

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
106TH LEGISLATURE

HEARING BEFORE COMMITTEE ON BUSINESS LEGISLATION

ON NO FAULT INSURANCE: LD-1, LD-1420

BOOK I OF IV

REPORTER:

Mrs. Letha Brown
7 Mountain Avenue
Lewiston, Maine

State House
Augusta, Maine
April 18, 1973

STATE OF MAINE
106th LEGISLATURE

COMMITTEE ON BUSINESS LEGISLATION

HEARINGS ON NO FAULT INSURANCE:
LD-1, LD-1420, LD-1425, LD-1770

I N D E X -- May 18, 1973

Bill	Speaker	Page
1	Bennett ✓	9, 63
	Cragin ✓	31
	Hogerty ✓	46
	Lawrence	45
	Ring	30
	Ross	2
1420	Coyne	130
	Harris	203
	Hogerty	210
	Lawrence	229
	McTeague	139
	Ring	132
	Rochelleau	174
	Tarous	96
	Tierney	170
	Trask	65
	Underwood	117
	Woodman	66
	Whelton	131

NO FAULT

- 1 -

P R O C E E D I N G S

SENATOR COX. Call the hearing to order. Anyone who speaks should clearly give their name and where they are from. This also goes for the Committee when they ask a question.

We will be hearing two bills today: LD-1 and LD-1420. There's also a time limitation of an hour for the proponents, one hour for those in opposition and a free period of time for counsel and all others who want to speak on the record. We do have a reporter here and everything that will be said will be captured and -- and anyone that has any printed presentation, if you want to just hit the highlights in your special report, the presentation will be included in the record and it will be most helpful.

The first bill we will hear is LD-1, An Act Providing for a No-Fault Automobile Liability Insurance Law, and the Chair recognizes the sponsor, Representative Ross.

NO FAULT

- 2 -

REPRESENTATIVE ROSS. Mr. Chairman, and members of the Committee, I may be out numbered today by the insurance people and lawyers, but that is nothing new to me. For instance, several years ago, I sponsored a Savings Bank life insurance bill. Every life insurance salesman in the whole State of Maine was here in opposition and I stood alone. In Sunday's paper, there was a piece by Bill Caldwell telling about the Select Committee which studied No-fault and how it was staffed with eight out of nine insurance men. Probably that is not all bad, since they were looking into a very technical matter. But not only was I not a member of that Committee, I am neither in the insurance business nor am I a barrister. I did not even see their report, but as a neophyte layman I studied the present laws of various States on my own.

I -- I've decided to base my suggestions pretty much on the Delaware law and then I jumped the gun.

NO FAULT

- 3 -

REPRESENTATIVE ROSS (Continued): I filed this in November of 1972.

My No-Fault bill may lack a few worthy details considered necessary by the insurance professionals and certain lawyers. However, it cannot be denied that it has won distinctive priority. It is numbered LD-1. Representative Louis Jalbert thought one of his bills warranted this number because of a few years seniority over me. Nevertheless, I won out. Perhaps having a Republican Clerk of the House in November of 1972 helped just a little bit.

I have thought of this as a very worthy approach to automobile insurance for a long time. I further realized that a complete study of the subject was being made. However, this was really brought home to me when I read in a Washington letter that big changes are certainly coming all over the country this year in the automobile insurance field.

The public is fed up with arbitrary cancellations, slow claims and settlements, plus ever-rising

NO FAULT

- 4 -

REPRESENTATIVE ROSS (Continued): costs. If the States don't act in 1973 to overhaul their insurance laws, Congress will surely fix standards even though the White House does not favor this approach. If individual States do not act promptly, we can expect a Federal law by 1974.

For these reasons, a switch to various forms of No-Fault is a very good bet in the majority of States this year. The basic reasons are very simple: this will speed up payments, reduce legal fees, and help clear congested Court dockets.

We must consider future implications. A study by the Department of Transportation reveals that we now have almost an intolerable situation. Losses are over five billion dollars. The average loss per victim is ten thousand dollars including hospital costs, property and loss of income. Under the present tort system, the recovery is only 16% of the total loss. This is inadequate and unfair and surely should be changed. Beneficiaries of fatally injured

NO FAULT

- 5 -

REPRESENTATIVE ROSS (Continued): persons under this tort system are never adequately reimbursed, even though they have life insurance, Social Security and other forms of extra coverage.

There are many persons who advocate that we should abolish this tort system altogether in automobile cases and go directly to the first party system. The tort procedure, of course, was never designed to pay all costs. The purpose of this was to differentiate between right and wrong, and impose the liability upon the wrongdoer. Victims in the wrong had no just claim.

In Maine, we have adopted a comparative negligence law which does help even under the tort system. A person can collect something, even though the amount would be reduced by the comparison of fault.

In general, I believe the insurance industry is even against this. The driver who carries high

NO FAULT

- 6 -

REPRESENTATIVE ROSS (Continued): limits for his own liability ought to be able to carry high limits to protect himself against low limit insurance drivers.

Although many people disagree with the Massachusetts plan, the first year under their No-Fault system, injuries dropped 33%. When they adopted property damage coverage, the accidents reported in this category indicated a similar downward trend. Premiums for collision and property damage are still very high in that State, but bodily injury has been reduced 15%. The insurance industry itself has saved many millions of dollars. Of course, we cannot compare any form of Massachusetts insurance to that in the State of Maine.

But as I said, my bill is very similar to the Delaware No-Fault law. This is working extremely well in that State. Unlike some other proposals, it works more for the benefit of the people without taking anything away. For instance, it does not restrict an

NO FAULT

- 7 -

REPRESENTATIVE ROSS (Continued): individual as to the right to sue. More people are being paid promptly and more equitably than ever before.

All No-Fault plans mean that people are paid directly by their own insurer. In Delaware, there is no single incidence where victims were not paid promptly. In spite of this, no one has paid more in insurance premiums. No rate increases have occurred in 20 months in spite of inflation; in many cases rates have gone down.

My bill also covers personal property. Coverage is not less than the maximum minutes -- limits under the Financial Responsibility Laws. All registered vehicles must be covered. The minimum coverage is 10/20. Any person may elect to carry more insurance if he so desires. Compensation for the insured vehicle shall be actual cash value plus \$10 per day for a loss not to exceed \$300. Every policy shall require the insurer to submit to arbitration for

NO FAULT

- 8 -

REPRESENTATIVE ROSS (Continued): damage to another motor vehicle. A panel of arbitrators shall be selected by the Insurance Commissioner. Three members shall be chosen from this panel to decide on each case.

The Insurance Commissioner of Delaware claims that their law is working so effectively, it could serve as a national model. In summary, my bill, like theirs, is not simple, but workable. In my opinion it covers all the details necessary for the protection of the citizens of Maine.

If you should consider this bill or parts thereof, Section 10 on page 5 should be changed, one word, from "Superior Court" to "District Court", because in our State misdemeanors are handled by a District Court and these are considered misdemeanors and the bill refers to Superior Court. I could go on but for the sake of brevity, I shan't. As I say, I am not an insurance man; I cannot answer your technical questions probably; I would try. But I know that there are people here that can answer them.

NO FAULT

- 9 -

SENATOR COX. Are there any questions for Representative Ross?

SENATOR MARCOTTE. Representative Ross, you mentioned a rate decrease in Delaware. Do you have any figures available?

REPRESENTATIVE ROSS. Yes, yes, I do have figures. I have a briefcase; I will be glad to show it to you afterwards.

SENATOR MARCOTTE. Thank you.

SENATOR COX. Any further questions? None. Thank you.

REPRESENTATIVE ROSS. Thank you, gentlemen.

SENATOR COX. Are there proponents of LD-1?

MR. BENNETT. My name is Herbert Bennett and I want to make it clear today that I speak here as an individual lawyer and not in my capacity as Legislative Chairman for the Maine Trial Lawyers Association. Because unlike what the newspapers would have you believe, we do not have uniformity amongst the trial

NO FAULT

- 10 -

MR. BENNETT (Continued): lawyers, and it was voted at our last meeting that since we do not have uniformity, that we would take no specific position and any lawyer who wanted to get up and speak on a particular bill would be free to do so. So I speak as -- as a member of the public and as an attorney, and I think, as someone who has had some experience in this field.

Now, there was mention made of Bill Caldwell's article, and since it was brought up, I think perhaps I ought to give the -- the rest of the story which didn't appear in the article. And it is namely this: There was a Committee before this Special Study Committee that was appointed by Frank Hogerty, the Insurance Commissioner of Maine. I was asked to serve on that Committee as a Representative.

The purpose of that Committee was to make sure there would be no flim-flam sham No-Fault bill sail through the State of Maine. We would have a cross-section on that Committee; this was Mr. Hogerty's

NO FAULT

- 11 -

MR. BENNETT (Continued): idea which I frankly subscribed to. There would be a man from labor, and there was, a fellow named Ben Dorsky, so he was appointed to serve on that Committee. There would be somebody from education and he was Chairman of that Committee, Bill Curran from Hesson College. There would be two lawyers on that Committee, one who represented the Plaintiff's interest and one who represented the defense's interest. I was on there for the Plaintiff and a man named Sidney Wernick who is now a Supreme Court Justice in this State was the other lawyer member of that Committee. Now, the other people in that Committee were Frank Fowles, President of the Maine Bonding Insurance Company, Rick Love from the Dunlap Agency, and a man named Ken Harrison who is an agent -- insurance agent down in Kennebunk. So that was a true balance -- balanced Committee.

Well, gentlemen, that Committee met for approx-

NO FAULT

- 12 -

MR. BENNETT (Continued): imately two to two and a half years; we met at least once a month, sometimes more; Mr. Hogerty sat in with us, and we studied the various forms of No-Fault.

And that Committee's recommendation was that since Maine was low in -- I think the 38th State as far as premiums, that you weren't going to reduce any premiums in the State of Maine by passing No-Fault. Mr. Hogerty I believe has said this publicly himself and probably will have something to say today. And also that a threshold bill was not a good deal for the public because anybody can save premiums, you see, by taking benefits away from people.

Now, what happened, the insurance industry didn't like that, so they decided, I guess, to have another committee. This time, the odds were a little different. Eight out of nine members of that committee are directly dependent upon the

NO FAULT

- 13 -

MR. BENNETT (Continued): insurance industry for their livelihood. Now, it would be just as bad to put all the Plaintiff's lawyers on the Committee and say, "Now, you tell us what's best for the people of Maine." So I think this has to be brought out and I think we have to take a hard look at it. I think you gentlemen have a deep trust here and -- what we've got to do here is what's best for the consumer, not what's best for the lawyers and not what's best for the insurance industry. But you see, when Mr. Hogerty appointed four public members this time, he didn't have anybody from labor or education who might take a cold hard look at it and really look at it from the consumers' view point.

