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It is uncertain whether a company can adequately shield special funds and trusts from its general creditors to provide the intended protection. The company must examine each arrangement in light of applicable state law and the company's unique circumstances to determine if it is appropriate and likely to achieve the desired result.

IV. NEW LEGISLATION

Finally, another area that all companies should watch closely are the modifications in various state statutes. In response to the highly publicized "D&O liability crisis", some state legislatures have recently amended their corporation laws to provide relief from civil liability for directors and officers and to broaden the scope of corporate indemnification. Some of these enactments are innovative and make substantial changes in former laws. Others merely seek to transform obsolete statutes into more current, generally used forms.

Some of these recent amendments are self-executing and require no action by the company to utilize the benefits of the legislation. A few states, such as Delaware, require affirmative action by the company. We will review the new Delaware provisions in some detail since so many businesses are incorporated there. However,

several other states, including Indiana and Ohio, have enacted statutes which provide significantly greater protection than the Delaware statute. Depending upon the state in which a company is incorporated, these new statutes may provide extraordinary protection to directors against state law claims and they should be closely examined.

The Delaware Bill

Delaware Senate Bill No. 533 was enacted into law effective July 1, 1986. The amendments authorize corporations to limit or eliminate certain types of director (but not officer) liability and also clarify certain issues relating to indemnification for directors and officers.

The amendments relating to director and officer liability (as opposed to indemnification) are enabling in nature. This means that they are not applicable unless and until the shareholders of a particular corporation approve a charter amendment consistent with the new legislation. Such a charter amendment can either be written broadly to eliminate the liability for certain breaches of a director's duty of care, or can be written more narrowly by imposing limitations on such liability. If the corporation chooses to merely limit the liability, it could, for example, create an individual or collective "cap" on director liability. The corporation could also condition recovery from a director

upon the plaintiff taking specific action, or could limit director liability in connection with some matters but not others.

This enabling legislation is somewhat restrictive and does not permit the elimination or limitation of director liability in a number of areas, including the following:

a) any breach of the director's duty of loyalty to the corporation or its stockholders;

b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

c) the payment of unlawful dividends or unlawful stock repurchases or redemptions;

d) any transaction from which the director derived an improper personal benefit;

e) liability to any person other than the corporation or its stockholders;

f) claims for non-monetary, equitable relief, such as claims for an injunction or rescission; or

g) liability for federal statutory violations, including violations of RICO and the federal securities laws.

When examining the potential benefits of a charter amendment, one should realize that such an amendment may provide little protection for director liability arising out of a takeover situation. Most lawsuits filed against directors in that situation allege, or could easily allege, a breach of the director's duty of loyalty, rather than the duty of care. By carefully drafting a complaint with this new legislation in mind, plaintiffs may be able to circumvent the liability limitation contained within the charter amendment.

The adoption of a charter amendment consistent with this new legislation may result in a limited expansion of the Business Judgment Rule. As noted above, the new legislation applies only to a director's duty of care, which is one of several elements of the Business Judgment Rule. Although a charter amendment may effectively eliminate the "care" element from the Rule (subject to the statutory limitations summarized above), the remaining elements of the Rule continue to apply. For example, the Rule will still require good faith, and a reasonable belief that the best interests of the corporation and its stockholders are being served, as well as the absence of personal interest or self-dealing.

In summary, the new legislation provides some additional protection for a director if the corporation's shareholders approve an appropriate charter amendment. However, the

scope of this additional protection is somewhat limited and will depend upon the language of the charter amendment adopted by each corporation. This law does not in any sense provide absolute immunity for director liability, even when the director's misconduct is merely negligent in nature.

There will likely be considerable uncertainty as to the meaning and effect of these changes until courts interpret the legislation and the adopted charter amendments. These interpretations and judicial clarifications are several years away, at best. While imperfect, these new laws can offer important protection to directors, and companies should promptly evaluate them and take full advantage of their benefits.

V. SUMMARY

The liability exposure of directors and officers has never been greater. The frequency and magnitude of lawsuits, settlements and judgments are at unprecedented levels. Extensive publicity of this liability crisis has caused a justifiable alarm and, in some instances, resignations of directors and officers.

We have summarized some of the more important self-protection options available to reduce this liability exposure and concern. Nonetheless, any alternatives must be closely examined by each company, its managers and its legal counsel

in light of the unique circumstances of that company and the legal framework in which it exists and operates.

INSURANCE FOR DIRECTORS AND OFFICERS

The previous section discussed today's legal environment, as well as techniques which can reduce the potential for directors and officers liability claims. Even the best run companies cannot altogether eliminate such lawsuits, and sound protection is still important. Adequate coverage today requires access to, and knowledge of, world insurance markets. Coverage is often difficult to obtain, and negotiations require an experienced staff.

Furthermore, policy forms have changed dramatically in recent years, and little uniformity exists. A company cannot determine the quality of protection afforded by a directors and officers policy solely by its price, or the dollar amount of the policy limits. For example, buyers need to consider:

- policy language
- deductible amounts
- the discovery period
- the stability of the insurer
- new restrictions, such as exclusions for mergers and acquisitions, "insured versus insured" claims, and the failure to maintain adequate insurance.

Because policy forms continue to change, RBH's Research and Planning department regularly conducts policy comparisons to assist clients in selecting the appropriate insurer and coverage. Specialized expertise is more important than ever before.

The following pages provide a brief overview of several important characteristics of D&O policies, including the claim reporting features, policy coverages and the impact of applicable laws.

The Form

All D&O policies are written on a claims-made basis, which means that the submission of a claim triggers coverage, rather than the occurrence which led to the claim. The policy in force at the time a claim is submitted responds to that claim, although some D&O insurers may use a retroactive date to eliminate claims from past activities. Coverage for losses from prior activities is an important consideration in evaluating D&O insurance.

Claims-made policies are complicated and have been the subject of many insurance industry seminars and publications. Losses must be reported promptly and policyholders should be aware of conditions for reporting circumstances which may give rise to a claim, and the requirements and availability of the "discovery period" (for claims reported after policy expiration).

Coverage

The intended insureds of a D&O policy are the directors and officers, not their corporation - a fact that has been the source of recent litigation. The corporation itself is only insured for the wrongful acts of corporate officials which the corporation indemnifies.

A D&O policy covers wrongful acts, which typically include: an actual or alleged breach of duty, neglect, error, misstatement, omission or other act committed or wrongfully attempted by the insureds. This definition is somewhat restricted by the policy terms and conditions, but still applies to a wide range of activities.

State Indemnification Statutes

State statutes govern the indemnification of corporate officials, and for this reason, traditional D&O policies provide two separate coverages - corporate reimbursement and direct protection. Corporate reimbursement pays a corporation for those claims which the corporation is permitted or required to make on behalf of its directors and officers. According to industry estimates, as much as 80 or 90% of all D&O claims fall under the corporate reimbursement section.

The second coverage provides direct protection to directors and officers for those claims which their companies cannot or, in some cases, will not reimburse. For example, in most states, companies cannot directly indemnify an officer in a shareholder's derivative suit because money would in effect be taken from the corporation to pay damages to the corporation. Although non-indemnifiable claims make up only a small portion of all D&O claims, they are significant because without insurance, directors could be personally liable for these judgments. The important point here

is that insurance companies are usually allowed to provide broader protection than can be provided by the corporation alone.

Additional Needs

Two other factors favor the purchase of directors and officers insurance. The first consideration is that recent court judgments have involved millions of dollars and the defense costs alone can strain a company's resources. Such costs may be more than a business can prudently self-insure, and some companies may simply be unable to pay them.

The second consideration is that while a company can legally indemnify most claims without insurance, it might refuse to do so. For example, following a hostile takeover, the new board could conceivably refuse to indemnify claims against ousted board members.

Other Insurance Options

Because of the present restricted insurance market, businesses have expressed interest in two additional insurance options which are available on a limited basis. They are:

- Direct protection for directors and officers for only those claims which the corporation cannot reimburse (because of legal or financial reasons). Claims which can legally be reimbursed by the corporation are self-insured. Companies have chosen this option to reduce the cost of D&O coverage

while still providing protection for those claims it cannot pay. These policies are not widely available.

- "Fronted" programs, in which the policyholder agrees to repay the insurer for losses incurred under the policy. While the insured eventually pays most, if not all losses, the presence of an insurance company is often reassuring to corporate officials. Furthermore, the company can settle losses according to the terms of an insurance contract. Companies should obtain legal advice on the tax deductibility of premiums and the payment of non-indemnifiable claims because legally, these plans may not be considered "insurance."

  Fronting insurers charge a fee for their services and for "standing behind" the policy. The policyholders must demonstrate to the insurer that they are capable of paying any losses under the policy. Businesses that cannot supply sufficient evidence of security, such as a letter of credit, may not be able to obtain a fronted policy.

One encouraging note is that several insurers have recently decided to enter or re-enter the D&O market, and the availability of coverage is gradually improving. However, certain industries, such as financial institutions, new ventures and financially troubled companies still face major difficulties in obtaining adequate coverage. Additionally, the increased capacity has not yet resulted in substantial improvements in policy terms. Because

many policies are still restricted, a company must carefully review them in terms of its own unique needs.

ALTERNATIVE INSURANCE PROGRAMS FOR DIRECTORS AND OFFICERS

Many businesses cannot afford or obtain adequate insurance in the traditional D&O marketplace, and have turned to various alternative insurance programs. With proper design, implementation and careful evaluation, such programs can offer help to many companies. Under such a program, the company often retains a significant amount of risk that was previously transferred to an insurer. The use of self-insurance in directors and officers liability programs is particularly complicated because of the state laws which govern the indemnification of corporate officials. Companies evaluating this option must consider certain facts:

- The courts may interpret self-insurance programs as direct indemnification by the corporation, which may preclude these programs from covering the non-indemnifiable claims that the corporation itself could not legally pay.

- The Internal Revenue Service (IRS) frequently challenges the deductibility of premiums paid into self-insurance programs, such as a captive insurer.

- The risk of large verdicts and legal expenses is more than many companies can safely assume.

- Reinsurance is difficult to obtain for both group and single owner captives.

The present state of the insurance market and the critical importance of this coverage have produced strong arguments in favor of self-insurance programs. However, certain self-insurance plans may not legally qualify as "insurance" -- a significant issue given that insurance policies are allowed to provide broader protection than the corporation.

Businesses may understandably resist accepting any insurance policy, regardless of how expensive or inadequate, over a sound self-insurance program. Credible arguments have been raised on both sides of the legality question, but the final answer must come from the courts. These issues are so new that little case law exists for guidance, and legal opinions may vary.

What Constitutes "Insurance"?

Many state indemnification statutes do not define "insurance", leading some legal experts to believe that courts will use the definition developed in recent IRS rulings. These tax cases have required a transfer of risk outside the economic family of the insured in order for a plan to qualify as insurance (and consequently, tax deductible premiums). In D&O cases, this definition could restrict the use of self-insurance alternatives as well as affecting tax deductibility. Litigation over this issue is expected soon, and this should determine what "insurance" means for the indemnification of directors and officers.

Groups and Associations

Group or association captives may overcome the problems of tax deductibility and non-indemnifiable claims if they are properly structured. A court is more likely to consider them true insurance programs if they transfer and distribute risk among unrelated group members. Furthermore by pooling their resources, companies can create more coverage and provide a stable source for this critical protection.

A number of industry associations and groups have recently formed captive insurers to provide both excess and primary D&O coverage. Member/insureds usually must make a capital contribution in addition to the premium payment. If the group's losses exceed the premiums collected, the possibility of lost capital exists. Members may have to share in the losses of other companies -- losses which can be large and difficult to predict.

Proper capitalization is complicated and is critical to a successful captive operation. Financial statements must be examined in detail whether joining a new or existing program. All operations should be reviewed and questioned. Because groups differ on the apportionment of losses among members, companies must evaluate the consequences of each plan. This analysis requires competent financial, legal and insurance expertise.

Captives must be organized carefully to avoid the coverage

disputes that have plagued insurance companies. Like all business decisions, a company must weigh the decision to join a group captive against the consequences of other available options. Each course of action contains risk. The failure to provide D&O protection can also be a source of risk if talented directors resign.

Single Owner Captives

In addition to group and association captives, some companies are using single-owner captive insurers to write D&O insurance. As previously mentioned, legal questions exist about the deductibility of premium payments and (in most states) the payment of non-indemnifiable claims. We cannot offer a definitive answer on these issues until the courts provide one. However, single parent captives can provide a funding mechanism for the legally reimbursable claims (the corporate reimbursement section of a D&O policy), where most D&O claims fall.

Companies with legal or financial difficulties may be unacceptable to group captives and have few options in the traditional insurance marketplace. Single parent captives can offer a means of protection to businesses that cannot afford or obtain any coverage from insurance companies. For example, should a parent corporation become insolvent, the funds of the captive may be better sheltered against creditors than the general assets of the parent. A captive can provide D&O coverage according to the terms

and conditions of an insurance policy. Although policy limits may be lower than traditional insurance policies, at least some funds are earmarked to protect directors and officers.

Trusts

Irrevocable trust funds have been used as funding devices for D&O claims. A third party administrator can determine coverage and administer claims in order to create an arms-length transaction. To further remove the trust from corporate control, the trust agreement can also provide that any assets remaining after payment of all claims will belong to a specified charity.

Defenders of this approach argue that the trust is no longer under the control of the parent and therefore should not be subject to the indemnification limitations of the parent corporation. This opinion is not unanimous and trusts are subject to the same legal questions regarding tax deductibility and non-indemnifiable claims as are self-insurance techniques.

Cyclical Insurance Markets

Self-insurance and participation in group or association programs can offer significant benefits to some businesses. However companies must consider one additional factor: the cyclical nature of the insurance market. Periods of adequate coverage and competitive pricing are normally followed by periods of limited

coverage and premium increases. The D&O market is already showing signs of improvement, and for some companies this will mean sound coverage at affordable rates. For others, those in difficult insurance classes, available programs may offer limited protection and unaffordable prices for some time to come. Additionally, difficult industries could be the first to suffer in any future insurance cycles. The D&O decision making process must take into account both the probable impact of our changing marketplace and the need for a long-term coverage solution.

