



STATE OF ALASKA COMPENDIUM OF LAW

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PRE-SUIT AND INITIAL CONSIDERATIONS

Pre-Suit Notice Requirements/Prerequisites to Suit

There are generally no prerequisites to suit in civil cases in Alaska.

- A) **Construction.** There is a prerequisite to suit in certain claims involving the sale of new dwellings. Like the majority of states, Alaska has a Notice and Opportunity to Repair statute. *See* ALASKA STAT. § 09.45.881 *et seq.* Alaska's statute applies to claims against construction professionals for defects in design, construction, or remodeling of a dwelling. ALASKA STAT. § 09.45.881. Construction professionals include registered contractors, architects, and engineers. Dwellings include single-family homes, duplexes, and multi-family housing units. For all other definitions, see ALASKA STAT. § 09.45.899.
- B) **Employment.** There are also prerequisites to suit in certain employee actions against employers, for example, where a collective bargaining agreement provides contractual or administrative remedies. *Cozzen v. Municipality of Anchorage*, 907 P.2d 473, 475 (Alaska 1995).
- C) **Human rights.** In human rights actions, the plaintiff must serve a copy of the complaint on the State Commission for Human Rights. However, this requirement of is not a jurisdictional requirement for maintenance of human rights claims in superior court, which means that a claim will not be dismissed if it is not met. *Dep't of Revenue v. Andrade*, 23 P.3d 58, 79 (Alaska 2001).
- D) **Medical malpractice.** Although it is not a prerequisite to sue, courts are required to appoint an expert advisory panel in medical malpractice cases if such a panel is necessary to adjudicate the case. ALASKA STAT. § 09.55.536.

This list is not intended to be comprehensive as to statutes involving pre-suit notice requirements.

Relationship to the Federal Rules of Civil Procedure

Alaska has adopted its own Rules of Civil Procedure, entitled the Alaska Rules of Civil Procedure, which are generally modeled after the Federal Rules of Civil Procedures. There are a number of differences, particularly in the area of discovery.

Description of the Organization of the State Court System

- A) **Judicial selection.** Alaska has a merit system of judicial selection. All Alaska supreme and trial court judges are appointed by the governor from a list of candidates submitted by the Alaska Judicial Council. ALASKA CONST. art. IV, § 5. Thereafter, judges are subject to retention elections, where they must obtain a majority of votes to remain in office. ALASKA CONST. art. IV, § 6.

The appointment process involves several entities. People who wish to be considered for the bench submit their names to the Alaska Judicial Council, an independent organization. The Judicial Council has seven members. The Chief Justice of Alaska's Supreme Court is the Council's chairperson. Three members are attorneys appointed by the Alaska Bar Association. Three members cannot be attorneys and are appointed by the Governor subject to legislative confirmation. ALASKA CONST. art. IV, § 8. The Council then reviews the qualifications of the candidates and submits the names of the three top candidates to the governor. The governor must select a judge from the list of candidates submitted. ALASKA CONST. art. IV, § 5.

- B) **Structure.** The Alaska court system has three court levels: the trial courts, the Court of Appeals, and the Alaska Supreme Court. The Court of Appeals handles criminal appeals only. ALASKA STAT. § 22.07.020. There is discretionary review of Court of Appeals rulings by the Supreme Court. ALASKA STAT. § 22.07.030.

The trial courts are divided into the District Courts, which are courts of limited jurisdiction that handle smaller matters, and the Superior Courts, which are courts of general jurisdiction. Civil cases that seek damages less than \$100,000.00 generally must be filed in District Court. ALASKA STAT. § 22.15.030. Discovery is more limited in District Court cases. District Court cases are appealable to the Superior Court. There is discretionary review of Superior Court appeal rulings by the Supreme Court. ALASKA STAT. § 22.05.010.

The court system is divided into four judicial districts that cover the state. Each judicial district is then divided into a number of venue districts. The lines for the judicial districts and venue districts do not necessarily follow any political boundaries. Each judicial district will contain several superior court locations and a larger number of venue districts or district court locations. ALASKA STAT. § 22.15.020.

- C) **Alternative Dispute Resolution.** Alaska's trial courts do not have a program of mandatory alternative dispute resolution, although ADR is encouraged. The courts' judges generally make themselves available for settlement conferences upon request. The Alaska Supreme Court recently adopted a program of mandatory settlement discussions in civil appeals. Also, the court frequently orders the parties to attend settlement conferences. *See* ALASKA R. APP. P. 221, 222.

Service of Summons

- A) **Person.** Service of summons upon a person is governed by Alaska Civil Rule 4. This rule allows personal service and service of process by mail. A summons also may be left at an individual's dwelling with a person of suitable age and discretion.
- B) **State of Alaska.** Service of process for the State of Alaska is governed by Alaska Civil Rule 4(d)(7), which requires service of process on the Attorney General, as prescribed by the rule.

- C) **Public corporations.** Public corporations may be served by serving the chief executive officer, chief clerk, or the corporation's secretary. ALASKA CIV. R. 4(d)(9).
- D) **Private corporations.** Private corporations may be served by delivering a copy of the summons and complaint to an officer or registered agent for service of process. ALASKA CIV. R. 4(d)(4). The Alaska Corporations Code requires each corporation to appoint an agent for service of process. Service of process may also be accomplished through service on the Commissioner of the Alaska Department of Commerce, Community, and Economic Development, if after reasonable diligence the registered agent cannot be served. ALASKA STAT. § 10.06.175.
- E) **Waiver.** The Alaska Civil Rules do not have provisions addressing waiver of service of process. Under Alaska's statutes, an entry of appearance is considered a waiver of service. ALASKA STAT. § 09.05.010.
- F) **Other service of process.** Service of process on other types of organizations, such as limited liability corporations, unincorporated associations, partnerships, infants, and incompetent persons is also addressed in Alaska Civil Rule 4.

