

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 4:15 P.M. on January 23, 2006 in Room 313-S of the Capitol.

All members were present except:

Kasha Kelley- excused
Marti Crow- excused
Michael Peterson- excused
Mike Kiegerl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Mike Heim, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Nancy Kirk
Representative Paul Davis
Randy Hearrell, Kansas Judicial Council
Mark Knackendoffel, Kansas Judicial Council, Probate Law Advisory Committee
Daryl Craft, Kansas Bankers Association, Trust Division
Professor Robert Casad, Kansas Judicial Council

Representative Nancy Kirk appeared before the committee with a bill request to add survivors of suicides to the Victims Bill of Rights. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Davis seconded the motion. The motion carried.

Representative Paul Davis requested four bills be introduced:

1. changes in the drug paraphernalia statute dealing with methamphetamine
2. changes in the arson statute
3. an amendment to the worthless check statute
4. changes in the civil procedure to providing notice to the Health Care Stabilization Fund

He made the motion to have the requests introduced as committee bills. Representative Loyd seconded the motion. The motion carried.

Chairman O'Neal opened the hearing on **HB 2607 - amendments to the Kansas Uniform Trust Code.**

Randy Hearrell, Kansas Judicial Council, introduced Mark Knackendoffel, Kansas Judicial Council's Probate Law Advisory Committee. The Uniform Trust Code (UTC) became effective January 1, 2003, after which the Judicial Council studied the UTC and are proposing the following changes to codify existing trust law, reduce the need to restore to court proceedings to resolve trust administration issues and conflicts, and to enhance the rights of trust beneficiaries in protecting their beneficial interests. (Attachment 1)

After **HB 2607** was introduced, the Kansas Bankers Association Trust Division proposed some additional amendments of which the Judicial Council approved of and requested that they be amended into the proposed bill. (Attachment 2) When asked if the Commission on Uniform Law had approved the changes, Mr. Knackendoffel responded that they had not seen the changes but most were technical in nature.

Daryl Craft, Kansas Bankers Association, Trust Division, appeared as a proponent of the proposed bill and amendments. He believes that the changes will enhance and streamline the provisions of the UTC. (Attachment 3)

The hearing on **HB 2607** was closed.

The hearing on **HB 2610 - civil procedure; service outside the state; submitting to jurisdiction**, was opened.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 4:15 P.M. on January 23, 2006 in Room 313-S of the Capitol.

Professor Robert Casad, Kansas Judicial Council, appeared as a proponent of the proposed bill which would make amendments to the long arm statute by modernizing language relating to types of jurisdiction. The proposed bill would also clarify that in specific jurisdictions based on the act Kansas courts could also obtain personal jurisdiction over nonresident defendants through general jurisdiction. (Attachment 4)

Committee members suggested that they would like more specificity as to potential defendants being put on notice as to what actions would subject them to long-arm jurisdiction in Kansas.

The hearing on HB 2610 was closed.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for 3:30 p.m. on January 24, 2006, in room 313-S.

**JUDICIAL COUNCIL
TESTIMONY ON 2006 HB 2607
RELATING TO THE
KANSAS UNIFORM TRUST CODE**

I am testifying in support of HB 2607 on behalf of the Probate Law Advisory Committee (PLAC) of the Judicial Council, of which I am a member. I am also a member of the Kansas Bar and have worked as a Trust Officer for 23 years with my current position as President of The Trust Company of Manhattan.

This bill is an amendment to the Uniform Trust Code. The primary reasons for adoption of the UTC were to:

- codify existing trust law,
- reduce the need to resort to court proceedings to resolve trust administration issues and conflicts, and
- enhance the rights of trust beneficiaries to protect their beneficial interests.

The UTC became effective in Kansas on January 1, 2003. After the 2005 legislative session, the Judicial Council was requested by the House Judiciary Committee to study HB 2435 which proposed several amendments to the Kansas Uniform Trust Code. During the study the Judicial Council Probate Law Advisory Committee also considered proposed amendments from the Trust Division of the Kansas Bankers Association. In addition, the Committee considered amendments to 15 sections of the UTC proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). These are official amendments that are now considered to be a part of the Uniform Trust Code.

Various professional groups dealing who have experience with the UTC have proposed improvements to the Code. These professionals included the PLAC, Kansas Bankers Association Trust Division, Kansas Bar Association, and the National Conference of Commissions on Uniform State Laws. These proposed improvements include technical corrections, clarifications and policy changes that have received broad support. The bill before you is the culmination of these efforts to improve the UTC in Kansas.

A number of the provisions of HB 2607 are being proposed to conform Kansas law with the changes that have been adopted in the uniform act. Incidentally, the uniform act already includes a number of other changes that were first instituted by Kansas in its original statute, which were later incorporated into the uniform act by the NCCUSL.

Following the preparation of HB 2607 in its current form, the bill was reviewed by the Kansas Bankers Association Trust Division and they proposed additional amendments. These proposed

amendments are found in the "mark up" provided to the Committee. They have been approved by the Judicial Council Probate Law Advisory Committee and we urge the bill be amended to include them.

COMMENT TO SECTION 1

Both NCCUSL and the Bar recommend subsection (10), relating to the power of withdrawal, be revised to specifically exclude exercise by a trustee. This avoids the failure of a trustee to make a distribution from constituting a lapse of a "power of withdrawal" under K.S.A. 58-505(b)(2), thereby subjecting the assets subject to the lapsed power to the claims of the trustee's creditors.

The PLAC adopted the amendment proposed by the Uniform Law Commissioners. Because the amendment includes the phrase "ascertainable standard" the meaning of that phrase is included in the subsection, which is the only place in the code the phrase appears.

Both NCCUSL and the Bar recommended amendments to subsection (12), which defines "Qualified Beneficiary". The changes proposed by the Judicial Council Committee generally follow the recommendations of the Bar.

Currently subsection (12) defines "qualified beneficiary" to include not only current distributees but also a distributee of trust income or principal, if the trust terminated on that date. The current provision raises an issue as to the trustee's burden to determine whether such power has been exercised, thereby changing qualified beneficiaries.

The provision is amended to place the burden of informing the trustee of any exercise of a non general power of appointment on the power holder. The change also avoids the trustee having to notify a remainder beneficiary that such beneficiary has been disinherited by the exercise of a power of appointment, in circumstances where the power holder does not wish the remainder beneficiary notified.

In subsection (12)(a), the PLAC changed the word "distributee" to the phrase "entitled to receive distributions". The purpose of the change is to clarify that a person is a "qualified beneficiary" only if the trustee is required to make distributions to that person.

