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Overview of the State of Alaska Court System

A. Trial Courts

1. The trial courts are made up of the Superior Court and the District Court. These courts are divided across the state into four districts:

   First District – Juneau

   Second District – Barrow / Nome

   Third district – Anchorage

   Fourth District – Fairbanks

2. Superior Court

   a) The Superior Court is the court of general jurisdiction, with original jurisdiction in all civil, criminal, probate, and juvenile cases. (AS 22.10.020) However, where the Superior Court and the District Court have concurrent jurisdiction over an action, the action is to be filed in the District Court unless a court rule provides otherwise.

   b) An appeal from a subordinate court to the Superior Court is a matter of right, except where a plea of guilty was entered in a criminal case.

   c) A Superior Court jury consists of at least 12 jurors unless the trial court directs otherwise (AS 9.20.090)

   d) Mediation is not mandatory, but the Superior Court may order mediation at the request of a party or on its own initiative (Civil Rule 100)

3. District Court

   a) The District Court has jurisdiction in civil and criminal cases. (AS 22.15.030)(AS 22.15.060)

   b) The District Court's jurisdiction includes:

      i) Claims for money, personal and real property, contract, or motor vehicle tort valued less than $100,000

      ii) Small claims (<$10,000 and heard by magistrate)

iii) Where it has concurrent jurisdiction with the Superior Court

vi) Misdemeanors and ordinance violations

c) The District Court's jurisdiction does not include title to real property or equity.

d) A District Court jury consists of five people (AS 22.15.150)

B. Appellate Courts

1. Court of Appeals

a) There is one Court of Appeals consisting of three justices; though a quorum is two justices. (AS 22.070)(Appellate Rule 105)

b) The Court of Appeals does not review civil actions. Its jurisdiction is limited to (AS 22.07.020):

i) Criminal prosecutions and related matters

ii) Delinquent minors

iii) Extradition

2. Supreme Court

a) There are five justices on the Supreme Court; though a quorum is three justices. (AS 22.05.020)(Appellate Rule 105)

b) The Supreme Court has final appellate jurisdiction over all matters. However, there is no right to appeal to the Supreme Court where there is already a right to appeal to the Court of Appeals or the Superior Court. (AS 22.05.010)

c) Unless exempted, a bond for costs is to be filed with an appeal. This is set at $750.00, expect the Superior Court sets a different amount or a supersedeas bond is filed. A bond for costs is not required for criminal matters or where the appellant is indigent. (Appellate Rule 204(c))

d) An appellant may request that the Superior Court approve a supersedeas bond to stay proceedings, with the surety conditioned on full satisfaction of the judgment and costs, including the costs of appeal. (Appellate Rule 204(d))

e) Interest is payable where a civil matter for money is affirmed. (Appellate Rule 509) The pre-judgment and post-judgment interest rate is "three

percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered." (AS 09.30.070)

Procedural

A. Venue

If a defendant can be personally served in Alaska, a civil action may be commenced in one of the four judicial districts where (1) the claim arose or (2) the defendant may be personally served. A criminal action may be prosecuted in a venue district where the claim arose within the judicial district. (Court Rule 3)

B. Statute of Limitations

1. Breach of Contract – three years (AS 09.10.53)

2. Construction Defect – at least one year after discovery of defect but not more than ten years after "substantial completion" (AS 09.10.054)

3. Tort, personal Injury, wrongful death, damage to personal property – two years (AS 09.10.070)

4. The statute of repose is 10 years (AS 09.10.055)

5. Tolling is allowed where the plaintiff is a minor or incapacitated. The statute of limitations is tolled until two years after the disability ceases (AS 09.10.140)

C. Time for Filing An Answer

The answer is due 20 days after service of the summons and complaint. (Court Rule 12)

D. Dismissal Re-Filing of Suit

A plaintiff may voluntarily dismiss without prejudice. However, a notice of dismissal is deemed on the merits if the plaintiff has voluntarily dismissed the claim before in any other court in the United States. (Court Rule 41)

