KADC
KANSAS ASSOCIATION OF DEFENSE COUNSEL

Kansas Defense Journal

Summer 2017

Inside this issue of *Kansas Defense Journal:*

2017 KEY CHANGES IN KANSAS CODE OF CIVIL PROCEDURE

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The author greatly acknowledges the contribution of Jeff Pike, law student at Washburn School of Law

2017 brings another update to the Kansas Code of Civil Procedure effective July 1, 2017. Some may be excited to see what the changes entail and others may just plan on glossing over them, but every Kansas litigator should pay attention to the changes and how they potentially impact them. Here are a few key changes to watch out for.

Changes in Additional Time After Being Served Electronically

It has become a habit for many of us to add three extra days to the time to act after being served electronically or by fax. This is a habit that will need to be broken, however, because changes to K.S.A. 60-206(d) are removing both electronic service and service by fax from the list of kinds of service that allow additional time to act. In short, the "three day rule" will no longer apply to electronic or facsimile service.

Changes in the Scope of Discovery

One of the biggest fights in discovery is what information falls inside the scope of discovery. This year's revisions to K.S.A. 60-226(b)(1) will likely change how we argue this. No longer will we be arguing the "reasonably calculated to

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AN UPDATED REVIEW OF UNINSURED AND UNDERINSURED MOTORIST LAW IN KANSAS

Robert C. Hutchison
Thompson Warner, P.A.

"READ THE POLICY. READ THE POLICY. READ THE POLICY." Twenty-three years ago, Wichita litigator Gerald W. Scott concluded his exhaustive discussion of Uninsured Motorist ("UM") and Underinsured Motorist ("UIM") insurance with this advice for any attorney attempting to tackle a UM or UIM issue. In addition to providing this advice, Scott's article, *Uninsured/Underinsured Motorist Insurance: A Sleeping Giant*, 63 May J. Kan. B.A. 28 (1994), outlined the development of UM and UIM coverage and the applicable law in Kansas from 1956 to 1994, including its transition from optional policy provision to mandatory coverage. While his advice remains as critical and significant today as it was when Scott first penned it, the law and practice surrounding UM/UIM cases have substantially evolved in the intervening decades. This article will update Scott's analysis as well as discuss a recent plaintiffs' trend in filing UM and UIM suits.

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The *Kansas Defense Journal* is a quarterly publication of the Kansas Association of Defense Counsel. If you have any questions, comments, or ideas for future articles, please contact:
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PRESIDENT'S MESSAGE

Sarah E. Warner
Thompson Warner, P.A.

In June, the Kansas Legislature closed one of the longest legislative sessions in recent history, wrestling with the budget shortfall and a new school finance formula. This was the first session in years that did not involve serious efforts to change the structure of our judiciary—either on the front end through judicial selection or the opposite with the tweaks to the retirement age or judicial retention opposition. This was a breath of fresh air, due in no small part to the efforts of KADC and its members, especially KADC past-president Jim Robinson.

Why did we at KADC engage in this discussion? Because in addition to working to improve the skills of business and defense attorneys and elevating the standards of trial practice, we understand that our ability to represent our clients and practice our profession is inextricably tied to having a fair and impartial forum where disputes can be resolved. Our clients depend on it. We depend on it.

Yet while we have been so focused on responding to proposals involving the structure of the Kansas judiciary and keeping the courtroom doors open through a minimum level of funding, another issue has emerged—an issue with enormous empirical gravity.

Our members and our clients appreciate the critical need for Kansas judges and judicial personnel who are not only devoted public servants, but are also at the top of their respective fields. We depend on the employees in the clerks' offices throughout Kansas to understand the judicial process and to efficiently shepherd cases to their resolution. We rely on our system's court reporters to make a meticulous record of all court proceedings. We want our most intelligent and evenhanded attorneys to become our judges and judicial clerks, so they can understand the nuanced and often complex legal arguments we present, impartially consider the facts, and fairly decide each case.

If we value these aspects of our justice system, it only makes sense that we pay our judicial employees at a rate commensurate with that value. But Kansas' compensation for some judicial employees ranks 50th in the nation. How can we expect to attract and retain intelligent and qualified people to these positions when several court employee salaries fall below the federal poverty level for a family of four? Can we be surprised when experienced personnel leave the courts for significantly higher salaries in the private sector, and when important positions remain vacant because no one can afford to take up the mantle of public service? Our current system does not reflect the value Kansans place on justice. We must do better.

This past legislative session, the Kansas Judicial Branch sought funding that would bring Kansas judicial employees' salaries within range of the national average, instead of serving as the national caboose. In this session, where so many budgetary puzzle pieces hung in the balance, those efforts were stalled (though state employees received a 2.5% increase across the board). KADC members know we cannot let these efforts go by the wayside. We will continue to advocate and lay out the business case for the need for compensation that will attract and retain top personnel in these crucial roles.

In the meantime, though, next time you're at the courthouse, let the public servants there know we appreciate the crucial role they play in our system of justice. And say thank you. Shake their hands. After all, we know how much we rely on them and their service—it's the least we can do.▲

DRI Seminars

September 6, 2017
Alternative Legal Service Providers: Understanding the Growth and Benefits of New Legal Providers
This webinar is complimentary for all to attend

September 7, 2017
Cybersecurity and Data Privacy
Chicago, IL

September 14, 2017
Strictly Automotive
Troy, MI

September 14, 2017
Nursing Home ALF/Litigation
Atlanta, GA

September 14, 2017
Managing Partners and Law Firm Leaders Conference
Chicago, IL

September 19, 2017
Cybersecurity and Regulatory Issues for Drugs and Medical Devices
Webinar

September 28, 2017
Business and Development Marketing Series: Creating an Online Presence and Using Social Media to Enhance Business Development Activity
Webinar

October 4-8, 2017
2017 Annual Meeting
Chicago, IL

October 18, 2017
Deposition Institute
Chicago, IL

November 2, 2017
Northeast Regional Claims Conference
Hartford, CT

Visit www.DRI.org for additional information

DRI REPORT: GET YOUR DRI ON!

Are you making the most of your KADC membership? What about DRI? Most of us in KADC are members of both organizations, but certainly not all. In recent years many firms have tightened down and only pay for one association membership. That is short-sighted, but so is not expecting if not requiring that members be active enough to make each association a worthwhile investment. Even if your firm or office is one with such a policy, it is worth it to pay for both KADC and DRI yourself, as the payoff, both tangible and intangible, makes them great investments. Otherwise, contact me and I will be happy to try and convince your firm leadership of the value proposition of supporting not just membership, but *active* membership.

But beyond the few hundred dollars in membership dues, representing a few hours of billable time, the real investment is your effort toward making connections with the organization's other members, across this state for KADC and across the nation for DRI. Most of us go to the KADC annual meeting in December. That's a great way to make and keep relationships, and it fulfills all your CLE requirements. So is keeping in touch with this Journal, our legislative updates and other resources on our website.