Another encouraging trend is that several states have recently modified their D&O statutes as a result of the restricted insurance market. Some of these changes limit the liability of directors; some broaden the corporation's power to indemnify directors; some do both. Several states now allow corporations to obtain insurance from an insurer in which the corporation has an equity interest. Conceivably, this change could allow single owner captive insurers the freedom to provide the same breadth of coverage as traditional insurers. Like most aspects of D&O liability, self-insurance is complicated and requires sound insurance expertise and legal advice.

CONCLUSION

Rollins Burdick Hunter is providing this information because our clients are best served when they understand the relevant facts. This is particularly true of directors and officers liability insurance, which has undergone radical changes in recent years. Corporations that are aware of all available D&O options, including non-insurance techniques, are in a better position to make a sound decision.

Like all business decisions, companies must base their response to the present insurance crisis on well-researched facts in order to produce a program that best serves their short and long-term interests. There are no easy solutions that are readily applicable to everyone. A great deal of sophisticated insurance knowledge is required regardless of the option you choose.

Rollins Burdick Hunter's captive and traditional insurance experts are ready to work with you to develop a program that meets your individual needs. We have successfully addressed these problems for many corporations -- even where other brokers have failed. For additional information on your D&O coverage options, contact your local Rollins Burdick Hunter office.

NOVEMBER 11, 1987

MEMO

TO: CHUCK BUNDRANT
BART EATON

FROM: JOE PLESHA

RE: LIMITATION OF DIRECTOR LIABILITY UNDER DELAWARE LAW

INTRODUCTION

On July 1, 1986, a new law became effective in Delaware which permits a Delaware corporation to include in its certificate of incorporation a provision which limits or eliminates a director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.[1]

BACKGROUND

Delaware law has generally permitted a Delaware corporation to purchase insurance on behalf of its directors and officers against liability incurred in their corporate capacity, regardless of whether the corporation would have the power to indemnify the director against such liability under Delaware law.[2] The market for directors' and officers' liability insurance has, however, changed dramatically over the past several years. Despite the statutory authorization of Delaware corporations to purchase and maintain directors' liability insurance, many corporations have have reportedly experienced difficulties in obtaining or maintaining sufficient coverage at a reasonable cost. As a result, may corporations have been forced to accept insurance with lower dollar limits of coverage, higher deductible amounts, and broader policy exclusions at a significantly higher cost.[3]

The insurance crisis for directors may be exacerbated by the courts increasing tendency to scrutinize the decisions of a director, even when the director acted in good faith and not out

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[1] Indemnification of directors and officers, and limitation or elimination of director liability as authorized by the new Delaware law, are separate and distinct concepts. Alaska law already provides that directors can be indemnified for actions under certain circumstances. Alaska Stat. § 10.05.101.

[2] Del. Code Ann. tit. 8, § 145(g) (Supp. 1986) (amended 1986) provides:

> A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership , joint venture, trust or other enterprise against any liability asserted agains. him incurred by him in any such capacity, or arising out of his status as such, *whether or not the corporation would have the power to indemnify him against such liability under this section.*

[3] *See* Hilder, *Liability insurance is Difficult to Find Now for Directors, Officers.* Wall St. J., July 10, 1985, at 1, col. 6.

of self interest. For example, the court in the case of *Smith v. Van Gorkom* [4] found that the board of directors of Trans Union Corporation breached their fiduciary duty of due care in approving a proposed cash merger and the court held members of the board personally liable for the resulting damages.

The expense of defending these lawsuits and the inevitable uncertainties with respect to application of the business judgment rule (the rule by which corporate directors actions are judged) may impact upon an individual's willingness to serve as director of a corporation. In addition, such uncertainty could cause directors to act defensively out of concern over costly litigation and potential personal liability, rather than acting to manage the business in the best interest of the corporation. For these reasons, Delaware adopted legislation in 1986 which would permit a corporation to limit or eliminate the director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.

ANALYSIS OF NEW DELAWARE LAW

Title 8, §102(b)(7) of the Delaware General Corporation Law enables a Delaware corporation to include in its articles of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of their fiduciary duty as a director. In addition, § 102(b)(7) states that no such provision can eliminate or limit a director's liability (i) for breach of the director's *duty of loyalty* to the corporation or its stockholders; (ii) for acts of omissions *not in good faith or involving intentional misconduct or a knowing violation of law*; (iii) for willful or negligent conduct *paying dividends or repurchasing stock out of other than lawfully available funds*; or, (iv) for any transaction from which the director derives an *improper personal benefit.*

Section 102(b)(7) is an enabling provision only. Amendment of the corporate articles of incorporation, therefore, is required to include the provision authorized by this section before it is an effective limitation of personal liability for a corporation's directors. The ultimate determination as to the propriety of limiting the opportunity of a corporation or its stockholders to seek monetary damages from the directors rest with the stockholders of the corporation who vote on any amendments to the articles of incorporation. As a practical note, it can be argued that a board which proposes an amendment pursuant to this law is an "interested party," since the individual directors of the board will benefit from the elimination of monetary liability which they otherwise may be required to pay. Obtaining the required stockholder approval after full disclosure of all material facts, however, eliminates any conflict of interest which might otherwise arise.

Section 102(b)(7) does not preclude or limit damages in actions instituted by third parties. In addition, it can be argued that §102(b)(7) permits limitation or elimination of monetary liability only for directors acting as directors. Actions taken by a majority stockholder in his capacity as such cannot be exempted from liability. Finally, §102(b)(7) does not permit limitation or elimination of liability arising under other laws or regulations. A director's potential liability under state and federal securities laws, for example, is unaffected by this section

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[4] 488 A.2d 858 (Del. 1985). The court found the board grossly negligent in that the directors had failed to fully inform themselves of "all material information reasonably available to them," and had acted hastily in approving the proposed merger, after two hours' consideration. *id.* at 872.

Fiduciary Duty

Directors are charged with the fiduciary duty of *due care* and *loyalty* to the corporation. Loyalty basically requires that a director, in making a business decision, act in good faith and in the honest belief that the action taken is in the best interest of the corporation. Under the new Delaware law, a director can still be found to be personally liable for monetary damages where they violate the fiduciary duty of loyalty by acting in their own "self-interest," and not in the best interest of the corporation.[5] (For example, by usurping a corporate opportunity for their own personal benefit or competing with the corporation.)

The official legislative synopsis of §102(b)(7) notes that this provision permits a corporation to protect its directors from monetary liability only from liability for breach of the *fiduciary duty of due care*.[6] It is clear that if a director negligently or with gross negligence (want of even scant care, or failure to exercise even that care which a careless person would use) disregarded his fiduciary duty of due care, they could be protected from monetary liability under the new Delaware law.

In is not clear, however, whether §102(b)(7) exempts directors from liability for reckless (actions that fall somewhere between gross negligence and intentional wrongdoing) disregard for the fiduciary duty of due care. It could be argued that to the extent that the recklessness involves conscious disregard for a known risk, such conduct is not taken in good faith and therefore, would not be a liability subject to limitation under §102(b)(7)(ii). To the extent recklessness encompasses merely inattention to duty by the directors, however, I believe that such conduct should be labeled "gross negligence" and therefore any liability resulting from it would be subject to limitation.

§102(b)(7), however, does not *eliminate* a director's fiduciary duty to act with due care, it merely insulates directors from personal *monetary* liability for failure to satisfy that duty. A director's conduct would, therefore, still be subject to injunctive or rescissory relief. A stockholder can institute an action to enjoin completion of a board's action or to rescind a completed action if such action involves violations of the duty of care. This may be relevant in proxy contest, elections, resignations, etc.

In conclusion, Delaware's new law only allows for a corporation to limit or eliminate the monetary damages a corporation or its shareholders can receive from its directors for a breach of the director's fiduciary duty of due care. It does not limit damages that can be awarded for a directors breach of their fiduciary duty of loyalty, or violations of law, or any transaction from which a director derives an improper personal benefit. In addition, the corporation or shareholder can still seek equitable remedies, such as recession or injunctive relief for a directors breach of their fiduciary duty of due care.

WASHINGTON & ALASKA LAW

Like Delaware, Washington State and Alaska law provide that a corporation may purchase insurance on behalf of its directors and officers to protect against personal liability incurred

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5 Del. Code Ann. tit. 8, § 102(b)(7)(i).

6 The synopsis notes: "[t]his provision enables a corporation in its original certificate of incorporation or an amendment thereto validly approved by stockholders to eliminate or limit personal liability of members of its board of directors or governing body for violations of a director's fiduciary duty of care."

in their corporate capacity, regardless of whether the corporation would have the power to indemnify against such liability under the relevant state law.[7]

On Washington recently enacted legislation similar to Delaware's which would allow for a Washington corporation limit the monetary liability of directors for a breach of their fiduciary duty of due care to the corporation.[8] I am having a copy of the new provision sent to me. Alaska has not yet enacted such legislation.

I have attached the relevant portions of the Delaware, Alaska and Washington State law.

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[7] Nearly identically to Delaware law, Wash. Rev. Code § 23A.08.025(11) (1980) provides:

> A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a officer, employee or agent of another corporation, partnership , joint venture, trust or other employee benefit plan against any liability asserted against him incurred by him in any such capacity, or arising out of his status as such, *whether or not the corporation would have the power to indemnify him against such liability under this section.*

The Alaska Statutes §10.05.015(g) (1970) provide that:

> A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership joint venture, trust or other enterprise against any liability asserted against hem and incurred by the person in such a capacity, or arising out of the person's status as such, *whether or not the corporation would have the power to indemnify the person against the liability under the provisions of this section.*

[8] S.B. 6048, effective July 26, 1987.

fact that most major banks are reporting their most profitable year in history for 1986."

LEGISLATIVE BRIEFS

Arizona: SB 1103, limiting the release by the state of information contained in annual reports filed by corporations with the state, has been introduced. The information may not be released "unless it is in statistical form that prevents identification of particular corporations." Further, the bill provides that the information may be used as evidence in judicial proceedings or certain hearings, may be released to the state department of revenue for tax purposes, or may be released to a state or federal agency upon written request.

- HB 2082, SB 1087, and SB 1096, providing that directors and officers of nonprofit corporations are immune from personal liability for actions taken in good faith within the scope of their authority, have been introduced. Further, a "customary level of corporate indemnification" must have been obtained under §10-10005.

Georgia: HB 219, permitting a corporation to limit or eliminate directors' personal liability for breaches of fiduciary duty through its articles of incorporation, has been introduced. A limiting provision may not restrict a director's liability for breach of the duty of loyalty or for acts not done in good faith or that involve intentional misconduct or a knowing violation of the law. The bill also would amend indemnification provisions for directors.

Kansas: SB 26, amending Kansas corporation law to permit shareholders to limit directors' liability through a charter amendment or provision in the original certificate of incorporation, has been introduced. The bill permits elimination of directors' personal liability for breaches of fiduciary duty of care, but not for breaches of the duty of loyalty, failure to act in good faith, intentional misconduct, knowingly violating a law, paying an illegal dividend or approving an illegal stock repurchase, or obtaining an improper personal benefit. The bill would also eliminate provisions in the corporate law prohibiting indemnification by a corporation of officers and directors who have been found liable for negligence or misconduct. Shareholders may not limit directors' liability retroactively.

- HB 2107, limiting liability of directors or officers of a charitable organization, has been introduced. The bill provides that directors or officers may not be individually liable or the board as a whole may not be liable in a civil damages action for acts or omissions "unless such conduct constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the directors and officers are not required to be insured by law or are not otherwise insured against such acts or omissions."

Maryland: HB 242, permitting corporations to adopt provisions in the articles of incorporation that permit limitations on directors' personal liability, has been introduced. A director would only be liable if the person fails to perform the duties of a director in accordance with the statutory standard and the conduct amounts to willful misconduct or deliberate recklessness, or if the director received an improper benefit or voted for an illegal dividend.

- HB. 233, which would permit only limited liability for directors or officers of a voluntary organization where the organization obtains insurance with certain minimum coverage, has been introduced.

Minnesota: SB 7, which would repeal current securities regulation provisions and basically adopt the Uniform Securities Act of 1985 as issued by the National Conference of Commissioners on Uniform State Laws, has been introduced.

- HB 141, which would make directors or trustees of organizations that are exempt from state income tax immune from most civil suits if the directors or trustees acted in good faith and were not reckless, has been introduced. The director or trustee also must have been acting within the scope of the person's responsibilities as director or trustee.

Mississippi: HCR 62 and SCR 550, calling for an amendment to the Mississippi Constitution of 1980 that would repeal provisions that give all stockholders the right to vote their shares cumulatively for a single candidate for the board of directors or to vote shares of stock for all directors to be elected, have been introduced. The current constitutional provision also permits the issuance of preferred stock without voting rights.

- HB 1050, amending provisions dealing with a corporate director's duties to the corporation, has been introduced. The bill would amend §79-3-91, Mississippi Code of 1972, to state that a director must discharge directorial duties in accordance with the director's good faith business judgment of the best interests of the corporation. Unless a director has special knowledge, a director is entitled to rely on information, reports, or statements prepared by other officers or employees that the director believes to be reliable and competent; legal counsel or public accountants, or a committee of the board of directors, if certain conditions are met. A director is not personally liable for actions taken as a director if the director performs the duties of the office in compliance with subsection 79-3-91.
- SB 2574, permitting a corporation to include provisions in its articles of incorporation limiting a director's personal liability for breaches of fiduciary duty, has been introduced.
- SB 2501, limiting the liability of charitable and nonprofit organizations and their directors in certain cases, has been introduced.

Montana: HB 182, which would impose escrow requirements on securities issues to a promoter while a corporation is in a promotional or developmental stage, has been introduced.

- SB 49, abolishing individual liability of officers and directors or nonprofit corporations except in in-

stances of willful or wanton misconduct, has been introduced.

