MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Pinsoneault, on January 23, 1991, at 10:; a.m. in Room 325 of the State Capitol.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SENATE 87

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, said SB 87 was introduced at the request of the Board of Realty Regulation. He stated that the Montana Association of Realtors (MAR) was involved in this legislation and provided copies of a bill draft rewriting SB 87.

Senator Brown told the Committee that real estate brokers want to give earnest money to a third party when a deal "goes sour" to get out of disputes between buyers and sellers.

Proponents' Testimony:

Tom Hopgood, MAR, explained he was embarrassed at having to unravel this bill. He said Senator Brown made an accurate

description of the problem. He stated that several sessions ago Representative Dorothy Cody carried a bill to allow small claims interpleader to be done in the small claims division of district court or justice court.

Mr. Hopgood referred to 3-12-106, MCA, the statute dealing with small claims in district court. He explained that in several areas a justice has preferred to hear interpleader. Mr. Hopgood commented that MAR decided against a test case, and that it would probably be easier to go through the Legislature.

Mr. Hopgood said the MAR bill draft clarifies this issue, and that he believes it is a comprehensive revision of law which could accomplish what Representative Cody started to do in 1987. He said he thought SB 87 was the same as the MAR bill draft, but found they were not identical. Mr. Hopgood explained that new staff at the Board of Realty Regulation and at MAR were part of this miscommunication. He apologized to Senator Brown and the Committee, and said he hoped the Committee would consider the bill draft. Hr. Hopgood added that he would be willing to work with Valencia Lane on the bill.

Helen Garrick, Board of Realty Regulation, Department of Commerce, said she supported testimony given by Mr. Hopgood.

Patricia Bradley, Montana Magistrates Association, stated her support of the bill.

Opponents' Testimony:

There were no opponents of SB 87.

Questions From Committee Members:

Chairman Pinsoneault asked Senator Brown if the amendments were significant. Mr. Hopgood replied that they only contained codification instructions.

Senator Svrcek asked how many court cases were anticipated annually. Mr. Hopgood replied that two cases this past summer were possible test cases for a writ of mandamus.

Senator Svrcek asked if an earnest money deposit of more than $2500 would automatically go to district court. Mr. Hopgood replied that $3500 or more would go to district court and $2500 would go to justice court. He said the rule of civil procedure allows interpleader action to occur.

Senator Towe asked if small claims procedure is used in district court. Mr. Hopgood replied he was not certain.

Chairman Pinsoneault asked if a buy-sell agreement could be made more clear to avoid deals going sour. Mr. Hopgood replied he

did not believe a form contract could be drafted to absolutely govern every situation that may come up. He added that earnest monies are to be given to courts only after things do go awry - the buyer and seller can't agree on who gets what.

Closing by Sponsor:

Senator Brown made no closing comments.

HEARING ON SENATE BILL 125

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, told the Committee SB 125 requires that loan or credit agreements be in writing to be enforceable. He said the bill has been before the Legislature in the 1989 session, but did not make it through the House.

Senator Brown explained that (a) through (e) in section 1 describe what needs to be in writing. He said new language is in section 2 stating credit agreements need to be in writing.

Senator Brown stated this legislation was enacted in Minnesota, Kansas, Georgia, Washington, and North and South Dakota by 1989. He said that a written agreement would place both the lender and borrower on notice and would cut down on litigation in the best interest of all parties.

Proponents' Testimony:

George Bennett, Counsel, Montana Bankers Association, told the Committee this legislation was adopted in 31 states by 1990, covering "sophisticated" commercial borrowers and professional lenders. Mr. Bennett said he had seen a "flood" of litigation nationally, and in Montana, between banks and borrowers.

Mr. Bennett said the intent of the bill was worked out in 1989. He explained that it would not require all contracts to be in writing, but only those for money. Mr. Bennett commented that SB 125 does not cover credit cards, utility agreements, but does cover loans by professional lenders of $10,000 or more. He said loans for personal, family, or household purposes are excluded.

Mr. Bennett advised the Committee that Montana has a statutory parole evidence rule, allowing inquiry behind contracts where fraud is concerned. He said the Committee must also remember that the State of Montana is in the lending business, in addition to banks.

Mr. Bennett commented that a handshake is no longer enough in the "commercial world we live in". He said he believes lenders in Montana and outside the state are looking to see what the Committee does with this bill. Mr. Bennett added that lawyers do benefit from these disputes.

Chairman Pinsoneault asked Mr. Bennett to explain parole evidence to the Committee. Mr. Bennett replied that 28-2-905, MCA, pertains to parole evidence. He said the provision allows "going behind a contract" where there is a question of a mistake of imperfection; allows questioning the validity of agreements, ambiguity, illegality, and actual or constructive (careless) fraud.

Jock Anderson, Montana League of Savings Institutions, said he supported statements made by Mr. Bennett. He stated that loan agreements have engendered an inordinate amount of litigation, said commercial loan agreements tend to be complicated and lengthy. He said they also tend to be negotiated under stressful terms, putting both the creditor and debtor under less than ideal conditions. He added that, after the fact, it is easy for either party to remember what they want to remember.

Paul Schummer, loan officer Norwest Bank Helena, said he believes the bill would clarify the situation between borrowers and lenders.

Roger Tippy, Montana Independent Bankers Association, said he hoped the Trial Layers Association would speak to the Story vs City of Bozeman decision. He commented that if the bill were enacted, potential plaintiffs won't lose much under common law as it now stands.

Opponents' Testimony:

Mike Sherwood, Montana Trial Lawyers Association, told the Committee he called several attorneys to ask them who was suing banks (Exhibit #2). He said he received a response that, "no one in their right mind is suing banks". Mr. Sherwood referred to Lachenmaier v. First Bank Systems, Inc. and First Bank v. Clerk.

Mr. Sherwood said he did not believe there was a need for this bill, and referred to the Lachenmaier decision on p.2246 of the Exhibit. He stated that banks quit loaning dollars long term for agriculture and commercial purposes several years ago. He told the Committee a considerable defense was raised by debtors whose notes were not renewed or amortized by banks.

