

No. 47439-5-II

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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HOFFMAN, LARRY AND JUDITH, husband and wife,

Plaintiffs-Appellants,

v.

ALASKA COPPER COMPANIES, INC., et al.,

Defendant-Respondents.

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**REPLY BRIEF OF APPELLANTS  
LARRY AND JUDITH HOFFMAN**

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John W. Phillips, WSBA #12185  
Michael Madderra, WSBA #48169  
Phillips Law Group, PLLC  
315 Fifth Avenue South, Suite 1000  
Seattle, WA 98104  
(206) 382-6163

Counsel for Plaintiffs-Appellants

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## I. REPLY ARGUMENT

### A. **The Washington and Alaska Statutes of Repose Do Not Conflict.**

Defendants admit that the Court should apply the Washington Statute of Repose unless the Alaska Statute of Repose would produce a different result. KPC points out that the two statutes are different in a number of ways (KPC Opp. at 8-10), but the fact that they are different does not matter. They must produce a different result. Defendants agree that the Washington Statute of Repose does not bar the Hoffmans' suit. As detailed below, neither does the Alaska Statute of Repose.

#### 1. **Under The Plain Language of The Alaska Statute of Repose, the Hoffmans' Claims Are Preserved.**

By concluding that the Hoffmans' asbestos personal injury claims are barred by the Alaska Statute of Repose, the Superior Court in effect concluded that the 1997 Alaska law abolished most asbestos personal injury claims from Alaska substantive law. KPC expressly endorses this notion. KPC Opp. at 6. This is an astonishing claim given that the word "asbestos" does not occur *once* in the legislative history of the 1997 amendment to the Alaska Statute of Repose. According to Defendants, the Alaska Legislature

eliminated an entire category of personal injury claims “sub silentio.” And it performed this act so quietly that it even evaded the attention of the Alaska Supreme Court four years later, where it explained that an asbestos personal injury claim is the paradigm of how the discovery rule works. *See Sopko v. Dowell Schulmberger, Inc.*, 21 P.3d 1265 (Alaska 2001). KPC claims that the “discovery rule” does not apply to the statute of repose (KPC Opp. at 11-15), but the Hoffmans do not suggest otherwise and the argument misses the point. If all asbestos personal injury claims were abolished four years earlier by the Alaska Legislature, why would the Alaska Supreme Court discuss the viability of asbestos personal injury claims in 2001?

Given the many ways in which the Alaska repose statute preserves concealed or latent personal injury claims, the notion that most asbestos personal injury claims were abolished under the statute is simply irresponsible. Defendants say that the Court should read the Alaska Statute of Repose narrowly because it is a remedial statute that intends to restrict claims, but the argument ignores that the statute contains *eleven* explicit and broad exceptions to the 10-

year bar. See AS 09.10.055(b)(1)(A-F), (b)(2) through (5) and (c).<sup>1</sup>

A number of these exceptions preserve the Hoffmans' claims.

**2. The Alaska Statute of Repose Preserves the Hoffmans' Claims Because Mr. Hoffman's Personal Injury Resulted From Prolonged Exposure to Hazardous Waste.**

AS 09.10.055(b)(1)(A)'s preservation of claims based on "prolonged exposure to hazardous waste" was intended to protect claims based on exposure to hazardous substances that take a long time to manifest as disease. The bill's sponsor explained that there was no reason to distinguish hazardous "waste" from hazardous "material."<sup>2</sup> GE misleads the Court by suggesting that the legislature rejected a change to "hazardous substance" in order to maintain a narrow exception (GE Opp. at 16-17). GE neglects to tell the Court that the legislature chose not to change "hazardous waste" to "hazardous substance," because 'hazardous waste' was inclusive

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<sup>1</sup> Defendants cite two cases, *Intl. Ass'n of Firefighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 42 P.3d 1265 (2002) and *Whitesides v. U-Haul Co. of Alaska*, 16 P.3d 729 (2001), both of which liberally interpreted laws granting workers greater rights. Neither supports the idea that the Court should construe a statute to eliminate an entire category of personal injury claims when the subject was never even addressed by the legislature.

<sup>2</sup> Appendix A (Minutes, H. Jud. Comm. Hearing on S.S.H.B. 58, 20th Leg. 1st Sess. (Feb. 21, 1997), No. 1184).

and didn't need to be changed.”<sup>3</sup>

KPC misreads federal and state law in claiming that Alaska adopted federal regulations, and that asbestos is not listed as a “hazardous waste” under those regulations. The problem with the argument is that the list KPC cites in 40 CFR Part 261 is not intended to be exhaustive. 40 CFR Part 261.1(b)(2) recognizes that “[t]his part identifies only *some* of the materials which are solid wastes and hazardous wastes under sections 3007, 3013, and 7003 of RCRA.” (emphasis added). “A material which is not defined as a solid waste in this part, or is not a hazardous waste identified or listed in this part, is still a solid waste and a hazardous waste . . . if . . . [i]n the case of sections 3007 and 3013, EPA has reason to believe that the material may be a solid waste within the meaning of section 1004(27) of RCRA and a hazardous waste within the meaning of section 1004(5) of RCRA . . .” 40 CFR Part 261.1(b)(2) – (2)(i).

The term “hazardous waste” means a solid waste, or combination of solid wastes, which because of its

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<sup>3</sup> Appendix B (Minutes, S. Fin. Hearing on H.B. 58, 20<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Apr. 11, 1997), SFC #101, Side 1)), *available at* [http://www.legis.state.ak.us/basis/get\\_single\\_minute.asp?ch=S&beg\\_line=0054&cnd\\_line=0426&session=20&comm=F1N&date=19970411&time=1709](http://www.legis.state.ak.us/basis/get_single_minute.asp?ch=S&beg_line=0054&cnd_line=0426&session=20&comm=F1N&date=19970411&time=1709)).



quantity, concentration, or physical, chemical, or infectious characteristics may—

- (A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
- (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42 U.S.C. § 6903(5). This is the *very same definition* of hazardous waste as under Alaska law:

- (9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may
  - (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - (B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of[.]

AS 46.03.900(9). As the court forcefully explained in *Metal Trades, Inc. v. United States*, 810 F. Supp. 689 (D. S.C. 1992), asbestos fibers plainly meet the federal and state definitions of "hazardous waste."<sup>4</sup> The only reason asbestos is not listed under 40 CFR Part

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<sup>4</sup> The fact, as KPC observes (KPC Opp. at 22), that Alaska also has separate regulations for landfill disposal of asbestos and other hazardous wastes does not change Alaska's broad definition of hazardous waste. It simply shows the regulatory need for a separate scheme for landfilling.

261 is because EPA was concerned that it would create a duplicative regulatory regime by doing so. *See* 45 FR 78538 (Nov. 25, 1980).