Now, I'm going to make certain points that I'd like you to consider. Whatever bill -- Whatever bill that you decide, if you do decide we should have one, Blue Cross should certainly be in there, writing it along with the industry. This serves two purposes. Blue Cross writes most of your health insurance now.

NO FAULT

- 14 -

MR. BENNETT (Continued): And there's nothing like competition to keep the rates right for the people of the State of Maine. That was my position on that Committee, but the three insurance members on that Committee, of course, they didn't want to see Blue Cross writing No-Fault insurance. So I suggest to you, whatever the bill is, that should be -- we should have Blue Cross writing it right along with anybody from the industry, and that could only help the people of the State of Maine.

Now, another thing that has always bothered me is this: Why should we have No-Fault property damage? I mean, it seems to me that if No-Fault makes sense any place, it makes sense on the broken fender, the damaged fender case. Why should that be -- Why shouldn't that be paid right off without litigation? So, I would also suggest that any bill that we have should contain a provision for property damage on a No-Fault basis.

NO FAULT

- 15 -

MR. BENNETT (Continued):

Now, I've read Mr. Ross's bill and frankly it's pretty hard to fault that bill from a consumer standpoint. It -- It pays people their benefits, the first party, up to \$10,000 and it doesn't take their rights away. It's pretty hard for me to say that this is not a good deal for the public. I'm sure a lot of lawyers won't like it for other reasons, but I think if you're going to look at that from a consumer standpoint, it's a pretty hard bill to fault.

I would make one suggestion in the bill: there's a provision that says you can't put in evidence the first party's payments. I would suggest that that be changed and that evidence be allowed on first party payments in a law suit.

Now, my reason for that is two-fold. If it's a small case, you see, I think the jury will see that it is a small case by the amount of medical bills and wage losses. And if in fact it is a large case, they'll

NO FAULT

- 16 -

MR. BENNETT (Continued): also see that; they'll get the whole picture.

Now, I would also suggest that after the verdict, the Justice deduct from the benefits returned by the jury any amounts that the party has received on a first party basis. So in effect, I'm not really talking about much of a change. My only -- The only thing I'm suggesting is that the jury gets the picture, but the man doesn't benefit twice because whatever he receives on a first party basis would be deducted from the bill. I think with -- with that in mind, I certainly would have to support, with those changes, Mr. Ross's bill.

SENATOR COX. Any questions for Mr. Bennett? Yes, sir.

REPRESENTATIVE JACKSON. I believe it is Massachusetts and Florida that have No-Fault property insurance -- excuse me, on the property. Has it not given problems in both of those States?

MR. BENNETT. Let me say this: First of all, Massa-

NO FAULT

- 17 -

MR. BENNETT (Continued): chusetts was probably the worst State in the Union insofar as their auto insurance. They were probably #1 and for many reasons which I'm sure we -- we all understand. Almost anything that you did in Massachusetts would have to be an improvement; it was that bad down there.

As far as Massachusetts is concerned, the overall cost of insurance has gone up since No-Fault because the property damage is just -- Well, even from -- well, let -- let me say this: your bodily injury insurance frankly has never been the biggest part of your premium. You look at your policy and you'll find that what you pay for bodily injury is far less than what you pay for property damage. For example, in 1970 which is prior to the time they had No-Fault down there, your bodily injury insurance was \$117, but your comprehensive was 126, and your collision with 100 deductible was 161. You

NO FAULT

- 18 -

MR. BENNETT (Continued): can see the comparison between property damage rates and bodily injury. Now, in '71, it -- your bodily injury dropped from 117 to 99.53, but your collision went from 161 to 196, so that more than made up for any savings. And then in 1972, your collision jumped from 196 to 294 on property, and that's what's happened in Massachusetts on property damage, it -- it has just gone up substantially.

So I -- I feel that, you know, if you're going to have a situation where you want to no longer clog up the Courts, it seems silly to me to say on one hand, "If my child is injured and gets a broken arm or something, we're not going to -- you know, we're going to pay right off", and on the other hand, "if my car fender gets dented, why, you and I are going to go into Court and fight over who caused the dent." It just doesn't make sense.

I'm for No-Fault coverage for property damage

NO FAULT

- 19 -

MR. BENNETT (Continued): and I -- I don't know many people who I've talked to who aren't; it just makes good sense. This is -- Yes, sir?

REPRESENTATIVE JACKSON. Do you see a threshold on that?

MR. BENNETT. On -- On what? Property damage? No, I don't see a threshold at all. I think it's ridiculous to have a threshold. Once you say, you're going to have a threshold on property damage, how much of a threshold? Are you going to take away the rights the people have now? This is what bothered me. I -- For example, there's probably very few people in this room that -- that don't have some kind of property damage coverage, but if somebody dents my car, why should it cost me \$100 if -- if they caused it? For example, I shouldn't talk about this, she will be unhappy, but my wife was coming out of our driveway. Well, the fellow -- she stopped and tooted her horn. The fellow next door didn't see her, and came in and struck the car. Now, the damage was \$180,

NO FAULT

- 20 -

MR. BENNETT (Continued): I think, or something like that. OK. If -- If we didn't have the system we have now, I have 100 deductible, it would have cost me \$100. A . it was, it didn't cost me anything, and why should it because it wasn't my wife's fault and the other fellow conceded liability.

I don't think we should take benefits away from people, here. I'm all for giving people more insurance coverage, better protection, and all that, but I think you're going the wrong route.

You know, anybody can cut an insurance premium by just not paying out any benefits. That's the easiest way in the world. And if you're going to say that, "Well, we'll -- we won't pay people for inability to work, for pain and suffering," certainly you're going to reduce premiums, but I'll tell you, that's no bargain, and I think that is the point that has to be kept in mind here. Right now, the people that are protected; they do have the right.

And don't get carried away with this hogwash

NO FAULT

- 21 -

MR. BENNETT (Continued): about Court congestion in the State of Maine, because we're not in Massachusetts, New York or Connecticut. The civil cases are not clogging the dockets up here in Maine. If we have any problem in Maine, it's from the criminal dockets. I think this has to be borne in mind. You have to look at Maine as it exists, where we stand nationally on rates.

Another thing, if anybody gets up here and takes the position that a certain bill is going to cut rates, then I say, fine, let's believe him, but let's have a mandatory decrease written in that bill. If they're going to take a position we can cut rates by 30%, then let's have a mandatory rate reduction at 25 and see whether or not they'll accept it, because there is the moment of truth. I suggest to you that not only will No-Fault -- I -- I say it will not cut rates in the State of Maine, but it could very well raise them. And that may be all right if we get better benefits. I may not be against that. I don't think you'll ever

NO FAULT

- 22 -

MR. BENNETT (Continued): get away from the theory that you get what you pay for.

SENATOR COX. Any further questions for Mr. Bennett? Representative Deshaies.

REPRESENTATIVE DESHAIES. You mentioned some pretty substantial collision premiums there a few moments ago.

MR. BENNETT. Right.

REPRESENTATIVE DESHAIES. Could you tell me the year and make car you were referring to?

MR. BENNETT. I can give you the whole situation on Massachusetts; I have it right here. And as a matter of fact, this was a class ten operator, the best rating in the City of Boston. He paid in 1970, for his full coverage, he paid \$523.57 and under No-Fault in '72, two years later, for the same coverage, he paid \$590. So you see, the overall cost did in fact go up, not down. I can give you the breakdown, "med" pay and all the rest, because I've got it here.

NO FAULT

- 23 -

REPRESENTATIVE DESHAIES. You mean, his bodily injury premium did not go down?

MR. BENNETT. Yes, his bodily injury premium did go down, but let me show you how much. From 117 in '70 to 99.53 in '71 to \$74 in '72. But his property damage soared so high, it more than offset that savings. That's the point I'm trying to make. So what they give you on one hand, they more than took away on the other.

REPRESENTATIVE DESHAIES. This is the same year and make car?

MR. BENNETT. That's correct. This was the same year and make -- in the same class.

REPRESENTATIVE DESHAIES. Same class?

MR. BENNETT. That -- That's correct.

REPRESENTATIVE DESHAIES. Accident free for that year?

MR. BENNETT. That's correct. This is exactly what the thing shows.

NO FAULT

- 24 -

SENATOR COX. Any further questions? Representative Tierney?

REPRESENTATIVE TIERNEY. What -- What -- I'm a little concerned or I just have an open mind at this point on the inclusion of property damage involved. Now, you said, not to include it would be ridiculous. Well, my wife sees it from your standpoint, but from where I'm sitting, I don't.

MR. BENNETT. I think you misunderstood me. I said it should be included in a No-Fault bill.

REPRESENTATIVE TIERNEY. That's right.

NO FAULT

- 25 -

MR. BENNETT. Right.

REPRESENTATIVE TIERNEY. Not to do so would be ridiculous.

MR. BENNETT. I think that's right.

REPRESENTATIVE TIERNEY. I think you -- I think you're going to have to go a little bit further than just the mere word "ridiculous," because that puts the state in the business of talking about property insurance, you know.

MR. BENNETT. Well, let's talk about it. Let's talk about it. On the one hand, the proponents are saying that it's silly to be fighting about who caused the accident, you ought to be given this money right off, there should be no question about liability or who caused the accident. Isn't that one of their claims they talk about on No-Fault? Would you agree with that one?

REPRESENTATIVE TIERNEY. You're not being very --

MR. BENNETT. No, I'm just asking.

REPRESENTATIVE TIERNEY. I'm the one asking the questions and --

MR. BENNETT. Well, I'm trying to answer you. That's

NO FAULT

MR. BENNETT (Continued): what I understand the whole thing about -- to be about. You don't have to go into the court room and decide how the accident happened in order to get these first party payments. Now, why should you have to go into the court room and fight the same issue of liability to get your car fixed? If you've got to go in and fight about your car, then why not go in and fight about the damage done to your child or your wife? That's my point. If you're going to do it, then I suggest, do it all the way, because you're not going to unclog the courts of little cases. Most of your little cases are your property damage cases anyhow. There's where most of your small cases are, property damage.

So on one hand, you -- you're saying that, well, if you're injured, we'll give you hospitalization and we'll give you wage loss, which eight -- more than 80% of the people in Maine already have through employment or other ways, or otherwise. You're saying that we'll -- we'll see that you get that, but, gee, if you want to get your car repaired, on that basis, fella, you've got to go into Court and fight about who caused these

NO FAULT

MR. BENNETT (Continued): damages and who went through what stop sign, that sort of thing. That, to me, it makes logic that that be covered, even more so than the other.

SENATOR COX. Any further questions? Representative O'Brien?

REPRESENTATIVE O'BRIEN. I -- This may be too early to ask this question, Mr. Bennett, but I take it from your testimony that out of the five or perhaps six No-Fault bills we're going to have hearings on, you, Attorney Bennett, are supporting LD#1?

MR. BENNETT. No, sir. I suggest before we get through, I'll probably be up to support maybe three or four of them.

