MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 18, 1985

The fifty-first meeting of the Senate Judiciary Committee was called to order at 10 a.m. on March 18, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 529: Representative Kelly Addy, sponsor of this bill, said that this bill deals with workers who are injured on the job while they are working for someone who does not have workers' compensation coverage. The employee only has two choices, either he has to sue the employer directly, or they have to make a claim against the uninsured employers' fund. I think the testimony today will show that there is only about $600,000 in the uninsured employers' fund, and if everyone who is injured on the job were to file a claim with that fund, they would not have an adequate sum returned to them on a prorata basis. The only other option they have is to sue the uninsured employer directly. And if they guess wrong, and the employer is a corporation and the employer has succeeded in depleting all the assets of the corporation or encumbering all the assets of the corporation so that all you can sue is a corporation that doesn't have any assets in it, you can see that the employee in that case too is left with no effective remedy. What House Bill 529 does is give the worker a multiple number of remedies available to him. They may file a claim against the uninsured employers' fund. They may sue the employer directly. They may do both of those things, so that the election that you see on page 5 in existing law is no longer the exclusive remedy. If they guess wrong, they can go back and forth between causes of action. Also, it limits the remedies that are available to the employer to those that would be available to him if he were sued on a workers' compensation claim.

PROPONENTS: Gary Blewett, Administrator of Workers' Compensation Division, supports this bill. The Department supports this bill as an important opportunity for employees to get benefits they are not otherwise able to have when they work for an uninsured employer. We have tried numerous ways to build up the uninsured employers' fund, but none of the ways have been successful. We are able to identify and find uninsured employers and collect fines from them, which is the major source of money in the uninsured employers' fund, but the number that we are able to find and the fines that they pay are not enough to pay the full amount of benefits to those claimants. We are running anywhere from $20,000 to $60,000 that we collect in fines per month. That amount has only yielded to date about $600,000 in the uninsured employers'

fund. We have claims against that for about 200 claimants right now which are far in excess of what that amount would make available. We are trying to work out some rules that we can make some proportional payments to them, but that is still not paying them what the normal Workers' Compensation Act would pay. This bill would give some additional remedies against uninsured employers and expand the opportunity to get the moneys that would be due them had they worked for an insured employer. We are just this week taking the opportunity to advertise the fact that employers are supposed to be insured under the workers' compensation act. In this way, we feel that those employees realizing that they are working for an uninsured employer will call a hotline listed in the advertisement and we can catch these uninsured employers.

Keith Olson, Executive Director, Montana Logging Association, supports this bill. The Montana Logging Association represents in excess of 500 independent logging contractors from throughout the timbered regions of Montana. We rise in support of House Bill 529 because we sincerely believe that some uninsured employers can be classified as the lowest form of life known to human man. No-one should have to check out whether or not his employer is insured when seeking employment. This creates two serious problems, if an employee is injured while working for an uninsured employer, he becomes a welfare recipient and we have to pick up the tab for that. Second, uninsured employers unfairly compete for business with insured employers who are in compliance with the law.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: There were no questions from the Committee.

CLOSING STATEMENT: The whole idea of the bill is to place the burden for solving the problem on the shoulders of those who are creating the problem.

Hearing on HB529 was closed.

CONSIDERATION OF HB 712: Representative Ron Miller, sponsor of the bill, said the issue of this bill is, the bill will place a lien in front of financial institutions as far as lien laws go. The reason we bring this bill forward is because of the fairness aspect of it. First of all, there are liens on seeds, farm labors, crop dusters, hail insurance, etc. Fertilizer in this state is really big business. There is about $200 million dollars per year of fertilizer sold in this state. There is no operation of this size that does not allow people who are selling this type of equipment, whatever you have, not to place liens upon it. As every farmer knows, about 35% of his operating costs go for fertilizer. Representative Miller went on to tell the committee about the benefits of fertilizer. He said the banks say, "let the seller

beware, let him take his risks just like we do." That's not a fair statement. Representative Miller said that this leaves the fertilizer salesman all by himself. He said there are 19 states that do have fertilizer liens. Some of the states around us are Nebraska, Iowa, Oregon, North Dakota and Washington. These are farming states just like ours. I think the fertilizer person should have the same shot as the rest of the people.

PROPONENTS: Leanne Schraudner, Montana Agri-Business Association as well as Montana Grain Elevators Association, and we support this bill. I think the strongest argument for supporting this legislation is fairness and equity. At this time, there already exist liens for seed people, hail people, farm laborers, threshers, crop dusters, and people who deal with agricultural products. Maybe the reason there is none for fertilizer people is because a few years ago all we did was spread a little cow manure or horse manure on the ground and it didn't cost a whole lot. Now it does, and it is one of the major expenditures in a farmer's budget. Unfortunately, these fertilizer dealers have no protection. Fairness demands that they be on equal footing with other lienholders. Ms. Schraudner explained to the Committee why the fertilizer people should be allowed to be lienholders. She said the banks have said if they become lienholders they won't loan them money, but this is just untrue. She entered the attached article from Agrichemical Age (Exhibit 1) in support of her position. Ms. Schraudner then went on to read parts of the article to the committee. She said this is a simple bill and follows all the other lien laws in the state and provides that you can file a lien within 90 days after the product is delivered to the farmer. She closed by saying the bankers have all the cookies in their jar and they have the dough to make more. They would like a couple of cookies in their jar.

Tem Peterson, representing his own corporation in Wilsall and Clyde Park, Shields Valley Grain, supports this bill. He said they handle a lot of fertilizer accounts in their area. We at this present time have 10 and possibly 15 growers that we know of that are not in a position for refinancing for fertilizer. We cannot in good conscience or good sense provide fertilizer for these growers with no possibility of recompense from the sale of those products. Mr. Peterson said they are very much in support of this bill. He said that he had talked to some of his lending people and they in most cases can see their case, as he is sure the committee can. He said they don't want to be hung out to dry for selling something which in most cases they are selling for 5-6% gross margin before expenses are taken out. He said they don't have the capital to handle the number of people that would go bad on them.

Larry Johnson, owner of Montana Agri Chemicals in Belgrade, a small independent business, supports this bill. The one thing that I would like to stress is that I feel the lien law is something we need now. We don't need it a couple of years from now or 5 years from now, we need it now due to the economic plight of the farmer in this country. As a small, independent dealer, we feel it is necessary for us to have this for our growth in the future.

Allen Broyles, Billings, employed by J. R. Simplot Co., said I'm very much in support of this legislation. He made the comment that they had a customer last week that through soil tests it appeared he needed a top dressing of winter wheat with about 40 lbs. of fertilizer. His banker would loan him money for insurance on the crop and 24-D for killing weeds, but would limit him for putting on any fertilizer for his winter wheat. The poor man didn't know what he was going to do. He felt like his fertilizer was a good investment.

Gary Goodroad, works for HarvesTstates Cooperatives, Great Falls, supports this bill. He said they own a number of grain elevators in this state as well as fertilizer plants. I mention the grain elevators to stress that the banks, of course, are an extremely important part of our business. The reason that we are in support of this bill is that there are situations where bankers do not work in good faith in our opinion to give us the information that we need to make a good decision, as to whether to extend credit or to not. He gave the committee an example of a man who charges fertilizer and in the fall of the year hauls his grain or wheat or whatever to this man's grain elevator, but the man cannot take a nickle of that check because the bank has it all sewed up. This is the predicament that we as fertilizer dealers are under.

Tommy Wood, Cargill, Inc., Joplin, supports this bill. Mr. Wood said this is just a means to attach a crop in the event someone doesn't pay. He told the committee how much the fertilizer and chemical business has grown. Mr. Wood says he also farms and in his own operation last fall they started seeding; they bought seed, fertilizer, wild oat chemicals from the elevator and by the time they had finished their seeding they owed the elevator a little over $99,000. He doesn't think any bank would extend him credit of this kind without some security. He hopes this bill will encourage the banks to lend the companies money.

Jerry Sullivan, Manager, Financial Services, AgriBasics Company, supports this bill. Mr. Sullivan entered written testimony attached hereto marked Exhibit 2.

Marcie Quist, Weed Busters, Gallatin Valley, supports this bill. Ms. Quist told a story about a man in Townsend who is in the fertilizer business. He had to turn down business totalling $20,000 because he knew the farmer was financially unable to pay. This man told Ms. Quist that if there was a lien law, he could have extended the credit to this man. She feels that this legislation is very important.

OPPONENTS: Frank Stock, Security State Bank in Polson, opposes this bill. He said that his bank does not want these fertilizer dealers broke. He offered some amendments (Exhibit 3). Mr. Stock said that their margins on these loans are not that great. He said because of economic conditions there are lots of reasons not to make loans to farmers, and this legislation would be just another excuse for that ever shrinking supply of ag lenders out there to "cut out." I think we could live with an ag lien law and I have some amendments here that would give the fertilizer dealer some protection, but the banks need protection too. As this law is written, we will have no idea that there is a lien until that lien is filed. Most of us that are making loans to ag, if they are credit worthy, we have scheduled out a budget for them and that includes fertilizer, chemicals and the other things they need. I think if the fertilizer people would get consent from us, so that we know that that bill is out there and who owed it, then we could protect ourselves and protect the fertilizer dealer. Mr. Stock thinks this should be written so the fertilizer people call the banks and ask if it is okay to extend this farmer credit, the bank will say okay, and if the man doesn't pay it, he is ripe for a lien. If he wants to charge $15,000 worth of fertilizer and we feel that he doesn't have that kind of money, we should be able to say no. That way, we will have some idea if there is a lien against that crop. Mr. Stock explained the other amendments to the committee and told them that the language needs to be cleaned up. Mr. Stock felt that item number 3 of his amendments was very important because it would see to it that this is wrapped up in one year and not extended indefinitely down the road. Mr. Stock said he could support the bill with these amendments, but he would have to be opposed to it in its current form.

George Bennett, Attorney representing Montana Bankers Association, opposes this bill. Mr. Bennett said the banks ask that the committee kill this bill. He feels that this bill moves further

and further away from what they consider the proper approach to lien laws. They think the best approach to lien filing is that all liens be recorded, and that the priority with liens start with recording. Mr. Bennett feels that technology makes it possible to do extensive lien searches. He said they now have on the books, and he can see why the fertilizer people want to get into the act, seed and grain liens, hail insurance liens, spraying and dusting, warehousing liens and so forth all wanting priority. Mr. Scott has pointed out several of the problems with the way the bill is drafted. This is a very poorly drafted bill. Mr. Bennett went on to tell the committee many of the problems with the way the bill is drafted. He told the committee that if bankers don't know if collateral is available to them, they are going to lend less. Your bankers along with your PCA's and others are your primary lenders of operating capital and you are going to dry up that source because you make collateral either difficult to use or unavailable to them. Secondly, you are creating another secret lien. This lien does not have to be filed for 90 days. Thirdly, we are told that one of the reasons why this bill should be passed is because banks will not co-operate in making their credit information available to suppliers. Mr. Bennett pointed out the right to privacy acts that the banks operate under. Mr. Bennett warned that if this law passes it will dry up the prime lenders, and will necessitate liens for petroleum and all the other suppliers. (Exhibit 4)

Claire Willitts, Great Falls PCA, testifying on behalf of the PCA's of Montana. Mr. Willitts said that they have had great financial difficulties lately and they view this bill as further stress on their lending abilities. Mr. Willitts felt this bill will dry up credit for the farmers that they deal with. They don't like this hidden lien, and not knowing for 90 days whether they did or did not file a lien. Mr. Willitts sees this as a salesman's dream--he can sell more and collect ahead of anybody.

Al Haslebacher, Farm Credit Banks of Spokane, listed the many people they represent. He said they speak in opposition to this bill and that he will not rehash the points made by other lenders. He told about being a farmer in Spokane and how he was asked for a letter of credit from the fertilizer people. He told the committee that they had liens in the state of Washington for fertilizer companies, but they were nonpriority liens. He said they were hidden and secret. He said that in Spokane they had a task force looking into these liens, and Mr. Haslebacher felt this is what the state of Montana should do. In that way, he felt they could come up with a law that protected everyone.

Elroy Letcher, Executive Secretary of the Montana Council of Co-operatives, opposes this bill. Mr. Letcher entered written testimony attached hereto marked Exhibit 5.

Bob Reiquam, President of First Banks, Great Falls, opposes this bill. Mr. Reiquam entered written testimony attached hereto marked Exhibit 6.

QUESTIONS OF THE COMMITTEE: Senator Crippen asked if there were any farmers out there that aren't bankers or seed dealers, just a plain old farmer? No-one answered so he couldn't ask his question. Senator Towe apologized for missing the proponent's testimony and asked what was the matter with the lien they already had in 71-3-901. Ms. Schraudner asked if that was the one that listed crop dusters. Senator Towe replied that it was. Ms. Schraudner felt that this only applies to the person who applies the chemical, but not to the person who supplies it, and it does not apply to fertilizers. Senator Mazurek asked if they were repealing all of the laws related to crop dusting. Ms. Schraudner replied that they are repealing the lien laws that cover crop dusting because this would include the crop dusting people.

CLOSING STATEMENT: Representative Miller felt that the banks are businesses and they should be treated like the rest of the businesses. He said they should get in line just like the rest of the suppliers. Representative Miller said that in Washington state only 2-3% of the farms had liens filed against them. He said there would not be a great number of liens filed. Representative Miller mentioned that the co-sponsors on the bill were mostly farmers, and mentioned that no farmers had opposed this bill. He said that banks come in second or third on many types of liens, and he doesn't understand why it can't be the same way on this. Representative Miller passed out a letter addressed to Representative Cobb (Exhibit 7) and explained it to the committee. He urged the committee to pass this bill.

The hearing on House Bill 712 is closed.

CONSIDERATION OF HB 778: Representative Gary Spaeth is the sponsor of this bill. He told the committee that this measure does one thing, it changes how an attorney is paid in a workers' compensation case--it changes it from a contingency fee to an hourly cost, an actual cost basis. The law that you see before you was passed in 1973 and that was interpreted to allow for actual costs to be given to attorneys. A recent court case, I believe in 1983 changed that to allow for contingent fees. The person that we are most concerned with under workers' compensation is the person that is injured. That person was provided for for approximately

10 years under this measure until the recent Supreme Court case without any adverse effects. This bill just asks that it return to that prior situation and eliminate contingent fees. I am a proponent of the contingent fee in many instances, but in this instance, I don't think this is a viable way to go because it increases costs to the carriers and to the state.

PROPONENTS: Norm Grosfield, representing himself as drafter of the bill, supports this bill. Mr. Grosfield said that he drafted this bill because workers' compensation is becoming extremely costly and shortly it is going to become unaffordable. He said this is one measure that will at least help correct that problem. Mr. Grosfield explained the old laws to the committee. He said that pre-1973 laws worked. The attorney would submit to the court the number of hours he had incurred, and it would be assessed against the insurance carrier if the insurance carrier had improperly denied benefits, or had improperly terminated benefits. This worked well for 10 years and in 1983 the Supreme Court decided that the system could not be utilized that way. The fee assessed against the insurance carrier had to be based on the contingency fee. I'm merely trying to reinstate the system that existed beforehand. Mr. Grosfield said that you will hear the opponents argue that if you do this, it will take away the contingency fee concept. It does not do that, it specifically allows the contingency fee to continue. The only thing is if the insurance company is assessed a certain amount and the attorney feels that he is still entitled to an additional amount, that will come out of the claimant. You will also hear that this will dry up attorney representation. That is not true. In some instances, this bill will assist the representation of injured workers because it will allow an attorney to be properly compensated in small cases. Mr. Grosfield asked the question, would this help premiums. He felt it would because in large cases there would not be as much of an assessment against the insurance carrier. The only person that will be hurt in the passage of these bills will be the trial lawyer if the trial lawyer does not feel he has been recompensed.

