

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION

January 28, 1991 Hearing Room 357 1:00 p.m. Tapes 6-8
MEMBERS PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian
Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix
Rep. Randy Miller MEMBER EXCUSED: Rep. Name STAFF PRESENT: Greg
Chaimov, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD HB 2113 - Procedures for Tax Court review in
Oregon Supreme Court (PH/WS) HB 2218 - Certification of Records,
Workers' Compensation (PH/WS) HB 2372 - Separate Judicial Districts For
Benton And Linn Counties (PH/WS) HB 2375 - Revises Professional
Corporation Law (PH) WITNESSES: Gary Carlson, Association of
Oregon Industries (2113) Justice Carson, Oregon Supreme Court (2113)
Dave Canary, Oregon State Bar (2113) Denise McPhail, Pacific Gas And
Electric (2113) Mary Alice Hammond, Workers' Compensation Board (2218)
Lynn-Marie Crider Workers' Compensation Board (2218) Douglas W.
Daughtry, Workers' Compensation Board (2218) Charles W. Williamson,
Oregon trial Lawyers Association (2218) Kingsley Click, Judicial
Department (2372) Ron Longtin, Judicial Department (2372) Andrew J.
Morrow, Oregon State Bar (2375) Craig A. Smith, Oregon State Bar (2375)
Tom Cooney, Oregon Medical Association (2375) Bill Gaylord, Oregon Trial
Lawyers Association (2375) . . . These minutes contain materials which
paraphrase and/or summarize statements made during this session. Only
text enclosed in quotation marks report a speaker's exact words. For
complete contents of the proceedings, please refer to the tapes.

TAPE 6, SIDE A House Committee on Judiciary January 28, 1991 Page 2

040 CHAIR BAUM: Calls meeting to order at 1:00.

HB 2113 - OREGON TAX COURT REVIEW IN SUPREME COURT - PUBLIC HEARING
010 CHAIMOV: Summarizes HB 2113. The Bill changes the way that the
Supreme Court reviews Tax Court decisions. Under current law, the
Supreme Court reviews de novo, the case heard below. The Chief Justice
has submitted a letter. See Exhibit A. -There is no fiscal impact on
this Bill. 028 GARY CARLSON, ASSOCIATION OF OREGON INDUSTRIES: Oregon
Associated Industries opposes HB 2113. Tax matters reviewed by the
Supreme Court should be a "full" review of the tax matters including both
issues of law and fact. The Oregon Tax Court is the first judicial level
and involves a single judge. Appeals are made directly to the Supreme
Court. Some cases that come before the Supreme Court involve millions
and millions of dollars of tax. The tax payers that we represent feel
that they deserve a full review of their case. 046 REP. MILLER: If
the Tax Court had 3 or 5 judges would that change your opinion about
this Bill? 050 CARLSON: Not necessarily. The two levels of review on
de novo review on the facts are still what we want. In the current
situation with only one judge, that bolsters our need to have a
multijudge panel review the outcome of the lower court decision.
055 REP. MILLER: If you presented your case before two panels of
judges and lost both times do you think that we need to create a third
level of appeal? 059 CARLSON: Two is sufficient. 062 JUSTICE
CARSON, OREGON SUPREME COURT: EXHIBITS A,B,C. -Reads from Exhibit A
(Letter of Chief Justice Peterson) The Court addressed the problem of
the Supreme Court review of factual matters decided in a Tax Court case
in United Telephone Companv Of The Northwest. Inc. v. Department Of
Revenue 307 Or 428, 770 P2d. 43 (1989). See Exhibit B. In footnote 2, on
page 432, the Court stated that "If this or any other tax payer would
prefer to see this court function in this kind of case only as a
law-deciding court . . . [the taxpayer] needs to apply to the

