14 ATTORNEY'S FEES

In Civil Rule 82, authorized by AS 09.60.010, Alaska rejects the "American Rule," which prohibits an award of attorney fees except where authorized by statute or other special rule, and, instead, follows the "English Rule," which awards partial attorney's fees to the prevailing party in virtually all civil cases. Rule 82 sets forth the procedure and the schedule to be followed for the award of these fees.

Pursuant to Rule 82(b)(1), the court shall award attorney's fees at set percentages depending upon the amount of the judgment, including prejudgment interest, whether the case was contested and whether or not the contested case proceeded to trial.

In cases where the prevailing party recovers no money judgment (such as where the jury returns a defense verdict), the court shall award that prevailing party 30% of his or her actual attorney's fees necessarily incurred in the action in a case that goes to trial. If the case is resolved without trial (e.g., upon a defendant's successful motion for summary judgment), the court shall award the prevailing party 20% of his or her actual attorney's fees necessarily incurred in the action.[1]

The court may vary the attorney's fee award to the prevailing party based upon consideration of various factors, including the complexity of the case, the length of the trial, the reasonableness of the attorney's hourly rate and the time expended, vexatious or bad faith conduct during the litigation, and other equitable factors the court deems relevant. In general, a trial court has broad discretion to award Rule 82 attorney's fees in amounts exceeding those prescribed by the schedule of the rule, so long as the court specifies in the record its reasons for departing from the schedule.[2]

A *pro se* **attorney** litigant may recover Rule 82 attorney's fees for the time expended as an attorney in the litigation, but not for the time expended as the client.[3] A **lay** *pro se* litigant cannot recover attorney's fees.[4] The Alaska Supreme Court has stated as dictum that this situation (allowing *pro se* attorney litigants to recover Rule 82 attorney's fees while not allowing lay *pro se* litigants to do so) does not give rise to an equal protection claim because attorney and non-attorney litigants are not similarly

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[1] Alaska R. Civ. P. 82(b)(2).

[2] *Tenala, Ltd. v. Fowler*, 993 P.2d 447, 451 (Alaska 1999).

[3] *Pratt & Whitney Canada v. Sheehan*, 852 P.2d 1173, 1181 (Alaska 1993).

[4] *J.L.P. v. V.L.A.*, 30 P.3d 590, 599 (Alaska 2001); *see also Shearer v. Mundt*, 36 P.3d 1196 (Alaska 2001) ("purpose of Rule 82 attorney's fees is to compensate litigants for fees they incur through legal representation, not to compensate litigants for the economic detriment of litigating.").

situated.[5] The court explained that "[a]ttorneys' representational services have a 'clear marketable value' whether they 'are directed to the representation of others or oneself,' whereas the representational services of non-lawyers have no such value."[6]

Generally, the prevailing party is the party who successfully prosecuted or defended on the main issue of the action and in whose favor the decision or verdict is rendered and the judgment entered.[7] A defendant faced with a potential liability of $275,000, but who was only required to pay plaintiff approximately $1,200, was properly declared the prevailing party.[8] The determination of which party prevailed is within the discretion of the trial judge.[9]

The Alaska Supreme Court has made an exception to Rule 82's award of partial attorney's fees for public interest litigants.[10] Public interest litigants are normally entitled to full reasonable attorney's fees.[11] Nonetheless, a trial court has discretion to award less than all requested fees if, for instance, it finds the hourly rate is excessive or the total hours unreasonable.

Alaska Appellate Rule 508 governs the award of costs and attorney's fees in an administrative appeal. If a statute requires payment of full reasonable attorney's fees the statute[12] ordinarily trumps Alaska Civil Rule 82's provision authorizing partial fees for prevailing parties. Similarly, an attorney's fee provision in a commercial contract controls an award of attorney's fees.[13]

Attorney's fees for federal claims are governed by federal law. However, Civil Rule 82 applies to cases in federal court on the basis of diversity jurisdiction. D. Ak. LR

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[5] *Shearer v. Mundt*, 36 P.2d at 1199 (Alaska 2001).

[6] *Id.* (footnote omitted).

[7] *Adoption of V.M.C.*, 528 P.2d 788, 795 n.14 (Alaska 1974).

[8] *Hutchins v. Schwartz*, 724 P.2d 1194, 1204 (Alaska 1986).

[9] *DeWitt v. Liberty Leasing Co. of Alaska*, 499 P.2d 599, 601 (Alaska 1972).

[10] *Dansereau v. Ulmer*, 955 P.2d 916, 918 (Alaska 1998).

[11] *Hunsicker v. Thompson*, 717 P.2d 358, 359 (Alaska 1986).

[12] *See, e.g.,* AS 09.60.070 (full reasonable attorney's fees for injuries caused by serious criminal offenses, including driving while intoxicated).

[13] *Bobich v. Hughes*, 965 P.2d 1196, 1200 (Alaska 1998) (statute); *see also Jackson v. Barbero*, 776 P.2d 786, 788 (Alaska 1989) (noting that the plain meaning of a contract provision prevails over any limitation otherwise imposed by Civil Rule 82).

54.3 governs the award of attorney's fees in federal cases filed in the U.S. District Court in Alaska. Subsection (b) of that Local Rule provides that, in a diversity case, the court will apply Civil Rule 82 existing at the time judgment is entered.

The Alaska Supreme Court has held that attorney's fees may not be awarded as compensatory damages in connection with an insurance bad faith claim. The court held that trial courts are precluded from awarding attorney's fees except as expressly permitted by rule or order.[14]

Insurance Policies

A policy under which an insurer has a right or duty to provide a defense for an insured must provide coverage for the payment of attorney's fees taxable as costs against the insured under Civil Rule 82.[15] A policy under which an insurer has neither a right nor a duty to provide a defense but agrees to indemnify an insured for the costs of defense must provide coverage to indemnify an insured for the payment of attorney fees taxed as costs against the insured under Civil Rule 82.[16] In theory, an insurer may limit its liability for Civil Rule 82 attorneys fees under 3 AAC 26.510, 3 AAC 26.520, or 3 AAC 26.530 by including a policyholder notice that conforms with the requirement of 3 AAC 26.550.

