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SUPREME COURT  
OF THE STATE OF WASHINGTON

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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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**LARRY AND JUDITH HOFFMAN'S ANSWER TO GENERAL  
ELECTRIC'S PETITION FOR REVIEW**

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ORIGINAL

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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

GE offers no reason why this Court should review the Court of Appeals' sound decision that the Hoffmans' personal injury claim based on Mr. Hoffmans' exposure to asbestos – indisputably authorized under Washington law – is also authorized under Alaska's Statute of Repose, which contains numerous exceptions plainly applicable to the Hoffmans' case. GE's chief argument for review is its claim that the Hoffmans' counsel did not adequately preserve their defective products claim, and that GE gaskets do not qualify as products under the defective products exception to the Alaska Statute of Repose. Pet. at 6. The argument is wrong and does not justify review for several reasons. All of the arguments the Hoffmans made on appeal were also made in the trial court, and it is equally plain that the gaskets GE supplied are "products" for purposes of the Alaska Statute of Repose. The Court of Appeals analyzed this claim utilizing Washington case law as persuasive authority, and correctly and fairly concluded that the claim was preserved under the explicit language of the product exception to Alaska's Statute of Repose. This is hardly the stuff for discretionary review.

GE also claims that allowing the Hoffmans to pursue a claim under the gross negligence exception to the Alaska Statute of Repose would turn the statute upside down, but the Court of Appeals reviewed the trial court's ruling on a CR 12(b)(6) motion, and the

Hoffmans had a tenable basis to pursue a gross negligence claim against GE. This argument also does not justify discretionary review.

Not only did the Alaska Legislature create a clear exception for the Hoffmans' product defect and gross negligence claims, but it also established other exceptions that preserved the Hoffmans' claims relating to hazardous waste such as asbestos and inhaled foreign objects such as asbestos, which are not knowable until the disease manifests. Accordingly, not only does the Court of Appeals' reasoning not invite the Supreme Court's review, but the multiple alternative legal bases to affirm the Court of Appeals demonstrate that discretionary review in this case would be imprudent.

## **II. ARGUMENT**

### **A. General Electric Offers No Reason Why This Court Should Accept Discretionary Review.**

GE's petition fails to address the criteria for this Court's acceptance of discretionary review of the Court of Appeals' unpublished decision in this case. RAP 13(b) provides:

**Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

GE identifies no conflict in Washington appellate decisions, it fails to identify any constitutional question upon which the Court of Appeals' decision hinges, and there is no "substantial public interest" in the Court of Appeals' conclusion that Alaska and Washington law do not conflict in allowing the Hoffmans' personal injury claim based on exposure to asbestos fibers.

Instead, GE argues that the Court of Appeals was wrong in several respects, none of which meets the criteria for this Court's acceptance of discretionary review. GE argues that the Hoffmans' waived their claims but the record shows otherwise. GE complains that the Court of Appeals turned to persuasive Washington authority when no Alaska case law was on point, but the notion that gaskets are products is hardly novel, and on a CR 12(b)(6) motion, the Hoffmans allegation that GE sold gaskets that were placed in the turbines that exposed Mr. Hoffman to asbestos is more than sufficient. And GE critiques the Court of Appeals' opinion that sufficient facts were alleged to support a claim of gross negligence – as opposed to simple negligence – but that argument is irrelevant on a 12(b)(6) motion to proceed with their claim

Indisputably, Washington courts should follow the

**B. Mr. Hoffman Did Not Repudiate His Claim that GE Sold Products, and the Court of Appeals Correctly Concluded that Washington and Alaska Law Do Not Conflict, Because Neither Bars the Hoffmans' Claims Based on Products Sold by GE.**

