Approved March 1, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 xxx./p.m. on February 10, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Buehler, Fuller, Peterson, and Roy, who were excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:
Jerry R. Palmer, Kansas Trial Lawyers Assoc.
Mike Sexton, Kansas Trial Lawyers Assocc.
Ron Smith, Kansas Bar Assoc.
Matt Lynch, Judicial Council

Hearings for opponents on H.B. 2690 - Periodic payments of personal injury judgments act
H.B. 2691 - Actions where exemplary or punitive damages recoverable
H.B. 2692 - Damages for noneconomic loss in personal injury action limited to $250,000
H.B. 2693 - Collateral source benefits admissible
H.B. 2730 - Civil procedure; relating to damages for pain and suffering in personal injury actions
H.B. 2731 - Civil procedure; relating to exemplary damages in civil actions
S.B. 258 - Periodic payment of judgments act

Jerry Palmer testified on H.B. 2690 and S.B. 258, concerning periodic payments of personal injury judgments act. He stated that although the purposes of the two bill are identical, S.B. 258 is a bill that tries to be more than one sided, taking into account not only the needs of wrong-doers, but also the needs of their victims. S.B. 258 does have some rational basis and is capable of being written into a constitutional piece of legislation. He said H.B. 2690 has the same constitutional vagaries as those identified by Judge Theis in his opinion Kansas Malpractice Victims Coalition v. Bell that it does violate the remedy by due course of law, clause of Section 18 of the Kansas Bill of Rights as well as impinging upon the right to trial by jury contained in Section 5 of the Bill of Rights of the Kansas Constitution, (see Attachment I).

Mike Sexton testified on H.B. 2693 concerning the collateral source rule. He stated the present collateral source rule prohibits a party from introducing evidence about any funds received from a third party. The intent of H.B. 2693 is to reduce insurance premiums, however H.B. 2693 will not have any effect on insurance premiums. He said H.B. 2693 will cause more lengthy and more exepnsive trials. The Kansas Trial Lawyers Association opposes any collateral source bill. He listed as constitutional concerns with H.B. 2693, equal protection, vagueness of damage determination, comparative fault, financial status of the parties, and the effective date of H.B. 2693, (see Attachment II).

Jerry Palmer distributed a memo to the Committee addressing H.B. 2693 in which he stated there should not be a change in the collateral source rule, however if legislation on collateral source is passed that it not be made retroactive to causes of action accruing before the effective date of the act, (see Attachment III).

Ron Smith distributed to the Committee a memorandum answering previous legislative testimony, (see Attachment IV), testimony on punitive damage legislation in which he recommended that the legislature do nothing. Current law allows the doctors a shield for punitive damages equal to what they want. If that shield falls in a punitive damage action, then they can fall back on current law, K.S.A. 1987 supp 60-3701(g), (see Attachment V), and case cite of every case where punitive damages were part of the issues that were appealed for 1977 through 1986, (see Attachment VI). He testified the Kansas Bar Association is opposed to caps on noneconomic and overall awards in tort actions. There were two options the Committee could consider. Amending K.S.A. 1987 Supp. 60-19a01 ($250,000 on pain and suffering only) with a provision where if 60-3408 is declared unconstitutional

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

then 60-19a01's limits apply to medical malpractice. Bringing doctors and hospitals under 1987 legislation, $250,000 on pain and suffering only, and avoid legislative fights over limits, (see Attachment VII).

Matt Lynch distributed a report of the Judicial Council Civil Code Advisory Committee on Tort Reform and Liability Insurance on the Modification or Elimination of the Collateral Source Rule. The advisory committee recommended against modification of the collateral source rule, (see Attachment VIII).

The Committee meeting was adjourned at 5:15 p.m.

The next meeting will be Thursday, February 11, 1988 at 3:30 p.m. in room 519-S.

GUEST REGISTER

DATE Feb. 10, 1988

HOUSE JUDICIARY

NAME	ORGANIZATION	ADDRESS
PATRICIA HENSHALL	OJA	TOPEKA
[illegible]	KBA	"
[illegible]	KTLA	
[illegible]	KTLA	
MIKE SEXTON	KTLA	KC, KS
[illegible]	"	Topeka
[illegible]	[illegible] - KHA/KMS	
Tom Bell	KHA	
Tom Palace	SLSI	Topeka
Joe A. Morris	KCSI	TOPEKA
Belva Ott	PPK	Wichita
Keith Wilkin	self	Topeka
Joan [illegible]	KMSA	Topeka
[illegible] Lee	KMSA	Topeka
Matt Lynch	Judicial Council	"
Chip Wheelen	Ks Medical Society	Topeka
Ted Fay	Ks Insurance Dept	Topeka

TESTIMONY OF KANSAS TRIAL LAWYERS ASSOCIATION

By Jerry R. Palmer

Before the House Judiciary Committee
Concerning H.B.2690
February 1988

General Comments:

The Committee's bill is the one sponsored by the Kansas Medical Society. In order to properly address the bill it must be compared to Senate Bill No. 258 which passed the 1987 session of the Kansas Senate 40 to 0. Although the purposes of the acts are identical, SB258 is a bill that tries to be more than one sided, taking into account not only the needs of wrong-doers but also the needs of their victims.

The classic example used to criticize the present system is a medical malpractice action involving a brain damaged baby where large sums are awarded for future medical expense and then sometime shortly after the verdict the baby dies and its heirs receive the money which the jury intended to go for the future medical care. We would admit that that is one of the problems the current system off-sets to some extent by the same chance that the medical expenses will be greater or the loss of income will be greater than could have been predicted at the time the jury rendered its award when plaintiff and defendant had their "day in court."

Any bill that is enacted will make litigation of these cases more expensive as it will almost always require either an actuary, an economist or similarly trained individual to testify. The estimate is that this could be anywhere from $3,000 to $10,000 depending on the complexity of the case, the preparation and trial time, which are out of pocket expenses unrecoverable by a plaintiff. It also will result in more decisions that will have to be made by the jury. Both plans involve removing from the plaintiff the freedom to invest a judgment to take advantage of investment opportunities or make unforeseeable payments at the time of trial which may accrue earlier than prognosticated.

It is the position of the Kansas Trial Lawyers Association if the only reform enacted was a fair periodic payment of

Attachment I

judgments bill (best represented at this stage by Senate Bill No. 258) then that would be an acceptable bitter pill to swallow, since at least (unlike other tort reforms) it does have some rational basis and is capable of being written into a constitutional piece of legislation.

Constitutionality and the Two Bills:

It is the opinion of the author and this organization that House Bill 2690 has the same constitutional vagaries as those identified by Judge Theis in his opinion Kansas Malpractice Victims Coalition v. Bell that it does violate the remedy by due course of law, clause of Section 18 of the Kansas Bill of Rights as well as impinging upon the right to trial by jury contained in Section 5 of the Bill of Rights of the Kansas Constitution.

As Judge Theis rhetorically asked; would a plaintiff accept a judgment paid off by Kansas lottery tickets?

Some of the particular considerations and concerns that we have are as follows:

1. The "trigger" - this bill applies to all cases which are filed. SB258 has a number of opt-out provisions but basically is designed for cases with future damages in excess of $100,000. Since it is this category of cases which has caused the greatest consternation and is representative of the "brain damaged baby case," it seems appropriate that the trigger should be set at a high level so that the many cases identified in the 1986 and 1987 survey by the office of judicial administration would not have to go through this complex proof. For example, in 1987 it would have applied to no more than the 50 cases in which a plaintiff received an award, rather than the 183 cases which were tried where that result occurred.

2. What the jury is told - in this bill a jury is not told anything about what the effect of their verdict will be. The senate bill advises the jury about what is going to happen so that it can make its own informed judgment.

3. Inflation effect - under this bill the plaintiff would prove up the damages for future years by adding in inflationary effects. For a very young person this could mean that you would be projecting what the person would be making 50 years from now

so that car wash attendants are making $100,000 a year and hamburgers are costing $10. In a current case an economist would take into account not only the inflationary affects but also reducing on an annual basis those items discounted by investment, so that the numbers are more readily understood by the jury. There is a substantial problem with a jury not believing these future figures. It proves up especially the problem of why this would be a denial of the right to trial by jury since a jury is only seeing one side of the equation and not the other.

There is a historical anachronism that may some day have to be dealt with and that is Justice Schroeder's dissent in Hampton v. State Highway Commission, where he held that inflation was too speculative for proof. Thus, you may be proving up future dollars in today's dollars without regard for historic inflation and then cutting that back even further which would be a result that could not possibly occur under current law.

The senate bill has a mechanism for standardized reduction based on economic testimony that was adduced in the senate committee indicating that historically there is about a 1.6% difference in inflation and the one year T-bill rate. Thus, under the senate bill the jury thinks in terms of the costs of things and loss of income in present dollars, they are then adjusted by this historical discrepancy and then adjusted on an annual basis after that to recognize "true inflation," thus carrying out the goal of the legislation to affect more precise awards of damages for actual losses and to alleviate one of the practical problems incident to the unpredictability of large future losses.

4. Life expectancy effect - this bill abates everything in case of a shortened life. If a breadwinner is injured and was still alive at the time of the verdict but died thereafter, his dependents who would probably be barred from bringing a wrongful death action (especially in a medical malpractice case) lose out entirely. Under the senate bill that portion of income in the future can be allocated to the wrongful death beneficiary limited by their pecuniary loss. Both bills deny the heirs any non-pecuniary loss and in that sense also deny them what they might have otherwise have had if the person had died sooner for their "intangible" losses. Both plans abate the medical at the time of death.

The house bill permits the jury to reduce pain and

suffering damages by the expected shortened life. Under the senate bill you use the life expectancy independent of the negligently inflicted injury and then the damages for pain and suffering are cut off by operation of the actual death. A fairer way and again more in line with the goal of reducing unpredictability.

5. Mechanisms for future payments - the house bill anticipates only an annuity. The senate version has a complete calculus of "what-ifs" which are annuity-dependent.

6. Attorney fees - the house bill forces a fee limit on that portion of the award for future payments. The senate version leaves complete freedom to contract.

7. Assignments - the house bill provides no way to make an assignment, the model act more reasonably permits assignments for medical expenses and child support.

8. Specific awards - the house version divides the entire award evenly irrespective of when the needs would occur. The senate version permits a year-by-year allocation of the damages before applying the discount. For example, if you needed a $10,000 operation next year and you had 20 years to live, under the house version you would have $500 attributed in each year where under the senate version the $10,000 would be available in next year's allocation.

Conclusion:

The house version which is the medical society's proposal is far worse to the point of being mean spirited when it is compared with the senate version which came out of the model act. Every break goes to the negligent or willful wrong-doer who would have been benefited by either plan to the detriment of his victim. Insurance companies in small cases can exert leverage by requiring plaintiffs to hire experts or could do the same where they have limited coverages and very large exposures. It is simply judicially inefficient to adopt the house proposal for that reason.

The inflation effect is a serious detriment and will guarantee a unfair result exploiting people's basic inability to think in future inflated dollars and the approach is unjustified

when an easier, fairer method is available to permit the jury to think in current dollars. The house version denies the jury access to information as to what it is doing and what is going to happen next. Someone who understands the concept of present value may well rebel at not regarding discounted values unless they are aware that the judge is at a later time going to apply some type of discount formula.

The senate version has fixed ways in which future denominations will be occurring. In other words, there is a specific delegation and it is not up to the judge to decide what "present value" is, which is one of the problems constitutionally in the denial of right to trial by jury in the decision that must be made by the court. For the foregoing reasons we urge the Committee to reject the medical society proposal and take up consideration of SB258. However, since the basic goal of all of this legislation is the substantial reduction of insurance premiums and Medical Protective, one of the state's largest malpractice insurance carriers, has indicated that neither collectively nor individually will these have much to do with achieving that goal, then constitutionally this may not meet either a rational basis test nor the more stringent standard of strict scrutiny which is probably the basis for review of this legislation under Section 18 of the Constitution.

those sections as a whole. However, assuming its constitutionality, Section 15 by its breadth - "in any medical malpractice liability action" - would appear to be capable of operating independent of the unconstitutional caps. Further, there is evidence in the legislative record when viewed with the purposes of the Act as a whole as declared in Section 1 of HB 2661, at K.S.A. 1987 Supp. 60-3405, for the court to believe Section 15(a) would have been promulgated independently. There can be little question but that a principal underpinning and focus of this provision was the legislature's contemplation that the state operated Health Care Stabilization Fund would be the principal purchaser of the annuities as specified. The provisions of Section 15(b) by specifying either the health care stabilization fund or insurer as a purchaser of an annuity provides the intent for independent operation and represents some evidence that the legislature at least meant insurers to participate when judgments were either within the minimum liability limits of $200,000/$600,000 for primary insurance coverage of within any extended coverage. See, K.S.A. 1987 Supp. 40-3408. Thus, if Section 15 of HB 2661 is otherwise constitutional, it can be seen as independent of Section 13 and Section 28 heretofore declared unconstitutional.

C. <u>The "Annuity Judgment" Sections v. Sections 5 and 18 of the Kansas Bill of Rights</u>.

Taking the language of Section 15 (a) as it is, the court is of the opinion the provision as written runs counter to both Section 5 and Section 18 of the Kansas Bill of Rights. Section 13(c)(3), if it were otherwise severable, would harbor the same deficiencies. Section 15 being all encompassing would require Section 13(c)(3) to be interpreted in <u>para materia</u> with Section 15.

First, though not violative per se, Section 15 runs the risk that the right to trial by jury guaranteed by Section 5 of the Kansas Bill of Rights could be violated. The court would make reference to the prior portions of this Opinion as to the fact the

remedy of trial by jury applies to the wrongs and injuries subject of HB 2661.

The reason Section 15 would risk impingement on the right to trial by jury is the fact the law may withdraw an essential finding of fact from the jury and give it to the judge. The Section first directs that the jury be instructed that the amount of future economic damages they find not be reduced to present value by them. After the jury has entered a verdict for future economic damages which would inherently appear to require as a finding of fact the future value of the damages, the Section then, post verdict, requires the court to reduce the value of these damages to present value before entering judgment. This latter act of reduction required of the judge requires an equally commensurate finding of fact. If the evidence presented at trial, by example, did not elucidate the evidentiary mechanics by which the jury arrived at the future dollar value of the damages for future economic loss such that the judge could retrace the mechanics to present value, the judge's decision would require the presentation of facts none of which could be ascertained by judicial notice. By example, if no special questions were asked of the jury as to present value of such damages and the evidence was conflicting as to value or the extent of damages or no evidence could be pointed to as to whether an evidentiary statement of loss was expressed in present value or future value, the judge could be put in the posture of being unable to determine without facts as to which measure to use or what the verdict otherwise actually represented, i.e., extent, amount, or both. However if the evidence was undisputed and required no factual interpretation, the judge could, and as a mechanical act, reduce damages to present value without abridging the right to trial by jury. Compare, Marsh v. Kendall, 65 Kan. 48 (1902); Girardey v. Girardey, 99 Kan. 679 (1917); Schlesser v. Mott, 107 Kan. 41 (1920); Kansas Wheatgrower's Ass'n v. Windhorst, 134 Kan. 736, 738 (1932); and Ogilvie v. Mangels, 183 Kan. 733 (1958).

As stated in Ogilvie v. Mangels, supra, at page 738:

> "The right to trial by jury presupposes the power of a trial judge to withdraw a case from the jury upon a point of law under proper procedures."

This same principle would apply to a portion of the case as well. All such powers, however, are required to be cautiously exercised in regard to Section 5 of the Kansas Bill of Rights. As stated in essence earlier in this opinion, and as stated in Gordon v. Mann, 83 Kan. 242, 245 (1910):

> "The right to trial by jury has ever been regarded as important, and it may not be abridged or limited beyond the fair import of the constitutional and statutory provisions by which it is guaranteed."

As we know, difficulty of the issue is no criteria for withdrawal of an issue from the jury. See, Estey v. Holdren, supra. Further, legislative desire or intent in conflict with the requirements of Section 5 of the Kansas Bill of Rights as noted earlier in this Opinion obviously is of no force. In essence then, but with probable hazard and difficulty, Section 15(a)'s directive to the court to reduce the future economic damages to present value would not, under proper trial procedures, violate Section 5 of the Kansas Bill of Rights. Since Section 15(a)'s procedure governs Section 13(c)(3)'s, it would survive the same analysis.

Section 5 of the Kansas Bill of Rights is implicated further by Section 15(a)'s directive to the court to enter judgment on the damages as reduced to present value "for an annuity contract, which to the greatest extent possible, will provide for the payment of benefits over the period of time specified in the verdict in the amount awarded by the verdict for future economic loss." Subsequently, the judgment is to incorporate the intervals of the annuity payments, ". . . which shall be fixed and determinable as to amounts and dates of payments." This language in Section 15(a) may be contrasted to the language of Section 13(c)(3) which uses the phrase for entry of judgment "for the cost of an annuity contract," while still using the predicate "to the

as was discussed in terms of the limitations and caps of Sections 13 and 28 of HB 2661 as noted in this Opinion, supra, at Part III, A.

Further if, as Section 15(a) literally directs, judgment is to be entered in other than money as found by the jury, that is, for an "annuity contract," then clearly Section 18 of the Kansas Bill of Rights as well as Section 5 of the Kansas Bill of Rights are violated. The historic and constitutional remedy is for compensation in money, the coin of the realm, which when entered as a judgment is capable of being collected from the person or persons against whom judgment was entered. See, McCormick, ibid, and Woods v. Jacob Dold Packing Co, 141 Kan. 748 (1935). The legislature is not competent to dilute the remedy by requiring its entry and the security it represents be entered for an insurance contract represented by the annuity. A promise to pay, a contract for future payment, is not the monetary judgment the verdict represents or the historic remedy provides. A promise to pay is not capable of being executed upon and in the case of the annuity contract here is neither to be owned, possessed, or controlled by the person obtaining the judgment. In Neely v. St. Francis Hospital and School of Nursing, supra, the legislature attempted to defeat the remedy for injury against charitable hospitals by leaving the judgment but barring traditional means for its collection. The court held this was impermissible under Section 18 of the Kansas Bill of Rights as it affronted the remedy. In the Neely case, the remedy through the entry of judgment was not interfered with but had the legislative act prevailed, the judgment would have been hollow. In the case now before the court Section 15(a)'s directive for entry of judgment "for an annuity contract" coupled with Section 15 (b)'s pronouncement that its purchase constitutes satisfaction, that is, extinguishment of the judgment, goes even further. This legislative schematic not only bars collection but substitutes a paper promise for the historic attributes of a judgment. Liability for the judgment against the wrongdoer is extinguished, and should the substituted party, the

annuitant issuer, fail or default, the injured party's as effectively deprived of his remedy by this statute as if it had had none to begin with. It may be argued that the annuity purchased may be highly commercially rated (although the law does not so require) and is subject to the Kansas Life and Health Insurance Guaranty Association Act, K.S.A. 40-3001 et seq., yet such guarantees and institutions, private or public, are transitory, without the control of the person who won the judgment, and are no substitute for a judgment in money entered by a court of law in furtherance of the remedy guaranteed and protected by Section 18 and Section 5 of the Kansas Bill of Rights. No one would accept a judgment payable in Kansas lottery tickets. The fact the risk of non-recovery through an annuity is accompanied by promises of high security does not make the annuity not itself a risk. An annuity has no attributes of a judgment. A judgment represents no promise to pay. Its enforcement is contingent only as to the discovery of assets of the wrongdoer. Its security is its existence. The court is therefore of the opinion that Section 18 of the Kansas Bill of Rights prevents its dilution and constitutionally requires any legal risk of non-payment rest with the person against whom the judgment was entered. Section 15(b) clearly prevents any other construction.

