Approved March 7, 1986
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.m.~~ on February 27, 1986 in room 313-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey Hoferer, Burke, Feleciano, Langworthy, Parrish, Steineger, Talkington and Winter.

Committee staff present:

Mary Hack, Revisor of Statutes
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Homer Cowan, The Western Insurance Companies
Michael Fitt, Employers Reinsurance Corporation
Theodore Fay, Office of the Insurance Commissioner
Ronald J. Dickens, Manhattan Employee Benefits Development Systems, Inc.
Mark Bennett, American Insurance Association
David Litwin, Kansas Chamber of Commerce and Industry

Senate Bill 540 - Professional malpractice by licensees of state other than health care providers.

Senator Robert Talkington, the prime sponsor of the bill, stated the bill seeks to establish procedures by which those who believe they have suffered injury, due to professional malpractice, will continue to have the right to seek redress through the judicial system. Copies of his testimony and proposed amendment are attached (See Attachments I).

Homer Cowan, The Western Insurance Companies, testified in support of the bill. He stated he is a member of the Kansas Health Care Board and they oversee the medical malpractice operations. He works for an insurance company that is 75 years old and it is a large multiple writer. In the late sixties there were concerns about medical malpractice, and in 1974 and 1975 they said you better look to solutions to solve problems of professional liability. Mr. Cowan said they don't insure a burning building. He stated the real problem in insurance is the inability to predict. Before the explosion of litigation, that people can sue their doctor, the coverage was almost given away. Mr. Cowan stated litigation is outstripping the national pastime. He said this bill is a part of a solution but not an entire solution, the solution has to lie on some sort of restraint. They would like to see some kind of a cap in an area of affordability. He stated punative damages increases the value of each and every claim, and joint and several liability causes costs. Mr. Cowan urged the committee to support the bill.

Michael Fitt, Employers Reinsurance Corporation, Overland Park, stated he could not confine his remarks to this bill. He testified the reinsurance industry is not a state industry, it is an international industry. Most primary companies can be relatively a low retention. If we are going to provide the coverage that U.S. public needs, we have to have some form of predictability. He said when we pay a claim we pay it out of premiums that is paid by the public. The U.S. public cannot afford the system as it works today. He stated the problem today is with the attitude and litigious nature of the public.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 313-S Statehouse, at 10:00 a.m./~~p.m.~~ on February 27, 1986

Senate Bill 540 continued

Theodore Fay, Office of the Insurance Commissioner, testified we may not have all the facts we would like for the 24 licensed professionals covered by this bill, but if the bill is enacted it might prevent serious problems five or ten years from now and may save a number of professions and injured third parties from an economic disaster. A copy of his testimony is attached (See Attachment II).

Ronald J. Dickens, Manhattan, Employee Benefits Development Systems, Inc., appeared in support of the bill. He said his insurance agency specializes in employees benefits, and if this bill does not become law, he is out of business. The current crisis of professional liability has made my business very ill. He is here this morning not for himself but for his clients. He urged the committee to endorse the bill.

Mark Bennett, American Insurance Association, was recognized. He did not testify but pointed out his written testimony had been handed out to committee members. (See Attachment III).

David Litwin, Kansas Chamber of Commerce and Industry, testified KCCI does endorse the bill, in terms of the reforms, that it would apply to a broader area than the medical malpractice bill, House Bill 2661, which they also support. A copy of his testimony is attached (See Attachment IV).

Following the testimony, committee discussion was held with conferees.

The meeting adjourned.

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

Copies of position papers concerning the bill from the following groups are attached (See Attachments VI-XXIII).

Kansas Consulting Engineers
Kansas-National Education Association
Kansas Health Care Association
The Kansas Society of Certified Public Accountants
Kansas Dental Association
Kansas Association of Professional Psychologists
Dickinson County Child Care Center, Inc.
Kansas Association for the Education of Young Children, Inc.
Board of Veterinary Medical Examiners
The Kansas Funeral Directors and Embalmers Association, Inc.
Kansas Federation of Licensed Practical Nurses
Kansas State Board of Technical Professions
Kansas Association of Land Surveyors
The Kansas Society of Architests
Kansas Engineering Society, Inc.
Bartlett & West Engineers, Inc.
Independent Insurance Agents of Kansas
Editorial Opinion by Richard J. Ferris

Guest List 2-27-86

Name	Address	Organization
Mrs. M. J. Fitt	1245 Huntington Rd. Kansas City, Mo.	
PATRICIA HENSHALL	TOPEKA	OJA
Stephen P. Weir	627 S. Topeka	Hiatt & Carpenter
Bill Sneed	Topeka	Ks Assn of Def. Counsel
Jacque Oakes	Topeka	Ks. Soc. of Land Surveyors
[illegible] Murphy	Leavenworth	Gov. Office
[illegible]	612 Ks. Ave. Topeka	Ks. Society of Architects
SUSAN T-MIRINGOFF	TOPEKA	Ks State Nurses Assn.
Carl Schmitthenner	Topeka	Kansas Dental Assn
T. C. Anderson	Topeka	KSCPA
Dick Hummel	Topeka	Kansas Health Care
Jim Snyder	Topeka	KFDA
Homer Cowan	Ft Scott	The Western Ins Co's
Mark Bennett	Topeka	AIA
Jan Vasek	Topeka	KSCPA
[illegible]	Topeka	Gov. Office
Marie Hough	Silver Lake Ks	Nurses'
Ronald J. Dickerson	MANHATTAN	CBD Systems, INC
Thomas Sloan	Lawrence	State Senate
Lori Callahan	Topeka	Am. Ins. Assn
Jyan Barber	Topeka	Kansas Consulting Engineers
George Barber	Topeka	Kan consulting Engrs.
[illegible]	Topeka	KCCI
Helen Stephens	Topeka	Land Surveyors
Michele Hinds	Topeka	KSNA
Alice Young	Topeka	KSNA
Kelle Roesch	Lawrence	KTLA
Ron Smith	Topeka	KBA
Steve Feely	Los Angeles	Farmers Ins.
Lee WRIGHT	MISSION	FARMERS INS. GROUP

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Name	Address	Organization
Sheila Rypkin	Topeka, KS	Registered Nurse in Kansas
Anita Burge	Kansas City	KSNA
Kristie Cassell	Kansas City	KSNA
Pat Shoemaker	Beloit	KSNA
Karlene Baxa	Beloit	KSNA
Nancy Versch	Osborne, Ks.	KSNA
Karen Smith	Concordia, Ks	KSNA
Chris Smith	CONCORDIA, KS	CCCC
Mona Wegerat	Salina, Ks.	CCCC
Marcia Bullergh	Concordia, Ks	CCCC
Pennie Fleming	Concordia KS	CCCC
Sue Hoestje	Beloit, Ks.	CCCC
Ann Koster	Beloit, KS	CCCC
Sherry Weise	Linn, Ks	CCCC
Denise Merritt	Linn, KS	CCCC
Dianna Ruzicka	Concordia, KS.	CCCC
Bob Ruzicka	Concordia, Ks	CCCC
[illegible]	Osborne, KS	CCCC
Michele Foster	Osborne, KS	CCCC
Jim White	Glasco KS	CCCC
Lori J. Spear	Hunter Ks.	CCCC
Lisa Schleicher	Belleville, KS	CCCC
Linda Rogers	Eskridge Kans.	KSNA
Christine Donner	Topeka	KSNA
Suzanne Radell	Topeka, KS	KSNA
Kathy Muir	Topeka, Ks	KSNA
Evelyn Grant	Topeka, KS	KSNA
Julie Martin	KC, KS	KSNA
Julie Hagemaster	LU, KS	KSNA
Beth Shoemaker	KC, KS.	KSNA
Lisa Lane	Hanover, Ks.	CCCC
Jeanne Sebree	Tecumseh, Ks	KSNA

KANSAS SENATE

ROBERT V. TALKINGTON
SENATE PRESIDENT
P.O. BOX 725
IOLA, KANSAS 66749-0725

CHAIRMAN:
LEGISLATIVE COORDINATING COUNCIL
CHAIRMAN:
ORGANIZATION, CALENDAR AND RULES
MEMBER:
INTERSTATE COOPERATION
JUDICIARY
WAYS AND MEANS

OFFICE OF THE PRESIDENT

STATE CAPITOL
TOPEKA, KANSAS 66612-1565
913-296-2419

FEBRUARY 27, 1986

TESTIMONY IN SUPPORT OF SENATE BILL 540 - PROFESSIONAL LIABILITY AND INSURANCE COVERAGES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I RISE IN SUPPORT OF SENATE BILL 540 CONCERNING MALPRACTICE OF PROFESSIONALS IN THE STATE OF KANSAS AND THE LIABILITY AND INSURANCE COVERAGES NECESSARY TO PROTECT THE PUBLIC AND THE PROFESSIONALS.

WHILE MUCH ATTENTION HAS BEEN DIRECTED BY THE LEGISLATURE AND PRESS TO THE MEDICAL MALPRACTICE LIABILITY HEARINGS AND TESTIMONY, MAJOR SEGMENTS OF THE KANSAS PUBLIC ARE CONFRONTING THE POTENTIAL LOSS OF OTHER PROFESSIONAL SERVICES. THE ISSUES IN MEDICAL LIABILITY INSURANCE AND OTHER PROFESSIONALS' LIABILITY INSURANCE EXPERIENCES ARE SIMILAR AND THE REDRESS SOUGHT IN BOTH INSTANCES IS THE SAME.

SENATE BILL 540 SEEKS TO ESTABLISH PROCEDURES BY WHICH THOSE WHO BELIEVE THEY HAVE SUFFERED INJURY, DUE TO PROFESSIONAL MALPRACTICE, WILL CONTINUE TO HAVE THE RIGHT TO SEEK REDRESS THROUGH THE JUDICIAL SYSTEM. THEY WILL, HOWEVER, BE REQUIRED TO

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PARTICIPATE IN A SETTLEMENT CONFERENCE IN AN EFFORT TO MINIMIZE THE COST OF THE SUIT TO BOTH PARTIES. IF THE SETTLEMENT CONFERENCE IS SUCCESSFUL IN RESOLVING THE PROBLEM OR ARRANGING AN APPROPRIATE SETTLEMENT, IT WILL NOT BE NECESSARY FOR THE CASE TO PROCEED IN COURT. SHOULD A RESOLUTION OF THE MATTER NOT BE SUCCESSFULLY CONCLUDED IN THE SETTLEMENT CONFERENCE, THE MATTER WILL BE SCHEDULED FOR COURT HEARINGS. STATEMENTS MADE IN THE SETTLEMENT CONFERENCE WILL NOT BE ADMISSIBLE IN THE COURT HEARINGS.

INSURERS PROVIDING PROFESSIONAL LIABILITY INSURANCE COVERAGE TO A PROFESSIONAL LICENSEE IN KANSAS SHALL REPORT TO THE APPROPRIATE REGULATORY AGENCY AND THE STATE DEPARTMENT OF INSURANCE ALL ACTIONS FOR DAMAGES FOR PROFESSIONAL MALPRACTICE. THUS A RECORD OF FACTS WILL BE MAINTAINED BY THE APPROPRIATE PUBLIC REGULATORY AGENCIES TO ENSURE THAT ANY DISCIPLINARY HEARINGS CONTAIN A FULL ACCOUNT OF THE FACTS.

COMPENSATION FOR REASONABLE ATTORNEY FEES TO BE PAID BY EACH LITIGANT IN THE ACTION SHALL BE APPROVED BY THE JUDGE AFTER AN EVIDENTIARY HEARING. CRITERIA FOR ASCERTAINING REASONABLE FEES ARE ESTABLISHED IN THE BILL AND ARE DESIGNED TO ENSURE THAT THE ATTORNEY IS COMPENSATED ADEQUATELY FOR THE EFFORT EXPENDED, WHILE THE LITIGANTS' INTERESTS ARE PROTECTED. THE INTENT OF THIS BILL IS NOT TO DENY ATTORNEYS A LIVELIHOOD, BUT TO ENSURE THAT THE

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SUCCESSFUL LITIGANT RECEIVES AN ADEQUATE COMPENSATION FOR THE DAMAGES SUFFERED DURING THE MALPRACTICE.

PROVISIONS ARE MADE FOR THE ESTABLISHMENT OF A PROFESSIONAL MALPRACTICE SCREENING PANEL FOR THE PURPOSE OF EXAMINING RECORDS AND EVIDENCE AVAILABLE WHETHER THERE WAS A DEPARTURE FROM THE STANDARD PRACTICE OF THE PROFESSION AND WHETHER A CASUAL RELATIONSHIP EXISTED BETWEEN THE DAMAGES SUFFERED BY THE CLAIMANT AND ANY SUCH DEPARTURE. THE REPORTS OF THE SCREENING PANEL WILL BE ADMISSIBLE IN ANY SUBSEQUENT LEGAL PROCEEDING.

FINALLY, THE TOTAL AMOUNT RECOVERABLE FOR ALL CLAIMS FOR NONECONOMIC LOSS SHALL NOT EXCEED $250,000 AND THE TOTAL AMOUNT RECOVERABLE FOR ALL CLAIMS SHALL NOT EXCEED $1 MILLION.

YOU MAY NOTE SIMILARITIES TO THE PROPOSED RESOLUTION OF THE MEDICAL MALPRACTICE LIABILITY INSURANCE PROBLEM. SENATE BILL 540 IS DESIGNED TO ENSURE THAT PROFESSIONAL SERVICES ARE AVAILABLE TO THE PEOPLE OF KANSAS AND THAT THE RIGHTS AND SAFETY OF ALL KANSANS ARE PROTECTED.

