

1999 SENATE TRANSPORTATION

SB 2377

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2377

Senate Transportation Committee

Conference Committee

Hearing Date February 4, 1999

Tape Number	Side A	Side B	Meter #
1	x		3821-End
1		x	1-738
3	x		175-321
Committee Clerk Signature <i>Aori D. Schaeffer</i>			

Minutes:

SENATOR B. STENEHJEM called the hearing on SB 2377 to order. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, V. Thompson, and Dennis Bercier.

KIM BRUST, NORTH DAKOTA TRIAL LAWYERS ASSOCIATION testified in support of SB 2377 (see testimony).

ALBERT WOLF, NORTH DAKOTA TRIAL LAWYERS ASSOCIATION was not present but had testimony passed out at the hearing in support of SB 2377 (see testimony).

TOM SMITH, DOMESTIC INSURANCE COMPANIES testified in opposition to SB 2377.

The bill changes the definition of underinsured motor vehicle (he explained liability limits, see tape). This bill allows one to settle with liability carrier and make a claim under underinsured liability. It is a significant change in existing law. Mr. Brust talked about the fact that this is an

illusory coverage. Interestingly, there was a lawsuit in Cass County by a NODAK Mutually Insured Company. The plaintiff was a NODAK Mutually Insured against the NODAK Mutually Insured Company. The NODAK Mutually Insured had been involved in a motor vehicle accident with someone who had the 2550 liability limits and did receive the \$25,000 liability limits. He had the 2550 underinsured motorist coverage. They sued making all kinds of claims. One being the underinsured motorist coverage under NODAK Mutually Insured was illusory. The district court said absolutely not and they went through the legislative history. The law requires us to make available underinsured and uninsured coverage to the consumer not at 2550 but at least \$300,000. You, as the consumer, have the right to choose what you want to be protected. The other point I would like to make is that all policies issued in all the states have an extra territorial application file. It says if one operates their vehicle in another jurisdiction, their policy is conformed to what the other state's law is. Whether the person has uninsured or underinsured motorist coverage is another matter. The jurisdictions are split on that. Even under the existing law, the loss insurance companies are experiencing under underinsured motorist is significant. Some of them have loss ratios up to 100%. This will seriously increase their loss. This law will not impact those who are pretty good drivers but it will come into play with the marginal bad drivers. Their likelihood of them to maintain their insurance is low.

SENATOR B. STENEHJEM What's the difference between this bill ant the bill last session.

TOM SMITH The difference is they split the last bill into two bills this session.

GARY THUNE, AMERICAN INSURANCE ASSOCIATION I join in opposition and urge a Do Not Pass on SB 2377

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Senate Transportation Committee
Bill/Resolution Number Sb 2377
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KENT OLSON, EXECUTIVE DIRECTOR OF NDPIA testified in opposition to SB 2377. 83% of our employees oppose this bill. The consumer has a choice of what they want to buy. The initial estimates on what the premiums will cost will at least double. The rates are going up on uninsured motorists. If we make it optional the consumer will not buy it. This is cost shifting the complaints are still there someone else is picking up the tabs on it.

SENATOR B. STENEHJEM Is there any other testimony?

SENATOR B. STENEHJEM We will close the hearing on SB 2377.

February 4, 1999-Tape 3

SENATOR MUTCH I motion for a Do Not Pass.

SENATOR SCHOBINGER I second that motion.

Roll call was taken (5 Yeas, 1 Nays, and 1 Absent and Not Voting).

Senator Mutch will carry SB 2377.

February 4, 1999

Date: ~~Jan~~

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2377

Senate Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen. Mutch Seconded By Sen. Schobinger

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenejem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch	X				
Sen. Dwight Cook	X				
Sen. David O'Connell					
Sen. Vern Thompson		X			
Sen. Dennis Bercier	X				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator Mutch

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 5, 1999 11:16 a.m.

Module No: SR-24-2026
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2377: Transportation Committee (Sen. B. Stenehjem, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2377 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2377

**Testimony of Kim E. Brust before the
Senate Transportation Committee
Re: S.B. 2377
February 4, 1999**

Mr. Chairman, members of the committee, my name is Kim Brust. I am an attorney practicing in Fargo, North Dakota, and represent citizens of our State who have been injured in automobile accidents. I am currently the immediate past-president of the North Dakota Trial Lawyers Association. I appear here today in support of Senate Bill 2377.

