

1073 HB - 546 HB 997

DHT

RECEIVED

APR 9 1980

Hughes, Thorsness, Gantz  
Powell & Brundin

April 4, 1980

The Honorable Richard L. Randolph  
Representative State of Alaska  
Pouch V  
Juneau, AK 99811

Dear Dick:

RE: CS for House Bill 546  
An Act Increasing Prejudgment  
and Post Judgment Interest

My letter to you of March 18, 1980, contains some computation errors. HB 546 refers not to prime rate per se but to the annual rate charged by the 12th Federal Reserve District to their member banks - known more commonly as the "discount rate". Effective February 15, 1980, the "discount rate" for the 12th Federal Reserve District was 13%. Even though this figure is somewhat lower than the prime rate, it still produces an additional cost to the Alaska insurance consumer that is very substantial. It would increase the cost to each automobile insurance policyholder in Alaska from \$11.16 per year, which is the additional cost of the present statute at 8% annual rate, to \$20.91 per year. The overall effect for all automobile insurance policyholders in Alaska is an additional cost of more than \$1,934,000 in premium to support this additional tax free interest. At the present time this interest at 8% requires \$2,208,000 of additional automobile insurance premium dollars to support its cost to the Alaska consumer. The new automobile insurance premium cost, using a 13% discount rate plus 2% under HB 546, would require \$4,141,900 additional automobile insurance premium dollars based upon a conservative projection of the most recent actual experience in Alaska experienced by the automobile insurance industry.

The faulty premise of prejudgment interest is that unless the person being sued has to pay interest from the day of the incident until paid, he has no incentive to settle. The history of litigation in Alaska since the enactment by the Supreme Court of prejudgment interest has not encouraged settlements at all. Most cases are not ready for settlement until facts have been aired and damages determined. This information is not immediately available at the time of the incident. The actual effect of this sort of legislation is to give the plaintiff and his attorney very little incentive to settle when a statute would allow annual tax free interest of 15% at present discount rates.

The statute proposed does not produce a fair judicial system for the consumer of Alaska. The bill actually is an attempt to further coerce the segment of society being sued with the cost being paid by all insurance consumers in the State. This

April 4, 1980

Page 2

bill will not solve the litigation explosion problem in the State: it has the effect of ignoring fair judicial procedure and due process and it penalizes all the insurance consuming public in Alaska with higher insurance premiums - the only source of funds to pay for the additional costs.

Dick, I hope you can bring this updated corrected and more precise information to the attention of the Senate Judiciary Committee. I understand that the effect on medical malpractice liability premiums would be to increase premiums by one-third because of the long tails - a devastating effect.

Very truly yours,



John S. Glascock  
Division Manager  
Alaska/Oregon Division

JSG:jv

cc: Fover Holmes, Attorney  
618 Christensen Dr.  
Anchorage, AK 99501  
Tave Thorsness, Attorney  
509 West Third Avenue  
Anchorage, AK 99501

April 8, 1980

Mr. Douglas B. Baily,  
Attorney at Law  
Dunn, Baily and Mason  
510 L Street, Suite 312  
Anchorage, Alaska 99501

Dear Mr. Baily:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

3 —  
Robert H. Ziegler, Sr.

RHZ:lk

# DUNN, BAILY AND MASON

LAWYERS

510 L STREET, SUITE 312  
ANCHORAGE, ALASKA 99501

THEODORE RUSS DUNN  
DOUGLAS B. BAILY  
JULIAN L. MASON III  
ROBERT J. BUCKALEW  
CABOT CHRISTIANSON

TELEPHONE  
AREA CODE 907  
276-4331

March 31, 1980

Senator Robert Ziegler  
First Floor  
State Capitol Bldg.  
Juneau, AK 99801

RE: CS for House Bill 546  
Prejudgment and Postjudgment  
Interest Rates

Dear Senator Ziegler:

In furtherance of our conversation during my recent visit to Juneau, I am pleased to have this opportunity to provide comments on various bills affecting prejudgment and postjudgment interest which are presently pending in the Alaska legislature. As I indicated when we spoke in Juneau I have among my clients persons across the entire spectrum of conflicting interests with respect to increasing prejudgment and postjudgment interest rates. My firm represents claimants and defendants and judgment creditors and judgment debtors together with others who are in various stages of litigation or subject to potential claims which cut in all directions with respect to changes in prejudgment and postjudgment interest rates. Accordingly, I am to a substantial extent neutral with respect to the issue of whether these rates should be increased.

It is my primary concern that any bill which changes the rate of either prejudgment or postjudgment interest should contain sufficient particularity to resolve in advance any question concerning when the new rates become applicable. My study leads me to conclude that a simple change in the interest rate with an effective date would not be sufficient to resolve issues of the type posed.

For example one might ask whether an increase in the postjudgment interest rate would or would not affect judgments in existence on the effective date of the Act. Again, some judgments specify that they will carry interest "at 8% per annum" while other lawyers and judges specify that their judgment's interest "at the legal rate". Existing judgments

Senator Robert Ziegler  
March 31, 1980  
Page 2

with these two forms of language might be affected differently by House Bill 546 if its applicability is not set out with some degree of certainty.

In order to resolve difficulties of the types suggested above and to avoid resolution of these issues by litigation, I would suggest consideration of a provision that any increase in postjudgment interest rates be deemed applicable only to judgments, decrees and orders rendered after the effective date of a new Act.

Similar difficulties arise from the potential increase of prejudgment interest rates. If a claim is in litigation at the time of increase of prejudgment interest rates, I see some unfairness in increasing the applicable rate from 8% to perhaps 16% based solely on the fact that the case is tried a week after the effective date of the Act as opposed to the week before the effective date of the Act based upon the mere unpredictability of the court calendars. With respect to prejudgment interest, I would suggest as a possibility that legislation increasing the rate would exempt matters presently in litigation or pending appeal. This would provide a clear delineation that only claims asserted after the effective date of the Act would be affected by the increased rate.

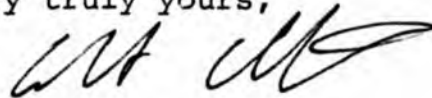
I have discussed my interests in resolving these issues in advance and without the need of litigation with Art Snowden of the Alaska Court System and he has advised me that he concurs with that goal. He may or may not concur with the particular methods which I have proposed of resolving those questions in advance. I have also taken the liberty of discussing my concerns with Senator Dankworth who has authored a Bill affecting interest rates and I am providing him with a copy of this letter expressing my concerns. I have further provided you with a draft attached to this letter of proposed language which might avoid the ambiguities which I foresee. I do not pride myself on my legislative drafting, but provide my proposals only as a base from which the problem can be addressed.

Thank you very much for your time relative to this concern while I was in Juneau. I appreciate having had the

Senator Robert Ziegler  
March 31, 1980  
Page 3

opportunity to comment on this matter of somewhat widespread interest.

Very truly yours,



~~FDB~~ Douglas B. Baily

DBB/nk

Encl.

cc: Senator Dankworth

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act increasing prejudgment and post-judgment interest rates."

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

\* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The annual rate of interest on judgments and decrees for the payment of money rendered before the effective date of this act is eight per cent [a year] and on judgments and decrees for the payment of money rendered on and after the effective date of this act is two percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the judgment or decree is rendered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree [, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCENT A YEAR].

\* Sec. 2. AS 09.30.070 is amended by adding a new subsection to read:

(b) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the maximum interest rate computation under (a) of this section shall be provided by the Department of Commerce and Economic Development.

\* Sec. 3. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state [IS EIGHT PERCENT A YEAR AND NO MORE] on money after it is due is two percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the day the obligation to pay occurs except as provided in (b) of this section. [THE RATE OF INTEREST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OF MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

\* Sec. 4. AS 45.45.010(d) is amended to read:

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District

prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the interest rate computation under (a) of this section and for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce and Economic Development.

\* Sec. 5. AS 45.45.010 is amended by adding a new subsection to read:

(i) Nothing in this act shall alter the interest rates presently applicable to matters in litigation or pending appeal upon the effective date of this act.

Alaska State Legislature



House of Representatives

LIBERTARIAN  
REPRESENTATIVE  
RICHARD (DICK) L. RANDOLPH  
1105 CUSHMAN ST  
FAIRBANKS, ALASKA 99701  
Phone (907) 452-2206

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA  
99811  
Phone (907) 465-4955

Enclosed is some more up to date  
information on HB 546 which may help  
you in considering this bill.

Dick

April 12, 1980

I keep telling you I have an idea as to what  
should be done with HB 546.

If we are going to get together, leave us do  
it soon, because I'm taking it up before  
Senate Judiciary Committee on Tuesday,  
April 15th.

3

RHZ:lk



# State Farm Insurance Companies

April 4, 1980

JOHN S. GLASCOCK  
Northwest Office  
4600 25th Avenue  
Salem, Oregon  
97313

The Honorable Richard L. Randolph  
Representative State of Alaska  
Pouch V  
Juneau, AK 99811

Dear Dick:

RE: CS for House Bill 546  
An Act Increasing Prejudgment  
and Post-Judgment Interest

My letter to you of March 18, 1980, contains some computation errors. HB 546 refers not to prime rate per se but to the annual rate charged by the 12th Federal Reserve District to their member banks - known more commonly as the "discount rate". Effective February 15, 1980, the "discount rate" for the 12th Federal Reserve District was 13%. Even though this figure is somewhat lower than the prime rate, it still produces an additional cost to the Alaska insurance consumer that is very substantial. It would increase the cost to each automobile insurance policyholder in Alaska from \$11.16 per year, which is the additional cost of the present statute at 8% annual rate, to \$20.91 per year. The overall effect for all automobile insurance policyholders in Alaska is an additional cost of more than \$1,934,000 in premium to support this additional tax free interest. At the present time this interest at 8% requires \$2,208,000 of additional automobile insurance premium dollars to support its cost to the Alaska consumer. The new automobile insurance premium cost, using a 13% discount rate plus 2% under HB 546, would require \$4,141,900 additional automobile insurance premium dollars based upon a conservative projection of the most recent actual experience in Alaska experienced by the automobile insurance industry.

