Approved April 2, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

12:00 ~~x.m./p.m.~~ Noon on April 1, 1987 in room 519-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

David Litwin, Kansas Chamber of Commerce and Industry
Paul Fleener, Kansas Farm Bureau
Ted Fay, Kansas Insurance Department
L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies
Jerry Palmer, Kansas Trial Lawyers
Ron Smith, Kansas Bar Association

House Bill 2472 - Limit on noneconomic damages in personal injury actions.

David Litwin, Kansas Chamber of Commerce and Industry, appeared in support of the bill. He stated, I think it is fair to say that it was the liability insurance crisis (which, incidentally, from reports we receive from the business community, widely continues to plague our members) that drew everyone's attention to problems in the court system. There certainly is a direct and proximate relationship between the insurance crisis and civil justice problems, but it cannot be overemphasized that in our view, every proposed "tort reform" that we support should be enacted primarily becuase it is good public policy. Insurance considerations are certainly pertinent, but public policy factors are paramount. A copy of his testimony is attached (See Attachment I).

Paul Fleener, Kansas Farm Bureau, appeared in support of the bill. He testified pain and suffering deserves to be compensated, and non-economic losses also.

Ted Fay, Kansas Insurance Department, testified the citizens committee recommended the legislature establish reasonable caps for noneconomic damages. He stated, I believe, from the discussions held by the citizens committee, that the $250,000 cap in House Bill 2472 is within the range considered appropriate by the committee. A copy of his testimony is attached (See Attachment II). He said he would like to make one point, that the citizens committee felt the problem is the insurance companies are withdrawing from the high risk areas and throwing that risk to the citizens of the State of Kansas.

L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies, appeared in support of the bill. He stated they believe it will have a premium impact which depends on predictability, and this will place a cap upon that upward trend. He proposed the bill be amended in lines 26, 27, 32 and 39, the words "noneconomic loss" be restored. The pain and suffering shall not exceed $250,000.

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 519-S, Statehouse, at 12:00 noon ~~xx:xx xx~~ on April 1, 1987.

House Bill 2472 continued

Jerry Palmer, Kansas Trial Lawyers, appeared in opposition to the bill. He related a true story of a man who had been burned badly, and he had $120,000 in medical expenses. He was off work two years and coud never return to work fulltime and received an award of one million dollars. Mr. Palmer said the defendants didn't even say the one million dollars awarded to the man was too much, so $250,000 is not enough, when you don't hear what the circumstances are. The commissioner of insurance office has not brought in correspondence and information from other states about what impact is going to be made of insurance premiums by the enactment of this legislation. If insurance companies have actuarial data then they ought to be here saying so. Mr. Palmer said we do not have any evidence of any excessive verdicts in Kansas. You have to talk about Kansans paying Kansas premiums. The courts of appeals in New York regularly knock down verdicts. That's the kind of evidence that has been brought up to support the bill. I do not believe the proponents made a case when they said this bill will impact on premiums. The bill is not fair, and there are no statistics to show we have a problem. The whole idea of a cap, it just shouldn't be.

Ron Smith, Kansas Bar Association, stated they are opposed to caps on awards unless proponents can show public benefits from these types of changes. Compare this issue with the issue at ten o'clock this morning. It is inconsistent in the first bill this morning the proponents said let the system work and then when it does then they say put a cap on the award. Caps are predictability and unfair to the catastrophically effected. The insurance companies say it is difficult to get statistics provided, and they have not provided them as to what is going on in Kansas. The bar will try to get you some statistics in the state courts of Kansas, and this is the thing you would want before youbefore you make a decision on this. He said there are about 600 total verdicts rendered in this state a year. That information can be collected from the district court clerks. Mr. Smith stated this bill is the business approach to justice that you can say, my bottom line costs are "X" dollars. The problem is businessmen and businesswomen don't serve on juries. They get off and gripe about the legal system. They don't want to serve, then they come in and say we want to make a bottom line. Predictability is unfair.

Committee discussion followed on the bill.

The chairman announced there will be an eight o'clock meeting in the morning.

The meeting adjourned.

A copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 4-1-87

Noon

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
L M Cornish	Topeka	Ks Assoc P/C Cos
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Bob Arpathnot	Topeka	KTLA
Richard Mason	"	"
MARTA FISHER LINENBERGER	TOPEKA	KMS
TED FAY	Topeka	Ks.
KEITH R LANDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Jerry Palmer	Topeka	K. T. L. A.
RON CALBERT	NEWTON	U.J.U
~~KEVIN~~ ROBERTSON	TOPEKA	~~KS~~ CONSULTING ENG.
George Barbee	Topeka	Ks Consulting Engr
Jim Edwards	"	KCCI
[signature]	"	"
RON CACHES	WICHITA	BMAC
PATRICIA HENSHALL	TOPEKA	OJA
THERESA SHIVELY	TOPEKA	KANSAS NARAL
Lori Callahan	Topeka	Am. Ins. Assn.

Attach. III
Senate Judiciary
4-1-87

4-1-87

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

HB 2472

April 1, 1987

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Judiciary Committee
by
David Litwin

Mr. Chairman, members of the committee. My name is David Litwin, and I appear on behalf of the Kansas Coalition for Tort Reform and the Kansas Chamber of Commerce and Industry. We appreciate the opportunity to testify in support of HB 2472.

The Kansas Coalition for Tort Reform is a federation of diverse groups that share the view that certain changes in our civil justice system are needed for two general purposes: 1) to make that system more efficient, more just, and less costly, and 2) to provide, over the long term, a more stable environment that would permit the writing of high quality liability insurance at affordable rates.

The Coalition's membership includes the following: Kansas Chamber of Commerce and Industry; Kansas Farm Bureau; Kansas Contractors Association; Independent Insurance Agents of Kansas; Kansas Railroad Association; Wichita Area Chamber of Commerce; Kansas Motor Carriers Association; Kansas Society of Architects; Kansas Medical Society; Kansas Hospital Association; Associated General Contractors of Kansas; Kansas Association of Broadcasters; Kansas Grain and Feed Dealers Association; Kansas Association of Property and Casualty Insurance Cos., Inc.; Kansas Consulting Engineers; Kansas Engineering Society; Kansas Motor Car Dealers Association; Kansas Lodging Association; Kansas Petroleum Council; Kansas Independent Oil and Gas Association; American Insurance Association; Kansas League of Savings Institutions; Wichita Independent Business Association; Western Retail Implement and Hardware Association; Alliance of American Insurers; Kansas Telecommunications Association; National Federation of Independent Business/Kansas; Merrell Dow Pharmaceuticals, Inc., Overland Park; Hutchinson Division, Lear Siegler, Inc., Clay Center; Becker Corporation, El Dorado; The Coleman Co., Inc., Wichita; FMC Corporation, Lawrence; Puritan-Bennett Corp., Overland Park; and Seaton Media Group, Manhattan.

Attch. I
Senate Judiciary
4-1-87

I think it is fair to say that it was the liability insurance crisis (which, incidentally, from reports we receive from the business community, widely continues to plague our members) that drew everyone's attention to problems in the court system. There certainly is a direct and proximate relationship between the insurance crisis and civil justice problems, but it cannot be overemphasized that in our view, every proposed "tort reform" that we support should be enacted primarily because it is good public policy. Insurance considerations are certainly pertinent, but public policy factors are paramount.

KCCI feels, as does the great majority of the members of the Coalition for Tort Reform, that the most essential single proposed reform of our civil justice system that is of general applicability is a reasonable cap on noneconomic damages. This is not at all to imply that other pending bills and proposals are not vital, but only to emphasize the significance of this particular reform.

Intangible kinds of loss - such as pain and suffering, anguish, stress, loss of consortium - are certainly very real and can entail much suffering. Such loss <u>demands</u> fair compensation - we have no quarrel at all with that. The problem is defining what is "fair" or "reasonable" in this context. Such kinds of damage are subjective and cannot be assigned an objective dollar value. As a result, juries cannot be given very precise instructions on this category of damage, and conversely there are few controls to limit their discretion. The consequence is verdicts that are sometimes unreasonably high, and vary enormously from case to case, even those involving similar injuries.