3AAC 26.550 provides that a policy issued by an insurer that limits coverage for attorney's fees must include a policyholder notice that conforms with Attorney Fees Coverage Notice (A, B, C, or D depending on the type of policy in question), or the notice must be "approved in writing by the Director upon a determination that the proposed notice is substantially equivalent to the Attorney Fees Coverage Notices. This regulation was interpreted by the Alaska Supreme Court, which found that it was intended to force insurers to comply with proper notice requirement to protect insurers' reasonable expectations. The court held that private parties may litigate whether an endorsement attempting to limit attorney's fees coverage is enforceable and, in the case before it, held that the insurer's endorsement was invalid and unenforceable because it neither conformed with the appropriate Attorney Fees Coverage Notice nor had received the Director's approval.[17]

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[14] *Alaska Pac. Assur. Co. v. Collins*, 794 P.2d 936 (Alaska 1990).

[15] 3 AAC 26.510.

[16] 3 AAC 26.520.

[17] *Therchik v. Grant Aviation, Inc.*, 74 P.3d 191 (Alaska 2003).

Civil Rule 82 attorney's fees are an additional item of coverage under an insurance policy, and should be considered part of the "policy limits."[18] Generally, in determining policy limits, attorney's fees should be calculated pursuant to the "contested" schedule set forth in Civil Rule 82(b)(1).[19] Therefore, when an insurer offers "policy limits," the offer must include Civil Rule 82 attorney's fees on those limits as well. The insurer should be aware that it may also have to pay Civil Rule 79 costs as part of the "policy limits." An insurer offering "policy limits" with respect to a policy providing minimum statutory limits of coverage must also offer prejudgment interest on those limits.[20]

The Alaska Supreme Court has repeatedly held that an insurance carrier's agreement to settle a claim for "policy limits" obligates the company to pay its maximum potential liability available under the policy, which is defined as the amount the insurance company would have to pay under its policy if the case went to trial and resulted in an adverse verdict. Based on such holdings, an unrepresented claimant who was entitled to "policy limits" argued that she was entitled to Civil Rule 82 attorney's fees calculated on the "contested with trial" schedule despite the fact that this constituted a windfall to her. In that case, in which this firm represented the insurer, the Alaska Supreme Court held that an insurer need not offer Civil Rule 82 attorney's fees as part of a "policy limits" offer to an unrepresented claimant.[21] The court held that, when calculating their maximum liability under a policy, insurers are not required to speculate about the course of future litigation. Rather, insurers must base their offers "on a present-tense -- albeit hypothetical -- evaluation of the current situation." Because the plaintiff was not represented by counsel on the date of her policy limit offer, she had no right to expect a payment of Rule 82 fees.

The Alaska Supreme Court has held that, unless an amendatory endorsement limiting an insurer's liability for Rule 82 fees "substantially complies" with the recommended language set forth in Division of Insurance Bulletin 96-04, it is invalid.[22] An amendatory endorsement seeking to limit the insurer's liability for Rule 82 must be "very close to identical" to DOI Bulletin 96-04, and only "minute deviations, such as immaterial punctuation errors," will be tolerated.[23] Failure to conform to the limiting

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[18] *Schultz v. Travelers Indem. Co.*, 754 P.2d 265, 266 (Alaska 1988).

[19] *Bohna v. Hughes, Thorsness, Gantz, Powell & Brundin*, 828 P.2d 745, 749 n.3 (Alaska 1992).

[20] *See* Tab 4 Prejudgment and Postjudgment Interest.

[21] *Maloney v. Progressive Specialty Ins. Co.*, 99 P.3d 565 (Alaska 2004).

[22] *Therchik v. Grant Aviation, Inc.*, 74 P.3d 191 (Alaska 2003).

[23] *Id.*

language recommended by the Division of Insurance will expose the carrier to liability for unlimited Rule 82 fees assessed against the insured.

AS 09.60.010 provides that Civil Rule 82 attorney's fees may not be awarded unless the case is contested. It has not yet been determined, however, whether a defendant who tenders policy limits by way of attempted settlement of a claim before the filing of an answer that would deny liability or contest the amount of damages may nevertheless be required to pay attorney's fees under the Civil Rule 82 schedule.[24]

Offers of Judgment

Please refer to Tab 5, relating to Civil Rule 68 Offers of Judgment, since such offers will impact the award of attorney's fees if the offer is rejected but the offeree does not obtain a judgment equal to at least 95% of the offer.

Attorney Fees for Victims of Serious Criminal Offenses

AS 09.60.070 provides that a person who has been injured or damaged, or the Estate of a person who has died, may recover from the offender full reasonable attorney's fees in the civil action if the injury, damage, or death resulted from the commission or attempt to commit a serious criminal offense. The statute sets forth each of the serious criminal offenses covered by the statute and they include "driving while under the influence of an alcoholic beverage . . . ." The statute specifically provides that, if a judgment for attorney's fees is entered under this statute, and a contract of insurance requires an insurer to pay the attorney's fees, that insurer shall be liable only for the attorney's fees that would have been awarded to plaintiff under Civil Rule 82(b)(1).

The trial courts have interpreted AS 09.60.070 as compelling the court to award the full amount of the plaintiff's attorney's contingency fee, calculated on the jury verdict plus interest, as the full reasonable attorney fee incurred by a prevailing plaintiff in cases where the defendant caused plaintiff's injuries, damages, or death and the defendant was driving while under the influence of alcohol at the time of the accident. The Alaska Supreme Court has not yet interpreted the statute or announced whether an insurer which unreasonably refused to settle a bodily injury or death claim within policy limits is liable for the full amount of attorney's fees awarded pursuant to this statute despite the clear language of the statute that the insurer is only liable for the amount of attorney's fees that would have been awarded under Civil Rule 82 (approximately 10% of the jury's verdict plus interest).

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[24] *See also* Tab 17 Uninsured and Underinsured Motorists Coverages; and Tab 20 Insurance Bad Faith.

Appendices:

Alaska R. Civ. P. 79
Alaska R. Civ. P. 82
D. Ak. LR 54.3
AS 09.60.010
AS 09.60.070
3 AAC 26.510 - .550
Div. of Insurance Bulletin No. B96-04 w/attachment A1-C3

Rule 79. Costs — Taxation and Review.

(a) **Allowance to Prevailing Party.** Unless the court otherwise directs, the prevailing party is entitled to recover costs allowable under paragraph (f) that were necessarily incurred in the action. The amount awarded for each item will be the amount specified in this rule or, if no amount is specified, the cost actually incurred by the party to the extent this cost is reasonable.