REPRESENTATIVE O'BRIEN. I --

MR. BENNETT. Because I -- I think there may be three or four bills here that may be good for the consumer.

REPRESENTATIVE O'BRIEN. Well, let me ask you -- let me ask you now. Let me say why I asked that question: because from your testimony, I get the distinct impression you're laying the ground work for those bills, not this bill.

NO FAULT

MR. BENNETT. No, that's not true.

REPRESENTATIVE O'BRIEN. Well, I get that impression.

MR. BENNETT. Well, you're entitled to your impression.

REPRESENTATIVE O'BRIEN. I agree.

MR. BENNETT. But that doesn't happen to be the case.

SENATOR COX. Any further questions? Representative Tierney?

REPRESENTATIVE TIERNEY. You seem to be very knowledgeable on property damage and have some pretty definite opinions. Would you tell me what the problem is in Massachusetts that we've been reading so much about, that they're having a problem -- problems with?

MR. BENNETT. Sir, my understanding is that they're having problems -- a lot of people are very unhappy with the Massachusetts situation totally, now, not only with property but with the whole No-Fault situation.

REPRESENTATIVE TIERNEY. Well, primarily property damage; I've read considerably more on property damage than I have on the BI. Do you have any -- any first-hand knowledge of what that problem might be in

NO FAULT

REPRESENTATIVE TIERNEY (Continued): Massachusetts?

MR. BENNETT. I don't know as there is one, no.

REPRESENTATIVE TIERNEY. I understand there is.

MR. BENNETT. Well, that may be, but I don't know about it.

REPRESENTATIVE TIERNEY. All right.

SENATOR COX. Any further questions? Senator Katz?

MR. BENNETT. Yes, sir.

SENATOR KATZ. What impact do you think this will have on the premium rates?

MR. BENNETT. Well, I was on -- I was on a committee that studied various forms of No-Fault, as I said. It was our opinion that almost anything they did in Maine was going to cause some increase in premiums. It's pretty hard for me to conceive that -- that that's not going to happen, only because we're so low, to begin with. If we were up in the first ten, I'd say, well, no, you know, chances are the premiums are going to go down. But I think when you start out 38th from -- you know, from the top, you're in a different position. I --

SENATOR KATZ. Do you anticipate, though, a significant

NO FAULT

- 30 -

SENATOR KATZ (Continued): increase?

MR. BENNETT. No, I don't think it would be significant. No, I don't think it would be significant, but I -- I wouldn't be surprised if there was some increase. You know, how do we know? I haven't got a magic crystal ball.

SENATOR COX. Any further questions? None. Thank you, Mr. Bennett.

MR. BENNETT. Thank you.

SENATOR COX. Any further proponents?

(Conference off the record)

SENATOR COX. Any further proponents of LD-1? All right. Are there any who wish to speak in opposition?

SENATOR KATZ. Mr. Chairman, I have some information on this bill, if the Committee would care for it. Is there anyone else who will speak on this bill?

SENATOR COX. I'm asking now the ones who are for or against it? Does anyone wish to speak either for or against that bill?

MR. RING. Mr. Chairman, I'm not here to speak on the bill, but I think I know a little bit about the Delaware plan, that I could make my comment with at least,

NO FAULT

MR. RING (Continued): and if members of the Committee wanted to ask some questions, but that's not what my primary purpose is.

MR. BENNETT. Allow me, if I may, to introduce this gentleman. This is Leonard Ring who handled the Illinois case, the grace case in Illionois, and we asked him to come up and --

SENATOR COX. Not at this point, sir.

(Conference off the record)

SENATOR COX. The Chair recognizes Mr. Cragin.

MR. CRAGIN. Mr. Chairman, my name is Charles C R A G I N, and I'm here as a legislative agent for Maine Blue Cross and Blue Shield. I will not speak either as an opponent or a proponent of this particular piece of legislation, but going along with Representative O'Brien, I feel that rather than make the same speech on each legislative document that comes before this Committee concerning No-Fault legislation, I'd like to call certain things to the Committee's attention at this time relating to all of these bills.

I think as you begin to examine the specific proposals to deal with the problems of automobile accident

NO FAULT

MR. CRAGIN (Continued): reparations, you've got to keep in mind the whole crux of what your investigation is supposed to be. And primarily your responsible -- responsibility should be to attend to the needs of the victim of automobile accidents rather than to assess the blame. I think we can set aside our own interest and instead consider how we can coordinate our various talents to provide the best possible solution. You may very well be on the verge of setting standards for other States to follow, thinking we can succeed if we face the challenge squarely. The automobile insurers have developed a tremendous amount of expertise in assessing damages to vehicles and property, in determining liability, and in dealing with the legal aspects of automobile accidents. They have contributed much to making the fault system as fair as possible. The furthest thing from our mind is to attempt to erase their contributions. They're a vital part of any system which is developed or considered by this Legislative Committee.

At the same time, I think we must realize that the foremost needs of the victim who is injured, are

NO FAULT

MR. CRAGIN (Continued): health care needs. In this area of endeavor, the underwriters of health care, whether they be insurance carriers or the insurance companies in the State of Maine, are the experts, and should be utilized to the fullest extent in behalf of the accident victim. Really, it -- it's only to this pooling of our various areas of expertise that the victim has the best opportunity of being made whole again.

Maine Blue Cross & Blue Shield as a non-profit provider of hospital and medical benefits has always provided quality health care coverage at a low administrative cost to their 444,000 members, regardless of who or what caused the illness or the injury. Last year they returned over 90¢ of every subscriber dollar in health care benefits, and this administrative expertise will certainly carry over to the handling of No-Fault coverage.

In reality, Maine Blue Cross & Blue Shield has always been sort of a No-Fault carrier by virtue of the fact that they historically paid first party benefits for injuries incurred in an accident,

NO FAULT

MR. CRAGIN (Continued) regardless of fault. It is in the consumer's best interest because of speed and sophistication of the Blue Cross claims system and the low Blue Cross operating costs that this type of coverage continue under No-Fault.

I have generally stated the reasons why Maine Blue Cross & Blue Shield feels it should be allowed to participate in writing no-fault coverage at least in the health care field. Let us now consider the separate points in a little more detail.

First, health care financing systems by Maine Blue Cross & Blue Shield and health insurance companies within the State of Maine are already functioning well. They have many years of experience. Consumers, hospitals, physicians and other health care providers know them, they respect them and they count on them. The providers know exactly when and where and how they'll be paid for their services by the health care carriers, the insurers and Blue Cross. A great deal of confusion and continued misunderstanding could follow for the consumers and for the providers as well, if they began looking to auto insurance companies rather than to

NO FAULT

MR. CRAGIN (Continued): health care carriers for medical care expense payment. As one example, because of the unique Nationwide Claims Processing System we have developed, a Maine Blue Cross subscriber who is involved in an accident anywhere in the U.S. or Canada can receive treatment and have medical bills paid with a minimum of administrative problems regardless of where he lives or where the accident takes place.

The administrative cost of health insurance companies and prepayment plans average far less than those of automobile insurance companies. For example, the administrative expense of Maine Blue Cross & Blue Shield of only 7.6%, ranks among the lowest in the industry. Nationally, health insurance companies average 20% of the premium dollar for their administrative expense. Automobile insurance companies nationally average approximately 44% of the premium dollar for operating costs. Thus, the consumer can expect a higher return on his premium dollars from a health insurance carrier and a prepayment plan.

To translate the difference into dollars, if the

NO FAULT

MR. CRAGIN (Continued): one billion dollars in medical expenses resulting from motor vehicle accidents estimated for 1970 by the National Safety Council had been underwritten entirely by auto insurance liability policies, we could have been adding some 400 million dollars more in administrative expenses to the medical expenses, bringing the total premiums for the consumers to 1.4 billion dollars.

On the other hand if Blue Cross & Blue Shield and health insurers had underwritten the medical expenses, administrative or operating expenses would have been about at 70 million dollars, a savings of 330 million to the consumers.

Health insurers and prepayment plans significantly influence the cost and the quality of health care in this system. Specifically, Maine Blue Cross & Blue Shield through its participating agreements with providers has developed and perfected peer and utilization review mechanisms, is constantly striving to assure that its subscribers and derivatively all consumers of health care receive the highest quality care at the lowest possible cost.

NO FAULT

MR. CRAGIN (Continued):

The charter establishing Maine Blue Cross & Blue Shield as a non-profit organization, authorizes them to contract with hospitals, physicians and other health care providers for services. The benefits offered the Blue Cross subscribers are based on these contents. This three part contractual agreement is at the heart of Blue Cross' ability to work closely with health care providers, allowing them to have a decided impact on the health care delivery system.

Maine Blue Cross & Blue Shield also has a strong effect on health care system of Maine through its own benefit system and to support a peer review, a utilization review and comprehensive health plans. One of the greatest problems that can take place if health insurance and prepayment plans is not considered in conjunction with No-Fault legislation is unnecessary -- is duplication which should be unnecessary if the proper steps and precautions are taken. If Maine Blue Cross & Blue Shield and other health carriers were entirely written out of the no-fault context, there

NO FAULT

MR. CRAGIN (Continued): would necessarily be duplication of coverage and in some cases, possibly, even duplication of claims payments.

Maine Blue Cross & Blue Shield covers approximately 45% of the residents of the State of Maine and about 93% of the Maine population have some form of health coverage. It makes no sense to me that it may be necessary for these consumers to be required to incur additional health coverage expense under mandatory No-Fault coverage or be subjected to the confusion which would inevitably result if the source of their coverage became further fragmented and dependent on the product of health care.

Therefore, to preclude unnecessary duplication of coverage and to allow health carriers with their overall effectiveness in paying injury claims to offer No-Fault coverage, I would submit to this Committee that they should seriously consider insuring that in any legislation which it reports out, that health insurers and prepayment non-profit medical service plans had an opportunity to at least participate in the program. I refer to a very brief summary of reparation payments as

NO FAULT

MR. CRAGIN (Continued): far as insurance is concerned on the basis of amount paid and the speed with which it is paid, comparing various types of carriers. I will leave it with you for your review at your leisure. (See Appendix)

SENATOR COX. Are there any questions of Mr. Cragin? Representative Donaghy?

REPRESENTATIVE DONAGHY. Mr. Cragin, I -- I wonder, how far are you contemplating going into health care coverage beyond what is already provided for medical payments under present automobile policies? I think the average cost is, let's say, ten or twelve dollars, for a \$10,000 policy.

MR. CRAGIN. It depends of course on the package of benefits which this Committee decides the people of Maine should have. We -- Maine Blue Cross & Blue Shield wishes to provide as part of this package the medical benefits and -- and physician benefits, etc., which they currently provide. I think the Committee should look at something permitting medical service organizations and health insurers or a combination of the two of them to provide the necessary medical pay

NO FAULT

MR. CRAGIN (Continued): benefits, wage replacement benefits, etc., that any No-Fault package would contain.