The evidence that is available points to pain-and-suffering damages as the key ingredient in the acknowledged huge increase in the average size of jury verdicts in personal injury cases that has occurred throughout the United States. For some reason, or more likely for a complex of reasons, juries in many cases today are simply awarding much more money than ever before for intangible kinds of damages. But the result is unpredictable in any given case.

Attach. I

Attached to this testimony is a New York Times editorial on this topic from July 1986. It relates a case - certainly extreme in size but still all too representative of the trend - in which a woman was seriously injured as a result of medical malpractice. Her actual damages were set at $7 million, no small amount. But the jury set pain and suffering at $58 million. The editor pertinently asks:

> "By what measure could even such suffering be worth $58 million? What manner of life does the jury intend to confer on the ailing 56-year-old woman - and on her heirs, who suffered no injury whatever?"

The editor then notes that plaintiffs' attorneys might counter that such a manifestly excessive award would probably be reduced by the trial judge or on appeal. But that is cold comfort, and very uncertain. The degree to which a verdict can be reduced by a trial or appeals court is limited by the fact that the scope of review is restricted. A judge is not permitted to ask whether he or she would have awarded such an amount, but can upset a verdict only where it is clearly capricious and unreasonable.

In another case reported in the media last year, a Texas gas-field worker was seriously injured in an accident. Verdict: $64 million, mostly punitive and pain-and-suffering damages. A juror interviewed later said:

> "I went along with it (the big verdict) because I figured it would be reduced by a judge or on appeal."

Another juror in the same case:

> "I look at the federal deficit, and it's not too hard to understand that too many people are leaning on the taxpayer. I personally felt the company should pay or the (plaintiff) would be a tax debt the rest of his life."

The successful attorney for the plaintiffs, apparently in awe even of his own verdict, said: "Money is losing its meaning." These case accounts graphically illustrate the dangers inherent in allowing unlimited awards and boundless jury discretion.

We submit that a defendant should not have to face such total uncertainty. It is unfair and illogical. Moreover, the spectre of huge noneconomic loss awards is a major obstacle to settlement of many cases. In the words of the federal government's Tort Policy Working Group's 1986 Report:

Cotter. I

> "Noneconomic damages also can serve as a significant obstacle in the settlement process. Plaintiffs and defendants often can agree quickly on the amount of economic damages, but disagree sharply on non-economic damages. Plaintiffs frequently have unrealistic expectations of non-economic damages in the hundreds of thousands or millions of dollars to which defendants simply are unwilling to agree. Plaintiffs thus often reject settlement offers that from the standpoint of compensation for economic damages are quite reasonable." Report at p. 67.

Furthermore, news reports of astronomical verdicts are made when they are entered. The chances that a subsequent reduction would be reported with the same exposure are remote. Thus this kind of verdict whets the appetite of the public, encouraging unrealistic expectations and blocking settlements in future cases.

This runs against the important public policy favoring early resolution of disputes. Litigants are better off settling before trial, thus avoiding prolonged involvement in a civil justice system that, all agree, spends much more deciding who wins a case than it does in compensating injured people. It is also very much in the interest of taxpayers to encourage settlement, since we pay all of the fixed costs of the court system.

Turning from broader public policy considerations to insurance factors, since noneconomic awards are the primary cause of the rapid increase in verdict size, I submit it is obvious, unless one believes that the insurance crisis was and is a sham, that placing some reasonable outside limit on intangible loss recoveries will inevitably have a substantial long-term moderating effect. The industry suffered a 179% increase in paid losses on commercial liability lines during the period 1979 to 1985, vastly outstripping the growth in GNP, Consumer Price Index, or any other pertinent index. This represents what they actually paid out, and is completely unaffected by arguments about whether the carriers charged too little or too much, or about how much they earned on their investments. This trend can result from one factor only - the alarming increase in judgments, and in settlements based on the size of litigated judgments.