Keith Olson, Executive Director, Montana Logging Association, supports this bill. Mr. Olson feels that it is time to restate that Montana's workers' compensation laws exist for the employers and employees. Workers' compensation is a mandatory insurance coverage that exists to protect the workers. All others involved are subservient to the needs of the injured employee. However, Mr. Olson believes that that is not the way it is in Montana. He said Montana's system has deteriorated to the point where subordinate professions are realizing substantial and excessive

benefits far in excess of those intended when the act was created. Mr. Olson said today's workers' compensation system allows itself to be "ripped off" and that he is merely asking the legislature to eliminate that opportunity. He said Montana's system is too liberal.

George Wood, Executive Director of Montana Self-Insurers' Ass'n. rises in support of this bill.

Irv Dellinger, representing Montana Building Material Dealers Association, supports this bill.

Roger McGlenn, Executive Director of the Independent Insurance Agents of Montana, supports this bill.

Riley John, representing Professional Insurance Agents of Montana, supports this bill.

George Allen, representing Montana Retail Association, supports this bill.

OPPONENTS: Terry Trieweiler, Montana Trial Lawyers Association, opposes this bill. Mr. Trieweiler said they rise to oppose this bill not because it adversely affects attorneys, because it doesn't, but because it adversely affects workers who need attorneys. Everyone recognizes that the only way an injured worker can hire an attorney is with the contingency fee. They are out of a job, their disability benefits have been denied and they cannot afford to hire an attorney on an hourly basis. This bill doesn't preclude injured workers from hiring an attorney based on a contingency fee payment. What it does is say that even if the injured worker has to go out and hire an attorney, and even if he only has to hire him because his disability payments have been wrongfully terminated, he is only entitled to be compensated for his attorneys fees up to a certain extent, and to the extent that the contingency fee exceeds the hourly rate, he has to pay those benefits out of his own pocket. Mr. Trieweiler then explained the contingency fee agreement and how it is regulated by the Workers' Compensation Division. Mr. Trieweiler said the insurer already has total control over whether the worker needs an attorney in the first place. Secondly, the contingent fee is regulated by the division according to the amount of the percentage that can be charged. He then listed the percentages that can be charged. Mr. Trieweiler said those percentages were implemented back in 1975 after input from insurers, from workers, from the division and from self-employed industry, such as the logging industry. Everyone conceded that we needed this in order for injured workers to have representation.

(Exhibit 8)

Dick Bottomly rose to oppose HB778. He felt that there had been too much injured workers' legislation. He said the greed of the insurance company is insatiable. He cautioned the legislature to be careful in making changes in the Workers' Compensation Act. Mr. Bottomly believes that this is a complicated piece of legislation that belongs with the Governor's Blue Ribbon Insurance Company Committee. He went on to give the background on the bill. Mr. Bottomly feels that the contingent fee system is honorable and equitable. He said it is the poor man's key to the courthouse. He told about all the people that agreed to the rule that is now in place.

Don Judge, Montana State AFL-CIO, opposes this bill. Mr. Judge said he was there to discuss problems with HB 778 that deals with an injured worker. As an example, the elimination of settlements as a justification of the payment of attorneys by insurance companies forces the claimants to go to court to find the insurer responsible for attorneys' fees. Now, on a small claim settlement it would be impossible to find an attorney to handle that case. This is unfair. Mr. Judge felt there should be a fiscal note for this bill because once the workers are told how the system is going to work, they are going to say, take it to court, take it to court, don't settle out with the insurer because it comes out of my pocket and I'm an injured worker. Therefore, we would have to hire two or three more workers comp court judges because that's the only way these cases are going to get taken care of. Most injured workers cannot afford to hire an attorney by the hour. Mr. Judge asked that unless they want to amend this bill tremendously, they give it a do not pass.

Jim D. Moore, Attorney from Kalispell, Montana, opposes this bill. Mr. Moore entered testimony attached hereto marked Exhibit 9. Mr. Moore basically said all the things that the previous opponents had said.

John Hoyt rose in opposition to this bill. He said all lawyers were not equal. He said there were good lawyers and there were poor lawyers and all lawyers getting the same fee did not set well with him. Mr. Hoyt said he does not keep these kinds of records and he is not going to keep these kinds of records, and he has not sent a bill out to a client in 25 years. Mr. Hoyt said this bill says he has to keep all those records, and he replies, "give me a break."

Judge Reardon said that he was not really an opponent of the bill. He said in reading section 2 he wanted to point out what he thought was a potential problem with the bill. He said the hourly fee that the judge sets must be based on customary and current hourly fee recognized by the legal profession as a reasonable hourly fee for legal work performed in the state. I don't know what that means. There are about 2,000 members of the Montana Bar and I don't think any of them agree on what a reasonable hourly rate is, so I think you are asking me to undertake an impossible task. He feels this legislation would cause him to have many hearings as to what a reasonable hourly fee should be.

Gary Blewett, Administrator, Workers' Compensation Division of the Department of Labor and Industry, said he is not an opponent or a proponent. He said he was simply here to furnish information. He has some misgivings similar to Judge Reardon's. He drew the committee's attention to page 3, lines 3 through 7 and read from the bill. Mr. Blewett told the committee about the problems with this section of the bill. He said that this refers to another section of law (Exhibit 10) and he passed it out. He told the committee that he would not read through that law, but he can show them the effect of that if they will turn to the very last page of that handout entitled Effect of HB 778. Mr. Blewett explained this very thoroughly to the committee. Mr. Blewett said that under both the present rule and the proposed rule, the claimant could end up paying out of his own pocket and the chart shows how much.

QUESTIONS OF THE COMMITTEE: Senator Mazurek asked Representative Spaeth if he would concede under Mr. Hoyt's argument that there ought to be a contingent fee, assuming that we would consider this bill favorably, a different fee allowed for someone of Mr. Hoyt's experience than there would be for someone just graduated from law school. Representative Spaeth felt that that is exactly what the bill says. He does not see this as being a problem. He thinks it should be recognized.

CLOSING STATEMENT: Representative Spaeth said that they had accurately predicted the arguments of the opponents. He said that this bill did not have all the smoke screen in it that they see. He feels that this bill is using extreme caution as one of the opponents warned. He feels that it is up to the legislature to address this problem and not the Supreme Court. He said this bill returns the statute to what it was for ten years. Representative Spaeth said they now have ten years experience as to how this should be administered under the present situation. He said he is not against contingent fees, he simply feels that this is not the place where contingent fees should be applied.

The hearing on HB 778 is closed.

CONSIDERATION OF HB 363: Representative Robert Marks is the sponsor of this bill. There are really four parts to HB 363 as it would limit punitive damages. First, the plaintiff would have to prove the element for punitive damage by clear and convincing evidence. The plaintiff may not present the position that the defendant may have, that is his financial statement or his net worth, unless the judge rules outside the hearing of the jury, that the plaintiff has proved a prima facia claim for punitive damages. The third component is that the defendant is guilty of oppression if he intentionally causes cruel and unjust hardship by misuse or abuse of authority or power, or taking advantage of some weakness, disability or misfortune of another person, which is the Supreme Court language. The fourth part of this bill that is distinctive is that punitive damages may not be awarded to a plaintiff in the amount in excess of $500,000. That's basically the bill. I would ask that you would amend the bill, however, and I have given those amendments to the secretary and I think she has distributed them along with a narrative (Exhibit 11). Representative Marks then went through the amendments with the committee. The amendments are underlined in the narrative.

PROPONENTS: Sam Ryan, Helena, Supervisory Committee Chairman, Tri-Valley Credit Union, East Helena, supports this bill. We had an employee discharged for good cause and he was awarded an undeserved cash settlement. Thank you.

Jim Jones, Attorney from Billings, supports this bill. Mr. Jones supports putting a "cap" on punitive damages because he believes they are being abused by the legal profession. Mr. Jones said that people who believe they have done nothing wrong and that they have acted in good faith cannot afford to go to court because there is no limit or standards that are meaningful, and there is no limit on the amount of recoverable damages. Mr. Jones went over many areas that were covered by Representative Marks. Mr. Jones recommended that the committee use the language "beyond a reasonable doubt," and he felt that this was not a Constitutional question, and that the legislature had full power to do this. Mr. Jones agreed with the amendments. Mr. Jones said he had some problem with presumed malice and felt it had to be defined. He said no bank or financial institution could foreclose on any mortgage or collect any debt without violating that standard. He said you know it is going to hurt that other person, and when you do so intentionally, you violate this standard. Mr. Jones thinks it should be taken out completely.

Mike Rice, President Transystems, Inc., of Great Falls, supports this bill because of the risk of a loss. He feels they have had

to pay out large amounts to avoid going to court. He feels like the prize in a lottery. He said that most of the claims are not against big, fat cats, but are against the little companies. He said that they are finding that nearly every single claim they have is accompanied by punitives. He said that they now have a bigger problem, they cannot find an insurance company and he feels that Montana has been "red-lined," at least for high risk businesses such as themselves, a trucking company. He said that because of this problem they have expanded so that 80% of their employees are now from outside of Montana, and they are going to continue to hire from outside Montana. He said when you have a high risk business in Montana and you are expanding, you dump it and move into lower risk areas and this is just what they have done. He agreed with many of the points made by Mr. Jones, including adding beyond a reasonable doubt and defining clear and convincing evidence, and getting rid of the implied malice thing.

John Hanson, President Copp Construction, supports this bill. Mr. Hanson entered written testimony attached hereto marked Exhibit 13. They are moving their company to Wyoming.

Francis J. Raucci, Vice-President and General Counsel of Buttreys, supports this bill. Mr. Raucci entered written testimony attached hereto marked Exhibit 14.

Bob Reiquam, First Banks in Great Falls, supports this bill. Mr. Reiquam entered written testimony attached hereto marked Exhibit 15.

Forrest Boles, President of Montana Chamber of Commerce, supports this bill. He said the Billings Chamber of Commerce is also in favor of this bill.

Randy Johnson, Executive Vice-President of Montana Grain Growers Association, and they support this bill.

Keith Anderson, Montana Taxpayers Association, supports this bill. Mr. Anderson entered written testimony attached hereto marked Exhibit 16.

Roger McGlynn, Executive Director of Independent Insurance Agents of Montana, representing many small insurance agencies around Montana and they all support this bill.

Irv Dellinger, Montana Building Material Dealers Association, supports this bill, as amended.

Jeff Kirkland, representing the Montana Credit Unions League, and they strongly recommend passage of this bill as amended.

Dave Piper, President of the Continental Bank in Harlowton, supports this bill. He is a victim of a punitive damage suit.

Elmer Hauskin, Lobbyist representing Montana Association of Underwriters, and they strongly support passage of this bill, as amended.

Roger Young, President, Great Falls area Chamber of Commerce, supports this bill.

Mike Young, representing the State Department of Administration, said and for once I do not represent the state of Montana, but the little guy who is personally liable for these things.

OPPONENTS: Terry Trieweiler, Montana Trial Lawyers Association, opposes this bill. He said that after listening to all the proponents he has not heard anyone say that Montana juries have returned too many punitive damage awards. Mr. Trieweiler said the figures that they have previously had indicate to the contrary. Over the past five years, the Montana Supreme Court has had occasion to consider five appeals on an annual basis involving punitive damages and that represents 1-2% of all the cases the Montana Supreme Court considers. Neither has anyone given you one example of a punitive damage verdict returned by a jury in the state of Montana where the result offended anyone. I submit that if you knew all the facts in the cases where punitive damages were awarded, you would be as equally offended by the defendant's conduct as the jury was. Mr. Trieweiler said that the solution to the problem is not to throw the baby out with the bathwater if there is a problem. He said that if people are presenting cases that are without foundation, the solution is to deal with the problem. He submits the attached documents (Exhibit 17) saying that these rules are already on the books and are there for people who have claims against them which are without merit. He said putting a "cap" on punitive damages doesn't protect anyone. Mr. Trieweiler then went on to explain the attached rules. He suggests the solution is more vigorous and more ready enforcement of the rules that are already available. Mr. Jones said Rule 11 hasn't been enforced in 15 years, well let's just amend it to include those sanctions in October of 1985. Mr. Trieweiler entered a simple statement of purpose to accompany SB 200, which he stated that this committee and the Senate had enacted, which he claimed increased the burden on those people seeking punitive damages. He then read the statement to the committee.

Reverend Bob Holmes, Pastor of the United Methodist Church, opposes this bill. Rev. Holmes entered written testimony attached hereto marked Exhibit 18.

Pat Tribby opposes this bill. Ms. Tribby entered written testimony attached hereto marked Exhibit 19.

John Hoyt, a lawyer from Great Falls, opposes this bill. He sees one problem with the "cap". To take a percentage of net profit creates a mind-boggling swamp in the courtroom. What happens to Mutual Insurance Companies? This is an issue that has arisen. Mutual Insurance Companies say they have no net worth, so the net worth figure, of course, would be monstrosity. Amendment #5 that the juries not be advised of the law, seems to be an insult to the people of this state. We have judges to advise the people of the law. We do not want them to work in a vacuum. Mr. Hoyt felt this would allow very oppressive, scurilous conduct. He feels we should work with the laws we already have.

Bruce Whearty, Elliston, opposes this bill. Mr. Whearty entered written testimony and a letter attached hereto marked Exhibit 20.

Karl Englund, Montana Trial Lawyers Association, opposes this bill. Mr. Englund entered written testimony attached hereto marked Exhibit 21.

James D. Moore opposes this bill. Mr. Moore did not testify, but he entered written testimony attached hereto marked Exhibit 22.

QUESTIONS OF THE COMMITTEE: Senator Mazurek asked that the proponents and opponents be available during executive action because there is still one more bill to hear.

CLOSING STATEMENT: Representative Marks said HB 363 is not Representative Ramirez's bill, it is his bill. Secondly, I don't have anything against lawyers, you notice I did not bring this up in my testimony. Representative Marks said he is concerned about the little guy and that's why the cap, because he thinks this will protect the little businesses. Representative Marks said that it had been stated that there weren't very many cases with punitive damages. He said that in Lewis and Clark County in the last quarter of 1984, there were 138 cases filed requesting money, and 22 of them had punitive damages. Some of them specified amounts from $2500-$1 million. In Yellowstone County for the two months of this year, the research indicated there had been 54 damage cases filed and there were 18 punitive damage claims in that. Representative Marks said the little guy cannot ignore a punitive damage suit. You have to try to get the thing taken care of, and that hurts. Representative Marks asked that this bill be passed with the amendments.

The hearing on HB 363 is closed.

CONSIDERATION OF HB 95: Representative Jack Ramirez is the sponsor of this bill. This bill is written to correct a situation which

arose in the case of Kloud v. Flink, which is a case in which an insurance company was sued for bad faith. He said the underlying claim was presented in the same case and the two were combined for trial, and that case came up before the Supreme Court on the question of whether the bad faith claim and the underlying claim should be tried at the same time, because there is prejudice that can result to the defendant. Representative Ramirez said that even the justices were worried about this and he quoted dissenting Justice Morrison. The district courts have the discretion to consolidate or not to consolidate and many of them do not, but some of them are permitting them to be tried together. This bill would eliminate that possibility. He then went on to explain the bill to the committee and to give them examples. Representative Ramirez said this applied to all claims, whether an insurance company is involved or not. He then told the committee how to limit it if they wished to. He did not feel the bill needed any work and should be passed in its present form.

