

Approved February 20, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by Representative Turnquist at  
Chairperson

3:30 a.m./p.m. on Tuesday, February 19, 1991 in room 531N of the Capitol.

All members were present except:

Committee staff present:

Mrs. Emalene Correll, Research  
Mr. Chris Courtwright, Research  
Mr. Bill Edds, Revisor  
Mrs. Nikki Feuerborn, Secretary  
Ms. Gena Lott, Intern

Conferees appearing before the committee:

Mr. Tim Alvarez  
Mr. Bill Sneed  
Mr. Larry McGill  
Mr. David Hanson

Others Attending - See Attached List

Representative Helgerson moved for the approval of the minutes of February 18, 1991. Representative Sawyer seconded the motion. Motion carried.

Chairman Turnquist opened the hearing on HB 2126. Mr. Tim Alvarez, representing the Kansas Trial Lawyer's Association appeared before the committee as a proponent. See Attachment 1. The five modifications to the bill which would be of direct benefit to insureds are:

1. Elimination of the last sentence of KSA 40-284(a) which had made permissive rather than mandatory UM/UIM coverage on excess or umbrella policies. Even if mandatory, the insured would still have the right to reject UM/UIM coverage in excess of \$25,000.
2. An injured person would be able to collect underinsured motorist coverage to the extent that the damages exceed the negligent driver's liability policy limits. Corrects a second substantial problem existing with the current underinsured statute which arises when more than one person is injured due to the fault of a negligent driver.
3. Addition of the word "duplicative" to the existing PIP and workers compensation offset allows the insured to receive the benefits actually purchased without a double recovery or windfall to either the insured or the insurer.
4. This amendment provides that a carrier's right to subrogation arises only after the insured has been fully indemnified.
5. Requires payment of attorney fees by the carrier in all situations where benefits are overdue.

Mr. Bill Sneed, appearing for State Farm insurance, testified as an opponent of HB 2126. Mr. Sneed stated that the bill is unwarranted, costly, and not in the best interest of the insurance public. (See Attachment 2). Statements of opposition included:

1. Proposed amendment would inhibit the affordability and competitiveness in homeowners and fire lines markets in Kansas. These types of policies are not designed to protect the insured from the automobile torts of third parties.
2. Proposed amendment would change the underinsured motorist provision from a "difference in limits" type of policy to an "excess" limits type of coverage. Kansas State Farm policy holders would see an overall 70% increase in premiums.

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.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

room 531-N Statehouse, at 3:30 ~~a.m.~~/p.m. on February 19, 1991, 19  

3. Uncertain as to why there would be any benefits that would be excluded for these various areas that would not be duplicate if it arose out of the same incident.

4. Deleting the court's supervision of attorney's fees would encourage additional litigation and thus increase costs to all insureds.

Mr. Lee Wright, Farmers Insurance Group, appeared before the committee as an opponent of HB 2126. In his testimony (See Attachment 3), Mr. Wright stated his company could see no reason for the proposed change in the proposed Underinsured Motorist (UIM) coverage since any individual may purchase whatever UIM coverage they feel necessary to protect themselves. The proposed change regarding payment of attorney fees for PIP when payment is overdue may cause insurers to pay attorney fees on overdue claims regardless if there are valid reasons for delay.

Mr. Larry McGill, representing Independent Insurance Agents of Kansas, appeared before the committee as an opponent of HB 2126. (See Attachment 4). Mr. McGill stated that his agency was opposed to mandating that all umbrella or excess liability policies include uninsured/underinsured motorist coverage because they do not believe many carriers will offer the coverage. They may simply cease writing umbrella policies. The bill would virtually eliminate subrogation against workers compensation and PIP benefits. It would allow stacking of underinsured limits on top of the at-fault drivers limits and require insurance companies to pay attorneys fees in virtually every case where PIP benefits are alleged to be late.

Mr. David Hanson of Kansas Association of Property and Casualty, appeared before the committee as an opponent of HB 2126. He stated that the rules were set up to go after uninsured drivers and then the insured would ask his own insurance company for compensation. He did not present written testimony. Attachment 6 arrived later and was requested to be part of the minutes:

Due to opposition, Representative Sprague moved HB 2002 be tabled. The motion was seconded by Representative Ensminger. Motion carried.