Liability

A. Negligence

The four elements of a negligence claim are duty, breach, causation, and harm. *Lyons v. Midnight Sun Transportation*, 928 P.2d 1202 (1996). The alleged negligence of the defendant is compared with the conduct of a reasonable person in the same or similar circumstance. *Wilson v. Sibert*, 535 P.2d 1037 (1975). A defendant may be liable for negligence *per se* for violation of a statute or regulation. *Pagenkopf v. Chatham Electric*, 165 P.3d 634 (2007).

Alaska is a pure comparative fault state. The plaintiff's award for compensatory damages is diminished proportionally by the plaintiff's share of fault. (AS 09.17.080)

B. Negligence Defenses

1. Assumption of the Risk

Assumption of the risk is not a complete bar to recovery but is a factor in the trier of facts apportionment of fault. (AS 09.17.060)

2. Last Clear Chance

Alaska has abolished the last clear chance doctrine. *Martin v. Union Products*, 543 P.2d 400 (1975)

3. Unavoidable Accident

An unavoidable accident, or "mere accident," instruction is disapproved and not available. *Maxwell v. Olsen*, 468 P.2d 48 (1970)

4. Sudden Emergency Doctrine

A sudden emergency jury instruction is generally disapproved unless the trial court determines the facts of the case require more explanation on the standard of care. *Lyons v. Midnight Sun Transport*, 928 P.2d 1202 (1996).

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

Gross negligence is defined as an extreme departure from the use of reasonable care. It is more than ordinary negligence but less than reckless indifference. *Storrs v. Lutheran Hospital & Homes Society, Inc.*, 661 P.2d 632 (1983)

D. Negligent Hiring and Retention

Alaska adopted the Restatement of Torts, § 317, on negligent hiring and retention. *Svacke v. Shelley*, 359 P.2d 127 (1961). A duty is imposed on a master to exercise reasonable care to control his servant for the servant's actions outside the scope of employment if: (1) the servant is on the master's premises or other privileged area; (2) the master knows or has reason to know he controls his servant; and (3) the master knows of the necessity of exercising such control.

E. Negligent Entrustment

Alaska follows the Restatement (Second) Torts, § 390, on negligent entrustment. *Kalenka v. Infinity Insurance Co*, 262 P.3d 602 (2011). A person in control of a vehicle is negligent if the

vehicle is knowingly entrusted to an incompetent or habitually careless driver.

F. Dram Shop

A person who provides alcohol to another person cannot be held civilly liable for injuries resulting from intoxication unless that person furnishing alcohol is licensed to sell alcohol and the alcohol was sold to someone under the age of 21 or to a drunken person. (AS 04.21.020) That is, the dram shop act does not apply to social hosts. *Christiansen v. Christiansen*, 152 P.3d 1144 (2007). However, a person is not liable for selling to a person under the age of 21 if he secures in good faith a signed statement or driver's license that indicates the person is 21 years of age or older. (AS 04.21.050) A drunken person is a person whose physical or mental conduct is substantially impaired by alcohol and who exhibits plain, easily observable, or discovered outward manifestations of alcohol impairment. (AS 04.21.080)

A person not licensed to sell alcohol is strictly liable for selling alcohol to the recipient or another person for civil damages if the person receiving the alcohol engages in conduct that results in damages. An unlicensed person is also strictly liable for the cost of the state to prosecute the person who purchased the alcoholic beverage. (04.21.020)

G. Joint and Several Liability

Alaska is a pure comparative fault state. There is no joint liability. Fault can be allocated to a non-party except where the non-party was identified as a potentially responsible party and the parties had sufficient opportunity to join the non-party in the action but failed to do so. (AS 09.17.080)

In 1989, Alaska passed tort reform which abolished a statutory right to contribution among defendants; but the common law right to contribution remained. *McLaughlin v. Lougee*, 137 P.3d 267 (2006). Because Alaska applies pure comparative fault, the right to contribution is manifested as the right of non-setting defendants to offset the plaintiff's damages in proportion to the settling party's comparative fault. *Petrolane Inc. v. Robles*, 154 P.3d 1014 (2007).