THESE ADJUSTMENTS IN THE STATUTES ARE RECOMMENDED IN ORDER TO BETTER PROTECT THE PUBLIC FROM PERSONS WHO ARE LICENSED OR REGULATED BY THE STATE WHO ARE LESS THAN FULLY COMPETENT AND, AT THE SAME TIME, TO PROTECT THE PUBLIC'S ABILITY TO FIND

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PROFESSIONALS IN THESE FIELDS WHEN ONE IS NEEDED. THE PROFESSIONALS NAMED IN THIS BILL PROVIDE SERVICES THE PUBLIC NEEDS, IT IS OUR RESPONSIBILITY TO ENSURE THAT THE PUBLIC HAS ACCESS TO SUCH SERVICES. SENATE BILL 540 PROTECTS THE PUBLIC FROM LESS THAN COMPETENT PROVIDERS, PROTECTS THE RIGHT TO SEEK LEGAL REDRESS FOR HARM DONE BY A PROVIDER, AND PROTECTS THE ABILITY OF THE PUBLIC TO FIND A PROFESSIONAL PROVIDER WHEN ONE IS DESIRED AND AT RATES THAT ARE AFFORDABLE FOR THE AVERAGE KANSAN.

THE CRISIS IN LIABILITY INSURANCE IS NOT ONE OF THE PUBLIC VERSUS THE PROVIDER OF SERVICES; IT IS A CRISIS OF ENSURING THAT LIABILITY INSURANCE IS AVAILABLE AT AFFORDABLE RATES. WITHOUT BOTH THE AVAILABILITY AND AFFORDABILITY ASPECTS BEING ADDRESSED, KANSAS, AND THE NATION, WILL SEE A SHORTAGE OF PROVIDERS IN MANY PROFESSIONAL FIELDS AND CHARGES FOR THE SERVICES, OF THOSE REMAINING, AT LEVELS SO HIGH THAT NO ONE WILL BE ABLE TO AFFORD. SENATE BILL 540 ADDRESSES THESE PROBLEMS, I URGE PASSAGE OF THE BILL.

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I PRESENT TO THE COMMITTEE STATEMENTS IN SUPPORT OF S.B.540 FROM MOST OF THE GROUPS NAMED IN THE BILL. THE SENTIMENT IS STRONGLY IN SUPPORT OF THE LIMITATION OF PROFESSIONAL LIABILITY, NOT TO SAVE THE PRACTITIONERS, BUT TO ENSURE THE AVAILABILITY OF SERVICES FOR THE PUBLIC.

I PARTICULARLY CALL YOUR ATTENTION TO THE MATERIALS PROVIDED BY THE CHILD CARE CENTER PEOPLE, ENGINEERS, DENTISTS, AND ACCOUNTANTS. THEY HAVE PROVIDED THE MOST SPECIFIC DETAILS OF THE PROBLEMS BEING EXPERIENCED BY THEIR MEMBERS. THE OTHER GROUPS EXPECT TO SEE THE SAME TYPE OF RAPIDLY ESCALATING PREMIUMS, RAPIDLY DECLINING COVERAGE LIMITS AND AVAILABILITY.

I URGE YOU TO READ THE STATEMENTS BECAUSE THEY REPRESENT THE BEST EFFORTS OF THE PROFESSIONALS TO EDUCATE US ABOUT THE PROBLEMS THEY ARE EXPERIENCING. THEY ALSO SPEAK TO THE ISSUES OF QUALITY OF SERVICE AND HOW S.B.540 IS VALUABLE IN ENHANCING PROFESSIONAL STANDARDS.

I WOULD CALL THE COMMITTEE'S ATTENTION TO ONE ITEM FOR POSSIBLE DISCUSSION; THE APPROPRIATE LEVEL OF CAP ON AWARDS MAY NEED TO BE ADJUSTED FOR SOME OF THE PROFESSIONS BECAUSE THE NATURE OF THEIR LIABILITY IS LESS COSTLY. DENTAL HYGIENISTS, BARBERS, AND PUBLIC LIVESTOCK

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MARKETERS MAY BE EXAMPLES OF GROUPS WHICH DO NOT REQUIRE $1 MILLION DOLLAR CAPS IN ORDER TO PROTECT THE PUBLIC WELFARE.

I ALSO CALL YOUR ATTENTION TO A PROPOSED AMENDMENT TO THIS BILL WHICH WOULD EXTEND COVERAGE TO THREE OTHER PROFESSIONAL GROUPS: EMERGENCY MEDICAL SERVICE PERSONS, SCHOOL ADMINISTRATORS, AND PESTICIDE APPLICATORS. REPRESENTATIVES OF THESE GROUPS CONTACTED MY OFFICE ABOUT BEING INCLUDED AND IT IS APPROPRIATE THAT THEY SHOULD BE.

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PROFESSIONS NAMED IN SB 540:

ABSTRACTERS

ACCOUNTANTS

ARCHITECTS

ATTORNEYS

BARBERS

COSMETOLOGISTS

DENTISTS

DENTAL HYGIENISTS

PRIVATE DETECTIVES

ENGINEERS

FUNERAL DIRECTORS

INSURANCE AGENTS

LAND SURVEYORS

LANDSCAPE ARCHITECTS

REAL ESTATE BROKERS

TEACHERS

CHILD CARE PROFESSIONALS

PSYCHOLOGISTS

SOCIAL WORKERS

VETERINARIANS

NURSES

PUBLIC LIVESTOCK MARKET STAFF

ADULT CARE HOME PROFESSIONALS

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REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Judiciary

Recommends that Senate Bill No. 540

"AN ACT relating to certain licensees, licensed or certificated by agencies of the state of Kansas; concerning misconduct or malpractice of such licensees and liability and insurance coverage therefor; amending K.S.A. 7-121b and K.S.A. 1985 Supp. 40-3003 and repealing the existing sections."

Be amended:

On page 3, in line 90, by striking "and"; following line 92, by inserting:

"(25) ambulance service attendants certified pursuant to K.S.A. 65-4321 and amendments thereto;

(26) school administrators certificated by the state board of education; and

(27) pesticide applicators certified pursuant to article 20 of chapter 2 of the Kansas Statutes Annotated.";

And the bill be passed as amended.

__________________________Chairperson

2-27-86

IN JANUARY OF 1985 COMMISSIONER BELL ASKED ME TO SERVE AS THE ATTORNEY FOR THE CITIZENS COMMITTEE HE HAD APPOINTED TO STUDY THE TORT SYSTEM AND IN PARTICULAR THE PROBLEMS WITH MEDICAL MALPRACTICE IN KANSAS. THE CITIZENS COMMITTEE HAD MEMBERS REPRESENTING ALL INTERESTS INCLUDING PHYSICIANS AND TRIAL LAWYERS. THE COMMITTEE ALSO HAD REPRESENTATIVES FROM SUCH GROUPS AS LABOR, BUSINESS, THE ACADEMIC COMMUNITY, AND THE AARP. THE ARGUMENTS DURING THE EIGHT MONTHS THE COMMITTEE MET WERE UNRESTRAINED TO SAY THE LEAST.

I FEEL, AFTER WORKING ALMOST FULL TIME FOR OVER A YEAR ON ~~THE~~ MEDICAL MALPRACTICE, PRETTY CONFIDENT ABOUT THE CRISIS THAT EXISTS IN THIS AREA. THE MEDICAL MALPRACTICE PROBLEM HAS BEEN WITH US FOR MANY YEARS.

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TEN YEARS AGO BECAUSE INSURANCE COMPANIES WERE WITHDRAWING FROM THE MEDICAL MALPRACTICE MARKET, KANSAS ESTABLISHED A JOINT UNDERWRITING ASSOCIATION OR JUA TYPE ENTITY UNDER STATE SUPERVISION TO GUARANTEE THAT ALL HEALTH CARE PROVIDERS IN KANSAS COULD OBTAIN MEDICAL MALPRACTICE INSURANCE IN KANSAS. THE LEGISLATURE ALSO CREATED THE HEALTH CARE STABILIZATION FUND TO BE ADMINISTERED BY THE INSURANCE COMMISSIONER TO PROVIDE EXCESS INSURANCE COVERAGE FOR HEALTH CARE PROVIDERS.

THESE CHANGES WORKED. ALL HEALTH CARE PROVIDERS IN KANSAS CAN OBTAIN INSURANCE PROTECTION. NOW THE PROBLEM IS "COST" NOT "AVAILABILITY", AND IT IS NOT DIFFICULT TO DETERMINE WHAT IS CAUSING THESE COST PROBLEMS SINCE

WE HAVE TEN YEARS OF STATISTICS FROM THE JUA AND THE HEALTH CARE STABILIZATION FUND TO REVIEW AND STUDY.

THERE ARE STILL THOSE WHO ARGUE THAT WE DON'T HAVE ENOUGH DATA IN MEDICAL MALPRACTICE UPON WHICH TO BASE RECOMMENDATIONS. DON'T BELIEVE THEM. WE HAVE ENOUGH STATISTICS TO SINK A BATTLESHIP. WE CERTAINLY HAVE ENOUGH STATISTICS TO JUSTIFY PASSAGE OF HOUSE BILL 2661 WHICH HAS BEEN OR WILL SOON BE UP ON THE FLOOR OF THE HOUSE FOR A VOTE. HOUSE BILL 2661 CONTAINS A PACKAGE OF REFORMS THAT HAVE BEEN ARRIVED AT WITH THE EFFORTS AND HARD WORK OF A SUBSTANTIAL NUMBER OF PEOPLE. THE BILL DESERVES TO BE SUPPORTED. THE BILL REPRESENTS A LOT OF COMPROMISES - PERHAPS THERE HAVE BEEN TOO MANY

II

COMPROMISES FOR THE BILL TO TOTALLY SOLVE THE MEDICAL MALPRACTICE PROBLEM. WE DON'T THINK SO, BUT WE ARE CERTAIN THAT IF HOUSE BILL 2661 ISN'T PASSED WE ARE FLIRTING WITH A DISASTER IN THE HEALTH CARE SYSTEM IN THIS STATE. WITHOUT HOUSE BILL 2661 MEDICAL MALPRACTICE PREMIUMS WILL CONTINUE TO SOAR AND OUR RURAL HEALTH CARE SYSTEM MAY CEASE TO EXIST IN ITS PRESENT FORM. TIME HAS RUN OUT IN MEDICAL MALPRACTICE. THERE SIMPLY IS NO TIME LEFT FOR EXPERIMENTATION. WE MUST HAVE MEANINGFUL LEGISLATION AND HOUSE BILL 2661 IS THE BEST THING ON THE TABLE.

I HAVE DISCUSSED MEDICAL MALPRACTICE FOR A FEW MINUTES BECAUSE I FEEL COMFORTABLE WITH THE INFORMATION

NOW AVAILABLE IN THAT AREA. I MUST HONESTLY TELL YOU THAT I AM NOT AS COMFORTABLE WITH THE DATA AVAILABLE IN OTHER LIABILITY INSURANCE AREAS. I DON'T HAVE THE STATISTICS TO PROVE CONCLUSIVELY THAT THE TORT SYSTEM IS THE PRIMARY CAUSE OF PROBLEMS WITH MUNICIPALITIES, DAY CARE CENTERS, CPA'S, DESIGN ENGINEERS, AIRPLANE MANUFACTURERS AND SO FORTH. A GREAT DEAL OF WORK NEEDS TO BE ACCOMPLISHED IN EACH OF THESE AREAS.

COMMISSIONER BELL HAS ALREADY STARTED AN EFFORT TO STUDY THESE PROBLEMS. HE WILL SERVE AS CHAIRMAN OF A TASK FORCE FOR THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS TO STUDY THESE LIABILITY INSURANCE PROBLEMS AT THE NATIONAL LEVEL. HE HAS ALSO RECONSTITUTED HIS

CITIZENS COMMITTEE. THE NEW COMMITTEE WILL HAVE REPRESENTATIVES FROM MANY OF THE INDUSTRIES AND GROUPS IN KANSAS FACING LIABILITY INSURANCE PROBLEMS. BOTH OF THESE COMMITTEES SHOULD BE HELPFUL IN OBTAINING THE STATISTICS AND INFORMATION NECESSARY TO DETERMINE WHAT MAY BE CAUSING THEIR PROBLEMS.

BUT LET ME TELL YOU AT THE OUTSET THAT IT MIGHT BE WELL TO LEARN SOME OF THE LESSONS THAT MEDICAL MALPRACTICE TAUGHT US DURING OUR RECENT STUDY. FOR EXAMPLE:

TEN YEARS AGO INSURANCE COMPANIES STARTED TO WITHDRAW FROM THE MEDICAL MALPRACTICE MARKETS. IN LARGE PART THIS WAS BECAUSE THEIR ACTUARIES WERE SEEING SOME

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OMINOUS SIGNS FOR THEIR INDUSTRY.

AS YOU KNOW, ACTUARIES ARE THE MATHEMATICIANS AND STATISTICIANS FOR THE INSURANCE INDUSTRY. THEIR JOB IS TO REVIEW PAST TRENDS AND PREDICT FUTURE LOSSES. PREMIUMS ARE COMPUTED BASED UPON THESE EXPECTATIONS. WHEN LOSSES BECOME TOO VOLATILE, ACTUARIES ARE UNABLE TO PREDICT REASONABLY THE FUTURE AND WHEN THIS HAPPENS ACTUARIES GENERALLY ADVISE THEIR COMPANIES TO WITHDRAW FROM THE RISK. INSURANCE COMPANIES DON'T LIKE TO THINK THEY ARE GAMBLERS. THEY PREFER TO THINK THAT THEY SCIENTIFICALLY ESTIMATE LOSSES FOR LARGE GROUPS AND SPREAD THAT RISK AMONG THE GROUPS IN THE FORM OF PREMIUMS.

TEN YEARS AGO ACTUARIES WERE WARNING THEIR COMPANIES THAT MEDICAL MALPRACTICE WAS TOO UNPREDICTABLE BECAUSE OF SOME ALARMING AND DANGEROUS TRENDS. MANY PEOPLE, INCLUDING LAWYERS, LEGISLATORS, STATES AND PHYSICIAN GROUPS DIDN'T ENTIRELY BELIEVE THESE WARNINGS. THEY ASSUMED THAT IF ONLY THE STATE COULD TAKE OVER THE INSURANCE MECHANISM, IF ONLY PHYSICIANS COULD SET UP PHYSICIAN OWNED INSURANCE COMPANIES AND GET RID OF INSURANCE COMPANY PROFITS, OR IF THE RISK WAS INTERNALIZED SO THAT KANSAS HEALTH CARE PROVIDERS PAID INSURANCE PREMIUMS OR SURCHARGES BASED TOTALLY ON KANSAS EXPERIENCE, THEN THE PROBLEM WOULD BE SOLVED.

