

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9176 HOUSE JUDICIARY

1 causal relation between the conduct and the damages claimed. The trier of fact may
2 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO
3 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
4 claimed and the separate act or omission of each person cannot be distinguished.

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

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

Cross
#5

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

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

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

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

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

See the
March

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

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

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

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

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

30 (2) if the offer was served more than 60 days after both parties
31 made the disclosures required by the Alaska Rules of Civil Procedure but more

1 than 90 days before the trial began, the offeree shall pay 75 percent of the
 2 offeror's reasonable actual attorney fees:

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

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

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

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

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

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

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

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

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

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

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

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

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

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

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

26 (a) In an action for damages due to personal injury or death based upon
27 the provision of professional services by a health care provider, including a person
28 providing services on behalf of a governmental entity, when the parties have not
29 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
30 20 days after filing of answer to a summons and complaint a three-person expert
31 advisory panel unless the court decides that an expert advisory opinion is not necessary

1 for a decision in the case. When the action is filed, the court shall, by order,
 2 determine the professions or specialties to be represented on the expert advisory panel,
 3 giving the parties the opportunity to object or make suggestions.

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

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

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

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

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

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

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

22 (6) What specifically caused the medical injury?

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

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

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

28 (f) Discovery may not be undertaken in a case until the report of the expert
 29 advisory panel is received or 60 days after selection of the panel, whichever occurs
 30 first. However, the court may relax this prohibition upon a showing of good cause by
 31 any party. If the panel has not completed its report within the 30-day period

1 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
 2 an additional 30 days.

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

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

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

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

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

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

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

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

31 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or

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

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

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

20 **Notice of Limited Liability**

21 The following emergency room physicians are independent
 22 contractors and are not employees of the hospital:

23 (List specific emergency room physicians)

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

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

← *Electric
Amend*

1 (d) In this section,

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

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

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

9 * Sec. 36. AS 09.65.210 is repealed and reenacted to read:

10 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
11 **under the influence of alcohol or drugs.** A person who suffers personal injury or
12 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
13 recover damages for the personal injury or death if the injury or death occurred while
14 the person was

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

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

21 (A) substantially contributed to the personal injury or death; and

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

24 (3) fleeing after the commission, by that person, of conduct that would
25 constitute an unclassified felony, a class A felony, or a class B felony or being
26 apprehended for conduct that would constitute an unclassified felony, a class A felony,
27 or a class B felony if the conduct

28 (A) during the flight or apprehension substantially contributed
29 to the injury or death; and

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

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

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

9 * **Sec. 37.** AS 09.68 is amended by adding a new section to read:

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

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

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

- 23 (1) divorce and dissolution;
 24 (2) adoption, custody, support, visitation, and emancipation of children;
 25 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
 26 cases under 47.12;
 27 (4) domestic violence protective orders under AS 18.66.100 -
 28 18.66.180;
 29 (5) estate, guardianship, and trust cases filed under AS 13;
 30 (6) small claims under AS 22.15.040.

31 * **Sec. 38.** AS 21.06 is amended by adding a new section to read:

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

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

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

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

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

20 * **Sec. 39.** AS 21.89.100(d) is amended to read:

21 (d) If the insured selects independent counsel at the insurer's expense, the
 22 insurer may require that the independent counsel have at least four years of experience
 23 in civil litigation, including defense experience in the general subject area at issue in
 24 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 25 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 26 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 27 course of business in the defense of a similar civil action in the community in which
 28 the claim arose or is being defended. **In providing independent counsel, the insurer**
 29 **is not responsible for the fees and costs of defending an allegation for which**
 30 **coverage is properly denied and shall be responsible only for the fees and costs**
 31 **to defend those allegations for which the insurer either reserves its position as to**

1 coverage or accepts coverage. The independent counsel shall keep detailed
 2 records allocating costs accordingly. A dispute between the insurer and insured
 3 regarding attorney fees that is not resolved by the insurance policy or this section shall
 4 be resolved by arbitration under AS 09.43.

5 * Sec. 40. AS 21.89.100 is amended by adding a new subsection to read:

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

11 * Sec. 41. AS 23.30.015(g) is amended to read:

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

21 * Sec. 42. AS 44.77.015(a) is amended to read:

22 (a) For the purposes of filing claims for medical services provided under
 23 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
 24 within six months after the date of service, or as provided in (b) of this section, if
 25 there is no third-party claim, or (2) within 12 months after the date of service if there
 26 is a third-party claim. Except as provided in (c) of this section, a claim may not be
 27 paid if it is not filed promptly; an inference to the contrary may not be drawn from
 28 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

29 * Sec. 43. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

30 (c) Motion to Set Trial and Certificate. Unless otherwise ordered by the
 31 court, a [A] motion to set trial may not be filed until after the meeting of parties

1 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
 2 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
 3 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
 4 set trial together with a certificate, signed by counsel, stating:

- 5 (1) That the issues in the case have actually been joined;
 6 (2) That all parties have completed discovery or have a reasonable
 7 opportunity to do so within the next 60 days;
 8 (3) That the procedure for listing witnesses and exhibits and providing
 9 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
 10 (4) Whether trial by jury has been timely demanded;
 11 (5) The estimated number of days for the trial, including estimates for
 12 each party's case and for jury selection;
 13 (6) The names, addresses and telephone numbers of all attorneys and
 14 pro se parties who are responsible for the conduct of the litigation;
 15 (7) Which, if any, statute or rule entitles the case to preference on the
 16 trial calendar;
 17 (8) That the parties have complied with [PARAGRAPH] (k) of this
 18 rule.

19 * Sec. 44. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

20 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 21 soon as practicable after the exchange of initial disclosures required under Rule
 22 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 23 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 24 their claims and defenses and the possibilities for a prompt settlement of the case and
 25 to develop a proposed discovery plan. The attorneys of record and all unrepresented
 26 parties that have appeared in the case are jointly responsible for arranging and being
 27 present or represented at the meeting, for attempting in good faith to agree on the
 28 proposed discovery plan, and for submitting to the court within 10 days after the
 29 meeting a written report outlining the proposed discovery plan. The proposed
 30 discovery plan shall indicate the parties' views and proposals concerning

- 31 (1) what changes should be made in the timing or forms of subsequent

1 disclosures under the rules, including a statement as to when the disclosures required
2 under Rule 26(a) were made;

3 (2) the subjects on which discovery may be needed, when discovery
4 should be complete, and whether discovery should be conducted in phases or be
5 limited to or focused upon particular issues;

6 (3) what changes should be made in the limitations on discovery
7 imposed under these rules and what other limitations should be imposed;

8 (4) whether a scheduling conference is unnecessary;

9 (5) whether there will be dispositive or partially dispositive motions
10 filed in the case and whether other deadlines should be set aside pending resolution of
11 the dispositive or partially dispositive motions by the court; and

12 (6) any other orders that should be entered by the court under Civil
13 Rule 16(b) and (c).

14 * **Sec. 45.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
15 paragraph to read:

16 (3) **Settlement Information.** If a voluntary dismissal under this rule
17 is the result of compromise or other settlement of the parties, the parties shall submit
18 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
19 of dismissal made under (1)[a] of this subsection must be accompanied by a
20 certification signed by or on behalf of the plaintiff that the information required under
21 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
22 dismissal made under (1)[b] of this subsection must be accompanied by a certification
23 signed by or on behalf of all parties who have appeared in the action. The
24 requirements of this paragraph do not apply to the types of cases listed in
25 AS 09.68.130(c).

26 * **Sec. 46.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

27 (g) **Discovery** Except by leave of court, no discovery may be conducted until
28 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
29 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
30 to occur, unless discovery is further stayed for good cause by order of the court.

31 * **Sec. 47.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

1 (b) In addition to its authority under (a) of this rule and its power to punish
2 for contempt, a court may, after reasonable notice and an opportunity to show cause
3 to the contrary, and after hearing by the court, if requested, impose a fine not to
4 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
5 to comply with these rules or any rules promulgated by the supreme court.

6 * **Sec. 48.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
7 subsection to read:

8 (c) If the trier of fact determines that a party to a civil action has intentionally
9 made a false statement of a material fact in connection with the prosecution or defense
10 of a civil action, the court shall enter judgment against the party making the false
11 statement on the issue to which the false statement relates. If the civil action involves
12 multiple claims and the false statement does not apply to all claims, the judgment
13 required under this subsection shall apply only to those claims to which the false
14 statement relates.

15 * **Sec. 49.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
16 subsection to read:

17 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
18 result of compromise or other settlement between the parties, the parties shall submit
19 to the Alaska Judicial Council the information required under AS 09.68.130. A
20 dismissal by agreement under (a) of this rule must be accompanied by a certification
21 signed by the attorneys of record for all parties that the information required under
22 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
23 appellant or petitioner made under (b) of this rule must be accompanied by a
24 certification signed by the appellant's or petitioner's attorney of record. The
25 requirements of this subsection do not apply to the types of cases listed in
26 AS 09.68.130(c).