Statutes of Limitations

- A) **Construction claims.** There is no designated statute of limitations for construction claims. The statute of limitations differs depending on the nature of the claim.
- B) **Contract.** The same statute applies to written and oral contracts. The statute of limitations for contract claims accruing after August 7, 1997, is three years. ALASKA STAT. § 09.10.053. For contract actions arising before August 7, 1997, the statute of limitations is six years. ALASKA STAT. § 09.10.053 (1995). A ten-year statute of limitations applies to an action brought upon a sealed instrument. ALASKA STAT. § 09.10.040.
- C) **Contribution.** Alaska has no contribution statute, but there potentially is a court-created cause of action for implied contribution. *See McLaughlin v. Lougee*, 137 P.3d 267, 279 (Alaska 2006). This action may be brought after resolution of the underlying claim, but the court has not determined the applicable statute of limitations for this type of action. *Id.*
- D) **Employment.** The statute of limitations for employment discrimination claims is two years. *See* ALASKA STAT. § 09.10.070. The statute of limitations for wage and hour claims likewise is two years. ALASKA STAT. § 23.10.130. A claim for breach of the employment contract would be subject to the three year contract statute of limitations. *See* ALASKA STAT. § 09.10.053.
- E) **Fraud.** Misrepresentation and fraud are tort concepts, and the two-year statute of limitations respecting torts governs these claims. *Hutton v. Realty Execs., Inc.*, 14 P.3d 977, 979-80 (Alaska 2000); *Alaska Tae Woong Venture, Inc. v. Westward Seafoods, Inc.*, 963 P.2d 1055, 1065 (Alaska 1998).

- F) **Government entities.** An action brought in the name of or for the benefit of the state, political subdivisions, or public corporations may be commenced within six years of the accrual of the cause of action. ALASKA STAT. § 09.10.120. There is no statute of limitations as to quiet title actions or actions to protect resources held in the public trust. *Id.*
- G) **Improvements to realty.** The limitations period for damage to realty or improvements to realty is six years. ALASKA STAT. § 09.10.050; *State Farm Fire & Cas. Co. v. White-Rodgers Corp.*, 77 P.3d 729, 732 (Alaska 2003) (holding that the six-year trespass statute of limitations applies for claims involving a “substantial interference” with property).
- H) **Indemnity.** The general rule is that a claim for contribution or indemnity based upon tort is distinct from the cause of action for the underlying tort, and the time when the statute of limitations starts to run upon an indemnity action is not when the tort is committed, but when there is a judgment or settlement of the underlying claim. *Alaska Gen. Alarm, Inc. v. Grinnell*, 1 P.3d 98, 105 (Alaska 2000).

An indemnity claim based on contractual indemnity would be subject to a three-year contract statute of limitations. There is little Alaska guidance on the length of the statute of limitation for implied indemnity, but the likely statute of limitations is the three-year statute of limitations for implied contracts. *See* ALASKA STAT. § 09.10.053.

- I) **Personal injury.** The statute of limitations for personal injury is generally two years. ALASKA STAT. § 09.10.070. Alaska has adopted the "discovery" rule, which provides that the statute of limitations begins to run when a plaintiff discovers or should have discovered that a claim may exist. *John's Heating Serv. v. Lamb*, 46 P.3d 1024, 1031-32 (Alaska 2002); *Hanebuth v. Bell Helicopter, Int'l*, 694 P.2d 143, 144 (Alaska 1984).

Claims for breach of warranty under the Uniform Commercial Code are subject to a four-year statute of limitations. ALASKA STAT. § 45.02.725.

- J) **Professional liability.** The Alaska Supreme Court has applied the three-year contract statute of limitations where there is a breach of duties implied in a professional services contract, leading to economic loss, as such claims "aris[e] out of contract." *See Hutton v. Realty Execs., Inc.*, 14 P.3d 977, 980 (Alaska 2000); *Breck v. Moore*, 910 P.2d 599, 603 (Alaska 1996).
- K) **Property damage.** The statute of limitations for injury to personal property is two years. ALASKA STAT. § 09.10.050. As noted above, the limitations period for damage to realty (and improvements to realty) is six years. ALASKA STAT. § 09.10.070.
- L) **Survival.** Alaska does not have a separate statute of limitations for survival actions. *See generally* ALASKA STAT. § 09.55.570.
- M) **Tolling.** If a plaintiff is either incompetent or a minor at the time the cause of action accrues, the statute of limitations is tolled until two years after the disability ceases. ALASKA STAT. § 09.10.140(a); *Yurioff v. Am. Honda Motor Co.*, 803 P.2d 386, 390 (Alaska

1990). However, a person may not claim the benefit of a disability unless it existed when the right of action accrued or began before the time for commencing the action expired. ALASKA STAT. § 09.10.180.

The part of the 1997 Tort Reform Act that tolled the statute of limitations for minors until either their eighth birthday or two years after the cause of action accrued has been found unconstitutional under the state constitution's due process clause. *Sands ex rel. Sands v. Green*, 156 P.3d 1130, 1136 (Alaska 2007).

- N) **Wrongful death.** A wrongful death action must be brought within two years from the time of death. ALASKA STAT. § 09.55.580(a).

Statute of Repose

The 1997 Alaska Tort Reform statute creates a ten-year statute of repose for tort actions. This statute establishes that a person may not bring an action for personal injury, death, or property damages unless the action is commenced within "10 years or the earlier of . . . (1) substantial completion of the construction" or "(2) the last act alleged to have caused the personal injury, death or property damage." ALASKA STAT. § 09.10.055(a)(1), (2). This ten-year statute of repose applies to causes of action accruing on or after August 7, 1997.

The statute of repose applies even where the plaintiff is under the age of majority or under a disability at the time of injury. *See* ALASKA STAT. § 09.10.055(a).

- A) **Exceptions.** There are a significant number of exceptions to the statute of repose that limit the application of the statute. ALASKA STAT. § 09.10.055(b). For example, the statute does not apply where:

- 1) the personal injury, death or property damage was caused by (a) prolonged exposure to hazardous waste; (b) an intentional act or gross negligence; (c) fraud or misrepresentation; (d) breach of an express warranty or guarantee; (e) a defective product; or (f) breach of trust or fiduciary duty;
- 2) the facts that would give notice of a potential cause of action are intentionally concealed;
- 3) a shorter period of time for bringing the action is imposed under another provision of law;
- 4) there is a contractual waiver; or
- 5) the facts that would constitute accrual of a cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

- B) **Constitutionality.** A prior Alaska statute of repose was declared unconstitutional by the Alaska Supreme Court. *Turner Constr. Co. v. Scales*, 752 P.2d 467, 471 (Alaska 1988). The current statute of repose has been found to be constitutional because it does not violate due process. *Evans v. State*, 56 P.3d 1046, 1068 (Alaska 2002). However, the constitutionality of the statute as applied to minors may be in doubt because of due process concerns. *See Sands ex rel. Sands v. Green*, 156 P.3d 1130, 1136 (Alaska 2007).