Mr. Sherwood advised the Committee he also attached testimony from former Representative Bruce Simon who lost his business as a result of a bank deal. He added that there is a history of bankers being taken at their word. Mr. Sherwood reiterated that SB 125 is unnecessary and unfair, and urged the Committee to give the bill a do not pass recommendation.

Dennis Olson, Northern Plains Resource Council, told the Committee he was a community organizer in North Dakota, working primarily on farm credit issues, before coming to Montana. He stated it his experience that independent banks have been most

trustworthy and reliable, and said he was surprised that they were supporting this bill.

Mr. Olson reported that during the past five years he has advised farmers to get agreements in writing from bankers. He said his experience is that a very small number of farmers foreclosed on go to court. Mr. Olson told the Committee of 130 FMHA borrowers who attended a workshop in Wolf Point on dealing with banks where it was found that "many bank deals went down the tubes".

Mr. Olson told the Committee that he saw lenders become more desperate as the farm crisis deepened, and that the real purpose behind banks requiring more collateral was to increase their equity position because they were in such trouble. Mr. Olson stated he knew of a county where there was no FMHA supervisor for three years and applications were never processed. He said that looking at congressional action concerning farmers, we are headed down the same road again.

Questions From Committee Members:

Senator Towe asked George Bennett if the language in SB 125 is similar to that adopted by the 31 states he referred to. Mr. Bennett replied the concept is the same, once sophisticated borrow and lender are defined. He said Montana is only one of a handful of states not putting lending agreements under the statutes of fraud.

Senator Towe asked if Montana would be out on a limb with the language proposed in the bill. Mr. Bennett said he believed the language is in line with that adopted by other states.

Senator Towe asked if a $9,000 loan on a $100,000 line of credit would not be covered by the bill. Mr. Bennett replied that was his understanding.

Chairman Pinsoneault asked if this legislation follows the model act. Mr. Bennett replied he is not familiar with the model act, but believed the concept to be the same.

Chairman Pinsoneault asked if the language adopted by Minnesota were similar to SB 125. Mr. Bennett replied he had a copy of that legislation to give to the Chairman.

Senator Crippen asked if there were a uniform credit agreement. Mr. Bennett replied there is not, and said they are all prepared for use by banks. He said lots of larger banks have their own form.

Senator Crippen stated he was at a loss as to why the banks were not satisfied with the Supreme Court case, and said he believed that decision should have solved the problem. Mr. Bennett asked Senator Crippen if he were saying the bill is no longer necessary because of that court's decision. Mr. Bennett stated he

believed there won't be as many court cases, but the bill is still necessary. He said he could not see why Montana is reluctant to adopt this legislation, and that without it banks could get back in the cycle where everyone is suing them again.

Senator Crippen commented that most agreements are custom designed to meet a given need at a given time. He said he was concerned with using a standard form which may not apply and that he did not want to see a trend in this direction. Senator Crippen stated that these agreements need to be tailor-made.

Senator Svrcek noted that Mr. Bennett repeatedly used the term "sophisticated" when referring to borrowers and lenders, and said he could not find that term in the bill. Mr. Bennett replied that maybe it was a bad term to use. He said that if a loan is for more than $10,000, language in the bill provides that it cannot be for personal or household purposes. Mr. Bennett asked how a commercial borrower would be defined.

Senator Svrcek provided an example of a logger in his district who, needing equipment but having no sophisticated understand of commercial lending, makes that purchase on a verbal agreement. He asked if that logger could run into difficulty. Mr. Bennett replied that even if the agreement were in writing and the logger felt there was a breach, he would have legal remedy.

Senator Svrcek asked what the lending community would do if SB 125 did not pass. Mr. Bennett replied that Montana stands out like a "sore thumb" without this legislation. He said his perception of Montana is that of being somewhat anti-business, anti-lender.

Senator Svrcek asked Mike Sherwood if he agreed that the bottom line is that anyone dealing with a lender should not contract orally. Mr. Sherwood replied he did not see even a sophisticated million dollar borrower being in the habit of getting a bank to sign concerning a verbal commitment.

Senator Yellowtail asked Mr. Bennett about the public notice suggested as an amendment by Mike Sherwood. Chairman Pinsoneault requested that Mr. Bennett report to Senator Yellowtail after he had reviewed the amendment.

Senator Doherty asked Mr. Bennett if he had evidence of how adopting this bill in 31 other states improved lending in those states, and why Montana should adopt this bill. Mr. Bennett replied that there was obviously a problem or those states would not have adopted this legislation. He said he believes this legislation has to help or there would not have been "this wave of states adopting it".

Senator Doherty commented that securities laws deal with sophisticated investors, and asked why the bill did not make reference to securities laws. Mr. Bennett replied this was hammered out in the 1989 Session, and that the $10,000 figure was

input at that time. He stated he did not know if this legislation would fit in to securities law.

Senator Grosfield asked what would happen in the case of a first installment of $11,000 on a $100,000 note being renewed by phone over a long period of time. Paul Schummer replied the loan agreement would be committed.

Senator Towe said he believed that is a line-of-credit and would normally be entered into at the beginning when first initiating the written agreement. Senator Towe asked Mr. Bennett if the example of a borrower phoning in need of funds that date in order to take advantage of a discount, was the type of situation he was referring to. Mr. Bennett replied it was.

Senator Towe referred to language on page 2, line 20 stating "and is signed by the creditor and the debtor", and asked if the situation he just cited would work. Mr. Bennett replied that Senator Towe made a good point. He said this language was copies from Minnesota legislation, and that he had no objection to changing this language to "signed by parties in charge".

Closing by Sponsor:

Senator Brown reminded the Committee that SB 125 was drafted to consider issues from the 1989 session. He said the bill clarifies the law, and that he knows the statutes on fraud contain other agreements that are to be in writing. He stated the bill is an attempt to avoid litigation.

EXECUTIVE ACTION ON SENATE BILL 57

Motion:

Discussion:

Senator Towe said he believes the bill encourages defence counsel to not be in the room with a client. He stated that with his proposed amendment he would not oppose the bill so much. (Exhibit #3)

Senator Halligan said he would oppose electronic equipment being used at initial appearances. Senator Halligan commented that many do not even have counsel at initial appearance. Senator Towe replied that is a valid point and that he would change his amendment accordingly. Valencia Lane replied she would not put this provision in initial appearance.