(b) **Cost Bill.** To recover costs, the prevailing party must file and serve an itemized and verified cost bill, showing the date costs were incurred, within 10 days after the date shown in the clerk's certificate of distribution on the judgment. Failure of a party to file and serve a cost bill within 10 days, or such additional time as the court may allow, will be construed as a waiver of the party's right to recover costs. The prevailing party must have receipts, invoices, or other supporting documentation for each item claimed. This documentation must be available to other parties for inspection and copying upon request and must be presented to the clerk upon request. Documentation may be filed only if requested by the clerk or in response to an objection.

(c) **Objection and Reply.** A party may object to a cost bill by filing and serving an objection within 7 days after service of the cost bill. The prevailing party may respond to an objection by filing and serving a reply within 5 days after service of the objection.

(d) **Taxing of Costs by Clerk.** Promptly upon expiration of the time for filing objections, or if an objection is filed, the time for filing a reply, the clerk shall issue an itemized award of costs allowable under this rule. No cost bill hearing will be held unless requested by the clerk. If a hearing is held, it will be limited to issues identified by the clerk in the notice of hearing. The clerk may deny costs requested by the prevailing party on grounds that

(1) the cost is not allowed under paragraph (f);

(2) the party failed to provide an adequate description or adequate supporting documentation following a request by the clerk or another party; or

(3) the amount claimed by the prevailing party is unreasonable.

The clerk may not deny costs on grounds that the costs were not necessarily incurred in the action. If a party objects on this basis, the party must seek review under paragraph (e) of the clerk's action in awarding the cost.

(e) **Review by Court.** A party aggrieved by the clerk's action in awarding costs may file a motion for review of the clerk's award. The motion must be filed and served within five days after the date shown on the clerk's certificate of distribution on the award. The motion must particularly designate each ruling of the clerk to which objection is made. Matters not so designated will not be considered by the court.

Costs awarded by the clerk are presumed to be reasonable.

(f) **Allowable Costs.** The following items are the only items that will be allowed as costs:

(1) the filing fee;

(2) fees for service of process allowable under Administrative Rule 11 or postage when process is served by mail;

(3) other process server fees allowable under Administrative Rule 11;

(4) the cost of publishing notices required by law or by these rules;

(5) premiums paid on undertakings, bonds, or security stipulations where required by law, ordered by the court, or necessary to secure some right accorded in the action;

(6) the cost of taking and transcribing a deposition allowed by Civil Rule 30(a) or 31(a) (including a deposition that is ordered by the court or agreed to by the parties under those rules), as follows:

(A) the court reporter's fee and travel expenses to communities where a local court reporter is not available;

(B) expenses allowed by Civil Rule 30.1(e) for recording, editing, or using an audio or audio-visual deposition; and

(C) the cost of the original plus one copy of the transcript;

(7) witness fees allowed under Administrative Rule 7;

(8) the fee of an interpreter or translator for a witness when that witness is entitled to a fee under Administrative Rule 7;

(9) travel costs allowed under paragraph (g) of this rule;

(10) long distance telephone charges for telephonic participation by an attorney or party at court proceedings, depositions, the meeting of the parties required by Civil Rule 26(f), and interviews of witnesses other than the party;

(11) charges paid by the prevailing party's attorney for computerized legal research;

(12) copying costs for paper copies, photographs, and microfilm, the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium, as follows:

(A) for copies from the court, a copy center, or a person or entity other than the prevailing party's attorney, the amount charged for the copies; and

(B) for copies from the prevailing party's attorney, the amount charged by the attorney or $.15 per copy, whichever is less.

(13) exhibit preparation costs;

(14) the cost of transcripts ordered by the court; and

(15) other costs allowed by statute.

(g) **Travel Costs.** (1) Travel costs will be allowed for

(A) one attorney to attend trial, hearings on dispositive motions, settlement conferences, and the meeting of the parties required by Civil Rule 26(f), but only if no local attorney is present; if more than one out-of-town attorney attends a proceeding at which no local attorney is present, travel costs will be allowed for the attorney who traveled the shortest distance to the trial site;

(B) one attorney to attend depositions, interviews of witnesses who are not deposed, and meetings to review documents produced in the course of discovery;

(C) one legal assistant or investigator to interview witnesses who are not deposed or to review documents produced in the course of discovery; and

(D) witnesses to the extent permitted by Administrative Rule 7.

(2) Travel costs are subject to the following limitations:

(A) air fare is allowed at the coach class fare or the actual fare, whichever is less;

(B) ground transportation, including car rental, is allowed outside the traveler's home city; and

(C) food and lodging is allowed at the same per diem rate allowed for court employees.

(3) In unusually complex cases, the court may allow a prevailing party to recover travel costs for more than one attorney to participate in the activities described in section (g)(1)(A) of this rule. To request travel costs for more than one attorney, the prevailing party must file a motion for court review of the clerk's award as provided in paragraph (e) and must include supporting documentation for each item claimed. These costs should not be included in the cost bill filed with the clerk.

(4) To recover travel costs, the prevailing party must include the following information for each trip: the name of the traveler, whether the traveler is an

attorney, legal assistant, or investigator, the reasons for the travel, and the travel dates.

(h) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, costs must be apportioned and awarded according to the provisions of Civil Rule 82(e).

(Adopted by SCO 5 October 9, 1959; amended by SCO 56 effective November 1, 1963; by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1085 effective January 15, 1992; by SCO 1118 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1200 effective July 15, 1995; and by SCO 1279 effective July 31, 1997; rescinded and readopted by SCO 1306 effective January 15, 1998; amended by SCO 1340 effective January 15, 1999)

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 1995 (the Uniform Interstate Family Support Act), has the effect of amending Civil Rule 79 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

Note: In 1997 the legislature enacted AS 18.16.030(m), which provides that a filing fee may not be required of, and court costs may not be assessed against, a minor in a proceeding to bypass parental consent to an abortion. According to ch. 14, § 10 SLA 1997, AS 18.16.030(m) has the effect of amending Administrative Rule 9, Civil Rule 79, and Appellate Rule 508 by prohibiting filing fees and assessment of court costs in certain actions. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings in the superior court and a separate rule on judicial bypass appeals. *See* Probate Rule 20 & Appellate Rule 220.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.