**1. The Hoffmans Did Not Waive Their Argument Under the "Products" Exception to Alaska's Statute of Repose.**

GE claims that under RAP 2.5, the Hoffmans waived the right to argue the product defects exception, and failed to argue that a GE gasket qualified as a defective product. GE misreads the Rules of Appellate Procedure. 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 an appellate argument 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, including GE, 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 to GE's conduct, and GE responded to those arguments. The Hoffmans specifically raised their

argument about GE's sale of gaskets, and those arguments were not evaluated on the basis of sufficiency of evidence because the motion was decided under CR 12(b)(6). RP (Mar. 25, 2015) at 23:21-24; *see* CP 13-18; CP 2912-13; *see also* CP 1252, 1254, 1175, 1177, 1179-80. GE complains that trial counsel stated that the product was the "turbines," but the gaskets GE sold were installed in the turbines. *See* CP 1252, 1254, 1175, 1177, 1179-80. And Mr. Hoffman was exposed to airborne asbestos from the turbines both from his cleanup duties and from direct exposure working near the turbines when they underwent maintenance, including gasket replacement. *See* CP 299. Excluding an argument on appeal in this circumstance makes no sense at all, and certainly does not justify discretionary review.

The appellate 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>2</sup> Thus, there is no conflict with other appellate decisions or appellate procedure, as suggested by GE. Pet. at 8-11. The Hoffmans adequately raised the issue before the Superior Court, and this Court should deny discretionary review.

**2. 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 ‘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 the Hoffmans’ waived their argument that GE gaskets were products, and then says that turbines are not products

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<sup>2</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[.]”).

so the exception does not apply. GE is wrong for a number of reasons. First, the Hoffmans argued – with evidentiary support from the trial court record – the following to the Court of Appeals:

The Hoffmans will demonstrate through fact and expert testimony that the GE turbines that Larry Hoffman worked around . . . contained asbestos-containing components, including thermal insulation, gaskets, and packing. *See e.g.*, CP 1252, 1254. GE sold gaskets to the Sitka and Ketchikan mills during Larry Hoffman's tenure there. *See* CP 1175, 1177, 1179-80.

App. Br. at 7. This clearly shows that the Hoffmans properly raised the issue with the Court of Appeals (Opn. at 9, n.8) and presented evidence of sale of GE gaskets, as products, to the trial court.<sup>3</sup> The Hoffmans' trial counsel also argued to the Superior Court that GE *“sold gaskets and other materials for use on those turbines. All of that falls within the products exception. So our case against GE is that it's a products case.”* RP (Mar. 25, 2015) at 23:21-24 (emphases added).

GE's further contention that the gaskets were not products borders on the absurd. Asbestos gaskets are indisputably products, as dozens of cases have held. *E.g., Morgan v. Aurora Pump Co.*,

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<sup>3</sup> GE also alleges that waiver occurred before the Court of Appeals (as to both the defective product and gross negligence exceptions), but ignores the Hoffmans' straightforward explanation that the “issue” raised before the Superior Court was whether the Alaska Statute of Repose bars the Hoffmans' suit. *See* Section II.B, above. The Hoffmans plainly did not waive this claim in their assignments of error. App. Br. at 2.

159 Wn. App. 724, 248 P.3d 1052 (2011) (asbestos-containing gaskets are products under product liability statute).

As the Court of Appeals explained, “we agree with Hoffman because Hoffman has presented some evidence that GE delivered gaskets that could have caused Hoffman’s injury.” Opn. at 9; *see also* CP 1252, 1254, 1175, 1177, 1179-80. The Court also stated, “although [GE] disputed whether its turbines would be considered products and vehemently argued that there was no evidence that it manufactured, supplied, or sold thermal asbestos insulation, GE does not say the same about replacement gaskets.” Opn. at 12. The Court of Appeals plainly considered – but reasonably rejected – GE’s argument that gaskets were not “products” as contemplated by the statutory exception. The Court’s opinion should not be disturbed.

GE’s second argument, that the “steam turbines were an ‘improvement to real property’” (Pet. at 6) is beside the point. 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, and none of the out-of-state case law cited by GE involves such a specific and governing statute.

Additionally, while the GE turbines here may have been custom-made, as GE points out (Pet. at 2), 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 intended the “products” exception 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; Minutes, H. Jud. Comm. Hearing on S.S.H.B. 58, 20th Leg. 1st Sess. (Feb. 21, 1997). 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. Review should be denied.

