MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 17, 1989, at 8:02 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Gould

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 103

Presentation and Opening Statement by Sponsor:

Rep. Whalen, House District 93 stated that HB 103 is a repeal statute on unconstitutional language to strike subsection 2. The language that is seen stricken in the bill was declared unconstitutional by the Montana Supreme Court in Hammer vs. Justice Court decided June 10, 1986.

List of Testifying Proponents and What Group They Represent:

Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Wally Jewell submitted before the Committee written testimony in favor of HB 103 (EXHIBIT 1).

Questions From Committee Members: Rep. Daily questioned why it was declared unconstitutional? Rep. Whalen stated that the subsection requires that any litigate that goes in to defend themselves in Justice Court must pay

for the cost of the jury if they lose. It was declared unconstitutional to require that because it was an infringement upon individuals rights to have a jury trial.

Closing by Sponsor: Rep. Whalen closed.

DISPOSITION OF HOUSE BILL 103

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep. Eudaily.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 104

Presentation and Opening Statement by Sponsor:

Rep. Whalen, House District 93 stated that HB 104 changes the present practice of allowing an insurance company to remain unnamed and undisclosed in civil jury actions where they will be obligated in the final analysis if the jury verdict is in favor of the plaintiff to pay whatever that verdict amount may be. HB 104 requires that an insurance company by named as a real party in interest if tort fees or defendant will be indemnified by insurance. The purpose for this is so that the jury is aware that there is potential indemnification, who the real party of interest is and in many cases, the only real party in interest is the insurance company. It eliminates the legal fiction which has no continuing use in our society and lays out on the table who the real parties are. The present problem with the system as it is right now, is that often times the jury will be unaware that there is any insurance that will pay the verdict against the defendant which many times it appears that they are not able to pay even though they may feel there is liability.

List of Testifying Proponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

Jacqueline Terrell, American Insurance Association
Steve Browning, State Farm Insurance
Gene Phillips, Kalispell
Bonnie Tippy, American Alliance of Insurance

Testimony:

Michael Sherwood submitted before the committee his comments in support of HB 104 accompanied by proposed amendments and insurance contracts from the States of Florida and Louisiana (EXHIBITS 2, 3, 4).

Jacqueline Terrell stated that the American Insurance Association does not support the proposed bill as well as disagreeing with the amendments submitted by the trial lawyers. Mrs. Terrell pointed out that there are some specific policy reasons for the opposition of the Association. It is in direct contravention of one of the Montana Rules of Evidence that was adopted some time ago. That particular rule of evidence is in strict compliance with the Federal Rules of Evidence and the Uniform Rules of Evidence. Montana is in the majority of jurisdictions of adopting and enforcing that rule of evidence in its course. There are two primary reasons for excluding this evidence: 1.) Liability insurance is irrelevant to the determination of damages in a lawsuit. 2.) The evidence is prejudicial. It allows the jury to speculate about resources to compensate the plaintiff for their injury and does not focus on the issues relating to the trial.

Steve Browning stated that he wanted to bring to the Committees attention one point brought out by the proponents. Concerning the State of Florida, which the proponents stated had adopted this legislation and supplied the Committee with information on this legislation; Mr. Browning commented that he is informed that the joinder of parties was established initially by a Supreme Court ruling in Florida and the legislature acted to overturn that ruling. Subsequently, the Florida Supreme Court revised the legislation through another ruling, which it too was turned down by the legislature. The experience of Florida is apparently that these kinds of requirements do tend to drive up the awards, therefore raising the cost of insurance. Mr. Browning commented that one additional point that was not mentioned in the previous testimony is that when a person has joinder, meaning they have two party defendants which are typically represented by council, again, adds to the cost of

litigation ultimately leading to the increase of insurance costs as a result.