KEEP IN MIND THAT IN 1976 KANSAS HAD NEVER HAD A

MEDICAL MALPRACTICE CASE ABOVE $500,000. CALIFORNIA HAD A COUPLE OF MILLION DOLLAR JUDGMENTS BUT WE JUST COULDN'T BELIEVE THEIR PROBLEMS WOULD HAPPEN HERE. WE WERE SURE THAT INSURANCE COMPANIES WERE OVER REACTING.

THEY WEREN'T.

THE ACTUARIES FOR MEDICAL MALPRACTICE COMPANIES WERE RIGHT. THEY HAD NOTED CLOUDS ON THE HORIZON AND THOSE CLOUDS HAVE NOW BECOME A STORM IN MEDICAL MALPRACTICE.

NOW ACTUARIES IN OTHER LIABILITY AREAS ARE ONCE AGAIN WARNING THAT CLOUDS ARE ON THE HORIZON FOR MANY OTHER BUSINESSES AND PROFESSIONAL GROUPS. THEY ARE WARNING THEIR COMPANIES TO WITHDRAWN FROM THESE RISKS.

WE CAN ONCE AGAIN PRETEND THAT ALL WE NEED TO DO IS MAKE SURE INSURANCE IS AVAILABLE AND THE PROBLEMS WILL GO AWAY - BUT IF WE IGNORE THE OMINOUS TRENDS CAUSING OUR INSURANCE PROBLEMS WE DO SO AT OUR OWN RISK - AT LEAST IF OUR EXPERIENCE IN MEDICAL MALPRACTICE IS ANY GUIDE. KEEP IN MIND THAT INVESTORS IN PUBLICLY OWNED CASUALTY COMPANIES BELIEVE WHAT THE ACTUARIES ARE SAYING. STOCK PRICES HAVE BEEN MOVING HIGHER PARTIALLY AS A RESULT OF INVESTORS HOPES AND THEIR OBSERVATIONS THAT THESE COMPANIES ARE GETTING OUT OF UNNECESSARILY RISKY AREAS OF INSURANCE.

DON'T MISUNDERSTAND ME. YOU KNOW COMMISSIONER BELL WELL ENOUGH TO KNOW THAT HE WILL MAINTAIN A VIGILANCE

II

TO PROTECT KANSAS CITIZENS FROM INSURANCE COMPANIES. HE HAS BEEN DOING THAT FOR ALMOST 3 DECADES AND HIS EXPERIENCE DURING THESE MOST DIFFICULT TIMES FOR INSURANCE IS ESSENTIAL. I HAVE READ SOME OF THE INSURANCE REGULATORY RECOMMENDATIONS BEING MADE IN SOME OTHER STATES. I AM IMPRESSED THAT MOST OF THE THINGS RECOMMENDED HAVE BEEN IN PLACE IN KANSAS FOR A LONG TIME. SO COMMISSIONER BELL WILL CONTINUE TO REGULATE INSURANCE.

BUT WE TRUTHFULLY PROBABLY ALREADY KNOW WHAT IS CAUSING THE LIABILITY INSURANCE CRISIS. YOU DON'T HAVE TO LOOK IN INSURANCE MAGAZINES. ALL YOU HAVE TO DO IS READ YOUR LOCAL NEWSPAPER, OR TIME OR NEWSWEEK

II

OR ANY OTHER WIDELY DISTRIBUTED PUBLICATION. ALMOST EVERY ISSUE HAS AN ARTICLE ABOUT THE CAUSE OF THE PROBLEM. WE, AS A SOCIETY ARE SUING MORE THAN EVER BEFORE AND AS A GROUP WE ALL WANT MORE AND MORE MONEY TO SETTLE THESE CASES.

TO GIVE A PERSONAL EXAMPLE, I AM A DIRECTOR FOR A VERY LARGE NON-PROFIT DAY CARE CENTER IN LAWRENCE. OUR BOARD HAS A PHYSICIAN, A CPA, TWO LOCAL BUSINESS OWNERS, A PRESIDENT OF A SMALL MANUFACTURING COMPANY, A PHARMACIST, TWO TEACHERS, AND ONE OF THE LEADING AUTHORITIES ON DAY CARE CENTERS AT THE UNIVERSITY OF KANSAS.

YOU WOULD THINK THAT IF OUR DAY CARE CENTER IS TO AVOID SOME OF THE PROBLEMS EXPERIENCED BY OTHER DAY CARE

CENTERS THAT OUR BOARD HAS THE EXPERTISE TO ANTICIPATE PROBLEMS AND SOLVE THEM BEFORE THEY OCCUR.

WE TRY! WE CONSTANTLY REVIEW OUR EQUIPMENT, FACILITIES AND PLANS TO PREVENT ACCIDENTS, OR THE SPREAD OF DISEASE. WE KNOW HOWEVER THAT IF SOMETHING HAPPENS TO ONE OF OUR CHILDREN LAWYERS WON'T JUDGE US BASED UPON WHAT WE HAVE DONE. THEY WILL LOOK AT THE MATTER WITH HINDSIGHT AND WHATEVER HAPPENED TO CAUSE THE INJURY WILL BECOME OUR RESPONSIBILITY. IT WON'T MATTER THAT THE PROBLEM COULDN'T HAVE BEEN REASONABLY FORESEEN. AND EVEN IF WE ARE SUCCESSFUL IN OUR DEFENSE THE LEGAL FEES MAY BANKRUPT US.

YOU SEE WE HAVEN'T HAD DIRECTORS AND OFFICERS

II

INSURANCE FOR A NUMBER OF YEARS. WE CAN'T GET ANY. WE CONTINUE TO WONDER WHY WE SHOULD SUBJECT OUR FAMILIES TO THE RISK OF A LAWSUIT, HOWEVER NOT A SINGLE DIRECTOR HAS RESIGNED SO FAR.

WE ARE FACED WITH ALL KINDS OF CATCH 22 PROBLEMS. TO PROTECT THE CHILDREN WE MUST SUPERVISE OUR EMPLOYEES CAREFULLY. IF WE SPOT A PROBLEM WE EXPECT OUR DIRECTOR TO TERMINATE IMMEDIATELY THAT EMPLOYEE. WE THINK THIS IS NECESSARY, BUT SUCH A HARSH TERMINATION POLICY SUBJECTS US TO POSSIBLE LEGAL ACTION FOR WRONGFUL DISCHARGE OR FOR CIVIL RIGHTS VIOLATIONS. ONE GROUP OF LAWYERS SEEMS TO GET US IF WE DO SOMETHING WHILE ANOTHER GROUP OF LAWYERS WILL GET US IF WE DON'T. IT

II

IS A NO WIN SITUATION AND WE CAN'T FAULT INSURANCE COMPANIES FOR GETTING OUT OF THE D & O BUSINESS.

WE KNOW VERY WELL THAT IT IS THE TORT SYSTEM THAT HAS LEFT US WITHOUT D & O INSURANCE. IF IT WERE MERELY A MATTER OF PAYING FOR INJURIES IN OUR FACILITY WE COULD BUY A POLICY TO COVER MEDICAL EXPENSE. BUT WE KNOW THAT IF WE ARE SUED IT IS LIKELY WE WILL FACE A LARGE DEMAND FOR PAIN AND SUFFERING OR PUNITIVE DAMAGES. ACTUAL DAMAGES PLAY A SMALLER AND SMALLER PART IN LITIGATION AND THE LEGAL EXPENSES - WIN OR LOSE - WILL BE TREMENDOUS.

HOWEVER, EVEN IF WE ACCEPT THE FACT THAT THE TORT

II

SYSTEM MAY BE RESPONSIBLE FOR THE PROBLEMS OUR INSURANCE MECHANISM IS ENCOUNTERING WE MUST STILL DECIDE HOW TO SOLVE THE PROBLEM. MOST LIKELY THE ANSWERS IN EACH AREA WILL REQUIRE DIFFERENT RESULTS.

THE ANSWER IN MEDICAL MALPRACTICE CONTAINED IN HOUSE BILL 2661 IS A COMBINATION OF CAPS ON AWARDS, SCREENING PANELS, STRUCTURED JUDGMENTS AND INCREASED EFFORTS BY THE MEDICAL COMMUNITY TO CONTROL MALPRACTICE. CAPS MAY ALSO WORK IN OTHER AREAS.

IN OTHER AREAS, SUCH AS LIABILITY OF COUNTIES AND TOWNSHIPS, A FULL OR PARTIAL RETURN TO GOVERNMENTAL IMMUNITY MAY BE NECESSARY.

II

MANDATORY ARBITRATION MAY BE THE ANSWER IN STILL OTHER AREAS SUCH AS DAY CARE CENTERS.

KANSAS IS NOW BEGINNING TO ADDRESS THESE SERIOUS PROBLEMS AND WE ARE CONFIDENT THAT ANSWERS CAN BE FOUND TO SOLVE THE PROBLEMS PRESENTLY FACING THE COMPENSATION SYSTEM.

SENATE BILL 540 PLACES A $1 MILLION CAP ON AWARDS FOR ACTIONS INVOLVING THE PROFESSIONAL LIABILITY OF 24 LICENSED PROFESSIONALS IN KANSAS. THIS BILL ALSO INCLUDES SOME OF THE PROVISIONS IN HOUSE BILL 2661 REQUIRING STRUCTURED AWARDS AND SETTLEMENT CONFERENCES. THIS BILL TAKES THE ACTUARIES AT THEIR WORD. IT ANTICIPATES THAT THERE ARE STRUCTURAL PROBLEMS CAUSING OUR PRESENT

LIABILITY INSURANCE PROBLEMS AND ATTEMPTS TO ADDRESS THESE PROBLEMS NOW RATHER THAN A DECADE FROM NOW WHEN THESE PROBLEMS MAY HAVE GROWN TOO SEVERE TO CORRECT EASILY. SENATE BILL 540 RECOGNIZES THAT SOME OF THE MOST IMPORTANT AND NECESSARY PROFESSIONALS IN THIS STATE MAY BE FORCED TO CHANGE THEIR BUSINESS PRACTICES IF SOME RELIEF ISN'T FOUND FOR THEIR INSURANCE PROBLEMS.

THE INSURANCE COMMISSIONER WILL CONTINUE TO STUDY AND INVESTIGATE EACH OF THESE AND OTHER LIABILITY AREAS EVEN IF SENATE BILL 540 IS ENACTED. AS MORE INFORMATION AND DATA ARE OBTAINED SOME ADJUSTMENTS MAY BE NECESSARY, HOWEVER, THE CAP WILL PROVIDE SOME IMMEDIATE RELIEF ALTHOUGH NOT NECESSARILY IMMEDIATE PREMIUM RELIEF.

TEN YEARS AGO THE ACTUARIES WARNED US ABOUT THE FUTURE IN MEDICAL MALPRACTICE. HAD WE PLACED A CAP ON AWARDS AT THAT TIME - EVEN THOUGH WE DIDN'T HAVE ALL THE FACTS AT OUR DISPOSAL - WE COULD HAVE AVOIDED THE SUBSTANTIAL MEDICAL MALPRACTICE PROBLEM FACING US TODAY. NOW WE HAVE A CHANCE TO ACT QUICKLY RATHER THAN REACT TO A SITUATION THAT WILL STEADILY WORSEN UNLESS SOME KIND OF REMEDIAL ACTION IS TAKEN.

WE MAY NOT HAVE ALL THE FACTS WE WOULD LIKE FOR THE 24 LICENSED PROFESSIONALS COVERED BY THIS BILL, BUT IF SENATE BILL 540 IS ENACTED IT MIGHT PREVENT SERIOUS PROBLEMS 5 OR 10 YEARS FROM NOW AND MAY SAVE A NUMBER OF PROFESSIONS AND INJURED THIRD PARTIES FROM AN

II

ECONOMIC DISASTER.

LETFO

II

2-27-86

MARSHALL, DAVIS, BENNETT & HENDRIX

LAWYERS

210 COMMERCE BANK AND TRUST BUILDING
31ST AND S. TOPEKA BOULEVARD
TOPEKA, KANSAS 66611-2191

HERBERT A. MARSHALL
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AREA CODE 913

DORAL H. HAWKS (1984)

February 26, 1986

The Honorable Robert G. Frey
Chairman
Senate Committee on Judiciary
State House
Topeka, KS 66612

Re: Senate Bill 540

Dear Senator Frey and
Members of the Senate Committee on Judiciary:

I am Mark L. Bennett and I represent the American Insurance Association, which is a service organization of approximately 178 property and casualty insurance companies, many of which are doing business in the State of Kansas. I am appearing on behalf of the American Insurance Association in support of SB 540, and we highly recommend its passage.

I have been advised that because of a full agenda of speakers and a consequent shortage of time, full presentation by various persons who want to testify in regard to this bill requires a written statement of position rather than an oral statement of position. It is for that reason that I am, on behalf of the American Insurance Association, presenting this statement in regard to its position on the bill.

Thank you very much.

Very truly yours,

Mark L. Bennett

Mark L. Bennett

mlb/eg

S. Judiciary
2/27/86
A-III

2-27-81

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 540

February 27, 1986

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Committee

by

David Litwin

Mr. Chairman, members of the committee. I am David Litwin, representing the Kansas Chamber of Commerce and Industry. We appreciate the opportunity to comment in favor of passage of SB 540.

> 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. KCCI receives no government funding.
>
> 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.

Earlier this month, KCCI's Board of Directors adopted a comprehensive policy on liability insurance availability and tort reform. A copy is appended to my written testimony.