Senator Yellowtail said he was concerned with language regarding defendants and private communication with counsel. Valencia Lane replied that she used the examples of Oregon and California in drafting the bill. She explained that one state

specifically said the defendant would be with counsel, and the other specifically said counsel would be in court, so she didn't mention it one way or the other.

The Committee viewed a four-minute tape on Video Justice presented by Michelle Burchett, US West.

Senator Doherty told the Committee he was well-acquainted with Judge Rosenblum in Portland, who was featured in the video. He said Judge Rosenblum advised him it was her understanding the county had not purchased the system because it was too expensive. He explained that electronic equipment is not used in Oregon for first-time offenders, but is used for those in prison. He added that he would like to visit with Judge Rosenblum more on the matter.

Senator Doherty reported that Judge Rosenblum said she didn't see any danger or disruption to the attorney/client privilege, as most attorneys were present with the defendant. Senator Doherty shared he had the experience of representing a pro bono client by phone in Denver in court. He stated that communication by phone was very bad, and that he believed in having attorneys and defendants see each other.

chairman Pinsoneault asked if the cost were $15,000 at each end. Michelle Burchett replied that is a rough figure, dependent upon transmission which, in turn, dictates equipment used.

Amendments, Discussion, and Votes:

Senator Yellowtail stated he had no problem with the amendments. Valencia Lane advised the Committee of the need to strike references on page 2, lines 13 and 14 in amendments 1 and 2.

Senator Towe made a motion that the amendments be approved with the modification stated by Valencia Lane. The motion carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that SB 57 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 53

Motion:

Discussion:

Chairman Pinsoneault told the Committee he was concerned with amendment language "next game", in that there could be unlimited numbers of games per days. He said his perception was that there would be one game per day.

Senator Doherty commented that shaking for the juke box could be done more than once per day.

Senator Mazurek commented that the Committee may want to get taverns out of the situation where a dice box is shaken for a pot, and may want to limit shaking to the juke box.

Chairman Pinsoneault said he believes the reservations are charting their own destiny, and that he shares Senator Mazurek's concerns.

Amendments, Discussion, and Votes:

Senator Yellowtail made a motion to amend SB 53 by deleting subsection (b) on page 1, line 21 through page 2, line 8. The amendment eliminates shaking for a pot and leaves shaking for drinks or the juke box.

The motion made by Senator Yellowtail carried in a roll call vote (attached) with all Senators voting aye, except Senators Grosfield and Halligan who voted no. Senator Crippen was not present and did not leave a vote.

Recommendation and Vote:

Senator Halligan made a motion that SB 53 DO PASS AS AMENDED.

Senator Towe, speaking as counsel to the Crow Tribe, said he felt concern because the bill might allow expansion of this activity at a later date. He said it could create a position of bad faith.

Chairman Pinsoneault agreed with Senator Towe, and said there is some risk involved in this legislation.

Senator Yellowtail told the Committee he hoped the bill would be defeated because of its long-range implications. He stated this is a progressive game and that if reservations expand it, then gambling casinos in the state will want to expand it.

Chairman Pinsoneault said he believed Senator Yellowtail is right. Senator Towe also agreed with Senator Yellowtail.

The motion made by Senator Halligan failed in a roll call vote (attached) with five members voting aye and six members voting no. Senator Crippen was not present and did not leave a vote.

Senator Mazurek stated the bill should be tabled and examined in greater detail. He said the Committee needs more information from the Attorney General and the tribes. He added that if the bill could be limited in form now, he would be okay with it.

Senator Brown said he supported Senator Mazurek's statement.

Senator Halligan made a motion that SB 53 be TABLED with the caveat proposed by Senator Mazurek. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12:10 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 23 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 57 (first reading copy -- white), respectfully report that Senate Bill No. 57 be amended and as so amended do pass:

1. Page 3, line 24.
   Page 6, line 24.
Following: the second "other"
Strike: "and"
Insert: ","

2. Page 4, line 1.
   Page 5, line 5.
   Page 7, line 1.
Following: "privately"
Insert: ", and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication"

3. Page 4, line 16.
Following: "."
Insert: "Two-way electronic audio-visual communication may not be used unless the defendant's counsel is physically present with his client, unless this requirement is waived by the defendant."

4. Page 5, line 4.
Following: "other"
Strike: "and"
Insert: ","

Signed: _____
Richard Pinsoneault, Chairman

1-23-91
Amd. Coord.

1-23
Sec. of Senate

Exhibit #1
23 Jan 91

DRAFT #3

SB 87

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE JURISDICTION OF THE SMALL CLAIMS DIVISIONS OF DISTRICT COURTS AND ALLOWING INTERPLEADER ACTIONS TO BE FILED IN JUSTICE COURTS AND IN THE SMALL CLAIM DIVISIONS OF JUSTICE COURTS; AND AMENDING SECTION 25-34-106, MCA."

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

SECTION 1. SECTION 25-34-106, MCA IS AMENDED TO READ:

"25-34-106. Interpleader Actions. (1) As used in this chapter, interpleader actions determine the rights of claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court ~~or justice of the peace~~ and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court ~~or justice of the~~ peace at the time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Court of the _____ Judicial District in and for the County of _____, State of Montana.

_____,
Plaintiff

vs.

_____, INTERPLEADER AFFIDAVIT
Defendant

and

_____,
Defendant

State of Montana)
) ss
)

_____, being duly sworn, deposes and says: That _____, a defendant, resides at _____~~, in the above named county~~. That _____, a defendant, resides at _____~~, in the above named county~~. That the plaintiff has custody or possession of money in the amount of $_____, being held pursuant to the following: _____

_____

_____

_____.

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $_____, which represents the amount of money in dispute.

That the plaintiff resides at the address shown ~~in the~~ above-~~caption~~.

_____

Affiant

Subscribed and sworn to before me this ____ day of _____, 19__.