Gene Phillips stated that this bill is not a wise solution to what he perceives as a problem that does not exist. We have to keep in mind as to what the purpose of the trial is. The trial is there in the search for the truth. Only evidence which is relevant in making that search should be admissable before the jury. Mr. Phillips commented that in a typical situation such as were talking about here, you might have an automobile accident and the question is whether or not the driver of the car, for example was negligent in his operation of the car and caused injury to the plaintiff. The presence or absence of the insurance has absolutely no relevancy on the search for the truth of that trial. The second part of the trial is deciding what the extent of the injuries to the plaintiff amount to. Once again, the presence or absence of insurance has absolutely no relevance to the determination of those facts. In Rule 411 it states that evidence that a person was or was not insured against liability is not admissible upon the issue of whether he acted negligently or otherwise wrongfully. He stated that insurance is admissable for some other limited purposes, but it is not admissable for the general purpose of simply showing that there is money there to pay and eject which might be recovered. Mr. Phillips pointed out that insurance is for the benefit of the insured. He is the person that obtains the policy and it is for his own protection more so than anyone else.

Bonnie Tippy commented that basically the question that should be asked is, is a sued party more or less guilty based on the amount of liability insurance that they are carrying? She feels that it is not really relevant to whether they are guilty or innocent, or how guilty or how innocent. Put into simple terms she urged the Committee to give HB 104 a DO NOT PASS recommendation.

Questions From Committee Members: Rep. Eudaily questioned if the Louisiana and Florida laws are State statutes or if they are a court administrative rule? Rep. Whalen responded that Florida is statute as well as a court decision and Louisiana is a statute.

Rep. Addy questioned Mrs. Terrell regarding a statement she made in her testimony that if this passes that there are companies who will leave the state. Mrs. Terrell clarified for Rep. Addy that she said there would be a loss of product. Rep. Addy then commented that companies who are here will stop offering certain lines

of insurance? Mrs. Terrell stated that that was correct. Rep. Addy questioned how she came up with that conclusion and Mrs. Terrell stated that she had talked with other representatives in the insurance industry who are employed directly by the insurance industry and not in the legal profession. Rep. Addy requested that Mrs. Terrell provide for the committee specifically which insurance companies these representatives worked for and which products they were talking about. Mrs. Terrell responded that she would need some time to recall the names of the representatives of whom she spoke with and would provide the committee with the requested information at that time.

Rep. Mercer questioned Michael Sherwood as to what is currently preventing this from occurring in Montana? Is it rule 411 or is it something else? Mr. Sherwood stated that he believes that it is the current statute that simply says that you cannot name an insurer. Rep. Mercer commented that he is assuming that Rule 411 is the rule that is prohibiting this information from being presented to the jury. Mr. Sherwood responded that Rule 411 says that unless the insurance company is named as a party, you can't mention that a party is carrying insurance.

Rep. Mercer asked of Rep. Whalen to name what statute it is that prohibits this from happening. Rep. Whalen responded that it is not a statute, it is a common law case law that has developed since Montana became a state. The current statute only deals with municipalities, but the remainder of the law is contained in court decisions.

Closing by Sponsor: Rep. Whalen stated that the first observation that he wanted to make, brought up by Mrs. Terrell and Mr. Phillips, is that this statute would fly in the face of Rule 411 of the Montana Rules of Evidence. This rule does not require the exclusion of evidence of insurance against liability, but offered for another purpose such as proof of agency, ownership or control or bias or prejudice of a witness. This statute, if passed, would be read consistent with Rule 411 of the Montana Rules of Evidence and would preclude insurance solely for the purpose of proving liability, but would be available to the jury for the other reasons set forth in the Rule mentioned above. Rep. Whalen stated that the fact that the insurance will cover a loss and the amount of insurance is in fact irrelevant, but in many trials evidence is offered for one purpose, but not allowed for other purposes.

Courts regularly give jury instructions to jurors and admonish the jury when evidence is offered for one purpose but is not properly used for another. In closing, Rep. Whalen urged that we adopt this policy in the State where if we're going to have to pay the amounts of money that we are presently paying for insurance, that we get something for it in justifiable cases that are appropriate.

DISPOSITION OF HOUSE BILL 104

Motion: Rep. Eudaily moved HB 104 DO NOT PASS, motion seconded by Rep. Brooke.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Addy made a substitute motion to TABLE HB 104, motion seconded by Rep. Darko and CARRIED unanimously.

HEARING ON HOUSE BILL 108

Presentation and Opening Statement by Sponsor:

Rep. Whalen stated that HB 108 is best explained by the individual that asked him to carry the bill, introducing the City Judge of Laurel, Judge Larry Herman.

