

# **MAINE STATE LEGISLATURE**

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**STATE OF MAINE**  
**106<sup>TH</sup> LEGISLATURE**

**HEARING BEFORE COMMITTEE ON BUSINESS LEGISLATION**

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

**BOOK II OF IV**

**REPORTER:**

Mrs. Letha Brown  
7 Mountain Avenue  
Lewiston, Maine

State House  
Augusta, Maine  
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STATE OF MAINE  
106th LEGISLATURE  
COMMITTEE ON BUSINESS LEGISLATION  
MEETINGS ON NO FAULT INSURANCE:  
LD-1, LD-1420, LD-1425, LD-1770

I N D E X -- May 26, 1973

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SENATOR TANCUS (Continued): up with a compromise, as Senator Katz has mentioned, of a \$500 level. That's when it will pick up more strength, at that point.

Relative to mandatory insurance in Maine, the figure referred to was, as Mr. Woodman mentioned, 90% are presently covered. Under the mandatory provision of this bill, we may pick up another 3% of -- of those that are not now covered.

I would like to draw your attention to page 5. I personally would ask that a couple of amendments be made to this particular bill and this may not have the sanction of the Commission but these I would request: First, if you'll notice, Section 128 of the bill gives a threshold of \$500. In the event that an individual does not reach this threshold in question, he would not -- he -- he would be barred from bringing suit in the courts in the State of Maine to recover for pain and suffering, or when the expense is in excess of \$2,000, and this bothers

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SENATOR TANOUS (Continued): me. I don't know -- I wish I could have attended the last Commission meeting, because it is very conceivable an individual will have medical expenses of \$200 or \$300 or \$400, and would have lost income of eight or \$9,000 which would be over the \$2,000 limit. Now, this individual who has had medical expenses of only up to \$400 and something and lost income of eight -- eight or \$9,000 would be barred from bringing an action in our courts to recover the excess loss over and above \$2,000; I think this is unfair, and I feel that this bill should be amended in that the -- if an individual loses or if his expenses exceed \$2,000 or his losses exceed \$2,000, he should have his tort rights to collect over and above that amount.

And this is not unheard of, because I've got a case in my office now, an individual, under this particular bill, would collect \$2,000 and his actual expenses come to around ten or \$12,000, and he would be limited to \$2,000. And this individual received

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SENATOR TANOUS (Continued): from a very qualified orthopedic surgeon, services of Dr. Cornell, he lives in Greenville, Maine, he was receiving rehabilitation services in the sense that they were -- yes, I'm about -- it begins on page 6, I understand that rehabilitation expenses would be excluded. Now, my understanding is that an individual that's receiving therapeutic treatments, for instance, would be limited to \$100, and therapy I think is a well recognized medical treatment, and yet that individual would be limited to \$100 expenses. Just take that case that I mentioned to you, if therapeutic treatments are in the area of about 800 to \$1,000, he wouldn't have medical expenses of any significance except the few office calls to the doctor which would be about, oh, 75 or \$80. He was out of work for eight months, he worked for Great Northern Paper Company, had a good income. Under this particular bill, he would recover \$2,000; his loss income was approximately eight or \$8,000 and no permanent impairment, so therefore he'd be shut out.

SENATOR TANOUS (Continued):

So I think in these two areas that I would ask the Committee to give its serious consideration to amend this bill in those two areas. Are there any questions? I'll be pleased to answer them, Senator.

SENATOR COH. Are there any questions? Representative Donaghy.

REPRESENTATIVE DONAGHY. Senator Tanous, along the same line you've just been talking about, am I right going through this here that a person receiving benefits under Social Security and the benefit health side of Social Security and income is over the threshold, that he couldn't sue, that he's lost his tort right to sue?

SENATOR TANOUS. Well, it's not my understanding that Social Security benefits are a matter of consideration under this bill.

REPRESENTATIVE DONAGHY. It looks to me as if they're ...

SENATOR TANOUS. It could be; I don't know.

REPRESENTATIVE TIERNEY. The special benefits -- The special benefits under paragraph 127, would they also be subtractable as far as the tort rights are concerned? I am asking you to interpret these bills.

SENATOR TANOUS. Well, the bill says they are subtracted in terms only of net loss. I still don't understand the gist of your question, Mr. Donaghy, I'm sorry.