Nebraska: LB 650, which would permit the Nebraska Director of Banking and Finance to impose a fine of up to $25,000 for violations of the Nebraska Securities Act or rules or regulations under the Act, has been introduced. Failure to pay the fine and investigative costs would constitute a forfeiture of the violator's right to do business in the state under the Nebraska Securities Act.

• LB 425, permitting a corporation to amend its articles of incorporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for breaches of fiduciary duty in certain cases, has been introduced.

Nevada: SB 52 and 58, permitting limitations on directors' liability in articles of incorporation, have been introduced. The limitation may not cover breaches of loyalty by a director.

New York: SB 830, which would provide for greater regulation of commodity contracts trading, has been introduced. The bill would provide a statutory definition of commodity and commodity contract, and would permit the attorney general to prosecute persons charged with commodity fraud where exclusive jurisdiction is not within the Commodity Futures Trading Commission. The bill also would give the attorney general authority to bring an action for either legal or injunctive relief in federal court to enjoin a fraudulent practice, or to enforce compliance with the Commodity Exchange Act or CFTC rules. For persons registered under the CEA other than floor brokers or registered futures associations, the attorney general may bring an action under the CEA in state court. The attorney general also is given certain investigative authority under the bill.

Ohio: HB 156 and SB 50, which would provide that authority conferred on corporations to grant options with conditions that preclude shareholders of a certain percentage of outstanding common shares from exercising the options applies only to companies that have shares listed on a national securities exchange or that are regularly quoted in an over-the-counter market by members of a national or affiliated securities association, have been introduced.

• HB 155, clarifying when shareholders may not authorize directors to amend a merger or consolidation agreement, has been introduced.

Oklahoma: HB 1038, permitting corporations to limit personal liability of directors through provisions in the articles of incorporation, has been introduced. Under the bill, a liability-limiting provision may not limit liability for breach of a director's duty of loyalty, for acts not in good faith or involving intentional misconduct or a knowing violation of the law, or for transactions from which the director derived an improper personal benefit. The provision also may not excuse a director from liability under §1053 of Section 6, Chapter 292, O.S.L. 1986. The bill also would provide that a director's or officer's right to indemnification continues even though the person has ceased to be a director or officer, and that the right inures to the estate of a former director or officer.

Oregon: SB 145, adopting the Oregon Commodity Code, has been introduced. The bill would prohibit certain commodity contracts, grant the corporation commissioner authority to enforce the Act, and punish violations of the Act by a maximum of 10 years imprisonment and a $100,000 fine.

South Dakota: SB 98, which would excuse directors and officers of tax- exempt, nonprofit corporations from personal liability unless there was willful or wanton misconduct, has been introduced.

Texas: HB 403, which would permit a corporation to amend its articles of incorporation to eliminate or limit a director's personal liability for breaches of fiduciary duty, has been introduced. The provision could not eliminate liability for breaches of the duty of loyalty, or for an act not done in good faith or that involved intentional misconduct.

REGULATORY BRIEFS

Florida: A trial court should have compelled parties in a securities law and fraud dispute to arbitrate their claims due to an arbitration clause in a franchise agreement between the parties, the Florida District Court of Appeal determines. Carol McCrory and Linda Kline brought a complaint with five causes of action against Doctors Associates, Inc. The complaint contained Florida securities law, franchise misrepresentation, common law fraud, and civil theft claims. The trial court granted a motion to compel arbitration under a franchise agreement only for the Florida securities law claim. The appeals court says that the trial court should have compelled arbitration of each count. Judge Monterey Campbell III relies on *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Melamed*, 453 So.2d 858 (FlaDistCtApp 1984), in reversing, and ordering arbitration of all claims (*Doctors Associates, Inc. v. McCrory*, Case No. 86-1151, FlaDistCtApp, 1/21/87).

Maine: New rules governing investment adviser registration in Maine took effect Feb. 1. The Securities Division of the Maine Bureau of Banking proposed the rules last August, and the comment period closed Sept. 26, 1986. The rules cover applications for licensing, amendments to an adviser's licensing file, renewal applications, custody of clients' securities and funds, statements of financial condition, and recordkeeping by advisers.

LAW OFFICES
BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON A PROFESSIONAL CORPORATION
ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

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*D.C. BAR ONLY
**D.C. AND ALASKA BAR
ALL OTHERS ALASKA BAR ONLY

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELECOPIER (907) 276-2822
TELEX 25-356

FIRST NATIONAL BANK BUILDING
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701
(907) 452-1666
TELECOPIER (907) 456-8055

1155 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D. C. 20036
(202) 659-5800
TELECOPIER (202) 659-1027

February 17, 1988

Senator Arliss Sturgulewski
P. O. Box V
Juneau, Alaska 99811

Re: SB 343

Dear Senator Sturgulewski:

On Thursday, February 18, the Senate Judiciary Committee will revisit SB 343 -- a bill that would allow corporations, with shareholder approval, to limit their directors' liability for simple negligence. On behalf of Sealaska, I wanted to explain the purpose of an amendment to SB 343 that will be considered by the Committee in the form of a proposed Committee Substitute. That amendment would allow corporations formed under the Alaska Native Claims Settlement Act to amend their articles of incorporation with respect to directors' liability by a majority shareholders' vote, rather than the two-thirds vote otherwise required.

There are four sound public policy reasons for adopting the amendment. The proposal does not represent a "special deal" for Alaska Natives; rather, it recognizes that there are some fundamental differences between ANCSA corporations on the one hand, and general Alaska business corporations on the other, that must be addressed if the legislation is to achieve its intended goal. These considerations include:

1. Virtually all Alaska corporations have only a handful of shareholders. Indeed, in a typical situation the

only shareholders will be the directors themselves. As a result, obtaining a super-majority (or even unanimity) on this issue among shareholders would be an easy task. Typical of other regional corporations, however, Sealaska has 16,000 shareholders -- spread from southcentral Alaska to the lower 48. It is hard enough for corporations with such dispersed ownership to obtain a quorum; obtaining a two-thirds vote on any matter -- no matter how non-controversial -- is a virtual impossibility;

2. Normally, a corporation's directors hold large (and often controlling) blocks of shares in the company. As a result, they stand to realize substantial and direct profits from the corporation's business activities. This prospect of large personal gain compensates for the risk of liability that a director might suffer, and makes that potential for liability seem equitable. Native corporation directors, however, have no prospect of direct and substantial economic gain. They hold no more shares than any shareholder; and, as a result, directorship on a Native corporation is often viewed more as a form of community service than as an avenue of personal enrichment. The equitable symmetry of gain on the upside, and exposure on the downside, doesn't exist in the Native corporate context, and director liability legislation ought to recognize this substantial difference;

3. In the normal business setting, venturers voluntarily embark upon the corporate form in the expectation of gain. They voluntarily assume the risk, and they are usually familiar with the standard of care demanded of business men. Alaska's Natives, on the other hand, had the corporate form imposed upon them by Congress. They were told to administer their lands through a business organization with which -- particularly at the village level -- they were unfamiliar. Had the lands been administered through the Tribe, these same Native leaders would have performed essentially the same functions under the cloak of Tribal immunity. Moreover, they are not, by and large, familiar with the latest New York Court of Appeals cases defining permissible director conduct. It is perfectly proper for the state to be a bit sensitive in imposing personal liability for administering land entitlements through a form that is unfamiliar and, to a large extent, involuntarily; and

4. The purpose of the legislation is to encourage the formation of new corporations in Alaska. For new corporate ventures, a liability provision will be inserted in the initial articles of incorporation. Shareholders will, quite frankly, never read those articles. I will confess to never having reviewed the articles of incorporation of any company in which I have purchased stock. If, however, I receive a proxy solicitation from a company in which I own shares, asking me to accept limited director liability, I would probably give the matter some scrutiny. The point, of course, is that even majority shareholder approval for existing corporations will result in substantially broader scrutiny than that attendant the formation of new companies.

For these reasons, I believe the Judiciary Committee will be on firm footing in concluding that the sound philosophy behind SB 343 would be better served by acknowledging important differences between ANCSA and other business corporations. If I can be of any further assistance, or if you have any reservations about Sealaska's amendment, please do not hesitate to call.

Sincerely,

BIRCH, HORTON, BITTNER
PESTINGER & ANDERSON

Jon K. Tillinghast

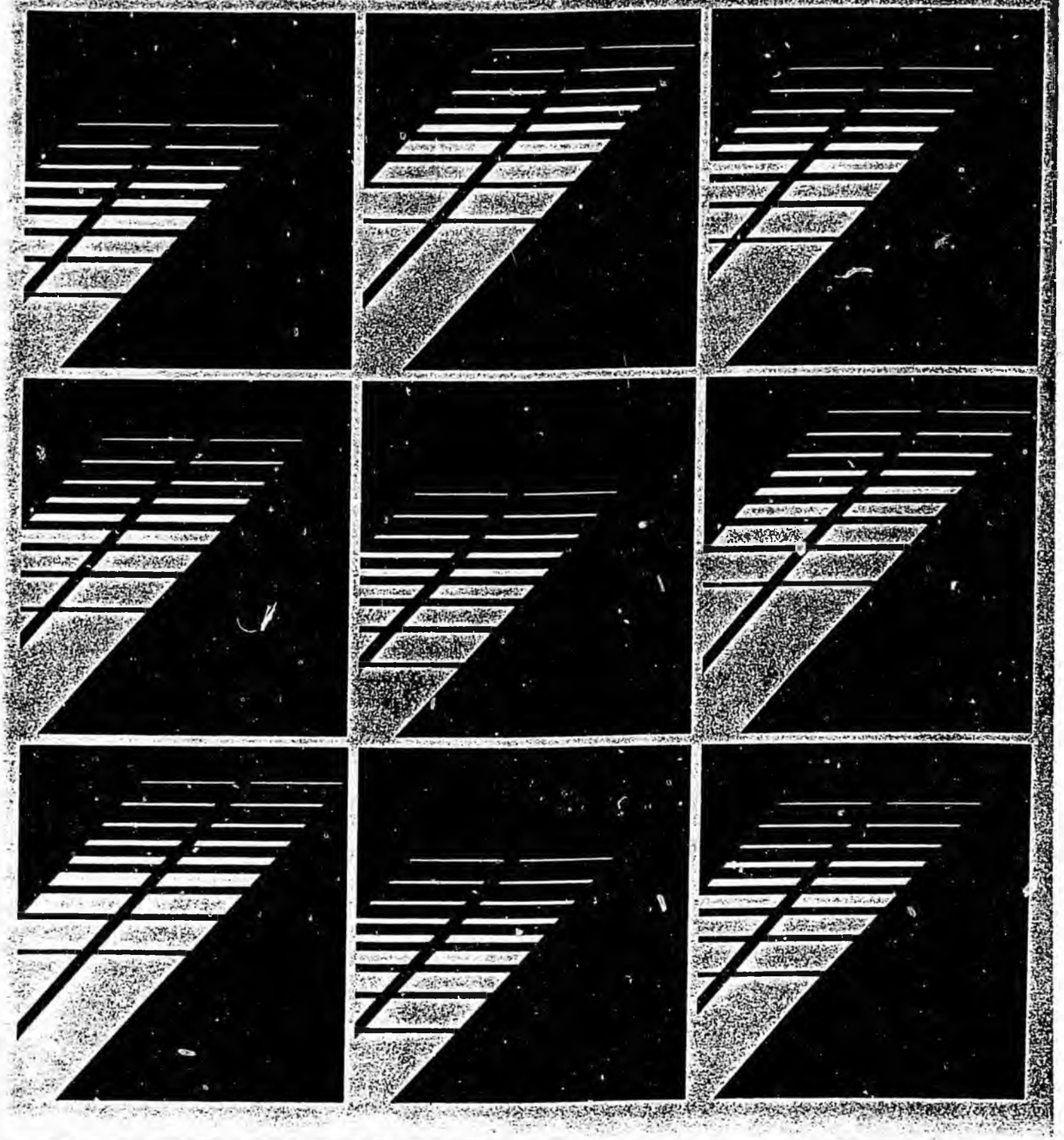
JKT/jrm

Issues Facing U.S. Corporate Directors

December 1986

Touche Ross

An opinion survey of directors of major U.S. corporations on the consequences of increased director's liability and other issues that affect the work of the board: the U.S. economy, foreign trade pressures, and the outlook on corporate America's future.



Are directors of large U.S. corporations concerned about their ability to make the right decisions in their work on the board? What do they think about foreign trade pressures, intense merger and acquisition activity, and access to capital markets? As directors, how do they deal with increased personal liability? Do they foresee problems recruiting qualified board candidates in the future?

These and other issues critical to the future of business in America were explored in a nationwide survey of corporate directors conducted by Touche Ross in the fall of 1986. More than 1,100 directors participated in the survey; nearly three-quarters of them serve on boards of companies with annual sales (or the equivalent in assets) of $1 billion dollars or more, and 81 percent have more than five years of board experience.

Highlights

Directors' Issues

- Almost one-third of the directors surveyed say they have considered retiring from their boards because of the increased liability to which they are exposed.

- Ninety-three percent of the directors polled believe increased liability will make it more difficult to recruit talented, experienced people to serve on boards in the future.

- More than 80 percent of the directors surveyed believe today's directors, in general, are more effective than they were twenty years ago.

Corporate and Economic Issues

- Nearly half the directors surveyed believe merger and acquisition activity has hurt the U.S. economy. Nevertheless, when the survey was conducted in September and October of 1986, some 45 percent of the directors polled believed that merger and acquisition activity would remain at the same level, and 27 percent said it would increase, over the next twelve months.

- While half of the directors say foreign trade has adversely affected earnings of companies of which they are a board member, the large majority of all directors polled do *not* think Congress should pass legislation to protect U.S. business from foreign competition.

- Eighty-one percent of the directors polled do not believe that, over the next year, Third World debt will have an adverse effect on the balance sheets of companies where they serve on the board.

- Almost one-third of the directors surveyed think the bankruptcy rate for companies with sales of $1 billion or more will increase in the coming year.

