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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Hon. Edward Larson
DATE: March 3, 2011
RE: Judicial Council Testimony on 2011 HB 2028 Relating to the Insurable Interest Amendment to the Kansas Uniform Trust Code

The Judicial Council Probate Law Advisory Committee (PLAC) has had an interest in the *Chawla ex rel Giesinger v. Transamerica Occidental Life Insurance Co.*, WL 405405 (E.D. Va. 2005) aff'd in part, vac'd in part, 440 F.3d 639 (4th Cir. 2006) case since 2005, when a Virginia Federal District Court applied Maryland law and held that a trust did not have an insurable interest in the life of the insured who was the settlor and the creator of a trust. This holding caused widespread concern among practitioners in the trust and estate planning areas, including the Judicial Council's PLAC. The PLAC initially agreed to study the subject and draft proposed legislation. However, the Committee decided to wait until the appellate process concluded to begin its study.

On appeal the Fourth Circuit affirmed the federal district court's decision on other grounds and vacated the portion of the federal district court's decision relating to the trust not having an insurable interest in the life of the settlor. However, it was noted by the PLAC and others who practice in the area that the Fourth Circuit did not question or criticize the district court's insurable interest analysis.

Before the PLAC started its study, the Committee became aware that the National Conference of Commissioners on Uniform State Laws was studying the issue and the PLAC decided to wait for the proposal of the Uniform Law Commission.

At the annual meeting of the National Conference of Commissioners on Uniform State Laws held in July of 2010 in Chicago, the Insurable Interest Amendment to the Uniform Trust Code was approved. The PLAC reviewed the proposed amendment and requested 2011 HB 2028 be introduced. The Probate Law Advisory Committee recommends the amendment be adopted and upon adoption be added to the Kansas Uniform Trust Code at K.S.A. 58-113.

Senate Judiciary

3-3-11
Attachment 2

The amendment at lines 26 and 27 was requested by the Judicial Council. The amendment at lines 24 and 25 was not requested by the Judicial Council, but the Council has no objections to it. However, it does appear that in line 24 the article "a" should be changed to "or."

A copy of the Uniform Law Commission's Comment to the Insurable Interest Amendment to the Uniform Trust Code is attached at pages 5 to 10.

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