REPRESENTATIVE DONAGHY. Well, --

SENATOR TANOUS. It is late in the day now.

REPRESENTATIVE DONAGHY. If a person was under Social Security and received Social Security benefits, would these benefits be subtracted before they could sue?

REPRESENTATIVE TIERNEY. Your second threshold.

SENATOR TANOUS. Yes. Well, in what way are they -- I don't understand.

REPRESENTATIVE TIERNEY. Threshold.

REPRESENTATIVE DONAGHY. Threshold. If -- If the total sum of the damages, if you want to call it that, were \$2,050 and \$2,000 were paid by Social Security, would they have a right to sue? There still would be quite a bit of damage for pain and suffering and so forth.

SENATOR TANOUS. I would say that Section 127 of the bill would subtract the benefits.

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

SENATOR O'BRIEN. Senator, going back to your public hearings that you advertised extensively and so forth and you've testified that the general public as such did not show up, would you consider this as ground swell for No -- No Fault insurance?

(Laughter)

SENATOR TANOUS. I'd be interested -- Now that you've asked, how many people today are here from the general public? I'd be very interested to know.

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SENATOR COX. Any further questions? Representative Deshaies?

REPRESENTATIVE DESHAIES. Senator Tanguis, you said 90% of the claims -- bodily injury claims or PDI?

SENATOR TANGUIS. Personal injury claims.

REPRESENTATIVE DESHAIES. All right. Were settled between the adjuster and the company, --

SENATOR TANGUIS. The claimant, yes.

REPRESENTATIVE DESHAIES. -- do you have any figures on the period of time involved, a week, a month, six months, or what? 90% were settled, but within what period of time? Did you have any figures on that?

SENATOR TANGUIS. No, I don't. I know that Representative -- former Representative Tom Gagnon is an adjuster working on -- on this Committee. We had several other adjusters that appeared before the Committee, and I spoke to several adjusting brokers in the State that -- you know, going around, and I think Tom agrees that 90%

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SENATOR TANOUS (Continued) : are settled between himself and the claimant.

REPRESENTATIVE DESHAIES. I have no quarrel with the figures that you have. I was just curious as to the time element. It's wonderful to say that 80% were settled --

SENATOR TANOUS. Oh, how soon were they settled?

REPRESENTATIVE DESHAIES. Exactly; the period of time.

SENATOR TANOUS. I don't recall the Committee going into that. No, I don't.

REPRESENTATIVE DESHAIES. All right.

SENATOR COX. Any further questions? Senator Marcotte?

SENATOR MARCOTTE. Senator Tanous, you came out and supported this particular bill but there are a number of changes you'd like to see; is that correct?

SENATOR TANOUS. Yes, I would even go as far as to say that, you know, if the Committee feels that the personal limit should be reduced, to gain support, I

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SENATOR TANOUS (Continued): would recommend that too. One I have heard is a \$300 threshold. And the Council on State Government -- Well, I'm sure Senator Katz is familiar with the Council on State Government. In their recent brochure released on No Fault insurance, they have recommended in order to pick up strength -- you know, if it's necessary to reduce the threshold, that perhaps it would be wise to recommend it. You know, my feeling is, I got quite a lot from the insurance industry on this request. It's not a superficial question. But if you're willing to try to enact a No Fault bill in this -- in the 106th Maine Legislature, I think the important thing that you're going to enact is a philosophy, not a threshold. If you're talking about a threshold of \$500, to many people that will be a ridiculous low threshold, and why don't we raise it to 2,000 if this is what you're going -- if you're going -- if you're talking about enacting a threshold, you exempt some things entirely, how about the UMVARA law, if this

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SENATOR TANOUS (Continued): Is what you're looking for, because this is total 100% No Fault, and that may be -- if we're going around talking threshold, you'll say, "Well, forget threshold; go all the way in the bill." But I think this is philosophy we're talking about. And if this Legislature is prepared to adopt the philosophy of No Fault insurance, then we should attempt to enact a philosophy and not talk about thresholds.

SENATOR COX. Senator Marcotte?

SENATOR MARCOTTE. I would like to be a little more direct, if I may, and I just need a yes or no to this. Would you support this bill in its present form?

SENATOR TANOUS. Not unless the two amendments I mentioned are entered in the bill.

