

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 27, 1986

The third meeting of the Senate Judiciary Committee for the 49th Second Special Session was called to order at 8:00 A.M., March 27, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 12: Senator Bruce Crippen, Senate District 45, Billings, gave testimony in support of this bill as co-sponsor. He stated he would give a brief introduction for the bill and then the chief framer of the bill, Representative Mercer, will go over the bill. He said we were called into session to deal with this crisis that is threatening the economic welfare of this state and the citizens of this state. This crisis exists both in the private and public sectors of our society. Simply put, the cost of obtaining liability insurance cover for the main stream businessmen and women and the public sector, cities, counties, etc., has become prohibitive. It is becoming a situation where no insurance coverage is available at any price. He said testimony has been presented to this committee that businesses are facing closure and, as a result, there is potential loss of jobs. There is a loss of economic well being of increasing numbers of citizens in Montana. In the public sector cities are going without insurance coverage. As a legislative body we cannot allow this situation to continue. He said we have heard testimony that the fault lies with the insurance industry, with the trial lawyers and their greed, with the legislature, with our liberal courts and outrageous verdicts. This is all true. We all have a share in the blame of this problem. To solve the problem we must all work together. By working together hopefully we can provide meaningful and appropriate tort reform legislation. He feels this bill that is before the committee today is necessary for that delineation. Senate Bill 12 goes to the heart of the problem of who has the authority to make the laws, the legislature or the courts and that question must be clearly answered and defined. This bill insures that the legislature can enact meaningful laws in the civil justice area, meaningful court reform legislation.

This bill does not restrict a person's access to the courts, it does not limit a person's rights and it does not prevent an injured person from obtaining compensation of his or her injuries. It is not the intent of the co-signers of this bill to place any caps or to usurp the right of a jury in exercising proper statutory authority. The legislature must always be aware and protect the rights of those who are wrongfully injured as well as work toward tort reform. What he hopes this bill will allow is the legislature to restrict, limit, and modify laws that the legislature deem appropriate without fear that such legislation will be held unconstitutional and do this in a proper manner. In other words this bill will help us do our job that we are mandated to do. The Supreme Court and some of its decisions have severely restricted the legislature, the elected representatives of the people, in its ability to pass laws. Along with that authority we need a comprehensive study pertaining to tort reform and it is his understanding there is a companion bill being presented by Representative Vincent in the House. In Montana the legislature's hands have been tied and its time that we act. There are no guarantees, no quick fix solutions. Passage of this bill will not be in itself a guarantee that premiums or coverage will be reduced or that overnight there will be an increase of availability of insurance coverage but without this enabling legislation we can be certain it will be increasingly more difficult to find, much less pay for the coverage.

Representative Mercer, House District 50, gave testimony in support of this bill as chief sponsor. He stated that he believes the state of Montana is in a constitutional crisis. He has a great deal of respect for the roll of the Supreme Court and the legislature but the balance of power right now is not in balance. This bill is an attempt to bring that balance back. He said we can't do it alone, we have to bring it before the people to vote on. He reviewed the bill with the committee. He stated that the purpose of the whereas clauses is to tell the Supreme Court that it is our desire to allow tort reform on a rational basis test rather than a compelling state interest test. The first section of Article II that is addressed is section 16. It has been

reorganized and the reason for the reorganization is to try to make it clear as to what that particular section seeks to address. Subsection two in section 16, on line 13, the words "this full" are deleted. The reason those words are deleted is that is what the majority in the Pfof case used to justify their reasoning that it was a fundamental right to full legal redress. In the Pfof case, the Supreme Court said that "any statute that restricts, limits or modifies full legal redress", in other words any statute in the tort reform area, "the state in order to pass that statute must show a compelling state interest if it is to sustain the constitutional validity of the statute." That same court went on to say with respect to the legislative findings that many of the legislators at the hearing were involved in when the court limits were set before, "we find little more in the quoted legislative findings supporting 2-9-107 than a legislative plea not to require the legislature and other political entities to provide the funds necessary to pay the just obligations of those entities." What the Supreme Court is doing is substituting their judgement in the area of allocation of resources, something that has always been the area of the legislature to determine. The court spoke primarily in the area of increased taxes and that the state could simply increase taxes in order to pay these things. That when the state indicated that by having to increase taxes or to reallocate resources they will be making difficult decisions cutting particular programs, the Supreme Court said, "that statement by the legislature was so wild in speculation on its face as to be unacceptable." Subsection 3, line 20, tries to make it clear that section 16 should not be used by the Supreme Court to limit the legislature's authority to enact statutes limiting or modifying remedies, claims for relief, or damages in any civil proceeding. This is to try to address the White case and the Pfof case because both cases seem to go to the issue of fundamental right and to show a compelling state interest. Section 16 is the government area and the new language says that the state is not immune from suit and the state should not be immune from suit. This subsection tries to treat the state like everybody else. The public and private will be treated the same. There is some concern as to why public and private are put in the same referendum. The reason for that is they both have the same problem. With regard

to the issue on the two-thirds vote, it originally was put in the private sector and not in the public sector. There is no need to distinguish between the two. If put in the private sector it would tie our hands as it is almost impossible for the legislature to agree on anything by a two-thirds vote. All we are trying to do is to restore the balance of power. The equal protection clause still applies, any legislation enacted under these constitutional amendments would still be subject to the rational basis test contained in the constitution. The protection is still there. Everyone agrees we need tort reform but there is one problem, unless we address the constitution in the way set forth in this bill the future legislatures can do nothing.

PROPOSERS: George Bennett, member of the Montana Liability Coalition, testified in support of this bill. He stated that at a time when we have the agriculture crisis, railroad employment decline and the demise of the copper industry in Montana, the Governor, in his press release for this special session, said the number one economic problem in Montana today is the liability crisis. It is that crisis that brought the Montana Liability Coalition together. There were meetings throughout the state and slowly we began to get a feel as to what we should do. The tavern owners said we have got to define liquor liability, businesses said we have got to define good faith/bad faith and then we started hearing we have to have tort reform. We knew we had to go to the legislature but the lawyers told us the legislature, under the constitution, has become a trial court. They can define bad faith or define liquor liability in a way that reduces the probability of full legal redress only if they hold extensive hearings and produce evidence and show by a preponderance of the evidence that there is a crisis and a pressing public need to define bad faith or whatever. The decision of the legislature is subject to review by the Supreme Court and if the Supreme Court finds there is insufficient evidence your law will not stand up. We will not know what bad faith is even if the legislature defines it unless you take it through the courts and the Supreme Court can change it whenever they want. As far as they are concerned, this bill is the only one that is not flawed and the only one that addresses the issue. He does not think that the public and private sectors have different problems. The tort

liability law covers everybody. Anyone that causes harm is an issue for the legislature. The question should go to the people so they can decide whether the legislature will continue to be an inferior tribunal. He does not think that it should take a two-thirds vote to define elements of tort liability. You do not have to have a two-thirds vote to take a life away or to tax a large part of a persons income. The federal government has no such restraints. He could not find any other state that places the legislature in an inferior position. He left with the committee a copy of the Order Denying Hearing in the Pfof case, letters concerning this issue and a copy of the statute dealing with common law. They are attached as Exhibit 1.

William H. Porter, Vice President of Operations, American Chemet, East Helena, gave testimony in support of this bill. He stated they have approximately 50 employees and the primary product of their corporation is sold throughout the entire United States in relation to paints. He is in favor of SB 12 and against the amendment. Their liability coverage ran out in January. They ran for 30 days and at the end of 30 days were able to get liability coverage for one million dollars, down from five million. The cost went from \$35,000 to \$92,000. He would submit that without reasonable limits for claims or sufficient insurance at a reasonable cost, we and people like us are in danger of losing our interest in the company. This would be hurtful to us all, to our employees, our customers, the government for the loss of taxes, to ourselves personally and those ultimately who have legitimate liability claims.

Jerry Perkins, Kartz Stage (school bus and charter bus operation), Bozeman, Montana, gave testimony in support of this bill. He stated in the 1983/84 school year they paid \$53,000 for a five million primary with a five million secondary policy. In 1984/85 we were faced with this insurance crisis and we went from \$53,000 to \$169,000 and the insurance coverage decreased. In August, 1985 the cost for Kartz Stage with 14 coaches was \$389,629, with one million primary and one million secondary. In November, 1985 we were required by the Federal Government ICC to carry five million dollars liability and those prices we were not able to afford. In the five years he has been with Kartz Stage they have not had a liability claim yet they are being penalized. They have had to close their office in Billings with four employees.

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Kay Cain, Missoula, office manager for a medical office, treasurer of a local youth soccer association and wife of one of the owners of Montana Snow Bowl, gave testimony in support of this bill. A copy of her testimony is attached as Exhibit 2.

Donna Tenneson, City County Sanitation, gave testimony in support of this bill. She stated they have been in business for 20 years and they serve approximately 23,000 residents. She stated they were notified six weeks ago that their insurance would not be reissued. They have a notice of cancellation cancelling their liability insurance on April 18, 1986. They have received a letter from the PSC that states they will be prohibited from operating as a motor carrier and their certificate of authority will be terminated and to stop operations on April 15, 1986 unless proper insurance is provided. Her agent has been looking for a company for five weeks and has not found one yet. She stated her service is very necessary to the community. In 20 years they have had three accidents reported in the amount of about \$500 between the three accidents.

Chase Hibbard, rancher from the Helena area and a member of the Montana Stockgrowers and Montana Wool-growers Associations, gave testimony in support of this bill. The insurance liability crisis, coupled with the agriculture crisis, has had a ripple effect which has effected every business and person in Montana. His insurance rates have increased 330% from 1984 to just under \$30,000 in 1986. Obviously he cannot pay that kind of insurance rates. He said if something can be done it should be. Senate Bill 12 is an attempt to put common sense and equity back into the system. He would urge adoption of SB 12 without amendments.

Teddy Thompson, Big Timber, gave testimony in support of this bill. He runs an outfitting and livestock operation and has been in the business for 30 years. He said we use the U.S. Forest Service land, and a few years ago they demanded that we insure the government for about three million dollars of liability insurance. Last spring our premium doubled and we only have until next September 15 and then we do not know if we are going to get any insurance at any cost. That means that if rates do not change in the near future we will be out of business as far as outfitting is concerned.

Bill McLin, Valle Rest Manor, Lewistown, gave testimony in support of this bill. He said their nursing home in Lewistown is the third largest employer in that community and that they also represent a nursing home in the Billings area. We were notified by our insurance company that they would be dropping us in thirty days and we had to find another market. We put bids out to five insurance companies and received a response from only one insurance company with a 300% increase. He was quite surprised at the amount of increase but he has since found out that insurance company is not writing any other nursing homes in the state. They have been in operation for twenty years and have never seen insurance prices as great as they are now. They are in control of the 300% increase only to collect it from the private pay people, 30% of their patients, and the other 70% is collected from everyone as taxpayers.

Ed LaMere, representing the Native American Center, Inc., Great Falls, gave testimony in support of this bill. He stated they are a non-profit social services agency providing services in Great Falls. Early in 1984 they were forced to make employee cutbacks as the result of budget cuts. This resulted in three people filing wrongful termination suits against the center. We were placed in a position that we could not defend ourselves. Fortunately we were able to settle the action out of court and apparently there will not be any large claim made against the center. Due to the prohibitive cost of insurance premiums for coverage of board members, executive directors and people who work for non-profit organizations, it is virtually impossible to get coverage and when you can get coverage the cost is prohibitive. See attached Exhibit 3.

Pete Hoiness, manager of FBS Insurance, Hoiness-LaBar Insurance, gave testimony in support of this bill. He said that generally in this market place whether a person has had claims or not makes no difference. There is a state of condition in Montana right now and it is relative to other surrounding states where insurance capacity is allocated. We are considered by people who allocate capacity, whether it be real or unreal, to be the worst of the six states surrounding us. We are probably the worst state in the United States as far as bad faith and are considered to have the 47th or 48th worst economic

insurance climate in the United States. It is a question of allocation of resources. Our brother states have in the last month and in the last year passed tort reform. States like Idaho have no problem with bad faith. The state of Washington has no problem. Wyoming last week passed tort reform and do not have problems with bad faith. When insurance companies allocate capacity they allocate it to those states where there is a good economic climate. Montana is not receiving a fair share of this allocation and will not receive a fair share until we change our social, legal climate in Montana. Many of his clients are in the room today and he understands about the loss ratios and understands what they are going through. They can run a perfectly good business, they can have a good risk and they do not necessarily have to have losses or non-losses. The problem that is affecting the business in Montana is the social legal atmosphere in this state. Insurance companies will not allocate or do business in the state of Montana until that changes. That allocation will go to other states and the agents in Montana are fighting for their lives to get Montana's fair share.

Dan Stanaway, President of Automobile and Industrial Distributors in Billings, gave testimony in support of SB 12. He showed the committee a notice of cancellation of insurance and said this is the death wish of our company. It cancels all of their insurance on the vehicles, inventory, buildings and liability. They employ sixty people distributing motor oil and power equipment. Since their beginning in 1924 they have never had a liability claim and their loss ratios are under industry average. He has spent every bit of available time since receiving the notice to try to get coverage. His coverage expired on March 23 and he now has a two week reprieve. If he does not receive coverage by April 7 his company will close the doors and sixty people will be out of work.

John Stephenson, practicing attorney from Great Falls, gave testimony in support of this bill. See attached Exhibit 4.

Joe Wolf, Polar Electric, gave testimony in support of this bill. He stated they do a lot of business for the state in Montana and they are required to carry a one million dollar liability policy. We have had no claims against our carrier but still the premiums have increased 40% to 60% this year.

Bill Sirak, President of the Northern Rocky Mountain Easter Seal Society, gave testimony in support of this bill. See attached Exhibit 5.

Ed Argenbright, Superintendent of Public Instruction, gave testimony in support of this bill. See attached Exhibit 6.

Dale Duff, owner of Rocky Mountain Transport and Hertz Rent-a-Car, Whitefish, gave testimony in support of this bill. He said he is the owner of the bus that had the most tragic accident in the state of Montana's highway history. Since that time they have had a great deal of experience with both the legal community and the insurance community. His problem is that he simply has not been able to get liability insurance at an affordable price and it is not because of the accident. It is simply unobtainable by the bus industry in the state of Montana other than on the assigned risk market.

Gary Marbut, representative of Montana Council of Organizations and Limits in Missoula, gave testimony in support of this bill. He furnished the committee with a copy of a petition signed by over 5,000 people in Montana. See attached Exhibit 7.

Jack Atcheson, Butte, gave testimony in support of this bill. See attached Exhibit 8.

Gary Elliott, representing the Whitefish Tavern Owners, gave testimony in support of this bill. In the past 15 years he has served on the City-County Planning Board as an elected representative of the Flathead Governmental Study Commission and he has been very involved in the community. He has been in business in his community for the past 15 years. He said we need help in order to survive in our community. He supports SB 12 and asks to be treated the same as a businessman in his community as an elected official of the community.

Wayne Waggoner, founder and chairman of Waggoner Trucking in Billings, gave testimony in support of this bill. They have 450 employees and contractors. He came to Montana in 1960 with two employees and this is where they are today. They have been successful until this year. Their liability insurance went from \$683,000 to \$1,349,000 this year. Our twenty million

dollar umbrella, which we have never had a claim on, went from \$100,000 to \$750,000 for five million. Our total increase in cost for 1986 is going to be one and one-half million. We have three choices: 1) run with one million dollars of insurance and pray we don't have an accident, 2) go to work for the insurance company and last for one year before we file bankruptcy, or 3) auction the place off and send 450 people home.

Robert E. Stoeckig, Vice President of Pan American Industries, Inc., gave testimony in support of this bill. See attached Exhibit 9.

Bob Reiquam, President of First Banks, Great Falls, gave testimony in support of this bill. See attached Exhibit 10.

Jay Whitney, Architect in Helena and co-consultant both to the state of Montana and the City of Helena, gave testimony in support of this bill. From his position he is able to see small businessmen struggling to do building in this state. He is faced with ever increasing fees due to the increasing cost of insurance to professionals and at the same time the professionals are faced with a fear of being criminally punished for a small simple error.

Nancy Stephenson, director of a non-profit that is involved in insurance, gave testimony in support of this bill. See attached Exhibit 11.

LaDene Bowen, Executive Director of the Butte Chamber of Commerce, representing over 400 businesses in the Butte community, stood in support of SB 12.

Robert Corea, Bozeman area Chamber of Commerce, representing over 600 businesses, stood in support of SB 12 with no amendments.

John Rabenberg, representing Wolf Point Chamber of Commerce, stood in support of SB 12 without amendments.

Chuck Herringer, Billings Chamber of Commerce, representing 900 businesses, stood in support of this bill.