27 * **Sec. 50.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

28 * **Sec. 51.** AS 09.55.548 is repealed.

29 * **Sec. 52.** AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending
30 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
31 percentage of an award of punitive damages be deposited into the general fund.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/78

Central Microfilm Services
Department of Education
State of Alaska

1 (b) In addition to its authority under (a) of this rule and its power to punish
2 for contempt, a court may, after reasonable notice and an opportunity to show cause
3 to the contrary, and after hearing by the court, if requested, impose a fine not to
4 exceed \$10,000.00 [~~\$1,000.00~~] against any attorney who practices before it for failure
5 to comply with these rules or any rules promulgated by the supreme court.

6 * Sec. 48. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
7 subsection to read:

8 (c) If the trier of fact determines that a party to a civil action has intentionally
9 made a false statement of a material fact in connection with the prosecution or defense
10 of a civil action, the court shall enter judgment against the party making the false
11 statement on the issue to which the false statement relates. If the civil action involves
12 multiple claims and the false statement does not apply to all claims, the judgment
13 required under this subsection shall apply only to those claims to which the false
14 statement relates.

15 * Sec. 49. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
16 subsection to read:

17 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
18 result of compromise or other settlement between the parties, the parties shall submit
19 to the Alaska Judicial Council the information required under AS 09.68.130. A
20 dismissal by agreement under (a) of this rule must be accompanied by a certification
21 signed by the attorneys of record for all parties that the information required under
22 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
23 appellant or petitioner made under (b) of this rule must be accompanied by a
24 certification signed by the appellant's or petitioner's attorney of record. The
25 requirements of this subsection do not apply to the types of cases listed in
26 AS 09.68.130(c).

27 * Sec. 50. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

28 * Sec. 51. AS 09.55.548 is repealed.

29 * Sec. 52. AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending
30 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
31 percentage of an award of punitive damages be deposited into the general fund.

1 * Sec. 53. AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending
2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
3 damages by certain tax rates in effect on the date of injury or death if taxable.

4 * Sec. 54. AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending
5 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
6 periodically if requested by a party, with a lump sum payment for certain attorney fees.

7 * Sec. 55. AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending
8 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
9 is paid by periodic payments.

10 * Sec. 56. AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending
11 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
12 increases for future inflation.

13 * Sec. 57. AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending
14 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
15 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
16 among the claimants, defendants, third-party defendants, persons who have been released from
17 liability, or other person who is responsible for the damages.

18 * Sec. 58. AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending
19 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
20 testifying as an expert witness.

21 * Sec. 59. AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of
22 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
23 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
24 eliminating provisions relating to interest and by providing that a subsequent offer revokes
25 prior offers.

26 * Sec. 60. AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending
27 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
28 awarded for future economic or noneconomic damages.

29 * Sec. 61. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
30 legislation to create a pilot alternative dispute resolution procedure within the existing civil
31 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil

1 disputes.

2 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
3 Association, review court sanctioned alternative dispute resolution programs in other states and
4 in the federal court system, and make recommendations to assist the legislature and the Alaska
5 Court System in the establishment of a pilot program for alternative dispute resolution within
6 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
7 legislature and to the Alaska Supreme Court within six months after the effective date of this
8 Act. The report must include specific types of programs, specific types of cases within each
9 program that are amenable to alternative dispute resolution, the cost to the parties and to the
10 Alaska Court System under these programs, and the qualifications of the neutral parties,
11 including nonlawyers, who will provide dispute resolution services under the program.

12 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
13 and early neutral evaluation.

14 * Sec. 62. APPLICABILITY. This Act applies to all causes of action accruing on or after
15 the effective date of this Act.

16 * Sec. 63. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
17 application of a provision of this Act to any person or circumstance is held invalid, the
18 remainder of this Act and the application to other persons shall not be affected.

19 * Sec. 64. This Act takes effect July 1, 1997.

July 21, 1988

Distribution Of Claims By Year As Compared To Project Substantial Completion

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

DISTRIBUTION OF CLAIMS BY YEAR WITHIN WHICH RECEIVED AFTER SUBSTANTIAL COMPLETION

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

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

DISTRIBUTION OF CLAIMS BY TYPE OF CLAIMANT

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

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

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

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



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

State Capital
Juneau, AK 99801-1182

Statute of Repose/Limitations by State, 1993

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

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

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

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

Document produced by Perkins office; info from Leg. Research

BISS AND HOLMES

ATTORNEYS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS, OF COUNSEL
ROGER F. HOLMES

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

WASILLA OFFICE
HC31 BOX 5111
WASILLA, ALASKA 99654
TELEPHONE (907) 376-5318

February 23, 1997

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

Re: House Bill 58 (Sponsor substitute)

Dear Representative Porter:

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

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

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

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

Representative Brian S. Porter
February 23, 1997

Very truly yours,

BISS & HOLMES

A handwritten signature in dark ink, appearing to read "Roger F. Holmes". The signature is written in a cursive style with a large, sweeping initial "R".

Roger F. Holmes
\\RFH

AMENDMENT

To: SSHB 58

BY: Rep. Rokeberg

Page 8, line 13

Delete: "Anchorage, all items index"

Insert: "U. S. City Average, all urban consumers, all items indexes"

*Change "indexes"
to "indices"*

*Adopted
2/26/97*

4 7

EB-1

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 5, line 17:

following "exceed",

delete "\$300,000", insert "\$500,000"

Page 5, line 19:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

Fails
2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 4, line 14:

following "provider",

delete "if the injured person is, on the date of the alleged negligent act or omission, less than six years of age unless the action is commenced before the person's eighth birthday",

insert "unless commenced within eight years of the date of the alleged negligent act"

*Fails
2/26/97*

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 6, line 11:

following "gain;"

delete "and", insert "or"

Fails
2/26/97

EB-4

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 10, lines 30-31:

delete lines 30-31,

Page 11, line 1:

preceeding "trained", delete "(2)",

Page 11, line 2:

following "issue", delete "; and", insert "."

Page 11, lines 3-6:

delete lines 3-6

*Failed
2*

A M E N D M E N T

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 58

Page 7, lines 6-7:

following "of", delete "a party", insert "both parties"

Page 24, line 6:

following "by", delete "a party", insert "both parties"

fails

AMENDMENT

BY REPRESENTATIVE CROFT/ #1

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 5, line 21 following "(1)":

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

Insert "suffers severe disfigurement or severe physical impairment"

— Amend. fails as written

AMENDMENT

BY REPRESENTATIVE CROFT/ #2

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 9, line 15 through page 10, line 16:

Delete all material

Re-number the following sections accordingly.

Page 20, line 11 through line 20:

Delete all material

*Amend #5
fails*

Re-number the following sections accordingly.

Page 24, lines 13-17:

Delete all material

Re-number the following sections accordingly.

6

AMENDMENT

BY REPRESENTATIVE CROFT/ #3

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 3, line 11 through page 4, line 10:

Delete all material

Renumber the following sections accordingly.

*fails
2/26/97*

AMENDMENT

BY REPRESENTATIVE CROFT/ #5

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 16, line 8 following "hospital" through page 16, line 31:

Delete all material

Insert "may not escape liability for the actions or inactions of emergency room physicians by contractual device, change in employment status, or purported notice to or waiver by emergency room patients. Nothing in this section is intended to modify the standard of care for emergency room physicians or apply to a physician that is independently hired and not associated with the hospital's provision of emergency services."

Renumber following sections accordingly.

*Fails
2/26/97*

AMENDMENT

BY REPRESENTATIVE CROFT/ #6

OFFERED IN HOUSE JUDICIARY

TO: SSHB 58

Page 25, line 18 following "be affected":

Insert "**Sec. 64.** This Act sunsets if, on July 1, 2000, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been reduced by at least 10 percent from those filed on January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

Renumber the following section accordingly.

*Fails
2/27/97*

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT # 11

TO: SSHB 58

1 Page 6, lines 3 - 20:

2 Delete all material.

3 Insert new subsections to read:

4 "(b) Except as provided in (c) of this section, the court shall require deposit
5 into the general fund of 50 percent of that portion of the punitive damages award that
6 is equal to or less than the greater of three times the amount of compensatory
7 damages or \$300,000.

8 (c) The court shall require deposit into the general fund of 50 percent of that
9 portion of the punitive damages award that is equal to or less than the greater of four
10 times the amount of compensatory damages awarded or \$600,000, if

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

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

19 (d) If a court or jury awards punitive damages under (a) of this section, the
20 court shall require that 100 percent of the punitive damages award that exceeds the
21 maximum amounts described under (b) or (c) of this section, as applicable, be
22 deposited into the general fund or the Alaska permanent fund under AS 37.13.010.
23 The party paying the punitive damages shall elect which fund shall receive the money
24 required to be paid under this subsection.