legislature for appropriate changes in the law." No tax payer applied, so the Court did. The proposed changes that the Court suggests would make the Supreme Court a more efficient court to decide these issues. -The alternatives outlined by the Chief Justice remove de novo review and substitutes a two pronged analysis. The Court would look for erroneous law interpretation or where there is no evidence to support the judgement. The alternatives would: -1) Remove the de novo review and focuses on ORS 19.125 which is our basic review statute. -2) Remove de novo review and deletes the word "compel" leaving only "erroneous law interpretation. It then adds a "substantial" evidence rather than a "no evidence" test. See See Exhibit C. Exhibit C. -3) Leave most of the old language but shift from equity cases to an action at law. That would get us to where the Court would like to be which is a law review Court or for review of substantial evidence. See Exhibit C. Home Committee on Judiciary January 28, 199 1- Page 3

148 REP. EDMUNSON: How about having a limited review in the Court of Appeals as in all other cases? 156 CARSON: Yes. However, the Court of Appeals would have an increase case load while appellants could still appeal their case to the Supreme Court. It is not an alternative that the Court is recommending. 166 REP. EDMUNSON: Presently the Supreme Court is required to review these cases. If we were to allow for limited review in the Court of Appeals then the Supreme Court review would be discretionary and there would be no guarantee that the Supreme Court would review. . 173 CARSON: Yes. That is how it would work out. 175 REP. JOHNSON: How many cases have been reversed on a factual basis by the Supreme Court? 183 CARSON: I count 18 cases since 306 (307 Or 428) That is over about a year and a half. The Court reversed one case which was a fact case dealing with assessed values of computers. In 1989 we modified an ad valorem factual case and reversed it on attorneys fees. A number of cases will have intertwined legal questions as well, but the factual questions primarily are assessed valuation. That takes up about 75% of the cases. 205 REP. JOHNSON: What is the percentage of the Supreme Court's work load that is taken up with Tax Court appeals cases and of that work how much is allocated to reviewing de novo factual matters as opposed to looking at legal questions? 211 CARLSON: In terms of raw case load, it is a small part. In terms of writing an opinion it is substantial. 247 REP. BELL: You spoke of "effective" and "effficient" How would you explain to my constituents the reasons why you would want to close another option of appeal in these tax matters? What benefit is it to them? 258 CARSON: We are not precluding the appeal. We narrow the appeal. The appeal would remain a "direct" appeal to the Supreme Court. Having seven Justices review the assessment on a piece of property is not an effective way dealing with the issue. 307 REP. MILLER: What is the usual situation when a person has a tax complaint? Where is your first stop? 319 CARSON: It begins with a filing with the Oregon Tax Court. A hearing is held and a decision rendered. 326 REP. MILLER: Itis conceivable that you have gone through administrative hearings on the way up through the Tax Court. 333 CARSON: That is correct. There may be two or three levels of administrative review as orrect. There may be two or three levels of administrative review as opposed to judicial review. opposed to judicial review. House Committee on Judiciary January 28, 1991 - Page 4 , . 336 REP. MILLER: If this is appealed to the Supreme Court you must review it?

341 CARSON: That is correct.

342 REP. MILLER: Where are we if we made that decision of review discretionary?

345 CARSON: The Court would probably apply ORAP 1405. If there is a serious question of law that affects the law or a number of Oregonians or the decision held by the Tax Court is contrary to an established body of law or our cases we would take it. 364 REP. MILLER: If we simply said that you had the opportunity to use the criteria you listed or retry the case you could do that. Would that be a remedy worth looking at. 369 CARSON: Yes. It would. 371 REP. CLARK: Referring to Exhibit B, page 432, 2N, Justice Gillette stated, "We have previously pointed out that we could confine our review to legal questions if the [Justice] Department would promulgate rules relating to valuation methods Could you tell me why that would solve the problem if you had evaluation rules?

380 CARSON: If the Department had specific rulemaking on what means of approving valuation of property then our review would be limited to whether rules were complied with which would make the Court's role easier.

