

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Chairman Rex Hoy at
Chairperson

3:30 ~~am~~/p.m. on March 1,, 1983 in room 521 S of the Capitol.

All members were present except:
Rep. J. C. Long, who was excused.

Committee staff present:
Wayne Morris, Legislative Research
Gordon Self, Revisor's Office
Mary Sorensen, Committee Secretary

Conferees appearing before the committee:
Larry Worrall, Leawood, KS, for Media Professional Insurance, Inc.
Jim Wright, for the Kansas Association of Defense Counsel
L. M. Cornish, for Kansas Association of Property and Casualty Insurance Companies
Larry Smith, Fort Scott, KS, for the Western Insurance Companies
Dick Scott, for State Farm Insurance Companies
Dick Brock, Kansas Insurance Department
Larry Magill, Independent Insurance Agents of Kansas
Jerry Palmer, Kansas Trial Lawyers Association
John Brookens, Kansas Bar Association

Others present were:
See List (Attachment 1) Pages 1 and 2

Larry Worrall, Leawood, KS, President and General Counsel of Media Professional Insurance, Inc. spoke in support of HB 2062, and gave several examples where there might be a need for insurance for punitive damages.

HB 2061 was considered next. Jim Wright, for the Kansas Association of Defense Counsel, spoke in opposition to the bill. He said that under the present law there was no limit on lawsuits for tangible losses, but intangible losses were limited to \$25,000 and he thought the present system was working very well. There was discussion as to whether or not insurance rates for liability insurance would be raised if this bill is passed. L. M. Cornish, representing the Kansas Association of Property and Casualty Insurance Companies, then spoke in opposition to HB 2061. He said their association felt that the present law was working well, and that it might work a hardship on the smaller insurance companies if the lid was raised to \$100,000 as proposed in this bill, or if it were completely eliminated and the amount of damages left to the court system. Dick Scott, of the State Farm Insurance Companies, said his company would like the limit to stay at \$25,000, but would rather have a \$100,000 limit than none at all. Larry Magill of the Independent Insurance Agents, said he felt all points had been covered and he had nothing to add.

HB 2437 was next on the agenda. Larry Smith, of the Western Companies, passed around a Position Memorandum prepared by their companies (Attachment 2) He went through the memorandum and spoke to the exclusions and suggested amendments in the memorandum, and said they would like to see them included in the bill for passage. Dick Scott, representing the State Farm Insurance Companies, spoke in favor of the bill and passed out a presentation on Personal Injury Protection Subrogation System (Attachment 3). He discussed the contents, and there were questions and discussion on the PIP coverages, uninsured motorists coverage, and subrogation under the present law, as suggested in Western's memorandum, and HB 2437. Dick Brock, of the insurance department, stated that this was basically a clean-up bill and the department would support it, with certain changes.

Kathleen Sebelius, of the Kansas Trial Lawyers Association, passed around testimony in opposition to HB 2437 (Attachment 4) and Jerry Palmer read the testimony. There were questions and discussion on some of the points in the testimony. John Brookens, of the Kansas Bar Association, said that their association would stand on Mr. Palmer's statement in opposition to HB 2437.

The meeting adjourned at 5:10 PM.

POSITION MEMORANDUM
OF
THE WESTERN CASUALTY AND SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY COMPANY
ALL OF
FORT SCOTT, KANSAS

SUBJECT: HOUSE BILL 2473

BACKGROUND: When the present no-fault law was passed in 1973/74 the old financial responsibility laws were repealed. The repealed sections contained permitted exclusions which were part of a standard automobile policy. This standard policy is used in all states. Further, in 1980 a case in the Kansas Supreme Court interpreted the repeal of these exclusions as being the "legislative intent". Thus, all exclusions in the Kansas automobile insurance policy were declared null and void.

Subsequently in 1980, a hurried attempt was made to restore these exclusions with SB 371. Many were. The restored exclusions were those applicable to personal auto policies. Those relating to commercial auto policies were overlooked and were not included.

House Bill 2473 attempts to restore the commercial auto policy to its former provisions.

In addition, a number of changes are suggested which would broaden coverage. These changes are needed to clarify the law in certain areas or to improve the delivery of insurance benefits under the auto no-fault statute.

POSITION OF
THE WESTERN:

House Bill 2473 was submitted "by request".