S. Judiciary
2/27/86
A-IV

We endorse SB 540, in terms of the reforms that it would apply to a broader area than the medical malpractice bill, HB 2661, which we also support. SB 540 would apply the following reforms to professional malpractice actions involving some two dozen licensed professions: caps on awards, for both pain and suffering and total damages; structured awards for future economic loss to maximize the payout to victims while controlling defense and insurance costs; a requirement that expert witnesses spend substantial parts of their days in actual practice, in order to discourage the use of traveling professional hired-gun witnesses; mandatory settlement conferences, with sanctions for failure to accept reasonable settlement offers; tightened requirements concerning the reporting by insurers of incidents of possible professional malpractice; a requirement for an evidentiary hearing to determine the reasonableness of attorney fees; and, pretrial screening panels whose decisions would be admissible in evidence at any subsequent trial, with the important safeguard that would allow any member of the panel to be subpoenaed for purposes of examination and cross-examination.

These are important reforms and are a major part of what is often referred to as tort reform. Virtually all who have studied the present crisis in cost and availability of many kinds of liability insurance agree that it results both from problems within the insurance industry, and runaway costs of our tort litigation system, and that in order to restore long-term stability and affordability to both systems, both problems must be addressed. SB 540 would address many of the major problems in our civil justice system.

Other reforms might include restriction or abolition of punitive damages, the elimination of the collateral source rule, and control of discovery costs and abuse.

It is our hope that in the near future the legislature will undertake a broad inquiry into the problems plaguing our insurance and civil justice systems and enact such reforms as may be necessary. There is a deeply-felt need among the general business community for relief from the increasing cost and decreasing availability of insurance, and to bring costs of litigation back to a level of reasonableness and viability.

SB 540 would advance us further down that road, and KCCI supports its passage.

Thank you again for the chance to testify. I'll be happy to address any questions the committee may have.

IV

Kansas Chamber of Commerce and Industry
Tort Reform Policy

February 1986

The Kansas Chamber of Commerce and Industry supports reforms which, in medical malpractice actions, would impose caps on damage awards with the exception of past and future medical expenses and other out-of-pocket costs, provide for structured awards of future economic loss, require itemization of jury awards, make decisions of pretrial screening panels admissible in evidence, require expert witnesses to be active in clinical practice, establish mandatory settlement conferences, link postjudgment interest rates to the yield of United States Treasury bills, require evidentiary hearings on the reasonableness of attorneys' fees, and reduce the exposure of the Health Care Stabilization Fund.

KCCI further supports, in principle, the enactment of provisions which would curtail the activities of impaired health care providers, accelerate and improve practitioner discipline, impose mandatory requirements concerning the reporting of malpractice incidents, immunize good faith reporting of such incidents, require the implementation of peer review and risk management programs, and impose civil fines for malpractice.

KCCI further believes that there is an equally serious crisis in the cost and availability of liability insurance in a wide range of industries and professions and for public entities, and in the cost of litigating tort claims. KCCI believes that reforms that are necessary and appropriate in the medical malpractice area should, on the whole, be adopted in these more general spheres as well, and urges the legislature to enact remedial legislation as soon as possible. Such legislation should include provisions that would eliminate or significantly restrict the award of punitive damages, place caps on awards for pain and suffering, authorize structured awards, limit attorney contingent fees, eliminate the collateral source rule, eliminate discovery abuse and control discovery costs, provide for alternate dispute resolution in appropriate cases, limit venue shopping in tort actions, and effect such other procedural and substantive reforms as may be necessary.

IV

KANSAS
CONSULTING
ENGINEERS

GEORGE BARBEE, EXECUTIVE DI R
1100 MERCHANTS NATIONAL BANK
8TH & JACKSON
TOPEKA, KANSAS 66612
PHONE (913) 357-1824

February 24, 1986

Senator Robert Talkington
President, Kansas Senate
State Capitol, Room 359-E
Topeka, KS 66612

RE: Kansas Consulting Engineers support for SB-540

Dear Senator Talkington:

On behalf of the Kansas Consulting Engineers, we are pleased to offer support of the provisions within SB-540. The following comments are offered to highlight the severe professional liability problem with affordability and availability now being faced by consulting engineers.

In addition to being licensed to offer their services to the public, most firms also have professional liability insurance because the clients require it, the competition demands it, or out of pure fear of being sued in this litigous society we live in. I was employed by the Kansas Consulting Engineers in 1972. Through the years I had become quite familiar with the problems the members were experiencing with professional liability insurance and the consulting engineers allowed me to form an independent insurance agency, Technical Profession Insurance Corporation (TPIC), to help them with their problems being encountered in finding adequate coverage at affordable prices. This agency was formed in 1980.

After about three years, through TPIC, we were able to write policies for our members through Imperial Casualty and Indemnity, Republic Insurance Company, CIGNA, and Continental Casualty Company (CNA). Through the early part of the '80s we were able to provide considerable savings for our members because we had created new competition by causing new companies to come in to Kansas. However, we began to see the market change to its present hard status beginning in 1984. The first sign was when Imperial notified us that they would accept no applications for new business, but would continue reviewing renewal applications. Their premiums went up dramatically.

Next, the source for most of our policies, CIGNA, began to notify us as each insured policy expired, that they would not renew because of "new underwriting guidelines". CIGNA has refused, to this date, to make an announcement that they are getting out of the architect and engineer professional liability business. They simply do not renew.

Then, in 1985, Republic notified us that they would not accept applications from firms that have an annual gross billing of less than $100,000 per year, or more than $5 million per year. That figure now has been reduced to less than $250,000 or more than $3 million per year. Republic will only offer a limit of liability of $500,000.

A-VI

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Availability of coverage is now so restricted that Continental Casualty is acknowledging receipt of applications by letter, stating that it may be several weeks before they can respond. We are down to one carrier offering broad coverage for architects and engineers.

I presently have thirty-one engineering or architectural firms insured through the KCE in-house agency. This week I took the last five policies sold to calculate the percentage of increased premiums compared to the change in the firms' gross billings. The results were as follows:

FIRM	'85 BILLINGS	'86 BILLINGS	%CHNG	'85 PREM	'86 PREM	% INCREASE
A	$135,723	$291,543	115%	$3,489	$9,794	180%
B	$472,377	$409,979	-13%	$8,407	$15,192	81%
C	$4,001,090	$5,611,383	40%	$61,484	$105,104	71%
D	$730,000	$642,541	-12%	$10,771	$24,281	125%
E	$750,000	$920,000	23%	$9,923	$24,142	143%

This illustration of the last five purchases of insurance from two different companies shows an average gross billing change of 31% increase but an average premium increase of 120%.

These increases are kept to a minimum by raising deductibles as high as possible. It should also be recognized that the coverage has been drastically reduced. There is no longer available coverage for asbestos work or pollution coverage. The state is wanting to let contracts to clean up pollution and engineering firms have their hands tied because they cannot accept the liability.

These problems are compounded when you realize that these figures do not include the cost of workers' compensation, general liability, loss of business, automobile insurance, life insurance, heath insurance, etc.

This brief summary does not touch upon all of the problems involved, but the opportunity to provide information to a legislative forum is greatly appreciated. It is certainly time that the legislature recognizes that the doctors are not the only ones with insurance problems.

Sincerely,

George Barbee

George Barbee
Executive Director

F: 6.5.15

VI

Statement by K-NEA President Carolyn Schmitt on SB 540

to the Senate Judiciary Committee

On behalf of the members of Kansas-NEA, I would like to ask for your support for SB 540. Although teachers have not yet faced the professional liability insurance crisis as other professionals have, we believe this matter could be one of serious concern to us in the near future. We believe the limitations provided in SB 540 will protect professionals from unjustified and frivolous lawsuits and make available to them continued access to professional liability insurance.

We would ask you to consider including administrators in SB 540. School administrators also are certified by the state and we believe they, too, are entitled to some of the protections of SB 540.

Thank you for consideration of our concerns. We urge you to report SB 540 favorably for passage.

S. Judiciary
2/27/86
A-VII

Telephone: (913) 232-8271

Member of ahca

Kansas Health Care Association

February 24, 1986

The Honorable Robert Talkington
President, The Kansas Senate
Room 359-East, State Capitol
Topeka, KS 66612

RE: Support for S.B. 540 -- Malpractice Liability Limits

Dear Senator Talkington:

This is to relay this organization's support for the favorable passage of S.B. 540, in that it includes adult care homes and adult care home administrators under its coverage.

On one hand, adult care homes are charged with an important public responsibility in delivering nursing care to Kansas' infirmed and elderly; on the other adult care home providers are in the "cross-hairs" of health care cost containment.

We find the bill to be a sensible balance between these two issues; for we have witnessed, although in other states at present, a growning trend of excessively large judgements against providers, well above the limits of S.B. 540.

We in Kansas, along with other health care providers, have experienced sky-rocketing increases in liability insurance.

The Kansas Health Care Association is a voluntary, non-profit organization representing over 200 licensed Kansas adult care homes, both tax-paying as well as not-for-profit entities.

Thank you for your understanding and support for S.B. 540.

Sincerely,

F. C. Eaton

F.C. Eaton
KHCA President

FCE:jn

S. Judiciary
2/27/86
A-VIII

221 SOUTHWEST 33rd ST. • TOPEKA, KANSAS 66611 • 913/267-6003

The Kansas Society of Certified Public Accountants
Supports the Enactment of Senate Bill 540

This month our Kansas Society Newsletter carried a front page headline warning members that their 1986 Professional Liability Insurance premium could increase as much as 1,000 percent.

I cite for you the case of the north central Kansas CPA firm which has nine employees. Their 1984 premium for $1 million coverage was $682. In 1985 the cost increased to $775 and in 1986...$9,113, just shy of a 1200 percent increase.

In south central Kansas the story is somewhat the same. A firm with 14 employees paid $787 for a million dollars' coverage in 1984, $1,302 in 1985 and in 1986...$14,925, a bit more than an 1100 percent increase.

Needless to say neither firm has ever had a claim filed against it.

The Kansas Society of Certified Public Accountants represents nearly 2,000 members.

We are fortunate in that our national organization (The American Institute of CPAs) since 1974 has provided professional liability insurance through a nationwide plan for CPA firms with 250 or less employees. So as of this date, availability of coverage has not been a problem.

The amount of coverage available today under our national plan is a problem, however. In 1985 Kansas CPA firms could obtain $5 million of coverage, to date $1 million is the maximum for 1986 because of a lack of interest in the reinsurance market. Yet the AICPA reports that 99 percent of the 4,229 claims filed nationwide against the Plan since its beginning in 1974 have been for less than $500,000.

In addition to skyrocketing costs, Kansas CPAs are concerned about three other aspects of their liability coverage. Deductibles have been doubled, prior acts coverage nearly eliminated if a CPA changes carriers, and attorney fees have become included in the limits of the policy.

Professional liability insurance premiums are getting out of hand and the Kansas Society sees SB 540 as an important step in brining stability back to this area of insurance.

T. C. Anderson
Executive Director

A-IX
S. Judiciary
2/27/86

KANSAS DENTAL ASSOCIATION

KANSAS DENTAL ASSOCIATION
POSITION STATEMENT
PROFESSIONAL LIABILITY INSURANCE
FEBRUARY 1986

Submitted by Carl C. Schmitthenner, Executive Director

The malpractice crisis has impacted dentistry as it has all segments of society. Premium increases of 300 to 500 percent are not uncommon. Cancellations of policies and dificulty in obtaining coverage are becoming common complaints.

The major concern of the dentists is that there is a significant cost of doing business which must be passed along as an increased fee for dental service. This results in a higher fee to the patient with no increase in the quality or quantity of care which they receive.

The dentists of Kansas have consistantly supported the formalized Peer Review System which was established by the Kansas Dental Association in 1967. We have also supported increased funding of the Dental Board to facilitate additional investigation funds. The KDA has not and will not support any effort to get negligent doctors off the hook, but has in fact continued to make every effort to assure that quality dental care is delivered.

Regardless of the efforts of both the Dental Association and the Dental Board, the cost of malpractice coverage continues to increase while the availability decreases. While there is some increase in the frequency of the filing of malpractice actions we feel that the major cause of the increase is the higher level of the awards rather than the number of suits.

Realistically a $250,000 limit on non-economic damages should never have an impact on a dental claim. however it may disuade jurys from awarding or litigants from requesting unrealistic amounts by acting as a reminder of the problem.It would appear that the malpractice market is not a profitable area since the number of carriers writing dental coverage has dwindled from 60 in 1981 to 3 or 4 in 1986.

We support all the provisions of SB 540. We are not convinced however that even these measures will be adequate to stabilize or reduce the cost of malpractice coverage in the forseeable future.Unfortunately we have not been able to develope any better recommendations which might address the problem. Until the attitudes of the general public changes significantly, we are concerned that the situation will continue to deteriorate.

5200 Huntoon
Topeka, Kansas 66604
913-272-7360

S. Judiciary
2/27/86
A - X

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February 24, 1986

The Honorable Robert Talkington
President, Kansas State Senate
Statehouse
Topeka, KS 66612

Dear Senator Talkington:

This in reference to Senate Bill 540 introduced by you and other senators and referred to the Senate Judiciary Committee.

On behalf of the Kansas Association of Professional Psychologists we support the inclusion of certified psychologists within the limitations prescribed by that bill. If we can be of any assistance, please let us know.

Best personal regards,

John C. Peterson

John C. Peterson
JCP:dk

S. Judiciary
2/27/86
A-XI

Dickinson County Child Care Center, Inc.
508 SOUTH CAMPBELL
ABILENE, KANSAS 67410

February 21, 1986

Dear Senator Talkington:

During the past 24 months our center's liability insurance rate has increased Approximately nine hundred percent. Our coverage has decreased from one million dollars to one hundred thousand and excludes sexual abuse, malpractice, transportation and professional liability.

Within this time we have been informed by two insurance companies that our liability policy would not be renewed and replacement policies have been exceedingly difficult to find at any price.