But also consider the DRI Annual Meeting, about which you can find information here. Chicago is a great and relatively inexpensive venue to reach from Kansas. The Annual Meeting will expose you to everything else DRI has to offer, including substantive committees that fit your practice, so you can better target your investment efforts. Your KADC leadership also attends the DRI Annual Meeting, and you can connect with them and other leaders in the Mid-region of state organizations, which also operates as a separate unit.

Michael G. Jones
Martin, Pringle, Oliver, Wallace & Bauer, LLP

Check out the brochure and see the line-up of exciting blockbuster speakers and networking events that you won't want to miss. Follow @DRICommunity on Twitter for exciting announcements, additional event information, and program details. Register and book your room today.

So get involved. Get your DRI on and enjoy not only the financial payoff the investment provides but the professional and personal rewards that come with it. If you need any further convincing or have any questions, please email me at mgjones@martinpringle.com or call me at 316-265-9311.▲

EXECUTIVE DIRECTOR'S REPORT

Greetings from KADC headquarters! I hope you all had a safe Fourth of July holiday with family and friends!

The most exciting news from HQ is definitely the ongoing planning of the 2017 Annual Conference. Your planning committee is hard at work and the agenda is going to be fantastic! There will, once again, be an amazing slate of speakers and topics. Couple that with the networking opportunities, the great services to learn about from our vendors, and the best bang-for-the-buck CLE value in Kansas, and it's a can't miss opportunity. I hope you'll mark your calendars and plan to register and attend!

Your KADC President, Sarah Warner, has also continued our efforts to create more and more focus groups to ensure we are providing the best possible value and service to our members. This also means there are more and more ways to get involved in KADC and benefit from your membership. Here are just a handful of the opportunities available:

- Amicus committee
- Young lawyers committee
- Government affairs committee
- Annual Conference planning
- Trial skill workshop

If you'd like to be involved in these areas, or any others, please contact myself or any of your KADC board members at any time to let us know. The networking that takes place as part of these initiatives in and of itself will provide more than enough value for the time you would commit.

Scott Heidner
KADC
Executive Director

Finally, I'd be remiss if I didn't put in a plug to reach out to your legislators while they are not in session. It's the best time to build relationships and political capital. You don't need to advocate for any specific KADC issues, just introduce yourself, let them know what you do, and tell them you'd love to be a resource to them on legislation. This will make you infinitely more effective as a grassroots advocate when the time comes.

Enjoy your summer, and don't forget to mark your calendars for December 1-2 and attend the Annual Conference!▲

KADC *AMICUS* COMMITTEE UPDATE

The KADC *Amicus* Committee welcomes Eric Turner (Foulston Siefkin, LLP) as co-chair of the committee. Eric brings substantial appellate expertise to the committee, having clerked for Judge Steve Leben on the Kansas Court of Appeals and Judge Nancy Moritz on the Tenth Circuit Court of Appeals.

Please consider requesting an *amicus curiae* brief from KADC if you have an appellate issue which affects the defense bar as a whole. Please submit your request in sufficient time for the Committee to evaluate it and for a brief-writer to do the issue justice. We recommend identifying potential KADC participation as soon as the issues on appeal are outlined.

The Kansas appellate courts have received KADC briefs favorably in many cases, and we would like to continue that tradition. You can find the *amicus* policy and request form on the KADC website.▲

Eric Turner
Foulston Siefkin LLP

Anne Kindling
Stormont-Vail HealthCare, Inc.

YOUNG LAWYER COMMITTEE ANNOUNCES LEADERSHIP

Over the last few years, KADC has been working towards establishing a more formalized Young Lawyer Committee ("YLC"), which includes all KADC members with five years of practice or of age 35 or below, whichever is greater. Through this re-vamping process, the YLC is committed to planning new opportunities for its members and addressing areas of importance to members. To support the new iteration of the YLC, the YLC has established a leadership board. The YLC is excited to announce that the following KADC members have been selected to serve on the first YLC Board:

Samantha Woods, President

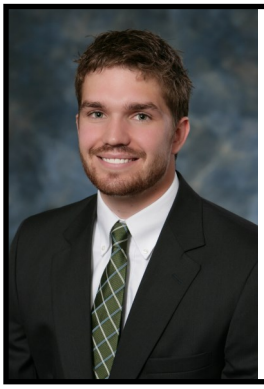
Samantha practices at Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., in Wichita. Her practice includes general civil and commercial defense, medical malpractice defense, and personal injury defense. She has been a KADC and YLC member since 2013. She has also been a member of the Annual Meeting Planning Committee since 2014. Samantha is also very involved with the Wichita Bar Association and serves as co-chair of the WBA membership committee and secretary of the Wichita Women Attorneys Association.

Lisa Brown, Vice-President

Lisa practices at Goodell Stratton Edmonds & Palmer, L.L.P., in Topeka. She mainly practices in the areas of insurance defense and healthcare compliance but also does some collections and bankruptcy work. Lisa has been a member of KADC since 2015 and a member of the YLC since 2017. Lisa has served on the Legislative Committee for KADC since 2016 and received the Horizon Award for her work at the 2016 Annual Meeting. In addition to her work with the KADC, Lisa is President of the Topeka Bar Association Young Lawyer's Division, Law Day Chair for the Topeka Bar Association, and an Executive Committee member of the Sam A. Crow Inn of Court in Topeka.

Ann Parkins, Secretary & Treasurer

Ann practices as Wise & Reber, L.C., in McPherson. Her main areas of emphasis are general civil litigation defense and family law. She has been a member of KADC and the YLC since 2014. Ann serves on the Annual Meeting Planning Committee.



Jake Peterson, At-Large Representative

Jake practices with Clark, Mize & Linville, Chartered, in Salina. Jake concentrates his practice in the areas of litigation and healthcare law. His litigation work includes medical malpractice defense, general insurance defense, and criminal prosecution as a special prosecutor for the City of Salina. He graduated from Washington University in St. Louis Law School and earned his undergraduate degree in physics from Washburn University. Jake originally hails from Lindsborg, a small community in central Kansas. Jake and his wife, Leah, have a son, August, and a daughter, Vivienne.

The YLC is currently working on various young lawyer events, including events associated with the Annual Meeting, the Trial Skills workshop, and a community service project. In addition, the YLC will hold a business meeting at the Annual Meeting to discuss the goals of the committee and to elect new leadership. If you would like to become more involved with the YLC, please contact Samantha Woods at smwoods@martinpringle.com.▲

KERRY MCQUEEN RECEIVES WASHBURN HONORARY DOCTOR OF LAW

Kerry E. McQueen, KADC member since 1997 and 2010 KAHRS Lifetime Achievement Award recipient, received the 2017 Washburn University School of Law Honorary Doctor of Law.