### **3. The Court of Appeals Properly Looked to *Simonetta* and *Braaten* in Absence of Controlling Alaska Authority**

GE takes issue with the Court of Appeals Conflict of Laws analysis (Pet. at 11-17), by “constru[ing] Alaska law using nothing but Washington authorities.” Pet. at 13. The Court of Appeals’ analysis does not conflict with Washington Conflict of Laws jurisprudence, and GE’s misleading argument ignores the Court of

Appeals' rationale. The Court of Appeals employed *Simonetta* and *Braaten* to determine whether a supplier of component parts could be held liable – under a defective products exception – for supplying a defective component part. Opn. at 10-12. The Court explained that Washington's approach was "consistent with Alaska law". Opn. at 10-12 (citing *Burnett v. Covell*, 191 P.3d 985, 987-88 (Alaska 2008)). GE cites no authority suggesting that the Court of Appeals erroneously utilized Washington authority as persuasive to interpret Alaska substantive law.

There is no "fundamental issue at stake" implicating either the Due Process Clause or Full Faith and Credit Clause. *See* Pet. at 13. Under both the Washington and Alaska statutes of repose, the Hoffmans' claims are preserved. *See* Section II.A, above. GE argues that "determining Alaska law based solely upon Washington law – is constitutionally impermissible," but GE ignores that a conflict of laws analysis focuses on whether the application of a different States' law will affect the outcome. *Seizer*, 132 Wn.2d at 648-49.

GE also facetiously argues that "plywood, or nails, or perhaps concrete blocks" would be included within the "products" exception, such that the statute of repose would be "swallow[ed] up" by the defective products exception. Pet. at 16-17. This argument asks the Court to ignore the specific facts alleged by the Hoffmans and to address irrelevant questions of statutory interpretation that are better

addressed by the Alaska Legislature. The Hoffmans will present evidence that the turbines, when sold, contained asbestos packing and gaskets and that GE also sold asbestos gaskets to the mills for the purpose of turbine maintenance. *See* CP 1162, 201-02, 214-18, 225-26, 2236, 299, 1175, 1177, 1179-80, 1251-52, 1254. The Court of Appeals correctly determined that a CR 12(b)(6) dismissal was inappropriate in light of the facts alleged.

**C. The Court of Appeal Decision Sustaining the Gross Negligence Claim Was Correct And Also is Supported By Several Alternative Legal Bases That the Court of Appeals Did Not Need to Reach.**

The Court of Appeals also determined that the Hoffmans asserted sufficient facts, under a CR 12(b)(6) standard, for gross negligence. *Opn.* at 13-16. GE presents no tenable reason to reverse that ruling. And while the Court of Appeals did not address the Hoffmans' argument that prolonged exposure to hazardous waste and the presence of asbestos foreign bodies constituted additional exceptions to the Alaska Statute of Repose (*Opn.* at 9, n.7), both exceptions apply here and provide additional legal grounds why this Court should deny GE's petition for review.

**1. The Alaska Statute of Repose Preserves the Hoffmans' Claims Because GE Was Grossly Negligent.**

GE claims that this exception cannot apply because the Hoffmans waived the issue of "gross negligence" (*Pet.* at 17-18), the Hoffmans allegedly don't have evidence of "gross negligence," and

the Hoffmans pled negligence only. GE Opp. at 38-40. As for GE's first point, it forgets that the Court reviewed the grant of a CR 12(b)(6) motion, not a summary judgment motion. In any event, the Hoffmans' disclosed a "state of the art" expert, Dr. Castleman, who is prepared to testify that GE 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. RP (Mar. 24, 2015) at 20:15-21:10. That evidence is not before the Court on a CR 12(b)(6) motion, and this Court is no position to evaluate it on discretionary review. The Court of Appeals decision thus did not conflict with any of the decisions cited by GE. *See* Pet. at 17.

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." RP (Mar. 25, 2015) at 49:14-15. GE's argument offers no basis for discretionary review.