COMMENT TO SECTION 2

Both NCCUSL and the Bankers proposed amendments to subsection (b)(2) to make it consistent with section 801 (K.S.A. 58a-801). The PLAC took the approach of amending the subsection to refer to K.S.A. 58a-801 to avoid repeating the same language at two places in the Code.

COMMENT TO SECTION 3

The new language in subsection (b) was proposed by the Bankers. The new language gives guidance to the duty stated in the first sentence of the subsection.

The Bankers proposed striking the first sentence of the subsection, but the PLAC did not agree. The PLAC did strike the word "continuing" in the first sentence because it is unnecessary.

COMMENT TO SECTION 4

NCCUSL, the Bar and the Bankers all proposed amendment to clarify the intent of subsection (a). The effect of all the proposals is to exclude charitable organizations, which hold only remote remainder interests, though they are named in the terms of the trust.

The amendment proposed was prepared by the Bankers, and the PLAC Committee is of the opinion it more clearly states the intent of the subsection. The language stricken in subsection (a) had a similar intent but could have been read more broadly.

COMMENT TO SECTION 5

Subsection (b) is amended as recommended by the Bankers. The language stricken ", any matter involving a trust" is inconsistent with subsection (d).

COMMENT TO SECTION 6

Changes were proposed to subsection (a) by both NCCUSL and the Bar. While the changes were different in their approaches, both dealt with the problem of the unintentional inclusion of the trust estate in the settlors taxable estate.

In the comments to the NCCUSL proposal several options are discussed to amend subsection (a). The PLAC has chosen language proposed by the Uniform Law Commissioners which makes the subsection prospective and applicable only to irrevocable trusts created on or after the effective date of the Code or to revocable trusts that become irrevocable on or after the effective date of the Code.

COMMENT TO SECTION 7

The proposed amendment to subsection (a) was suggested by the Bar. The amendment is intended to clarify that the provisions of trusts which can be merged or divided under this provision do not have to be identical, if the interests of each beneficiary is substantially unchanged by the division or merger. Similar language was included in Missouri's version of the UTC, which was enacted in 2004.

COMMENT TO SECTION 8

The amendment to this section was proposed by NCCUSL and is not intended to be substantive.

COMMENT TO SECTION 9

New subsection (a) adds a definition of "mandatory distribution". No change in substance is intended by the amendment. The amendment clarifies that a mandatory distribution is to be understood in its traditional sense, such as provisions requiring that the beneficiary receive an income or receive principal upon termination of the trust.

The Bankers suggested that if the amendment is adopted, the sections headnote should be changed from "Overdue distribution" to "Overdue mandatory distribution".

COMMENT TO SECTION 10

Amendments were proposed to this section by NCCUSL, the Bar and the Bankers. This section generally provides that while a trust is revocable, all rights that the trust's beneficiaries would otherwise possess are subject to control of the settlor. However, the settlors control is negated if the settlor is incapacitated. Concern has been expressed that the section prescribes a different rule for revocable trusts than for wills, and that the rules should be the same. In its 2004 amendments, NCCUSL made the language relating to the incapacity limitation optional.

The Bar proposed striking the phrase "and the settlor has the capacity to revoke the trust". The PLAC agreed that phrase should be stricken and further amended subsections (a) and (b) for simplicity and clarity.

In addition the Bar proposed a number of additional subsections which relate to procedures to be followed if the settlor of a revocable trust is, or becomes, disabled. The PLAC approved the Bar's proposals, with minor editing and reorganization.

In subsection (c)(1) the phrase "incapacitated person" is used, it is defined at K.S.A. 2004 Supp. 77-201(31).

While approving of the changes in subsections (b),(c) and (d), it is the position of the Bankers that subsection (a) should not be amended.

COMMENT TO SECTION 11

Both NCCUSL and the Bar recommend this section of the Code be amended. The PLAC approved the change proposed by the Uniform Law Commissioners.

Subsection (f) creates an exception to the prohibition on self-dealing for certain investments in mutual funds in which the trustee, or its affiliate, provides services in a capacity other than as trustee. As originally drafted, Section 802(f) provided that the exception applied only if the investment complied with the Uniform Prudent Investor Act and the trustee notified the qualified beneficiaries of the additional compensation received for providing the services. However, the Uniform Prudent Investor Act itself contains its own duty of loyalty provision (Section 5), thereby arguable limiting or undoing this exception to the UTC's loyalty provision. The amendment, by providing that the investment does not violate the duty of loyalty under the UTC if it "otherwise" complies with the Uniform Prudent Investor Act, is intended to negate the implication that the investment must also comply with the Uniform Prudent Investor Act's own duty of loyalty provision.

COMMENT TO SECTION 12

Amendments to this section were proposed by NCCUSL, the Bar and the Bankers.

Subsection (b)(1) previously required a trustee to send a copy of the trust instrument to all qualified beneficiaries who requested it. The section was amended to limit this duty to permit the trustee to provide only those portions of the trust instrument that relate to the qualified beneficiary's interest in the trust. This provision allows the trustee to protect the privacy of other provisions of the trust instrument that are unrelated to the interests of the qualified beneficiary who requested a copy of the trust instrument. This change was primarily drafted to limit disclosure to legatees and devisees, who typically have no beneficial interest in distributions to other legatees or devisees or in the residue of the trust.

The PLAC restructured former subsection (c) by splitting it into a new subsection (b)(5) and a new subsection (e). Subsection (b)(5) defines a trustee's duties with respect to sending annual trust reports to qualified beneficiaries. New subsection (e) defines a trustee's duties with respect to sending trust reports upon the termination of a trust. The PLAC created a separate subsection because the types of information that should be sent to qualified beneficiaries in these two circumstances are quite different.

Subsection (b)(5) also changes which qualified beneficiaries must receive annual trust reports and the types of information that must be included in the trust reports. Qualified beneficiaries who have actually received a distribution will continue to automatically receive an annual trust report that covers the period in which the beneficiary received the distribution. In addition, any qualified beneficiary who would have been eligible to receive a distribution, but did not receive such a distribution (usually a discretionary distribution) could request a copy of the trust report. The PLAC believes that this provision will limit the mailing of trust reports to beneficiaries who have only remote interests in the trust, but still allows them the opportunity to obtain the information necessary to protect their interests.