H. Wrongful Death and/or Survival Actions

Actions for wrongful death and survival are statutory and to be brought by the personal representative. If the spouse, children, or other dependents of the decedent survive, then both economic and non-economic damages are recoverable exclusively for their benefit. If the decedent is not survived by a spouse, children, or other dependent, then recovery for the estate is limited to the decedent's pecuniary loss. (AS 9.55.580) However, the estate may recover the pre-death conscious pain and suffering of the decedent under the survival statute. (AS 09.55.570) *North Slope Borough v. Brower*, 215 P.3d 308 (2009). Additionally, a parent may bring an action for injury or death of a child. (AS 09.15.010)

I. Vicarious Liability

Employers are vicariously liable for acts performed by their employees within the scope of their employment. Alaska applies a multi-factored test listed in the Restatement (Second) on Agency,

§ 228 to answer whether the employee's acts fit this definition. *Domke v. Alyeska Pipeline Service Co*, 137 P.3d 295 (2006). Acts are considered within the scope of employment if: (1) it is the kind of work the employee is employed to do; (2) the act occurs within the authorized time and space limits; (3) the act is for the purpose of serving, at least in part, the employer; and (4) if there is intentional force used against another, the intentional force was not unexpected by the master. On the other hand, acts are considered outside the scope of employment if not authorized, not within the authorized time and space, or the purpose is too attenuated to serve the employer.

The Alaska Supreme Court has not yet issued decisions applying placard liability to motor carriers.

J. Exclusivity of Workers' Compensation

Worker's compensation is the exclusive remedy for claims against an employer or co-employee, conditioned on the employer having secured proper insurance. In the event such insurance is not maintained, the injured employee may elect to either claim worker's compensation or to sue the employer at law for injury or death. (AS 23.30.055) Nonetheless, an employee may still bring an action against an employer for intentional torts or for violations of public policy. *Reust v. Alaska Petroleum Contractors*, 127 P.3d 807 (2005).

Damages

A. Statutory Caps on Damages

Alaska's statutory caps for non-economic damages have been upheld as constitutional. *Evans v. State*, 56 P.3d 1046 (2002). The caps are two-tiered. The lower cap is $400,000 or life expectancy multiplied by $8,000, whichever is greater. The higher cap applies where there is severe permanent impairment or disfigurement. It allows for $1,000,000 or life expectancy multiplied by $25,000, whichever is greater. (AS 09.17.010) The jury is not to be instructed on the non-economic damage caps. *Kodiak Island Borough v. Roe*, 63 P.3d 1009 (2003).

B. Compensatory Damages for Bodily Injury

Recoverable compensatory damages for bodily injury include pain, suffering, inconvenience, physical impairment, loss of enjoyment of life, and disfigurement. (AS 09.17.010). The jury is to fairly compensate the plaintiff from the date of injury to trial and for such non-economic loss the plaintiff is reasonably probable to experience in the future. (Civil Pattern Instruction 20.06)

C. Collateral Source

Evidence of a collateral source is permitted so long as the collateral source compensated the plaintiff for the same injury and the collateral source does not have a right to contribution. This evidence is submitted to the jury only after the jury has awarded damage. The plaintiff may counter offer evidence regarding attorneys' fees and insurance premium payments. If the collateral benefits exceed the amount of plaintiffs' fees and insurance payments, the trial court is to reduce the damage award by this difference. (AS 09.17.070) However, evidence of a

collateral source may be admissible during trial to prove malingering if this evidence is shown to be more probable than other evidence available. *Jones v. Bowie Industries*, 282 P.3d 316 (2012).