Without a textual or rational basis for excluding Mr. Hoffmans' exposure to asbestos from the protection afforded by the statute, Defendants make specious distinctions. GE says that Mr. Hoffman can't benefit from this exception, because he did not suffer a "prolonged" exposure. GE Opp. at 15. Mr. Hoffman was first exposed to asbestos fibers as a child and then in the workplace and then to those same asbestos fibers for decades after they became lodged in his lungs. That constitutes "prolonged exposure" under any possible definition of phrase. KPC, in turn, argues that Mr. Hoffman's father's clothing is not "waste," (KPC Opp. at 17-21). It is not the clothing, but the asbestos fibers lodged in the clothing while Mr. Hoffman's father worked in the KPC mill, that constitutes "waste." Asbestos dust, as a matter of law, is hazardous waste no matter where it lands. Opening Br. at 23.

Finally, Defendants claim that the Hoffmans should not be permitted to raise a new "equal protection" issue. They are wrong and misunderstand the Hoffmans' point. Courts should construe a

statute to avoid constitutional infirmities. *Barber v. State, Dept. of Corrections*, 314 P.3d 58, 68 (Alaska 2013). Because *Turner Construction Co., Inc. v. Scales*, 752 P.2d 467 (Alaska 1988) suggests that the Superior Court’s attempt to distinguish personal injuries due to “prolonged exposure to” asbestos waste and “prolonged exposure to” other hazardous wastes would violate equal protection, the Court should construe the statute to avoid such constitutional infirmity.

**3. The Alaska Statute of Repose Preserves the Hoffman’s Claims Because They Are Based on the Undiscovered Presence of Asbestos Fibers in Mr. Hoffman’s Lungs.**

Defendants have no response to the fact that asbestos fibers are considered “foreign bodies” both in science and medicine. Instead, they argue that AS 09.10.055(c) is limited to medical malpractice claims because the statute includes the phrase “that has no therapeutic or diagnostic purpose or effect in the body.” Defendants also cite the fact that a physician testified before a legislative committee about materials inadvertently left after surgery. Neither point demonstrates that AS 09.10.055(c) applies *solely* to medical malpractice actions. The cited language simply

demonstrates that the section includes medical malpractice actions, a point the Hoffmans never have contested.

If the Alaska Legislature had intended to limit the scope of “foreign body” tolling solely to medical malpractice actions, it would have said so explicitly, as have other states. The Alaska statute does not state that the section applies only to claims against a “health care provider” or to “medical malpractice actions,” as other state legislatures have done in limiting such a statute of repose exception to medical malpractice actions,<sup>5</sup> and this Court should not supply language that does not exist in the statute. Under its plain language, the section preserves claims based on asbestos fibers in the lungs as well as sponges left after surgery.

**4. The Alaska Statute of Repose Preserves the Hoffmans’ Claims Because Mr. Hoffman’s Injuries Resulted from a Defective Product.**

The “products” exception to Alaska’s statute of repose is not confined to “product liability” actions. “[T]he legislature defined

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<sup>5</sup> See Cal. C.C.P. § 340.5 (tolled the statute for actions “*against a health care provider*”) (emphasis added); F.S.A. § 766.102 (addressed leaving a foreign body in a patient as prima facie evidence of *negligence by a health care provider*); RCW 4.16.350 (tolls *only medical malpractice actions* based on “foreign bodies.”).

‘product’ and this definition refers to the tangible thing that causes an injury, not to the legal theory that a plaintiff might use to recover for the injury.” *Jones v. Bowie Indus.*, 282 P.3d 316, 338 (Alaska 2012). The bill’s sponsor described the “products” exception as “one of the biggest exceptions[.]” Minutes, H. Jud. Comm. Hearing on S.S.H.B. 58, 20th Leg. 1st Sess. (Feb. 21, 1997). Both the statute’s plain language and Representative Porter’s comments illustrate that the defective product exception should be broadly construed.

GE says that its turbines are not products so the exception does not apply. GE is wrong for a number of reasons. First, the argument is irrelevant, as GE sold asbestos gaskets to the mills long after the turbines were installed at the mills. CP 1175, 1177, 1179-80. Asbestos gaskets are indisputably products, as dozens of cases have held. *E.g., Morgan v. Aurora Pump Co.*, 159 Wn. App. 724, 248 P.3d 1052 (2011) (asbestos-containing gaskets are products under product liability statute). Thus, GE’s argument about turbines is beside the point.

Second, in each out-of-state case GE cites, the courts addressed only a construction and design statute of repose relating to “improvements to real property” as to which no “product” exception existed. The Alaska Statute of Repose is not limited to design and construction claims, but addresses all personal injury claims, and it contains numerous exceptions, including a “defective products” exception. The exception (AS 09.10.055(b)(E)) specifically states that a “component part” is a “product.” The explicit language of the statute governs here.

Third, while the GE turbines here may have been custom-made, as GE points out, the turbines themselves were removed and re-sold like any other “product” when the mill closed. A number of courts, even when interpreting statutes of repose addressing only “improvements to real property,” have concluded that such statutes of repose do not apply to “conveyor belts and other industrial equipment,” particularly when the equipment could be disassembled and moved or sold. *See Ervin v. Continental Conveyor & Equipment Co., Inc.*, 674 F. Supp.2d 709, 719-22 (D. S.C. 2009) (gathering cases).

The Alaska Statute of Repose was intended to be one of the “biggest exceptions” to the statute of repose, and the Alaska Supreme Court has held it is not limited to “product liability” actions. *See Jones v. Bowie Indus.*, 282 P.3d at 338. Accordingly, both the turbines and the asbestos gaskets that GE sold the mills during the life of the mills are products within the meaning of the statute.

Similarly, that the Hoffmans’ premises liability negligence claim against KPC is not a “products liability” claim does not matter for the reasons discussed above. The exception applies when the injury is caused by a defective product, and KPC mismanaged a number of asbestos products that caused Mr. Hoffman’s injuries.

**5. The Alaska Statute of Repose Preserves the Hoffmans’ Claims Because GE and KPC Were Grossly Negligent.**

Defendants claim that this exception cannot apply because the Hoffmans don’t have evidence of “gross negligence,” and the Hoffmans pled negligence only. As for Defendants’ first point, they forget that the Court is reviewing the grant of a CR 12(b)(6) motion, not a summary judgment motion. The Hoffmans’ disclosed a “state of the art” expert, Dr. Castleman, who is prepared to testify that both

GE and KPC knew of the deadly nature of asbestos fiber inhalation long before Mr. Hoffman's suffered his deadly exposures, yet did nothing about it to protect the safety of those exposed to asbestos fibers, such as Mr. Hoffman. That evidence is not before the Court on a 12(b)(6) motion, and this Court is no position to evaluate it other than to assume that the Hoffmans' will be able to present evidence of both defendants' gross negligence.

Second, the difference between negligence and gross negligence is a matter of degree, *see* WPI 10.07, and whether an act constitutes one or the other is ordinarily a factual question for trial. *See Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 609, 257 P.3d 532 (2011). The Superior Court acknowledged as much in conceding that "I'm clearly going out on a limb [regarding gross negligence], because usually that's a question of fact." Verbatim Report of Proceedings, March 25, 2015; at 49:14-15. Whether the Hoffmans can prove "gross negligence" is for another day, and this Court lacks the record to evaluate that question. The exception applies.