25 (e) The provisions of this section do not grant the state the right to file or join

1 a civil action to recover punitive damages."

2 Page 16, line 4:

3 Delete "due the state under AS 09.17.020(d)"

4 Insert "required to be deposited under AS 09.17.020"

5 Page 23, line 31, after "fund":

6 Insert "or the Alaska permanent fund"

To: Mike Ford

From: Jim Sourant

February 24, 1997

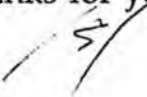
Re: Additional amendments to SSHB 58

Mike:

Representative Brian Porter has the following amendments for the bill:

1. Section 17, at top of page 10, lines 1 thru 4, delete the second sentence in its entirety, starting with the phrase: "The trier of fact....." and ending with "cannot be distinguished." Leave the rest of line 1 on that page intact.
2. Section 39, at top of page 20, line 2, insert the word "fees and" between the words "allocating" and "costs".
3. Section 12, page 7, line 8, do not take out the word "[FUTURE]". Leave that part of the statute the way it was before we made all the other changes.

Thanks for your help,



cc: Brian

✓ bcc: Lisa Kirsch
bcc: Mary Gore

(list: Meesse PASS to
JOE.
TKS.
Jim

BRIEFING

755 Sansome Street, #450

San Francisco, CA 94111

Phone: (415) 989-0833

Fax: (415) 989-2411

E-Mail: PRIPP@aol.com



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

By Steven Hayward[†]

HIGHLIGHTS:

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

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

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

Introduction

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

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

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

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

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

What Lawsuit Filings Data Tell Us

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

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

The highlights of the analysis of these cases include:

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

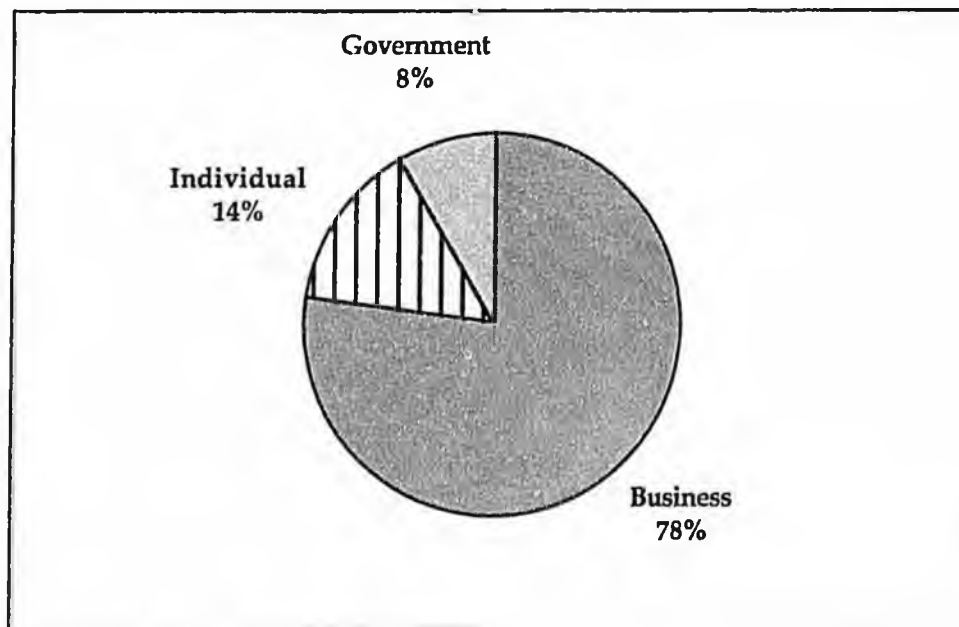
Of the 1,024 cases we examined, nine (9) cases were designated by the court as "sealed" and were unavailable for study. This left a pool of 1,015 lawsuits for study. 537 of these 1,015 cases, or 52.9 percent, were based on one of three principal causes of action where punitive damages are recoverable:

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

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

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

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



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

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

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

Government Agencies Frequently Targeted

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

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

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

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

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

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

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

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

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

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

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

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

Duration: Punitive Cases Take Longer to Resolve

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

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

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

Asking the Right Questions: The Dynamics of Lawsuit Settlement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹¹ Katz, *op cit.*, p. 4, 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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



Additional copies of this briefing
may be purchased for \$5.00:

PACIFIC RESEARCH INSTITUTE
755 Sansome Street, #450
San Francisco, CA 94111
Phone: (415) 989-0833
Fax: (415) 989-2411
E-mail: PRIPP@aol.com
Coming in March 1996:
www.ideas.org

ABOUT PACIFIC RESEARCH INSTITUTE

The Pacific Research Institute is supported entirely by the private sector through voluntary contributions from foundations, corporations and individuals, and from the sale of its books. The Institute is a tax-exempt, 501(c)(3) organization; all contributions are tax deductible.

The Institute neither solicits nor accepts government funding.

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

How About Some Politics?



by Daryl Nelson in collaboration with Bonnie Nelson on behalf of The Alaska Public Interest Research Group

The Alaska State Medical Association (ASMA) and Doctor David McGuire killed health care reform in Alaska because of their tort reform obsession. Affordable equitable health care as a right, rather than a privilege, would do more to get fair justice for all Alaskans than the current "civil justice" reform proposals being offered by ASMA. Having cradle to grave health care security would be a better alternative because it would reduce the litigation costs, the dollar amount of jury verdicts, the dollar amounts of settlements plus more people would have more incentive to get off welfare systems, go to work and pay taxes.

The problem is that the next legislature is going to pass a tort reform bill that is of the rich, by the rich, and for the rich. Gail Phillips, Speaker of the House, has said that their coalition has the numbers to get whatever they want. There will be no gridlock since they will be able to overturn a veto by the Governor. Poor people, disabled people, and the elderly will have no representation. Governor Tony Knowles has put together a Civil Justice Reform Task Force to help him write a bill to present to the legislature next session. But Gail Phillips said she would disregard the Task Force recommendations.

Tort means a civil wrong or injury resulting from a legal duty. The duty arises from society's expectations of interpersonal conduct rather than from a contract or other private relationship. Tort reform recommendations by ASMA were presented to the Governors Task Force on November 15, 1996. Doctors representing both the national and state medical association have repeatedly insisted that we

must have tort reform before health reform. Alaska Public Interest Research Group supports reform of Civil Justice, but not reforms that help wrongdoers at the expense of the blameless victims. The Alaska Public Interest Research Group refutes the following ASMA proposals, predicting that they will ignore the Task Force recommendations when their powerful lobbyists are in Juneau next session. Here are ASMA recommendations compared to the Alaska Public Interest Research Group (APIRG).

(1) ASMA recommends: Lower the current cap on non-economic damages such as pain and suffering to \$250,000, but leave the "no limit" on economic damages. ASMA says that "high unpredictable awards lead to more physicians going with out liability insurance because insurance premiums are based on jury verdicts."

APIRG recommends: The current \$500,000 statutory cap on non-economic damages should be repealed. The Constitution says that the jury should set damages, not the legislature. It actually would be fairer to cap economic damages because rich and poor should get the same compensation for the same kind of injury and negligence. Now they do not. If a child, an unemployed person, a disabled person, a retired person on Social Security or a person living a subsistence lifestyle becomes injured or further injured, they do not have as much economic value and their monetary award will be far less. Being disabled is a hardship regardless of one's status prior to becoming injured. Finally, most reports (such as the Rand Institute of Justice, Alaska Legislative Research, Alaska Division of Insurance, and the Alaska Judicial Council) are that insurance premiums are not based on litigation or settlement experience in Alaska, nor elsewhere. Instead, insurance premium rates are based on their investment success or failure in financial markets and also on predictable business cycles.

(2) ASMA recommends: The legislature should cap plaintiff attorney fees (if they are contingency). 40% of the first \$50,000
33 1/3% of the next \$50,000
25% of the next \$500,000
15% of any amount exceeding \$600,000

APIRG recommends: Capping only "contingency" fees discriminates against poor or middle class people because wealthy people pay attorneys at hourly rates or on retainer. Capping only plaintiff attorneys discriminates against injured persons who can pay them on an hourly basis or on retainer. Why not cap the hourly retainer rates that defense attorneys make so as to level the playing field. Or better yet the legislature should cap doctor and hospital fees (Health Reform Cost Containment) in exchange for a "no-fault" state health insurance for and by All Alaskans. And soon... before lower 48 multinational HMO's cap Alaska health care providers. Canadians are considering changing to a two tiered health care system: one for the rich, and one for everyone else (like the United States). Instead of the U.S. becoming more humane like other countries, other countries now are becoming more mean-spirited like the U.S. Doctors and lawyers should make good money, but they should not be able to get rich off the injury and sickness of people.