Mr. McQueen was one of four honorary doctorate recipients honored at the Washburn University spring 2017 commencement ceremony May 13, 2017. The honorary degree is the highest academic recognition Washburn University can bestow. These recipients have demonstrated high standards of excellence in their life and work as evidenced by scholarship, public service, and in commitment to the development of Washburn University.

McQueen was born in Kirwin, Kansas. He received a bachelor of science in business from Fort Hays State University in 1961, and earned his juris doctor from Washburn University School of Law in 1965. McQueen is an accomplished civil litigator and stockholder and president of Sharp McQueen, P.A., with offices in Liberal and Overland Park, Kansas. He was admitted to the Kansas and U.S. District Court, District of Kansas in 1965; the U.S. Court of Appeals, 10th Circuit in 1969 and the U.S. District Court Northern District of Oklahoma in 1976. McQueen has devoted the majority of his practice to civil litigation, antitrust, collective bargaining agreement arbitration, education, health, and workers' compensation law and has served as the firm's managing stockholder since 1991. He is a Fellow of the American College of Trial Lawyers, where he served on the State Committee from 1993-98, and an Associate of the American Board of Trial Advocates, where he served as president of the Kansas Chapter from 1985-86. McQueen is past chairman of the Kansas Board of Examiners of Court Reporters served from 1998 to 2013 and was elected to the Kansas Supreme Court Nominating Commission from 2006-14. He is a member and past board member of the Kansas Association of Defense Counsel. He is a member and past president of the Seward-Haskell County Bar Association. McQueen is a member of the Kansas Bar Association and served as past secretary and past member of the Board of Governors. McQueen is a member of the Southwest Kansas Bar Association, the American Bar Association, the Kansas Bar Foundation, the Association of Defense Trial Attorneys, the Kansas Association of Hospital Attorneys, the American Academy of Hospital Attorneys, and a past member of the Defense Research Institute, Inc. McQueen is listed in Best Lawyers of America and the Missouri and Kansas Super Lawyers Top 100.

Congratulations to Kerry McQueen!▲

SAVE THE DATE FOR THE 2017 KADC ANNUAL MEETING

December 1-2, 2017
Marriott Country Club Plaza
4445 Main Street
Kansas City, MO 64111

Interested in being a Sponsor/Vendor? Contact Alison Connell at alison@kadc.org or 785.232.9091

2017 Changes in the Kansas Code of Civil Procedure
(Continued from page 1)

lead to the discovery of admissible evidence" standard, as this has been changed. Kansas is switching to a balancing test that examines proportionality.

Parties may still obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, and information still need not be admissible in evidence to be discoverable. However, the new language adds proportionality to the mix combining it with relevancy as the two driving forces in determining scope of discovery. The new language instructs courts to measure proportionality and relevancy by "considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues and whether the burden of expense of the proposed discovery outweighs its likely benefit." This language theoretically will give courts more ability to limit discovery, but will it have any impact other than changing the buzzwords lawyers use when arguing discovery?

As this year's changes mirror 2015 amendments to the Federal Rules of Civil Procedure, guidance can be found by looking at the official comments to the Federal Rules and federal case law. According to comments to the 2015 amendments to the Federal Rules, the main purpose of the change in language was to give courts a tool to limit discovery when necessary. As the "reasonably calculated to lead to the discovery of admissible evidence phrase…was often misused…and had the potential to swallow any other limitation."[1]

The United States District Court for the District of Kansas also provides some direction, as it has recently commented on the issue. The court has indicated that proportionality is not a new concept to the federal rules and "relevance is still to be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any party's claim or defense."[2] The court has also determined that proportionality does not impact the burden of both parties, in that if the discovery appears relevant, the burden is on the party resisting discovery, and if appears irrelevant, the burden is on the party seeking discovery.[3] It remains to be seen how Kansas courts will interpret the new language, but make sure you are using the right phrasing when arguing scope of discovery!

Changes in Sanctions to Preserve Electronically Stored Information

Changes have been made to K.S.A 60-237(e), which is applicable when a party fails to preserve electronically stored information. Parties must take "reasonable steps" to preserve ESI in anticipation or conduct of litigation. "Reasonable steps" encompasses the previous good-faith standard, which is now just a factor in determining if a party took reasonable steps to preserve ESI.[4]

Once again, federal courts provide some guidance, this time in interpreting what "reasonable steps" means. The United States District Court for the District of Kansas has agreed with commentary to the 2015 Federal Rules amendments in that "reasonable steps to preserve suffice; it does not call for perfection."[5] The court also mentions the sophistication of the parties is taken into account in determining "reasonable steps."[6]

The new statute also sets up two levels of possible punishment for failing to preserve ESI. First, courts may now order whatever measures necessary to cure the prejudice other parties experienced as a result of lost ESI that cannot be restored or replaced. Second, upon finding that a party acted with the *intent* to deprive another party of the information's use in the litigation the court now may presume that the lost information was unfavorable to the party, instruct the jury that it may, or must, presume the information was unfavorable to the party, or dismiss the action or enter a default judgement.

While these are some key changes to look out for, they are not all of the changes so be sure to read the new statute so you are not caught off guard!▲

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1. *See* FED. R. CIV. P. 26(b)(1) advisory committee's note to 2015 amendment.
2. *Rowan v. Sunflower Elec. Power Corp.*, 15-cv-9227-JWL-TJJ, 2016 U.S. Dist. LEXIS 91108, at *5-6 (D. Kan. July 13, 2016).
3. *hibu Inc. v. Peck*, 16-cv-1055-JTM-TJJ, 2016 U.S. Dist. LEXIS 121770, at *4-5 (D. Kan. Sept. 8, 2016).
4. *Marten Transp., Ltd. v. Plattform Adver., Inc*., 14-cv-02464-JWL-TJJ, 2016 U.S. Dist. LEXIS 15098, at *12 (D. Kan. Feb. 8, 2016)
5. *Id.*
6. *Id.*

An Updated Review of Uninsured and Underinsured Motorist Law in Kansas (Continued from page 1)

Breadth of Statute

UM coverage, a combination of contract rights grounded in an insurance policy and tort claims that trigger those rights, has been an option available to Kansas drivers since 1956 and has been a mandatory offering in some form since 1968, with the passage of K.S.A. 40-284. Subsequent revisions to the statute have added UIM coverage and established the coverage exclusions that insurance carriers may include in UM/UIM policy provisions. When determining the breadth of the coverage and benefits available to an insured, first, as Scott admonishes us, READ THE POLICY, and then establish the extent to which the policy conforms to K.S.A. 40-284.