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The statute proposed does not produce a fair judicial system for the consumer of Alaska. The bill actually is an attempt to further coerce the segment of society being sued with the cost being paid by all insurance consumers in the State. This

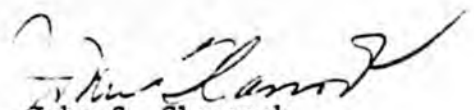
-April 4, 1980

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bill will not solve the litigation explosion problem in the State; it has the effect of ignoring fair judicial procedure and due process and it penalizes all the insurance consuming public in Alaska with higher insurance premiums - the only source of funds to pay for the additional costs.

Dick, I hope you can bring this updated corrected and more precise information to the attention of the Senate Judiciary Committee. I understand that the effect on medical malpractice liability premiums would be to increase premiums by one-third because of the long tails - a devastating effect.

Very truly yours,



John S. Glascock  
Division Manager  
Alaska/Oregon Division

JSG:jw

April 14, 1980

Mr. Michael J. Schneider,  
Attorney at Law  
Mestas and Schneider  
540 L Street, Suite 106  
Anchorage, Alaska 99501

Dear Mr. Schneider:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I have held those bills on that subject for several weeks and everybody will have a chance to be heard. HB 546 is scheduled for hearing on April 15, 1980 at 1:30 p.m.

No doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES

*Mestas & Schneider*

DENNIS M. MESTAS  
MICHAEL J. SCHNEIDER

540 L STREET, SUITE 106  
ANCHORAGE, ALASKA 99501

AREA CODE 907  
277-4551

April 10, 1980

Senator Ziegler  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

This firm has been informed that CSHB 546 (which raises post judgment and prejudgment interest to two points above prime) is now before the Senate Judiciary Committee. My partner and I would like to take this opportunity to express our strong support for this Bill. The legislature has recently seen fit to authorize funds for an intermediate appellate court and for new judgeships in the Anchorage area. While we think these are wise decisions and valuable improvements to our judicial system, much of the heavy burden upon the appellate courts could be relieved by the passage of CSHB 546. The present legislation creates a great incentive for defendants to drag out litigation, refuse to settle on reasonable grounds, and pursue frivolous appeals. CSHB 546 would impose an equitable burden upon those involved in litigation; a burden that would change over time and accurately reflect the value of the funds tied up pending a final judicial determination of a dispute.

Again, we strongly urge your support of this Bill, and are hopeful that we will soon be greeted with its enactment.

Respectfully yours,

MESTAS & SCHNEIDER

By

  
MICHAEL J. SCHNEIDER

MJS/ck

April 10, 1980

Mr. Michael T. Thomas,  
Attorney at Law  
Robertson, Monagle,  
Eastaugh and Bradley  
P. O. Box 1211  
Juneau, Alaska 99802

Dear Mr. Thomas:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I have held those bills on that subject for several weeks and everybody will have a chance to be heard. HB 546 is scheduled for hearing on April 15, 1980 at 1:30 p.m.

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Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

OF COUNSEL  
M. E. MONAGLE

## ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

R. E. ROBERTSON (1885-1961)  
F. O. EASTAUGH  
J. B. BRADLEY  
WILLIAM G. RUDDY  
L. B. JACOBSON  
MICHAEL T. THOMAS  
JAMES F. CLARK  
PAUL M. HOFFMAN  
J. P. TANGEN  
DEBORAH A. HOLBROOK  
D. ELIZABETH CUADRA  
HAROLD E. SNOW, JR.  
PAMELA L. FINLEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
POST OFFICE BOX 1211  
JUNEAU ALASKA 99802

ROBERT B. BAKER  
LEROY J. BARKER  
L. G. BERG  
C. R. RICH  
WM. R. NALD HULEN

### ANCHORAGE OFFICE

601 WEST FIFTH SUITE 510  
ALASKA MUTUAL BANK BLDG.  
POST OFFICE BOX 679  
ANCHORAGE, ALASKA 99510  
PHONE (907) 277-6693  
CABLE: ROMEA  
TELEX 09C-26-486

April 9, 1980

### JUNEAU OFFICE

200 NBA BUILDING  
POST OFFICE BOX 1211  
JUNEAU, ALASKA 99802  
PHONE (907) 586-3340  
CABLE: ROMEA  
TELEX 069-45-376

The Honorable Robert Ziegler, Chairman  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Ziegler:

We have asked the American Insurance Association, and other friends in the industry, to provide us as much information as they can concerning the actual impacts of this bill relating to prejudgment and post-judgment interest. They are gathering that information, but as you might imagine, it is a little difficult to isolate the effect of interest rates in settlements and judgments in one state.

Without having the exact figures, we know that this bill which if it were currently law would have the effect of more than doubling the interest rate on claims prior to judgment, would do several things, none of which seem to be warranted. As you may be aware, tort cases which go to trial have shown in the last few years a remarkable tendency to produce defense judgments. Many others come in at verdict amount which are less than offers of judgment that have been made. Thus, the insurance companies or uninsured defendants have been making fairly good judgments, about the merits of the claims against them. That would seem to call into question the argument that delays in settlement are due to callous greed on the part of the defendants. We can also demonstrate that the insurance companies are averaging approximately the same 8% return on their investments, that the prejudgment interest rate would give the plaintiff on his claim. Thus, the prejudgment interest rate wipes out the investment earnings as a reason to delay settlement. The very high cost of litigation in this state, on the other hand, is in addition to the interest, and forces serious attention to business by insurers. At the same time, the

The Honorable Robert Ziegler  
Page Two

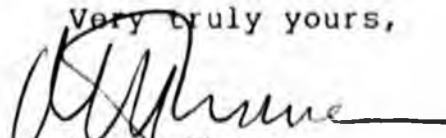
April 9, 1980

plaintiffs are seldom able to obtain a return of 18% on their verdicts, and would not have made that kind of money if they had been given the verdict amount on the date of the accident. From their point of view, then, the interest rate is a windfall.

From the foregoing, all of which we can substantiate, it would seem that this enormous increase in the pre-judgment interest rate will tend to skew the system by forcing settlement at higher figures than they are worth, or forcing settlements in cases that should be tried because the trier of fact would find no liability, and finally in those cases where there is a recovery by the plaintiff, it overcompensates the plaintiff. All of these phenomena tend to add to the cost of insurance, since both the amounts of the settlements and of the judgments, are business expenses of the insurance companies and will be used to substantiate rate increases. In the case of some lines of insurance, such as automobile, this will have further adverse effects on the public of Alaska as a whole, since other factors have caused automobile insurance to be sufficiently expensive so that nearly half of our driving citizens do not insure themselves.

We will be forwarding statistical and other information as we obtain it from the industry. I would appreciate notice of any hearing on this bill.

Very truly yours,



M. T. Thomas

MTT:sd

April 14, 1980

Mr. Michael Moody,  
Attorney at Law  
Atkinson, Conway, Bell and Gagnon  
420 L Street, Suite 500  
Anchorage, Alaska 99501

Dear Mr. Moody:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I have held those bills on that subject for several weeks and everybody will have a chance to be heard. HB 546 is scheduled for hearing on April 15, 1980 at 1:30 p.m.

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Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

KENNETH R. ATKINSON  
JOHN M. CONWAY  
JESSE C. BELL  
BRUCE E. GAGNON  
ROBERT J. DICKSON  
W. MICHAEL MOODY  
GEORGE M. KAPOLCHOK  
JOHN A. TREPTOW  
PATRICK B. GILMORE  
SUSAN WRIGHT MASON

LAW OFFICES OF  
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420 L STREET  
SUITE 50C  
ANCHORAGE, ALASKA 99501

CABLE ADDRESS:  
DOVER  
TELEPHONE 279-5563  
ARFA CODE 907  
TELEX NUMBER:  
26-517

April 9, 1980

Robert H. Ziegler, Sr.  
Chairman  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

It has come to my attention that your Committee is considering amendments to AS 09.30.070 and 45.45.010, dealing with pre-judgment and post-judgment interest. I have reviewed CSHB 546 and would encourage you to enact that or similar legislation.

Given the general inflationary trend over the past few years, such legislation is sorely needed. There was a time when the 8% interest rate was realistic. With inflation galloping along at 15% a year and the prime lending rate now at 20%, the old fixed interest rate is simply unrealistic. When an injured person is unable to work or a small businessman is not paid under a contract, they have to borrow money in the marketplace to survive. It is difficult to explain to them why they must pay interest in excess of 20% but are awarded only 8% interest by the court.

As you know, the theory of pre- and post-judgment interest is that it is part of the compensation required to make an injured party whole. Our supreme court has recognized the "economic fact that money awarded for any reason is worth less the later it is received." State v. Phillips, 470 P.2d 266, 273 (1970). Since the person has suffered a loss at the time the injury occurred, he is entitled to interest from that day forward in order to be made whole. Thus pre-judgment and post-judgment interest are part of the compensatory damages. Davis v. Chisum, 513 P.2d 475 (1973). The remedy is illusory, however, where the disparity is so great between the legislative interest rate and that of the marketplace.