Testifying Proponents and Who They Represent:

Larry Herman, City Judge of the City of Laurel
Alec Hansen, Montana League of Cities and Towns

Proponent Testimony:

Larry Herman, appearing in support of HB 108 pointed out for the Committee the tierage of the court system in Montana. Montana has four courts of record: 1.) Senate, 2.) Supreme Court, 3.) District Court, and 4.) Municipal Court. After that we have City Courts and the Justice Courts. The Municipal Courts, City Courts, and the Justice Courts are the courts of limited jurisdiction. Of those three courts the only court that is a court of record is the Municipal Court. Mr. Herman submitted before the Committee a written testimony (EXHIBIT 5) accompanied by letters of support from Billings City Judge, Donald E. Bjertness and Great Falls City Attorney, David V. Gliko (EXHIBITS 6 and 7).

Alec Hansen stated that he checked with the cities that will be affected by the passage of HB 108; Great Falls, Billings and Missoula, and they expressed to him their support of the proposed bill. They see the possibility of saving some money by avoiding the current appeals process. They feel that by establishing a municipal court they can save money that they are currently spending on appeals. He stated that as Mr. Herman indicated this would only affect four cities in Montana at this time.

Testifying Opponents and Who They Represent:

Wallace Jewell, Montana Magistrates Association

Opponent Testimony:

Wally Jewell submitted before the committee written testimony in opposition to HB 108 (EXHIBIT 8).

Questions From Committee Members: Rep. Eudaily questioned Rep. Whalen if Laurel would be the only city that would be added that is not currently eligible. Rep. Whalen stated that he believed it would add Laurel and a Municipal Court in Great Falls.

Rep. Rice questioned Mr. Herman as to the provision on Page 3 that states that the salary must be appropriate for a judge serving on a court of record. Rep. Rice feels that that seems to be the biggest fiscal impact. Mr. Herman stated that he would ask that that be removed because there is a confusion as to the meaning of that particular language. When the bill was drafted, the intent was that the salary should be reasonable to the office. Mr. Herman commented that to avoid confusion it could be said that the salary must be the same as the District Court Judge and offered that as an amendment.

Closing by Sponsor: Rep. Whalen closed.

DISPOSITION OF HOUSE BILL 108

Motion: Rep. Addy moved DO PASS, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved to amend page 1, line 17, strike "shall", insert may, motion seconded by Rep. McDonough. Rep. Addy offered as a friendly amendment to strike page 1, line 4, strike

"requiring", insert allowing. A vote was taken on the proposed amendments and CARRIED unanimously.

Rep. Rice offered an additional amendment to delete the sentence starting on page 3, line 16 "the salary must be appropriate for a judge serving on the Court of Record". Motion seconded by Rep. McDonough, voted on and CARRIED unanimously.

Rep. Mercer moved to delete the appeal language, section 6, page 4, lines 5-11. Motion seconded by Rep. Eudaily and CARRIED unanimously.

Rep. Addy moved to reinstate the original language on page 1, line 24, sub-paragraph 2, 3-6-601. Motion seconded by Rep. Mercer and CARRIED unanimously.

Recommendation and Vote: A DO PASS AS AMENDED motion was made by Rep. Darko, motion seconded by Rep. Addy. With the Committees concurrence further action will be held on HB 108 for further amendments to be drafted.

DISPOSITION OF HOUSE BILL 13

Motion: A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Darko.

Discussion: Rep. Boharski made a substitute motion to defer any further action on HB 13 for proposed amendments to be drafted. The committee agreed to delay action and HOLD HB 13 for an additional 24 hours.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: None.

ADJOURNMENT

Adjournment At: 10:16 a.m.

Dave Brown

REP. DAVE BROWN, Chairman

DB/je

1408.MIN

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 17, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

January 17, 1989

Mr. Speaker: We, the committee on Judiciary, voting with a quorum present, report that HOUSE BILL 104 (first reading copy -- white) has been TABLED.