**B. The Hoffmans Argued and Defendants Responded To All The Reasons Why the Alaska Statute of Repose Does Not Bar the Hoffmans' Claims.**

Finally, both Defendants claim that under RAP 2.5, the Hoffmans waived the right to argue certain exceptions because they did not argue a specific exception as to a certain defendant. Under RAP 1.2(a), this Court construes the rules “liberally” to “promote justice and facilitate the decision of cases on the merits.” For that reason, excluding evidence under RAP 2.5(a) is discretionary. *See e.g., Obert v. Env'tl. Research & Dev. Corp.*, 112 Wn.2d 323, 333, 771 P.2d 340 (1989) (“[T]he rule precluding consideration of issues not previously raised operates only at the discretion of this court.”).

The “issue” raised before the Superior Court was whether the Alaska Statute of Repose bars the Hoffmans’ suit. The Hoffmans addressed all the ways in which the statute preserves their claims, Defendants argued all the ways they believed the statute bars the Hoffmans’ claims, and the Superior Court ruled on each exception that the Hoffmans’ argue here. The Hoffmans argued that the exceptions applied because of Mr. Hoffman’s exposure to asbestos fibers due both to KPC’s and GE’s conduct, and both Defendants

responded to those arguments. Excluding an argument on appeal in this circumstance makes no sense at all.

This Court may consider any argument applied to a specific defendant when the general principles or legal theories were advanced in the superior court. *See, e.g., State Farm Mut. Auto Ins. Co. v. Amirpanahi*, 50 Wn. App. 869, 872 n. 1, 751 P.2d 329, *rev. denied*, 111 Wn.2d 1012 (1988) (appellants argued “the basic reasoning”, allowing the court to review those issues on appeal “despite lack of citation to the crucial case law and treatises.”); *Newcomer v. Masini*, 45 Wn. App. 284, 287, 724 P.2d 1122 (1986) (“Even though the key words ‘equitable subrogation’ do not expressly appear”, the appellate court chose to consider equitable subrogation theory where, on reconsideration, party argued theories of unjust enrichment and equitable indemnity). These authorities apply here.<sup>6</sup>

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<sup>6</sup> Even where an argument could have been made more clearly, this Court will consider arguments advanced at the trial level. *See e.g., Bennett v. Hardy*, 113 Wn.2d 912, 917, 784 P.2d 1258 (1990) (“Plaintiffs may have framed their argument more clearly [on appeal], but so long as they advanced the issue below, thus giving the trial court an opportunity to consider and rule on the relevant authority, the purpose of RAP 2.5(a) is served[.]”).

For these reasons, the Court should address the applicability of each exception as to each defendant.

**C. Washington Has the Most Significant Relationship To This Controversy.**

Defendants rely on *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 875 P.2d 1213 (1994), but the specific factors here that distinguish *Rice* and makes this case more similar to *Williams v. Leone & Keeble, Inc.*, 170 Wn. App. 696, 285 P.3d 696 (2012), are: (1) that KPC was incorporated in Washington and remains domiciled in Washington; and (2) GE, neither a resident of Alaska nor Washington, sold its turbines to KPC, a Washington corporation. In *Williams*, the court held that Washington had the most significant relationship to a controversy between a Washington resident who was injured in Idaho, because of alleged tortious conduct by a Washington corporation in Idaho. And in *Zenaida-Garcia Recovery Sys. Tech., Inc.*, 128 Wn. App. 256, 260, 263, 115 P.3d 1017 (2005), the Court held that the conduct *causing* the injury occurred where the product was designed and manufactured without warnings, not where it was used.

Both defendants rely on *McCann v. Foster Wheeler LLC*, 48

Cal.4<sup>th</sup> 68, 225 P.3d 516 (2010), but the California court rejected the lower court's reliance on the place of a defendant's incorporation and the location where the product was designed and manufactured in a conflicts analysis. *Id.* at 93. By contrast, Washington appellate courts have repeatedly affirmed the relevance of the defendant's place of incorporation and where a product is designed and manufactured to the "most significant relationship" analysis. *See, e.g., Zenaida-Garcia*, 128 Wn. App. at 260, 263 (the court must evaluate "the domicile, residence, nationality, place of incorporation, and place of business of the parties"; the place where the conduct *causing* the injury occurred was where device was designed and manufactured).

Because the Hoffmans and KPC are residents of Washington, and the place of manufacture of the products at issue does not point toward Alaska, this Court should hold that Washington has the most significant relationship to the controversy, that "Washington can protect the interests of its citizens seeking a full recovery, and [that] Washington is able to regulate one of its corporations". *Williams*, 170 Wn. App. at 711. At minimum, these distinguishing factors

demonstrate that the interests of Washington and Alaska are equally balanced and public policy considerations dictate that the Court should apply Washington law.

Washington has a strong public policy of allowing asbestos victims to obtain relief for their personal injuries, a policy enshrined in our case law. *See e.g., Lockwood v. AC & S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987). If the Superior Court's construction of the Alaska Statute of Repose were accepted, asbestos personal injury claims largely would be abolished under Alaska substantive law. Such a result would conflict with the Washington Constitution's direction that all citizens should have equal access to our courts. *See Putman v. Wenatchee Valley Med. Cntr., P.S.*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009) ("The people have a right of access to courts; indeed it is 'the bedrock foundation upon which rest all the people's rights and obligations.'" (citation omitted)).

Where the asbestos tort victim lives in Washington State, one of the defendants is a Washington corporation that has enjoyed the protection of our laws, and Washington State resources will be drawn upon to address that injury, the public policy of Washington

dictates that the asbestos tort victim should be entitled to seek relief in our courts. *See e.g., Williams*, 170 Wn. App. at 711.

## II. CONCLUSION

For the reasons set forth above, this Court should reverse and remand this case for trial.

DATED this 7th day of October, 2015.

Respectfully submitted,

PHILLIPS LAW GROUP, PLLC

By: \_\_\_\_\_  
John W. Phillips, WSBA #12185  
Michael Madderra, WSBA #48169

Attorneys for Plaintiffs-Appellants

## CERTIFICATE OF SERVICE

I certify that on this day, I served by email a copy of the foregoing, along with this Certificate of Service, on all parties listed below:

**PLAINTIFFS:**

Benjamin Couture  
Brian Weinstein  
Marissa Langhoff  
Alexandra Caggiano  
WEINSTEIN COUTURE  
PLLC  
818 Stewart Street, Suite 930  
Seattle, WA 98101  
[ben@weinsteincouture.com](mailto:ben@weinsteincouture.com)  
[brian@weinsteincouture.com](mailto:brian@weinsteincouture.com)  
[marissa@weinsteincouture.com](mailto:marissa@weinsteincouture.com)  
[alex@weinsteincouture.com](mailto:alex@weinsteincouture.com)