The impact of the current fixed interest rate can best be illustrated by a hypothetical. Assume that a person's

PAGE TWO  
ROBERT H. ZIEGLER, SR.  
APRIL 9, 1980

uninsured home or automobile is destroyed by the negligence or intentional act of another. The wrongdoer refuses to pay the damage and a lawsuit is filed. To replace the damaged item, the injured party must obtain funds in the marketplace at the prevailing interest rate. If recovery is had after three years of litigation, the claimant receives 24% total simple interest on the court award. Yet at prevailing rates he would have paid in excess of 60% total interest on the comparable money he had to borrow over the same period. It is obvious that even though he prevailed in the case, he was not made whole.

Regardless of the economic climate, CSHB 546 establishes a more equitable scheme than the current fixed interest rate. At best, the fixed rate will only approximate the real cost of money at any given time. A floating rate would much more closely approximate the true rate. Although companies that are frequently defendants, such as insurance companies or large businesses, might oppose such a statute, that opposition focuses only on the short term economic climate. In different economic times it could work to their advantage. For example, if President Carter succeeds in creating the recession he has been striving for, the money market will change drastically. In that situation, the floating rate could well decrease to the point where it was advantageous to defendants as compared to a fixed rate. As compared to the realities of the money market, however, a floating rate would be fair to both parties at any given time.

There is one other salutary effect of a realistic interest rate. It prevents defendants from litigating cases solely to retain use of relatively cheap money for several years. Only a fool or a saint would pay a claim promptly to avoid paying 8% interest where he must then borrow replacement money at 22%. In such a case the innocent claimant is subsidizing the wrongdoer in the amount of the difference of the two rates. If the base amount of the claim were \$100,000, the benefit to the wrongdoer would be \$14,000 per year. Any candid attorney would have to admit that such economic decisions are commonplace in litigation. A realistic interest rate would eliminate manipulation of this economic leverage.


PAGE THREE  
ROBERT H. ZIEGLER, SR.  
APRIL 9, 1980

For t e foregoing reasons, I urge you to give favorable consideration to CSHB 5.6. Such action is necessary to remedy the current inequitable situation. Thank you for your time.

Very truly yours,

ATKINSON, CONWAY, BELL & GAGNON

By

  
W. Michael Moody

WMM:mr

cc: Senator Dankworth  
Senator Bennett  
Senator Meland  
Senator Ray

MSGR

82241 AL ANCHORAGE ALASKA 50 04-28 112480 APR 28 PM 10 15

PMS SENATOR ROBERT H ZIEGLER

JUNEAU AK

WE SUPPORT HB546 BY JUDICIARY COMMITTEE WHICH WILL DO MORE TO  
ELIMINATE THE CONGESTED COURT CALENDARS THEN ANY OTHER MEASURE  
AS IT IS A FAIR REFLECTION OF THE COST OF MONEY I. TODAY'S COURT.

PAUL J HANGLE

JULIE A CLERK

CARNEY W NIXMS III

131 CHRISTIANSON ANCHORAGE AK 99501

*This bill is scheduled for April 15, 1980  
1:30 P.M. Beltz committee room*

March 27, 1980

Diane Niemi  
R.R. 5, Box 5242  
Juneau, Alaska 99803

Senator Robert H. Ziegler  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: House Bill #546

Dear Bob:

Thank you for taking time recently to discuss with me House Bill #546. It is my opinion that you should take whatever action within your power to see that this bill is not passed. As you know, my concern is not so much over the rate of prejudgement interest applied, but rather with the concept of over what time period the interest should be assessed. As I understand it prejudgement interest is assessed from the date of injury, accident or when the cause of action arose. It would seem far more judicial for such interest to be assessed over a time period beginning 90 days (or some reasonable amount of time) after the defendant received written notice of claim or demand. As you know many Complaints are not filed until a year or more after the incident giving rise to the Complaint thus affording the plaintiff quite a bit of time to research his position and formulate various arguments in his favor and perform routine acts of discovery, but not affording those same opportunities to the defendant. In many cases the defendant is not aware that he has behaved in such a way that a lawsuit could result so he reports nothing to the insurer until he receives notice of suit from the plaintiff. It has always seemed odd to me that the insurer should be penalized by prejudgement interest from the date of injury when the plaintiff is not required by law to make a formal claim immediately but is given two (or three, or six) years to file suit.

The current system seems to award a plaintiff for waiting as long as the statute of limitations will allow to file his Complaint so that even if the defendant or insurer agreed with the plaintiff's allegations and agreed to pay every dime of the demand the plaintiff would stand to collect additional sums by nature of prejudgement interest. In spite of what plaintiff's attorneys may report there are cases in that category.

It is my understanding that one of the main purposes for prejudgement interest was to encourage prompt settlements. In my narrow scope of all the litigation which goes on in Alaska I have been aware of a number of cases in which the defendant did all in his power to schedule settlement conferences but the plaintiff's counsel was out of town, involved in another trial, ill, or just "out to lunch." I know of cases in which the defendant was prepared for trial and the Court granted continuance after continuance at the plaintiff's request. The Courts are booked

Senator Robert H. Ziegler

March 27, 1980

Page 2

such that even when both parties are prepared for trial an actual trial date may not be available for six months or longer. Have you ever heard a plaintiff's attorney complain when a case is postponed? Consumers seem quite concerned when insurance premiums rise yet it seems obvious that it's you and I and the guy next door who ultimately pay for the injustice discussed here. While the concept of prejudgment interest may have been formulated with the idea of moving cases along it seems the net result is none other than to punish defendants and their insurers. I understand that a plaintiff who has truly been wronged by a defendant should not have to wait three or four years to prove his case and then collect money which one could say was due the date of the wrongful act, but as a practical matter there is no way such a debt could be paid on the date the action arose. One obvious reason is that quite often the plaintiff himself does not know the extent of his damages and is not in a position to make a demand for a year or so. Why should the defendant be required to pay interest on a debt over the period of time during which the amount of that debt cannot be established even by the plaintiff himself?

It seems the current system has the effect of holding the defendant responsible UNLESS he is able to prove through trial that he is not guilty until proven innocent. Our society provides us with courts for the purpose of settling differences of opinion as to who may owe whom, yet penalizes the party who chooses to employ that system by saying, "I am not at fault." Perhaps lawmakers should give some consideration to the idea that prejudgment interest should work both ways. That is, if the defendant prevails at a trial and is found to be 0% liable to the plaintiff the plaintiff would then owe the defendant prejudgment interest from the date of injury assessed on the amount of dollars the insurer (or uninsured defendant) held in reserve as required by law. That way the risk of trial would seem more equally shared. I have handled numerous suits in which the jury returned a verdict for the defense and as the prevailing party we were awarded fees and costs to be paid by the plaintiff. The amount awarded is a very small percent of the actual fees and costs which I suppose is nearly irrelevant as the plaintiff generally trades his obligation to reimburse us for a promise not to appeal and we never see the \$\$\$\$. I realize the same fate would likely befall the payment of prejudgment interest to the defendant, but such a concept would have to be considered by a plaintiff when determining his position and his risk. In some cases the possibility of having to pay the defendant prejudgment interest might be the very factor to cause a plaintiff to accept a settlement offer made by a defendant.

I would like to see some statistics comparing lawsuits in Alaska to those filed in states which do not have prejudgment interest. One could chart the date a Complaint was filed and the date and method by which the issue was resolved and perhaps statistically determine if the concept of prejudgment interest has any effect on timely settlements. I suspect it does not as there are so many other influencing factors.

Senator Robert H. Ziegler  
March 27, 1980  
Page 3

And one last comment. In a case where an Offer of Judgement had been made in the amount of \$20,000 but the jury awarded an amount greater than that it would seem more equitable to charge the defendant with pre-judgment interest on \$20,000 to the date of the Offer and on the balance to the date of the trial. This would take into consideration that the defendant was willing to pay \$20,000 as of that certain date and should not then be penalized with continuing interest on an amount which would have been paid but for the refusal of the plaintiff to accept.

Well, you asked for a "brief letter" outlining my ideas and suggestions. I guess you never really expected I could be brief, but hopefully I have supplied you with some ideas. It is my opinion pre-judgment interest should be abolished altogether but if that is not in the cards I would hope for some equitable modifications and you're just the guy who should be able to help.

As you know, I am employed by a major insurance carrier but have not written to you on its letterhead as my superiors have not had the opportunity to review and approve my comments. Opinions expressed here are mine and may or may not be reflective of the position taken by my employer. Amen.

Sincerely,

*Diane*

Diane Niemi

*P.S. This letter is not your  
birthday present!*

April 3, 1980

Mr. H. Bixler Whiting,  
Attorney at Law  
Whiting and Rosie  
548 1/2 Second Avenue, Suite 303  
Fairbanks, Alaska 99701

Dear Bix:

O

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

WHITING & ROSIE  
ATTORNEYS AT LAW  
548½ SECOND AVENUE, SUITE 303  
FAIRBANKS, ALASKA 99701

H. BIXLER WHITING  
THOMAS P. BLANTON  
JOHN F. ROSIE

AREA CODE 907  
452-3196 • 452-3287  
452-2492 • 452-3738

March 31, 1980

Robert Ziegler, Senator  
STATE CAPITOL  
Pouch V  
Juneau, Alaska 99811

Dear Bob:

I understand that the legislature is considering changing the statute which controls interest rates which judgments bear to be a floating rate consistent to some extent with the prime rate. I can not think of anything which would do more to remedy the backlog of cases in the court system. Somehow, people seem to forget that the purpose of insurance is to compensate for injury. That is, a nation-wide group pays premiums so that those who they injure can be compensated for the injury. When it comes time for the compensation payment, the realities of the business world become involved and those realities are separate and distinct from the realities of the legal world. If prejudgment interest is 6% or 8%, and an insurance company makes 18% to 20% on its investments by keeping the money, why should it pay the money until it absolutely has to? It simply does not make business sense to give up use of that money at those low interest rates until forced to do so. If \$100,000 is owed and they can delay payment for four years through discovery, motions, delays, appeals and etc., they can easily clear 10% over and above the 8% which is due and earn \$40,000 or \$50,000 in the process.

