Approved March 18, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p~~x~~x~~ on February 22, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Feleciano, Gaines, Langworthy and Steineger

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Kathleen Sebelius, Kansas Trial Lawyers Association
Don Vasos, Kansas City, Kansas Judicial Council Study Committee
David Litwin, Kansas Chamber of Commerce and Industry

Kathleen Sebelius, Kansas Trial Lawyers Association, presented two requests for committee bills. The first proposal concerned occupational disease as injury by accident. The second proposal concerned insurance relating to certain unfair claim settlement practices (See Attachments I). Following the explanation, Senator Gaines moved to introduce the bills. Senator Langworthy seconded the motion. Since there was not a quorum present, the committee did not vote on the motion.

Senate Bill 35 - Kansas Comparative Fault Act.

Kathleen Sebelius explained the bill is a product of a study by the Kansas Judicial Council. A copy of her handout is attached (See Attachment II).

Don Vasos, a practicing attorney from Kansas City and a member of the Kansas Judicial Council Study Committee, appeared on behalf of the Kansas Trial Lawyers in support of the bill. He stated the consensus of the study committee was, what should our comparative law act be. The most salient feature is pure comparative fault, which is the 49% rule. The 49% rule is subject to a lot of abuse. In this state if you are 50% at fault, you lose everything. The system that will accomplish fairness, the judiciary have opposed for a comparative fault system. The bill establishes two general practice of parties to a law suit. Mr. Vasos stated, if he could, he would eliminate Section 5(b) of the bill; there is a basic unfairness of the act. If a workman sustains an injury from a defective machine, the case has been delayed because the employer refuses access of the machine for a number of reasons, if there was a way to get that employer in the law suit. The act also consistently eliminates the doctor of joint and several liability. Mr. Vasos discussed the question of who has the burden of proof against the parties in a comparative fault situation. In today's law suits there is no such thing as a two car collision anymore. The defendant alleges that the defendant driver was not at fault. The accident was contributed to the fault of the city to properly sign the streets, or a defective street, or vehicle failed. Mr. Vasos stated they would like to see a very clear statement in any act that is adopted to the effect that the party joining the additional party shall have the burden of proof, including burden of going further of the evidence. A committee member inquired if this was debated in the committee? Mr. Vasos replied, it was not specifically considered an issue. I think it is important enough point to be made that it ought to be discussed. He stated one of the things specifically considered and rejected by the committee was the concept of set-off of judgments between the parties. By common law that we have an old case

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 22, 1985.

Senate Bill 35 continued

set-off of judgments do not occur as a matter of right only as court's discretion. A committee member inquired, what is wrong with set-offs if both parties are insured? Mr. Vasos replied insurance companies only get the benefit. In conclusion Mr. Vasos asked the committee not to reject the bill.

David Litwin, Kansas Chamber of Commerce and Industry, stated their board has not yet had occasion to speak to the issues presented by this bill; however, the bill does present some serious concerns which they ask this committee to consider carefully in its deliberations. A copy of his testimony is attached (See Attachment III).

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE (SEN. FRED) DATE: 2-22-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Matt Lynch	Topeka	Judicial Council
William E. Westerbeke	Lawrence	Judicial Council
Joe FURTADO	TOPEKA	KASB
Tom Bell	Topeka	Ks. Hosp. Assn.
Judy Anderson	Wichita	City of Wichita
Don Vogts	KCKS	KTLA
Chris McKenzie	Topeka	League of KS Mun.
Kathleen Sebelius	"	ICTLA
Dick Hahn	"	KCCI
Homer Cowan	Ft Scott	The Western
Mark L Bennett	Topeka	CAIA
David Hanson	"	KS Assoc Prop & Cas Co
Lee WRIGHT	MISSION	FARMERS INS GROUP
Dick Scott	Topeka	KAJM
DAN MORGAN	O.P. KS	State Farm Ins. Co
Bill SNEED	Topeka	AGC of KS
Don. Strole.	Topeka	KS Assn of Def. Coun
Ron Smith	"	Bd of Healing Arts
Pat Hubbell	Topeka	KS Bar ASSN
		Kans Railroad Assn.