_____

District Judge

_____

Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in _____ (name, building, or residence), in _____ County of _____, State of Montana, on the ____ day of _____, 19__, at the hour of _____(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-

described money, as well as the deposition thereof; and, in addition, for costs of the action.

Dated this ____ day of _____, 19__.

_____
~~Justice of the Peace~~

_____
Clerk

NEW SECTION. SECTION 2. **Interpleader actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice Court of the State of Montana, in and for the County of _____, before _____, Justice of the Peace.

_____,
Plaintiff

vs.

_____, INTERPLEADER AFFIDAVIT
Defendant

and

_____,
Defendant

State of Montana)
) ss
)

_____, being duly sworn, deposes and says: That _____, a defendant, resides at _____~~, in the above named county~~. That _____, a defendant, resides at _____~~, in the above named county~~. That the plaintiff has custody or possession of money in the amount of $_____, being held pursuant to the following: _____

_____

_____

_____.

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $_____, which represents the amount of money in dispute.

That the plaintiff resides at the address shown ~~in the~~ above-~~caption~~.

_____

Affiant

Subscribed and sworn to before me this ____ day of _____, 19__.

_____

Justice of the Peace

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in _____ (name, building, or residence), in _____, County of _____, State of Montana, on the ____ day of _____, 19__, at the hour of _____(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the deposition thereof; and, in addition, for costs of the action.

Dated this ____ day of _____, 19__.

_____

Justice of the Peace

SECTION 3. SECTION 25-35-502, MCA IS AMENDED TO READ:

"25-35-502. **Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under (Section 4) in which the amount claimed does not exceed $2,500.

NEW SECTION. SECTION 4. **Interpleader Actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of justice court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Division of Justice Court of _____ County, Montana, before _____, Justice of the Peace.

_____,
Plaintiff

vs.

_____, INTERPLEADER AFFIDAVIT
Defendant

and

_____,
Defendant

State of Montana)
) ss
)

_____, being duly sworn, deposes and says: That _____, a defendant, resides at _____~~, in the above named county~~. That _____, a defendant, resides at _____~~, in the above named county~~. That the plaintiff has custody or possession of money in the amount of $_____, being held pursuant to the following: _____

_____

_____

_____.

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $_____, which represents the amount of money in dispute.

Exhibit # 1
1/23/91 SB 87

.f resides at the address shown ~~in the~~

_____

Affiant

vo~n to before me this ____ day of

_____

Justice of the Peace

_____

Clerk

ORDER

ıa to the within named defendants,

ected to appear and answer the within

my office in _____ (name,

), in _____, County of _____,

e ____ day of _____, 19__, at the

and to have with you then and there,

witnesses needed by you to establish

y.

tified that in case you do not so

e given against you as follows:

reclosing your claim to the above-

n thereof; and, in

.

_____

the Peace

_____

n. Section 2 is

10, MCA. Section 3

35-506, MCA.

visions of Sections

ions arising after

Exhibit #2
23 Jan 91
SB 125

Testimony of Michael Sherwood, MTLA

OPPOSING Senate Bill 125

January 23, 1991

My first experience with this bill was in 1989 when it was introduced as Senate Bill 138. The Montana Supreme Court had just decided First Bank v. Clark, 45 State Reporter 2294, in December of 1988. Clark had been sued by the bank for a deficiency judgment and raised as a defense the Bank's commitment to release Clark from a personal guaranty of a corporate debt if Clark gave them a trust indenture in real property held by Clark and his children.

Clark granted a trust indenture based on a handshake with a bank officer. The Bank denied that the oral offer had been accepted by Clark. A jury found that Clark was not obligated as guarantor of the note and awarded Clark $100,000 in damages for the bad faith and constructive fraud of the bank. The decision was reversed by the Montana Supreme Court which held that the jury had been wrongfully instructed as to bad faith. The court held that a fiduciary relationship does not exist between a bank and its debtor unless there are special circumstances indicating exclusive and repeated dealings where the bank acts as financial advisor in some capacity other than that common in the usual arms-length debtor/creditor relationship.

In spite of the favorable ruling by the Montana Supreme Court the Montana Banker's Association urged the passage of SB 138 in order to avoid any suits based upon alledged oral agreements. SB 138 passed the Senate and died swift death in the House Business Commitee where it met with stiff opposition from businessmen who felt that a Banker ought to be good for his word. Then Representative Bruce Simon, a member of that committee, testified against the bill. I have attached a copy of his testimony to this testimony.

Since 1989 the case of LACHENMAIER V. FIRST BANK SYSTEMS, INC., 47 State Reporter 2244 was decided by the Supreme Court in December of 1990. I have attached a copy of that Case to my testimony as well. In that case the district court granted summary judgment in favor of the bank and the Supreme Court affirmed. At page 2246 of that case the Court held that Section 28-2-903 MCA precluded the Lachenmaiers from alleging a course of dealing here amounting to an oral agreement for continued financing. Now, in spite of this highly favorable ruling the Montana Banker's Association is back again.

In his testimony in 1989, George T. Bennett, Counsel for the Montana Banker's Association, indicated that the major purpose of the bill was to eliminate unnecessary and expensive litigation where sophisticated parties should have, and could have, reduced their agreements to writing. I suggest that a $10,000 limitation

on this legislation does not guarantee that the debtor is a sophisticated party. I also agree with Representative Simon that if a lending institution wishes to avoid allegations of oral commitments to lend money or forbear collection it need merely advise its loan officers not to make such commitments.

Finally, if this legislation is to pass, I propose the attached amendment.

Rep. Simon wanted to go on record as strongly opposing this bill. I have been victimized in this system and I know how difficult it is to pursue legal action against a financial institution based on this kind of action. I thought I was going to be in court a few weeks ago, only to have a summary judgment brought against me. Now I have to take this issue to the Supreme Court before I can even get my day in court. This is a difficult thing to pursue for someone like myself or any other business person, this suing a bank, they are very sophisticated, they are very well financed. If they don't want their loan officers making verbal agreements then they should tell them to not make verbal agreements. They don't have to put it in Montana codes. All they have to do is tell their loan officers not to make verbal agreements. I urge the committee to give this bill a fair hearing and then let it hang.