Venue Rules

Venue is governed by both court rules and statutory authority. *See* ALASKA CIV. R. 3; ALASKA STAT. § 22.10.040.

- A) **Commencing an action.** Alaska Civil Rule 3 controls where the cause of action should be commenced. Actions related to real property should be commenced in a superior court in the judicial district in which the real property is located. ALASKA CIV. R. 3(b). Other causes of action should be brought in the judicial district in which the claim arose or the judicial district where the defendant may be personally served. *See* ALASKA CIV. R. 3(c).
- B) **Changing venues.** Venue may be changed under Alaska Civil Rule 3(d), which holds that trial should be held in the venue district within the judicial district which would best serve the convenience of the parties and witnesses. In addition, venue may be changed when there is reason to believe that an impartial trial cannot be had or when change of venue would promote the convenience of the witnesses and the ends of justice. ALASKA STAT. § 22.10.040.

NEGLIGENCE

Comparative Fault/Contributory Negligence

Alaska is a pure comparative fault state and allows the apportionment of fault to plaintiffs and all other parties to the action in warranty and tort-based actions. ALASKA STAT. §§ 09.17.060, .080, .900. That is, a defendant's share of financial responsibility for the judgment is reduced according to the percentage of fault apportioned to the other parties. *Id.* Fault is broadly defined to include negligent, reckless or intentional misconduct, breach of warranty, misuse of a product, unreasonable failure to avoid an injury, or failure to mitigate damages. ALASKA STAT. § 09.17.900.

- A) **Parties.** Prior to the Tort Reform Act of 1997, a defendant who wished to allocate fault to a non-party was required to join the party to the action. *Benner v. Wichman*, 874 P.2d 949, 958 (Alaska 1994) (fault may not be allocated to individuals who may have been at fault, but who were not properly joined as parties).

Under the 1997 Tort Reform Act, it is no longer necessary for a defendant to join a party in order to allocate fault in all situations. Fault may now be apportioned to non-parties if the parties did not have "sufficient opportunity to join" the absent party. The statute holds there is not "sufficient opportunity to join" if the party is outside the jurisdiction of the court, is not reasonably locatable, or where joinder is precluded by law. Where a party to

an action has sufficient opportunity to join a party, but chooses not to do so, fault still cannot be allocated to the absent party. ALASKA STAT. § 09.17.080.

- B) **Relationship with Workers' Compensation Act.** Fault may be allocated to the plaintiff's employer despite the exclusive remedy provisions of the Workers' Compensation Act. The employer does not need to be joined for fault to be allocated to it because it is not subject to judgment. Allocation of fault to an employer affects the worker's compensation carrier's right to recover on its workers' compensation lien.

Exclusive Remedy – Worker's Compensation Protections

Under Alaska's Workers' Compensation statute, employers and co-employees are protected from suit for on-the-job injuries. ALASKA STAT. § 23.30.055; *State v. Purdy*, 601 P.2d 258, 259 (Alaska 1979); *Elliott v. Brown*, 569 P.2d 1323, 1325-26 (Alaska 1977) (workmen's compensation is an exclusive remedy and bars a common-law action against a fellow employee).

- A) **Exclusive Remedy Provisions Extended To Owners/Contractors.** In 2004 the Alaska Legislature amended the Alaska Workers' Compensation Act and provided immunity from tort liability to both general contractors and project owners, i.e., those contractually upstream from the injured worker's employer. *Schiel v. Union Oil Co. of Cal.*, 219 P.3d 1025, 1029 (Alaska 2009). The term "project owner" has been given a broad definition by the Alaska court to include those companies that regularly use contractors in their business, *Anderson v. Alyeska Pipeline Serv. Co.*, 234 P.3d 1282, 1288 (Alaska 2010), and small businesses that may hire a contractor to assist with remodeling their offices. *Trudell v. Hibbert*, 272 P.3d 331 (Alaska 2012).
- B) **Exceptions.** Workers' compensation protection does not apply when an employee commits an intentional tort upon a fellow employee, or where injury results from responsibilities not "inextricably intertwined" with an individual's employment duties. *Sauve v. Winfree*, 907 P.2d 7 (Alaska 1995) (co-employee may be liable for responsibilities which are not "incident to" nor "inextricably intertwined" with their employment duties); *Elliott v. Brown*, 569 P.2d 1323, 1327 (Alaska 1977) (socially beneficial purpose of the workmen's compensation law would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability). Another exception is where an employer fails to purchase the required workers' compensation insurance. *Ehredt v. deHavilland Aircraft Co.*, 705 P.2d 913, 916 n.6 (Alaska 1985).

Indemnification and Contribution

- A) **Express indemnity.** In the commercial context, Alaska courts enforce written indemnity agreements, regardless of the comparative fault of the parties. In other words, the parties to a contract can agree that one party or the other will be responsible for damages arising out of the performance of the contract. Alaska courts will enforce an indemnity clause as reasonably construed, even if the provision does not specify that the indemnitee is entitled to recover for liability resulting from its own negligence. If the reasonable construction dictates that the clause provides coverage for the indemnitee's own negligence, it is

irrelevant whether or not the indemnitor was also negligent. *Duty Free Shoppers Grp. Ltd. v. State*, 777 P.2d 649, 652 (Alaska 1989).

Exception. There is a statutory exception in the area of construction contracts. For a construction contract, any contractual provision that has the effect of indemnifying a person for that person's sole negligent or willful misconduct is against public policy and void. ALASKA STAT. § 45.45.900; *Hoffman Constr. Co. of Alaska v. U.S. Fabrication & Erection, Inc.*, 32 P.3d 346, 354 (Alaska 2001).