SENATOR COX. Any further questions?

REPRESENTATIVE ANNE BOUDREAU. Charles, could you arrange to make that information available to the Committee?

MR. CRAGIN. Well, it's rather in rough form, but I'd be glad to recedit it and then supply it to the Committee, Mrs. Boudreau.

SENATOR COX. Any further questions? Representative Tierney?

REPRESENTATIVE TIERNEY. Mr. Cragin, I'm very concerned about the cost of my Blue Cross, the premium. You keep referring to administrative costs of -- of Blue Cross & Blue Shield. How would you handle through Blue Cross loss of earning claims and things of that nature? Rehabilitation costs?

MR. CRAGIN. That's right. I think I was referring to -- as far as Representative Donaghy's question, I believe this should be something that would be done

NO FAULT

MR. CRAGIN (Continued): in combination with the insurance carriers, indemnity carriers.

REPRESENTATIVE TIERNEY. Wouldn't this be a nightmare for the policy holder not knowing where to submit his bill?

MR. CRAGIN. No, he would submit his bill to one source. There would not be a run-around. You go there because that's a specific type of claim. But the package that would be offered could be offered by a concern -- it could also be offered by a health insurance company.

REPRESENTATIVE TIERNEY. It's pretty rational over here, but I wonder exactly how it would strike a policyholder when he does have a -- a whole bunch of bills to submit. Now, who gets what?

MR. CRAGIN. I think --

REPRESENTATIVE TIERNEY. Loss of earnings goes here and --

MR. CRAGIN. No, I believe it --

REPRESENTATIVE TIERNEY. -- the medical bills go there?

MR. CRAGIN. They -- He submits it to one source.

NO FAULT

REPRESENTATIVE TIERNEY. And you don't think that the administrative cost of Blue -- of Blue Cross would rise?

MR. CRACIN. I am sure that under any No-Fault program, you're not going to return 93% on the dollar to subscribers, but I think that a properly constructed program, you're talking at least in the area of 80% on a cost benefit ratio, and possibly something in this area should be written into any bill that's introduced or presented to the full Legislature.

REPRESENTATIVE TIERNEY. You don't think that the premium, the Blue Cross premiums, will rise as a result of this?

MR. CRACIN. There's going to be a premium charge for this package. I would submit that depending upon the benefits, there's going to be a -- a cost for it. But Blue Cross, Blue Shield, for example, the coverage should be deducted out of that package to start with. If the no-fault package that the Legislature puts out is totally comparable as far as "med" pay, for example, that's being offered now

NO FAULT

MR. CRAGIN (Continued): by Blue Cross, the individual really shouldn't pay another red cent as long as he can show proof of Blue Cross coverage. If there are additional benefits required, that portion of -- that is covered by Blue Cross should be deducted from his No-Fault coverage in order to reduce his No-Fault premium.

REPRESENTATIVE TIERNEY. You would be able to separate this internally within your own -- in your own Department?

MR. CRAGIN. I believe so.

REPRESENTATIVE TIERNEY. What I'm concerned with is the main health -- you know, the many policies that you have out now.

MR. CRAGIN. That's correct.

REPRESENTATIVE TIERNEY. Group policies, they pay X number of dollars for premiums.

MR. CRAGIN. Um-hmmm.

REPRESENTATIVE TIERNEY. I'm afraid that if you become involved in an automobile reparation system, that the overall cost of Blue Cross will balloon and this cost will be passed on to the other policy holders.

NO FAULT

MR. CRAGIN. I don't believe so, Representative Tierney. Of course, it all depends on how you set up your accounting system, but if you're handling one facet of something, you should be able to break out a cost analysis as to just exactly what that -- that costs. And I don't think that people who are getting basic Blue Cross coverage should be subsidizing the individual --

REPRESENTATIVE TIERNEY. I quite agree.

SENATOR COX. Representative Clark.

REPRESENTATIVE NANCY CLARK. Mr. Cragin, you -- you have suggested that should this Committee report out a bill on No - Fault, that we do on medical and other benefits as you suggest. Do you have more specific suggestions for the Committee or would you be willing to submit some?

MR. CRAGIN. I would certainly be willing to submit some. I'm sure before the Committee concludes its deliberations on these bills, I will probably be back on one or more specific items.

REPRESENTATIVE CLARK. Thank you.

SENATOR COX. Any further questions? Mr. Cragin, I

NO FAULT

SENATOR COX (Continued): understand that your remarks also apply to LD-1420 and you will appear later this afternoon?

MR. CRAGIN. Yes, they will, and I will not speak again. Thank you, Senator Cox.

SENATOR COX. Any further -- people who are for or against?

(Conference off the record)

MR. LAWRENCE. Senator Cox and members of the Committee, my name is James H. Lawrence, I represent the Christian Science Committee on publication for the State of Maine. I appear as a representative of the Church and representative of the Christian Scientists of the State of Maine and I would like to propose a brief amendment to this

NO FAULT

- 46 -

MR. LAWRENCE (Continued): bill. On page 2, under "bodily injury," to insert after the words "within twelve months of said accident," and following is the text of the amendment: "such benefits may include also necessary remedial treatment and services recognized and permitted under the laws of this State for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs."

(SEE Appendix)

This amendment would be necessary not to overlook the needs of those people who rely on Christian Science care and treatment. Questions?

SENATOR COX. Representative Clark?

REPRESENTATIVE NANCY CLARK. May I have a copy of those?

MR. LAWRENCE. Yes, you may.

SENATOR COX. Any questions? None. Thank you, Mr. Lawrence.

MR. LAWRENCE. Yes, sir.

SENATOR COX. Anyone else who wishes to speak on LD-1?

(Conference off the record)

MR. HOGERTY. Thank you, Mr. Chairman and ladies and gentlemen of the Business Legislation Committee: my name is Frank Hogerty, I'm the Insurance Commissioner.

NO FAULT

- 47 -

MR. HOGERTY (Continued): I am going to try to set forth the facts by laying my cards completely on the table, face up.

Your Committee will be hearing various types of proposals for No-Fault legislation. The proposals are going to vary, as I understand them, from the far extremes to the very moderate. The Insurance Commissioner and his staff are at your disposal to help you in your serious deliberations about the various proposals you'll hear. Within our budgetary means, we stand ready to assist you in your actuarial review of these proposals.

We do have a preliminary actuarial review of the three bills that we knew of in sufficient time in order to make the actuarial review. This is a preliminary review and I'm sure you'll be interested in it at the proper time.

Benefits to the consumer are maintained and cost savings along with corresponding premium reductions can be actuarially supported. We would favor such an approach at the Departmental level since the prime responsibility of the Insurance Department is to protect

MR. HOGERTY (Continued): the consumer.

Going into the history of No-Fault insurance, just to let you know how some of these people that have been involved with No-Fault in the past several years have positioned themselves. Way back in -- around, this is 1966 or prior thereto, there was a plan called the Keeton-O'Connell Plan. At that time, that was probably the first popular version of No-Fault or probably the version of No-Fault. At that time it was opposed by all segments of the insurance industry. There were debates, though, by people such as Keeton with members of the insurance industry who opposed them. However, the insurance industry gradually came around to realize that such plans as Keeton-O'Connell and other No-Fault programs would provide them with a means to pass along claim settlements more equitably and directly to the consumer by his own insurance company. They also recognized the fact that certain expense savings built into these plans might reduce automobile insurance premiums to the insurance buyer. Therefore there devolved numerous types of No-Fault proposals from several industry sources, the

NO FAULT

- 49 -

MR. HOGERTY (Continued): Mutual Life, the AIA, the American Insurance Association, and several other industry oriented associations came up with their versions of No-Fault. They saw in this an attempt or a possibility, at least, to help them in their attempt to improve their public image which needed it and still needs improvement.

Now, disagreements among the industry factions resulted in a lack of positive action at the State Legislature level. Therefore, I became involved with the National Association of Insurance Commissioners in my current job, and in Chicago at one of our annual meetings I proposed that the various industry factions use the NAIC, the National Association of Insurance Commissioners, as a sounding board to develop a uniform approach for the consumer interest. The verbal response was excellent; I got a lot of lip service, but there was no action forthcoming because of divergent views and hesitations by the industry to act in concert. I later learned to understand this.

NO FAULT

- 50 -

MR. HOGERTY (Continued):

The NAIC in Chicago adopted a resolution. I won't bother to read to you the entire resolution but I will be able to furnish you with its text subsequent to my speech, my talk. One of the important facets of the resolution, however, was the proposition that the NAIC continue to support and endorse State by State experimentation with various forms of No-Fault coverages and to encourage States to enact systems with different characteristics.

Now, later as these problems of No-Fault unfolded, nine major insurance companies met in what was called a clandestine manner at a place called Camelback Inn, in Scottsdale, Arizona, in December of 1972. In meeting there they were attempting to resolve various differences within their industry. Mr. Bennett spoke of the differences that the trial lawyers have within their brotherhood. The industry, I understand, has their problems also. They attempted at Camelback to establish a modified uniform approach to the No-Fault situation. But then, subse-

NO FAULT

- 51 -

MR. HOGERTY (Continued): quent to that, the industry's fears were probably justified when the Federal Government called for an investigation of the so-called secret meeting at Camelback and they have been asked to testify as to why they were getting together. Therefore, it was a defeat of their efforts.

During all this we fortunately in Maine I think had some foresight. The 105th Legislature established a Legislative Order in May of 1971 which established a study commission to study seven items, one of which, only one of which, was No-Fault. This type of approach seemed to be involving as the proper approach in Maine to bring in different parties so that they could be heard. I will say more about this commission as you take up their bill, but I would like to quote one facet of that study commission's order established by the 105th Legislature. Senator Kenneth McLeod and the then Speaker of the House David Kennedy and the Insurance Commissioner, I, Frank Hogerty, were the appointed authorities under that order. As President

MR. ROBERTY (Continued): of the Senate, he would appoint two members in the Senate, and as Speaker of the House, he would appoint three members from his body; I was to appoint four, making a total of nine. Here's what the order said:

"These members" who together are supposed to "represent the various Maine insurance constituencies and shall serve without compensation." There isn't one single order or one single word in this order that directed us to have a member of the public on that commission. In fact, we were directed otherwise. I just wanted the facts to be straight.

I shall have more to say about the Commission on the next bill.

During your Committee's deliberations on the various No-Fault bills, I'm sure you will arrive at the conclusion that each bill has its own merits. Therefore, I agree with Chairman John Cox, Senator Cox, who is quoted in this morning's newspaper as follows: "I think we can come out with a bill that will benefit the consumer." Furthermore, I know that

NO FAULT

- 53 -

MR. HOGERTY (Continued): I hope that Senator Cox's prediction also in the paper will come true and that was that any bill eventually endorsed by this Committee will combine the best features of the several bills now before the Legislature.