Mr. Bill Edds, Revisor, passed out a proposed amendment to HB 2082 (See Attachment 5). Mr. Dick Brock of the Insurance Commissioner's office agreed with the amendment. Representative Campbell moved for acceptance of the amendment. Representative Wells seconded the motion. Motion carried.

This amendment will change HB 2082 back to its original meaning. It will allow the Insurance Commissioner's office to take immediate action on a violation committed by an insurance company without the violation being a general business practice.

Representative Helgerson moved for the passage of HB 2082 as amended. Representative Sawyer seconded the motion. Motion carried.

Meeting adjourned at 5:05 p.m.





# KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603  
(913) 232-7756 FAX (913) 232-7730

TESTIMONY  
OF THE  
KANSAS TRIAL LAWYERS ASSOCIATION  
BEFORE THE  
HOUSE INSURANCE COMMITTEE

February 19, 1991

HB 2126 - AUTO INSURANCE REFORM

The Kansas Trial Lawyers Association appreciates the opportunity to present testimony in support of HB 2126. It would enact several modifications to the Kansas automobile insurance statutes that will provide a direct benefit to your constituents.

Page 1, Lines 33-38. This change eliminates the last sentence of KSA 40-284(a) which had made permissive rather than mandatory UM/UIM coverage on excess or umbrella policies. Unfortunately, by making this coverage permissive rather than mandatory, the coverage is no longer available from most carriers. Many Kansans have assets they want to protect with this type of coverage. Even if mandatory, the insured would still have the right to reject UM/UIM coverage in excess of \$25,000 as outlined in KSA 40-284(c).

Page 2, Lines 1-3. The insurance concepts of uninsured and underinsured motorist coverage, abbreviated UM and UIM respectively, are relatively simple concepts to understand. Uninsured motorist coverage allows an injured person to make a claim against his or her own insurance company in the event that the negligent driver, the person causing the collision, has no insurance whatsoever. Underinsured motorist coverage is a similar concept that allows an injured person to collect damages from his or her own insurance company in the event that the negligent driver has insurance, but not in an amount sufficient to cover the injured person's damages. However, because of the way the Kansas statute was written, Kansas consumers can rarely collect the full underinsured motorist benefits, they need.

Under Kansas law, an underinsured motorist is one whose liability policy limits are less than the injured person's underinsured motorist policy limits. Under this definition, Kansas law essentially provides no underinsured motorist protection when minimum limits are purchased, despite the apparent fact that premiums are charged.

For example, if an injured person with \$25,000 in underinsured motorist coverage (the minimum required under Kansas law) is injured by a negligent driver with \$25,000 in liability policy limits and sustains \$50,000 in damages, the injured person gets \$25,000 from the

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Attachment 1*

coverage. This is because, as described above, Kansas law defines an underinsured driver as one whose liability policy limits are less than an insured person's underinsured policy limits. Thus, in the example above, since the injured person's underinsured policy limits of \$25,000 are not less than the negligent driver's liability policy limits of \$25,000, the injured person recovers nothing from the underinsured motorist policy.

To illustrate:

|   |                |
|---|----------------|
| Insured's UM/UIM limits or coverage       | \$25,000       |
| Less: Negligent driver's liability limits | <u>-25,000</u> |
| = Maximum UIM benefits available          | -0-            |

The changes contained on lines 1-3 solve this problem by focusing on the injured person's damages rather than the negligent driver's policy limits. With these changes, an injured person would be able to collect underinsured motorist coverage to the extent that the damages exceed the negligent driver's liability policy limits. Using the example above, since the injured person's damages exceed the negligent driver's liability policy limits by \$25,000 (\$50,000 - \$25,000), the injured person would be able to collect \$25,000 in underinsured motorist coverage. Similarly, if the injured person had \$35,000 in damages, her or she would be able to collect \$10,000 (\$35,000 - \$25,000) in underinsured motorist coverage.