GE makes the unsupported assertion that "[n]early every urban dweller has been exposed to asbestos" (Pet. at 19) to argue that the Hoffmans' alleged facts – "that Hoffman worked around GE turbines, with or around GE-supplies asbestos gaskets, and work

with or around those gaskets may have exposed him or his father to asbestos” (Opn. at 13) – is not “remotely comparable” to grossly negligent conduct. Pet. at 19. Whether the Hoffmans can prove “gross negligence” is for another day, and this Court lacks the record to evaluate that question on discretionary review. No conflict of law exists as suggested by GE. See Pet. at 19-20. The exception applies, and the Court of Appeals correctly recognized that Hoffman alleged sufficient facts to prove gross negligence. Opn. at 13-16.

**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>4</sup> The Legislature chose not to change “hazardous waste” to “hazardous substance,” because ‘hazardous waste’ was inclusive and didn’t need to be changed.”<sup>5</sup>

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<sup>4</sup> Appendix A (Minutes, H. Jud. Comm. Hearing on S.S.H.B. 58, 20th Leg. 1st Sess. (Feb. 21, 1997), No. 1184).

<sup>5</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&end\\_line=0426&session=20&comm=FIN&date=19970411&time=1709](http://www.legis.state.ak.us/basis/get_single_minute.asp?ch=S&beg_line=0054&end_line=0426&session=20&comm=FIN&date=19970411&time=1709)).

“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 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.” The only reason asbestos is not listed under 40 CFR Part 261 is because EPA was concerned that it would create a duplicative regulatory regime by doing so. *See* 45 FR 78538 (Nov. 25, 1980).

This alternative legal ground for leaving the Court of Appeals’ decision alone is another reason to deny review.

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

Asbestos fibers are considered “foreign bodies” both in science and medicine. GE told the Court of Appeals 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.” This language, however, does not demonstrate 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>6</sup> and this Court should deny discretionary review, because the “foreign bodies” exception provides yet another basis to leave undisturbed the Court of Appeals decision.

Each of the four exceptions provides an alternative legal ground to allow the Court of Appeals’ decision to stand and to deny discretionary review.

### III. CONCLUSION

For the reasons set forth above, this Court should deny GE’s Petition for Review.

DATED this 10th day of October, 2016.

Respectfully submitted,

PHILLIPS LAW GROUP, PLLC

By: \_\_\_\_\_

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<sup>6</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.”).

## 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:

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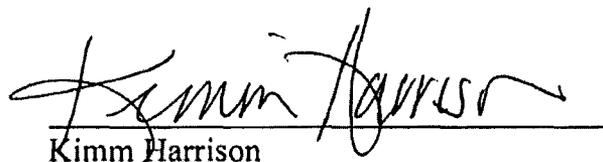
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**CLEAVER-BROOKS, INC.;;  
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Carney Badley  
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[asbestos@carneylaw.com](mailto:asbestos@carneylaw.com)

DATED this 10th day of October, 2016, in Seattle,  
Washington.

  
Kimm Harrison  
Legal Assistant to John W. Phillips

## OFFICE RECEPTIONIST, CLERK

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**Sent:** Monday, October 10, 2016 3:40 PM  
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**Cc:** John Phillips; Michael Madderra; 'ben@weinsteincouture.com'; 'brian@weinsteincouture.com'; 'marissa@weinsteincouture.com'; 'alex@weinsteincouture.com'; 'wfitzharris@pregodonnell.com'; 'jloynd@pregodonnell.com'; 'dchawes@pregodonnell.com'; 'twitney@pregodonnell.com'; 'asbestos@poglaw.com'; 'bill.shaw@klgates.com'; 'janet.lewis2@klgates.com'; 'SE.asbestos@klgates.com'; 'SEAasbestos@gordonrees.com'; 'service@gth-law.com'; 'wkgasbestos@williamskastner.com'; 'chris.marks@sedgwicklaw.com'; 'megan.coluccio@sedgwicklaw.com'; 'kirk.jenkins@sedgwicklaw.com'; 'barry.mesher@sedgwicklaw.com'; 'brian.zeringer@sedgwicklaw.com'; 'asbestos.seattle@sedgwicklaw.com'; 'asbestos@omwlaw.com'; 'asbestos@carneylaw.com'; John Phillips; Michael Madderra  
**Subject:** RE: Hoffman v. Alaska Copper Companies, et al.