The result of the low interest rate is to give insurance companies little or no choice, but to delay settlement as long as possible. To do otherwise would be to exercise poor business judgment. A realistic interest rate would make the realities of the law consistent with realities of business and encourage rather than discourage early settlements. I support the bill.

Yours truly,

  
H. Bixler Whiting

HBW:vm

April 3, 1980

Mr. Dennis P. James,  
Attorney at Law  
750 West Second Avenue, Suite 110  
Anchorage, Alaska 99501

Dear Mr. James:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

750 West 2nd Avenue, Suite 110  
Anchorage, Alaska 99501

Telephone  
(907) 276-3037  
(907) 276-6200

Dennis Patrick James  
Attorney at Law

March 26, 1980

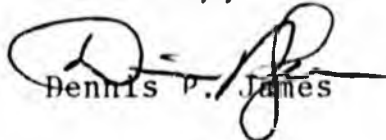
Senator Ziegler  
Pouch V  
Juneau, Alaska 99811

Dear Senator:

I wish to solicit your support for House Bill 456 which deals with pre-judgment and post-judgment interest. The current law does not encourage settlement in that the tort-feasor who is generally insured, has no incentive to settle the case with his innocent victim. The primary reason for this is that money can be invested during the pendency of litigation at a much higher rate than the current interest rate that the court will assess against the Defendant.

Please support this Bill so that innocent victims may get the full protection of our laws.

Sincerely,

  
Dennis P. James

DPJ/sdw

April 8, 1980

Mr. Robert L. Richmond,  
Attorney at Law  
Richmond, Willoughby and Willard  
880 H Street, Suite 201  
Anchorage, Alaska 99501

Dear Mr. Richmond:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES

Richmond, Willoughby & Willard

A PROFESSIONAL CORPORATION

880 "H" STREET, SUITE 201

ANCHORAGE, ALASKA 99501

ROBERT L. RICHMOND  
RICHARD J. WILLOUGHBY  
DONNA C. WILLARD  
AME W. IVANOV  
R. N. SUTLIFF

TELEPHONE  
AREA CODE 907  
276-5727

March 26, 1980

The Honorable Robert H. Ziegler, Sr.  
Alaska State Senate  
307 Bawden Street  
Ketchikan, Alaska 99901

Dear Senator Ziegler:

In recently returning to the state from vacation, I understand that a bill has passed the House which indicates that pre and post judgment interest in personal injury cases will be paid at a figure of two percent above the prime rate.

It seems to me that the bill does a great disservice to all defendants, which includes not just insurance companies, but those small defendants who believe they have the right to have their day in court.

I understand you are opposed to the bill and I thought one of the points that would be effective in arguing against this bill is that plaintiff's counsel frequently await up to the two year statute of limitation prior to even filing their lawsuits. Under this bill a plaintiff could build up almost thirty-five percent, or more, interest while investigating a case before filing a lawsuit. While I am against such an interest rate being added to a verdict or a judgment at any time, I do think that if this bill has enough support to pass, that at least something should be done to avoid the build up of interest over the period of time before the filing of a lawsuit.

I would be glad to discuss this with you at any time if you have any questions. My comments regarding plaintiff's lawyers delaying the filing of lawsuits, of course, is not an across-the-board indictment of plaintiff's counsel. In fact, one of the most tenacious and successful plaintiff's counsel that I have had occasion to deal with is your own partner, Hal Brown, who I had the pleasure of

FYI

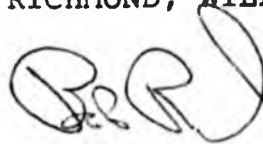
Robert H. Ziegler, Sr.  
March 26, 1980  
Page Two

dealing with in the so-called "Petersburg roof collapse case".

In any case, I would appreciate your attention  
to this matter.

Very truly yours,

RICHMOND, WILLOUGHBY & WILLARD

A handwritten signature in dark ink, appearing to be 'RLR', written over a horizontal line.

Robert L. Richmond

RLR:cb

cc. Charles J. Ossenkop

April 8, 1980

Mr. Winthrop Fish, M.D.  
Chairman Legislative Committee  
Alaska State Medical Association  
4107 Laurel Street, #1  
Anchorage, Alaska 99504

Dear Mr. Fish:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

# LASKA STATE MEDICAL ASSOCIATION



~~1125 W. Eighth Avenue, Suite 600, Anchorage, Alaska 99501~~ • (907) 277-6891

March 24, 1980

4107 Laurel St. #1, Anchorage, AK 99504

Senator Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V, M/S 3100  
Juneau, AK 99811

Dear Senator Ziegler:

CSHB 546, increasing pre and post-judgment, passed the House unanimously. Its apparent purpose is to prevent laggardly judgment payments or timely settlement in times of high interest investment return. The Alaska State Medical Association is opposed to this legislation for the following reasons:

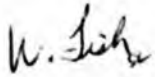
- 1) Our insurance companies have stated that it will cause an immediate increased premium for liability insurance. This will have two (2) effects.
  - a) The insurance companies will have discounted the interest penalties up front and will have created immediate investment funds from the increased premium before the fact of any legal action or judgment against their insured. It thus rewards the insurance companies directly.
  - b) Increased liability insurance premiums will be borne by the entire insured public, contributing to the general inflation.
- 2) High pre-judgment interest will directly encourage plaintiff's attorneys to maximize the return by delaying valid actions. The plaintiff will be penalized by the delay, and the attorney rewarded by increased contingency fees.
- 3) The interest rates effectively and automatically increase the actual eventual award. The successful plaintiff could not hope to invest privately at these rates.
- 4) Malpractice insurance carriers serving Alaska have expressed the possibility of withdrawal from the state, which, of course, would simply reopen the old sore.

Thus, this legislation will penalize the insured public, and, potentially, the plaintiff, while rewarding the plaintiff's attorney and insurance companies. We do not consider this to be in the public interest. It can potentially disrupt or destroy the current well-functioning malpractice coverage in Alaska, achieved with great effort.

Senator Ziegler  
March 24, 1980  
Page 2

We therefore urge the Senate to act unfavorably on this legislation,  
and, further, to document the invalidity of its apparent purpose.

Sincerely,



Winthrop Fish, M.D., Chairman  
Legislative Committee

WF/sel

cc: Alaska State Medical Association Council Members  
Alaska State Medical Association Legislative Committee Members

April 3, 1980

Mr. James M. Morgan,  
Attorney at Law  
931 Clay Court  
Anchorage, Alaska 99503

Dear Mr. Morgan:

Senator Tillion requested me to respond to your letter of March 26.

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Tillion

# JAMES M. MORGAN

ATTORNEY AT LAW

HB 546 - in 200  
Judging.  
then E Finance

931 CLAY COURT  
ANCHORAGE, ALASKA 99503

PHONE  
(907) 272-5261

March 26, 1980

The Honorable Clem Tillion  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Tillion:

I am writing in support of House Bill 546 (an act increasing pre-judgment and post-judgment interest rates) which I understand you will be considering very shortly. As an attorney, I have been heavily involved in litigation and have thus been exposed to the effect that the present 8% interest rate has on the litigation process.

My experience has shown that the bargain 8% rate encourages defendants to drag their feet and prolong the litigation process as long as possible even when the defendant has a realistic expectation of winning. Our Supreme Court has said that failure to award pre-judgment interest creates a substantial financial incentive for defendants to litigate even where liability is so dear and the jury award so predictable that they should settle, State v. Phillips, 470 P.2d 266 (Alaska 1970). That same philosophy would seem to apply when defendants are required to pay interest which is substantially below the market rate. The objective of House Bill 546 is to remove this disparity between the pre- and post-judgment interest rate and the prevailing market rate. This proposed floating interest rate would also have the advantage of keeping pace with future market fluctuations and would thus avoid the necessity of repeated legislative reviews.

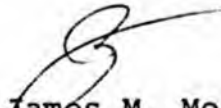
It should be remembered that an aggrieved party is supposed to be compensated for his loss through the payment of interest until his loss is repaid by the responsible party and as long as the interest rates allowed under AS 09.30.070 and 45.45.010 remain unrealistically low, those Alaska citizens these statutes were meant to protect are being shortchanged.

The Honorable Clem Tillion  
March 26, 1980  
Page 2

Finally, the present interest situation is a major factor in creating the massive backlog of civil cases in our courts (particularly the superior courts). If House Bill 546 is passed into law, I feel we will see a substantial reduction in the number of pending cases in our court system at all levels which will continue into the future, thus reducing the pressure on the system and in the long run helping to keep down the rapidly expanding costs of the burgeoning court system.

Thank you for your support in this matter. If there is anything I can do to further support this effort, please let me know.

Sincerely,



James M. Morgan

JMM:lge

March 27, 1980

Mr. L. Ames Luce  
Kelly and Luce  
Attorneys at Law  
1015 West Fifth Avenue  
Anchorage, Alaska 99501

Dear Ames:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Say hello to Bernie.