**ARMSTRONG  
INTERNATIONAL, INC.:**

William E. Fitzharris, Jr.  
Jennifer Loynd  
David E. Chawes  
Preg O'Donnell  
901 Fifth Avenue, Suite 3400  
Seattle, WA 98164  
[wfitzharris@pregodonnell.com](mailto:wfitzharris@pregodonnell.com)  
[jloynd@pregodonnell.com](mailto:jloynd@pregodonnell.com)  
[dchawes@pregodonnell.com](mailto:dchawes@pregodonnell.com)  
[twhitney@pregodonnell.com](mailto:twhitney@pregodonnell.com)  
[asbestos@poglaw.com](mailto:asbestos@poglaw.com)

**ALASKA COPPER  
COMPANIES, INC.; CRANE  
CO.:**

G. William Shaw  
K&L Gates  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104  
[bill.shaw@klgates.com](mailto:bill.shaw@klgates.com)  
[janet.lewis2@klgates.com](mailto:janet.lewis2@klgates.com)  
[SE.asbestos@klgates.com](mailto:SE.asbestos@klgates.com)

**ASBESTOS CORPORATION  
LIMITED TRANE U.S., INC.:**

Mark Tuvim  
Kevin Craig  
Gordon & Rees  
701 Fifth Avenue, Suite 2100  
Seattle, WA 98104  
[SE.Asbestos@gordonrees.com](mailto:SE.Asbestos@gordonrees.com)

**CERTAINTEED  
CORPORATION; UNION  
CARBIDE CORPORATION:**

Diane Kero  
Gordon Thomas Honeywell  
600 University, Suite 2100  
Seattle, WA 98101  
[service@gth-law.com](mailto:service@gth-law.com)

**KETCHIKAN PULP  
COMPANY**

David Shaw  
Tami Becker-Gomez  
Williams Kastner  
601 Union Street, Suite 4100  
Seattle, WA 98101  
[wkgasbestos@williamskastner.com](mailto:wkgasbestos@williamskastner.com)

**GENERAL ELECTRIC  
COMPANY:**

Christopher Marks  
Megan Coluccio  
Sedgwick  
520 Pike Street, Suite 2200  
Seattle, WA 98101  
[chris.marks@sedgwicklaw.com](mailto:chris.marks@sedgwicklaw.com)  
[megan.coluccio@sedgwicklaw.com](mailto:megan.coluccio@sedgwicklaw.com)

Kirk C. Jenkins  
Sedgwick  
One North Wacker Drive, #4200  
Chicago, IL 60606  
[Kirk.jenkins@sedgwicklaw.com](mailto:Kirk.jenkins@sedgwicklaw.com)

**CHICAGO BRIDGE AND  
IRON COMPANY;  
GEORGIA-PACIFIC:**

Barry Mesher  
Brian Zeringer  
Sedgwick  
520 Pike Street, Suite 2200  
Seattle, WA 98101  
[barry.mesher@sedgwicklaw.com](mailto:barry.mesher@sedgwicklaw.com)  
[brian.zeringer@sedgwicklaw.com](mailto:brian.zeringer@sedgwicklaw.com)  
[asbestos.seattle@sedgwicklaw.com](mailto:asbestos.seattle@sedgwicklaw.com)

**OAKFABCO, INC.:**

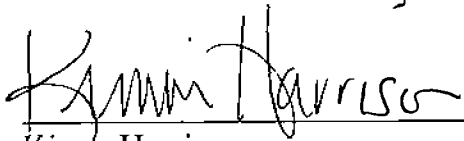
Robert Andre  
Odgen Murphy  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101  
[asbestos@omwlaw.com](mailto:asbestos@omwlaw.com)

**CLEAVER-BROOKS, INC.;;  
SABERHAGEN HOLDINGS,  
INC.:**

Tim Thorsen  
Carney Badley  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104  
[asbestos@carneylaw.com](mailto:asbestos@carneylaw.com)



DATED this 7th day of October, 2015, in Seattle,  
Washington.

  
\_\_\_\_\_  
Kim Harrison  
Legal Assistant to John W. Phillips

# **APPENDIX A**

20th Legislature(1997-1998)  
**Committee Minutes**  
HOUSE JUDICIARY  
**Feb 21, 1997**  
HOUSE JUDICIARY STANDING COMMITTEE  
February 21, 1997  
1:04 p.m.

MEMBERS PRESENT

Representative Joe Green, Chairman  
Representative Con Bunde, Vice Chairman  
Representative Brian Porter  
Representative Jeannette James  
Representative Norman Rokeberg  
Representative Eric Croft  
Representative Ethan Berkowitz

MEMBERS ABSENT

All members were present

COMMITTEE CALENDAR

\* SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58  
"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD AND HELD

Governor's Appointments: Violent Crimes Compensation Board

- REMOVED FROM AGENDA

(\* First public hearing)

PREVIOUS ACTION

BILL: HB 58  
SHORT TITLE: CIVIL ACTIONS & ATTY PROVIDED BY INS CO.  
SPONSOR(S): REPRESENTATIVE(S) PORTER, Cowdery

JRN-DATE JRN-PG ACTION  
01/13/97 43 (H) READ THE FIRST TIME - REFERRAL(S)  
01/13/97 43 (H) JUDICIARY, FINANCE  
01/16/97 95 (H) COSPONSOR(S): COWDERY  
02/17/97 373 (H) SPONSOR SUBSTITUTE INTRODUCED-  
REFERRALS  
02/17/97 374 (H) JUDICIARY, FINANCE  
02/19/97 (H) JUD AT 1:00 PM CAPITOL 120  
02/19/97 (H) MINUTE(JUD)  
02/21/97 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JIM SOURANT, Legislative Assistant  
to Representative Brian Porter  
Alaska State Legislature  
Capitol Building, Room 216  
Juneau, Alaska 99801  
Telephone: (907) 465-4930  
POSITION STATEMENT: Answered questions regarding SSHB 58.

THOMAS B. STEWART, Judge (Retired)  
Alaska Superior Court

P.O. Box 114100  
Juneau, Alaska 99811-4100  
Telephone: (907) 463-4741  
POSITION STATEMENT: Testified on behalf of Governor's Advisory  
Task Force on Civil Justice Reform regarding  
SSHB 58.

DAVID A. McGUIRE, M.D., Representative  
Alaska Liability Reform Group  
4048 Laurel Street, Suite 202  
Anchorage, Alaska 99508  
Telephone: (907) 562-4142  
POSITION STATEMENT: Testified on SSHB 58.

JOEL BLATCHFORD  
1983 Waldron Drive  
Anchorage, Alaska 99507  
Telephone: (907) 563-3743  
POSITION STATEMENT: Testified on SSHB 58.

CHERI SHAW, Executive Director  
Cordova District Fishermen United; and  
Chair, Tort Reform Committee  
United Fishermen of Alaska  
P.O. Box 939  
Cordova, Alaska 99574  
Telephone: (907) 424-3447  
POSITION STATEMENT: Testified in opposition to SSHB 58; provided  
suggestions.