Rose Skoog, Executive Director of the Montana Health Care Association, gave testimony in support of this bill. They support this legislation to deal with this issue for two reasons: 1) because it does not require a two-thirds vote to deal with the problem and 2) because this bill combines the public and private sectors. They represent county nursing homes as well as private nursing homes and it appears very inappropriate to treat one of those

facilities different from the other or to have a different set of standards or to provide different protections for the patients of those facilities. It is very important to deal with the public and private sector in a unified fashion.

Sue Weingartner, Executive Director of the Montana Solid Waste Contractors Assn., gave testimony in support of this bill. See attached Exhibit 12.

Betty H. Kissock, Montana Association of Realtors, Butte, stood in support of this bill. See attached Exhibit 13.

Roger Young, Great Falls Area Chamber of Commerce, stood in support of this bill. See attached Exhibit 14.

Tom Herzig, Manager of the Montana Chapter of the Electric Contractors Assn., stood in support of this bill.

Forrest Bolz, President of the Montana Chamber of Commerce, stood in support of this bill. See attached Exhibit 15.

Due to a limited time frame, the following stood in support of this bill but were not able to give personal testimony: Pat Underwood, Montana Farm Bureau (Exhibit 16); Ben Havdahl, Montana Motor Carriers Assn. (Exhibit 17); Dean Mansfield, Montana Automobile Dealers Assn. (Exhibit 18); Riley Johnson, National Federation of Independent Business and Professional Insurance Agents in Montana; George Allen, Montana Retail Assn. (Exhibit 19); Robert Simkins, Simkins Hallin Inc. (Exhibit 20); David Bruck, Independent Agents of Montana (Exhibit 21); Steve Turkiewitz, Helena Area Chamber of Commerce (Exhibit 22); Mr. Dellinger, Montana Building Material Dealers Assn.; Roland Pratt, Montana Restaurant Assn. (Exhibit 23); Jim Hughes, Mountain Bell (Exhibit 24); John Cadby, Montana Bankers Assn.; Bill Leary, Montana Hospital Assn.; Sandra Whitney, Montana Taxpayers Assn. (Exhibit 25); and Roger Tippy, Montana Beer and Wine Wholesalers.

OPPONENTS: Chip Erdman, Montana School Board Assn., gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 26.

Gordon Morris, Executive Director of the Montana Association of Counties, gave testimony in opposition to this bill.

Since early January he has been actively involved in the study of the liability issue as it relates to public entities. During those meetings he was almost a solitary voice in raising the issue of private sector concerns simultaneously with the concerns of the public sector. He said we had some of the best legal minds in the state there. We were assured at that time that you could not have two amendments under Article 14, section 11 of the constitution. We narrowed it down to a single amendment in section 18 to deal with the public sector liability concern. On behalf of the Montana Association of Counties, he said we would withdraw our opposition to this particular bill if we would have the assurance that there would be no constitutional issues raised.

John Maynard, Administrator, Tort Claims Division, Department of Administration, state of Montana, gave testimony in opposition to this bill. See attached Exhibit 27.

Alec Hansen, Montana League of Cities and Towns, gave testimony in opposition to this bill. See attached Exhibit 28.

Karl Englund, Montana Trial Lawyers Association, gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 29.

Chris Mattocks, Superintendent of Schools in Cut Bank, gave testimony in opposition to this bill. See attached Exhibit 30.

Phil Campbell, Montana Education Association, gave testimony in opposition to SB 12. Their 7,000 members across the state believe that private and public are two issues and should be placed separately.

Tom Winsor testified in opposition to SB 12. He feels this bill limits liability in either the public or the private sector. He is a businessman who has had to take legal action to try to recover the loss of his business and the ability to make an income in his business. He ran up against an existing limit which damaged his case. He lost a business that he had put seven years into developing, all his business property and the ability to continue to make an income in that business. He attempted to make a recovery against a government entity and an individual in the government. He took the matter to court and his request for damages was thrown out based upon an existing limitation. He said we are all frustrated by the insurance crisis but is there any guarantee that if you do limit liability that

insurance rates will come down. He does not believe so. He said to give us a chance, those who have been wronged, to get some chance to get some right.

Jim Murry, Executive Director, AFL-CIO, gave testimony in opposition to this bill. He said they feel strongly that before the peoples' redress is limited the insurance industry should give firm assurances to all Montanans that coverage will be made available to those people who now are unable to get coverage and that the insurance rates will be impacted in favor of Montana consumers. Without those assurances the relief will go to the insurance industry. They have another problem with SB 12 because it combines both private and public liability. They feel these issues should be handled separately and if left like this the people of Montana would be denied the right to vote on these issues separately.

Kim Wilsen, Montana Chapter of the ACLU, gave testimony in opposition to this bill. See attached Exhibit 31.

QUESTIONS FROM THE COMMITTEE: Senator Towe said to Mr. Bennett, you made a statement that this is the only one of the constitutional amendment proposals that isn't flawed. It seems to Senator Towe that under section 11, Article 14, that it is the most seriously flawed because of the joint combination of the two. He asked Mr. Bennett to respond to that.

Mr. Bennett said that is a lawyers opinion as to what constitutes a flaw. We feel that an attempt to write statutory language into the constitution is improper and we think that perhaps your bill is writing statutory language into the constitution.

Senator Towe said he believes that every single one of the bills are flawed. He asked Mr. Bennett to respond to the constitutional requirements in Article 14, section 11, which deals with more than one amendment.

Mr. Bennett said as you well know it is not a question of whether it is an amendment or amendments, it is a question of subject. The subject here that the people will vote on is whether or not they want to

elevate to a protected right the right of full legal redress in the public or private sector.

Senator Towe asked if anything had been done into checking into the constitutional background.

Senator Crippen said we have an opinion from Barry Hjort (attached as Exhibit 32) on cases that dealt with this subject. He said there are court cases that have held in that area and it is our opinion that they are relating to a single plan or purpose.

Senator Pinsonneault said if this authority is put into place and the legislature has this authority, it doesn't necessarily mean that the legislature has to exercise this authority if the trial lawyers and interested parties came forward with statutory legislation that would implement tort reform. He asked Mr. Wilsen to respond.

Mr. Wilsen said he guessed that is a result that could come about but on the other hand the language would still be in the constitution that the legislature would have that power.

Senator Pinsonneault asked Mr. Englund to respond to the same question.

Mr. Englund said that is conceivable but that is not the issue that should be looked at at this point. The fact that this will remain in our constitution that the citizens of Montana will lose their full right to redress is more fundamental at this time.

Senator Mazurek said that historically there has been the requirement of a two-thirds vote of the legislature before we could impose monetary limits or deal with immunity. He asked Mr. Bennett why he would resist the effort to impose a two-thirds vote on any effort to place a monetary cap on any amount a person can recover.

Mr. Bennett said with the two-thirds vote public policy will continue to be made in the court because a two-thirds vote of this body is extremely difficult to obtain. He said this legislature has the right to take away my life or to put me in prison by a simple majority. He thinks the legislature should be able to make tort reform by a simple majority.

Senator Mazurek asked Mr. Englund to respond to that question.

Mr. Englund said the legislature does not have the authority to take away Mr. Bennett's life, it has the authority to pass a law which could conceivably put him in that position, but he has and should have the right to go to court to test whether or not that legislative action violated his fundamental rights. What this bill does is to say that there are no fundamental rights in this area and that the legislature is in complete control by a simple majority.

Senator Mazurek said subject to the existing constitutional language that whatever the legislature does will have to pass some sort of rational basis test.

Mr. Karl Englund said if it discriminates then it would have to pass a rational basis test. It depends on what you are talking about doing.

Senator Mazurek said this bill would not eliminate the right of redress.

Mr. Englund said this bill does not eliminate legal redress. What it says is it doesn't have to be full. He said the legislature has the authority now to adopt the things that will effectuate a significant step toward solving the problems. You have the authority to do everything the insurance industry says has to be done.

Senator Mazurek said if we all agree that the legislature has that authority then why are we afraid to put it in the constitution.

Mr. Englund said because you are not putting simply that in the constitution. You are taking away a citizens right to full legal redress by a simple majority.

Senator Mazurek asked Mr. Englund if he disagreed that as written the bill still provides no person shall be deprived of legal redress. That any statute that we pass is going to have to be subject to judicial scrutiny, it is simply the level of scrutiny we are talking about. Compelling state interest versus rational basis.

Mr. Englund said you can pass bills right now on dealing with clout that he is not sure will even have to pass a rational basis test because there is no discrimination involved. What Pfof says is that you cannot place a cap on the amount of damages that someone will receive without showing a compelling state interest.

Senator Mazurek said he understands that but he suggests that anything that we try to undertake will affect someone's fundamental right to full legal redress. If, as you suggest, we have the authority to do the sorts of things suggested, that that will affect someone's fundamental constitutional right and we have to show there is a compelling state interest. In looking at the fact that the legislature in 1975 or 1976 had an interim study and made extensive legislative findings when it was thrown out after the White case, that that demonstrates that the court has not looked with much favor on the legislature's efforts to meet this compelling state interest test.

Mr. Englund said last session when you passed the bill that reimposed the limits, he sat in this same room and did not hear Mr. Young, representing the Department of Administration, tell you how many claims they had and what their potential pay out was and what their potential defense costs were and those kinds of things and we do not know for sure that the legislative study was before the court in this case. What he thinks the Supreme Court said in the Pfof case was that the reasons that you stated for the imposition of the limits without any background and backup information were not sufficient. The legislature could impose a criminal sanction for very good reasons but if the bill does not pass constitutional muster what is the subjective reason for the legislature doesn't matter to the courts.

Senator Towe said he has had a chance to review the memorandum by Barry Hjort and he still has some problems with this. The old constitution was slightly different than the new one in that the old constitution provided we could not have more than three constitutional amendments in the same ballot at the same election. There was a limit and because of that there was a need to make sure you did not put a lot of subjects in the amendment.

Senator Blaylock asked Pete Hoiness if the insurance business is having trouble all over the United States, not only in Montana, as a Montanan why should I vote under this bill being proposed to allow the legislature

by a simple majority vote to take away a fundamental right, when the insurance industry will not give us one iota of evidence or statement of intent to make insurance available or to lower the rates that they charge.

Mr. Hoiness said the insurance companies do not have to do business in the state of Montana. They can do insurance in any state they wish. What controls the situation is that the insurance industry will do business where they anticipate a better legal, social, business climate. You people have decided that the best way to correct this situation is through this piece of legislation. That this is a major way to correct the problems in Montana to attract business back in the state and he agrees with that. What we are doing is we have to go out into the market place and attract capacity into Montana and we find that we are on the bottom of the list. We are not insurance companies we are insurance agents. We need to provide a product to you and we cannot do that because of the atmosphere, social and legal, in Montana. You will not extract a promise from them until they see results. If we don't do something it will not get any better and as the other states do tort reform it will get worse. They will simply shift capacity to the other states. We write 3/10th of one percent of the national capacity. There is more insurance written in the I5 Corridor in Seattle than in the entire state of Montana. This state is 1,000 miles from the nearest insurance office. It is expensive to do business in this state.

Senator Blaylock said the testimony on the claims paid out and the premiums paid in do not bare out the insurance companies are losing money in Montana.

Mr. Hoiness said you are absolutely right but it doesn't make one bit of difference.

Senator Blaylock said you are asking us to take away a fundamental right that will not make any difference to the insurance companies anyway.

Mr. Hoiness said what you have to remember is that what they are looking at is what has occurred under some of the decisions in Montana and essentially they were all in the bad faith area. An insurance company can anticipate doing five to six million dollars a year gross business.

It is in their mind that they are faced in any one law situation of bad faith with two or three million dollars and there is absolutely no way they will continue to do business in this state.

Senator Towe asked Mr. Hoiness if he was aware that the Independent Insurance Agents and the Montana Trial Lawyers had tried to work out an agreement.

Mr. Hoiness said he was aware of that and that is a beautiful step forward.

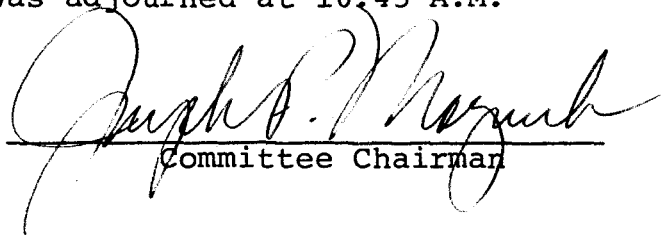
Senator Towe said he was impressed with that. That it would have allowed us to do something without waiting until the election and the next legislative session. He has asked the Legislative Council drafters to draft a petition that does not have anything to do with the legislature to the Independent Insurance Agents and the Montana Trial Lawyers to ask them to set down again and to come up with a suggested solution that we can implement in the June session of the legislature. He asked Mr. Hoiness if he could work with that.

Mr. Hoiness said certainly, he does not think they are that far apart. He said this bill will allow many cures that will go into effect and he is not talking in any way against this bill.

Senator Crippen closed by stating this is not going to be easy. He thinks it is important to realize that the legislature has to have an equal role in this process. What this legislation is intended to do is to bring us back in that bargaining area in an equal manner. The MEA opposed putting public and private together because they said our concerns are different. This is not the type of attitude we have got to have in order to get this done.

Hearing on SB 12 was closed.

There being no further business to come before the committee, the meeting was adjourned at 10:45 A.M.



Committee Chairman

DATE

March 27, 1986

COMMITTEE ON

Judiciary

VISITORS' REGISTER

SB12

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bill Anderson	OPI	12		
Riley Johnson	NFIB & PIA	12	✓	
Wingfield	Valle Vista Manor	12	✓	
Ed Hamel	Nature Am Center Great Falls	12	✓	
Ldene H. Bowen	BUTTE Chamber	12	✓	
Rose Skoog	MONTANA HEALTH CARE ASSN	12	✓	
Sue Weingarten	Mt. Sales & Waste Contractors	12	✓	
Bob Coned	Bozeman Chamber	12	✓	
Jan Cecil	Cardinal Pulling	12	✓	
Chick Higgins	Billings Chamber	12	✓	
Wayne Wiggins	Wiggins Trucking	12	✓	
Roy W Young	Great Falls Chamber of Commerce	12	✓	
Jack Atkinson	CITIZEN	12	✓	
Bill Dinal	Easter Seal Soc.	12	✓	
Wm Stephenson	Neighborhood Housing	12	✓	
Roy D Stenaway	A & I Distributors Bldg	12	✓	
Borden McManis	Flynn Insurance	12	✓	
John Stephenson	Mt. A Soc. Defense ^{Council}	12	✓	
R. L. REIGNAN	self & banking industry	12	✓	
Tom Wilk	ACLU	12		✓
Gordy Morris	MAEO	12		✓
Bill Decker	SIMKINS HALL INC	12	✓	
Karl Waterman	USF&C	12	✓	
John & Abby	Mt States ASS	12	✓	
ileen Mansfield	Mt. Auto Dealers Assoc.	12	✓	

(Please leave prepared statement with Secretary)

DATE March 27, 1986

COMMITTEE ON

Judiciary

VISITORS' REGISTER

SB-12

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ken Underwood	MT. Farm Bureau	12	✓	
Ben Haddad	MT Motor Carriers Assn		✓	
Jim De Jan	MTA - BELL	12	✓	
Mike Pardis	MT. CHIROPRACTIC ASSN	12	✓	
Chip Edmann	MT School Bd Assoc	12		✓
Anna Tennessee	City County Sanitation	12	✓	
The Neumann	MT Solid Waste Contractors	12	✓	
Bill Leary	MT. Hospital Assn.	12	✓	
Bob Steckert	Pan American Industries, Inc	12	✓	
ROGER McGEHEE	INDEPENDENT INS. AGENTS OF MT	12	✓	
John Rabenberg	Wolf Point CofC + ag	12	✓	
Julie Hacker	Madia Co. Freeholders Assn	12	✓	
Paula Cahoon	" " "	12	✓	
John Honess	FBS - Honess-Labov Inc	12	✓	
John C. Hoyt	U, T, U.			✓
Jim McMillan	M. B. M. D. A	12	✓	
George Allen	MT. Retail Assn	12	✓	
GARY S. MARBUT	M. C. O. LIMITS	12	✓	
Joe Wolfe Jr	Palmer Elec	12		
Jay Whitney	ARCHITECT - HELENA.	12	✓	
Andie Whitney	Montana Taxpayers	12	✓	
Walter H. Hissell	Montana Ins of Actuaries	12	✓	
Howard Serys	MT Chap Nat Elec Contractors	12	✓	
Ed Cunningham	Supt of Public Inst.	12	✓	
Alvin Tully	Ed Chair Hellgate Elem, Missoula	12		✓
JH Boles	Montana Chamber	12	✓	

(Please leave prepared statement with Secretary)

DATE March 27, 1986

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Russ Rella	Mayor City of Helena	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ronald Pratt	MT Restaurant Assoc	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roger Tippy	MT Beer & Wine Wholesalers	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>
J.C. Matrocks	Cum Bank Public School	12	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Phil Campbell	Mont - Ed. Assoc.	12	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Pyser	Mont Credit Union League	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Rollins	ASARCO, Inc	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Boland	ATTORNEY - Great Falls	12	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dee Cross	Billings Chamber	12	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

Submitting Testimony

NAME: Dee Ann Bernhard DATE: 3/27/86

ADDRESS: 1501 Woodfield Rd. Ste 400 West
Schaumburg, IL 60193

PHONE: 312-490-8635

REPRESENTING WHOM? ALLIANCE OF AMERICAN INSURERS

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: see attached - 15 copies

Please submit for this morning
hearing

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony
Senate Bill
March 27, 1986

My name is Dee Ann Bernhard. I am a regional manager for the Alliance of American Insurers, one of three national property and casualty insurance trade associations. The Alliance represents 170 mostly small to mid-size mutual companies. Our most well known members are Kemper, Wausau, Sentry and Libery Mutual, as well as the property and casualty companies of large life companies such as Prudential, Metropolitan and John Hancock.