The above nonrenewals and rate hikes affected our program regardless of our never having an insurance claim, quality of program or years of operation.

Moreover, we were given less than two weeks notice of nonrenewal.

What complicates the problem for our child care facility is that many of our parents cannot afford an increase in their child care cost to cover the substantial insurance rate increases.

In addition our center has a Major Purchase of Service contract with the Kansas State Department of Social and Rehabilitation Services in order to serve children with special needs and low income families.

Therefore we are inable to pass the cost on to parents.

When faced with budget breaking rate increases, our program is having to make some difficult trade-offs. Such as cutting program quality by using the money we have budgeted for teaching supplies, parent education, play equipment, lower adult child ratios or closing our doors, Which will seriously reduce the availability of licensed child care for many families in our community.

Thank You,

Pat Lacey

Pat Lacey, Director

S. Judiciary
2/27/86
A-XII

K A N S A S

K.A.E.Y.C.

Kansas Association for the Education
of Young Children, Inc.

My name is Pat Lacey. I am speaking on behalf of the Kansas Association for the Education of Young Children (KAEYC) as President of the orginization. KAEYC is a nonprofit, membership association comprised of 1,002 individuals who work in all facets of early education. The vast majority of our members work directly with children in child care programs and nursery schools. They all approach their work with a strong sense of professionalism; with a commitment to self-improvement; and a determination to work with us toward the goal of improving the quality of child care and early education programs in this country.

This IS a real crisis.

It is a crisis that is jeopardizing the availability, stability, and quality of child care in this state at a time when our organization has documented an unprecedented need for more and higher quality child care. Child care is integral to the self-sufficiency of today's families. Under these circumstances, the sweeping and dubious classification of child care as being of extremely high risk and its associated vulnerability to boom-bust patterns of insurabliity are intolerable.

S. Judiciary
2/27/86
A-XIII

KANSAS

K.A.E.Y.C.

Kansas Association for the Education
of Young Children, Inc.

Magnitude of the Problem

KAEYC is receiving several calls a week from child care providers who cannot find affordable insurance, if they can find insurance at all. We have never received this magnitude of calls on any issue in the history of the Association.

What is Happening?

The current insurance crisis has four parts:

Access: Insurance for programs is being cancelled midterm or not renewed. and replacement policies are exceedingly difficult to find at any price.

Affordability: Programs that do find insurance are assessed rate increases anywhere from 100% to 600%. The normal increase per year seem to be 300% to 400%.

Predictability: Nonrenewals and rate hikes affect programs regardless of their claims history, quality and years of operation. Moreover, programs often are given one month's notice or less.

Coverage: Almost all companies that still carry child care programs exclude child abuse and sexual molestation from coverage. Many other exclusions and eligibility criteria are also being applied.

I want to give you a feel for what we are hearing from the field by highlighting several themes that are reiterated again and again by the numerous child care providers who are calling us.

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K.A.E.Y.C.

Kansas Association for the Education
of Young Children, Inc.

First, the loss of insurance and the prohibitive rate increases we are seeing bear no relation to the professionalism, quality, or claims history of the programs affected. Even our state's very best child care programs are having problems obtaining affordable liability coverage.

Second, insurance is an absolute necessity for the child care field. Providers must have insurance, not only as an essential protection, but also because programs without insurance are operating illigally and are therefore ineligible to receive essential federal funds.

Third, many child care programs are unwilling or unable to pass the increased insurance costs onto the families they serve. The greatest pressures along these lines are felt by programs that serve publicly-subsidized and other low-income families.

Head Start programs and programs that serve Title XX children are simply unable to pass increased insurance costs on to their families, because they receive a set reimbursement rate per child. There are no parent fees to raise.

For other programs that serve primarily poor and low-income families, their ability to recoup the insurance costs from parents is limited by the families' ability to pay.

XIII

K.A.E.Y.C.

Kansas Association for the Education
of Young Children, Inc.

Forth, programs are sacrificing the quality of the care they provide and are foregoing program improvements to cover their increased insurance costs.

There is simply no maneuvering room in a child care budget -- the majority of programs are nonprofit, and they operate on a shoestring. About 70-80% of the average child care program's budget goes toward staff salaries. The remainder covers resource materials, physical repairs, rent or mortgage payment, food and insurance. Rent, food and insurance are set costs, leaving only nonessential materials and staff-related expenses open to cutbacks.

Programs are considering increases in the number of children supervised per adult, hiring staff with less training, reduction in in-service training and cutbacks in the education resources they make available to children. These are precisely the aspects of program quality that bear a direct association to child safety and to the healthy development of children in child care.

Fifth, the insurance industry is establishing conditions and standards for insurability that are far in excess of any standard that child are providers must presently meet.

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Kansas Association for the Education
of Young Children, Inc.

By establishing standards of quality that far exceed anything that has been required before, and thus far exceeds current practice by most child care programs, the insurance industry is effectively writing off child care programs.

I do not want to judge whether the insurance crisis is fueled by speculation or solid evidence. I have spent hours talking to representatives of the insurance industry, to individual insurers, and to underwriters. They are feeling financial pressures that are forcing them to scrutinize their own policies. They are caught with us in the midst of a highly litigious society. And, child care is not the only industry affected. This is a problem shared by foster homes, obstetricians and gynecologists, nurse midwives and the cities.

The fact remains, however, that child care is in a highly precerious and volatile position.

Conclusion

I am very worried about the future of child care in the wake of this crisis. Child care has historically been viewed by our society as a necessary evil. The field has withstood the severe cutting of federal funds at the beginning of this decade, the recent assault arising from headlines about child abuse, and the on-going lack of rewards or respect for child care providers. All of these problems have failed to impede the field's commitment to assuring that families who need child care receive it.

But this insurance crisis is different: No matter how hard or how long a provider has worked to create a high quality program, in just a few days they can find themselves facing the responsibility of caring for children without insurance. It is the unpredictability and the complete disregard for an individual provider's efforts to run a good child care program that makes this different from previous crises.

And, we are seeing signs that committed providers and directors of quality programs are simply giving up. Ironically, it is some of our most conscientious providers who are feeling the pressures most acutely, because they are unwilling or unable to pass the increased insurance costs onto the families they serve, and they are unwilling to run a program whose quality of care has been seriously eroded or to operate without insurance.

The real victims, however, are the children. Whatever extra resources can be found in the child care market will now go to insurance companies rather than to higher staff-child ratios, better trained staff, or retention of staff who are being drawn away from child care by more lucrative jobs -- the true means of insuring the safe and healthy development of children in child care.

I cannot adequately stress the importance of working with the insurance industry, and with your collegues in the Legislature to ensure that the immediate insurance crisis is alleviated and that its inevitable return in a few years is prevented. The Kansas Association for the Education of Young Children will, of course, offer any assistance, information and support as you develop an effective method for addressing this crisis.

State of Kansas

Board of Veterinary Medical Examiners

February 21, 1986

Dr. Thomas Sloan
Senate President's Office
State Capitol
Topeka, KS 66612

Dear Dr. Sloan:

I am sure that the majority of veterinarians in this state are agreeable with the intent of the proposed legislation to limit malpractice awards by the courts for the various professions.

In the past ten years the costs of malpractice insurance insurance have risen at an alarming rate. I maintain a mixed-animal practice, both large and small animals, and in 1977 when I first obtained professional liability insurance the cost for $200,000 coverage was $50.00 annually. In 1979 coverage of $1,000,000 became available at $250.00 annually. My renewal in November 1985 for $1,000,000 coverage cost $614.00. I am aware that this is very small compared to the medical profession, but it does represent a considerable expense. Additional increments of liability insurance are available at $130.00 per $1,000,000 coverage up to $5,000,000 maximum. Very often, veterinarians are sued for two to five million in cases involving stallions, purebred bulls and large numbers of cattle.

Punitive dammages are usually sought in malpractice cases. I seriously doubt that anyone intentionally, with malice commits malpractice, yet punitive damages are usually specified that greatly exceed the lost value of the animals involved. I am not aware if any limit or restrictions could be placed on this or not.

Personally, I very much support the passage of liability limiting legislation.

Sincerely,

Earl E. Gatz

Earl E. Gatz, ~~D.V.M.~~
Secretary-Treasurer
Rural Route 1
Pratt, Kansas 67124

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S. Judiciary
2/27/86
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THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904
TOPEKA, KANSAS 66601
PHONE 913-232-7789

NON SOLUM NOBIS

AFFILIATED WITH N. F. D. A.

FEB 24 1986

February 24, 1986

TO: SENATOR ROBERT FREY, CHAIRMAN
SENATE JUDICIARY COMMITTEE
STATE OF KANSAS

RE: SENATE BILL 540

Dear Senator Frey:

The Kansas Funeral Profession would like to go on record as being in favor of Senate Bill 540. Malpractice insurance--practically non-existent for our profession a few years ago--has become a major expense for these firms.

Funeral Homes, as a small business all across Kansas, try very hard to contain expenses in order to reduce the increase of funerals as much as possible. I have found, through research, the average cost of malpractice insurance has increased nearly one-third during the past 3 years.

Senate Bill 540 would be very helpful to the cost containment needs of the Kansas Funeral Profession. Your support would be appreciated.

Sincerely yours,

Jim Snyder

James F. Snyder
Executive Secretary

cc: Senate Judiciary Committee

S. Judiciary
2/27/86
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Taylor & Associates
A POLITICAL/ASSOCIATION MANAGEMENT COMPANY
BOX 397
TOPEKA, KANSAS 66601
913-354-1605

February 20, 1986

Senator Robert Talkington
Statehouse
Topeka, KS 66612

Honorable President Talkington,

On behalf of the Kansas Federation of Licensed Practical Nurses, I would like to take this opportunity to let you know that we are in support of measures which would provide professional insurance coverage at reasonable rates. The availability of professional malpractice insurance is of grave concern to us all. For the LPN, non-availability may prohibit some of us from practicing in the trade which we love and have trained for.

Thank you for your efforts on this most important issue. If I can be of any assistance to you on this or any other nursing issue, don't hesitate to contact me.

Sincerely,

Elizabeth

Elizabeth E. Taylor
Legislative Consultant to KFLPN

S. Judiciary
2/27/86
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KANSAS STATE BOARD OF TECHNICAL PROFESSIONS
214 West Sixth Street (913) 296-3053 Topeka, Kansas 66603

February 19, 1986

Mr. Thomas Sloan
Office of Senate President Talkington
State Capital
Topeka, KS 66612

Dear Mr. Sloan:

As per our telephone conversation on February 19, 1986 pursuant to Senate Bill 540, enclosed please find the testimony that was given before the Members of the Special Committee on Financial Institutions and Insurance on August 27, 1985.

I hope this information will be helpful to you. Please let me know if I can be of any further assistance.

Sincerely,

Betty L. Rose

Betty L. Rose
Executive Secretary

BLR/jh
Encl.

S. Judiciary
2/27/86
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STATEMENT FOR THE RECORD

Hearings of the
Special Committee of Financial Institutions and Insurance
Of the Kansas Legislature

August 27, 1985

by

Vernon Reed, AIA

I am a practicing architect with offices in Kansas City, Missouri; am a former president of the Missouri Council of Architects, where I was first introduced to the frustrations of architects who face a variety of meritless claims (and some with merit). I am now one of five members of The American Institute of Architect's Professional Liability Committee, and I am here today because Melinda Hanson, from your Legislative Research Department, called the AIA in Washington to see if the Institute had input for your hearings. The Office of the AIA Legal Counsel referred her to me. But I should add this disclaimer: I speak for myself; and my views, though I am helping to shape AIA policy, do not represent the official views of the AIA or any component of the AIA.

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The various forms of insurance involved in the planning, design, construction, operation and maintenance of buildings have evolved over a period of time in response to changing conditions, creative underwriting, and the needs of society. When someone proposes a subtantial change to this insurance system, as would be the case in calling for mandatory professional liability insurance, you will get the attention of architects, for the architectural profession has been helping to manage the insurance system in the construction industry for the past century.

I will leave with you copies of the AIA's document A201, General Conditions of the Contract for Construction, which includes Article 11, entitled, Insurance. This article embodies the consensus of the industry — including the owners' and contractors' points of view. It deals primarily with the insurance requirements during construction; and it is supplemented by additional provisions in the specifications for each individual project, with more specific requirements.

This document does not deal with the owners' continued insurance coverage for buildings after construction is completed; and we now perceive that as a problem to be addressed, for to provide the kind of coverages society seems to be expecting, it a appears that a comprehensive look of the total insurance package for buildings is in order. This new look we are now taking, provides the suggestion that professional liability insurance — at least as far as the design professionals are concerned — may soon become somewhat obsolete.

So while the notion of mandatory professional liablity insurance may appear attractive to some of you who are looking for ways to increase the financial responsibility of professionals, and may even appear attractive to large firms who are now compelled to carry hugh amounts of coverage, when they look with envy at the many small and medium size firms that go bare, the fact of the matter is, fulfilling society's needs cannot be accomplished with such a proposal. Corrections to weaknesses in the insurance system must start with a more complete understanding of the roles each of the parties play in the process of erecting a building.

Essentially those roles are as follows:

1. The owner:
    a. Initiates the project;
    b. Owns or acquires the property;
    c. Secures the financing;
    d. Determines in scope of the project and its detailed requirements;
    e. Approves the design, accepts the construction documents as fullfilling his or her requirements;
    f. Contracts with a builder;
    g. Pays all expenses of everyone involved;
    h. Operates and maintain the building upon its completion;
    i. Benefits from its use and accrues the profits it generates.

2. The Architect:
   a. Provides special knowledge and skill in planning and design;
   b. Organizes masses of information about the myriad choices to be made so that the owner can make intelligent decisions;
   c. Organizes the information about the building so its cost can be estimated, and so that the builder can figure how to build it;
   d. Administers the construction contract on behalf of the owner, to encourage the greatest value of construction for the contract price.