AARON and STELLA LACHENMAIER, husband and wife, Plaintiffs and Appellants,
v.
FIRST BANK SYSTEMS, INC.; CREDIT SERVICES, member First Bank System, FIRST STATE BANK OF FORSYTH, Defendants and Respondents.

No. 90-016.
Submitted on briefs Aug. 7, 1990.
Decided Dec. 12, 1990.
47 St.Rep. 2244.
____Mont.____.
____P.2d____.

BANKS AND BANKING--CONTRACTS--JUDGMENT, SUMMARY, Appeal from summary judgment granted to bank in claim for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and tortious interference with contract. The Supreme Court held:

1. For every contract not covered by a more specific provision, the standard of conduct required of contracting parties is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

2. The bank was under not obligation to loan money and there was no breach of fiduciary duty when the bank acted for solid business reasons.

3. A parent corporation is privileged to interfere in a contract between its subsidiary and a third party to protect its own legitimate economic interest and such interference will not give rise to tort liability.

4. The actor is never liable when he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress.

Appeal from the District Court of Rosebud County.
Sixteenth Judicial District.
Honorable Joe L. Hegel, Judge presiding.

For Appellant: **A. Cliff Edwards and David R. Paoli,** Billings For Respondent: **Stephen D. Bell;** Dorsey & Whitney; Billings **David A. Ranheim,** Minneapolis, Minnesota

Affirmed.

JUSTICE MCDONOUGH delivered the Opinion of the Court.

The appellants Aaron and Stella Lachenmaier initiated this suit against the defendants alleging commercial bad faith and other breaches of contract and tort obligations. The Lachenmaiers appeal the order of the Sixteenth Judicial District Court, Rosebud County, granting the defendants', First Bank Systems, Inc., FBS Credit Services, Inc., and First State Bank of Forsyth, joint motion for summary judgment on the plaintiffs' claims of breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty and tortious interference with contract. The District Court also granted the defendants' motion for summary judgment on their counterclaim to foreclose on the Lachenmaier's mortgage and promissory notes. We affirm.

The Lachenmaier's raise five issues on appeal:

1) Did the District Court err in ruling the defendants did not breach the implied covenant of good faith and fair dealing?

2) Did the District Court err in ruling the defendants owed no fiduciary duty to the plaintiffs?

3) Did the District Court err in ruling as a matter of law that there was no tortious or intentional interference of contract by CSI and First Bank System in regard to the contract between First State Bank of Forsyth and the Lachenmaiers?

4) Did the District Court err in granting summary judgment on the plaintiffs' claims of intentional infliction of emotional distress?

5) Did the District Court err in granting defendants' motion for summary judgment on the counter-claim to foreclose mortgages and promissory notes?

The Lachenmaiers owned and operated a farming and ranching business operation near Hathaway in Rosebud County, Montana for approximately twenty years. During this period the Lachenmaiers did their banking exclusively with defendant First State Bank of Forsyth (Bank). The Bank was owned by defendant First Bank Systems, Inc. (FBS) as a wholly-owned subsidiary, until 1986 when it was sold to local investors.

From 1964 to 1971 the Lachenmaiers were consistently satisfactory sugar beet and grain producers. In 1971 the Lachenmaiers lost their sugar beet contract when the Hardin sugar beet factory closed. The Lachenmaiers then focused on raising crops for sale and ran a small cow-calf operation from 1972 through 1978. Also, in the early 1970's the Lachenmaiers

bought some additional 800 plus acres of land, borrowing $40,000 from the Bank.

In 1978, allegedly upon the recommendation of the Bank president at the time, Mr. Thiesen, the Lachenmaiers switched to a feeder cattle operation to make better use of the feed raised on the farm. The Bank basically provided operating funds to the Lachenmaiers on an annual basis. The cattle operation sustained substantial operating losses nearly every year until 1986 when this action was commenced. The losses were a combined result of drought, grasshoppers, poor commodity prices, failure of the cattle to achieve projected weight gains, and increased operating and equipment expenses.

In 1985, as a condition of further financing, the Bank required the Lachenmaiers to apply for a Farmers' Home Administration (FmHA) guarantee. The FmHA agreed to guarantee to the Bank 90% of the Lachenmaier's already accrued operating expenses on the $275,000.00 face amount of the loan. The guarantee provided for a twenty year amortization rate with a balloon payment in seven years, with the Bank to provide annual operating funds in accordance with attached budgets.

In the 1985-86 cattle year, as a result of low weight gains and the federal dairy cow buy-out, the Lachenmaiers sustained a $79,000 operating loss and failed to pay their operating loan, due on April 25, 1986. Shortly thereafter, in May, the Bank advised the Lachenmaiers that their loans were being transferred to the other defendant, FBS Credit Services, Inc. (CSI). CSI is also a wholly- owned subsidiary of FBS. The Lachenmaiers' loans were assigned to CSI as "problem loans" in conjunction with FBS's divestiture of the Bank in Forsyth. After reviewing a proposed budget provided by the Lachenmaiers--which did not show a positive cash flow--CSI advised the Lachenmaiers that they would only extend additional credit in the amount of $69,000 for a period of six months and any further extension of credit would depend upon the ability of the Lachenmaiers to provide a realistic budget which would provide for a pay-down of the debt.

After negotiations between the Lachenmaiers and CSI through the summer and fall of 1986, the Lachenmaiers referred all further contact and correspondence to their attorney. They filed suit in November, 1986, alleging various breaches of duties sounding in both tort and contract. Following extensive discovery, the District Court entertained defendants' motions for summary judgment, defendants' motions in limine and plaintiffs' motion in limine. The trial court issued a memorandum and order granting the defendants' joint motion for summary judgment, dismissing the plaintiffs' complaint with prejudice, and granting the Bank's motion for summary judgment on its counterclaim for foreclosure. From this order the Lachenmaiers now appeal.