Under K.S.A. 40-284(a), the mandatory UM offering applies to every automobile liability insurance policy "delivered or issued for delivery" in Kansas. This limitation means that courts will not automatically read UM/UIM coverage into out-of-state policies that do not include UM/UIM coverage, in contrast to the imputation of mandatory liability limits under K.S.A. 40-3106 to out-of-state policies written by insurance companies doing business in Kansas. In addition, K.S.A. 40-284 does not require UM coverage to be offered or included "in connection with any excess policy, umbrella policy or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation or use of a specifically insured motor vehicle." K.S.A. 40-284(a). Insurance carriers are not forbidden from offering UM coverage as part of these policies, however.

An automobile liability insurance policy must include a provision for UM coverage with limits equal to the bodily injury ("BI") liability limits on the policy. Kansas currently requires drivers to carry $25,000 per person/$50,000 per occurrence BI limits, and this will always be the minimum amount of UM coverage available on a Kansas policy. Kansas drivers can elect higher BI limits, of course, and the UM coverage limits will match that higher election unless the insured explicitly rejects in writing any coverage above the statutory minimum limits. K.S.A. 40-284(c). Any such written rejection by an insured is effective for all insured parties under the policy, and carriers are not required to provide UM/UIM coverage on future policies issued by the same insurer for vehicles owned by the named insured, including supplemental, renewal, reinstatement, transferred, and substitute policies. K.S.A. 40-284(c).

The Kansas Court of Appeals addressed such a rejection in *Phillips v. St. Paul Fire & Marine Ins. Co.,* 39 Kan. App. 2d 758, 758-59, 763-54 (2008)*, aff'd*, 289 Kan. 521 (2009). In *Phillips,* the Kansas Court of Appeals concluded that K.S.A. 40-284(c) permitted an insurance carrier to rely on a letter limiting UM coverage for an insured for a 2003 policy, even though the written rejection of higher limits had been completed by the insured for policies dating from 1996 to 1999, and there was a multi-year gap between these policies and the policy in question wherein the insured was covered by a different carrier *Id.* An insured can rescind this rejection by requesting higher UM limits in writing. K.S.A. 40-284(c).

Initially, only UM coverage was mandatory, leaving as optional coverage for instances where an insured tortfeasor's policy had inadequate liability limits to provide for all of a party's injuries. K.S.A. 40-284(b) now requires any UM coverage provision to include UIM coverage for "damages for bodily injury or death to which the insured is legally entitled from the owner or operator of another motor vehicle with coverage limits equal to the limits of liability provided by such uninsured motorist coverage to the extent such coverage exceeds the limits of the bodily injury coverage carried by the owner or operator of the other motor vehicle." In short, UIM coverage on a policy will

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An Updated Review of Uninsured and Underinsured Motorist Law in Kansas (Continued from page 8)

provide coverage limits for bodily injury up to the policy's UM limits, less the tortfeasor's BI limits. If the tortfeasor's BI single person limit of liability coverage equals the per occurrence limit of the available UIM coverage, there is no UIM coverage available, regardless of whether the insured's damages exceed the BI limits of the tortfeasor, and such circumstances do not transform the claim from one sounding in UIM to one under the UM provision. *Richert v. McHone*, 35 Kan. App. 2d 417, 424 (2006) ("We cannot accept that a reasonable insured would believe that an underinsured claim somehow transforms into an uninsured claim simply because the insured chose inadequate UIM limits on his own policy.").

Additionally, the limits of multiple tortfeasors are not combined to determine whether UIM applies. Instead, the highest limit of a single tortfeasor is used for the determination. *See Sellens v. Farmers Insurance, Co., Inc.*, 2016 WL 6139725 (Kan. Ct. App. Oct. 21, 2016) (unpublished). In *Sellens*, the plaintiff advanced a peculiar and ultimately unsuccessful argument to get around this rule. The plaintiff in *Sellens* was injured when the tortfeasor pulled his truck in front of Sellens' motorcycle, and Sellens ultimately collected $100,000 from the policy covering the business owner of the truck and $250,000 from the driver's liability policy. *Id.* at *1. Sellens then sought to recover $150,000 from his UIM carrier (plus $60,000 in attorney's fees under K.S.A. 40-908), contending that he was entitled to the difference between his UIM policy limits and the liability limits of the truck owner's policy because the business entity was the operator of the at-fault vehicle, and, as such, only that entity's policy limits should be considered. *Id.* at *2-3.

Fortunately, the Court of Appeals rejected this argument, applying the clear statutory language of K.S.A. 40-284(d) in holding that UIM coverage was limited to the difference between the UIM limits and the highest limits of "any single applicable policy." *Id.* at *6. Of note, when an insured is the recipient of a prorated settlement from an underinsured tortfeasor's liability carrier, the amount of UIM benefits available is the difference between the UM policy limits and the insured's prorated share, not the per person limits of the tortfeasor's policy. *O'Donoghue v. Farm Bureau Mut. Ins. Co., Inc.*, 275 Kan. 430, 439-41 (2003).

A UIM provision does not provide broad, indiscriminate protection for anyone who is injured by someone with inadequate insurance to pay all damages, but, rather, it provides coverage for anyone: (1) injured by a tortfeasor with insufficient liability coverage to pay for all of the party's injuries; and (2) in possession of a policy with UM/UIM coverage limits that are higher than the tortfeasor's BI limits. In other words, UIM will only provide you with coverage when the tortfeasor is underinsured compared to you, not underinsured in terms of any public policy determinations. This means that any insured who only carries the state minimum coverage for UM will not receive any benefit from a UIM policy provision unless struck by an out-of-state vehicle with lower BI limits on a policy issued by a company that is not registered to do business in Kansas. Twelve states have mandatory BI limits lower than Kansas, including nearby Iowa, so such a situation is not impossible, but unlikely.

Under K.S.A. 40-284(d), the Kansas legislature limited UM coverage to the "highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved in the accident." In other states, consumers can elect to purchase stacked UM/UIM insurance, where UM/UIM coverage for multiple vehicles on the same policies and even multiple policies

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An Updated Review of Uninsured and Underinsured Motorist Law in Kansas (Continued from page 9)

can be combined, or stacked, to create higher per person and per occurrence limits for UM/UIM coverage. Some initially interpreted K.S.A. 40-284(d) to permit carriers to offer stacked coverage while not requiring it, despite its statement that coverage for UM/UIM "shall be limited" as noted above. K.S.A. 40-284(d). The Kansas Supreme Court has since held that K.S.A. 40-284(d) plainly prohibits stacking UM coverage on automobile liability policies, reading such a prohibition into applicable policies. *Eidmiller v. State Farm Mut. Auto Ins. Co.*, 261 Kan. 711, 724 (1997). An insurer does not have to include anti-stacking language in its policy, as this prohibition is included in the statutory limitations on UM coverage. *Brown v. Farmers Ins. Co., Inc.*, 31 Kan. App. 2d 419, 423 (2003) (citing *Eidmiller*, 261 Kan. at 721-24).