And again I repeat, the Insurance Commissioner and his Department stand ready to help you; that's what we're here for. We don't make the laws, we enforce them, we administer them, to the best of our ability and the funds available to us.

If we approach this matter with that in mind, in this way we in Maine will properly respond to the demand at the Federal Government level for responsible action at the State level in establishing a responsible automobile No-Fault insurance law. That concludes my remarks on this particular issue.

SENATOR COX. Are there any questions of the Commissioner? Representative Deshaies.

REPRESENTATIVE DESHAIES. Thank you, Commissioner, for setting the record straight. I've just one question: Has your Department had an opportunity to project the actuarial savings to the consumer with this particular bill?

NO FAULT

- 54 -

MR. HOGERTY. My answer directly is no. We have some projections if you'd like to hear them. We received them by phone, and as I say, they're preliminary.

REPRESENTATIVE DESHAIES. Yes, I would like to hear them very much.

MR. HOGERTY. These are based on three sets of figures, and these pertain to LD-1. I'll group them in A, B and C groupings: The A group, 20/40 BI, 20/40 uninsured motorist, and 10,000 PD. In other words, these limits don't correspond directly with the limits called for in the bill, but in order for us to have some comparison that -- that is meaningful, we will give you these figures as if they were in that program.

REPRESENTATIVE DESHAIES. Excuse me, Commissioner. Can I interrupt you just for a moment? That was -- Under A, it was 20/40 BI?

MR. HOGERTY. Right.

REPRESENTATIVE DESHAIES. 20/40 uninsured motorist?

MR. HOGERTY. Right.

REPRESENTATIVE DESHAIES. And 10,000 PD.

NO FAULT

- 55 -

MR. HOGERTY. Yes, sir.

REPRESENTATIVE DESHAIES. And the projected savings?

MR. HOGERTY. The projected cost, not savings, in Maine would be 16%. That's 16% additional costs.

REPRESENTATIVE DESHAIES. Increase.

MR. HOGERTY. Yes. Now, under the figures for B, category B, the same -- the same set of limits but adding in \$1,000 "med" pay, medical payments coverage, the increase would amount to 8%.

Under the third category, C, 20/40 BI, 20/40 uninsured motorist 1,000 medical payments, the increase would amount to 13%. Now, I'm sure that the Committee will want to have further actuarial studies made of this, but this is the first one, a preliminary one, that we've been able to get in the time allotted to us.

SENATOR COX. Any further questions? Senator Katz, any further questions?

SENATOR KATZ. Are you going to make some kind of a recommendation to us as a Departmental position with respect to the question of -- of limitations for liability on the inclusion of No-Fault property damage

NO FAULT

- 56 -

SENATOR KATZ (Continued): in a Committee bill?

MR. HOGERTY. Senator Katz, I think we would be out of order at the Departmental level in making such a recommendation. I believe that it's up to the members of the Legislature after they have heard proper testimony.

SENATOR COX. Any further questions? Representative O'Brien.

REPRESENTATIVE O'BRIEN. Mr. Hogerty, this study commission that they had -- no, that's someone else. Other than the fact that there is some fear that the Federal Government may step in and write a bill nationally, and Maine's premiums being some of the lowest in the country, excluding the fact that the Federal Government intervened, was there any -- did the study commission decide that perhaps Maine did not need a No-Fault bill?

MR. HOGERTY. Well, this was thrashed over extensively, Senator O'Brien -- Representative O'Brien, by the Study Commission. The Study Commission held many, many public hearings, and I sat in as Advisor, primarily, at first as Deputy Commissioner and then I sat

NO FAULT

- 57 -

MR. HOGERTY (Continued): in as Advisor with that Commission. They did -- they came up with many, many -- they spent many hours trying to decide whether or not in fact Maine did need No-Fault. It was their final decision that it did; that it would improve primarily claim settlements, make them more equitable, make them more expeditious. I think this was their primary reason for their decision to proceed. Also, I'm sure that they are anticipating some sort of premium reduction. And again, I think they want further review actuarially because it is very difficult to recommend a -- a reduction unless you have some basis for it, and I think that somewhere along the line a basis can be established which will help you in your decision.

SENATOR KATZ. This is my problem, Commissioner. The general public's feeling is, as you've stated, they expect some sort of a rate reduction. Now, I -- I think the general public should be made -- that it should be let -- known to the general public that no rate reduction is going to come with No-Fault. And

NO FAULT

- 58 -

SENATOR KATZ (Continued): I'm having a difficult time, looking at the three bills that I've seen now, trying to get enthused over the fact that we even need No-Fault in Maine. This is my problem, right now, I'm going to need a lot of advice.

MR. HOGERTY. Well, to me, one -- one reason, to me, as I see it, is, the companies will make their payments better, because they're making it right to their own insured, and the insured gets it right from -- back from his own company for personal injury. The same way on property damage if that happens to be included, as it is now for collision.

Certainly, in the backs of the minds of the Study Commission, and I would really prefer to have the Study Commission speak for itself, but I am speaking as a -- as an on-looker, my impression is that the members of the Study Commission under Senator Wakine Tanous felt that there was some need for State action, as many State legislators feel, because we would rather, I think, handle a No-Fault law where we in Maine have something to say about it, so it can be fitted to the needs of the people of Maine and not have it mandated from Washington. I feel -- This is the way I look at

NO FAULT

- 59 -

MR. HOGERTY (Continued): it. Now, I really feel that the Commission felt this way, but I would rather have them speak for themselves. I'm not speaking for the Study Commission.

SENATOR COX. Any further questions? Representative Jackson?

REPRESENTATIVE JACKSON. I hope we're not being forced in a position where we're reacting to a Federal threat that is going to cause the citizens of the State to spend more money on their automobile insurance.

MR. HOGERTY. Well, I think if we go along, we will find that -- I think you'll find that maybe we can come up with a bill, taking a look at all of them, as I understand there are probably six of them, with one that meets the needs. I don't think they're all costly. Now, again, these projections here are not -- may not be actuarially -- perfectly accurate. In fact any actuary will not vouch for their accuracy. I don't think you'll ever get an actuary to vouch for all the accuracy of the figures because there are many

NO FAULT

- 60 -

MR. HOGERTY (Continued): areas of judgment that must be considered in an actuarial projection. And now, I hope -- in the projections that I have, I hope that you will be considering seriously the -- either the hiring of, or the testimony of, an actuary or more -- one or more actuaries, because that will be a big help to you.

SENATOR COX. Any further questions? Representative Donaghy?

REPRESENTATIVE DONAGHY. Commissioner Hogerty, I want to compliment you on the position that you have taken on this for some time, and that is that it is going to cost us more money if we get the same coverage under No-Fault.

MR. HOGERTY. Well, again Mr. Donaghy, it all depends on what bill you're looking at, and what the bill does.

REPRESENTATIVE DONAGHY. Well, that being the case, would you recommend a certain area in -- in the bill that we should look at closer? You're the professional on this. Now, what's the -- what particular clauses

NO FAULT

- 61 -

REPRESENTATIVE DONAGHY (Continued): in these bills should we be looking for?

MR. HOGERTY. Well, one is threshold. Another would be looking closely at first party benefits. Another would be looking at subrogation. Let me think, I'll probably leave something out, but -- I would look to -- to see how -- how -- well, subrogation works along the line of -- subrogation of benefits; who are the persons, types of vehicles covered?

The bills call for an actuarial review and these are all some of the areas that you have to look at to see just how extensive the benefits are, if in fact the benefits are over and above what is currently included in an automobile policy, or is actually lower than or less than what is included in a current automobile policy? So all of these various factors put together make up the final product, and until you put them all together and match them with what you've got, you really can't tell what your projected rate level is going to be. I'm -- I'm almost speaking like an actuary and I'm nowhere near one.

NO FAULT

- 62 -

REPRESENTATIVE DONAGHY. One -- One more thing, a little bit different line, but would you anticipate that if the Blues go in and compete as they have asked to do, would they be under the -- bound by the same regulations and codes as the commercial insurance companies are at the present time?

MR. HOGERTY. I would certainly want to see that go into the codes, if they were. I would certainly want to see any nonprofit hospital association such as Blue Cross, if they were included in such a bill, to come under the jurisdiction of the Insurance Commissioner and Department, of course in -- in the same way that the insurance companies were.

SENATOR COX. Any further questions? Representative Deshaies?

REPRESENTATIVE DESHAIES. Commissioner Hogerty, didn't your office work on an actuarial savings with a threshold bill on one of -- I believe it was two stock companies that submitted actuarial figures on what the savings would be to the Maine Policy holder with a \$500 threshold.

NO FAULT

- 63 -

MR. HOGERTY. Yes, Mr. Deshaies, we've worked on that. We have substantial figures which Mr. Briggs has and Mr. Reddin; That was on what eventually turned out to be LD-1420 and that was done prior to final revisions made on that bill by the sponsor.

REPRESENTATIVE DESHAIES. In other words -- I guess the point I'm trying to make is, there is a savings available to the Maine policy holder with the right type of no-fault bill?

MR. HOGERTY. Well, according to the actuarial projections, it appears that there will be.

REPRESENTATIVE DESHAIES. OK.

SENATOR COX. Commissioner, we'll probably be working on the problem with you within the next few weeks on No-Fault. Thank you very much.

MR. HOGERTY. Thank you.

SENATOR COX. Anyone else who wishes to speak on LD-1? Mr. Bennett?

MR. BENNETT. I would just like to make one observation, and that is this: My practice is now almost 100% in the field of labor relations and as such I sit down

NO FAULT

- 64 -

MR. BENNETT (Continued): almost daily and negotiate labor contracts and one thing we're always faced with' is whether to have Blue Cross Insurance coverage for our people or a private carrier. And I want to tell you one thing. There is absolutely -- there isn't a contract that I can think of right now where we don't have hospitalization and some wage continuation plan. And there is absolutely no problem. As a matter of fact, Blue Cross works with an insurance company, or you can put it out to bid and get your own. I wanted to put that fear to rest about this duplication -- duplication of payments because you just take a look at the industry in the State of Maine and you'll find where you have Blue Cross coverage for the employees working, they also have the wage continuation plan; no problem.

SENATOR COX. Thank you, Mr. Bennett. Anyone else who wishes to speak on LD-1? All right, I'll declare the public hearing closed.

The next bill we'll hear is LD-1420, an Act Providing for No-Fault Motor Vehicle Insurance. The Chair

NO FAULT

SENATOR COX (Continued): recognizes the sponsor,
Representative Trask.

REPRESENTATIVE TRASK. Senator Cox and members of
the Business Legislation Committee:

I am Representative Claude Trask of Milo and
the sponsor, on behalf of the Insurance Study Com-
mission, of LD 1420, An Act Providing for No-Fault
Motor Vehicle Insurance.