- Directors divide evenly in their opinion on whether corporate America's investment in capital equipment will increase, decrease, or continue at the same level in the next twelve months. However, 77 percent believe investment in capital *plant* will decrease or remain the same. The vast majority agree that corporate America will increase its investments in technology and in research and development in the next year.

Most survey participants are highly experienced board directors who serve major U.S. corporations: 71 percent of the respondents serve on at least one board of a business whose annual sales equal or exceed $1 billion; 76 percent serve on more than one board; and 58 percent have ten or more years of board experience.

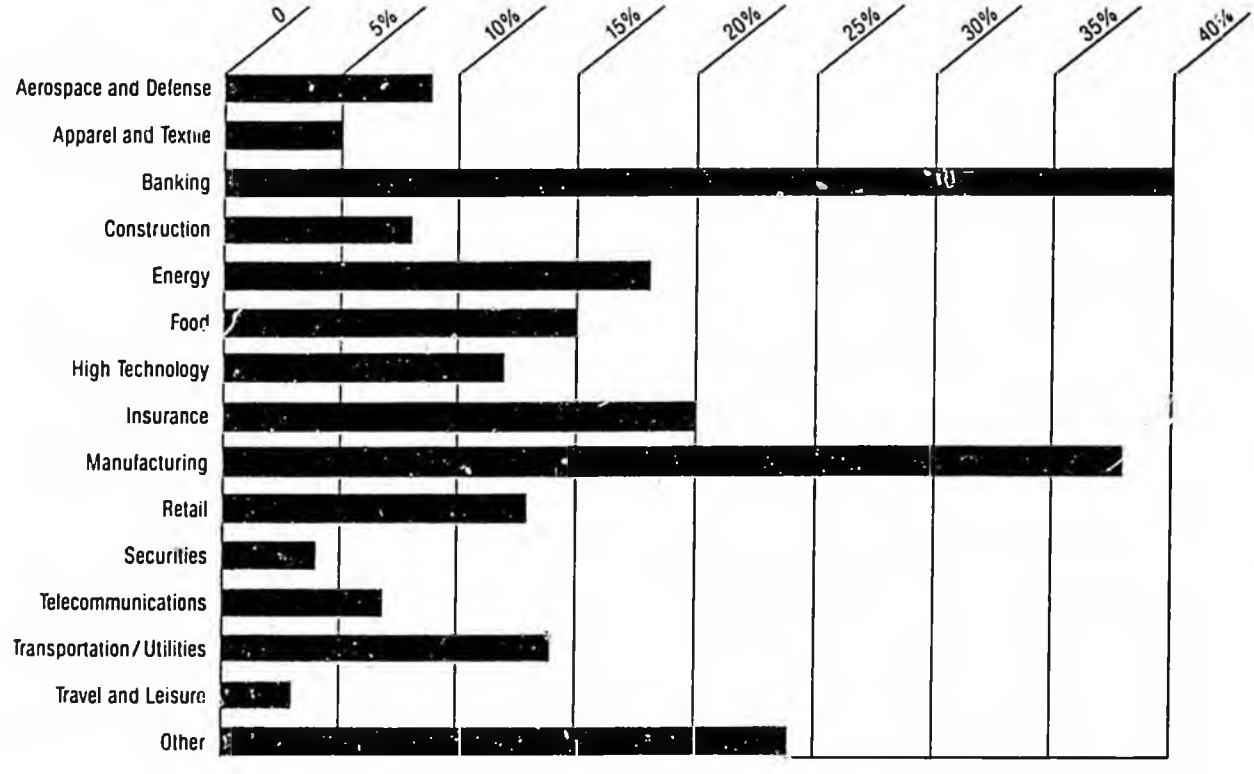
Participants in the Survey

The directors surveyed serve on a wide diversity of boards of large businesses and industries: 71 percent serve on at least one board of a business that has annual sales of $1 billion (or the equivalent in assets) or more; 41 percent serve on at least one board of a company that has annual sales of $500 million to $999 million; and 45 percent serve on at least one board of a business that has annual sales of under $500 million.

Of the directors surveyed, 24 percent serve on one board only; 26 percent serve on two boards; 21 percent serve on three boards; 13 percent serve on four boards; and 16 percent serve on five or more boards. Thus, most participants in the survey have extensive board experience.

This fact is supported by the amount of time the respondents have served as directors: less than one-fifth of the respondents have been directors for less than five years; 23 percent have five to nine years of

Industries Served by Survey Respondents



Note: Percentages total more than 100 percent because nearly three-quarters of the directors surveyed serve on more than one board.

experience; 23 percent have ten to fourteen years of experience; 15 percent have served as board members for fifteen to nineteen years; and 20 percent have served for twenty years or more. Eighty-one percent of the total respondents have at least five years of board experience, and 58 percent have served ten or more years. The majority of respondents, then, are widely experienced board directors who serve large U.S. businesses.

Nearly three-quarters of the respondents are officers of one or more companies where they serve on the board:

26% are Chief Executive Officers
9% are Chief Operating Officers
9% are Chief Financial Officers
6% are Executive Vice Presidents
9% are Senior Vice Presidents or Vice Presidents
4% are Chairmen
4% are Vice Chairmen
6% are Presidents, Legal Counsels, Secretaries, and other officers.

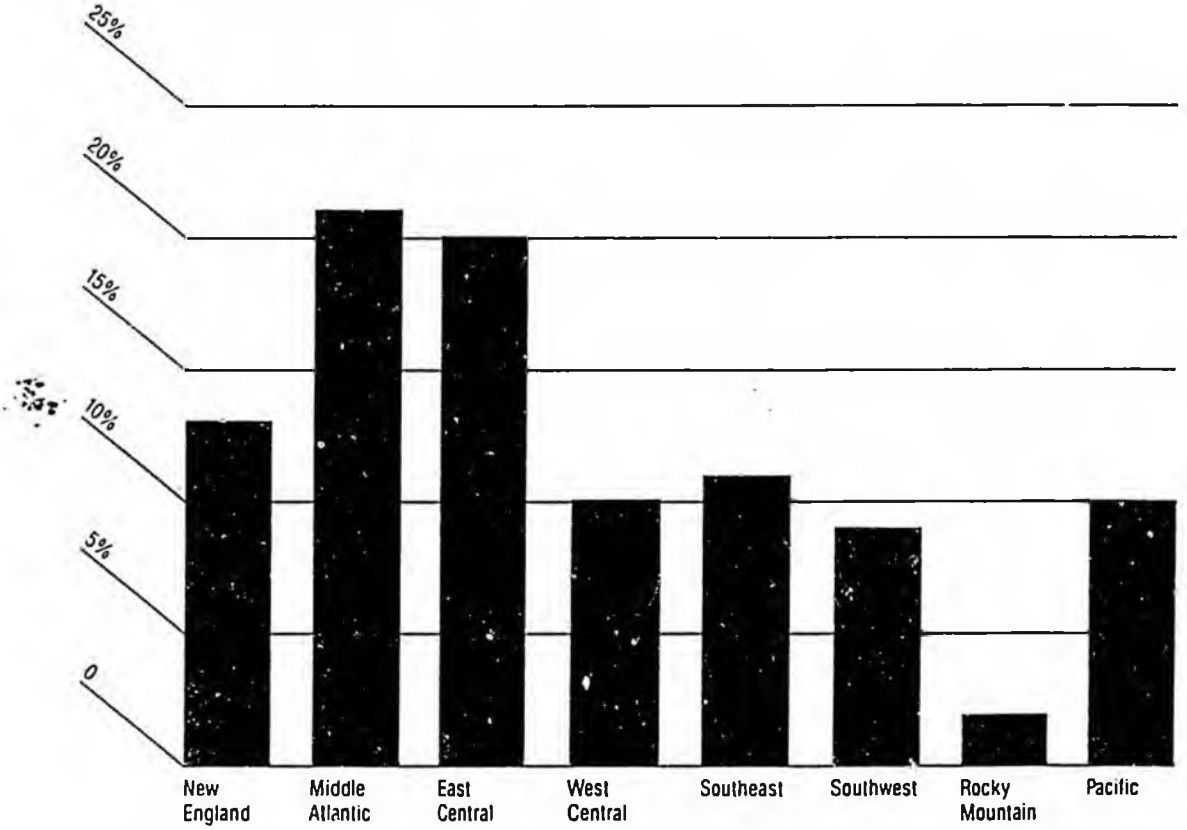
Nearly three-quarters of the directors surveyed are officers of one or more companies where they serve on the board. Of those who are outside directors, 88 percent were recruited by the chief executive officer.

Eighty-eight percent of the outside directors were recruited by the chief executive officer; 7 percent by another officer of the company; 4 percent by an executive search firm; and 10 percent by others.

Twenty-three percent of the respondents are officers or retired officers of other companies, and 20 percent have special business experience or skills. Only 2 percent represent a special, external constituency.

Internal directors serving their board(s) tend to have the least board experience—both in number of years served and in number of boards served on. Predictably, the more years directors have served, the more likely they are to be officers or retired officers of another company, or to have special business-related experience or skills. However, directors who have served on a board for twenty years or more are *three times* more likely to be major stockholders of the company(ies) served than directors serving less than twenty years.

Regions of the United States in Which Survey Participants Live



Some 93 percent of the directors surveyed believe that increased directors' liabilities will make it more difficult to recruit talented, experienced people in the future. The directors imply, then, that increased liability will create boards whose members will be less qualified or less effective than today's.

Ninety percent of the directors surveyed serve on board committees, and most serve on a number of these committees. Predictably, those who do not serve on committees have less than five years of board experience or serve on only one board. Directors who are officers of at least one company on whose board they serve are most likely to sit on the executive committee (64 percent), followed by the compensation committee (43 percent), the audit committee (40 percent), and the budget committee (11 percent). Thirteen percent of these directors serve on no board committees.

Outside directors—defined here as directors who are not officers of any company on whose board they serve—are most likely to serve on the audit committee (75 percent), followed by the compensation committee (63 percent), the executive committee (58 percent), and the budget committee (8 percent). Only 2 percent of these directors serve on no board committees.

Forty percent of the directors who are not officers of any company on whose board they serve sit on other committees, as do 25 percent of those directors who are officers of at least one company on whose board they serve. These committees include the nominating, contribution, social responsibility, public policy, and foundation committees.

The Challenge of Increased Liability

One-third of the directors surveyed say they have considered retiring from one or more of their board seats because of the increased liabilities to which they are exposed. In fact, the longer that directors have served on boards, the more likely they are to think of retiring because of increased liabilities. Only 16 percent of all the directors polled who have less than five years of board experience think of retiring, while the percentage more than doubles for directors who have five or more years of experience.

While 41 percent of the directors who are not officers of any company where they serve on the board have considered retiring because of increased liability, 36 percent of CEOs also say they have considered doing so. Some 36 percent of committee members, regardless of the committee(s) on which they serve, have considered retiring, while only 16 percent of non-committee members of the board have considered doing so. Thus, directors who have the least experience as measured by length of time served, and those who are not involved with board committees are the least concerned about increased liabilities.

Given the pace of change affecting the business community and the responsibilities of corporate directors, 35 percent feel only "somewhat confident" in exercising their responsibilities as a director and 4 percent feel "unsure." Overall, 62 percent of board members feel "confident." CEOs feel more confident than any other board members, with 66 percent saying so. Fifty-nine percent of CFOs express confidence in today's board environment, as do 60 percent of the other officers who serve on boards and 60 percent of those directors who are not officers of any companies where they serve on the board. The least confident in exercising their responsibilities are board members who serve on no board committees and who have, perhaps, the least "hands-on" experience.

Although the less-experienced directors worry the least about increased liabilities, it is not really a contradiction that they are the least confident in dealing with board matters. The survey results imply that, while they are aware that they lack knowledge of areas which are brought before the board, they may not be aware—precisely because they know less—of the extent to which increased directors' liabilities can affect them.

An overwhelming 93 percent of the directors surveyed believe that increased liability will make it more difficult to recruit talented, experienced people in the future. This percentage holds for all directors, regardless of length of board service, their involvement in committee work, and whether they are officers of any company on whose board they serve. Do the findings imply that increased liability will create boards whose members will be less qualified or less effective than current board members?

A great majority of the directors surveyed (83 percent) believe that today's directors are more effective than those of twenty years ago. Eighty-five percent of the directors serving on boards for twenty or more years (and who can, therefore, compare their earlier experience to their present experience), and 86 percent of the directors serving on three or more boards, find today's directors more effective than do those serving on fewer boards and with fewer years of experience.

Interestingly, 90 percent of the outside directors surveyed who are not officers of *any* company where they serve on the board were recruited by the chief executive officer—yet only 28 percent believe they have great influence on the chief executive officer.

Directors' Influence on Their Board(s)

When asked how much influence they have on their board(s), 39 percent of the respondents say their influence is great. Sixty percent claim moderate influence, and only 6 percent believe their influence is small. These responses and percentages hold true for both internal and outside directors.

Directors with less than five years of board experience and directors who sit on only one board feel they have the least influence. The more boards that directors serve on, the greater they believe their influence to be: 54 percent of directors serving on more than five boards say their influence is great, the largest percentage of all directors surveyed to say so. Directors who have served on a board(s) for twenty years or more are also likely (44 percent) to think they have great influence.

The directors' responses also reflect the particular board committees on which they serve. Fifty-two percent of directors serving on the budget committee believe their influence on the board is great, as do 47 percent of those who sit on the compensation committee, 43 percent of those on the executive committee, 38 percent of audit committee members, and 36 percent who serve on other committees. Nearly 20 percent of directors who do not serve on any committees say their influence is small.

Directors' Influence on the Chief Executive Officer

While 90 percent of the directors who are not officers of any company on whose board they serve were recruited by CEOs, only 28 percent believe they have great influence on the CEO(s). Directors serving on more than five boards feel they have the greatest influence (35 percent), followed by or including those who sit on board committees. Twenty-nine percent of the directors serving on compensation committees feel they have great influence on the CEO, followed by those serving on the audit committee (28 percent), the budget committee (27 percent), and the executive committee (24 percent).