410 REP. CLARK: So the rules would at least give you a starting point for guidance?

TAPE 7, SIDE A

004 CARSON: It would narrow our review as well as the Tax Court's.

010 REP. CLARK: Whatever approach the Committee decided to take to direct the Department to enact rules regarding evaluation, would you rather have that than nothing

013 CARSON: Anything that would narrow our review would help.

022 REP. MANNIX: Which of these three versions is your preferred version? Is there a ranking? . 025 CARSON: Not really. All of them have the idea that we are going to be law review. How narrow or tight that review is is what changes.

028 REP. MANNIX: Is number 3 the narrowest?

030 CARSON: There is no hierarchy to these. Speaking for self, the alternative eliminating the word "compels" can go. The second element concerning "no evidence to support" could go. "Substantial evidence" test is something that the Court is used to dealing with and is o.k. See Exhibit C.

044 REP. MANNIX: You will take anyone of the three?

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051 DAVE CANARY, OREGON STATE BAR: Representing the Department of Revenue. The Bill would eliminate any appellate review of property tax matters which are essentially factual matters. The Bill as proposed would eliminate judicial review of many cases where the dispute is essentially factual. Some of these cases involve millions of dollars. He stated in one case where the amount in controversy was worth more than \$10 million and there were no legal issues to be settled, only factual. If a judge has a bias or a misconception of the case, there would be no opportunity for review of the factual matters, essentially the case itself.

086 REP. EDMUNSON: What is the extent of the hearing in the Department of Revenue? Is it a full contested case proceeding? 089 CANARY: No it is not. It is not under the APA. It is a review by a hearings officer who writes an opinion which is reviewed by the Department. It can then be appealed to the Oregon tax court for a full evidentiary proceeding.

096 REP. EDMUNSON: What if we were to require full contested case proceedings in the Department of Revenue with limited appeal to the Court of Appeals as in all other administrative cases? 098 CANARY: Stated he engaged in tax work in Washington state and that is the situation where there is a Board of Tax Appeals and you can only go to a trial judicial court based upon a substantial evidence test. He represented tax payers in those situations and it was very difficult to get review in front of the trial court because of the substantial evidence test. If you want to limit review for purposes of judicial economy and cut down on the number of cases, that is the way to do it. Having seven judges reviewing the case is better than having review by a single judge or single panel. 101 REP. EDMUNSON: Our administrative boards in Oregon are familiar with these sorts of cases and they are pretty darn conscientious. 102 CANARY: The difference is that at the Department of Revenue they don't have an independent administrative law judge panel. If you were to create an independent administrative law judge to hear full contested case hearings I don't think that would be a problem. -Addressing Rep. Clark's point brought up in the General Telephone case. If the Department of Revenue would pass administrative rules that would set legal standards for how you appraise property, that has been done recently. Effective December 31, 1989, the Department passed a substantial number of rules two inches thick on appraising railroads, utilities, industrial property and contaminated property. Part of the problem that the Committee is seeing, is going to be eliminated by the Department's passing of these rules.

134 REP. MANNIX: Isn't it true, albeit in limited circumstances, that there is no constitutional right to appeal? Do you have any reaction to that concept? 144 CANARY: The statement may be correct even though it may not have become the fabric of our society. 151 REP. MANNIX: If we were to propose today, however, that you have a jury trial system for taxation, what is your reaction? House Committee on Judiciary January 28, 1991 - Page 6

156 CANARY: The Department welcomes the ability to have a jury trial because a six person jury would have a better collective idea of what the facts might be.

167 REP. CLARK: Getting back to the rules that the Department has promulgated, you are not sure whether those rules are within the scope of that authority that the Department has. 171 CANARY: This Legislature has given to the Department of Revenue the power to implement any rules that will define what true cash value is. However, the limit is that you can only value real property and personal property, not intangible property. The Department has passed rules that say how to value industrial, railroad, utility and contaminated properties. Within those rules they attempt to define what intangible property is to include such things as "good will" which runs directly counter to ORS 306 .105 which says it shall only be limited to "real and tangible personal property."