- B) **Implied indemnity.** Even where there is not an express indemnity agreement, a party that is not at fault can recover damages it has paid from another party who is at fault under the doctrine of implied indemnity. Alaska allows implied indemnity by a non-negligent party against the party primarily responsible, for example, in a product liability action. *Koehring Mfg. Co. v. Earthmovers of Fairbanks, Inc.*, 763 P.2d 499 (Alaska 1988); *Ross Labs. v. Thies*, 725 P.2d 1076 (Alaska 1986). Alaska courts thus allow claims for implied contractual indemnity where the indemnitee (a) was not liable except vicariously for the tort of the indemnitor, or (b) was not liable except as a seller of a product supplied by the indemnitor and the indemnitee was not independently culpable. The indemnitor must also have secured the release of the indemnitee. *AVCP Reg'l Hous. Auth. v. R.A. Vranckaert Co.*, 47 P.3d 650, 657 (Alaska 2002). As one court stated, "The general rule of implied indemnity in Alaska is that an innocent supplier of a defective product who is liable on a theory of strict liability is entitled to indemnity from the manufacturer of the defective product." *Palmer G. Lewis Co. v. ARCO Chem. Co.*, 904 P.2d 1221, 1224 (Alaska 1995) (internal citations omitted).

Alaska case law holds that there is no implied indemnity among concurrently negligent tortfeasors. *Vertecs Corp. v. Reichhold Chems., Inc.*, 671 P.2d 1273, 1274 (Alaska 1983). As discussed below, a concurrently negligent tortfeasor may have an action for implied contribution, against other tortfeasors, however.

- C) **Contribution.** Contribution allows a party who is partially at fault, and has paid a judgment or settlement, to recover part of that payment from another party who was at fault but has not paid or settled. Alaska has no contribution statute.
- D) **Implied contribution.** Alaska potentially recognizes a common law implied contribution action by a tortfeasor against another, non-settling tortfeasor. *McLaughlin v. Lougee*, 137 P.3d 267, 279 (Alaska 2006). This cause of action, if adopted, would only apply to post-1989 torts (1989 is the year Alaska's prior contribution statute was repealed). It is likely Alaska will follow the Restatement (Third) of Torts: Apportionment of Liability, section 23 because Alaska cases have cited to it. *Id.* at 279 n.64. Thus, "[w]hen two or more persons are or may be liable for the same harm and one of them discharges the liability of another by settlement or discharge of judgment, the person discharging the liability is entitled to recover contribution from the other, unless the other previously had a valid settlement and release from the plaintiff." *Id.* (quoting RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY § 23(a)).

Joint and Several Liability

Under joint liability laws, all tortfeasors are responsible for paying all of a plaintiff's damages regardless of their level of fault. Under several liability, each tortfeasor is responsible only for his proportional share of the fault. Under a joint and several liability scheme, each tortfeasor is responsible for all of the damages to a plaintiff, but may seek contribution from the other tortfeasors based on each tortfeasor's proportion of the fault. Joint and several liability has been abolished in Alaska. ALASKA STAT. § 09.17.080(d).

Alaska is a several liability state, meaning that tortfeasors are only liable for their proportion of the fault. ALASKA STAT. § 09.17.080(d). For example, in the case of *Sowinski v. Walker*, 198 P.3d 1194 (Alaska 2008), the Alaska court held that a bar that violates the dram shop law is liable only for its own percentage of fault as allocated to it by the jury, and not the fault of the intoxicated minor that purchased the alcohol.

Strict Liability

Under the doctrine of strict liability, a person can be found liable without a finding of negligence. A product may be defective due to defective design, manufacturing defect, or the failure to contain adequate warnings. *Shanks v. Upjohn Co.*, 835 P.2d 1189, 1194 (Alaska 1992). For a strict liability claim, a plaintiff merely must prove that there was a product defect that that the defect proximately caused the plaintiff's injury. *Prince v. Parachutes, Inc.*, 685 P.2d 83, 87 (Alaska 1984).

- A) **Applicability.** Alaska has adopted the Restatement (Second) of Torts § 402A, which applies to strict product liability, with some exceptions. *Saddler v. Alaska Marine Lines, Inc.*, 856 P.2d 784, 787 (Alaska 1993). One exception is that Alaska has rejected the requirement that the product be unreasonably dangerous. *Saddler*, 856 P.2d at 787. Alaska applies strict products liability to sellers, manufacturers, wholesalers, retailers and distributors. *Id.* However, it does not apply to the provision of services. *Id.* The Alaska is adopting portions of the Restatement (Third) of Torts: Products Liability on a case by case basis. *See Jones v. Bowie Indus.*, 282 P.3d 316, 335 (Alaska 2012) (adopting § 10 with respect to post-sale duty to warn).

The Alaska Supreme Court has not applied strict liability to the sale of a home or real estate, but has applied strict liability to sales of a mobile home and building products. *Heritage v. Pioneer Brokerage & Sales, Inc.*, 604 P.2d 1059, 1061 (Alaska 1979); *D.G. Shelter Products Co. v. Moduline Indus., Inc.*, 684 P.2d 839 (Alaska 1984). It is likely the Alaska court will apply the warranty of habitability to the sale of new homes, should it be called upon to do so. The court has spoken approvingly of the implied warranty of habitability in several cases. *Stormont v. Astoria Ltd.*, 889 P.2d 1059, 1063 n.5 (Alaska 1995); *Cousineau v. Walker*, 613 P.2d 608, 614 (Alaska 1980).

- B) **Pure economic loss.** Strict liability does not apply in cases of pure economic loss, except in limited circumstances. The rule in Alaska is: "When a defective product creates a situation potentially dangerous to persons or other property, and loss occurs as a result of

that danger, strict liability in tort is an appropriate theory of recovery, even though the damage is confined to the product itself. In order to recover on such a theory plaintiff must show (1) that the loss was a proximate result of the dangerous defect and (2) that the loss occurred under the kind of circumstances that made the product a basis for strict liability." *N. Power & Eng'g Corp. v. Caterpillar Tractor, Co.*, 623 P.2d 324, 329 (Alaska 1981).