In Montana, Alliance companies write 6.7% of all property and casualty insurance. Alliance member companies are not large writers in Montana; yet, we consider your actions this week regarding liability extremely important. The industry does not turn a deaf ear to what has become a problem of gigantic proportions.

We admit the negative effects of our past practice of underpricing our product.

There is a crisis in the insurance industry stemming from huge losses in commercial liability insurance. Many companies are on the ropes. We have not manufactured this crisis, because the problem also exists for other entities. Those cities, professionals and businesses who self-insure face the same unknown exposures and the same losses brought about by the liability crisis. The business world, represented by the U.S. Chamber, has made the liability crisis their number one issue.

The insurance mechanism, which spreads the heavy burden of a few lightly on the shoulders of many, has become a social welfare system, as far as the courts are concerned. Unfortunately, without benefit of ever collecting a premium for this service.

It is the liability crisis which causes more frequent and more severe losses than predicted. The insurance mechanism is only a mirror image of what is happening to our insureds. Insureds and self-insureds are being sued more often for higher awards. It is the liability crisis that is being reflected in availability and affordability problems. Insurance companies are the unlucky messengers of this news.

When insurance companies look at the losses and where they come from and what can be done in order to stay in the business of insurance, they found it was these unknown exposures caused by problems in the civil justice system. There are many tort reforms that we think will help stop the hemorrhaging. We think this will stabilize the insurance environment and will enable companies to strengthen their capacity and to compete again.

The insurance industry is a profit making business, or it once was. We want to continue to offer our product at an affordable price. We do not accept the villain role in a problem we did not create.

The Alliance supports the referendum which will allow the legislature to address these legal liability problems.

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March 27, 1986

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(This sheet to be used by those testifying on a bill.)

NAME: Tom Herzog DATE: 27 Mar 84

ADDRESS: Box 1249 Helena

PHONE: 442-8330

REPRESENTING WHOM? Montana Chapter National Electrical Contractors Assn

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: The ~~us~~ electrical contractors in
our association support this ~~bill~~ bill
with out an amendment that requires
a 2/3 vote.
Ude

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Phil Stroppe DATE: 3-27-86

ADDRESS: Box 874

PHONE: 442-6570

REPRESENTING WHOM? Mont INNKEEPERS AND MONT TAVERN ASS.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

Indorse prepared remarks
of Senator Crippen, Rep
Merew and George
Bennett.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Dr. Mike Pardi's DATE: Mar 27 '86

ADDRESS: 950 N. Montana, Helena MT 59601

PHONE: 449-7500

REPRESENTING WHOM? MT. CHIROPRACTIC ASSN.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: We support this bill in hope
that a handle may be gotten on
liability costs for the practice
of chiropractic and for the board
members of our state association

Mike Pardi, D.D.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Joe Dellinger DATE: 3/27

ADDRESS: 711 No Main

PHONE: 442-2420

REPRESENTING WHOM? Martinez Bldg 1700 N. 1st Ave

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Jeddy Thompson DATE: 3-27

ADDRESS: Big Timber Mt. 59011 Box 976

PHONE: 932-4294

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: S.B. 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: ROSE SKOOG DATE: 3-26-86

ADDRESS: 36 So. Last Chance Gulch, Ste A

PHONE: 443-2876

REPRESENTING WHOM? Montana Health Care Assn.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

Support SB 12
oppose any amendment
requiring a 2/3 vote.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Jay Whitney - ARCHITECT DATE: 3-27

ADDRESS: 1621 HOUSER

PHONE: 442-2303

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: The increasing insurance rates for the construction industry is repressing investment of construction -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Garry Elliott DATE: 3/27/86

ADDRESS: P.O. Box 752 WHITEFISH, M.T.

PHONE: 862-7098

REPRESENTING WHOM? WHITEFISH TOWN OWNERS.

APPEARING ON WHICH PROPOSAL: SEN BILL 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: GARY S. MARBUT DATE: 3/27

ADDRESS: P.O. Box 4924 MISSOULA 59806

PHONE: 549-1252

REPRESENTING WHOM? MONTANA COUNCIL OF ORGANIZATIONS
LIMITS

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Dale D Buff DATE: 3-27-86

ADDRESS: 1410 E Edgewood

PHONE: 812-2539

REPRESENTING WHOM? Rocky Mtn Pump

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

This bill should be
supported with no Amendments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Joe Wolfe Jr DATE: 3-28-56

ADDRESS: 3290 Tizer Rd

PHONE: 442-710

REPRESENTING WHOM? Polar Elec

APPEARING ON WHICH PROPOSAL: _____

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

COMMENT: _____

Ins Plan are up 40 to 60 %
and we are requiring to care for
for working in Coast field

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Gordon Morris DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? MA Co.

APPEARING ON WHICH PROPOSAL: SB 12

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

COMMENT: _____

for Const. reasons - 2 amendments
appears to raise question of Const.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MAR 24 1986



Sammons Trucking

P.O. Box 4347 • Missoula, Montana 59806 • (406) 728-2600

March 24, 1986

Montana Legislature
Helena, Montana

I am writing to express my concern about the problem being created by the insurance crisis in Montana as it relates to my business.

As I see it the problem is two fold. First of all, many insurance companies are, for whatever reason, no longer willing to write insurance in our state and the ones that still do are very reluctant to take on new customers. Secondly, the ones that are still writing coverage here are substantially reducing the limits of coverage offered and are raising the premiums very dramatically with no regard for loss experiences. To relate this to dollars and cents, two years ago we had 20 million dollars worth of coverage that cost \$270,600. Today 5 million dollars of coverage will cost us \$1,440,000. Twenty-five (25) percent of the coverage and an increase in cost of 5.3 times. Where is the fairness or reasonableness?

In the economic environment we are operating in now it is difficult if not impossible to pass these costs on to the consumer so they simply come off the bottom line and quite frankly, our business cannot afford that. We have had to implement all the cost cutting measures we can which include a freeze on everyone's salaries and looking to eliminate any jobs that aren't absolutely essential. Some of these measures are simply good business practice but many are short term remedies that perhaps sacrifice long term benefits.

Something has to be done and I think the legislature is the place to start.

Sincerely,

SAMMONS TRUCKING

James D. Basolo
President

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

JDB:kd

BOB WARD & SONS, INC.

Jewelry and Sporting Goods

BRANCH STORE NO. 2
3103 HARRISON AVE.
BUTTE, MONTANA 59701
PH. 406-494-3445

BRANCH STORE NO. 3
2320 WEST MAIN ST.
BOZEMAN, MONTANA 59715
PH. 406-586-4381

WHOLESALE & RETAIL
Watchmakers and Jewelers
Keepsake Diamond Rings - Bulova Watches

MAIN OFFICES & STORE NO. 1
HWY. 93 AT SOUTH AVE.
MISSOULA, MONTANA 59801
PH. 406-728-3220

BRANCH STORE NO. 4
800 NORTH FIRST ST.
HAMILTON, MONTANA 59840
PH. 406-363-6204

BRANCH STORE NO. 5
SOUTHGATE MALL
MISSOULA, MONTANA 59801
PH. 406-728-2019

BRANCH STORE NO. 6
1401 CEDAR ST.
HELENA, MONTANA 59601
PH. 406-443-2138

ARCHERY - FOOTWEAR - OUTDOOR CLOTHING - GUNS AND AMMUNITION - RELOADING SUPPLIES - BACKPACKING
TENNIS - GOLF - EVERYTHING FOR HUNTING AND FISHING - WINTER SPORTS HEADQUARTERS - SKI SHOP - ATHLETIC EQUIPMENT

March 24, 1986

MAR 24 1986

Gary Marbut
% Montana Chamber of Commerce
Box 1730
Helena, Montana 59624

Attention: Montana Legislators
Helena, Montana

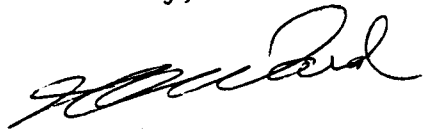
Bob Ward and Sons, Inc. have had a problem securing liability and insurance coverage this year at a reasonable price!

We were forced to shop the market as our regular carrier doubled their rates and greatly increased the deductibles.

We did find insurance at a great increase in price over last year for less coverage.

There is a real problem in insurance for the Businesses at the present time at an affordable price.

Sincerely,



BOB WARD AND SONS, INC.
Irvine C. Ward/President

ICW/bw

"EVERY DEPARTMENT A SPECIALTY SHOP"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03 27 86
BILL NO. S.B. 12

MAR 24 1986



P.O. Box 4027
Missoula, Montana 59806
Phone (406) 721-1060
MC No. 143154

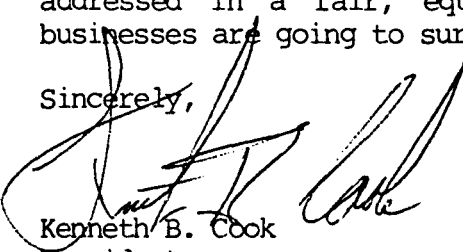
March 24, 1986

Montana Legislature
Helena, Montana 59624

Dear Legislature:

I have spent many hours in travel to negotiate face to face with Insurance Company's in their home offices, plus hours on the telephone, to find a rate as digestable as possible, eighteen month's ago it was 2.2% at my gross revenue, today it is 6.3%. This equates from \$132,000.00 in 1984 to \$378,000.00 in 1986. This is after eighteen month's of no losses through an excellent safety program. Doing the things to make this Company more, insurables just the opposite has happened. This last increase will put A & S Trucking, Inc. in the red on a operating basis. The awards being given are going to be catastrophic to my business if this continues as it has the past few years. The Insurance Company's need stability in the system. A & S Trucking, Inc. brings jobs to the state of Montana. The future well being of my business is in your hands. In this session we need both the private and public sector liability, addressed in a fair, equitable manner, if my business and other businesses are going to survive in the state of Montana.

Sincerely,


Kenneth B. Cook
President

KBC/ba

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

"SERVICE IS OUR SPECIALTY"

MAR 24 1986



MISSOULA
GENERAL
HOSPITAL

March 24, 1986

Montana Legislative Body
State Capitol Building
Helena, Montana 59624

Dear Members of the Legislature,

I am writing to express my concern over the liability issue confronting the legislature at this time and to inform you of the effects on my institution if the legislature does not impose a limit on the private sector liability.

The persons who seek the services at our facility end up paying for the cost of the high liability insurance that we are required to carry in order to protect our facility. Our rates must be increased substationally in order to afford this coverage, thus the persons who use our facilities are paying for our insurance coverage. Without doing this we could not afford insurance for our facility. I am especially concerned if limits are not put into place about the cost in the future of obtaining this necessary coverage, and if the coverage is even going to be available to our facility. Insurance companies may not be willing or able to provide coverage for our facility because of the risk of the high cash awards being given to the private sector.

Currently, many obstetricians in rural settings are opting not to deliver babies as a result of the high cost of obstetrics insurance. How long will it be before this effects the practices of many of the physicians on our staff in other areas of medicine?

I am certain that the medical field is not the only business that will suffer if the legislature does not act on this issue and ask only that each of you will do what is best for the future of businesses and private citizens in the state of Montana by limiting private insurance liability.

Thank you for your consideration in this matter.

Karen Foster, Administrator

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

Health Care...With a Personal Touch.

902 North Orange Street Missoula, Montana 59802 Telephone 406/542-2191



Telegram

MESSAGE NUMBER 1-019208J083

ORIGINATING OFFICE Billings, Mt

DATE 3-24-86

FILING TIME

TO: Montana Chamber of Commerce
Atn: Gary Warbut
ADDRESS: 110 Neil
CITY - STATE & ZIP CODE: Helena, M.t 59601

Our company has been in the Bentonite Mining business and wholesale oil well drilling mud business since 1951. For a number of years we have carried a blanket liability insurance umbrella in the amount of twenty million dollars. This year we were advised by our local Billings agent that the twenty million dollar coverage is not available in the state of Montana and that the two million that is available will cost more than the twenty million dollar policy last year. This will obviously have a serious effect on our business as well as any other business involved in the development of natural resources in Montana legislative action under the circumstances is imperative.

SIGNED: David L. Auer; Executive Vice-President WYO-BEN Corp.
Director

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12



(406) 782-5915 Or 782-5338

EVANS TRANSFER & STORAGE, Inc.

750 Utah
BUTTE, MONTANA 59701

March 25, 1986

Montana State Legislature
Helena, Montana 59601

Dear Legislators:

During the past two years we have been insured through the Home Insurance Company of Manchester, New Hampshire. We have had both our warehouseman and trucking policy through this firm. During the past two years we have been faced with 40% increases yearly. Our basic premium that we pay each year is over \$15,000.00 and because of the difficulty people in our line of business have been experiencing we are hesitant to even file a claim with our insurance company for fear of cancellatin or non-renewal. Last week we had notification that our insurance policies will not be renewed and have had to search for other carriers who would be interested in insuring us.

When we received notification of non-renewal I immediately contacted our insurance company to find out why we had received notice and was informed that Home Insurance Company was no longer writing that type of coverage, trucking insurance. My only question to him was that for the past two years we have paid premiums in excess of \$30,000.00 and have had no claims other than one in 1984 for \$1100.00 and at that rate I do not believe we are a bad risk.

If I, and others like myself were financially able to hold enough funds in reserve for insurance purposes we would not have these problems but unfortunatly we are at the insurance company's mercy, without them we can not operate. By law we are required to have insurance and with out this insurance we will be out of business.

AGENT FOR northAmerican VAN LINES

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S. B. 12



(406) 782-5915 Or 782-5338

EVANS TRANSFER & STORAGE, Inc.

750 Utah
BUTTE, MONTANA 59701

Page (2)

Montana State Legislature

Where do we turn now? With insurance companies so hesitant to insure our type of business and with premiums so high where do we go from here. The rapidly increasing cost of coverage can not be supported by the consumer. The majority of these costs are borne by the insured and are rapidly forcing many of us in the trucking industry out of business.

We would appreciate anything the legislators can do to help alleviate the problems with insurance in the trucking industry.

Sincerely,

Ronald H. Evans
President
Evans Transfer & Storage, Inc.

PLUMBING, HEATING and
VENTILATING CONTRACTOR

PLUMBING
FIXTURES

BUTTE, MONT. PH. 782-5404 782-2929
1716 HARRISON AVENUE

GARY QUAM

WALSH
ENGINEERING

March 25, 1986

Montana State Legislators
Helena, Montana

Gentlemen:

At this time I would like to request that some action be taken during the next Legislature session in regards to the rising Liability insurance costs.

We are a small business concern, incorporated in the State of Montana, employing between 15 to 30 people on an annual basis, depending on work load.

The rising cost of Liability insurance has definitely worked a hardship on small business's in the surrounding area, causing some to cease operations as increased costs cannot be passed on to the public at this particular time.

Hoping some action will be taken on this request, I remain,

Respectfully yours,

WALSH PLUMBING & HEATING

Gary Quam
Gary Quam
President

GQ:bm

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03 27 86
BILL NO. S.B. 12



4655 Harrison Avenue South • Butte, Montana 59701 • Telephone 406/494-6666

March 25, 1986

The Montana Legislature
 Capitol Hill Station
 Helena, Montana

Dear Sirs:

The Copper King Inn, located in Butte, Montana, has a business volume of more than \$3,000,000 and employs 125 people year-round. The Copper King Inn is a service business which offers lodging, food and liquor service.

Our annual insurance renewal date is in May for our property and liability coverage, and our workers' compensation policy renews in December. In the past year, we were cancelled by our property and liability carrier and our workers' compensation carrier. A considerable effort was necessary to locate a carrier. Our property and liability policy doubled with the new carrier. In an effort to control costs, we found it necessary to reduce our umbrella policy by two-thirds.

In December our workers' compensation carrier cancelled, and we were able to locate a second carrier with our increase estimated at 15 percent.

At this time, we are approaching our renewal date. There is a great deal of uncertainty as to whether we can find a carrier and coverage at the level we require. Our insurance broker has prepared us for a stiff increase in our umbrella policy and is finding more companies which, because of the recent Supreme Court decision, no longer wish to write a liquor liability policy.