The scope of this problem becomes readily apparent when one considers that all Kansas motorists are required to carry a minimum of \$25,000 in liability coverage and \$25,000 in UM/UIM coverage. Since a significant percentage of Kansans purchase this minimum coverage, they will most likely never be able to collect these underinsured motorist benefits. The only exception would be if the injured person is an out-of-state driver who has liability insurance but in an amount less than \$25,000. For example, Florida requires its drivers to have \$15,000 in coverage.

Furthermore, the problem does not go away by simply purchasing more insurance. For example, assume that a Kansas resident has purchased a \$100,000 automobile liability insurance policy providing \$100,000 in underinsured motorist coverage and is involved in a collision where significant injuries are incurred due to the fault of another driver with \$25,000 in liability protection. Under existing Kansas law, only \$75,000 in UIM benefits can be collected, even though the policy states \$100,000. Again, this is because Kansas law allows an injured person to collect underinsured benefits only to the extent that UIM coverage exceeds the negligent driver's liability coverage (\$100,000 - \$25,000).

To illustrate:

|   |                 |
|---|-----------------|
| Insured's UM/UIM limits of coverage       | \$100,000       |
| Less: Negligent driver's liability limits | <u>- 25,000</u> |
| = Maximum UIM coverage available          | \$ 75,000       |

This proposed change to existing Kansas law, as explained above, would focus on the injured person's damages rather than the negligent driver's liability policy limits and thereby allow the injured person to recover benefits to the full extent of their UIM coverage. It means Kansas insurance consumers would get what they believe they are purchasing.

This section of HB 2126 also corrects a second substantial problem existing with the current underinsured statute which arises when more than one person is injured due to the fault of a negligent driver. Assume three persons are seriously injured in one accident by a negligent driver who has insurance coverage of \$25,000 per person and \$50,000 per accident of liability coverage. This policy would be the minimum required under Kansas law. Because of the \$50,000 per accident limitation, the three injured persons split the \$50,000 equally, resulting in each getting \$16,666. Assume further that each injured person sustained damages of \$50,000 and that each injured person had \$50,000 in underinsured benefits. Under this scenario, the existing law would dictate that the injured person can only recover \$41,667 of their \$50,000 in damages despite the fact that the negligent driver has \$25,000 in liability coverage and the injured person has \$50,000 in underinsured insurance coverage.

This is because the existing law erroneously focuses on the negligent driver's policy limits and not the actual amount received under the policy by the injured person. Thus, the injured person can collect UIM benefits only to the extent that the damages exceed \$25,000 (the defendant's liability policy limits) and not to the extent the damages exceed \$16,667, the amount actually recovered from the defendant's liability policy. In other words, the injured person simply loses the \$8,333 in damages which exist where the negligent driver's liability coverage stops, \$16,667, and the injured person's UIM coverage kicks in, \$25,000.

In summary, the changes in lines 1-3 would make the starting point for UIM coverage the amount of the recovery from the negligent driver's policy by the injured person rather than the amount of the negligent driver's policy limits.

Page 2, Lines 35 & 39. The intent of the present law was to prevent a duplicative or double recovery by the insured of both underinsured coverage and PIP benefits, or underinsured coverage and workers compensation benefits. For example, if the injured person's insurance company pays medical bills under the PIP coverage and then again pays compensation for the same medical bills under the underinsured coverage, the present law prevents the injured person from recovering twice for payment of the same bills by allowing the insurance carrier to reduce its underinsured coverage by the amount of the duplicative payment. This is the intent of the present law and it is both fair and correct.

However, the problem is that in those situations where the payment of UIM coverage is truly not duplicative, the insurance carriers are still interpreting the law to allow a dollar for dollar reduction in UM/UIM coverage. This is being done even though separate premiums are collected for both PIP benefits and UM/UIM benefits.

For example, assume that the injured person has \$4,500 in medical PIP benefits, the minimum required under Kansas law, and \$50,000 in UM/UIM benefits. Also, assume that the injured person suffered catastrophic injuries requiring constant medical care for the rest of their life. Because the injured person's medical bills far exceed the sum of PIP benefits and UIM coverage, the amounts are not duplicative and the carrier should not be allowed to reduce its UIM coverage by the amount of the PIP benefits. In other words, this situation should be viewed as the PIP benefits paying the first \$4,500 in medical bills and the UIM benefits kicking in to cover medical bills above \$4,500, thereby resulting in no duplicative benefits.