187 REP. CLARK: Are you saying that the rules that the Department has promulgated are not going to address the problem that Justice Carson has brought to us today? 193 CANARY: To the contrary, to a certain extent they will. For instance, in the \$10 million dollar case mentioned before

(Southern Pacific) there was a lot of discussion as to what the right capitalization rate was and whether or not you should use an embedded debt or you should use some sort of other debt. That is a very technical field. The Department has said that you shall not use embedded debt, but you shall use a discounted cash flow theory, or a direct capitalization theory. Consequently, the next time Justice Carson is faced with a railroad case that comes under these rules he is going to say, "Did they use a direct capitalization that had the appropriate cost of debt laid out." If those rules are correct and if its within their scope of the past, you are going to have a standard by which to compare that against. Consequently, it will no longer be a factual matter. It will alleviate the problem.

209 REP. CLARK: Is it your view that the Department has promulgated some rules, but that you could not call them comprehensive? 217 CANARY: They have made a very valiant effort to promulgate rules that set forth what the procedure is on a large number of cases. So in that respect they are comprehensive. There are other areas that are not as comprehensively dealt with, but are not as crucial or critical to the case. . 229 DENISE McPHAIL, PORTLAND GENERAL ELECTRIC: First preference would tee to have no bill. Second preference would be to adopt the use of the ~substantial evidence. test rather than the use of "no evidence" test. HB 2218 - WORKER'S COMPENSATION HEARINGS - PUBLIC HEARING

244 CHAIMOV: Summarizes HB 2218. HB 2218 deletes the requirement that worker's compensation referees certify the hearing transcript as "true and correct."

268 MARY ALICE HAMMOND, ADMINISTRATOR FOR WORKER'S COMPENSATION BOARD: EXHIBIT D. Reads from exhibit D. House Committee on Judiciaq January 28, 1991- Page 7

297 REP. BRIAN: Once you have an original and a correct copy, obviously copies need to be made of that. It seems important that someone certify that these are true copies. It is not a matter of someone certifying that the copy machine was working. Some pages may have been missing or changes could have been made of drafts. Do you disagree with that?

313 HAMMOND: There is a certification attached to each transcript which is prepared by the transcriber which says, "This was a true and accurate record of the proceedings that were transcribed." Currently, we are adding an additional certification by the referee which is what the statute requires.

322 REP. BRIAN: Would it be helpful if the transcriber made additional copies which he or she would certify on the spot rather than having only one certified copy?

330 HAMMOND: The transcriber prepares an original and two copies of the transcript that they attach original certifications to. If there are more than two copies required, our staff prepares additional copies of the transcript. Then the referee adds a certification to all copies including those originally prepared by the transcriber. 349 REP. CLARK: It does not matter to me who does the certifying. However, when documents become lengthier, the potential for error increases. Would you have a delegee, or someone directly responsible for the certification process? 375 HAMMOND: We have been having the referees sign them. r 392 REP. JOHNSON: Why can't we change the system so that after a transcript is ordered by an appealing party each party receives a copy of that transcript and they can review it? If either party decides that

something is wrong either one can contest it without getting the referee involved. TAPE 6, SIDE B

014 HAMMOND: That is similar to what happens in the Court of Appeals. Whenever a court reporter prepares a transcript it is filed with the Court of Appeals and a certification is prepared like ours which states that the reporter certifies that it is an accurate reflection of the record and each party has an opportunity to review the transcript and ask that it be supplemented and corrected. That seems to be a more appropriate process. 022 REP. MANNIX: Would it not be simpler to say that the original transcript shall be certified to be true and correct by the transcriber. Photocopies are run from that. The original can be used for verification. The stenographer's notes can also be used for verification. Would that be o.k? 038 HAMMOND: Yes. Prefers changing the words to "true, accurate and complete.. 045 REP. EDMUNSON: On lines 11 and 12, page 1 of HB 2218 it says, "Copies of any exhibit which can be conveniently duplicated are to be furnished along with the copy of the transcribed record." In my experience, exhibits are never attached to the transcript. Most referees ask the parties at the time of the hearing to waive the requirement and to certify that they all have copies. It seems that the language is superfluous. My concern is that there is never a list of exhibits at House Committee on Judiciary January 28, 1991- Page 8 the hearing. Would you have any objection requiring a list of the exhibits received by the referee and along with that a certified transcript?