D. Pre-Judgment/Post judgment Interest

Interest is payable where a civil matter for money is affirmed. (Appellate Rule 509) The pre-judgment and post-judgment interest rate is "three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered." (AS 09.30.070)

E. Damages for Emotional Distress

1. Negligent Infliction of Emotional Distress (NIED)

There must be proof of physical injury to prevail on a negligent infliction of emotional claim, with two exceptions – where the plaintiff is a "bystander" or where there was a pre-existing duty. The bystander-plaintiff must have: (1) been near the scene of the accident; (2) suffered emotional impact from the sensory and contemporaneous observance of the accident; and (3) had a close relationship with the victim. The bystander does not need to be in the "zone of danger." A pre-existing duty is one where the defendant has a fiduciary or contractual relationship with the plaintiff and the potential emotional distress to the plaintiff is sufficiently foreseeable. *Kallstrom v. US*, 43 P.3d 162 (2002).

2. Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress requires that the defendant's conduct was extreme and outrageous and intentionally and recklessly caused the plaintiff's emotional distress. Before the plaintiff may proceed on the claim, the trial court is to determine whether the alleged conduct was so outrageous as to go beyond all possible bounds of decency. *Odom v. Fairbanks Memorial Hospital*, 999 P.2d 123 (2000).

F. Wrongful Death and/or Survival Action Damages

The non-economic damage caps apply to wrongful death and survival claims. (AS 09.17.010) Where there is no surviving spouse, children, or other dependents, the estate in a wrongful death action is limited to recovery of pecuniary loss; but where there are such statutory beneficiaries, recovery is allowed for damages deemed by the jury to be fair and just. To fairly compensate for the injury resulting in death, the jury is to consider: (1) loss of pecuniary benefits to beneficiaries; (2) loss of contributions for support; (3) loss of services; (4) loss of consortium; (5) loss of prospective training or education; and (6) medical and funeral expenses. (AS 09.55.580) However, in a survival action, the decedent's estate may recover pre-death injuries, including pain and suffering. (AS 09.55.570) *North Slope Borough v. Brower*, 215 P.3d 308 (2009).

G. Punitive Damages

Punitive damages are recoverable for tort claims but not for contract claims. *Reeves v. Alyeska Pipeline Service*, 56 P.3d 660 (2002). This includes a first-party insured's claim of bad faith against an insurer. *State Farm Fire & Casualty v. Nicholson*, 777 P.2d 1152. An award of punitive damages is a two-stage process. First, there must be clear and convincing evidence that the defendant's conduct was outrageous or evidenced reckless indifference. Second, at a separate hearing, the jury determines the amount to be awarded as punitive damages by examining: (1) the likelihood that serious harm would arise from the conduct; (2) the degree of the defendant's awareness of this likelihood; (3) the amount of the defendant's actual or expected financial gain from the conduct; (4) the duration or intentional concealment of the conduct; (5) the defendant's attitude when the conduct was discovered; (6) the defendant's financial condition; and (7) the total deterrence of other damages imposed on the defendant.

Regardless of the jury's award, punitive damages are capped into three strata. The base punitive damages are the greater of $500,000 or three times compensatory damages. If the jury determined that the defendant's conduct was motivated by financial gain, the cap is the greater of $700,000, four times compensatory damages, or four times the defendant's financial gain. And where an employer was found to be motivated by financial gain in an action for unlawful employment, then the number of the defendant's employees in the state is considered: (1) $200,000 for less than 100; (2) $300,000 for more than 100 but less than 200; (3) $400,000 for more than 200 but less than 500; and (4) and $500,000 for more than 500. (AS 09.17.020)

H. Diminution in Value of Damaged Vehicle

When the plaintiff alleges damage to personal property, the damage award is the lesser of two figures. The first figure is the reasonable expense of necessary repair, plus the difference between fair market value before the occurrence and the fair market value after the personal property is repaired. The second figure is the difference in fair market value of the property before the occurrence and the fair market value immediately after the occurrence. *ERA Helicopters v. Digicon Alaska*, 518 P.2d 1057 (1974).