Section 1 of the Bill amends subsection 2 of section 26.1-40-15.1 of the North Dakota Century Code. The amendment changes the definition of "underinsured motor vehicle" to coincide with the expectations of North Dakota consumers who are required to purchase underinsured (UIM) motorist insurance.

An underinsured motor vehicle currently is defined in North Dakota Century Code §26.1-40-15.1(2) as follows:

[A] Motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident, but the applicable limit of bodily injury liability of such policy or bond:

- a. is less than the applicable limit for underinsured motorist coverage under the insured's policy; or
- b. has been reduced by payments to other persons injured in the accident to any amount less than the limit for underinsured coverage under the insurance policy.

NDCC § 26.1-40-15.1(2).

The above statute provides that UIM coverage is available only when the liability coverage of the at-fault driver is less than the UIM coverage or when that liability coverage has been reduced by

payments to other victims of the accident to an amount less than the UIM coverage. This definition is commonly known as a "limits trigger" because the availability of coverage is based upon whether there is a difference of limits between the UIM coverage and the liability coverage. If the UIM coverage does not exceed the available liability coverage, then the at-fault vehicle is not by definition an underinsured regardless of the seriousness of the injury and the amount of damages.

Under our present difference-of-limits based coverage, a victim who has suffered \$50,000 of damages and has UIM coverage of \$25,000 recovers zero dollars from that underinsured motorist coverage if the at-fault driver has bodily injury limits of \$25,000. The victim also is unable to recover \$25,000 of his damages.

The inequity of this difference-of-limits basis for determining whether an at-fault driver is underinsured is compounded by the fact that North Dakota law requires every car to have bodily liability limits of not less than \$25,000. Thus, in every accident involving an insured at-fault driver, there will always be at least \$25,000 of bodily injury liability limits. Victims whose damages exceed \$25,000, however, and who have minimum limits UIM coverage will not be able to access that coverage because the at-fault driver is not underinsured because the victims UIM coverage is not greater than the at-fault driver's bodily injury limits.

Courts in other jurisdictions have recognized that insurance companies should not be allowed to charge premiums for insurance coverage which provide little or no likelihood of recovery. The courts

have reasoned that if the limits of liability coverage and UIM coverage are the same, the insured could never recover from his insurance company on his underinsured policy. Thus, the underinsured coverage is illusionary.

It is important to understand that the unfairness resulting from the difference-of-limits basis for determining UIM coverage in North Dakota's current law does not just apply to instances where the at-fault driver and the victim have minimum limits of \$25,000. Rather, the limits trigger acts much like a unknown deductible in that no matter how much UIM coverage you purchase, if you are injured by a motorist carrying bodily injury limits equal to your UIM coverage, you will never recover any UIM benefits. For example, if you carry UIM limits of \$100,000/\$300,000 and you are injured by a motorist carrying bodily injury limits of \$100,000/\$300,000, you have no underinsured motorist coverage available for your injuries. In effect, your deductible in that instance is \$100,000.

The present basis for determining whether a vehicle is underinsured is contrary to the expectations of consumers and insurance purchasers in North Dakota. Consumers paying premiums for underinsured motorist coverage believe that they are purchasing coverage which will provide benefits in the event that they suffer damages in a motor vehicle accident which exceed the bodily injury liability limits of the at-fault driver. Little do they know, that their access of this coverage is not dependent upon the extent or seriousness of their injury, but rather the amount of insurance coverage maintained by the at-fault driver.

Senate Bill 2377 changes the definition of underinsured motor vehicle to meet the expectations of consumers in North Dakota. Section 1 of Senate Bill 2377 states that UIM coverage is available when the damages suffered by the insured victim exceed the limits of liability policy of the at-fault driver. This definition is known as a "damages trigger." Under Senate Bill 2377, this means that an injured victim who has suffered \$50,000 of damages and who has \$25,000 of UIM coverage, can recover under his policy, when the bodily liability limits of the at-fault driver are also \$25,000. There is no hidden deductible, but rather UIM coverage is available if there is sufficient damages.