Statutorily Permitted Coverage Exclusions

K.S.A. 40-284(e) lists six coverage exclusions that insurance carriers are permitted to include in UM/UIM coverage provisions. These six exclusions, discussed below, are the only permitted limitations and exclusions that a carrier can include in a UM/UIM provision, and a court will treat any other limitations and exclusions as void. *Brown v. USAA Casualty Ins. Co.*, 17 Kan. App. 2d 547, 549 (1992). Other limitations that impact the policy as a whole and are not limited to UM/UIM benefits can still be enforceable, however. As an example, an insured in one case argued that a provision limiting policy coverage to occurrences in the United States and Canada could not exclude UM coverage for a loss that took place in Mexico, as geographical limitations are not listed under K.S.A. 40-284(e). *Degollado v. Gallegos*, 260 Kan. 169, 173-74 (1996). The Court reasoned that, read together, K.S.A. 40-284 and K.S.A. 40-3107 required coverage in the United States and Canada but not worldwide, such that a territorial limitation that did not infringe on the required scope of coverage in a policy was not an exclusion barred by K.S.A. 40-284(e). *Degollado* at 173-74. The exclusions discussed below, which are listed in K.S.A. 40-284(e), permit, but do not mandate, the exclusion of coverage for damages that an insured would otherwise be entitled to under the policy.

K.S.A. 40-284(e)(1) - Insured Occupying or Struck by an Uninsured Auto Owned or Provided for the Insured's Regular Use

This exclusion has seen little judicial analysis, but it creates an important investigatory focus early in the life of a claim or in the handling of a suit against an insurer. In *Davis v. Allstate Ins. Co.*, 36 Kan. App. 2d 717 (2006). The Kansas Court of Appeals held that a motorcycle that an insured rode with her husband two to three times a month was "provided for [her] regular use" so as to fall within the ambit of the exclusion. 36 Kan. App. 2d 717 (2006). By necessary implication, the Court of Appeals held that "use" is not limited to operation of an auto but also to occupation of the vehicle as a passenger, as there was no evidence that the insured drove the motorcycle herself. *Id.* at 720-21 (citing *Ball v. Midwestern Ins. Co.*, 250 Kan. 738 (1992)).

Davis is a curious case for defense counsel. First, the motorcycle at issue in the case was not uninsured. The husband of the insured had a policy on the motorcycle through a different company, and that policy had BI limits $75,000 lower than the UM/UIM coverage on the Allstate automobile policy. As such, this was actually a UIM claim, not a UM claim. This distinction is important because K.S.A. 40-284(e)(1) permits insurers to exclude coverage when an insured is "occupying or struck by an uninsured automobile." The statute does not explicitly state that the exclusion applies when an insured is occupying or struck by an underinsured automobile, and an earlier case wherein this point was raised relied on the broad definition of "uninsured motor vehicle" in the policy that included underinsured vehicles to dispel concerns about the breadth of the statute. *Farmers Ins. Co., Inc. v. Gilbert*, 247 Kan. 589, 591 (1990). When handling a UIM case where this exclusion may apply, closely examine the definition of uninsured vehicle in the policy to see if it includes underinsured vehicles. If it does, then it could allow for application of this exclusion. If it does not, then the vehicle in question might not be considered an "uninsured automobile" under the terms of K.S.A. 40-284(e)(1).

K.S.A. 40-284(e)(2) - The Uninsured Automobile is Owned by A Self-Insurer or any Governmental Entity

Self-insured entities are expected to have the financial means to respond to a claim for damages for which it is liable, including instances where agents of the entities cause injuries with otherwise uninsured vehicles. In his 1994 article, Scott identified a potential problem for this exclusion when someone uses an uninsured automobile owned by a self-insurer or governmental entity beyond the scope of his authority, resulting in a denial of liability. Scott anticipated that courts would disallow operation of the exclusion in such cases, but

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this hypothesis has not yet been tested in Kansas.

A Michigan court has dealt with a similar circumstance, however, when a truck stolen from a self-insured entity struck another vehicle, resulting in fatal injuries to a passenger in the car. *Thompson v. Citizens Ins. Co. of America*, No. 208272, 1999 WL 33441277 (Ct. App. Mich. June 11, 1999) (unpublished). Due to the theft of the truck, the self-insurance certificate for the truck did not cover the accident, and the representative of the deceased passenger argued that the vehicle should be deemed "uninsured" such that UM coverage would apply. The Court of Appeals of Michigan acted contrary to Scott's prediction for Kansas courts, however, by holding that the vehicle was self-insured regardless of whether the certificate provided coverage for the loss and the coverage exclusion still applied. A significant difference between this case and any possible case in Kansas, however, is that UM/UIM is mandatory in Kansas, whereas it is optional in Michigan. Policy definitions drove the Michigan Court of Appeals' decision, whereas statutory interpretation and legislative intent could certainly lead to a different result in a Kansas court.

K.S.A. 40-284(e)(3) - There is No Evidence of Physical Contact With the Uninsured Motor Vehicle and no Evidence From a Disinterested Witness Not Making Claim Under the Policy to Prove the Facts of the Accident

While obvious, it is worth pointing out that this exclusion is specifically designed to prevent fraudulent phantom driver claims. *See Cannon v. Farmers Ins. Co., Inc.*, 50 P.3d 48, 274 Kan. 166, 176 (2002). In *Cannon*, the Supreme Court identified two factors for courts to evaluate on a fact-intensive case-by-case basis when determining whether a witness is "disinterested" under K.S.A. 40-284(e)(3): (1) the relationship of the parties; and (2) the nature of the witness's pecuniary interest, if any, in the outcome of the case. *Id*. at 178. The Court held that a mere driver-passenger relationship is not sufficiently suspicious to disqualify the passenger-witness as a disinterested party. *Id*. at 178. The Court also advised that court should make this determination at the time the witness is to provide testimony, such that a witness who has already settled a claim against a UM/UIM carrier could be a disinterested witness despite having made a claim against the policy. *Id*. at 179.

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Application of K.S.A. 40-284(e)(3) is not defeated by an admission at trial by the insurer's attorney of the existence of an unidentified driver, as the full conduct of, and the threat posed by, such a driver is a central issue of such a trial, not the mere presence of another driver or vehicle. *Russell v. Farmers Ins. Co., Inc.*, 38 Kan. App. 2d 290, 293-95 (2007). The *Russell* holding permits defense counsel to admit that a phantom vehicle existed and challenge the significance of any conduct on that driver's part without conceding the application of the coverage exclusion. Such an opportunity is particularly significant in cases where the insured's reaction establishes grounds for comparative negligence or outright fault, but establishing such a defense requires the presence of another vehicle.