Conversely, creation of a reasonable cap must inexorably have a stabilizing and moderating effect on cost and availability of insurance over the long term. Again,

Attach I

assuming one does not attribute the crisis to a conspiracy. As for that charge, it strikes me as incongruous that in an industry with over 3,000 active carriers, collusion should be charged, and by those very parties that in the same breath charge the industry with excessive competition only a few years back in the form of vigorous price slashing.

Finally, since only one year ago the Kansas Legislature itself enacted a $250,000 cap on noneconomic damages in medical malpractice actions, this legislature evidently believed that this was justified by public policy considerations. I respectfully submit that the same reasoning applies to the broader problem as well.

Certainly, all members of the Coalition would prefer to have HB 2472 restored to the form recommended by the House Judiciary Committee, which proposed a cap of $250,000 on noneconomic loss. The current version was adopted on the floor of the House. However, if a majority of this Committee does not feel that the same cap that was adopted for malpractice cases a year ago is appropriate for all personal injury cases, we would still urge you to recommend as strong and definite a cap as you deem warranted.

The present version caps only damages for pain and suffering - and not other kinds of noneconomic loss - and provides that the cap shall be the greater of $250,000 or the amount of actual or economic loss. This would undoubtedly be somewhat helpful, and again, if you feel a stronger limit is not appropriate, we certainly would urge you to recommend the current bill for passage. But other possible compromises also exist. For one, you might recommend restoring the cap to apply to all noneconomic loss, not just pain and suffering. With the $250,000 limit inoperative in serious cases, a greater degree of certainty and predictability would be provided by at least bringing all noneconomic loss within the coverage of the greatly softened cap.

Another possibility which I think deserves very serious consideration was actually enacted into law last year by our sister state Colorado. It provides for a limit of $250,000 for noneconomic loss, but provides that the court may allow such loss to be

Attch. I

compensated up to $500,000 if it finds that "clear and convincing evidence" justifies such expansion. Thus the most serious cases would be amply compensated for intangible loss. Yet, since specific court action would be required to break the $250,000 cap, in routine cases the latter figure would control. A copy of this bill is attached to my testimony.

In recommending a bill, please keep in mind in any case that compensation for noneconomic loss, including pain and suffering, is entirely exempt from income tax, and is in addition to 100% unlimited compensation for all economic loss, including lost earnings and medical expenses.

We respectfully urge the committee to recommend HB 2472 favorably for passage by the Senate. If there are any questions, I will try to answer them.

Attach. I

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935
ARTHUR HAYS SULZBERGER, Publisher 1935-1961
ORVIL E. DRYFOOS, Publisher 1961-1963

ARTHUR OCHS SULZBERGER, Publisher

A. M. ROSENTHAL, Executive Editor
SEYMOUR TOPPING, Managing Editor
ARTHUR GELB, Deputy Managing Editor
JAMES L. GREENFIELD, Assistant Managing Editor

MAX FRANKEL, Editorial Page Editor
JACK ROSENTHAL, Deputy Editorial Page Editor

LANCER PRIMIS, Exec. V.P., General Manager
RUSSELL T. LEWIS, Sr. V.P., Circulation
J. A. RIGGS JR., Sr. V.P., Operations
HOWARD BISHOW, V.P., Employee Relations
ERWIN LINKER JR., V.P., Advertising
JOHN M. O'BRIEN, V.P., Controller
ELISE J. ROSS, V.P., Systems

The $65 Million Malpractice Question

All New York loves a lottery, and the best game in town takes place in the courtroom. That's what Agnes Mae Whitaker, a victim of medical malpractice, discovered recently. She drew a jury that gave her $65 million — but it's not the kind of luck the rest of us should toast.

Ms. Whitaker's suffering is beyond dispute. The doctors at Lincoln Hospital failed to diagnose an intestinal constriction. The jury found that they so neglected its treatment that an infection developed, requiring removal of most of the small intestine. To cover the patient's lost earnings, past medical bills and the care she will continue to require, the jury awarded her $7 million. But that award — startling in itself — is dwarfed by the additional grant of $58 million for "pain and suffering."