072 REP. MANNIX: You are not saying that they have to write a new list, but make sure that the list is put in with the file and that it is properly numbered and copies would then be sent out with the transcript.

087 LYNN-MARIE CRIDER, WORKERS COMPENSATION BOARD AND DOUG DAUGHTRY, PRESIDING REFEREE, WORKERS COMPENSATION BOARD: EXHIBIT D.

092 DAUGHTRY: The Board has a problem, in house, occasionally, when it puts together transcripts for appeals purposes in determining what is and what is not in the record. A master list of exhibits would be helpful. This could be done by the parties themselves.

103 REP. MANNIX: A master list is not necessary. As long as the referee has an accurate list, even if it is cross referenced to other lists, this would be sufficient. Would that be o.k? 113 DAUGHTRY: Yes. 117CRIDER: Does not see any problem with it either. It does not have to be in the statutes. 119 REP. MANNIX: We are going to substitute the language which says that you have to supply exhibits, which is already a matter of procedure, in order to get the message out that a decent list ought to be kept. 129CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: In any transcript there are always mistakes. There should be an opportunity for the parties to correct any errors. 139 REP. MANNIX: For the record, the intention would be that any time there is a challenge to the transcript, on de novo review the reviewing court may still ask the stenographer for the notes of the proceeding or may have the proceeding played back off of cassette tapes. HB 2218 - WORKERS' COMPENSATION HEARINGS - WORK SESSION

150 MOTION, REP. MANNIX: Moves to amend the Bill on line 11, page 1. Proposed deletion should be replaced by "The original transcript shall be certified to be true, accurate and complete by the transcriber."

153 VOTE: No objection. So ordered. 154 MOTION, REP. EDMUNSON: Moves to amend the Bill on line 11, page 1, striking the second word "copies" and inserting "a list" Also, strike the word "any" and insert "all" and following the word "exhibits" insert "received by the

referee.. On line 12, strike the words "which can be conveniently duplicated" so the sentence would read, "A list of all exhibits received by the referee shall be furnished to the parties in interest along with a copy of the transcribed recordMy intent is that this could be satisfied by attaching the various House Committee on Judiciary January 28, 1991- Page 9

transmittal letters the attorneys have provided the referee so long as those letters clearly identify the exhibits to which the numbers have been given. 179 VOTE: No objection. So ordered. 180 MOTION, REP. MANNIX: Moves to Full Committee with a "do pass" recommendation. 196 VOTE: 7-0 Motion passes. Rep. Edmunson to carry.

AYE: Bell, Brian, Clark, Edmunson, Mannix, Miller, Baum NO: EXCUSED: Johnson

HB 2372 - BENTON/LINN COURTS - PUBLIC HEARING

200 CHAIMOV: Summarizes HB 2372. HB 2372 splits in two the court that serves Benton and Linn Counties. EXHIBIT E from the State Court administrator explains the reasons for dividing the Court.

212 KINGSLEY CLICK, DEPUTY STATE COURT ADMINISTRATOR: The Judicial Department's interest in this bill is to allow separate judicial districts for Benton and Linn Counties. ' 243 RON LONGTIN, TRIAL COURT ADMINISTRATOR, 21ST DISTRICT (COMPRISES LINN AND BENTON COUNTIES): The Bill will provide for clarity in the area of judicial administrative leadership within each of the Counties. It will reinforce cooperation between the counties. The demographics of Linn and Benton Counties vary. The judges within these Counties have their own perception regarding the administration of the Courts. There will be no additional funding necessary as a result of this legislation. 301 REP. MILLER: Where do you do your work now?