DALE BONDURANT  
HC 1, Box 1197  
Soldotna, Alaska 99669  
Telephone: (907) 262-0818  
POSITION STATEMENT: Testified in opposition to SSHB 58.

PAUL SWEET  
P.O. Box 1562  
Palmer, Alaska 99645  
Telephone: (907) 745-2242  
POSITION STATEMENT: Testified in opposition to SSHB 58

STEVE CONN, Director  
Alaska Public Interest Research Group  
P.O. Box 101093  
Anchorage, Alaska 99510  
Telephone: (907) 278-3661  
POSITION STATEMENT: Testified on SSHB 58.

BONNIE NELSON  
20615 White Birch Road  
Chugiak, Alaska 99567  
Telephone: (907) 688-3017  
POSITION STATEMENT: Testified in opposition to portions of SSHB  
58.

ROSS MULLINS  
P.O. Box 436  
Cordova, Alaska 99574  
Telephone: (907) 424-3664  
POSITION STATEMENT: Testified on SSHB 58.

DARYL NELSON  
4334 Vance Drive, B-5  
Anchorage, Alaska 99508  
Telephone: (907) 333-9713  
POSITION STATEMENT: Testified in opposition to SSHB 58.

ERIC YOULE, Executive Director  
Alaska Rural Electric Cooperative Association

703 West Tudor Road, Number 200  
Anchorage, Alaska 99503  
Telephone: (907) 561-6103  
POSITION STATEMENT: Testified on SSHB 58.

JEFFREY W. BUSH, Deputy Commissioner  
Office of the Commissioner  
Department of Commerce and Economic Development  
P.O. Box 110900  
Juneau, Alaska 99811-0800  
Telephone: (907) 465-2500  
POSITION STATEMENT: Provided Administration's position on SSHB 58.

#### ACTION NARRATIVE

TAPE 97-23, SIDE A  
Number 0020

CHAIRMAN JOE GREEN called the House Judiciary Standing Committee to order at 1:04 p.m. Members present at the call to order were Representatives Green, Bunde, Porter, Croft and Berkowitz. Chairman Green noted that Representatives James and Rokeberg would be late; they arrived at 1:56 p.m. and 2:00 p.m., respectively.

#### SSHB 58 - CIVIL ACTIONS & ATTY PROVIDED BY INS CO.

The only order of business was Sponsor Substitute for House Bill No. 58, "An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIRMAN GREEN said the sponsor would explain the bill and questions for clarity would be addressed. However, there would be no debate on substantive issues. Public testimony would be taken that day and Monday, February 24. The committee would then debate and discuss SSHB 58 on Wednesday, February 26.

Number 0221

REPRESENTATIVE BRIAN PORTER, sponsor of SSHB 58, read from Section 1, subsection (1), which set forth the legislative intent: "encourage the efficiency of the civil justice system by discouraging frivolous litigation and by decreasing the amount, cost, and complexity of litigation without diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive, compensation for tortious injuries caused by others". He said that was the legislation in a nutshell.

REPRESENTATIVE PORTER said Section 2 was not substantive but a minor consistency change. A change existed in Section 23 reflecting the thought of the Governor's Advisory Task Force on civil justice reform, as well as the previous year's bill, that the rate of prejudgment interest should more adequately reflect the marketplace instead of being a fixed rate, which was currently 10.5 percent. The provision in Section 23 provided for a floating rate. Section 2 was a consistency change to leave 10.5 percent interest in a section of the banking code that was referenced to this section, he said. The banking statute was being left in place, with this being a conformity change to what was done in Title 9.

Number 0439

REPRESENTATIVE PORTER said the next sections dealt with the statute of repose and the statute of limitations. In layman's terms, a statute of repose is an absolute outer limit on when a case can be brought, based on the length of time since the action took place that supposedly caused injury or damage. SSHB 58 proposed an

eight-year statute of repose. Within that eight years, varying statutes of limitations shortened the time period allowed if the plaintiff knew or should have known that the damage or injury had taken place. The bill suggested what those limits should be in several areas.

Number 0615

REPRESENTATIVE PORTER said Section 3 reflected suggestions from the task force. It addressed a law that had contained a six-year statute of limitations on several provisions. Section 3 specified what would retain that six-year statute of limitations "And further limitations will be shown from that law that -- as it had existed in subsequent sections," he added.

REPRESENTATIVE PORTER referred to Section 4. Again from the task force, it imposed a three-year statute of limitations, reduced from six years, on contract actions.

Number 0666

REPRESENTATIVE ERIC CROFT said some task force conclusions were compromises between doing nothing and having more extreme provisions. He asked whether Representative Porter intended to include the compromises as well as the original legislation.

REPRESENTATIVE PORTER said he was on the subcommittee that dealt with the statute of limitations issue. He believed the provisions did not result from discussion of "outer limits" or a "compromise to the middle." He said it was a suggestion by a subcommittee member that was discussed, adopted, and then subsequently adopted by the entire task force.

Number 0764

REPRESENTATIVE CROFT asked whether Representative Porter's intention on the statute of repose was to keep the discovery rule intact. For example, if someone had no way of knowing a harm had been done until nine years had passed, would that be barred? Was there any relief for someone who, through no fault of their own, did not know?

REPRESENTATIVE PORTER said he hadn't yet explained the statute of repose. However, to that specific question, **there certainly could be a situation where someone did not have, for whatever reason, knowledge of an injury or a damage. If the statute of repose had been completed, that would be a bar to filing a case. However, there were exceptions where the statute of repose would not apply. He offered to go through those.**

CHAIRMAN GREEN suggested he address them as they came up, but only for clarification.

Number 0846

REPRESENTATIVE PORTER pointed out the statute of repose is similar to the hearsay rule in that the meat of the law is in the exceptions. He listed exceptions to the eight-year statute of repose from Section 5(2)(b)(1): (A) any prolonged exposure to hazardous waste; (B) an intentional act or gross negligence; (C) fraud or fraudulent misrepresentation; (D) breach of an express warranty or a guarantee.

REPRESENTATIVE PORTER said one criticism of a statute of repose is the supposition that people wanting to provide a longer period of time were seemingly barred from doing so. That is not the case, he said. Citing the example of a school roof falling in, he said no such cases on record had occurred within the allotted time period. However, nobody constructing a building was barred from having a contract with the contractor for a longer period of statute of

repose if both parties agreed to it.

REPRESENTATIVE PORTER believed one of the biggest exceptions was Section 5(2)(b)(1)(E), a defective product. There had been much testimony over the last four years about "some of the more salient products that have come to light after an eight-year period." He cited Thalidomide as an example. Although one could argue for a statute of repose in those cases, an accommodation and compromise existed in this legislation. "We're saying, 'Okay, we're not going to fight that battle today,' he said. "Quite frankly, I don't intend to fight it ever, but if someone wants to, welcome."

Number 1050

REPRESENTATIVE PORTER said another cause for exception would be if a defendant had intentionally tried to conceal any element that would go to establish the occurrence of the injury or negligence.