As amended, subsection (b)(5) limits the trustee's duty to provide the trust's investment rate of return. Formerly, a trustee was obligated to provide a rate of return that complied with the standards established by the Association of Investment Management and Research (AIMR). This section now requires the trustee to disclose whether or not the reported return calculation complies

with AIMR standards. The PLAC believes that mandating AIMR-compliant returns would be burdensome to trustees, particularly individual trustees.

New subsection (e) defines the requirements for sending trust reports upon termination of a trust. The only substantive change is to limit the transactions disclosed in the trust report to receipts and disbursements that occurred after the event that caused the termination of the trust, typically the death of a settlor. The PLAC believes this enables the trustee to protect the privacy of the settlor regarding transactions prior to his or her death. In the event that a qualified beneficiary questions any transactions by a trustee prior to such termination event, the beneficiary may seek disclosure through a judicial proceeding.

References to "permissible current distributee" throughout Section 813 were removed because the PLAC believes it is redundant. Permissible current distributees is a class of beneficiaries that is included in the definition of "qualified beneficiaries" in Section 103(12). Subsection (f), which defined permissible current distributee is stricken.

A key issue considered by the PLAC is this section's retroactive application to pre-existing trust instruments. Despite proposals by NCCUSL the Bar and the Bankers to limit the section's retroactivity, the PLAC declined to adopt these proposals. The primary rationale is that, upon adoption of the UTC in Kansas as of January 1, 2003, the entire act was made retroactive, and to now apply a different set of rules after three years would create confusion in the law.

COMMENT TO SECTION 13

Both the Bar and the Bankers recommended modifying subsection (b) to provide that if a settlor was represented by an attorney not employed by the trustee, a provision exculpating the trustee from liability would not have to be determined "fair under the circumstances" and adequately communicated to the settlor to be given efficiency. The PLAC agreed.

HOUSE BILL No. 2607

By Committee on Judiciary

1-12

9 AN ACT concerning trusts; amending K.S.A. 58a-103, 58a-105, 58a-108,
10 58a-110, 58a-111, 58a-411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-
11 802, 58a-813 and 58a-1008 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 58a-103 is hereby amended to read as follows: 58a-
15 103. As used in this code:

16 (1) "Action," with respect to an act of a trustee, includes a failure to
17 act.

18 (2) "Beneficiary" means a person that:

19 (A) Has a present or future beneficial interest in a trust, vested or
20 contingent; or

21 (B) in a capacity other than that of trustee, holds a power of appoint-
22 ment over trust property.

23 (3) "Charitable trust" means a trust, or portion of a trust, created for
24 a charitable purpose described in subsection (a) of K.S.A. 58a-405, and
25 amendments thereto.

26 (4) "Conservator" means a person appointed by the court pursuant
27 to K.S.A. 59-3001 *et seq.*, and amendments thereto, to administer the
28 estate of a minor or adult individual.

29 (5) "Environmental law" means a federal, state, or local law, rule,
30 regulation, or ordinance relating to protection of the environment.

31 (6) "Guardian" means a person appointed by the court pursuant to
32 K.S.A. 59-3001 *et seq.*, and amendments thereto, to make decisions re-
33 garding the support, care, education, health, and welfare of a minor or
34 adult individual. The term does not include a guardian ad litem.

35 (7) "Interests of the beneficiaries" means the beneficial interests pro-
36 vided in the terms of the trust.

37 (8) "Jurisdiction," with respect to a geographic area, includes a state
38 or country.

39 (9) "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government; governmental subdivision, agency, or instrumentality; public
42 corporation, or any other legal or commercial entity.

43 (10) "Power of withdrawal" means a presently exercisable general

maric knacker doffed

House Judiciary

Date 1-23-06
Attachment # 2

1 power of appointment other than a power:
 2 (A) Exercisable by a trustee and limited by an ascertainable standard
 3 relating to an individuals health, education, support or maintenance
 4 within the meaning of section 2041(b)(1)(A) or 2514 (c)(1) of the Internal
 5 Revenue Code of 1986, as in effect on July 1, 2006; or
 6 (B) exercisable by another person only upon consent of the trustee
 7 or a person holding an adverse interest.

8 (11) "Property" means anything that may be the subject of owner-
 9 ship, whether real or personal, legal or equitable, or any interest therein.

10 (12) (A) "Qualified beneficiary" means a beneficiary who, on the
 11 date of the beneficiary's qualification is determined to be either:

12 ~~(A) A distributee of trust income or principal; or~~

13 ~~(B) a distributee of trust income or principal if the trust terminated~~
 14 ~~on that date as of the date in question, either is entitled to receive distri-~~
 15 ~~butions of trust income or principal, or would be so entitled if the trust~~
 16 ~~terminated on that date.~~

"eligible"

"mandatory or discretionary"

"eligible"

17 (B) For the purpose of trustee determining "qualified beneficiaries"
 18 of a trust in which a beneficial interest is subject to a power of appoint-
 19 ment of any nature, the trustee may conclusively presume such power of
 20 appointment has not been exercised unless the trustee has been furnished
 21 by the powerholder or the legal representative of the powerholder or the
 22 powerholder's estate with the original or a copy of an instrument validly
 23 exercising such power of appointment, in which event the qualified ben-
 24 eficiaries shall be subsequently determined by giving due consideration
 25 to such exercise unless and until the trustee has been given notification in
 26 a similar manner of an instrument which validly revokes or modifies such
 27 exercise.

COMMENT

The change clarifies that beneficiaries of either mandatory or discretionary distributions would be "qualified beneficiaries". The word "eligible" is less susceptible to misinterpretation.

28 (13) "Revocable," as applied to a trust, means revocable by the settlor
 29 without the consent of the trustee or a person holding an adverse interest.

30 (14) "Settlor" means a person, including a testator, who creates, or
 31 contributes property to, a trust. If more than one person creates or con-
 32 tributes property to a trust, each person is a settlor of the portion of the
 33 trust property attributable to that person's contribution except to the ex-
 34 tent another person has the power to revoke or withdraw that portion.

35 (15) "Spendthrift provision" means a term of a trust which restrains
 36 either voluntary or involuntary transfer of a beneficiary's interest.

37 (16) "State" means a state of the United States, the District of Co-
 38 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
 39 insular possession subject to the jurisdiction of the United States. The
 40 term includes an Indian tribe or band recognized by federal law or for-
 41 mally acknowledged by a state.

42 (17) "Terms of a trust" means the manifestation of the settlor's intent
 43 regarding a trust's provisions as expressed in the trust instrument or as

1 may be established by other evidence that would be admissible in a ju-
2 dicial proceeding.