SENATOR COX. Any further questions? Representative Tierney?

SENATOR TANOUS. You understand, the second \$100 here in the tort suit, the limitation, I think should be

SENATOR TANOUS (Continued): stricken out. I don't think that there should be exemptions on page 6 relative to your diagnostic; your actual -- your rehabilitation expenses in excess of \$100. These are all legitimate medical expenses, every one of those. And I don't think that should be in the bill. I don't think they should be exempted.

REPRESENTATIVE TIERNEY. I -- I guess I have a little problem, Chairman Tanous. You were chairman of this Commission?

SENATOR TANOUS. Yes.

REPRESENTATIVE TIERNEY. And -- and now we find there's at least two amendments which would actually cost a higher rate and some -- so, I'm a little bit confused --

SENATOR TANOUS. Well, let's speak about that. We had a meeting -- The last meeting we had was in January, was January 24th or January 26th. It was rather late at night and we went through many, many

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SENATOR TANOUS (Continued): amendments that had been suggested to the Commission by past hearings that we had had. Several insurance companies had recommended amendments and this particular \$100 one was the recommendation of an insurance company or a group of insurance people. And we went through this entire bill in perhaps an hour and a half and of course I didn't have a chance to look this over and I understand the Commission met and I wish that I could have gone, I think they had it last evening, I don't know, because these were very serious reservations that I had on the bill and I would have certainly tried to get the Commission to vote on these two areas that I'm concerned about.

SENATOR COX. Thank you very much, Senator.

SENATOR TANOUS. Sorry I took up so much time.

SENATOR COX. We'll now take a brief recess and come back again at 3:00 o'clock and dispose of these bills.

(A short recess was then had. Record reopened):

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SENATOR COX. We'll proceed with LD-14. Some of you gentlemen have to fly out of here this afternoon; so we will allow two proponents a very limited time and then we will proceed with those who are not in favor. At this time I'm going -- The Chair recognizes Richard Underwood.

MR. UNDERWOOD. Thank you, Mr. Chairman, for your courtesy. My name is Richard J. Underwood; I'm the Regional Vice President of the American Insurance Association and I'm joined today by our Maine State counsel, Attorney Robert Marden. The American Insurance Association is made up of approximately 122 companies writing property damage and bodily injury insurance throughout the United States.

In 1967 the American Insurance Association began an 18 month study of Automobile Accident Reparations. The findings of the Study made public in the Fall of 1968 found the tort insurance system was incomplete, inadequate, slow, expensive, invited exaggerated claims, and produced serious underwriting losses. The AIA findings have been substantiated by later studies of

MR. UNDERWOOD. (Continued) of the New York Insurance Department, The National Conference on Uniform State Laws and the two year - two million dollar study of the United States Department of Transportation. The results of this Study were submitted to the Congress in March 1971. The Department of Transportation Study recommended:

1. That the state -- the state enactment of no-fault auto insurance plans.
2. The states be given two years to do so, and if they do not, then there was recommended Federal action.

To quote from the specific recommendation of the Federal Department of Transportation study, the state no-fault plans should do the following, they should and I quote:

"Be based on universal, compulsory first-party insurance for all motor vehicle owners covering all economic losses above voluntarily accepted deductibles up to a reasonably high limit. Insurers should be free to offer additional insurance coverage above these

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MR. UNDERWOOD. (Continued): limits. Victims should retain their present right to sue in tort for specified intangible losses, but the right should be restricted to the truly serious cases. Victims should not be able to sue in tort for economic losses compensated by their own insurers or voluntarily accepted as a deductible. The system should be implemented in stages at the State level. The private insurance industry should service the system, which should continue to be regulated by the several States." That was the direction of the Federal Department of Transportation in 1971.

Following the AIA study and during the course of the Department of Transportation study and its subsequent -- subsequent report to the Congress two states (Massachusetts and Florida) enacted no-fault auto insurance plans:

In 1970 Massachusetts enacted the nation's first compulsory no-fault plan with limited first party medical/wage benefits of \$2,000 while also barring minor pain and suffering suits where the medical expenses

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MR. UNDERWOOD. (Continued): are \$500 - or less.

In 1971 Florida enacted compulsory limited first party medical wage benefits of \$5,000 while also barring minor pain and suffering suits where the medical expenses are \$1,000 or less.