Attach. IV

K.S.A. 44-5a01 - OCCUPATIONAL DISEASE AS INJURY BY ACCIDENT: PROVISIONS OF WORKMAN'S COMPENSATION LAW APPLICABLE. (a) Where the employer and employee or workman are subject by law or election to the provision of the Workman's Compensation Law, the disablement or death of an employee or workman resulting from an occupational disease shall be treated as the happening of an injury by accident, and the employee or workman or, in case of death, his dependents shall be entitled to compensation as provided in the Workman's Compensation Law; and the practice and procedure prescribed in such law shall apply to all proceedings under this Act. K.S.A. 44-5a02 through and including K.S.A. 44-5a22 are hereby repealed.

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Attch. I

2-22-83

Session of 1983

SENATE BILL No. 291

By Committee on Judiciary

2-15

AN ACT concerning insurance; relating to certain unfair claim settlement practices; amending K.S.A. 40-2404 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-2404 is hereby amended to read as follows: 40-2404. *(a)* The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

~~(a)~~ *(A)* Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

~~(b)~~ *(B)* misrepresents the dividends or share of the surplus to be received on any insurance policy;

~~(c)~~ *(C)* makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

~~(d)~~ *(D)* is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

~~(e)~~ *(E)* uses any name of title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

~~(f)~~ *(F)* is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

~~(g)~~ *(G)* is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance

Att. I

policy; or

~~(h)~~ *(H)* misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance, or by any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(5) *False statements and entries.* ~~(a)~~ *(A)* Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

~~(b)~~ *(B)* Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the

business of such person in any book, report or statement of such person.

(6) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232 *and amendments thereto.*

(7) *Unfair discrimination.* ~~(a)~~ *(A)* Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

~~(b)~~ *(B)* Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(8) *Rebates.* ~~(a)~~ *(A)* Except as otherwise expressly provided by law, knowingly permitting ~~or~~, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon~~, or~~; paying ~~or~~, allowing, ~~or~~ giving or offering to pay, allow~~,~~ or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, ~~or~~ any special favor or advantage in the dividends or other benefits thereon~~,~~ or any valuable consideration or inducement whatever not specified in the contract; or giving, ~~or~~ selling, ~~or~~ purchasing or offering to give, sell~~,~~ or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds~~,~~ or other securities of any insurance company or other corporation, association~~,~~ or partnership, or any dividends or profits accrued thereon,

or anything of value whatsoever not specified in the contract.

~~(b)~~ *(B)* Nothing in subsection ~~(7) or paragraph (a) of this subsection~~ *(a)(7) or (a)(8)(A)* shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance~~.~~*;* any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; *or*

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice of any of the following:

~~(a)~~ *(A)* Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

~~(b)~~ *(B)* failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

~~(c)~~ *(C)* failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

~~(d)~~ *(D)* refusing to pay claims without conducting a reasonable investigation based upon all available information;

~~(e)~~ *(E)* failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

~~(f)~~ *(F)* not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

~~(g)~~ *(G)* compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

~~(h)~~ *(H)* attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

~~(i)~~ *(I)* attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

~~(j)~~ *(J)* making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

~~(k)~~*(K)* making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

~~(l)~~ *(L)* delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

~~(m)~~ *(M)* failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; *or*

~~(n)~~*(N)* failing 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.

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has

received since the date of its last examination under K.S.A. 40-222~~;~~ *and amendments thereto,* but no such records shall be required for complaints received prior to the effective date of this act. ~~This~~ *The* record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of ~~these~~ *the* complaints, the date each complaint was originally received by the insurer~~;~~ and the date of final disposition of each complaint. For purposes of this subsection, "complaint" ~~shall mean~~ *means* any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-1515 *and amendments thereto.*

(13) *Disclosure of information relating to adverse underwriting decisions, as defined in K.S.A. 40-2,111 and amendments thereto.* Failing to provide applicants, policyholders and individuals proposed for coverage with the information required under K.S.A. 40-2,112 *and amendments thereto* within the time prescribed in such section.

(b) An individual may bring suit against an insurance company for engaging in any practice described in subsection (a)(9). For the purposes of the individual action, it is not necessary to prove that the act was committed or performed with such frequency as to indicate a general business practice. If the individual prevails in the action, the individual is entitled to reasonable attorney fees, settlement of the claim and any other damages allowed by law.