3 (18) "Trust instrument" means an instrument executed by the settlor
4 that contains terms of the trust, including any amendments thereto.

5 (19) "Trustee" includes an original, additional, and successor trustee,
6 and a cotrustee.

7 Sec. 2. K.S.A. 58a-105 is hereby amended to read as follows: 58a-
8 105. (a) Except as otherwise provided in the terms of the trust, this code
9 governs the duties and powers of a trustee, relations among trustees and
10 the rights and interests of a beneficiary.

11 (b) The terms of a trust prevail over any provision of this code except:

12 (1) The requirements for creating a trust;

13 (2) the duty of a trustee to ~~act in good faith and~~ *administer the trust*
14 ~~in accordance with the purposes of the trust K.S.A. 58a-801, and amend-~~
15 ~~ments thereto;~~

16 (3) the requirement that a trust and its terms be for the benefit of its
17 beneficiaries, and that the trust have a purpose that is lawful, not contrary
18 to public policy and possible to achieve;

19 (4) the power of the court to modify or terminate a trust under K.S.A.
20 58a-410 through 58a-416, and amendments thereto;

21 (5) the effect of the rights of creditors to reach a trust as provided in
22 article 5 of chapter 58a of the Kansas Statutes Annotated, and amend-
23 ments thereto;

24 (6) the power of the court under K.S.A. 58a-702, and amendments
25 thereto, to require, dispense with, or modify or terminate a bond;

26 (7) the power of the court under subsection (b) of K.S.A. 58a-708,
27 and amendments thereto, to adjust a trustee's compensation specified in
28 the terms of the trust which is unreasonably low or high;

29 (8) the effect of an exculpatory term under K.S.A. 58a-1008, and
30 amendments thereto;

31 (9) the rights under K.S.A. 58a-1010 through 58a-1013, and amend-
32 ments thereto, of a person other than a trustee or beneficiary;

33 (10) periods of limitation for commencing a judicial proceeding un-
34 der K.S.A. 58a-604, and amendments thereto;

35 (11) the power of the court to take such action and exercise such
36 jurisdiction as may be necessary in the interests of justice; and

37 (12) the barring of claims against trusts and trustees under K.S.A.
38 58a-818, and amendments thereto.

39 (c) Notwithstanding any provisions of the Kansas uniform trust code
40 to the contrary, any trust created by will and admitted to probate shall be
41 subject to the requirements of chapter 59 of the Kansas Statutes
42 Annotated.

43 Sec. 3. K.S.A. 58a-108 is hereby amended to read as follows: 58a-

1 108. (a) Without precluding other means for establishing a sufficient con-
2 nection with the designated jurisdiction, terms of a trust designating the
3 principal place of administration are valid and controlling if:

4 (1) A trustee's principal place of business is located in or a trustee is
5 a resident of the designated jurisdiction; or

6 (2) all or part of the administration occurs in the designated
7 jurisdiction.

8 (b) A trustee is under a ~~continuing~~ duty to administer the trust at a
9 place appropriate to its purposes, its administration, and the interests of
10 the beneficiaries. *In determining the appropriate place for the adminis-*
11 *tration of the trust, consideration shall be given to the designation of the*
12 *settlor, the purposes of the trust, the interests of the beneficiaries and the*
13 *manner and costs of trust administration.*

14 (c) Without precluding the right of the court to order, approve, or
15 disapprove a transfer, the trustee, in furtherance of the duty prescribed
16 by subsection (b), may transfer the trust's principal place of administration
17 to another state or to a jurisdiction outside of the United States.

18 (d) The trustee shall notify the qualified beneficiaries of a proposed
19 transfer of a trust's principal place of administration not less than 60 days
20 before initiating the transfer. The notice of proposed transfer must
21 include:

22 (1) The name of the jurisdiction to which the principal place of ad-
23 ministration is to be transferred;

24 (2) the address and telephone number at the new location at which
25 the trustee can be contacted;

26 (3) an explanation of the reasons for the proposed transfer;

27 (4) the date on which the proposed transfer is anticipated to occur;
28 and

29 (5) the date, not less than 60 days after the giving of the notice, by
30 which the qualified beneficiary must notify the trustee of an objection to
31 the proposed transfer.

32 (e) The authority of a trustee under this section to transfer a trust's
33 principal place of administration terminates if a qualified beneficiary no-
34 tifies the trustee of an objection to the proposed transfer on or before
35 the date specified in the notice.

36 (f) In connection with a transfer of the trust's principal place of ad-
37 ministration, the trustee may transfer some or all of the trust property to
38 a successor trustee designated in the terms of the trust or appointed
39 pursuant to K.S.A. 58a-704, and amendments thereto.

40 Sec. 4. K.S.A. 58a-110 is hereby amended to read as follows: 58a-
41 110. (a) A charitable organization expressly mandated to receive distri-
42 butions under the terms of a trust ~~or has the rights of a qualified bene-~~
43 *fiary under this code, if the charitable organization, on the date the*

1 *charitable organization's qualification is being determined:*

2 (1) *Is a distributee of trust income or principal;*

3 (2) *would be a distributee of trust income or principal upon the ter-*
4 *mination of the interests of other distributees then receiving or eligible to*
5 *receive distributions; or*

6 (3) *would be a distributee of trust income or principal if the trust*
7 *terminated on that date.*

8 (b) A person appointed to enforce a trust created for the care of an
9 animal or another noncharitable purpose as provided in K.S.A. 58a-408
10 or 58a-409, and amendments thereto, has the rights of a qualified bene-
11 ficiary under this code.

12 (b) (c) The attorney general of this state has the rights of a qualified
13 beneficiary with respect to a charitable trust having its principal place of
14 administration in this state.

15 Sec. 5. K.S.A. 58a-111 is hereby amended to read as follows: 58a-
16 111. (a) For purposes of this section, "interested persons" means persons
17 whose consent would be required in order to achieve a binding settlement
18 were the settlement to be approved by the court.

19 (b) Except as otherwise provided in subsection (c), interested persons
20 may enter into a binding nonjudicial settlement agreement with respect
21 to ~~any matter involving a trust~~ *the matters listed in subsection (d).*

22 (c) A nonjudicial settlement agreement is valid only to the extent it
23 does not violate a material purpose of the trust and includes terms and
24 conditions that could be properly approved by the court under this code
25 or other applicable law.

26 (d) Matters that may be resolved by a nonjudicial settlement agree-
27 ment are limited to:

28 (1) The approval of a trustee's report or accounting;

29 (2) the resignation or appointment of a trustee and the determination
30 of a trustee's compensation;

31 (3) transfer of a trust's principal place of administration; and

32 (4) liability of a trustee for an action relating to the trust.