It should be clearly understood here that the court is not constitutionally abrogating nor is it addressing the constitutional propriety of delaying the obligation to pay judgments for future damages to the time the jury may find they are due. However, the language of Section 15(b), even assuming "judgment for an annuity contract" in Section 15(a) meant "judgment for the cost of an annuity contract" as was used in Section 13(c)(3), precludes such a construction of legislative intent and does not permit of such interpretation. It would be strained and artificial. It is obvious the legislature has confused the constitutionally protected entry of judgment with a rational and constitutional statutory plan to require payment of

judgments when they will be due as determined by the jury, particularly where a state administered insurance fund is the payee. See, Florida Patient's Comp. Fund v. Von Stetina, 474 So. 2d 783, 787-789 (Fla. 1985).

Further, it would appear an annuity was chosen so that the right to future damages would expire with the death of the annuitant. Although the legislature theoretically might be able to provide for a bifurcated trial consisting of a trial on liability, consideration of damages to the date of verdict and non-economic damages, and probable reasonable future economic damages to be incurred in the future to an established point in time and yet later permit a subsequent constitutional trial on economic damages incurred or to be incurred beyond the point of consideration of a prior jury without risk of res judicata bars, such a procedure would have to be carefully evaluated from a constitutional remedy perspective including considerations that passage of time might defeat the remedy in terms of the security provided for by a full judgment. Equal protection guarantees as well would apply. Section 28 of HB 2661 though constitutionally deficient for reasons noted earlier is an example of such a thought. Another immediate example brought to mind is in the area of child support and spousal maintenance. The court is here neither proposing nor deciding the constitutional efficacy of such a procedure once enacted, however, it is pointed out merely to show that delaying payment or even determination of future damages until incurred or terminating the right to damages not yet incurred or payable upon death of the claimant is not unknown in the law. However, such limitations on payments due might better be received within the context of state remedial insurance schemes where a judgment is otherwise secured. See, Florida Patient's Comp. Fund v. Von Stetina, supra.

Simply here, however, the legislature did not enact a constitutional future damage payment or determination procedure. Instead, they interfered to the point of disassemblement of the constitutional remedy for injury to persons as guaranteed by

Section 18 and Section 5 of the Kansas Bill of Rights.

The court maintains no doubt that Section 15(a) is unconstitutional as in violation of Section 5 and Section 18 of the Kansas Bill of Rights, and that Section 15(b) is unconstitutional as in violation of Section 18 of the Kansas Bill of Rights.

The balance of Section 15 as expressed in subsections (c) and (d) are so entwined with the Section as a whole as to be inseparable. They are accordingly not severable and are of no force and effect.

The deficiencies in terms of Sections 5 and 18 of the Kansas Bill of Rights would attend Section 28(f) as it cannot otherwise be operative except by agreement. It is, therefore, unconstitutional. Further, as noted for the reason Section 28(f) is merely part of the machinery of the limitations and caps imposed by interrelated Sections 13 and 28 declared unconstitutional, it is not operative independently and must fall.

D. The Annuity Judgment Sections and Section 1 of the Kansas Bill of Rights:

For the reasons expressed and relying on the scrutiny standards expressed in Farley v. Engelken, supra, and under the discussions at this Opinion, Part III, B., the court finds Section 15(a) and Section 15(b) violate the equal protection of the laws as guaranteed by Section 1 of the Kansas Bill of Rights. As noted earlier, this court would have otherwise applied a test of strict scrutiny based on the principles stated in Ernest v. Faler, supra.

E. The Annuity Judgment Sections and the 14th Amendment to the Constitution of the United States:

As the court has found that the right to remedy upon the subject matter of the cases at bar includes the right to a money judgment entered consistent with the verdict of the jury and that these state rights are property rights guaranteed by Sections 5 and 18 of the Kansas Bill of Rights, their violation by the promulgation of Section 15(a) and Section 15(b) of HB 2661 also

derivatively violate the 14th Amendment to the Constitution of the United States.

V. Severability of the Amendments made to K.S.A. 1985 Supp. 40-3403 and K.S.A. 1985 Supp. 40-3408:

Prior to the passage of HB 2661, the legislature had previously created the Health Care Stabilization Fund. At the time of enactment of HB 2661, the extent of the Fund's liability was set forth in K.S.A. 1985 Supp. 40-3403(e). This statute limited the fund to a liability of three million dollars for any one claim against a health care provider with a fund fiscal year aggregate limitation of six million dollars for all claims against the health care provider. K.S.A. 1985 Supp. 40-3402 provided for the maintenance of $200,000/$600,000 minimum liability private insurance or self insurance coverage by a health care provider. These minimums are still the law. K.S.A. 1985 Supp. 40-3408 directed that the Health Care Stabilization Fund would be an excess carrier above this limit or above the private insurance carried by the provider in excess of these minimums. See, Missouri Medical Ins. Co., v. Wong, 234 Kan. 811, 821-822 (1984). Thus as a minimum 3.2 million dollars for any one claim or 6.6 million dollars in any one fiscal (claim) year for all claims was minimally available for any one health care provider to respond to a claim or claims made.

Additionally under the existing 1985 liability schematics the Fund was liable for judgments against inactive health care providers to the same extent.

Further no prohibitions or immunities existed for health care providers who were covered by the Fund against vicarious liability from the actions of other claims related health care providers when the existing law would make them subject to such liability. No provision of statute permitted an insurance carrier to exclude this vicarious liability.

Amendments of K.S.A. 1985 Supp. 40-3403 first began in 1986 by Senate Bill 382, Chapter 179, Section 2, L. 1986, then by Senate Bill 734, Chapter 184, Section 3, L. 1986, followed by HB

TESTIMONY REGARDING H.B. 2693
BY MIKE SEXTON FOR KANSAS TRIAL LAWYERS ASSN.

I. Tort Reform Considerations

II. Purpose of Collateral Source Rule

III. Intent of H.B. 2693
- A. Reduce Insurance Premiums
  - 1. Decrease Verdicts
  - 2. Decrease Number of Lawsuits

IV. Results of H.B. 2693
- A. No Effect on Insurance Premiums
- B. No Relationship to Legislative Intent
- C. Windfall to Health Insurers

V. Problems of H.B. 2693
- A. Evidentiary Requirements
- B. Governmental Benefits
- C. Subrogation
- D. Comparative Negligence

VI. Constitutional Concerns
- A. Personal Injury v. Other Torts
- B. Vagueness of Damage Determination
- C. Date of Legislation
- D. Comparative Fault
- E. Personal Wealth

Attachment II

PALMER, MARQUARDT & SNYDER, P.A.

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*CERTIFIED CIVIL TRIAL ADVOCATE
BY THE
NATIONAL BOARD OF TRIAL ADVOCACY

MEMO

TO: ALL MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: JERRY R. PALMER

DATE: FEBRUARY 8, 1988

RE: HB 2693 (COLLATERAL SOURCE RULE LIMITATIONS) AND MY CLIENT SHILOH FETTERS

Dear Members of the House Judiciary Committee:

My client Shiloh Fetters is an eight year old child who has a suit pending in the District Court of Sedgwick County, Kansas. Shiloh's injury occurred April 4, 1986.

A suit was filed June 1, 1987. Because of conflicts of scheduling by one of the defense counsel this case will not be tried until May of 1989. By the middle of October of 1987 Shiloh's medical expenses had exceeded $600,000. If defense counsel are candid they will acknowledge that this is a case that does not realistically have a verdict for all defendants.

Briefly the facts are that this child who was a second grader living in Towanda, Kansas had a shunt placed for her hydrocephalus when she was a baby. One of the greatest risks that people with shunts have is that they will become obstructed. The mother, a neonatal intensive care nurse at Wesley Hospital was aware of this problem and when she returned home and the child had been sick for a number of hours with headache, vomiting and was so lethargic that she could not verbally respond, she called the treating pediatrician in Wichita and immediately took the child to the pediatrician's office.

The pediatrician admitted the child with the diagnosis of "shunt malfunction." A pediatric neurologist was consulted. Although he says he entertained the potential diagnosis of shunt malfunction (a life-threatening situation) he concluded it was more probably a complex migraine and ordered an EEG. The definitive test for shunt malfunction is a CT scan. The mother

Attachment III

inquired as to why he did not order a CT scan. He indicated he would first read the EEG and then make the decision about the CT scan.

The doctor left the hospital without waiting for the test that he had ordered to be performed, went to a soccer game and never checked back during the evening. The nurse indicates that she tried to page him three times to which he did not respond. In the meantime, there is on the intensive care charting in Pediatric ICU at Wesley a "coma scale." It is to people following a neurologic patient what the charting of temperature is. It has methods by which you check boxes, the boxes have numerical scores and it is designed to help nurses communicate with doctors as to change in neurologic status. Although the nurse checked the appropriate boxes, she apparently did not communicate to either the pediatric resident or the pediatrician that there had been such a change in neurologic status as the child had actually experienced.

The pediatrician who visited the child at 10:00 looked at the child but did not look at the neurologic chart which was kept at the bedside of the child. At approximately 3:30 a.m. (the child had been admitted at 6:30 p.m. the evening before) the child had a respiratory arrest and complications thereafter which have led her to be in a state just above being constant vegetative.

Shiloh has around-the-clock nursing care, multiple types of therapists and is totally dependent on others for everything. She can communicate yes and no and so she does have intellectual function.

Shiloh's parents are divorced. Her mother has insurance through Wesley Hospital (one of the Defendants in the action), her father has insurance benefits and her stepfather has insurance benefits.

As her attorney I am seriously concerned about her exhaustion of her insurance benefits prior to the time that we actually try the case. That consideration, though, was not paramount in the scheduling of the case. This case could, from

the Plaintiff's standpoint and reasonably from the Defendants, if their attorneys were reasonably available to complete the discovery process, be tried before July 1, 1988, avoiding the potential effect date of HB 2693. However, because of the Defense lawyers' scheduling in the event HB 2693 is passed in its present form, the child will have to come under the Act.

Some of the practical problems we expect if we have to try it are,

a. We have to make assumptions about whether the mother will continue to work for the institution or whether the institution will continue to retain her in its service. If the mother leaves the service of the hospital or should die or become disabled, that will impact upon the amount of benefits that are available to the child.

b. Once she exhausts the benefits under the mother's plan then we have to go to the father's plan and try to figure out its "coordination of benefits clause" with the first plan, whether it is supplementary, whether it is in addition to the mother's plan, or whether it will provide the same kind of high care services that the child is now getting, or whether there will be an additional deductible and an additional co-insurance clause that will have to be satisfied.

c. The stepfather married the mother after Shiloh had already had her respiratory arrest. It is <u>possible</u> through the construction of his policy that she would be covered, but again we have to go through the problem of coordination of benefits with the other two policies, perhaps a waiting period, co-insurance clauses, and additional deductibles, and then a question of whether or not this policy which is different from the other two covers the same type of care that Shiloh is now receiving.

One or more of the policies may require that Shiloh be hospitalized for the kind of care she is getting. Currently it has been decided essentially by negotiation with the insurance company that is currently on the risk that it is better to keep the child at home because that is more economical for all

concerned, considering the unique situation that her mother is an intensive care nurse, and can be a supervisor over the other health care professionals that are involved. That, of course, is dependent on the mother's continued life and her continued energies and ability to perform.

Quite frankly I expect to have to be in litigation at some point with the other two carriers as to their responsibility on this risk. That litigation, though, would follow most probably the termination of the litigation with the persons we believe to be responsible for Shiloh's injury. Or at least the litigation would not be concluded before the May 1989 trial setting.

I also have to recognize that other variables include the continued employment of the father and stepfather; the continued marriage between the mother and stepfather; the continued economic viability of the employers of both of these men; as well as the risk that their employers will in some way to save costs find cheaper policies or policies with even different coverages than now exist. Perhaps one or both of them will go into HMO or PPO plans. The complexity is unending. It is unfair and unrealistic to believe that a jury should have to hear all the conflicting opinions that are possible in the scenario I have described above and weigh the relative risks of employment of three people, the viability of one marriage, the economic viability of two employers and predict what those employers will do with their future coverages. On the other hand any assumptions that are made based on current policies and the status quo, if it does not turn out to be that way in the future, will be detrimental to this child who has done nothing to contribute to the catastrophe that she has experienced.

The clause that most profoundly affects her is Section 5 which makes the Act relate to her case simply because of the unfortunate nature of the timing of her trial, rather than the injury or the fact of when she filed her lawsuit.

The Kansas Supreme Court when dealing with the Wrongful Death Act has held that increases in the wrongful death limitation are not applicable retroactively to injuries sustained prior to the effective date of the statute (Kleibrink v. Missouri

Kansas Texas Railroad Company, 224 Kan. 437 445, 581 P.2d 372 (1978). Retrospective applications of law will not be given where vested rights will be impaired (Board of Greenwood County Commissioners v. Natal, 228 Kan. 469, 618 P.2d 778 (1980).

The litigation in Kansas over collateral source benefits has not really focused on this issue before. When we look around to determine if it is a "substantive" rule of law, we find that the collateral source rule is referred to it in the Restatement of Torts 2d and when federal courts decide on the law of which forum to apply, they apply the collateral source rule of the state where the cause of action arose as a rule of substantive law. (Restatement of Law Conflict of Law, § 412 and Restatement of Law Conflict 2d § 171, Restatement of Torts 2d § 920A.) The issue was squarely addressed in Arizona in Allen v. Fisher, 118 Az 95, 574 P.2d 13, 14 (1977). There the Court held that the collateral source rule was substantive and could not be retroactively abrogated with respect to pending lawsuits.

Granted there are in several Kansas cases referral to the collateral source rule as a "rule of evidence." However, it is to be noted that it is not contained in the sections K.S.A. devoted to evidence (K.S.A. 60-401 et req) and when federal courts apply the substantive law of Kansas they apply the collateral source rule.

The cases, though, in Kansas have not turned upon the issue of whether or not this is a rule of evidence and the substantive nature of the rule has not been frankly considered. Testimony to prior legislation committees given by Professor Jim Concannon has indicated that there is a duality of nature of the rule, it is both substance and evidentiary in character.

Another point that probably ought to be made is that the insurance premiums that have been paid and the reserves that have been set aside to pay this claim have already been paid and are not going to be impacted by a retrospective application of the law.

As a lawyer my essential position would be that there should not be a change in the collateral source rule. On behalf of my

client, though, I most strenuously plead with the legislature--at least if you pass it, do not make it retroactive to causes of action accruing before the effective date of the act.

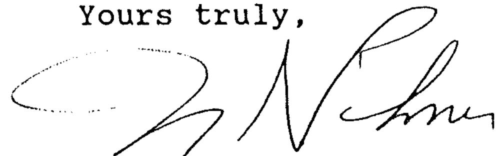
It should be noted that in the constitutional litigation in this state the federal judge, Franklin Theis, in Coburn v. Augustin, 627 F. Supp. 983 (D.Kan. 1985) stated:

> Due to the substantive operation of the collateral source rule, this Court believes that a more searching equal protection inquiry is warranted. L.C. 968.

Thereafter he determined the statute was unconstitutional on equal protection grounds. In due course the Supreme Court of Kansas found the 1985 legislation violative of state equal protection and struck it in the case of Farley v. Engelken, 214 Kan. 663 (1987). Thus, enactment with this retrospective aspect will fire off a whole new round of constitutional litigation on the collateral source rule limitations by statute.

Hopefully the legislation that is passed this session will meet constitutional muster and hopefully the legislation will not invite immediate scrutiny.

Yours truly,



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M E M O R A N D U M

TO: Members, Kansas House Judiciary Committee

FROM: Ron Smith, Legislative Counsel, KBA

RE: Points regarding Previous Legislative Testimony

DATE: February 10, 1988

You are wrestling with grave problems. KBA has no quarrel with that analysis. We are a bit skeptical that a true cause and effect can be drawn between tort "reforms" and premium reductions. I have a few general notes:

1. A major problem with tort "reform" is its presumptions. You do not have good statistics, either from the insurance or legal systems. Yet you are being asked, in effect, to do what doctors should never do: operate on the tort system without very good information. In that type of environment, you must proceed with caution.

2. The chief fallacy is that tort reform somehow gets the "attorneys." I would simply point out that the best paid attorneys, as a class, work on Wall Street, not in courtrooms. More KBA members earn a living representing physicians on corporate, tax and estate planning issues, or help collect their overdue bills than sue doctors for medical malpractice.

3. There is an allegation that Kansans are litigious. But who causes litigation? Some studies put the responsibility with governments and legislatures. "Over eighty percent of the latest federal decisions and around 80% of the latest state decisions depend in some important way upon rules of decision with legislative origins." Foy, Some Reflections on Legislation, Adjudication and Implied Private Actions in the State and Federal Courts, 71 Cornell Law Rev., 501, 511 (1986).

4. Jerry Slaughter says the KMS cannot afford to wait three years for new legislation to take effect and be tested. Thus, KMS is considering a constitutional amendment. Yet he also says -- and Mike Mullen and Kim Younkins confirm -- these four tort bills will not have much affect, if any, on the current premium problem. Further, a change in the constitution will not change whether these types of bills are effective in bringing down costs. No actuary is going to lower premiums solely on the basis of a constitutional amendment; they would wait to see what kind of legislation is offered, and whether the court upholds the legislation. Even if the state constitution is amended, if it violates federal equal protection or due process grounds, it can be invalidated.