I. Loss of Use of Motor Vehicle

Damages for loss of use of a motor vehicle are recoverable, but not beyond the time reasonably necessary to replace the lost motor vehicle. However, damages may be awarded in excess of the motor vehicle's fair market value if a delay in locating a replacement vehicle was reasonably necessary. Damages for loss of use do not include pre-judgment interest, as this is considered a double recovery. *Kenai Chrysler Center v. Denison*, 167 P.3d 1240 (2007). The jury is instructed that the plaintiff is entitled to loss-use damages for the time: (1) reasonably necessary to fix the motor vehicle; (2) plaintiff was unable to use the motor vehicle; (3) the motor vehicle was held by the defendant; or (4) reasonably necessary to repair the motor vehicle. (Civil Instruction 20.16)

Evidentiary Issues

A. Preventability Determination

There is no Alaska case directly on the issue of a motor carrier's preventability determination.

B. Traffic Citation from Accident

A citation for violation of the driving laws is not admissible in a matter arising out of the accident that is the subject of the citation. (AS 28.35.120). Moreover, a police report of an accident is not admissible under a public report exception to hearsay. (Evidence Rule 801(b)); *Dinsmore-Poff v. Alvod*, 972 P.2d 978 (1999).

C. Failure to Wear a Seat Belt

A person over the age of 16 must wear a seat belt. (AS 28.05.095) Evidence for failure to wear a seat belt is relevant for the purpose of reducing that plaintiff's alleged damages. (AS 09.17.080); *Hutchins v. Schwartz*, 724 P.2d 1194 (1986).

D. Failure of Motorcyclist to Wear a Helmet

A motorcyclist over the age of 18 is not required to wear a helmet. (AS 28.35.245) But evidence for failure to wear a helmet would likely be admissible under the comparative fault apportionment statute. (AS 09.17.080).

E. Evidence of Alcohol or Drug Intoxication

The admission of evidence of alcohol and drug intoxication while driving under the influence of alcohol, inhalants, and controlled substances is set by statute. If the breath alcohol or blood alcohol result is .08% or more, there is a presumption of driving under the influence. Other competent evidence probative on the question of driving under the influence is allowed irrespective of the breath alcohol or blood alcohol result. Breath alcohol and blood alcohol tests are presumed valid. However, the breath alcohol or blood alcohol test must be performed by a qualified person using approved methods. (AS 28.35.033) *Gilbreath v. Municipality of Anchorage*, 773 P.2d 218 (1989).

F. Testimony of Investigating Police Officer

An investigating officer may give testimony as a "hybrid witness" – lay and expert. The investigating officer is often intimately involved in the underlying facts of the cases and thus is an appropriate lay witness. The investigating officer may testify as an expert where the investigating officer is qualified as an expert under Evidence Rule 702, i.e., the witness has specialized knowledge which will assist the trier of fact. *Getchell v. Lodge*, 65 P.3d 50 (2003).

G. Expert Testimony

Alaska applies the relevant and reliable *Daubert* standard for admission of expert testimony. *State v. Coon*, 974 P.2d 386. But the *Daubert* factors for admissibility – the trial court's gate

keeping role – do not apply where the expert's testimony is based on personal experience rather than on the scientific method or sophisticated scientific theory. *Marsingill v. O'Malley*, 128 P.3d 151 (2006). That is, Alaska does not follow *Kumho Tire*. Otherwise, Alaska's rule for admission of expert testimony mirrors the federal rule, i.e., testimony by qualified expert which will assist the trier of fact. However, unlike the federal rule, Alaska expressly limits experts to no more than three on the same issue. (Evidence Rule 702)

H. Collateral Source

Evidence of a collateral source is permitted so long as the collateral source compensated the plaintiff for the same injury and the collateral source does not have a right to contribution. This evidence is submitted to the jury only after the jury has awarded damage. The plaintiff may offer counter evidence regarding attorneys' fees and insurance premium payments. If the collateral benefits exceed the amount of the plaintiff's fees and insurance payments, the trial court is to reduce the damage award by this difference. (AS 09.17.070) However, evidence of a collateral source may be admissible during trial to prove malingering if this evidence is shown to be more probable than other evidence available. *Jones v. Bowie Industries*, 282 P.3d 316 (2012).