33 (e) Any interested person may request the court to approve a non-
34 judicial settlement agreement, to determine whether the representation
35 as provided in article 3 of this code was adequate, and to determine
36 whether the agreement contains terms and conditions the court could
37 have properly approved.

38 Sec. 6. K.S.A. 58a-411 is hereby amended to read as follows: 58a-
39 411. (a) A noncharitable irrevocable trust may be modified or terminated
40 upon consent of the settlor and all qualified beneficiaries, even if the
41 modification or termination is inconsistent with a material purpose of the
42 trust. A settlor's power to consent to a trust's modification or termination
43 may be exercised by an attorney in fact under a power of attorney only

1 to the extent expressly authorized by the power of attorney or the terms
2 of the trust; by the settlor's conservator with the approval of the court
3 supervising the conservatorship if an agent is not so authorized; or by the
4 settlor's guardian with the approval of the court supervising the guardi-
5 anship if an agent is not so authorized and a conservator has not been
6 appointed. *This subsection does not apply to irrevocable trusts created*
7 *before, or to revocable trusts that became irrevocable before, January 1,*
8 *2003.*

9 (b) A noncharitable irrevocable trust may be terminated upon con-
10 sent of all of the qualified beneficiaries if the court concludes that con-
11 tinuance of the trust is not necessary to achieve any material purpose of
12 the trust. A noncharitable irrevocable trust may be modified upon consent
13 of all of the qualified beneficiaries if the court concludes that modification
14 is not inconsistent with a material purpose of the trust.

15 (c) A spendthrift provision in the terms of the trust is presumed to
16 constitute a material purpose of the trust.

17 (d) Upon termination of a trust under subsection (a) or (b), the trus-
18 tee shall distribute the trust property as agreed by the qualified
19 beneficiaries.

20 (e) If not all of the qualified beneficiaries consent to a proposed mod-
21 ification or termination of the trust under subsection (a) or (b), the mod-
22 ification or termination may be approved by the court if the court is
23 satisfied that:

24 (1) If all of the qualified beneficiaries had consented, the trust could
25 have been modified or terminated under this section; and

26 (2) the interests of a qualified beneficiary who does not consent will
27 be adequately protected.

28 Sec. 7. K.S.A. 58a-417 is hereby amended to read as follows: 58a-

29 417. (a) After notice to the qualified beneficiaries, a trustee may combine
30 two or more trusts into a single trust or divide a trust into two or more
31 separate trusts, if the result does not impair rights of any beneficiary or
32 adversely affect achievement of the purposes of the trust. *The terms of*
33 *each new trust created by a division under this section do not have to be*
34 *identical if the interest of each beneficiary is substantially the same under*
35 *the terms of the trust prior to its division and the combined terms of all*
36 *trusts after the division. Two or more trusts may be combined into a single*
37 *trust if the interests of each beneficiary in the trust resulting from the*
38 *combination are substantially the same as the combined interests of the*
39 *beneficiary in the trusts prior to the combination. The trustee shall de-*
40 *termine the terms controlling any trust after its combination as authorized*
41 *by this section. The trustee may make a division under this section by:*

42 (1) Giving written notice of the division, not later than the 30th day
43 before the date of a division under this subsection, to each qualified ben-

1 eficiary; and

2 (2) executing a written instrument, acknowledged before a notary
3 public or other person authorized to take acknowledgments of convey-
4 ances of real estate stating that the trust has been divided pursuant to
5 this section and that the notice requirements of this subsection have been
6 satisfied.

7 (b) A trustee, in the written instrument dividing a trust, shall allocate
8 trust property among the separate trusts on a fractional basis by identi-
9 fying the assets and liabilities passing to each separate trust, or on any
10 other reasonable basis. The trustee shall allocate undesignated trust prop-
11 erty received after the trustee has divided the trust into separate trusts
12 in the manner provided by the written instrument dividing the trust, or,
13 in the absence of a provision in the written instrument, in a manner
14 determined by the trustee.

15 (c) The trustee may combine two or more trusts under this section
16 by:

17 (1) Giving a written notice of the combination, not later than the 30th
18 day before the effective date of the combination, to each qualified ben-
19 eficiary; and

20 (2) executing a written instrument, acknowledged before a notary
21 public or other person authorized to take acknowledgments of convey-
22 ances of real estate stating that the trust has been combined pursuant to
23 this section and that the notice requirements of this subsection have been
24 satisfied.

25 (d) The trustee may divide or combine a testamentary trust after the
26 will establishing the trust has been admitted to probate, even if the trust
27 will not be funded until a later date. The trustee may divide or combine
28 any other trust before it is funded if the instrument establishing the trust
29 is not revocable at the time of the division or combination.

30 Sec. 8. K.S.A. 58a-501 is hereby amended to read as follows: 58a-
31 501. To the extent a beneficiary's interest is not ~~protected by~~ *subject to*
32 a spendthrift provision, the court may authorize a creditor or assignee of
33 the beneficiary to reach the beneficiary's interest by attachment of pres-
34 ent or future distributions to or for the benefit of the beneficiary or other
35 means. The court may limit the award to such relief as is appropriate
36 under the circumstances.

37 Sec. 9. K.S.A. 58a-506 is hereby amended to read as follows: 58a-
38 506. (a) *As used in this section, "mandatory distribution" means a distri-*
39 *bution of income or principal which the trustee is required to make to a*
40 *beneficiary under the terms of the trust, including a distribution upon*
41 *termination of the trust. The term excludes a distribution subject to the*
42 *exercise of the trustee's discretion whether or not the terms of the trust:*

43 (1) *Include a support or other standard to guide the trustee in making*

1 *distribution decisions; or (2) provide that the trustee "may" or "shall"*
2 *make discretionary distributions, including distributions pursuant to a*
3 *support or other standard.*

4 (b) Whether or not a trust contains a spendthrift provision, a creditor
5 or assignee of a beneficiary may reach a mandatory distribution of income
6 or principal, including a distribution upon termination of the trust, if the
7 trustee has not made the distribution to the beneficiary within a reason-
8 able time after the mandated distribution date.

9 Sec. 10. K.S.A. 58a-603 is hereby amended to read as follows: 58a-
10 603. (a) While a trust is revocable and the settlor has capacity to revoke
11 the trust, rights of the beneficiaries are subject to the control of, and, the
12 duties of the trustee are owed exclusively to, the settlor.

