

TO: Senator Jeff King
Members of Senate Committee on Judiciary

FROM: Ted Timsah

DATE: January 20, 2015

RE: K.S.A. 40-908 and S.B. 16

Dear Senators:

My name is Ted Timsah. I live in Wichita, Kansas, where I own a significant number of commercial rental properties and operate several businesses. Please consider this my written testimony in opposition to S.B. 16.

Last year, I submitted this testimony in opposition to an identical bill, H.B. 2678, which was tabled by unanimous vote of the House Insurance Committee.

I owned a 5,000 square foot rental home in the Vickridge neighborhood in east Wichita. It was appraised at \$350,000 - \$450,000. I paid to insure it through one of the Travelers Property Casualty Companies.

In April of 2006, I evicted my tenant from the property for failure to pay rent. Shortly thereafter, I discovered, among other things, that:

1. a leaded glass panel on the front door had been broken out;
2. all of the carpet had been removed from the house, leaving the subfloors exposed;
3. the kitchen sink and a bathroom sink had been turned on and stoppered, and a hose had been left running, such that the house was flooded with water;
4. all of the appliances had been stripped from the house (*e.g.*, a new washer and dryer, a custom refrigerator, a built-in ice maker, a dishwasher, the stove, and the built-in microwave with exhaust fan);
5. all of the light fixtures and a Lalique crystal chandelier had been stripped from the house;
6. the security system control panel (motherboard) and key pad had been stripped from the house;
7. the mailbox had been stolen;
8. linoleum had been ripped from the bathroom floor;

9. the garage door opener had been damaged beyond repair;
10. laminate had been ripped away from the kitchen counter; and
11. the control board had been ripped out of the furnace.

After discovering the extraordinary damage, I promptly made a report to the police. I also promptly notified Travelers of the loss and exhibited the damage to Travelers' claim representative.

In response to my claim, Travelers misrepresented to me that the claim was not covered by its insurance policy. Travelers denied any responsibility and it refused to pay any part of my loss. Although I didn't like it, I relied on Travelers' representation that the policy did not afford coverage for my loss. (I am not an insurance expert). The damage rendered my property uninhabitable, and it could not be rented. Without a better option, I sold the house; and the new owners demolished it. After crediting the proceeds of that sale, my net loss was in excess of \$100,000.

About a year later, I complained about this matter to my attorneys, Jacob Graybill and Russell Hazlewood, of Graybill & Hazlewood L.L.C. After reviewing the facts and the insurance policy, they advised me the claim was covered, and Travelers had breached its insurance contract. They told me there was a statute, K.S.A. 40-908, that would allow me to recover my attorneys fees and expenses from Travelers if I prevailed in a lawsuit. Consequently, they were able take my case under an arrangement that shifted the risk and expense to them, making it economically practical for me to pursue my claim.

Graybill and Hazlewood filed a lawsuit for me in October of 2007. After about a year of litigation, my claim was resolved at a mediation. If K.S.A. 40-908 were amended as proposed by S.B. 16, it would have been of no help to me in connection with this claim. Without the statute, I would never have pursued the claim, even though I could afford to pay the attorneys. Even with a loss in excess of \$100,000, that exercise would not have survived a cost/benefit analysis from my perspective. I know from experience that some insurance companies are willing to wage a war of attrition. Without a fee-shifting mechanism, the risk and expense of litigation against an insurer willing to expend virtually unlimited funds can make pursuing a claim impractical, even where the policyholder is relatively affluent and the loss is significant.

Over the past several years, Graybill and Hazlewood have helped me and my companies resolve a number of insurance coverage disputes involving claims other than fire, tornado, lightning or hail. As a practical matter, those claims and the claim discussed above would have been worthless if the statute had been amended as proposed by S.B. 16.

I urge you to make no change that would limit the scope of K.S.A. 40-908. It seems to me that K.S.A. 40-908, if amended, should be expanded to encompass all insurance coverages.

Ted Timsah