Regards,

*Robert H. Ziegler, Sr.*  
Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES

**KELLY & LUCE**

A PROFESSIONAL CORPORATION

1015 WEST SEVENTH AVENUE

ANCHORAGE, ALASKA 99501

(907) 279-9571

BERNARD P. KELLY  
L. AMES LUCE

KENAI OFFICE  
HIGHLAND BUILDING  
P. O. BOX 3762  
KENAI, ALASKA 99611

March 20, 1980

Senator Robert Ziegler  
Chairman, Senate Rules Committee  
Pouch V  
Juneau, Alaska 99811

Re: Pre/Post Judgment Interest Bill

Dear Senator Ziegler:

For a period in excess of one year I have been deeply involved, along with other members of the Bar Association, in addressing my attention to the continuing problem of court congestion and case resolution delay. These efforts have been directed toward participating in various committees and groups which have substantially streamlined the pretrial calendaring procedures in Anchorage, which will hopefully result in more expeditious case resolution. Also, substantial effort has been directed toward supporting the establishment of an interim appellate court, which has now come to be, and this should substantially reduce appellate delay, and for the addition of two new judges in the Anchorage area, which should help in expediting case resolution.

There is, however, still one important measure that needs to be implemented in order for all of these actions to produce their desired end - a more expeditious resolution of disputes. That is the enactment of the pre/post judgment bill that is presently pending before your committee.

As you will recall, pre and post judgment interest was initially established at 6%, and several years ago with rising inflation rates, was increased to 8%. Such an interest figure under present conditions, however, is unrealistic, and appeals and delay become advantageous economically for those against whom judgments have been rendered or whose liability will in all probability be established. In the Anchorage court system at the present time, it can be expected that from the time of the request for trial setting until resolution of the case by appeal, there will have elapsed a period of approximately four years. If judgment is obtained in the amount of \$500,000 and if money can be generally invested at 18%, 10% per year would amount to a \$50,000 difference between the pre or post judgment interest required to be paid and the money to be earned

Senator Robert Ziegler  
March 20, 1980  
Page Two

if judgment were to be invested. This, coupled with a four year period of delay, would result in approximately \$200,000 difference between the investment income to be produced and the pre or post judgment interest that would have to be paid. Reducing from this figure attorneys' fees and costs, we still would find in most cases that it is substantially more beneficial for a defendant to delay to the utmost extent possible and always use the appellate process, because the dictates of the marketplace make it financially desirable to do so. As long as the ethics of the marketplace make the delay in the resolution of disputes and the utilization of the appellate process more profitable than prompt and expeditious settlement at a claim's fair value, the trial court and appellate congestion, irrespective of the judicial resource available, will be the norm.

In some respects, this condition reminds me of what has been the experience in the astronomical increase in the cost of health care delivery services, where prepaid medical insurance, either through government or private industry sponsored plans, continually induces the escalating spiral of costs of medical delivery services far in excess of inflation or other responsible factors. While the analogy may not be exact, I think it serves as a model that should be avoided and not emulated by the legal profession.

House Bill No. 546 would place pre and post judgment interest at 2 percentage points above prime, which would effectively reflect the investment income that can be derived in the marketplace. In so doing, all financial benefit or inducement to engage in delay of case resolution, either at the trial or appellate level, would be removed.

It is to be anticipated that many special interest groups could claim that in some manner they are being substantially prejudiced by raising pre and post judgment interest to the actual marketplace level for the investment of funds. Such contentions, I believe, bear little merit. Suffice to say that the concept of pre and post judgment interest has proved to be meritorious and has withstood the test of time. All that needs now be done is have it reflect, in these economic times, the actual conditions of the marketplace.

I would appreciate your committee's support of this measure, which I believe will result in substantial elimination of much of the existing court backlog and ultimately result in a better quality of justice for Alaskans.

Yours truly,

  
L. Ames Luce

LAL/cb

Alaska State Legislature

LIBERTARIAN  
REPRESENTATIVE  
RICHARD (DICK) L. RANDOLPH  
1106 CUSHMAN ST.  
FAIRBANKS, ALASKA 99701  
Phone (907) 452-2208



WHILE IN JUNEAU  
"LUNCH"  
JUNEAU, ALASKA  
99811  
Phone (907) 485-4968

House of Representatives  
March 25, 1980

Robert Ziegler  
Chairman  
Senate Judiciary Committee

Dear Bob

Enclosed is some information that I  
have received which I think may be  
helpful to you in your consideration  
of HB 546.

Regards,

Dick

March 27, 1980

I may have a solution. Why don't  
we get together sometime the first  
week of April?

Regards,

31



# State Farm Insurance Companies

March 18, 1980

JOHN S. GLASCOCK  
Northwest Office  
4600 25th Avenue  
Salem, Oregon  
97313

The Honorable Richard L. Randolph  
Representative State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Dick:

RE: CS for House Bill No. 546  
An Act Increasing Prejudgment and  
Post-Judgment Interest Rates

Our best estimate of the cost of this bill to the insurance consumers of Alaska is conservatively \$2,300,000. The present prejudgment interest rate of 8% costs Alaska insurance consumers \$1,500,000 a year. State Farm Insurance Company's share of this is \$250,000 a year. Present prime rate of 18 $\frac{1}{2}$ % as of last Friday plus 2% points generates a current interest of 20 $\frac{1}{2}$ % which is 12.25% points greater than the 8% prejudgment interest rate now required. This would increase the total cost to \$3,800,000 a year. The difference between the present cost of \$1,500,000 and \$3,800,000 is \$2,300,000.

This, of course, is not the only cost to the insurance consumer. Prejudgment interest places a penalty on individuals insured or uninsured alike and as a consequence places a penalty on a person's desire to have judicially determined the question of liability or damages. In addition, Alaska case law now requires that Rule 82 Attorneys Fees be computed on both the principal plus the interest. This computation will further magnify the effect of the proposed interest rate increase.

The faulty premise of prejudgment interest is that unless the person being sued has to pay interest from the day of the incident until paid, he has no incentive to settle. The history of litigation in Alaska since the enactment by the Supreme Court of prejudgment interest has not encouraged settlements at all. Most cases are not ready for settlement until facts have been aired and damages determined. This information is not immediately available at the time of the incident. The actual effect of this sort of legislation is to give the plaintiff and his attorney very little incentive to settle when a statute would allow annual tax free interest of more than 20% on the judgment. The additional disincentive for the plaintiff to settle would create even additional costs for the consumer. It is fair to estimate we believe that the total additional costs to the consumer would be something in the range of \$3,500,000 to \$4,000,000 for the insurance consumer of Alaska.

March 18, 1980

Page 2

The statute proposed does not produce a fair judicial system for the consumer of Alaska. The bill actually is an attempt to further coerce the segment of society being sued with the cost being paid by all insurance consumers in the State. This bill will not solve the litigation explosion problem in the State; it has the effect of ignoring fair judicial procedure and due process and it penalizes all the insurance consuming public in Alaska with higher insurance premiums - the only source of funds to pay for the additional costs.

Dick, I hope that you are able to bring this information to the attention of the Senate Judiciary Committee which is now considering this proposed bill.

Very truly yours,



John S. Glascock  
Division Manager  
Alaska/Oregon Division

JSG:jw

March 31, 1980

Mr. James D. Rhodes,  
Attorney at Law  
Cole, Hartig, Rhodes,  
Norman and Mahoney  
717 K Street, Suite 201  
Anchorage, Alaska 99501

Re: HB 546.

Dear Mr. Rhodes:

We'll do something with the captioned bill prior to terminating the session.

Certainly the current rate of interest on judgments is unacceptable, but on the other hand what is being sought is a little on the high side.

I suspect there is a compromise area someplace, and I hope to find it within the next few weeks.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

HOYT M. COLE  
ROBERT L. HARTIG  
JAMES D. RHODES  
JOHN K. NORMAN  
ROBERT J. MAHONEY  
BERNARD J. DOUGHERTY  
MICHAEL W. SHARON  
ROGER H. BEATY  
EDGAR R. LOCKE

**COLE, HARTIG, RHODES, NORMAN & MAHONEY**

A PROFESSIONAL CORPORATION  
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(907) 274-3576

KODIAK OFFICE:  
202 CENTER AVE., BOX 503  
KODIAK, ALASKA 99615  
(907) 486-3143  
C. WALTER EBELL  
MELVIN M. STEPHENS, II

March 25, 1980

MICHAEL ROBBINS  
WEV W. SHEA  
C. WALTER EBELL  
SPENCER C. SNEED  
MELVIN M. STEPHENS, II

OF COUNSEL:  
G. KENT EDWARDS

REPLY TO: Anchorage

Honorable Robert H. Ziegler, Sr.  
Pouch V  
Juneau, Alaska 99811

RE: HB 546

Dear Senator Ziegler:

Please accept this letter as evidence of strong support for HB 546 or any substitute legislation which raises the interest rate attaching to judgments for both pre judgment and post judgment awards.

I feel I speak not only on behalf of many attorneys who have long felt that the present rates work an immense injustice on persons who must resort to the courts to secure monetary compensation, but also for a multitude of injured persons who seek redress against the Insurers of negligent and careless persons.

I personally represent several persons (or their estates) who were seriously injured or killed as a result of the negligence of others and who now must seek just compensation ultimately from an insurance carrier. As it now stands under the present interest rate on judgments there is no incentive for an insurance company to pay a just claim. In fact the opposite is true. At the present rate of 8% it is much more to the economic advantage of an insurance company to delay payment to the injured victim as long as possible utilizing the money withheld to earn the insurance companies even more money at market interest rates of 15-20% and much more considering the actual yield on these investments.

In fact, and as a specific example, we secured a judgment against a Defendant for a wrongful death in Fairbanks in a judge tried case. The attorney representing the Defendant (appointed by the Defendant's insurance carrier) stated to

Honorable Robert H. Ziegler, Sr.  
Page Two  
March 25, 1980

me in all candor that the insurance company was going to appeal the decision even though the chance of overturning the judge's decision and award was nil merely because it is cheaper to appeal than to pay because of the low interest rate on the judgment.