The uncertainty of recent changes in the insurance market has made it difficult to make future plans. We are particularly concerned with the effect of recent court decisions on our liquor liability.

We hope the Legislature will take steps to make our insurance market more manageable.

Sincerely yours,

Douglas G. Smith
 General Manager
 DGS/blf

MONTANA'S FINEST MOTEL AND LARGEST CONVENTION FACILITY
 For Reservations Call Toll Free 1-800-548-6008 • In Montana Call 1-800-332-8600
 (Best Western Toll Free 1-800-528-1234)

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 1
 DATE 03 27 86
 BILL NO. S.B. 12

ROACH AND SMITH DISTRIBUTORS INC.
WHOLESALE

CIGARS, TOBACCOS, CONFECTIONERY & BAR SUPPLIES

Phone 563-2041 — Anaconda, Montana 59711

March 25, 1986


Montana Legislative Special Session
Gary Marbut
Montana Chamber of Commerce
P. O. Box 1730
Helena, Montana 59624

Dear Gary,

We have been effected by the current liability crisis dramatically. An example is the increase in insurance premiums.

I am very concerned about our business with the liability crisis at hand. If it were to continue we would not be able to expand our business due to the cost of liability insurance. We could not afford new vehicles or additional inventories. We have increased our deductables, to date as a method of controlling current premiums. I have thought in the past that insurance premiums were too high but now I know we cannot survive in business with anymore insurance premium increases. We are counting on you, personally so as we may continue in business.

Best regards,


Joe Markovich



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

BERT MOONEY AIRPORT AUTHORITY

MEMBERS:
Thomas C. Brophy
Dave Brown
William Evans
Keith P. Johnson
Shag Miller

SECRETARY-MANAGER:
Angelo Petroni

AIRPORT ATTORNEY:
Lawrence G. Stimatz

BUTTE, MONTANA 59701
Phone 406-494-3771

March 25, 1986

Montana State Legislature
Montana Capitol
Helena, MT 59601

Dear Legislators:

The Bert Mooney Airport Authority has over the years carried 6 million dollars of liability at a cost of \$4,400.00 per year. Last year the premium was raised to \$9,500.00 and the same coverage for this year was increased to \$27,500.00.

The airport increased the insurance budget to \$14,000.00 to cover anticipated increases for 1986, but the quote for the coverage increased \$13,500.00 more than was budgeted. This increased amount is more than the total repair and maintenance amount budgeted for the airport.

A survey of the past 5 years, losses at the airport revealed three slip and falls being reported. Two of the incidents had no claims turned in and the third resulted in a \$94.00 claim.

Sincere efforts must be made to correct this inequity.

Yours truly,

BERT MOONEY AIRPORT AUTHORITY

By: 
Angelo Petroni
Airport Manager

AP/ld

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

THOMPSON DISTRIBUTING, INC.

Phone 723-6528
845 So. Wyoming
Butte, Montana 59701

March 25, 1986

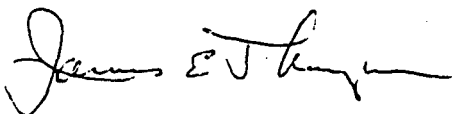
Montana State Legislature
Helena, Montana 59601

To Whom It May Concern:

I would like to respectfully submit that the current liability crisis in the small business community is at a crisis proportion. We have recently been able to get our insurance placed but at a cost of twice what it cost in 1985. We were cancelled from Home Insurance at the end of the policy in March. We had been with them for 6 years with no claims.

The over all effect of such adverse insurance problems has been such that instead of expanding with one new job this year I have pulled back and will not fill that position. The money available for jobs has been taken in the form of insurance payments.

Respectfully yours,



James E. Thompson
President

JET/all

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

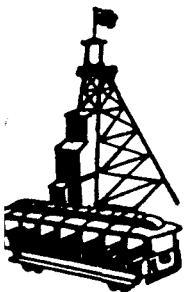
DATE 03 27 86

BILL NO. S.B. 12



ADOLPH COORS CO.—ANHEUSER-BUSCH, INC.





Butte Silver Bow
Chamber of Commerce

2950 Harrison
Butte, Montana
59701
Telephone: 406-494-5595

March 25, 1986

Montana State Legislature
Helena, MT 59601

The insurance liability problem has reached crisis proportions for Butte businesses, as well as, the non-profit organizations in our community.

The business liability premiums are soaring. Some businesses are unable to obtain coverage at any price and must go without or close their business. State-wide, this includes hospitals, restaurants, trucking companies, day-care centers and financial institutions, just to name a few.

Figures released on an insurance liability survey of business people and professionals by the U.S. Chamber of Commerce show 60.3% had difficulty obtaining affordable general liability insurance. 40.7% said that product liability insurance presented problems and 13.2% said the same of professional liability insurance. More than 14% were unable to obtain the type of coverage they needed. 51.3% reported premium increases of more than 100% with almost 10% stating their increase was over 500%.

We understand the causes of the problem are very complex and urge the Montana State Legislature address the conditions in Montana and take a course of action to improve conditions for the private business sector.

Sincerely,

LaDene H. Bowen

LaDene H. Bowen
Executive Director
BUTTE SILVER BOW CHAMBER OF COMMERCE

lhb

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03 27 86
BILL NO. S.B. 12

Historic Butte

Fascinating

Spirited

Resourceful

BUTTE

SHeltered WORKSHOP, INC.

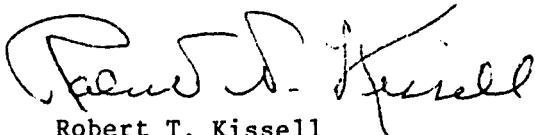
March 25, 1986

Montana State Legislature

Our agency provides services to handicapped men and women of South Western Montana. Briefly, the programs of service include vocational, habilitation, diagnostic, and residential. In order to provide these services our agency receives funds from the State of Montana, Social and Rehabilitative Services. One of the conditions for receiving these funds is that we maintain \$1,000,000.00 in general liability coverage. During 1985 we paid approximately \$8,000.00 for our total insurance package, including the million dollar liability policy. For our present premium year, 1986, our coverage will cost \$22,000.00, however we can only get \$300,000.00 in general liability coverage.

Our program is obviously effected in two serious ways, 1. We do not have the required amount of coverage and 2. the increased premiums puts serious restrictions on other areas of our programs. We have had to get a loan to pay the premiums over a nine month period and also we have had to rebudget in other areas of our contract with the State.

I have attached a list of the insurance companies our broker has tried to get coverage from and failed, it should be noted that we have been fortunate not to have ever had a claim.



Robert T. Kissell
Executive Director

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

VOCATIONAL
EVALUATION

WORK
ADJUSTMENT

FOOD
SERVICE
TRAINING

SHELTERED
EMPLOYMENT

JOB
PLACEMENT

SOCIAL
ADJUSTMENT

COUNSELING

United Pacific

Continental Insurance Company

U.S.F. & G.

Safeco

Traveler's

New Hampshire

Implement Dealers

Western Insurance Company

Hartford

St. Paul

Great American

American States

General Agency Representatives

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S. B. 12



Neighborhood Housing Services, Inc.

OF GREAT FALLS

615 THIRD AVENUE SOUTH • GREAT FALLS, MONTANA 59405 • TELEPHONE (406) 761-5861

March 26, 1986

Montana Senate Judiciary Committee
Helena, MT

Gentlemen:

Neighborhood Housing Services is a non-profit organization that is a public-private partnership of residents, lenders, businesses, and local government. Its goal is to revitalize the declining core neighborhoods of Great Falls by providing low-interest home improvement loans, construction supervision, financial counseling, and many other services. NHS has a three person staff and supervises approximately \$400,000 of rehabilitation and/or new construction work a year.

Liability insurance to cover our volunteer Board of Directors and Officers was \$515 in 1985. For 1986 it is \$4,110. This is an increase of 698 percent.

Our general corporate liability, fire, and real estate insurance was \$1,037 in 1985. For 1986 the same coverage will cost us \$3,300. The increase is 218 percent.

This means for our non-profit with an operating budget of under \$90,000 that our insurance has increased by almost \$6,000 in one year. In more than five years we have never had a claim filed on any of our liability coverage. All of the contractors and subcontractors who work on NHS projects are required to carry liability insurance.

We know that other small non-profits are being faced with similar increases in insurance rates. We cannot operate without liability insurance to protect both our volunteer directors and our Revolving Loan Funds.

The question is how long will non-profits that survive primarily on donations be able to operate when faced with this tremendous escalation in insurance rates. I would urge you to deal with this problem.

Very truly yours,


Nancy M. Stephenson
Executive Director

NMS:jrm

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

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Executive Director

NMS:jrm

SENATE JUDICIARY COMMITTEE

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Very truly yours,


Nancy M. Stephenson
Executive Director

NMS:jrm

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Phil Campbell DATE: _____

ADDRESS: Helena

PHONE: _____

REPRESENTING WHOM? MEA

APPEARING ON WHICH PROPOSAL: SB 12

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

COMMENT: _____

Support repetition of issuer

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: James W. Murray DATE: 3-27-86

ADDRESS: P.O. Box 1176 Helena, Mont.

PHONE: 442-1708

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: _____

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Tom Wilson DATE: 3/27

ADDRESS: 618 Holton, Helena

PHONE: 442-4309

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 12

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: GEORGE T. BENNETT DATE: 3/27/86

ADDRESS: 404 FULLER AVE P.O. Box 1705

PHONE: 442-8950

REPRESENTING WHOM? MONTANA LIABILITY COALITION

APPEARING ON WHICH PROPOSAL: SENATE BILL 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032786
BILL NO. SB 12

MAR 24 1986

FLATHEAD ASSOCIATION OF INDEPENDENT AGENTS
F.A.I.A.

DORIS BIGHAM, EXECUTIVE DIRECTOR
MONTANA BLDG. - 33 2ND ST. E.
KALISPELL, MONTANA 59901
PHONE 755-1882



March 25, 1986

Mr. Gary Marbut
c/o Montana Chamber of Commerce
P. O. Box 1730
Helena, Montana 59624

Dear Mr. Marbut:

As the executive director of the Flathead Association of Independent Agents, I would like to point out some special problems we are having in trying to insure our local government entities.

1) Examples of recent drastic increases in premiums for those coverages we can place are as follows:

Last year we could insure a school district for around \$90,000. including property, general liability, automobile insurance, special floater policies, and umbrella liability. This year our projections are in the neighborhood of \$200,000. for the same coverages.

An umbrella policy for a city went from \$3,172. to \$37,000.

The property insurance for the county went from \$41,041 to \$107,482. and their automobile insurance went from \$38,000. to \$75,881.

2) You are probably well aware that many municipalities are going "bare" due to unavailability of insurance at any price. Flathead County is one such government entity. Altogether we have contacted 32 markets, and everyone has declined to write this coverage. The last market we tried, a surplus lines company, advised they are no longer interested in writing business in Montana until there is a change in the current judicial climate.

3) We are a profit making corporation, and find that our business is being damaged by the actions of the insurance companies. They are cutting our commissions, and of course, for those policies we cannot write, we do not receive any remuneration.

Respectfully submitted,

Doris Runyan

Doris Bigham Runyan
Executive Director
Flathead Association of Independent Agents

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032786
BILL NO. S.B. 12



Mobile Home Transport

"we move mobile homes"

March 24, 1986

MAR 24 1986

Montana Legislators
Helena
Montana

Gentlemen:

We have ICC and PSC authority to transport mobile homes in 23 of the United States. Our 14 trucks are leased on to us by Owner-Operators. We carry both Cargo and Liability insurance on the units.

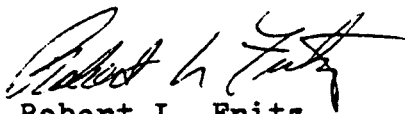
In 1983 we had \$3,000,000.00 liability coverage plus cargo at a total cost of \$15,000.00 per year. Now we are paying \$100,000.00 for \$750,000.00 liability plus cargo. It has become increasingly difficult to even get the insurance coverage, much less pay for it.

Our objective in writing this letter is to ask your help in trying to relieve this situation. In order to stay in business our rates will have to be increased considerably and there is a limit as to what the public can pay for services rendered.

Thank you for your consideration of our request.

Sincerely,

BILL'S MOBILE HOME TRANSPORT, INC.


Robert L. Fritz
President

nc

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

MAR 24 1986

TIGER TRANSPORTATION, INC.
MC 140186

EUGENE TRIPP TRUCKING, INC.
MC 143328



In-State WATS: 800-332-2714

Out-Of-State WATS: 800-548-8895

P.O. BOX 5328 • MISSOULA, MONTANA 59806 • (406) 728-6121

March 25, 1986

Montana State Legislature
c/o Gary Marbut
Montana Chamber of Commerce
P. O. Box 1730
Helena, MT 59624

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

Dear Mr. Marbut:

Recent increases in liability insurance premiums for trucking are causing and will continue to have catastrophic effects on the industry unless legislation provides some measure of relief.

To closely monitor the safe operations of our equipment we have installed on board computers in all of our trucks. This technologically advanced equipment records speed, engine operation, application of brakes and gives us a print-out which is used for educational review with the driver and gives us the opportunity to retain or terminate drivers strictly on a factual basis. It is indeed our eyes and ears making us aware of what happens with our equipment on a minute-by-minute basis. We rigidly conduct monthly safety inspections on our equipment and it is inspected daily by the operator.

Our company has been the proud recipient of two Montana State Safety Awards.

Additionally, as an incentive, we provide safe driver awards on a monthly and annual basis to our company drivers and owner/operators. These awards are highly coveted by our employees and competition to maintain the highest safety records is extremely keen.

Our Safety Director was selected as Safety Supervisor of the Year by the Montana Motor Carriers Association, attesting to the fact that our safety program works. Further affirmation, of course, is our minimal accident and freight claim record of which we are justifiably proud.


Notwithstanding the foregoing, our liability insurance premiums have increased from \$600,000.00 to \$900,000.00 this year. Such exorbitant increases will force many owner/operators out of the business due to their inability to pay insurance costs. It works an extreme hardship on all trucking companies. And it should be noted that ultimately, as always, the consumer will necessarily pay the costs.

Serving your shipping needs with flatbed, dry van and refrigerated equipment.

Whatever you can do to promote within the legislature some action to put a ceiling on liability claims will relieve the trucking industry of this onerous burden and will benefit all Montana consumers.

Sincerely,

TIGER - TRIPP



Warren C. Shepard
President

WCS/gaa

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

MAR 24 1986



McELROY & WILKEN, INC.

Concrete-Sand-Gravel

March 24, 1986

Montana Legislature
Helena, Mt..59624

Re: Increased Insurance Rates

We are writing in regards to the new increased insurance rates. These are coming at a time when businesses are asking employees to either take a wage cut or freeze in wages and benefits. Other employers are closing their doors because of the high cost of operation. The insurance companies are asking for in excess of 50% increases in rates. This increase takes away from plans one might have had for expansion programs as well as purchasing any new or replacement of equipment.

We would like to ask for any assistance you might be able to direct in correcting this matter.

Sincerely,



Gary A. Wilken, President
McElroy and Wilken, Inc.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

MAR 24 1986



Sammons Trucking

P.O. Box 4347 • Missoula, Montana 59806 • (406) 728-2600

March 24, 1986

Montana Legislature
Helena, Montana

I am writing to express my concern about the problem being created by the insurance crisis in Montana as it relates to my business.

As I see it the problem is two fold. First of all, many insurance companies are, for whatever reason, no longer willing to write insurance in our state and the ones that still do are very reluctant to take on new customers. Secondly, the ones that are still writing coverage here are substantially reducing the limits of coverage offered and are raising the premiums very dramatically with no regard for loss experiences. To relate this to dollars and cents, two years ago we had 20 million dollars worth of coverage that cost \$270,600. Today 5 million dollars of coverage will cost us \$1,440,000. Twenty-five (25) percent of the coverage and an increase in cost of 5.3 times. Where is the fairness or reasonableness?

In the economic environment we are operating in now it is difficult if not impossible to pass these costs on to the consumer so they simply come off the bottom line and quite frankly, our business cannot afford that. We have had to implement all the cost cutting measures we can which include a freeze on everyone's salaries and looking to eliminate any jobs that aren't absolutely essential. Some of these measures are simply good business practice but many are short term remedies that perhaps sacrifice long term benefits.

Something has to be done and I think the legislature is the place to start.

Sincerely,

SAMMONS TRUCKING

James D. Basolo
President

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 27 86

BILL NO. S.B. 12

JDB:kd

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 85-007

RICHARD B. FOST,

Plaintiff and Respondent,

vs.

THE STATE OF MONTANA and
MISSOULA COUNTY, a Political
subdivision of the State
of Montana,

Defendants and Appellants.

FILED

FEB 20 1986

Ethel W. Johnson
CLERK OF SUPREME COURT
STATE OF MONTANA

ORDER DENYING REHEARING

The petition for rehearing is DENIED.

DATED this 20th day of February, 1986.