Section 2 of Senate Bill 2377 amends North Dakota Century Code §26.1-40-15.6(6). This amendment would eliminate the present statute's requirement that the bodily injury liability limits of the at-fault driver be completely exhausted by payment of settlements or judgments before underinsured motorist coverage is available. This exhaustion clause increases and encourages litigation. That was not the purpose for which it was originally enacted. Rather, the statutes were suppose to ease the burden of litigation and encourage prompt payment of claims. Instead, the exhaustion requirement forces the insured to litigate his claim to final judgment in order to exhaust the policy limits and preserve any UIM claim. Forcing the victim to proceed with litigation results in litigation expenses which reduces the net recovery to the victim, delays payment and unnecessarily burdens our judicial system with cases that could otherwise have been settled. Victims of automobile accidents in our State should be able

to accept the best settlement possible from the at-fault driver's liability insurer and should not be forced to forego settlement and go to trial in order to avoid losing their rights to UIM benefits under their own automobile policy for which they have paid premiums.

In fact, the Minnesota Supreme Court has held that exhaustion clauses in insurance policies are void against the public policy of its No-fault Automobile Insurance Act. North Dakota's statutory law, however, incorporates the exhaustion principal as a statement of public policy.

Respectfully submitted,

Kim E. Brust

FROM FARMERS INSURANCE COMPANY TESTIMONY
 RE: HB 2126 TO HOUSE INSURANCE COMMITTEE

UM/UIM Policy Limits	Current Charge			Proposed Charge			% Increase	DOLLAR INCREASE PER YEAR
	UM/UIM	UM	UIM	UM/UIM	UM	UIM		
25/50	\$ 5.40	\$3.90	\$1.50	\$ 6.90	\$3.90	\$3.00	+100%	\$3.00
35/70	\$ 5.80	\$4.00	\$1.80	\$ 7.10	\$4.00	\$3.10	+ 72%	\$2.60
50/100	\$ 6.60	\$4.30	\$2.30	\$ 7.60	\$4.30	\$3.30	+ 43%	\$2.00
100/200	\$ 8.10	\$5.00	\$3.10	\$ 8.90	\$5.00	\$3.90	+ 26%	\$1.80
100/300	\$ 9.30	\$5.60	\$3.70	\$10.00	\$5.60	\$4.40	+ 19%	\$1.40
250/500	\$10.80	\$6.10	\$4.70	\$10.90	\$6.10	\$4.80	+ 2%	\$.20

This is an actuarial estimate for illustrative purposes of an average auto policy for a six month term.

UM = Uninsured Motorist Coverage
 UIM = Underinsured Motorist Coverage
 (UM/UIM limits are in thousands)

Submitted by Lee Wright, GCA, Farmers Insurance Group of Companies,
 during Testimony on HB 2126 before the Kansas House Insurance Committee.

UNDERINSURED MOTORIST COVERAGE

DEFINITIONS

1. "DAMAGES TRIGGER"

UIM is coverage which applies when the damages suffered by the insured victim exceed the limit of the tortfeasor's liability insurance.

2. "LIMITS TRIGGER"

UIM is coverage which applies when the limits of the tortfeasor's liability insurance is less than the insured victim's underinsured motorist coverage or has been reduced by payments to persons, other than the insured, injured in the accident to less than the limit for UIM coverage under the insured's policy.

SB 2377

Mandatory coverage:

N.D.C.C. § 39-16.1-11.