PROPONENTS: Glen Drake, representing American Insurance Association, supports this bill. Mr. Drake recommended that this bill be passed in its present form.

Bob James, State Farm and National Association of Independent Insurers, and we support this bill.

Elmer Hauskins, representing Montana Association of Life Underwriters, supports this bill.

Roger McGlenn, Executive Director of Independent Insurance Adjusters of Montana, and they support this bill as it is written now.

OPPONENTS: Terry Trieweiler, Whitefish, Montana Trial Lawyers Association, opposes this bill. (Exhibit 23) He said that this bill says that having the insurance company dealt with at the same time as the defendant would cause prejudice. The problem with this bill is that it makes separation mandatory in every case where you sue an insurance company for unfair practices. He said we already have Rule of Civil Procedure No. 42B and it provides that the district court may, to avoid prejudice, separate the claims, so we already have that authority. In my opinion, they do this already in 99% of the cases. We do not need this bill. He gave the committee examples of when this would be a bad idea to separate the cases. Mr. Trieweiler feels the judges ought to have the discretion to make the decision on their own.

Karl Englund, Montana Trial Lawyers Association, opposes this bill. Mr. Englund refers to section 2 and tells of the problems with it.

Mr. Englund feels that this section is not needed, and that it is confusing. He asked the committee to remove subsection 2 at the very least.

John Hoyt opposes this bill. He gave the committee examples of places where this law should not apply by telling them about three of his cases. He pleaded with the committee to make it clear that the discovery and the bad faith case can go on at the same time.

James D. Moore, Kalispell, opposes this bill. Mr. Moore did not testify, but he entered written testimony attached hereto marked Exhibit 24.

QUESTIONS OF THE COMMITTEE: None

CLOSING STATEMENT: Representative Ramirez said as far as the prejudicial argument is concerned, it is there and there is no question about it. He said these questions are argued over and over and over. He said this would save a lot of time and argument because it would eliminate the arguments in those cases. Representative Ramirez said that the defendant has no control over what his insurance company has done, and his case should not be colored by that. He urged the committee to pass HB95.

The hearing on HB 95 is closed.

The meeting was adjourned at 12:47 p.m.

SENATOR JOE MAZUREK, CHAIRMAN

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 031855

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE Judiciary

BILL HB 95, 363, 529, 712, 778 DATE Mar 18

SPONSOR

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOSE
[illegible]	Mt. Trial Lawyers	Tuluca	363	
Hal Smith	Mont Hosp Ass'n	Helena	363	
Francis J Ranci	Buttrey Food-Drug	Great Falls	363	
Dave Hagan	Tri-Valley Fed. Credit Union	Helena	363	
Mike Kips	Travelers Ins. Co.	Stf	363	
George Wood	Mt Self Insurers Assn	Missoula	HB	529
Pat Tubby	Mothell Tubby	Vaughn		363
K V Brotherton	self	Stf		778
John L Hansen	self	Billings	363	
Jim Moore	—	Kalispell		95 363 778
Bill Kirkpatrick	—	Missoula	363	
Roger McGlenn	Independent Insurance Agents Assoc of Mt	Helena	95 363 778	
Mike Young	State of Montana	Helena (DOT)	363	
Jay Lewis	Agri Business	Great Falls	712	
Helen Braylen	Symplot Soilbuilder	Belenger	712	
Tommy Wood	Cargill Inc	Gryden Grant	712	
Jeffry M. Kirkland	Mt. Credit Unions League	Helena	HB 363	
Steven Shapiro	Dept-Labor	Helena		
Tom Peterson	Shields Valley Grain	Wilsall/Clyde Park	712	
Larry Johnson	Mont Agri. Chemicals	Belgrade	712	
Dan Place	Broadwater Grain	Townsend	712	
Joe Widhalm		Power	712	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE _____

BILL _____ DATE 031885

SPONSOR _____

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOSE
Richard Hanus	Self	655 M. Rodney - Helena		363
Bob Reiquam	Mont. Bankers Assn.	2700 Channel Great Falls		712
Bob Reiquam	Self	" "	363	
Keith Olson	Montana Logging Assn	Helena	363	
Hal G Stearns	NW Bank	Cut Bank	363	
Don Judge	MT STATE AFL-CIO	Helena		778
Glen Drake	American Agri	Helena	778 95	
Dave Fagen	Central Mont Bank Stockgrs	Harlowton	363	
Penny Johnson	Montana Grain Growers Assn	Great Falls	363	
AL Hasselbacher	Farm Credit Banks	Spokane		712
ELROY LETCHER	MT COUNCIL COOPS	HELENA		712
Clair Willits	PCA's of Mont.	Great Falls		712
Dave Cooper	Billings Chamber of Commerce	Billings	HB 363	
Kevin Geary	Great Falls Chamber of Com	Great Falls	HB363	
Tom Hagen	" "	"	"	
Gary Goodrod	Harvest States Coop	Great Falls	HB 712	
Dennis Hemmer	MBMDA	Helena	HB 363	
Marcia Quist	Mt Agri Business Assn	Manhattan Mont	HB 712	
KEITH OLSON	MT. Logging Assn.	Kalispell	HB778	
Ben Havdahl	MT Motor Carriers Assn	Helena	HB 778 HB 363	
Don Allen	MT. Wood Products Assn	Helena	HB 363	
Steve Browning	First Bank System	Helena	HB 363	HB 71

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE ______

BILL ______________________ DATE 031885

SPONSOR ______________________

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOSE
James L Jones	self	Billings	363	
[illegible] Murphy	Mt. Farmers Union	Great Falls	✓ 363	
John C Hoyt	self	Great Falls	~~8~~	778 363, 95
George Allen	Mt. Retail Assn	Helena	363	
William LEARY	MT. Hosp. Assn.	Helena	363	
[illegible] Hausken	MALU	Helena	95 ~~363~~	
Al Bolles	MT Chamber of Commerce	Helena	95 363	
[illegible]	WC [illegible]	Helena	778	
			778	
BOB JAMES	STATE FARM; NAII	G. Falls	363 95	
Norm Grosfield	Self	Helena	778	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Agrichemical Age

FOR DEALERS, APPLICATORS, AND CONSULTANTS • MARCH 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 031885
BILL NO. HB 712

Easy Credit a Thing of the Past

BY PARRY KLASSEN

The major fertilizer dealers nearly all agree on one thing—1985 should be a year where farmers will be buying fertilizer to produce at their best. But each takes a different approach on how they will collect payment on a bill that has grown to almost a third of a grower's production expenses.

The poor economic condition of some farmers in California, for example, has forced fertilizer dealers to take a close look at credit policies. Some have already started strict payback schedules, while others have been forced to modify programs because of farmers' increasing indebtedness. Refusal of additional credit can often be the result.

"If there's a way for us to work out with the grower the total fertilizer needs for that year, then we're willing to do it," says Jerry Rudd, corporate credit manager for Simplot Soil Builders. "If it means we have to carry a portion of the fertilizer purchase for a period of time, then we're willing to do that, as long as we're secured."

That willingness to work beyond short-term credit isn't universal in the industry. "Our normal terms are 30 days," says Paul Volker, fertilizer department manager for Wilbur-Ellis in Fresno, Calif. "Beyond that time it's not really our responsibility. That's the bank's responsibility or the commercial lender's responsibility. We don't want the bankers in the fertilizer business, and we don't want to be in the banking business. We try to keep it that way," Volker says.

Though most growers buy fertilizer from the same dealer every year, some have considered shopping around. "Since times got a little tougher the last couple years, we are paying a lot more attention to creditworthiness, especially with new customers," says Puregro regional credit manager Ken Flinn of Sacramento.

Strict payback schedules or extended lines of credit, and thorough financial analysis of both new and old customers all characterize an industry hoping for a good year in 1985. And even if farmers love to complain about fertilizer bills, there's no doubt they will come back next year.

When growers came back to Simplot for last year's fertilizer purchases, many were looking to take advantage of long payback terms, says Rudd. That's not just because prices for most crops have been lower. "The banks and commercial lenders are having the attitude that more of the credit should be carried by the fertilizer supplier rather than financed by the bank."

That creates a particular problem because often fertilizer dealers don't have security on the farmer's crop or assets. Britz Inc. of Fresno, Calif., avoids that situation by not carrying growers year to year without security, according to the company's chief financial officer Bob Glassman. "If a grower is going in crop to crop, we're getting out or we're getting notes and deeds of trust so we're in the position of a secure lender. This is the way we have to do business. We have no collateral. Like any other business, we have to pay our bills."

Wilbur-Ellis has been able to avoid much of the delinquent payments because of its long-standing policy of scrutinizing a customer's financial situation. "We

Continued on page 52

The author is a field editor for our sister publication. California Farmer.

Fert
Poise
How I

CREDIT

Continued from page 7

have a history of watching that very closely for many, many years," says Volker. "When you operate that way as a normal course, then you don't get in a trap when you find yourself getting behind. I think we as a company are in better shape because we have always watched that very closely, and our customers know it."

Discounts

To encourage early payment of purchases, Wilbur-Ellis offers its fertilizer customers a 5 percent discount if bills are paid within 30 days. If that doesn't happen, their recourse is to approach the grower's bank. "They are the money-lenders, we are not. We don't want to charge interest. We want the bill paid or

discount. We promote that as much as we possibly can," stresses Volker.

Britz takes a similar approach, but only on shorter terms. "We structure his payment schedule to pay us immediately," declares Glassman. "We do not give crop financing." Though these terms are what Glassman calls his company practice, he admits they can be lenient with established growers. "We have longstanding growers who we have done business with for many years and as a matter of business philosophy wish to pay us later than that. Sometimes we'll make special arrangements."

Delinquencies

Glassman says some of their customers start out paying current but fall behind for reasons of weather or financial budgeting. "We work with them through the season, then get out at the end of the year."

beyond the grower's control, should a dealer force a closure? "No, we'll lose," Glassman believes. "We have to work with them. Unless it's an abusive situation. We've had abusive situations where we'll cut somebody off and sue them the next day. But we have got to look at the facts."

Collection of delinquent fertilizer bills has been made somewhat easier in several states by enactment of lien laws. Washington and Oregon currently have a law on the books which, Rudd says, provides some benefits for Simplot dealers there. "Lenders in those states are much more cooperative and they communicate more readily with our industry than in states that don't have the lien law," Rudd says.

In states with the law, a fertilizer dealer files a lien at the time of purchase. The grower knows that when the products are delivered, the dealer's lien is superior

CREDIT

Continued from page 52

to any filed after the date it is filed, and equal to any filed earlier. Some states allow liens to be filed up to six months after the purchase. The lien, however, is usually filed only after earlier communication between the dealer and banker indicates a potential repayment problem.

Though Washington, Oregon, Iowa and several other states currently have this law [see AGRICHEMICAL AGE, December, p. 28A], dealers probably won't see one here soon. "I don't think the climate in California is conducive right now to the passage of a chemical and fertilizer lien law because of the great lobbying ability of the banks and other lending institutions," Rudd believes. He notes that a similar law has failed twice in Simplot's home state of Idaho for that very reason.

Though the tight economic situation has caused some growers to have a hard time paying their fertilizer bills, the numbers aren't overwhelming. "There may be anywhere from 2 to 5 percent that we have to be cautious with, which is a very small percentage when you consider the whole farm economy," says Rudd.

Flinn says that Puregro had good luck with repayment from most of its growers last season. "Our delinquencies are down right now compared to a year ago. We've worked very hard to get it that way."

Those growers with ample credit will have all the fertilizer available this year they can use. And if demand is as good as these dealers predict, growers may be in for a surprise when they get their monthly bills. "There is the potential of the cost turning around very rapidly, especially when you look at some of the prices that haven't changed for three years," says Volker.

Should this price increase occur when the demand picks up later this spring, Volker believes growers might find themselves in a bind. "He could go to his bank right now, base his budget on today's fertilizer prices and three months from now they may be 20–30 percent higher. That could happen very easily if things get rolling."

Volker bases his assumption of an impending price increase on the fact basic fertilizer manufacturers have actually lowered prices in recent years to remain competitive. If fertilizer demand is good, he believes they may try to recoup some of the losses accumulated during those years.

Like everyone else, fertilizer dealers are out to make a profit. Though bills may at times be hard to collect from customers, most fertilizer dealers do manage to stay in business and continue to thrive. As Glassman puts it, "I think money will be made in fertilizer this year and every year."

P.O. Box 2548
Great Falls, Montana 59403
Phone (406) 453-4321

AgriBasics Company

Jerry Sullivan
Manager, Financial Services

JUDICIAL COMMITTEE HEARING PRESENTATION

Mr. Chairman, members of the committee. For the record, my name is Jerry Sullivan, and I represent AgriBasics Company of Great Falls. I'm here today to solicit your support for S.B. 712.

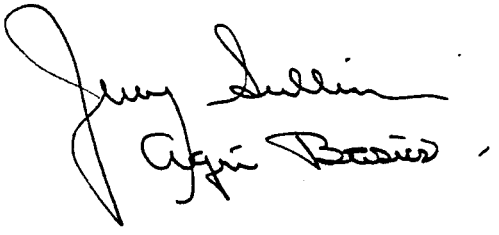
I am aware that Montana has a lien law on the books now that protects seed dealers, custom cutters, hail insurance companies, crop dusters and farm laborers. We in the fertilizer and chemical industry provide 35% of the farmer's productive operating expenses and feel we should be afforded the same protection.

There seems to be some concern in the banking community that this bill will restrict the free flow of agricultural credit.

In practice, that doesn't seem to be the case. North Dakota, Washington and Oregon, for example, have had priority lien laws for years and the banks and PCA's in those states continue to make agricultural loans. Even in Montana, the banks don't refuse to include seed in a farmer's budget because the seed dealer has the right to file a lien to secure payment. S. B. 712 is designed to help the good operation; the young farmer who is just starting in the business, leveraged farmers who are selling off a portion of their assets, and farmers who have not set up their bank or PCA budget for the next growing season.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 031885
BILL NO. HB 712

By protecting the fertilizer and chemical dealer, both the farmer and the dealer will benefit.
I urge you to vote YES on S.B. 712 and to bring it to the floor of the Senate with a DO-PASS recommendation.



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 031885
BILL NO. HB 712

House Bill 712

The passage of this bill in its present form would be inadvisable. Farmers are facing critical problems getting financing in the current adverse agricultural economy. The practical affect of the bill as it stands, without the amendments, will be that of making life for the farmer more difficult. Farmers are already faced with a shrinking pool of lenders for operating credit. This bill will provide reluctant lenders one more reason to deny farm credit.

PROPOSED AMENDMENTS

NUMBER 1.

In New Section, Section 1, line 23, need to insert after "within one year" (from the date of the furnishing of the fertilizer, soil conditioner, herbicide, pesticide or other agricultural chemical).

JUSTIFICATION: Occasionally agricultural chemicals and fertilizers are carried over from one year to the next year. The bill should be clarified from the date the merchant delivers the product and not be dependent on the time of application.

NUMBER 2.

Replace the New Section, Section 3, line 23, page 2 to line 3, page 3 with the following new section:

NEW SECTION. Section 3. Priority. The lien provided for in [this act] has priority as to the crops covered thereby over all other security interest or liens or encumbrances, provided the person, firm, corporation or business entity has the prior written consent of any creditor who has a perfected lien filed at the time of sale of fertilizer, soil conditioner, herbicide, pesticide or other agricultural chemical, except for seed and farm laborers' liens and prior filed liens under this act.