Chief Justice

John Conway Peterson
John C. Sheehy
William E. Hunter

Justices

Mr. Justice John C. Sheehy further concurring:

The petition for rehearing by the State is properly denied because it fails to fit within our rules for

rehearing. The petition for rehearing does not point to a material fact overlooked in the majority decision, nor to a controlling case or statute to which our attention was not directed. Rule 34, M.R.App.Civ.P.

Ordinarily, we deny such petitions without comment. Most of the Court is so inclined but I undertake some comment since the subject matter--state governmental immunity--will undergo further legislative discussion. If the State's petition truly reflects the State's understanding of the majority opinion, quite obviously the legislature will need more direction than can be found in the petition.

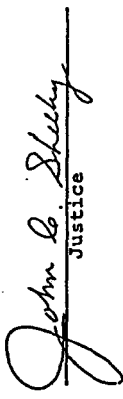
The State should now accept that under this decision and White v. Montana (Mont. 1983), 661 P.2d 1272, the right to bring a civil action in Montana "for every injury of person, property or character" is fundamental and embedded in the State Constitution, Art. II, § 16. No one, not the State on rehearing or earlier, not Missoula County, not any of the dissenters, has tried to defend section 2-9-107, MCA, as not being discriminatory. As we said, its discriminatory effect is beyond argument.

When a statute is discriminatory, it must face an equal protection inquiry. When a fundamental right is being discriminated against, then the statute must pass strict judicial scrutiny to sustain the discrimination. Otherwise the statute is struck down on equal protection grounds. Equal protection is fundamentally guaranteed in Art. II, § 4 of our state constitution.

Following our decision, the governor was quoted in the press as saying he did not understand how four persons on the Court could set aside the action of 108,704 people. The governor was facetious, of course, because otherwise he would

betray the state constitution he has sworn to uphold. One of the functions of a constitution is to protect minorities. One of the functions of a court is to make certain that minorities are equally protected. Moreover, we did not set aside Art. II, § 18 of the state constitution (which was opposed by 76,252 people). Rather we set aside a discriminatory state statute which the legislature had enacted under Art. II, § 18.

The supposed effect of our decision is much exaggerated, and useless to argue here. In the heat of misunderstanding the legislature may now propose to write discrimination into the state constitution. That will be a measure of its statelessness.


Justice

Mr. Chief Justice J. A. Turnage, Mr. Justice Fred J. Weber and Mr. Justice L. C. Gulbrandson would grant a rehearing.

TESTIMONY OF JOHN D. STEPHENSON, JR.

ON BEHALF OF MONTANA ASSOCIATION OF DEFENSE COUNSEL

My name is John D. Stephenson, Jr. and I have practiced for more than 25 years in Great Falls. I represent persons and businesses who have been sued in civil litigation. About fifty percent of the time my clients have liability insurance and any settlements or fees are paid by liability carriers. In the remaining fifty percent of the cases, my clients carry no insurance and pay any settlements or judgments, as well as my fees, directly. Some of these noninsured clients are large organizations who find it more economical not to be insured. Many others however are individuals or small businesses who cannot find or cannot purchase insurance coverage to protect the risks which are at issue.

I am a member of the Montana Association of Defense Counsel, a past president, and presently Chairman of the Counsel's legislative committee. Our organization consists of about 200 Montana attorneys who spend a substantial portion of their practice defending individuals and businesses in civil litigation. Our Board of Directors and a majority of our membership firmly support the legislation which is before you today.

The Montana Trial Lawyers, on the other hand oppose this legislation. The Montana Trial Lawyers have a very effective and vocal organization which has been very good at getting its message across. Sometimes the

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impression is created that they speak for all attorneys in the State of Montana. This is not true, however, and many attorneys in the State of Montana do not agree with their political views.

The Montana Trial Lawyers Association is attempting to defeat this legislation by telling you that there is no liability crisis. They claim that the problems which your constituents have been complaining about are simply a "phony crisis" generated by insurance companies. However, the real issue before you is not an insurance crisis, it is a liability crisis. The Trial Lawyers are attempting to create a red herring when they blame the insurance companies. They want to make you and the people of Montana mad at all insurance companies and hope that in the meantime you will forget about the real crisis which is affecting Montana individuals and businesses.

I do not know the answers to the conflicting claims concerning the liability insurance situation, but I do know that whatever cycle we are passing through, liability insurance in the future will be more expensive, will be less available and will offer less coverage than it has in the past. This means that Montana individuals and businesses will bear a larger share of liability than they have in the past. Furthermore many areas of liability which have newly created never have been, and probably never will be covered by liability insurance. The real

problem then is how do we strike a balance between peoples' rights to be compensated for injuries and defendants' rights to be treated fairly.

This constitutional amendment provides an opportunity for the State of Montana to strike a balance. The Pfost case recently decided by our Supreme Court indicates that under our state constitution any legislative attempt to restrict either liability or damages, whether it is public or private liability, may be unconstitutional. I hasten to urge that I do not agree with or support this view, but only state that many lawyers may advocate this position in future cases before the Court.

Knowledgeable attorneys in the State of Montana, including our Board of Directors, feel that the only way that some balance can be achieved in this area, is to have a constitutional amendment which restores to the Legislature the right to pass the kinds of laws which have traditionally been within its domain. This constitutional amendment will not in itself limit any liability and it will not in itself impose any damage limitations. It will however permit the Legislature to impose reasonable limitations at future legislative sessions. Each of these laws, if and when passed, will have to go through all of the careful debating which any law must pass, and of course any such law will have to meet the very strict requirements of the United States constitution as well as avoid con-

flicting with other provisions of the Montana constitution.

This constitutional provision will not strip anyone of any rights, but it will provide a means by which a reasonable balance can again be achieved between the rights of an injured party to recover reasonable compensation against the rights of a defendant to be treated fairly.

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Neighborhood Housing Services, Inc.

OF GREAT FALLS

615 THIRD AVENUE SOUTH • GREAT FALLS, MONTANA 59405 • TELEPHONE (406) 761-5861

March 26, 1986

Montana Senate Judiciary Committee
Helena, MT

Gentlemen:

Neighborhood Housing Services is a non-profit organization that is a public-private partnership of residents, lenders, businesses, and local government. Its goal is to revitalize the declining core neighborhoods of Great Falls by providing low-interest home improvement loans, construction supervision, financial counseling, and many other services. NHS has a three person staff and supervises approximately \$400,000 of rehabilitation and/or new construction work a year.

Liability insurance to cover our volunteer Board of Directors and Officers was \$515 in 1985. For 1986 it is \$4,110. This is an increase of 698 percent.

Our general corporate liability, fire, and real estate insurance was \$1,037 in 1985. For 1986 the same coverage will cost us \$3,300. The increase is 218 percent.

This means for our non-profit with an operating budget of under \$90,000 that our insurance has increased by almost \$6,000 in one year. In more than five years we have never had a claim filed on any of our liability coverage. All of the contractors and subcontractors who work on NHS projects are required to carry liability insurance.

We know that other small non-profits are being faced with similar increases in insurance rates. We cannot operate without liability insurance to protect both our volunteer directors and our Revolving Loan Funds.

The question is how long will non-profits that survive primarily on donations be able to operate when faced with this tremendous escalation in insurance rates. I would urge you to deal with this problem.

Very truly yours,


Nancy M. Stephenson
Executive Director

NMS:jrm

SENATE JUDICIARY COMMITTEE

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TESTIMONY REGARDING LIABILITY INSURANCE
FOR HEALTH CARE AND HUMAN SERVICE PROVIDERS

William N. Sirak

My name is William N. Sirak. I am president of the Northern Rocky Mountain Easter Seal Society/Goodwill Industries of Montana.

The non-profit organization I represent provides direct services to disabled and disadvantaged children and adults in the states of Montana, Wyoming and Idaho.

In cooperation with the Montana Division of Developmental Disabilities of the Department of Social & Rehabilitation Services, we operate Montana's largest sheltered workshop; employing 120 adults with disabilities.

As a part of our work training and vocational services, we have for many years manufactured a wooden rocking horse which was for sale to the general public. Hundreds of these rocking horses have been sold throughout the state of Montana.

We no longer make those rocking horses because we were told by our insurance broker that no insurance company would bid on coverage for the Northern Rocky Mountain Easter Seal Society if we continued making our rocking horses or decided to become a provider of day-care services for children.

We, incidently, have never had an insurance claim or lawsuit filed against our organization, which has been providing services since 1946.

We now have an opportunity and a desire to provide personal care attendant services for severly disabled adults in their homes. Such a service would not only improve the quality of life

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of the elderly and disabled, but also keep individuals out of costly institutions.

The question we are now exploring is can we find an insurance company that will provide liability coverage for us and at what cost.

Although I do not have any recommendations for you concerning this difficult issue, I do know that providers of human services and health care agencies may be unable to carry out their mission of serving people in need of their help unless this insurance issue is resolved.

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NAME: Ed Argenbright DATE: 3-27-86

ADDRESS: Capitol Helena

PHONE: 444-3654

REPRESENTING WHOM? Office of Public Instruction

APPEARING ON WHICH PROPOSAL: S.B. 12

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

COMMENT: The relatedness between the public sector and the private sector causes me to support this bill. Taxpayers support our public school districts and include the whole community, business, professionals, and craftsmen etc. A united stand will offer a better chance of success for changing the current system. This approach reflects reality - it is a common crisis affecting the whole of our communities.

Whether doctors, teachers, or individual board members elected as trustees we're subject to individual private malpractice - we are related in this matter. The school bus example also shows the interrelatedness as many school buses are private contractors - their costs are reflected in schools costs as automatic property tax levies.

I don't believe an arbitrary separation of public and private interests in this matter is in the best interest of our school districts who

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. are supported by taxpayers and the whole of their communities.

I urge unanimous approval of S.B. 12

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* * * * PETITION TO LIMIT LIABILITY * * * *

THE UNDERSIGNED MONTANA CITIZENS AND VOTERS STRONGLY URGE THE LEGISLATURE TO PASS A CONSTITUTIONAL REFERENDUM WHICH WOULD ALLOW THE LEGISLATURE TO LIMIT OR CONSTRAIN PRIVATE SECTOR LIABILITY. LET THE PEOPLE OF MONTANA VOTE ON THIS ISSUE!

THIS PETITION WAS SIGNED BY OVER 4200 MONTANA CITIZENS FROM THE FOLLOWING COMMUNITIES:

ANACONDA	ANTELOPE	ARLEE	BAINVILLE
BAKER	BASIN	BELFRY	BELGRADE
BELT	BIGFORK	BILLINGS	BONNER
BOULDER	BOZEMAN	BRADY	BROADUS
BROCKTON	BROWNING	BUTTE	BYNUM
BIG TIMBER	CARDWELL		
CARTER	CHESTER	CHINOOK	CLANCY
CLINTON	CLYDE PARK	COHAGEN	COLSTRIP
COLUMBIA FALLS	CONRAD	CORAM	CORVALLIS
CULBERTSON	CUT BANK	DAGMAR	DEER LODGE
DEVON	DILLON	DRUMMOND	DUPUYER
DUTTON	EAST HELENA	EMIGRANT	EUREKA
EVERGREEN	FALLON	FLAXVILLE	FLORENCE
FORSYTH	FORTINE	FOUR BUTTES	FRENCHTOWN
GALATA	GALLATIN GATE	GARDINER	GLASGOW
GLENDAVE	GREAT FALLS	HAMILTON	HARDIN
HARLOWTOWN	RYGATE		
HAURE	HELENA	HERON	HIGHWOOD
HINGHAM	HINSDALE	HUNGRY HORSE	HUNTLY
HUSON	HYSHAM	JEFFERSON CITY	JOPLIN
KALISPELL	KEVIN	KILA	KREMLIN
LAKESIDE	LAMBERT	LAUREL	LEDGER
LEWISTOWN	LIBBY	LINCOLN	LINDSAY
LIVINGSTON	LOLO	MALTA	MANHATTAN
MARION	MEDICINE LAKE	MELSTONE	MILES CITY
MILLTOWN	MISSOULA	MONTANA CITY	NOXON
OPHEIM	OUTLOOK	PARK CITY	PEERLESS
PENDROY	PLAINS	PLENTYWOOD	POLSON
POPLAR	PRAY	PRYOR	RAYMOND
RED LODGE	REDSTONE	RESERVE	REXFORD
RICHLAND	ROBERTS	ROSEBUD	ROUNDUP
SCOBY	SEELEY LAKE	SHAWMUT	SHELBY
SHEPHERD	SIDNEY	SOMERS	STEVENSVILLE
STOCKETT	SUNBURST	SUPERIOR	SWEETGRASS
THOMPSON FALLS	THREE FORKS	TOWNSEND	TREGO
TROY	VALIER	VICTOR	WESTBY
WEST YELLOWSTONE	WHITEFISH	WHITETAIL	WH. SULFUR SPRINGS
WIBAUX	WILLOW CREEK	WILLSALL	WISE RIVER
WOLF POINT			

N.B. Copies of completed petitions on file with the President of the Senate and the Speaker of the House.

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EXHIBIT NO. 7

DATE 03 27 86

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(This sheet to be used by those testifying on a bill.)

NAME: Jack Atcheson DATE: _____

ADDRESS: 3210 Offawn Butte mont

PHONE: 406 782 2382

REPRESENTING WHOM? CITIZEN

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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constitution and statutes and in the constitution and statutes, the United States.

History: En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

1-1-106. Public and private statutes. Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History: En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

1-1-107. Unwritten law defined. Unwritten law is the law not promulgated and recorded, as mentioned in 1-1-104, but which is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned men.

History: En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11.

1-1-108. Common law — applicability of. In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

1-1-109. Common law of England — when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

History: En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; am. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

Part 2

General Definitions of Terms Used in Code

1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (a) "Oath" includes an affirmation or declaration.
- (b) "Person" includes a corporation as well as a natural person.
- (c) "Several" means two or more.
- (d) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.
- (e) "United States" includes the District of Columbia and the territories.

(2) Wherever the word "man" or "men" or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, such word or syllable shall be deemed to include

1-1-307. Postponement of day appointed for an action when it falls on a holiday.

Part 4 — Citizenship

- 1-1-401. People defined.
- 1-1-402. Citizens defined.
- 1-1-403. Allegiance.
- 1-1-404. Allegiance — how renounced.
- 1-1-405. Persons not citizens.

Part 5 — State Symbols—Ballad—Medal

- 1-1-501. Great seal.
- 1-1-502. State flag.
- 1-1-503. State floral emblem.
- 1-1-504. State bird.
- 1-1-505. State gem stones.
- 1-1-506. State grass.
- 1-1-507. State fish.
- 1-1-508. State animal.
- 1-1-509. State fossil.
- 1-1-510 reserved.
- 1-1-511. State ballad.
- 1-1-512 through 1-1-514 reserved.
- 1-1-515. Montana medal of valor established.

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Part 1

Meaning of Law

1-1-101. Definition of law. "Law" is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

1-1-102. How expressed. The will of the supreme power is expressed by:

- (1) the constitution;
- (2) statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

1-1-103. Laws — written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

History: En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

1-1-104. Written law defined. A written law is that which is promulgated in writing and of which a record is in existence.

History: En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

1-1-105. Constitution and statutes. The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its

NAME: Kay Cain DATE: 27 Mar 86

ADDRESS: 7905 Leme Springs Tr. Missoula

PHONE: 721-1116 / office 728-4160

REPRESENTING WHOM? Recreation

APPEARING ON WHICH PROPOSAL: Senate Bill #12

DO YOU: SUPPORT? yes AMEND? NO! OPPOSE? _____

COMMENT: I am from Missoula.

I am the office manager for a medical office, the treasurer of our local youth soccer association as well as the wife of one of the owners of our local ski area, Montana Snow Bowl. Snow Bowl is owned by 6 investors, & has been owned by them for 2 years. We had 28,000 skier days this year, 44,000 last year; 50,000 is our probable maximum. We have 35 employees.

These owners purchased the area to keep it from closing. They feel that skiing is an important reason why people live in Montana; and that Missoula without Snow Bowl would not be nearly as nice a place to live. Recreation of all kinds is one of the reasons why people come to Mt., especially new businesses. A growing Missoula, a growing Mt needs ski areas as well as other forms of recreation.

We are luckier than some — we have insurance, but the cost is crippling. Three yrs. ago the previous owner paid \$15,000 — last year we paid \$30,000 or DOUBLE the previous yr. This year it doubled again to \$60,000. That \$60,000 is money we planned to spend

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EXHIBIT NO. 2
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Ed Lamere DATE: 3/27/86

ADDRESS: P.O. Box 2612

PHONE: 406-761-3165

REPRESENTING WHOM? Native American Center, Inc.
Great Falls, MT

APPEARING ON WHICH PROPOSAL: S.B. 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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Ed Hamm Outline 59403

Native American Center, Inc
P.O. Box 2612 - St Falls, ND

1. Identify myself & Program
2. Brief description of services.
3. Cutback and layoffs in 1984
4. Resulting lawsuits for wrongful terminations
5. Insurance Company would not defend, which put us in a situation where we could not pay attorney fees to defend ourselves in court
6. Insurance Company would not renew our policy - as a result we had great difficulty in finding coverage with another Insurance Company
7. When we ~~found~~ found a new Insurance Company which would insure us, the premium was 30% higher than our old policy.