Signed: _____
Dave Brown, Chairman

EXHIBIT 1
DATE Jan. 17, 1989
HB 103-Rep. Whalen

Montana Magistrates Association

17 January 1989

Testimony offered in support of HB 103, a bill for an act entitled: "An act removing the requirement of payment of jury fees in courts not of record."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The judges of courts of limited jurisdiction encourage you to support this legislation and to give a favorable recommendation to its passage.

Wallace A. Jewell

EXHIBIT 2

Jan. 17, 1989

104-Rep. Whalen

WITNESS STATEMENT

NAME Michael Sherwood BUDGET _____

ADDRESS MTLA - #1 Last Chance Gulch

WHOM DO YOU REPRESENT? MTLA

SUPPORT X w/amendments OPPOSE _____ AMEND _____

COMMENTS:

A.) There are strong public policy arguments to support this bill;

c) Different verdicts based upon similar ~~auger~~ injuries result when the nature of the defendant is a factor

b) This bill would allow the tracking of insurance company behavior

c) Jury confusion as to the existence of insurance causes erratic verdicts,

d) Out of state defendants add costs to litigation for both sides

B) Similar acts exist in Louisiana, Florida and Peurto Rico. They have withstood constitutional attacks.

C) Public policy: (1) Traditional contract + tort US.

(2) Protection of public interest

D) Voir Dire;

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

EXHIBIT 3
DATE Feb. 17, 1989
HB 104-Rep. Whalen

PROPOSED AMENDMENT TO HOUSE BILL NO. 104

Michael Sherwood, MTLA

Page 1, line 17:

Strike: "must"

Add: "may"

Page 1, line 18:

Add: " The plaintiff shall have a right of direct action against the insurer within the terms and limits of the policy and such action may be brought against the insurer alone, or against both the insured and the insurer.

This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Montana or not and whether or not such policy contains a provision forbidding such direct action, providing the accident or injury occurred within the State of Montana.

It is the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, their heirs or survivors, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named as insureds or additional insureds under the omnibus clause, for an legal liability said insured may have as a tort-feasor within the terms and limits of said policy.

Louisiana

EXHIBIT 4
DATE Feb. 17, 198
HB 104-Rep. Whale

ding or otherwise. On the 9th of April, A. had an entry made in the book attached to his policy, by which merchandise shipped to him from Montgomery, on the Alabama river, was covered. The merchandise had been burned on the 7th of same month, but A. had no knowledge of the fact at the time of the entry. Held, that the entry was regularly made and within the terms of the open policy; that said policy authorized the risk from the port of Montgomery, on the Alabama river; and that the special application was an additional agreement containing certain stipulations, none of which modified the open policy, so as to limit the risks to the Ohio and Mississippi rivers and their navigable tributaries. Marx v. National Marine & Fire Ins. Co., 1873, 25 La.Ann. 79.

128. Presumptions and burden of proof

Burden of proof of establishing that permission to use certain automobile has been granted, for purposes of determining automobile liability insurance coverage, is upon those whose interest would be served thereby. Gremillion v. Coleman, App.1975, 316 So.2d 810.

Plaintiff who seeks to recover accidental death benefits for death of an insured due to gunshot wounds under policy excluding from coverage death resulting from an intentional act of a person other than insured does not have burden of showing reasonable probability that intended victim of shooting was person other than insured. Tornabene v. Atlas Life Ins. Co., Inc., App.1974, 295 So.2d 30, writ refused 299 So.2d 360.

Where petition, in personal injury suit by guest passenger against, inter alia, insurer of automobile in which she was riding, averred that defendant was liability insurer of such automobile, and defendant's answer admitted the existence of a policy which described that automobile, the admission by insurer that such a policy had been issued shifted the burden of proof to it to prove that no liability existed under the policy. Marshall v. Maselli, App.1974, 291 So.2d 806.

Delivery of policy to loss payee without any indication thereon that premium had not been paid in full does not create presumption that it has been fully paid. Insured Lloyds Ins. Co. v. Woodle, App.1971, 248 So.2d 862.

Insurer who bases defense on exclusionary clause must prove special defense to legal certainty by preponderance of evidence. Myevre v. Continental Cas. Co., App.1971, 245 So.2d 785, application denied 258 La. 764, 247 So.2d 863.