Later in 1972 limited no-fault plans were enacted in Connecticut with \$5,000 of first-party medical/wage benefits and a medical expense "threshold" of \$400 or 300 as Senator Katz indicated.

In New Jersey in 1972 first-party unlimited medical benefits were enacted together with \$5,200 in wage benefits with suits for minor pain and suffering barred when the medical expense was less than 200 but exclusive of hospital expenses, x-rays and other diagnostic expenses.

Also in 1972, Michigan enacted compulsory limited first party medical/wage benefits including unlimited medical and \$36,000 in wage loss while barring suits for pain and suffering except when the injured person suffered death, serious impairment of function or permanent serious disfigurement. All the no-fault plans

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MR. UNDERWOOD. (Continued): enacted to date, of all of them, Michigan comes the closest to meeting the specific recommendation of the Federal Department of Transportation.

This year, 1973, New York enacted compulsory limited first-party medical/wage benefits with an aggregate limit of \$50,000 while barring minor pain and suffering suits where the medical expense is \$500 or less.

Simultaneous with this limited response by the states, pressure has been building up in Congress for either a pre-emptive national no-fault law or at the very least Federal standards with which the states would be required to comply.

In 1972 the Hart-Magnuson Bill (Senate 945) narrowly missed passing the U.S. Senate when it was referred to the Judiciary Committee by a 49 to 46 vote.

This year, this very day, the same Committee is meeting and conducting hearings on Senate bill 354, a national no-fault auto standards proposal. Senate 354 is based to a great extent on the recommendations of the National Conference on Uniform State Laws, the

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MR. UNDERWOOD. (Continued): so-called "UMVARA" bill, the text of which is before you in L.D. 1425. Every indication from the Federal Department of Transportation, the White House and the Congress is that if there is not a pattern of state action consistent with the 1971 specific recommendation of the Department of Transportation, then there will be Federal action in 1973.

The type of state action that is looked for is the enactment of genuine no-fault plans. A genuine no-fault plan provides for the substitution of automatic, guaranteed compensation in place of the vagaries and unpredictability of lawsuits. Instead of enacting "no-fault" some states have responded by enacting "yes-fault", that is, a plan which simply provides add-on coverages.

What we are saying is that if the words, "tort liability exemption" or similar words with the same meaning, don't appear in an auto insurance reform bill, the bill is not "no-fault". Whatever else the law provides, it must substitute at least to some degree, the

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MR. UNDERWOOD. (Continued): right to collect directly from a motorist's insurance company for the right to sue. Otherwise, it is "yes-fault" -- which is a short-hand way of saying it preserves -- it preserves the fault or lawsuit system.

Genuine no-fault laws such as in Massachusetts, Florida, New Jersey, Connecticut, Michigan and New York do contain a tort liability exemption. This is another way of saying they prohibit lawsuits unless an auto accident results in serious injuries.

On the other hand, several states including Delaware, Maryland, and Oregon have "yes-fault" laws. Rather than prohibit lawsuits, they simply provide add-on coverages for medical expense, lost income and other economic losses. Two proposals before your Committee are "add-on" "yes-fault" bills, L.D. #1 and L.D. 1770.

This past week I mailed to you a booklet which distinguishes genuine enacted no-fault plans from proposals which have simply provided add-on coverages. This booklet is entitled, "No-Fault vs Yes-Fault or How to Spot A Decoy". I hope that this material was

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MR. UNDERWOOD. (Continued): helpful to you in your assessment of the proposals that are presently before you.

Before the Committee today is the recommendation of the Maine Insurance Study Commission in the form of L.D. 1420. This is a genuine no-fault plan. L.D. 1425 is also in this category, the UMVARA bill, and while I will address myself to the recommendation of the Maine Study Commission, this in no way should lessen the regard that our Association has for the efforts of the National Commission on Uniform State Laws which is responsible for the UMVARA bill.

L.D. 1420, the Maine Study Commission bill, represents the informed and conscientious effort of the Maine Study Commission over a number of months. It is also indicative of the way in which legislation should be developed for the ultimate submission to the elected representatives of the people. During the course of its work I and many others, including proponents and opponents of no-fault auto insurance reform, had the opportunity to present our views to an interested and courteous Commission. I wish to take this opportunity

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Mr. UNDERWOOD. (Continued): to thank the Commission members for their kindness and consideration.