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(over, please)

Attachment IV

5. Mike Mullen said Kansas is in the vanguard of "jumbo verdicts." I would point out he offered nothing but opinion evidence to that effect. Further, over the years, Kansas has had a fairly conservative system:

(a) No joint & several liability since 1974; (the most important tort "reform" of the 1980s in other states)

(b) A 49% comparative negligence rule (the most restrictive of modified comparative negligence systems; Many states have "pure" or 50% rules.

(c) $250,000 limit on all "pain and suffering" (1987)

(d) Punitive damage limited to a year's gross income or $5 million whichever is less -- even for intentional fault! Requires clear and convincing evidence;

(e) General legislative reluctance to see pure comparative fault;

(f) No prejudgment interest (which is found in most of the "litigious states."

(g) No ability to directly sue an insurance company for unreasonable failure to settle a case;

(h) General reluctance to impose punitive damages;

(i) Less than 500 jury trials per year (not all of them tort cases).

(j) Modified legislation on ability to sue governmental agencies, with a $500,000 limit on awards <u>per incident</u>; which means if 10 plaintiffs were involved in same accident, they might get only $50,000 each regardless of damages;

(k) A $100,000 limit on pain and suffering and "nonpecuniary loss" in wrongful death actions;

(l) no legislation allowing "wrongful birth" or "right to life" litigation; where such litigation has been attempted, it has failed;

(m) Kansas adopted "negligence" standard in its product liability litigation since 1974 when comparative negligence was the new rule; strict liability is harder to press than in other states;

(n) Kansas Product Liability act, K.S.A. 60-3301 et seq, one of the most conservative in the country; large Kansas mfgrs, like Beechcraft, express "satisfaction" with the way product claims are handled in Kansas; other states are the problem;

(o) Kansas adheres to the "impact rule" on mental anguish damages; no recovery without "trauma" to the body; (Exceptions: outrage, libel)

(over, please)

(p) Court rule limiting contingent fee contracts to "net" fees.

(q) There is no statutory authority for Remittitur or Additur in our law, and the statute is "liberally construed" (60-102) to effect the reform in 1966. The 1966 civil code change did not codify the common law powers of additur (increasing the jury's verdict when inadequate) or remittitur (lowering the award of the jury). Federal civil procedure does not allow use of additur. Ability to get new trial if jury gives lower award is fairly limited, and strictly construed as to statute (KSA 60-259).

6. Priority of Reform Where is "tort reform" on the list of the public's legislative priorities? Very low.

(a) A poll released by the Independent Insurance Agents of America (reported in 12/11/87 Federal & State Insurance Week) indicates AIDS is the major issue which voters will judge presidential candidates next year. In ranking 21 other issues from "very important" to "not important" in influencing their votes, AIDS, drug addiction, improving the nation's education, and national health and crime were important. Near the bottom of the list were product safety laws, nuclear energy, medical malpractice insurance and auto safety.

7. Public Reform The Tort Reform Coalition ignores what the PUBLIC wants in reform. According to KCCI's poll, those 2,000 Kansans sampled feel the press coverage of "big verdicts" causes more litigation. That is legitimate criticism. But is this legislature going to gag the press coverage of trials?

8. Kim Younkin of St. Paul indicated that the problems in California are worse that Kansas, and I assume she meant with medical malpractice. California enacted MICRA, the Medical Insurance Compensation and Reform Act, in 1976. It includes collateral source changes similar to what was ruled unconstitutional by our justices in Farley, and a $250,000 limit on noneconomic loss. MICRA allows periodic payment of judgments, and has a provision limiting attorney contingent fees. Other law also allows arbitration (or screening) of medical cases. It was interesting that St. Paul, with these types of reforms, still thinks the California severity and frequency rate is too high, and they do not want to write coverage in that state.

9. Kim Younkin indicated in the 1970s three major problems changed society: (a) society increased its expectation on medical care; (b) there was a dramatic change in legal doctrines; and (c) inflation for both medical care and income. She is correct. The June 22, 1987 Washington Post reports health care expenditures account for 10.9 percent of current the U.S. GNP, but is headed towards capturing 15% of GNP by the year 2000. Total U.S. Health costs will triple by 2000, from $458 billion to $1.5 trillion. Per capita costs will grow from $1,837 in 1986 to $5,551 in 2000. Price inflation rather than increased use, says columnist Michael Specter, accounted for 54% of the 1986 increase. Specter reports medical care is the 2nd highest user of GNP in this country behind the defense department. Precisely because medical costs are a large component in any personal injury verdict, and medical costs continue to skyrocket from a

(over, please)

number of reasons, settlements and verdicts will have to continue to climb. The phenomenon is unavoidable unless there is a dramatic turn in health care costs. Medical malpractice premiums do not constitute enough cost to contribute to that turnaround.

10. Ms. Younkin indicated that St. Paul went from 10 claims/100 physicians in 1982 to 14/100 in 1986. At the same time period, St. Paul was insuring fewer doctors in Kansas. It was my recollection from the 1985 interim hearings that St. Paul insured most of the high-risk surgeons and OBGYNs. Claim frequency has gone up among these classes, that is true. So the rise does not appear extraordinary, when compared with the 13/100 to 17/100 increase (82 to 86) countrywide for St. Paul.

11. The figures she gave for average claim paid in Kansas in '82 to '86 going from $23,000 to $40,900 seemed to shock some members of the committee, especially compared to national figures of $30,400 to $38,900 nationally during the same period. However, in 1984 the Kansas legislature required primary carriers like St. Paul to double the primary coverage (increasing it from $100,000 to $200,000). We do not know how much of this increase was due to that legislative change.

12. The Wausau Insurance Company problem with paying medical malpractice claims 15 years after they quite writing the business has been mentioned several times. That is probably an occurrence-based policy. Since 1976, occurrence based medical malpractice policies are not allowed in Kansas. The Wausau experience is interesting, but most irrelevant.

(over, please)

Federal Court
Regional Caseloads

1987 Civil filings by nature of suit

Type of Case	Total	A	B	C	D	E	F	G	H	I	J	K	L
Ark	3219	355	74	668	45	461	56	490	524	36	301	5	204
Colorado	2249	25	173	278	71	64	149	548	246	58	229	10	328
Kansas	2154	44	113	367	31	321	59	458	301	33	228	4	195
MO	5810	328	431	1657	124	62	262	1056	875	76	453	14	375
Nebr	1763	39	123	475	25	132	63	238	307	33	125	3	200
Okla	4692	96	336	541	103	449	87	1505	777	38	343	9	418
Iowa	2165	223	124	436	32	231	74	375	270	33	168	2	197
U.S. Total	267,820	13322	24208	37316	6269	11585	12746	45322	42947	5477	19785	785	19210

Key: A = Social Security
B = Recovery of Overpayments and enforcement of judgments
C = Prisoner petitions
D = Forfeitures and penalties and tax suits
E = real property
F = labor suits
G = contracts
H = Torts
I = copyright, Patent, Trademark
J = Civil Rights
K = Antitrust
L = All other civil

Source: Federal Court Management Statistics, 1987, Administrative Office of the United States Courts

(over, please)

Punitive Damages

The 1987 legislature enacted punitive damage legislation [Chapt. 216, 1987 Session Laws]. The 1985 legislature enacted similar legislation for just medical malpractice tort-feasors. [KSA 60-3402] The differences in the proposals are set forth in the following table.

Issue	Medical Malpractice Def. KSA 60-3402	All Other Tort-feasors under KSA Supp 60-3701
Bifurcates the trial	YES	YES
Jury decides whether to award but judge decides amount of punitive damages.	YES	YES
Limits punitive damages to:		
(a) One year's gross income,	NO	Yes
(b) 25% of one year's gross income,	YES	No
(c) or $3 million	YES	No
(d) or $5 million	No	Yes
(e) 1.5 times profit	No	Yes
Standard is clear and convincing evidence	YES	YES
Willful or wanton conduct, fraud or malice	YES	YES
Mitigation factors can be introduced:	No	Yes
"income" definition not limited	No	Yes
50% goes to HCSF	Yes	No
No punitives against employer, principle unless ratified	YES	YES
No punitives against partnership or corporation for the acts of partner or shareholder unless entity ratifies the conduct;	YES	YES

(over, please)

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February 10, 1988

Mr. Chairman, members of the House Judiciary Committee. I am Dale Pohl, President-elect of the KBA. I practice law in Eureka. I have been asked to speak today on punitive damage legislation.

KBA supported most of the 1987 changes to the pleading, proving and awarding of punitive damages. Specifically, we supported a clear and convincing evidence standard, the bifurcation of the trial so that punitive damage issues do not cloud the original liability determination, and allowing a list of "mitigating factors" to be presented to the trier of fact [See K.S.A. 1987 Supp. 60-3701(b)]. We did not support capping punitive damages, or transferring authority to award punitive damages to the judge in lieu of the jury.

Previous Legislative Action

The 1985 legislature enacted K.S.A. 1987 Supp. 60-3402. It applies only to medical malpractice. Compare 60-3402 and 60-3407 and you'll see they are quite different, including the types of caps. NOTE: the Supreme Court's action last summer in Farley v. Engelken, 241 Kan. 663, did not say the doctor's punitive damage cap was unconstitutional. The issue of constitutionality of 3402 has not yet arisen in Kansas.

The 1987 Kansas legislature enacted K.S.A. 1987 Supp. 60-3701. K.S.A. 87 supp 60-3701(g) states when other punitive damage statutes apply, then 3701 is not applicable. Physicians still have 60-3402. While they feel it no longer applies because of Farley no court has yet agreed.

All of the issues in the 1985 medical punitive damage act were discussed and debated in the 1987 bill and soundly rejected. Rejected were 50-50 split with the state, removing wanton and reckless conduct from the definition, and a 25% of gross income cap. The reason it was rejected: the legislature likes their doctors, but not necessarily other intentional, reckless, or fraudulent tort-feasors.

They have no sympathy for drunk drivers, persons who commit intentional acts which inflict emotion distress, fraud, malice, or those businesses which intentionally interfere with the contracts of other businessmen. Your constituents have no sympathy for white collar criminals who are sued in civil courts for activities which constitute a crime based on the reckless disregard for the rights of others.

Proponents argue the criminal law can take care of this, and that we don't need punitive damages for reckless or wanton conduct. I would point out that the federal government disagrees. It's RICO statutes

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Attachment V

are civil attempts to prove and award punitive damages for activities where the criminal law cannot touch unlawful business activities.

Everybody likes their doctor. But this law doesn't cover just doctors.

1988 Recommendation

Our recommendation is that you do nothing. Current law allows the doctors a shield for punitive damages equal to what they want. If that shield falls in a punitive damage action, then they can fall back on the current law, KSA 1987 supp 60-3701(g).

Reasoning:

1. Punitive damages do not affect insurance rates.

2. To our knowledge, no physician or hospital has ever paid a dollar of punitive damage awards in a Kansas medical malpractice action. (One verdict was rendered in 1984, but settled on appeal.) Punitive damages against physicians for medical malpractice is remote. As to the potential use of a punitive damage claim as a "hammer" on defendant doctors to settle the actual damage claim, current law 60-3701's requirement for bifurcation and higher evidentiary standards should alleviate that problem.

3. Our recommendation is one less "tort reform" battle for the 1988 Legislature. Most important, however, the United States Supreme Court, in December, 1987, heard oral arguments in Bankers Life & Casualty Co. v. Crenshaw, #85-1765. The principle question is whether a jury's award of $1.6 million in punitive damages based on an insurance claim for $20,000 violates the "excessive fines" clause of the Eighth Amendment to the U.S. Constitution. The entire issue of punitive damages, including their growth from English Common law, effectiveness as a deterrent, and appropriateness in modern litigation is being reviewed by the Supreme Court. The case will be the Court's first effort to discuss the "standards that apply to punitive damages outside the First Amendment area" and could have "major consequences" for the tort reform controversy. In short, if the Supreme Court tosses out punitive damages or recommends only legislation with certain guidelines, the 1989 Kansas legislature will be redoing punitive damage statutes anyway. Therefore, the legislature should wait for guidance from the U.S. Supreme Court.

4. Finally, we have a handout citing to you every case filed on appeal in Kansas since 1977 and Court Unification that discusses punitive damages. We have to assume that if there were other punitive damages in other cases, either they were resolved on appeal, paid, or the defendant was insolvent. There are only 165 of them out of some 200,000 civil cases filed in Kansas during that time. Out of that number, only about 40 to 50 were affirmed on appeal, some for very small amounts. The things most striking were that most were based on fraud and intentional conduct, and involved real estate transactions or business matters.

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Mitigation factors can be introduced:	No	Yes
"income" definition not limited	No	Yes
50% goes to HCSF	Yes	No
No punitives against employer, principle unless ratified	YES	YES
No punitives against partnership or corporation for the acts of partner or shareholder unless entity ratifies the conduct;	YES	YES

(over, please)

CHAPTER 60 CASE FILINGS
(Excluding Domestic Matters)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
Contract	6,546	7,212	7,274	7,246	8,349	7,670	7,617	8,915	9,573
Tort	3,249	3,334	3,402	3,055	2,784	2,601	2,796	2,954	3,099
Real Estate	2,275	2,244	2,464	2,676	2,899	3,082	3,399	3,994	4,836
Personal Property	422	607	370	443	377	373	446	378	477
Tax Appeal	27	52	22	10	42	19	19	34	15
60-1507	69	87	69	82	85	98	119	121	143
Habeas Corpus	198	189	179	177	202	135	116	114	115
Worker's Comp.	145	127	120	213	217	257	244	199	316
Other*	2,661	3,404	4,016	4,269	5,194	5,460	5,108	5,607	6,543
TOTAL	15,592	17,156	17,916	18,171	20,149	19,695	19,864	22,316	25,117

*Included in the category are: small claims appeals; juvenile appeals and probate appeals; habitual violator cases; name change cases; requests for restraining orders; and a variety of other regular civil actions excluding domestic matters.

(If domestic relations and limited action cases are included with these statistics, total case filings in Kansas district courts exceed 100,000 per year on the average.)

Attachment VI

Case Cite:	Case Title:	PLF TYPE (Key)	PLF EXP	DEF TYPE (Key)	DEF EXP	$PD SOUGHT	$PD AWARDED	ACTUALS AWARDED $$$	DIS POS TYP	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $	THEO of PD KEY	NOTES	TYP CON Key
P2D , 1987 K	Armstrong v. Goldblatt Tool Co.	0		0		0	0	0	0	0	0	0		0
P2D , 1987 K	State ex rel Stephan v Gaf Corporation, etal	0		0		0	0	0	0	0	0	0		0
P2D , 1988 K	Western Motor Co., Inc. v. Koehn etal	0		0		0	0	0	0	0	0	0		0
USDC 83-4040	Fisher v. Triplet Inc.	1		7	Mix 1 & 5	7	0	0	1	0	0	5		5
001 KAN APP 2D 180	McHugh v. City of Wichita	1		4		1	0	0	3	0	0	8	KTCA immunity	3
001 KAN APP 2D 203	Hubin v. Shira	1		1		3	3	25,000	8	0	0	22	Assault/Battery30kPD	4
001 KAN APP 2D 610	Jennings v. Speaker etal	1		1		0	0	13,043	0	0	0	10	TC affirmed; no P.D.	5
002 KAN APP 2D 313	Sanders v. Park Towne Ltd.	1		7	Mix 1 & 5	4	4	32,981	8	0	0	16	100kPD/Affmd/NoJury	1
0[illegible] APP 2D 385	George v. Bolen-Williams Realtors	1		7	Mix 1 & 5	4	0	180,000	7	0	0	16	R&RemNewTrialonPD	5
0[illegible] APP 2D 406	Thurman v. Cundiff	1		1		0	0	15,000	3	0	0	19	FalseArrest/NoPD/R&R	5
002 KAN APP 2D 683	Kiser v. Gilmore	1		7	Mix 1 & 5	2	2	3,888	7	0	0	20	K Law/15kPD/NewTrial	4
003 KAN APP 2D 077	Mansfield Painting Inc. v. Budlaw Services Inc.	5		5		1	1	6,308	1	0	0	10	BreachFidDty/affmd	1
003 KAN APP 2D 146	Gleichenhaus v. Carlyle	1		5		0	0	0	2	0	0	21	Libel/SumJud4Def.	2
003 KAN APP 2D 461	Belluomo v. KAKE-TV	1		5		7	0	0	8	0	0	15	Defense Verdict/Affd	5
003 KAN APP 2D 536	Traylor v. Wachter (Emcasco Insurance Co.)	1		7	Mix 1 & 5	5	4	105,000	8	0	0	13		1
003 KAN APP 2D 572	Coble v. Scherer	1		7	Mix 1 & 5	1	0	4,000	5	0	1,000	16		4
005 KAN APP 2D 353	Jones v. Smith	1		7	Mix 1 and	3	0	22,500	6	0	22,500	11	TCerrd AllwdDef.Jud	6
005 KAN APP 2D 552	Daniels v. Chaffee (1980)	1		1		2	0	0	6	0	15,000	7	Conversion	5
006 KAN APP 2D 272	Lawrence v. Phillips Petroleum Co.	1		5		0	0	0	1	0	0	18	WkrComp Exclusv Rem.	4
006 KAN APP 2D 342	Nohinek v. Logsdon	1		1		7	1	29,480	6	0	5,000	7		1
006 KAN APP 2D 346	USD #490 v. Celotex Corp.	4		5		5	5	100,000	5	0	43,000	4	600k PD	1
006 KAN APP 2D 735	M&W Development Inc. v. El Paso Water Co.	5		5		7	4	19,707	5	0	132,118	10	Promis. Notes	3
006 KAN APP 2D 798	Speer v. City of Dodge City	1		7	Mix 1 & 4	1	1	17,196	5	0	1,500	8	Conv.Pers.Property	5
006 KAN APP 2D 806	Cooper v. Hutchinson Police Department	1		4		0	0	0	7	0	0	5	InterlocApp/StatLim	3
007 KAN APP 2D 110	Binyon v. Nesseth (C/Ap)	1		1		3	3	0	8	0	0	10	leased auto contract	1
007 KAN APP 2D 369	Lynn v. Taylor	1		1		7	3	13,246	8	0	0	16		1
007 KAN APP 2D 416	Stanfield v. Osborne Industries Inc.	1		7	Mix 1 & 5	7	0	0	7	0	0	16	Royalty contract	2
007 KAN APP 2D 753	Hays House Inc. v. Powell	7	Mix 1 & 5	1		2	2	24,552	7	0	20,000	2	Rev/Rem for new tria	5
008 KAN APP 2D 104	Slough v. J.I. Case Co.	7	Mix 1 & 5	5		4	4	55,500	5	0	150,000	10		1
008 KAN APP 2D 737	Wade v. Ford Motor Credit Company	1		5		8	0	0	7	0	0	28	Repossession	5
0[illegible] APP 2D 760	Mears v. Hartford Fire Ins. Co.	1		5		7	0	0	7	0	0	11		6
00[illegible]N APP 2D 080	Mills v. Smith	1		1		7	0	99	8	0	0	16	No P.D. awarded	4
009 KAN APP 2D 217	Capitol Federal Savings v. Hohman	5		1		2	2	35,000	8	0	0	16	Wilful Breach/Trust	5
009 KAN APP 2D 287	Caplinger v. Carter	1		1		0	0	0	2	0	0	5	Rev/Rem on some Issu	4
009 KAN APP 2D 338	Stevens v. Jayhawk Realty Co.	1		7	Mix 1 & 5	2	0	15,000	6	0	15,000	16	Rev/JNOVFraudnotProv	1
009 KAN APP 2D 338	Collins v. MBPXL Corporation	1		7	Mix 1 & 5	7	0	0	3	0	0	20	Labor Contract	1
009 KAN APP 2D 491	O'Donnell v. Fletcher	1		1		1	0	0	3	0	0	18	J/Def StatLim/Remand	5
010 KAN APP 2D 014	Scott v. Strickland	1		1		7	0	3,935	7	0	0	10	PDnotIssueonAppeal	5
010 KAN APP 2D 073	Ohme v. Ohme	1		1		0	0	0	3	0	0	23	DivorceIndpTort/R&Rm	5
010 KAN APP 2D 350	Hatfield Chevrolet v. Watson Motors	5		5		0	0	0	6	0	0	10	UCCBadFaithTCreversd	1
010 KAN APP 2D 659	Miller v. Clayco State Bank	1		5		7	0	0	1	0	0	2	Garnishment	5
012 KAN APP 2D 095	Topeka Datsun Motor Co. v. Stratton	5		1		2	1	0	5	0	3,083	10	deficiencyjdgmt	0
012 KAN APP 2D 123	State ex. rel. Stephan v. GAF Corporation	4		4		0	5	100,705	6	0	1,000,000	14	defectconstruc	3
12 KAN APP 2D 95	Topeka Datsun Motor Co. v. Stratton	0		0		0	0	0	0	0	0	0		0
219 KAN 140	Gowing v. McCandless	1		1		4	0	4,575	8	0	0	16	NoPDawardedByJury	3
220 KAN 244	Ford v. Guarantee Abstract & Title Co.	1		5		7	4	34,748	6	82,000	0	11	BrechFidDty/R&Rem	6
220 KAN 350	Dold v. Sherow	1		1		2	2	22,000	8	0	0	10	25kPD	5
221 KAN 079	Webber v. Patton	1		1		1	1	63	8	0	0	22	Nominal Awd	4
221 KAN 571	Bribiesca v. City of Wichita	1		4		2	0	0	3	0	0	8	TCtDsmd/KTCAImmunity	2