3. The Builder:
   a. Takes complete charge of the building process;
   b. Delagates and supervises all work items to persons or subcontractors skilled in the performances required;
   c. Uses his ingenuity to employ labor and material resources with economy;
   d. Delivers to the owner a completed and usable facility.

You all know that there is a liability crises developing in America. Nearly everyday you can read articles in the newspapers and magazines about how insurance premiums have gone out of sight — or that insurance is not available at all — for municipalities, schools, hospitals, banks, and others.

I want to spend a few moments to acquaint you with the insurance crises as seen by the architectural profession:

ARCHITECTS' PROFESSIONAL LIABILITY INSURANCE:
What's Broke and How to Fix It

Architects assume responsibility; we are paid to accept responsibility; and are prepared to faithfully discharge our legal obligations.

No architect is looking for less responsibility.

Liability is another matter. Liaibility deals with who pays for things that go wrong. There is a world of difference between architects being responsible for the design of a building, and paying:

1. for failure of materials that were manufactured by others,
2. for the failure of contractors who are poorly managed,
3. for the failure of owners to anticipate their needs,
4. for the costs of construction over which they have no control,
5. for the costs to release mechanics and material liens,
6. for the injury and death of workers under the supervision of others,
7. for duties specifically assigned in contracts to others,
8. for unsafe working conditions created and maintained by others,
9. for conditions known and accepted by the owner,
10. for the state of the art developed years later,
11. contractors for the contractor's own ineptness,
12. sub-contractors who have been mistreated by general contractors,
13. sureties, with whom they had no contractural relationship,
14. users of buildings owned, operated, and maintained by others,
15. estates of workers, already compensated through insurance,

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Yet, this is what is happening today, in a world turned upside down by a civil justice system so intent on protecting the "underdog," and which takes such pride in providing an open access to the court system, that it allows excesses which compromise the rights of people who are honestly and responsibly trying to do their job. We are told that we must bear the inconvenience of defending ourselves, for the sake of allowing anyone and everyone to come to court, and with impunity (and often with little or nothing to go on) charge us with negligence when something goes wrong. And things do go wrong in construction.

There will always be builders who fail to make their targeted profit and will find ways to charge the architect with "delays." There will be owners who are disappointed that their new building doesn't perform to their expectations. And there will always be the members of the public who slip and fall.

I am not here to suggest that architects practice their profession perfectly. We do make mistakes. We are human. There is no way someone preparing the plans for a building can imagine, beforehand, every contingency that must be dealt with during the course of construction of that building, and during a lifetime of that building's operation. And sometimes we just plain make a mistake in judgment.

The law recognizes that professionals are human, and it allows for human error. Thirty years ago, the traditional legal status of architects was one of immunity from liability on the sound premise that in preparing plans, the architect was an agent for an owner, who initiated the project, secured its financing, determined its scope and ultimate use, benefitted from its use, and accrued the profits it generated; and that in administering the construction contract, the architect served in a quasi-judicial role as an interpreter of the documents and an arbiter between the owner and the contractor. In other words, if something went wrong with the design, the owner was responsible, having directed the designer; and if something went wrong with the construction, the contractor was responsible, for he, alone was responsible for the means of construction.

During the past 30 years, that immunity has been stripped from architects by small, scattered steps which have had a significant accumulative effect, as courts have eliminated traditional defenses, created new causes of actions, allowed new parties to bring action; and have led us now to the threshold of strict liability, where no proof of negligence is required, but, because something is amiss somewhere in the construction process, the architect, as the acknowledged "learned professional" on the job, must pay.

Twenty-eight years ago, the American Institute of Architects, concerned about the emerging trend, worked with a leading insurance carrier to establish its "commended" professional liability insurance program. Today, there remains only one commended program, one carrier of insurance that meets our criteria. (To be commended, a company must be willing to write coverage in all 50 states. That is why there is only one commended carrier.) There are other carriers — a total of 11 two years ago, maybe 6 are still in the business, but I hear only 2 who will accept new applications today.

When the program started, we were dealing with few claims, that involved relatively small amounts. The insurance didn't cost much, and was easily absorbed as a normal cost of operating a business.

It's an entirely different matter now. You've heard about the liability crises the medical profession is facing. They've taken their case to the public, loudly and forcefully. 15 out of every 100 doctors are sued every year. If they have a crises, think about us architects. 44 out of every 100 architectural firms are now being sued every year. (That's statistically speaking. Actually, some firms are sued more than once a year, which distorts the actual number of firms sued.)

Are we doing a poorer job of practicing architecture? No! The entire country is enjoying a design renaissance. Our built environment is becoming more humane; we are enjoying more visual excitement; our lives are enriched and ennobled by good design; we are more comfortable and safer; our buildings are smarter, more flexible, work better; and our living, work, and play environments allow us to get more out of life than any society has ever had.

So what's the problem? Why are architects the target of so many suits? I believe it is because of the mentality that has led you to give consideration to this subject — mandatory professional liability insurance. Underlying those words are the notion that somehow, your citizens should live in a risk free society; that the state can somehow provide all with security from the cradle to the grave.

Our compassionate judges and juries who listen to the woes of those who are injured, feel compelled to reach out and help victims of misfortunes. And they will find a way to help. Often disregarding the real causes of the damage, ignoring the victim's own role in creating the misfortune, judges and juries look for the deep pocket to dip into to extend that helping hand. It is the American Way.

Here are some typical examples of the litigation architects face:

1. Vandals throw rocks through a window; a customer in the building is injured by flying glass; the architect is sued.

2. A car veers in the way of oncoming traffic; a driver swerves to miss the car headed for it in her lane, but loses control, crosses the trafficway, jumps the curb and parkway, smashes into a parked car, knocking it against a woman standing between the car and a building, injuring her legs. The architect of the building is named as a third party defendent.

3. A 22 month old boy is left on the balcony of a fifth story apartment. A neighbor sees the unattended child and, recognizing a potential hazard, rushes to warn the mother. She is too late; the child manages to climb over the balcony railing and falls to his death. The grieving mother cannot accept her own neglect; she sues the architect.

4. A plumber installs and test a water heater without following the manufacturer's instructions or the architect's specifications. He leaves out the safety relief valve designed to prevent pressure from building up. The heater explodes and kills him. The widow sues the architect

even though the architect had no knowledge of the installation or the testing underway.

5. A contractor's inept management of a project caused it to go broke. The bonding company called in to finish the job sued the architect for not preventing the contractor from making so many mistakes. (The architect's contract with the owner, and the contractor's contract with the owner explicitly state that the architect is to have no jurisdiction over how the contractor is to perform the construction. The architect is concerned only with the end results of the construction — not the process itself.)

6. When a contractor fell seriously behind in its schedule, the architect alerted the bonding company. When the contractor developed additional problems, he sued the architect for libel, slander, and interference with his business.

7. A manufacturer concealed the fact that his product did not pass flame spread tests. When the architect specified the product relying upon the manufacturer's false claims, he was sued when he discovered the defiency and ordered it removed.

8. A contractor erected 26 trusses with temporary bridging, then returned to the beginning to permanantly weld the bridging. In doing so, he loosened the bolts of the temporary briding to make realignments as he proceeded. However, loosening the bridging caused the final 18 trusses to buckle and collapse. He sued the architect for not catching him do something wrong.

9. A school board decided against paying the architect for full time representation on the jobsite during construction of its new school, and settled for general observations. But when the contractor failed to tighten bolts on the roof structure, and a windstorm caused heavy damage to it, they sued the architect for not discovering the contractor's ommission.

10. An architect rejected a proposed emergency generator for a project because it didn't comply with the requirements of the specifications. For a year and a half, the contractor kept insisting the product be approved because its price was the basis of his bid. The architect never waivered in rejecting it. Then the architect was sued for delaying the job.

11. A roofer fell through an opening left in the roof for mechanical equipment to be installed later. Even though such conditions normally exist during construction, the widow sued the architect to supplement her insurance settlement.

12. A woman took her 77 year old mother to a museum, then left her alone a moment afterward, to get a cab. The older woman, with her glasses removed, failed to see a step as she wandered around waiting for her daughter and the taxi. She fell, and injured her elbow, which healed in a displaced position. Although millions of users had established this was not a "dangerous" condition, the architect was sued.

13. An architect designed a high rise apartment building, but occupancies remained low, and the owner converted the building into a hotel, and had a decorator redesign the lobby. The registration desk was placed next to large plate glass windows. A guest walked through the glass cutting himself seriously. The architect was sued even though he had nothing to do with the changed occupancy or the revised lobby that created the hazard.

14. When an apratment building was destroyed by fire, the owners and tenants sued an architect whom the mortgage company had hired to inspect the building during construction, to protect its security interest in the building.

15. A fireman was injured when the ladder he was using collapsed while he was fighting a fire. He sued the city, and the city sued the architect of the burned building on the premise that, if the building were properly designed, it wouldn't have caught fire.

16. A child was pushed against the railing of bleachers during an exciting basketball game, and was injured. Parents sued the architect for negligently creating a dangerous condition, even though the railing was not concealed or defective.

In addition to these meritless claims, there is also an assortment of claims filed against architects by those who genuinely do not understand how buildings are built. They believe that buildings can be constructed to the same standards under which products are manufactured. A company that rolls off 1,000 or 10,000 units a day from an assembly line might have 40 inspections or more along the way; and every so often, a unit is taken off and subjected to tough tests until the unit breaks. That way the company knows just how well their products will hold up under normal wear and tear.

Buildings, however, are another matter. They are one-of-kind. There is no opportunity for factory controlled conditions. Every building is a unique experiment. Never have the materials and systems come together in just this way before. Not only is the "product" unique, but its fabrication is also unique. The combination of owners, contractors, sub-contractors, architects, engineers, manufacturers, and suppliers have never been assembled exactly in this combination before, nor will they ever work entirely together as a team again. Many are there because they were low bidders, and to come out ahead, they must be adversaries with everyone else on the "team."

In such an environment, there is abundant opportunity for things to go wrong. And even though he does not control the manufacturing processes, the architect, because he is "the learned professional," bears the brunt of everyone's disappointments.

So we are being sued more today than 30 years ago, because through our insurance, we have provided a deep pocket. But we have learned that that is not the answer. For the deeper the pocket, the greater the frequency and magnitude of the claims. Our premiums skyrocketed a few years ago when the windows in the Hancock Building in Boston fell out of the upper stories. We've gone through several other waves of doubling and tripling of premiums since then. The latest is this year, when it has been rumored that we must all chip in to reimburse the reinsurer's losses over the Union Carbide gas leaks in Bhopal, India. We are also told that since insurance companies cannot make their targeted return on assets because interest rates have dropped, we must help them make up the difference with new revenues through increased premiums. How much of our premium increases are due to Bhopal or lower interest rates, and how much are due to the rising expectations of perfection in our practice, is an open question.

Our premiums increased this year at rates of from 250 to 400% in many markets. Luckier architects, with no adverse claims record, practicing in "safe" areas of non-litigious environments, had their rates increase "only" 150 to 250%. Small wonder 50% of the architects in California are now going bare.

But one point is now abundantly clear to us. Architects cannot underwrite the expectations of society for a risk free life.

We cannot guarantee the performance of the contractor or his subcontractors;
We cannot place our financial resources behind those of a manufacturer of a building product, and guarantee that product will not fail;
We cannot guarantee that the owner's expectations will be met — particularly when budget restrictions deny the use of quality products and systems.
And we cannot guarantee users of buildings that they will not fall and fracture their elbows.

More and more, architects are rebelling at the abuses of the civil justice system, and are making conscious decisions to "go bare." That's one answer to the problem, for we have learned that suits are directed at those who carry insurance. Carry no insurance and you make a smaller target for gunslinging plaintiffs' lawyers who shoot first and asks questions later.

Perhaps a better way to deal with the problem, as far as architects are concerned, now seems to be emerging. The AIA, in concert with engineering and other design professional societies, is working towards the development of a major restructuring of the insurance programs dealing with construction. This restructuring involves providing the coverage for those things for which we are sued, in a new form of property insurance.

To understand this new direction, it is helpful to understand that:

The owner is the ultimate risk taker in all construction ventures.

Only the owner's money is spent on a project. (The owner pays the architect's insurance indirectly through fees; and it pays the contractor's insurance through the contract price.)

Owners have not been getting a good bargain in the way they protect themselves from the risks of building. They discovered this themselves a few years ago, when it was customary for the builder to pay for the builder's risk policy, and include that amount in the construction contract price. Owners found they could usually save money, by adding the builder's risk coverage to their regular property insurance policy; and they instigated a change to the AIA contract documents to allow them to pay for the coverage directly.

Since most of the litigation involving construction takes place between the owners, the architects or engineers, and the contractors, it is worthwhile to see what happens to the pool of funds created by architects and engineers liability insurance.

30% of the funds are required to administer the program.

Of the balance left, another 30% to 40% is expended in defending the insured.

Less than half the fund is available to pay actual damages.

Not only can the owner buy more coverage at less cost under an umbrella coverage, there is a sound logic in the very principle of the owner carrying the insurance for all parties:

As a class, owners are the most financially competent party of those involved in the process, and are better able to distribute the burden among their many patrons and customers than architects are to distribute the burden among their few clients.

Profit is defined as the compensation for risk. Profits made by architects are scaled to the risks they take in conducting a business — meeting the payroll, finding new jobs, keeping their employees happy and productive. Such profits bear no resemblence to the scale of the risks associated with construction.

If society's expectations of having those deep pockets for all potential injuries resulting from the construction process are to be met, the pool of funds necessary must come, not from the 10,000 architectural firms in America surrounded by 125,000 trial lawyers, but from the millions of buildings that exist. That's the only real way to spread the risk.

Developing this restructured package of insurance will not be a simple task, regardless of the logic that dictates it. No one in responsible charge in our profession is looking for a no fault solution to our problem. We recognize that there are architects who can make some bad mistakes. We will not become apoligists for them. But protecting society from incompetent professionals is the very basis of our licensing laws. And that is were the problems need to be solved.