STANDARD OF REVIEW

In order for summary judgment to issue, the movant must demonstrate that there is no genuine issue as to all facts deemed material in light of the substantive principles entitling the movant to judgment as a matter of law. Rule 56(c), M.R.Civ.P; Cecil v. Cardinal Drilling Co. (Mont. 1990), 797 P.2d 232, 234, 47 St.Rep. 1673, 1676. Cereck v. Albertson's, Inc. (1981), 195 Mont. 409, 411, 637 P.2d 509, 511. If the movant meets this burden, it then shifts to the non-moving party to demonstrate a genuine issue of material fact. *Cecil*, 797 P.2d at 235, Thelen v. City of Billings (1989), 238 Mont. 82, 85, 776 P.2d 520, 522; Gamble Robinson Co. v. Carousel Properties (1984), 212 Mont. 305, 312, 688 P.2d 283, 287. As our forthcoming discussion will indicate, the Lachenmaiers fail to meet this shifted burden.

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

[1] In its memorandum opinion accompanying the order granting summary judgment, the District Court relied heavily on the case of Montana Bank of Circle, N.A. v. Ralph Meyers and Son, Inc. (1989), 236 Mont. 236, 245, 769 P.2d 1208, 1214, for the proposition that breach of the implied covenant of good faith and fair dealing can only occur in a commercial setting after a breach of an express term of the underlying contract. In an effort to provide more workable guidelines this Court recently reassessed the implied covenant of good faith and fair dealing. In Story v. City of Bozeman (Mont. 1990), 791 P.2d 767, 775, 47 St.Rep. 850, 859, we held that

"[E]very contract, regardless of type, contains an implied covenant of good faith and fair dealing. A breach of the covenant is a breach of the contract. Thus, breach of an express contractual term is not a prerequisite to breach of the implied covenant."

We also held that for every contract not covered by a more specific provision, the standard of conduct required of contracting parties is "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." Section 28-1-211, MCA; *Story*, 791 P.2d at 775. We then equated this standard to the one applicable to merchants under the uniform commercial code:

"Each party to a contract has a justified expectation that the other will act in a reasonable manner in its performance or efficient breach. When one party uses

discretion conferred by the contract to act dishonestly or to act outside of accepted commercial practices to deprive the other party of the benefit of the contract, the contract is breached."

Story, 791 P.2d at 775.

Here, no evidence was presented that the Bank breached the "honesty in fact" standard. Plaintiff claims that the evidence indicates that the Bank in Forsyth continued to loan and encourage them to borrow more money simultaneous with the regional office's and CSI's plans to liquidate their assets and foreclose on the debt. At most, these allegations might indicate FBS's corporate right hand acting one way and its left hand--without knowing what the right hand was doing-- acting in another. It is not, however, proof that the defendants, in particular the Bank, utilized discretion conferred by the loan agreements to act dishonestly or outside of accepted commercial practices to deprive the Lachenmaiers of the benefit of the agreement. The Bank did not stand to gain anything from its actions, it was simply exercising sound business judgment as a creditor in acting to foreclose a "problem" loan. *See* Tresch v. Norwest Bank of Lewistown (1989), 238 Mont. 511, 778 P.2d 874; Coles Department Store v. First Bank Billings N.A. (1989), 240 Mont. 226, 783 P.2d 932, Randolph v. Peterson Inc. (1989), 239 Mont. 1, 778 P.2d 879; Blome v. First National Bank of Miles City (1989), 238 Mont. 181, 776 P.2d 525; Central Bank of Montana v. Eystad (1985), 219 Mont. 69, 710 P.2d 710; First National Montana Bank of Missoula v. McGuiness (1985), 217 Mont. 409, 705 P.2d 579.

Furthermore, the parole evidence rule and the statute of frauds, § 28-2-903, MCA, preclude the Lachenmaiers from alleging a course of dealing here amounting to an oral agreement for continued financing. Under the doctrine of merger as enunciated in *McGuiness* any such oral representations merged with the terms of the note, which then became the final agreement between the parties. *Blome,* 776 P.2d at 528, Shiplet v. First Security Bank of Livingston, Inc. (1988), 234 Mont. 166, 171, 762 P.2d 242, 245. Thus, the Bank is not precluded by any alleged prior oral representations in exercising its good business judgment in foreclosing on the notes in this case. Also, the Lachenmaier's reliance on Weinberg v. Farmer's State Bank of Worden (1988), 231 Mont. 10, 752 P.2d 719, as controlling on the issue of breach of the implied covenant is misplaced. While the factual background of *Weinberg* is similar, plaintiffs' attempt to construe the FmHA agreement here as analogous to the one in *Weinberg* fails. In *Weinberg,* the guarantee between the Lender and the FmHA was *incorporated* on the face of the promissory note between the lender and the borrower. *See Shiplet,* 762 P.2d at 244-245. Furthermore, the bank in *Weinberg* was found in breach of that agreement when it attempted to vary the interest rates set forth in the original note. Here, there was no incorporation of the FmHA agreement into the notes between the borrower and the lender, thus the borrowers were not a party to the FmHA guarantee and cannot attempt to enforce an alleged promise by the Bank based on the guarantee. *Shiplet,* 762 P.2d at 245, 246.

Finally, the Lachenmaiers argue that the facts here fit under the "special relationship" tort criteria set forth in *Story.* In *Story* we noted that tort damages were only available in breach of implied covenant cases involving "special relationships which are not otherwise controlled by specific statutory provisions." *Story,* 791 P.2d at 776. Regardless, for a plaintiff to maintain a cause of action for breach of the implied covenant, whether it is based in contract or based on the "special relationship" criteria giving rise to a tort, the plaintiff must first show a breach of the honesty in fact standard. Kinniburgh v. Garrity (Mont. 1990), 798 P.2d 102, 105, 47 St.Rep. 1655, 1658; *Story,* 791 P.2d at 775. Even if the Lachenmaiers could demonstrate breach of the honesty in fact standard, they failed to set forth evidence of each and every element of the special relationship criteria, particularly the element requiring that the relationship between the parties must be based on a non-profit motivation. *See Story,* 791 P.2d at 776.

FIDUCIARY DUTY

The Lachenmaiers contend that their fiduciary relationship with the Bank is evidenced by the fact that Lachenmaiers banked with First Bank Forsyth exclusively for over twenty-two years. During this relationship the Lachenmaiers claim that they sought and received the advice and counsel of First Bank Forsyth. The Lachenmaiers also contend that the Bank instructed them to buy more cattle and switch to a feeder operation, and that under *Weinberg* these alleged facts are sufficient to indicate the existence of a fiduciary relationship.