Aside from its other provisions in L.D. 1420, which are necessary for a meaningful no-fault bill and which we generally support, L.D. 1420 does the two essential things required of auto insurance reform: it delivers automatic guaranteed compensation of medical and funeral expenses; survivors loss and work loss to the automobile accident victim, while partially eliminating from the system the "pain and suffering" action which produces the inequitable, inadequate, slow and expensive conditions which result from the attempted compensation of auto accident victims -- victims based on fault.

However, in this regard, we do not feel that L.D. 1420 goes far enough. We respectfully suggest that the aggregate limit on mandatory no-fault benefits as provided in section 123 be increased to \$5,000 so that the more seriously injured automobile accident victim will be assured compensation for his economic loss. Further, we recommend that the abuses of the tort

NO FAULT

MR. UNDERWOOD. (Continued): insurance system can be substantially eliminated by amending Section 128 to change the "medical expense threshold", below which action for pain and suffering are eliminated, from \$500 to \$1,000 and the -- the exception from the tort exemption be changed to read and I quote the change we wish to make: "There shall be no exemption from tort liability if the injured party has suffered -- has sustained, excuse me, has sustained death, dismemberment, significant permanent and irreparable disfigurement, serious permanent disability . . .", end of quote, end of recommended change.

In addition we believe that there should be a flat exemption for the owner, of a vehicle covered by a no-fault policy in the area of special damages which are the -- which are subject to the no-fault system that is, medical and funeral expenses, survivors loss and work loss. Section 128 could be frustrated by an interpretation that the \$2000 referred to therein includes pain and suffering damages, and I think this is getting on to what Senator Tanous was hinting about. The intent

MR. UNDERWOOD. (Continued): of this section should be to allow recovery for pain and suffering only in the event that medical and hospital expenses are \$500 or more or where there has been a serious injury or death. To correct the above, we would suggest that the words "...regardless of how calculated or the basis for same, up to \$2000..." be deleted and the words included "to the extent of such benefits" be added after the reference to "Section 123" in line 5, Section 128 would then read:

"Every owner, registrant, operator or -- or occupant of a motor vehicle to which this sub-chapter applies and every person or organization legally responsible for his acts or omissions, is exempted from liability to pay damages for pain and suffering, inconvenience, and other non-pecuniary damages and for basic benefits under Section 123 to the extent of such benefits, as a result of injury arising out of the . . .", and then continue on, the way the Section presently reads. These amendments, by the way, are going to be submitted

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MR. UNDERWOOD. (Continued): to you in form -- in final form by our counsel, Attorney Marden, for your review. I have presented them very crudely and very quickly now, and it's difficult to grasp them but he will be submitting them to you tomorrow. The foregoing represents the essential changes we would wish to recommend to I420. I wish to thank you for the time and consideration you have given my remarks. And if I or our counsel or the American Insurance Association can render any assistance to this Committee during its deliberations, we will be pleased to do so.

SENATOR COX. Any questions? Representative Tierney?

REPRESENTATIVE TIERNEY. Yes, I'd like to talk about one of the yes-fault bills you referred to, Delaware.

MR. UNDERWOOD. Yes. Which one of them? Delaware.

REPRESENTATIVE TIERNEY. The yes-fault bill in Delaware.

MR. UNDERWOOD. It's yes-fault, no doubt about that.

REPRESENTATIVE TIERNEY. No doubt at all. You said that what we needed was a guarantee to forbid a certain number of claims. In other words, you had that, an absolute substitution somewhere in that bill. And yet,

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REPRESENTATIVE TIERNEY. (Continued): the people in Delaware tell us that, they've reduced claims under that program, point of 2<sup>nd</sup>.

MR. UNDERWOOD. I'd like to see those figures, Representative. Do you have them?

REPRESENTATIVE TIERNEY. No, no, I don't have them.

MR. UNDERWOOD. No, I don't believe -- I don't believe that they were presently existing.

REPRESENTATIVE TIERNEY. Well, now, I --

MR. UNDERWOOD. Because I've just had conversation up in Vermont on this very same thing, where the Committee up there was considering two no-fault bills. We had extensive conversation with the actuary for the Delaware Insurance Department and they informed us that they would have no experience on which to base any type of a judgment until late -- late July of this year.