Case Cite:	Case Title:	PLF TYPE (Key)	PLF EXP	DEF TYPE (Key)	DEF EXP	$PD SOUGHT	$PD AWARDED	ACTUALS AWARDED $$$	DIS POS TYP	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $	THEO of PD KEY	NOTES	TYP CON Key
221 KAN 596	Karms Enterprises Inc. v. Quan	5		1		3	0	24,160	4	5,600	0	5	TCt/noJury/NoPDAwded	3
222 KAN 225	Ayers v. Christianson	1		1		4	0	0	8	0	0	22	A&B/def.Verd.affirmd	5
222 KAN 644	Iseman v. Kansas Gas & Electric	1		5		2	0	9,000	4	3,500	0	16	TortInfCont/NoPDjury	5
223 KAN 477	Redi Bares v. First National Bank of Neodesha	1		7	Mix 1 & 5	0	0	0	7	0	0	10	TC SumJud4Def R&Rem	4
223 KAN 645	Gorrell v. City of Parsons	1		4		0	0	0	5	0	9,236	5	GovImm4PD/JNOV for D	3
224 KAN 406	Holder v. Kansas Steel Built Inc.	1		7	Mix 1 & 5	2	2	7,847	1	0	0	7	WageDisp/6KPDallowed	5
224 KAN 506	Newton v. Hornblower Inc.	1		7	Mix 1 & 5	4	4	133,331	5	0	69,576	24	SharehldrDirv/294kPD	5
225 KAN 678	Henderson v. Hassur	1		1		4	4	48,000	8	0	0	16	215kPD;	**
KAN 070	Modern Air Cond. Inc. v. Cinderella Homes Inc.	5		5		2	0	10,939	6	6,277	0	16	APCtStruckPD	1
AN 662	Citizens State Bank v. Gilmore	5		1		7	0	0	2	0	0	2		1
226 KAN 681	Cantrell v. R.D. Werner Company	1		7	Mix 1 & 5	7	2	18,500	2	0	0	4	Breach EXP warranty	5
227 KAN 045	Temmen v. Kent Brown Chevrolet	1		5		4	2	113	6	0	20,000	10	Warranty/JNOV to def	1
227 KAN 059	Nordstrom v. Miller	1		7	Mix 1 & 5	7	0	90,000	1	0	0	16		1
227 KAN 221	Traylor v. Wachter etal	1		1		4	0	55,000	4	150,000	0	13	TCstruckPD/Affirmed	5
227 KAN 308	Lindquist v. Ayerst Laboratories Inc.	1		5		7	0	0	1	0	0	12	Medical Malpractice	3
227 KAN 580	Citizens State Bank v. Martin	5		1		2	0	41,000	2	0	0	2		1
227 KAN 747	Weigano v. Union National Bank of Wichita	1		5		2	2	0	5	0	10,000	2	R&R/TCterrdRecision	1
227 KAN 914	Spencer v. Aetna Life & Casualty	1		5		0	0	0	3	0	0	11	Q:DoesKShaveBadFaith	6
228 KAN 052	Collier v. Operating Engineers Local #101	1		7		7	0	0	7	0	0	10		5
228 KAN 216	Yocum v. Phillips Petroleum Com.	1		5		5	0	2,258	1	0	0	18	WkrCmpn Affm on App	1
228 KAN 249	Hein v. Lacy	1		1		7	0	0	2	0	0	21	Libel	2
228 KAN 532	Guarantee Title Co. v. Interstate Fire & Cas.	5		5		4	0	17,375	7	0	0	11		6
228 KAN 641	Porter v. Stormont Vail Hospital	1		5		7	0	478	3	0	0	12	jud4Def.	5
229 KAN 210	Scarpelli v. Jones	1		1		3	3	4,000	5	0	44,000	21	Libel -- Judg 4 Def.	2
229 KAN 252	Marcotte Realty & Auction Inc. v. Schumaker	7	Mix 1 & 5	7	Mix 1 & 5	7	2	9,600	1	0	0	10	breach of contract	5
230 KAN 032	Daniels v. Chaffee (1981)	1		1		1	1	2,450	8	5,050	0	28	2kPD/Affmd by S Ct	5
230 KAN 115	Stephens v. Snyder Clinic Assn.	1		7	Mix 1 & 5	7	0	0	3	0	0	12	med mal/StatLimXprd	3
230 KAN 443	Baca v. Walgreen Co.	1		5		7	1	3,943	5	0	1,200	1		5
231 KAN 052	Broomfield v. Mann, Hamm, Vestring etal 79 C 38	1		7	Mix 1 and	7	3	100,613	4	100,613	0	10	VactdVrdReinstated	1
231 KAN 052	Broomfield v. Paul Mann 79 C 37	1		7	Mix 1 & 5	7	3	107,000	4	107,000	0	10	Affmd	1
KAN 052	Augusta Bank & Trust v. Broomfield 78 C 528	1	Def. Coun	5		3	3	60,000	4	60,000	0	2	ReinstatedbySCt.	1
KAN 372	Sieben v. Sieben	1		7	Mix 1 & 5	2	2	19,350	5	0	20,000	10		5
231 KAN 381	Binyon v. Nesseth	1		1		7	3	9,326	8	0	0	10	Affirmed award	1
232 KAN 001	Gobin v. Globe Publishing Company I	1		5		0	0	0	3	0	0	21	Libel/Rev/Remto TCt	4
232 KAN 001	Gobin v. Globe Publishing Company III	1		5		3	0	0	6	0	100,000	21	Libel/SCtRvsdTCtJNOV	3
232 KAN 076	Guarantee Title Co. v. Interstate Fire & Cas.	5		5		7	2	0	6	0	0	11		6
232 KAN 727	Ultimate Chemical Co. v. Surface Transp. Int'l Inc	5		5		7	4	102,000	8	0	0	15		4
233 KAN 492	Kearney v. Kansas Public Services Co.	7	Mix 1 & 5	5		7	3	97,000	0	0	0	0	FIND/REREAD	0
233 KAN 555	Eitus v. Orkin Exterminating Co.	1		7	Mix 1 & 4	7	3	33,195	8	0	0	16	READ	1
233 KAN 572	Sampson v. Hunt	1		7	Mix 1&5	5	4	10,000	8	0	0	17	300kPD/READ	1
233 KAN 656	Geiger v. Wallace	1		1		1	1	408	8	0	0	7	Ct.trial/afmdonApp	2
234 KAN 354	W.V. Enterprises Inc. v. FSLIC	5		4	federal a	7	4	1,045,944	8	0	0	2	Breach of contract	5
234 KAN 721	Goben v. Barry	7	Mix 1 & 5	7	Mix 1 & 5	7	3	0	8	0	0	10	breach of K; dissolu	1
234 KAN 811	Missouri Medical Co. v. Wong	5		1		7	0	0	1	0	0	11	Affmd no breach of K	6
234 KAN 898	Price v. Grimes	1		1		7	3	85,000	8	0	0	16	breach of K	1
235 KAN 045	Kelley v. Commercial National Bank	1		5		7	0	3,292	1	0	0	11	& 13; Promissry Note	6
235 KAN 175	Iola State Bank v. Bolan	5		1		7	4	26,663	8	0	0	2	DefCntClm	5
235 KAN 580	Plains Resources Inc. v. Empire Drilling Co.	5		7	Mix 1 & 5	7	5	282,569	8	0	0	16	DrillHoleSabotaged	5
235 KAN 815	Capitol Federal Savings & Loan v. Hohman	5		1		2	2	0	8	0	35,000	16	MtgInvalid READ	5

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235 KAN 870	Bowman v. Doherty	1		1		7	1	100	7	0	900	12	Leg/Mal	4
236 KAN 090	Stevens v. Jayhawk Realty Co. Inc.	1		5		7	2	15,000	6	0	15,000	16	JNOV for def.	1
236 KAN 108	Betts v. General Motors	1		5		0	0	0	4	0	0	4	TCtgranted JNOV	3
236 KAN 120	State Farm Fire & Casualty v. Liggett	5		1		8	0	119,998	5	0	119,998	11	119998wasAttFeeReman	5
236 KAN 335	Oberhelman v. Barnes Investment Corp.	1		5		8	8	0	8	0	0	24	Derivitive Action	1
236 KAN 417	City of Ottawa v. Heathman	4		1		0	0	70,000	8	27,767	0	16	TCaddi27k/affd/noPD	3
236 KAN 626	ANCO Construction Co. Ltd v. Freeman	5		1		8	0	0	3	0	0	21	Libel	4
236 KAN 664	Neufeldt v. L.R. Foy Construction Co.	1		5		8	4	50,000	6	0	100,000	25	Outrage/SCtJNOVP.D.	4
27[illegible] 811	Farm Bureau Ins. Inc. v. Stephen Miller	5		1		7	0	0	1	0	0	11		6
23[illegible] 184	Thurner v. Kaufman	7	Mix 1 & 5	1		7	0	6,750	4	6,750	0	16	Oil/gasLeaseRev	5
237 KAN 195	Ford Motor Company v. Suburban Ford	5		5		7	0	1,750,000	6	0	1,750,000	10	Contract Actuals61K	5
237 KAN 495	Carmichael v. Halstead Nursing Center Ltd	1		5		7	3	50,000	8	0	0	10	unJustEnr/39kactuals	5
237 KAN 629	Ling v. Jan's Liquor Stores	1		5		7	0	0	3	0	0	26	DramShop/TCDismissed	4
238 KAN 308	Decker Investments v. Bank of Whitewater	5		5		7	0	0	3	0	0	10	MTGforclosure	1
238 KAN 462	McDermott v. Kansas Public Service Co.	1		5		4	0	0	7	0	0	16	Fire Damage	4
238 KAN 663	Executive Financial Service Inc. v. Loyd	5		7	Mix 1 & 5	0	0	0	1	0	0	10	Breach of K	5
238 KAN 732	Andres v. Claassen	1		1		7	0	0	8	0	0	16	TCdeniedPDclaim/Affm	1
240 KAN 262	Davis v. Odell	1		1		0	0	1,910	4	500	0	27	landlord/tenant	3
240 KAN 562	Smith v. United Technologies	1		4		0	2	30,000	8	0	0	5		2
240 KAN 671	North Cent. Kansas Production Ass'n v. Hansen	0		0		0	0	0	0	0	0	0		0
241 KAN 013	Beck v. Kansas Adult Authority	0		0		0	0	0	0	0	0	0		0
241 KAN 042	Mohr v. State Bank of Stanley	3		4		4	3	224,452	5	0	76,000	2	conversion	4
241 KAN 257	Southwest Nat. Bank of Wichita v. ATG Const. Mngmt	0		0		0	0	0	0	0	0	0		0
241 KAN 281	Cooper v. Re-Max Wyandotte Cty Real Estate, Inc.	0		0		0	0	0	0	0	0	0		0
241 KAN 441	Tetuan v. A.H. Robins Co.	0		0		0	0	0	0	0	0	0		0
241 KAN 501	Morriss v. Coleman Co., Inc.	0		0		0	0	0	0	0	0	0		0
241 KAN 525	Slaymaker v. Westgate State Bank	0		0		0	0	0	0	0	0	0		0
241 KAN 647	Hunt v. Dresie	0		0		0	0	0	0	0	0	0		0
242 KAN 94	Boydston v. Board of Regents for State of Kan.	0		0		0	0	0	0	0	0	0		0
525 [illegible] SUPP 46	Miller v. Lear Siegler, Inc. (1981)	1		4		7	3	35,000	8	0	0	21	libel/slander	2
54[illegible] 532	Coleman V. Holeck (1976)	1		7	Mix 1 & 4	7	3	323,117	8	0	0	11		1
562 [illegible]2D 19	Barbour v. U.S.	1		3		7	2	5,000	8	0	0	2		1
590 F2D 860	Scholz Homes, Inc. v. Wallace	5		1		3	2	20,000	8	0	0	10		1
592 F. SUPP 976	Miller v. Cudahy Co.	1		4		7	6	3,117,739	7	0	0	15	pendingevaluation	3
619 F. SUPP 1465	Earth Scientists v. US Fidelity & Guarantee	4		4		7	0	0	1	0	0	11		1
626 F. SUPP 1246	Coffey v. US on Behalf of Commodity Credit Corp.	1		3		2	0	0	3	0	0	10	lackedjurisdiction	5
640 F. SUPP 953	Fogarty v. Campbell 66 Exp. Inc. etal	7	Estate of	7	Mix of 1	7	0	0	2	0	0	17	Mix of 13 and 17	4
641 F. SUPP 98	Kupka v. GNP Commodities Inc. etla	1		7	Mixed 1 &	7	0	0	1	0	0	17		1
654 F. SUPP 870	Urban v. Henley	0		0		0	0	0	0	0	0	0		0
656 F. SUPP 316	Miller v. Cudahy Co.	0		0		0	0	0	0	0	0	0		0
659 F. SUPP 1201	Ortega v. City of Kansas City, Kan.	0		0		0	0	0	0	0	0	0		0
663 F. SUPP. 1360	Reazin, et al v. Blue Cross & Blue Sheild et al	6	Mix 1 & 4	4		7	5	10,007,882	8	0	0	7	FedAntitrust750KP.D.	5
666 F. SUPP 1483	Graham by Graham v. Wyeth Laboratories, a Div. of	0		0		0	0	0	0	0	0	0		0
667 F. SUPP 1423	American Motorists Ins. Co. v. General Host Corp.	0		0		0	0	0	0	0	0	0		0
670 F. SUPP 310	Boyd Motors, Inc. v. Employers Ins. of Wausau	0		0		0	0	0	0	0	0	0		0
670 F2D 907	Barta v. Long (1982)	1		4		7	3	234,360	8	0	0	9		1
673 F. SUPP 1032	Endsley v. Naes	0		0		0	0	0	0	0	0	0		0
674 F. SUPP 1432	Drez v. E.R. Squibb & Sons, Inc.	0		0		0	0	0	0	0	0	0		0
705 F2D 286	Miller v. City of Mission, Kan. (1983)	1		7	City of M	7	2	20,000	8	0	7,500	5		2

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715 P2D 1045	Sec. of SRS v. Fomby	4		1		1	0	7,230	5	0	2,500	1	WelfareFr/NoPDallowe	1
716 P2D 524	White v. Adler etal	1		5		7	0	51,000	5	0	51,000	6	SCtRvrsdTCt/JNOV Def	1
716 P2D 544	Consolidated Beef Industries v. Schuyler	5		1		7	0	0	8	0	0	10	PD Recovered/AmtUnkn	1
718 P2D 604	Short v. Wise	1		1		1	1	25,204	8	0	0	15	$1 PD awarded	5
719 P2D 020	Winner v. Florey	1		1		2	0	0	3	0	0	5	FalseImpr/TCRev/Rem	5
722 P2D 0530	Newell v. Krause	1		1		7	4	171,833	2	0	0	16	150kPDonOneCoDef/Afm	1
722 P2D 1106	Turner v. Halliburton Co.	1		7	Mix 1 & 5	3	0	0	6	0	86,700	21	Defamation/Jreversed	5
722 P2D 1125	Grainland Farms Inc. v. ARKLA Gas Co. etal	5		5		2	0	500	1	0	0	15		2
[illegible]2D 660	Johnson v. Greer Real Estate Co.	1		5		1	2	8,600	1	0	0	16	SCtaffmdTC action	1
[illegible]2D 606	Kain v. Winslow MFG., Inc. (1984)	3		4		7	4	144,744	4	0	0	20	Tort/unfaircomp	1
814 F 2D 1489	Koch v. City of Hutchinson	0		0		0	0	0	0	0	0	0		0
815 F 2D 617	Carter v. City of Emporia, Kan.	0		0		0	0	0	0	0	0	0		0
821 F 2D 1438	O'Gilvie v. International Playtex, Inc.	0		0		0	0	0	0	0	0	0		0