REPRESENTATIVE PORTER referred to Section 5(2)(c), which he described as somewhat unusual, a sticking point for which accommodation was made along the way. "The old sponge left in the body after surgery" kept coming up, he said. "We toll the statute of repose. Tolling is a nice legal word for meaning that it's null and void, held in abeyance until this thing is discovered, that if there is a foreign body that has no therapeutic or diagnostic purpose found ... in a person's body, that that is an exception to the statute of repose."

Number 1132

REPRESENTATIVE ETHAN BERKOWITZ asked whether hazardous waste had a legal definition or was addressed by a body of law.

REPRESENTATIVE PORTER replied, "It is an attempt to address another concern that was raised of the more typical kinds of 'someone's property leached chemicals into my property and I didn't know about it,' those kinds of things." He said if someone had a better definition, he would certainly look at it.

Number 1184

REPRESENTATIVE BERKOWITZ asked whether there was a reason for using the term "waste" instead of "material."

REPRESENTATIVE PORTER said there may have been at the time; however, he could not recall one.

REPRESENTATIVE BERKOWITZ asked whether a person committing a criminal act would fall outside the statute of repose.

REPRESENTATIVE PORTER said, "The exception regarding an intentional act, would, I'm sure, bring that outside."

REPRESENTATIVE BERKOWITZ asked, "That would include even if the criminal statute of limitations precluded a criminal action?"

REPRESENTATIVE PORTER said yes. The statute of limitations for prosecution would not apply to a civil case.

Number 1235

REPRESENTATIVE BERKOWITZ asked whether defective products included products involving "intellectual property" such as an idea.

REPRESENTATIVE PORTER replied, "Well, the definition, of course, is an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part and is introduced into trade or commerce. I don't think thoughts would fall into that definition."

Number 1270

REPRESENTATIVE BERKOWITZ asked, "If there's an indication of intentional concealment, the tolling period begins at what point?"

REPRESENTATIVE PORTER replied, "When the injury, damage, whatever is discovered, or should have been discovered, and that's put in there, obviously, so that you can't just say, 'I didn't know' and (indisc.) to prove what's in a person's head. Then the two-year statute of limitations would start accruing, but the statute of repose, the eight-year limitation, would be tolled, so that if this discovery were made ten years after the fact, and it was as a result of an intentional concealment or fraud or something like that, then you would have two years to get it in."

Number 1308

REPRESENTATIVE CROFT asked, "The statutes of limitations don't mention it, but do they still contain the discovery rule?"

REPRESENTATIVE PORTER said yes. The definition of "from the time of accrual" was not currently in statute, but it fairly reflected the case law. He explained that the statute of limitations begins from the time a person knew or should have known, which was basically the time of accrual.

REPRESENTATIVE CROFT said, "So the statute of limitations provisions didn't mean any change in the discovery rule."

REPRESENTATIVE PORTER concurred.

REPRESENTATIVE CROFT continued, "But the statute of repose provisions do. I mean, that's the point of a statute of repose."

REPRESENTATIVE PORTER replied, "By definition; that's correct."

REPRESENTATIVE CROFT said, "And my original question from before was: Something that someone has no way of learning, if it doesn't fall into these exceptions, would be barred after eight years?"

REPRESENTATIVE PORTER said that was correct.

Number 1382

REPRESENTATIVE PORTER referred to Section 6, the limitation of actions against health care providers. He said it provides an exception to the statute of limitations for children from zero to six years old. He explained, "It, by its first statement, notwithstanding the disability of a minor, shortens an exception that currently exists in law that provides ... that the statute of repose, if you will, is tolled for minors, for incompetent persons, and in cases of adult recollection of child abuse when the memory was suppressed and was later recalled as an adult."

REPRESENTATIVE PORTER said those three exceptions to the statute of repose were existing law. In this statute, the exception for minors was being changed from eighteen years to eight years of age. As a result, the statute of repose would be in place for these kinds of cases for injuries to children up to six years of age, such as at-birth injuries. "The statute of limitations is tolled, but the statute of repose fits with this," he said.

Number 1470

REPRESENTATIVE CROFT asked whether there was a statute of repose previously or simply a tolling of the statute of limitations up to 18 years, the age of majority.

REPRESENTATIVE PORTER indicated the statute of repose was repeatedly in and out of the statutes, based on actions by the



# **APPENDIX B**

20th Legislature(1997-1998)

**Committee Minutes**

SENATE FINANCE

**Apr 11, 1997**

HB 58 CIVIL ACTIONS/ATTY FEES/INSURANCE

Vice-Chair Phillips took testimony via statewide teleconference between 5:00 P.M. and 7:30 P.M. After a brief recess, COCHAIR SHARP reconvened the meeting to take up amendments. SENATOR TORGERSON MOVED Amendment an Amendment to Amendment #1. Without objection, the Amendment to Amendment #1 was ADOPTED. There was no further objection, and Amendment #1 was ADOPTED. SENATOR TORGERSON MOVED Amendment #2. COCHAIR SHARP objected. Amendment #2 FAILED by a 3 to 4 vote. SENATOR ADAMS did not offer Amendment #3. Amendment #4 was not offered. SENATOR DONLEY MOVED Amendment #5. Objection was heard. Amendment #5 FAILED by a 2 to 5 vote. SENATOR DONLEY MOVED Amendment #6. SENATOR DONLEY MOVED an Amendment to Amendment #6. SENATOR TORGERSON objected. SENATOR DONLEY MOVED to amend the Amendment to Amendment #6. Without objection, it was ADOPTED. There being no further objection, Amendment offer Amendment #7. SENATOR DONLEY MOVED Amendment #8. COCHAIR PEARCE objected. SENATOR DONLEY withdrew Amendment #8 without objection. SENATOR ADAMS MOVED Amendment #9. COCHAIR PEARCE objected. Amendment #9 FAILED by a 2 to 5 vote. SENATOR ADAMS MOVED Amendment a 2 to 5 vote. SENATOR ADAMS MOVED Amendment #11. SENATOR TORGERSON objected. Amendment #11 FAILED by a 2 to 5 vote. SENATOR ADAMS MOVED Amendment #12. Objection was heard. Amendment #12 FAILED by a 2 to 5 vote. SENATOR ADAMS MOVED Amendment #13. COCHAIR PEARCE objected. Amendment #13 FAILED by a 2 to 5 vote. SENATOR ADAMS MOVED Amendment #14. COCHAIR PEARCE objected. Amendment #14 FAILED by a 1 to 6 vote. SENATOR ADAMS MOVED Amendment #15. SENATOR TORGERSON objected. Amendment #15 FAILED by a 2 to 5 vote. SENATOR ADAMS MOVED Amendment #16. SENATOR PARNELL objected. Amendment #16 failed by a 2 to 4 vote. SENATOR ADAMS did not offer Amendment #17. SENATOR ADAMS MOVED Amendment #18. COCHAIR PEARCE objected. Amendment #18 FAILED by a 1 to 6 vote. SENATOR PARNELL MOVED Amendment #19. SENATOR TORGERSON objected. Amendment #19 was ADOPTED by a 6 to 1 vote. SENATOR PARNELL MOVED Amendment #20. COCHAIR SHARP objected then withdrew his objection. Without further objection, Amendment #20 was ADOPTED. SENATOR TORGERSON MOVED SCSCSSSHB 58(FIN) from committee with individual recommendations. SENATOR ADAMS objected. By a vote of 6 to 1, SCSCSSSHB 58(FIN) was REPORTED OUT with previous zero fiscal notes from the Department of Law and the Department of Commerce and Economic Development, fiscal notes from the Judicial Council (26.5) and the Court System (19.4) and a new zero fiscal note from the Department of Administration.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am  
"An Act relating to civil actions; relating to independent

counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

VICE-CHAIR PHILLIPS announced that teleconferenced testimony would be limited to two minutes per person. He invited Representative Porter, Sponsor of HB 58, to address the committee.