REPRESENTATIVE TIERNEY. I'm sorry. Rough estimates from -- from the Delaware Insurance Commissioner running around --

MR. UNDERWOOD. I can give you all the rough estimates -- estimates you want on anything.

REPRESENTATIVE TIERNEY. Are you --

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MR. UNDERWOOD. But there is no specific data available out of Delaware.

REPRESENTATIVE TIERNEY. All right.

SENATOR COX. Any further questions?

MR. UNDERWOOD. Thank you, Mr. Chairman.

SENATOR COX. Thank you, Mr. Underwood. Mr. Whelton.

NO FAULT

MR. WHITFORD. Mr. Chairman, members of the Committee: I appreciate your patience in trying to hear my statements. I'm a Director of Public Affairs for the New England Office of the American Mutual Insurance Alliance. My name is Thomas Whelton. The Alliance is a trade association of over 100 mutual companies selling insurance across the United States. I would like to register our Association in favor of legislation, LD 1420. I feel that the -- this form of no-fault is for the benefit of the consumer. We do believe that the threshold of \$500 would be better at \$1,000 and that motorcycles should be excluded from this bill. We also feel that the issue of -- of privacy that's been raised here this afternoon, that this is a -- certainly a large issue, that it should have an extensive hearing of its own. And I think this is something that it would be very important to the members of this Committee and the insurance industry. In view of the time limitations that I have in taking a flight out, I would be happy to answer any questions you may have or come back tomorrow, if you wish.

SENATOR COX. Any questions for Mr. Whelton?

None. Thank you, sir.

MR. WHELTON. Thank you.

SENATOR COX. So now we will listen to those who are opposed and -- Mr. Ring, you have a plane to catch?

MR. RING. Thank you, Senator Cox. My name is Leonard M. Ring; I'm from Chicago and I want to thank you, Mr. Chairman and members of the Committee to permit me to present my views on the important problem now facing your State.

I should tell you, by way of background, that I am the attorney that handled the Illinois case where the Illinois statute with a limitation on tort recovery paid to medical costs was held unconstitutional. And also I should tell you that I am the first Vice President of the Association of Trial Lawyers of America and that I have been around the country on this particular matter and this is probably the 20th or the 25th state, and I also appeared before your study Commission briefly, and so I have some slight familiarity with the procedures of the States. And you know, you sit around all these hearings and you hear about no-fault and you

MR. RING (Continued): get the impression that this is some great new idea that has caught the imagination of the people, and then you start looking into the facts and what do you find?

You may know -- Some of you may know, and it's rather interesting historically, about 110 years, in 1863, some men trying to be insurers got together in Hartford, Connecticut, and at that time, the talk was the danger of travel by steamship and rail and people were concerned that -- or at least it appeared to them that there was a market for insurance for wage loss and medical to people who traveled by the common motor conveyance then in use, steamship and rail. And so they decided to go into the -- the insurance business, and sell a policy for travelers by steamship and rail, and that's how the company derived its name, The Travelers Insurance Company, a member of the AIA.

So for 110 years, there have been medical and wage loss coverage; they didn't call it no-fault; they called it travelers insurance, and all of us know that the company has done very well. Since then, a lot of

MR. RING (Continued): other companies have gone into the field and it has expanded. You have heard some discussion today about the extent of health insurance in this country. And let me give you, and you might want to get a copy of this book, it's called "The Source Book of Health Insurance 1972 and 1973". I first came across it when I was interested in the Grace case because I began to wonder, based on my own experience, as to how many people already have this so-called no-fault coverage, because all it is, is medical and wage loss. And I happened to get hold of the book and it's been updated now, and here is what you will find. About 180 million Americans have hospitalization coverage. In addition to that -- that includes about 10 million people over 65; there's about 20 million in the country, so you've got another 10 million who have Medicare, but do not have additional health insurance. 92% of the number that have the hospital coverage have surgical benefits and I think 80% have regular medical coverage and a surprising 46 or 48% have major medical coverage.

As to Maine, and my understanding is you've got a

MR. RING (Continued): population of just under a million dollars -- a million people throughout -- a million people and here is what you've got according to the Source Book. In Maine at the end of 1971 927,000 people, about -- close to 93% had hospitalization insurance, and these are for people under 65; you have to add about another 10% of the people -- you have to increase this by people who would have Medicare, but would not have just a private insurance. Surgical, 902,000 and regular medical, 772,000. There is no statistics for Maine for the major medical, but this is from this particular book.