K.S.A. 40-284(e)(4) - To the Extent That Worker's Comp Benefits Apply

In *Bussman v. Safeco Ins. Co. of America*, 298 Kan. 700, 714-17 (2014), the Kansas Supreme Court held that insurance carriers may exclude UM/UIM coverage for any medical expenses for which the insured is entitled to payment under workers compensation. The Court specifically stated that this limitation in coverage pertains to the payments for which an insured is entitled, not merely those that have already been paid, collected, or awarded. *Id*. at 717. This decision seemingly carried a different result than another decision from 12 years earlier, *Tyler v. Employers Mut. Cas. Co.*, 274 Kan. 227 (2002). In *Tyler*, the Court construed K.S.A. 40-284(e)(4) to only permit exclusion of UM payments for workers compensation benefits that were actually awarded. *Id*. at 238.

While the *Bussman* Court relied on the fact that the insured party in *Tyler* was not entitled to certain future medical payments for which the UM carrier denied coverage, this distinction ignores the *Tyler* Court's repeated holding that the only method by which to reify the legislature's intent to permit exclusion of duplicative payments was to restrict the workers compensation benefits exclusion to awarded damages. *Bussman* broadens the exclusion by focusing on entitlement rather than the actual workers compensation award. This may be an academic distinction in most cases, where the administrative awards account for future medical payments and fully encompass the scope of the party's entitled payments, but it does signal a slightly less restrictive reading of the permitted exclusions.

K.S.A. 40-284(e)(5) - Suit is Filed Against the Uninsured Motorist Without Notice to the Insurance Carrier

Discussed more fully below, someone looking to file suit in order to collect UM/UIM damages has three options. She can sue the uninsured tortfeasor alone, the UM carrier alone, or file separate actions against each. Under the second and third option, the UM carrier becomes aware of the suit as soon as it is served and will be in a position to defend against the claim. In the first circumstance, however, the UM carrier is not necessarily made aware of the suit or given an opportunity to intervene to present a defense. This permitted exclusion prevents an insured from slipping suits by the carrier until judgment is issued and the company is bound by the findings of facts and damages in that judgment. As noted at the end of this analysis, however, the accuracy of the insured's notice is critical to informing an insurer's decision as to whether to intervene in a suit filed just against the uninsured or underinsured tortfeasor.

While Scott opined that a court would permit a plaintiff to cure a failure to notify the carrier by dismissing the suit without prejudice, providing notice, and then refiling the suit, no Kansas court has yet addressed this question. In other states, similar notice requirements have been applied to prevent claims, as long as the insurer establishes prejudice as a result of the lack of notice. *See Rekemeyer v. State Famr Mut. Auto Ins. Co.*, 828 N.E.2d 970, 796 N.Y.S.2d 13, 17-18 (Ct. App. N.Y. 2005); *see also Clementi v. Nationwide Mutual Fire Ins. Co.*, 16 P.3d 223, 230, 232 (Col. 2001) (en banc). In North Carolina and Alabama, an insurance company that is not served with a copy of a complaint and summons is not bound by the resultant judgment. See *Travelers Home and Marine Ins. Co. v. Gray*, 171 So.3d 3, 10 (Ala. 2014); see *also Kahihu v. Crunson*, 234 N.C. App. 142, 147 (2014).

K.S.A. 40-284(e)(6) – To the extent that Personal Injury Protection (PIP) Benefits Apply

Judicial treatment of this exclusion generally mirrors that applied to K.S.A. 40-284(e)(4), as both exclusions are intended to allow insurers to avoid making duplicative payments. Notably, however, the concern for duplicative payments is not limited to an insured collecting payments in excess of the amount required for indemnification, but also about the insurance company itself, the PIP carrier for the insured, paying twice for the same damages. *See, e.g., Rich v. Farm Bureau Mut. Ins. Co.*, 250 Kan. 209, 211-16 (1992). The *Rich* opinion, therefore, gave greater weight to

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avoiding duplicative payments rather than entitlement, which has come to anchor the analysis of the workers compensation setoff.

Preservation of Subrogation Rights

An insured who settles with an underinsured tortfeasor's liability carrier can imperil his own insurer's subrogation rights for any future UIM payment. K.S.A. 40-284(f) requires an insured to provide his UIM carrier with 60 days' notice of a tentative policy limits settlement agreement with the underinsured motorist. During these 60 days, the UIM carrier may investigate the loss and decide to substitute its own payment, for which it may subrogate the underinsured motorist's liability carrier to the extent of that policy's liability limits. Failure to substitute payment within the 60 days eliminates the carrier's subrogation rights "for any amount paid under the underinsured motorist coverage." K.S.A. 40-284(f). In *Dalke v. Allstate Ins. Co.*, 23 App. 2d 742, 744 (1997), the insured failed to provide settlement notice, and the Kansas Court of Appeals noted that the statute does not explicitly state the consequences of such a failure. The Court of Appeals decided that an insured's failure to provide such notice resulted in the insured having "forfeited her right of recovery . . . under the underinsured motorist provisions of her policy." *Id.* at 749. The court justifies this harsh result, in part, on the permitted coverage exclusion for failure to provide notice of suit in K.S.A. 40-284(e)(5). *Id*. at 749-50.

No Kansas court has overturned this holding, and the Tenth Circuit has not only applied it in favor of an insurer's denial of coverage in the wake of the insured's failure to provide K.S.A. 40-284(f) notice, but also expanded upon in by holding that notice of litigation under K.S.A. 40-284(e)(5) did not satisfy the K.S.A. 40-284(f) notice requirement. *Owens v. Continental Ins. Co.*, 216 F.3d 1088, *3-5 (10th Cir. May 30, 2000) (unpublished). Some states require the insurer to show prejudice from the insured's failure to provide settlement notice or to procure consent to settlement, whereas others follow Kansas' brightline approach. *See, e.g., Woznicki v. GEICO General Ins. Co.*, 443 Md. 93, 145 (2015) (holding that insurers were not required to demonstrate prejudice resulting an insured's failure to provide notice of settlement); *see also Ferrando v. Auto-Owners Mut. Ins. Co.*, 98 Ohio St. 3d 186, 197 (2002) (holding that the insurance carrier demonstrated adequate prejudice to justify denying coverage for failure to obtain consent to settlement).

Filing Suit: Three Paths

As briefly mentioned above, a UM/UIM claimant has three options for recovery by suit: (1) sue the UM/UIM carrier directly and solely; (2) file separate suits against both the tortfeasor and the UM/UIM carrier; or (3) sue the tortfeasor alone and provide adequate notice of the suit to the UM/UIM carrier to give it a chance to intervene. The plaintiff's selection of who to pursue may depend, in part, on the operative statute of limitations. The plaintiff's claims against the tortfeasor sound in tort, triggering a two-year statute of limitations, whereas a claim for UM/UIM coverage is rooted in contract law and enjoys a longer five-year limitations period. *Farm Bureau Mut Ins. Co. v. Progressive Direct Ins. Co.*, 40 Kan. App. 2d 123, 130-31 (2008); *Brown*, 17 Kan. App. 2d at 550. If an insured fails to bring suit against the tortfeasor within the two-year period, she is not barred from filing an action against the UM/UIM carrier, even though the insured's conduct eliminated the carrier's ability to seek subrogation for any eventual UM/UIM payout.