One claiming under policy of insurance must establish that loss is covered by policy terms. Sherwood Real Estate & Inv. Co. v. Old Colony Ins. Co., App. 1970, 234 So.2d 445.

In action by insured on an insurance contract, burden of proof is on insured to establish every fact essential to his cause of action and also to establish that his claim is within policy coverage. Collins v. New Orleans Public Service, Inc., App.1970, 234 So.2d 270, writ refused 256 La. 375, 236 So.2d 503.

Plaintiff suing on insurance contract has burden of establishing every fact in issue which is essential to his cause of action or right of recovery, including existence of policy sued on, its terms and provisions, and that his claim is within its coverage. B. T. U. Insulators, Inc. v. Maryland Cas. Co., App.1965, 175 So. 2d 899.

When an insurer seeks to limit or relieve its liability under policy in existence, burden of proving essential facts rests upon insurer. Id.

§ 655. Liability policy; insolvency or bankruptcy of insured; direct action against insurer

No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss oc-

EXHIBIT 4
DATE 2-17-89
HB 104

casioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors mentioned in Revised Civil Code Article 2315, or heirs against the insurer. The injured person or his or her survivors or heirs hereinabove referred to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, Code of Civil Procedure. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if the same are not in violation of the laws of this State. It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State.

It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort-feasor within the terms and limits of said policy.

Amended by Acts 1958, No. 125; Acts 1962, No. 471, § 1.

History and Source of Law

Source:

Acts 1956, No. 475, § 1.
Acts 1950, No. 541, § 1.
Acts 1948, No. 195, § 14.45.

Acts 1950, No. 541, § 1, amended this section by adding the provision declaring that the right of direct action exists whether or not the policy sued on was written or delivered within the state, or whether or not the policy contained a provision precluding direct action "provided the accident or injury occurred within the State of Louisiana".

Florida

EXHIBIT 4
DATE 2-17-89
HB 104

Note 25

25. Review

Generally, discretionary matters in regard to sanction to be imposed for violation of circuit courts' orders is to be left in hands of circuit courts, but if overly severe sanction is ordered, it is District Court of Appeal's obligation to intercede. Hart v. Weaver, App., 364 So.2d 524 (1978).

Where, though record on appeal contained no pretrial order, minutes of pretrial conference indicated that court outlined issue of amount of possible recovery to be $45,000 or nothing, but evidence upon which recovery in lesser amount could be based was introduced at trial without objection, defendant cross-examined plaintiff extensively on such point and court instructed upon theory of recovery of lesser amount, minutes of pretrial conference must be considered to have been amended to allow a verdict for less than $45,000. Alter v. Adams, App., 185 So.2d 490 (1966).

Rule 1.210. Parties

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another or a party expressly authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and when any one refuses to join, he may for such reason be made a defendant.

(b) Infants or Incompetent Persons. When an infant or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Amended Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165).

Historical Note

Source.

Subds. (a, b) derived from 1954 RCP 1.17. Subd. (c) derived from 1954 RCP 3.3. Subd. (d) derived from 1954 RCP 3.5.

Prior Provisions.

Law. Laws 1881, c. 3241, § 1; Rev.St.1892, § 981; Gen.St.1906, § 1365; Rev.Gen.St. 1920, § 2561; Comp.Gen.Laws 1927, § 4201; F.S.A. § 45.01 (Plaintiffs; real parties in interest). Repealed, Laws 1955, c. 29737, § 1, eff. May 31, 1955. Superseded by 1954 RCP 1.17(a).

Insurer which has paid insured's loss is subrogee of insured's cause of action against tort-feasor, and as such is real party in interest, and is permitted, but not required, to prosecute and maintain action against tort-feasor in its own name; receding from holdings in Indiana Insurance Company v. Collins, 359 So.2d 916, and Central Mutual Ins. Co. v. State Farm Mutual Automobile Insurance Co., 247 So.2d 94. Id.

The inclusion of an insurer as a real party in interest in a personal injury action is, in itself, no longer prejudicial or fundamental error. Allred v. Chittenden Pool Supply, Inc., 298 So.2d 361 (1974).