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(This sheet to be used by those testifying on a bill.)

NAME: John Stephenson J. DATE: 3/27

ADDRESS: Box 2269, Great Falls

PHONE: 727-5000

REPRESENTING WHOM? Mt. Arroc. Detour Council

APPEARING ON WHICH PROPOSAL: Senate Bill #12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: My remarks are contained
in typed form submitted
to the Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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I HAVE BEEN SUED
JACK ATHERSON
OUTTE MONT
282 2382

Plaintiff - HIM
Defendant - me -

1. PERSON IS UNHAPPY, REAL OR UNREAL
He AND HIS LAWYER ARE LOOKING FOR EASY BIG BUCK!
2 PERSON (PLAINIFF) AND HIS LAWYER TAKE RUN AT DEFENDANT
THE PLAINIFF AND LAWYER USUALLY WORK ON CONTINGENCY
PLAINIFF ~~WANTS~~ WANTS NOTHING. BOTH HOPE DEFENDANT WILL
OR HIS INS. COMPANY WILL SETTLE OUT OF COURT
EVEN IF DEFENDANT DID NO KNOWN WRONG.
TO SETTLE MIGHT BE CHEAPER, ^{NOT TO FIGHT} AND JURY ARE FICKLE

IN ANY CASE THE DEFENDANT MUST HIRE A
LAWYER USUALLY \$100 PER HOUR PLUS MOST CASES
EXCEED \$5000 CLOSER TO 20,000.

IF DEFENDANT RESISTS:

PLAINIFF MUST DECIDE, GO TO COURT OR DROP THE SUIT

IF IT GOES TO COURT & PLAINIFF WINS ITS SETTLED

BUT

BUT, IF PLAINIFF LOSES OR DROPS THE CASE THE
DEFENDANT STILL HAS HUGE DEFENCE LAWYER BILLS
DEFENDANT MAY HAVE DONE NOTHING, NEVER GOES TO COURT
BUT IS BROKE - HE'S REALLY DAMAGED!

↑

make it EASY TO GET BACK THE DEFENDANT LOSSES
make it EASY FOR THE DEFENDANT TO SUE THE
PLAINIFF IT MAKE HIMSELF "WHOLE" - GET BACK HIS LOSSES
IF PLAINIFF MUST PAY SOME OF DEFENDANT'S LEGAL BILLS
HE MAY NOT BE SO QUICK TO MAKE PREVIOUS SUITS

~~ON A CONTINGENCY PLAINIFF PUT UP NOTHING~~

Remember most people HAVE NO INSURANCE TO
start with

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POINT

Jack
Atcheson. Defendant Bill # 12

I WOULD NAD, CLAIMS

PLAINTIFF & HIS LAWYER USUALLY ON CONTINGENCY
TAKE A RUN AT DEFENDANT, IN HOPE OF EASY MONEY
IF DEFENDANT RESISTS with small investment

DROP THE CASE OR CONTINUE -

IF PLAINTIFF WINS IN COURT OR SETTLE THE CASE IS CLEAR

BUT IF PLAINTIFF LOOSE IN COURT OR IF
PLAINTIFF DROPS THE CASE IS OFTEN HAPPEN

THE DEFENDANT IS ~~NOT~~ STILL DAMAGED

BUT DID NOTHING WRONG YET LOST THOUSANDS
IN DEFENSE 'COULD BREAK HIM

MAKE IT EASY FOR DEFENDANT TO GET BACK
HIS LOSSES THAT DAMAGED

THIS WOULD SLOW INTEREST IN SUITS

IF THEY LOSE MAYBE SUE THEIR LAWYER FOR ^{DAD} _{ADVIS}
IT IS VERY DIFFICULT TO DO THIS

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(This sheet to be used by those testifying on a bill.)

NAME: Robert E. Stoeking DATE: 3/27/86

ADDRESS: PB Box 1018 Lewistown, MT 59457

PHONE: 406/538-2595

REPRESENTING WHOM? Pan American Industries, Inc.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? X AMEND? NO! OPPOSE? _____

COMMENT: We as a small business which moved to MT from CA.
Upon closure of our CA office, liability insurance was
cancelled. Only two companies in the USA will even
quote us on liability insurance. We are going from a
premium of \$3,700⁰⁰ last year to over \$35,000⁰⁰
this year. We need SB 12 to pass with no
2/3 provision or there is no change, we or
other companies locating in MT will have to move
back out of the state!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Robert L. REIQUM DATE: 3-27-86

ADDRESS: 705 FOREST GT. FALLS 59404

PHONE: 727-8055 Home 761-7200 office

REPRESENTING WHOM? Self & banking industry

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Costs are not only from insurance

Other costs:

1. Legal fees to prevent litigation
2. EXTRA paper work
3. Restriction on credit - can't take the risk,

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
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DATE 03 27 86
BILL NO. S.B. 12

TESTIMONY TO SENATE COMMITTEE ON "PUNITIVE DAMAGES"
ON "BAD FAITH LAWSUITS" and

HELENA, MONTANA

MARCH 27, 1986

Robert L. Reigman

President, First Banker Great Falls

Members of the Committee:

Distance from markets, high taxes, and even adverse weather is not nearly as negative for business in Montana as the current legal climate. "Bad faith" and "punitive damage" suits are creating havoc in business circles throughout the state. Since I have made my living for the past twenty one years making loans and managing banks, my remarks will focus on the credit issues of the notorious punitive damage law suits.

There is no doubt that every lender in Montana is vitally aware of the threat of multi-million dollar law suits. The worst part is that we don't know how to prevent them or what we did to cause them. A normal lending transaction involves a borrower pledging collateral to cover a note specifying money received, interest charged, and when and how the note is to be repaid. If the borrower fails to pay the note, it is assumed the collateral is to be forfeited. Now we find trial lawyers say there is no need to repay because lenders act in "bad faith" when they ask for their collateral pledged by the contract.

The current atmosphere in Montana causes three major things to happen with every astute lender in the state:

1. IT RAISES COSTS. Most lines of credit now involve detailed loan agreements between the bank and the borrower. These are prepared, or at least examined by an attorney. The borrower pays. If the note is not repaid as agreed, attorneys prepare all notices and advise on procedures. That is a cost to that borrower or subsequent ones.

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enacts Bill
12

Our bank has one full time officer checking loans and documentation for exceptions that could lead us into legal hassle. That administrative work costs and the borrower must pay. Costs of insurance, particularly for banks, is skyrocketing. The borrower has to pay that cost in the final analysis.

2. Customers dislike the time and paper shuffle it takes to complete a loan transaction. Awareness of legal action against banks causes all lenders to document every detail and double check every form before granting a loan. This paperwork is costly and annoying.
3. Credit becomes more difficult to obtain with each lawsuit filed. Why take that risk when you can deal in Government securities or make other investments without getting sued. When you are threatened with court action that could wipe out the bank's capital, why take the chance? There are numerous attorneys eagerly awaiting clients that think they can win the "Montana lottery" and get a million dollar judgement in their favor.

It is absolutely not worth it to make a loan that has any degree of risk. A lawsuit not only costs if you lose, but the hours of preparation and the legal fees can be devastating too.

You people, our elected representatives have the power to restore some degree of sanity to the Montana legal system. The best way to develop business in Montana and assure financing for legitimate, profitable, well managed business and agriculture is to restrict the punitive damage lawsuits. I support the action of the coalition and support Senate Bill 12, without any amendments.

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BILL NO. S.B. 12

INSURANCE ISSUES.
costs.

na.



(This sheet to be used by those testifying on a bill.)

NAME: Nancy Stephenson DATE: 3/27/86

ADDRESS: 200 3rd Ave N, Great Falls, MT 59401

PHONE: 452-9471

REPRESENTING WHOM? Neighborhood Housing Services of Great Falls, Inc

APPEARING ON WHICH PROPOSAL: S.B. 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: I work for a non-profit that
has a staff of 3~~00~~^{and} 200 volunteers
that help the poor, the elderly, female head
of households and minorities. Our
non-profit and others will be put
out of business if the insurance situation
gets worse we will all be unable to
provide ~~us~~ valuable services to the
needy -

For a few plaintiffs to get millions
of dollars far in excess of their payages,
thousands and thousands of needy
Montanans will not have the services
provided by non-profits -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 03 28 86
BILL NO. S.B. 12



Neighborhood Housing Services, Inc.

OF GREAT FALLS

615 THIRD AVENUE SOUTH • GREAT FALLS, MONTANA 59405 • TELEPHONE (406) 761-5861

March 26, 1986

Montana Senate Judiciary Committee
Helena, MT

Gentlemen:

Neighborhood Housing Services is a non-profit organization that is a public-private partnership of residents, lenders, businesses, and local government. Its goal is to revitalize the declining core neighborhoods of Great Falls by providing low-interest home improvement loans, construction supervision, financial counseling, and many other services. NHS has a three person staff and supervises approximately \$400,000 of rehabilitation and/or new construction work a year.

Liability insurance to cover our volunteer Board of Directors and Officers was \$515 in 1985. For 1986 it is \$4,110. This is an increase of 698 percent.

Our general corporate liability, fire, and real estate insurance was \$1,037 in 1985. For 1986 the same coverage will cost us \$3,300. The increase is 218 percent.

This means for our non-profit with an operating budget of under \$90,000 that our insurance has increased by almost \$6,000 in one year. In more than five years we have never had a claim filed on any of our liability coverage. All of the contractors and subcontractors who work on NHS projects are required to carry liability insurance.

We know that other small non-profits are being faced with similar increases in insurance rates. We cannot operate without liability insurance to protect both our volunteer directors and our Revolving Loan Funds.

The question is how long will non-profits that survive primarily on donations be able to operate when faced with this tremendous escalation in insurance rates. I would urge you to deal with this problem.

Very truly yours,


Nancy M. Stephenson
Executive Director

NMS:jrm

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Sue Weingartner DATE: 3/27/86

ADDRESS: Helena Montana

PHONE: 443-1160

REPRESENTING WHOM? MT Solid Waste Contractors

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Support without amendments
Represent Refuse haulers which provide garbage
services to over 80,000 Montana households
and 7,500 business establishments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 03 27 86
BILL NO. S.B. 12

SB 12



Montana Solid Waste Contractors, Inc.

36 South Last Chance Mall, Suite A • Helena, Montana 59601 • 406-443-1160

MARCH 27, 1986

FOR THE RECORD, MY NAME IS SUE WEINGARTNER. I RESIDE IN HELENA, MONTANA, AND I AM EXECUTIVE DIRECTOR OF THE MONTANA SOLID WASTE CONTRACTORS. OUR ASSOCIATION REPRESENTS 40 WASTE HAULING COMPANIES THROUGHOUT THE STATE OF MONTANA. MOST ARE SMALL FAMILY-OWNED AND OPERATED BUSINESSES PROVIDING AN ESSENTIAL PUBLIC HEALTH AND SAFETY SERVICE TO APPROXIMATELY 80,000 HOUSEHOLDS AND 7,500 COMMERCIAL AND BUSINESS ESTABLISHMENTS THROUGHOUT THE STATE.

AUTHORITY TO HAUL WASTE AND REFUSE IS GRANTED BY THE MONTANA PUBLIC SERVICE COMMISSION AFTER A SHOWING OF PUBLIC NEED AND NECESSITY. IN ORDER TO MAINTAIN ITS AUTHORITY, A COMPANY MUST AT ALL TIMES HAVE A LIABILITY INSURANCE POLICY.

EVERY SINGLE ONE OF OUR MEMBERS THAT I HAVE TALKED WITH OVER THE PAST SEVERAL WEEKS ARE EXPERIENCING ONE OF TWO THINGS, EITHER: (1) A PREMIUM INCREASE RANGING FROM 60% ALL THE WAY TO 260%; or (2) LIKE THE EXAMPLE OF DONNA TENNESON AND CITY-COUNTY SANITATION, NOTIFICATION OF NON-RENEWAL. I KNOW OF ANOTHER COMPANY SERVING A SMALL COMMUNITY IN NORTHWESTERN MONTANA, EXPERIENCING THE SAME PROBLEM AS DONNA TENNESON. IF OUR HAULERS ARE NOT ABLE TO OBTAIN INSURANCE, BY STATE LAW THEIR OPERATIONS MUST CEASE ON THE DATE THEIR INSURANCE EXPIRES. IT WOULD NOT BE AN EXAGGERATION TO STATE THAT IF THIS SCENE WERE TO BECOME A REALITY, PUBLIC HEALTH COULD BE IN SERIOUS JEOPARDY.

OUR ASSOCIATION FULLY SUPPORTS THE POSITION OF THE MONTANA LIABILITY COALITION AND THIS BILL BEFORE YOU TODAY--WITHOUT AMENDMENT AND WITHOUT REQUIRING A 2/3RDS MAJORITY OF EACH HOUSE. WE URGE YOUR SUPPORT AS WELL.

JUDICIARY COMMITTEE

NO. 12
2786
S.B. 12

(This sheet to be used by those testifying on a bill.)

Kissock Realty Inc.

NAME: Betty H. Kissock DATE: 3-27-86

ADDRESS: 3215 Harrison Ave Butte, Montana

PHONE: 494-3351

REPRESENTING WHOM? Montana Ass. of Realtors

APPEARING ON WHICH PROPOSAL: S.B. 12 un amended

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

COMMENT: _____

Allow a Much Needed Tort reform To take place

Please allow Montana Business to stay active -

Do NOT place any tax paying business inactive because of insurance rates

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: ROGER W Young DATE: 3-27-86

ADDRESS: 537 32 Ave NE, Great Falls, MT 59406

PHONE: 741-6594

REPRESENTING WHOM? Great Falls Area Chamber of Commerce

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: We are an organization of 900 firms, and with more than 1500 men and women on our roster. In a recent legislative poll 84.9% of our members favored legislation to limit liability for the private sector; 82.8% favored legislation to limit public liability. The Constitutional Amendment in SB 12 must be passed and it must not be handcuffed with an amendment/provision which would require a 7/3 vote of each house in order to make any tort reform or establish any limits. To be so amended would be to destroy any value of the Constitutional Amendment.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: F. H. Bales DATE: _____

ADDRESS: Box 1730 Helena

PHONE: 442-2405

REPRESENTING WHOM? MONTANA CHAMBER

APPEARING ON WHICH PROPOSAL: S.B. 12

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT: This is a top priority issue for the Montana Chamber. We strongly support for our approx 1000 members the passage of this bill and equally strongly oppose any amendment requiring a 2/3 vote of the Legislature to institute tax reform.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: PAT UNDERWOOD DATE: 3/27/86

ADDRESS: 507 S. 19TH AVE BOZEMAN, MT ⁵⁹⁷¹⁵

PHONE: 406-587-3153

REPRESENTING WHOM? MONTANA FARM BUREAU

APPEARING ON WHICH PROPOSAL: SB 12 (NOT AMENDED)

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: THE 4,000 FARMERS AND
RANCHERS IN OUR ORGANIZATION DESIRE
THE LEGISLATURE TO PASS MEANINGFUL
TORT REFORM (NOT GESTURES).

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Ben Hardan DATE: 3/27/86

ADDRESS: Box 1714 - Holbrook MI 49024

PHONE: 442 6600

REPRESENTING WHOM? Montana Motor Carriers Assn

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 03 27 86
BILL NO. S.B. 12

The Montana Motor Carriers Association as a member of the Montana Liability Coalition fully supports and urges this Legislature to adopt Senate Bill 12, a referendum amending Article #2, Section 16 of the Constitution granting legislative authority to grant government immunity and limit private sector liability in civil proceedings.

(HB 17)

Ben Hardan

The adoption of this referendum is vital in the longer range solution to the liability insurance crisis that has had a dramatic negative affect on business especially the motor carrier industry not only in Montana but throughout this whole country.

The Montana Motor Carriers Association represents some 365 motor carrier members including all the larger carriers and 125 supplier members in Montana. There are approximately a total of 1,000 trucking operations, many are one or two truck operators, based in Montana that operate in several states in addition to Montana. 95% of the MMCA carrier members operate in interstate commerce. Some 9,000 carriers based outside of Montana operate in and/or through the state. It has been estimated that some 200,000 over the road commercial trucks operate within and/or through the state on an annual basis.

Nationally some 5 million truckers log more than 138 billion miles throughout the country operated by 260,000 firms hauling 77% of the dollar value of all freight in the U. S.

Federal law, unlike many other industries you've heard from, requires that each over the road truck described must carry a minimum of \$750,000 of public liability insurance regardless of commodities hauled. A minimum of a million dollars of liability is required by a carrier hauling hazardous waste, hazardous materials along with other commodities and \$5,000,000 is required if the carrier is a bulk transporter of gasoline, LPG, or other hazardous substances. Buses with 16 or more passengers must carry \$5 million and \$1.5 million if they haul under 16 passengers.