The Insurance Study Commission was created by
the 165th Legislature to examine a number of differ-
ent insurance subjects. The best known and of great-
est interest, of course, was No-Fault insurance.

Senator Tanous was chosen Chairman and he and
the Commission determined at the outset to obtain all
information possible and to involve the public and
all interested parties as much as possible in the No-
Fault problem. A series of advertised Public Hearings
were held so that all points of view could be expressed.
The Commission received, through the Insurance Depart-
ment and other sources, progress reports on similar
legislation throughout the country, as well as many
reports and opinions on the subject. Finally, after

NO FAULT

- 66 -

REPRESENTATIVE TRASK (Continued): almost a year of study, a modified No-Fault bill was completed by the Commission and all those who had shown an interest throughout the year were again invited to express corrections and suggestions.

The Study Commission has had the advice of the Insurance Department and the Attorney General's Department throughout the development of this bill, and hopefully we have submitted a No-Fault law for your consideration which is particularly well suited to Maine.

Mr. Chairman, with your permission, I would now like to introduce Mr. Roger Woodman who was a member of the Commission and who will explain the highlights of this bill.

SENATOR COX. Are there questions for Mr. Trask?

None. Thank you.

MR. WOODMAN. Senator Cox, members of the Committee:

My name is Roger Woodman, I'm a resident of Falmouth, Maine, and I am part of the insurance firm of Campbell, Payson & Noyes in Portland. It's a

NO FAULT

- 67 -

MR. WOODMAN (Continued): pleasure on my part to introduce on behalf of my fellow Commission members LD-1420. First, if I may, I'd like to give a brief background of No-Fault, a change in handling auto claims legislation which seems fair to me. Then I shall quickly go to LD-1420, just giving the purpose or highlights of various sections. Then I shall be glad to try and answer the questions of the Committee, if I can.

In the early 1930's ideas about change in paying claims for auto injuries began with legal professors and theorists. One such plan was set forth at Columbia Law School. Plans were discussed

NO FAULT

- 68 -

MR. WOODMAN (Continued): for years and then in 1966 two law professors, Keeton and O'Connell, offered a further study and at a critical time. It was a critical time because in many states auto insurance was hard to get. It was getting more costly and in some jurisdictions, it took years to settle claims. There was a climate for change.

And the Keeton - O'Connell Plan made some radical suggestions. #1, it eliminated phony questions of who was at fault for the injury. #2, it let each injured party know in advance exactly what he could recover if injured in an auto accident. #3, heavy costs of investigating claims and Plaintiff's and Defense costs were eliminated. And finally under their Plan, all pain and suffering, a subjective and non-specific award adding two or three hundred percent to smaller claims, would be eliminated.

Since the Keeton - O'Connell Study, there has been much debate and numerous plans have been proposed. The Department of Transportation in Washington did a massive two million dollar study on accident claims. Now, at

NO FAULT

- 69 -

MR. WOODMAN: (Continued): this moment some 16 states have passed some form of auto claims payment law and nine of these, and most of the recent ones, are threshold laws. The Hart-Magnuson bill, as you are undoubtedly aware, has been introduced in Washington to provide a sweeping change for Federal law, and the Uniform Motor Vehicle Accident Reparation Act is being introduced nationally and practically all states have been studied by a distinguished legal commission.

Against this background, the Insurance Study Commission, as Representative Trask has outlined, would use stacks of material and hear detailed suggestions throughout the year at public hearings in developing LD-1420. It is, as has been stated, a balanced approach demonstrated on the success of so-called threshold bodily injury plans as enacted elsewhere and applicable to Maine.

After a year of review and several drafts, bill 1420 is before us at this moment. And basically it does three things: #1, you will continue to carry the same bodily injury and property damage liability and uninsured

NO FAULT

- 70 -

MR. WOODMAN (Continued): motorist coverage that you presently do, but it would be mandatory that everybody carry it. #2, you, your spouse and relatives and minor children, residents in the household, would be eligible for \$2,000 of benefits each in any automobile accident regardless of who was at fault. And #3, you would not be able to sue another party in connection with an automobile accident unless medical costs or expenses exceeded \$5,000.

Now, I'd like to go through the bill, very, very quickly, just by sections. I'm not going to do it by line; there doesn't seem to be anything between -- between five minutes of skipping through it and 40 minutes of line by line, so I'm just going to go through briefly and identify the different sections and what the purpose of adding that particular section is.

Section 121 are the definitions, and it sets forth the definition of "insured", "loss", "vehicle", and the other terms that are pertinent in the act. I think the particularly significant point here is that 1420, now, would provide No Fault benefits and make it mandatory

NO FAULT

- 71 -

MR. WOODMAN (Continued): for commercial vehicles, whereas in many states it only applies to private passenger vehicles. But in Maine with many farms and individual owners of commercial vehicles, it seems particularly appropriate to include all vehicles.

Section 122 spells out mandatory motor vehicle insurance on page 3. It in essence makes that current Financial Responsibility Law and limits -- Financial Responsibility limits and insurance -- excuse me -- compulsory. This is required in the Act because all people must be insured for the act to be practical and to be fair for everybody.

Then if you will note on page 4, Item 3, "Penalty", there is no pre-registration requirement under the Act. This saves expense and difficulty for the Motor Vehicle Department and the public. Over 90% of our cars are stated to being insured now. If you do not insure, however, it is severe, as shown.

Section 123 on page 4 spells out the \$2,000 in No Fault benefits that must be provided in each policy and the additional protection that must be offered in each policy.

NO FAULT

- 72 -

MR. WOODMAN (Continued):

There is no property damage included in 1420. The Commission on this item was guided by the findings of the Committee that Mr. Bennett referred to in 1968 which pointed out that including PD in No Fault does in fact increase costs and it also was guided by the testimony of Commissioner Ryan from Massachusetts whereas he has not had a single BI complaint, that the No Fault under PD was a constant citizen problem, so it is not included in this bill.

Section 124 extends No Fault benefits to pedestrians and passengers injured by uninsured or unidentified vehicles. This is an important element, I think, because under this bill benefits as a result of injury in an automobile accident are extended to persons who might not own and insure a car and have benefits under a car.

Sections 125 and 126 on page 5 exclude intentional injuries and also claims in connection with converted vehicles for obvious reasons.

Section 127 deals with Social Security, Workmen's Compensation, or Medicare or Medicaid benefits. It is a

NO FAULT

- 73 -

MR. WOODMAN (Continued): pattern to exclude Workmen's Compensation in all States. This is not only true in connection with No Fault, but is true in connection with the automobile insurance and it's true in connection with the accident & health industry. Workmen's Compensation is a separate and distinct coverage.

Also under Section 127, Social Security, Medicare or Medicaid which are already tax provided benefits where applicable would not be included. Also in the same section, non-taxable income tax savings are subtractable as described.

Now, Section 128 on page 5, along with the mandatory insurance section, is the heart of meaningful automobile claim reform. Unless the minor suit or damage claim is eliminated, the benefits, speed of coverage, coverage for persons not presently insured, and favorable effect on -- on insurance costs, simply cannot all be combined. Under this section, it is pointed out, you cannot sue unless the cost of medical and hospital expenses are \$500 or more, or there is death or serious

NO FAULT

- 74 -

MR. WOODMAN (Continued): injuries, as set forth in the section.

Unless you have a threshold, and by a threshold is meant a minimum amount, under which no claim for pain and suffering or loss can be brought against the other party, you do not have meaningful No Fault auto reform.

Section 129, page 6, simply states that if you recover in a suit, whatever No Fault benefits you've already collected will be reimbursed.

Section 130, on page 6, sets forth the applicability of insurance No Fault benefits as applying to the person insured in other situations or where there may be two or more obligations to pay No Fault payments.

Section 131, page 6, states that the benefits apply both within and without the State of Maine. One State, I believe, has No Fault benefits which do not apply outside that State, which seems to the Committee an obvious omission.

#132 -- Section 132, page 6, an undoubtedly legal and technical thing that should be again changed in this

NO FAULT

- 75 -

MR. WOODMAN (Continued): final draft and I am not an -- an attorney, but it should state that the Insurance Commissioner rather than the Secretary of State, for example, regulates No Fault benefits as set forth in the Act.

Now there is a long series of sections and I'm not going to take the time to identify them by section. Section 133 on page 7 and Sections 134, 135, 136 and through 142, all deal with the proper and timely disposition of claims for No Fault benefit insurance. There are interest penalties if the benefits aren't paid in the course of the time period involved with provision for both attorneys as respect both Plaintiffs and the carrier. That body of the law deals with the disposition promptly, which is a main impact of -- of 1420, and properly for the benefit of the public in handling these claims.

Now Sections 145 and 146, on page 10 and 11, set up the organization and distribution and cost to pay No Fault benefit claims if a person is not protected by insurance. For example, this would be applicable in the case of a pedestrian who does not own a car.

NO FAULT

MR. WOODMAN (Continued):

Section 147 is essential. If certain portions of this bill, particularly Section 122, the mandatory auto coverage, and Section 128, dealing with the tort exemption, were found to be unconstitutional, then the bill as presented would lose its meaning and its purposes.

Section 3, the final section, would set the effective date as January first, 1974.

I'd like to make three brief comments in addition to the specifics of the bill to perhaps give you a little insight into the thinking and deliberations of the Commission. There have been some comments in connection with insurance people which were spelled out in the order serving as the four members from outside the Legislature on this Committee. I think it's interesting that in the point of time of this Commission, these members really represented the full spectrum of thinking at that time in connection with No Fault insurance. Agents who generally are closer in most instances, closer to the insuring public than anybody else, because they talk with them every day about their claims

NO FAULT

- 77 -

MR. WOODMAN (Continued): and their coverage, at that point in time were, if not opposed, very lukewarm on No Fault. They didn't sense among their customers any groundswell for this kind of legislation. And in some instances, agent bodies actually came out in opposition to No Fault. There were certain groups of companies at that particular time who felt that rather than change any of the tort system that the best way in helping the public was simply to add accident and health coverage, if you will, to the bill. There were other people at that time who were in favor of sweeping reform, and we also had the benefit in this group of an attorney who had no connection with auto reparations, or now, as it's known, No Fault, and he was most helpful in giving a starting from scratch approach.

The second item I'd like to comment on is cost. In addition to prompt payment and broadened protection, cost is a vital part of No Fault. Maine rates are among the lowest in the nation. And if No Fault is to be accepted in a meaningful way by the public, it's got to be a meaningful bill offering a possible reduction in

NO FAULT

- 78 -

MR. WOODMAN (Continued): cost or some stabilization, at least, against inflationary health trends.

The work of actuaries is scientific, but they cannot be considered exact and they won't go on record as such. Preliminary actuarial estimates of various plans were obtained by the Insurance Department and this was a significant consideration on the part of the Commission in their approach to this balanced No Fault bill. I think it also would be useful to the Committee to know that the National Association of Insurance Commissioners established last fall to be operative this spring, a national clearinghouse of the actuarial testing of these bills as respects costs. You cannot divorce in terms of public interest and public desire for No Fault the cost. Prompt pay -- payment is a major element and the extension of protection is a major element, but cost is indeed a factor and this was a very definite consideration as far as the Commission is concerned.

