

TO: Members of the Senate Committee on Judiciary

FROM: Douglas McComas
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Bel Aire, KS 67220

DATE: January 20, 2015

RE: Opposition to S.B. 16

My name is Douglas McComas. My wife, Marcia, and I are long-time residents of Wichita, and are active in the community. I am employed as a manufacturing engineer. My wife is an R.N. employed by the KU Medical School as a Nurse Consultant for children with special needs. Please consider this my written testimony in opposition to S.B. 16.

In 2007, I testified in person in the House Committee on Judiciary in opposition to H.B. 2189. That bill was a substantially similar to S.B. 16. It did not pass out of the committee.

I respectfully request that the Committee make no changes to limit the scope of protection afforded to insurance consumers by K.S.A. 40-908. In support of my request, I wish to share with the Committee a personal experience that I believe illustrates the need for K.S.A. 40-908.

My wife and I owned a Jeep Cherokee that we insured through State Farm. One night it was stolen from our driveway. I discovered it was missing when I left for work the following morning. I immediately reported the theft to State Farm, and to the Wichita Police Department. Later the same day, the police found the vehicle on the flood way known as "The Big Ditch". The thieves had "four-wheeled" the vehicle in an abusive manner, apparently colliding with trees or other objects, causing significant dents in the sheet metal. All four tires were flat, and the thieves had attempted, unsuccessfully, to burn the vehicle by starting a fire on the front seat. Although significantly damaged, the only thing that prevented the vehicle from being driven was the four flat tires.

State Farm took possession of our vehicle, and under the pretense of investigating our claim, arranged to have the engine and transmission disassembled into individual component parts. Following the disassembly of the vehicle, and without reassembling it, State Farm returned the now useless vehicle to us and denied our claim. According to State Farm, my wife and I, during the night, had removed the engine, replaced the engine main bearings without replacing the rod bearings in a "repair to run" effort. According to State Farm, we then reassembled the engine, drove it to The Big Ditch, abusively four-wheeled the vehicle along The Big Ditch in an effort to stage a theft to enable us to defraud State Farm. Neither my wife, nor I, have any significant mechanical experience which would allow us to perform the tasks State Farm suggested.

Needless to say, we were outraged. When we explained what State Farm was accusing us of doing to the Pastor of our church and his wife the Pastor's wife, without further consultation with either of us, wrote a moving letter vouching for our good character and objecting to the apparent miscarriage of justice to a State Farm Vice President, to no avail.

I quickly learned it would be difficult to find a lawyer who would take our case on terms we could afford. It became apparent that because of the relative small amount of money involved (approximately \$14,000) it was not economically practical for a lawyer to take the case on a percentage basis. To my wife and I, \$14,000 was not a small amount. We purchased insurance for that reason – because we did not feel we could assume a loss of that size without disrupting our lives.

I eventually contacted Jacob Graybill, a Wichita attorney, who agreed to take our case. He explained there is a statute (K.S.A. 40-908) that provided for us to recover our legal expenses in the event we sued State Farm successfully. He was confident, after investigating our claim, we could successfully prosecute our claim, and consequently, he agreed to advance the expense money necessary to prosecute the lawsuit, and he agreed that if we were not successful, he would not require us to reimburse him for our accrued legal expense. He filed our lawsuit, and after months of legal wrangling which involved a series of videotaped depositions, required my son, my wife, and me to testify by deposition, and required us to spend hours answering discovery requests, State Farm withdrew its contention we had attempted to defraud it, and agreed to a reasonable settlement.

It is my understanding and belief that if K.S.A. 40-908 had not been on the books, we would have been unable to find a lawyer willing to represent us on terms we could afford. We would have been forced to accept a grave injustice without any practical redress.

I urge the committee not to make changes to K.S.A. 40-908 to limit its scope. If any change is made, the statute should be expanded to afford similar protections for all types of insurance.

Respectfully submitted,

/s/ Douglas McComas

Douglas McComas