It is the law in Montana that "[t]he relationship between a bank and its customer is generally described as that of debtor and creditor . . . and as such does not give rise to fiduciary responsibilities." Deist v. Wacholz (1984), 208 Mont. 207, 216, 678 P.2d 188, 193 (citations omitted). *Shiplet* 762 P.2d at 248; Simmonds v. Jenkins (1988), 230 Mont. 429, 433, 750 P.2d 1067, 1070. A limited exception to this general rule has been recognized upon proof of "special circumstances," as, for example, where a bank is "thrust beyond the role of a simple creditor into the role of an advisor." *Diest,* 678 P.2d at 193; *Simmons,* 750 P.2d

at 1070; Pulse v. North American Land Title Co. of Montana (1985), 218 Mont. 275, 283, 707 P.2d 1105, 1110. This Court has recognized that no fiduciary duty arises between a bank and its borrower where the bank did not offer financial advice, its advice was not always heeded, or where the borrower was advised by others, such as legal counsel. *Simmons*, 750 P.2d at 1070; *Shiplet*, 762 P.2d at 248.

The District Court concluded there was no special relationship beyond the normal debtor-creditor relationship between a bank and its customer. While noting that the Bank and the Lachenmaiers enjoyed a long and exclusive commercial relationship, the District Court pointed out that neither was tied to the other and the Lachenmaiers were free to transfer their loans to another financial lending institution at any time.

[2] A review of the Lachenmaier's evidence in the light most favorable to them may indicate the existence of disputed facts regarding whether the Bank did in fact act as a financial advisor during the course of its long relationship with the Lachenmaiers. However, even assuming the defendant Bank owed a fiduciary duty, the bank was under no obligation to loan the Lachenmaiers money under the FmHA guarantee, and there was no breach of fiduciary duty when the Bank acted for solid business reasons. *See Tresch v. Norwest Bank of Lewistown supra*, 778 P.2d at 876. Thus, any factual issues concerning the existence of a fiduciary relationship here are immaterial for purposes of summary judgment.

INTERFERENCE WITH CONTRACT

The Lachenmaiers contend that both CSI and FBS tortiously interfered with the contracts entered into between the Lachenmaiers and their Bank. The District Court found that "the parties defendant are in a parent-subsidiary relationship and the parent FBS has a right to participate in the affairs of its subsidiary and to make investment and loan decisions that are in the best interests of its shareholders, so long as, in doing so, it does not breach its contractual obligations with its borrowers."

We agree. In order to make out a claim for tortious interference with the contractual relationship the complaint must allege: (1) that a contract was entered into, (2) that its performance was refused, (3) that such refusal was induced by unlawful and malicious acts of the defendant, and (4) that damages have resulted to the plaintiff. Phillips v. Montana Education Association (1980), 187 Mont. 419, 423, 610 P.2d 154, 157. Here, CSI was acting as a contractual servicing agent of the Bank. An agent is privileged, when acting on behalf of its principal, to interfere with a contract between its principal and a third party. Cotton v. Otis Elevator (S.D. W.Va. 1986), 627 F.Supp. 519, aff'd 841 F.2d 1122 (4th Cir. 1988). An agent's acts, if motivated and taken in furtherance of the purposes and interests of its principal, will not give rise to a cause of action for tortious interference of a contract between its principal and a third party. *Phillips*, 610 P.2d at 158. The contractual interference claim against CSI fails.

[3] The Lachenmaiers' claim against FBS for interference with contract must also fail. At all times relevant to this case First Bank Forsyth and CSI were wholly owned subsidiaries of FBS. A parent corporation is privileged to "interfere" in a contract between its subsidiary and a third party to protect its own legitimate economic interest and such interference will not give rise to tort liability. Bendix Corp. v. Adams (Alaska 1980), 610 P.2d 24, 31-32.

EMOTIONAL DISTRESS

[4] In denying the Lachenmaiers' claim for intentional infliction of emotional distress the District Court noted that the Lachenmaiers failed to produce evidence of outrageous, extreme, unlawful or unreasonable acts by the defendants. We agree. "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." Restatement 2d of Torts § 46, comment d; Frigon v. Morrison-Maierle, Inc. (1988), 233 Mont. 113, 123-124, 760 P.2d 57, 63-64. Furthermore, the Bank in this case cannot be said to have acted "beyond all possible bounds of decency" where it merely exercised a legal right to foreclose on the mortgage and notes. "The actor is never liable when he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress." Restatement of Torts, § 46, comment g. *See also*, Ledl v. Quick Pick Food Stores, Inc. (Mich. App. 1984), 349 N.W.2d 529, 533; Batchelor v. Sears, Roebuck & Co. (E.D. Mich. 1983), 574 F. Supp. 1480, 1489. The District Court correctly held there was no outrageous conduct.

DEFENDANTS' COUNTERCLAIM

The defendants filed a counterclaim seeking to collect from the Lachenmaiers all amounts presently due and owing the Bank. Finding the Lachenmaiers had defaulted, the District Court granted the defendants' motion for summary judgment on the counterclaim.

We agree with the District Court's holding. The Lachenmaiers signed the credit agreement with the

Bank dated November 15, 1985 and a promissory note dated November 4, 1985. Under the terms of the November 4 note, the Lachenmaiers were obligated to make seven annual payments of $35,990.69 payable on November 4 of each year. On November 15, 1985, the Lachenmaiers executed a "Note for Funds to be Advanced in the Future." The line of credit note was expressly made due and payable in full on April 25, 1986.

The Lachenmaiers defaulted on the line of credit note by failing to make payment of $77,064.40 on April 25, 1986. The Lachenmaiers admit their default. The Lachenmaiers also defaulted on the November 4 note by failing to make payments due and owing on November 4, 1986, November 4, 1987 and November 4, 1988. The Lachenmaiers admit the default.

Because the Lachenmaiers defaulted on these written agreements with the Bank the amounts due have been accelerated. The District Court correctly granted summary judgment to the defendants on the counterclaim.