As a result, the widow and her three children continue to live in poverty and on welfare while the insurance carrier, Fidelity and Deposit Insurance Company of Maryland in this case, uses her money to invest for high returns and will ultimately pay her only 8% on her judgment when affirmed by the Supreme Court some two years after obtaining her right to compensation.

I am convinced, beyond any doubt whatsoever, that the legislation proposed will not only serve to expedite payment of insurance claims, it will have the additional benefit of clearing crowded court calendars of pending personal injury cases that are being contested not on merit, but on the grounds mentioned above.

I would only add, certainly only as constructive criticism, that the 2 point differential above the Federal Discount Rate, still leaves considerable disparity between the interest owed and the actual money market.

In other words, assuming a judgment entered today was effective pursuant to the terms of HB 546, the rate would be only 14%. The "prime rate" is 19% and the market availability of money in other areas is even higher, leaving insurance companies with a continuing incentive to procrastinate. A five percent addition would be even more logical and would not exceed the "usury" limitation in this State.

In any event HB 546 is a great effort to solve an important issue.

Good luck and thanks.

Sincerely,

COLE, HARTIG, RHODES,  
NORMAN AND MAHONEY

BY:

  
James D. Rhodes

JDR: cab

March 27, 1980

Roger E. Holmes  
Biss and Holmes  
Attorneys at Law  
618 Christensen Drive  
Anchorage, Alaska 99501

Dear Mr. Holmes:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

BISS AND HOLMES  
ATTORNEYS AT LAW  
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS  
ROGER F. HOLMES

818 CHRISTENSEN DRIVE  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 277-8564

WASILLA OFFICE  
SR BOX 5111  
WASILLA ALASKA 99687  
TELEPHONE (907) 376-5318

March 20, 1980

Robert H. Ziegler, Sr., Esq.  
Chairman of the State Senate  
Judiciary Committee  
510 Kennedy Street  
Juneau, Alaska 99801

Re: Pre and Post-judgment Interest Legislation

Dear Senator Ziegler:

I am the Corporate Secretary for the Medical Indemnity Corporation. I am sure you are aware that this corporation was set up a few years ago by the State to help solve the medical malpractice crisis in Alaska.

We are very concerned with legislation now pending before the House and Senate which would raise the prejudgment and post-judgment interest paid on liability claims to an amount which could be as high as 15 or 16%. This is, of course, double the present amount. Under the Bill the rates could go much higher.

MICA now insures all but one hospital in the State of Alaska. We also insure in excess of 100 physicians practicing in the State.

The Medical Indemnity Exchange of California, a private medical malpractice insurer, is now competing with MICA in the State of Alaska. MIEC now insures in excess of 30 physicians in the State of Alaska and possibly as high as 50.

We have not had an opportunity to receive a final opinion from our actuary on what doubling the interest rate will do to the malpractice premiums in the State. However, MIEC has informed the medical association that its actuary estimates that a rate increase of up to 33% could be necessary if these interest rate bills become law. We assume that our actuary will tell us approximately the same thing.

Robert H. Ziegler, Sr., Esq.  
Page Two  
March 20, 1980

Malpractice premiums for physicians and hospitals are now at a very substantial rate. The health care providers will undoubtedly pass these substantial increases along to their patients. This will result in a further escalation of the already rising health care prices.

MICA has made it a policy to refer all claims to a panel of physicians here in the State. If that panel tells us that the care is not defensible, every effort is made to settle the case at the earliest opportunity. On the other hand, we have many cases now in litigation in which the plaintiffs are claiming substantial damages but which an independent panel of physicians tell us are defensible cases. Adequate reserves have been posted in case a trier of fact finds against us.

By insurance code regulations we are strictly limited in the types of investments that can be made with our assets, including those which constitute our reserves. At the present time our portfolio of required securities is yielding less than 10% in a return to us. From that must be subtracted the expenses of investment and the cost of defense.

If these new interest rate bills pass, we will be exposing the premiums paid by our insureds as well as the \$3,000,000.00 guarantee from the taxpayers of the State of Alaska, to interest rates at least 5% to 6% above what by law we are entitled to earn.

This exposure will in turn cause a further increase in rates in future years. Because of the substantial interest penalty that can be tacked on to any judgment, it will become extremely dangerous to let a trier of fact determine the issues in cases in which independent members of the health care community have determined that no negligence exists. By forcing more settlements in cases which might otherwise be successfully defended, a further rate increase is inevitable. By settling cases which might otherwise be defended, more suits will be brought which if the participants knew they must take their case to a jury, would probably never be brought.

I have been involved in litigation of this nature for ten years. I have yet to deal with an insurer who was not pushing me to resolve the case at the earliest opportunity. Many plaintiffs' cases are not brought until just prior to the expiration of the statute of limitations. Many of the long delays which occur

Robert H. Ziegler, Sr., Esq.  
Page Three  
March 20, 1980

thereafter can be traced to a delay by the claimant's counsel in prosecuting the case. Substantial court delays at the trial and appellate level also contribute to the problem.

I have handled plaintiffs' personal injury and death cases. I have not found it difficult to force defendants into a trial or settlement posture when I have actively pressed the case except for court delays.

Thank you for your consideration in this matter.

Very truly yours,

MEDICAL INDEMNITY CORPORATION  
OF ALASKA



Roger F. Holmes  
Corporate Secretary

RFH/gd

cc: M. E. Dankworth  
H. D. Meland  
Bill Ray  
Don Bennett  
Ken Moore, Director, Division of Insurance

March 31, 1980

Mr. O. Nelson Parrish,  
Attorney at Law  
Parrish Law Office  
536 Fourth Avenue  
Fairbanks, Alaska 99701

Dear Mr. Parrish:

You and your brother Lance ought to communicate more closely.

I enclose a copy of a letter I wrote him the other week on  
the same subject.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure

PARRISH LAW OFFICE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

536 FOURTH AVENUE

FAIRBANKS, ALASKA 99701

March 24, 1980

O. NELSON PARRISH  
JAMES A. PARRISH  
LANCE C. PARRISH  
  
ROBERT A. PARRISH  
OF COUNSEL

TELEPHONE  
(907) 456-4070

Senator Robert Zeigler  
Pouch V  
Juneau, Alaska 99811

Dear Senator Zeigler,

It has come to my attention that there is a bill pending in the legislature, House Bill 546, that attempts to make an equitable adjustment regarding pre-judgment and post-judgment interest on civil litigation in Alaska. I wish to urge that you give this bill your complete support. In my opinion, passage of this bill is absolutely necessary to protect the rights of economically damaged people in the State of Alaska.

As you know, the rate of inflation in the United States is out of control. Extremely high interest rates on invested money go hand in hand with this inflation. (I was advised yesterday by a banker that sums in excess of \$100,000.00 could be invested at a Seattle bank at between 18½ and 19%.) In my opinion, the insurance industry is taking advantage of these high interest rates to drag litigation out. The difference between actual interest rates and current pre-judgment and post-judgment interest rates gives insurance companies and other large corporations and in fact any other judgment debtor, no incentive to settle or otherwise resolve their liability.

A copy of a recent Supreme Court of Alaska opinion in which this office is involved, which provides an example of what I am talking about is enclosed. This case was tried and the judgment obtained in September or October of 1975. Since that time it has been on appeal, with the judgment running at 8% interest. As you can see from the opinion, the Supreme Court affirmed the judgment. Right now Continental Insurance Company is in the process of filing a Petition for Rehearing with the Supreme Court. This will undoubtedly occasion some further delay. Continental Insurance Company has been attempting to negotiate a settlement at substantially below the amount of the judgment plus interest. In my opinion, this is because they know every single day that passes deflates the value of our judgment.

As you can see, what occurs is in the nature of a vicious circle. Since there is no incentive to settle litigation even after judgment, the court system becomes overburdened with trials and appeals in cases that would otherwise be settled. This occasions more delay. The delay accrues to the advantage of the judgment debtor and to the disadvantage of the injured party. The situation is at present untenable.

I truly hope that you will give my remarks your closest consideration. If there is need, I would be happy to present my thoughts on this matter in more detail, in whatever manner you might desire.

Thank you.

Sincerely,



O. Nelson Parrish

ONP:mak

enclosure

AN Attorney, Doug Bailey  
will be writing + seeing  
you regarding this bill

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

Attorneys at Law

|                    |                    |                      |
|--------------------|--------------------|----------------------|
| JOHN C. HUGHES     | CARL J. D. BAUMAN  | TIMOTHY R. BYRNES    |
| DAVID H. THORSNESS | FRED B. ARVIDSON   | JAMES M. SEEDORF     |
| RICHARD O. GANTZ   | ROBERT T. FRICE    | BONNIE L. THIE       |
| JAMES M. POWELL    | DENNIS M. BUMP     | PAUL J. ERICKSON     |
| BRIAN J. BRUNDIN   | MARY HUGHES PATCH  | GARY G. FOSTER       |
| MARCUS R. CLAPP    | FRANK A. PFIFFNER  | FREDERICK J. ODSEN   |
| KENNETH P. JACOBUS | RALPH R. BEISTLINE | MICHAEL L. LESSMEIER |
| GARY W. GANTZ      | GORDON J. TANS     | STEVEN S. TERVOOREN  |
| JERRY E. MELCHER   | R. CRAIG HESSER    | JOSEPH R. LOESCHER   |
| JOE M. HUDDLESTON  | ROBERT L. MANLEY   |                      |
| SIGURD E. MURPHY   | DORIS R. EHRENS    |                      |
| RICHARD D. THALER  | JAMES M. GORSKI    |                      |

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Telecopier: 274-7525

3550 AIRPORT WAY  
FAIRBANKS, ALASKA 99701  
Telephone (907) 479-3161  
Cable Address: DENALI

• Fairbanks Office

Please reply to: ANCHORAGE

March 13, 1980

Senator Robert H. Ziegler, Sr.  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Bob:

Thanks for yours of March 10, 1980 and while I suspect we will continue to be plagued with prejudgment interest, unjust as it is, I would not be upset with a ten percent figure. The proponents of this change, as I understand, are beating the drums that this is a necessary change in order to force settlement of civil litigation which is the problem in the Superior Courts. I think we know that is not true either as a cause of the congested calendars, such as they are, or that higher interest force settlements. It indeed seems to me to be a strange position for the law to take to force the litigants, particularly one class of litigants, to settle under penalty of monetary sanctions and forego what I have always considered to be a right to have their questions judicially determined. However, that seems to be the official process under which we are operating in the State of Alaska. Bias in favor of defendants in criminal cases and against defendants in civil cases, to me, is so apparent as to be nauseating in the extreme.

