

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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Bulletin 96-04

TO: All Licensees, Insurance Companies, and Interested Parties

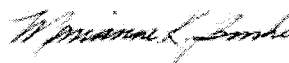
PURPOSE: This bulletin provides notice of new requirements regarding coverage for Alaska Rule of Civil Procedure 82 applicable to insurance policies issued on or after July 1, 1996, by all admitted and nonadmitted insurers.

Order R 96-03 adopted new regulations under Article 3, Chapter 26 - Trade Practices, and repealed 3 AAC 29.010, effective July 1, 1996.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

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

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

Dated this 19th day of April, 1996.



Marianne K. Burke
Director of Insurance

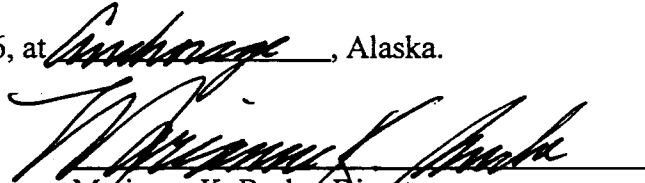
ORDER R 96-03 ADOPTING OR REPEALING
REGULATIONS OF THE DIVISION OF INSURANCE

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

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

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

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



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

FILING CERTIFICATION

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



Lieutenant Governor

Effective: July 1, 1996

Register: 138, July 1996

March 29, 1996

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

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

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

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

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

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

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

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

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

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

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

20% of \$25,000
10% of \$75,000

\$5,000
\$7,500

Total Limit of Liability \$100,000

Total Attorney Fees Covered \$12,500

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

March 29, 1996

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

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

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

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

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

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

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

(2) \$10,000.

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

Example 1:

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

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

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

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

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

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

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

Example 2:

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

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

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

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

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

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

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

Example 3:

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

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

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

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

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

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

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

March 29, 1996

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

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

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

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

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

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

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

(2) \$10,000.

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

Example 1:

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

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

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

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

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

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

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

Example 2:

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

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

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

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

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

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

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

Example 3:

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

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

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

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

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

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

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

March 29, 1996

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

**THIS POLICY DOES NOT PROVIDE COVERAGE FOR ATTORNEY FEES
UNDER ALASKA RULE OF CIVIL PROCEDURE 82**

We do not have a right or duty to defend an insured under this policy. We have no obligation to pay attorney fees taxable as costs against the insured under Alaska Rule of Civil Procedure 82.

This limitation means that the potential costs that may be awarded against you as attorney fees under Alaska Rule of Civil Procedure 82 are not covered by this policy. You will have to pay all attorney fees under Alaska Rule of Civil Procedure 82 directly.