to work driving and he has an episode and hurts someone, Ryder is liable."

The courts generally have held that if a driver is medically disqualified, there is no requirement to offer another driving job, Mr. Herrmann said.

Employers may be forced to offer such people nondriving positions, however.

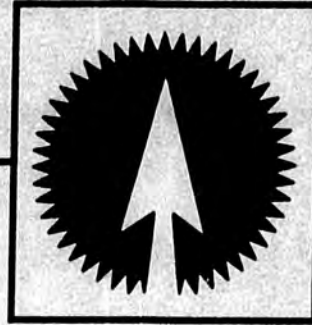
Even so, Mr. Herrmann said, management should retain some prerogatives in hiring. "Just because you are disabled doesn't mean you jump to the top of the list. ADA is not affirmative action."

Another question for companies that operate nationwide is whether injured workers must be offered jobs in other cities.

Mark A. Spognardi, a Chicago-based labor attorney, said the Lewis case is no fluke. He expects to see more like it because the ADA has set a very high burden of proof for employers to meet in determining the potential harm to individuals due to physical handicaps.

In the case of a person with epilepsy, it may not be enough to argue that seizures are likely to happen again, he said. The company must prove the individual poses a "significant" risk of "substantial" harm.

Alaska Forest Association, Inc.



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

March 12, 1997

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

Subject: Support for HB 58 - Tort Reform

Dear Gentlemen,

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

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

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

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

Sincerely,

Jack Phelps, Executive Director



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 98503 FAX: (907) 278-7987 Telephone: (907) 278-0347

March 10, 1997

Honorable Gene Therriault
Co-Chairman, House Finance
Capitol Building
Juneau, AK 99801

RE: Tort Reform

Dear Representative Therriault,

The Alaska Miners Association wishes to go on record in support of House Bill 58, regarding tort reform. The Alaska Miners Association has over 1000 members from all parts of the mining industry. Our membership includes suction dredgers, small mom & pop miners, independent prospectors, suppliers, and major international mining companies.

The time has come for meaningful and comprehensive reform of Alaska's tort law. This bill will accomplish what is needed. We support fair compensation for injured persons but we do not support the current system that encourages abuse of the law. Many, and possibly most, tort cases are now settled out of court because that is less costly for the company. When this happens to our vendors, they have to increase the cost of goods and services to the miner to cover the settlement as well as the cost of insurance to cover the uncertainty of other tort issues.

Other tort reform needs include a change to insure that each party is liable only to the extent that each is responsible. Another needed change is to ensure that a person cannot receive an award for an injury that occurs while committing a criminal act.

Lastly, this area of law is a major factor in the general and wide-spread distrust and contempt in this country for the legal system, the courts, and attorneys in this country. The changes and reasonable limits in this bill will help restore the public faith in our legal system.

Thank you for the opportunity to comment on this important bill. We urge its passage.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Brian Porter



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 10, 1997

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

Dear Representative Porter,

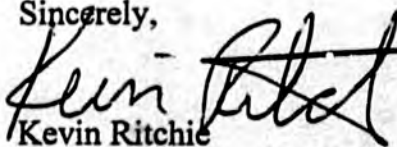
Thank you for your continued hard work on tort reform. Last year the AML urged the implementation of the Tort Reform bill. **The AML continues its support of the adoption of a meaningful tort reform bill.** The provisions of CS of SSHB 58 (JUD) appear to fulfill this goal.

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

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

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

Sincerely,



Kevin Ritchie
Executive Director

CC: AML Board of Directors
AML Legislative Committee

C:\Legcomm:297\tortreformhb58

Member of the National League of Cities and the National Association of Counties

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 19, 1997

The Honorable Drue Pearce, Co-Chairman
Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801

AOGA Position on Tort Reform Legislation

Dear Senator Pearce:

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.

AOGA is writing to forward its position on tort reform legislation. AOGA established its position in February, 1997. That position was recently modified to further define the type of conduct that would justify punitive damage awards.

Following, for your reference is the AOGA position statement on tort reform legislation.

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:

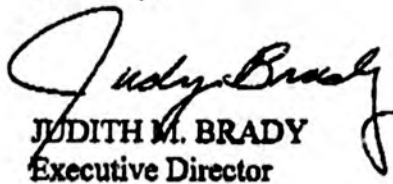
The Honorable Drue Pearce
March 19, 1997
Page 2

•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 malice or conscious acts showing deliberate disregard of another person's rights 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 judgements. 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.

Sincerely,


JUDITH M. BRADY
Executive Director

cc: Rep. Brian Porter

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 19, 1997

The Honorable Bert Sharp, Co-Chairman
Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801

AOGA Position on Tort Reform Legislation

Dear Senator Sharp:

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.