JUSTIFICATION: The bank, P.C.A. or Farm Home Administration extending loans to farmers generally extend credit according to a farm operating budget. The lender should be protected from a blind lien. Further, if the bank, P.C.A. or Farm Home Administration is notified that the farmer wants fertilizer applied, they can review the budget and if the funds are provided for in the budget, consent to application. The lender is then on notice that fertilizer is being applied and they can then control the loan disbursement by putting the merchants name on a check when disbursing the funds. This approach is fair because the lender is not surprised by a bill that may run to $20,000.00 or $30,000.00, and the merchants are protected by a lien after the lender consents to the sale, if the lender does not advance funds or if the farmer uses the money advanced for another purpose other than paying for the fertilizer. The funds can be disbursed to the fertilizer merchant without any hardship on the lender. In this approach, the lender and merchant both have some protection.

NUMBER 3.

In New Section, Section 4, line 8, need to insert after "Commercial Code" (except an action to foreclose the lien provided for in this act must be commenced within one year from the date the lien under this act is perfected.)

JUSTIFICATION: A lien once perfected under the Uniform Commercial code can be continued and foreclosed at any time in the future. In this situation, the crop should be sold, the lien satisfied, and the merchant paid. One year is sufficient time to resolve this matter.

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 3
DATE 031885
BILL NO. HB 712

NAME: GEORGE T. BENNETT DATE: 3/18/85

ADDRESS: P.O. BOX 1705
404 FULLER AVE HELENA 59624

PHONE: 442-8950

REPRESENTING WHOM? MONTANA BANKERS ASSN

APPEARING ON WHICH PROPOSAL: H.B. 712

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 031885
BILL NO. HB 712

Montana Council of Cooperatives
P.O.Box 367 406-442-2120
Helena, Montana 59624

OPPONENT HB-712

SENATE JUDICIARY COMMITTEE MARCH 18,1985

For the Record I am Elroy Letcher, Executive Secretary of the Montana Council of Cooperatives.
Our Organization represents the Farmer Owned Supply Cooperatives as well as the Farmer Owned Grain Marketing Cooperatives. We also represent the Cooperative Farm Credit System Lenders.

WE Oppose HB-712 for a number of reasons.
1. The proponents have stated "It is only right and fair that Fertilizer & Chemical Dealers Should have a Priority Lien" because with the Deregulation of the Lending Industry by Congress a number of years ago, almost everyone is allowed to become a part of this business. As we recall the discussions leading to deregulation, The advantages held by some and the restrictions on others were removed to create and we quote "A LEVEL PLAYING FIELD".
To give one segment of the new entrants to that arena, A PRIORITY LIEN, AND ALSO A BLIND LIEN, in our opinion does not retain the concept of a level playing field.
2. The Proponents also maintain that the product they supply is very important to agricultural producers, and since Seed has been considered important enough to merit a priority Lien they too should have a priority. We would point out that section 71-3-703 of the Code places a limitation on the amount of lien for Seed, this being the purchase price of 700 Bushels, This bill places no limit for Fertilizer or Chemicals.

If we are to follow this same line of thinking, When will the other production items feel their product is also very important to production of a crop. The supporters of HB-819 must have considered their products to be as important when they sought a priority Lien for themselves. With the bill being killed in the House, that body must have felt they were not. But will future sessions bring a continual demand for more priorities, until such time that the Producers' only means to retain enough of his crop to cover wages, would be to incorporate and hire himself and all family members as labor, with each of them filing a labor lien during the year.

It has been the position of our organization for many years, that no supplier should have a priority lien as it distrubs normal commerce and tends to restrict availabilitiy of credit.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 03/18/85
BILL NO. HB 712

3. The Proponents have said they need this bill to be able to file liens against crops for credit extended.
Per our review of the Uniform Commercial Code, we feel the ability to file a lien against any crop is already there. In addition the UCC provides that the lien be recorded in advance, and upon full knowledge of the producer. We feel this is when any lien should be filed, that in event the Dealer during his evaluation of the producers financial condition and credit needs determines that He the Dealer needs to take a Lien against the crop. He the dealer should inform the producer, and the producer have the opportunity to decide if his need for this credit is sufficient that he is willing to place a lien against the crop.
If so the proper documents should be prepared and filed, notifing others that a lien exists.
To Allow for Blind Liens in our opinion does not foster good relationships within the business community.
In addition it is the feeling of our Dealer members that Priority Blind Lien legislation is an attempt to Legislate "Credit Policies" and we are of the firm belief that this can not be done nor should it be done.
4. Availability of Information.
Our dealers as well as many other non-co-op dealers with whom we have discussed this issue, agree that the original intent behind this legislation was merely a request for a means to be able to obtain information regarding a producers credit arrangements from the Lenders.
Many agree that this has been accomplished with the mere introduction of the Bill, in that the Dealers and Lenders are now discussing the problems involved, with many developing arrangements for the use of "Letters of Credit".
Our dealers would point out that No one can or should attempt to Legislate Communications.
5. PRODUCER INTERESTS; as pointed out earlier, our membership is made up of the various cooperative business' in Montana. Those business are owned by FArmer Producers.
These producers have a legitimate concern. During the 1983 Session Repr. Donaldson, on behalf of a number of Grain Producers introduced a bill to provide a Blind Lien on Grain sold by the producer. Many of the business interests appearing today as Proponents of HB-712 were Opponents to Repr. Donaldsons' Bill. The basis for their opposition being "That A Blind Lien is a restriction on Trade and Commerce" Our Farmer Producer owners are now asking if A Blind Lien when held by a Producer is a restriction of Trade, Is it not also a restriction of trade when it can be filed for the benefit of a business that may be a Supplier as Well as buyer of the producers production?
The Senate in 1983 agreed with the business interests that Blind Liens were not in the best interest of Trade or Commerce, and Killed that bill.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 03/8/85
BILL NO. HB 712

For these reasons we would ask that this committee treat this request for the establishment of Blind Liens in the same manner and give it a DO NOT PASS RECOMMENDATION.

THANK YOU.

Elroy Letcher
Executive Secretary
Montana Council Of Cooperatives
442-2120 or 443-3497

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 031885
BILL NO. HB 712

TESTIMONY for the Senate Judiciary Committee
Monday, March 18, at 10:00 a.m.

RE: Lien Bills

I am Bob Reiquam, President of First Banks Great Falls

Tough economic times certainly bring all forms of requests before the legislature. I have stated publicly that I do not feel that there is an agricultural credit crunch because that would indicate a shortage of available funds. There is no question there is a serious agricultural financial crisis, but it stems from inability for many agriculturalists to repay rather than from a shortage of dollars.

I know you people as legislators are concerned with the agricultural problem as it affects the people of our state, our tax base, and our financial ratings. Agriculture is a heavy user of credit and operating credit traditionally has come from commercial banks, the Production Credit Associations, the Farmers Home Administration, and, yes, from dealers and suppliers of chemicals, feeds, fuel, and other supplies.

The absolute worst possible thing that could be done in these tough economic times for farmers and ranchers would be to provide first lien rights for all individual farm suppliers. This would cause great uncertainty in all financial circles and would have an adverse affect upon the credit situation in this state. There would be little reason to have secured credit. The only farmers and ranchers deemed credit-worthy, would be those with strong enough financial statements, sufficient cashflow, and a strong enough credit history to warrant unsecured credit. These are probably the operators that could be self-financed if they so chose.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 031885
BILL NO. HB 712

In testifying in opposition to HB712, as well as the other lien bills, I find myself in a difficult position, as we not only finance farmers and ranchers, but also finance crop sprayers, fertilizer dealers, and all of the other suppliers, as well. We want to see these people protected, but HB712 will certainly be at the expense of the farm and ranch industry and will not supply additional credit for agriculture.

Lien laws, their effect on agricultural credit, the entire agricultural credit mechanism, is something we should not take lightly and enact legislation that may adversely affect another segment of our industry. Senate joint resolution 31, sponsored by Senator Chris Christiaens, is probably the best solution at this time and it simply suggests that a study of all lien laws be conducted. I would urge that HB712 as well as all other lien laws surrounding agriculture be tabled until that study is completed and we proceed with the knowledge of the matter rather than trying to jump in with solutions that may cause additional problems.

For the sake of the agricultural producers across Montana, please table HB712 until Senate Joint Resolution 31 is completed and we have a complete and thorough study of the lien laws in Montana.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 031885
BILL NO. HB 712

GARY DeCRAMER
Senator 27th District
R.R. Box 40
Ghent, Minnesota 56239
Phone: (507) 428-3578
and
Room 303 State Capitol
St. Paul, Minnesota 55155
Phone: (612) 296-6820

Senate
State of Minnesota

February 15, 1985

Representative John Cobb
House of Representatives
Helena, Montana 59601

Dear Representative Cobb:

It is my understanding that the Montana Legislature is considering legislation that would provide an opportunity for greater security interest for the suppliers of agricultural inputs. In 1984, I authored S.F. 1451 for the Minnesota Legislature. S. F. 1451, Minnesota's Agriculture Production Input Lien bill, was passed into law last spring.

I asked Minnesota Agricutlural input suppliers to keep track of how the bill was working. When I spoke to a convention of 400 Minnesota elevator operators and their boards recently, and asked if any of them were experiencing cooperation from their local lenders, only one supplier came forward to say yes. The law isn't working. If it were working as it was designed, it would be a good vehicle for determining credit. Minnesota lenders are refusing to cooperate.

I have prepared an amendment to S.F. 1451 which would bring the bill into its original form; suppliers should have a priority position for the value of the inputs they have provided.

Truly,

Gary DeCramer
State Senator

GDC:ams

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 031885
BILL NO. HB 712

Minnesota Agri-Growth Council, Inc.

8030 CEDAR AVE. SO., SUITE 213, BLOOMINGTON, MN 55420 • PHONE (612) 854-1665

February 15, 1985

The Honorable John Cobb
House of Representatives
State Capitol
Helena, Montana

Dear Representative Cobb:

I am writing to you regarding our so-called supplier lien law passed last year in the Minnesota Legislature. As you may know, this supplier lien law is somewhat of a misnomer in that it results in a priority lien for suppliers only in the event that lendors fail to respond within 10 calendar days to a request for credit information on producers. In fact, since this law was enacted, we are not aware of any supplier who has gained a priority position through this law.

Generally, lendors are responding "no" in every case to inquiries of credit worthiness under this law. This general policy by lendors clearly undermines our intent which was to encourage producers, suppliers and lendors to work more closely together in credit situations. Because of this lack of cooperation, an effort has already been made in the Minnesota Legislature to make into law a priority lien for suppliers. Ironically, this took shape in the form of an amendment that was not instigated by the suppliers. The amendment was defeated on a tie vote because it was considered an "unfriendly" amendment.

Our current position is to continue to support the concept of the current law; however, the lack of lendor cooperation is generating almost spontaneous support within the Legislature to pass a priority lien law.

I hope that this provides some insight into the Minnesota experience. Please don't hesitate to call on us for further assistance.

Best Regards,

THE MINNESOTA AGRI-GROWTH COUNCIL, INC.

Dan A. Gunderson
Executive Director

DAG:jrm

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 031885
BILL NO. HB 712

NAME: TERRY TRIEWEILER DATE: 3/18/85

ADDRESS: 233 2nd ST., WHITEFISH

PHONE: 862 4597

REPRESENTING WHOM? MTLA

APPEARING ON WHICH PROPOSAL: HB 778

DO YOU: SUPPORT?_____ AMEND?_____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 031885
BILL NO. HB 778

NAME: James D Droove DATE: 3-18-85

ADDRESS: Box 1198, Kalispell

PHONE: 755-8020

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: HB 778

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The injured workman, by passage of this bill, would suffer yet an additional reduction of already Sub-Subsistance benefits.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031885
BILL NO. HB 778

Permanent v. temporary disability. Where employer-insurer neither denied liability for claim nor terminated benefits, although it disputed claimant's contention of permanent total disability and paid benefits on temporary total disability, this section rather than 39-71-611 governed attorney fees when trial court adjudged claimant permanently totally disabled. *Krause v. Sears, Roebuck & Co.*, ____ Mont. ____, 641 P.2d 458, 39 St. Rep. 394 (1982).

Net compensation not to be reduced. Since the purpose of this section is to provide to a successful claimant attorney fees above and beyond the compensation awarded to him, the Workers' Compensation Judge may not assess him for those fees. *Holton v. F. H. Stoltze Land & Lumber Co.*, 195 Mont. 263, 637 P.2d 10 (1981).

Collateral references: *Grosfield*, § 10.34; *Larson*, § 83.12.

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619.

Cross-References
"Division" defined, 39-71-116.
"Order" defined, 39-71-116.

Division note: This section was implemented in ARM 24.29.3801.

Constitutional. Statute is not an unconstitutional intrusion into the judicial branch of state government under separation of powers precedents, nor does it infringe upon Supreme Court's powers to supervise attorney conduct under Art. VII, § 2 (3) of the Montana Constitution. *Kelleher v. Division of Workers' Compensation*, W.C.Ct. Doc. No. 1269, no. 8 (v. I, 1981).

Filing of fee agreement. In the absence of a statute or rule governing the time for filing a fee agreement, there is no forfeiture of a claim for attorneys' fees if the agreement is not filed prior to the hearing before the Workers' Compensation Court. *Hock v. Lienco Cedar Products*, ____ Mont. ____, 634 P.2d 1174, 38 St. Rep. 1598 (1981).

Collateral references: *Grosfield*, § 8.50; *Larson*, § 83.13.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031885
BILL NO. HB 778

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 24.29.3801.	)))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE 24.29.3801.

TO: All Interested Persons.

The notice of proposed division action published in the Montana Administrative Register on December 13, 1984, at page 1795, is amended as follows because the division has received a request for a public hearing from the Yellowstone Valley Claimants' Attorneys' Association, comprised of about forty members.

1. On April 4, 1985, at 10:00 a.m., a public hearing will be held in the conference room on the third floor of the Workers' Compensation Building located at 5 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of Rule 24.29.3801, Attorney Fee Regulation. The rule proposed for amendment is found on page 24-2353 of the Administrative Rules of Montana.

3. The amendment is proposed for the purpose of setting forth the manner in which attorneys, who represent or act on behalf of a claimant or any other party on any workers' compensation claim, submit to the division a contract of employment between the attorney and the claimant, and setting forth the manner in which the administrator of the division regulates the amount of the attorney's fee in any workers' compensation case. The amendment of this rule is necessary to distinguish the division's responsibility to regulate attorney fees pursuant to section 39-71-613, MCA, and the workers' compensation court's responsibility to award attorney fees pursuant to section 39-71-611, or 39-71-612, MCA.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601, no later than April 19, 1985.

5. William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

5. The authority of the division to make the proposed amendment is based on section 39-71-203, MCA, and the rule implements sections 39-71-611, 39-71-612, and 39-71-613, MCA.

Gary L. Blewett

GARY L. BLEWETT, Administrator

CERTIFIED TO THE SECRETARY OF STATE: February 15, 1985

MAR Notice No. 24-29-5

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031885
BILL NO. HB 778

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rules.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 24.29.3801. (No Public Hearing Contemplated)

TO: All Interested Persons

1. On January 14, 1985, the Workers' Compensation Division proposes to amend its rule concerning attorney fee regulation and the submission of attorney fee contracts.

2. The proposed rule to be amended provides as follows:

24.29.3801 ATTORNEY FEE REGULATION (1) An attorney representing a claimant on a workers' compensation claim shall submit to the division, in accordance with section 39-71-613 MCA, a contract or a copy of a contract of employment stating specifically the terms of the fee arrangement. The contract of employment shall be signed by the claimant and the attorney~~.~~, and must be approved by the Administrator of the Division of Workers' Compensation. A contract complying with these rules shall be deemed approved by the Administrator unless good cause requires otherwise. The Administrator shall notify the attorney in writing of any contracts which do not comply with these rules.