Annotations

Cases

Ten-day period for service and filing of a cost bill commenced only at the date of docketing of the formal judgment and not at the date of docketing of the verdict without any direction by the court as to the entry of judgment. **Patterson v. Cushman,** Op. No. 233, 394 P2d 657 (Alaska 1964).

Appellant who did not serve cost bill and notice waived its right to recover costs. **M-B Contracting Company v. Davis,** Op. No. 275, 399 P2d 433 (Alaska 1965).

Taxing of costs rests in the sound discretion of the trial court. **Beaulieu v. Elliott,** Op. No. 443, 434 P2d 665 (Alaska 1968).

Refusal to allow as costs expenses incident to the taking of depositions was no abuse of discretion where in a personal injury case the prevailing plaintiff had failed to point out what depositions were involved, when they were taken, or when the concession of liability was made by the defendant. **Beaulieu v. Elliott,** Op. No. 443, 434 P2d 665 (Alaska 1968).

Failure to contest costs within the time limit of this rule bars raising the issue on appeal. **A.R.C. Industries, Inc. v. State,** Op. No. 1283, 551 P2d 951 (Alaska 1976).

Trial courts award of costs will be affirmed unless there has been a clear abuse of discretion. **Kaps Transport, Inc. v. Henry,** Op. No. 1527, 572 P2d 72 (Alaska 1977).

Where defendant could properly defend in main suit by prosecuting cross-claim, costs for expert witness fees were properly charged to cross-claim defendant. **Kaps Transport, Inc. v. Henry,** Op. No. 1527, 572 P2d 72 (Alaska 1977).

Allowance of costs for unused depositions of key witness who testified at trial was not abuse of discretion. **Kaps Transport, Inc. v. Henry,** Op. No. 1527, 572 P2d 72 (Alaska 1977).

An award of costs to the prevailing parties which included expenses incurred by their attorney for travel, food and lodging was not an abuse of discretion where the attorney had to travel from his office in Juneau to Nome for the proceedings. **Davis v. Hallett,** Op. No. 1772, 587 P2d 1170 (Alaska 1978).

Alaska does not include prejudgment interest among the items allowed as costs. **Guin v. Ha,** Op. No. 1810, 591 P2d 1281 (Alaska 1979).

While attorney's fees are costs, they are not covered by the literal requirements of Civil Rule 79(b). **State v. University of Alaska,** Op. No. 2303, 624 P2d 807 (Alaska 1981).

Trial court did not abuse its discretion in permitting a request for attorney's fees thirteen days after judgment. **State v. University of Alaska,** Op. No. 2303, 624 P2d 807 (Alaska 1981).

The taxing of costs for witness fees is governed by Civil Rule 83 and Administrative Rule 7(c) rather than the general provisions of Civil Rule 79(b). **Miller v. Sears,** Op. No. 2447, 636 P2d 1183 (Alaska 1981).

The premium on a supersedeas bond was properly included in an award of costs. **Isaacson Steel v. Armco Steel,** Op. No. 2466, 640 P2d 812 (Alaska 1982).

Filing of bill of costs prior to entry of judgment violated this rule, but did not constitute a waiver of the right to recover costs. **Isaacson Steel v. Armco Steel,** Op. No. 2466, 640 P2d 812 (Alaska 1982).

Superior court erred in awarding costs at the time judgment was entered because it prevented the losing party from objecting at a hearing on costs before the clerk of the court to the inclusion of specific expenditures in the award, which in turn prevented these objections from being considered on

Rule 82. Attorney's Fees.

(a) **Allowance to Prevailing Party.** Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) **Amount of Award.**

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgment and, if awarded, Prejudgment Interest		Contested With Trial	Contested Without Trial	Non-Contested
First	$25,000	20%	18%	10%
Next	$75,000	10%	8%	3%
Next	$400,000	10%	6%	2%
Over	$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

(A) the complexity of the litigation;

(B) the length of trial;

(C) the reasonableness of the attorneys' hourly rates and the number of hours expended;

(D) the reasonableness of the number of attorneys used;

(E) the attorneys' efforts to minimize fees;

(F) the reasonableness of the claims and defenses pursued by each side;

(G) vexatious or bad faith conduct;

(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) **Motions for Attorney's Fees.** A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third-party defendant.

(f) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; by SCO 1006 effective January 15, 1990; by SCO 1066 effective July 15, 1991; repealed and reenacted by SCO 1118am effective July 15, 1993; amended by SCO 1195 effective July 15, 1995; by SCO 1200 effective July 15, 1995; by SCO 1241 effective July 15, 1996; by SCO 1246 effective July 15, 1996; by SCO 1281 effective August 7, 1997; by SCO 1340 effective January 15, 1999; and by SCO 1455 effective July 15, 1993)

Note to SCO 1118am: By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, **see, e.g., Anchorage Daily News v. Anchorage School Dist.,** 803 P.2d 402, 404 (Alaska 1990); **City of Anchorage v. McCabe,** 568 P.2d 986, 993-94 (Alaska 1977); **Gilbert v. State,** 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-prevailing party. **See, e.g., Malvo v. J.C. Penney Co.,** 512 P.2d 575, 588 (Alaska 1973); **Demoski v. New,** 737 P.2d 780, 788 (Alaska 1987).

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 1995 (the Uniform Interstate Family Support Act), has the effect of amending Civil Rule 82 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

RABINOWITZ, Justice dissenting.

I dissent from the court's adoption of the amendments to Civil Rule 82 called for in [SCO 1118am.] In my view no compelling case has been made demonstrating the need for these changes.[1] Further, my judicial hunch is that these amendments to Civil Rule 82, in particular the new provisions reflected in (b)(3)(A) through (K), will unnecessarily and dramatically increase litigation over attorney's fees awards both in our trial courts as well as in this court.[2]

[1]In this regard I note that the Alaska Judicial Council is scheduled to conduct an in depth empirical study of the workings of Civil Rule 82. My preference is to await the results of the Council's study before deciding whether any of the current provisions of Rule 82 should be amended. Such a study should position this court to make a more informed assessment as to whether the current rule operates in a fashion which unjustly denies access to our courts. I further note that our Civil Rules Committee recently surveyed the Alaska Bar membership on discrete aspects of Civil Rule 82. A clear majority of those responding to the committee's questionnaire indicated: that Civil Rule 82 does not deter people of moderate means from filing valid claims; that the rule does not put excessive pressure on moderate income people to settle valid claims; and that the rule is needed to discourage frivolous litigation.