13 (b) During the period ~~the a~~ power of withdrawal may be exercised,
14 the holder of a ~~the~~ power of withdrawal has the rights of a settlor of a
15 revocable trust under this section to the extent of the property subject to
16 the power.

17 (c) (1) *If a settlor of a revocable trust is or becomes an incapacitated*
18 *person, on petition of the settlor's legal representative, an adult member*
19 *of the settlor's family or any interested person, including a person inter-*
20 *ested in the welfare of the settlor, for good cause shown, the court may:*
21 *Order the trustee to exercise or refrain from exercising the trustee's au-*
22 *thority in a manner inconsistent with the trustee's fiduciary responsibil-*
23 *ities under the provisions of the trust; remove the trustee; require the*
24 *trustee to account; and issue such other orders as the court finds will be*
25 *in the best interests of the settlor.*

26 (2) (A) *The court may require any person petitioning for any such*
27 *order to file a bond in such amount and with such sureties as required*
28 *by the court to indemnify either the trustee or the trust estate for the*
29 *expenses, including attorney fees, incurred with respect to such*
30 *proceeding.*

31 (B) *None of the actions described in this section shall be taken by the*
32 *court until after hearing upon reasonable notice to the trustee, the settlor,*
33 *and any legal representative of the settlor, such as a conservator or at-*
34 *torney-in-fact under a durable power of attorney authorizing the attor-*
35 *ney-in-fact to act on the behalf of the settlor in such matters.*

36 (C) *If there is no legal representative of the settlor, the court shall*
37 *appoint a guardian ad litem to represent the settlor in such proceeding.*

38 (D) *In the event of an emergency as determined by the court, the*
39 *court, without notice, may enter such temporary order as seems proper*
40 *to the court, but no such temporary order shall be effective for more than*
41 *30 days unless extended by the court after hearing on reasonable notice*
42 *to the persons identified as herein provided.*

43 Sec. 11. K.S.A. 58a-802 is hereby amended to read as follows: 58a-

1 802. (a) A trustee shall administer the trust consistent with the terms of
2 the trust and solely in the interests of the beneficiaries.

3 (b) Subject to the rights of persons dealing with or assisting the trustee
4 as provided in K.S.A. 58a-1012, and amendments thereto, a sale, encumbrance,
5 or other transaction involving the investment or management
6 of trust property entered into by the trustee for the trustee's own personal
7 account or which is otherwise affected by a conflict between the trustee's
8 fiduciary and personal interests is voidable by a beneficiary affected by
9 the transaction unless:

10 (1) The transaction was authorized by the terms of the trust;

11 (2) the transaction was approved by the court;

12 (3) the beneficiary did not commence a judicial proceeding within
13 the time allowed by K.S.A. 58a-1005, and amendments thereto;

14 (4) the beneficiary consented to the trustee's conduct, ratified the
15 transaction, or released the trustee in compliance with K.S.A. 58a-1009,
16 and amendments thereto; or

17 (5) the transaction involves a contract entered into or claim acquired
18 by the trustee before the person became or contemplated becoming
19 trustee.

20 (c) A sale, encumbrance, or other transaction involving the investment
21 or management of trust property is presumed to be affected by a
22 conflict between personal and fiduciary interests if it is entered into by
23 the trustee with:

24 (1) The trustee's spouse;

25 (2) the trustee's descendants, siblings, parents, or their spouses;

26 (3) an agent or attorney of the trustee; or

27 (4) a corporation or other person or enterprise in which the trustee,
28 or a person that owns a significant interest in the trustee, has an interest
29 that might affect the trustee's best judgment.

30 (d) A transaction between a trustee and a beneficiary that does not
31 concern trust property but that occurs during the existence of the trust
32 or while the trustee retains significant influence over the beneficiary and
33 from which the trustee obtains an advantage is voidable by the beneficiary
34 unless the trustee establishes that the transaction was fair to the
35 beneficiary.

36 (e) A transaction not concerning trust property in which the trustee
37 engages in the trustee's individual capacity involves a conflict between
38 personal and fiduciary interests if the transaction concerns an opportunity
39 properly belonging to the trust.

40 (f) An investment by a trustee in securities of an investment company
41 or investment trust to which the trustee, or its affiliate, provides services
42 in a capacity other than as trustee is not presumed to be affected by a
43 conflict between personal and fiduciary interests if the investment *oth-*

1 *erwise* complies with the prudent investor rule of article 9 of this code.
 2 In addition to its compensation for acting as trustee, the trustee may be
 3 compensated by the investment company or investment trust for provid-
 4 ing those services out of fees charged to the trust. If the trustee receives
 5 compensation from the investment company or investment trust for pro-
 6 viding investment advisory or investment management services, the trustee
 7 must at least annually notify the persons entitled to receive a copy of
 8 the trustee's annual report, under K.S.A. 58a-813, and amendments
 9 thereto, of the rate, formula or method by which that compensation was
 10 determined.

" or its affiliate."
" or its affiliate."

"shall"

11 (g) In voting shares of stock or in exercising powers of control over
 12 similar interests in other forms of enterprise, the trustee shall act in the
 13 best interests of the beneficiaries and consistent with the terms of the
 14 trust. If the trust is the sole owner of a corporation or other form of
 15 enterprise, the trustee shall elect or appoint directors or other managers
 16 who will manage the corporation or enterprise in the best interests of the
 17 beneficiaries.

COMMENT

The insertion of the phrase "or its affiliate" makes the language consistent with language at page 9, line 41 of this subsection. Replacement of the word "must" with "shall" is consistent with the Revisor's efforts to use the term "shall".

18 (h) This section does not preclude the following transactions, if fair
 19 to the beneficiaries:

- 20 (1) An agreement between a trustee and a beneficiary relating to the
- 21 appointment or compensation of the trustee;
- 22 (2) payment of reasonable compensation to the trustee;
- 23 (3) a transaction between a trust and another trust, decedent's estate,
- 24 or conservatorship of which the trustee is a fiduciary or in which a ben-
- 25 eficiary has an interest;
- 26 (4) a deposit of trust money in a regulated financial-service institution
- 27 operated by the trustee; or
- 28 (5) an advance by the trustee of money for the protection of the trust.

29 (i) The court may appoint a special fiduciary to make a decision with
 30 respect to any proposed transaction that might violate this section if en-
 31 tered into by the trustee.