FINAL TOTALS	ACTUALS AWARDED $$$	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $
TOTAL	19,834,299	555,057	3,926,811
AVG	123,964	3,469	24,542
COUNT	160	160	160

* * * * * E N D O F R E P O R T * * * * *

Case Cite:	Case Title:	PLF TYPE (Key)	PLF EXP	DEF TYPE (Key)	DEF EXP	$PD SOUGHT	$PD AWARDED	ACTUALS AWARDED $$$	DIS POS TYP	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $	THEO of PD KEY	N O T E S	TYP CON Key
F2D , 1987 K	State ex rel Stephan v Gaf Corporation, etal	0		0		0	0	0	0	0	0	0		0
F2D , 1987 K	Armstrong v. Goldblatt Tool Co.	0		0		0	0	0	0	0	0	0		0
F2D , 1988 K	Western Motor Co., Inc. v. Kuehn etal	0		0		0	0	0	0	0	0	0		0
12 KAN APP 2D 95	Topeka Datsun Motor Co. v. Stratton	0		0		0	0	0	0	0	0	0		0
233 KAN 492	Kearney v. Kansas Public Services Co.	7	Mix 1 & 5	5		7	3	97,000	0	0	0	0	FIND/REREAD	0
240 KAN 671	North Cent. Kansas Production Ass'n v. Hansen	0		0		0	0	0	0	0	0	0		0
241 KAN 013	Beck v. Kansas Adult Authority	0		0		0	0	0	0	0	0	0		0
241 KAN 257	Southwest Nat. Bank of Wichita v. ATG Const. Mngmt	0		0		0	0	0	0	0	0	0		0
24[illegible]N 281	Cooper v. Re-Max Wyandotte Cty Real Estate, Inc.	0		0		0	0	0	0	0	0	0		0
2[illegible]N 441	Tetuan v. A.H. Robins Co.	0		0		0	0	0	0	0	0	0		0
241 KAN 501	Morriss v. Coleman Co., Inc.	0		0		0	0	0	0	0	0	0		0
241 KAN 525	Slaymaker v. Westgate State Bank	0		0		0	0	0	0	0	0	0		0
241 KAN 647	Hunt v. Dresie	0		0		0	0	0	0	0	0	0		0
242 KAN 94	Boydston v. Board of Regents for State of Kan.	0		0		0	0	0	0	0	0	0		0
654 F. SUPP 870	Urban v. Henley	0		0		0	0	0	0	0	0	0		0
656 F. SUPP 316	Miller v. Cudahy Co.	0		0		0	0	0	0	0	0	0		0
659 F. SUPP 1201	Ortega v. City of Kansas City, Kan.	0		0		0	0	0	0	0	0	0		0
666 F. SUPP 1483	Graham by Graham v. Wyeth Laboratories, a Div. of	0		0		0	0	0	0	0	0	0		0
667 F. SUPP 1423	American Motorists Ins. Co. v. General Host Corp.	0		0		0	0	0	0	0	0	0		0
670 F. SUPP 310	Boyd Motors, Inc. v. Employers Ins. of Wausau	0		0		0	0	0	0	0	0	0		0
673 F. SUPP 1032	Endsley v. Naes	0		0		0	0	0	0	0	0	0		0
674 F. SUPP 1432	Drez v. E.R. Squibb & Sons, Inc.	0		0		0	0	0	0	0	0	0		0
814 F 2D 1489	Koch v. City of Hutchinson	0		0		0	0	0	0	0	0	0		0
815 F 2D 617	Carter v. City of Emporia, Kan.	0		0		0	0	0	0	0	0	0		0
821 F 2D 1438	O'Gilvie v. International Playtex, Inc.	0		0		0	0	0	0	0	0	0		0
230 KAN 443	Baca v. Walgreen Co.	1		5		7	1	3,943	5	0	1,200	1		5
715 P2D 1045	Sec. of SRS v. Fomby	4		1		1	0	7,230	5	0	2,500	1	WelfareFr/NoPDallowe	1
007 KAN APP 2D 753	Hays House Inc. v. Powell	7	Mix 1 & 5	1		2	2	24,552	7	0	20,000	2	Rev/Rem for new tria	5
010 KAN APP 2D 659	Miller v. Clayco State Bank	1		5		7	0	0	1	0	0	2	Garnishment	5
226 KAN 662	Citizens State Bank v. Gilmore	5		1		7	0	0	2	0	0	2		1
2[illegible] 580	Citizens State Bank v. Martin	5		1		2	0	41,000	2	0	0	2		1
22[illegible] 747	Weigano v. Union National Bank of Wichita	1		5		2	2	0	5	0	10,000	2	R&R/TCterrdRecision	1
231 KAN 052	Augusta Bank & Trust v. Broomfield 78 C 528	1	Def. Coun	5		3	3	60,000	4	60,000	0	2	ReinstatedbySCt.	1
234 KAN 354	W.V. Enterprises Inc. v. FSLIC	5		4	federal a	7	4	1,045,944	8	0	0	2	Breach of contract	5
235 KAN 175	Iola State Bank v. Bolan	5		1		7	4	26,663	8	0	0	2	DefCntClm	5
241 KAN 042	Mohr v. State Bank of Stanley	3		4		4	3	224,452	5	0	76,000	2	conversion	4
562 F2D 19	Barbour v. U.S.	1		3		7	2	5,000	8	0	0	2		1
006 KAN APP 2D 346	USD #490 v. Celotex Corp.	4		5		5	5	100,000	5	0	43,000	4	600k PD	1
226 KAN 681	Cantrell v. R.D. Werner Company	1		7	Mix 1 & 5	7	2	18,500	2	0	0	4	Breach EXP warranty	5
236 KAN 108	Betts v. General Motors	1		5		0	0	0	4	0	0	4	TCtgranted JNOV	3
USDC 83-4040	Fisher v. Triplet Inc.	1		7	Mix 1 & 5	7	0	0	1	0	0	5		5
006 KAN APP 2D 806	Cooper v. Hutchinson Police Department	1		4		0	0	0	7	0	0	5	InterlocApp/StatLim	3
009 KAN APP 2D 287	Caplinger v. Carter	1		1		0	0	0	2	0	0	5	Rev/Rem on some Issu	4
221 KAN 596	Karms Enterprises Inc. v. Quan	5		1		3	0	24,160	4	5,600	0	5	TCt/noJury/NoPDAwded	3
223 KAN 645	Gorrell v. City of Parsons	1		4		0	0	0	5	0	9,236	5	GovImm4PD/JNOV for D	3
240 KAN 562	Smith v. United Technologies	1		4		0	2	30,000	8	0	0	5		2
705 F2D 286	Miller v. City of Mission, Kan. (1983)	1		7	City of M	7	2	20,000	8	0	7,500	5		2
719 P2D 020	Winner v. Florey	1		1		2	0	0	3	0	0	5	FalseImpr/TCRev/Rem	5
716 P2D 524	White v. Adler etal	1		5		7	0	51,000	5	0	51,000	6	SCtRvrsdTCt/JNOV Def	1

Case Cite:	Case Title:	PLF TYPE (Key)	PLF EXP	DEF TYPE (Key)	DEF EXP	$PD SOUGHT	$PD AWARDED	ACTUALS AWARDED $$$	DIS POS TYP	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $	THEO of PD KEY	N O T E S	TYP CON Key
005 KAN APP 2D 552	Daniels v. Chaffee (1980)	1		1		2	0	0	6	0	15,000	7	Conversion	5
006 KAN APP 2D 342	Nohinek v. Logsdon	1		1		7	1	29,480	6	0	5,000	7		1
224 KAN 406	Holder v. Kansas Steel Built Inc.	1		7	Mix 1 & 5	2	2	7,847	1	0	0	7	WageDisp/6KPDallowed	5
233 KAN 656	Geiger v. Wallace	1		1		1	1	408	8	0	0	7	Ct.trial/afmdonApp	2
663 F. SUPP. 1360	Reazin, et al v. Blue Cross & Blue Sheild et al	6	Mix 1 & 4	4		7	5	10,007,882	8	0	0	7	FedAntitrust750KP.D.	5
001 KAN APP 2D 180	McHugh v. City of Wichita	1		4		1	0	0	3	0	0	8	KTCA immunity	3
006 KAN APP 2D 798	Speer v. City of Dodge City	1		7	Mix 1 & 4	1	1	17,196	5	0	1,500	8	Conv.Pers.Property	5
221 KAN 571	Bribiesca v. City of Wichita	1		4		2	0	0	3	0	0	8	TCtDsmd/KTCAImmunity	2
67[illegible]2D 907	Barta v. Long (1982)	1		4		7	3	234,360	8	0	0	9		1
[illegible]N APP 2D 610	Jennings v. Speaker etal	1		1		0	0	13,043	0	0	0	10	TC affirmed;no P.D.	5
00[illegible] KAN APP 2D 077	Mansfield Painting Inc. v. Budlaw Services Inc.	5		5		1	1	6,308	1	0	0	10	BreachFidDty/affmd	1
006 KAN APP 2D 735	M&W Development Inc. v. El Paso Water Co.	5		5		7	4	19,707	5	0	132,118	10	Promis. Notes	3
007 KAN APP 2D 110	Binyon v. Nesseth (C/Ap)	1		1		3	3	0	8	0	0	10	leased auto contract	1
008 KAN APP 2D 104	Slough v. J.I. Case Co.	7	Mix 1 & 5	5		4	4	55,500	5	0	150,000	10		1
010 KAN APP 2D 014	Scott v. Strickland	1		1		7	0	3,935	7	0	0	10	PDnotIssueonAppeal	5
010 KAN APP 2D 350	Hatfield Chevrolet v. Watson Motors	5		5		0	0	0	6	0	0	10	UCCBadFaithTCreversd	1
012 KAN APP 2D 095	Topeka Datsun Motor Co. v. Stratton	5		1		2	1	0	5	0	3,083	10	deficiencyjdgmt	0
220 KAN 350	Dold v. Sherow	1		1		2	2	22,000	8	0	0	10	25kPD	5
223 KAN 477	Redi Bares v. First National Bank of Neodesha	1		7	Mix 1 & 5	0	0	0	7	0	0	10	TC SumJud4Def R&Rem	4
227 KAN 045	Temmen v. Kent Brown Chevrolet	1		5		4	2	113	6	0	20,000	10	Warranty/JNOV to def	1
228 KAN 052	Collier v. Operating Engineers Local #101	1		7		7	0	0	7	0	0	10		5
229 KAN 252	Marcotte Realty & Auction Inc. v. Schumaker	7	Mix 1 & 5	7	Mix 1 & 5	7	2	9,600	1	0	0	10	breach of contract	5
231 KAN 052	Broomfield v. Paul Mann 79 C 37	1		7	Mix 1 & 5	7	3	107,000	4	107,000	0	10	Affmd	1
231 KAN 052	Broomfield v. Mann, Hamm, Vestring etal 79 C 38	1		7	Mix 1 and	7	3	100,613	4	100,613	0	10	VactdVrdReinstated	1
231 KAN 372	Sieben v. Sieben	1		7	Mix 1 & 5	2	2	19,350	5	0	20,000	10		5
231 KAN 381	Binyon v. Nesseth	1		1		7	3	9,326	8	0	0	10	Affirmed award	1
234 KAN 721	Goben v. Barry	7	Mix 1 & 5	7	Mix 1 & 5	7	3	0	8	0	0	10	breach of K; dissolu	1
237 KAN 195	Ford Motor Company v. Suburban Ford	5		5		7	0	1,750,000	6	0	1,750,000	10	Contract Actuals61K	5
237 KAN 495	Carmichael v. Halstead Nursing Center Ltd	1		5		7	3	50,000	8	0	0	10	unJustEnr/39kactuals	5
238 KAN 308	Decker Investments v. Bank of Whitewater	5		5		7	0	0	3	0	0	10	MTGforclosure	1
[illegible]AN 663	Executive Financial Service Inc. v. Loyd	5		7	Mix 1 & 5	0	0	0	1	0	0	10	Breach of K	5
[illegible]2D 860	Scholz Homes, Inc. v. Wallace	5		1		3	2	20,000	8	0	0	10		1
626 F. SUPP 1246	Coffey v. US on Behalf of Commodity Credit Corp.	1		3		2	0	0	3	0	0	10	lackedjurisdiction	5
716 P2D 544	Consolidated Beef Industries v. Schuyler	5		1		7	0	0	8	0	0	10	PD Recovered/AmtUnkn	1
005 KAN APP 2D 353	Jones v. Smith	1		7	Mix 1 and	3	0	22,500	6	0	22,500	11	TCerrd AllwdDef.Jud	6
008 KAN APP 2D 760	Mears v. Hartford Fire Ins. Co.	1		5		7	0	0	7	0	0	11		6
220 KAN 244	Ford v. Guarantee Abstract & Title Co.	1		5		7	4	34,748	6	82,000	0	11	BrechFidDty/R&Rem	6
227 KAN 914	Spencer v. Aetna Life & Casualty	1		5		0	0	0	3	0	0	11	Q:DoesKShaveBadFaith	6
228 KAN 532	Guarantee Title Co. v. Interstate Fire & Cas.	5		5		4	0	17,375	7	0	0	11		6
232 KAN 076	Guarantee Title Co. v. Interstate Fire & Cas.	5		5		7	2	0	6	0	0	11		6
234 KAN 811	Missouri Medical Co. v. Wong	5		1		7	0	0	1	0	0	11	Affmd no breach of K	6
235 KAN 045	Kelley v. Commercial National Bank	1		5		7	0	3,292	1	0	0	11	& 13; Promissry Note	6
236 KAN 120	State Farm Fire & Casualty v. Liggett	5		1		8	0	119,998	5	0	119,998	11	119998wasAttFeeReman	5
236 KAN 811	Farm Bureau Ins. Inc. v. Stephen Miller	5		1		7	0	0	1	0	0	11		6
542 F2D 532	Coleman V. Holeck (1976)	1		7	Mix 1 & 4	7	3	323,117	8	0	0	11		1
619 F. SUPP 1465	Earth Scientists v. US Fidelity & Guarantee	4		4		7	0	0	1	0	0	11		1
227 KAN 308	Lindquist v. Ayerst Laboratories Inc.	1		5		7	0	0	1	0	0	12	Medical Malpractice	3
228 KAN 641	Porter v. Stormont Vail Hospital	1		5		7	0	478	3	0	0	12	jud4Def.	5
230 KAN 115	Stephens v. Snyder Clinic Assn.	1		7	Mix 1 & 5	7	0	0	3	0	0	12	med mal/StatLimXprd	3

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235 KAN 870	Bowman v. Doherty	1		1		7	1	100	7	0	900	12	Leg/Mal	4
003 KAN APP 2D 536	Traylor v. Wachter (Emcasco Insurance Co.)	1		7	Mix 1 & 5	5	4	105,000	8	0	0	13		1
227 KAN 221	Traylor v. Wachter etal	1		1		4	0	55,000	4	150,000	0	13	TCstruckPD/Affirmed	5
012 KAN APP 2D 123	State ex. rel. Stephan v. GAF Corporation	4		4		0	5	100,705	6	0	1,000,000	14	defectconstruc	3
003 KAN APP 2D 461	Belluomo v. KAKE-TV	1		5		7	0	0	8	0	0	15	Defense Verdict/Affd	5
232 KAN 727	Ultimate Chemical Co. v. Surface Transp. Int'l Inc	5		5		7	4	102,000	8	0	0	15		4
592 F. SUPP 976	Miller v. Cudahy Co.	1		4		7	6	3,117,739	7	0	0	15	pendingevaluation	3
718 P2D 604	Short v. Wise	1		1		1	1	25,204	8	0	0	15	$1 PD awarded	5
[illegible]2D 1125	Grainland Farms Inc. v. ARKLA Gas Co. etal	5		5		2	0	500	1	0	0	15		2
[illegible]AN APP 2D 313	Sanders v. Park Towne Ltd.	1		7	Mix 1 & 5	4	4	32,981	8	0	0	16	100kPD/Affmd/NoJury	1
002 KAN APP 2D 385	George v. Bolen-Williams Realtors	1		7	Mix 1 & 5	4	0	180,000	7	0	0	16	R&RemNewTrialonPD	5
003 KAN APP 2D 572	Coble v. Scherer	1		7	Mix 1 & 5	1	0	4,000	5	0	1,000	16		4
007 KAN APP 2D 369	Lynn v. Taylor	1		1		7	3	13,246	8	0	0	16		1
007 KAN APP 2D 416	Stanfield v. Osborne Industries Inc.	1		7	Mix 1 & 5	7	0	0	7	0	0	16	Royalty contract	2
009 KAN APP 2D 080	Mills v. Smith	1		1		7	0	99	8	0	0	16	No P.D. awarded	4
009 KAN APP 2D 217	Capitol Federal Savings v. Hohman	5		1		2	2	35,000	8	0	0	16	Wilful Breach/Trust	5
009 KAN APP 2D 338	Stevens v. Jayhawk Realty Co.	1		7	Mix 1 & 5	2	0	15,000	6	0	15,000	16	Rev/JNOVFraudnotProv	1
219 KAN 140	Gowing v. McCandless	1		1		4	0	4,575	8	0	0	16	NoPDawardedByJury	3
222 KAN 644	Iseman v. Kansas Gas & Electric	1		5		2	0	9,000	4	3,500	0	16	TortInfCont/NoPDjury	5
225 KAN 678	Henderson v. Hassur	1		1		4	4	48,000	8	0	0	16	215kPD;	**
226 KAN 070	Modern Air Cond. Inc. v. Cinderella Homes Inc.	5		5		2	0	10,939	6	6,277	0	16	APCtStruckPD	1
227 KAN 059	Nordstrom v. Miller	1		7	Mix 1 & 5	7	0	90,000	1	0	0	16		1
233 KAN 555	Eitus v. Orkin Exterminating Co.	1		7	Mix 1 & 4	7	3	33,195	8	0	0	16	READ	1
234 KAN 898	Price v. Grimes	1		1		7	3	85,000	8	0	0	16	breach of K	1
235 KAN 580	Plains Resources Inc. v. Empire Drilling Co.	5		7	Mix 1 & 5	7	5	282,569	8	0	0	16	DrillHoleSabotaged	5
235 KAN 815	Capitol Federal Savings & Loan v. Hohman	5		1		2	2	0	8	0	35,000	16	MtgInvalid READ	5
236 KAN 090	Stevens v. Jayhawk Realty Co. Inc.	1		5		7	2	15,000	6	0	15,000	16	JNOV for def.	1
236 KAN 417	City of Ottawa v. Heathman	4		1		0	0	70,000	8	27,767	0	16	TCaddi27k/affd/noPD	3
237 KAN 184	Thurner v. Kaufman	7	Mix 1 & 5	1		7	0	6,750	4	6,750	0	16	Oil/gasLeaseRev	5
238 KAN 462	McDermott v. Kansas Public Service Co.	1		5		4	0	0	7	0	0	16	Fire Damage	4
[illegible]AN 732	Andres v. Claassen	1		1		7	0	0	8	0	0	16	TCdeniedPDclaim/Affm	1
[illegible].2D 0530	Newell v. Krause	1		1		7	4	171,833	2	0	0	16	150kPDonOneCoDef/Afm	1
722 P2D 660	Johnson v. Greer Real Estate Co.	1		5		1	2	8,600	1	0	0	16	SCtaffmdTC action	1
233 KAN 572	Sampson v. Hunt	1		7	Mix 1&5	5	4	10,000	8	0	0	17	300kPD/READ	1
640 F. SUPP 953	Fogarty v. Campbell 66 Exp. Inc. etal	7	Estate of	7	Mix of 1	7	0	0	2	0	0	17	Mix of 13 and 17	4
641 F. SUPP 98	Kupka v. GNP Commodities Inc. etla	1		7	Mixed 1 &	7	0	0	1	0	0	17		1
006 KAN APP 2D 272	Lawrence v. Phillips Petroleum Co.	1		5		0	0	0	1	0	0	18	WkrComp Exclusv Rem.	4
009 KAN APP 2D 491	O'Donnell v. Fletcher	1		1		1	0	0	3	0	0	18	J/Def StatLim/Remand	5
228 KAN 216	Yocum v. Phillips Petroleum Com.	1		5		5	0	2,258	1	0	0	18	WkrCmpn Affm on App	1
002 KAN APP 2D 406	Thurman v. Cundiff	1		1		0	0	15,000	3	0	0	19	FalseArrest/NoPD/R&R	5
002 KAN APP 2D 683	Kiser v. Gilmore	1		7	Mix 1 & 5	2	2	3,888	7	0	0	20	K Law/15kPD/NewTrial	4
009 KAN APP 2D 338	Collins v. MBPXL Corporation	1		7	Mix 1 & 5	7	0	0	3	0	0	20	Labor Contract	1
736 F2D 606	Kain v. Winslow MFG., Inc. (1984)	3		4		7	4	144,744	4	0	0	20	Tort/unfaircomp	1
003 KAN APP 2D 146	Gleichenhaus v. Carlyle	1		5		0	0	0	2	0	0	21	Libel/SumJud4Def.	2
228 KAN 249	Hein v. Lacy	1		1		7	0	0	2	0	0	21	Libel	2
229 KAN 210	Scarpelli v. Jones	1		1		3	3	4,000	5	0	44,000	21	Libel -- Judg 4 Def.	2
232 KAN 001	Gobin v. Globe Publishing Company I	1		5		0	0	0	3	0	0	21	Libel/Rev/Remto TCt	4
232 KAN 001	Gobin v. Globe Publishing Company III	1		5		3	0	0	6	0	100,000	21	Libel/SCtRvsdTCtJNOV	3
236 KAN 626	ANCO Construction Co. Ltd v. Freeman	5		1		8	0	0	3	0	0	21	Libel	4

