

TESTIMONY OF PAUL SANDERSON IN SUPPORT OF STUDY 1365
INTERIM JUDICIARY COMMITTEE
JULY 26, 2011

Chairman Nething and Members of the Interim Judiciary Committee, my name is Paul Sanderson. I am an attorney in the Bismarck law firm of Zuger Kirmis & Smith. I represent the Property Casualty Insurers Association of America "PCI", which is the nation's premier insurance trade association, representing over 1,000 companies that write over \$180 billion in insurance premiums for automobile, homeowners, and business insurance. PCI supports reducing the statute of limitations on tort claims in North Dakota as proposed in House Bill 1365 introduced during the last Legislative session.

PCI supports reducing the statute of limitations in personal injury actions from six years to three years. The statute of limitations is the period of time within which a certain claim may be filed. After that period of time has passed, the claim is barred and the would-be plaintiff may not pursue his claim.

The North Dakota Supreme Court has stated that the purpose of a statute of limitation is to prevent "plaintiffs from sleeping on their legal rights to the detriment of the defendants." Hanson v. Williams County, 389 N.W.2d 319, 321 (N.D. 1986). There are a number of public policy reasons for reducing the statute of limitations in personal injury actions from six years:

The diminishing value of evidence - The best time to bring a lawsuit is as close to the event as possible so as to have the best evidence available to prove a lawsuit or claim and to defend a lawsuit or claim. As time passes it becomes increasingly difficult to gather evidence as memories fade and important evidence may be lost. It is not uncommon for businesses to get rid of records

after a certain period of time. In addition, witnesses are often no longer available in the jurisdiction. A shorter statute of limitations will allow evidence to be gathered more easily. This benefits the court system and civil jurisprudence as a whole, as cases should be decided on the best evidence.

Fairness - The injured party should be required to pursue an action diligently with speed and efficiency, both because of the diminishing value of evidence and because of the importance of closure for all parties. People want to get on with their lives and not have legal issues from their past arise unexpectedly. The injured party has a responsibility to quickly bring their case so that the process can begin.

Finality - The rationale for having a statute of limitations period is to ensure that actionable claims are resolved as quickly as possible and also add a sense of finality to the legal system.

A reduced statute of limitations will ensure that the best evidence is available for both the plaintiff and defendant. In addition, it will move personal injury cases through the civil justice system in a more efficient manner.

PCI recognizes that not all injuries are known immediately and a shorter statute of limitations could be harsh. However, in these circumstances when an injury is not immediately known, the courts have adopted the "Discovery Rule" under which the statute of limitations period does not begin to run until the plaintiff discovers or reasonably should have discovered the injury. Reducing the statute of limitations would not alter the current application of the discovery rule. An injured party would have three years to bring a claim once they discover they have been injured.

In addition, reducing the general personal injury statute of limitations would not affect the statute of limitations applying to claims of minors or the disabled, as N.D.C.C. § 28-01-25 extends the statute of limitations in those circumstances.

A reduction of the personal injury statute of limitations will also lessen the current disparity that exists between personal injury actions and other statute of limitations in North Dakota. It is difficult to understand why a person who is injured by a doctor can be aware of the injury and commence their action within two years, yet a person injured by the actions of a businessman needs six years to determine whether they are injured and to commence their claim. The federal maritime statute of limitations governing claims occurring on the Missouri River is three years, yet a person injured on other bodies of water in North Dakota have six years. In addition, a Plaintiff bringing a claim against the State or a State Employee must file written notice of the claim with OMB or the claim is barred. Plaintiffs in 42 other states are able to evaluate their injuries and commence an action in three years or less.

One of the arguments presented against HB 1365 was that it would increase litigation and flood the court system. We do not believe this is a legitimate concern. Plaintiffs who have been injured and have a legitimate claim will still commence a personal injury action. However, instead of being permitted to wait six years, they will commence their action within three years. In addition, the typical practice in North Dakota is for a plaintiff to commence an action by serving the summons and complaint on the defendant without filing the case with the court.

For the foregoing reasons, the Property Casualty Insurers Association of America support the rationale in HB 1365 and urge the Committee to recommend a reduction in the statute of limitations in North Dakota.