Simply adding the word "duplicative" in the statute will solve this problem. This approach is not new to Kansas law. There is similar language in KSA 30-3113a relating to PIP subrogation which states:

(b) In the event of recovery from such tortfeasor by the injured person, . . . , the insurer or self-insurer shall be subrogated to the extent of duplicative personal injury protection benefits provided . . .

Addition of the word "duplicative" to the existing PIP and workers compensation offset allows the insured to receive the benefits actually purchased without a double recovery or windfall to either the insured or the insurer.

Page 3, Line 21. This amendment provides that a carrier's right to subrogation arises only after the insured has been fully indemnified. An example illustrates the problem. Assume an injured person with \$25,000 in UIM coverage who recovers a \$150,000 judgment from a negligent driver who has \$100,000 in liability limits. If HB 2126 were in effect, the plaintiff would receive \$125,000 toward the \$150,000 judgment. Assume that the negligent driver offers \$10,000 in cash to fully and completely satisfy the remaining \$25,000 of the judgment. Under the existing law the underinsured insurance carrier

gets the \$10,000, even though the injured person has not yet been fully compensated. In other words, the insurer is entitled to be reimbursed before the injured person recovers their full damages!

The new language simply states that subrogation rights arise only after the insured has been fully compensated. Again, this amendment is fair and would change the law to reflect what consumers believe their insurance policy provides.

Page 4, Lines 8-10. This amendment requires an award of attorney fees in all situations where PIP benefits are overdue by eliminating the previous language requiring a showing of unreasonableness. There is a very real problem with PIP carriers not providing benefits or not paying the full amount of medical bills. For the problem to be addressed, the courts must be able to award attorney fees in more situations. Requiring the payment of attorney fees by the carrier in all situations where benefits are overdue will provide a proper incentive for insurance companies to promptly pay PIP benefits, which is one of the primary reasons for a no-fault auto insurance system.

On behalf of our members and for the benefit of Kansas auto insurance policyholders, we encourage you to act favorably on HB 2126. Thank you.



## MEMORANDUM

TO: Larry Turnquist  
House Insurance Committee

FROM: William W. Sneed  
State Farm Insurance Companies

DATE: February 19, 1991

RE: H.B. 2126

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Mr. Chairman, Members of the House Insurance Committee: My name is Bill Sneed, and I represent State Farm Insurance Companies. I am here today to state my client's opposition to H.B. 2126. It is my client's position that H.B. 2126 is unwarranted, costly, and not in the best interest of the insurance public. The bill attempts to make four changes in K.S.A. 40-287, 40-3111 and 40-284. These statutes, along with a group of other statutes, are commonly referred to as the Kansas No-Fault Law in regard to automobile liability insurance. I will address each change separately and provide a brief discussion of our opposition.

1. The first amendment is a revision of K.S.A. 40-284(a) whereby it is striking current law which allows carriers to exempt from making available homeowners, personal liability, umbrella or other excess policies in uninsured/underinsured motorist cases. We know of no public outcry for deleting this exemption, and would strongly argue that the proposed amendment would inhibit the affordability and competitiveness in homeowners and fire lines markets in Kansas. Further, these types of policies are not designed to protect the insured from the automobile torts of third parties. Rather, they are

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*Attachment 2*

primarily designed to protect the insured from liability to third parties for the torts of their family members. Thus, we believe the proposed deletion of the exemption is unwarranted.

2. The next proposed amendment is found starting at line 39 on page one, which is an amendment to K.S.A. 40-284(b). This proposed amendment would change the underinsured motorist provision from a "difference in limits" type of policy to an "excess" limits type of coverage. We believe that in Kansas, State Farm policyholders would see an overall 70% increase in premiums. This percent of increase would vary depending upon the limits purchased, but we do believe the smallest increase would be 57% on individuals purchasing limits of 100/300 to a substantial increase for those individuals purchasing minimum limits. Further, losses under an excess program go up at a more rapid pace, and as such, we contend that the 70% increase is only the beginning of substantial increases in premiums. We are unaware of any problem in the marketplace for an individual to purchase higher underinsured motorist coverages. Thus, if an individual wants additional protection for underinsured coverages, we believe it more appropriate for that particular individual to purchase higher limits than to mandate an excess form of coverage for all insureds.