(3) ASMA recommends: The jury should be allowed to know that the plaintiff received insurance, worker's compensation or other proceeds (collateral sources).

APIRG recommends: The current system requires that if there is money awarded for medical expenses which were paid by insurance or worker compensation, they this money must be paid back by the plaintiff (subrogation). There is no windfall to the plaintiff under the current system. To allow the jury to know collateral sources only lets negligent wrong doers pay less. Disclosing collateral sources to the jury hurts the plaintiff because reducing the potential amount of an award may result in the possibility of an attorney not taking a case or in settling unjustly.

(4) ASMA recommends: The legislature should allow either partly to require that an award be paid in installments (periodic payment of future damages).

... Continued on pg. 6...

Available Scholarship

Alaska Sea Services Scholarship Fund—
\$1000 awarded to a dependent child of a Regular or Reserve Navy, Marine Corps, or Coast Guard member on active duty, retired with pay, deceased, missing-in-action, or in a drilling reservist status who is/was a legal resident of Alaska. Applicants must be at an accredited college attending full-time pursuing a Bachelor of Arts or Science degree. Deadline to apply is April 30th.*

20 Days for \$20!

by Cree Bol

Looking for something to do over the winter break? Want to get outside, take advantage of the winter daylight, and have fun? The Outdoor Program is running a special deal on cross country ski rentals for APU I.D. holders only. You can rent a pair of skis, boots, and poles from December 16 to January 4 for only twenty dollars. There is a limited supply, so you may want to come by and reserve them NOW!

If you have never cross country skied before this is the perfect opportunity to teach yourself how. Students have been coming in all fall and checking out skis for the first time. With the APU trail system so close by, there are plenty of skiing opportunities within walking distance from your dorm room.

If you would rather have instruction, it's not too late to sign up for cross country lessons. The Ski Program is offering lessons to students for only \$15 dollars. Take a lesson and then spend the next 20 days improving your technique.

For more information call the Outdoor Program at 564-8314.*

...Politics, cont. from pg. 5...

APIRG recommends: If a plaintiff was required to get an award in periodic payments, then a seriously disabled person would not be eligible to get benefits from Medicaid, Social Security or Aid to the disabled, ect. This would be a windfall for the government at the expense of the victim.

(5) ASMA recommends: Allow doctors to contract with patients for mandatory arbitration of malpractice claims.

APIRG recommends: Arbitration or mediation should not be mandatory, but voluntary. People should be able to go to trial "as well as," not instead of. Alaskans have a fundamental right to a jury given to us with the founding of our country and our state. And our current system already allows for voluntary mediation. The legislature should not impose more costs and delays to litigants, but rather make the court process more efficient.

(6) ASMA recommends: Maintain the current statute of limitations for injury or death of persons over the age of six. For children under the age six, an action should be brought before age eight or within two years, whichever is longer. However, the clock would stop if there was fraud, intentional concealment of facts, or if there exists an undiscovered foreign object in the body.

(7) ASMA recommends: Prohibit suits after eight years measured from the date of the act that caused the injury of death (Statute of Repose).

APIRG recommends: The statute of limitation should remain as it is. Currently a minor has until age 18 plus two years. And there is no statute of repose. According to Bruce

YOU WANT ME TO JUMP OFF WHAT?!

by Heidi Witt

On November, 16th, while many APU residents were still snoozing, 14 ROTC students from Colony Junior High were on route to APU. What for you ask? They came to spend the day participating in the APU Challenge Program. These students spent the day crossing chocolate rivers, swinging from vines carrying buckets full of nitroglycerin, climbing blindfolded, and diving into crowds of people. Sounds like fun huh?! Well you're right, it was. So much so, that the facilitators (Heidi Witt, Tonio Verzone, Josh Hedberg, and Jason Gleason) almost forgot we were getting paid! The Colony students spent the day doing all of these things and more. In fact, they had so much FUN some of them just darn near peed their pants from laughing so much! It was a great success for all. Now you might ask, "what the heck is going on here at APU and how can I join in the fun?!" Simple, it's the APU Challenge Program and heck yeah, you can get involved. Contact Heidi Witt (X8328) or Cree Bol (X8314) for further information. Woo Hoo!*

Great Job Turkey Trotters

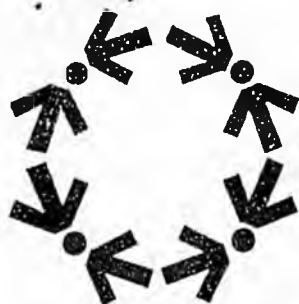
by Kim Brownsberger

A great time and prizes were had by all at the 1996 Annual Turkey Trot race. Paul Twardock (and buddy Roo), Marc Phillips, Jason Gleason, Rusty Myers, Nathan Meadows, Cree Bol, Karen Plentnikoff, Ulrica Olsson, and Charlie Fahl were the nine brave fleet-footed participants following the LARGE lunch we all had prior to the race. We look forward to even more participants in future races.*

Botelho, Attorney General, "The deletion of tolling for minors would violate due process if minors are deprived of their access to court. See, *Bush v. Reid*, 516 p. 2d 1215, 1219 (Alaska, 1973). A minor may not enforce legal rights in his or her own name or enter into a contract until the age of 18. AS 25.20.010. An additional concern is litigation by the former minor against the parent of guardian for failing to bring a personal injury action. This concern would especially impact the state acting as a child custodian. There may also be equal protection questions regarding different treatment of minors, who are incompetent to file suit by reason of minority and persons incompetent to file suit by reason of mental disability."

(8) ASMA recommends: Continue the medical review panel that has been in existence in Alaska since 1975, but change methods of choosing the three physicians, and change the questions asked.

APIRG recommends: The expert advisory panel should be eliminated because it is biased and it limits and injured person's legal rights to access justice by giving the doctors the power to decide if the case will go to a jury. This type of panel has been held unconstitutional in several other states. The Alaska Supreme Court upheld the validity of the medical review panel in *Keyes v. Humana Hosp. Alaska, Inc.* However, since it limited the scope of its holding to the facts of that particular case because she did not have enough statistics and factual evidence a future claim might differ. Keyes argued that Alaska Statutes section 09.55.536 violated her right to a jury trial, increased her burden of persuasion, deprived her of due process of law and violated separation of powers principles. She also claimed the panels were biased and bore no relation to their asserted goals (Alaska Law Review, Vol. 9:2, 1992).*



ALASKA PUBLIC INTEREST RESEARCH GROUP

P O Box 101093, Anchorage AK 99510-1093

507 E St, Suite 202

<http://www.ak.net/akpirg>

Phone: (907) 278-3661

Fax: (907) 278-9300

E-mail: akpirg@anc.ak.net

February 21, 1997

RECEIVED
FEB 25 1997

Representative Green
Representative Bunde
Representative James
Representative Porter
Representative Berkowitz
Representative Croft
Representative Dyson
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Judiciary Committee Members:

We have reviewed HB 58, and oppose many of its provisions.

1. The Punitive damages provision can be amended to satisfy everyone's concerns.

AKPIRG proposes an effective compromise provision on punitive damages that will protect everyone's interests. There has been a fair amount of debate in this state about whether the law governing punitive damages should be amended. Generally, the consensus has been that the idea of behind punitive damages - to punish exceedingly callous conduct that threatens severe public and individual harm - is good policy. However, the perceived problem is that punitive damages might, in a particular case, cause a business to go bankrupt or to face an unfair amount of hardship.¹ An absolute punitive damages cap has been proposed by some in the past to prevent this occurrence. However, a flat cap would be devastating to small businesses, and absolutely ineffective against large corporate actors.

There is a very fair and very effective compromise position between those who feel a flat cap will provide an inadequate deterrent for the largest corporate actors, and those who feel a cap to protect smaller Alaskan businesses is necessary. Punitive damages can continue to properly deter and punish egregious conduct if they are capped, for the most egregious cases, at the defendant's 5-year average gross annual income. AKPIRG

¹ We have never seen any evidence that in this State that courts, after reviewing jury awards for constitutional soundness, are awarding too much in the way of punitive damages. However, if the Legislature determines that such evidence exists, then it should consider a fair and flexible cap proposal that reflects the reality that some defendants can and need to be punished and deterred more than others. A fair proposal should provide adequate deterrence and punishment, but should not threaten to put small Alaskan companies out of business.

supports this concept, as should all those on the various sides of this issue who wish for an effective compromise.

This cap would work as follows, and would protect small business much better than a flat dollar cap. A flat dollar cap of, for example, \$500,000, would threaten devastation for most local family businesses.

Punitive Damages Cap:

(a) Punitive damages awarded pursuant to existing law may not exceed the greater of: 1) the defendant's, or the defendant's owner's, gross income for the calendar year the plaintiff suffered injury; or 2) the defendant's insurance policy limits.