Sec. 2. K.S.A. 40-2404 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

M E M O

TO : Kathleen Sebelius, KTLA
FROM : Donald W. Vasos
DATE : February 22, 1985
RE : S.B. 35, SUMMARY OF KANSAS COMPARATIVE FAULT ACT, AS AMENDED, KANSAS JUDICIAL COUNCIL FINAL DRAFT

I. ASSIGNMENT. During the 1983 session, the Senate Judiciary Committee introduced S.B. 292, which would enact the Uniform Comparative Fault Act. No further action was taken by Senate Judiciary. On May 6, 1983, Sen. Pomeroy referred the matter to the Kansas Judicial Council with a request that the council "study the issue of comparative fault . . . and make a recommendation to the Kansas legislature."

II. ORGANIZATION. The Council delegated Sen. Pomeroy's request to its Civil Code Advisory Committee. Members of the Committee are Marv Thompson, Chairman; Hon. Terry Bullock; Emett Blaes; Prof. Robert Casad; Hon. Dick Foth; Morris Hildreth; Hon. Dave Prager; Leonard Thomas; Ron Williams; and Donald W. Vasos. Special members include Matt Lynch, reporter, and Prof. Bill Westerbeke, consultant.

III. SUMMARY. The draft prepared by the Committee was approved, as amended by the Council, on September 7, 1984:

Section 1. States that the general purpose is to provide for the "equitable distribution of damages" where one or more parties is at fault. Comparative fault is established as a system of loss allocation, intended to more "equitably" divide the loss among persons at fault.

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Section 2. Defines the terms "fault", "non-intentional fault", "claimant", and "share of liability."

Section 3. Creates a pure comparative fault system. I.e., a 99% negligent plaintiff is not barred, but may recover 1% of his damages. The statute applies special rules with respect to an intentional wrong-doer. The common law doctrines of last clear chance and assumption of risk are abolished.

Section 4. Requires that the trier of fact return a special verdict finding each party's percentage of fault, and the amount of damages sustained by each claimant.

Section 5. In two sections, created a mechanism to deal with adding other parties claimed to be at fault. The Act divides such parties into Section A - persons who can be subject to liability in the action, and Section B - persons who cannot be subject to liability in the action. Section A persons can be joined only if actually served with summons and a petition for joinder. They must be brought into the action in order to have fault determined. Section B persons can be joined either by the summons and petition procedure, or by a simple notice of joinder.

Examples of persons who cannot be subject to liability, but whose fault will be determined in the action include:

(1) A party who is released;

(2) Immune because of family immunity;

(3) Immune because of an exclusive remedy provision, i.e., employer's worker's comp;

(4) Immune under the bankruptcy code;

(5) The person is identifiable, but is unable to be brought before the Court by service of process;

(6) Immune because of the expiration of the statute of limitations. (May be limited because of later section);

(7) A catch-all where a party is entitled to immunity because of some beneficial relationship.

Section 6. A Section B party will have its fault determined, and must engage in discovery, if joined by petition. If joined by notice, a Section B party is a party only for purposes of determining its percentage of fault, but may intervene in the action if it chooses.

Section 7. Where defendant alleges fault of another person, this section extends the applicable statute of limitations, for a period of one year after the date on which the original action was commenced. Plaintiff is granted an additional year to discover identity of additional party, and join it in the action.

Section 8. Eliminates joint and several liability, and imposes existing concept of individual liability. This will be the general rule in the majority of cases except that tortfeasors in the following types of cases remain jointly and severally liable:

(1) Intentional conduct.

(2) Persons "acting in concert" with one another.

(3) Persons liable because fault is imputed under principals of tort or agency. The most permanent example is the employer-employee situation.

(4) Persons who attempt to delegate a non-delegable duty.

(5) Cases of negligent entrustment;

(6) A strictly liable seller;

(7) Bailments and failure to confine cases. The intent was to retain the Bruenger and Cansler rules.

Section 9. Establishes a system of Comparative Implied Indemnity that permits a defendant to recover money from another tortfeasor when the defendant pays more than his share. Intended to modify Ellis II.

Section 10. All claims, counter-claims or cross-claims existing between parties in the action must be asserted, or will be barred. However, no party is required to join another person, in order to assert (retain) a cross-claim against that person.

IV. ANALYSIS.

A. Benefits of Change.

1. Adoption of a pure comparative system;

2. Retains McCort rule which requires jury to find total damages sustained in wrongful death cases rather than up to the amount of the limitation;

3. Fault of unidentified "phantoms" and immune governmental entities will not be included for purposes of comparison;

4. Additional parties must now be brought into the action by filing some type of pleading with allegations of fault (petition or notice) - in same cases, by actual service - and if joined by petition, even Section B party must engage in discovery;

5. Extends statute of limitations one year for identifiable additional parties.

6. Eliminates certain persons from comparison.

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7. Benefits settling defendant in establishing a workable comparative indemnity situation.