303 LONGTIN: "I spend two days, Monday and Tuesday, in Benton County and the remainder of the week with the Linn trial courts."

307 REP. MILLER: Asks whether it is typical in other counties that are combined for an administrator to travel between two counties. 311 LONGTIN: Yes. In Jackson and Josphine Counties the same situation exists. This is also true for Deschutes, Crook and Jefferson Counties.

315 REP. CLARK: "Does the administrator serve separate judicial districts?"

320 CLICK: Yes.

237 2 - BENTON/LINN COURTS - WORK SESSION

338 MOTION, REP. MILLER: Moves HB 2372 to Full Committee. "Do Pass" House Committee on Judiciary January 28, 1991 Page 10

recommendation. 354 VOTE: 8-0 Motion passes. Rep. Brian to carry.

AYE: Bell, Brian, Clark, Edmunson, Johnson, Mannix, Miller, Baum NO: 0 EXCUSED:

HB 2375 - REVISIONS TO PROFESSIONAL CORPORATIONS ACT - PUBLIC HEARING

393 CHAIMOV: Summarizes HB 2375. Proposes substantial revisions to the Professional Corporations Act. The two major revisions are found in

sections 23 (page 7 of printed bill) and 9 (page 3 of printed bill). Section 23 allows expansion of the areas in which professional corporations can practice provided the Boards regulating those professions permit that expansion. Section 9 cuts off liability of a share holder or employee whom the shareholder does not supervise. See EXHIBIT F from OSB and EXHIBIT G from Richard Solomon, P.C.

TAPE 7, SIDE B 010 ANDREW MORROW, LEGISLATIVE CHAIR OF THE BUSINESS LAW SECTION, OSB : EXHIBIT F One of the important points of HB 2375 is that the Act applies to a number of professional practices. One of the key points of the Bill is the liability of the professionals who provide services to shareholders of the corporation. Currently, non-professionals can be shareholders of the corporations. They cannot comprise a majority of the shareholders and directors. -HB 2375 would permit professional corporations to practice more than one profession within the same professional corporation. There is a need to deal with the vicarious liability issue because of this new growth in powers. -Currently under the statute, a professional corporation shareholder is liable for malpractice which an individual under the shareholders control commits, or malpractice where that shareholder participates in the malpractice of another shareholder. All the shareholders of the professional corporation are jointly and severally liable for the actions of another shareholder with whom they have any direct involvement or not. It is this level of liability that the OSB would like to remove. -Other elements of the Bill include: -The expansion in the scope of services. -Improves access to information that is provided to the regulatory boards. -It deals more effectively with shareholder discipline issues and death of shareholders. -Coordinates better with the Business Corporation Act. 089 CRAIG SMITH, OREGON STATE BAR BUSINESS LAW SECTION: In terms of the vicarious liability portion, the professional corporation remains liable. -The Professional Corporation Act supplements the Oregon Business Corporation Act which went through substantial changes in 1987. The purpose of the Professional Business Corporation Task Force was to bring HB 2375 into conformance with the 1,987 changes and also to look at the Act for the first time in 20 years. Two major changes were enacted during the previous legislative session: 1) to allow non-professional shareholders to own an interest in a professional corporation and 2) to allow foreign corporations to operate and do business in the state.

House Committee on Judiciary January 28, 1991 - Page 11 -A major conclusion of the Task Force's work was to allow greater deference to the regulatory boards. This statute creates the basic framework and allow the regulatory boards to fill in the rest and apply the rules to particular professions. -Another major area of the Task Force's work centered on corporate governance. This legislation recognizes the unique circumstances of professionals and that the state does have an interest in seeing that professionals are in control of the corporation.

145 REP. BRIAN: The feature of allowing professional corporations to participate in other activities makes sense. Limiting liabilities of share holders does not seem to be in the public interest.

163 SMITH: Why is there a rule that is unique to professional corporations as opposed to normal business corporations? Historically, individuals in professional corporation are in a good position to prevent officers from doing bad.