\$25,000 per person/\$50,000 per occurrence bodily injury

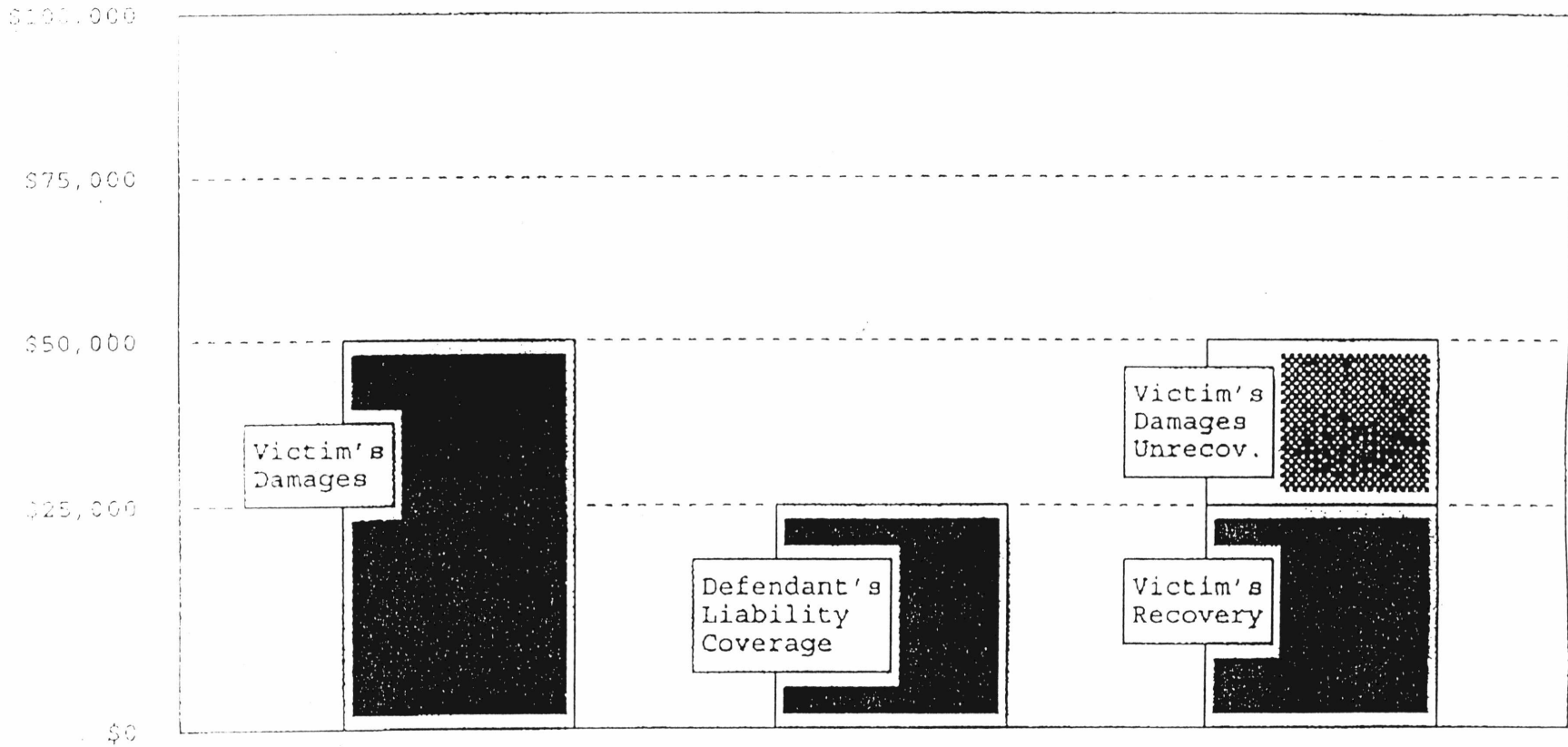
N.D.C.C. § 26.1-40-15.3.

\$25,000 per person/\$50,000 per occurrence UIM

LIMITS TRIGGER

Damages = \$50,000.00
 Defendant's Liability = 25,000.00
 Uncompensated Damages = \$25,000.00