AOGA is writing to forward its position on tort reform legislation. AOGA established its position in February, 1997. That position was recently modified to further define the type of conduct that would justify punitive damage awards.

Following, for your reference is the AOGA position statement on tort reform legislation.

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:

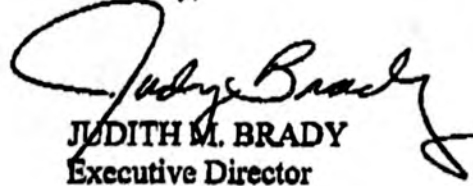
The Honorable Bert Sharp
March 19, 1997
Page 2

•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 malice or conscious acts showing deliberate disregard of another person's rights 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.

Sincerely,



JUDITH M. BRADY
Executive Director

cc: Rep. Brian Porter

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 10, 1997

The Honorable Gene Therriault, Co-Chairman
Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801

AOGA Position on Tort Reform Legislation

Dear Representative Therriault:

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.

On February 10, 1997, the AOGA Board of Directors adopted the following position on tort reform legislation. AOGA is aware of your interest in tort reform legislation and wanted to forward our position to you for your reference.

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:

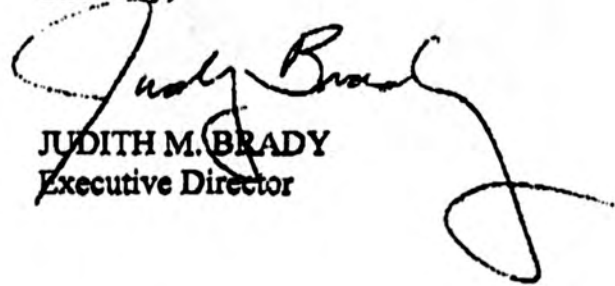
- Limitations on punitive damages. This reform would make it clear that awards beyond those necessary to compensate plaintiffs for real damages would need to be justified by clear and convincing evidence of outrageous conduct, and would be capped - as are sentences in criminal law - so that juries and judges could not impose financially ruinous or unlimited awards.

The Honorable Gene Therriault
March 10, 1997
Page 2

• 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 judgements. 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.

Sincerely,



JUDITH M. BRADY
Executive Director

cc: Rep. Brian Porter



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

March 10, 1997

apdclic\mrt397

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

Re: HB58

Dear Representative Theriault:

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

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

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

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

- 1) Almost all of the cases brought after eight years are related to maintenance problems, rather than design or construction problems. The owner of the building would still be available for suit if his lack of maintenance is the cause of the damage, because that would be an on-going problem. Cases brought this late do not result in an indemnity payment on the behalf of the design professional. However, it does require expenditure of time and money which is rarely recovered by the designer.
- 2) It is impossible to defend, or prosecute, a case fifteen years after substantial completion due to the lack of witnesses, fading memories, and lack of documentation. Most of us would have a hard time remembering what we did fifteen days or months ago, never mind fifteen years.
- 3) Designers will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage, and pass the savings on to our clients.
- 4) It is unreasonable to expect an engineer or architect to pay tens of thousands of dollars a year in insurance premiums for fifteen years after they retire. Errors & omissions insurance for design professionals is on a claims-made basis: that is, it covers you for claims made during that year. Therefore, the longer a period you have to cover, the higher the premium. The firm in which I am a principal had a premium of nearly twenty thousand dollars in our first year, with no "tail" to cover. It was our third highest expense, after payroll and rent. Adding a fifteen year tail results in a considerably higher premium. It is not unheard of to have a premium of over a hundred thousand dollars with a deductible of a hundred thousand dollars for the million dollar policy required by the State of Alaska. If we can limit the "tail" for which we have to insure to eight years, we expect to see a reduction in our insurance bills.

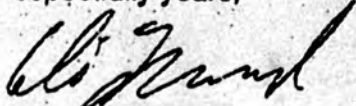
Many of the arguments for a statute of repose for construction related cases also apply to other cases and its application to those cases makes sense.

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

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

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

Respectfully yours,



Colin Maynard, PE

cc: Rep. Brian Porter



Electric Service for 300,000 Alaskans

Alaska

Rural

Electric

Cooperative

Association, Inc.

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

March 11, 1997

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

Subject: House Bill 58—Tort Reform Legislation

Dear Representative Therriault:

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

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

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

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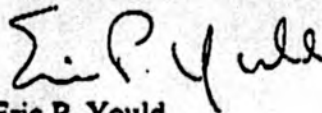
DEMOCRACY IN ACTION

Representative Gene Therriault
March 11, 1997
Page 2

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

Sincerely yours,

ALASKA RURAL ELECTRIC
COOPERATIVE ASSOCIATION, INC.



Eric P. Yould

:lka

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

Resolution 97-3-2

A Resolution Supporting Tort Reform

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