DISCOVERY

Electronic Discovery Rules

Alaska has adopted discovery rules specific to electronic discovery, based on the federal rules. *See* ALASKA CIV. R. 26(f)(3) (electronic discovery should be discussed in the parties' initial meet and confer conference); ALASKA CIV. R. 34 (parties may request that discovery be in electronic form, and parties generally must produce discovery in the form in which it is normally maintained).

Expert Witnesses

- A) **Forms of disclosure.** Alaska Civil Rule 26(a) requires the production of reports by retained experts and requires that the report contain a complete statement of all opinions to be expressed and the basis and reasons for the opinions. It also requires that parties produce the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authorized by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. ALASKA CIV. R. 26(a)(1).
- B) **Rebuttal witnesses.** Allowance of expert rebuttal witnesses varies from judge to judge, and is typically set out in each judge's pretrial order. Normally the court limits an expert's testimony to the opinions provided in his expert report or later disclosed in the expert's deposition.
- C) **Discovery of expert work product.** Generally, all of an expert's work product is discoverable because it may contain information on which the expert's opinions are based, and therefore may be fair game for cross-examination by opposing counsel.

Non-Party Discovery

- A) **Subpoenas.** Subpoenas must be obtained from a court in the same judicial district as the witness to compel production of documents and the testimony of witnesses in that judicial district. The party seeking the evidence must also set the deposition of the respondent, even just to obtain records. ALASKA CIV. R. 45(a).
- B) **Respondents.** A respondent may object to the production of records by serving a written objection before the deposition. ALASKA CIV. R. 45(d)(1). In practice, absent objection, respondents often produce the records in advance to avoid the expense of attending the

deposition. Further, where possible, depositions are typically set to accommodate the schedules of all the interested parties and respondents.

- C) **Time-frame for responses.** A party must give respondents a reasonable period of time to respond to notice of a deposition. ALASKA CIV. R. 45(b).

Privileges

- A) **Attorney-client.** Alaska exempts from discovery communications between an attorney and his client or representative. ALASKA R. EVID. 503(b). This rule has been held to extend to communications between an attorney and insurance adjustor. The client may exercise the privilege. ALASKA R. EVID. 503(c).
- B) **Statements.** Non-privileged recorded statements by witnesses with relevant information must be produced automatically under Alaska’s initial disclosure rules. ALASKA CIV. R. 26(a)(1).
- C) **Work product.** Materials prepared by counsel in preparation for trial are privileged and need only be produced upon a showing of substantial need of the materials and that the requesting party is unable to obtain the substantial equivalent of the materials by other means without undue hardship. ALASKA CIV. R. 26(b)(3).
- D) **Self-critical analysis.** The Alaska Supreme Court has not addressed the application of a privilege for self-critical analysis, and trial courts have split on whether to allow the privilege. As previously noted, Alaska Rule of Evidence 407 allows admission of subsequent remedial measures for purposes other than to show negligence and the Alaska Supreme Court generally allows liberal discovery of actions taken by a defendant in regards to an accident, making it uncertain whether the Alaska Supreme Court will recognize the privilege. Thus, in one case where a defendant prepared a report as to how similar accidents could be prevented in the future, the court admitted the report, holding that evidence of post-accident investigations and recommendations was not excluded as a subsequent remedial measure and that only remedial measures that were actually undertaken fall under Rule 407. *City of Bethel v. Peters*, 97 P.3d 822, 827 (Alaska 2004).
- E) **Common interest.** Alaska recognizes a “common interest” privilege as to communications between lawyers of two different parties representing their clients in a matter of common interest. ALASKA R. EVID. 503(b)(3).

Requests to Admit

Under Alaska Civil Rule 36, a party may serve a request for admission of a fact or of the authenticity of documents. Wrongful failure to admit can be penalized with an award of attorney’s fees.

Unique State Issues

As a general matter, Alaska recognizes liberal discovery. However, it recognizes limits on the discovery of adjusters' files regarding an adjuster's mental impressions and evaluations. *See Langdon v. Champion*, 752 P.2d 999, 1007 n.14 (Alaska 1988); *Gibson v. Geico Gen. Ins. Co.*, 153 P.3d 312 (Alaska 2007) (precluding deposition of adjuster's evaluation where only issue in UIM case was the extent of the insured's damages).

EVIDENCE, PROOFS & TRIAL ISSUES

Accident Reconstruction

Alaska follows a "liberal admissibility standard" for expert testimony and allows any person with specialized knowledge to serve as an expert witness, so long as that knowledge is relevant, in that it can help the trier of fact understand evidence or determine facts in issue. No specific training or formal education is required. *Marron v. Stromstad*, 123 P.3d 992, 1003 (Alaska 2005) (non-engineer and non-biomechanical experts permitted to reconstruct accident).

Appeal

A notice of appeal is allowed as a matter of right within 30 days after the entry of final judgment. ALASKA APP. R. 204(a)(1). A Petition for Review may be filed within ten days of the issuance of an interlocutory order or decision from which review is sought. ALASKA APP. R. 403(a). However, acceptance of a Petition for Review is discretionary, and the Alaska Supreme Court only accepts a small number of interlocutory appeals.

Rulings of the Superior Court are appealed to the Alaska Supreme Court. Rulings of the District Court are appealed to the Superior Court.

Biomechanical Testimony

Alaska allows the admission of biomechanical testimony to assist the jury in understanding the speed of impact and effects of the impact on plaintiff. *Cable v. Shefchik*, 985 P.2d 474, 477 (Alaska 1999).

Collateral Source Rule

Historically, Alaska's collateral source rule provided that benefits received from a plaintiff's insurance policy would not be deducted from a claim against the defendant. *Tolan v. Era Helicopters, Inc.*, 699 P.2d 1265 (Alaska 1985) (precluding discussion of credit for collateral benefits received for the same injury). This common law scheme was partially modified by the 1986 Tort Reform statute. *See* ALASKA STAT. § 09.17.070. Under the new statute, a defendant is entitled to claim certain collateral benefits as an offset after the court or jury has rendered an award.