I. Recorded Statements

There are no specific rules regarding admission of recorded statements beyond questions of hearsay. If it is the party's own statement, it would likely be admissible. (Evidence Rule 401(d)(2)) If the recorded statement is of a non-party, then it would likely not be admissible unless the recorded statement meets a hearsay exception. (Evidence Rule 803)(Evidence Rule 804)

J. Prior Convictions

Prior convictions are admissible for the purpose of impeachment. The conviction must be for dishonesty or false statement and have occurred less than five years before the evidence is offered. (Evidence Rule 609) Crimes of dishonesty include conspiracy, concealment of merchandise, larceny, embezzlement, and robbery. *Jenson v. Goresen*, 881 P.2d 1119 (1994).

K. Driving History

There are no statutes or cases which directly discuss the admissibility of a party's driving record; though driving records were introduced in matters involving negligent entrustment and an assumed duty to investigate a worker's competence to drive. *Neary v. McDonald*, 956 P.2d 1205 (1998); *Lamoureaux v. Totem Ocean Trailer*, 651 P.2d 839 (1982).

L. Fatigue

There are no cases discussing admissibility of hours of service violations under the Federal Hours of Service Act for railroad workers or the Federal Motor Carrier Safety Regulations. But

in at least on case brought under Alaska's Wage and Hour Act for overtime pay driver logs were reviewed. (AS 23.10.060) *Schorr v. Frontier Transportation*, 942 P.2d 418 (1997).

M. Spoliation

Spoliation is the intentional destruction, alteration, or concealment of evidence. *Hibbits v. Sides*, 34 P.3d 327 (2007). A cause of action exists for spoliation only if it is accompanied by an underlying viable cause of action. The spoliation tort requires a showing that the defendant intended to disrupt the prospective civil action and the spoliation prejudiced the prosecution of the prospective civil action. That is, it cannot stand alone. *Estate of Day v. Willis*, 897 P.2d 78 (1995). Though Alaska has recognized a spoliation tort, it has not yet spelled out its elements. *State v. Carpenter*, 171 P.3d 41. In any event, the spoliation must be intentional. *Sweet v. Sisters of Providence in Washington*, 895 P.2d 484 (1995).

Spoliation may also lead to a negative inference against the non-producing party; especially where the party had a duty to maintain such evidence. In this instance, there is rebuttable presumption that the missing evidence would have been adverse to the non-producing party, subject to a jury finding that loss of the evidence was excusable. *Sweet v. Sisters of Providence in Washington*, 895 P.2d 484 (1995).

Settlement

A. Offer of Judgment

Offers of judgment are governed by court rule and statute. (AS 09.30.065)(Court Rule 68) The offer is to be served at least 10 days before trial and cannot be revoked during this time. If accepted, the opposing party has 10 days to provide a written notice of acceptance. If rejected, and the final judgment is at least 5% less favorable to the opposing party than the offerer (10% for multiple defendants), then the opposing party must pay the offering party's costs and reasonable attorneys' fees from the date the offer was made. The amount of attorneys' fees is dependent on the timing of the offer of judgment: (1) 75% if made no later than 60 days after the time set for initial disclosures; (2) 50% if made more than 60 after the time for initial disclosures but more than 90 days before trial; and (3) 30% if made more than 90 but less than 10 days before trial.