[2]Any attorney worth his or her salt will, pursuant to the expansive provisions of (b)(3)(A) through (K), request variations from the attorney's fees awards called for under either the monetary recovery schedule provisions of (b)(1), or the provisions of (b)(2) which apply where no money judgment is recovered by the prevailing party.

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment. According to ch. 26, § 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases **filed** on or after August 7, 1997. See paragraph 17 of this order.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.

Note: Chapter ___SLA 03 (HB 280) amends Chapters 10 and 45 of Title 9 of the Alaska Statutes relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings and limits on when certain court actions may be brought. According to Section 4(1) of the Act, AS 09.45.889(b) has the effect of amending Civil Rule 82 by allowing the court to deny attorney fees to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the prevailing party.

RULE 54.3 AWARD OF ATTORNEY'S FEES

(a) Motion. A motion for attorney's fees under Rule 54(d)(2), Federal Rules of Civil Procedure, must:

(1) state the amount requested;

(2) set forth the authority for the award, whether Rule 82, Alaska Civil Rules, a federal statute, contractual provision, or other grounds entitling the moving party to the award; and

(3) be accompanied by an affidavit that provides—

[A] total number of hours worked,

[B] the amount charged to the client, if any, and

[C] has attached as exhibits bills sent or other detailed itemization as may be appropriate.

(b) Diversity Cases. In a diversity case the court will apply Rule 82, Alaska Rules of Civil Procedure, existing at the time judgment is entered.

Related Provisions

28 U.S.C. § 1875	Protection of juror's employment
28 U.S.C. § 1927	Counsel's liability for excessive costs
28 U.S.C. § 2412	Costs and Fees
28 U.S.C. § 2465	Return of property to claimant; liability for wrongful seizure; attorney fees, costs and interest
F.R.Civ.P. 54	Judgments; Costs
Alaska Civ.R 82	Attorney's Fees

Effective October 1, 2002.

Sec. 09.60.010. Costs and attorney fees allowed prevailing party. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial, or fully contested as determined by the court. (§ 5.14 ch 101 SLA 1962; am § 4 ch 139 SLA 1986)

Cross references. — For related court rules, see Civ. R. 54, 79 and 82.

For effect of the 1986 amendment to this section on Alaska Rules of Civil Procedure 82, see § 8, ch. 139, SLA 1986, in the Temporary and Special Acts.

Editor's notes. — Section 9, ch. 139, SLA 1986 provides that the 1986 amendment to this section applies "to all causes of action accruing after June 11, 1986."

NOTES TO DECISIONS

I. General Consideration.
II. Right to Costs.
  A. Generally.
  B. Prevailing Party.
III. Award.
  A. Generally.
  B. Attorney's Fees.

I. GENERAL CONSIDERATION.

Applied in Brand v. First Fed. Sav. & Loan Ass'n, 478 P.2d 829 (Alaska 1970).

Quoted in Albritton v. Estate of Larson, 428 P.2d 379 (Alaska 1967); Thomas v. Croft, 614 P.2d 795 (Alaska 1980); Alaska Fed. Sav. & Loan Ass'n v. Bernhardt, 788 P.2d 31 (Alaska 1990); Alaska Pac. Assurance Co. v. Collins, 794 P.2d 936 (Alaska 1990); Hickel v. Southeast Conference, 868 P.2d 919 (Alaska 1994).

Cited in Guin v. Ha, 591 P.2d 1281 (Alaska 1979); Stone v. Stone, 647 P.2d 582 (Alaska 1982); Kimmons v. Heldt, 667 P.2d 1245 (Alaska 1983).

II. RIGHT TO COSTS.

A. Generally.

The right to costs is purely statutory. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

Right to costs did not exist at common law. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The authority to make awards of attorney fees is derived from this section, which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-18, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. Stepanov v. Gavrilovich, 594 P.2d 30 (Alaska 1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. Klopfenstein v. Pargeter, 597 F.2d 150 (9th Cir. 1979).

Child in need of aid proceedings. — There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, 638 P.2d 174 (Alaska 1981).

Civil R. 82 established pursuant to delegation of authority in section. — Civil R. 82, authorizing awards of attorney's fees to the prevailing party in civil litigation, apart from eminent domain proceedings, was established by the supreme court pursuant to a legislative delegation of authority found in this section. Crisp v. Kenai Peninsula Borough Sch. Dist., 587 P.2d 1168 (Alaska 1978), overruled on other grounds, Rosen v. State Bd. of Pub. Accountancy, 689 P.2d 478 (Alaska 1984).

Federal law. — Resort to state law favoring the award of at least partial attorney's fees to the prevailing party in civil actions in the absence of an express congressional directive was inappropriate in a federal question case when controlling federal common law existed and directly conflicted with the state rule. Home Sav. Bank v. Gillam, 952 F.2d 1152 (9th Cir. 1991).

B. Prevailing Party.

No party is entitled to costs until he prevails in the suit, in other words, until judgment is entered. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The prevailing party is entitled to costs. Owen Jones & Sons v. C.R. Lewis Co., 497 P.2d 312 (Alaska 1972).

Sec. 09.60.070. Attorney fees for victims of serious criminal offenses. (a) A person who has been injured or damaged, or the estate of a person who has died, may recover from the offender full reasonable attorney fees in a civil action or a wrongful death action if the injury, damage, or death resulted from

(1) an attempt on the part of the person to prevent the commission of a serious criminal offense or to apprehend an offender who has committed a serious criminal offense, or aiding or attempting to aid a police officer to do so, or aiding a victim of a serious criminal offense; or

(2) the commission or attempt on the part of the offender to commit a serious criminal offense.

(b) If a judgment for attorney fees is entered against an offender in a civil action brought under this section, and a contract of insurance requires an insurer to pay the attorney fees, the insurer shall be liable only for the attorney fees that would be awarded to the plaintiff under Alaska Rule of Civil Procedure 82(b)(1).