REPRESENTATIVE PORTER kept his remarks brief, stating it was more relevant to say what the bill did not do as opposed to what it did. It did not limit economic damage recovery. The three avenues of request for recovery for a person who had been injured or had property damage were economic damages, non-economic damages and punitive damages. He provided additional detail and gave examples. He pointed out that non-economic damages were capped at \$300 thousand but could go to \$500 thousand in exceptional cases and punitive damages were capped at three times compensatory damages or \$300 thousand, whichever was greater up to \$600 thousand and four times compensatory damages in extreme cases. REPRESENTATIVE PORTER stated that the bill did not affect Workers Compensation cases and then concluded his introduction.

The presence of Senators Donley and Parnell was noted.

SENATOR ADAMS stated that the legislation did not allow for fair and just compensation for Alaskans because it did not favor the injured party, but instead favored businesses. He continued by stating that the belief that insurance rates would go down as a result was a myth. REPRESENTATIVE PORTER spoke to the issue of insurance rates, pointing out that they were regulated by the state and companies are asked to justify their rates based on experience in paying claims. The inability to lower rates immediately was because current cases had to be tried and compensated under existing law, which could take up to ten years.

VICE-CHAIR PHILLIPS called for statewide teleconference testimony next. The following individuals testified.

Valdez:

JAMES CULLEY, CEO, Valdez Community Hospital: Support  
MIKE LOPEZ, Fisherman: Oppose

Ketchikan:

DAVID JOHNSON, M.D., Alaska State Medical Association:  
Support

Cordova:

CHERI SHAW, Cordova District Fishermen United: Oppose  
COLLETTE PETIT: Oppose  
AMY BROCKERT, Eyak Village Corporation: Oppose  
JACK HOPKINS: Oppose  
CHRISTINE HONKOLA: Oppose  
ROSS MULLINS: Oppose  
LINDEN O'TOOLE: Oppose

DENNY WEATHERS: Oppose  
ROXY ESTES: Oppose

Kenai:  
JOHN SIVELY, Kenai Central Labor Council: Oppose  
ROBERT COWAN: Oppose

End SFC-97 #99, Side 1, Begin Side 2

PHIL SQUIRES: Oppose  
SUSAN ROSS: Oppose  
HUGH TORDOFF: Oppose

Mat-Su:  
ROBERT MARTINSON: Oppose  
DAVID GLEASON: Oppose

Sitka:  
JANET LEEKLEY KISARAUSKAS: Support

Kodiak:  
CHRIS BERNS: Oppose

The presence of Senator Donley was noted.

Anchorage:  
KAREN COWART, Alaska Alliance: Support  
COLIN MAYNARD, Professional Design Council: Support  
STEPHEN CONN: Oppose  
FRANK DILLON; Alaska Trucking: Support  
DICK CATTANACH: Support  
MONTY MONGTOMERY, Associated General Contractors: Support  
KEVIN MORFORD: Oppose  
RANDY RUEDRICH: Support  
LES GARA, AKPIRG Board Member: Oppose  
AL TAMAGNI: Support  
STEVE BORELL, Executive Director; Alaska Miners Assn.:  
Support

Fairbanks:  
RICHARD HARRIS, Geologist: Support

The following individuals testified in person in Juneau.

JIM JORDAN, Executive Director, Alaska Medical Association:  
Support CYNTHIA BROOKE, M.D., Anchorage: Support

End SFC-97 #99, Side 2  
Begin SFC-97 #100, Side 1

KEVIN SMITH, Risk Manager, Alaska Municipal League: Support  
CHRISTY TENGS FOWLER, Haines: Support  
The presence of Cochair Sharp, Senators Torgerson and  
Parnell was noted.

PAMELA LA BOLLE, Alaska State Chamber of Commerce: Support  
MICHAEL LESMEIER, State Farm Insurance: Support

After a brief recess, COCHAIR SHARP reconvened the meeting  
to take up amendments.

SENATOR TORGERSON MOVED Amendment #1. He explained that the amendment clarified that the legislation would not affect existing litigation taken in the Exxon Valdez case. SENATOR ADAMS objected. SENATOR TORGERSON MOVED an Amendment to Amendment #1 relating to maritime law. Without objection, the Amendment to Amendment #1 was ADOPTED.

COCHAIR SHARP asked for comments from the bill sponsor. REPRESENTATIVE PORTER welcomed the amendment and had no problem with it.

There was no further objection, and Amendment #1 was ADOPTED.

SENATOR TORGERSON MOVED Amendment #2. COCHAIR SHARP objected. SENATOR TORGERSON explained the amendment. REPRESENTATIVE PORTER spoke in opposition, as did SENATOR DONLEY.

End SFC-97 #100, Side 1, Begin Side 2

A roll call vote was taken on the MOTION to adopt Amendment  
IN FAVOR: Phillips, Torgerson, Adams  
OPPOSED: Donley, Parnell, Sharp, Pearce  
Amendment #2 FAILED by a 3 to 4 vote.

SENATOR ADAMS did not offer Amendment #3.

Amendment #4 was not offered because it was identical to Amendment #1 which had been adopted.

SENATOR DONLEY MOVED Amendment #5 and explained that the amendment related to limited immunity for emergency room doctors. Objection was heard. REPRESENTATIVE PORTER spoke to the amendment. Although he philosophically agreed, he opposed the amendment.

A roll call vote was taken on the MOTION to adopt Amendment

IN FAVOR: Donley, Adams  
OPPOSED: Torgerson, Parnell, Phillips, Pearce, Sharp.  
Amendment #5 FAILED by a 2 to 5 vote.

SENATOR DONLEY MOVED Amendment #6. SENATOR DONLEY MOVED an Amendment to Amendment #6. SENATOR TORGERSON objected. SENATOR DONLEY explained that the amendment related to posting notice of limited liability. There was lengthy discussion, with support expressed by SENATORS ADAMS and TORGERSON. SENATOR DONLEY MOVED to amend the Amendment to Amendment #6. Without objection, it was ADOPTED. There being no further objection, Amendment #6, as amended, was ADOPTED.

SENATOR DONLEY did not offer Amendment #7.