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**From:** Kimberly Harrison [mailto:kharrison@jphillipslaw.com]  
**Sent:** Monday, October 10, 2016 3:34 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** John Phillips <jphillips@jphillipslaw.com>; Michael Madderra <mmadderra@jphillipslaw.com>; 'ben@weinsteincouture.com' <ben@weinsteincouture.com>; 'brian@weinsteincouture.com' <brian@weinsteincouture.com>; 'marissa@weinsteincouture.com' <marissa@weinsteincouture.com>; 'alex@weinsteincouture.com' <alex@weinsteincouture.com>; 'wfitzharris@pregodonnell.com' <wfitzharris@pregodonnell.com>; 'jloynd@pregodonnell.com' <jloynd@pregodonnell.com>; 'dchawes@pregodonnell.com' <dchawes@pregodonnell.com>; 'twitney@pregodonnell.com'; 'asbestos@poglaw.com' <asbestos@poglaw.com>; 'bill.shaw@klgates.com' <bill.shaw@klgates.com>; 'janet.lewis2@klgates.com' <janet.lewis2@klgates.com>; 'SE.asbestos@klgates.com' <SE.asbestos@klgates.com>; 'SEAasbestos@gordonrees.com' <SEAasbestos@gordonrees.com>; 'service@gth-law.com' <service@gth-law.com>; 'wkgasbestos@williamskastner.com' <wkgasbestos@williamskastner.com>; 'chris.marks@sedgwicklaw.com' <chris.marks@sedgwicklaw.com>; 'megan.coluccio@sedgwicklaw.com' <megan.coluccio@sedgwicklaw.com>; 'kirk.jenkins@sedgwicklaw.com' <kirk.jenkins@sedgwicklaw.com>; 'barry.mesher@sedgwicklaw.com' <barry.mesher@sedgwicklaw.com>; 'brian.zeringer@sedgwicklaw.com' <brian.zeringer@sedgwicklaw.com>; 'asbestos.seattle@sedgwicklaw.com' <asbestos.seattle@sedgwicklaw.com>; 'asbestos@omwlaw.com' <asbestos@omwlaw.com>; 'asbestos@carneylaw.com' <asbestos@carneylaw.com>; John Phillips <jphillips@jphillipslaw.com>; Michael Madderra

<mmadderra@jphillipslaw.com>; Kimberly Harrison <kharrison@jphillipslaw.com>

**Subject:** Hoffman v. Alaska Copper Companies, et al.

Supreme Court Clerk:

Attached for filing is Larry & Judith Hoffman's Answer to General Electric's Petition for Review.

Thank you.

Kimm Harrison  
Legal Assistant/Office Manager to John W. Phillips

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**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 SCSCSSHB 58(FIN) from committee with individual recommendations. SENATOR ADAMS objected. By a vote of 6 to 1, SCSCSSHB 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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## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, October 11, 2016 9:10 AM  
**To:** 'Kimberly Harrison'  
**Cc:** John Phillips; Michael Madderra; 'ben@weinsteincouture.com'; 'brian@weinsteincouture.com'; 'marissa@weinsteincouture.com'; 'alex@weinsteincouture.com'; 'wfitzharris@pregodonnell.com'; 'jloynd@pregodonnell.com'; 'dchawes@pregodonnell.com'; 'whitney@pregodonnell.com'; 'asbestos@poglaw.com'; 'bill.shaw@klgates.com'; 'janet.lewis2@klgates.com'; 'SE.asbestos@klgates.com'; 'SEAasbestos@gordonrees.com'; 'service@gth-law.com'; 'wkgasbestos@williamskastner.com'; 'chris.marks@sedgwicklaw.com'; 'megan.coluccio@sedgwicklaw.com'; 'kirk.jenkins@sedgwicklaw.com'; 'barry.mesher@sedgwicklaw.com'; 'brian.zeringer@sedgwicklaw.com'; 'asbestos.seattle@sedgwicklaw.com'; 'asbestos@omwlaw.com'; 'asbestos@carneylaw.com'; John Phillips; Michael Madderra  
**Subject:** RE: Hoffman v. Alaska Copper Companies, et al.