We affirm.

CHIEF JUSTICE TURNAGE and JUSTICES HARRISON and WEBER, and THE HONORABLE HENRY LOBLE, DISTRICT JUDGE, concur.

Exhibit # 2
1/23/91 SB 125

Proposed Amendment to SB 125
Submitted by Michael Sherwood, MTLA

At Page 3, line 4, INSERT after "debtor":

"and who has posted conspicuously in his place of business and has had printed conspicuously on the face of each document signed by a debtor, the following language:

> Due to a law which was passed by the 1991 Legislature at request of the Montana Banker's Association this lending institution is not bound by any oral commitment made by any of its officers or employees to lend money or forbear the payment of debt. If you wish this institution to be bound by any such commitment make sure that the commitment is in writing and signed by an authorized representative of this institution. Unless a commitment is in writing none of our officers or employees can be legally held to his word. "

Exhib. #3
23 Jan 91

Amendments to Senate Bill No. 57
White Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
January 23, 1991

1. Page ~~5~~ 3, line ~~24~~ 24. < Page 6, line 24
Following: "other"
Strike: "and"
Insert: ","

2. Page 4, line 1.
Page 5, line 5.
Page 7, line 1.
Following: "privately"
Insert: ", and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication"

4. 3. Page ~~3~~ 5, line ~~24~~ 4.
~~Page 6, line 24.~~
Following: ~~the second~~ "other"
Strike: "and"
Insert: ","

3. ~~4.~~ Page 4, line 16.
Following: "."
Insert: "Two-way electronic audio-visual communication may not be used unless the defendant's counsel is physically present with his client, unless this requirement is waived by the defendant."

SB57
1-23-91

U S WEST COMMUNICATIONS

560 N. Park
P.O. Box 1716
Helena, MT 59624
January 22, 1991

Senator Dick Pinsoneault
Chairman Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Senator Pinsoneault,

Enclosed, for your committee's consideration, is a list of judges, attorneys and correctional officials who are currently using video telconferencing in some judicial proceedings in Oregon. This particular system links the District Courts in Portland with two correctional facilities in Salem. It has been operating for more than a year.

Other locations presently using video teleconferencings for the applications discussed in Senate Bill 57 include the City of Las Vegas, Dade County/City of Miami, Brevard County, Florida, and San Bernadino County, California.

Several professional journals have published articles on the effective use of video technology in the courtroom. These articles also address the issues raised before your committee. We will be glad to make available copies of such articles from the National Sheriff, The National Law Journal, The Judicature and the Justice System Journal.

As indicated at the January 21st hearing, U S WEST Communications will also make available, at the committee's convenience, a videotape and 35mm slides illustrating the use of video technology in judicial applications.

We appreciate the opportunity to present further testimony in support of Senate Bill 57. Please call me at 441-3385 if I can be of further assistance.

Sincerely,

Dan Walker
Director - External Affairs

enc.

SB 57
1-23-91

Multnomah County Video Arraignment System

Dept. of Corrections

Fred Pearce, Director of Department of Corrections
Jim Patteson, Oregon State Corrections Institute (503) 373-0104
Carl Beals, Oregon State Prison (503) 378-2437

The Judiciary

Judge Ellen Rosenblum (503) 248-5029
Judge Phillip T. Abraham (503) 248-3804

Multnomah County Sheriff's Office

Sheriff Bob Skipper (503) 255-3600
John Schweitzer, Chief Deputy in Charge of Corrections (503) 248-5088

Public Defenders' Office (503) 228-2822

John Conners
Mike Greenlick
Randi Wever
Dan Feiner

Prosecuting Attorney

John Hoover (503) 248-3689

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 23 day of January, 1991.

Name: Pat Bradley Montana Magistrates Assn

Address: Helena

Telephone Number: 443-7260

Representing whom?

Montana Magistrates Assn

Appearing on which proposal?

SB 87

Do you: Support? ✓ Amend?____ Oppose?____

Comments:

On behalf of the Courts of Limited Jurisdiction we offer our support of SB 87

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 13 day of JAN., 1991.

Name: HELEN GARRICK

Address: 3710 FASSETT

MISSOULA MT. 59801

Telephone Number: 406-728-9410

Representing whom?

REALTY REGULATION

Appearing on which proposal?

SB 87

Do you: Support? X Amend?_____ Oppose?_____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 23rd day of January, 1991.

Name: Roger Tippy

Address: Tippy & McCue, 1215 11th Ave., P.O. Box 543
Helena, MT 59624

Telephone Number: 442-4448

Representing whom?
Montana Independent Bankers Association

Appearing on which proposal?
Senate Bill 125

Do you: Support? X Amend? ____ Oppose? ____

Comments:

Under the principles announced by the Montana Supreme Court in Story v. City of Bozeman, the scope of lender liability in bad faith actions has been narrowed anyway — hence enactment of this bill would not greatly narrow potential plaintiffs' remedies

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 23rd day of JAN., 1991.

Name: GEORGE T. BENNETT

Address: P.O. BOX 1705 HELENA 59624

Telephone Number: 442-3691

Representing whom?

MONT. BANKERS ASSN

Appearing on which proposal?

SB 125

Do you: Support? X Amend?_____ Oppose?_____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE Jan 23, 1991

COMMITTEE ON Judiciary S.B 87 - SB 125

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Grace Berger	Dept. of Commerce	SB87		
Helen Garrick	Bd Realty Reg.	SB 87		
Michael Sherwood	MTLA	SB125		✓
Tom Hopgood	Mt. Assoc. Realtors	SB87		
Bill LEARY	MT. Bankers Assn	SB 125	✓	
GEORGE T. BENNETT	MONT. BKRS ASSN	SB125	X	
PAT BRADLEY	Mont Magistrates Assn	SB 87	X	
Tom E Schlemmer	Veranda Park Helena MT.	SB 125	X	
Jack Anderson	League of Savings Inst	"	✓	
GENE PHILLIPS	First Interstate Bank of Mt.	"	X	
John Tubbs	DNRC	SB 94		
Dennis Olson	NPRC			✓
Roger Tippy	Mt. Indep. Bankers	SB125	X	