(b) In the case where a defendant company or corporation is owned by another, the gross income of the owner shall constitute the defendant's "Gross income". An "owner" under this section is a person or entity that holds a 95% or greater ownership interest in the defendant.

* * * *

Section (b) addresses an issue of accountability that is fought in every case. A corporation should not be able to hide its income for punitive damages purposes by creating "sub" corporations which have little in the way of assets or income on paper. This is a shell game that frequently gets played in the courts - but which courts that have addressed the subject have often said should not be played. The goal of punitive damages is to fairly punish the owner of the company. If a corporation is owned by Donald Trump, he should not avoid scrutiny by arguing that the corporation is owned by another corporation, which he in turn owns. See TXO Production Corp. v. Alliance Resources Corp., 419 S.E.2d 870, 890 (W. Va. 1992), aff'd. 113 S. Ct. 2711 (1993); Mihara v. Dean Witter & Co., Inc., 619 F.2d 814, 824 (9th Cir. 1980); Riley v. Empire Airlines, Inc., 823 F. Supp. 1016, 1023 (N.D. N.Y. 1993); Dushaw v. Roadway Exp., Inc., 816 F.Supp. 1229, 1239 (N.D. Ohio 1992) (court takes judicial notice of parent's wealth is affirming punitive damage award).

2. Apportionment of Fault to Invisible Parties - A Shell Game.

HB 58 grants wrongdoers another weapon to use against innocent citizens. Currently, if a wrongdoer claims a third person is partially responsible for harming a citizen, it must make that party part of the suit. Damages will be split among all the responsible parties. A new provision allows defendants to play the game of never mentioning that a third party is responsible until it the time has passed to name the third party. It is unfair to allow a defendant, who has caused a plaintiff's injury, to deprive a plaintiff of compensation by strategically pointing at someone it knows cannot be named as a party. This is gamesmanship, not justice.

HB 58 then goes so far as to punish victims of malicious conduct and other wrongs. If a victim wins a case, s/he only gets *partial* attorneys fees, at best. Under HB 58, if a person proves s/he has been victimized by malicious or other wrong conduct, *the wrongdoer* may recover *full* attorneys fees *against the victim*. This will occur if a jury awards her/him one dollar less than what the wrongdoer offered to pay to prevent her/him from taking the case public to a jury. Given the provision's pre-judgment interest provision, this penalty will be imposed even where, adjusted for inflation/interest, a jury awards the plaintiff *more* than what is offered. Thus, someone who proves a \$50,000 claim of fraud may have to pay \$400,000 in attorney's fees for time billed at \$250/hour by a corporate defense firm. This is an injustice.

3. Statute of Repose

A few years ago in the North Slope Borough a house burned down, killing and injuring innocent children and family members. It burned down because the builder, 12 years earlier, built the home with sub-code wiring. Under HB 58's statute of repose, the survivors in this case would have no recourse.

The law today is not abusive. It is fair. It says that once a tort victim has reason to begin looking into his or her claim, s/he has two years to bring suit. The statute of repose punishes innocent victims who, like the fire victims in the North Slope Borough, do not know of the defendant's misconduct until after it has been committed.

Likewise, victims of many acts injurious to their health do not learn of misconduct until a disease, such as cancer, shows itself. This will normally be more than 8 years after the defendant's misconduct. This provision should be deleted.

4. Non-Economic Damages Cap.

One already exists. HB 58's cap insults the dignity of victims whose loved ones have died, capping the value of a person's life as if death were no more serious than a broken nose. The purpose of pain and suffering caps is to make sure people with minor injuries do not receive a windfall. A cap on non-serious injuries is appropriate. A cap on serious injuries is not appropriate. Courts have accordingly struck down caps similar caps as unconstitutional.

5. Damages reduced by taxes.

Currently injured people pay taxes on their recoveries, unless the recovery is to compensate for a physical injury. A wrongdoer then often deducts his liability on his taxes. Anything more than what exists is but a windfall to a wrongdoer. It also threatens to double tax victims, who will pay taxes to the person who injured them, and then again to the government.

6. Sending 50% of punitive Damages To The State Is reasonable.

It leaves victims with the financial incentive to punish society's worst actors. Anything more than 50% would be counterproductive.

7. Offers of Judgment/Pre-Judgment Interest

The existing rules should not be altered. They already favor rich people over average Alaskans. A person who has been victimized should never have to pay fees to a wrongdoer after s/he wins a case. Under these proposals, payments to wrongdoers, both indirectly and directly, would increase.

8. SLAP Suit Provision

It is out understanding that some legislators are considering a suit that imposes damages against anyone who brings a suit that is later found to be groundless. Big companies and Government use such provisions in the lower 48 to threaten publicly spirited citizens, conservative and liberal alike, from challenging their conduct. The right to free speech is too important to alter with a SLAPP suit provision.

Currently, people who bring frivolous lawsuits are on the hook to pay a defendants' FULL attorney's fees and costs. This is enough of a deterrent.

9. Promises of Lower Insurance Rates Have Never Been Honored, And Never Will be Honored.

On short notice, we have not had the time to review the remaining aspects of the Bill. However, we would remind the Legislature that this State has already enacted Tort Reform Statutes twice, in 1986 and 1988. We already have damage caps, and some of the most restrictive tort rules in the country. The promises have always been that insurance rates would go down after the laws were enacted. Insurance rates have never gone down as a result of Tort Reform, and never will. Insurance companies have proven that they keep extra profits - they do not share them with the community.

We oppose HB 58.

Sincerely,



Les Gara, Board Member
Steve Conn, Director

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

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

Our legal system needs modification! Over 90% of civil suits never get to a court hearing. Most cases are settled, with little to no consideration to actual fault, to avoid the expenses of discovery, trials and the seemingly capricious decisions of juries. Suits are filed against all possible defendants, regardless of fault, to ensure there are plenty of pockets to chip into the settlement. Some people use the court system as a means of legal extortion by filing frivolous suits with the hope of a quick settlement. Millions of dollars are spent in the so called "discovery process" which almost always results in the defendants throwing in their insurance to stop the bleeding and make the case go away. Existing sanctions against frivolous suits are rarely used because they require that the plaintiff first lose at trial, a trial that rarely happens. Summary judgment is also very rare because appellate courts have almost always overturned such decisions, making trial judges wary of issuing such orders. HB58 includes two sections which will help the situation for design professionals:

The first reduces the Statute of Repose for construction related suits from fifteen years to eight years and expands it to cover all suits. Over 95 percent of the cases associated with construction are brought within eight years after substantial completion, over 98 percent within ten years. We believe that an eight year statute is more reasonable for four main reasons. First, almost all of the cases brought after eight years are related to maintenance problems, rather than design or construction problems. The owner of the building would still be available for suit, since his lack of maintenance is an on-going problem. Secondly, it is impossible to defend, or prosecute, a case fifteen years after substantial completion due to the lack of witnesses, fading memories, and lack of documentation. Most of us would have a hard time remembering what we did fifteen days or months ago, never mind fifteen years. Thirdly, we will not have to store fifteen years of files and can reduce the size, and rent, for our archive storage. Finally, it is also unreasonable to expect an engineer or architect to pay tens of thousands of dollars a year in insurance premiums for fifteen years after they retire. Errors & omissions insurance for design professionals is on a claims-made basis: that is, it covers you for claims made during that year. Therefore, the longer a period you have to cover, the higher the premium. The firm in which I am a principal had a premium of nearly twenty thousand dollars in our first year, with no "tail" to cover. If you add a fifteen year tail to that, you get a considerably higher premium. It is not unheard of to have a premium of over a hundred thousand dollars with a deductible of a hundred thousand dollars. If we can limit the "tail" for which we have to insure to eight years, we will make a considerable reduction in our insurance bills.

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

Subject : Tort Reform

I am against tort reform ,it's a measure against the general public ;to discourage the average citizen from filing a suit against large and powerful corporations such as tobacco companys ,doctors , insurance companys , oil companys and large entities who would like to manipulate the law in their favor.

Some people can hire a lawyer on a contingency basis, if tort reform were in effect ,a lot of these cases would never be filed simply because of lack of funds, so it gives an edge to people who do have funds to do so. In other words we would not all be equal in a court of law. Justice would depend on how much money you had. It's too much that way already.

Is there a need for tort reform ,NO! ,The cases that might be considered frivolous are somewhere between one tenth of one per cent to one per cent ,and even that is doubtful as there is a judge and jury to determine whether they are frivolous or not. We must remember that we were not present when these cases were determined ,but the judge and jury were . It appears to me there are already safeguards in place ...the judge and jury ,we also have a law against filing a frivolous cases... punishable by law.

The people who would benefit by the "watering down" of Punitive damages would become so powerful they would consider the price of paying the law for their wrongdoing just another expense of doing business and for the plaintiffs ,the odds would be so much against them they would not be able to afford the expensive price of justice.

It's too bad that we have legislators ,politicians and governor who would even entertain the idea.