Directors' Outlook on the U.S. Economy

Three-quarters of the directors surveyed believe the economy is growing slowly, but their responses differ according to the region of the United States in which they live. Directors living in the Middle Atlantic states and the Southeast are the most positive about the economy. The least positive are directors living in the Rocky Mountain region and the Southwest.

Rate of U.S. Economic Growth

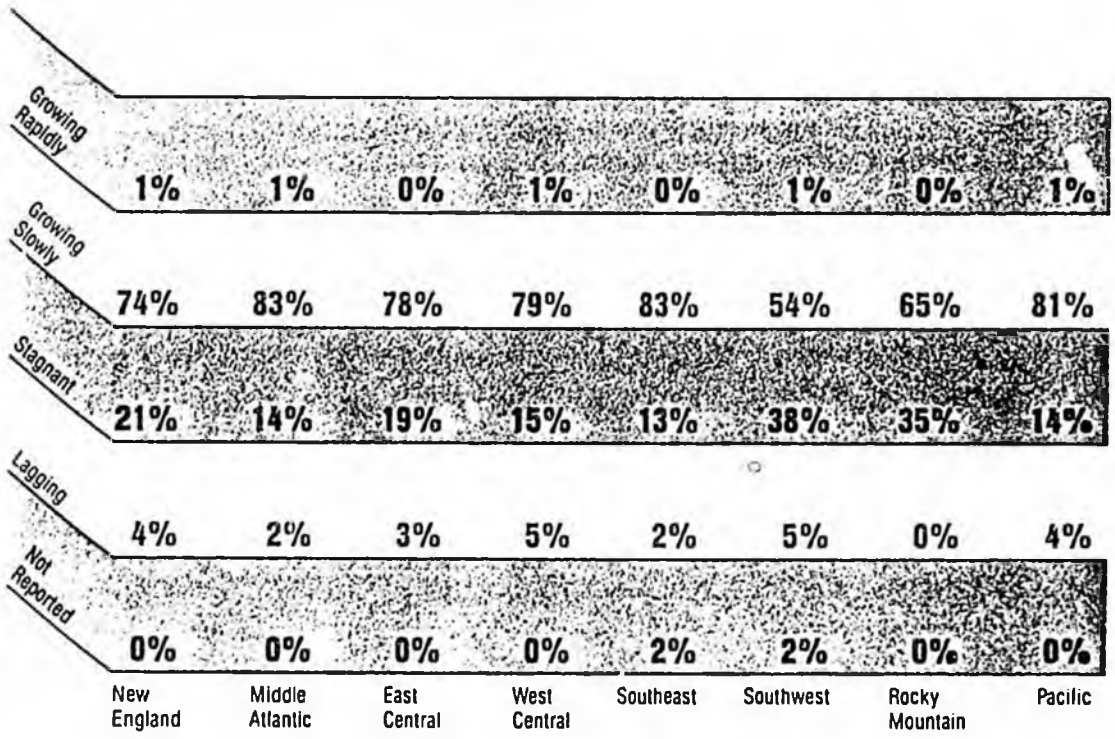
Three-quarters of the directors surveyed believe the U.S. economy is growing slowly. The greatest majority of directors who believe this are directors who serve on more than five boards (84 percent).

The directors' responses vary depending on the region in which they live: directors living in the Middle Atlantic states and the Southeast are the most positive, with 83 percent describing the economy as growing slowly. Those who live in the Southwest are most likely to say the economy is stagnant (38 percent) or lagging (5 percent), while 35 percent of the respondents living in the Rocky Mountain region say the economy is stagnant.

Areas of Corporate Investment

The directors surveyed are evenly divided as to whether corporate America's investment in capital equipment will increase, decrease, or stay at the same level. Regarding capital *plant*, however, only 22 percent of the directors surveyed think investment will increase here. Most directors believe

Respondents' Opinion, by Region, on the Rate of U.S. Economic Growth



Only 26 percent of the directors polled believe that consumer or political terrorism will significantly affect U.S. business during 1987. Those who think it will consider the travel and leisure industry, followed by the pharmaceutical and drugs industry, the most likely to be hurt.

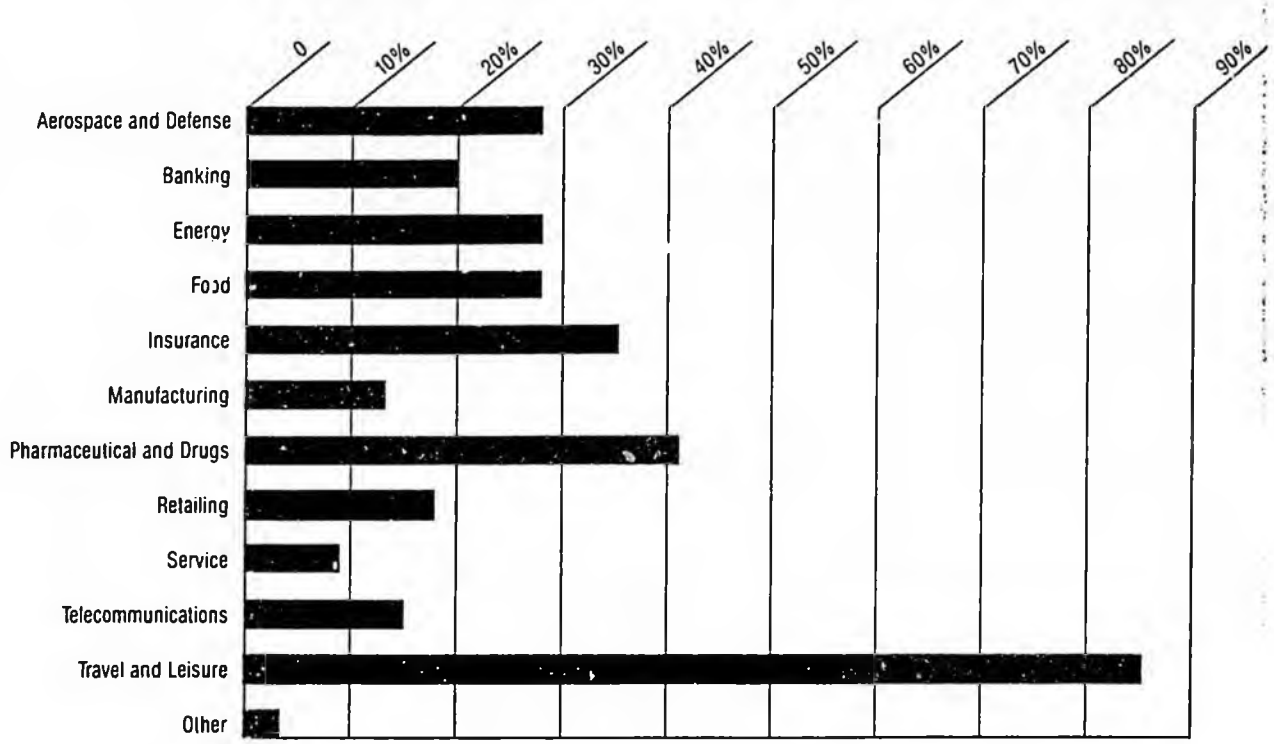
that investment in capital plant will either decrease in the future (39 percent) or stay at the same level (38 percent).

Some 86 percent of all directors surveyed believe that business and industry will increase their investments in technology. They agree regardless of their board experience, the region in which they live, the size of company(ies) for which they serve on the board, or the industry(ies) which they serve as board members. Nearly 70 percent of all directors also agree that investment in research and development will increase, but 24 percent believe it will stay at its current level.

Terrorism

Less than one-third of all directors believe that terrorism—consumer terrorism or any other form of terrorism in the U.S. or other countries—will significantly affect business during 1987. Of those who believe terrorism will hurt segments of the U.S. economy, 85 percent believe that the travel and leisure industry will be hurt, followed by 41 percent who say the pharmaceutical and drugs industry will suffer. Only 28 percent believe that the food industry will be affected.

Industries Directors Say Will be Affected by Terrorism in 1987



While almost half of the respondents believe merger and acquisition activity has hurt the economy, many more than half of the directors that serve on only one board for the construction, high-technology, banking, or apparel and textile industry say that mergers and acquisitions have had an adverse effect.

Mergers and Acquisitions

In September and October of 1986, when the survey was conducted, 27 percent of the directors surveyed believed merger and acquisition activity would increase, while 45 percent thought it would remain at the same level of activity, during 1987. However, *almost half—48 percent—of all the directors polled agreed that merger and acquisition activity has hurt the economy.* The most experienced directors seemed to be the least pessimistic about the effect merger and acquisition activity has had on the economy: 56 percent of those with twenty or more years of experience said mergers and acquisitions have either helped the economy (26 percent) or had no effect (30 percent).

Of those directors who serve on only one board and who, therefore, serve only one industry as board members, 88 percent of directors serving a construction industry business said mergers and acquisitions have hurt the economy, as did 83 percent of those who sit on a high-technology industry board, 72 percent of those who sit on the board of a bank, and 67 percent of those who serve on the board of an apparel and textile industry business.

More directors who are CEOs (50 percent) tend to feel that merger and acquisition activity has been damaging to the economy than all other directors, including those who are CFOs (45 percent).

Foreign Trade

Directors divide evenly on whether foreign competition has adversely affected the earnings of any company or companies of which they are a board member. Fifty-two percent say that foreign competition has hurt; 55 percent say it has not. Those who say it *has hurt* serve on at least one board of businesses in the following industries:

Aerospace and Defense
Apparel and Textile
Construction
Energy
High Technology
Manufacturing
Telecommunications
Travel and Leisure

Of these directors, 48 percent report that earnings have been affected significantly, 53 percent say moderately, and 16 percent say very little.

Those who say that foreign competition has *not hurt* them serve on at least one board of businesses in the following industries:

Banking
Food
Insurance
Retail
Transportation and Utilities

Despite the fact that 52 percent of the directors say that foreign competition has hurt the earnings of at least one company which they serve as a board member, 81 percent of all directors say they do *not* think Congress should pass legislation to protect U.S. business from foreign competition. Given the current mood of Congress and its seeming willingness to limit importation, it is surprising that the great majority of directors do not believe Congress should enact legislation.

When asked whether a common market between the U.S. and Canada would benefit U.S. business, 65 percent of the directors say yes, while 27 percent say no. However, despite the fact that the majority of directors favor such a common market, only 16 percent of them find it very or somewhat likely that such a common market could develop.

The survey findings on corporate financing issues over the next twelve months show that one-third of the directors think access to capital markets will become easier and that 81 percent do not believe Third World debt will adversely affect the balance sheet of any company on which they serve as a member of the board.

Corporate Financing

In addressing corporate financing issues, one-third of the directors polled say that access to capital markets will be easier in the next year. Nearly half say that it will remain the same, while 19 percent say it will become more difficult.

Fifty-three percent of the directors believe financial institutions will be the main source of financing in the next twelve months, as compared to 35 percent who say banks will be. Nine percent believe insurance companies will be the main source of corporate financing, while only 5 percent look to international lending agencies.

It is interesting to look at the differences in what CEOs and CFOs see as the main sources of funding in 1987 (see chart).

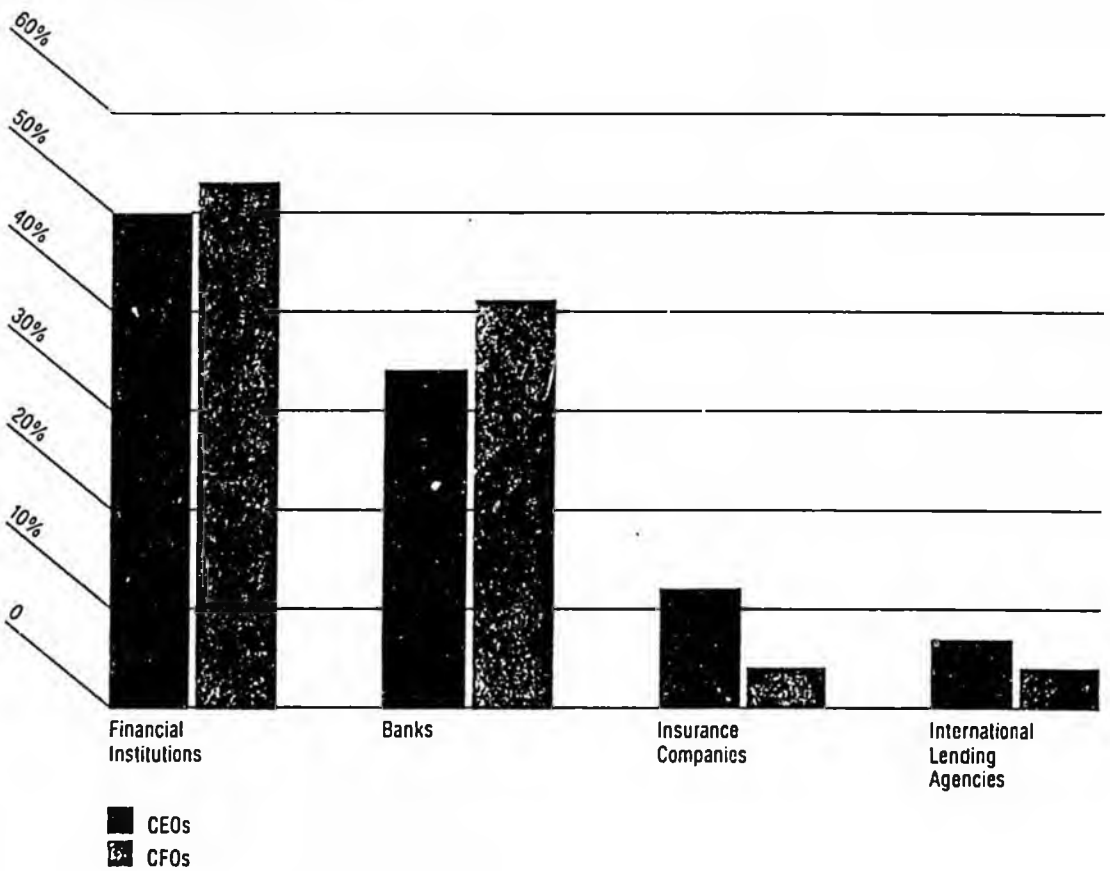
Third World Debt

A majority of directors (81 percent) do not believe that Third World debt will have an adverse effect in the next twelve months on the balance sheet of any company they serve. In general, only 11 percent of those directors who say Third World debt will affect company balance sheets believe that the effect will be significant; 41 percent believe it will be moderate; and 51 percent say it will have only somewhat or little effect. Is the implication, then, that directors are less concerned about Third World debt than is generally believed?