(2) An attorney representing a claimant on a workers' compensation claim, and who plans to utilize a contingent fee system to establish the fee arrangement with the claimant, may not charge ~~a fee above the following amounts:~~

~~(a)~~ For cases that have not gone to a hearing before the workers' compensation judge, a fee above twenty-five percent (25%) of the amount of compensation payments the claimant receives due to the efforts of the attorney.

~~(b) For cases that go to a hearing before the workers' compensation judge, thirty-three percent (33%) of the amount of compensation payments the claimant receives from an order of the workers' compensation judge.~~

~~(c) For cases that are appealed to the Montana supreme court, forty percent (40%) of the amount of compensation payments the claimant receives based on the order of the supreme court.~~

(3) The amount of medical and hospital benefits received by the claimant shall not be considered in calculating the fee, unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, in the claimant's case, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

MAR Notice No. 24-29-4

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031885
BILL NO. HB 778

(4) For good cause shown, the division may allow contingent fees in excess of the maximum fees as set forth in the above schedule. Such a variation from the maximum contingent fee schedule must be approved by the division before a final fee contract is entered into between the attorney and the claimant.

(5) The fee schedule set forth above does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time. When such a fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

(6) The contingent fee schedule set forth above is a maximum schedule, and nothing prevents an attorney from charging a contingent fee below the maximum contingent fee schedule. The division encourages attorneys to review each workers' compensation claim on a case by case basis in order to determine an appropriate fee. An attorney may also reduce the attorney's fee from what was originally estabished in the fee contract, without the approval of the division.

(7) ~~The division retains its authority to regulate the attorney fee amount in any workers' compensation case even though the contract of employment fully complies with the rules set forth above.~~ Attorneys' compensation in claims settled prior to the hearing of a petition before the workers' compensation court shall be determined solely by the approved fee arrangement and shall be paid out of the funds received in settlement or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court, that court shall have exclusive jurisdiction for the award of attorney's fees on the claim.

(8) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim not having gone to hearing on a petition before the workers' compensation court, the Administrator, upon request of either the claimant o the attorney, shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in Section 24.29.201, et seq., ARM. The fee contract between attorney and client shall clearly identify the rights granted by this subsection.

(9) This rule constitutes the administrator's regulation of the amount of attorney's fees in any workers' compensation case as permitted by section 39-71-613, MCA.

3. The rationale for amending ARM 24.29.3801 is to set forth the manner in which attorneys, who represent or act on behalf of a claimant or any other party on any workers' compensation claim, submit to the division a contract of employment between the attorney and the claimant, and to set forth the manner in which the administrator of the division regulates the amount of the attorney's fee in any workers' compensation case. The amendment of this rule is necessary to distinguish the division's responsibility to regulate attorney

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031885
BILL NO. HB 778

fees pursuant to section 39-71-613, MCA, and the workers' compensation court's responsibility to award attorney fees pursuant to section 39-71-611, or 39-71-612, MCA.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601, by January 11, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to William R. Palmer, address above, no later than January 11, 1985.

6. If the division receives requests for a public hearing on the proposed amendment from 25 persons who are directly affected by the proposed amendment or ten percent of the population of the state of Montana, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The rule will affect each individual in the state. Notice of hearing will be published in the Montana Administrative Register.

GARY L. BLEWETT, Administrator

CERTIFIED TO THE SECRETARY OF STATE: December 3, 1984
(date)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031885
BILL NO. HB 778

EFFECT OF HB 778

With Division Contingent Fee Agreement Rule

Flat 25%

Example #1:

$,0000 Case 20 hours atty. time @$100/hr.	Effect with Current Division Rule				Effect with Proposed Division Rule			
	Contingent Agreement	Attorney Receives	Insurer Pays	Claimant Pays	Contingent Agreement	Attorney Receives	Insurer Pays	Claimant Pays
OUT OF COURT SETTLEMENT	$2,500	$2,500	-0-	$2,500	$2,500	$2,500	-0-	$2,500
W.C. COURT DECISION IN CLAIMANT'S FAVOR 33	$3,300	$3,300	$2,000	$1,300	$2,500	$2,500	$2,000	$ 500
SUPREME COURT DECISION IN CLAIMANT'S FAVOR 40	$4,000	$4,000	$2,000	$2,000	$2,500	$2,500	$2,000	$ 500

Example #2:

$10,0000 Case 40 hours atty. time @$100/hr.	Effect with Current Division Rule				Effect with Proposed Division Rule			
	Contingent Agreement	Attorney Receives	Insurer Pays	Claimant Pays	Contingent Agreement	Attorney Receives	Insurer Pays	Claimant Pays
OUT OF COURT SETTLEMENT	$2,500	$2,500	-0-	$2,500	$2,500	$2,500	-0-	$2,500
W.C. COURT DECISION IN CLAIMANT'S FAVOR	$3,300	$4,000	$4,000	$ -0-	$2,500	$4,000	$4,000	$ -0-
SUPREME COURT DECISION IN CLAIMANT'S FAVOR	$4,000	$4,000	$4,000	$ -0-	$2,500	$4,000	$4,000	$ -0-

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 10
DATE 031885
BILL NO. HB 778

HOUSE BILL NO. 363

INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "An ACT LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-221, MCA, is amended to read:

"27-1-221. When exemplary damages allowed. (1) Subject to subsection (2), in any action for a breach of an obligation not arising from contract where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant.

(2) The jury may not award exemplary or punitive damages unless the plaintiff has proved all elements of the claim for exemplary or punitive damages by clear and convincing evidence. Clear and convincing evidence means evidence which is unmistakable and free from serious or substantial doubt.

(3) Presumed malice exists when a person has knowledge, which knowledge may be proven by direct or circumstantial evidence, of facts which create a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk, or recklessly proceeds in

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 03/885
BILL NO. HB 363

unreasonable disregard of or in indifference to that risk.

(4) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.

(5) A defendant is guilty of oppression if he intentionaly causes cruel and unjust hardship by:

(A) Misuse or abuse of authority or power; or

(B) Taking advantage of some weakness, disability, or misfortune of another person.

(6) (a) In cases of actual fraud, or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded punitive damages may be in an amount up to but no greater than $100,000 or 1% of the defendant's net worth whichever is greater.

(7) If a plaintiff sought exemplary damages at trial, but such damages were not awarded, the court shall submit to the jury a question concerning whether the jury found in the evidence presented any reasonable basis in fact for seeking exemplary damages. If the response to the question is negative, the court may, in its discretion as a penalty against

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 031885
BILL NO. HB363

such party, the party's attorney or both assess damages in an amount not to exceed what is determined by the court to be reasonable attorney fees and costs of the defendant incurred in defense of such claims.

(8) In cases where punitive damages may be awarded, the jury shall not be instructed, informed or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in section 6b.

NEW SECTION. Section 2. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

NEW SECTION. Section 3. Applicability. This act applies to any proceeding begun after or pending on the effective date of this act that has not been submitted to a jury on the effective date of this act.

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

-End-

7263R

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 031885
BILL NO. HB 363

STANDING COMMITTEE REPORT

MARCH 18 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 363

Third reading copy (Blue color)

LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS

Respectfully report as follows: That HOUSE Bill No. 363

Third reading copy
Be amended, as follows:

1. Page 2, line 2.
Following: "EVIDENCE."
Insert: "Clear and convincing evidence means evidence which is unmistakable and free from serious or substantial doubt.

(3) Presumed malice exists when a person has knowledge, which knowledge may be proven by direct or circumstantial evidence, of facts which create a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk, or recklessly proceeds in unreasonable disregard of or in indifference to that risk."

2. Page 2, line 3.
Strike: "(3)"
Insert: "(4)"

~~AND AS AMENDED~~

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 031885
BILL NO. HB 363

Chairman.

STATE PUB. CO.
Helena, Mont.

March 18, 1985 19

3. Page 2, line 9
Strike: "(4)"
Insert: "(5)"

4. Page 2, line 14
Strike: Lines 14 and 15 in their entirety.
Insert: "(6) (a) In cases of actual fraud, or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded punitive damages may be in an amount up to but no greater than $100,000 or 1% of the defendant's net worth whichever is greater.

(7) If a plaintiff sought exemplary damages at trial, but such damages were not awarded, the court shall submit to the jury a question concerning whether the jury found in the evidence presented any reasonable basis in fact for seeking exemplary damages. If the response to the question is negative, the court may, in its discretion as a penalty against such party, the party's attorney, or both, assess damages in an amount not to exceed what is determined by the court to be reasonable attorney fees and costs of the defendant incurred in defense of such claims.

(8) In cases where punitive damages may be awarded, the jury shall not be instructed, informed or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in section 6b."

And as concurred in
DO PASS

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 031885
BILL NO. HB 363

Chairman.

STATE PUB. CO.
Helena, Mont.

NAME: Mike Rice DATE: 3/18/95

ADDRESS: Box 399 Black Eagle, MT.

PHONE: 727-7500

REPRESENTING WHOM? Transystems, Inc.

APPEARING ON WHICH PROPOSAL: HB 363

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 12
DATE 031885
BILL NO. HB 363

NAME: John L Hansen DATE: 3/18/85

ADDRESS: Box 20913 Billings, Montana

PHONE: 252-8421

REPRESENTING WHOM? SeH

APPEARING ON WHICH PROPOSAL: 363

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 031885
BILL NO. HB 363

HB363

I am John Hansen, President of COP Construction Co. of Billings, Montana. I am a life-long Montanan. COP Construction Co. has done business in this state since 1949. During that time the firm has never defaulted a contract, has never been sued, nor has it brought legal action against anyone with whom it has done business.

Last month COP Construction agreed to a pre-trial settlement of a punitive damages suit. The settlement cost $68,000.00 plus legal costs of $13,017.00 and in-house costs of $17,760.00 for a total cost of $98,777.00. The sole reason for our decision to accept a pre-trial settlement is the injustice and unfairness, and the totally helpless and hopeless position of a defendant charged under the Montana Punitive Damages Act. Right now a defendant accused, fairly or unfairly, in a civil action in Montana is infinitely at the risk of unlimited punitive damages above actual damages.

As a contractor I understand risk. The decision taken in February changed the risk from infinite to defined. The pressure of infinite risk is not justice. It is not fairness. It should not be the force that decides to abandon trial; however, under the present circumstances, it is the leading reason.

Briefly, a construction depression occurred in Montana in 1981-1982. In 1980 COP Construction did $16,000,000.00 volume. That volume declined in 1981 to $11,000,000.00 and in 1982 to $7,000,000.00. We experienced a substantial loss in 1981 and at the third quarter of 1982 our certified public accountants predicted another large loss. Their strong advice was to reduce costs.

Because of this drastic decline and bleak outlook, assets and equipment were sold and the work force was reduced. The sale of assets and reduction of work force was taken to avoid bankruptcy. No employees were laid off for poor performance or cause; there simply was not work available.

One employee, and only one, brought suit in March 1983 alleging age discrimination and wrongful discharge based on violation of the implied covenant of good faith and fair dealing.

The charge of age discrimination was heard before a Montana Human Rights Commission examiner. Before the hearing could be completed, the employee and his attorney got up and walked out of the room; therefore, that charge was not resolved.

Business volume recovered in 1983 to $11,000,000.00. A firm offer of re-employment was made to the employee. He refused to accept the offer to return to work.

We feel strongly that the employee was fairly treated, and that the accusation was unjust. However, to resolve the charge at trial would result in infinite risk to the defendant. COP Construction has an employees pension trust for its people. I was informed that this trust, the life savings of employees, would be at total exposure. I simply could not risk that money. The deck is so stacked against a defendant, that our decision to accept pre-trial settlement was made. The deck is stacked so bad against the defendant that it almost precludes defending at a trial.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 031885
BILL NO. HB 363

About three quarters of the suits filed in Montana are punitive damages suits. The reason for this is the helplessness of the defendent under the present condition of presumed and implied guilt.

Opportunistic plaintiffs led by trial attorneys recognize that fact. Request punitive damages and the suit is almost a sure winner. The combination of defending against implied malice, presumed guilt, with unlimited risk at punitive damages stack the deck so strongly that defense is hopeless. It is almost extortion. It just if not a fair arena.

The law needs to be corrected. I ask that you vote for this bill and work strongly to correct the injustice of the present Punitive Damages Act.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 031885
BILL NO. HB 363

NAME: FRANCIS J. RAUCCI DATE: 3-18-85

ADDRESS: PO BOX 5008

PHONE: GREAT FALLS, MT 59403

REPRESENTING WHOM? BUTTREY FOOD STORES

APPEARING ON WHICH PROPOSAL: HB 363

DO YOU: SUPPORT? ✓ AMEND? ~~by~~ OPPOSE? _____

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

REMARKS TO SENATE JUDICIARY COMMITTEE ON HB363

GOOD MORNING, MY NAME IS FRANCIS J. RAUCCI. I AM VICE PRESIDENT & GENERAL COUNSEL OF BUTTREY FOOD STORES WHICH DOES BUSINESS IN MONTANA AS BUTTREY FOOD & DRUG. I APPRECIATE THE OPPORTUNITY TO SPEAK ON BEHALF OF THE PASSAGE OF HB363, WITH THE PROPOSED AMENDMENTS, REGARDING SOME CONTROL, DEFINITION AND CLARIFICATION ON THE ISSUE OF PUNITIVE DAMAGES.

WHILE I AM AN ATTORNEY WHO HAS BEEN IN PRACTICE FOR TWENTY YEARS, I HAVE SPENT MOST OF MY CAREER AS AN EMPLOYEE OF BUTTREY, HANDLING ITS LEGAL MATTERS AS THEY RELATE TO OUR BUSINESS. THE PERSPECTIVE THAT I HOPE TO BRING TO THIS COMMITTEE TODAY IS THAT OF A BUSINESS MAN WHOSE COMPANY DOES THE MAJORITY OF ITS BUSINESS IN MONTANA. I AM SURE THAT YOU HAVE HEARD MUCH TESTIMONY REGARDING PUNITIVE DAMAGES, BOTH FROM A LEGAL AND BUSINESS PERSPECTIVE. THEREFORE, I WILL BE VERY BRIEF IN MY COMMENTS AND ATTEMPT TO SET FORTH 3 POINTS FOR YOUR CONSIDERATION. FIRST IS THE EFFECT OF THE PRESENT STATE OF THE LAW ON BUSINESSES IN MONTANA; SECONDLY, ARE THE ABERATIONS THAT HAVE OCCURRED IN THE LAW AS THEY PERTAIN TO OUR BUSINESS; AND, LASTLY, THE NEED FOR SOME STANDARD OF CONDUCT THAT WILL PERMIT PREDICTABILITY OF RESULT AND THEREFORE PROVIDE A REASONABLE BASIS FOR CONDUCT.

1. <u>EFFECT ON BUSINESS IN MONTANA</u>: LET ME START THIS CONCERN WITH THE ANTICIPATION OF THE CRITICISM THAT THIS IS A BIG, OUT OF STATE BUSINESS CONCERN THAT IS PART OF AMERICAN STORES COMPANY, A NATIONAL RETAIL ORGANIZATION.

   BUTTREY HAS OPERATED IN MONTANA FOR OVER 75 YEARS. IT IS NOT OPERATED FROM CHICAGO OR SALT LAKE CITY BUT, RATHER, FROM GREAT FALLS. IT HAS AUTONOMY IN ITS OPERATING, MERCHANDISING AND ADVERTISING DECISIONS. ITS REAL ESTATE DECISIONS

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

ARE RESULTS OF VYING FOR CAPITAL AMONG THE OTHER CONSTITUENT AMERICAN STORES COMPANIES WHICH I WILL EXPLAIN BELOW.