The change that will come about in the insurance industry must deal with accountability; and I believe accountability will be taken into consideration in at least 2 ways:

1. Underwriters will take into consideration who the architects, engineers, contractors, and owners are in preparing the premium charges for the coverage. The market will punish incompetent practicioners with higher premiums.

2. A mediation service — not just arbitration, but mediation — will become a new form of conflict resolution in construction, where informed outsiders will review problems and manage the conciliation process; and, if necessary, apportion any liability among the parties for the cost of the deductable — not the face amount — of the coverage.

While there may be some initial reluctance on the part of owners to the changes we propose, there will be incentives other than better pricing for them to embrace a new system: They would be assured that the desired coverage is kept in force during the critical periods of their building's life. The coverage would not be eroded by limits that may be used up on other projects, or dropped altogether by a professional facing staggering premium increases.

Mandatory professional liability insurance is the wrong answer to a misunderstood problem. It is a sinking ship that has been overloaded by greed, an idle legal profession that is increasing its numbers at the rate of 30,000 new attorneys per year, and an overly compassionate justice system that has difficulty in telling 77 year old ladies they should be more careful to keep their glasses on and watch where they are going.

Should a bill get to the Legislature calling for mandatory professional liability insurance, it will quickly be dubbed "The Plaintiff Lawyers' Relief Act." Instead of helping to resolve serious problems in the construction industry, it would serve only to attract more and larger claims. Suits are filed now as players of lotteries buy tickets. It doesn't really cost much to get your ticket, and who know? You might be a winner with a big settlement.

Professional liability insurance was probably a good idea in its day. But it was doomed by those who raided it for frivolous purposes, and those who could have brought a sense of responsibility to its use, but who failed to do so. Now, we professionals simply cannot create the pool of funds necessary to support the style to which our litigious society has become accustomed.

Something has to give. Either society's expectations must be brought back down to earth, or someone else must fund them. It is actuarily impossible for architects and engineers to underwrite the awards for damages that judges and juries deliver. From the information I have been able to uncover (and this is not necessarily the complete picture), there was last year approximately $100,000,000 of revenue into professional liability insurance funds. Notwithstanding the fact one disaster on the scale of a "Hyatt" could use up all such funds, I have already mentioned that less than half of that amount is actually available for damages, because of administrative and defense costs.

To the credit of those involved in the Hyatt, the various insurance funds were pooled to pay claims; no liability was contested; and a high percentage of the funds available went directly to compensate victims. But please note: the contribution of the design professions' insurance to that settlement was only $7,000,000 — a fraction of the total required to settle the cases involved. It was the owner, that ultimate risk taker I mentioned earlier, who furnished the financial backing for the settlements. And that is the way it will have to be.

Mandatory Professional Liability Insurance will not work, because professional liability insurance can not continue to work as it is presently structured. If the risks of construction are to be spread to society, as is the very foundation of all insurance, it must have a broad actuary base. It must be supported by millions of hamburgers sold, or square feet rented, or in the case of non profit buildings, as a part of the cost of the building's operations, right along with the fire insurance. There is no good reason to have the architect or the engineer be a middle-man conduit to buy that insurance for the owner.

TO: Members of the Senate Judiciary Committee

FROM: Kansas Association of Land Surveyors

DATE: February 25, 1986

RE: Senate Bill No. 540 - Professional malpractice by licensees of state other than health care providers.

Mr. Chairman and Members of the Committee:

My name is William Shafer, Legislative Committee Chairman for the Kansas Association of Land Surveyors.

You have before you remarks that were made by me during the 1985 study of Proposal #12, the mandating of professional liability insurance. At that time, our organization had not taken a policy position regarding this topic. Since 1985, we have studied and reviewed this subject and do support Senate Bill No. 540.

Thank you for for opportunity to present our written testimony.

S. Judiciary
2/27/86
A- XVIII

KANSAS STATE BOARD OF TECHNICAL PROFESSIONS
214 West Sixth Street (913) 296-3053 Topeka, Kansas 66603

February 19, 1986

Mr. Thomas Sloan
Office of Senate President Talkington
State Capital
Topeka, KS 66612

Dear Mr. Sloan:

As per our telephone conversation on February 19, 1986 pursuant to Senate Bill 540, enclosed please find the testimony that was given before the Members of the Special Committee on Financial Institutions and Insurance on August 27, 1985.

I hope this information will be helpful to you. Please let me know if I can be of any further assistance.

Sincerely,

Betty L. Rose

Betty L. Rose
Executive Secretary

BLR/jh
Encl.

S. Judiciary
2/17/86
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To: Members of the Special Committee on
Financial Institutions and Insurance

From: Kansas Society of Land Surveyors
Wm. I. Shafer, Legislative Committee Chairman

Re: Hearing on Proposal #12 - Mandating Professional Liability Insurance

As KSLS did not receive word of this meeting until August 5th, it was impossible to get a total feeling of the organization. However, I did contact the Board of Directors and as many of the surveyors in both public and private practice as I could to get their feelings on this matter.

The first general thought was negative, probably due to the word "mandating," for some reason the fact that the government is requiring something new still gets to most people. After more thought, most of those that I contacted felt there were some pluses along with the minuses for this. I tried to outline them below.

The general feeling of whether this professional liability insurance should be required for licensing depends on how you are employed. In talking with the Victor O. Schinnerer Insurance Company, I was advised that there is no insurance available for a professional engineer or land surveyor working for a company that does not as a primary function offer engineering services. An engineer or surveyor working for a large nonengineering company or a governmental office could not acquire insurance on their own. The Victor O. Schinnerer Insurance Company did state that some coverage might be afforded as a rider to other policies that the companies or municipalities might have.

In the private sector the practice of engineering and land surveying is quite often combined. The larger engineering companies that provide land surveying services for the most part do have the insurance and seem to favor the mandatory insurance. These companies generally provide total engineering along with their surveying services. They have premiums that vary from 8 to 20% of

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their gross annual billing. The percentage depends on the type of services performed. The smaller firms, especially those just starting, generally do not carry the insurance because the rates quoted were more than they could afford. Generally the life and limb risk in the surveying profession is not as great as it is in the engineering or other professions. Some of the higher risk services, construction survey, preliminary engineering survey and topographical survey do not require a license as a land surveyor in the State of Kansas unless boundary survey and or legal description are required in conjuction with these services. Generally speaking the practice of land surveying, that requires a license in the State of Kansas, is a low risk service. The claims that I have heard about have been small and generally were taken care of by the surveyor in a self-insured manner, except on the above listed services.

I have received two comments from private surveying companies with premiums mentioned. One of them quoted a premium of 10% of his gross billing. The other said that he felt that the premium would be nearer to 15% based on his experience. In talking with the Victor O. Schinnerer Insurance Company, it was indicated the fees would vary considerably with company to company and could not give me a general rule. Due to the lack of experience rating for various land surveying firms in the rural, developing and urban areas for the State of Kansas, the current practice appears to be pick the nearest area with an experience rating and then put the company on a five year adjusted premium basis.

Generally speaking most of the surveyors that I have talked to have mixed feelings about whether the public would best be served by them carrying the insurance and raising their rates to cover it. The current opinion of the general public is now that the fees are too high without this added cost.

Those in the private practice of land surveying, without engineering, and those in governmental type survey jobs feel that if it is required, it should be required by the state as a part of license fee and a general policy should be provided by the licensing board. This would take care of the administrative problems in assuring that a person carried the liability insurance.

We appreciate the opportunity for us to give you our views and rest assured at the next Board of Directors meeting, as well as our chapter and state meetings, this will be discussed in more detail. I would appreciate it if you would keep us advised of the status on this study and should it proceed to a bill status, we would appreciate a copy so that we may review it.

You may contact the KSLS through me or our Secretary -Treasurer, Gene Sickmon at the addresses listed below.

Wm. I. Shafer, PE-LS
8633 W. 90th Terr.
Overland Park, KS 66212

Gene D. Sickmon
109 E. 13th
Hutchinson, KS 67501

Yours truly,

Wm. I. Shafer

Wm. I. Shafer
Chairman Legislative Committee
Kansas Society of Land Surveyors

THE KANSAS SOCIETY OF ARCHITECTS, AIA

612-614 Kansas Avenue   Topeka, Kansas 66603   913-357-5308   A Chapter of the American Institute of Architects

February 26, 1986

The Honorable Robert G Frey
Chairperson - Judiciary Committee
Kansas Senate
Room 514 S, State Capitol
Topeka, Kansas

Dear Senator Frey:

The Kansas Society of Architects, AIA greatly appreciates the opportunity to provide information to your committee relative to SB 540. Our association at both the national and state levels is very concerned about the rising costs and the reduced availablility of professional liability insurance. **We support any legislation that potentially improves the insurance climate for our members without jeopardizing the legitimate interests of the public.**

We do support SB 540. We believe the insurance climate may be improved by this legislation. In the area of personal injury or death, SB 540 seems to deal with the issue of frivilous litigation by empowering the use of a screening panel. This same process extended to other damage cases might further reduce unnecessary litigation.

We have not completed a planned member survey about liability insurance experiences in Kansas. We cannot at this point quote Kansas statistics about premiums, percent increases, number of claims, size of claims, etc. A spot check of a few Kansas firms indicates similar increases to those reported nationally by carriers of design professional liability insurance. We have found that 1985 increases were 25% at the low end and exceeded 100% at the high end. Although it's very difficult to reduce premium data to like-kind comparisons, this disparity apparently reflects differences in carrier underwriting criteria and carrier pricing for similar exposures. We have been informed that even higher increases have been filed for approval with the Insurance Commission in 1986. We also know that the number of carriers in this market has decreased significantly.

Our concerns are real. If these increases are not the result of the "cyclical nature of the insurance

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industry" but rather are due to actuarial projection that there are too many risks in this liability arena; we will soon witness a national crisis. Like physicians, some architects may be (or have been) forced to abandon practice. Some architects will simply choose (or have chosen) to "go bare". Others (larger firms) will be able to continue the fight by direct-billing insurance costs to their clients. **Are any of these eventualities in the best interest of society?**

We believe the long term solution to this impending crisis will need to include various legislative remedies. We have concerns about existing statute of limitations interpretations, about existing laws on joint and several liability, and about frivilous or unnecessary litigation. We even have some concern that the definition used in this bill to express the liability action (professional malpractice) further fosters what has become a litigant society. Malpractice usually carries with it the connotation of consistent dereliction of professional duty or improper practice. This would imply that we are inherently incompetent each time the provisions of this proposed law were involked. We believe that the typical professional shortcoming is one of errors or omissions; not dereliction of duty. We believe "professional liability" would be the more appropriate definition for this bill.

We applaud the intent of this legislative initiative. We look forward to working with the legislature to reconcile the tort issues that are now so drastically impacting our society.

Sincerely,

Vance W Liston

Vance W Liston

Chairperson - Public Policy Committee
Kansas Society of Architects, AIA

KIENE & BRADLEY
DESIGN GROUP
CHARTERED

SUITE 925
1ST NATIONAL BANK
BUILDING
TOPEKA, KANSAS
66603

February 26, 1986

Honorable Robert G. Frey, Chairperson
Judiciary Committee
Kansas State Senate
Room 514 S
State Capitol
Topeka, Kansas 66612

Re: Professional Liability Insurance
Premiums

Dear Senator Frey:

Kiene and Bradley Design Group is a 20 person architectural and interior design firm. Continental Casualty Company recently notified us that our professional liability insurance premium for the period 11/26/85 to 11/26/86 would increase from $27,200.00 to $43,352.00. This is a 59% increase of premium with no change in insurance coverage or reduction in deductible.

The increase in premium for the prior year was from $21,737.00 to $27,200.00, or a 20% increase. The increases, in part, are due to "program changes" that the carrier inacted as outlined in the attached list.

We are sympathetic to the insurance industry's right to generate a profit while doing business. However, it appears that controls are required to keep premium costs at a reasonable level. We understand we are not unique as a profession or as a firm. Therefore, we request your consideration of our profession's problem with continual significant annual premium increases for professional liability insurance.

Thank you for your consideration.

Sincerely,

KIENE & BRADLEY DESIGN GROUP

Gary L. Hibbs

Gary L. Hibbs, Vice-President

GLH:kki

Enclosure

ARCHITECTS AND ENGINEERS 1984/85
PROGRAM CHANGES

The loss development trends have continued to deteriorate for architects and engineers professional liability claims. Claims frequency has continued at the highest levels in the program's history - more than 40 claims per 100 firms per year. The average cost of each claim has increased more than 65% in recent years. These factors have necessitated the implementation of a combination of rate and coverage changes which are reflected in the enclosed quotations:

1. An average nationwide rate increase of 15% will go into effect for basic coverage. The increase will vary from state to state.

2. The cost of Optional Defense Cost Coverages has been increased to more accurately reflect their actual costs.

3. The eligibility criteria and benefits under the Deductible Credit Plan have been revised.

4. Structural engineering firms will receive an additional rate increase of 25% above those outlined above.

5. For firms with losses, there may be other individual risk underwriting modifications which may result in rate increases in excess of those outlined above.

Changes in exposure or firm size as measured by billing may result in premium changes which vary from those outlined above.

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ONEK • FINCHAM • Architects • PA
6540 S.W.10th • Topeka, Kansas 66615 • 913 • 272-8252

The Honorable Robert G. Frey
Chairperson, Judiciary Committee
Kansas Senate
Room 514-S
Kansas State Capitol
Topeka, Kansas 66603

Dear Senator Frey,

With the pending legislation on professional liability insurance, I am sending you a brief resume on our status this year and the the past two years. You can see our construction values and our receipts were virtually the same for the policy coverage. This year the real change came - an increase of 200.04%.

Many of our clients are using the professional's insurance to cover the entire building. It is not for that purpose. Many, including the State of Kansas, are demanding a sizeable amount which is unrealistic and excessive. If you want to do business, the insurance is a rapidly increasing expense and is not on that our income is keeping up with.