"As provided in this section, a"

COMMENT

This reference clarifies that by following the provisions of Section 813, a trustee will be deemed to have kept the beneficiary "reasonably informed about the administration of the trust." The Bankers were concerned that a beneficiary may claim that despite following the statute, the trustee still did not "reasonably inform" him or her and that the trustee should undertake further measures to satisfy the beneficiary.

32 Sec. 12. K.S.A. 58a-813 is hereby amended to read as follows: 58a-
 33 813. (a) ~~A trustee shall keep the qualified beneficiaries and permissible~~
 34 ~~current distributees of the trust income or principal~~ reasonably informed
 35 about the administration of the trust and of the material facts necessary
 36 for them to protect their interests. Unless unreasonable under the cir-
 37 cumstances, a trustee shall promptly respond to a qualified beneficiary's
 38 ~~and a permissible current distributee's~~ request for information related to
 39 the administration of the trust.

40 (b) *Except as otherwise provided under the terms of the trust*, a trustee shall:

- 41 (1) Upon request of a qualified beneficiary ~~or a permissible current~~
- 42 ~~distributee, shall~~, promptly furnish to the qualified beneficiary ~~or per-~~
- 43

1 ~~missible current distributee~~ a copy of the *portions of the* trust instrument
2 *relating to the interest of the qualified beneficiary;*

3 (2) within 60 days after accepting a trusteeship, ~~shall~~ notify the qual-
4 ified beneficiaries and ~~permissible current distributees~~ of the acceptance
5 and of the trustee's name, address, and telephone number;

6 (3) within 60 days after the date the trustee acquires knowledge of
7 the creation of an irrevocable trust, or the date the trustee acquires knowl-
8 edge that a formerly revocable trust has become irrevocable, whether by
9 the death of the settlor or otherwise, ~~shall~~ notify the qualified benefici-
10 aries and ~~permissible current distributees~~ of the trust's existence, of the
11 identity of the settlor or settlors, of the right to request a copy of the trust
12 instrument and of the right to a trustee's report as provided in subsection
13 (c); and

14 (4) ~~shall~~ notify the qualified beneficiaries and ~~permissible current dis-~~
15 ~~tributees~~ in advance of any change in the method or rate of the trustee's
16 compensation; and

17 (5) *At least annually, send a trust report for the trust's most recent*
18 *fiscal year to each qualified beneficiary who actually received a distri-*
19 *bution during such fiscal year. The trustee shall also send a trust report*
20 *to any additional qualified beneficiary who would have been entitled to*
21 *receive a distribution during the fiscal year and who requests a copy of*
22 *the trust report. The trust report shall include a list of the trust assets,*
23 *and, if feasible, their market values; liabilities, receipts and disbursements;*
24 *the source and amount of the trustee's compensation; and if requested,*
25 *the trust's investment rate of return and whether the rate complies with*
26 *standards established by the association of investment management and*
27 *research (AIMR). Upon a vacancy in a trusteeship, unless a cotrustee*
28 *remains in office, a trust report must be sent to the qualified beneficiaries*
29 *by the former trustee. A personal representative, conservator, or guardian*
30 *may send the qualified beneficiaries a trust report on behalf of a deceased*
31 *or incapacitated trustee.*

32 (c) ~~A trustee shall send to the distributees or permissible current~~
33 ~~distributees of trust income or principal, and to other qualified benefi-~~
34 ~~ciaries who request it, at least annually and at the termination of the trust,~~
35 ~~a report of the trust property including liabilities, receipts and disburse-~~
36 ~~ments, including the source and amount of the trustee's compensation, a~~
37 ~~listing of the trust assets and, if feasible, their respective market values,~~
38 ~~and if requested, the trust's association of investment management and~~
39 ~~research compliant rate of return. Upon a vacancy in a trusteeship, unless~~
40 ~~a cotrustee remains in office, a report must be sent to the qualified ben-~~
41 ~~eficiaries by the former trustee. A personal representative, conservator,~~
42 ~~or guardian may send the qualified beneficiaries and permissible current~~
43 ~~distributees a report on behalf of a deceased or incapacitated trustee.~~

"relevant portions of "

COMMENT

This change makes the language consistent with language at lines 1 and 2 of this page.

"except a beneficiary who received a specific bequest"

"eligible"

"method for calculating the"

COMMENT

This change in line 19 prevents a beneficiary who received a distribution of a specific bequest from having access to information in the trust report that does not relate to his or her interest in the trust.

The word "eligible" is less susceptible to misinterpretation.

"Rates" don't comply with AMIR Standards, the standards relate to the methodology for calculating the rate.

1 ~~(d)~~ A qualified beneficiary or permissible current distributee may
2 waive the right to a trustee's report or other information otherwise re-
3 quired to be furnished under this section. A qualified beneficiary or per-
4 missible current distributee, with respect to future reports and other in-
5 formation, may withdraw a waiver previously given.

6 (e) ~~(d)~~ The provisions of this section are inapplicable to persons qual-
7 ified beneficiaries other than a surviving spouse so long as a the surviving
8 spouse is or may be entitled to receive income or principal distributions
9 from a qualified beneficiary of the trust, or holds any power of appoint-
10 ment therein over the entire trust estate, and where any or all other qual-
11 ified beneficiaries are the issue of the surviving spouse.

12 ~~(f)~~ As used in this section "permissible current distributee" means a
13 person presently entitled to receive, subject to the discretion of the trust-
14 tee, income or principal.

15 (e) At the termination of a trust, the trustee shall send a trust report
16 to each qualified beneficiary who ~~will be~~ entitled to receive a distribution
17 from the trust. Such trust report shall include the information required
18 by subsection ~~(b)(5)~~, except information relating to receipts and disburse-
19 ments need only be prepared for the period from the date of the event
20 that caused the termination of the trust.

"is"

", except a beneficiary who received a specific bequest"

COMMENT

These changes prevent a beneficiary who is entitled to receive a distribution of a specific bequest from having access to information in the trust report that does not relate to his or her interest in the trust.

21 Sec. 13. K.S.A. 58a-1008 is hereby amended to read as follows: 58a-
22 1008. (a) A term of a trust relieving a trustee of liability for breach of
23 trust is unenforceable to the extent that it:

24 (1) Relieves the trustee of liability for breach of trust committed in
25 bad faith or with reckless indifference to the purposes of the trust or the
26 interests of the beneficiaries; or

27 (2) was inserted as the result of an abuse by the trustee of a fiduciary
28 or confidential relationship to the settlor.