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525 F. SUPP 46	Miller v. Lear Siegler, Inc. (1981)	1		4		7	3	35,000	8	0	0	21	libel/slander	2
722 F2D 1106	Turner v. Halliburton Co.	1		7	Mix 1 & 5	3	0	0	6	0	86,700	21	Defamation/Jreversed	5
001 KAN APP 2D 203	Hubin v. Shira	1		1		3	3	25,000	8	0	0	22	Assault/Battery30kPD	4
221 KAN 079	Webber v. Patton	1		1		1	1	63	8	0	0	22	Nominal Awd	4
222 KAN 225	Ayers v. Christianson	1		1		4	0	0	8	0	0	22	A&B/def.Verd.affirmd	5
010 KAN APP 2D 073	Ohme v. Ohme	1		1		0	0	0	3	0	0	23	DivorceIndpTort/R&Rm	5
224 KAN 506	Newton v. Hornblower Inc.	1		7	Mix 1 & 5	4	4	133,331	5	0	69,576	24	SharehldrDirv/294kPD	5
236 KAN 335	Oberhelman v. Barnes Investment Corp.	1		5		8	8	0	8	0	0	24	Derivitive Action	1
27[illegible]AN 664	Neufeldt v. L.R. Foy Construction Co.	1		5		8	4	50,000	6	0	100,000	25	Outrage/SCtJNOVP.D.	4
[illegible] N 629	Ling v. Jan's Liquor Stores	1		5		7	0	0	3	0	0	26	DramShop/TCDismissed	4
240 KAN 262	Davis v. Odell	1		1		0	0	1,910	4	500	0	27	landlord/tenant	3
008 KAN APP 2D 737	Wade v. Ford Motor Credit Company	1		5		8	0	0	7	0	0	28	Repossession	5
230 KAN 032	Daniels v. Chaffee (1981)	1		1		1	1	2,450	8	5,050	0	28	2kPD/Affmd by S Ct	5

FINAL TOTALS

	ACTUALS AWARDED	TRIALCT REDUCED	APP CT. REDUCED
TOTAL	19,834,299	555,057	3,926,811
AVG	123,964	3,469	24,542
COUNT	160	160	160

* * * * * E N D O F R E P O R T * * * * *

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230 KAN 443	Baca v. Walgreen Co.	1		5		7	1	3,943	5	0	1,200	1		5
227 KAN 747	Weigano v. Union National Bank of Wichita	1		5		2	2	0	5	0	10,000	2	R&R/TCterrdRecision	1
234 KAN 354	W.V. Enterprises Inc. v. FSLIC	5		4	federal a	7	4	1,045,944	8	0	0	2	Breach of contract	5
235 KAN 175	Iola State Bank v. Bolan	5		1		7	4	26,663	8	0	0	2	DefCntClm	5
241 KAN 042	Mohr v. State Bank of Stanley	3		4		4	3	224,452	5	0	76,000	2	conversion	4
562 F2D 19	Barbour v. U.S.	1		3		7	2	5,000	8	0	0	2		1
006 KAN APP 2D 346	USD #490 v. Celotex Corp.	4		5		5	5	100,000	5	0	43,000	4	600k PD	1
240 KAN 562	Smith v. United Technologies	1		4		0	2	30,000	8	0	0	5		2
[illegible] 2D 286	Miller v. City of Mission, Kan. (1983)	1		7	City of M	7	2	20,000	8	0	7,500	5		2
[illegible] AN 656	Geiger v. Wallace	1		1		1	1	408	8	0	0	7	Ct.trial/afmdonApp	2
663 F. SUPP. 1360	Reazin, et al v. Blue Cross & Blue Sheild et al	6	Mix 1 & 4	4		7	5	10,007,882	8	0	0	7	FedAntitrust750KP.D.	5
006 KAN APP 2D 798	Speer v. City of Dodge City	1		7	Mix 1 & 4	1	1	17,196	5	0	1,500	8	Conv.Pers.Property	5
670 F2D 907	Barta v. Long (1982)	1		4		7	3	234,360	8	0	0	9		1
006 KAN APP 2D 735	M&W Development Inc. v. El Paso Water Co.	5		5		7	4	19,707	5	0	132,118	10	Promis. Notes	3
007 KAN APP 2D 110	Binyon v. Nesseth (C/Ap)	1		1		3	3	0	8	0	0	10	leased auto contract	1
008 KAN APP 2D 104	Slough v. J.I. Case Co.	7	Mix 1 & 5	5		4	4	55,500	5	0	150,000	10		1
012 KAN APP 2D 095	Topeka Datsun Motor Co. v. Stratton	5		1		2	1	0	5	0	3,083	10	deficiencyjdgmt	0
220 KAN 350	Dold v. Sherow	1		1		2	2	22,000	8	0	0	10	25kPD	5
231 KAN 372	Sieben v. Sieben	1		7	Mix 1 & 5	2	2	19,350	5	0	20,000	10		5
231 KAN 381	Binyon v. Nesseth	1		1		7	3	9,326	8	0	0	10	Affirmed award	1
234 KAN 721	Goben v. Barry	7	Mix 1 & 5	7	Mix 1 & 5	7	3	0	8	0	0	10	breach of K; dissolu	1
237 KAN 495	Carmichael v. Halstead Nursing Center Ltd	1		5		7	3	50,000	8	0	0	10	unJustEnr/39kactuals	5
590 F2D 860	Scholz Homes, Inc. v. Wallace	5		1		3	2	20,000	8	0	0	10		1
542 F2D 532	Coleman V. Holeck (1976)	1		7	Mix 1 & 4	7	3	323,117	8	0	0	11		1
003 KAN APP 2D 536	Traylor v. Wachter (Emcasco Insurance Co.)	1		7	Mix 1 & 5	5	4	105,000	8	0	0	13		1
232 KAN 727	Ultimate Chemical Co. v. Surface Transp. Int'l Inc	5		5		7	4	102,000	8	0	0	15		4
718 P2D 604	Short v. Wise	1		1		1	1	25,204	8	0	0	15	$1 PD awarded	5
002 KAN APP 2D 313	Sanders v. Park Towne Ltd.	1		7	Mix 1 & 5	4	4	32,981	8	0	0	16	100kPD/Affmd/NoJury	1
007 KAN APP 2D 369	Lynn v. Taylor	1		1		7	3	13,246	8	0	0	16		1
009 KAN APP 2D 217	Capitol Federal Savings v. Hohman	5		1		2	2	35,000	8	0	0	16	Wilful Breach/Trust	5
[illegible] N 678	Henderson v. Hassur	1		1		4	4	48,000	8	0	0	16	215kPD;	**
2[illegible] AN 555	Eitus v. Orkin Exterminating Co.	1		7	Mix 1 & 4	7	3	33,195	8	0	0	16	READ	1
234 KAN 898	Price v. Grimes	1		1		7	3	85,000	8	0	0	16	breach of K	1
235 KAN 580	Plains Resources Inc. v. Empire Drilling Co.	5		7	Mix 1 & 5	7	5	282,569	8	0	0	16	DrillHoleSabotaged	5
235 KAN 815	Capitol Federal Savings & Loan v. Hohman	5		1		2	2	0	8	0	35,000	16	MtgInvalid READ	5
233 KAN 572	Sampson v. Hunt	1		7	Mix 1&5	5	4	10,000	8	0	0	17	300kPD/READ	1
229 KAN 210	Scarpelli v. Jones	1		1		3	3	4,000	5	0	44,000	21	Libel -- Judg 4 Def.	2
525 F. SUPP 46	Miller v. Lear Siegler, Inc. (1981)	1		4		7	3	35,000	8	0	0	21	libel/slander	2
001 KAN APP 2D 203	Hubin v. Shira	1		1		3	3	25,000	8	0	0	22	Assault/Battery30kPD	4
221 KAN 079	Webber v. Patton	1		1		1	1	63	8	0	0	22	Nominal Awd	4
224 KAN 506	Newton v. Hornblower Inc.	1		7	Mix 1 & 5	4	4	133,331	5	0	69,576	24	SharehldrDirv/294kPD	5
236 KAN 335	Oberhelman v. Barnes Investment Corp.	1		5		8	8	0	8	0	0	24	Derivitive Action	1
230 KAN 032	Daniels v. Chaffee (1981)	1		1		1	1	2,450	8	5,050	0	28	2kPD/Affmd by S Ct	5

FINAL TOTALS

	ACTUALS AWARDED $$$	TRIALCT REDUCED V. BY $$	APP CT. REDUCED V. BY $
TOTAL	13,206,887	5,050	592,977
AVG	307,136	117	13,790
COUNT	43	43	43

Christel Marquardt, President
Dale Pohl, President-elect
A.J. "Jack" Focht, Vice President
Alan Goering, Secretary-Treasurer
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KANSAS BAR ASSOCIATION

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Ronald Smith, Legislative Counsel
Art Thompson, Legal Services Coordinator
Dru Toebben, Continuing Legal Education Director

February 10, 1987

Mr. Chairman. Members of the House Judiciary Committee. I am Dale Pohl, a partner in a Eureka law firm, and President-elect of the Kansas Bar Association. I have been asked to speak to you today about the caps legislation.

KBA has generally opposed caps on noneconomic and overall awards in tort actions. Such caps have little impact on most insurance premiums because policy limits are usually less than the legislative limits. I understand this observation is directly supported by Mike Mullen, CEO of Medical Protective Company, who said last week that collateral source changes and periodic payment acts will mean more to insurance companies than caps on noneconomic loss.

We also believe that while noneconomic loss verdicts are subject to abuse, no clear evidence of such abuse exists in Kansas. Requirements for itemized verdicts, generally, have existed only since July 1, 1987 ('86 for medical malpractice actions). Juries here are generally conservative, especially in rural Kansas, and courts have plenty of inherent power to correct excessive verdicts, when applicable.

Previous Legislative Action

In 1986 the Medical Society and Hospitals sought a $250,000 limit on all noneconomic loss from all defendants. The 1986 legislation became K.S.A. 1987 Supp. 60-3407. In 1987, other tort-feasors banded together and sought similar limits. However, the House of Representatives overwhelmingly rejected the medical malpractice approach to limiting noneconomic loss in other tort cases. It did so on an unrecorded vote on the House floor that had over 75 votes. During the conference negotiations, repeatedly the House of Representatives rejected 1987 Senate attempts to go to a $250,000 limit on all noneconomic loss. It preferred then -- and we think prefers now -- a $250,000 limit on pain and suffering (including mental anguish), and leaving unlimited the compensation where negligence causes paralysis, disability, burns or great bodily disfigurement. See K.S.A. 1987 Supp. 60-19a01.

1988 Action

In January, 1988, District Judge Frank Theis declared the 1986 noneconomic loss cap for medical malpractice unconstitutional. The Medical Society and the Insurance Commissioner has appealed the decision. The Medical Society believes that because of Farley v. Engelken, 241 Kan. 663, the Supreme Court will agree the 1986

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BOARD OF GOVERNORS: Thomas A. Hamill, District 1 • Hon. Fred N. Six, District 2 • Tim Brazil, District 3 • Warren D. Andreas, District 4 • E. Dudley Smith, District 5 • Robert W. Wise, District 6 • Dennis L. Gillen, District 7 • William B. Swearer, District 8 • Linda Trigg, District 9 • Edward Larson, District 10 • Anne Burke Miller, Young Lawyers President • John Elliott Shamberg, Association ABA Delegate • Glee S. Smith, Jr., Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. Jerry Mershon, KDJA Representative

Attachment VII

legislation is unconstitutional. They may, or may not, be right. If not, the 1986 medical malpractice limit on noneconomic loss would stand and physicians already would have their $250,000. Assuming the 1986 law unconstitutional is jumping the gun.

The Kansas Medical Society and Hospital Associations want to expand their 1986 limit ($250,000 on all noneconomic loss) to all tort actions (HB 2692). Other interests have offered a milder alternative. HB 2730 would bring the physicians under the 1987 law, $250,000 for pain and suffering only. Options include:

1. Wait to see whether Kansas Supreme Court upholds the constitutionality of the Doctor's 1986 legislative caps.

2. Amend KSA 1987 Supp. 60-19a01 ($250k on pain and suffering only) with a provision where if 60-3408 is declared unconstitutional, then 60-19a01's limits apply to medical malpractice.

3. Bring doctors and hospitals under 1987 legislation, $250k on pain and suffering only, and avoid legislative fight over limits.

4. Expand $250k cap to all "noneconomic loss" in all tort actions.

We urge consideration for options 2 or 3. KBA opposes Option 4, expanding the cap. There is no reason to go through that legislative process again. Either a cap is constitutional, or it is not.

1. KBA still doesn't approve of caps. However, current law has caps on pain and suffering in all tort actions. The legislature feels it must do something this session to guard against the possible unconstitutionality of the physicians' separate $250k limit on noneconomic loss. While KBA feels obligated to have input into their political problem, reversing their 1987 caps legislation is not an option.

2. Option 2 protects physicians without doing further damage to the tort system. If the 1986 legislation is unconstitutional, medical malpractice automatically would automatically fall under K.S.A. 1987 Supp. 60-19a01. This gives them predictability as to loss occasioned by mental anguish awards and other "pain and suffering" without limiting awards for more severe injury. In nonmedical malpractice cases, people suffer catastrophic injury and are left disabled, paralyzed, or severely disfigured, especially in burn cases. There are controls in place. Itemized verdicts can help judges review verdicts, and allows statutory power to control such verdicts if they are excessive.

Thank you.

$250,000 Noneconomic caps affects few 1987 cases

(a) Sedgwick County District Court, #83C641, involving an oil field explosion. Verdict exceeded one million dollars, but the dispute was over how to divide up a $300,000 insurance policy and what percentage of comparative negligence applied to the codefendant with that policy. The claimant died from the injuries, so the $100,000 limit on pain and suffering (60-1903) applied, but since there was only $300,000 available to pay the verdict, the statutory limit was of no consequence.

(b) Sedgwick County District Court, #84C593 - a general, rather than itemized verdict, was used. No indication as to the type of case, but the claimant was a child, who received $400,000. Parents were awarded $2,250, each.

(c) Sedgwick County district court, #85C2250 - two plaintiffs were both killed in a train crash with an automobile. One plaintiff recovered $1 million actual damages, $100,000 nonpecuniary. The other received $500,000 actual damages, $100,000 nonpecuniary. Wrongful deaths involved, so 60-1903 already applied.

(d) Wyandotte County #85C2295 - A trash truck backed over 21-year-old mother, killing her. Jury awarded $1 million actual damages to the husband, $1 million to the surviving child. $35,000 nonpecuniary loss was awarded to the husband, and $300,000 nonpecuniary loss to the child, which was reduced to $100,000 by 60-1903. Comparative negligence found to be 78.5% on the trash truck owner, 21.5% to the victim. The verdict was appealed, then settled on appeal, but no numbers are available. One can assume the settlement was less than what the verdict would have awarded.

(e) Wyandotte County #85C2456 - A personal injury and wrongful death action stemming from an electrocution. KPL and a Sign company were codefendants. KPL was found 85% at fault, and the sign company 15%. Jury awarded the decedent $10,000. Heirs received $490,000 actual damages, nonpecuniary loss $500,000 which 60-1903 will reduce to $100,000. Punitive damages of $1 million were awarded. The entire verdict is being appealed.