8. Comparison is made only of persons who are "parties in the action." Bar of Sec. 10 does not apply if tortfeasor is merely "available to be joined," but applies only when joinder actually brings Section A party into the action. Albertson and Eurich partially modified.

9. Concept permitting set-off of mutual judgments rejected.

B. Disadvantages.

1. Retains current concept of individual judgments, and abolition of joint and several liability, in some cases.

2. Permits joinder and comparison of most immune, insolvent, and identifiable absent tortfeasors. Risk of loss only partially shifted away from plaintiff.

3. While it is clear that defendant alleging fault of additional party has burden of proof, including burden of going forward with the evidence, additional procedural language should be added to make it clear that plaintiff may preserve claim against additional party without introducing evidence of such fault in his case in chief. I.e., plaintiff may "piggy-back" his claim against additional party in defendant's case in chief.

V. RECOMMENDATION. Support with suggested changes.

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

SB 35 February 22, 1985

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

HOUSE JUDICIARY COMMITTEE

by

David S. Litwin
Director of Taxation

Mr. Chairman, members of the committee. I am David Litwin, Director of Taxation for the Kansas Chamber of Commerce and Industry. We appreciate the opportunity today to express our views on SB 35.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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Since we are a large organization representing the entire gamut of the business community, for purposes of coordination and consensus we operate on the basis of policies developed by our committees and approved by our board of directors. Our board has not yet had occasion to speak to the issues presented by this bill, so I am not here is opposition or support. However, the bill does present some serious concerns which we ask this committee to consider carefully in its deliberations.

This bill essentially would expand comparative fault to permit a claimant to recover proportionately to a defendant's degree of culpability, regardless of the degree of plaintiff's fault. At the present time, if a plaintiff is more than 50% at fault, he or she is barred from recovery.

This situation is arguably unfair, in that a plaintiff who is, for example, 55% at fault must absorb the entire cost of his damages, while if a defendant is 55% at fault, he still receives credit for the 45% of causation contributed by plaintiff, and the parties share the cost of the incident.

However, in considering this bill, we urge the committee to recall that the entire concept of comparative fault is itself a very major reform, and a recent one at that, having been enacted in Kansas only 11 years ago. Prior to the enactment of this reform, the doctrine of contributory negligence absolutely barred a plaintiff from recovery, even though his contribution may have been trivial compared to the defendant's. This was the prevailing judge-made law for centuries, and it was only after long discussion that the legal community finally came around to the position supporting limited comparative fault. The length and depth of this prior experience suggests proceeding cautiously in this area.

Second, we ask the committee to consider the extent to which this bill might be an invitation to additional litigation, in the area of products liability and in other spheres as well. Many skilled plaintiffs' attorneys feel that if they can only "get to a jury," then, regardless of the technicalities governing the jury's change, they will be able to make a recovery. The limitation that they must prove that the defendant was more than 50% at fault surely must act as a considerable constraint on

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their decisions to accept cases and very likely causes numerous questionable cases not to be brought, for if a jury finds a plaintiff to be the predominant party at fault, the plaintiff gets nothing, and in the great majority of cases, so does the attorney.

If a plaintiff may recover regardless of the degree of his fault, then it seems likely that many plaintiffs' attorneys would bring a substantial number of poor cases into court, knowing that in some they may recover nothing, but that in most they would win something, and might in a few win substantial judgments. The proposed reform could be an invitation to the plaintiffs' bar to bring all sorts of actions that are unjustified under present law.

If this occurs, then the courts' backlog would increase, creating more pressure to expand their operations, which could be done only at taxpayers' expense. There also appears to be a clear potential for defendants and their employees to have to spend unconscionable amounts of time at depositions and in court defending highly questionable claims. Moreover, insurance rates could rise to unreasonable levels.

On the other hand, if the committee does decide that the present standard is not fair to plaintiffs, we would note that the threshold of fault could be dropped below 50%, but not down to virtually zero. In other words, the statute could be amended to provide, for example, that a plaintiff must be no more than 35% at fault in order to recover a judgment.

Thank you again for the opportunity to testify today. If there are questions, I will be happy to answer them.

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