The insurance industry requested introduction of this bill. Accordingly, we are proponents in favor of passage of House Bill 2473.

IMPACT:

The primary impact is to place the Kansas policy on an equal basis with all other states. Restoring language which has been in the policy for fifty years or more is needed.

At present, the Kansas Commercial Policy, without these provisions, is unique. The exclusions transfer losses to the proper insurance policy. The long term impact is that Kansans, you and me, will be paying for losses that should be paid through some other form of insurance.

EFFECT OF ANY EXCLUSION:

The old adage --- "They give it to you in the large print and take it away in the small print" --- is one used in reference to an insurance policy. To some extent that is true --- but it is also necessary.

The truth is -- exclusions are necessary for several reasons:

- (1) To prevent fraud or abuse of the policy
- (2) Coverage would be cost prohibitive generally without exclusions.
- (3) To prevent overlap with other coverages.
- (4) To be able to price the insurance product.

House Bill 2473 deals primarily with overlap. Very simply, without these exclusions the auto insurance on a business, a farm or possibly your personal car can well pick up the tab for a loss which should be covered by a commercial risk policy. To over-simplify, the premium you pay for your automobile insurance may be increased because of losses that should be paid by the Boeing Company or Safeway Stores! The lack of exclusions would make the auto coverage primary (or pro rata).

EXPLANATIONS:

- #1) Page 2, lines 0065-0067. We are adding "struck by" and "or trailer" to make the exclusion consistent with the intent of the existing language. This is a "clean up" effort in that injuries caused by an owned but uninsured auto or trailer should not qualify for uninsured motorist coverage. As amended this language is consistent with the original intent and will help insure that uninsured motorist coverage premiums will stay as low as possible.
- #2) Page 2, line 0069 "the federal government" was replaced by "any governmental entity". A self-insured government unit, whether federal, city, county or state, should not be considered uninsured. Otherwise, you are paying premiums for losses caused by a self-insured entity.
- #3) Page 2, line 0071. This broadens coverage. The existing law requires physical contact between two autos before uninsured motorist coverage is applicable. This is the "phantom vehicle" situation where someone forces a vehicle off the roadway without colliding. We believe coverage should exist in these situations as long as there is evidence to support the claim.
- #4) Page 4, line 0142. The word "employees" was left out originally. This is a correction only.
- #5) The "household" exclusion is broadened by this amendment.
- EXAMPLE: Father lets daughter have the family car for the evening. Daughter lets her boyfriend drive. While driving the boyfriend has an accident, seriously injuring the daughter. Under present law, daughter's injuries would not be covered. With this amendment, the daughter would be covered as she is not related to or residing with the operator of the auto.
- #6) Page 5, line 0167 and following (including suggested amendments)
Permitted exclusion: Exclusion #7. This is the "intentional act" exclusion. Very simply, insurance should not pay the person who burns

his car down or who intentionally causes an accident. If insurance paid these losses the honest person would surely pay higher premiums.

Exclusion #8. For the most part the "nuclear exclusion" will not affect the average Kansas auto policyholder. The "nuclear exclusion" applies only to persons who deal in the transportation of nuclear substances. In those cases coverage is excluded in favor of a nuclear energy liability policy such as one written by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters.

Exclusion #9. The "WC indemnification exclusion" is a companion to subsection (4). Both, operating together, make worker's compensation coverage the exclusive remedy for injured workers.
EXAMPLE: "A" the employer and driver was taking "B" the employee to a worksite. "A" failed to yield at an intersection and was struck by "C" who was speeding in his car. "A" paid WC benefits to "B". "B" sued "C" and collects his medical expenses and loss of earnings based on "C's" negligence. "C" then sues "A". "A" has met his responsibility to "B". "C's" suit against "A" should be dropped. In the event the lawsuit against "A" is not dropped, it will be "A's" worker's compensation policy which will defend "A". Employer's Liability Coverage (Coverage B) of the WC policy is written for this purpose.

Exclusion #10. The "fellow servant rule" holds that since the employer is required to provide worker's compensation coverage he is not further liable to the injured employee. This is the law in the State of Kansas. This exclusion simply makes the Kansas auto policy conform with present law.