29 (b) ~~Unless the settlor was represented by an attorney not employed~~
30 ~~by the trustee with respect to the trust containing the exculpatory term,~~

"An"

31 an exculpatory term drafted or caused to be drafted by the trustee is
32 invalid as an abuse of a fiduciary or confidential relationship unless the:

COMMENT

The stricken language in lines 29 and 30 is redundant when read in conjunction with new subsection (2).

33 (1) Trustee proves that the exculpatory term is fair under the circum-
34 stances and that its existence and contents were adequately communi-
35 cated to the settlor; or

36 (2) the settlor was represented by an attorney not employed by the
37 trustee with respect to the trust.

38 Sec. 14. K.S.A. 58a-103, 58a-105, 58a-108, 58a-110, 58a-111, 58a-
39 411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-802, 58a-813 and 58a-1008
40 are hereby repealed.

41 Sec. 15. This act shall take effect and be in force from and after its
42 publication in the statute book.



An Independent Trust Company

Daryl V. Craft, President
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TESTIMONY ON HOUSE BILL NO. 2607

Ladies and gentlemen of the committee, thank you for allowing me the opportunity to testify before you this afternoon. My name is Daryl Craft. I am President of **GTrust**, an independent trust company headquartered here in Topeka. Today I am testifying in my capacity as Legislative Chairperson for the Kansas Bankers Association Trust Division.

KBA Trust Division members have a very strong interest in the Kansas Uniform Trust Code. The Code sets the standards of conduct for our daily activities. The KBA Trust Division was an active participant in the drafting of the Code and it has participated with the Judicial Council in the preparation of House Bill No. 2607. The mark-up you have been provided with today contains several additional changes suggested to the Judicial Council by the KBA Trust Division. Because of timing issues these changes did not make it into the Bill before it was introduced.

It is the consensus of the KBA Trust Division Board of Directors that this Bill, incorporating the amendments requested today, will enhance and streamline the provisions of the Kansas Uniform Trust Code. The KBA Trust Division supports House Bill No. 2607 with the proposed amendments.

To: Civil Code Advisory Committee

From: R.C. Casad

Subject: General Jurisdiction in Kansas

The decision that led me to raise this question was Merriman v. Crompton Corp., 113 P. 3rd 834, 2005 WL 150 0861 (Kan. App. 2d June 24, 2005). That is an unpublished per curiam opinion.

It contains a statement that is inconsistent with another Court of Appeals decision and some Kansas federal cases. That statement is: “. . . Kansas does not recognize the concept of general jurisdiction.”

The support for that statement was a Kansas Supreme Court decision: Kluin v. American Suzuki MotorCorp., 274 Kan. 888, 56 P. 3rd 829 (2002). The court there noted that the Kansas long-arm statute, K.S.A. 60-308(b), does not authorize general jurisdiction. It did not say the Kansas legislature does not authorize general jurisdiction at all. In fact, it noted that general jurisdiction might be authorized over foreign insurers under K.S.A. 40-218 who are served in the state under that statute. The court cited with approval Novak v. Mutual of Omaha Ins. Co., 29 Kan App. 2d 526, 28 P. 3rd 1033, rev. denied 272 Kan. 1419 (2001) which specifically held that a foreign insurer could be sued in Kansas for a cause of action that arose elsewhere if the insurer was served under 40-218.

So the Kansas legislature has authorized general jurisdiction through service under 40-218. The same reasoning could apply to other corporations served in the state under K.S.A. 17-7301 and 17-7307(c). These statutes all predated the long-arm statute. In a 1949 case, the federal Court of Appeals for the 10th Circuit upheld general jurisdiction against an insurer. In the opinion, Judge Huxman wrote:

“It will be noted that nowhere in the Kansas statute relating to an action in the state court is the action limited to business transactions arising in the state. . . . all legislation making foreign corporations amenable to judicial process in the state in which they seek the privilege of doing business is predicated upon the right of the state to protect its citizens in their controversies with such corporations by requiring that the same be adjudicated in the courts of the state rather than compelling its citizens to travel to remote places to litigate such controversies.”

House Judiciary

Date 1-23-06

Attachment # 4

Travelers Fire Ins. Co. v. Ranney-Davis Mercantile Co., 173 F. 2d 844 at 847 (10th Cir. 1949).

The enactment of the long-arm statute in 1964 was intended to expand the range of Kansas court's territorial jurisdiction, not to restrict it. So if general jurisdiction was authorized before the enactment of K.S.A. 60-308(b), it continued to be authorized, notwithstanding that the long-arm statute itself was limited to specific jurisdiction. The long-arm statute itself reserves the right to serve process by other means, 60-308(d).

In the Meriman case, 2 of the defendants had qualified to do business in Kansas and were served in the state under 17-7301. That should have provided statutory authorization for general jurisdiction. The question then would have been the constitutional one: did those corporations have sufficiently "substantial continuous and systematic" contact with Kansas to make it fair to sue them here on this cause of action.

In Lugo v. Wyndham Intl., Inc. 2003 WL 21183220, 2003 U.S. District Lexis 8622 (D. Kan. 2003), a Kansas Federal Court upheld general jurisdiction under K.S.A. 60-30(b)(7) for an automobile accident that occurred in Wisconsin. The court did not seem to be aware of the Kansas Supreme Court decision in Kluin. Section 60-308(b)(7) is different from the other provisions in 60-308(b) in that it does not require that the cause of action arise from any act of the defendant in the state. It does, however, require that the injury that gives rise to the cause of action must be received in the state. The section was designed to apply to product liability cases. The court in Lugo seems to have ignored that limitation on 60-308(b)(7).

The defendant in Lugo was qualified to do business in Kansas and was doing substantial business here unrelated to the cause of action. So general jurisdiction over it was apparently authorized if it had been served under 17-7301.

Why should it make any difference how service is made if the defendant is subject to general jurisdiction? The only reason is the language of the long-arm statute, limiting its application to causes of action arising from the specific acts named. At one time, I think about 1984, the Judicial Council recommended adding an "any constitutional basis" clause which would then clearly authorize general jurisdiction under the long-arm statute. I remember appearing before the Judiciary Committees in support of the change. Some of the committee members questioned me about just how that would change existing law. I had to admit that the only real change would be to expand general jurisdiction over non-resident individuals since we could already reach non-resident corporations. With respect to corporations, the change would eliminate the anomalous situation that makes jurisdictional basis depend on the method of service. The legislature apparently did not think those were sufficient reasons to amend the statute.

It may be that the time is now ripe to make such a change as was recommended 20 years ago. Because the present statutes cause such confusion, even for the courts, something should probably be done to clarify matters.