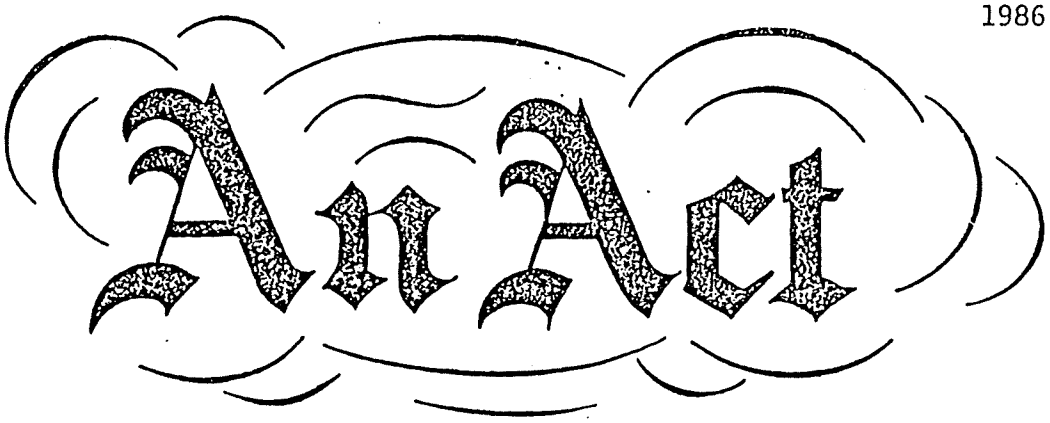
That is where justice is lost to luck. By what measure could even such suffering be worth $58 million? What manner of life does the jury intend to confer on the ailing 56-year-old woman — and on her heirs, who suffered no injury whatever? Why should stupendous sums go to those who manage to fix legal blame on a source like the City of New York that can at least ostensibly "afford" to pay? Why should all other citizens ultimately bear its cost in inflated taxes and liability insurance premiums?

Hold on, say the malpractice lawyers. That huge award, perhaps the nation's largest to date, won't ever be paid. The city is already moving to have the trial judge set it aside, and if he doesn't, the appeals court will surely knock it down. Perhaps. But the public hears mostly about the initial $65 million, not the reduced amount eventually paid. That feeds the lottery mentality in a big way.

Patients rush to press even marginal claims. Lawyers eagerly take promising cases for contingency fees. Insurers, warned of how a jury's emotions might be inflamed, settle out of court for increasing amounts. And doctors perform costly, often unnecessary "defensive medicine."

Why not cool the lottery fever at a stroke by capping pain and suffering awards at a few hundred thousand dollars, as some states are doing? Governor Cuomo and the Democrats of the State Assembly have resisted that idea, saying no study has precisely quantified how such a cap would reduce costs. That's true. But there is broad agreement that a limit would, eventually and inevitably, have some beneficial effect. Ms. Whitaker's luck only dramatizes the need for trying it now.

Attach. I



SENATE BILL NO. 67.

BY SENATORS Hefley, Beatty, Brandon, Durham, Fowler, Glass, McCormick, Meiklejohn, P. Powers, R. Powers, Strickland, and Traylor;
also REPRESENTATIVES Schauer, Brown, Entz, K. Williams, Owens, Allison, Armstrong, Berry, M.L. Bird, Bledsoe, Bryan, Carpenter, Dambman, Fish, Gillis, Hume, Minahan, Mutzebaugh, Philips, Scherer, Swenson, Taylor-Little, and Younglund.

CONCERNING DAMAGE AWARDS IN CIVIL ACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 21 of title 13, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

13-21-102.5. Limitations on damages for noneconomic loss or injury. (1) The general assembly finds, determines, and declares that awards in civil actions for noneconomic losses or injuries often unduly burden the economic, commercial, and personal welfare of persons in this state; therefore, for the protection of the public peace, health, and welfare, the general assembly enacts this section placing monetary limitations on such damages for noneconomic losses or injuries.

(2) As used in this section:

(a) "Derivative noneconomic loss or injury" means nonpecuniary harm or emotional stress to persons other than the person suffering the direct or primary loss or injury.