Exclusion #11. This exclusion and #12 below are known as the "loading and unloading" exclusions. Their purpose is to coordinate coverage between a general liability policy and the automobile policy. One begins where the other ends to provide coverage as goods and materials go in and out of autos and trucks. These exclusions are used in all states. We attach a general liability endorsement to illustrate how these exclusions work together.

Without the "loading and unloading" exclusions in the policy, Kansas auto policyholders can be charged with general liability losses of Boeing or Safeway for example!

Exclusion #12. This is the "forklift" exclusion which should be considered in the discussion of the "loading and unloading" exclusion above.

Exclusion #13. This is the pollution exclusion. Here, as with exclusions above, there is a need to coordinate with the general liability policy:

EXAMPLE: Mr. Smith, a farmer, is carrying a tank of liquid fertilizer. He loses control of his pickup, hits a bridge abutment and the tank goes into a stream, causing considerable pollution damage. This damage is covered. All sudden and accidental damage is covered. By contrast, continuous pollution is not covered. It is not covered under a general liability policy and it should not be covered under an auto policy. Coverage is written by the Pollution Liability Insurance Association as well as several individual insurance companies, specifically for the pollution exposure. To load the Kansas auto policy with this additional risk is not right!

#7) Page 5, line 177 and following -- the amendment broadens "no-fault" coverage to include injuries outside the state of Kansas as a pedestrian or in an auto not covered by no-fault insurance. There are substantial changes which carry out the initial intent of the law and benefit the insuring public.

- #8) Page 5, line 0193 and 0200 eliminate the word "himself". This is "cleanup" only.
- #9) Page 6, lines 0203 through 0216 and Page 7, lines 0244 through 0251. This is an "overhaul" of a section of the no-fault which will greatly benefit the insuring public. Under present law a great deal of effort is made in trying to apportion or pro rate benefits between insurance companies. These amendments do away with all of that!

Instead, the policy providing the highest amount of coverage becomes primary. There is no confusion and benefits can begin immediately. There is no dispute as to which insurance company will pay the benefits.

On page 7, a reduction is made in the amount of loss a person can claim in a lawsuit. In other words, if you have received payment of your medical bills through your no-fault insurance you cannot claim them again in the lawsuit. This is a double recovery.

At the same time your no-fault insurance gives up the right to reimbursement for payments it makes.

The whole effect is to deliver a greater benefit to the insuring public by cutting out handling costs. The repealed section, K.S.A. 40-3113a becomes unnecessary once all of the benefits flow to the injured party; once the insurance company cannot get its payment back.

CONCLUSIONS:

These provisions and exclusions are not designed to disadvantage any purchaser of automobile insurance. Almost all create a benefit to the Kansas insuring public. While delivering a benefit, they also streamline the handling methods or shift the risk to other types of insurance.

Insurance premiums are based upon the provisions and exclusions of the policy.

Admittedly some of these loss situations are not frequent. Yet, when they occur, if they are covered by the auto policy when they should be covered by some other form of insurance, the rates will go up! All losses go into the rate making stream. It is unfair for Kansas citizens to be subject to potential rate increases while citizens of all other states are not.

RESPECTFULLY SUBMITTED,

THE WESTERN CASUALTY AND SURETY COMPANY

THE WESTERN FIRE INSURANCE COMPANY

THE WESTERN INDEMNITY COMPANY

BY: 

*HOMER COWAN, JR.

*Registered Lobbyist

0156 charge of or transported by an insured, however, this exclusion
0157 shall not apply to coverage for a rented residence or rented private
0158 garage;

0159 (4) for any obligation of an insured, or the insured's insurer
0160 under any type of workers' compensation or disability or similar
0161 law;

0162 (5) for liability assumed by an insured under any contract or
0163 agreement; and

0164 (6) if two or more vehicle liability policies apply to the same
0165 accident, the total limits of liability under all such policies shall
0166 not exceed that of the policy with the highest limit of liability;

0167 (7) for any damages arising from an intentional act; and

0168 (8) for any damages to any person who is insured under a
0169 nuclear energy liability policy.