G. Kendall
P.O.Box 2523
Soldotna, Alaska 99669

Service Oil & Gas, Inc.

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

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



February 24, 1997

Representative Brian Porter
Alaska State Legislature
Juneau, Alaska

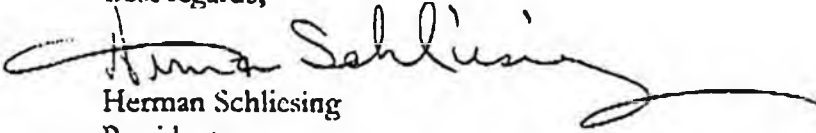
Reference: House Bill 58

Dear Representative Porter:

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

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

Best regards,


Herman Schliesing
President

APPENDIX

Alaska State Library
Alaska Historical Collections
P.O. Box 110571
AK 99811-0571

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

BALLOT MEASURE NO. 2

**Initiative No. 87TOR2
Civil Liability**

BALLOT LANGUAGE

(As it will appear on the November 8, 1988
General Election Ballot)

This initiative changes the way damages can be collected from parties to lawsuits who share fault for injury to persons or property. The law now says that a party more than half responsible could be liable for the total judgment. Parties may collect from each other amounts paid over their share. Parties less than half responsible pay only up to twice their fault.

The initiative would make each party liable only for damages equal to his or her share of fault, and repeal the law concerning reimbursement from other parties.

Shall this initiative become law?

YES

NO

**LEGISLATIVE AFFAIRS
AGENCY SUMMARY**

This measure will affect lawsuits in which two or more persons are at fault.

The new law would tell the court to enter judgment against each person at fault, but only in an amount that represents that person's share of the fault.

Existing law now tells the court to enter judgment against each person at fault in an amount equal to the total liability of all persons at fault. Those at fault are required to share the total cost of the fault. The measure repeals that law.

The measure applies to suits based on acts occurring after its effective date.

**FULL TEXT OF PROPOSED
AMENDMENT**

What follows is the actual text of the amendments to Title 9 of the Alaska Statutes proposed by this initiative which would become law if the measure is passed by the voters. Capitalized words appearing in brackets are those in the current law which would be deleted. Words that are underlined would be added to the current law.

*Section 1 AS 09.17.080(d) is amended to read:

(d) The court shall enter judgment against each party liable on the basis of [JOINT AND] several liability [, EXCEPT THAT A PARTY WHO IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENTAGE OF FAULT ALLOCATED TO THAT PARTY] in accordance with that party's percentage of fault.

*Sec. 2. AS 09.16 is repealed.

*Sec. 3. Underlined material in this Act indicates text that is being added to the law, and bracketed material in capital letters in this act indicates deletions from the law.

*Sec. 4. Sections 1-2 of this Act apply to all causes of action occurring after the effective date of this Act.

*Sec. 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

JK
a h 25

Alaska State Library
Alaska Historical Collections
P O Box 110571
Juneau AK 99811-0571

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT

Supporters of this ballot measure believe it isn't fair to hold people responsible for things that aren't their fault. Yet, under current law, defendants found liable in a civil suit can be forced to pay damages equal to twice the amount of their fault. In other words, if you are 50 percent responsible for an injury you could be forced to pay 100 percent of the damages.

The current law - called joint and several liability - is simply unfair. It forces people to pay for damages caused by somebody else, and it contributes to inflated damage awards and encourages lawsuits based on who has money instead of who's at fault.

If Ballot Measure No. 2 is passed and you do something wrong, you pay for it. But you would not be forced to pay for something you didn't do - which could happen under present law.

This initiative will make the civil justice system more fair by assessing damages on the basis of a person's degree of fault, instead of on how much money or insurance he/she has. Thus, if you are found to be 20 percent responsible for someone's injury or property damage, you pay only 20 percent of the award.

Ballot Measure No. 2 will make the civil justice system more fair, while ensuring that people are held accountable for injuries or damage they cause.

Please vote YES on Ballot Measure No. 2.

Citizens' Coalition for Fair Reform
P.O. Box 201668
Anchorage, Alaska 99520

STATEMENT IN OPPOSITION

In Alaska, when drunk drivers, criminals, careless corporations or polluters harm a person or his property, that person has the right to seek repayment for the wrong done to him. Ballot Measure No. 2 drastically limits this basic right to protect ourselves and our property from such wrongdoers.

Here is how it works. If two drunk drivers hit a car and cripple a little girl, the child can seek payment from both drivers. But if one driver has no money, who should pay the child's lifetime doctor bills - the other drunk driver, who is insured, or the child and her parent?

In 1986, our legislature dealt with this problem. It said the drunk driver with insurance and the young girl who was injured should share the problem created by the drunk driver without insurance.

Ballot Measure No. 2 eliminates that sharing, and places the entire burden on the innocent victim. In the example of the drunk driver, the crippled child would recover only half her medical bills. The injured child and her parents would have to pay the rest. Under Ballot Measure No. 2, the drunk driver's insurance company will not have to pay all the child's medical bills. The insurance companies win, and we lose. That's unfair.

Even under current law, the innocent victim loses when one of the wrongdoers can't pay. For instance, suppose a corporate polluter is 10% at fault, and a penniless company is 90% at fault. Today, the corporate polluter shares the problem by paying only 20%. The innocent victims of the polluters, such as homeowners and fishermen, share the problem because they cannot recover 80% of their loss. That may be unfair to victims, but Ballot Measure No. 2 is even worse. Ballot Measure No. 2 would eliminate the sharing, and penalize only the victims.

The insurance companies pushing Ballot Measure No. 2 are telling us wrongdoers should only pay their own share of the loss. That sounds good. But the insurance companies are not telling us what happens when one of the wrongdoers cannot pay anything. This is a common problem. Under Ballot Measure No. 2, the insurance company wins, and the victim loses.

Who benefits from Ballot Measure No. 2? The answer is simple: insurance companies. Who loses under Ballot Measure No. 2? The citizens of the State of Alaska. Will we pay less for insurance if the law is changed? No. Not even one insurance company has promised to lower its rates if Ballot Measure No. 2 passes. And you can bet it won't happen. Do not be misled by the insurance companies' propaganda. Vote NO on Ballot Measure No. 2.

Alaskans For Fairness
P.O. Box 103363
Anchorage, Alaska 99510

1987 INIT. NO. 2

STATE OF ALASKA
INITIATIVE NO. 87-2

1988



* Section 1. AS 09.17.080(d) is amended to read:

(d) The court shall enter judgment against each party liable on the basis of [JOINT AND] several liability (, EXCEPT THAT A PARTY WHO IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENTAGE OF FAULT ALLOCATED TO THAT PARTY) in accordance with that party's percentage of fault.

* Sec. 2. AS 09.16 is repealed.

* Sec. 3. Underlined material in this Act indicates text that is being added to the law, and bracketed material in capital letters in this Act indicates deletions from the law.

* Sec. 4. Sections 1 - 2 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

Testimony of Ross Mullins Opposing Certain Aspects of HB58
Mr Mullins Testifying For Himself and as Chairman of the Prince
William Sound Fishermen Plaintiffs Committee-2/21/97 at
Cordova LIO Office.

Thank you for this opportunity to speak Mr. Chairman. I am representing myself as well as several thousand commercial fishermen plaintiffs in the Exxon Valdez oil spill.

I fully endorse the comments of Cheri Shaw, Executive Director of the Cordova District Fishermen United, the preceding speaker from Cordova. I just regret that thousands of other state residents are not listening to Representative Porter and the other oil industry and insurance company lackeys describe the wonderful characteristics of HB58. The lack of faith in the sensibility of our states jury system to make well reasoned awards to injured and damaged plaintiffs in civil torts is appalling to me and, I would hope to thousands of others. In a misguided attempt to control what apparently appears in their minds, as a problem of great magnitude, civil litigation run amok, it seems to me that this bill will very likely promote that very thing. When Representative Porter stated earlier in his review of HB58 that out of a universe of plaintiffs in Alaska only about 5% end with a trial and that 95% are settled out of court before a trial occurs. That seems to me a most interesting statistic in that with our current system, without legislative meddling, and no caps on the various types of damages, the wrongdoers, malfeasors, insurance companies and etc, are prone to settle to avoid litigation that might possibly result in an unknown level of economic consequence. If this is in fact the reason that the great preponderance of tort cases end in out of court settlements then it logically seems to follow that if this bill becomes law that wrong doer as well as the injured will very likely be more ready to go to trial. Would this result not serve to clog up the court system and create a system where "justice delayed is justice denied" as the final result. Should even 25-30% of cases now settling out of court proceed to trial as a result of this bill our court system could very well be clogged and impeded

by the weight of this proliferation of trial cases.