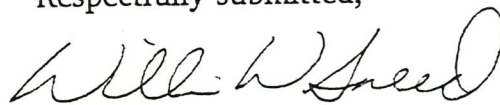
3. The next group of amendments are found at K.S.A. 40-284(e)(4) and (6), which are located on page two of the bill. Further, a similar type of amendment is found in Section 2, which is an amendment to K.S.A. 40-287, found on page three. Since my remarks have been prepared before having an opportunity to hear what the proponents are attempting to do with these amendments, I am somewhat limited as to how we can provide a response. Since we must assume that any proposed amendment would, in fact,

effectuate a change in the law, we are at somewhat of a loss inasmuch as the term "duplicate" is being utilized. In other words, we are uncertain as to why there would be any benefits that would be excluded for these various areas that would not, in fact, be duplicate if it arose out of the same incident.

Finally, the fourth amendment is found on page four as an amendment to K.S.A. 40-3111(b), which deletes the court's supervision of attorney's fees. It would be my client's position that deleting this provision would only encourage additional litigation, and thus increase costs to all insureds. We believe that the current law is adequate in providing protection to an insured to have his or her attorney's fees paid if the insurer unreasonably refuses to pay a claim or unreasonably delays in making proper payment.

As stated earlier, my client is unaware of any major problem these proposed amendments are addressing. Inasmuch as these amendments will, as a whole, substantially increase the cost automobile insurance as compared to the current status that Kansas enjoys with its low-cost automobile insurance, we see no need to implement H.B. 2126. Thus, we respectfully request your disfavorable consideration.

Respectfully submitted,



William W. Sneed  
Legislative Counsel  
State Farm Insurance Companies

Testimony on HB 2126  
House Insurance Committee  
By: Lee Wright, GCA  
Farmers Insurance Group of Companies

Thank you Mr. Chairman and members of the Committee. My name is Lee Wright. I am representing Farmers Insurance Group. We appreciate this opportunity to appear in opposition to House Bill 2126.

I would first like to address the proposed Underinsured Motorist (UIM) coverage change beginning on line 43 on page one and continuing onto the next page. For your reference I have attached a cost chart of an average auto policy which will give you an idea of the current individual premium UM and UIM requires. More importantly the chart also shows the additional charges which would be required for UIM under the trial lawyers proposed amendment.

These figures are estimates for illustrative purposes from our actuarial department for an average auto policy on a 6 month premium basis.

So for example, an average increase for UIM coverage on a minimum statutory limits policy of 25/50 will increase the present premium figure of \$1.50 to \$3.00. There is, of course, no change in the UM coverage and it would remain at \$3.90.

It is important to note we are not charging our policyholders for \$25,000 of UIM coverage which could never be used. The premium charge for the current \$25,000 of UIM coverage reflects the risk exposure of traveling out-of-state and being struck by a vehicle with lower bodily injury limits than the Kansas statutory mandatory liability coverage of \$25,000. Oklahoma is one such state with minimum limits of 10/20 - Iowa another at 20/40.

*Farmers Insurance*  
*Feb. 19, 1991*  
*Attachment 3*

We see no reason for the proposed change since any individual may purchase whatever UIM coverage they feel necessary to protect themselves. It is unnecessary for all policyholders of the state to have their UIM auto premiums increased if they don't desire the additional coverage.

The other proposed change I would like to address is found on the last page of the bill. It relates to attorney fees for Personal Injury Protection benefits (PIP) when payment is overdue.

What we are particularly concerned with is the removal of the language unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

In our handling of medical PIP claims there are times when we request an independent outside consulting company to review unusual or suspicious medical claims. Generally, the type of claims sent for review are those where there may be reason to question the type of treatment for the diagnosis, the frequency of treatment, or to be sure the amount being charged is reasonable and customary.

Many times the patient is unaware their doctor is overcharging or overtreating them. They are simply following their doctor's advice.

These type of reviews assist our claims people in determining if the amounts being claimed are legitimate, inflated or completely fraudulent. It is an important part of claims cost control because it avoids simply giving an unscrupulous health care provider a "blank check" when insurance is involved.