- A) **Offset permitted.** An offset is allowed only if the claimant has received compensation for the same injury from a collateral source that *does not have a right of subrogation*. Additionally, the collateral benefits cannot be used for offset where the benefit is one that under federal law cannot be reduced or offset, is a life insurance policy, or was a “gratuitous benefit.” *Id.* For example, offset was allowed for payments by a fund providing compensation to oil spill victims that did not have a right of subrogation. *Chenega Corp. v. Exxon Corp.*, 991 P.2d 769 (Alaska 1999). Collateral benefits may also be admissible for a purpose other than reducing the plaintiff’s damages, such as to show malingering. *Liimatta v. Vest*, 45 P.3d 310 (Alaska 2002). Trial court rulings have suggested offsets would be available for benefits received under state or federal disability programs or statutes.
- B) **Workers’ compensation.** Workers’ compensation payments are not a collateral benefit for which an offset is allowed. Rather, the worker’s compensation carrier has a statutory lien against recoveries in a third-party action arising out of the same accident. ALASKA STAT. § 23.30.015.

Convictions

- A) **Criminal.** Only convictions for crimes of dishonesty or false statements within the prior five years are admissible to attack the credibility of a witness. ALASKA R. EVID. 609(a), (b). However, a criminal conviction or a no contest plea will collaterally estop the criminal defendant from denying any element in a subsequent civil action against him that was necessarily established by the conviction, as long as the prior conviction was for a serious criminal offense and the defendant had the opportunity for a full and fair hearing. *Lamb v. Anderson*, 147 P.3d 736, 739 (Alaska 2006); *Scott v. Robertson*, 583 P.2d 188, 191-92 (Alaska 1978).
- B. **Traffic.** Most traffic tickets do not have a collateral estoppel effect, given that collateral estoppel only applies to serious criminal offenses. Generally, any offense punishable by imprisonment should be considered to be a serious offense. *Scott*, 583 P.2d at 192.
- C. **Agency.** Administrative adjudications can have preclusive effect in later court proceedings in some circumstances. The preclusive use of prior administrative findings must always be “fair.” Fairness “at a minimum” requires that the administrative process follow essential elements of adjudication, including notice and an opportunity to present and rebut evidence, a formulation of issues of fact and law, and other procedural elements necessary for a conclusive determination of the issue. Issue preclusion can apply only when the issue to be precluded from re-litigation is identical to the issue already litigated, there has been a final judgment on the merits, and the determination of the issue was essential to that final judgment. *Parson v. State, Dept. of Revenue, Alaska Hous. Fin. Corp.*, 18 P.3d 1032, 1037 (Alaska 2008).

Day in the Life Videos

“Day in the Life” videos are allowed as demonstrative evidence if they help the jury better understand the verbal testimony of the witness. *See Fruit v. Schreiner*, 502 P.2d 133, 143 (Alaska 1972).

Dead Man’s Statute

Dead Man’s Statutes prohibit a witness from testifying to what a person who is deceased or incapacitated previously stated if the statement was adverse to the deceased or incapacitated person’s interests. Alaska has no Dead Man’s Statute. *Cavanah v. Martin*, 590 P.2d 41, 43 (Alaska 1979) (“Alaska has completely eliminated the common law disqualification of witnesses based on interest.”).

Medical Bills

Medical bills are generally admissible evidence of a plaintiff’s damages. However, if a lien holder requests that the claimant not include their lien interest in the plaintiff’s damages case, a plaintiff may not include that lien interest in his damages case. *Ruggles v. Grow*, 984 P.2d 509, 512 (Alaska 1999) (“When an insurer pays expenses on behalf of an insured it is subrogated to the insured’s claim. The insurer effectively receives an assignment of its expenditure by operation of law and contract.”). The subrogated claim thus belongs to the insurer. Where a lien holder’s interest is not included in plaintiff’s claim, courts nevertheless sometimes allow a plaintiff to use the medical bill to prove the nature or seriousness of the injury.

It is currently undecided in Alaska how damages for medical bills should be determined where medical bills are discounted as required by Medicaid or Medicare, or due to agreements between an insurer and the health care provider. *Cf. Lucier v. Steiner Corp.*, 93 P.3d 1052 (Alaska 2004) (dissent from denial of petition for review).

Offers of Judgment

Alaska Civil Rule 68 governs offers of judgment. If a party makes an offer of judgment, and at trial beats the offer, the party making the offer may receive an attorney’s fees award. Because of the detailed nature of Alaska’s offer of judgment scheme regarding when offers of judgment must be made and how much in attorney’s fees may be collected, the rule should be reviewed for details.

Offers of Proof

Alaska Rule of Evidence 103(a)(1) and (2) provides that an appeal may not be granted for improperly including or excluding evidence unless (1) a substantial right of the party is affected, (2) a specific ground of objection is made, and (3) where evidence is excluded, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which questions were asked.

Prior Accidents

In general, evidence of prior accidents is not admissible to establish negligence. Evidence of negligence on a prior occasion is not evidence of liability with respect to the current allegation. *Adams v. City of Tenakee Springs*, 963 P.2d 1047, 1054 (Alaska 1998).

- A) **Substantial similarity.** Evidence of other accidents may be admissible to show a dangerous condition or product if the other accidents occurred under substantially similar circumstances. *Walden v. Dep't of Transp.* 27 P.3d 297, 303 (Alaska 2001). Similarly, experimental evidence is admissible if the conditions of the experiment were substantially similar to the conditions at the time of the evidence in question. *Walden*, 27 P.3d at 306. However, similarity of conditions is not required in the case of experiments designed to show the general traits and capacities of the materials involved in the controversy. *Id.* (trial court did not err in allowing skid testing evidence).
- B) Evidence of other accidents may be relevant to other issues, such as notice.

Relationship to the Federal Rules of Evidence

Many of Alaska's Rules of Evidence are patterned after the Federal Civil Rules of Evidence. While the federal court's interpretations are not binding, the Alaska courts look to the federal interpretations of similar federal rules for guidance.

Seat Belt and Helmet Use Admissibility

Alaska's statutes require the use of seat belts, ALASKA STAT. § 28.05.095, but adults are not required to wear motorcycle helmets. ALASKA STAT. § 28.35.245.