(b) "Noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

attach. I

suffering, inconvenience, emotional stress, and impairment of the quality of life.

(3) (a) In any civil action in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of two hundred fifty thousand dollars, unless the court finds justification by clear and convincing evidence therefor. In no case shall the amount of such damages exceed five hundred thousand dollars.

(b) In any civil action, no damages for derivative noneconomic loss or injury may be awarded unless the court finds justification by clear and convincing evidence therefor. In no case shall the amount of such damages exceed two hundred fifty thousand dollars.

(4) The limitations specified in subsection (3) of this section shall not be disclosed to a jury in any such action, but shall be imposed by the court before judgment.

(5) Nothing in this section shall be construed to limit the recovery of compensatory damages for physical impairment or disfigurement.

SECTION 2. Article 20 of title 13, Colorado Revised Statutes, as amended, is amended, BY THE ADDITION OF A NEW PART to read:

PART 5
ACTIONS AGAINST ARCHITECTS, ENGINEERS,
AND LAND SURVEYORS

13-20-501. Actions against architects, engineers, and land surveyors - certificate of review required. (1) In every action, whether by complaint, counterclaim, or cross claim, for damages or indemnity based upon the alleged professional negligence of a person licensed to practice architecture pursuant to article 4 of title 12, C.R.S., or of a person registered and licensed to practice engineering pursuant to the provisions of part 1 of article 25 of title 12 C.R.S., or of a land surveyor certified pursuant to part 2 of article 25 of title 12, C.R.S., or of a firm, partnership, or corporation by or through which such person was practicing at the time that he was alleged to have been professionally negligent, on or before the date of service of the complaint, counterclaim, or cross claim against any such person, firm, partnership, or corporation, the plaintiff's or complainant's attorney shall file the certificate specified in subsection (2) of this section.

(2) A certificate shall be executed by the attorney for the plaintiff or complainant declaring one of the following:

Attach. I

(a) That the attorney has reviewed the facts of the case, has consulted with at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or who teaches at an accredited college or university and is licensed to practice in this state, in the same discipline as the person or persons alleged to have been professionally negligent, and who the attorney reasonably believes is knowledgeable in relevant issues involved in the particular action and that he has concluded on the basis of such review and consultation that there are reasonable and meritorious grounds for the filing of such action. The person consulted on whose opinion the attorney's certificate is based shall not be a party to the litigation. He shall be identified in such certificate.

(b) That the attorney was unable to obtain the consultation required by paragraph (a) of this subsection (2) because a statute of limitations would impair the action and that the certificate required by paragraph (a) of this subsection (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph (b) the certificate required by paragraph (a) of this subsection (2) shall be filed within sixty days after the filing of the complaint, counterclaim, or cross claim.

(c) That the attorney has consulted with not less than five architects, engineers, or land surveyors, whichever discipline is applicable, and that none of such persons will certify that there are reasonable and meritorious grounds for the filing of the action pursuant to paragraph (a) of this subsection (2). Such persons shall be identified in the certificate executed by the attorney.

(3) The failure to file a certificate in accordance with this section shall be grounds for dismissal of the complaint, counterclaim, or cross claim.

SECTION 3. Part 1 of article 21 of title 13, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

13-21-111.6. Civil actions - reduction of damages for payment from collateral source. In any action by any person or his legal representative to recover damages for a tort resulting in death or injury to person or property, the court, after the finder of fact has returned its verdict stating the amount of damages to be awarded, shall reduce the amount of the verdict by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated for his loss by any other person, corporation, insurance company, or fund in relation to the injury, damage, or death sustained; except that the

Attach. I

verdict shall not be reduced by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated by a benefit paid as a result of a contract entered into and paid for by or on behalf of such person. The court shall enter judgment on such reduced amount.

13-21-111.7. Assumption of risk - consideration by trier of fact. Assumption of a risk by a person shall be considered by the trier of fact in apportioning negligence pursuant to section 13-21-111. For the purposes of this section, a person assumes the risk of injury or damage if he voluntarily or unreasonably exposes himself to injury or damage with knowledge or appreciation of the danger and risk involved. In any trial to a jury in which the defense of assumption of risk is an issue for determination by the jury, the court shall instruct the jury on the elements as described in this section.