Received 10/11/16.

Supreme Court Clerk's Office

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**From:** Kimberly Harrison [mailto:kharrison@jphillipslaw.com]  
**Sent:** Monday, October 10, 2016 6:11 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** John Phillips <jphillips@jphillipslaw.com>; Michael Madderra <mmadderra@jphillipslaw.com>; 'ben@weinsteincouture.com' <ben@weinsteincouture.com>; 'brian@weinsteincouture.com' <brian@weinsteincouture.com>; 'marissa@weinsteincouture.com' <marissa@weinsteincouture.com>; 'alex@weinsteincouture.com' <alex@weinsteincouture.com>; 'wfitzharris@pregodonnell.com' <wfitzharris@pregodonnell.com>; 'jloynd@pregodonnell.com' <jloynd@pregodonnell.com>; 'dchawes@pregodonnell.com' <dchawes@pregodonnell.com>; 'whitney@pregodonnell.com'; 'asbestos@poglaw.com' <asbestos@poglaw.com>; 'bill.shaw@klgates.com' <bill.shaw@klgates.com>; 'janet.lewis2@klgates.com' <janet.lewis2@klgates.com>; 'SE.asbestos@klgates.com' <SE.asbestos@klgates.com>; 'SEAasbestos@gordonrees.com' <SEAasbestos@gordonrees.com>; 'service@gth-law.com' <service@gth-law.com>; 'wkgasbestos@williamskastner.com' <wkgasbestos@williamskastner.com>; 'chris.marks@sedgwicklaw.com' <chris.marks@sedgwicklaw.com>; 'megan.coluccio@sedgwicklaw.com' <megan.coluccio@sedgwicklaw.com>; 'kirk.jenkins@sedgwicklaw.com' <kirk.jenkins@sedgwicklaw.com>; 'barry.mesher@sedgwicklaw.com' <barry.mesher@sedgwicklaw.com>; 'brian.zeringer@sedgwicklaw.com' <brian.zeringer@sedgwicklaw.com>; 'asbestos.seattle@sedgwicklaw.com' <asbestos.seattle@sedgwicklaw.com>; 'asbestos@omwlaw.com' <asbestos@omwlaw.com>; 'asbestos@carneylaw.com' <asbestos@carneylaw.com>; John Phillips <jphillips@jphillipslaw.com>; Michael Madderra

<mmadderra@jphillipslaw.com>

**Subject:** RE: Hoffman v. Alaska Copper Companies, et al.

Supreme Court Clerk:

I apologize as I just sent the incorrect Appendix A-B. Attached is the correct version that accompanies Larry & Judith Hoffman's Answer to General Electric's Petition for Review.

Thank you.

Kimm Harrison  
Legal Assistant/Office Manager to John W. Phillips

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**Sent:** Monday, October 10, 2016 5:52 PM

**To:** 'supreme@courts.wa.gov'

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**Subject:** Hoffman v. Alaska Copper Companies, et al.

Supreme Court Clerk:

Today at 3:33 p.m. I sent to you by email for filing Larry & Judith Hoffman's Answer to General Electric's Petition for Review. I inadvertently did not attach Appendix A-B. I am resending the Answer to you with Appendix A-B.

Thank you.

Kimm Harrison  
Legal Assistant/Office Manager to John W. Phillips

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**Subject:** Hoffman v. Alaska Copper Companies, et al.

Supreme Court Clerk:

Attached for filing is Larry & Judith Hoffman's Answer to General Electric's Petition for Review.

Thank you.

Kimm Harrison  
Legal Assistant/Office Manager to John W. Phillips

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