Plaintiffs are tasked with presenting somewhat different cases, depending on whether UM or UIM coverage is at stake. To recover in a UM suit, the insured must: (1) Demonstrate fault on the part of the owner or driver that resulted in damages; (2) Prove the extent of the claimed damages; and (3) Prove that the driver and

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owner are uninsured. In a UIM suit, the plaintiff must demonstrate fault on the part of the owner or driver that resulted in damages and prove the extent of the damages regardless of whether the UIM carrier intervenes in a suit against the defendant or not. If the UIM carrier does not intervene, then insurance coverage remains out of evidence. If the carrier does intervene, then the plaintiff must prove that the driver or owner qualifies as an uninsured motorist through evidence of all applicable insurance policies and relevant coverage limits. Universal across all options is the resultant judgment, if any, is binding on the insured's carrier.

Attorney Fees Under K.S.A. 40-908

Plaintiffs do not have to specifically demand K.S.A. 40-908 fees to collect them. The statute itself provides notice, and courts have long treated these costs as part of the costs and fees a prevailing plaintiff collects. *Bussman*, 289 Kan. At 700. *Bussman* provided the Supreme Court an opportunity to narrow the scope of K.S.A. 40-908 to its originally intended purpose of compensating insured in property insurance disputes. The KADC submitted an amicus brief to the Court in that case, presenting the history of K.S.A. 40-908 and the nature of insurance policies at the time the statute was enacted in 1927. *Id*. at 723-28. While acknowledging that many of the argument presented by the KADC and others "are seductively logical and just make sense," the Court declined to give a limited reading of the "very sweeping and inclusive language in K.S.A. 40-908," partially due to the legislature's failure in more than 50 years to modify the statute. *Id*. at 729. If K.S.A. 90-408 is to be restored to its original narrowly tailored purpose, it must be done through lobbying and legislation, not appellate brief and judicial opinion.

UM Claims Masked as UIM Claims

The animating motivation for writing this updated review of UM/UIM law has been the recent rise of cases where plaintiff's attorneys are submitting notices to UM/UIM carriers of suits involving an underinsured motorist. These suits are filed solely against the allegedly underinsured tortfeasor. The notices provide almost no information, beyond the mention of an underinsured motorist and a claim that the letter satisfies the notice requirements of K.S.A. 40-248(e)(5). The letters lead the recipient insurance companies to believe that the defendant has insurance, albeit not enough, suggesting that another insurance company is already involved in the litigation. The presumptive presence of another insurer that would defend against the plaintiff's claims at trial certainly factors into the carrier's decision regarding whether to intervene in the suit.

In a recent case in my office, the tortfeasor not only failed to answer the petition in the suit but also turned out to be uninsured, not underinsured. This meant that no one was present at trial to oppose the plaintiff, who put forth whatever evidence she wished without any practical limitation and received a judgment from the trial court well in excess of limits. Such judgments are binding against the UM/UIM carrier with respect to facts and damages, unless the carrier can successfully argue that the judgment was void. *Medina v. American Family Mut. Ins. Co.*, 29 Kan. App. 2d 805, 810-11 (2001). Due to the misdirection provided by the K.S.A. 40-284(e)(5) letter, which misidentified the tortfeasor as underinsured instead of uninsured, the insurance carrier was led to abandon the only opportunity to contest the plaintiff's damages claim. Following trial, the plaintiff submitted a demand for UM limits and attorney fees under K.S.A. 40-908, and the only haven left to the insurer was the possibility of a coverage denial or a void judgment. With virtually no information available about the loss or the tortfeasor, now known to be uninsured, and a judgment in hand, the UM carrier had little recourse.

Such problems are not limited to cases where a defendant fails to answer a petition or show up to trial. Plaintiffs can also secure a covenant not to execute in exchange for the defendant's representation that she will not present any substantive challenge to the plaintiff's evidence at trial. The defendant's choice in this case is easy, as the covenant not to execute is a get out of jail free card handed that shifts the financial burden to the UM/UIM carrier, and the plaintiff enjoys a trial as one-sided as the instance where the defendant did not bother to answer. The Supreme Court long ago held that judgments based on agreements between the plaintiff and the tortfeasor or the plaintiff and the tortfeasor's liability carrier are binding on the UM/UIM carrier, regardless of whether there is an actual trial on liability. *Guillan v. Watts*, 249 Kan. 606, 616 (1991).

These circumstances should strongly incentivize insurance carriers to engage in additional investigation upon the receipt of such K.S.A. 40-285(e)(5) letters and to consider involving defense counsel at an earlier stage than the receipt of the post-trial demand. Basic pre-trial discovery and motions can help limit the damages evidence the plaintiff might present at trial, as well as hamper the uncontested liability case the

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plaintiff originally planned to build. While insurance carriers wish to avoid the costs of litigation, it seems elementary that a little investment in counsel upon receipt of these letters could result in a significant reduction in the amount and frequency of settlements and tenders. In cases where a partial or full tender is appropriate, such actions will also eliminate the necessity of paying attorney fees under K.S.A. 40-908 in addition to the coverage limits as a judgment will be avoided.

Proposed Legislation: HB 2104

While lobbying is on the table, a bill was presented to the Kansas legislature in February that sought, among other things, to increase mandatory BI limits to $50,000 per person/$100,000 per occurrence. The bill, HB 2104, also sought to eliminate offsets to UM/UIM payments that are designed to prevent duplicate recovery, like the workers compensation and PIP offsets noted above. Of the 22 witnesses who testified at a hearing on the bill, most of the supporters were plaintiffs' attorneys and former plaintiffs. The numerous insurance carriers that testified uniformly opposed the bill, despite admitting that the bill would increase the premiums the companies would charge to consumers. Notably, KADC did not contribute any testimony, but it should not let the opportunity pass next time. The bill, fortunately, did not make it out of committee. KADC members should pay careful attention for any effort to revive this bill, especially given its attempt to allow for duplicative payments that will only further incentivize questionable suits that interfere with the administration of deserving claims.