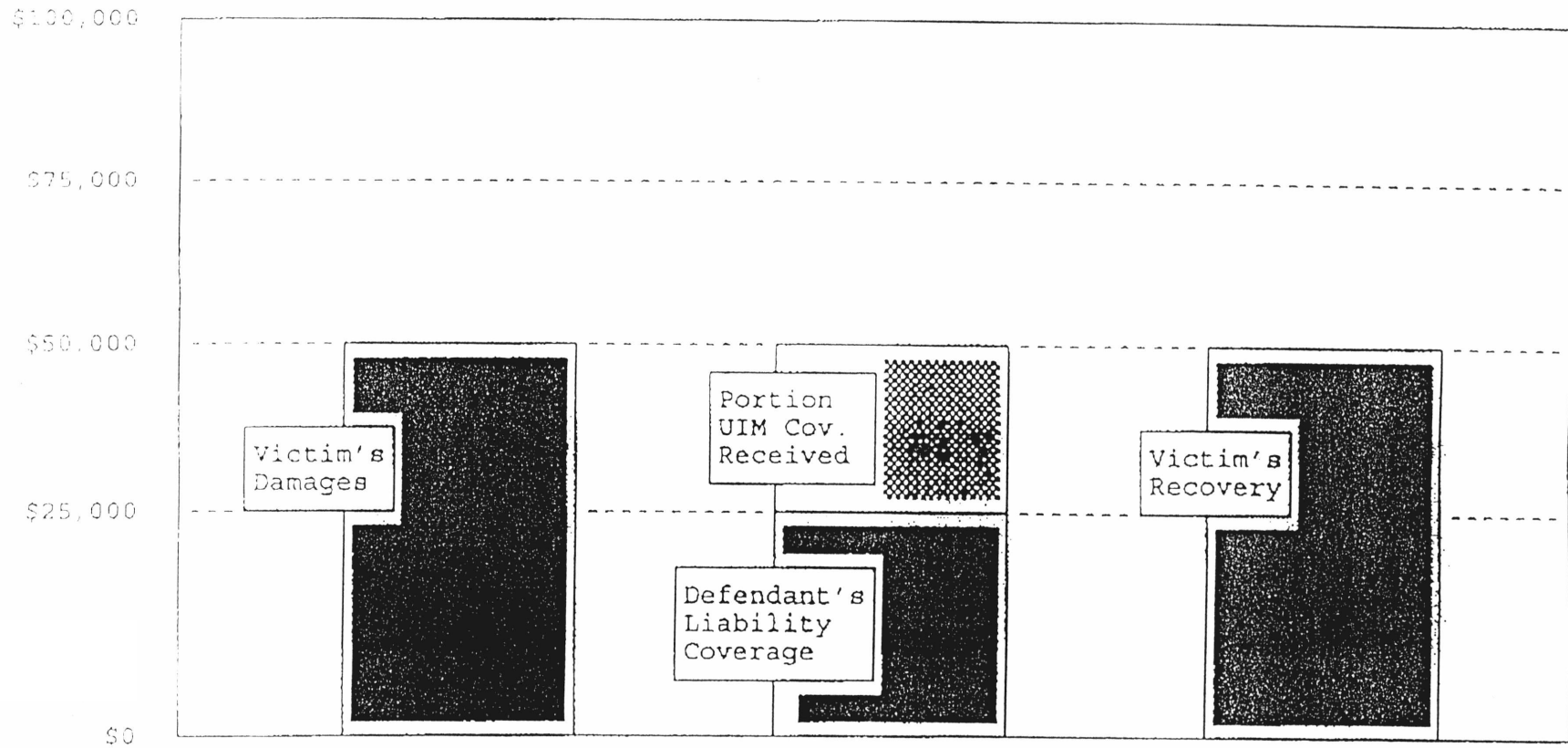
Insured Victim's UIM = \$25,000.00
 Less Defendant's Liab. = - 25,000.00
 Recov. Portion UIM = \$0