B. Liens

Medical providers have a statutory right to assert a lien against a judgment or settlement for services furnished to a person for traumatic injuries. (AS 34.35.450) The medical provider must perfect its lien by filing a lien notice with the recorder's office. This is to be done within 90 days of injury, discharge, or end of services. The healthcare provider is also obliged to send the notice of lien upon the person alleged to be responsible for the injury and that person's insurance carrier, if known. (AS 34.35.460) Additionally, Medicaid has a right to subrogate for the Medicaid recipient's recovery by settlement or money judgment. (AS 47.05.070) And a worker's compensation insurer can subrogate for the injured worker for damages believed caused by a third party. (AS 23.30.015)

C. Minor Settlement

To approve a settlement involving a minor, the parent or guardian of the minor files a petition with the court stating, among other things, the relationship of the moving party to the minor, the circumstances giving rise to the claim, the amount of applicable liability insurance, and the basis for determining that the settlement is fair and reasonable. A guardian ad litem is not required. A settlement may be approved without a hearing where the proceeds, less attorneys' fees and costs, are less than $25,000. (Court Rule 90.2)

D. Negotiating Directly With Attorneys

There is no rule precluding a claims representative from settling directly with an attorney or a plaintiff.

E. Confidentiality Agreements

Confidentiality agreements are permitted for settlement documents. While there are no direct cases discussing enforcement of a confidentiality clause in a settlement agreement, Alaska would apply contract principles when interpreting settlement agreements. *Villars v. Villars*, 277 P.3d 763 (2012)

F. Releases

Because Alaska applies pure comparative fault, and thus does not have joint liability, the fault of a released party may be considered by the jury when it apportions fault. The liability of the remaining defendants is offset by this percentage. (AS 09.17.080)

G. Voidable Releases

There are no cases directly discussing whether an release for settlement is avoidable for fraud or otherwise; however, Alaska would apply contact principles when interpreting settlement agreements. *Villars v. Villars*, 277 P.3d 763 (2012)

Transportation Law

A. State DOT Regulatory Requirements

Alaska follows the Federal Motor Carrier Safety Administration regulations. (17 AAC 25.200)

B. State Speed Limits

The maximum speed limit on the highway, unless otherwise altered, is 55 mph. Residential is 25 mph and business districts 20 mph. 13 AAC 02.275.

C. Overview of State CDL Requirements

To obtain a commercial driver's license, an applicant must be 21 years old, have had a valid driver's license for at least one year, and pass a road, vision, and written test. There are three classes of licenses: A/CDL, operating vehicle greater than 26,000 lbs. and towing greater than 10,000 lbs.; B/CDL, operating vehicle greater than 26,000 lbs. and towing less than 10,000 lbs.; and C/CDL, operate vehicle less than 26,000 lbs. and designed to transport passengers or hazardous materials. http://doa.alaska.gov/dmv/akol/cdl.htm

Insurance Issues

A. State Minimum Limits of Financial Responsibility

Minimum limits for auto liability coverage are mandated by statute. (AS 21.96.020) The minimum requirements are (AS 28.20.440):

- Bodily Injury - $50,000 one person / $100,000 two or more persons
- Property Damage - $25,000

B. Uninsured Motorist Coverage

An insurer must offer uninsured motorist coverage. (AS 28.20.440). No specific amount is set for uninsured motorist coverage; but the maximum coverage is the lesser of (AS 28.20.445):

- The difference between the insured's bodily injuries and property damage and the amount paid by the person held legally responsible for the injuries and damage; or
- The applicable limit of liability of the uninsured motorist coverage.

Uninsured motorist coverage is excess to other available insurance coverage and worker's compensation, i.e, no stacking. (AS 28.20.445) Uninsured motorist coverage does not cover damage caused by the insured's vehicle or the insured's spouse or relative residing in the same household. (AS 28.20.445).

C. No Fault Insurance

Alaska is not a no-fault state.