- A) Because Alaska is a several liability state, a plaintiff is entitled to recover against each defendant and third-party defendant in proportion to his or her degree of fault. Although a plaintiff's negligence is usually not a bar to recovery, a defendant may allege that a plaintiff was comparatively negligent and decrease the plaintiff's recovery according to the plaintiff's relative fault. ALASKA STAT. §§ 09.17.060, .080; *see also Kava v. Honda*, 48 P.3d 1170, 1174 (Alaska 2002) (it was not error for trial court to admit comparative negligence evidence that ATV driver was not wearing a helmet); *GMC v. Farnsworth*, 965 P.2d 1209, 1216 (Alaska 1998) (jury allowed to consider improper use of seatbelt as comparative fault.); *Hutchins v. Schwartz*, 724 P.2d 1194, 1199 (Alaska 1986) (Failure to wear a seat belt is relevant evidence for the purpose of damage reduction. The concept of comparative negligence means the non-use of a seat belt is a relevant factor for apportioning damages.).

Spoilation

- A) **Intentional spoliatio.** Alaska recognizes a cause of action for intentional spoliatio of evidence. *Hazen v. Municipality of Anchorage*, 718 P.2d 456, 463 (Alaska 1986) (recognizing a new tort for intentional spoliatio of evidence).

- B) **Unintentional spoliation.** When the spoliation is unintentional (as is the usual case), the court will likely provide a curative jury instruction that there is a rebuttable presumption that the missing evidence would have benefited the adverse party had it not been destroyed. *Sweet v. Sisters of Providence*, 895 P.2d 484, 493 (Alaska 1995). Generally, a showing that the destruction of the evidence was negligent is required. *See id.*; *Doubleday v. State*, 238 P.3d 100, 106 (Alaska 2010).
- C) **Federal courts.** Federal courts have been more inclined to grant summary relief based on a party's involuntary destruction of key evidence. *See, e.g., Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363 (9th Cir. 1992) (insurer's subrogation claim was dismissed where insurance adjuster destroyed allegedly defective product). Thus, where spoliation is an issue, the federal court system is more advantageous for the party harmed by the spoliation.

Subsequent Remedial Measures

Evidence of subsequent remedial measures is not admissible in state court to prove negligence, but it is admissible for other purposes such as proving ownership, control, the feasibility of taking precautionary measures or a defective condition in a products liability case. *See ALASKA R. EVID. 407; Robles v. Shoreside Petroleum*, 29 P.3d 838 (Alaska 2001). However, this products liability exception does not exist under Federal Rule of Evidence 407. Therefore, defendants seeking to exclude subsequent remedial measures in product liability cases would find it more advantageous to be in federal court.

Use of Photographs

Photographs are admissible if relevant and authenticated. Photographs that are unduly prejudicial may be excluded under Alaska Rule of Evidence 403. *Beck v. Dep't of Transp. & Pub. Facilities*, 837 P.2d 105, 113 (Alaska 1992).

DAMAGES

Caps on Damages

- A) Alaska places a cap on non-economic damages which applies to both wrongful death claims and other personal injury claims. ALASKA STAT. § 09.17.010(b). The statute caps damages at the greater of \$400,000.00 or \$8,000.00 multiplied by the plaintiff's life expectancy. There is a separate, \$250,000 cap for medical malpractice actions. ALASKA STAT. § 09.55.549.
- B) **Impairment or disfigurement.** In non-medical malpractice cases, where there is severe, permanent physical impairment or severe disfigurement, the cap on non-economic damages is the greater of \$1,000,000.00 or \$25,000.00 multiplied by the plaintiff's life expectancy. ALASKA STAT. § 09.17.010(c).

A severe disfigurement need not be permanent to support damages beyond the cap. However, a reasonable healing period must be allowed before disfigurement may be assessed. Disfigurement is severe if a reasonable person would find that the injury mars the plaintiff's physical appearance and causes a degree of unattractiveness sufficient to bring negative attention or embarrassment. *City of Bethel v. Peters*, 97 P.3d 822, 829 (Alaska 2004).

Calculation of Damages

- A) **Pre-tort reform.** Pre-tort reform case law held that in calculating past wage losses (losses incurred up through the date of trial), a plaintiff should be awarded his probable lost earnings, and for future economic loss, a plaintiff should be awarded his “lost earning capacity.” *Am. Nat'l Watermattress Corp. v. Manville*, 642 P.2d 1330, 1341-42 (Alaska 1982).
- B) **Post-tort reform.** Alaska's 1986 Tort Reform statute limited the calculation of future earnings by limiting loss to “the amount of wages the injured party could have been expected to earn during future years.” ALASKA STAT. § 09.17.040(b)(1). Some trial courts have held this statute did not amend prior law, and hold that future damages are measured based on loss of earning capacity, not loss of expected earnings.

Income taxes are deducted from past wage loss. No tax deduction is made for lost future earnings.

Available Items of Personal Injury Damages

In a personal injury claim, recoverable losses always include special damages such as lost wages and medical expenses. In addition, a personal injury plaintiff is entitled to damages for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, and loss of consortium, as well as other non-pecuniary damages that are not speculative. ALASKA STAT. § 09.17.010(a).

Lost Opportunity Doctrine

Alaska would likely allow a claim for lost economic opportunity to the extent that such damages would not be speculative. *Weiss v. State*, 939 P.2d 380, 393 (Alaska 1997) (“Lost opportunity damages are difficult to prove in any case unless there is an existing history of business activity or earnings.”) (quoting superior court decision). However, the Alaska Supreme Court has never directly addressed the issue of whether to allow non-speculative lost opportunity damages. Where such claimed damages are speculative, the Alaska court has simply not allowed such damages to go to the jury. *E.g., DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1291 (Alaska 1999).

Mitigation

The Alaska Supreme Court has recognized the avoidable consequences rule, which states that a plaintiff with an otherwise-valid right of action may not recover for losses resulting from failure

to use reasonable efforts to avoid or prevent them. This rule applies whether the action is in tort or breach of contract. *Anchorage Indep. Sch. Dist. v. Stephens*, 370 P.2d 531, 533 (Alaska 1962). While under Alaska's fault apportionment statute, ALASKA STAT. § 09.17.900, failure to mitigate is treated as "fault" to be apportioned pursuant to ALASKA STAT. § 09.17.080, as a practical matter this statute is not followed by the Alaska courts, and the courts give a standard mitigation of damages jury instruction.