SENATOR DONLEY MOVED Amendment #8. COCHAIR PEARCE objected. SENATOR DONLEY explained the amendment. There was lengthy discussion between SENATOR DONLEY, COCHAIRS PEARCE and SHARP and REPRESENTATIVE PORTER concerning the effect of the amendment. SENATOR DONLEY withdrew Amendment #8 without

objection.

SENATOR ADAMS MOVED Amendment #9 which repealed the statute of repose. COCHAIR PEARCE objected. REPRESENTATIVE PORTER spoke to the amendment and discussion continued.

End SFC-97 #100, Side 2  
Begin SFC-97 #101, Side 1

A roll call vote was taken on the MOTION to adopt Amendment  
IN FAVOR: Adams, Donley  
OPPOSED: Torgerson, Parnell, Phillips, Pearce, Sharp  
Amendment #9 FAILED by a 2 to 5 vote.

SENATOR ADAMS offered Amendment #9B and explained that it was a one word change. COCHAIR SHARP declared the amendment out of order.

SENATOR ADAMS MOVED Amendment #10, explained that it changed the term "hazardous waste" to "hazardous substance" and gave examples. COCHAIR PEARCE objected. REPRESENTATIVE PORTER spoke to the amendment and concluded that "hazardous waste" was inclusive and didn't need to be changed. A roll call vote was taken on the MOTION to adopt Amendment #10.  
IN FAVOR: Adams, Donley  
OPPOSED: Parnell, Phillips, Torgerson, Pearce, Sharp  
Amendment #10 FAILED by a 2 to 5 vote.

SENATOR ADAMS MOVED Amendment #11. SENATOR TORGERSON objected. SENATOR ADAMS explained that the amendment deleted the new caps on non-economic damages. A roll call vote was taken on the MOTION to adopt Amendment #11.

IN FAVOR: Donley, Adams  
OPPOSED: Phillips, Torgerson, Parnell, Pearce, Sharp  
Amendment #11 FAILED by a 2 to 5 vote.

SENATOR ADAMS MOVED Amendment #12. Objection was heard. SENATOR ADAMS explained that the amendment changed "and" to "or" concerning the standards for higher punitive damages. REPRESENTATIVE PORTER spoke in opposition to the amendment. A roll call vote was taken on the MOTION to adopt Amendment  
IN FAVOR: Adams  
OPPOSED: Phillips, Donley, Torgerson, Parnell, Pearce, Sharp  
Amendment #12 FAILED by a 1 to 6 vote.

SENATOR ADAMS MOVED Amendment #13. COCHAIR PEARCE objected. SENATOR ADAMS explained that the amendment deleted the section related to collateral benefits. Some discussion was had between SENATORS DONLEY, ADAMS and REPRESENTATIVE PORTER . A roll call vote was taken on the MOTION to adopt Amendment #13.  
IN FAVOR: Donley, Adams  
OPPOSED: Torgerson, Parnell, Phillips, Pearce, Sharp  
Amendment #13 FAILED by a 2 to 5 vote.

SENATOR ADAMS MOVED Amendment #14. COCHAIR PEARCE objected. SENATOR ADAMS explained that the amendment cleared up language related to expert witness qualifications of the bill. A roll call vote was taken on the MOTION to adopt Amendment #14.

IN FAVOR: Adams  
OPPOSED: Donley, Torgerson, Parnell, Phillips, Pearce, Sharp  
Amendment #14 FAILED by a 1 to 6 vote.

SENATOR ADAMS MOVED Amendment #15. SENATOR TORGERSON objected. SENATOR ADAMS explained the amendment. A roll call vote was taken on the MOTION to adopt Amendment #15.  
IN FAVOR: Adams, Donley  
OPPOSED: Parnell, Phillips, Torgerson, Sharp, Pearce  
Amendment #15 FAILED by a 2 to 5 vote.

SENATOR ADAMS MOVED Amendment #16. SENATOR PARNELL objected. SENATOR ADAMS described the amendment concerning offers of settlement prior to litigation. REPRESENTATIVE PORTER commented on the amendment, stating it would not be prudent. Additional discussion was had between he, SENATORS ADAMS, DONLEY and PARNELL. A roll call vote was taken on the MOTION to adopt Amendment #16.  
IN FAVOR: Adams, Donley  
OPPOSED: Phillips, Torgerson, Parnell, Sharp  
Amendment #16 failed by a 2 to 4 vote.

SENATOR ADAMS did not offer Amendment #17, but did provide a brief description.

SENATOR ADAMS MOVED Amendment #18. COCHAIR PEARCE objected.

SENATOR ADAMS explained that the amendment would set up a pilot program for alternative dispute resolution to help streamline the justice system. REPRESENTATIVE PORTER spoke against the amendment. A roll call vote was taken on the MOTION to adopt Amendment #18.  
IN FAVOR: Adams  
OPPOSED: Phillips, Donley, Torgerson, Parnell, Pearce, Sharp  
Amendment #18 FAILED by a 1 to 6 vote.

SENATOR PARNELL MOVED Amendment #19. SENATOR TORGERSON objected. SENATOR PARNELL explained that the amendment deleted periodic payments of a settlement. REPRESENTATIVE PORTER opposed the amendment. A roll call vote was taken on the MOTION to adopt Amendment #19.  
IN FAVOR: Donley, Parnell, Adams, Phillips, Pearce, Sharp  
OPPOSED: Torgerson  
Amendment #19 was ADOPTED by a 6 to 1 vote.

SENATOR PARNELL MOVED Amendment #20. COCHAIR SHARP objected for the purpose of discussion. SENATOR PARNELL explained the amendment which related to reckless conduct.

End SFC-97 # 101, Side 1, Begin Side 2

COCHAIR SHARP withdrew his objection. Without further objection, Amendment #20 was ADOPTED.

COCHAIR SHARP announced there were no further amendments and requested the pleasure of the committee.

SENATOR TORGERSON MOVED SCSCSSSHB 58(FIN) from committee with individual recommendations. SENATOR ADAMS objected. A roll call vote was taken on the MOTION to report the bill

from committee.

IN FAVOR: Parnell, Phillips, Donley, Torgerson, Pearce,  
Sharp

OPPOSED: Adams

By a vote of 6 to 1, SCSCSSSHB 58(FIN) was REPORTED OUT with previous zero fiscal notes from the Department of Law and the Department of Commerce and Economic Development, fiscal notes from the Judicial Council (26.5) and the Court System (19.4) and a new zero fiscal note from the Department of Administration.

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**PHILLIPS LAW GROUP PLLC**

**October 07, 2015 - 1:01 PM**

**Transmittal Letter**

Document Uploaded: 5-474395-Reply Brief.pdf

Case Name: Hoffman v. Alaska Copper Companies, Inc., et al.

Court of Appeals Case Number: 47439-5

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

Attached to this Reply Brief are Appendix A and B.

Sender Name: Kimmberly Harrison - Email: [kharrison@jphillipslaw.com](mailto:kharrison@jphillipslaw.com)