0170 Sec. 3. K.S.A. 40-3109 is hereby amended to read as follows:

0171 40-3109. (a) A self-insurer or the insurer of the owner of a motor
0172 vehicle covered by a policy of motor vehicle liability insurance
0173 meeting the requirements of this act shall pay any personal injury
0174 protection benefits which are required to be provided by this act
0175 or in such owner's policy of motor vehicle liability insurance for
0176 any injury:

0177 (1) Sustained in this state by the owner while occupying a
0178 motor vehicle not excluded by subsection (a) of K.S.A. 40-3108, or
0179 while not an occupant of a motor vehicle if the injury is caused by
0180 physical contact with a motor vehicle;

0181 (2) sustained outside this state, but within the United States
0182 of America, its territories or possessions or Canada, by the owner
0183 while occupying the owner's motor vehicle; within the United
0184 States of America, its territories or possessions or Canada by the
0185 owner while:

0186 (A) Occupying a motor vehicle not excluded by subsection (a)
0187 of K.S.A. 40-3108 and amendments thereto; or

0188 (B) not an occupant of a motor vehicle if the injury is caused
0189 by physical contact with a motor vehicle;

0190 (3) (2) sustained by a relative of the owner residing in the
0191 same household, under the circumstances described in paragraph
0192 (1) or (2) of this subsection, if the relative at the time of the

- (9) Any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee.
- (10) Bodily injury to any fellow employee of the insured arising out of and in the course of his or her employment.
- (11) Bodily injury or property damage resulting from the handling of property:
- a. Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto, or
 - b. After it is moved from the covered auto to the place where it is finally delivered by the insured.
- (12) Bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto.
- (13) Bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

PART I LIABILITY INSURANCE

LOADING AND UNLOADING - AMEN #11

A. WE WILL PAY.

1. We will pay all sums the insured legally must pay as damages because of **bodily injury** or **property damage** to which this insurance applies, caused by an **accident** and resulting from the ownership, maintenance or use of a covered **auto**.
2. We have the right and duty to defend any suit asking for these damages. However, we have no duty to defend suits for **bodily injury** or **property damage** not covered by this policy. We may investigate and settle any claim or suit as we consider appropriate. Our payment of the LIABILITY INSURANCE limit ends our duty to defend or settle.

FORKLIFT EXCLUSION #12

7. ported by the insured or in the insured's care, custody or control.
Bodily injury or **property damage** resulting from the handling of property:
 - a. Before it is moved from the place where it is accepted by the insured for movement into or onto the covered **auto**, or
 - b. After it is moved from the covered **auto** to the place where it is finally delivered by the insured.

8. **Bodily injury** or **property damage** resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered **auto**.

9. **Bodily injury** or **property damage** caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

B. WE WILL ALSO PAY.

In addition to our limit of liability, we will pay for the insured:

1. Up to \$250 for cost of bail bonds (including bonds for related traffic law violations) required because of an **accident** we cover. We do not have to furnish these bonds.
2. Premiums on appeal bonds in any suit we defend.
3. Premiums on bonds to release attachments in a suit we defend but only for bonds up to our limit of liability.
4. All costs taxed to the insured in a suit we defend.
5. All interest accruing after the entry of the judgment in a suit we defend. Our duty to pay interest ends when we pay or tender our limit of liability.
6. Up to \$50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at our request.
7. Other reasonable expenses incurred at our request.

POLLUTION EXCLUSION #13

D. WHO IS INSURED.

1. You are an insured for any covered **auto**.
2. Anyone else is an insured while using with your permission a covered **auto** you own, hire or borrow except:
 - a. The owner of a covered **auto** you hire or borrow from one of your employees or a member of his or her household.
 - b. Someone using a covered **auto** while he or she is working in a business of selling, servicing, repairing or parking autos unless that business is yours.
 - c. Anyone other than your employees, a lessee or borrower or any of their employees, while moving property to or from a covered **auto**.
3. Anyone liable for the conduct of an insured described above is an insured but only to the extent of that liability. However, the owner or anyone else from whom you hire or borrow a covered **auto** is an insured only if that **auto** is a trailer connected to a covered **auto** you own.

WE WILL NOT COVER — EXCLUSIONS.

This insurance does not apply to:

1. Liability assumed under any contract or agreement.
2. Any obligation for which the insured or his or her insurer may be held liable under any workers' compensation or disability benefits law or under any similar law.
3. Any obligation of the insured to indemnify another for damages resulting from **bodily injury** to the insured's employee.
4. **Bodily injury** to any fellow employee of the insured arising out of and in the course of his or her employment.
5. **Bodily injury** to any employee of the insured arising out of and in the course of his or her employment by the insured. However, this exclusion does not apply to **bodily injury** to domestic employees not entitled to workers' compensation benefits.