205 REP. BRIAN: Why do we have professional corporations as distinct from business corporations?

210 SMITH: This is due to the interest that the state has in regulating the corporations. If an entity holds itself out to the public as a corporation that provides a professional service there should be some assurance that the owners of that corporation are licensed professionals.

228 REP. BRIAN: Isn't that to insure a higher standard of care and attention to the corporation? Wouldn't we be diminishing that if we limited shareholder liability?

232 SMITH: Doubts that.

251 REP. CLARK: Recognizing the 200 300 shareholder corporations don't you think that there is some policing function in existence even if it is not one on one? Don't you think that the liability function still serves to keep matters under control? 269 SMITH: Yes. However, the motivation does not have anything to do with the vicarious liability that we are talking about. It has more to do with professionalism. Many shareholders right now would be liable even though they were not personally involved in a given quality control measure implemented by the corporation. 304 REP. CLARK: A particular individual may or may not be involved in the implementation of the quality control measures of a corporation, but those quality control measures would apply equally to everyone in the corporation. 312MORROW: The quality control measures generally focus upon people that are in a particular practice area. Someone who is a tax practitioner is not evaluating the work of the litigator. From a policy view, the present standard inhibits people from engaging in multiple disciplinary practices because of the potential liability. 356 TOM COONEY, OREGON MEDICAL ASSOCIATION (OMA): The OMA supports HB MEDICAL ASSOCIATION (OMA): The OMA supports HB 2375, but has some concerns. The concept that individual liability of a shareholder would 2375, but has some concerns. The concept that individual liability of a shareholder would cause that person to be more careful is not born out in real life, because the PCs assets are what are , - House Committee on Judiciary January 28, 1991 - Page 12 going to be the real concern of the shareholder, not the liability. -The medical profession is under all kinds of restrictions from many sources. It is concerned with the delivery of quality medical care. The delivery of medical care should not be mixed with other professional corporations. -ORS 9.320, the statute dealing with lawyers, prohibits a corporation from appearing in any type of a proceeding except by a lawyer. Many physicians may be called in to appear before committees, but may appear only as doctors and may not appear on behalf of his or her clients. OMA suggests that the Committee amend ORS 9.320 to say that "a corporation shall always appear by a lawyer, except a professional corporation."

TAPE 8, SIDE A .. 020 BILL GAYLORD, OREGON TRIAL LAWYERS ASSOCIATION: Is against HB 2375. Addresses the issue of what the Bill does to the practice of law. Traces the history of professional corporations. The desire to improve professionalisMwill not be served by HB 2375. How many clients would image that their recourse against their lawyer, doctor, dentist, etc. would be limited because there is a "P.C." after the name of the corporation. The historical benefits of becoming a corporation, i.e. tax benefits, were gained by paying the price of retaining individual and joint and several liability. HB 2375 attempts to take away the price that was paid. Those who say that the traditional policing method in the system is not practical is not true. The concern ought to be with the impaired professional and providing incentive to

the partners in the corporation to get the impaired some help. Joint and several liability works. 100 CHAIR BAUM: Closes Committee on Civil Law and Judicial Administration at 3:05 p.m. Submitted by: Reviewed by: : J. Kennedy Steve, Assistant David Harrell, Office Manager EXHIBIT LOG:

A Testimony on HB 2113 - Chief Justice Edwin J. Peterson - 8 Pages.
B Testimony on HB 2113 - United Telephone Company v. Department of Revenue, 307 Or 428 (1989) - 10 Pages. CTestimony on HB 2113 - Justice Carson - 1 Page. D Testimony on HB 2218 - Lynn-Marie Crider -5 Pages. E Testimony on HB 2372 - R. William Linden, Jr. - 7 Pages.
F Testimony on HB 2375 - Andrew J. Morrow, Jr. - 10 Pages.
G Testimony on HB 2375 - Richard B. Solomon - 1 Page.

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