The proper functioning of a vital truck and bus transportation system is essential, and currently the single most difficult problem facing the motor carrier industry in Montana and nationally, is the availability of adequate insurance at a reasonable and relatively stable price. In addition to the public liability, truckers maintain property damage insurance, workers compensation insurance, cargo loss and damage insurance and umbrella or excess coverage. The motor carrier's problem, above others, is that operating with no insurance coverage or coverage below the limits violates federal law.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 03 27 86

BILL NO. S.B. 12

By now you are familiar with the background of the problem. From the mid 1970's to early last year, high interest rates and easily obtainable insurance fuelled the so called "soft market" cycle in the insurance industry. In what is termed "cash flow under writing" premium dollars from writing of often times indiscriminate policy coverage by primary underwriters yielded returns from 18-20% from interest bearing investments for several years. Sound underwriting practices and effective risk management were generally ignored. It was a buyers market. A trucking company simply called an insurance broker and got the cheapest rate.

As you know, things changed in the last year. Interest rates dropped, reinsurance rates became expensive, indiscriminate claims for risks written during the "soft market" came home to roost after lengthy adjudication in the form of large court awards for pollution damage, several global catastrophies and numerous aviation disasters. In short, cash flow underwriting no longer worked for the insurance industry. A capacity crunch occurred, resulting in a \$60 plus billion short fall in reserves. All insurance needs could not be met and insurance companies raised premiums as a quick fix.

Limited capacity focused on safe risks. Unsafe risks were dropped or faced skyrocketing premiums. Trucking companies found themselves in the company of taxis and buses, liquor handlers, municipalities, doctors, lawyers, accountants and day care centers. A trucking company's safety or claims track record had little to do with premium hikes.

A survey of MMCA carrier members made in February 1986 indicated that 76% of the respondents were facing a large premium increase in liability insurance. 89% indicated the rate increase to be 50% or higher and 57% indicated their increased premium rates to be higher than 100% with increases ranging from 100 to 800%.

On a national average, premium rates for primary coverages for public liability and property damage (PL&PD) for general commodity carriers have skyrocketed on the average from 250 to 500 percent with claims-free records of carriers having had no affect on the rates being quoted to them. Some have been unable to get coverage at any rate, especially the tank truck carriers hauling hazardous materials. Those in the latter category (with \$5 million minimums) who have been lucky enough to get coverage, have absorbed increased rates as high as 1,000 percent.

Primary coverage premium rates for cargo loss and damage liability have risen on the average 70 to 150 percent. Some trucking companies in Montana have been unable to get coverage with street rates and have had to resort to usage of assigned risk pools.

Those who have turned to assigned risk pools to obtain coverages not otherwise available have done so despite the stigma associated with such a move that presents a bad connotation to prospective shipper customers. Some of our carriers have told us that the coverages they were able to obtain through assigned risk pools do not meet federally-imposed minimums and premiums are 200% to 300% higher in cost.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 03 27 86

BILL NO. S.B. 12

Davis Transport in Missoula, a medium sized motor carrier, is a classic example. In December 1985, their insurance coverage was cancelled because their carrier went out of business. They were unable to obtain coverage and had to turn to the assigned risk pool. They were required to pay a deposit of \$130,000 just to secure the coverage. Three weeks ago, they were able to get their coverage placed in the voluntary market. They were required to pay an additional \$150,000 deposit. Today, after spending \$280,000, they have the bare minimum of coverage and don't know whether they can afford the premium.

While we do not know the percentage to which carriers are increasing their deductibles for self-insurance purposes, we do know that most are being doubled or tripled. Premium rates for the excess coverages beyond the primary coverages are also increasing dramatically, with the level of coverage provided substantially decreased. Most of the insurance companies who will write primary coverage will not write excess. So, many trucking companies cannot get the required levels of insurance.

Our national affiliate, American Trucking Associations, has been receiving an average 1,000 calls per month on the insurance hot line instituted on August 6, 1985 to assist carriers in pursuing shopping leads. In August 1985, the Interstate Commerce Commission published a list of 700 underwriters which its file indicated were writing truck insurance. As of this month, we're told that only about 5%, or 35, are continuing writing insurance on a for-hire carrier and out of that group 50% are in dire financial straits. As a result, rather than 700, only about 18 insurance companies, as far as can be determined, are financially sound and writing for-hire truck insurance.

We do not know the number of trucking companies that have gone out of business as a result of their inability to pay for insurance. However, the trade press is full of specific instances from which we know there are many.

One of our out of state members, E. L. Murphy Trucking Company, Minnesota, recently cancelled 200 owner operators from MMCA's group health insurance plan, when they informed us they had closed their doors and terminated leases as their liability insurance premium went from under \$2,000 to \$7,500 per truck per year.

Literally hundreds of trucking companies from all over the country have filed independent tariffs with the ICC this year seeking approval of surcharges to their existing tariffs that will allow a pass through to the shippers of the increased insurance costs. The ICC is granting them routinely. The percentages sought range from 1.5% to a 5% increase in tariff rates.

But in the trucking industry, capacity far exceeds the demand with the addition of some 13,000 new carriers since deregulation in 1980 and a decrease in the volume of freight available, it doesn't take a genius or a big computer model to figure out that rates can't in fact be raised to cover the costs.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 03 27 86

BILL NO. S.B. 12

The Montana PSC has reduced the time from 45 to 20 days for a carrier's application for a rate increase to be processed due to increases in insurance costs. An MMCA bus company member, Rimrock Stage, recently petitioned the PSC for a rate increase for passengers and package bus service because of increased insurance costs. The cost of \$5 million liability insurance for Rimrock Stages rose from \$3,000 last year to \$10,000 per bus this year.

Tank truck operators have been the most severely hit. Their problems hauling petroleum, LP Gas, and other bulk hazardous materials are exacerbated by the federal government debates over environmental restoration, Superfund, and definitions of gradual pollution over sudden and accidental pollution. Several courts have interpreted the fine print on insurance policies regarding gradual/sudden and accidental pollution to mean complete environmental restoration. Insurance companies have begun not writing the risk into policies and tank carriers are experiencing rate increases with exclusions for environmental restoration close to 1,000% if coverage can be obtained at all.

Numerous other unusual exclusions are finding their way into the fine print of insurance policies submitted to trucking companies. Targetted, for example, are owner-operator usages, leased equipment, driveaway operations (motorized cargo that rolls on its own wheels under a bill of lading), and hazardous materials, as examples. The problems are particularly acute in the household goods moving industry which employs nationally the services of over 21,000 interstate owner-operators, over 20% of the nation's entire owner-operator population. These and other small, independent owner-operators, including many in Montana, attempting to negotiate for adequate, reasonably priced insurance, face a dilemma.

If carriers cannot find insurance, they have two options: cease operations until they can find insurance or operate illegally. Unfortunately, some appear to be utilizing the second option.

The U. S. Department of Transportation reports that 25% of all carriers -- regulated and unregulated -- do not have adequate insurance coverage.

Cost increases in insurance and other areas are affecting truckers of all sizes and shapes, making it more expensive to operate, reducing profits, and causing operating ratios to rise. Declining profit margins, or no profits at all, are bound to have substantial negative impact upon fleet maintenance and therefore upon the safety of our highways.

MMCA supports the adoption of legislation to alleviate the problem including the referendum in Senate Bill 12 amending the constitution thereby enabling this legislature to deal with the problems through legislation.

Since the crisis is an insurance industry problem that is national and even international in scope and the motor carrier industry is just a part of those affected, we realize easy short term solutions are simply not available.

We do think, however, adoption of Senate Bill 12 by Montana is a necessary first step.

Thank you

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EXHIBIT NO. 17

DATE 03 27 86

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SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 03 27 86

BILL NO. S. B. 12

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We do think, however, adoption of Senate Bill 12 by Montana is a necessary first step.

Thank you

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Dean Mansfield DATE: 3/27/86

ADDRESS: 501 N. Sanders

PHONE: 442-1233

REPRESENTING WHOM? Montana Automobile Dealers Assn.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

We support SB 12 as it was presented to the committee without any amendment requiring a 2/3 vote from each House to pass tort reform.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: George Allen DATE: 3-26-86

ADDRESS: Hielme

PHONE: 447-3388

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT: _____

Represent

MT. Retail Assn

Tire Dealers Assn

How and Imp. Assn.

Office Machinery Dealers Assn.

Outfitters Assn.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 19

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: ROBERT G SIMKINS DATE: 3/27/86

ADDRESS: 1419 SOUTH 3RD BOZEMAN, MT

PHONE: 586 2247

REPRESENTING WHOM? SIMKINS HALLIN INC

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: SIMKINS-HALLIN IS A FAMILY LUMBER

YARD INVOLVED IN THIS TYPE OF BUSINESS

SINCE 1910. APRIL 20, 1986 OUR LIABILITY

INSURANCE EXPIRES AND AS OF THIS DATE WE CAN'T

GET INSURANCE COMMITMENT. IF WE CAN'T

GET INSURANCE APRIL 20TH AND AT A RATE

THAT WE CAN AFFORD WE WILL BE FACED WITH

LOSING A BUSINESS OPERATING IN MONTANA FOR

MANY DECADES OR PUT AT RISK EVERY THING

THE FAMILY HAS WORKED FOR 75 YEARS

I URGE SUPPORT OF SB 12 WITHOUT AMENDMENT

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: DAVID BRUCK DATE: 3-27-86

ADDRESS: Box 6127 HELENA

PHONE: 442 5360

REPRESENTING WHOM? Independent Agents of Mt.

APPEARING ON WHICH PROPOSAL: SB 12

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

COMMENT: Independent Insurance Agents
of Mt. support passage of SB
12 as proposed - please
resist any attempts to amend

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 21

DATE 03 27 86

BILL NO. S.R. 12

(This sheet to be used by those testifying on a bill.)

NAME: STEVE TURKIEWICZ DATE: 3-26-86

ADDRESS: 2016 8th Ave

PHONE: 442-9600

REPRESENTING WHOM? Helena Area Chamber of Commerce

APPEARING ON WHICH PROPOSAL: SB-12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: The Helena Chamber represents a diverse range of businesses large & small in the Helena area. The Board of Directors urges the Committee to refer the issue of SB 12 to the people of Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 22
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Roland D Pratt DATE: 3/27/86

ADDRESS: Box 908 Helena

PHONE: 442-1432

REPRESENTING WHOM? MT Restaurant Assoc

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: We support SB 12 and feel that the public + private sectors must be addressed in the same initiative and at the same time

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 23
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: JAMES R. HUGHES DATE: 3/27/86

ADDRESS: HELENIA MT.

PHONE: 441-3385

REPRESENTING WHOM? MOUNTAIN BELL

APPEARING ON WHICH PROPOSAL: SB 12

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

COMMENT: _____

I WOULD OPPOSE ANY AMENDMENT
WHICH WOULD REQUIRE A 2/3'S VOTE
BY THE LEGISLATURE ON ANY FUTURE
REFORM MEASURES UNDER THE DECISION -
MAKING ABILITY OF THE LEGISLATURE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Sandra Whitney DATE: 3-27-86

ADDRESS: Box 4909

PHONE: 442-2130

REPRESENTING WHOM? Montoy

APPEARING ON WHICH PROPOSAL: S.B. 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: We concur with testimony in support
of this bill, without amendments. We
represent nearly 2000 members.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 25
DATE 03 27 86
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Chip Erdmann DATE: 3/27/86

ADDRESS: Box 513 Helena MT

PHONE: 442-8813

REPRESENTING WHOM? MT School Bd Assoc

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? X OPPOSE?

COMMENT: we support the merger of
the two referendums
→ we support both private
and public liability limits
→ we support two separate
referendums in November
→ we don't feel this combination
of the two issues would not
survive a constitutional
challenge under Article 14,
Section 11.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 26

DATE 03 27 86

BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: JOHN MAYNARD DATE: 3/27/86

ADDRESS: Rm. 111 - MITCHELL BLDG

PHONE: 444-2421

REPRESENTING WHOM? TORT CLAIMS DIV. - DEPT. OF ADMIN.

APPEARING ON WHICH PROPOSAL: SB-12

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENT: As written the bill is subject to challenge under Art ~~14~~ 14 Sec 11 of the Montana Constitution because it addresses two distinct issues and should therefore be presented as two separate referendums on the November ballot.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 27
DATE 032786
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Alec Hansen DATE: 3-27-86

ADDRESS: 130 NE 11 AVE HELENA

PHONE: 442 8768

REPRESENTING WHOM? DOT LEAGUE OF CITIES & TOWNS

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: _____

1. understand problems of doing business
without adequate and affordable insurance

2. committed to economic promotion and
job development in our cities and towns

3. Board members Officers and members
are engaged in main street businesses across
the state.

Support HB 7 direct and specific
response to the Dec 31 supreme
court decision

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 28

DATE 03 27 86

BILL NO. S. B. 12

NAME: KARL EDWARD DATE: _____

ADDRESS: 401 N. WASHINGTON, MSIA

PHONE: 721-2729

REPRESENTING WHOM? MT. TRULAW LAWYERS ASSOC.

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 29
DATE 03 27 86
BILL NO. S.B. 12

Karl England

- WE KNOW THAT LAST FRI WALL STREET JOURNAL SHOWS THE NASDAQ COMPOSITE AVERAGE FOR INSURANCE STOCK IS UP MORE THAN 45% FOR PAST 12 MONTHS; PROF/ CASUALTY INSURANCE INDUSTRY PD. \$ 2.1 BILLION IN STOCK DIVIDENDS LAST YR.

- HOWEVER, WE KNOW THAT NY. IS BUT .3% OF TOTAL PROF. & CAS. INSURANCE MARKET IN THIS COUNTRY; THAT WHAT WE DO HERE WILL HAVE HUGE EFFECT UPON RATES. WE KNOW THAT TOO BECAUSE NOT ONE, NOT ONE INSURANCE CO. REF. WILL COME BEFORE YOU; PROMISE YOU THAT WHAT YOU DO HERE WILL HAVE ANY EFFECT ON INSUR. AFFORDABILITY. MAKE THEM COME HERE; MAKE THEM PROMISE YOU THAT AMENDING OUR CONST. - OUR FUNDAMENTAL LAW - WILL HELP UNINS. LIKE ME WHOSE INSURANCE RATES ^{WENT UP} ~~WENT UP~~ 400% LAST YR, WILL DO THE SAME NEXT YR, AND THE YR AFTER THAT, I PROB. WOULDN'T BE ABLE TO BUY PROF. LIFE INSURANCE

- BUT TRIM LAWYERS ALSO KNOW THAT THIS PREMIUM CRISIS HAS GENERATED A SIGNIFICANT AMOUNT OF INTEREST IN TAKING A CRITICAL LOOK AT OUR CIVIL JUSTICE SYSTEM. THE WINDS OF CHANGE ~~ARE~~ ARE BLOWING AND WE FEEL THOSE WINDS AND WE HAVE TRIED TO BE RESPONSIVE. WE SAT DOWN W/ THE LOGIC MATRS WHO

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DATE 03 31 86
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I KNOW THE INSURANCE INDUSTRY THE BEST.
 WE DEMON. OUR WILLINGNESS TO COMPROMISE
 TO REVERSE PREVIOUS STANDS TAKEN &
 TO LIVE TAKE. (WE MET W/
 THE INSURANCE A. AND THEIR ATTORNEY
 & WE AGREED TO PROPOSALS WHICH
 WOULD HAVE BEEN BEFORE THIS SPECIAL
 SESSION AND, IF PASSED, WHICH WOULD
 HAVE SET A VERY STRONG & VERY
 POSITIVE SIGNAL TO THE INSURANCE INDUSTRY.
 TIME WAS SHORT, OUTSIDE PRESSURES WERE
 BROUGHT TO BEAR, OUR AGREEMENT FELL
 THRU.