IN THE MAIN, ITS EMPLOYEES ARE MONTANANS OR PEOPLE, LIKE MYSELF, WHO HAVE HAD THE ADVANTAGE OF BEING ABLE TO COME TO MONTANA AND MAKE A LIVING. BUTTREY RISES OR FALLS ON THE BASIS OF THE PERFORMANCE OF EACH OF ITS STORES. TO PUT IT IN AGRARIAN TERMS: EITHER THE COW CONTINUES TO GIVE MILKED OR IT BECOMES HAMBURGER. BUTTREY HAS 57 UNITS IN SEVEN STATES OVERALL WITH 28 STORES IN MONTANA OR 49% OF THE TOTAL. I AM NOT AT LIBERTY TO GIVE YOU OUR TOTAL SALES FIGURES BUT MONTANA PRODUCES 46% OF OUR TOTAL SALES. OF THE 4356 NUMBER OF EMPLOYEES IN THE COMPANY, 1907 ARE WORKING IN MONTANA. FOR A 43% OF TOTAL WORK FORCE AND A 47% OF TOTAL PAYROLL DOLLARS.

WE ARE LARGELY SELF-INSURED FOR THE KINDS OF RISKS THAT WOULD BRING ABOUT ALLEGATIONS OF CONDUCT ON WHICH PUNITIVE DAMAGES COULD BE BASED. IN THAT CONNECTION, WE PRESENTLY HAVE 16 LAWSUITS IN THE SEVEN STATES, OF WHICH 13 ARE IN MONTANA. THE INTERESTING PART IS THAT ALL OF THESE SUITS, EXCEPT ONE FILED IN THE LAST THREE WEEKS, ARE WHAT ARE CALLED "PREMISES LIABILITY CASES"...SIMPLY STATED, THEY ARE SLIP AND FALL CASES WHERE DAMAGE IS OCCASIONED BY FALLING ON THE PARKING LOT OR ON A GRAPE OR PRODUCE ITEM OR WATER ON THE FLOORS OF OUR STORES. WE FIND ALLEGATIONS OF "FRAUD", "OPPRESSION", "KNOWLEDGE OF FACTS WHICH CREATE A HIGH DEGREE OF RISK TO SUBSTANTIAL INTERESTS OF ANOTHER" IN EVERY COMPLAINT FILED IN MONTANA SINCE JANUARY 1, 1984.

HAVING STATED THAT PROBLEM, WHAT IS ITS RELATION TO OUR BUSINESS? AS I MENTIONED A FEW MOMENTS AGO, OURS IS A PROFIT CENTER ORIENTED BUSINESS. THAT MEANS THAT EACH STORE IS ON ITS OWN FOR THE PRODUCTION OF SALES AND THE RESPONSIBILITY FOR EXPENSE

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

WHICH INCLUDE CLAIMS, SETTLEMENTS OR JURY AWARDS - GENERAL, SPECIAL AND PUNITIVE DAMAGES. WHEN WE MEASURE THE EFFECT OF THAT EXPOSURE IN MONTANA, IT IS A LITTLE LIK BUTTREY RUNNING A RACE WITH SNOW SHOES WHEN OUR MAJOR, CHAIN STORE COMPETITORS ARE RUNNING WITH TRACK SHOES. THE NUMERATOR OF OUR STORES IN MONTANA TO TOTAL STORES IS MUCH LARGER THAN THE SAME NUMERATOR OF MONTANA STORES TO TOTAL STORES FOR CHAIN A AND CERTAINLY MUCH GREATER THAN CHAIN S. AN EXPOSURE FOR THESE COMPETITORS IN MONTANA CAN BE OFFSET BY OPERATIONS ELSEWHERE. WITH BUTTREY, MONTANA IS OUR HOME REGARDLESS OF WHO OWNS THE STOCK AND THERE IS NO OTHER PART OF THE COUNTRY TO "LAY OFF THE LOSSES". THAT EXPOSURE CAUSES REAL CONCERNS ABOUT CONTINUING TO CENTER OUR NON-STORE OPERATIONS AND ADMINISTRATION IN THE STATE. WHY RUN THE RISK OF DOING MORE THAN OPERATING CERTAIN STORES? WHY NOT MOVE THE CENTER OF THE COMPANY OUT OF GREAT FALLS? IT IS LETTING THE LEGAL TAIL WAG THE BUSINESS DOG IN THE DECISION AS TO WHERE TO OPERATE. IT SHOULD BE A BUSINESS DECISION BASED UPON NON-LEGAL REASONS, YET IT IS A STRONG STICK IN THE BUNDLE OF STICKS WEAPON IN MONTANA USED AGAINST OUR COMPANY.

IT HAS TO BE A CONSIDERATION WHEN A COMPANY SUCH AS BUTTREY COMPETES WITH OTHER SIBLING COMPANIES FOR CAPITAL DOLLARS FROM THE SAME PARENT.

IT HAS TO BE A CONSIDERATION WHEN DETERMINING WHERE TO ERECT A NEW DISTRIBUTION SITE TO SUPPORT OUR EXPANDED DRUG BUSINESS IN THE SEVEN STATES IN WHICH WE OPERATE. I STRONGLY DISAGREE WITH THE ASSERTION THAT PUNITIVE DAMAGES ARE AIMED AT LARGE COMPANIES THAT DO BUSINESS OUTSIDE OF MONTANA AND THEREFORE DO NOT ADVERSELY AFFECT BUSINESS IN THIS STATE. I AM SURE THAT YOU HAVE HEARD FROM SMALL AND MEDIUM-SIZED BUSINESSES IN THE STATE ON THAT SUBJECT BUT, LET ME GIVE YOU ANOTHER PERSPECTIVE...THAT OF A LARGE MULTI-STATE COMPANY. IN THE COMPETITION FOR CAPITAL DOLLARS, A COMPANY SUCH AS BUTTREY COMPETES WITH OTHER CONSTITUENT OPERATING COMPANIES THAT MAKE UP THE CHAIN. MONTANA IS SPARSELY POPULATED AND

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 03/18/85
BILL NO. HB 363

THUS WE GO IN AT A DISADVANTAGE FOR THOSE CAPITAL DOLLARS. THE DENSITY IN STATES SUCH AS CALIFORNIA, ILLINOIS AND PENNSYLVANIA, TOGETHER WITH A RAPID GROWTH IN THE SUN BELT, INDICATE THAT A GREATER RETURN ON INVESTMENT IS POSSIBLE IN THOSE PLACES. WHEN WE SUPERIMPOSE THE RISK AND ADDITIONAL COST THAT PUNITIVE DAMAGE DEFENSE ADDS IN MONTANA, IT CAN BE AN INSURMOUNTABLE BURDEN. THAT EFFECT IS TO REDUCE CAPITAL EXPENSE IN THIS STATE AND THUS REDUCE EMPLOYMENT AND GROWTH. WHILE OTHERS MAY TAKE OUR PLACE, IT WILL NOT BE WITH THE SAME INVESTMENT AND EMPLOYMENT COMMITMENT.

2. ABERATIONS AS THEY HAVE OCCURRED IN THE LAW: OUR BUSINESS IS THE BUSINESS OF DISTRIBUTING AND SELLING MERCHANDISE TO THE CONSUMING PUBLIC. MOST OF OUR SALES ARE OF FOOD AND HOUSEHOLD PRODUCTS AND OUR OPERATIONS RANGE FROM THE SMALL TOWN GROCERY STORE IN HARLEM AND CHINOOK TO A SUPER DRUG AND FOOD COMBINATION STORE FORMAT IN LARGER CITIES IN THE STATE. WE ARE A HEAVILY REGULATED BUSINESS AND THAT IS AS IT SHOULD BE SINCE WE ARE SELLING FOOD, HEALTH AND BEAUTY AIDS AND PRESCRIPTIONS THAT MUST BE WHOLESOME BEFORE APPLICATION AND USE. THE IRONY OF IT IS THAT WE HAVE ONLY ONE CASE OF THE 13 THAT I HAVE SET OUT ABOVE THAT CLAIMS THAT WE ARE CHARGED WITH A BREACH OF OUR RESPONSIBILITY IN VENDING WHOLESOME PRODUCTS AND, THERE IS NO CLAIM FOR PUNITIVE DAMAGES.

RATHER, WE HAVE THE PERSON WHO FALLS AND INJURES HIM OR HERSELF IN OUR STORE OR PARKING LOT EITHER ON SNOW, ICE, WATER OR SOMETHING ON THE FLOOR. CERTAINLY THOSE INJURIES CAN BE PAINFUL AND TEMPORARILY DISABLING BUT THERE HAVE BEEN NO FATALITIES, NO PARALYSIS, NO BRAIN DAMAGE OR OTHER SERIOUS AND LASTING INJURIES OCCASIONED IN MOST OF THESE CLAIMS. YET WE STILL SEE DEMANDS FOR PUNITIVE DAMAGE BECAUSE OUR CONDUCT WAS OUTRAGEOUS OR FRAUDULENT OR OPPRESSIVE OR MALICIOUS.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

WE SHOULD ALSO LOOK AT THE PEOPLE WHOSE CONDUCT IS MEASURED BY THE PUNITIVE DAMAGES. THESE ARE NOT "EXECUTIVES" OR "OUT OF STATE INTERESTS" BUT RATHER WORKING PEOPLE IN OUR STORES. THEY ARE CHECKERS, PRODUCE CLERKS, TRUCK DRIVERS, STOCK CLERKS AND THE LIKE. THEY LIVE, WORK AND DERIVE THEIR LIVELIHOOD FROM THE OPERATION OF OUR STORES IN THESE COMMUNITIES. WHAT WE ARE DOING IN THIS STATE IS MAKING THE MISTAKE OF THE WORKING MAN AND WOMAN EQUAL TO A MALICIOUS ACT.

3. STANDARD OF CONDUCT: IF YOU WILL PERMIT ME TO SPEAK AS AN ATTORNEY, I FEEL THAT PUNITIVE DAMAGES, WHICH HAVE A QUASI CRIMINAL FLAVOR TO THEM, HAVE BEEN BROADENED TO PUNISH DEFENDANTS FOR CONDUCT THAT, IN MOST OTHER STATES AND OTHER TIMES IN THIS STATE, HAVE BEEN LIMITED TO MONEY FOR PAIN, SUFFERING, LOSS OF EMPLOYMENT AND QUALITY OF LIFE AND THE LIKE. I DO NOT FEEL HB363 GOES FAR ENOUGH IN DEFINING CONDUCT, THAT IS SO REPREHENSIBLE AS TO REQUIRE PUNITIVE DAMAGES, BUT FEEL STRONGLY THAT THE KIND OF CASE THAT WE ARE INVOLVED IN WAS NEVER MEANT TO HAVE THE WINDFALL OF PUNITIVE DAMAGES AVAILABLE TO THE PLAINTIFF AND HIS OR HER ATTORNEY. I WOULD GO FARTHER IN SUBSECTION TWO (2) OF THE BILL AND PROPOSE THAT THE COLORADO STANDARD OF "BEYOND A REASONABLE DOUBT" BE SUBSTITUTED FOR "CLEAR AND CONVINCING EVIDENCE" AS THE STANDARD APPROVED NECESSARY TO FIND CONDUCT SO REPREHENSIBLE THAT PUNITIVE DAMAGES CAN BE CLAIMED. A PRINCIPAL PURPOSE OF LAW IS THE REGULATION OF CONDUCT. IN TURN, CONDUCT MUST BE KNOWN TO BE AVOIDED OR ACTED UPON. THE PRESENT STATE OF THE LAW ALLOWS NEITHER.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

Colorado Revised Statutes

Law reviews. For article, "One Year Review of Evidence", see 35 Dicta 44 (1958). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964).

The presumption of legitimacy is one of the strongest known to law, and, prior to the adoption of this section, could be overcome only by proof of nonaccess or impotency of the husband; the rule has now been broadened by this section with respect to blood tests in cases where definite exclusion is established. Beck v. Beck, 153 Colo. 90, 384 P.2d 731 (1963).

But, under this section, a reputed father is entitled as a matter of right to have blood tests made and to have such tests received in evidence when definite exclusion is established and proper foundation therefor is laid. Beck v. Beck, 153 Colo. 90, 384 P.2d 731 (1963).

Conclusive evidence overcomes presumption of legitimacy. Where accuracy of blood test relating to paternity of child was not challenged by the mother and shows conclusively that husband could not have been the father of the child, the evidence of such tests was competent and sufficient to overcome the presumption of legitimacy. Beck v. Beck, 153 Colo. 90, 384 P.2d 731 (1963).

It is abundantly clear that the general assembly intended the section for paternity proceedings to be the only vehicle for establishing paternity because under the statute the putative father has the right to trial by jury in paternity proceedings and blood grouping tests may be ordered by the court and received as evidence, whereas the statute on support proceedings allows neither of the above. In re People In Interest of L.B., ___ Colo. ___, 498 P.2d 1157 (1972), dismissed, 410 U.S. 976, 93 S. Ct. 1497, 36 L. Ed. 2d 173 (1973).

13-25-127. Civil actions - degree of proof required. (1) Any provision of the law to the contrary notwithstanding and except as provided in subsections (2) and (3) of this section, the burden of proof in any civil action shall be by a preponderance of the evidence. The provisions of this subsection (1) shall not apply to the burden of proof required in determining the validity of any legislative enactment.

(2) Exemplary damages against the party against whom the claim is asserted shall only be awarded in a civil action when the party asserting the claim proves beyond a reasonable doubt the commission of a wrong under the circumstances set forth in section 13-21-102. Nothing in this subsection (2) shall be construed as preventing a party asserting the claim from being awarded money damages or other appropriate relief, other than exemplary damages, if he sustains the burden of proof by a preponderance of the evidence.

(3) Execution against the body of a party against whom the claim is asserted shall be awarded only when the party asserting the claim proves beyond a reasonable doubt the commission of a tort under the circumstances set forth in section 13-59-103. Nothing in this subsection (3) shall be construed as preventing a party asserting the claim from being awarded money damages or other appropriate relief, other than execution against the body of a party against whom the claim is asserted, if he proves the commission of a tort by a preponderance of the evidence.

(4) This section became effective July 1, 1972, and applies only to civil actions which accrue on or after such date.

Source: L. 71, p. 579, § 1; C.R.S. 1963, § 52-1-28; L. 72, pp. 317, 318, §§ 1, 2.

Cross references. As to exemplary damages, see § 13-21-102. As to body execution in tort, see § 13-59-103.

Am. Jur. See 29 Am. Jur.2d, Evidence, §§ 127, 132, 133.

C.J.S. See 32A C.J.S., Evidence §§ 1016-1025.

As to section's application to heirship. See In re Estate of Etchart v. Nelson, ___ Colo. ___, 500 P.2d 363 (1972).

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

II.

Petitioners next contend that the trial court erred in granting the Central Bank's motion for judgment on the pleadings on their claim for exemplary damages pursuant to section 13-21-102, C.R.S. 1973. We disagree.

The trial court ruled that exemplary damages were only available in cases involving injury to person or property, or more particularly for tortious conduct. It then concluded that the statute did not apply because petitioners' claim was equitable.

Exemplary damages are available in Colorado only pursuant to statute. Ark Valley Alfalfa Mills, Inc. v. Day, 128 Colo. 436, 263 P.2d 815 (1953). Section 13-21-102, C.R.S. 1973, provides:

"Exemplary damages. In all civil actions in which damages are assessed by a jury for a wrong done to the person, or to personal or real property, and the injury complained of is attended by circumstances of fraud, malice or insult, or a wanton and reckless disregard of the injured party's rights and feelings, the jury, in addition to the actual damages sustained by such party, may award him reasonable exemplary damages."