Property damage to property owned or trans-

E. OUR LIMIT OF LIABILITY.

1. Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, the most we will pay for all damages resulting from any one accident is the LIABILITY INSURANCE limit shown in the declarations.
2. All **bodily injury** and **property damage** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident.

F. OUT OF STATE EXTENSIONS OF COVERAGE.

1. While a covered **auto** is away from the state where it is licensed we will:
 - a. Increase this policy's liability limits to meet those specified by a compulsory or financial responsibility law in the jurisdiction where the covered **auto** is being used.

WUC INDEMNIFICATION - AMENDMENT #9
FELLOW SERVANT AMENDMENT #10



FELLOW EMPLOYEE EXCLUSION

CHANGES IN POLICY - KANSAS

CA 01 22 (ED. 01-83)

For a covered auto licensed or principally garaged in, or garage operations conducted in, Kansas, the policy is changed as follows:

A. CHANGES IN LIABILITY INSURANCE

1. For coverage up to the limits required by the Kansas Financial Responsibility law, WE WILL NOT COVER-EXCLUSIONS is changed as follows:

a. The exclusions relating to (i) the obligation of the insured to indemnify another for injury to the insured's employee and (ii) bodily injury to any fellow employee of the insured and (iii) pollutants, contaminants or irritants do not apply.

b. The exclusion relating to property owned or transported by the insured or in the insured's care, custody or control is changed to read:
This insurance does not apply to property damage to property owned by, rented to, or in charge of or transported by an insured, however this exclusion does not apply to coverage for a rented residence or private garage.

c. The exclusion relating to bodily injury to any employee of the insured is changed to read:
This insurance does not apply to bodily injury to any employee of the insured arising out of and in the course of his or her employment by the insured if benefits are required or available for the employee under any workers' compensation or disability benefits law or under any similar law.

d. If contained in the policy, the exclusion relating to racing does not apply.

2. OUR LIMIT OF LIABILITY applies except that we will apply the limit shown in the declarations to first provide the separate limits required by Kansas law as follows:

- a. \$25,000 for bodily injury to any one person caused by any one accident,
- b. \$50,000 for bodily injury to two or more persons caused by any one accident, and
- c. \$10,000 for property damage caused by any one accident.

This provision will not change our limit of liability.

B. CHANGES IN CONDITIONS

CANCELLING THIS POLICY DURING THE POLICY PERIOD does not apply. The following Condition applies instead:

TERMINATION

A. Cancellation

- 1. You may cancel the policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
- 2. We may cancel the policy by mailing you notice. If we cancel for non-payment of premium we will mail you at least 10 days notice. If we cancel for any other reason we will mail you at least 30 days notice.
- 3. The effective date of cancellation stated in the notice shall become the end of the policy period.
- 4. If this policy is cancelled, you may be entitled to a premium refund. However, making or offering to make the refund is not a condition of cancellation. If you cancel, the refund, if any, will be computed in accordance with the customary short rate procedure. If we cancel, the refund, if any, will be computed pro rata.

B. Non-Renewal

- 1. If we decide not to renew or continue this policy we will mail you at least 30 days notice before the end of the policy period. If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.
- 2. If we fail to mail proper notice and you obtain other insurance this policy will end on the effective date of that insurance.

C. Mailing of Notices

Any notice of cancellation or non-renewal will be mailed by certified or registered mail or United States Post Office certificate of mailing to your last known address. However, we may deliver any notice instead of mailing it. Proof of mailing of any notice will be sufficient proof of notice.

All other terms, limits and provisions of the policy remain unchanged.

POLLUTION EXCLUSION ← → [pollutants, contaminants or irritants]
NOTE: THIS ENDORSEMENT DOES NOT COVER THE "LOADING & UNLOADING EXCLUSION - NEITHER DOES PRESENT LAW OBVIOUSLY A "DOUBLE OVERSIGHT"



GENERAL LIABILITY
AMENDATORY ENDORSEMENT - ADDITIONAL DEFINITION

Attached to and made a part of Policy No. _____ of The Western Casualty and Surety Company,
of Fort Scott, Kansas 66701. and/or
Western Fire Insurance Company,

Issued to _____
Name of Insured City State and Zip Code

Endorsement Effective* _____

HE DuVall
Secretary

Authorized Representative

*If no date shown, this endorsement becomes effective concurrently with the effective date of the policy to which it is attached.
(The information above is required only when this endorsement is issued after policy preparation.)