Bankruptcies

Some 29 percent of the directors surveyed think the bankruptcy rate of companies with sales of $1 billion will increase in the

Main Sources of Corporate Funding in 1987



next year. The greatest number of directors (31 percent) who think the bankruptcy rate of $1 billion companies will increase serve on at least one board of a company of that magnitude. Fifty-seven percent of the directors believe the bankruptcy rate of companies with sales of $1 billion or more will remain the same during the next twelve months.

Of those directors who see an increase in such bankruptcies, 76 percent believe the steel industry will be most vulnerable. Sixty-two percent believe that banks are most vulnerable; 60 percent believe the energy industry is most vulnerable. Twenty-two percent think high-technology companies are most vulnerable, and 9 percent believe the automotive industry is most vulnerable.

Of all the directors who participated in the survey, 77 percent do not think the Federal government will provide assistance to companies with sales of $1 billion or more facing bankruptcy. Twenty percent think the Federal government will give such assistance.

More than three-quarters of the directors surveyed describe product liability as being of great or moderate concern to them as it relates to the profitability of at least one company where they serve as a director. Within the survey sample, most concerned are directors who serve on only one board for the food, manufacturing, or aerospace and defense industry.

Product Liability

Seventy-eight percent of the directors surveyed describe product liability as a great or moderate concern to them as it relates to the profitability of at least one company which they serve as a director. However, 40 percent of the directors say that product liability is of little or no concern as it relates to the profitability of at least one company of which they are a director.

Two-thirds of the directors who serve on only one board say that product liability is of moderate to great concern to them, while one-third say it is of little or no concern. Of those directors who serve on only one board, however, 82 percent who serve on a food industry board, 77 percent on a manufacturing industry board, and 75 percent on an aerospace and defense board consider product liability to be of moderate to great concern as it relates to profitability. Much less concerned are those directors who serve on only one board in the securities, the insurance, and the banking industries, about half of whom express little or no concern about product liability. Thus, the degree of concern expressed regarding product liability is related to the industry on whose corporate boards directors serve.

That the industry served affects the degree to which directors feel concerned about product liability is also reflected in the survey finding that the more boards on which directors serve, the more they express moderate to great concern—and the more they also express little or no concern. This apparent contradiction can be explained by the fact that the more boards on which directors serve, the more industries they are likely to serve. Some of these are industries whose products cause directors great concern about product liability (food), and some are industries which cause them little concern (those industries in which services are rendered).

Survey Methodology

More than 1,100 directors responded to the survey questionnaire, a 14 percent response to the 8,000 questionnaires mailed. The questionnaires were sent to directors serving on boards of large U.S. corporations and institutions. Responses were received from directors living in each of the United States.

To better understand the views of directors of America's largest companies, Touche Ross sent questionnaires to 8,000 directors, most of whom serve on boards for businesses whose sales (or the equivalent in assets for banks, insurance companies, and financial institutions) equal or exceed $500 million per year. The intent was to reach as many directors as possible serving large U.S. corporations or service companies and gather their opinions on numerous topics which involve them as directors and in their board work. Some 1,126 of them completed and returned the questionnaire. Responses were received from all states in the United States, and from directors serving on the board(s) of diverse industries. Three-quarters of the respondents serve on at least one board of a company whose sales (or equivalent in assets) equal or exceed $1 billion.

For comparison purposes, the United States was divided into regions in this report, as follows:

New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Middle Atlantic: Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, and West Virginia.

Southeast: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

East Central: Illinois, Indiana, Michigan, and Ohio.

West Central: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

Southwest: Arkansas, Louisiana, Oklahoma, and Texas.

Rocky Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

Pacific: Alaska, California, Hawaii, Oregon, and Washington.

Survey Questionnaire

Issues Facing U.S. Corporate Directors

Directors' Issues

1 In your capacity as a director, are you also ...

73% An officer of the company

23% An officer or retired officer of another company

2% Representing a special, outside constituency

8% A major stockholder

20% An individual who has special business-related experience or skills

7% Other

2 If you serve on boards of companies of which you are not an officer, by whom were you recruited?

88% Chief executive officer

7% Other officer of the company

4% Executive search firm

10% Other

3 Have you considered retiring from any of your board seats because of the increased liability to which directors are exposed?

32% Yes

66% No

4 Do you think increased liability will make it more difficult to recruit talented, experienced people to serve on boards in the future?

93% Yes

7% No

5 Given the pace of change affecting the business community and the responsibilities of corporate boards, how do you feel in exercising your responsibilities as a director?

62% Confident

35% Somewhat confident

4% Unsure

6 How would you rate the effectiveness of today's director compared with those of twenty years ago?

83% More effective

4% Less effective

10% Same

7 How would you characterize your influence on boards on which you serve?

39% Great

60% Moderate

6% Small

8 If you are an outside director, how would you characterize your influence on the chief executive officer of the company or companies on whose boards you serve?

28% Great

63% Moderate

7% Small

Note: Percentages do not always equal 100 percent either because directors gave multiple responses or because some did not answer all questions.

U.S. Economy

9 Which of the following terms would you use to describe the U.S. economy?

1% Growing rapidly
77% Growing slowly
19% Stagnant
4% Lagging

10 Will corporate America increase or decrease investment in the following categories:

Capital equipment
36% Increase
30% Decrease
33% Stay at current level

Capital plant
22% Increase
39% Decrease
38% Stay at current level

Technology
86% Increase
3% Decrease
10% Stay at current level

Research and Development
68% Increase
7% Decrease
24% Stay at current level

11 Will terrorism, whether it be consumer terrorism in the U.S. or any form of terrorism in the U.S. or in other countries, significantly affect U.S. business during the next year?

26% Yes
72% No

12 If yes, which segments of the U.S. economy will be hurt? (Please check all that apply.)

28% Aerospace and Defense
20% Banking
28% Energy
28% Food
35% Insurance
13% Manufacturing
41% Pharmaceutical and Drugs
18% Retailing
9% Service
15% Telecommunications
85% Travel and Leisure
3% Other

13 In the next twelve months, do you think merger and acquisition activity will increase or decrease?

27% Increase
28% Decrease
45% Remain the same

14 In your opinion, what effect has corporate merger and acquisition activity had on the U.S. economy?

24% It has helped the economy.
48% It has hurt the economy.
25% It has had no effect on the economy.

Foreign Trade

15 Has foreign competition adversely affected the earnings of any company of which you are a board member?

52% Yes
55% No

16 If so, to what extent were that company's (those companies') earnings affected?

48% Significantly
53% Moderately
16% Very little

17 Do you think Congress should pass legislation to protect U.S. business from foreign competition?

17% Yes
81% No

18 Would a common market between the U.S. and Canada benefit U.S. business?

65% Yes
27% No

19 In your opinion, what are the chances for such a common market to develop?

1% Very likely
15% Somewhat likely
18% Neither likely nor unlikely
40% Somewhat unlikely
22% Very unlikely

Corporate Issues

20 In the next twelve months, will access to capital markets be ...

33% Easier
19% More difficult
47% Remain the same

21 In the next twelve months, which institutions will be the main sources of corporate financing?

35% Banks
53% Financial institutions
9% Insurance companies
5% International lending agencies
5% Other

22 In the next twelve months, will Third World debt have an adverse effect on the balance sheet of any company of which you are a director?

17% Yes
81% No

23 If yes, to what extent?

11% Significantly
41% Moderately
36% Somewhat
15% Little

24 In the next twelve months, will the bankruptcy rate of companies with sales of $1 billion or more ...

29% Increase
11% Decrease
57% Remain the same

25 If you see an increase in bankruptcies of these companies, which industries will be most vulnerable? (Please check all that apply.)

9% Automotive
62% Banks
60% Energy
22% High Technology
76% Steel
6% Other

26 Do you believe the Federal government will provide assistance to companies with sales of $1 billion or more facing bankruptcy?

20% Yes
77% No

27 How would you describe product liability as it relates to the profitability of any company of which you are a director?

37% Of great concern
41% Of moderate concern
27% Of little concern
13% Of no concern

Directors' Statistics

28 On how many corporate boards do you serve?

- 24% One board
- 26% Two boards
- 21% Three boards
- 13% Four boards
- 7% Five boards
- 9% More than five boards

29 Are you an officer of any of these companies?

- 73% Yes
- 26% No

30 If so, what is your title?

- 26% Chief executive officer
- 9% Chief financial officer
- 9% Chief operating officer
- 29% Other (Please specify)

31 In which industries are you a director?

- 9% Aerospace and Defense
- 5% Apparel and Textile
- 40% Banking
- 8% Construction
- 18% Energy
- 15% Food
- 12% High Technology
- 20% Insurance
- 38% Manufacturing
- 13% Retail
- 4% Securities
- 7% Telecommunications
- 14% Transportation/Utilities
- 3% Travel and Leisure
- 24% Other

32 How long have you been a corporate director?

- 18% Less than five years
- 23% Five years—nine years
- 23% Ten years—fourteen years
- 15% Fifteen years—nineteen years
- 20% Twenty years or more

33 In which state do you reside?

- 13% New England
- 21% Middle Atlantic
- 11% Southeast
- 20% East Central
- 10% West Central
- 9% Southwest
- 2% Rocky Mountain
- 10% Pacific

(Percentage of responses shown by region.)

34 On which board committees do you serve?

- 63% Executive
- 48% Compensation
- 49% Audit
- 10% Budget
- 29% Other
- 10% None

35 What are the annual sales (or assets, for financial institutions) of the company or companies on whose boards you serve?

- 71% Sales of $1 billion and over
- 41% Sales of $500 million to $999 million
- 45% Sales of under $500 million

Design: Kass Associates Inc.
Typography: Unbekant Typographers, Inc.
Printing: Conlon & Co. Inc.

HOUSE LABOR AND COMMERCE COMMITTEE
ALASKA STATE LEGISLATURE
P.O. BOX Y, JUNEAU 99811
(907) 465-3892

March 28, 1988

Carl H. Marrs, Vice President
Business Operations and Development
Cook Inlet Region, Inc.
P.O. Box 93330
Anchorage, Alaska 99509-330

Dear Mr. Marrs:

Many thanks for your March 22 letter offering certain amendments to SB 343, a measure currently pending in the House Labor and Commerce Committee.

I've included a copy of your letter in members files for discussion when we take up SB 343. In addition, a copy has been sent to Senator Sturgulewski, the prime sponsor of SB 343, with a request that she be prepared to respond to the proposed amendment when the measure is scheduled for a hearing before the House Labor and Commerce Committee.

Committee staff will notify your office when the SB 343 is scheduled. In the meantime, thanks again for your letter and please stay in touch.

Sincerely,

Dave Donley

Representative Dave Donley, Chair
House Labor and Commerce Committee

cc: House Labor and Commerce Committee member files
Senator Sturgulewski

3/25
H. L&C + Jud. 6

COOK INLET REGION, INC.

March 22, 1988

Representative Dave Donley, Chairman
House Labor and Commerce Committee
Juneau, AK 99811

Dear Representative Donley:

I understand that you will be holding hearings on CSSB 343 in the near future.

We believe such legislation regarding directors' liability is sound and is a positive step toward encouraging financially responsible people to serve on boards.

We would like to offer the following comments on CSSB 343:

The special provision in 10.05.276, making it easier for Native Corporations to adopt amendments to their articles providing for their limitation of liability, is also a good idea. The language, however, is flawed. First, the vote required should not be a majority of the "shareholders present" (i.e., the people who show up for the meeting), but rather a majority of the shares represented. See 10.05.153 where the correct language, "shares represented", is utilized. Second, the first sentence implies that a Native Corporation amendment to its articles is not generally permitted under 10.05.276, so that specific language is needed to authorize such an amendment. Such an implication is, at best, confusing. Instead, what needs to be said is simply that a Native Corporation can act by a majority of a quorum to approve this type of amendment.

We have taken the liberty to redraft the amendment to 10.05.276 to read as follows:

> Sec. 2 AS 10.05.276 is amended by designating the existing language as subsection (a) and by adding a new subsection to read:
>
> (b) Notwithstanding paragraph (3) of subsection (a) of this section, an amendment to the articles of incorporation of a corporation organized under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) and incorporated under AS 10.05.005, to add a provision eliminating or limiting the personal liability of a director to the Corporation or its stockholders for monetary damages under AS 10.05.255(c), may be adopted by the affirmative vote of a majority of the shares represented at the regular

ft for Carl Marrs CIRI V.P. 274-8638

CIRI BUILDING 2525 "C" STREET P.O. BOX 93330 ANCHORAGE, ALASKA 99509-3330
(907) 274-8638 TELECOPIER (907) 279-8836 TELEX 090-26-465

or special meeting at which a quorum is present in person or by proxy.

This language should be checked by an Alaska legislative draftsperson to see if my reference to "paragraph (3)" is correct, and if we used the right language to state that the present language of 10.05.276 is to be designated "subsection (a)."

Please let us know if we can be of any more assistance or if you have any questions.

Sincerely,

COOK INLET REGION, INC.

Carl H. Marrs
Vice President, Business Operations and Development

CHM/pkd2/143

cc: Roy M. Huhndorf
Ashley Reed
Representative Niilo Koponen
Representative Red Boucher
Representative Cliff Davidson
Representative Johnny Ellis
Representative Walt Furnace
Representative Curt Menard

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H L + C 4-21-88 2:00 p.m.

Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: April 21, 1988

SIGN-IN

Subject of meeting:

HB 556 Teacher negotiations; class size/workloads
HCR 45 Encouraging local hire
SB 351 Medical malpractice arbitration
SB 287 Practice of veterinary medicine
SB 329 Transferring Business licensing to DCED
SB 199 License exemption; boat trailer dealers
SB 343 Liability of directors of corporations
SB 223 Civil liability of zoos/zoo operators

PLEASE PRINT NAME & TITLE	REPRESENTING	ADDRESS & ZIP	PHONE	DO YOU WANT TO TESTIFY?	SUBJECT: BILL #
Steve Kettel Director Audit Div	Dept. of Revenue	P.O. Box SA Juno.	H W 5-2320	yes	SB 329
Judy Salo	DEA-AK	1510 Kenai Kenai	H W 586-3090	yes	HB 556
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		

Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: April 21, 1988

SIGN-IN

Subject of meeting:

HB 556	Teacher negotiations; class size/workloads
HCR 45	Encouraging local hire
SB 351	Medical malpractice arbitration
SB 287	Practice of veterinary medicine
SB 329	Transferring Business licensing to DCED
SB 199	License exemption; boat trailer dealers
SB 343	Liability of directors of corporations
SB 223	Civil liability of zoos/zoo operators

PLEASE PRINT **NAME** & TITLE	**REPRESENTING**	**ADDRESS** & ZIP	**PHONE**	**DO YOU WANT TO TESTIFY?**	SUBJECT: BILL #
Jon Tillinghast	Sealaska		H W	Yes	SB 343
John Abbott	AK CRC		H W	YES	SB 343
Willis Kirkpatrick	Div Banking		H W		SB 343
MARTHA FISCHBACH			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		

SB

344

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/21/88 FURTHER REFERRALS:

DATE: 5/3/88

The Labor & Commerce Committee has considered CSSB 344(L&C)(titl

"An Act relating to the registration of general contractors and subcontractors as to certain contracts of state agencies."

RECOMMENDS:

[ ] replace with ______________ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[ ] do pass

[ ] do not pass

[X] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______________ Committ

ADOPTS: [ ] __________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal no published ______________

[X] same as previous zero fisc note published 4/13/88

SIGNING DO PASS:

[signatures]

SIGNING OTHER RECOMMENDATIONS:

J. Ellis (no rec

Cliff Davidson (no rec)

(no rec)

Bill

Dave Donley

Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 344
PUBLISH DATE: SENATE 4/13

FISCAL NOTE

REQUEST:

Revision Date: -
Title: An Act relating to general contractors...
Sponsor: Senator Duncan
Requestor:

Agency Affected: Commerce & Economic Dev
BRU: Occupational Licensing
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	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	0	0	0	0	0	0
TOTAL	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

ANALYSIS: (Attach a separate page if necessary)

RAB

Prepared by: Jennifer Strickler, Management Analyst
Phone: 465-2144
Division: Occupational Licensing
Date: March 10, 1988

Approved by Commissioner: J. Anthony Smith Asst. Commissioner
Date: 3/10/88
Agency: Commerce and Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 344
PUBLISH DATE: SENATE 4/13/88

FISCAL NOTE

REQUEST:

Revision Date:

Agency Affected: Labor

Title: " An Act relating to general contractors and...contracts of state agencies..."

BRU: Labor Standards & Safety

Sponsor: Duncan

Components: Wage & Hour

Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director

Phone: 264-2452

Division: Labor Standards & Safety

Date: 3/22/88

Approved by Commissioner: Jim Sampson

Date: 3/22/88

Agency: Department of Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 344 (L&C) (title am)
PUBLISH DATE :

FISCAL NOTE

REQUEST:
Revision Date:
Agency Affected: Labor
Title: "An Act relating to the registration of general contractors..."
BRU: Labor Standards & Safety
Sponsor: Duncan
Components: Wage & Hour
Requestor: House Labor/Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director
Phone : 264-2452
Division: Labor Standards & Safety
Date : 5/2/88

Approved by Commissioner: Jim Sampson
Date: 5/2/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Attention
GINGER

MEMORANDUM

TO: Dave Donley
WITH: House Labor and Commerce

FROM: Frank Thomas-Mears, Chapter Secretary
WITH: ALASKAN CHAPTER
THE AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
12541 Atherton Road
Anchorage, Alaska 99516
907-345-7181

DATE: May 3, 1988

RE : CS SB 344
Registration of General and Subcontractors
Amending Section 2. AS 36.30.115(a)

We wish to further amend Section 2. AS 36.30.115(a), as follows:

> At the time of bid opening [Within five working days after the identification of the apparent low bidder], the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18. If a subcontractor on the list does not have a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the bid is opened, the purchasing officer shall reject the bid and proceed to the next lowest bidder.

Respectfully,
AMERICAN SUBCONTRACTORS ASSOCIATION, INC.

Frank Thomas-Mears
Chapter Secretary
Representational Lobbyiest

one - mac of two

Atherton
Ginger

MEMORANDUM

TO: Dave Donley
WITH: House Labor and Commerce

FROM: Frank Thomas-Mears, Chapter Secretary
WITH: ALASKAN CHAPTER
THE AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
12541 Atherton Road
Anchorage, Alaska 99516
907-345-7181

DATE: May 3, 1988

RE : CS SB 344
Registration of General and Subcontractors
Amending Section 2. AS 36.30.115(a)

The purpose of our amended language is to eliminate the onerous industry practice of BID SHOPPING.

Bid shopping is practiced by many general (prime) contractors, and works like this. After the general is awarded a contract as the apparent low bidder, he then goes back to the subcontractor whose low bids the general has already used to win the contract, and demands a further reduction in the subcontractors proposed pricing If the subcontractor who submitted the apparent low bid to the general is unwilling to do so, the general then contacts other non-low bidding subcontractors and asks them to beat the price.

The difference between what the general bid at the time of bid opening and the savings the general effects by bid shopping - GOES DIRECTLY INTO THE POCKETS OF THE GENERAL - not to the state or other contracting authority to whom any savings truly belongs.

IF IT IS FAIR THAT A GENERAL WHO IS THE APPARENT LOW BIDDER - AT THE TIME OF BID OPENING - IS AWARDED A CONTRACT, THEN IT IS ALSO FAIR THAT THE SUBCONTRACTOR WHO SUBMITTED THE LOWEST BID TO THE GENERAL - THAT ENABLED THE GENERAL TO BE THE APPARENT SUCCESSFUL LOW BIDDER AT BID OPENING - IS ALSO IMMEDIATELY AWARDED THE CONTRACT BY THE GENERAL.

Respectfully,
AMERICAN SUBCONTRACTORS ASSOCIATION,

Frank Thomas-Mears
Chapter Secretary
Representational Lobbyiest

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H L+C 5-3-88 6:30p.m.

SB

351

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/11/88 FURTHER REFERRALS: HESS
Judiciary

DATE: _____

The Labor & Commerce Committee has considered SB 351

"An Act relating to arbitration of medical malpractice claims."

RECOMMENDS:

[ ] replace with _____ [ ] the same title
[ ] a new title

[ ] attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[X] same as previous zero fiscal note published 2/22/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

STATE OF ALAS A
1988 LEGISLATIVE SESSION

BIL VERSION: SB 351
PUBLISH DATE: 2-22-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to arbitration of medical malpractice claims."
Sponsor: Senator Sturgulewski
Requestor: Senate HESS

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard R. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 15, 1988

Richard R. Pegues

Approved by Commissioner: Grace Berg Schaible, Attv. Gen.
Date: February 15, 1988
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 351

This bill amends AS 09.55.535(e) by providing that the requirement of subsection (e), that a voluntary agreement to arbitrate must be reexecuted each time a person is admitted to a hospital, applies only to agreements between a patient and a hospital. The voluntary arbitration statute otherwise applies to any health care provider. Because this bill deals with patients and hospitals, it will not have a fiscal impact on the Department of Law.

JANET K. TEMPEL
Attorney at Law
P.O. Box 2073
Soldotna, Alaska 99669
Telephone (907) 262-4604

January 27, 1988

Senator Arliss Sturgulewski
2957 Sheldon Jackson
Anchorage, Alaska 99508

Dear Senator Sturgulewski:

On behalf of Marcus C. Deede, M.D., I previously requested that AS 09.55.535(e) be amended so as to clarify that this particular provision applied only to an arbitration agreement between a patient and a hospital, and not to an agreement between a patient and a physician.

There are at least two physicians in the Soldotna area who have been routinely using patient/physician arbitration agreements for a considerable period of time. Routinely, the patients sign the agreements at the doctor's offices during their initial visits. The agreements are then in effect until revoked by the patients, under the guidelines set out in the statute.

As long as the patients are not hospitalized, there would be no controversy concerning the interpretation of AS 09.55.535(e). However, if patients are hospitalized, the statute as written is unclear whether the requirement to re-execute an arbitration agreement is solely applied to patient/hospital agreements (which seems to be the intent) or whether it also applies to patient/physician agreements.

Since most people are rarely hospitalized, it is logical and desirable to require a new patient/hospital agreement on each admittance, if the hospital is using the agreements. A previously signed agreement between a patient and a physician, however, contemplates that all future care provided by the physician, including hospitalizations, would be governed by the existing agreement. Having to present a new agreement on each hospitalization, therefore, is not only confusing to the patient, but generates unnecessary paperwork and expense, and requires administrative personnel from the doctor's office (or the hospital) to take additional time to re-explain the agreement and obtain new signatures.

As I indicated to you in a prior letter dated May 5, 1987, it appears that MICA, as well as the Attorney General's Office is of the understanding that the legislative intent was to have subsection (e) apply only to patient/hospital agreements, and not to patient/physician agreements. (Copy enclosed for your information.) Based on this, the local physicians have not been having their patients with existing arbitration agreements execute new agreements on admission to the hospital. The local physicians are concerned, however, that the existing language in subsection (e) leaves a loophole if a patient later attempts to void the agreement.

I hope this letter will be of assistance to you. Please let me know if I can assist further. Thank you for your consideration and assistance in this matter.

Yours truly,

Janet K. Tempel

Janet K. Tempel
Attorney at Law

JKT/rmc

cc: Marcus C. Deede, M.D.

Michael Lockwood, Administrator
Central Peninsula General Hospital

PLEASE READ THIS DOCUMENT CAREFULLY

ARBITRATION AGREEMENT
FOR
PHYSICIANS AND PATIENTS

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT.

2. The attending physician will provide medical care and services to the patient to the best of his skill or knowledge which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the attending physician by obtaining such medications as are prescribed, by following the instruments or the attending physician, by adherin to such treatment regimen or course of action as may be set forth and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned physician, during the period that this Agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rules as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this Agreement by notifying the undersigned physician in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The physician is not entitled to revoke this Agreement.

5. The arbitration board shall consist of three arbitrators: One designated by the physician; one designated by the party claiming malpractice by the physician; one to be selected by mutual agreement between the physician and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the doctor is a resident, pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the physician may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitration board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

7. The undersigned parties hereby acknowledge that they have read the foregoing arbitration agreement and understand the provisions contained therein.

8. This agreement is to remain in full force for all disputes, controversies, issues, or claims by the undersigned parties relating to care or treatment for the foregoing:

_____

_____ _____

9. Wherever used, the term "physician" includes the physician and all employees, agents and associates of the phys:

This agreement terminates when the above-described care and tre ment has been completed or on the ___ day of _____ 19___, whichever occurs first.

DATED this ____ day of _____, 19___.

_____
PATIENT

_____
PHYSICIAN

This form is hereby approved by the Office of the Attorney General for the State of Alaska.

DATED this 29 day of March, 1975.

OFFICE OF THE ATTORNEY GENERAL

By Robert M Maynard

PLEASE READ THIS DOCUMENT CAREFULLY

ARBITRATION AGREEMENT
FOR
HOSPITALS OR CLINICS AND PATIENTS

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT. THI AGREEMENT MUST BE RE-EXECUTED EACH TIME YOU ARE ADMITTED TO THE HOSPITAL.

2. The health care provider will provide medical care and services to the patient to the best of his skill and knowled which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the health car provider by obtaining such medications as are prescribed, by following the instructions of the health care provider, by adher to such treatment regimen or course of action as may be set forth and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned health care provider, during the period that this agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rules as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this agreement by notifying the undersigned health care provider in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The health care provider is not entitled to revoke this agreement.

5. The arbitration board shall consist of three arbitrators: One designated by the health care provider; one designated by the party claiming malpractice by the health care provider; one to be selected by mutual agreement between the health care provider and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the health care provider is situat pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the health care provider may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitratic board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

SS AND HOLMES
TORNEYS AT LAW
An Association of
rofessional Corporations
CHRISTENSEN DRIVE
NCHORAGE, ALASKA 99501

7. The undersigned parties hereby acknowledge that t[illegible] have r[illegible]d the foregoing arbitration agreement and understand th[illegible] provis[illegible]ns contained therein.

8. This agreement is to remain in force for all disputes, controversies, issues, or claims by the undersigned part[illegible] relating to care or t[illegible]atment for the following:

_____

_____

9. The term "health care provider" includes the hospi[illegible] or clinic and all agents, employees, servants, officers and dire[illegible]t[illegible] of the hospital or clinic and physicians employed by or ass[illegible]ciated with the hospital or clinic.

This agreement terminates when the above-described care or treatment has been completed or on the ____ day of _____ 19___, whichever occurs first.

DATED this ___ day of _____, 19___.

_____
PATIENT

_____
HEALTH CARE PROVIDER

This agreement is extended to apply to outpatient care for the treatment described in paragraph 8 of this agreement.

DATED this ___ day of _____, 19___.

_____
PATIENT

_____
HEALTH CARE PROVIDER

This form is hereby approved by the Office of the Attorney General for the State of Alaska.

DATED this 29 day of March, 1978.