A loan receipt arrangement is a lawful agreement and the loan made by insurer is not per se such a payment of insurance as to make the insurer the "real party in interest" in suit by insured against alleged tort-feasor under statutes requiring suit to be brought by real party in interest. Gould v. Weibel, 62 So.2d 47 (1953).

68. —— Assignments and indorsements, real party in interest

Where employee elected to take workman's compensation, employee's cause of action against wrongdoer was under statute assigned to employer in its entirety, and employer was entitled to bring the action as the only necessary party plaintiff and was not required, upon employee's death after action was begun and before trial, to join employee's personal representative as a real party in interest, notwithstanding employer was required to pay any excess of proceeds to person entitled to compensation or the representative. Haverty Furniture Co. v. McKesson & Robbins, 154 Fla. 772, 19 So.2d 59 (1944).

That a lot owner in a municipal subdivision acquired title to lots after state road department had entered subdivision without consent of lot owners therein and removed sidewalk and builder's sand while rebuilding a highway did not preclude such owner from recovering compensation from department where owner acquired an assignment of any right of action which his grantor might have had before suit was brought and thereby became the "real party in interest." State Road Depart. v. Bender, 147 Fla. 15, 2 So.2d 298 (1941).

Purchaser for value and in good faith of certificates of indebtedness, which were issued to contractor for county road improvement pursuant to invalid statute were entitled to maintain action against county for work and materials furnished as real party in interest, regardless of assignment of certificates. Gulf Life Ins. Co. v. Hillsborough County, 129 Fla. 98, 176 So. 72 (1937).

Under supersedeas bond whereby surety bound itself to pay "all costs, damages, expenses, and attorneys' fees" which might be incurred by appellee "in the event appeal is dismissed or the cause affirmed by the Supreme Court," judgment creditor's assignee who ratified contract employing attorneys to represent judgment creditor on appeal was entitled to maintain action against surety for attorneys' fees as main party in interest. Kahn v. American Surety Co. of New York, 120 Fla. 50, 162 So. 335 (1935).

F.S.A. § 45.01 (repealed; see, now, this rule) was permissive only, allowing assignee of chose in action to maintain action as real party in interest. Jennings v. Pope, 101 Fla. 1476, 136 So. 471 (1931).

69. —— Taxes and assessments, real party in interest

Holder of certificates of indebtedness issued after drainage district statute (Laws 1927, c. 11850) may, as use-complainant and real party in interest, institute suit in name of State to foreclose lien of assessments authorized by such statute and evidenced by tax sale certificates held by State, where all other taxes included in such certificates have been paid and lands have been redeemed from liens of State and county taxes evidenced thereby. Standard Fertilizer Co. v. State, for Use of Groves, 130 Fla. 350, 177 So. 518 (1938).

70. —— Executors and administrators, real party in interest

Executor was real party in interest in suit to foreclose mortgage owned by deceased, where will, relied on as passing title to mortgage to legatees, merely bequeathed "equity of the mortgage." Mills v. Hamilton, 121 Fla. 435, 163 So. 837 (1935).

71. —— Heirs, real party in interest

Merely because legal representatives of insolvent estate of deceased grantor were nonexistent or uninterested did not preclude party, claiming to be successor of general legatee under deceased's will which directed that her estate be reduced to cash to be used to pay debts and legacies with balance

TESTIMONY HOUSE BILL 108

LARRY D. HERMAN

My name is Larry Herman. I am the incumbant city judge of the City of Laurel. I am a former mayor of Laurel. I am a practicing attorney. I am appearing in support of House Bill 108.

The municipal court is not a new court. It was first provided for by the legislature in 1935 as a court of record in cities. There is presently only one municipal court established in the state which is in Missoula. The cities have generally not adopted the municipal court because of the costs that were associated with maintaining a court reporter. Also with the passage of the 1972 constitution there was some concern whether or not the appeal from the municipal court was as a trial anew. H.B. 108 addresses these problems. The passage of H.B. 108 will prove to be beneficial to the cities and their respective counties.

The problem associated with the cost of a court reporter for limited courts of record has been eliminated with the advent of the tape recorder and other electronic media. A record can now be maintained in the municipal court by means of relatively inexpensive electronic recorders. This is the method that is now being used in the Missoula municipal court.