It is agreed that the following definition is added:

"loading or unloading", with respect to an **automobile**, means the handling of property after it is moved from the place where it is accepted for movement into or onto an **automobile** or while it is in or on an **automobile** or while it is being moved from an **automobile** to the place where it is finally delivered, but "loading or unloading" does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the **automobile**.

All other terms, limits and provisions of the policy remain unchanged.



pire. The appraisers shall state separately the actual cash value and the amount of **loss**, and, failing to agree, shall submit their differences to the umpire. An award in writing of any two shall determine the amount of **loss**. **You** and **we** shall each pay the chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

2. **We** shall not be held to have waived any of **our** rights by any act relating to appraisal.

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

H E DuVall
Secretary

T. M. Maghen
President

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

It is agreed that:

A. The policy does not apply:

1. Under any Liability Coverage, to **bodily injury** or **property damage**

a. with respect to which an **insured** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

b. resulting from the **hazardous properties** of **nuclear material** and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

3. Under any Liability Coverage, to **bodily injury** or **property damage** resulting from the **hazardous properties** of **nuclear material**, if

a. the **nuclear material** (1) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (2) has been discharged or dispersed therefrom;

b. the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or

c. the **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to **property damage** to such **nuclear facility** and any property thereat.

L. **TWO OR MORE POLICIES ISSUED BY US**

If this policy and any other policy issued by **us** or any company affiliated with **us** apply to the same **accident**, the aggregate maximum limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy. This condition does not apply to any policy issued by **us** or an affiliated company specifically to apply as excess insurance over this policy.

B. As used in this endorsement:

"**hazardous properties**" include radioactive, toxic or explosive properties;

"**nuclear material**" means **source material**, **special nuclear material** or **byproduct material**;

"**source material**", "**special nuclear material**", and "**byproduct material**" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"**spent fuel**" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

"**waste**" means any waste material

(a) containing **by-product material** other than the tailings or **wastes** produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and

(b) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**;

"**nuclear facility**" means

1. any **nuclear reactor**,

2. any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing **spent fuel**, or (c) handling, processing or packaging **waste**,

3. any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"**nuclear reactor**" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"**property damage**" includes all forms of radioactive contamination of property.

NOTE

NEW YORK EXCEPTION: The "Nuclear Energy Liability Exclusion Endorsement (Broad Form)" does not apply to Automobile Liability Insurance in New York.

HOUSE BILL 2437

Presentation to the House Insurance Committee

PERSONAL INJURY PROTECTION SUBROGATION SYSTEM

PRESENT LAW AND PRACTICE

1. Subrogation claims are subject to litigation.
2. Subrogation claims are subject to comparative negligence.
3. Subrogation claims are subject to attorney fees.
4. Considerable time and effort is necessary to handle subrogation.
 - a) Notices sent to wrongdoer.
 - b) Notices sent to other insurance company.
 - c) Notices sent to injured insured.
 - d) Notices sent to insured's attorney.
 - e) Correspondence on a periodic basis with insured, other insurance company and insured's attorney.
 - f) Resolution of disputes as to facts of accident, negligence of parties, determination of comparative negligence, necessity of treatment and wage loss, etcetera.
 - g) Supervision of litigation.

In short, a very costly and inefficient system. But, some system is necessary to eliminate double recovery for the same loss by injured parties.

EFFECT OF HOUSE BILL 2437, SEC. 4(b)

1. Eliminates subrogation and all the correspondence, litigation, and attorney handling.

2. Continues to eliminate double recovery for the same losses.
3. Has the same dollar for dollar effect as subrogation, without the inefficient paper mill and expensive litigation process.
4. (MOST IMPORTANT) Provides better and more responsive insurance coverage for the injured person.
 - a) Present Law - If the injured person's claim has value that exceeds the liability policy limits, the net recovery (PIP plus liability) is limited to the liability policy limit.
 - b) HB 2437 - In the same situation the injured party has available the PIP coverage in addition to the liability limits.