Most reviews are completed within the thirty day payment deadline, avoiding overdue payments. However, problems do arise when the treating doctor will not cooperate and holds back pertinent information necessary to perform the review.

If this change is adopted, insurers will be forced to pay attorney fees on overdue claims regardless if there are valid reasons for delay.

As such, we are opposed to the change found on page 4 and request the current statutory language remain as is.

Thank you Mr. Chairman, that concludes my remarks.

| UM/UM<br>Policy Limits | Current Charge |        |        | Proposed Charge |        |        | UIM<br>% Increase |
|------------------------|----------------|--------|--------|-----------------|--------|--------|-------------------|
|                        | UM/UM          | UM     | UIM    | UM/UM           | UM     | UIM    |                   |
| 25/50                  | \$ 5.40        | \$3.90 | \$1.50 | \$ 6.90         | \$3.90 | \$3.00 | +100%             |
| 35/70                  | \$ 5.80        | \$4.00 | \$1.80 | \$ 7.10         | \$4.00 | \$3.10 | + 72%             |
| 50/100                 | \$ 6.60        | \$4.30 | \$2.30 | \$ 7.60         | \$4.30 | \$3.30 | + 43%             |
| 100/200                | \$ 8.10        | \$5.00 | \$3.10 | \$ 8.90         | \$5.00 | \$3.90 | + 26%             |
| 100/300                | \$ 9.30        | \$5.60 | \$3.70 | \$10.00         | \$5.60 | \$4.40 | + 19%             |
| 250/500                | \$10.80        | \$6.10 | \$4.70 | \$10.90         | \$6.10 | \$4.80 | + 2%              |

This is an actuarial estimate for illustrative purposes of an average auto policy for a six month term.

UM = Uninsured Motorist Coverage  
 UIM = Underinsured Motorist Coverage  
 (UM/UIM limits are in thousands)

Testimony on HB 2126  
By: Larry W. Magill, Jr., Executive Vice President  
Independent Insurance Agents of Kansas  
Before the House Insurance Committee  
February 19, 1991

Thank you Mr. Chairman and members of the Committee for the opportunity to appear today in opposition to HB 2126. Although the language is confusing this bill appears to do three things: Require that all umbrella or excess liability policies providing auto liability insurance offer uninsured/underinsured motorist coverage, virtually eliminate subrogation against workers compensation and PIP benefits, allow "stacking" of underinsured limits on top of the at-fault drivers limits and require insurance companies to pay attorneys fees in virtually every case where PIP benefits are alleged to be late.

The language being struck on page 1 lines 33 to 38 was added to the statute several years ago to clarify the legislative intent after a rather surprising court decision. The particular court case found that the statute required that uninsured/underinsured motorist coverage had to be provided in any auto insurance policy up to the liability limits whether the policy was primary or excess unless rejected by the insured. That was never the intent of the legislature.

When Senate bill #371 was passed in 1981 adding underinsured motorist coverage to the basic auto policy, mandating that all drivers in Kansas must carry at least the statutorily set minimum limits of \$25,000 per person/\$50,000 per accident for uninsured/underinsured motorist coverage and providing for an automatic for limit for UM/VIM equal to the policy limits for bodily injury in the absence of a signed rejection form from the insured, there was no consideration given of umbrella or excess liability policies.

*Larry W. Magill, Jr.*  
*Feb. 19, 1991*  
*Attachment 4*



The typical umbrella policy applies excess of primary limits of \$500,000 combined single limit or more. The umbrella carrier requires these high primary limits because the pricing of umbrella policies contemplates that very few claims will reach the umbrella limits. It is catastrophe coverage intended to protect the insured against only the most serious liability claims.

We are opposed to mandating that all umbrella or excess liability policies include uninsured/underinsured motorist coverage because we don't believe many carriers will offer the coverage. They may simply cease writing umbrella policies.

The cost for uninsured/underinsured motorist coverage at these limits would be significant. This mandatory offer will simply force agents to go through a tremendous amount of additional paperwork obtaining signed rejection forms from insureds and create a significant additional errors and omissions exposure for agents. Plus it is not uncommon for courts to find that insureds did not understand what they were rejecting after a serious accident and hold the rejection invalid. All of this assumes insurers are willing to even offer the higher limits.