(c) In this section, "serious criminal offense" means the following offenses:

(1) murder in any degree;

(2) manslaughter;

(3) criminally negligent homicide;

(4) assault in any degree;

(5) kidnapping;

(6) sexual assault in any degree;

(7) sexual abuse of a minor in any degree;

(8) robbery in any degree;

(9) coercion;

(10) extortion;

(11) arson in any degree;

(12) burglary in any degree;

(13) criminal mischief in the first, second, or third degree;

(14) driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated;

(15) a crime involving domestic violence, as defined in AS 18.66.990. (§ 5 ch 57 SLA 1991; am § 2 ch 64 SLA 1996)

Revisor's notes. — Formerly AS 09.55.601. Renumbered in 1994. In 1994, in subsection (b) "Alaska Rule of Civil Procedure 82(b)(1)" was substituted for "Alaska Rule of Civil Procedure 82(a)(1)" to reflect the 1993 restructuring of the court rule.

Cross references. — For the effect of this section on Alaska Rule of Civil Procedure 82, see § 25, ch. 57, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (c), added paragraph (15) and made a related stylistic change.

Editor's notes. — Section 24, ch. 57, SLA 1991 provides that this section "applies to an action arising from a crime committed or attempted on or after September 15, 1991."

Collateral references. — Measure and elements of restitution to which victim is entitled under state criminal statute, 15 ALR5th 391.

3 AAC 26.510. DUTY TO DEFEND POLICY. A policy under which an insurer has a right or duty to provide a defense for an insured must provide coverage for the payment of attorney fees taxable as costs against the insured under Alaska Rule of Civil Procedure 82 subject to the following minimum limits:

(1) as an additional amount of coverage, a policy that provides a defense in addition to the limit of liability must provide for payment of attorney fees awarded as costs against an insured under Alaska Rule of Civil Procedure 82 that is not less than the amount calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage;

(2) as an additional amount of coverage, a policy that provides a defense within an applicable limit of liability less than $1,000,000 must provide for payment of attorney fees awarded as costs against an insured under Alaska Rule of Civil Procedure 82 that is not less than the greater of

(A) the amount calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage; or

(B) $10,000;

(3) a policy that provides a defense within an applicable limit of liability of $1,000,000 or more may include within its limit of liability coverage for attorney fees awarded as costs against an insured under Alaska Rule of Civil Procedure 82. (Eff. 7/1/96, Register 138)

Authority: AS 21.06.090 AS 21.36.150 AS 21.42.120 AS 21.42.130 AS 21.42.160

3 AAC 26.520. INDEMNITY POLICY WITH A DEFENSE COST OBLIGATION. A policy under which an insurer has neither a right nor a duty to provide a defense but agrees to indemnify an insured for the costs of defense must provide coverage to indemnify an insured for the payment of attorney fees taxed as costs against the insured under Alaska Rule of Civil Procedure 82 subject to the following minimum limits:

(1) as an additional amount of coverage, a policy with an applicable limit of liability less than $1,000,000 must provide for payment of attorney fees awarded as costs against an insured under Alaska Rule of Civil Procedure 82 that is not less than the greater of

(A) an amount calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage; or

(B) $10,000;

(2) a policy with an applicable limit of liability of $1,000,000 or more may include within its limit of liability coverage for attorney

fees awarded as costs against an insured under Alaska Rule of Civil Procedure 82. (Eff. 7/1/96, Register 138)

Authority: AS 21.06.090 AS 21.36.150 AS 21.42.120 AS 21.42.130 AS 21.42.160

3 AAC 26.530. POLICY WITH NO DEFENSE COST OBLIGATION. An insurer is not required to provide coverage for the payment of attorney fees awarded as costs under Alaska Rule of Civil Procedure 82 against an insured in a policy under which an insurer has no right or duty to provide a defense or in a policy under which an insurer has not agreed to indemnify the insured for the costs of defense. Nothing in this section affects an insurer's right to participate in the defense of its insured at its own cost if that right is part of the policy. (Eff. 7/1/96, Register 138)

Authority: AS 21.06.090 AS 21.36.150 AS 21.42.120 AS 21.42.130 AS 21.42.160

3 AAC 26.540. NO ADDITIONAL PREMIUM CHARGE FOR MINIMUM COVERAGE. An insurer may not charge a separate premium for the minimum coverage required under 3 AAC 26.510 or 3 AAC 26.520. An insurer may charge a separate premium for coverage in excess of the minimum required. An admitted insurer shall secure from the director prior approval for premiums charged as required under AS 21.39.040. (Eff. 7/1/96, Register 138)

Authority: AS 21.06.090 AS 21.36.150 AS 21.39.020 AS 21.39.030 AS 21.39.040

3 AAC 26.550. REQUIRED NOTICE. (a) A policy issued by an insurer that limits coverage as permitted under 3 AAC 26.510, 3 AAC 26.520, or 3 AAC 26.530 must include a policyholder notice regarding Alaska Rule of Civil Procedure 82.

(b) The notice required by (a) of this section must

(1) conform with the division's

(A) Attorney Fees Coverage Notice A, dated March 29, 1996, and hereby adopted by reference, for a policy with a duty to defend in addition to its limit of liability;

(B) Attorney Fees Coverage Notice B, dated March 29, 1996, and hereby adopted by reference, for a policy with a duty to defend within its limit of liability;

(C) Attorney Fees Coverage Notice C, dated March 29, 1996, and hereby adopted by reference, for an indemnity policy that covers defense costs; or

(D) Attorney Fees Coverage Notice D, dated March 29, 1996, and hereby adopted by reference, for a policy with no defense cost obligations; or

(2) be approved in writing by the director upon a determination that the proposed notice is substantially equivalent to the division's Attorney Fees Coverage Notice A, B, C, or D. (Eff. 7/1/96, Register 138)

Authority: AS 21.06.090 AS 21.36.150 AS 21.42.120 AS 21.42.130 AS 21.42.160

Editor's note: A copy of the notices required by 3 AAC 26.550 may be obtained from the division of insurance, Department of Community and Economic Development, P.O. Box 110805, Juneau, Alaska 99811-0805.