Of course, perhaps our noble legislators address this problem in sec. 21 of the proposed bill, regarding offers of settlement, so that the unsophisticated, fearful, naive and injured plaintiff will become so intimidated by the consequences of the draconian shift of the cost of the trial, attorneys fees and interest penalties to the injured plaintiff in the event that the result of the trial did not exceed the insurance company's or malfeasor's offer of settlement, that might ensure that the injured plaintiff will feel such punitive pressure that s(he) will be unlikely to go to trial. This could only serve to deprive society and the citizens of Alaska of the opportunity to achieve a fair determination of the value of an injured parties damages by a jury of their peers. But, it might certainly prevent cases from proceeding to trial. Perhaps this coercive provision would even increase the number of cases that settle out of court- not because the recipient of the offer felt the offer fair and just but rather because of the onerous statutory penalties and pressure created by this bill.

I have no idea why this bill is necessary when ever Rep. Porter agrees that only about 5% of cases proceed to trial and of that 5% that do end in trial only one in twenty of those result in the award of punitive damages awards. To put this in perspective this means that out of every 2000 cases, 1900 settle out of court, 100 go to trial, and approximately 5 of those would result in punitive damages being awarded. I would assume that the trial cases are the most seriously injured and damaged plaintiffs. It is unclear if the few punitive awards exceeded the punitive caps being proposed in this bill but, if they did I am certain that this would have been brought forward and it wasn't.

To fix punitive caps does not serve the best interest of the citizens of Alaska. Today's dollar is worth approximately thirty eight cents in terms of the value of the dollar in 1970. A fixed cap will only serve the interests of wrongdoers over time. Particularly wrong doer who have the potential capacity to devastate the natural environment and common property resources of Alaska and of those Alaskans that depend on them for their livelihood. It will clearly reduce the financial risk of doing business for the major oil corporations and their insurers but is that what we

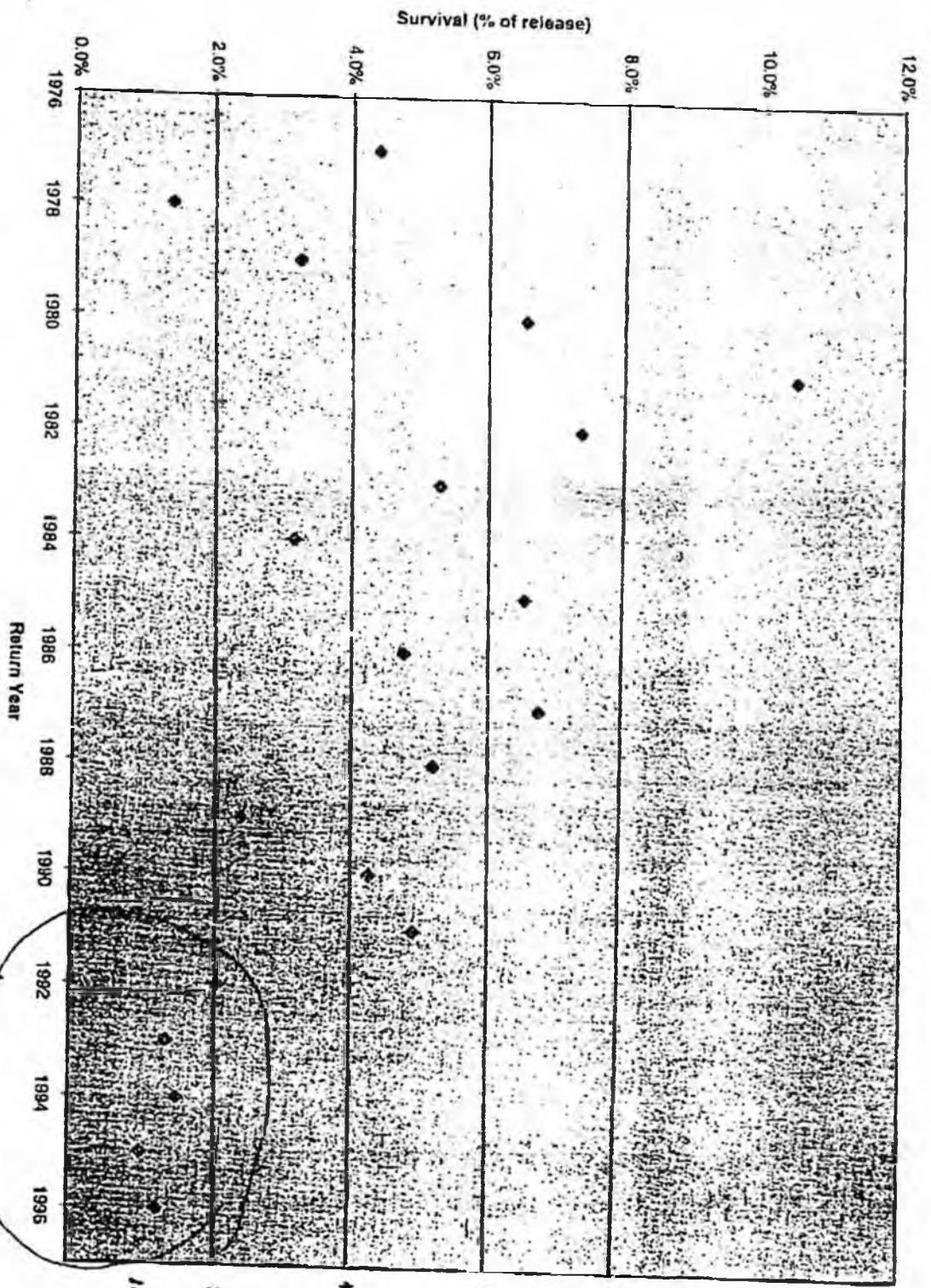
want in Alaska. The possibility of large punitive damages awards is in large measure why major oil is now seriously attempting to improve their marine transportation operations. When the cost of compliance rises above the possible consequences then I fear that we will no longer see big oil complying with what is best for Alaska and its citizens.

Finally, in regard to the concept of periodic payments. It seems ludicrous to me that if a plaintiff gets through an often multi-year period to trial and then very likely, a lengthy appeal and finally prevails, then to realize that the money due that plaintiff, should be doled out by some big brother scheme that deprives the person or entity the opportunity to determine for themselves the best application of that award is arrogant in the extreme and indicates the lack of concern. This clearly indicates the lack of concern that the drafters of this bill hold for the choice of the individual plaintiff and of the interests of the general public. It seems more likely again that the interests of the insurance industry is best being served by this bill. I am saddened and very concerned that this is the conclusion that I have been forced to arrive at by studying this anti-democratic and obviously special interest oriented proposal that is HB58.

Thank you very much Mr. Chairman for the opportunity to make my comment available to you today.

Exhibit as part of Ross Mullins testimony 2/24/97

AFK PINK SALMON MARINE SURVIVAL



Major Ecosystem Damage - Documented Genetic Impacts. Possible Food Chain Disruptions Resulting in Major Increase in Predation by Previous Assent Predators.

- 8 Million Fish Return
- 6 Million Fish Return
- 4 Million Fish Return
- 2 Million Return
- 1.3 Million Fish Return



National Federation of Independent Business

Statement of Support for HB 58 - Tort Reform

February 22, 1997

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

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

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

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

NFIB/Alaska urges support for HB 58.



November 21, 1996

Rep Brian Porter
State Capitol
Juneau, Ak 99801-1182

Dear Brian:

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

We lost a Goose ~~on November 14, 1996~~. The one passenger was a highly compensated, ~~executive~~. He was relatively young, and left a wife and two daughters.

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

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

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

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

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

PAGE TWO

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

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

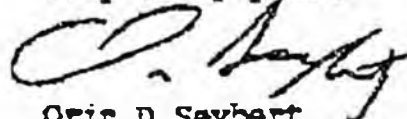
I have thought of another argument for reform. Since the limits are so low, there is actually less money available for the average Alaskan claimant. If we could just cap the punitive damages there would be more insurance coverage available.

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

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

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

Very truly yours



Orin D Seybert
President

CC: Gail Phillips
Rick Halford



November 8, 1966

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

Dear Steve:

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

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

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

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

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

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

Very truly yours

Orin D Seybert
President

CC: Hal Snow



November 26, 1996

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

Dear Dan:

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

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

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

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

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

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Orin D Seybert". The signature is written in a cursive style with some loops and flourishes.

Orin D Seybert
President



American Tort Reform Association

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005-3987
(202) 682-1163 • Fax (202) 682-1022

As of June 30, 1996

www.atra.org/atra

STATE STATUTES OF LIMITATION AND REPOSE

ALABAMA

PERSONAL INJURY

1 year for trespass on the case; 2 years malicious prosecution, libel, slander, fraud (from discovery); 6 years for trespass. Two years from date of injury, unless injury not discovered or reasonably discoverable; 5 months from discovery. No suit may be brought more than 4 years after date of injury. Minors under 4: by 8th birthday if statute would have otherwise expired by that time. The Alabama Supreme Court has upheld the constitutionality of this statute. Barlow v. Humana, 495 So. 2d 1048 (Ala. 1986) Tucker v. Nichols, 431 So. 2d 1263 (1983); Reese v. Rankin Fite Memorial Hospital, 403 So. 2d 158 (1981).