1983 - $4,608.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

1984 - $4,992.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

1985 - $10,004.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

In each of the three listed years, the construction value and the receipts remained the same. The need of this insurance in today's marketplace is apparant but the cost is becoming prohibitive.

I hope the above is helpful. The professionals need your help.

Sincerely,

Robert D. Onek, AIA, Architect
ONEK - FINCHAM - Architects - P.A.

rdo

Robert D. Onek AIA   Robert D. Fincham AIA   David E. Prickett, Ret.

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KANSAS STATE BOARD OF TECHNICAL PROFESSIONS
214 West Sixth Street (913) 296-3053 Topeka, Kansas 66603

February 19, 1986

Mr. Thomas Sloan
Office of Senate President Talkington
State Capital
Topeka, KS 66612

Dear Mr. Sloan:

As per our telephone conversation on February 19, 1986 pursuant to Senate Bill 540, enclosed please find the testimony that was given before the Members of the Special Committee on Financial Institutions and Insurance on August 27, 1985.

I hope this information will be helpful to you. Please let me know if I can be of any further assistance.

Sincerely,

Betty L. Rose
Executive Secretary

BLR/jh
Encl.

Kansas Legislative Research Department

PROFESSIONAL LIABILITY AUGUST 26, L985

KANSAS SOCIETY OF ARCHITECTS, ED DE VILBISS

ARCHITECTS IDENTIFY MORE WITH SOPHISTICATED CLIENTS THAN WITH PUBL.

Current status of professional liability insurance

1973 - 1 in 4 firms faced cases amounting to	$20,000	ave
1980 - 1 in 3	30,000	
1985 - 4 in 10	45,000	

Insurance is currently not available to all firms:

a) during this past year no. of carriers is down from 13-18 to 4-

b) new firms can not always get insurance, no matter the costs

c) firms with certain kinds of projects can not buy coverage

d) certain activities can not be insured.
- 50% of structural engineers,
- geo technical consultants
- asbestos removal
- condominiums
- shop drawings approval

e) carriers must stay with their limits. Coverage can not be provided when double premiums will require the doubling of limits.

Architects have become uninsurable when they have become part of (the current trend to be involved in) the construction process. coverage can not be obtained for:

a) Fast track procedures

b) design build

The costs of insurance have gone so high that many firms are choosing to go "bare". 100% increases during this last year are normal, some are higher.

It is currently almost impossible to compare rates and switch companies.

Why have the costs of insurance risen?

a) a climate of sue everyone in sight. Defenses are expensive.

b) Some very large cases were settled recently. (Hyatt, popping of glass in large office buildings, roofs,etc.)
c) Contracts have become tougher, expectation are higher to the point of being unrealistic. Expectations vs. performance is the issue. (vs. law requirements)
d) Non traditional services are in wider usage.
e) There is the ever present possibility of a product warranties interpretation.
f) Partial services are demanded by the client, who is not required by law to provide all phases of professional services.
g) Architects become involved, in secondary positions when claims are brought against other persons involved in the construction process.
h) Unlicensed persons performing ancillary services involve the Architect, as a verifier etc.
i) The courts have a problem with cases because the technical and special nature of some of the cases requires an educational process. The cases pivot on on contract law and testimony of experts.

Discussion:

Due to the complex and overlapping roles involved in the construction process, many times it is extremely difficult to affix responsibility.

All costs must ultimately be paid by the Owner.

Is the client, such as the state prepared to pay the higher costs of liability insurance?

Should the state require professional liability insurance, if it is not available to everyone?

Should the indemnification process be expanded? The Contractor's spread is 10 to 20 times the Architect's.

Who benefits from the problem solving abilities of the Architect? The Owner?

There is wide concern over the right of insurance companies who reserve the privilege of selecting counsel.

What is the Architectural professional doing to assist in resolving the problem?

- Undertaking studies of the capabilities of the insurers.

- Establishing a clearing house.

- Exploring alternatives in dispute resolution and mediation.

- Networking between architectural firms.

- Establish realistic standards of performance, and standards of care.

Some possible approaches:

- Explore and suggest remedies of law.

- Consider limits of liability, such as liability shall not exceed the amount of the fee or $50,000, which ever is greater.

- Do not sanction partial services.

- Approach the insurers as a total industry, such as all A.I.A. members.

- Support the adoption of a new licensing law based on the national model.

Kansas Engineering Society, Inc.
627 S. Topeka, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

KES

February 21, 1986

Senator Robert Talkington
President, Kansas Senate
State Capitol, Room 359-East
Topeka, Kansas 66612

Re: Kansas Engineering Society support for S.B. 540

Dear Senator Talkington:

On behalf of the Kansas Engineering Society's more than 1100 members we wish to express our professional organization's support for you and your colleagues' introduction of S.B. 540.

Our society is composed of individual engineers who practice their profession in industry, education, construction, government and private consulting.

Each and every licensed engineer today is being affected by the increases in malpractice liability rates, some in more ways than others.

The largest percentage of our membership, thirty eight (38) percent, are consulting engineers. Nationally in 1985 the professional malpractice insurance rates for this group on the average increased thirty five (35) percent; preliminary data for 1986 shows minimum premium increases to be averaging one hundred (100) percent.

More significantly, is the basic problem of obtaining malpractice insurance at all. Six to seven years ago there were at least ten firms offering malpractice insurance to professional engineers and architects and that number has been reduced to less than three. In Kansas, the practical affect of this withdrawal from the market is that there is only one insurer that offers liability insurance to a broad spectrum of practicing engineers.

We believe tort reform would aid the individual practitioner in securing malpractice insurance because certain aspects of tort reform would reduce the costs involved with litigation. For instance, the screening panel approach that is

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suggested in S.B. 540 is one good means of reducing spurious litigation while at the same time speeding up those valid claims which may exist.

We also believe that the establishment of a data base of claims involving members of our profession and requiring that data to be submitted to our State Board of Technical Professions is another good move.

We would suggest however that the language involving the screening panel be mandated for any claim based on alleged malpractice of a professional licensee whether or not the damages sought are for personal injury or death.

An additional problem facing our individual engineers is the situation that many insurance companies will not provide an insurance policy for an individual who wishes to go out and begin his own individual practice. This situation prevents a natural movement and diversification of practice that has occurred in the practice of engineering over many years. This situation also exists for engineers who are in education for example and are called upon as expert witnesses. Because of this specialization it is difficult to find insurance to cover those individuals in education who do specialized work.

For the above reasons and several others we wish to express our appreciation and support for your effort in tort reform which is evidenced in S.B. 540.

Very Truly Yours,

William M. Henry

William M. Henry
Executive Vice President
Kansas Engineering Society

WMH:mg
c.c. Bill Johnson, P.E.
Mike Lackey, P.E.
Larry Emig, P.E.
Kenny Hill, P.E.
Larry Thompson, P.E.
Mike Conduff, P.E.

Bartlett & West
Engineers, Inc.
Civil Engineers, Land Planners & Landscape Architects

24 February 1986

Mr. Bill Henry
Kansas Engineering Society
627 SW Topeka Avenue
Topeka, Kansas 66603

Dear Mr. Henry:

As one example as to what has happened to professional liability rates in the consulting engineering profession, I submit to you the increase in rates we experienced in July of 1985 when for no apparent reason our insurance company did not renew our policy and we were forced to go to another company.

Adding insult to injury was the fact that we had <u>not had a single claim</u> during the time we had insurance coverage and when we switched to CIGNA our deductible went from $15,000 to $50,000.

TABLE OF CHANGE IN PREMIUM

Year	Prev. Year Business Volume	Premium per $1,000,000 Volume	Change with 1981 as base of Year of 1.00
1981	$ 984,304	$10,966	1.00
1982	953,022	10,754	.98
1983	974,568	10,299	.94
1984	971,125	11,883	1.08
1985	1,342,270	27,687	2.52

I sincerely hope some mitigation of these increases may be possible through changes in the law.

Increased premiums must be passed through to our clients, many of whom are public bodies and rely on taxes for public works.

Sincerely,

BARTLETT & WEST ENGINEERS, INC.

William F. Roberson
President
WFR/cs

(913) 266-8377
310 West 33rd Street, Topeka, Kansas 66611

BRANCH OFFICE
Bismarck, North Dakota

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Testimony by Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas
Before the Senate Judiciary Committee
on SB 540
February 27, 1986

The Independent Insurance Agents of Kansas support the effort of broad based tort reform embodied in SB 540 and encourage this committee and the legislature to seek ways to provide relief from current civil justice system problems.

We support the basic concepts of caps on non economic awards, caps on actual awards, use of annuities, court review of attorney's fees, mandatory settlement conferences with incentives to settle and optional professional malpractice screening panels.

However, many business liability lines today are subject to severe availability and affordability problems and we encourage the committee to consider broadening the scope in SB 540, if possible.

Some problems such as products and pollution liability require a federal solution. Products because goods are sold in a national or international marketplace and one state's laws have little impact and pollution because of specific problems with the federal superfund law.

But other areas of potential tort reform, such as punitive damage limitations, collateral source changes and the reforms in this bill could be extended across the board at the state level.

Each profession has some unque problems, but none have received the extreme "litigation attention" of the medical

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ofessions - yet. Some professions such as engineers, architects, lawyers and CPA's are close, but have not had the huge multi-million dollar awards in Kansas - yet.

Most professions are experiencing an increase in the frequency of claims. Classic insurance theory dictates that with increased frequency ultimately comes the "big hit." Since other than the medical profession do not seem to be experiencing the multi-million awards in Kansas, the caps in SB 540 may be too high. In fact, they may set a target for plaintiffs and their attorneys to shoot for. On the other hand, some laughed in the mid 1970's at the idea of multi-million dollar awards in Kansas for medical malpractice.

If the committee's goal is to provide immediate relief for these professions, it should consider reducing the caps or adding other general tort reform concepts such as punitive damage limitations and modifications to the collateral source rule for everyone.

Despite IIAK's reservations about the level of the caps in SB 540, we support the legislation and urge the committee's favorable action.

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THE HIGH COST OF COURTING

In medieval times, knights settled their disputes by dueling. It was a quick, effective—and usually terminal—technique to assure a wrong was righted and honor upheld.

Today, suing has replaced dueling. In many nations, the United States especially, more and more people are taking their complaints to the courts. Between 1978 and 1983, a record 12 million lawsuits were filed in the U.S. alone.

Of course, individuals have a right to seek restitution for economic loss, pain and suffering, and punitive damages, just as individuals must be held accountable for their actions against others. But the belief that litigation is the only way to solve problems creates more problems.

Consider the current environment: Hundreds of companies and thousands of professionals, among them doctors and teachers, are subject to tremendous liability exposure. The courts are as congested as the freeways at rush hour. Attorneys and clients are forming entrepreneurial partnerships, often with profit as the goal. And people are losing a personal sense of values; they often sue not only because they feel wronged, but because the insurance company will pay for it.

People sue for the craziest reasons. In each issue of *Fortune*, associate managing editor Daniel Seligman highlights some of the more questionable grounds. Jail inmates filed a lawsuit arguing that their federally protected civil rights were being violated because a toilet seat was cold; and a baseball pitcher injured on a muddy mound during a rainstorm sued the umpire for not canceling the game "despite the existence of a known, dangerous condition."

It's time to return to reasonableness. The boom in litigation is expensive. The cost is borne by the public and reflected in the rising price of products and services.

Litigation is costly. Jury trials are expensive, but that's only the beginning. As the numbers of lawsuits increase and as the amounts juries award rise, so do insurance premiums and prices. For example:

- The average settlement in medical malpractice cases in Illinois rose from about $16,000 in 1977 to $132,000 in 1983. The combination of insurance and defensive medicine adds from 6 percent to as much as 14 percent to personal health-care expenditures. Viewed another way, a patient pays up to $2,800 "extra" on a $20,000 medical bill.
- When the insurance premium for a private bus company doubles, the owner factors in the additional cost in the fare; and riders end up paying more to get where they want to go. Ditto for any other consumer-oriented services; the customers pay.
- Many day-care centers can't afford the cost of liability insurance, which is rising fast even though claims are rare and the facilities are considered low risk. If centers want to stay open, owners are forced to increase tuition. Yet many working parents can't afford large boosts in tuition.

The consequences of reduced or lost services are significant. For example:

- A nationwide shortage of the vaccine that prevents diphtheria and tetanus has resulted because almost all U.S. companies have stopped its production due to unrealistic liability costs.
- After losing a $1.6 billion judgment for a pole-vaulter who missed the mat and another judgment in excess of $1 billion, an insurance company canceled the policies of 585 Ohio schools. Without insurance, the schools must decide whether to eliminate all student athletic programs or risk being sued without insurance coverage.
- Local governments must pay for court awards, settlements, and higher insurance premiums from their budgets. To make up the budget shortfalls, services such as police and fire protection, road repairs, and community-sponsored programs are cut back—or taxes are increased.

In addition to reduced or lost services, the litigation boom causes delays because courts are overcrowded. Usually no payment is made until fault is established, so the injured parties get no money when the money is needed.

Worse yet, most people dislike the current legal climate. A Gallup survey showed that the public thinks that the cost of the legal system is too expensive; that many suits are unjustified; that damage awards are too high; that delays are too frequent; and that change is necessary.

Clearly, the time is ripe for change. Individuals, organizations, corporations, special-interest groups, and others have proposed solutions. One growing in popularity is ADR (alternative dispute resolution). ADR is an umbrella term for procedures such as reconciliation, mediation, arbitration, community boards, even rent-a-judges.

Other proposed solutions have possible merit as well. They include extending no-fault insurance; using more pretrial procedures; and legislating a ceiling on awards.

Changes in the legal system will never be the work of chance. Changes will be the work of everyone who firmly believes that it's time to return to reasonableness.

We must begin using alternative methods to settle disputes; reducing the steep litigation costs that come out of the public's pocket; and most of all assuring that wrongs are righted quickly and fairly.

What are we waiting for?

Richard J. Ferris
Chairman
United Airlines
PO Box 66100
Chicago, IL 60666

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