BUT TWO THINGS ARE IMP??:

- ① ALL AGREED THAT LEGISL. NOW HAS
 POWER TO ENACTUATE SIGN. TORT
 REFORM W/O A CONST. AMENDMENT
 THOSE WHO ARGUE CONTRARY ARE LOOKING
 AT POST IN A VACUUM, IGNORING
 DECISIONS RENDERED AFTER POST LIKE
 THE HOUR WHERE LT. CLEARY, MOORE
 CLEARY STATED THAT IT IS LEGIS.
 ROLE TO DEFINE STANDARDS OF CONDUCT.
 - PUNITIVES
 - LIMITS - COMPLAINT INTEREST

- ② THINGS WE ADDRESSED, COLLATERAL SOURCE,
 SIGHT; SEVERAL, PUNITIVES, WRONGFUL
 DISCHARGE, LIQUOR LIABILITY ARE THE
 THINGS WHICH MULLIKAN SAID NEEDED
 TO BE ADDRESSED - LATS NOT IMP??,
 NOT NECESSARY,

BAD CATCH -
 BASED ON STATE

- THIS SESSION ZEROED IN ON RUSH, RUSH
 HEADLINES INTO CHALLENGING OUR CONSTITUTION
 WHEN YOU DO NOT HAVE FACTS IN
 FRONT OF YOU TO JUSTIFY THAT, WHEN
 YOU DO NOT KNOW I DO NOT HAVE
 THE TIME TO STUDY THE RAMIFICATIONS
 OF YOUR ACTIONS I WHERE THERE ISN'T
 ONE WORD THAT DEMONSTRATED FACT THAT
 WHAT WE ALL WANT TO ACCOMPLISH,
 LOWERING PREMIUMS, WILL BE ACCOMPLISHED

- SB 12 UNRAVES THE ISSUES OF PUBLIC
 TRULI LIABILITY, ELIMINATES THE FULL 27
 OF LEGAL REDRESS BY PROVIDING THAT SIMPLE
 MAJORITY OF LEGIS. MAY WHAT THIS IS.
 MEANS. ALLOW LEGIS. TO ARBITRARILY
 INCREASE CAPS.

- OPPOSE COMBINING:

- HISTORY

- STATE DOES THINGS THAT OTHERS WILL NOT DO
- " PROVIDES SERVICES NOT FOR PROFIT
- " RECORDS OPEN
- " WILL PAY ANYWAY

- LIVE PEOPLE VOTE - BUT DON'T LET THEM
 CHOOSE

- SIMPLE MAJORITY

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 29
 DATE 03 27 86
 BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: T. C. MATTOCKS DATE: 3/27/86

ADDRESS: 101 3rd Ave SE Cut Bank, MT

PHONE: 873-2229

REPRESENTING WHOM? School District 15

APPEARING ON WHICH PROPOSAL: SB 12

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 30
DATE 03 27 86
BILL NO. S.B. 12

Mr Chairman men of course

TOM, Supt CBPS

SB 12

opposed to form

- ties public + private together
- no limit on liability

1 public + private sectors are not alike when it comes to insurance

- surely the liability exposure of the CBPS is different from that of a sawmill, eg. which is different from that of a bank, eg.

In other words the current situation is unequal, and you can't solve an unequal situation with an equal solution.

2 to not have a limit on liability will, in my opinion, cause a lot of frustration among school districts as they try to insure their exposure

- ~~what~~ "the king could do no wrong" and we enjoyed total immunity, there was no problem

- even with 300,000/1,000,000 we could insure to those limits

- now the S.C. has waived those limits and confusion reigns

This bill, w/o limits, will not solve that problem

We need stated limits, from whatever source, in order to define the bounds of our exposure

There are those who refused to run for school board seats to be elected next Tuesday due to their uncertainty about liability. Current Board members are wondering if it's wise to continue to serve on the school board.

I agree with those who propose SB 11 that BOTH the public + private sectors need help in their insurance crisis. But they need different remedies + to place both on the same initiative is to say that both problems can be solved equally. That's not true.

It's not constitutionally true
" " practically true

The private sector has very few governmental functions
" public " " " " proprietaries "

functions here that
These are unequal & need to be ~~totally~~ ~~unequally~~ solved in an unequal manner

As Messrs Erdman, Hanson + ^{Morris} others have stated if assurances can be made by this committee that relief for SB's especially can be included in this bill, I would also withdraw my opposition

SENATE JUDICIARY COMMITTEE
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DATE 032786
BILL NO. S.B. 12

(This sheet to be used by those testifying on a bill.)

NAME: Kim Wilson DATE: 3-27

ADDRESS: 405 N. Last Chance Gulch, Helena

PHONE: 442-3261

REPRESENTING WHOM? Mt. Chapter of The ACLU

APPEARING ON WHICH PROPOSAL: SB # 12, HB # 17

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENT: (See prepared statement)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 31
DATE 03 27 86
BILL NO. S. B. 12

Mr. Chairman, Members of the Committee
- my name is Kim Wilson, I represent the
ACLU

- You have heard my testimony before on
the ACLU's position on the liability issue in
general. I will speak only briefly on this
particular bill

1. § 2 The 1972 Constitution created a ~~right~~
right to full legal redress. The court
in ~~post~~ ^{post} interpreted it as a ~~fundamental~~
it, but the right was there before. The
court merely shed light on it. This
is the common law. ~~Contrary to what~~
~~Mr. Bennett has said, the court was~~

- by taking out the words "this bill"
~~does not~~ may make the language more
palatable ~~than~~ to the court. It doesn't
avoid the fact that the right of full
legal redress, created by the 1972
Constitution is being taken away. Whether
that right was "fundamental" or not,
it is a substantial individual right being
reduced to the probable detriment
of the victim

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§3 read in conjunction with §2. The amendment to ~~that~~ gives the legislature a virtual blank check to limit rights to redress. I would remind you that ~~most~~ ^{most} of the § of the most of the individual rights guaranteed under the Constitution are partially implemented through the courts to redress. We strenuously object to this attack on the Constitution.

~~ART II § 11~~

2. We also object to combining the two bills in an amendment. While we object to limits for both public and private liability, we think that the public should be given an opportunity to examine both issues independently.

~~Agreement that they are historically separate issues.~~

3. ~~It is noted there is a problem with getting liability insurance - the way affected~~
~~speakers this morning are testifying to that.~~
But, we have no proof that this meddling with the Constitution will affect liability rates. All the representatives of the insurance industry ~~who speak~~ ^{Mr. Melman} ~~oppose~~ ^{Mr. Harte} the ~~amendment~~ could guarantee us that rates might change.

- We feel it is ludicrous to change the Constitution without any basis

- In conclusion, we urge you to reject the bills

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~~in both public and private liability.~~
~~We also urge you to separate the two bills. The ~~state's~~ injured party will be the ultimate victims of this case.~~

Keep

LAW OFFICES
Barry L. Hjort

Valley Bank Building
Helena, Montana 59601

February 21, 1986

Mailing Address:
3030 N. Montana Ave.
Helena, Montana 59601

Telephone:
(406) 442-8070

Montana Liability Coalition
& Montana Chamber of Commerce
110 Neill Avenue
Helena, Montana 59601

Re: Montana Liability Coalition - Constitutional Amendment

Gentlemen:

This opinion letter is written in response to your request of February 4, 1986. You asked that I provide you an evaluation and recommendation concerning two separate matters. First, you requested an opinion concerning the question whether it would be permissible to include within a single legislative referendum the twin subjects of the restoration of some form of sovereign immunity or the imposition of a cap on the liability of public entities as well as a referendum subject that would authorize the Legislature to impose limitations or restrictions on the damages recoverable against private persons or entities. You also asked that I provide my views as to alternative approaches that might be considered in the drafting of a legislative amendment or referendum in light of the recent court decisions of the Montana Supreme Court related to sovereign immunity, particularly the Pfost and White decisions.

It is my opinion that the imposition by the Legislature of liability limitations in the form of a referendum may include the subjects of sovereign immunity or the imposition of a cap on governmental immunity together with an amendment that would authorize the Legislature to limit private liability and that such a referendum would not run afoul of the requirement imposed in Article XIV, Section 11, of the Montana Constitution. The rationale for my conclusion is based on the following considerations.

It is provided in Article XIV, Section 11, of the Montana Constitution that: "If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately". Article XIV, Section 11, has not been construed by the Montana Supreme Court since the adoption of the new Constitution. A review of the deliberations of the members of the Montana Constitutional Convention indicates that the Convention did not intend to change the meaning or effect of the provisions contained in the new Constitution, Article XIV, Section 11, from the similar provision contained in the 1889 Montana Constitution in Article XIX, Section 9, which provided in pertinent part that:

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"Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than three amendments to this Constitution shall be submitted at the same election."

In the debate stage of the Constitutional Convention proceedings pertaining to the constitutional provision that eventually was numbered as Article XIV, Section 11, Delegate Etchart stated:

"Mr. Chairman, Section 15 is designed to aid voters in casting their votes on constitutional issues and a check on the possible action of grouping several issues under one innocuous title. This is to insure that each issue is presented separately."

Montana Constitution Convention, Vol. III, Tr. p. 514.

The rather limited debate discussion in the Constitutional Convention does at least indicate a clear intention on the part of the framers not to alter the meaning and effect of the relevant portion of Article XIX, Section 9, of the 1889 Constitution.

There are three Montana Supreme Court decisions which construe the relevant provisions of Article XIX, Section 9, of the 1889 Montana Constitution. Those decisions uniformly provide an expansive or "liberal" interpretation of the subject matter that may properly be included in a single amendment which would nevertheless meet the requirements of the constitutional provision. In State ex rel Hay v. Alderson, 49 Mont. 387, 142 P. 210 (1914), the Montana Supreme Court had under consideration an action in which an injunction was sought to restrain the Secretary of State from his distribution to County Clerks of a referendum measure directing that a statutory enactment concerning the establishment of a State Athletic Commission to regulate boxing be referred to the electors. In analyzing the argument that the referendum contained subject matter that would violate Article XIX, Section 9, the Court stated:

"(T)he fact that an amendment can be separated into two or more propositions concerning the value of which diversity of opinion may exist is not alone decisive. If, in the light of common sense, the propositions have to do with different subjects, if they are so essentially unrelated that their association is artificial, they are not one; but if they may be logically viewed as parts or aspects of a single plan, then the constitutional requirement is met in their submission as one amendment".

Alderson, supra at 212-213.

The Court's analysis plainly indicates that the "unity of subject" which is implicitly required by the constitutional provision is no different from the unity of subject matter required in legislative enactments. The majority opinion indicates that the unity of subject matter requirement pertaining to legislative acts is met even though many provisions may be contained in a particular act so long as all of the provisions are germane to the general subject which has been expressed. See also State ex rel. Teague v. Board of County Commissioners, 34 M. 426, 87 P. 450.

In State ex rel. Corry v. Cooney, 70 M. 355, 225 P. 1007 (1924), the more recent decision of the Court construing Article XIX, Section 9, of the 1889 Montana Constitution, the Court analyzed at some length a constitutional challenge to a legislative referendum which amended the Constitution to authorize the consolidation of municipal and county governments. The majority opinion makes several relevant points:

"The word 'amendment' is clearly susceptible to a construction which would make it cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject, as well as to the construction that every proposition which effects a change in the Constitution, or adds to or takes from it, is an amendment."
Cooney, supra at 1010.

"The objection that the amendment, although in the form of but one, in reality consists of more than three, is not tenable. Constitutional provisions necessarily are couched in broad language for they are designed to have a comprehensive scope and operation. When we examine the section under consideration critically, we see that it has but one purpose, one design: to permit the Legislature by general or special law to provide a legal method, within the limitations mentioned in the amendment, whereby counties, or counties and towns or cities and towns, may adopt what may be termed a municipal form of government." Cooney, supra at 1010-1011.

"The fact that an amendment impinges upon or affects various provisions of the constitution is not in itself persuasive that essential unity was violated in its submission. The real question is whether the operation of the amendment relates to a single plan or purpose." Cooney, supra, at 1011.

As a general proposition, the Courts will construe the Constitution utilizing the same principals of construction that are utilized for the interpretation of statutes. There is a strong presumption in favor of the validity of a constitutional referendum, Cooney at 1009; the Constitution must be construed as a whole, with all provisions of the Constitution bearing upon the same subject matter to receive appropriate attention and to be construed together, Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907 (1958); and when construing the Constitution broad and general provisions which tend in some measure to conflict with specific ones are controlled by the specific provision. British American Oil Producing Company v. State Board of Equalization, 101 Mont. 293, 54 P.2d 129 (1936).

Your second request pertains to possible approaches to the drafting of an amendment or amendments to the Constitution to accommodate the legislative imposition of liability limitations in light of recent Montana Supreme Court decisions. After reviewing the three significant Montana Supreme Court decisions dealing with the general subject matter of the rights of full redress of litigants as against the sovereign immunity liability limits imposed by statute pursuant to Article II, Section 18, of the Constitution, specifically: Pfost v. State of Montana, Mont.

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32 St.Rptr. 1957 (1985); Raisler v. Burlington Northern Railroad Company,
Mont. ___, 42 St.Rptr. 1997 (1985); and White v. State, Mont. ___, 661
P.2d 1272 (1983), I would suggest the following constitutional amendment.

I believe that this proposal is consistent with the "unity of subject"
limitation contained in Article XIV, Section 11; would permit the retention
of the existing provision pertaining to sovereign immunity in the Consti-
tution at Article II, Section 18; would authorize the Legislature to impose
limitations that would not be violative of an individual's right to equal
protection of the law for both private and public liability purposes; and
would address the principles relied upon by the Montana Supreme Court in
the three referenced decisions. My suggestion is:

"AMENDMENTS TO ARTICLE II, SECTION 16:

Section 16. The administration of justice. Courts of
justice shall be open to every person, and speedy remedy
afforded for every injury of person, property, or character
provided however, that limitations may be provided by law and
any such limitations so provided do not deny equal protection
of the laws under Article II, Section 4. No person shall be
deprived of this full legal redress for injury incurred in
employment for which another person may be liable except as to
fellow employees and his immediate employer who hired him if
such immediate employer provides coverage under Workmen's
Compensation Laws of this state. Right and justice shall be
administered without sale, denial or delay. A statute enacted
pursuant to Article II, Section 18, does not violate this
section or any other provision of this Constitution."

My review of Pfost, Raisler and White indicates that a constitutional
amendment will be necessary in order for any legislatively-imposed restri-
ctions (except as to punitive damages) on liability for public entities
or private persons or entities to pass constitutional muster with the
Montana Supreme Court. No meaningful "tort reform" would appear to be
likely to weather close judicial scrutiny without constitutional
alteration. This is so because any legislatively-imposed restriction on
liability will raise an equal protection question with regard to those
affected by the limitation and the analysis of Pfost and White plainly
indicates that a compelling state interest test will be utilized (which
will be difficult or impossible to meet) because of the fundamental right
to "full legal redress" which is contained in Article II, Section 16 of
the Constitution.

The majority opinion in Pfost at 1966, states:

"The constitutional framers thus construed a 'speedy remedy' as
comprehending 'full legal redress'. A state constitutional right
to full legal redress was thereby created. Any state statute that
restricts, limits or modifies full legal redress for injury to
person, property or character therefore affects a fundamental
right and the state must show a compelling state interest if it is
to sustain the constitutional validity of the statute."

In White, relying upon Corrigan v. Janney, Mont. ___, 626 P.2d 838,
(1981), the Court held that the Montana Constitution guarantees that all

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persons have a speedy remedy for every injury.

"The language 'every injury' embraces all recognized compensable components of injury, including the right to be compensated for physical pain and mental anguish and the loss of enjoyment of living. Therefore, strict scrutiny attaches."

White, supra at 1275.

In the same case, the Court also held that the Plaintiff did not have a constitutional right to recover punitive damages. The Court utilized the "rational basis" test rather than the "strict scrutiny" test in analyzing the punitive damage claim. It is clear, therefore, that in the Court's view the imposition of a limitation on punitive damages would not rise to the level of a fundamental constitutional right requiring the application for the strict scrutiny test.

In Raisler, the Burlington Northern Railroad was employer of an injured worker sought indemnity from the Farmers' Insurance Company for damages paid to the plaintiff. A statute precluded such indemnification and Burlington Northern challenged the statute. The majority opinion in that case stated as follows concerning the equal protection issue:

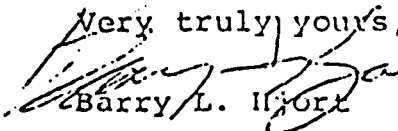
"Because an employers immunity from tort liability in a Workers' Compensation case is constitutionally recognized in Article II, Section 16, Mont. Const., we conclude no analysis of 39-71-411, MCA, on a strict scrutiny theory is required. Raisler supra at 2003."

The foregoing opinion makes it clear that if a statute is to deprive a person of full legal redress constitutional grounds must be found for sustaining the statutory provision.

While I obviously do not recommend my suggestion as the only possible solution to the private tort reform and governmental immunity dilemmas, I do believe that the suggestion has numerous virtues. First, it would seem to satisfy the "unity of subject" requirement of Article XIV, Section 11. Second, it would authorize the legislative imposition of liability limitations which could restrict the current unfettered right to "full legal redress". Third, the "fundamental right" analysis and use of the strict scrutiny test utilized by the Court in Pfost and White is addressed in two ways: by providing that legal redress can be restricted and also by providing that any such restriction does not transgress equal protection rights. Fourth, the constitutional recognition of limitations suggested as appropriate in Raisler is included. Fifth, a specific reference is made to the right of the Legislature to impose liability limitations for sovereign immunity purposes without transgressing equal protection rights pursuant to Article II, Section 18.

I trust that this information and the enclosed recommendations address the concerns which you had. Should you have any questions about my opinion or recommendations, please contact me.

BLH:rf

Very truly yours,

Barry L. Hoot

SENATE JUDICIARY COMMITTEE

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