Approved April 25, 1984
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Rep. Rex B. Hoy at
Chairperson

3:30 a.m./p.m. on March 19, 1984 in room 521 S of the Capitol.

All members were present except:
Rep. Cribbs, Rep. M. J. Johnson, Rep. Peterson, Rep. Turnquist, and Rep. Webb, all of whom were excused.

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

Conferees appearing before the committee:
Mark Bennett
David Hanson
Richard Brock
Homer Cowan
Others Present: See Attachment 1

SB 765, by Judiciary Committee--concerning liability insurance, providing for a direct cause of action against an insurer under certain circumstances, was up for continuation of hearing from last week. Mark Bennett, representing the American Insurance Association, spoke in opposition to the bill. He passed around his written testimony (Attachment 2). He read from the testimony and proposed an amendment to be considered by the committee, which is set out on page 3.

David Hanson, with the Kansas Association of Property and Casualty Insurance Companies, then spoke in opposition to SB 765. He referred to the present bankruptcy laws and said passage of this bill, as written, might jeopardize the entire bankruptcy system. There were questions of Mr. Bennett and Mr. Hanson.

SB 560, by Senate Committee on Commercial and Financial Institutions, concerning financial requirements for foreign and domestic insurance companies, was next to be heard. Wayne Morris of Legislative Research briefly explained the bill as amended by the Senate and stated that it was the Insurance Department's Proposal No. 1.

Richard Brock of the Insurance Department spoke to express the Insurance Department's support of the bill and the reason the department had requested its introduction. There were questions of Mr. Brock from committee members. Mr. Brock suggested an amendment applicable to title insurance companies and explained why there should be different requirements for the title insurance companies. He gave figures on how the department thought this bill would affect domestic companies and said he had heard no complaints from any of them. Rep. Spaniol asked about the effect of SB 157, passed last year, as compared to passage of SB 560.

Chairman Hoy asked if there would be a committee request for a conceptual amendment as suggested by Mr. Brock. Rep. Long moved that such motion be prepared. Rep. Weaver seconded. The motion carried.

Rep. Fuller moved to accept the minutes of the meeting of March 15, 1984, as written. Rep. Long seconded. The motion carried.

The meeting adjourned at 4:30 PM.

GUEST LIST Attachment 1

COMMITTEE: House Insurance DATE: Mon. March 19, 1984

NAME	ADDRESS	COMPANY/ORGANIZATION
Homer Cowan Jr	Ft. Scott, Ks	The Western Ins Co's
David Hanson	Topeka	Ks. Assoc. Prop & Cas. Ins.
Lee WRIGHT	Lenexa	F I G
Kathleen Sebelius	Topeka	KTLA
LARRY MAGILL	"	IIAK
Dick Brock	"	Ins. Dept.
Mark Bennett	"	American Ins. Assn.

Att. 1

Attachment 2

BEFORE THE HOUSE COMMITTEE ON INSURANCE
March 15, 1984
SENATE BILL 765

My name is Mark L. Bennett and I represent the American Insurance Association. The American Insurance Association is a trade organization representing some 170 insurance companies providing all lines of casualty coverage countrywide. Among other functions of the trade organization is the function of assisting legislatures in the various states in regard to insurance legislation.

We particularly object to Senate Bill 765 in regard to its provisions in Section 1 (b), (c) and (d) providing for direct action against the insurance companies.

Bills to authorize direct suit against liability insurance carriers or to permit joining of such carriers as co-defendants with their insureds are not uncommon legislative proposals. Quite obviously, we are very much opposed to such direct action bills of either type.

The only material issues in a tort action are negligence and damage. The existence of insurance, no matter how revealed to a jury, is totally irrelevant to these issues. It is of no probative value in answering questions as to the defendant's negligence, the plaintiff's contributory negligence or the extent of the injuries or loss suffered by the plaintiff. Evidence of insurance is not admissible in negligence actions in Kansas.

Rules of evidence are designed to admit only that evidence which is logically relevant to the issues at trial. Legislation permitting direct action against an insurer would destroy the efficacy of the general evidential rule precluding the introduction of information as to the existence of insurance. The only real motive for making the insurer a party to the suit is to inform the jury of the existence of insurance, i.e., to legalize the introduction of evidence which is not only irrelevant and immaterial but evidence which is generally held to be extremely prejudicial to the individual defendant.

Direct suit against the insurer, like the introduction of evidence of insurance, would induce a jury to ignore relevant proof and to substitute proof of insurance for the substantive issues of negligence and damage.

In other words, direct suit against an insurer would only serve to confuse the jury inasmuch as it is doubtful that all jurors are sophisticated enough to differentiate between the

Attch. 2

facts of an accident, the issues of negligence and damages and the import of a liability insurance policy.

The fact is that to most people insurance is insurance and if there is an accident, it is the expectation that the insurance company should pay. Having learned that insurance is in the picture, the only issue that would remain in a juror's thinking is to decide how much to award in damages. Since in the average juror's perception the burden of the judgment will not fall upon a poor litigant but upon a large impersonal corporation, he would simply reason that since the plaintiff has suffered an injury and incurred expenses, the plaintiff is entitled to recover.

It has been argued that direct action legislation is necessary to eliminate circuity of action. This suggests that cases are frequent where the assured's liability is judicially determined and the insurer refuses to pay under the policy. Actually, the contrary is true. It is only under the most exceptional circumstances that an insurer would refuse to pay a judgment to the extent of its policy limits and even then only where it feels it must assert a legitimate defense under the insurance contracts. In such an unusual case, there remains an adequate remedy at law in the form of a suit against the insurer by the judgment creditor. Such a separate suit against the insurer is a most uncommon occurrence. Thus, the argument that the purpose of direct action legislation is to eliminate circuity of action is patently false. The real motive is to emphasize the fact that an insurance company would pick up the tab if the verdict is in favor of the plaintiff, thereby ignoring the merits of the case.

The impact of direct action statutes will be felt by the consumer as well as the companies. Premium rates are determined by the loss experience of insurance carriers. When a statute places an insurer in a position where unwarranted burdens are almost certain, those burdens introduce new and definite hazards that will be recognized and reflected in the rates. Thus, higher insurance costs under direct action statutes would be almost inevitable because of (1) the probability of unwarranted and excessive verdicts, (2) the diminished probability of reasonable settlements out of court and (3) costs of defending minor claims.

In conclusion, we suggest that in lieu of Section 1 (b), (c) and (d) the bill be amended giving the right to a plaintiff in such case to file an action against an insured who is bankrupt and provide any judgment obtained in such action be unenforceable against the insured but be enforceable against the insured's insurance company. This, of course, would only

be accomplished by an amendment to the bill. We would propose in that regard that Senate Bill 765 be amended by striking Section 1 (b), (c) and (d) and inserting in lieu thereof the following:

"(b) If, at any time after a cause of action accrues against an insured and within the applicable statute of limitations, the insured files a petition in bankruptcy, the holder of the cause of action shall have a right to pursue his cause of action within the lawful terms and limits of the policy in an action brought against the insured. The plaintiff in such action shall have the right to collect the judgment from the insurer."

Respectfully submitted,

AMERICAN INSURANCE ASSOCIATION

Mark L. Bennett

By Mark L. Bennett