The problem associated with the appeal from a court of record to the district court has been addressed in H.B. 108. The record on appeal will consist of the electronic or stenographic record. The appeal would be confined to the record and questions of law and not tried a second time in the district court.

By confining the appeal to the record, the municipal court will not be used as a discovery court and then appealed to the district court to be tried anew.

The savings to the cities will be the elimination of the additional expenses incurred in a trial anew, that is excessive police hours to attend trial (usually overtime), city attorney or prosecutors time to try cases a second time, public defender hours to try a case a second time, witness fees, and jury costs.

Under H.B. 108 the cities as they grow will be able to increase the number of judges needed to operate the municipal court. Presently the cities can only have one city judge. This allows for growth and a more efficient court in the larger cities.

H.B. 108 eliminates the provision that the clerk of the city must be the clerk of court. This provison had applied to both city and municipal courts. It certainly was not a duty which most city clerks wanted in light of all of their

other duties.

H.B. 108 does not increase or decrease the jurisdiction of the municipal courts. It remains the same as city courts. The difference being that the municipal court being a court of record and is appealable on the record.

Local government, in particular in the more densely populated counties, need a means of operating their courts in a more economical manner and should not be required to wait 5 years or even 2 years when immediate results can be had under H.B. 108. The establishment of the municipal court under 108 will provide immediate relief to cities with a high volume case load and to their respective counties through the savings of pure dollars and cents. H.B. 108 makes good sense.

H.B. 108 makes good dolars and cents for both the cities and their respective counties. I would urge this committee to give it a most close review in light of the saving by the elimination of man hours of the police, prosecuting attorneys, and district court judges needed in handling two trials instead of one.

H.B. 108 does make good sense, and I urge the committee to recommend its passage and approval.

EXHIBIT 5
DATE 2-17-89
HB 108

City of Laurel

LAUREL, MONTANA 59044

P.O. BOX 10
PHONE: 628-8791

CITY JUDGE
DEPARTMENT

January 17, 1989

House Judiciary Committee
Capitol Building
Helena, Montana

Re: H.B. 108

Dear Members of the Committee:

The adoption of House Bill 108 will be in the best interest of the State of Montana and its local governments.

The establishment of municipal courts will provide substantial savings to both the cities and their respective counties.

The savings will result from the elimination of a second trial on appeal to the district court. As the municipal court is a court of record, the appeal will be limited to the record and matters of law. The municipal court will not be used as a discovery court as in the city court. Appeals will be limited to those with merit. This will result in substantial savings through the elimination of prosecutors time, police officers time (most often over time), witness fees, jury costs, and the district court's time.

This saving will not be confined to only those cities in which this bill initially establishes the municipal courts. Other cities within the state may, at their option, establish a municipal court if and when the need arises in their particular community. Thus those cities electing to establish the municipal court would pass on a savings to their respective counties and district courts.

I urge your strong consideration of House Bill 108 and that you recommend to the legislature that it be adopted and approved.

Sincerely,

Larry D. Herman
City Judge

EXHIBIT 6
DATE Feb. 17, 1989
HB 108-Rep. Whalen

CITY OF BILLINGS
M O N T A N A

CITY COURT
Second Floor — City Hall
Phone 657-8490

Jānaury 16, 1989

DONALD E. BJERTNESS
City Judge

Chairman
House Judiciary Committee
State Capitol
Helena, Montana

Re: House Bill 108
Establishing Municipal Courts

Dear Sir:

Please be advised that I support the bill mandating a municipal court in cities with a population over 5,000. I am particulary in favor of the provision allowing cities to establish the number of judges because my work load is such that an additional judge is needed in Billings right now. I urge favorable consideration.

Sincerely,

Donald E. Bjertness
City Judge

DEB/nlp

EXHIBIT 7
DATE Feb. 17, 1989
HB 108-Rep. Whalen

City of GREAT FALLS Montana 59403-5021

P. O. BOX 5021 TELEPHONE 406 / 727-5881

January 12, 1989

Mr. Dave Brown, Chairman
House Judiciary Committee
c/o Larry Herman
Box 217
Laurel MT 59044

Re: House Bill 108

Dear Mr. Brown:

This is to advise you and your Committee that the City Attorney's office of the City of Great Falls is in whole-hearted support of House Bill 108. We anticipate great savings by making city courts, courts of record thereby avoiding appeals with a trial de novo in District Court. Savings will occur through the elimination of prosecutors' time, witness' time (usually police officers taken from other duty) and the District Court's time. Appeals should also be limited to those with merit rather than merely another method of avoiding the City Court sentence.