In any event, for what assistance it may be to you in resolving this question, you will get no letters of complaint from me if the ten percent is adopted.

I have oftentimes thought, but I have never put it down in writing that I can recall, that your presence in the Senate, and particularly on the Judiciary Committee, is something the people of this State probably do not appreciate and will never appreciate. I, for one, am very happy you are serving in that position for the service you

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

Attorneys at Law

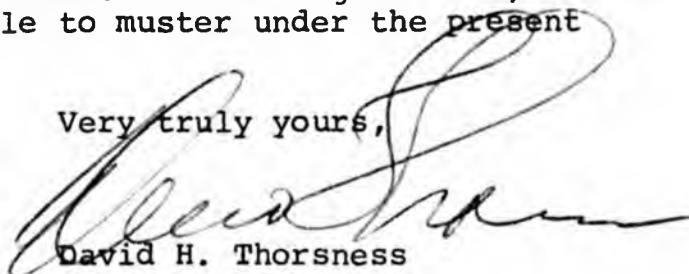
Senator Robert H. Ziegler, Sr.

March 13, 1980

Page Two

have rendered in the past and the service you will render in the future. I must say I am not overly pleased with the contribution that the south-central district makes to the legislature, but it seems to be the best we are able to muster under the present circumstances.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David H. Thorsness", written in dark ink over the typed name.

David H. Thorsness

DHT/fws

March 6, 1980

Mr. E. G. King,  
Attorney at Law  
Ziegler, Cloudy, Smith,  
King and Brown  
307 Bawden Street  
Ketchikan, Alaska 99901

Dear Ted:

Thanks for the comments on HB 674, HB 85 and the prejudgment interest bills. Comments noted.

If we ever, ala Shoemith, have to go the surety bond route again, the enclosure may prove of interest.

Regards,

  
RHZ:lk

Enclosure

STATE OF ALASKA

PUBLIC NOTICE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF  
COMMERCE AND ECONOMIC DEVELOPMENT

Notice is hereby given that the Department of Commerce and Economic Development, under authority vested by AS 44.33.020, proposed to amend and adopt regulations in Title 12 of the Alaska Administrative Code to implement AS 08.18.071 and AS 44.33.020, as follows:

- 1) 12 AAC 090(b) is amended by requiring that when a time certificate of deposit is filed with the department in place of a surety bond, the certificate of deposit be issued "ITF the State of Alaska;"
- 2) 12 AAC 21.300 is amended by adopting a definition of "ITF" (in trust for).

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing them so that they may be received by 4:30 p.m. on Monday, April 7, 1980, to:

Department of Commerce and Economic Development  
Division of Occupational Licensing - Regulations  
Pouch D  
Juneau, Alaska 99811

Copies of the proposed regulations may be obtained by writing to the above address and requesting such.

The Department of Commerce and Economic Development, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

\_\_\_\_\_  
Charles R. Hebbert  
Commissioner

\_\_\_\_\_  
Date

March 10, 1980

Mr. David H. Thorsness,  
Attorney at Law  
Hughes, Thorsness, Gantz,  
Powell and Brundin  
509 West Third Avenue  
Anchorage, Alaska 99501

Dear Dave:

I appreciated your well written, well reasoned letter of March 4 in which you commented about prejudgment interest. It is to be expected that I'll be receiving letters from all over the state since I circulated the various bar associations.

Once again, and Jesus how I hate it, I find myself in the middle of two warring factions within the same profession.

What do you think about ten percent flat as a cop-out point? Eleven percent? Twelve percent?

I sure could stand some guidance.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

# HUGHES THORSNESS GANTZ POWELL & BRUNDIN

Attorneys at Law

|                    |                    |                      |
|--------------------|--------------------|----------------------|
| JOHN C. HUGHES     | CARL J. D. BAUMAN  | TIMOTHY R. BYRNES    |
| DAVID H. THORSNESS | FRED B. ARVIDSON   | JAMES M. SEEDORF     |
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FAIRBANKS, ALASKA 99701  
Telephone (907) 479-3161  
Cable Address: DENALI

\* Fairbanks Office

Please reply to: ANCHORAGE

March 4, 1980

Senator Robert H. Ziegler  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: CS for House Bill #546  
Offered February 7, 1980  
Original Sponsor: Judiciary Committee

Dear Bob:

It has come to my attention that Art Snowden or his deputy of the court system is lobbying mightily for the enactment of this legislation. I think I have probably expressed myself earlier with regard to prejudgment interest which our Supreme Court enacted in their legislative capacity on the faulty premise that as long as people and their insurers did not have to pay the money which the other side was seeking, there was no incentive to settle. Thus, if they had to pay interest on that money, an unliquidated sum, concerning which no liability had, at that point, been established, they would then be willing to settle to avoid the incurrence of further interest costs. The unfairness of this sort of a procedure, in my estimation, remains. Furthermore, prejudgment interest applies to individuals insured or uninsured alike, and in my estimation, places a penalty on one's desire to have judicially determined the question of liability and/or damages, as the case may be.

The faulty premise of prejudgment interest (i.e., interest, on the sum ultimately determined to be due from the date of the incident) is that unless the party being sued and/or his insurer has to pay interest from the day of the incident until paid, he has no incentive to settle. This does not take into consideration reserve requirements, and thus that the money is available for use, as if it were unrestricted funds. In the days when it was the practice, in stand up bars, to furnish various types of

Senator Robert H. Ziegler  
March 4, 1980  
Page Two

sandwich food, to encourage consumption of large quantities of beer, one beer hall philosopher observed, "there ain't no such thing as a free lunch." He was right. The money paid out has to come from somewhere, i.e., either greater product cost or greater insurance premiums.

I have been handling litigation in the territory and the State of Alaska since about 1955. Since the enactment by the Supreme Court of prejudgment interest, the obligation to pay prejudgment interest has not encouraged settlements at all. On the other hand, I have seen instances where counsel will be claiming, in addition to what is an agreeable settlement figure, prejudgment interest which results in a prolongation of the pendency of the action, and in some instances, the case going to trial rather than settling on an agreed basis. People generally react negatively to intimidation; and while it is popular to criticize, penalize, and otherwise treat unfairly, various types of business, including insurers, I do not find insurers reacting to this type of treatment by yielding to this pressure and paying demands as made. Most cases are simply not ready for settlement until the facts have been thoroughly aired and damages determined. Also, a certain level of stabilization as concerns one who is claiming damages as a result of personal injury.

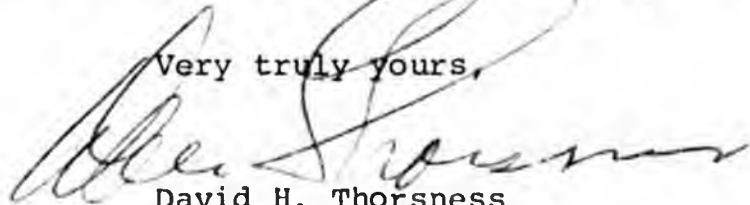
The problem of the litigation explosion is indeed a difficult one and I do not mean to imply that I can offer a solution in one paragraph or less. But for the court system to take the position that they are going to apply an interest penalty for not settling a lawsuit, I believe is a recognition on their part that they have not solved the problem which is justly theirs.

It may well be that some definite interest figure might well be increased where the obligation to pay judgment has been established. However, to increase the interest rate as far as prejudgment interest is concerned, in my estimation, aggravates an already inequitable situation. In my experience, cases settle when the parties can agree, and they agree at such time as the various representatives have evaluated the liability question and have also evaluated the damage question. About 98% of the cases settle and they settle at various stages, depending upon the availability of the information upon which to make a final determination. While it is popular to suggest that cases settle on the courthouse steps, in my memory I have settled two or three cases during trial and probably less than that on the eve of trial. I well appreciate the court system has been receiving a lot of heat as a result of the backlog and their inability to handle cases in an orderly fashion and many of the circumstances that create this problem are not those of the court system, i.e., no plea bargaining, etc. We indeed have had a litigation explosion, and the State Supreme Court has been active in defining new ways

Senator Robert H. Ziegler  
March 4, 1980  
Page Three

people can sue each other in an effort to obtain money recompense, this is not entirely the fault of the judicial system. In my estimation, judicial manpower has simply not kept pace with the increase in litigation arising at least partially out of the increase in population in various areas of the state. I note that two additional Superior Court judges have been requested for Anchorage and hopefully the legislature will approve. However, if we are going to have a fair judicial system then I submit that the prejudgment interest proposition as contained in the above referenced bill must not be enacted. The efficiency and success of any system of law, including the application and enforcement of that law depends entirely upon the faith of the people in that system. This rather transparent attempt at coercion of one segment of society, namely those people who are being sued, does nothing to reinforce the faith of the people in the system, and in fact, detracts from it substantially. I urge your opposition to this legislation.