(f) Johnson County #86C281 - a medical malpractice plaintiff's verdict for a brain-damaged child, but a general verdict was used. The $1,775,000 verdict was appealed, and the appeal dismissed. No pain and suffering identified.

(g) Johnson County, Appellate Court # 119604, stemming from negligence which cost a child the loss of the right eye. The defendant was found 58% at fault, and 28% on the plaintiff, with 14% the responsibility of another party. The jury awarded a general (non-itemized) verdict of $300,000, but comparative negligence reduced the award to $174,000. A $250,000 cap would NOT have affected this case.

(over, please)

HOUSE BILL No. 2730

By Committee on Judiciary

1-29

0017 AN ACT concerning civil procedure; relating to damages for
0018 pain and suffering in personal injury actions; amending K.S.A.
0019 1987 Supp. 60-19a01 ~~and 60-3407~~ and repealing the existing
0020 sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*
0022 Section 1. K.S.A. 1987 Supp. 60-3407 is hereby amended to
0023 read as follows: 60-3407. (a) In any medical malpractice liability
0024 action:
0025 (1) The total amount recoverable by each party from all
0026 defendants for all claims for noneconomic loss *based on causes*
0027 *of action accruing before July 1, 1988,* shall not exceed a sum
0028 total of $250,000; and
0029 (2) subject to K.S.A. ~~1986~~ *1987* Supp. 60-3411, the total
0030 amount recoverable by each party from all defendants for all
0031 claims shall not exceed a sum total of $1,000,000.
0032 (b) If a medical malpractice liability action is tried to a jury,
0033 the court shall not instruct the jury on the limitations imposed by
0034 this section or on the ability of the claimant to obtain supple-
0035 mental benefits under K.S.A. ~~1986~~ *1987* Supp. 60-3411.
0036 (c) In a medical malpractice liability action, subject to ap-
0037 portionment of fault pursuant to K.S.A. 60-258a and amendments
0038 thereto:
0039 (1) If the verdict results in an award for noneconomic loss
0040 which exceeds $250,000, the court shall enter judgment for
0041 $250,000 for all the party's claims for noneconomic loss.
0042 (2) If the verdict results in an award for current economic loss
0043 which exceeds the difference between $1,000,000 and the
0044 amount awarded by the court for damages for noneconomic loss,
0045 the court shall enter judgment for an amount equal to such

0046 difference for all the party's claims for current economic loss.
0047 (3) If the sum of the amounts awarded by the court for
0048 noneconomic loss and for current economic loss is $1,000,000 or
0049 more, no judgment shall be entered for future economic loss. If
0050 the sum of such amounts is less than $1,000,000 and the verdict
0051 results in an award for future economic loss which exceeds the
0052 difference between $1,000,000 and the sum of such amounts, the
0053 court shall enter judgment for the cost of an annuity contract
0054 which, to the greatest extent possible, will provide for the pay-
0055 ment of benefits over the period of time specified in the verdict
0056 in the amount awarded by the verdict for future economic loss,
0057 the cost of such annuity not to exceed the difference between
0058 $1,000,000 and the sum of the amounts awarded by the court for
0059 noneconomic loss and current economic loss.
0060 (d) The limitations on the amount of damages recoverable for
0061 noneconomic loss under this section shall be adjusted annually
0062 on July 1 by rule of the supreme court in proportion to the net
0063 change in the United States city average consumer price index
0064 for all urban consumers during the preceding 12 months.
0065 (e) The provisions of this section shall not be construed to
0066 repeal or modify the limitation provided by K.S.A. 60-1903 and
0067 amendments thereto in wrongful death actions.
0068 ~~(f) The provisions of this section shall expire on July 1, 1993.~~
0069 ~~Sec. 2.~~ K.S.A. 1987 Supp. 60-19a01 is hereby amended to
0070 read as follows: 60-19a01. (a) As used in this section, "personal
0071 injury action" means any action for damages for personal injury
0072 or death~~, except for medical malpractice liability actions~~.
0073 (b) In any personal injury action, the total amount recover-
0074 able by each party from all defendants for all claims for pain and
0075 suffering shall not exceed a sum total of $250,000.
0076 (c) In every personal injury action, the verdict shall be item-
0077 ized by the trier of fact to reflect the amount awarded for pain
0078 and suffering.
0079 (d) If a personal injury action is tried to a jury, the court shall
0080 not instruct the jury on the limitations of this section. If the
0081 verdict results in an award for pain and suffering which exceeds
0082 the limit of this section, the court shall enter judgment for

0083 $250,000 for all the party's claims for pain and suffering. Such
0084 entry of judgment by the court shall occur after consideration of
0085 comparative negligence principles in K.S.A. 60-258a.
0086 (e) The provisions of this section shall not be construed to
0087 repeal or modify the limitation provided by K.S.A. 60-1903 and
0088 amendments thereto in wrongful death actions.
0089 (f) The provisions of this section shall apply only to personal
0090 injury actions which are based on causes of action accruing on or
0091 after July 1, 1987, *and before July 1, 1988.*
0092 New Sec. 3. 2 (a) As used in this section, "personal injury
0093 action" means any action for damages for personal injury or
0094 death.
0095 (b) In any personal injury action, the total amount recover-
0096 able by each party from all defendants for all claims for pain and
0097 suffering shall not exceed a sum total of $250,000.
0098 (c) In every personal injury action, the verdict shall be item-
0099 ized by the trier of fact to reflect the amount awarded for pain
0100 and suffering.
0101 (d) If a personal injury action is tried to a jury, the court shall
0102 not instruct the jury on the limitations of this section. If the
0103 verdict results in an award for pain and suffering which exceeds
0104 the limit of this section, the court shall enter judgment for
0105 $250,000 for all the party's claims for pain and suffering. Such
0106 entry of judgment by the court shall occur after consideration of
0107 comparative negligence principles in K.S.A. 60-258a, and
0108 amendments thereto.
0109 (e) The provisions of this section shall not be construed to
0110 repeal or modify the limitation provided by K.S.A. 60-1903 and
0111 amendments thereto in wrongful death actions.
0112 (f) The provisions of this section shall apply only to personal
0113 injury actions which are based on causes of action accruing on or
0114 after July 1, 1988.
0115 Sec. 4. 3 K.S.A. 1987 Supp. 60-19a01 and 60-3407 are hereby
0116 repealed.
0117 Sec. 5. 4 This act shall take effect and be in force from and
0118 after its publication in the statute book.

"The provisions of this section shall not apply to any action governed by another statute establishing or limiting the amount of noneconomic, nonpecuniary or other intangible loss not capable of being reduced to economic loss, or prescribing procedures for the award of such damages."

REPORT OF THE JUDICIAL COUNCIL CIVIL CODE ADVISORY COMMITTEE AS REQUESTED BY THE 1986 SPECIAL COMMITTEE ON TORT REFORM AND LIABILITY INSURANCE ON THE MODIFICATION OR ELIMINATION OF THE COLLATERAL SOURCE RULE

ADVISORY COMMITTEE MEMBERS:

Marvin E. Thompson, Chairman
Judge Mary Beck Briscoe
Emmet A. Blaes
Judge Terry L. Bullock
Professor Robert C. Casad
Senator Franklin D. Gaines
Morris D. Hildreth
Justice Robert H. Miller
Leonard O. Thomas
Donald W. Vasos
Professor William Westerbeke
Ronald P. Williams

Approved by the Judicial Council January 8, 1988

Attachment VIII

REQUEST FOR STUDY

In January of 1987, Representative Joe Knopp, chairman of the Special Committee on Tort Reform and Liability Insurance, requested on behalf of the special committee that the Kansas Judicial Council study the issue of modifying or eliminating the collateral source rule (See Appendix A). The Judicial Council referred the study to the Civil Code Advisory Committee.

In its study of the collateral source rule, the Civil Code Advisory Committee reviewed the available literature, proposals introduced during the 1987 legislative session, testimony given before legislative committees and the opinion of the Kansas Supreme Court holding abrogation of the collateral source rule in the area of medical malpractice liability actions to be unconstitutional as a violation of equal protection. In addition, representatives of the Commissioner of Insurance, Kansas Chamber of Commerce and Industry, the Kansas Trial Lawyers Association, the Kansas Association of Defense Counsel and the Kansas Bar Association and Professor James Concannon of the Washburn University School of Law were invited to meet with the advisory committee. (Although the Association of Defense Counsel did not respond to the committee's invitation, the committee did have the benefit of a position paper on the collateral source rule prepared at the request of the Association of Defense Counsel and submitted in 1984.)

The advisory committee was also aware that approximately 28 states have enacted legislation modifying the collateral source rule. In 15 of those states (including Kansas), modification of

the rule has been confined to medical malpractice actions. In the 13 jurisdictions where modification of the rule applies in other tort actions besides medical malpractice, the statutes vary as to the types of benefits considered, whether deductions are left to the discretion of the jury or are made by the court, the conditions under which benefits will be considered, and the treatment of subrogated benefits.

References are made in this report to 1987 Senate Bill 391 and K.S.A. 1986 Supp. 60-3403 (See Appendix B). The advisory committee paid particular attention to these two approaches to modification of the collateral source rule. S.B. 391 carried over to the 1988 session in the Senate Judiciary Committee. Although K.S.A. 60-3403 applied to medical malpractice actions only (and was held unconstitutional by the Kansas Supreme Court), the committee recognized that its approach to modification of the rule could be extended to all personal injury actions.

COLLATERAL SOURCE RULE

The collateral source rule is of common law origin and has long been recognized by the courts of Kansas. The rule is defined in the Second Restatement of Torts, § 920A, as follows:

> (2) Payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable.

In Allman v. Holleman, 233 Kan. 781, Syl. ¶ 8, 667 P.2d 296 (1983), the Kansas Supreme court stated the rule as:

"The collateral source rule provides that benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer."

The benefits to which the collateral source rule applies are described in Comment c. to Restatement of Torts (second) § 920A:

c. The rule that collateral benefits are not subtracted from the plaintiff's recovery applies to the following types of benefits:

(1) Insurance policies, whether maintained by the plaintiff or a third party. Sometimes, as in fire insurance or collision automobile insurance, the insurance company is subrogated to the rights of the third party. This additional reason for keeping the tortfeasor's liability alive [that is, not diminishing the tortfeasor's liability] is not necessary, however, as the rule applies to insurance not involving subrogation, such as life or health policies.

(2) Employment benefits. These may be gratuitous, as in the case in which the employer, although not legally required to do so, continues to pay the employee's wages during his incapacity. They may also be benefits arising out of the employment contract or a union contract. They may be benefits arising by statute, as in worker's compensation acts or the Federal Employers' Liability Act. Statutes may subrogate the employer to the right of the employee, or create a cause of action other than by subrogation.

(3) Gratuities. This applies to cash gratuities and to the rendering of services. Thus the fact that the doctor did not charge for his services or the plaintiff was treated in a veterans hospital does not prevent his recovery for the reasonable value of the services.

(4) Social legislation benefits. Social security benefits, welfare payments, pensions under special retirement acts, all are subject to the collateral-source rule.

It has been stated that the collateral source rule developed due to a collision between two basic principles of tort law: first, that a wrongdoer must pay the reasonable value of all harm the wrongdoer causes; and second, that an injured party is entitled to full recovery but is not entitled to double recovery. The collateral source rule subordinates concerns with double recovery to the first principle.

Proponents of the rule contend that this is appropriate for a variety of reasons. Highly summarized, they are as follows:

> Requiring the wrongdoer to pay for all the harm the wrongdoer causes serves the deterrent purpose of tort law. Furthermore, in a capitalistic society, the real risk of injury resulting from some economic activity should be borne by those who engaged in that activity.
>
> Persons should not be penalized for or discouraged from purchasing collateral source benefits such as insurance.
>
> As to many collateral source benefits, the injured party has paid for the benefit, either directly or as part of his or her compensation for employment. Consequently, there is no double recovery. Even if there is a double recovery, it is preferable that any windfall go to the injured person as opposed to the wrongdoer.
>
> In regard to gratuitous benefits, the donor intends to confer a benefit on the injured person, not on the wrongdoer.
>
> The existence of collateral source benefits provide greater inducement to the injured person to settle a case without the necessity of litigation.
>
> As a practical matter, full recovery in tort does not make the injured party whole. The injured party has to pay litigation costs and attorney fees out of the damage award.
>
> Opponents of the rule contend:
>
> The receipt of collateral source payments and damage awards for the same item of expense represents double recovery and overcompensation.

To the extent an injured person receives collateral source payments, that person has not been damaged.

Widespread liability insurance eliminates the fault and deterrent aspects of tort law and reduces liability insurance to a compensatory scheme for accident victims.

Making liability insurance primary for compensation purposes results in increased transaction (litigation) costs.

Using the collateral source rule to compensate injured persons for litigation expenses and attorney fees is indirect and not accurately attuned to the problems sought to be cured. The amount and availability of collateral benefits received in any case are fortuitous and bear no relation to the extent a purely compensatory damage award falls short of making the injured person whole.

People do not purchase collateral benefits for the purpose or with the expectation of obtaining a double recovery in the event of liability on the part of a third party. Abolition of the rule does not deprive an injured person of his or her bargain.

COMMITTEE RECOMMENDATION

The advisory committee finds the existence of double recovery and the arguments for and against the rule to be highly debatable issues. Regardless of the merit of the respective positions concerning the collateral source rule, it is the opinion of the advisory committee that any potential benefits resulting from identification and prevention of double recovery are, in all likelihood, outweighed by the costs and complexities encountered in altering the collateral source rule. Accordingly, the advisory committee recommends against modification of the collateral source rule. The remaining sections of this report address the costs and other areas of concern associated with modification or elimination of the rule.

ADDITIONAL LITIGATION COSTS

Modification of the collateral source rule will require the development of evidence in regard to a number of new issues. The number of new issues will vary with the particulars of the rule modification involved.

Naturally, it will be necessary to present evidence as to the admissible collateral source benefits. Presenting evidence as to benefits already paid or received may not create too much difficulty. However, greater difficulty will be encountered in developing evidence as to future benefits. As recognized by § 4 of 1987 S.B. 391, eligibility for future collateral source payments will become an issue. In regard to future health insurance benefits, the advisory committee was provided with the example of a disasterously injured child whose future medical care depends on the parents maintaining continuous medical insurance coverage. It was noted that eligibility for future benefits will likely be affected by the child reaching age 21 and not being able to acquire coverage for the preexisting injury, or by a change of employment for the child's parents with resulting new "waiting periods" and exclusions. Eligibility for and the extent of future, governmental collateral source benefits would also appear to be an area which would invite a fair amount of conjecture and speculation.

Evidence as to subrogation and other obligations to reimburse collateral source benefits will also be required. Under S.B. 391, this would occur at the pretrial conference. If

the approach taken in K.S.A. 60-3403 is followed, evidence as to subrogation rights and liens must be developed and presented to the jury.

Costs paid or to be paid in the future to secure a collateral source benefit also become an issue. Again, the cost of future benefits such as health insurance would seem to involve a fair amount of speculation. S.B. 391 speaks of amounts paid by the claimant or by anyone on behalf of the claimant. It is arguably unclear whether or not this includes such items as that portion of the health insurance premium paid by the employer. Another issue in regard to costs of securing collateral source benefits concerns the period of time to be applied in considering such costs. S.B. 391 directs the judge to determine the relevant time period for considering such costs and to instruct the jury that the damages awarded must include the costs of securing collateral benefits. A logical basis for determining the relevant time period is not readily discernable by the advisory committee. K.S.A. 60-3403 is silent as to the relevant time period and makes the issue of costs a matter for jury consideration.

The development of evidence as to collateral benefits and the costs of securing such benefits, particularly as to future benefits and costs, would require the utilization of expert witnesses such as providers of collateral benefits, economists and actuaries. It would be necessary to depose these expert witnesses with a resulting increase in trial preparation costs, attorney fees and expert witness fees.

There are also costs in terms of time and inconvenience as to those persons who are needed as witnesses for the purpose of developing evidence as to the new issues injected by modification of the collateral source rule.

Finally it might be noted that the increased costs resulting from modification of the rule cause the risk of closing the courthouse doors to injured persons with few, if any, resources.

COMPARATIVE NEGLIGENCE

Professor Concannon has articulated for the legislature and the advisory committee the perceived injustice which will result if modification of the collateral source rule does not take into account the comparative negligence statute. Professor Concannon advocates that, if the collateral source rule is to be modified, collateral source benefits first be applied to that portion of the damages attributable to the claimant before any credit is given to the tortfeasor. His position is based on the theory that collateral source benefits are intended to compensate the claimant's losses and there is no double recovery until the combination of collateral benefits and damages awarded against a tortfeasor exceed the total damages suffered by the claimant.

In understanding the differing results reached depending upon whether the (A) collateral source rule is retained, (B) the rule is abolished or (C) Professor Concannon's approach is taken, it might be helpful to consider the following example: $50,000

in total damages; plaintiff 30% at fault; defendant 70% at fault; plaintiff receives collateral payments of $20,000 in the form of health insurance benefits.

COMPARISON OF RESULTS

	(A) Collateral Source Rule	(B) Abolition of Rule	(C) Professor Concannon's Approach
Total Damages	50,000	50,000	50,000
Deduction of Benefits Under (B)		20,000	
Defendant's Share of Damages	35,000 (70% of 50,000)	21,000 (70% of 30,000)	35,000 (70% of 50,000)
Deduction for Excess Benefits Under (C)			5,000 (Collateral Benefits [20,000] Minus Plaintiff's Share of Damages [15,000])
Damages Awarded Against Defendant	35,000	21,000	30,000
Collateral Benefits Received by Plaintiff	20,000	20,000	20,000
Total Compensation Received by Plaintiff	55,000	41,000	50,000

(A) Under the collateral source rule, the $20,000 in health insurance benefits would not be considered in determining damages. $35,000 (70% of $50,000) would be awarded against the defendant and plaintiff would receive $20,000 in collateral benefits for total compensation of $55,000.

(B) If the rule is abolished, presumably the $20,000 in benefits would be deducted from the $50,000 in damages, resulting in an award of $21,000 (70% of $30,000) against the defendant. Plaintiff would receive total

compensation of $41,000 ($21,000 from defendant and $20,000 in health insurance benefits) and would bear an uncompensated loss of $9,000.