Punitive Damages

- A) **Standard.** In addition to compensatory damages, Alaska law allows for punitive damages when the defendant's actions are "outrageous" because of their indifference to the rights of others. A fact finder may make an award of punitive damages if the defendant's conduct (1) was "outrageous, including acts done with malice or bad motives," or (2) "evidenced reckless indifference to the interest of another person." ALASKA STAT. § 09.17.020(b). Punitive damages must be established by clear and convincing evidence. ALASKA STAT. § 09.17.020(b). A court should not allow a claim of punitive damages to go to the jury unless there is evidence that gives rise to an inference of "actual malice or conduct sufficiently outrageous to be deemed equivalent to actual malice." *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264, 1266 (Alaska 1992).

Punitive damages are not recoverable for breach of contract unless conduct constituting breach is also a tort for which punitive damages are recoverable. *Reeves v. Alyeska Pipeline Serv. Co.*, 56 P.3d 660, 671 (Alaska 2002).

- B) **Procedure.** Punitive damages are determined in a separate trial only after a jury has determined they are appropriate. ALASKA STAT. § 09.17.020(c). Evidence of insurance may be admissible to determine defendant's financial condition, and thus what is an appropriate level of punitive damages. *Fleegel v. Estate of Boyles*, 61 P.3d 1267 (Alaska 2003).
- C) **Cap.** Punitive damages may not exceed the greater of three times compensatory damages or \$500,000. ALASKA STAT. § 09.17.020(f). A higher cap applies where the conduct was motivated by financial gain, and the consequences of the conduct were actually known to the defendant. ALASKA STAT. § 09.17.020(g).
- D) **Vicarious Liability.** ALASKA STAT. § 09.17.020(k), passed in 2003, holds that an employer cannot be held liable for punitive damages based on the actions of non-managerial employees. Rather, punitive damages may only be awarded against employers based on the acts of their managerial agents. A managerial agent is a person with some power to set policy for the employer.
- E) **Insurability.** Punitive damages are insurable in Alaska because there is no statutory or public policy prohibiting insuring against punitive damages in Alaska for municipalities and governmental entities. *See Providence Wash. Ins. Co. v. City of Valdez*, 684 P.2d 861 (Alaska 1984) (holding that even if public policy precluded insurance against punitive damages, municipalities would be exempt); *LeDoux v. Cont'l Ins. Co.*, 666 F. Supp. 178

(D. Alaska 1987). In the absence of a policy exclusion, punitive damages are covered. *State Farm v. Lawrence*, 26 P.3d 1074, 1080 (Alaska 2001).

Recovery of Pre- and Post-judgment Interest

- A) **Prejudgment interest.** Alaska courts award prejudgment interest as a measure of damages. Under Alaska's statute on prejudgment interest, ALASKA STAT. § 09.30.070, the rate of prejudgment interest is "three percentage points above the Twelfth Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered." Thus, the rate of prejudgment interest changes every year. The rate of interest for actions accruing prior to August 7, 1997, remains at 10.5%, regardless of when judgment is entered. The current rate can be found at the Alaska court system website: <http://www.state.ak.us/courts/int.htm>. The rate of prejudgment interest for judgments entered in 2015 is 3.75%. Parties may apply a different prejudgment interest rate if they contractually agree to do so.

Prejudgment interest runs from the date of notice that a claim may be brought. ALASKA STAT. § 09.30.070(b). It is calculated with simple interest, not compound interest. *Alyeska Pipeline Serv. Co. v. Anderson*, 669 P.2d 956, 956 (Alaska 1983).

Prejudgment interest may not be awarded for future economic losses, future non-economic losses, or punitive damages. ALASKA STAT. § 09.30.070(c); *McConkey v. Hart*, 930 P.2d 402, 405 (Alaska 1996); *Anderson v. Edwards*, 625 P.2d 282, 289 (Alaska 1981). Furthermore, prejudgment interest should not be awarded where funds have been paid in advance for past damages. *Liimatta v. Vest*, 45 P.3d 310, 322 (Alaska 2002).

- B) **Post-judgment interest.** Alaska awards post-judgment interest on judgments at the same rate as prejudgment interest. *See* ALASKA STAT. § 09.30.070. The interest rate is based on the year judgment is entered, and changes January 2 of each year, based on the federal discount rate in effect January 2. As with prejudgment interest, a higher or lower rate may be negotiated in contract cases, so long as the rate is specified within the contract.

Recovery of Attorney's Fees

- A) Unlike most other jurisdictions, Alaska routinely allows partial reimbursement of attorney fees to the prevailing party by both statute and court rule. *See* ALASKA STAT. § 09.60.010; ALASKA CIV. R. 82. There is extensive Alaska case law explaining which party qualifies as the "prevailing party," but generally the term "prevailing party" refers to the party in whose favor the decision or verdict is rendered and in whose favor judgment is entered. *See Cooper v. Carlson*, 511 P.2d 1305, 1308 (Alaska 1973).
- B) **Purpose.** The purpose of the Alaska Civil Rule 82 is to partially reimburse the prevailing party for attorney fees. In cases where money is recovered, Alaska Civil Rule 82 sets a schedule detailing the amount of attorney fees allowed. In cases in which the prevailing party does not recover a money judgment, the presumption is that the prevailing party is

entitled to 30% of the prevailing party's attorney fees if a case goes to trial, and 20% of attorney fees in other cases. ALASKA CIV. R. 82(b)(2).

Additionally, Alaska has a number of statutes that award full reasonable attorney's fees to the prevailing party. *See* ALASKA STAT. §§ 09.60.010, .015, .070.

Settlement Involving Minors

Alaska Civil Rule 90.2 governs settlements involving minors. Settlements involving minors must be approved by the court to be binding. A hearing is needed for approval of minor settlements where proceeds exceed \$25,000.00 after deduction of costs and attorney's fees.

Taxation of Costs

Alaska Civil Rule 79 spells out when the prevailing party is entitled to reimbursement of costs by court rule. Costs not allowed by the rule are not recoverable. Recoverable costs include deposition costs, witness fees, certain travel costs, transcript costs, interpreter fees, copy costs, and computerized legal research costs.

This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.