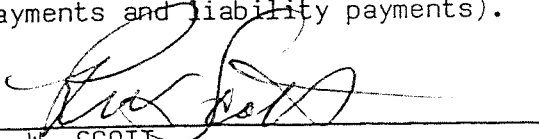
EXAMPLE

John Doe sustains serious injuries which have settlement value of \$40,000.00. Capitol Insurance Company insures the wrongdoer with limits of \$25,000.00. John Doe has PIP coverage with Wheat State Insurance Company and is paid a total of \$7,000.00 (\$2,000.00 medical and \$5,000.00 wage).

Present Law - John Doe is forced to settle for the \$25,000.00 limits of Capitol and then must pay back \$7,000.00 to Wheat State. Net recovery for John Doe - \$25,000.00.

HB 2437 - The liability settlement value of John Doe's claim is reduced by PIP payments (\$40,000.00 minus \$7,000.00 equals \$33,000.00). He can settle for \$25,000.00 from Capitol and keep the PIP payments. Net recovery for John Doe - \$32,000.00 (\$25,000.00 liability limit plus \$7,000.00 PIP payments).

As always, in evaluating the effect of any no-fault plan in regard to recovery of the injured person, one must consider NET RECOVERY (PIP payments and liability payments).


R. W. SCOTT

Representing State Farm Insurance Companies

TESTIMONY FOR KTLA

H.B. 2437

COMMITTEE ON INSURANCE

March 1, 1983

Kansas Trial Lawyer's Association is made up of more than 800 attorneys primarily representing the interests of injured persons and who are concerned about the subjects of automobile insurance, legislation that affects liability insurance, uninsured motorists protection and no-fault, all of which are represented in this bill.

The recommendation of the Kansas Trial Lawyer's Association will be directed to the lines of the Bill where the sections under consideration commence.

Line 69--This provision dealing with limitations on uninsured motorists protection presently includes self-insurers and the federal government. The amendment would extend this to any governmental entity. It is the recommendation of the KTLA that a sub-section 2 should be written in this way: "when the uninsured automobile is owned by a self-insurer or a governmental entity and is being operated by one of their employees within the scope of employment." The reasons for this are that ownership of a vehicle in the state of Kansas does not control liability. Thus, a vehicle may be owned but uninsured because the use is outside of the scope of employment by the self-insured's employee or by the governmental employee. When that occurs then there would be neither primary liability insurance nor would there be uninsured motorist protection. This would create a class of persons who would not necessarily be insured, nor would the victim's own insurance be available for coverage. The intent of the act is to see that everyone is covered for a loss either through underinsured/uninsured motorist protection if the negligent party has no liability insurance available.

This is a necessary amendment in order to effect the policy of universal coverage which is contemplated by the mixture of the liability and uninsured motorists statutes of this state.

Line 71--KTLA agrees with the philosophy of striking the physical contact requirement. Courts have long noted that they are capable of dealing with this type of situation and really there is no need, and KTLA would recommend that this entire sub-section be stricken. The wording that is proposed, though, is an even worse substitution. It is possible that you could have physical contact without having a "reliable competent" witness to prove the "facts of the accident". Whatever language is adopted, it should not be the language that is proposed. It will lead to more confusion and clear up fewer situations than the current language, which is bad in itself, can create.

Line 78--Sub-section 6 is an attempt to reduce uninsured motorists protection to the extent that personal injury protection benefits have been paid. In 1975 when the initial No Fault Act was initiated there was a similar section in K.S.A. 40-3113. K.S.A. 40-3113(a) was amended in 1977 and this provision was stricken. It makes no sense for a person to pay a premium for uninsured motorists protection and for no fault benefits and then have them discounted from each other. An injured person should have available the entirety of the monies for which they have paid in order to satisfy their claim and no good policy reason exists for anything differently.