Finally, I'd like to comment on Blue Cross and health insurance which the Commission considered. A representative of Blue Cross did appear before the Commission

NO FAULT

- 79 -

MR. WOODMAN (Continued): suggesting that Blue Cross have a primary position in paying auto medical bills. At the present time, Blue Cross is paying these claims to the public along with sums that the public is collecting from automobile medical payments insurance which they may have purchased or damages which they may collect. None of the other No Fault bills passed have made Blue Cross or any other kind of health insurance primary. It seemed to the Commission that we were taking a big step in making auto insurance mandatory. It also seemed to the Commission that we were taking a big step in terms of the public giving up their right to sue in minor cases, unless medical costs or expenses exceeded \$500, and that with the balanced bill presented, to subtract any other benefits or to involve another carrier be it Blue Cross or any other health company, wasn't practical.

It is my own personal feeling that No Fault plans will be evolutionary. Some day in the future national health insurance is obviously going to have a bearing on No Fault legislation which this State may enact or which has been enacted in other States. At that point in time, I think the whole question of health insurance obviously has to be discussed in connection with auto claims, but

NO FAULT

- 80 -

MR. WOODMAN (Continued): It did not seem appropriate to subtract these benefits, to the Commission at this time.

I very much appreciate your kindness and patience in my presentation. This is a complex and a very difficult business trying to improve auto claims procedure. Your Commission has worked hard to provide a good solution for the people of Maine. I hope you'll very seriously consider LD-1420. I know members of the Commission will be more than happy to meet with you and discuss any elements of the proposal. If you do have questions, I'll be glad to try and answer them.

SENATOR COX. Representative Tierney?

REPRESENTATIVE TIERNEY. I have a lot of questions, but I think I'll just ask two. I guess I'm interested in the area of health insurance raised here. Am I correct in quoting you, that you said that that would be a big step, to make health insurance primary, and that you regard the whole system as evolutionary, but it's inappropriate at this time to this Commission?

MR. WOODMAN. This was -- This is my personal feeling,

NO FAULT

- 81 -

MR. WOODMAN. (Continued): sir, and in the deliberations of the Commission it was felt in looking at this proposed legislation and at legislation elsewhere, that we -- we would not get into the area of subtractable health benefits.

REPRESENTATIVE TIERNEY. I see. But do you have any objection to its principle in your opinion?

MR. WOODMAN. I don't think so. I think -- I think it depends in terms of -- of the kind of bill here that you're talking about. You're talking about, here, a -- a bill with relatively low first party benefits, where a person can bring a legal action at a lower level. It does not seem to me the issue that it would be in connection with a Hart-Magnuson bill or the UNVARA bill which I think does make specific provisions as respects health insurance.

REPRESENTATIVE TIERNEY. But you don't -- you have no objection to the principle, then, or the concept of --

MR. WOODMAN. In the context of this bill -- In the context of this bill at this time, I think it would be

NO FAULT

- 82 -

MR. WOODMAN. (Continued): a great mistake to try to get into subtractable health benefits.

REPRESENTATIVE TIERNEY. Well, how about in other -- how about in other bills at this time?

MR. WOODMAN. In theory on a bill such as the Hart-Magnuson or UNIVARA bill, I think you almost have to.

REPRESENTATIVE TIERNEY. OK. The second question was just one I needed explained. Could you explain to me Section 127, section 1, please?

MR. WOODMAN. I hope so, Mr. Tierney. I get confused with the legislative documents, too. You're referring to the section on subtractable benefits. I believe the purpose of this section is that in calculating net loss which would be provided for under the definitions, which are "loss" as defined under the definitions again beginning #4 at page 2, you would subtract from those benefits that would be paid to a person, Workmen's Compensation benefits because he would be getting -- this is in a situation where he was getting the Workmen's Compensation benefits, and as I pointed out, these "comp" benefits stand alone under present liability

NO FAULT

- 83 -

MR. WOODMAN. (Continued): statutes and others.

Also you would subtract from those benefits Social Security, Medicare or Medicaid, the rationale being behind this, that these benefits are now already provided by general tax revenues and therefore cannot become a cost, if you will, of providing No-Fault benefits. And the third item that you would subtract would be if the benefits that the person received was tax free, he would not get the -- the tax benefit twice, if you will.

REPRESENTATIVE TIERNEY. I -- I'm still not quite sure I understand, sir. When you -- Now, let's say I'm on welfare or I'm -- or I'm a Senior citizen or something, and I'm injured in an automobile accident and I'm covered by Medicare or Medicaid, and my medical expenses, say, are \$1,000. Now, I expect to get Medicare or Medicaid; you subtract that from this policy, let's say; is that correct? Now, does that influence that threshold at all?

MR. WOODMAN. It does not influence -- it would -- your threshold would be influenced by medical or hospital expenses that were incurred. But the only relationship that your collection from Medicare or Medicaid would

NO FAULT

- 84 -

MR. WOODMAN. (Continued): have in connection with this bill would be as respects "loss" as defined on page 2 of the document.

REPRESENTATIVE TIERNEY. OK. And is there anything in here which guarantees the passing on of that savings, the rate premium or something?

MR. WOODMAN. The premiums and the rating for No Fault benefit would be subject to the same body of insurance law that the State currently operates under and as set forth that it should be regulated by the Insurance Department and that the rates for No Fault benefits would obviously have to meet the criteria of not being either excessive, discriminatory or inadequate.

SENATOR COX. Any further questions? Senator Katz?

SENATOR KATZ. This includes mandatory insurance?

MR. WOODMAN. Yes.

SENATOR KATZ. Can you give me some notion as to what extent are vehicles on our highway uninsured at the moment?

MR. WOODMAN. The Commission had a very interesting meeting with representatives of the Motor Vehicle Department, Senator Katz. We were concerned as to how to

NO FAULT

- 85 -

MR. WOODMAN. (Continued): approach mandatory insurance because we did not want to create a situation where you had to have an army of people checking registrations or accepting pieces of paper prior to registration. I'm sure the Motor Vehicle Department can comment on this in greater detail than I can. But the information that they gave to us as a result of tests and from time to time they will run a test on, say, 1,000 accidents, to see how many people had insurance at the time of that accident. The information as I recall it from memory that they gave us would indicate that 90 plus percent of the vehicles in the State of Maine are correctly insured.

SENATOR COX. Any other questions? Again, Senator Katz?

SENATOR KATZ. Do you have any information respecting the level of the threshold? You said that it is a low threshold. Can you give a -- some kind of indication of why this particular method was selected?

MR. WOODMAN. I'll try to, sir. There was a great deal of discussion within the Commission and there was rather

MR. WOODMAN. (Continued): a division of opinion -- of opinion within the Commission as to what was a reasonable threshold for a bill to be presented to your Committee and to the Legislature of the State of Maine.

I was a proponent of this threshold and I can express to you my reasons for it. My thinking was, again, based on my belief that this is an evolutionary process, that if we could produce a bill that was balanced, in that it did not radically change the tort system, and did not radically change people's right to sue, and because such bills were gaining acceptance in neighboring States such as Connecticut, that a bill of this nature would perhaps be most acceptable to all those involved in wrestling with this problem. And we had quite a number of votes and -- and quite a great deal of discussion. But my personal feeling was, as I indicated, that this was a balanced and a moderate view. The actuarial tests indicated that on this type of threshold, there would be savings although obviously such savings would not be as significant as in a bill with a much higher threshold.

NO FAULT

- 87 -

SENATOR KATZ. What other thresholds were there and supported by various members of the Commission?

MR. WOODMAN. I would say, sir, that the principal --- that the highest threshold that was discussed was \$2,000. There was ---

SENATOR KATZ. Of medical expenses?

MR. WOODMAN. That's correct. You would not be able to bring a tort action on -- unless your medical expenses exceeded that figure.

SENATOR KATZ. I don't mean this to sound hostile, but I think what you're saying is that the Commission made a political determination as to the nature of a bill which would be acceptable to the greatest number of -- of -- of the constituencies involved in this action.

Senator Tanous is smiling and I think that the answer probably is self-evident, and I'll ask you, the language is kind of kooky, isn't it? (Laughter)

I'm going to pursue the question that was asked before because I don't understand -- really don't understand your response. You --- You used the expression "subtractable health benefits", and I -- I

NO PAUSE

- 88 -

SENATOR KATZ. (Continued): presume here you're talking about the -- the flow of benefits that might come from a Blue Cross type of -- of policy. Under Section 127, subsection 1, you have subtractable benefits and you enumerated -- enumerated several of them. Why would it be more complicated or why would it be less advantageous to include a deductible -- subtractable health benefit in the program, if one of our objectives is to reflect savings to the consumer?

MR. GOODMAN. I think -- (coughs) excuse me, sir, -- I'm certainly -- I'm certain there are people who are more expert in this discussion than I am. I -- I can only give you my own --

SENATOR KATZ. I am very impressed so far.

MR. GOODMAN. I can only give you my own thinking. Workmen's Compensation, I think we can take right out at the outset. It has been excluded to the best of my knowledge in every single State where Workmen's Compensation is in effect and it's excluded currently under claims under automobile policies, under the public liability policies, under most accident and health policies. If you're

NO FAULT

-89-

MR. WOODMAN (Continued): covered by "comp", you're covered by "comp" and that's out. Now, we come to why include Social Security and Medicare and not also include any other kind of health benefits.

SENATOR KATZ. Yes, I -- I accept the -- your reasoning on those, but -- but where is the extraordinary complication with health benefits?

MR. WOODMAN. I think the difficulty there, sir, is that Medicare and Social Security are very much defined benefits. Whereas, all kinds of accident and health policies may be carried, a person may at some subsequent time find that they were covered under a policy that they didn't think they were covered, you have many members of families working now, who may be subject to different plans, and in the light of the bill with this threshold and with its \$2,000 first party benefits, this seemed to the Commission just opening such a can of worms that in terms of -- of a bill that -- a bill that could be handled in a simple fashion, directly

NO FAULT

MR. WOODMAN (Continued): between the insurer and the person who had bought the policy from him, that this would be the simplest procedure.

SENATOR KATZ. One last question: based on your own personal experience in your firm of 100 accidents -- in -- in the cases of 100 motor vehicle accidents, what percentage of them might involve bodily injury? And I'm directing your attention to bodily injury cases, how many do we -- what percentage of them would involve medical expenses in excess of \$500?

MR. WOODMAN. I can't give you those figures right from here, sir.

SENATOR KATZ. Approximately?