The way the statute is written now, the insurance company has to offer excess uninsured/underinsured motorist coverage and the insured has the option of buying it under umbrella or excess liability policies. There is no valid public policy that dictates that the legislature must force all carriers who wish to offer excess liability limits into offering exorbitant limits of uninsured/underinsured motorist coverage.

Currently, the state only mandates that a carrier offer the basic liability limits of 25/50/10, UM/UIM and PIP. These same drivers may

already have group health insurance coverage that adequately protects them, workers compensation with unlimited medical, employer sponsored disability programs, individually purchased disability policies, social security and a host of other sources of income over and above their primary policy limits for uninsured/underinsured motorist coverage. Of course, none of these policies or benefit programs provide coverage for pain and suffering or other non economic loss.

On a business fleet of vehicles the cost of adding millions of dollars of uninsured/underinsured motorist coverage would be substantial. We doubt many businesses would buy the coverage if available. Although the insured may be able to reject the excess limits, it forces carriers to offer them when they may be unwilling to do so. It also forces agents to obtain rejection forms. We urge the committee to let market place demand and supply function and reject this change.

The second change on page 1 line 43 and page 2 lines 1 through 3 would automatically "stack" the underinsured motorists coverage on top of whatever limits are carried by the at fault driver for bodily injury and property damage.

This is contrary to the intent of the coverage. The coverage is intended to allow an insured to protect themselves in an amount equal to the coverage the insured buys for others (bodily injury liability). Under this approach, underinsured coverage, as its name implies, only applies where the at fault driver carries lower limits.

This is how the coverage has always worked in Kansas and this is what Kansas insureds are presently paying for. Stacking the underinsured limits on top of the at-fault drivers limits will increase costs appreciably and potentially add to the uninsured drivers problem.

The third change, requiring that uninsured/underinsured motorist coverage can be offset only against "duplicative" payments from other sources presumably means that the policy limits will be available on any serious accident for non-economic loss which is not covered by workers compensation or personal injury protection. We suspect that insurers can provide this coverage but it will be considerably more expensive than at present.

Since auto insurance is mandatory in Kansas, we urge this committee to keep the cost of coverage as reasonable as possible. The division of motor vehicles under the Department of Revenue estimates that there are between 5% and 7% of the drivers in Kansas who are presently uninsured. Any increase in the basic cost of auto insurance could push those numbers higher. Keep in mind that the concept of mandatory auto insurance is not to provide a high guaranteed deep pocket for the insured but to protect members of the public from the people who drive motor vehicles (insureds).

For the same reason that we oppose mandates in health insurance, we oppose a mandate that would dictate more expensive uninsured/underinsured motorists coverage. Although the proponents may argue that the cost is affordable, each incremental increase in the basic cost of auto insurance forces more drivers to go without coverage and ultimately will lead to political pressure on the legislature to "fix the auto insurance problem".

Finally, we are opposed to requiring that insurers pay attorneys fees in every instance where PIP benefits are delayed as required by the last change on page four lines 8 to 10. Again, for the same reasons cited above, this will simply add to the cost of auto insurance creating a particular hardship on low and moderate income families that struggle as it is to pay for the insurance coverages they need today. The statute

requires payment of PIP benefits within 30 days. An insured who is not satisfied can simply complain to the insurance department and expect prompt handling of the complaint for free. We are unaware of late PIP benefits being a problem. What is more, they are direct, non-fault, first party benefits available from the insured's own carrier and should be easy to collect.

We urge the committee to report this bill unfavorably for passage. I would be happy to answer any questions or provide any additional information the committee desires.

## Proposed Amendment to HB 2082

On page 4, in line 12, by striking all after the period; by striking all of lines 13 and 14 and inserting "It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.";

By redesignating paragraphs (A) through (N) as paragraphs (i) through (xiv);

*Page 6 33-39 strike*

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Attachment 5  
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Kansas Association of

PROPERTY & CASUALTY  
INSURANCE COMPANIES, INC.