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Commerce and Economic Development to the Department of Community and Economic Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of commerce and economic development.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

P.O. BOX 110805
JUNEAU, ALASKA 99811-0805
PHONE: (907) 465-2515

Bulletin B96-04

TO: **All Licensees, Insurance Companies, and Interested Parties**

PURPOSE: **This bulletin provides notice of new requirements regarding coverage for Alaska Rule of Civil Procedure 82 applicable to insurance policies issued on or after July 1, 1996, by all admitted and nonadmitted insurers.**

Order R 96-03 adopted new regulations under Article 3, Chapter 26 - Trade Practices, and repealed 3 AAC 29.010, effective July 1, 1996. Beginning July 1, 1996, an insurance policy issued by an insurer that limits coverage for attorney fees taxable against an insured under Alaska Rule of Civil Procedure 82 must satisfy the minimum standards of 3 AAC 26.500 - 3 AAC 26.550. In addition, all such policies issued by an insurer must include the appropriate policyholder notice that conforms with the division's Attorney Fees Coverage Notices A, B, C, or D. Order R 96-03 included the finding that limitations of coverage for attorney fees taxable against an insured under Alaska Rule of Civil Procedure 82 that do not address an insured's reasonable expectations for coverage or do not provide adequate disclosure of the insured's potential uninsured liability constitute an unfair or deceptive trade act.

Since 1982, when 3 AAC 29.010 was adopted, insurers, policyholders, and the courts have attempted to address the many issues not addressed by that regulation. By clearly applying to all insurers, 3 AAC 26.500 - 3 AAC 26.550 should clarify whether, or how admitted or nonadmitted insurers may limit coverage for attorney fees taxable against an insured under Alaska Rule of Civil Procedure 82. Where the old regulation was premised upon a policy providing a defense in addition to the limits of liability, the new regulation addresses the different types of policies that are common today. The disclosure requirement of the old regulation has been the subject of much litigation. Taking guidance from court decisions, the notices referenced in the new regulations reflect the permissible limitations for different types of policies and provide adequate disclosure of an insured's potential uninsured liability.

The order of adoption provided more than two months, rather than the normal 30 days before regulations take effect, so that insurers have extra time to take action necessary to comply with the revised requirements. To further assist insurers, insurance producers, and others in complying with the revised requirements, this bulletin is being issued and includes as an attachment a copy of Order R 96-03, the new regulations, and copies of the four Attorney Fees Coverage Notices.

Dated this 19th day of April, 1996.

Marianne K. Burke
Director of Insurance

MKB/JB/dgl/1141jb
041996a

ORDER R 96-03 ADOPTING OR REPEALING REGULATIONS OF THE DIVISION OF INSURANCE

The attached 7 pages of regulations dealing with coverage for attorney fees taxable as costs against an insured according to Alaska Rule of Civil Procedure 82, are hereby adopted and certified to be correct copies of the regulations that the Division of Insurance adopts (3 AAC 26.500 - 3 AAC 26.550) and repeals (3 AAC 29.010) under the authority of AS 21.06.090 and AS 21.36.150, to implement, interpret, and make specific AS 21.36.150, AS 21.39.020, 21.39.030, and 21.39.040, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

I, Marianne K. Burke, the director of insurance, find that limitations of coverage for attorney fees taxable as costs against an insured according to Alaska Rule of Civil Procedure 82 that do not address an insured's reasonable expectations for coverage or do not provide adequate disclosure of the insured's potential uninsured liability constitute an unfair or deceptive trade act. Therefore, the adoption or repeal of regulations under this order is appropriate.

This regulations adopted under this order take effect on July 1, 1996, as provided in AS 44.62.180.

DATED this 29th day of March, 1996, at Anchorage, Alaska.

Marianne K. Burke, Director
Division of Insurance
Department of Commerce and
Economic Development

FILING CERTIFICATION

I, Fran Ulmer, Lieutenant Governor for the State of Alaska, certify that on April 4, 1996, at 11:30 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective: July 1, 1996

Register: 138, July 1996

March 29, 1996

ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ATTORNEY FEES COVERAGE NOTICE A

THIS POLICY LIMITS COVERAGE FOR ATTORNEY FEES UNDER ALASKA RULE OF CIVIL PROCEDURE 82

In any suit in Alaska in which we have a right or duty to defend an insured in addition to the limits of liability, our obligation under the applicable coverage to pay attorneys fees taxable as costs against the insured is limited as follows:

Alaska Rule of Civil Procedure 82 provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Alaska Rule of Civil Procedure 82. We provide coverage for attorney fees for which you are liable under Alaska Rule of Civil Procedure 82 subject to the following limitation:

> **We will not pay that portion of any attorney's fees that is in excess of fees calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage.**

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

For example, the attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

> 20% of the first $25,000 of a judgment;
> 10% of the amounts over $25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of $125,000, in addition to that amount you would be liable under Alaska Rule of Civil Procedure 82(b)(1) for attorney fees of $15,000, calculated as follows:

	20% of $25,000		$5,000
	10% of $100,000		$10,000
Total Award	$125,000	Total Attorney Fees	$15,000

If the limit of liability of the applicable coverage is $100,000, we would pay $100,000 of the $125,000 award, and $12,500 for Alaska Rule of Civil Procedure 82(b)(1) attorney fees, calculated as follows:

20% of $25,000	$5,000
10% of $75,000	$7,500

Total Limit of Liability $100,000 Total Attorney Fees Covered $12,500

You would be liable to pay, directly and without our assistance, the remaining $25,000 in liability plus the remaining $2,500 for attorney fees under Alaska Rule of Civil Procedure 82 not covered by this policy.

March 29, 1996

ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ATTORNEY FEES COVERAGE NOTICE B

THIS POLICY LIMITS COVERAGE FOR ATTORNEY FEES UNDER ALASKA RULE OF CIVIL PROCEDURE 82

In any suit in Alaska in which we have a right or duty to defend an insured within the limits of liability, our obligation under the applicable coverage to pay attorney fees taxable as costs against the insured is limited as follows:

Alaska Rule of Civil Procedure 82 provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Alaska Rule of Civil Procedure 82. We provide coverage for attorney fees for which you are liable under Alaska Rule of Civil Procedure 82 subject to the following limitation:

If the limit of liability of the applicable coverage is $1,000,000 or more, we will not pay any combination of judgment or claim settlement and attorney fees under Alaska Rule of Civil Procedure 82 that exceeds the limit of liability of the applicable coverage.

If the limit of liability of the applicable coverage is less than $1,000,000, we will not pay more than the greater of

(1) that portion of any attorney's fees that is calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage; or

(2) $10,000.