In interpreting this statute, we have held that punitive damages are not recoverable in actions in equity. See Miller v. Kaiser, 164 Colo. 206, 433 P.2d 772 (1967); Littlejohn v. Grand International Brotherhood of Locomotive Engineers, 92 Colo. 275, 20 P.2d 311 (1933); see also Poertner v. Razor, 500 P.2d 989 (Colo. App. 1972). Thus, our conclusion in part I of this opinion that petitioners' action was equitable in character is dispositive of this issue. The trial court properly granted Central Bank's motion to dismiss the claim for exemplary damages.

Rule discharged.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 031885
BILL NO. HB 363

TESTIMONY for the Montana Senate Judiciary Committee
Monday, March 18, 1985 at 10:00 a.m.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 031885
BILL NO. HB 363

Gentlemen:

My name is Bob Reiquam and I am President of the First Banks Great Falls, Great Falls, Montana. I am here to ask for your support in controlling the most anti-business issue confronting Montanans today. I am talking, of course, about the Punitive Damage or sometimes called Bad Faith law suits which are threatening the very existence of every business, every organization, and every individual that takes a stand or action on any issue.

The Punitive Damage issue has been particularly detrimental to commercial banks and their customers. The cases that have been heard, as well as those threatened, cause every banker to wonder if it is worth it to make another loan. In the event of non-payment of loans, we find it is absolutely impossible to conduct the necessary steps for recourse without being threatened with a law suit that could not only wipe out the bank's entire capital but also takes hours of time, causes untold frustration and anxiety, and ultimately makes it that much more difficult for the next customer to obtain credit.

Interest costs are higher because of the need to hire attorneys to look at each and every transaction, because of the increased costs of insurance when it is available, and because of all of the extra steps one must take in trying to protect yourself, even though that may be impossible.

Many loans are not made because of the threat of a business being sued or because of a business suing in the event any little thing goes wrong. Law suits are foremost on the minds of many of these people, especially when the rewards are as great as those we hear about.

The reputation Montana has developed as an anti-business state stems partially from the law suits that have received so much notoriety in the national press. Last December, I was in Washington, D. C., at an American Bankers Association Government Affairs meeting. We have name tags showing the state that we are from and in visiting with a banker from Pennsylvania, he made mention that a customer of his had planned to open a large manufacturing business in Montana. Being eager for new business for our Great Falls community, I inquired if his client had a location in mind and when he might be coming and what we might do to assist him in establishing a plant in Great Falls. To these questions, the Pennsylvania banker replied, "No, his customer had decided to establish his plant in New Mexico because of the anti-business climate in Montana." When I asked further about this, he stated that his customer had told him that he had researched the issue and found that Montana had laws that made it very easy to be sued and that damage suits were extremely large and that it was a good place to stay away from. He also mentioned that tax laws in New Mexico were much more conducive to a new business.

How many more cases of businesses avoiding Montana because of the Punitive Damage suits that have been filed and handled in Montana, I do not know, but I am certain that these cases are certainly increasing costs and diminishing the availability of credit across the face of Montana.

We need to limit the punitive damage issue. HB363 will be a constructive step in that direction.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 031885
BILL NO. HB 363

WILLIAM G. STERNHAGEN
CHAIRMAN, BOARD OF DIRECTORS
S. KEITH ANDERSON
PRESIDENT

MONTANA TAXPAYERS Association

P O BOX 4909 1706 NINTH AVENUE HELENA, MONTANA 59604 406 442-2130

S. KEITH ANDERSON

MONTANA TAXPAYERS ASSOCIATION

IN SUPPORT OF H. B. 363

SENATE JUDICIARY COMMITTEE

MARCH 18, 1985

UNDER CURRENT MONTANA LAW ANYONE DOING BUSINESS IN MONTANA IS FAIR GAME FOR PUNITIVE DAMAGE LAWSUITS. THIS INCLUDES RANCHERS AND FARMERS, THE PROFESSIONS AND PEOPLE DOING BUSINESS UP AND DOWN MAIN STREET. THOSE BRINGING THE LAW SUITS HAVE LITTLE IF ANYTHING TO LOSE, NO MATTER HOW CAPRICIOUS THE ACTION. BUT THOSE WHO MUST FACE THE LAW SUITS HAVE COURT COSTS, ADVERSE PUBLICITY, MENTAL AGONY AND THE POSSIBILITY OF A JURY DECISION DESTROYING THEIR BUSINESS AND PERSONAL ASSETS. THEY CAN NOT EVEN BE PROTECTED BY PROCESS OF BANKRUPTCY.

SOME PROTECTION MUST BE ACCORDED THE CITIZEN FROM THOSE WHO WOULD INDISCRIMINATELY USE THE COURT SYSTEM TO THEIR MONETARY ADVANTAGE. IF NOT, PEOPLE DOING BUSINESS IN THIS STATE WILL BE HARD PRESSED TO OBTAIN INSURANCE, MUCH LESS PAY FOR IT. AN INDIVIDUAL SHOULD NOT BE FORCED TO LIVE AND DO BUSINESS WITHOUT SOME PROTECTION UNDER THE LAW FROM PUNITIVE DAMAGE LITIGATION.

HOUSE BILL 363, GIVES SOME PROTECTION TO THE INDIVIDUAL THROUGH DEFINITION OF TERMS AND PLACES AN OBLIGATION UPON THE PLAINTIFF TO PRESENT CLEAR EVIDENCE A COMPENSATORY WRONG HAS TAKEN PLACE. LIKEWISE IT OFFERS SOME FINANCIAL LIMIT ON DAMAGES THAT MAY BE AWARDED.

I URGE YOUR SUPPORT AND PASSAGE OF H.B. 363.

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 16
DATE 031885
BILL NO. HB 363

NAME: TERRY TRIEWEILER DATE: 3/18/85

ADDRESS: 233 2nd St WHITEFISH

PHONE: 862-4597

REPRESENTING WHOM? Montana Trial Lawyers

APPEARING ON WHICH PROPOSAL: H.B. 363

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

STATEMENT OF PURPOSE

The purpose of Senate Bill 200 is to deter claims for punitive or exemplary damages that are not clearly based in fact and, to that end, the Montana Legislature intends for this amendment to be used in combination with early and ready application of Summary Judgment Orders pursuant to Montana Rule of Civil Procedure 56 where such claims are not based in fact, and the application of those sanctions provided for in Montana Rule of Civil Procedure 11 against those parties responsible for making such claims.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

MAJOR CORPORATE SALES AND PROFITS

FOR FISCAL YEAR 1983

The following are examples of assets, sales, and profits for major American corporations for fiscal year 1983. They are taken from the April 30, 1984, issue of Forbes magazine.

INSURANCE INDUSTRY

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
Aetna Life and Casualty Co.	47,626	14,411	325.2
CIGNA	35,117	12,564	400.5
Safeco	3,415	1,643	133.3
St. Paul Companies	5,595	2,321	126.8
USF&G	5,279	2,387	171.5

DRUG COMPANIES

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
Johnson & Johnson	4,461	5,973	547.0
American Home Products	3,086	4,856	627.2
Bristol Myers	3,007	3,917	408.0
Pfizer	3,936	3,750	447.1
American Hospital Supply	2,280	3,310	211.9

DRUG COMPANIES, continued

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
Merck	4,215	3,246	450.9
Warner-Lambert	2,919	3,108	200.5
Eli Lilly	3,414	3,034	457.4
Abbott Laboratories	2,824	2,928	347.6
A.H. Robins	510	563	58.2

AUTOMOTIVE MANUFACTURING

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
GM	45,694	74,582	3,730.2
Ford	23,869	44,455	1,926.9
Chrysler	6,772	13,240	525.8

TIRE AND RUBBER

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
Goodyear	5,985	9,736	331.5
Firestone	2,579	3,998	98.0
Goodrich	2,576	3,192	14.7
General Tire	1,853	2,184	70.8
Uniroyal	1,486	2,040	52.3

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

PERSONAL CARE PRODUCTS

Company	Assets ($ mil.)	Sales ($ mil.)	Net Profits ($ mil.)
Proctor and Gamble	8,361	12,633	886.0
Colgate/Palmolive	2,664	4,865	186.2
Avon Products	2,286	3,000	164.4
Revlon	2,215	2,379	109.0
Gillette	1,696	2,183	145.9

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

the way back, Polanchek said. The train, equipped with a steel cowcatcher, was not damaged, he said.

• **UNION CARBIDE FINED.** Union Carbide Corp., still reeling from December's toxic-gas disaster in Bhopal, India, was assessed a $3.9 million federal fine Friday after failing for four years to disclose evidence that another of its chemicals causes cancer in laboratory animals. The Environmental Protection Agency said in Washington, D.C., that Union Carbide waited until September 1983 to notify the agency of a 1979 study indicating that diethyl sulfate, a compound used to make dyes, drugs and textile finishing compounds, causes skin cancer in laboratory mice. Union Carbide officials in Danbury, Conn., declined to comment until they had seen the EPA accusations.

International

• **CHINA BACKS DOWN.** Despite a recent warning,

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

Rule 56. Summary Judgment.

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) CASE NOT FULLY ADJUDICATED ON MOTION. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

56.1 References

6, 6 Pt 2 Moore's Federal Practice, Chapter 56.

3A Bender's Federal Practice Forms, Rule 56, Form No. 3291, et seq.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 031885
BILL NO. HB 363

11.1 References

2A Moore's Federal Practice, Chapter 11.

2 Bender's Federal Practice Forms, Rule 11, Form No. 2137, et seq.

1 Moore's Manual–Federal Practice and Procedure, § 9.08.

1 Moore's Manual–Federal Practice Forms, Form No. 9:21, et seq.

11.2 History of Rule

[1]—General History

Rule 11 was amended in 1983.

[2]—1983 Amendment to Rule 11

Rule 11 was amended, effective August 1, 1983, as follows (matter stricken out is in brackets; new matter is in italics):

Rule 11. Signing of Pleadings, ***Motions, and Other Papers; Sanctions.*** Every pleading, *motion, and other paper* of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, *motion, or other paper* and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney *or party* constitutes a certificate by him that he has read the pleading, *motion, or other paper;* that to the best of his knowledge, information, and belief [there is good ground to support it, and that it is not interposed for delay] *formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.* If a pleading, *motion, or other paper* is not signed, *it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.* [or if signed with intent to defeat the purpose of this rule, it may stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.] *If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.*

[3]—Advisory Committee's Note to 1983 Amendment of Rule 11

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure* 64–65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, *Federal Practice* ¶7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. See, *e.g., Roadway Express, Inc. v. Piper,* 447 U.S. 752 (1980); *Hall v. Cole,* 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, *e.g., Browning Debenture Holders' Committee v. DASA Corp.,* 560 F.2d 1078 (2d Cir. 1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. See, *e.g., Heart Disease Research Foundation v. General Motors Corp.,* 15 Fed. R. Serv. 2d 1517, 1519 (S.D.N.Y. 1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n,* 365 F.Supp. 975 (E.D. Pa. 1973). This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation. See *Nemeroff v. Abelson,* 620 F.2d 339 (2d Cir. 1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after *in camera* inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations. See *Haines v. Kerner,* 404 U.S. 519 (1972).

The provision in the original rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. See generally Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed. R. Civ. P. 11,* 61 Minn. L. Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See *Murchison v. Kirby,* 27 F.R.D. 14 (S.D.N.Y. 1961); 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The reference in the former text to wilfulness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See *North American Trading Corp. v. Zale Corp.*, 73 F.R.D. 293 (S.D.N.Y. 1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969); 2A Moore, *Federal Practice* ¶ 11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See *Browning Debenture Holders' Committee v. DASA Corp., supra.* This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regime will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

[4]—Comment on Rule 11 as Amended in 1983

Together with new Rule 7(b)(3), see *7.2[4], supra*, the 1983 amendment to Rule 11 makes clear that the signing requirement of Rule 11 applies to motions and other papers, as well as to pleadings. The goal of amended Rule 11 is to facilitate the imposition of sanctions by the court, upon motion or upon its own initiative, in order to deter pleading and motion abuses. The amendment emphasizes the attorney's responsibilities and reinforces those obligations by the imposition of sanctions. Upon violation of the duties imposed by the Rule, sanctions shall be imposed on the signing attorney, the represented party, or both. In addition, sanctions shall also be imposed on an unrepresented party who signs the pleading, motion, or other paper in violation of the requirements of Rule 11.

The provision of the original Rule providing for the striking of a pleading or motion as sham and false, and the former reference to the inclusion of scandalous or indecent matter, has been deleted. As to the striking of a pleading or motion as sham and false, it was the Advisory Committee's

position that such matters are best raised by motion under Rules 8, 12 or 56. As to the striking of scandalous or indecent matter, the Advisory Committee stated that such matter could be stricken under Rule 12(f) or under the more general language of amended Rule 11. While the amendment also deleted the former reference to wilfulness as a prerequisite for subjecting an attorney to disciplinary action, the state of his or the party's actual or presumed knowledge should be considered by the court in determining the nature and severity of the sanction to be imposed.

11.3 Verification Not Required Except by Rule or Statute

The Tucker Act, which permits suits against the United States on "contract" claims, formerly required verification of the initiating pleading, called the petition. 28 USC § 762 (1940). There is nothing in the Code of 1948 which requires the complaint to be verified in either "Tucker Act" or tort claims suits. 28 USC §§ 1346, 1402, 2671–2680.

The federal interpleader statute also required the complaint to be verified. Verification is no longer required in statutory interpleader actions under the new Code. ¶ 22.06.

For the effect to be given pleadings, including verified pleadings, on a motion for summary judgment, see ¶ 56.11[3], and analysis under Rule 56, *infra.*

As to verification in proceedings brought within admiralty jurisdiction, see ¶ .52[3].

11.4 Attorney's or Party's Certification; Sanctions

Under Rule 11, as amended in 1983, the attorney or party signing the pleading, motion or other paper certifies "that to the best of his knowledge, information and belief *formed after reasonable inquiry* it is well grounded in fact and . . . law. . . ." (emphasis added). There is an affirmative duty placed on the attorney or party to investigate the facts and the law prior to the subscription and submission of any pleading, motion or paper. Where the pleading, motion or paper is signed in contravention of the dictates of Rule 11, the court, on its own or upon motion by a party, shall impose suitable sanctions on the attorney who signed it, the party represented by the attorney, or both persons. ¶ 11.02[2].

In two recent cases, sanctions were imposed for violation of Rule 11's certification requirement. In *Viola Sportswear, Inc. v. Mimun* (ED NY 1983) 574 F Supp 619, defendants sought attorneys' fees following the grant of their unopposed summary judgment motion in an action for trademark infringement, deception and unfair competition. Noting that plaintiff had alleged a nationwide conspiracy based on the sale of one pair of jeans without having investigated the facts prior to filing the complaint or conducting an inquiry as to the validity of the charges, the district court granted defendants' attorneys' fee application. Setting out Rule 11's certification requirement, including its provision for making a reasonable inquiry, the court added that the Rule also provides for sanctions for its violation, which may include the imposition of reasonable attorneys' fees. In assessing such fees against the plaintiff and its attorneys jointly and severally, the court determined that no inquiry was made to lend some assurance that the allegations of plaintiff's complaint were well grounded in fact.