Conclusion

There have been significant changes to UM and UIM law since Scott's article 23 years ago, and UM/UIM is no less a sleeping giant now than it has ever been. As far as defense counsel is concerned, it is important to be aware of the scope of the permitted coverage exclusions, the limits of claimable damage, and the hidden mines in the litigation field where plaintiffs have most of the discretion and flexibility and insurers must be constantly wary. Not only should those of us working in insurance defense advise our clients about the need to be proactive when first receiving notice of potential UM and UIM claims. In particular, insurance carriers should certainly investigate closely upon notice of a suit filed against a purportedly underinsured tortfeasor in order to verify that an insurance company is involved in defending against the plaintiff's liability and damages claims. Finally, through the KADC and other lobbying efforts, the defense bar has some opportunities to shape UM/UIM law for the better, as well, further reducing the incentives for exaggeration, fraud, and the pursuit of, at best, questionable claims and ensuring that UM and UIM continue to provide the robust coverage for the innocent it was designed for in the first place.▲

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Contact the *Journal* Editor Sarah Morse at smorse@gseplaw.com

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Please include the following information:

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Case Title
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Attorneys for Each Party
Date Decided
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Kansas Association of Defense Counsel

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Categories for individual membership in KADC:

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This application, together with membership fee, should be mailed to:
Kansas Association of Defense Counsel,
825 S. Kansas Ave., Suite 500, Topeka, KS 66612

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Kansas Association of Defense Counsel

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Future area(s) of practice, if known _____

Associations, professional organizations or student law societies to which you belong _____

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Are you a student member of DRI, The Voice of the Defense Bar? ☐ Yes ☐ No

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* SLDO=State and Local Defense Organization
** Non-transferable and expires 18 months after join date; excludes the Annual Meeting.
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2015-11

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By opting in for the automatic membership dues renewal on the reverse side, you hereby authorize DRI, Inc. on a recurring and automatic basis to annually renew your DRI membership and NFJE contribution (NFJE is an optional $25 fee) and charge the applicable membership and the optional NFJE donation to the credit card that you place on file.

You understand that DRI will initiate charges pursuant to this authorization not to exceed the amount shown on your DRI invoices. DRI will initiate transfers or charges each year on the date your invoice is due.

DRI may discontinue processing of recurring charges if DRI is unable to secure funds from your debit or credit card for the payments you have authorized due to, but not limited to, insufficient or uncollected funds or insufficient or inaccurate information you provide.

You also understand that this authorization to pay your DRI membership by recurring charges or debits is entirely optional and is not required to obtain or maintain your membership with DRI.

You are responsible for providing DRI with accurate payment information if such information changes in the future.

If you initially received a free or discounted dues rate as part of a special offer upon joining DRI, your renewal dues will be charged at the full rate for your membership category beginning on the date your invoice is due.

NATIONAL FOUNDATION FOR JUDICIAL EXCELLENCE

Promoting Excellence; Affirming Justice

Your gift has enabled the National Foundation for Judicial Excellence (NFJE) to produce an annual symposium that has an average attendance of more than 100 state appellate court judges each year. These symposia feature pressing, contemporary legal issues by nationally distinguished legal experts and scholars.

Established in 2004, NFJE is a 501(c)(3) charitable foundation that provides state appellate court judges with educational programs and other tools to continually enhance the rule of law and administration of justice. NFJE is the only defense lawyer organization providing judicial education. NFJE promotes a strong balanced judiciary.

When you make a contribution to NFJE with your DRI dues, a separate receipt will be sent from NFJE for your records. Thank you in advance for your gift. To learn more about the NFJE and its upcoming program, visit **www.nfje.net**.

NOTE: The National Foundation for Judicial Excellence is required to provide donors with the following disclosure from specific states.

ARIZONA: Financial information filed with the Secretary of State is available for public inspection or by calling toll free 1-800-458-5842.

CALIFORNIA: A copy of the Official Financial Statement may be obtained from the Attorney General's Registry of Charitable Trusts, Department of Justice, PO Box 903447, Sacramento, CA 94203-4470 or by calling (916) 445-2021.

FLORIDA: A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free, within the state 1-800-HELP-FLA. Registration does not imply endorsement. Florida Registration #CH19026.

KANSAS: State registration # 381-244-3; our financial report is filed with the secretary of state.

MARYLAND: Documents and Information filed under the Maryland charitable organization laws can be obtained from the secretary of state for the cost of postage and copies.

MISSISSIPPI: The official registration and financial information of the organization may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Registration by the Secretary of State does not imply endorsement by the Secretary of State.

NEW JERSEY: INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215. REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT.

NEW YORK: A copy of the latest annual report may be obtained from the organization or from the Charities Bureau, Department of Law, 120 Broadway, New York, NY 10271.

NORTH CAROLINA: Financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at 888-830-4939. The license is not an endorsement by the state.

PENNSYLVANIA: The official registration and financial information of the National Foundation for Judicial Excellence may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 800-732-0999. Registration does not imply endorsement.

VIRGINIA: Financial statements are available from the State Division of Consumer Affairs.

WASHINGTON: Financial disclosure information is currently on file with the Office of the Secretary of State and may be obtained by calling 1-800-332-4483.

WEST VIRGINIA: West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, WV 25305. Registration does not imply endorsement.

dri The Voice of the Defense Bar™

Join a Committee

Joining any of DRI's committees is a great way to engage with the DRI Community, enhance your career, and grow your network. There is no additional cost to belong to a committee, so join today to get the focused information you need to take your career to the next level. To join, indicate your choices on the list below, and together with the membership application on the first page of this form, mail, fax or email to DRI, or complete the application online at http://dri.org/Committee/CommitteeSignup.

- ☐ Alternative Dispute Resolution
- ☐ Appellate Advocacy
- ☐ Aviation Law
- ☐ Commercial Litigation
- ☐ Construction Law
- ☐ Corporate Counsel (to be considered for membership in this committee, fill out the section below)
- ☐ Data Management and Security
- ☐ Diversity and Inclusion
- ☐ DRI International
- ☐ Drug and Medical Device
- ☐ Employment and Labor Law
- ☐ Fidelity and Surety
- ☐ Government Enforcement and Corporate Compliance
- ☐ Governmental Liability
- ☐ Insurance Law
- ☐ Intellectual Property Litigation
- ☐ Law Practice Management
- ☐ Lawyers' Professionalism and Ethics
- ☐ Life, Health and Disability
- ☐ Medical Liability and Health Care Law
- ☐ Product Liability
- ☐ Professional Liability
- ☐ Retail and Hospitality
- ☐ Toxic Torts and Environmental Law
- ☐ Trial Tactics
- ☐ Trucking Law
- ☐ Women in the Law
- ☐ Workers' Compensation
- ☐ Young Lawyers (open to those in practice 10 years or less)

Corporate Counsel Committee Membership Application

For the purposes of this committee, in-house counsel is defined as a licensed attorney who is employed exclusively by a corporate or other private sector organization, for the purpose of providing legal representation and counsel only to that corporation, its affiliates and subsidiaries.

I am employed as in-house counsel as described above and I hereby make application for membership in the Corporate Counsel Committee.

Signature _____ Date _____

Title _____