Line 148--This is the householder's exclusion or family member exclusion. This perhaps is the most offensive of all the liability exclusions. It should be noted that historically this sub-section as well as others were amended on the floor of the house without committee consideration in the wake of a case named DeWitt v. Young, decided by the Supreme Court while the legislature was in session. The householder's exclusion creates a unique problem. The case of Noktonik v. Noktonik, decided by the Supreme Court gave rights to unemancipated minors to bring actions against their parents for personal injuries to them. Under this circum-

stance then, there would be liability without protection. This could create a class of uninsured motorists or in the alternative could create a class of persons who have no insurance available and leaves a gap in the whole coverage scheme. Admittedly the language here is better than that which currently exists in the law. Since, though, no committee ever considered this section, we would urge the committee to delete the entire section. It should be noted that none of the ISO companies had this exclusion as part of their package. Others, such as the Western did not have this provision until it was put into the law. It is our belief that most insurers would be willing to delete this section and even permit spouses (currently barred by common law immunity) to collect under the policy and that this is a desirable coverage from the standpoint of the public. If I am at fault for injuring my wife or my child and that person will suffer damages which are permanent in nature and require extensively medical, loss of income, disfigurement and disability, I would certainly rather pay the rather paltry premiums that have been quoted for this coverage than to not have it. Several lawyers who are sophisticated in these matters have changed companies to avoid this particular policy provision and it is the belief of the KTLA that others who understood its impact would do likewise if similarly informed. Ask yourself the question, "For two or three dollars more a year wouldn't I like to have my liability protection afforded to my family for the percentage of fault I might be found at if I were involved in an accident, particularly if their injuries were serious?" If that is your feeling, then perhaps it is your duty to see that this section is stricken as being in violation of public policy.

Line 244--KTLA believes this is the worst section in the whole Bill. What would occur is that PIP benefits which are paid for as a first party premium by the insured, will be discounted from any settlement or judgment for personal injury. In addition to the PIP payments, any "excess benefits" above the minimum limit will also be taken out; and not only those that have been paid but those which are "payable".

To understand the problem this creates, we must first recognize that a wrongdoer will benefit from his wrong doings to exactly the extent that his victim has been conservative enough to purchase insurance to cover losses. Moreover, the subrogation rights of insurance companies which have been limited to statutorily mandated coverage in most of the instances where it has been taken up in the District Courts of this state, will now be extended to all first party insurance purchased from an auto insurer as a discount against the ultimate recovery. Furthermore, it could certainly be argued under the wording of this statute that the entire limits for PIP, whether paid or not, would come under the concept of "payable" and thus if someone had had \$500.00 of medical expenses it could be argued that what is "payable" is \$1,500.00 of future expenses and those should be deducted from the entire judgment.

The practical effect of this would be that insurance companies would not be collecting back their monies and thus paying their fair share of the expenses of the prosecution of litigation and the attorney fees for the prosecution of the claim. Claims then would become more unprofitable for an injured person to prosecute by themselves, the economic impact would probably be for a higher attorney fee on the whole for the insured in the collection of his other damages, or his inability to find an attorney to represent him on a contingency fee basis.

A reduction from a "settlement" raises a myriad of problems not the least of which is the impairing of a contract. The ostensible trade off is the elimination of 40-3113(a) which is the subrogation right of the insurer which is subject, of course, to attorney fees.

The whole idea of the legislature making people pay for first party coverage is somewhat alien to free market choice. The reasons given for no fault, and which continue to be questioned to this very day, is that there has to be some minimum amount of first party coverage to pay the initial medical bills, pay for the lost time from work, and other incidentals and that people who drive on our highways have a responsibility to the public

at large to provide themselves with that kind of protection. However, when someone is at fault, we still shift the incidence of that loss back to the wrongdoer. Under the scheme that is being put forward here in this section, the burden does not shift to the wrongdoer, but stays with the innocent injured person. Whose rates, then, will go up? The wrongdoer or the innocent injured person?

In general we have some comments about the no fault insurance amendments which go to this package as well as to the others, and they are that there is NO NEED shown by the insurance industry or anyone else that litigation is increasing, in fact the number of automobile related lawsuits has probably dropped as the statistics of the Judicial Council show, and there is no actuarial evidence of any positive impact from any of this legislation. The legislature ought to require a showing of some kind in order to change the law. Especially when it may injure the innocent by higher premiums and benefit the guilty by lower ones. If for example we had an 18 year old male with a conviction for DWI on the one hand, and a 45 year old specialist physician on the other; whose rates would be increased and whose rates would be decreased by an amendment such as here proposed?

Respectfully submitted,

Jerry R. Palmer
Kansas Trial Lawyer's Association