D. Disclosure of Limits and Layers of Coverage

There is no requirement for an insurer to disclose policy limits pre-suit. But the insurance policy must be produced after litigation commences in the insured's initial discloses. (Court Rule 26)

E. Unfair Claims Practices

Alaska's Unfair Claims Settlement Practices Act (AS 21.36.125) includes a list of prohibited acts by an insurer:

- misrepresent facts or policy provisions relating to coverage of an insurance policy;
- fail to acknowledge and act promptly upon communications regarding a claim arising under an insurance policy;
- fail to adopt and implement reasonable standards for prompt investigation of claims;
- refuse to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise settlement;
- fail to affirm or deny coverage of claims within a reasonable time of the completion of proof-of-loss statements;
- fail to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear;
- engage in a pattern or practice of compelling insureds to litigate for recovery of amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;
- compel an insured or third-party claimant in a case in which liability is clear to litigate for recovery of an amount due under an insurance policy by offering an amount that does not have an objectively reasonable basis in law and fact and that has not been documented in the insurer's file;
- attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;
- attempt to settle a claim on the basis of an application that has been altered without the consent of the insured;
- make a claims payment without including a statement of the coverage under which the payment is made;
- make known to an insured or third-party claimant a policy of appealing from an arbitration award in favor of an insured or third-party claimant for the purpose of compelling the insured or third-party claimant to accept a settlement or compromise less than the amount awarded in arbitration;

- delay investigation or payment of claims by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

- fail to promptly settle claims under one portion of a policy for the purpose of influencing settlements under other portions of the policy;

- fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

- offer a form of settlement or pay a judgment in any manner prohibited by AS 21.96.030 (payment by check);

- violate a provision contained in AS 21.07 (patient confidentiality).

The Alaska Unfair Claims Settlement Practices Act does not create a private cause of action. (AS 21.36.127) Instead, the Director of Insurance is to adopt regulations enforcing the Alaska Unfair Claims Settlement Practices Act. (AS 21.36.910)

F. Bad Faith Claims

An insured may bring a first-party tort action against an insurer for breach of the duty of good faith and fair dealing. An insurer which wrongfully denies coverage materially breaches the insurance contract, and the insured is thereafter under no obligation to follow other provisions of the insurance contract. *State Farm Fire & Casualty v. Nicholson*, 777 P.2d 1152. In this instance, failure by the insured to forward the complaint would not preclude a bad faith claim. *Davis v. Criterion Insurance*, 754 P.2d 1331 (1988). The tort for breach of bad faith by first-party insurer does not require fraud; but the denial of coverage by the first-party insurer must be done without a reasonable basis. *Hillman v. Nationwide Mutual Fire Insurance*, 855 P.2d 3121 (1993). "An insurer, defending an action against the insured, is bound to exercise that degree of care which a man of ordinary prudence would exercise in the management of his own affairs, and if the insurer fails to meet that standard it is liable to the insured for the excess of the judgment over the policy limits, irrespective of fraud or bad faith. That is to say, an insurer undertaking a defense must exercise not only good faith, but also ordinary care and reasonable diligence and caution." *Continental Insurance Company v. Bayless & Roberts*, 608 P.2d 381 (1980).

Both policy holders and additional insureds may bring claims of bad faith claims against an insurer; however, incidental beneficiaries to an insurance contract, such as a tort victim, may not. *Ennen v. Integon Indemnity Corp.*, 268 P.3d 277 (2012). Additionally, an adjuster may be held personally liable to the insured for failure to exercise ordinary care with respect to the insured. *Continental Insurance Company v. Bayless & Roberts*, 608 P.2d 381 (1980).

G. Coverage – Duty of Insured

An insured has a duty to cooperate as required by the terms of the insurance contract. AS 21.96.100 However, if the insured refused to accept a reservation of rights, the insurer is either

to accept liability unconditionally or surrender control of the defense. *Continental Insurance Company v. Bayless & Roberts*, 608 P.2d 381 (1980).

H. Fellow Employee Exclusions

Alaska has not directly discussed the fellow employee exclusion for business automobile policies.