Similar sanctions were imposed under Rule 11 in *Wold v. Minerals Engineering Co.* (D Colo 1983) 575 F Supp 166. In that case plaintiff moved to disqualify the law firm representing defendant, alleging that in a prior matter the law firm had received confidential information about the plaintiff which related to the present suit. Denying the motion, the district court held that plaintiff failed to establish any grounds for disqualification. Granting defendant's motion for the imposition of Rule 11 sanctions, the court determined that plaintiff's counsel failed to make the "reasonable inquiry" required by amended Rule 11 since no personal interviews of knowledgeable witnesses were conducted, limited telephone inquiries did not meaningfully address the facts, and plaintiff's attorneys received information contradicting the assertions in their motion which should have put them on notice. Concluding that plaintiff's attorneys violated Rule 11, the court stated that it was compelled by Rule 11 to impose appropriate sanctions, and ordered plaintiff's counsel to pay the reasonable expenses incurred by defendant because of the disqualification motion.

NAME: REV. BOB HOLMES DATE: 3/18/95

ADDRESS: 655 N. RODNEY - HELENA

PHONE: 442-3436

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 363

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 18
DATE 031885
BILL NO. HB 363

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I read about lawsuits in the papers which sometimes ask for skyrocket figures in punitive and exemplary damages and I have wondered if some sort of rational limit can't be placed on it.

But I'm also aware that any blanket and mechanical rule you lay ~~on big corporations~~ may sooner or later hurt little people. That is my concemn this morning. As a neighbor and most especially as a pastor, I know the ~~xxxx~~ agony already caused individuals seeking appropriate damages for injury and the endless delays by corporations who play the advantages of holding punitive payments and drawing their interest as over against paying up promptly.

House Bill 363, in setting an upper limit for punitive and exemplary damages serves to increase the liklihood of such delay in unfairness to common people when they are the plaitiffs.

It would appear to be the old conflict between benefits to very big business and the rights of ordinary citizens. Efficient is important. & ~~Compassion is even more important~~. Therefore I urge your defeat of this bill.

REV ROBERT M. HOLMES
PASTOR, ST. PAUL'S UNITED
METHODIST CHURCH,
HELENA

& BUT NOT AT THE EXPENSE OF COMPASSION

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 031885
BILL NO. HB 363

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 031885
BILL NO. HB 363

Main Capitol Building to Top Floor
old Supreme Court Chambers
Senate Judiciary Committee

Car engines ... Sign in Sheet Lobbyist ... Trial Lawyers Assn.

I am here as a Concerned Citizen against House Bill # 363.

My name is Pat Tubby, I am a ranchers wife from Cascade County. We were awarded a large Amount of punitive damages in a case against a large corporation bank. This bank is not worth millions but billions of Dollars.

It is also my understanding that Mike Anderson, Atty. for Norwest Bank ~~testified~~ testified in ~~front~~ into house on the preliminary hearing on this bill and used our case as an example of why there should be limits on punitive damages. It was very Unethical for Mr Anderson to use our case as an example when it is still pending in the Supreme Court & three Supreme Court ~~Justices~~ judges present at that hearing. Mr Anderson did not tell the ~~truth~~ to the legislative Committee on our Case. He in effect told them we had lost only ~~7~~ one million. This is not True when ~~he~~ the jury awarded us 119,000 in Actual Damages plus a 1,000,000 Dollars in Punitive Damages. The Punitive Damage Pin on our case was open. What Mr. Anderson didn't tell them was the oppressive ~~tactics~~ Actions of the Bank & the Brief Rissn.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 031885
BILL NO. HB 363

The lack of Cooperation by the large Corporation Bank + the harassment we received by them for the past five years has caused our family 5 years of agony + damaging us not only monetarily but mentally + emotionally as well. We feel we have been put through the ringer. + this is why I tell you cannot legislate the damages that can be awarded. without know a specific case

My Point is this.

If you put a limit on punitive damages you are in effect saying you have no faith in our jury system. The same 12 people that sat on that jury also voted you into office. Let me remind you that 12 unbiased people sat on the jury that heard our case and after hearing both sides they felt it necessary to punish the bank so they would not treat anyone else the way they ~~are treated us~~. treating us.

Each case is so individual you cannot regulate by law on amount that should or should not be awarded without knowing the specifics about each case. Leave the punitive damages

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 031885
BILL NO. HB 363

for the lawsuit. He didn't tell you that we tried numerous times in person and by letter to stop what they were doing. We finally hired an attorney + he phoned + told them + they still continued their oppressive + malicious actions. He wrote them a letter which they defaced + lost. In order to get their attention we were forced to file suit against them + even then they charged us for giving us information on our own checking account. So it doesn't surprise me that they are still up to their oppressive + unfair tactics. The fact that he testified using our case only as example proves how difficult it is for an individual to fight a large corporation. One of the things that evens it up is the fact that punitive damages is the only thing that can keep a large corporation from running over a small individual like the NW Bank has done to us.

NAME: Bruce Wheatty DATE: March 18, 1985

ADDRESS: Box 413, Elliston

PHONE: 492-7516

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: HB 363

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Corporations already hold more power to delay settlements, delaying until the individual exhausts physical, emotional, and financial assets. There is already, because of this corporate power, an inequality before the law. Passage of this bill would discourage corporations from settling promptly out of court, and would encourage them to continue to delay.

Let's just leave it up to the citizens on juries to decide in each individual case what damages might be appropriate.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 031885
BILL NO. HB 363

Senator Dave

607 Avenue F
Billings, Montana
March 15, 1985

The Hon. Joe Mazurek, ~~Chairman~~
Senate Judiciary Committee
Capitol Station
~~H~~elena, Montana

Dear Senator Mazurek:

It has come to my attention that during this session a number of bills which would revise the Montana laws relating to punitive damages have been introduced. Of these, I am most concerned about House Bill 363 which I understand is scheduled for hearing by the Senate Judiciary Committee on Monday, March 18. If I had known of this bill sooner it might have been possible for me to be in Helena to testify in person.

Had this bill been introduced in an earlier session, I must admit that it probably would not have received my attention, for there would have been no awareness on my part of the implications of such legislation either to me personally or to others who may become victims or victim survivors in Montana. Because my daughter, Shannon, was shot and killed by bear hunters in the Gardiner area in the summer of 1982, I have become an observer-participant in both criminal and civil processes which leave me at times in total disbelief and at other times in total despair.

It is very difficult, Senator Mazurek, to intellectualize about something which, because of circumstance, has such an overwhelming emotional component. However, I feel that what I have experienced makes it possible for me to do so in ways that represent reality to a degree much greater than those available to most others.

House Bill 363, to me, disinvests Montana in the jury system and the rights of individuals to use that system in securing justice. This bill seems to impute some special kind of prescience to this particular assembly which makes it possible for it to look into the future and predict what will constitute justice for events and actions that have yet to occur. I doubt that any of us, even at our very best and with all the knowledge we have accumulated over years, can look ahead and determine how both morality and accountability can be insured in situations involving unique individuals and unique happenings.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 031885
BILL NO. HB 363

I believe in the jury system, even with its obvious shortcomings, and in the appeals process which accompanies it. The jury system did not fail Shannon or me in the criminal action. The man who killed my daughter was found guilty of negligent homicide in the county in which he lived and in which my daughter was killed.

The devaluation of my daughter's life began when a judge, in sentencing, spoke of the great loss to the young man of the beautiful gun which had killed her. In that sentencing there was no mention of the loss to society of a beautiful and talented young woman who had and would have continued for several decades to contribute not only to the small community in which she lived and moved, but also to the community which is Montana, and to the larger community which is mankind.

Independent research and research by schools of medicine in the United States has proved that victims and victim survivors of terrible trauma are many times more likely to become critically ill or to die from accident or suicide in the period from eighteen months to three years following the occurrence. Part of this is the result of a system that works so slowly that it is impossible for one to concentrate his efforts on recovery. I did not find it surprising that the man who shot Shannon died either through suicide or accident sometime after filing suit against his own insurors for failing to defend and protect him. Neither did I find any satisfaction from his death. I grieved that the ongoing nightmare which began for me on June 26 of 1982 was now doubly visited on other parents.

Having worked in the insurance industry for a number of years, I am well aware that it is possible for a defendant to predict with relative accuracy how long a suit must be delayed to reach a "break-even" or profit status. It would be naive, at best, to believe that they do not use these same strategies for delay to force plaintiffs into untenable emotional and economic states.

For me, the knowledge that a giant corporation may, indeed, profit from the death of my daughter only deepens the psychological wounds I already carry. I find my own life devalued and degraded by a system which allows this to happen. Surely the rules of evidence, and the tax and interest structure as they relate to reserves are sufficient protection for defendants without also establishing upper limits on punitive or exemplary damages. There is no example for the involved defendant or for others who

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 20
DATE 031885
BILL NO. HB 363

may be using similar practices, unless the result is truly punitive in terms of cost. Would it not be just as reasonable, or more reasonable, then, to set a minimum on what must be awarded when a civil defendant is found guilty of negligent, unethical, or immoral behavior which damages others? Would not the civil justice system be better served and the needs of individual Montanans better served, if this committee and this general assembly were to find some way to make delay less profitable?

My personal anguish may not be appropriate to this testimony; but I must say how greatly it has been exacerbated by the passing two years ago of the date originally set for the trial in the civil action which I brought as a result of the killing of Shannon, and by the numerous continuances sought by and granted to the defendants since. I am devalued as a person, as a mother whose identity was lost in a shot from a high-powered rifle, and as a professional who must struggle to meet the demands of a part-time position. My fluency, my energy, my memory, my ability to concentrate have left me ... I struggle to find sufficient meaning in each day to sustain me. My own devaluation, however, is much less painful than the ongoing devaluation of Shannon which the process brings. She was an honor student, was fluent in three languages, had won several awards for creative writing, was a pianist and a liturgical dancer in the church, was on the board of the Women's Center at Montana State University. Her greatest love was the mountains, and she went to them both for the challenge and the peace they brought her. She was no stranger to these chambers, for she had come here as an intern while in high school and as an administrative assistant to the minority leader during her years at Rocky Mountain College. She was not just an observer, but was a commentator, critic, and participant of and in the life that flowed around her. Shannon was a protector and conservator of both the people and environment of her world. She died in terrible fear - she did not deserve that. Shannon died fifty years prematurely - she did not deserve that. She had not been warned that bear hunters were prowling in that public camping area at the height of the summer season. Life is not just; it is impossible to speak of justice and the irreversibility, the finality of unwanted and brutal death.

I am not alone. There are victims and victim survivors all over Montana, most of whom represent either the willful or the negligent acts of others. The presence of negligence implies the willingness to risk the well being of other individuals.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 031885
BILL NO. HB 363

Late in 1984 I was contacted by the crime victims unit of the Division of Workers Compensation to ask that I volunteer as a resource to victim survivors because the need for aid and comfort for these people was still so great after the Division had done what it could to be of assistance. Since shortly after my daughter's death I have attempted to assist other parents who have lost children through homicide, willful or negligent; through driving while intoxicated, and through hit and run. Almost without exception they report that the system and its processes degrade them, devalue them, and at times inflict nearly as much pain as the original act.

To me it is of compelling importance that this legislature continue to let the jury system function as the arbiter of what is appropriate in the area of punitive and exemplary damages as an assurance to its constituency that the rights and needs of Montana citizens as individuals are more compelling than the rights of vested interest groups. House Bill 363 does not serve that purpose.

Thank you, Senator Mazurek, for allowing me to share my feelings with you.

Sincerely yours,

Frances Weatherly

Frances S. Weatherly

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 031885
BILL NO. HB 363

STATEMENT TO
THE SENATE OF THE
STATE OF MONTANA
AS TO
EXEMPLARY DAMAGES

Legislation to restrict punitive or exemplary damages to $500,000 is now before the Senate.

With new ideas, with new legislation we should always proceed cautiously and with a common-sense analysis.

Is there a need for a legislative change? Who will benefit and gain? Does the proposal serve a good purpose? We can all agree that a legislative change should and must be good for the people of the State of Montana.

A $500,000 limitation does not in any way improve or benefit the law system for the individual or the small corporation. $500,000 can represent the entire net worth of an individual or a small corporation. Consequently, it is of no benefit or gain to that type of defendant.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 031885
BILL NO. HB 363

For the large corporation, the very rich or the large insurance companies, such a limitation is virtual immunity against the theory of punitive damages which is a civil fine for fraud, oppression or malicious conduct. By way of example the net worth of the Atlantic Richfield Corporation in 1983 was in excess of 11 Billion, over 7 Billion for the Ford Motor Company and over 6 Billion for the State Farm Insurance Company.

$500,000 of the net worth of the least of these three corporationa (State Farm Insurance) is 120th of 1% of the net worth. And 1/2 is paid by the government because such damages are a business expense and a corporate deduction from the profit subject to tax.

Will that type and size of civil fine serve as an example to other large corporations and deter conduct which is fraudulent, oppressive or malicious? Of course not.

However, if $500,000 is assessed by a jury against an individual or a small corporation such a damage award will destroy - not punish.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 031885
BILL NO. HB 363

Exemplary or punitive damages are generally authorized by § 27-1-221 of the Montana Code. There is no limit anywhere in the Montana Codes. The limiting factor has been the jury and the Montana Courts. It has worked fairly and effectively. For how long? Since 1895 when the laws of Montana were first codified.

The juries and courts of Montana in those isolated instances where there are punitive damages have always determined that the defendant's net worth could absorb the amount assessed and continue to function with, hopefully, an elimination of the action or practices which justified the civil fine.

Who wants this proposed new litigation? For what reason? How will such a limitation benefit the people of the State of Montana?

If there is to be a limitation by law - a new concept and truly not needed, then there is a more just and fair way to accomplish the objective.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 031885
BILL NO. HB 363

Rather than have a $500,000 limitation which has no basis in logic or common-sense put the limitation on a percentage basis. 5% of net worth would be equal treatment for everyone - the individual, the small corporation and the big corporations who, of course, are the only legal entities which will benefit from the present proposed litigation.

Keep in mind, if the large corporate defendant has not been guilty of fraud, oppression or malice the juries and courts will not assess any damages. The best defense against punitive damages - far better than legislative restriction - is simple: treat people fairly and justly and honestly and you never need be concerned with punitive damages.

Finally, this is bad legislation. The people of Montana don't need it, the juries and the courts don't need it. Our system of law has its own internal mechanisims for restricting punitive damages to what is fair and just and economically within the ability of the defendant to pay.

A good rule to follow for everyone - an age-old concept of human wisdom.

"If it ain't broke, don't fix it."

SENATE JUDICIARY COMMI
EXHIBIT NO. 21
DATE 031885
BILL NO. HB 363

Wade Dahood
3-1-85

NAME: James D Moore DATE: 3-18-85

ADDRESS: Box 1198, Kalispell

PHONE: 755-8026

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: H.B 363

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: limitations on amt. of punitive damages, while offering no protection to individuals or small Montana businesses, provides unwarranted immunity to large special interests & such as banks and insurance companies, whose assets are measured in perhaps billions of dollars -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 22
DATE 031885
BILL NO. HB 363

NAME: TERRY TRIEWEILER DATE: 3/18/85

ADDRESS: 233 2nd ST WHITEFISH

PHONE: 862-4597

REPRESENTING WHOM? MTLA

APPEARING ON WHICH PROPOSAL: H.B 95

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 23
DATE 031885
BILL NO. HB 95

NAME: James D Moore DATE: 3-18-85

ADDRESS: Box 1198, Kalispell

PHONE: 755-8020

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: 95

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Creates expense, & judicial inefficiency by legislative fiat when the means for dealing with problems of potential prejudice presently exist.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 031885
BILL NO. HB 95