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

Example 1:

The attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

20% of the first $25,000 of a judgment;
10% of the amounts over $25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of $1,250,000, in addition to that amount you would be liable for attorney fees of $127,500 under Alaska Rule of Civil Procedure

82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $1,225,000	$122,500
Total Award	$1,250,000	Total Attorney Fees $127,500

If the limit of liability of the applicable coverage is $1,000,000, we would pay $1,000,000 of the $1,250,000 award, less the costs incurred defending you, and none of the attorney fees under Alaska Rule of Civil Procedure 82(b)(1).

You would be liable to pay, directly and without our assistance, the remaining judgment in excess of the remaining policy limit plus the $127,500 attorney fees under Alaska Rule of Civil Procedure 82.

Example 2:

The attorney fees provided by the schedule for contested cases under Alaska Rule of Civil Procedure 82(b)(1) are:

20% of the first $25,000 of a judgment;
10% of the amounts over $25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of $650,000, in addition to that amount you would be liable under Alaska Rule of Civil Procedure 82(b)(1) for attorney fees of $67,500, calculated as follows:

	20% of $25,000	$5,000
	10% of $625,000	$62,500
Total Award	$650,000	Total Attorney Fees $67,500

If the limit of liability of the applicable coverage is $500,000, we would pay $500,000 of the $650,000 award, less the costs incurred defending you, and $52,500 of the attorney fees under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $475,000	$47,500
Total Limit of Liability	$500,000	Total Attorney Fees Covered $52,500

You would be liable to pay, directly and without our assistance, the judgment in excess of the remaining policy limit plus the remaining $15,000 for attorney fees under Alaska Rule of Civil Procedure 82 not covered by this policy.

Example 3:

The attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

20% of the first $25,000 of a judgment;
10% of the amounts over $25,000 of a judgment.

Therefore, if a court enters a judgment against you in the amount of $500,000, in addition to that amount you would be liable for attorney fees of $52,500 under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $475,000	$47,500
Total Award	$500,000	Total Attorney Fees $52,500

If the limit of liability of the applicable coverage is $50,000, we would pay $50,000 of the $500,000 award less the costs incurred defending you, and $10,000 of the attorney fees under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $25,000	$2,500
		Minimum limit: $10,000
Total Limit of Liability	$50,000	Total Attorney Fees Covered $10,000

You would be liable to pay, directly and without our assistance, the judgment in excess of the remaining policy limit plus the remaining $42,500 for attorney fees under Alaska Rule of Civil Procedure 82 not covered by this policy.

March 29, 1996

ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
ATTORNEY FEES COVERAGE NOTICE C

THIS POLICY LIMITS COVERAGE FOR ATTORNEY FEES UNDER ALASKA RULE OF CIVIL PROCEDURE 82

In any suit in Alaska in which we have neither a right nor a duty to provide a defense but we have agreed to indemnify an insured for the costs of defense within the limits of liability, our obligation under the applicable coverage to pay attorney fees taxable as costs against the insured is limited as follows:

Alaska Rule of Civil Procedure 82 provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Alaska Rule of Civil Procedure 82. We provide coverage for attorney fees for which you are liable under Alaska Rule of Civil Procedure 82 subject to the following limitation:

If the limit of liability of the applicable coverage is $1,000,000 or more, we will not indemnify you for any combination of judgment or claim settlement and attorney fees under Alaska Rule of Civil Procedure 82 that exceeds the limit of liability of the applicable coverage.

If the limit of liability of the applicable coverage is less than $1,000,000, we will not pay more than the greater of

(1) that portion of any attorney's fees that is calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage; or

(2) $10,000.

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

Example 1:

The attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

20% of the first $25,000 of a judgment;

10% of the amounts over $25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of $1,250,000, in addition to that amount you would be liable for attorney fees of $127,500 under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $1,225,000	$122,500
Total Award	$1,250,000	Total Attorney Fees $127,500

If the limit of liability of the applicable coverage is $1,000,000, we would indemnify you for $1,000,000 of the total of the $1,250,000 award and your costs of defense, but we would indemnify you for none of the attorney fees under Alaska Rule of Civil Procedure 82(b)(1).

You would be liable to pay, directly and without our assistance, the remaining judgment in excess of the remaining policy limit plus the $127,500 attorney fees under Alaska Rule of Civil Procedure 82.

Example 2:

The attorney fees provided by the schedule for contested cases are in Alaska Rule of Civil Procedure 82(b)(1):

20% of the first $25,000 of a judgment;
10% of the amounts over $25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of $650,000, in addition to that amount you would be liable under Alaska Rule of Civil Procedure 82(b)(1) for attorney fees of $67,500, calculated as follows:

	20% of $25,000	$5,000
	10% of $625,000	$62,500
Total Award	$650,000	Total Attorney Fees $67,500

If the limit of liability of the applicable coverage is $500,000, we would indemnify you for $500,000 of the total of the $650,000 award and your costs of defense, and we would also indemnify you for $52,500 for the attorney fees under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000	$5,000
	10% of $475,000	$47,500
Total Limit of Liability	$500,000	Total Attorney Fees Covered $52,500

You would be liable to pay, directly and without our assistance, the judgment in excess of the remaining policy limit plus the remaining $15,000 for attorney fees under Alaska Rule of Civil Procedure 82 not indemnified by this policy.

Example 3:

The attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

20% of the first $25,000 of a judgment;
10% of the amounts over $25,000 of a judgment.

Therefore, if a court enters a judgment against you in the amount of $500,000, in addition to that amount you would be liable for attorney fees of $52,500 under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000		$5,000
	10% of $475,000		$47,500
Total Award	$500,000	Total Attorney Fees	$52,500

If the limit of liability of the applicable coverage is $50,000, we would indemnify you for $50,000 of the total of the $500,000 award and your costs of defense, and we would also indemnify you for $10,000 of the attorney fees under Alaska Rule of Civil Procedure 82(b)(1), calculated as follows:

	20% of $25,000		$5,000
	10% of $25,000		$2,500
		Minimum limit:	$10,000
Total Limit of Liability	$50,000	Total Attorney Fees Covered	$10,000

You would be liable to pay, directly and without our assistance, the judgment in excess of the remaining policy limit plus the remaining $42,500 for attorney fees under Alaska Rule of Civil Procedure 82 not covered by this policy.