L. M. Cornish  
Legislative Chairman  
Merchants National Tower  
P. O. Box 1280  
Topeka, Kansas 66601

MEMBER COMPANIES

Armed Forces Ins. Exchange  
Fl. Leavenworth

Bremen Farmers Mutual Ins. Co.  
Bremen

Consolidated Farmers Mutual Ins. Co., Inc.  
Colwich

Farm Bureau Mutual Ins. Co., Inc.  
Manhattan

Farmers Alliance Mutual Ins. Co.  
McPherson

Farmers Mutual Insurance Co.  
Ellinwood

Great Plains Mutual Ins. Co., Inc.  
Salina

Kansas Fire & Casualty Co.  
Topeka

Kansas Mutual Insurance Co.  
Topeka

Marysville Mutual Insurance Co., Inc.  
Marysville

McPherson Hail Insurance Co.  
Cimarron

Mutual Aid Assn. of the Church  
of the Brethren  
Abilene

Swedish American Mutual Insurance Co., Inc.  
Lindsborg

Town and Country Fire and Casualty Ins. Co., Inc.  
Hutchinson

Upland Mutual Insurance, Inc.  
Chapman

Wheat Growers Mutual Hail Ins. Co.  
Cimarron

Patrons Mutual Insurance Co.  
Olathe

Cimarron Insurance Co.  
Cimarron

Nordia Insurance Co.  
Topeka

February 22, 1991

House Insurance Committee  
Capitol Building  
Topeka, KS 66612

Re: House Bill 2126

Chairman Turnquist and Members of the House  
Insurance Committee

On behalf of the Kansas Association of Property and Casualty Insurance Companies, we would submit the following considerations in opposition to House Bill 2126. Although the concept of uninsured/underinsured motorist coverage may be complicated, we do not believe it was ever intended for the extended purposes being proposed in House Bill 2126. Protection against underinsured motorists is not a separate coverage and is not underwritten, priced or marketed as such. Instead, it is a protection included as part of the uninsured motorist coverage as required in the existing statutory provisions. K.S.A. 40-284(b) specifies that any "uninsured motorist coverage shall include an underinsured motorist provision . . ." (emphasis added). Kansas insureds are not being cheated. They are receiving what the law requires them to have. The proposed changes would substantially change this entire concept resulting in additional premium dollars for all insureds for the sake of a few who may have encountered problems with the existing provisions.

Although the provisions may be complicated, we believe that the current law assures Kansas insureds that they are getting what was intended. The proposed changes would only further complicate the law and lead to more litigation concerning the interpretation of these provisions. Currently, we have the

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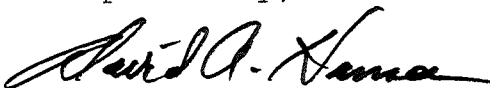
benefit of a number of appellate court decisions interpreting the existing language, which we could lose the benefit of in the event of these changes. For example, adding the wording "duplicative" or "which duplicates sums received as damages" does not add much clarification to the already clear intent of the statute, but instead provides a basis for differing interpretations as to the new intent.

Similarly, the proposed changes at the top of page two of House Bill 2126 do not provide much clarification. Instead, the change produces new and more complicated grounds for litigation by imposing inconsistent provisions for recovery. The recognized standard of determining coverage by comparing the readily ascertainable limits of coverage for each policy is lost. In its place, the proposed amendment would require a determination of the amount of the insured's "right to recover damages," which would obviously be subject to controversy. This language not only complicates the intended coverage, but may also enable the wrongdoer to minimize his or her liability, since the insured could obtain any remaining damages from his or her own insurance. The resulting expanded coverage will result in more litigation and higher premiums for everyone for the sake of the few who may theoretically fall within the example provided by the proponents. It would appear that an adequate remedy is already provided and available to those few in K.S.A. 40-284(f), wherein they can notify their own insurer of the proposed payment with documentation of the total claim, thereby forcing the insurer to elect between substituting its own payment to the insured or refusing such payment and waiving any right of subrogation for any amount paid under the underinsured motorist coverage.

The proposed change on the last page of House Bill 2126 is also unwarranted and will simply result in additional attorney fees regardless of whether the refusal or delay of payment was reasonable or not.

For these reasons, we oppose all of the proposed changes in House Bill 2126.

Respectfully,



DAVID A. HANSON

DAH:kls

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