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

1 year for trespass on the case.

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

1 year; 10 year statute of repose held unconstitutional (Lankford v. Sullivan, Long & Hagarty).

PROFESSIONAL LIABILITY

2 years for actions against architects and engineers, not to exceed 13 years after substantial completion of work.

ALASKA

PERSONAL INJURY

2 years; if fraud, accrues on discovery. Two years from date cause of action arises (discovery of injury); tolled by disability.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

6 years

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

6 years for actions of designs and construction professionals, not to exceed 15 years from substantial completion of work.

ARIZONA

PERSONAL INJURY

2 years; except 1 year (from discovery) for libel, slander, false imprisonment and 3 years for fraud. Two years from date of injury. Foreign object or intentional fraud: 1 year from discovery. 1984

BREACH OF WARRANTY 4 years
PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

CONNECTICUT

PERSONAL INJURY 3 years for any action founded on tort; 2 years from date of discovery of injury, injury to person or property (negligence/recklessness, wanton misconduct or malpractice), maximum 3 years from act or omission. Two years from discovery, but not more than three years after act.

WRONGFUL DEATH 2 years from date injury sustained or discovered, maximum 3 years from act or omission.

PROPERTY DAMAGE See **PERSONAL INJURY** above.

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 3 years from discovery of injury, but no more than 10 years from date of sale, lease or bailment, unless still within "useful life" or express warranty present.

PROFESSIONAL LIABILITY 7 years statute of repose for design professionals

DELAWARE

PERSONAL INJURY 2 years; if medical malpractice and not discoverable within 2 years, 3 years from injury.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years - Personal property; 3 years - Realty.

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

DISTRICT OF COLUMBIA

PERSONAL INJURY 3 years - from injury for negligence; 1 year for battery. Disability tolls statute.

WRONGFUL DEATH 1 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

FLORIDA

PERSONAL INJURY 4 years for any action founded on negligence; professional malpractice accrues on discovery (due diligence); 2 years from discovery (due

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



American Tort Reform Association

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005-3987
(202) 682-1163 • Fax (202) 682-1022

As of June 30, 1996

www.atra.org/atra

STATE STATUTES OF LIMITATION AND REPOSE

ALABAMA

PERSONAL INJURY

1 year for trespass on the case; 2 years malicious prosecution, libel, slander, fraud (from discovery); 6 years for trespass. Two years from date of injury, unless injury not discovered or reasonably discoverable; 6 months from discovery. No suit may be brought more than 4 years after date of injury. Minors under 4: by 8th birthday if statute would have otherwise expired by that time. The Alabama Supreme Court has upheld the constitutionality of this statute. Barlow v. Humana, 495 So. 2d 1048 (Ala. 1986) Tucker v. Nichols, 431 So. 2d 1263 (1983); Reese v. Ranklin Fite Memorial Hospital, 403 So. 2d 158 (1981).

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

1 year for trespass on the case.

BREACH OF WARRANTY

4 years

PRODUCT LIABILITY

1 year; 10 year statute of repose held unconstitutional (Lankford v. Sullivan, Long & Hagarty).

PROFESSIONAL LIABILITY

2 years for actions against architects and engineers, not to exceed 13 years after substantial completion of work.

ALASKA

PERSONAL INJURY

2 years; if fraud, accrues on discovery. Two years from date cause of action arises (discovery of injury); tolled by disability.

WRONGFUL DEATH

2 years

PROPERTY DAMAGE

6 years

BREACH OF WARRANTY

4 years

PROFESSIONAL LIABILITY

6 years for actions of designs and construction professionals, not to exceed 15 years from substantial completion of work.

ARIZONA

PERSONAL INJURY

2 years; except 1 year (from discovery) for libel, slander, false imprisonment and 3 years for fraud. Two years from date of injury. Foreign object or intentional fraud: 1 year from discovery. 1984

Ariz. Rev. Stat. Ann. Sec. 12-502) Period of disability (minor or unsound mind) shall not be deemed a portion of the period limited for commencement of action. Statute begins upon removal of disability.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years

BREACH OF WARRANTY 6 years - written; 3 years - oral.

PRODUCT LIABILITY 2 years, but no more than 12 years after the product was first sold for use and consumption.

CIVIL ACTIONS 12 years statute of repose for all civil actions and 1 year statute of repose for all civil actions against the state in 1993, subject to constitutional restraints.

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

ARKANSAS

PERSONAL INJURY 3 years; 1 year for assault, battery, false imprisonment, slander. In cases by minors against OB-GYNs. Two years from the date of injury. Foreign object: 1 year from discovery. Minors: by 9th birthday (1991 amendment). Adjudicated incompetent plaintiff must bring suit within one year from date of removal of disability.

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 5 years statute of repose for design professionals

CALIFORNIA

PERSONAL INJURY 1 year - general (includes libel and slander); if medical malpractice 3 years from injury or 1 year from discovery. Three years after injury or 1 year after discovery, whichever occurs first. In no event more than 3 years after injury, unless caused by fraud, concealment, or a foreign object. Minor under 6: 3 years or before 8th birthday, whichever is longer.

WRONGFUL DEATH 3 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years - does not apply to actions for personal injury, Becker v. Volkswagon of America, Inc.

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

COLORADO

ALL TORTS 2 years for all torts (regardless of theory of recovery).

BREACH OF WARRANTY 4 years
PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

CONNECTICUT

PERSONAL INJURY 3 years for any action founded on tort; 2 years from date of discovery of injury, injury to person or property (negligence/recklessness, wanton misconduct or malpractice), maximum 3 years from act or omission. Two years from discovery, but not more than three years after act.

WRONGFUL DEATH 2 years from date injury sustained or discovered, maximum 3 years from act or omission.

PROPERTY DAMAGE See PERSONAL INJURY above.

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 3 years from discovery of injury, but no more than 10 years from date of sale, lease or bailment, unless still within "useful life" or express warranty present.

PROFESSIONAL LIABILITY 7 years statute of repose for design professionals

DELAWARE

PERSONAL INJURY 2 years; if medical malpractice and not discoverable within 2 years, 3 years from injury.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 2 years - Personal property; 3 years - Realty.

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

DISTRICT OF COLUMBIA

PERSONAL INJURY 3 years - from injury for negligence; 1 year for battery. Disability tolls statute.

WRONGFUL DEATH 1 years

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

FLORIDA

PERSONAL INJURY 4 years for any action founded on negligence; professional malpractice accrues on discovery (due diligence); 2 years from discovery (due

diligence) but not more than 4 years from occurrence/incident for medical malpractice.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY 4 years, but must be within 12 years of date of delivery of completed product to original purchaser.

PROFESSIONAL LIABILITY 4 years statute of repose for design professionals in cases of patent defects, 15 years statute of repose in cases of latent defects.

GEORGIA

PERSONAL INJURY 2 years for general injury to person; 1 year for injury to reputation; 4 years for loss of consortium. Two years from injury or death, in no event longer than 5 years from act or death. Foreign object: 1 year after discovery. Minor under 5: 2 years from date of 5th birthday, in no event later than 10th birthday or 5 years from date of negligence if under 5 years at time. Agreement by parties to arbitrate tolls statute.

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 4 years

BREACH OF WARRANTY 4 years

PRODUCT LIABILITY Maximum 10 years, from first sale.

PROFESSIONAL LIABILITY 8 years statute of repose for design professionals

HAWAII

PERSONAL INJURY 2 years Accrues when act, damage and causal connection discovered or should have been discovered (reasonable diligence) includes medical malpractice actions by minors subject to maximum of 6 years from act/omission or by 10th birthday.

WRONGFUL DEATH 2 years from death

PROPERTY DAMAGE 2 years for personal property

BREACH OF WARRANTY 4 years

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

IDAHO

PERSONAL INJURY 2 years Discovery accrual for fraud, and medical malpractice if fraudulent concealment or foreign object.

WRONGFUL DEATH 2 years from occurrence, act, or omission.

PROPERTY DAMAGE 3 years

BREACH OF WARRANTY 4 years - Sales. 2 years - Personal injury or death.

PROFESSIONAL LIABILITY 6 years statute of repose for design professionals

ILLINOIS

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

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 5 years

BREACH OF WARRANTY 4 years

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

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

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

INDIANA

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

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 6 years - Realty 2 year - Personalty.

BREACH OF WARRANTY 4 years

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

PROFESSIONAL LIABILITY 10 years statute of repose for design professionals

IOWA

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

WRONGFUL DEATH 2 years

PROPERTY DAMAGE 5 years