MR. WOODMAN. A study was made in the State of Vermont, under the auspices of the Vermont Insurance Department for analysis of auto claims and the kinds of injuries. I also would refer you to the DOT Study which has exhaustive information in

NO FAULT

-91-

MR. WOODMAN (Continued): connection with this.

In connection with our own firm, I'd be glad to furnish to Senator Katz figures indicating out of the total number of claims that we had, how many involved bodily -- bodily injuries and an average cost of the claim.

SENATOR KATZ. Thank you. I imagine the Insurance Department might have some figures that they can develop for us. I'll save you the trouble.

MR. WOODMAN. I think -- I think that State of Vermont Study, sir, and the DOT Study would be helpful.

SENATOR COX. Any further questions? Representative Deshaies?

REPRESENTATIVE DESHAIES. Mr. Woodman, you mentioned actuarial tests. Do you have any projected savings on a \$500 threshold versus a \$1,000 threshold as to this particular bill?

MR. WOODMAN. I'd rather not comment, sir, on the actuarial tests vis a vis different thresholds at this

NO FAULT

-92-

MR. WOODMAN (Continued): time. The Department has some preliminary tests on the bill as --

REPRESENTATIVE DESHAIES. No, no.

MR. WOODMAN. -- indicated, and I'm certain if we go further down the line, that you'll want an actuary witness and other material.

REPRESENTATIVE DESHAIES. I understand. One last question. On page 2, item #5, the definition of motor vehicles, I see motorcycles are included. This may seem like a small matter, but there are an awful lot of those things on the road and I would expect that their loss experience versus an automobile tends to distort any benefits that might be available. Am I correct in assuming that?

MR. WOODMAN. There is some thought I'm sure that it would be best not to have motorcycles in here. In -- In testing No Fault benefits in Maine, you have rather a different situation than you do, say, in Connecticut or Maryland or some places, because we are a rural State and we have a very large number of significant single car accidents. And certainly

NO FAULT

-93-

MR. WOODMAN (Continued): there are numerous single car -- single cycle accidents. And I would suspect, sir, that the No Fault benefit experience in connection with motorcycles -- my own feeling would be that it would be higher than on a conventional type passenger car.

REPRESENTATIVE DESHAIES. Fine!

MR. WOODMAN. But it was the intent of the Commission to include commercial and other vehicles as well as -- as cars.

SENATOR COX. Any further questions? Representative Donaghy?

REPRESENTATIVE DONAGHY. I'd like to go through that just a little bit further. Would you care to make any "guestimate" of what difference it makes on your premium rate if motorcycles were not put in there, as they have not been done in many of the other States?

MR. WOODMAN. I'm not certain, Representative Donaghy, but I -- my suspicion would be that in view of the number of cycle accidents and all the variables in this

NO FAULT

MR. WOODMAN (Continued): plan, it would be extremely difficult to check the rates with motorcycles in and out. I think certainly a much better answer could be given to you by the technical and competent actuary but the Commission did not explore that view.

SENATOR COX. Any further questions? Representative Tierney?

REPRESENTATIVE TIERNEY. Yes, the argument respecting No Fault -- to get your answer to a question -- would deal with the question of possible fraud on threshold claims or a tendency of the consumer. If I'm banged up and I -- and my medical bill comes up to \$495, and I know \$500 is the magic figure, it's a temptation to get that last minute headache to go to the doctor's, the \$10 visit would put me over the top. How do you respond to that sort of line?

MR. WOODMAN. I'd rather -- One -- One advantage of being on this Commission is that I really got quite an education about No Fault and I've read a lot of

NO FAULT

-95-

MR. WOODMAN (Continued): interesting things and I read very recently an article by a member of the Defense Research Institute. These are attorneys specializing in defense work and they're not very much in favor of this kind of a No Fault bill either. And in the summation of his article, he raised the point that you made, Mr. Tierney, and he presented it as a challenge. He said that if attorneys and if members of the public show no restraint and show no sense of responsibility in accepting a No Fault law, that such a law would not work; it would be a disaster, and will collapse of its own weight. And I agree with him.

REPRESENTATIVE TIERNEY. I'm not -- What has that got to do with my question? I mean, under the -- under the threshold, have anything to do with --

MR. WOODMAN. I -- I'm -- I'm sorry if I misinterpreted your question but I thought we were talking about fraud in connection with trying to build all the thresholds -- or build up to the threshold in

NO FAULT

-96-

MR. WOODMAN (Continued): order to make a claim.

REPRESENTATIVE TIERNEY. Right.

MR. WOODMAN. And that's what I was responding to; and that's what this man who was writing this particular speech that struck me so as a conclusion he was responding to.

REPRESENTATIVE TIERNEY. Could you get me a copy of it?

MR. WOODMAN. Yes, I'd be very happy to.

SENATOR COX. Thank you very much, Mr. Woodman. I appreciate your testimony. Senator Tanous, do you want to speak?

SENATOR TANOUS. Senator Cox and members of the Business Legislation Committee: First, I'd like to go on the record as a member of the Commission that worked on this proposed bill less than four years ago. Now, this Commission was made up of nine people and I was indeed pleased to serve on the Commission as its Chairman. And I might add, I am a State Senator

NO FAULT

-97-

SENATOR TANOUS (Continued): I am an attorney practicing law in East Millinocket in the last few months, and I'm also a member of the Maine Trial Lawyers Association and have been for quite a few years. We have worked on the concept of No Fault insurance for approximately 18 months. Now, this study of No Fault was broken up halfway through to -- to take up other areas of insurance which this Commission was charged to study and report back to this Legislature. The members that were chosen to serve on this Commission did not volunteer to serve; they were asked. There were two members asked by the President of the Senate, Senator MacLeod; there were three members from the House that were asked by Speaker Kennedy; there were four members that were asked to serve by Mr. Hogerty, the Maine Insurance Commissioner, and I'm sure that neither one of these people that appointed individuals to serve on this Commission were aware that those whom they were appointing would study both No -- the area of No Fault as well as other

NO FAULT

-98-

SENATOR TANOUS (Continued): fields of insurance. So that if you hear any criticism about this particular Committee having been stamped as insurance oriented, please don't blame the members of the Commission. They worked for zilch for a year and a half, except for their expenses, worked very hard, were really dedicated individuals who came to these meetings that we held twice a week for many, many weeks during the course of the summer of '71, the winter of '72, the summer of '72 right up until January of '73. I understand that the Commission held a recent meeting. I haven't talked with them, I understand they held a recent meeting relative to certain last minute problems, and I wish I had been there because I had a couple of items that I wanted to take up with them that presented problems to me and that I discovered since the bill has been printed.

Now, the public hearings, I'd like to bring this Committee up to date as to what we did at our public hearings. First of all, I'd like to mention that

NO FAULT

-99-

SENATOR TANOUS (Continued): 99.9%, and I'm going to use percentages as I speak, of the people that appeared before the Study Commission involved -- relative to No Fault comprised -- were comprised of insurance company personnel and trial lawyers. Now, we published in the newspapers in bold form the -- the particular meetings that we were going to -- anticipated holding, the date and the time and the place where they were to be held. Apparently these advertisements did not attract the interest of the public. The only people, as I mentioned, to the best of my recollection that spoke were people directly involved: the insurance industry and trial lawyers. And this is principally the area of our source of information that we obtained from these two groups and very little from the general public, so to speak.

So then of course the Committee read multitudes of -- of press releases and books and brochures

NO FAULT

-100-

SENATOR TANOUS (Continued): on No Fault. I'm sure that every Committee member has as much material as I do and I've got a box full of it. They --- I was to bring it here today to leave with you, but I was afraid that I'd rupture myself carrying so big a load!

I'd like to briefly tell you some of the evidence that was presented before our public hearings. We studied various aspects and we had an agenda that we generally followed. We were concerned as to the present system under which we're operating, whether it needed improving. We're concerned about the need of No Fault in Maine as well. Some of the areas for instance we looked into: fraud, we are no Massachusetts where it's so bad a situation and this somewhat was the reason why there was a strong movement in Massachusetts for No Fault. And the insurance companies represented before our public hearings --

NO FAULT

SENATOR TANOUS (Continued): there were not --
no cases of fraud reported in the last ten years
by any company involving fraudulent tort claims.
There was no evidence presented to this Committee.

We found no evidence of Court congestion
relative to tort claims. Now, we did find Court
congestion in our courts, but there was a feeling
that much of the Court congestion was due to
criminal cases being on appeal in Superior Court,
accompanied by felonies that were being tried.
Some of the Committee members may disagree with
these findings, but to my recollection this is
what we came up with during our study.

We inquired of the Health & Welfare Department
as to whether there were any individuals drawing
welfare benefits as a result of being injured in
an auto accident without insurance coverage. We
also found that many percent of the cases involving
personal injuries, under the present system, are

NO FAULT

-102-

SENATOR TANOUS (Continued): settled directly between the adjuster and the claimant. And out of the balance of cases, 10% that consulted an attorney for representation, there were 5% of the remainder of these cases that brought -- that an -- an action was brought as far as Court procedure is concerned. The other 5% of these cases were settled directly between the adjuster and the insurance -- the claimant, the attorney for the claimant, or an attorney for the insurance company and the claimant. And the other cases that were actually -- that suit was brought on, there were only about -- out of the whole percent, 1% was actually tried in our Superior Courts. One company, if I remember, it was Roger Whitman. I want to commend Mr. Whitman for the very fine presentation that he made to this Committee. I wish that I could be as well prepared on every bill that I present. One company appeared before the Commission, if I recall, Mr. -- I forget his

NO FAULT

-103-

SENATOR TANOUS (Continued): name, I should remember, I settled cases with him, he mentioned that in six months in 1972 that only one case that -- from his office had gone to trial and that trial had commenced on it; it was settled before trial was concluded; that was in a six month period. Mr. Roland -- Roland Boutin, Mr. Boutin from, I think, Mr. Woodman's company. So actually just one case had been tried in a six month period, it had been commenced and it had been settled. The chief point in this, if you want my opinion, is that this particular company sells approximately 10% of the personal injury, auto liability insurance in the State of Maine.

The Commission, I'm sure, makes no claim that this particular bill will save any money to Maine people as far as auto insurance is concerned. We did have an informal actuarial survey performed;

NO FAULT

-104-

SENATOR TANOUS (Continued): we can't depend on it, but I think, with a \$500 level, there was a savings of between 5% and 5.6% if I recall. There were two different companies that submitted that. But they weren't either -- insurance company statistics or actuaries; they're not a professional company and we are not to rely on these 100% as far as we're concerned.

So what I was going to say to you -- this is something your Committee will have to decide. I'm glad you've got the decision to make and not myself, believe me, you've got to decide whether there's a need for auto reform in Maine. This is some thing that your Committee will have to undertake as our Commission has done.

There were variations as Mr. Woodman mentioned relative to the threshold of the bill, and it started from zero to \$2,000. There was one individual at zero and there were one or two at 2,000. We ended