Very truly yours,



David H. Thorsness

P.S. Since writing the above, I attended the Anchorage Bar Association weekly meeting and the president advised that it was his understanding that this prejudgment interest bill was the suggestion of L. Ames Luce, a prominent bodily injury lawyer which suggests some bias as concerns the entire idea and raises a serious question as to the propriety of the court system pushing such an idea.

DHT/fws

cc: Senator Ed Dankworth  
Senator Mike Colletta  
Senator Glenn Hackney  
Senator Tim Kelly  
Senator Pat Rodey

## HOUSE BILL 546

HB 546 as passed by the House would raise the pre-judgment and post-judgment interest rates from the present 8% to a floating rate tied to the Twelfth District Discount Rate. That currently would mean 15% as pre-judgment interest. The Senate Judiciary Committee passed out a substitute raising the rate to a flat 12%. Some substantial misinformation has been given out in support of the higher rate.

### FACTS AND FANCIES

Fancy: Plaintiffs are not being fairly compensated for their loss if they don't receive 15%.

Fact: Very few individuals would make 12% on their money, much less 15%, if given their verdicts on the date of incident. Long-term CD's are currently at 10 3/4%, but the rate is coming down. Retirement funds make 7 to 10%; savings accounts make 5 1/2%. It is in fact a windfall to plaintiffs and their attorneys.

Fancy: Defendants and insurance companies are making much more than 8% on their money by not settling cases.

Fact: Some uninsured defendants may be, but insurance companies aren't. Their return on the conservative investments they are required by law to make, net of investment expense, runs 6.8% to 8%. They lose money by not making a reasonable settlement as early as possible. In addition to interest, they have to pay costs of suit, which are much higher in Alaska than nationally.

Fancy: A high rate is necessary in order to force insurance companies to settle.

Fact: Of 31 civil trials reported by an Anchorage verdict reporting service, 19 resulted in plaintiff's verdicts, and 12 resulted in defense verdicts. At least 3, and probably more, of the 19 cases plaintiffs "won," were cases where plaintiffs had already rejected offers greater than the verdicts they won. So defendants are making reasonable judgments about when to resist paying what the plaintiffs ask. Court system statistics show that 95% of all civil cases settle without trial.

Fancy: Insurance companies will pay the bill anyway.

Fact: They will initially, but settlements and verdicts are costs of doing business, and will be reflected in rate filings. Ultimately, all Alaskans who buy insurance will pay. In a recent case, the verdict brought in by the jury was \$6,000,000.00 for a dentist terribly injured in an automobile accident. With interest and attorney's fees, the judgment based on that verdict would have been over \$11,000,000.

Compared with what most of us are able to get as a steady return on our assets, 8% is better than some do, and worse than others do. 12%, as a long-term guaranteed rate, is a very substantial and fair rate of return. 15% is a confiscatory penalty to defendants, and an inflationary pressure on insurance costs.

HB

686

COMMITTEE REPORT  
SENATE

FURTHER: None

4/15/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had CSHB 686  
donors of food to nonprofit organizations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
CHAIRMAN



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 3, 1980

#### LETTER OF INTENT

#### HOUSE JUDICIARY COMMITTEE

CS for HB 686

It is the intent of the House Judiciary Committee that this Act shall not limit or increase the liability of the nonprofit organization. The Committee intends that this Act shall have no effect on any questions arising about the liability of a nonprofit organization as that issue is not addressed in the Act.

A handwritten signature in cursive script, appearing to read "Charles H. Parr".

---

Charles H. Parr  
Chairman  
House Judiciary Committee

I. REQUEST

Bill/Resolution No. House Bill No. 686

Title "An Act relating to donors of food to nonprofit organizations."

Requested by Commissioner's Office

Date 3/17/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/Division of Public Health

BRU, Program, or Subprogram(s) Affected \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

|                          | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85. |
|--------------------------|-------|-------|-------|-------|-------|--------|
| 100 PERSONAL SERVICES    | 0     | 0     | 0     | 0     | 0     | 0      |
| 200 TRAVEL               | 0     | 0     | 0     | 0     | 0     | 0      |
| 300 CONTRACTUAL          | 0     | 0     | 0     | 0     | 0     | 0      |
| 400 COMMODITIES          | 0     | 0     | 0     | 0     | 0     | 0      |
| 500 EQUIPMENT            | 0     | 0     | 0     | 0     | 0     | 0      |
| 600 LAND & STRUCTURES    | 0     | 0     | 0     | 0     | 0     | 0      |
| 700 GRANTS, CLAIMS, ETC. | 0     | 0     | 0     | 0     | 0     | 0      |
| TOTAL                    | 0     | 0     | 0     | 0     | 0     | 0      |

FUNDING (Thousands of Dollars)

|                             |   |   |   |   |   |   |
|-----------------------------|---|---|---|---|---|---|
| GENERAL FUND                | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS               | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER (Specify Fund Source) | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

Prepared by: M. Weaver Date: 3/17/80  
Division/Office: P.H. Admin. PII: 3000  
Department of Health & Social Services

33-001 (Rev. 12/79)  
Modify by DHSS (11-28-79)

Approval DHSS Hgt. & Dtgt: \_\_\_\_\_ Date: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

HB

723

**COMMITTEE REPORT**  
**SENATE**

FURTHER: None

5/20/80

Date: 5/24/80

Mr. President:

The Committee on JUDICIARY has had CSHB 733  
relating to a constitutional convention

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass *indivisible*
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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[Signature]  
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CHAIRMAN

JAY S. HAMMOND  
GOVERNOR



TERRY MILLER  
LIEUTENANT GOVERNOR

STATE OF ALASKA  
LIEUTENANT GOVERNOR  
JUNEAU

May 22, 1980

The Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

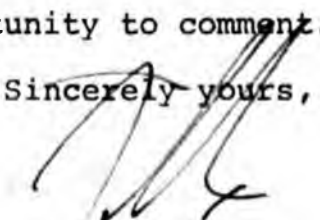
RE: CSHB 723, Re: Constitutional Convention

Dear Bob:

Thank you for your memorandum of May 20, 1980 regarding Committee Substitute for House Bill 723, "An Act Relating to a Constitutional Convention; and providing for an effective date". Neither my office nor the Division of Elections has any problem with this particular piece of legislation; indeed some sort of statutory language to facilitate a convention, should the voters order one, is probably necessary.

Thank you, Bob, for the opportunity to comment.

Sincerely yours,



Terry Miller  
Lieutenant Governor

May 20, 1980

To: The Honorable Terry Miller,  
Lt. Governor of the State of Alaska

From: Robert H. Ziegler, Sr.,  
Chairman, Senate Judiciary Committee

Through: Guy A. Van Doren, *AVD*  
Administrative Assistant  
Senate Judiciary Committee

Re: CSHB 723, Re: Constitutional  
Convention.

I would appreciate your reviewing the attached bill. Basically, it sets up mechanisms for calling a constitutional convention should the voters approve the call in the 1982 election, or whenever.

This may be premature; however, there are no mechanical provisions for calling a constitutional convention at the present time.

Please let us know at your earliest possible convenience whether or not you would like this bill reported out of committee.

RHZ:GAVD:lk

Attachment *3*

HB

917

COMMITTEE REPORT  
SENATE

FURTHER: None

4/24/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had CSHB 917 am  
foreign trade zones

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations: *70% do not pass*

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

SB 468 and CSHB 917 am

SB 468 was reported out of the Senate Judiciary Committee on April 10, 1980. HB 917 was the companion bill in the House and was referred to the Senate Judiciary Committee on April 17, 1980 as a Committee Substitute.

The Main substantive changes to the Senate version are:

- (1) The Commissioner of Commerce and Economic Development may establish a foreign trade zone if the zone is to be operated and maintained by the State;
- (2) Any municipality may establish and operate trade zones. The Senate version allowed foreign trade zones by Home Rule municipalities only;
- (3) A corporation may establish, operate and maintain a foreign trade zone;
- (4) The CS exempts property except real property from being taxed before clearing customs. The Senate version did not address the question of real property.

HB

997





Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 15, 1980

To: All Members of the  
Senate Judiciary Committee

From: Robert H. Ziegler, Sr.,  
Chairman

Re: SB 552 and CSHB 997 am,  
Board of Accountants.

These bills deal with the Board of Accountants. I have checked with their representative, Ed Foster, and he has assured me that his clients think the House Committee Substitute is just "dandy".

I will be a "Do pass". The rest of you, as always, may sign as you wish.

A brief explanation of the changes follows:

Sections 1 - 6 - No changes.

Section 7 - The original bill changed the reciprocity clause from "may" to "shall", thus requiring a license to be issued to a former resident of another state or a foreign country.

The House Committee Substitute eliminated this section, thus making reciprocity permissive.

Section 7 - Of the House Committee Substitute: The House added a new section which provides that an applicant who has an application pending may be issued a temporary certificate until the Board notifies the person that the permanent certificate has been granted or rejected.

Section 8 - Makes several technical changes and cleans up language to AS 08.04.345.

Section 9 - Clean-up language.

Section 10 - The House Committee Substitute provides that the Board shall issue a permit to a partnership as long as each partner personally engaged in the practice of public accountancy holds a license or permit.

Section 11 - No change.

Section 12 - Just a change of wording.

Section 13 - The House Committee Substitute removed an unnecessary change in section AS 08.04.600 in the original bill.

Section 13 - In the House Committee Substitute and Section 14 in the original bill are the same.

Section 14 - In the House Committee Substitute, a new paragraph defining "attest function" which has not in the original bill.

Section 15 - No change in the repealer section or in Section 16, the effective date.

I will be responsible for the bill on the floor.

RHZ:lk

3-