(C) Under Professor Concannon's approach, damages would initially be determined without reference to the collateral benefits. Defendant's share of the damages would be $35,000(70% of 50,000) and plaintiff's share would be $15,000 (30% of $50,000). The collateral benefits would first be applied to plaintiff's share of the damages, leaving $5,000 to be deducted from defendant's liability which would accordingly be reduced to $30,000. (It might be noted that under this approach, if there are multiple defendants, the "excess" collateral benefits would be applied to the defendants' liability in proportion to their respective percentages of fault.)

Again, Professor Concannon's approach is based on the concept that there is no double recovery due to collateral benefits until the injured person has been made whole. Apparently, there are those who believe that double recovery due to collateral benefits can occur prior to the time the injured person is made whole. They would argue that the defendant's percentage of fault should be applied to each item of damages and any collateral benefits should be applied to particular items of damages. Using the example above and assuming that the plaintiff suffered $20,000 in medical damages and $30,000 in other damages, the argument would be that the defendant is responsible for $14,000 (70% of $20,000) in medical expenses and since these have been compensated by the plaintiff's health insurance, the defendant's ultimate liability is 70% of the non-medical damages (70% of $30,000 = $21,000).

If there is a double recovery due to the collateral source rule in the example cited above (and a majority of the advisory committee is not convinced that there is), Professor Concannon's

approach is more reasonably related to the basic purposes of tort law; deterrence and compensation. Deterrence (prevention of injuries), requires that the defendant pay for the damages caused by the defendant's negligence. (It should be remembered that under our system of individual fault, the defendant is not asked to pay more than those damages attributable to his or her fault.) Before departing from this principle of deterrence and responsibility on the part of the defendant, Professor Concannon's approach would require that the other basic principle of the tort system, compensation of the injured person, be met by making the injured person whole.

Under our comparative negligence statute, the injured person must bear as a loss those damages attributed to an immune, unavailable, unknown or insolvent defendant. For the purpose of making the injured person whole, collateral source benefits should be applied to such damages as well before any credit is given to the tortfeasor from whom recovery can be obtained. It would be illogical to apply collateral source benefits to damages attributable to the fault of the plaintiff and not to apply such benefits against losses the plaintiff must bear due to no fault of his or her own.

There is the practical problem, however, of identifying insolvent defendants at the time damages and percentages of fault are determined. The following example attempts to illustrate the ramifications of this problem: $50,000 in damages; D_1 (Solvent Defendant) 40% at fault; D_2 (Insolvent Defendant) 30% at fault; plaintiff 30% at fault; plaintiff receives $22,000 in collateral

benefits. Without considering collateral benefits, the respective shares of damages would be: D_1 - \$20,000 (40% of \$50,000); D_2 -\$15,000 (30% of \$50,000); plaintiff - \$15,000 (30% of \$50,000). The logical extension of Professor Concannon's approach to double recovery would result in collateral benefits first being applied to losses which must be borne by the plaintiff (in the example, the damages attributable to the plaintiff and the insolvent defendant) before any credit is given against the liability of a defendant against whom recovery can be made. In this example, the collateral benefits (\$22,000) do not exceed the damages attributable to the plaintiff and insolvent defendant (\$30,000). Consequently, there would be no reduction in the liability of D_1. Plaintiff would receive \$20,000 from D_1 and \$22,000 in collateral benefits and would suffer an uncompensated loss of \$8,000 (\$50,000 damages minus \$42,000 compensation). If the insolvent defendant cannot be identified, there would be "excess" collateral benefits of \$7,000 (\$22,000 in benefits minus \$15,000 in damages attributable to plaintiff). These excess benefits would be applied against the liability of the defendants in proportion to their respective percentages of fault. The liability of D_1 would be reduced by \$4,000 (4/7 of \$7,000) to \$16,000. The liability of D_2 would be reduced by \$3,000 (3/7 of \$7,000) to \$12,000. Plaintiff would receive \$38,000 in total compensation (\$16,000 from D_1; 0 from D_2 since D_2 is insolvent; and \$22,000 in collateral benefits) and would bear an uncompensated loss of \$12,000. As can be seen, the failure to identify insolvent defendants and apply collateral benefits to the share of damages

attributable to such defendants will result in the appropriation of collateral benefits by solvent defendants before the injured person is made whole.

WORKERS' COMPENSATION

When workers' compensation is payable because of injuries for which a third party may also be liable, the injured worker has a right to receive workers' compensation and also pursue a remedy against the third party [44-504(a)]. In the event of recovery against the third person, the employer or the employer's insurer is subrogated to the extent of compensation and medical aid provided by the employer [44-504(b)]. The employer's subrogation right is diminished by the percentage of the damage award attributed to the negligence of the employer [44-504(d)].

Under S. B. 391, workers' compensation benefits are admissible unless the claimant makes a showing at pretrial conference that there is an obligation to reimburse. In any case in which there is a recovery against the third party, there will be an obligation to reimburse the employer. However, the extent of the obligation is not known until the jury determines percentages of fault. The fact that workers' compensation benefits are included in the list of potentially admissible collateral sources would seem to indicate that S.B. 391 envisions informing the jury of the amount of such compensation which is not subrogated and having such unsubrogated portion deducted from the award. It appears impossible to tell the jury the amount of unsubrogated

workers' compensation benefits since that cannot be determined until the jury has heard the case and determined percentages of fault.

Workers' compensation is intended to be a substitute, exclusive remedy for injuries arising out of the employment relationship. It is not intended to be a substitute for damages caused by a negligent third party. By way of example, assume a case in which claimant suffers $100,000 in total damages and receives $30,000 in workers' compensation benefits. Assume further that at trial, the employer is found to be 50% negligent and the third party 50% negligent. Under the present law, the claimant would receive $65,000 ($50,000 damages from the defendant plus $30,000 workers' compensation minus $15,000 due to the employer's subrogation right). The third-party tortfeasor pays $50,000 and the employer has, in effect, paid $15,000 in workers' compensation. As to that portion of the claimant's damages attributable to the employment relationship, the claimant has received the appropriate, proportionate amount under the exclusive remedy of workers' compensation. As to that portion of the claimant's damages attributable to the negligence of a third party, the claimant has also received the appropriate amount. There is not a double recovery. Due to the fact of subrogation, an injured worker can never be made whole, much less receive a double recovery, due to workers' compensation benefits.

However, if Professor Concannon's approach to identifying double recovery is followed, it would be appropriate to consider the unsubrogated workers' compensation benefits along with other collateral source benefits in determining whether or not the claimant has been made whole.

PERSONAL INJURY PROTECTION BENEFITS (PIP)

When personal injury protection benefits are payable under circumstances creating a legal liability against a tortfeasor, the payor of the benefits is subrogated to the extent that duplicative personal injury protection benefits are provided. This right of subrogation is reduced by the percentage of negligence attributable to the injured person. (K.S.A. 40-3113a) Under S.B. 391, the same problem exists with PIP benefits as exists with workers' compensation, in that the amount of the benefit which is subrogated cannot be determined until percentages of fault are allocated. This appears to be another situation in which there is arguably no "double recovery" since the PIP insurer is subrogated to the extent that tortfeasors are negligent.

REDUCTIONS FOR COLLATERAL SOURCES

Under the approach taken in K.S.A. 60-3403, it is up to each individual jury to determine (1) if collateral sources will be deducted from awards, (2) whether the cost of securing collateral benefits will be added to awards, and (3) whether subrogation rights or liens will be taken into account in rendering awards.

This approach leaves each individual jury in the role of balancing the delicate policy elements that surround proposals calling for abolition of the collateral source rule and of determining whether subrogation rights will be given proper recognition and effect. Whether the policy of modifying the collateral source rule is to prevent double recovery or to reduce damage awards for the purpose of lowering certain liability insurance costs, the approach taken under 60-3403 would seem to undermine the likelihood that the policy will be consistently applied. Professor Concannon has noted that, under such an approach, the predictability needed to impact insurance rates is lost. Where subrogation rights exist, the provider of the collateral benefits is entitled to reimbursement out of any damages awarded against a tortfeasor. Consequently, there is no double recovery. The approach taken in 60-3403 appears to needlessly create the risk that a particular jury will misapprehend the nature and effect of subrogated interests.

Senate bill 391 does direct the jury to deduct collateral source benefits, to include in awards the cost of securing the benefits, and does theoretically, keep the jury from considering subrogated collateral source benefits. However, due to the complexity of the issues and the interplay with the comparative negligence statute it does seem more reliable to allow the jury to determine total damages, percentages of fault, the amounts of collateral source benefits, and the costs of securing those benefits and then allow the judge to make the appropriate calculations and deductions.

The prejudicial impact of introducing evidence as to collateral source benefits would seem to be akin to that of introducing evidence of insurance on the part of the defendant. Some advisory committee members prefer that deductible collateral source benefits be spelled out with sufficient particularity to allow the judge to make the appropriate deductions without the necessity of presenting evidence to the jury. Other committee members expressed doubt that certain factual questions as to collateral source benefits and the cost of such benefits can be avoided or handled in such a manner.

ECONOMIC IMPACT

Under S. B. 391, to the extent that admissible collateral source benefits exceed the costs of securing those benefits, tort feasors and their insurers are relieved of liability. Theoretically, the costs of the tortfeasor are reduced and there is a benefit to the producers and consumers associated with the tortfeasor's activity. This savings will be offset to the extent that there are additional litigation costs associated with the injection of collateral source issues.

On the other hand, claimants who were entitled to receive admissible collateral source benefits will receive less total compensation. To the extent that collateral source benefits are admissible, actual damages resulting from the activity of the tortfeasor will not be attributed to that activity. Theoretically, this will result in decreased deterrence and a misallocation of resources. Under the approach taken in K.S.A. 60-3403,

there is the added dimension that juries may not render awards sufficient to reimburse subrogated interests. (To the extent that this happens, claimants are receiving even less compensation and tortfeasors are realizing an even greater reduction in their liability.) To the extent that subrogated collateral source benefits are not reimbursed, the costs of such benefits would theoretically increase.

As a practical rather than a theoretical matter, it is uncertain what impact modification of the collateral source rule would have. Certainly, some claimants would receive less total compensation. As to the impact on liability insurance premiums, there is little evidence to work with. In past legislative hearings, representatives of the insurance industry have been reluctant to state that modification of the collateral source rule will result in any reduction in liability insurance premiums. However, the actuarial consultants to the Kansas Insurance Department did estimate that elimination of the collateral source rule modification contained in K.S.A. 60-3403 would result in a 5% increase in the total liabilities subject to funding by the Health Care Stabilization Fund in fiscal year 1987/1988.

It was suggested to the advisory committee that individual claimants may be able to lessen the impact of modification of the collateral source rule by voluntarily entering into pretrial subrogation agreements with providers of collateral benefits. Under S.B. 391, such agreements would prohibit evidence of and deductions for the collateral payments covered by the agreements.

It was also suggested that unions and large self-insured employers might similarly contract away the effect of S.B. 391 as part of collective bargaining.

CONSTITUTIONAL ISSUES

Two statutes modifying the collateral source rule in the area of medical malpractice have been before the Kansas Supreme Court and both have been held unconstitutional as violations of equal protection. Wentling v. Medical Anesthesia Services, 237 Kan. 503 (1985) (violates equal protection clause of both U. S. Constitution and Kansas Bill of Rights); Farley v. Engelken, 241 Kan. 663 (1987) (violates equal protection clause of Kansas Bill of Rights). However, in the more recent case of Farley, the concurring and dissenting opinions (representing five of the justices) indicate that modification of the collateral source rule does not affect a "fundamental" right, the rational relationship test should be applied in equal protection challenges to legislation modifying the collateral source rule and modification of the collateral source rule in all tort cases would not violate the equal protection clauses of either the Kansas or the U. S. Constitutions.

Nonetheless, the advisory committee does not believe that the constitutionality of legislation modifying the collateral source rule in all tort cases is assured. First, the Farley decision did not determine whether or not modification of the collateral source rule violates § 18 of the Kansas Bill of Rights (due process clause) which provides that "All persons, for

injuries suffered in person, reputation or property, shall have a remedy by due course of law, and justice administered without delay. Second, modifications of the collateral source rule may still be subject to equal protection challenges based on any internal distinctions such legislation might make in regard to collateral benefits that will or will not be considered. In this regard, while the concurring opinion in Farley did indicate that the rational basis test would be appropriate in any equal protection challenge, the opinion did include the statement that "Equal justice requires that all who are injured by another's negligent act have an equal right to compensation from the negligent tortfeasor, regardless of any classification that the legislature has attempted to impose."

CONCLUSION

It is the opinion of the advisory committee that modification of the collateral source rule will result in a significant increase in litigation costs. Furthermore, assuming there is double recovery due to the collateral source rule, modification of the rule should (1) take into account the effect of comparative negligence, (2) properly address partially subrogated collateral benefits such as workers' compensation and PIP benefits, (3) exclude consideration of subrogated collateral benefits and (4) assure that appropriate reductions for collateral benefits are made from damage awards. Both S.B. 391 and the approach taken under K.S.A. 60-3403 contain deficiencies in regard to these matters. Modification of the rule will

result in reduced compensation for a number of injured persons and will theoretically have an adverse impact on the deterrent effect of the tort law in exchange for an uncertain impact, if any, on the cost of liability insurance. Accordingly, the advisory committee recommends against modification of the collateral source rule.

"APPENDIX A"

JOE KNOPP
MAJORITY LEADER

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

ROOM 381-W CAPITOL BUILDING
TOPEKA, KANSAS 66612-1591
(913) 296-2302

January 13, 1987

Honorable Justice Robert Miller
Kansas Judicial Council
Judicial Center
Topeka, KS 66612

Dear Justice Miller:

The Special Committee on Tort Reform and Liability Insurance requests that the Kansas Judicial Council study the issues of modifying or eliminating the collateral source rule and instructing juries about the taxability of awards. The committee did not have the time or expertise to thoroughly research the implication of these propsed changes.

The Special Committee would appreciate the Judicial Council's consideration of this matter.

Yours truly,

Representative Joe Knopp
Chairman
Special Committee on Tort Reform
and Liability Insurance

JK/pas

"APPENDIX B"

Session of 1987

SENATE BILL No. 391

By Committee on Ways and Means

3-18

0017 AN ACT concerning civil procedure; concerning certain evi-
0018 dence; repealing K.S.A. 1986 Supp. 60-3403.

0019 *Be it enacted by the Legislature of the State of Kansas:*
0020 Section 1. As used in this act:
0021 (a) "Claimant" means any person seeking damages in a per-
0022 sonal injury action, and includes the heirs at law, executor or
0023 administrator of a decedent's estate.
0024 (b) "Collateral source benefits" means any of the following
0025 benefits which were or are reasonably expected to be received
0026 by a claimant, or by someone for the benefit of a claimant, for
0027 expenses incurred or reasonably expected to be incurred as a
0028 result of the occurrence upon which the personal injury action is
0029 based: (1) Any benefits received as a result of any medical or
0030 other insurance coverage, or any benefit in the nature of insur-
0031 ance coverage, except life or disability insurance coverage; and
0032 (2) any workers' compensation benefit, military service benefit
0033 plan, employment wage continuation plan, welfare benefit pro-
0034 gram or other publicly funded benefit plan or program provided
0035 by law.
0036 (c) "Cost of the collateral source benefit" means the amount
0037 paid or to be paid in the future to secure a collateral source
0038 benefit by the claimant or by anyone on behalf of the claimant.
0039 (d) "Personal injury action" means any action for personal
0040 injury or death.
0041 Sec. 2. Evidence of collateral source benefits received, or
0042 evidence of collateral source benefits which are reasonably ex-
0043 pected to be received in the future, shall be admissible in any
0044 personal injury action, except as provided in section 3.
0045 Sec. 3. As a condition precedent to presenting evidence of

0046 any collateral source benefit pursuant to section 2, the party
0047 against whom claim is made in any personal injury action shall
0048 make disclosure of such evidence at a pretrial conference. Upon
0049 such disclosure, the claimant shall be allowed an opportunity to
0050 show that an obligation exists to reimburse the person or entity
0051 which has paid or will be paying such collateral source benefit
0052 from any damages awarded in such action. The claimant shall
0053 specify in such showing the amount of any such obligation. If the
0054 court determines that there is an obligation to reimburse any
0055 person or entity, the court shall order that any evidence of the
0056 receipt of such collateral source benefit shall not be admissible.
0057 Sec. 4. When evidence of a collateral source benefit is ad-
0058 mitted pursuant to section 2, the claimant may present evidence
0059 of the cost of such benefit, and may present evidence whether
0060 the claimant or claimant's parents, guardians or other responsi-
0061 ble persons with a custodial interest in the claimant will likely
0062 remain eligible for such payments. Such evidence of such cost or
0063 eligibility for such payments may cover whatever period of time
0064 is found by the court to be reasonably related to securing the
0065 collateral source benefit obtained.
0066 Sec. 5. In any case in which evidence of the receipt of any
0067 collateral source benefit is admitted, the jury shall be instructed
0068 that such evidence, together with the evidence of the cost of the
0069 collateral source benefit shall be considered by it in determining
0070 the amount of damages sustained by the claimant. The jury shall
0071 further be instructed that the damages awarded shall not include
0072 any amounts paid by collateral source benefits; however, the
0073 award shall include the cost of securing the collateral source
0074 benefit. In trials to the court, the court shall make similar find-
0075 ings.
0076 Sec. 6. The provisions of this section shall apply to any
0077 action pending or brought on or after July 1, 1987, regardless of
0078 when the cause of action accrued.
0079 Sec. 7. K.S.A. 1986 Supp. 60-3403 is hereby repealed.
0080 Sec. 8. This act shall take effect and be in force from and
0081 after its publication in the statute book.

60-3403. Evidence of collateral source payments and amounts offsetting payments; admissibility; effect. (a) In any medical malpractice liability action, evidence of the amount of reimbursement or indemnification paid or to be paid to or for the benefit of a claimant under the following shall be admissible: (1) Medical, disability or other insurance coverage except life insurance coverage; or (2) workers' compensation, military service benefit plan, employment wage continuation plan, social welfare benefit program or other benefit plan or program provided by law.

(b) When evidence of reimbursement or indemnification of a claimant is admitted pursuant to subsection (a), the claimant may present evidence of any amounts paid to secure the right to such reimbursement or indemnification and the extent to which the right to recovery is subject to a lien or subrogation right.

(c) In determining damages in a medical malpractice action, the trier of fact shall consider: (1) The extent to which damages awarded will duplicate reimbursement or indemnification specified in subsection (a); and (2) the extent to which such reimbursement or indemnification is offset by amounts or rights specified in subsection (b).

(d) The provisions of this section shall apply to any action pending or brought on or after July 1, 1985, regardless of when the cause of action accrued.

History: L. 1985, ch. 197, § 3; July 1.