SECTION 4. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. Repeal. 13-21-111 (4), Colorado Revised Statutes, as amended, is repealed.

SECTION 6. Effective date - applicability. This act shall take effect July 1, 1986, and shall apply to civil actions commenced on or after said date.

SECTION 7. Safety clause. The general assembly hereby

Attach. I

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ted L. Strickland
PRESIDENT OF
THE SENATE

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Nielson
SECRETARY OF
THE SENATE

Lee C. Bahryeh
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 23, 1986 6:13 p.m.

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

Attach. I

CAP ON NON-ECONOMIC LOSSES -- HOUSE BILL NO. 2472

RECOMMENDATION 11 OF THE CITIZENS COMMITTEE REPORT PROVIDES:

"RECOMMENDATION 11: THAT THE LEGISLATURE ESTABLISH REASONABLE CAPS FOR NON-ECONOMIC DAMAGES."

IN THE RATIONALE FOR THIS RECOMMENDATION, THE CITIZENS COMMITTEE ACKNOWLEDGED THAT NON-ECONOMIC LOSSES ARE REAL ENOUGH. THE PROBLEM ARISES FROM THE SUBJECTIVITY OF NON-ECONOMIC DAMAGES. SINCE NON-ECONOMIC LOSSES ARE

Attach. II
Senate Jud.
4-1-87

SUBJECTIVE AND THE ASSIGNMENT OF A MONETARY VALUE TO IT IS ESSENTIALLY ALSO SUBJECTIVE AND ARBITRARY, AWARDS FOR NON-ECONOMIC DAMAGES ARE UNPREDICTABLE. THIS UNPREDICTABILITY MAKES IT VERY DIFFICULT TO WRITE INSURANCE OR TO SELF-INSURE AT APPROPRIATE PREMIUM OR COST LEVELS, AND ALSO SOMETIMES RESULTS IN PAIN AND SUFFERING AWARDS THAT ARE SO HIGH THEY RESULT IN UNREASONABLE PREMIUM INCREASES.

THE CITIZENS COMMITTEE CITED FROM THE FEBRUARY 1986 STUDY OF THE FEDERAL TORT POLICY WORKING GROUP, NOTING THAT THE SUBJECTIVITY AND RESULTING UNPREDICTABILITY OF NON-ECONOMIC LOSS AWARDS LEADS TO "AWARDS FOR SIMILAR INJURIES VARY(ING) IMMENSELY FROM CASE TO CASE, LEADING TO HIGHLY INEQUITABLE LOTTERY-LIKE RESULTS." THE REPORT ALSO OBSERVES THAT THIS "LOTTERY MENTALITY," THAT IS, THE HOPE FOR A HIGH JUDGMENT DUE TO PAIN AND SUFFERING, OFTEN IMPEDES EFFORTS AT REASONABLE SETTLEMENTS, THUS, SPURRING NEEDLESS LITIGATION.

Attach. II

THE CITIZENS COMMITTEE NOTED THAT THE FEDERAL GROUP RECOMMENDED A CAP OF $100,000, WHILE THE KANSAS LEGISLATURE ESTABLISHED A $250,000 CAP ON NON-ECONOMIC LOSSES FOR MEDICAL MALPRACTICE CASES. THE CITIZENS COMMITTEE DID NOT RECOMMEND A SET DOLLAR CAP, BUT RECOMMENDED "THE LEGISLATURE ESTABLISH A REASONABLE CAP THAT WILL COMPENSATE INJURED PARTIES FAIRLY, BUT WILL PREVENT UNREASONABLE WINDFALLS."

I BELIEVE, FROM THE DISCUSSIONS HELD BY THE CITIZENS COMMITTEE, THAT THE $250,000 CAP IN HOUSE BILL NO. 2472 IS WITHIN THE RANGE CONSIDERED APPROPRIATE BY THE COMMITTEE.

Attach. II