Please give this Bill your strongest consideration.

Sincerely,

David V. Gliko,
City Attorney

DVG:dmh

EXHIBIT 8
DATE Feb. 17, 1989
HB 108-Rep. Whalen

Montana Magistrates Association

17 January 1989

Testimony offered in opposition to HB108, a bill for an act entitled: "An act requiring certain cities to establish municipal courts; revising provisions regarding the number, salary, and election of municipal court judges and the administration of and appeal from municipal courts." Given by Wallace A. Jewell, representing the Montana Magistrates Association, the limited jurisdiction judges of the State of Montana.

The Montana Magistrates Association opposes HB108 for several reasons:

1) Under current law, all the cities of Montana with a population of 10,000 or more have the option- if they so choose - to establish Municipal Courts. The Montana Magistrates Association is not opposed to local governments saving money, on the contrary we would strongly endorse nearly any such proposal. But, if the intent of this legislation is to limit or decrease the number and cost of appeals from limited jurisdiction courts, why not amend current statutes dealing with City Courts to allow all City Courts to become courts of record if the local government chose to do so? By court of record we do not mean to have each municipality hire a court reporter when a tape-recording of the proceedings could be made at a much reduced cost.

2) If the intent of this legislation is to allow for more than one judge per municipality, again, why not amend current City Court statutes so all municipalities could have that option? The Montana Magistrates Association can see little reason for the State to mandate judicial reform that would only affect 4 cities in the State, one of which already has a Municipal Court.

3) The MMA wants to emphasize its strong committment to our rural courts. In Montana the vast majority of the courts of limited jurisdiction as well as the District Courts serve rural populations. Any solution to any problem, whether real or imagined, should be based on an understanding of the unique character of our rural courts and their special nature.

4) In meetings of the MMA Board of Directors last summer and fall a Goals and Policy Statement was adopted that looks to the future role of the limited jurisdiction courts in Montana. At a meeting of the entire membership in Missoula, this coming May, nearly 150 limited jurisdiction judges will formalize a strategy to address judicial reform in Montana.

EXHIBIT 8
DATE 2-17-89
HB 108

Foremost in this strategy will be a study of other court systems in the country that may have adequately met the needs of a mostly rural state such as ours. The MMA would deeply appreciate an opportunity to formalize a proposal to address any possible problems that may currently exist within our limited jurisdiction courts.

I must also add that on the afternoon of 16 January 1989 I received a phone call from Bob Tucker, City Judge of the City of Great Falls and so one of the judges to be affected by this proposed legislation. Judge Tucker stated that he too does not endorse this proposal. He said that any of the things that we want to accomplish should be done through amendments to the City Court statutes.

The membership of the Montana Magistrates Association urges you to give HB108 an unfavorable recommendation and to vote to not pass this piece of legislation.

Wallace A. Jewell

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. House Bill 103 DATE January 17, 1989

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
WALLY JEWELL	HELENA MT	X	
LARRY HERMAN	LAUREL, MT	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. House Bill 104 DATE January 17, 1989

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Michael S Herwood	MTLA - Helena	X	
Ron Askalmarn	State Farm Insurance		X
Jacqueline Terrell	American Ins. Assn.		X
Kathy Anderson	Ind Ins Agents		X
Steve Browning	State Farm Insurance		X
GENE PHILLIPS	NAII		X
Bonnie Tippy	Alliance		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. House Bill 108 DATE January 17, 1989

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
NALLY JEWELL	MT. MAGISTRATES ASSOC HELENA		*
Shelly Laini	City of Helena	* generally	*
Karen Bryson	City of Helena	* generally	*
Margaret Davis	Lobbyist		
LARRY HERMAN	LAUREL, MT	X	
ALEC HANSEN	MT LEG. OF CITIES/TOWNS	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.