DAMAGES TRIGGER

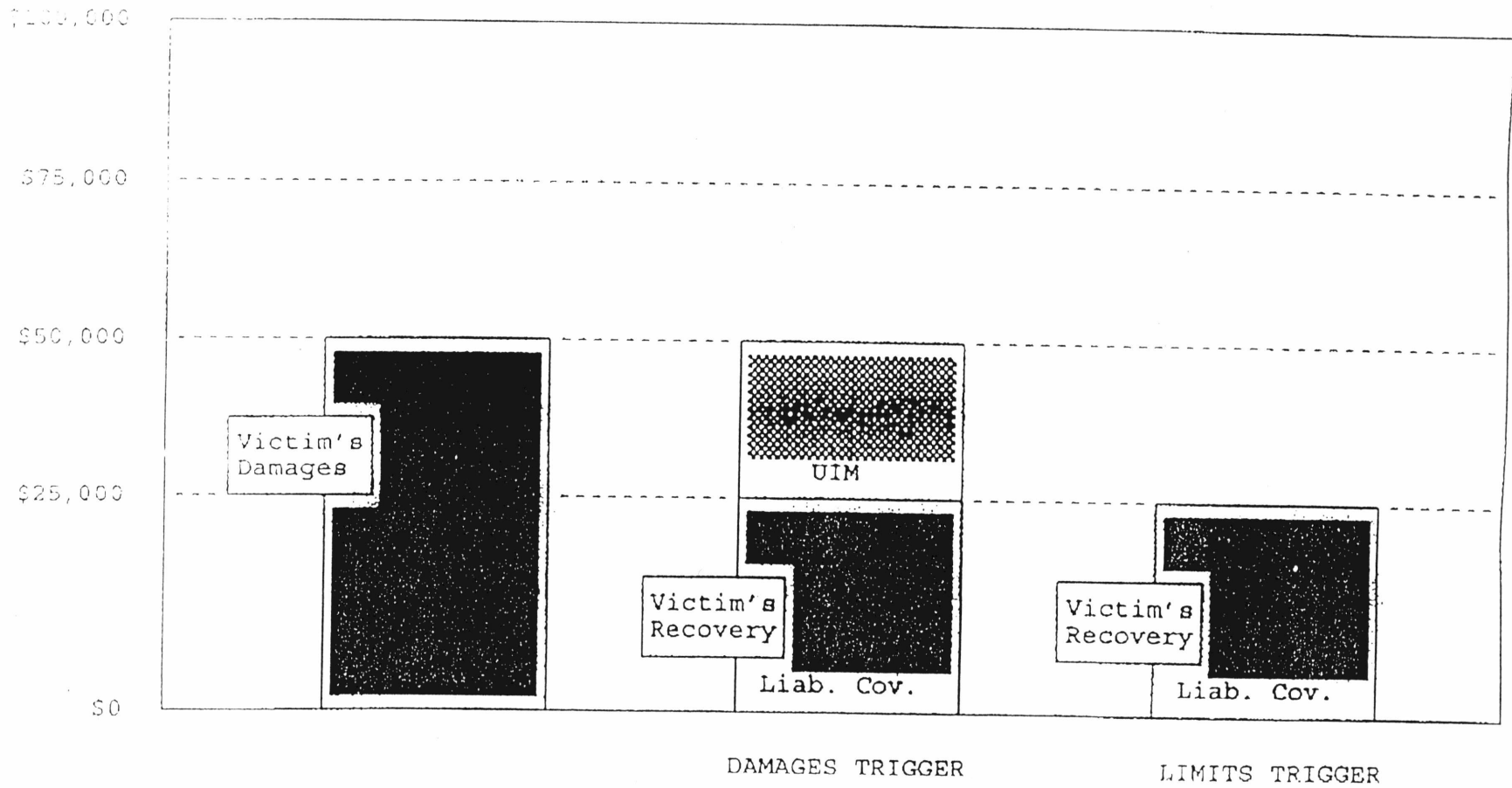
Damages = \$50,000.00
Defendant's Liability = 25,000.00
Uncompensated Damages = \$25,000.00

Insured Victim's UIM = \$25,000.00
Recov. Portion UIM = \$25,000.00



COMPARISON

DAMAGES v. LIMITS TRIGGER



TESTIMONY BY ALBERT A. WOLF
ON BEHALF OF
NORTH DAKOTA TRIAL LAWYERS ASSN.
BEFORE
SENATE JUDICIARY COMMITTEE
February 2, 1999

SB 2377

Chairman Stenehjem and members of the Committee.

SB 2377 was introduced to deal with an obvious problem arising out of a misunderstanding of most persons as to the coverage they have and pay for with their automobile insurance policies.

If you have \$50,000 underinsured motorists coverage, and the driver responsible for the accident has \$50,000 underinsured motorists coverage and you have \$100,000 in injuries and medical bills, your coverage does not kick in because your coverage did not exceed that which was on the automobile that was involved in the accident and had paid under their policy.

However, most people would think that if you have \$100,000 in damages and medical bills and loss of earnings a result of an accident that isn't otherwise covered, and the other person's insurance pays \$50,000, your \$50,000 underinsured motorists coverage should pay the remaining \$50,000 to you. But that is not the case.

It is true that there would be a \$10 or \$15 increase in insurance rates, but having the coverage that you think you have would be worth having the premium increase, rather than paying for what you are paying for the coverage now when you think you have the coverage, but you don't when you need it.

We urge a DO PASS of SB 2386.