OFFICE OF THE ATTORNEY GENERAL

By [signature]

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 351
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to arbitration of medical malpractice claims."
Sponsor: Senator Sturgulewski
Requestor: Senate HESS

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard R. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 15, 1988

Richard R. Pegues

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: February 15, 1988
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 351

This bill amends AS 09.55.535(e) by providing that the requirement of subsection (e), that a voluntary agreement to arbitrate must be reexecuted each time a person is admitted to a hospital, applies only to agreements between a patient and a hospital. The voluntary arbitration statute otherwise applies to any health care provider. Because this bill deals with patients and hospitals, it will not have a fiscal impact on the Department of Law.

health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

January 29, 1987

Memo To: Senator Arliss Sturgulewski

From: Harlan R. Knudson
Executive Director
Health Association of Alaska

Subject: Support - SB 351, Amending Arbitration Act

The Health Association of Alaska has reviewed and supports SB 351, amending the arbitration act to require that the arbitration agreement between the patient and the hospital be re-executed at each admission.

# # #

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C 4-21-88 2:00 PM.

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/17/88 FURTHER REFERRALS: C&RA
Judiciary

DATE: 4/29/88

The Labor & Commerce Committee has considered SSSB 357

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 357
"An Act exempting certain utilities with no more than 100 subscribers from regulation by the Alaska Public Utilities Commission or a municipality and providing that the most extensive exemption from regulation applies when one exemption is applicable to a utility."

RECOMMENDS:

[X] replace with CSSB 357 [X] the same title
[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [X] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [X] same as previous zero fiscal note published 3/1/88

SIGNING DO PASS:

(FURNACE)

SIGNING OTHER RECOMMENDATIONS:

Dave Donley no rec
[illegible] no rec.
[illegible] no rec

Dave Donley
Chairman's signature

5-1423L

Original sponsor: Faiks

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 357 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act exempting certain utilities with no more than 100 subscribers from regulation by the Alaska Public Utilities Commission or a municipality and providing that the most extensive exemption from regulation applies when more than one exemption is applicable to a utility."

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

* Section 1. AS 42.05.711(1) is amended to read:

(1) A person, utility, or cooperative that is exempt from regulation under AS 42.05.711(a), [OR] (d) - (k), or (m) is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

* Sec. 2. AS 42.05.711 is amended by adding new subsections to read:

(m) A utility located north of 69 degrees North latitude that has no more than 100 subscribers all of whom are commercial subscribers is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712.

(n) If a public utility is eligible for an exemption from regulation under more than one of the subsections in this section, the subsection that grants the most extensive exemption applies.

MEMORANDUM

To: Hon. Dave Donley
Representative
Alaska Legislature

Date: April 29, 1988

From: Ted Moninski
Executive Director
APUC

Subject: SSSB357

At yesterday's House Labor and Commerce Committee meeting considering the above referenced bill, Rep. Boucher asked a series of questions regarding the progress of the pending application of Norgasco, Inc., to provide gas distribution utility service to Deadhorse, Alaska. In response to Rep. Boucher and for the information of the Committee, attached is brief chronology of events associated with the Norgasco application, APUC Docket U-87-70.

The Commission had originally scheduled a public hearing to consider this, and the competing application of Polestar Energy, Inc., beginning June 9, 1988. As you will note from the chronology, Norgasco submitted a request for a sixty day extension of time. As a preliminary response, the Commission has granted a two week extension while it considers Norgasco's request and any opposition that may be submitted. The exact "new" hearing date will be determined after Commission review of all parties' pleadings.

If I can respond to any other questions relating to this matter, please contact me.

U-87-70

In the Matter of the Filing of an Application by NORGASCO, INC., for a Certificate of Public Convenience and Necessity To Operate as a Natural Gas Public Utility in and Around the Prudhoe Bay/Deadhorse Area

9/4/87 Recd Apln & PETITION FOR PROPRIETARY AND PRIVILEGED STATUS (fee paid 9/4/87)

9/28/87 ORDER NO. 1 - ORDER EXTENDING PERIODS FOR CONSIDERATION OF PETITION FOR PROPRIETARY STATUS AND FOR INTERIM PROPRIETARY TREATMENT OF APPLICATION (126-234)

10/5/87 Ltr frm R. R. Latchem, Norgasco, ENCL: cy of ltr dtd 5/11/87 to Commission

10/14/87 By Direction Ltr to R. Latchem, Norgasco, RE: Comm Order for add'l information to complete review of apln

10/26/87 Ltr frm R. Latchem, Norgasco, RE: response to Comm by direction ltr order of 10/14/87 for additional information

11/12/87 Ltr frm R. R. Latchem, Norgasco, ENCL: PETITION TO GRANT AN EXTENSION OF TIME FOR THE FILING OF INFORMATION ORDERED BY THE COMMISSION (until 1/15/88, 63 day extension)

11/16/87 Memo frm Commission Staff stating Staff's non-opposition to Norgasco's request for an extension of time to file information ordered by the Commission, until 1/15/88

11/19/87 NOTICE OF UTILITIES APPLICATION (comment period ends 12/20/87) Notice of competing applications ends 12/20/87, competing application's due 2/20/88

11/25/87 ORDER NO. 2 - ORDER GRANTING EXTENSION OF TIME (128-83)

11/30/87 Recd proof of publication frm The Anchorage Times

12/17/87 Ltr frm D. J. Moore, D. J. Moore Corp., RE: opposes Norgasco's apln, requests permission to review apln & notice of intent to file a competing apln

12/18/87 Ltr frm T. F. Klinkner, Wohlforth, Flint & Gruening, Attys f/ North Slope Gas Co-op., Inc., RE: intent to file a competing apln

12/22/87 Ltr frm J. E. Davis, North Slope Borough, RE: comments

1/11/88 PETITION FOR AN EXTENSION OF TIME IN WHICH TO FILE INFORMATION ORDERED BY THE COMMISSION by R. Latchem, Norgasco

1/11/88 Ltr frm R. Latchem providing proposed service rates

1/20/83 ORDER NO. 3 - ORDER GRANTING EXTENSION OF TIME IN WHICH TO FILE INFORMATION REQUIRED BY THE COMMISSION'S 10/14/87 LETTER ORDER (129-294)

2/4/88 Ltr to T. F. Klinkner, Atty f/ North Slope Gas & AUI, ENCL: Senate Bill No. 357

2/12/88 Ltr frm D. J. Moore, Richards Petroleum Resources Ltd, requesting a 90 day extension of requirement to file competing apln

2/22/88 Ltr frm R. Latchem, Norgasco, RE: objection to request by D. J. Moore for an extension of time

2/22/88 Ltr frm R. Latchem, NORGASCO, RE: response to Staff request for add'l info, ENCL: financial information, funding sources

2/22/88 ORDER NO. 4 - ORDER STAYING COMPETING APPLICATION DEADLINE TO ALLOW OPPORTUNITY FOR RESPONSE TO EXTENSION REQUEST (130-147)

3/4/88 OPPOSITION TO MOORE'S REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE AN APPLICATION by B. R. Edwards, Atty f/ Norgasco

3/4/88 STAFF'S OPPOSITION TO MOORE'S REQUEST FOR EXTENSION OF TIME by T. S. Moninski, APUC Staff

3/4/88 Ltr frm P. Argetsinger, Wohlforth, Flint & Gruening, Attys f/ Arctic Utilities, Inc., RE: AUI will not file a competing apln

3/11/88 ORDER NO. 5 - ORDER DENYING EXTENSION REQUEST; ESTABLISHING NEW DEADLINE FOR FILING COMPETING APPLICATION; AND ESTABLISHING FILING AND HEARING SCHEDULES (130-284)

4/6/88 PETITION TO INTERVENE OF ARCTIC UTILITIES, INC., by T.F. Klinkner, Wolforth, Flint & Gruening, Attys f/ AUI

4/7/88 STAFF COMMENTS ON REQUEST FOR PROPRIETARY STATUS by W.E. Marshall, APUC Staff

4/7/88 ARCTIC UTILITIES, INC. OPPOSITION TO REQUEST FOR PROPRIETARY STATUS by T.F. Klinkner, Wohlforth, Flint & Gruening, Attys f/ AUI

4/12/88 AMENDMENT TO PETITION TO INTERVENE OF ARCTIC UTILITIES, INC., AND MOTION FOR EXTENSION OF TIME TO FILE PREFILED TESTIMONY by T. F. Klinkner, Wohlforth, Flint & Gruening, Attys f/ AUI

4/19/88 OPPOSITION TO PETITION TO INTERVENE by B.R. Edwards, Atty f/Norgasco

4/20/88 PETITION FOR EXPEDITED TREATMENT; PETITION FOR CONTINUANCE by B.R. Edwards, Atty f/ Norgasco

4/26/88 MOTION TO STRIKE by M.G. Briggs, Guess & Rudd, Attys f/Polestar

4/26/88 OPPOSITION TO PETITION FOR CONTINUANCE by M. Briggs, Guess & Rudd Attys/ f/Polestar

4/26/88 ORDER NO. 6 - ORDER AFFIRMING ORAL EXTENSION (132-95) OF FILING AND HEARING SCHEDULES AND SETTING OF FILING DEADLINE

4/27/88 WAIVER OF PROPRIETARY STATUS AND OPPOSITION TO MOTION TO STRIKE by B.R. Edwards, Atty f/ Norgasco

4/28/88 REPLY TO OPPOSITION TO PETITION FOR CONTINUANCE by B.R. Edwards, Atty f/Norgasco

POLESTAR ENERGY, INC.
1406 Zarvis Place
Anchorage, Alaska 99508
(907) 272-9009

April 29, 1988

Representative Dave Donley
Labor and Commerce Committee
State of Alaska
P. O. Box V
Juneau, Alaska 99811

Attention: Ginger Baim

Reference: Senate Bill 357

Dear Representative Donley:

Polestar wishes to respond to Mr. Boucher's questions and submits further pertinent information and credibility supporting our opposition to SB 357:

1. W.E. 'Bill' Richards and D.J. 'Jack' Moore, directors of P.E.I., have been instrumental in projects associated with the oil and gas industry at management status which include, but are not limited to, the following:

Bill Richards - President, Senior Vice President, Secretary Dome Petroleum - 1961-1983 (President 1974-1983). Responsible in these capacities for all of Dome's ventures, some being Canmar's Beaufort Sea operations, world scale gas plant and petrochemical complexes and propane vapor distribution grids in northern communities, apart from Dome's extensive oil and pipeline activities. Richards is President of Wilshire Energy Resources, Inc., a co-financer with Finex Capital Corporation and D. J. Moore Corp.

Jack Moore - Managed the installation of 27 city and town gas distribution systems in Manitoba, Saskatchewan, Alberta and British Columbia for companies he operated since 1945. He was also in charge of the winter installation of the 12" pipeline test section of Humble/ARCO/B.P. at Barrow Nov/Dec/Jan 1968-69, using Native labor. Moore consulted, through this company, with Pipeline Technologists and headed up the field construction group that chose Valdez as terminal and he personally chose the points of intersection on tangent for TAPS pipeline alignment through the Chugach, Alaska and Brooks Range of mountains on a reciprocating basis with Jack Norris. Moore planned and supervised the perma frost ditching program at Fairbanks and

Eielson on the same basis. In 1983, Moore conducted a study for the Legislative Affairs Department, State of Alaska, commissioned by George Hohman, regarding the utilization of North Slope Natural Gas for use in Alaska. More recently, Moore can demonstrate that he has been discussing more economic energy with the North Slope Borough since 1988.

2. P.E.I. has financing in place as indicated in its April 1, 1988 application to the APUC, together with economic and engineering feasibility.

3. P.E.I.'s gas purchase contract is for 10 years with Standard Alaska Production Company, when renegotiation as to terms and price are necessary.

4. P.E.I. will construct the distribution system this season, provided the APUC issues us a certificate of convenience and necessity in a timely manner after the June 24th hearing.

5. P.E.I. will use Alaska labor and trades during construction, employing 40-45 men. After construction, Alaskans will be trained to operate and maintain the system.

6. Revenue accruing to the State of Alaska from 12 1/2% royalty and 10% severance is expected to be in excess of $45,000 annually.

7. P.E.I.'s burner price for gas is indicated in its APUC application as $4.25 per mm btu. The opposing applicant has indicated that its price ranges from $4.65 to $4.95 per mm btu.

8. P.E.I. is ready to go before the A.P.U.C. and present its case for their adjudication.

Queries that come to mind pursuant to the Apil 28th hearing before this committee are as follows:

1. Is the opposing APUC applicant's financing in place?

2. What is the opposing APUC applicant's term of capital amortization?

3. Does the 8 year gas contract, testified to by the opposing APUC applicant, satisfy the term of amortization?

4. The opposing APUC applicant testified that financing would be difficult should Senate Bill 357 not pass. Why?

5. The opposing APUC applicant testified that tax revenue, through royalty and severance tax, would be in the range of $600,000 a year with a project life tax revenue of $20,000,000 - please find enclosed page 3 of 5, Apil 20, 1988 petition for continuance indicating its gross revenue at $781,000. Reconciliation of these numbers tests one's ability without considering the 8 year gas contract as a factor.

6. Opposing applicant indicated in testimony yesterday "that they could not build the project this year". This utterance is supported by Affidavit dated April 20, 1988, in support of continuance.

In conclusion, Mr. Boucher's concern for inspection of construction under APUC is a point that the Commission should remedy. However, both ARCO, the operator, and Standard, our seller, insist on a qualified independent inspection service if SB 357 passes or fails to pass. If SB 357 passes, then any gas utility with less than 100 commercial customers in, lets say Anchorage, Fairbanks, Valdez or other potential industrial area in Alaska, is vunerable to a gas system that is not inspected.

Respectfully yours,

POLESTAR ENERGY, INC.

D. J. Moore, President

DJM/D

Please prepare copies for the following:

Jan Faiks
Ben Grussendorf
Niilo Koponen
Red Boucher
Cliff Davidson
John Ellis
Walt Furnace
Curt Menard

cc: Commission, APUC