And then in addition to that, and I'm sure it's true here, the auto insurers started to sell medical pay, I think 30 years ago according to the testimony of the Grace case, the Illinois case where the industry testified how long they've been selling no-fault benefits. And 70 to 80% across the country, and if I recall the testimony before your Commission, it was about 75 to 80% in Maine, carry coverage of about 2,000 in medical. And of course, you all have colla-

MR. KING (Continued): Sion coverage and that's nothing but no-fault.

Now, when we get around to actual wage loss, and this is the one that really surprised me, because according to the National -- the Source Book of Health Insurance, they show that 50,850,000 people in the United States have wage loss coverage for periods up to two years, and another 12,011,000 have it for periods longer than two years. And this is a total amount of about 70,000,000 out of a total work force of about 80,000,000 for 1971.

Now, when you want to see what that means in terms of the type of coverage, and questions were raised here about how many people have automobile accidents that -- what the medical expenses are in automobile accidents. Well, again, according to the D.O.T. Study confirmed recently by testimony of the insurance industry before the Congress Committee on February 7, in Washington, the total economic loss -- why don't I give you the figures in view of your specific questions -- the D.O.T. Study shows

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MR. RIND (Continued): that less than -- medical expense claims, \$500 or less, 92%. So when you have a \$500 threshold, you're talking about 92% of the claimants; this was a national average, less than \$1,000, 96.7% and then it goes up. In Illinois, when we had the industry testify as to what the figures there were, we came up with less than \$500, about 90%. But medical costs presumably are a little higher there, and you might say, "Well, costs have gone up a little and so those figures don't hold true. They are 1970 figures." They were -- They were figures that were, I think, submitted in 1970 and I think they're based on '69-'70. At any rate -- '69 or '70 -- this in addition -- But in any event, offsetting that is the fact that #1, very few of these people go to hospitals. In these, I think you'll find that about 70 to 80%, in fact, we had 80% in Illinois, and there was a study that the All-State Insurance Company did for the D.O.T. -- Illinois was one of the states that was used in the study, -- about 80% had bills under \$300. And quite frankly in

MR. KING (Continued): many of those cases, if you spend a day or two in a hospital, it is not unusual. I have a little boy at home now, he's 10 years old, and he had a compound fracture, not a compound, rather, a comminuted fracture of the tibia, the heavy bone in your leg, and he spent four days in the hospital. You know, parents don't leave their kids there too long, anyway, because if you do, he might get something serious, if you've been around hospitals long enough; so we pulled him out right away. But I think that even for people that are afraid of hospitals as we lawyers sometimes are in handling medical health practice cases, I think we'd find that a lot of these cases are casted and sent home. In many cases, simple fractures, that can be done -- you might stay a day or two to see that the circulation isn't affected and you can go home. But in most of these cases, and that is why, if you can just imagine that 90% have medical bills of less than \$500, you know there are not too many people with long stays in the hospitals.

So I think, if we consider that, we consider the

MR. RINE (Continued): fact that the large extent, or the large increase that I know of, has been in -- in hospital costs rather -- rather than medical costs, rather than ordinary medical costs, and then you consider also the fact that there has been a decrease in the severity and frequency of injuries. This is the testimony I believe a Mr. Linsman from Kerper who testified on February 7 before the Congress Committee, and there actually has been a reduction in claims across the country.

Now, then, and this by the way was also the testimony of the -- the insurance industry which is in the "Congressional Record." Now, then, when you look at that background you consider that everybody has the health insurance, when you consider that 75 to 80% of the victims -- of the insured people carry medical pay of \$2,000, and \$2,000, by the way, will cover probably about 95 or 96% of the total victims based on the D.O.T. Study. When you consider also the large number of people that have the wage loss insurance in force today, you start questioning what type of no-fault, if any, you need.

MR. KING (Continued):

And about wage loss, let me tell you another thing: you know this all sounds very good, but how many people really have wage loss? According to the D.O.T. Study, about 35%. And we can see how that comes out. First of all, the Senior Citizens are retired and they have no wage loss; your housewife, many of them have no wage loss; the pre-school child obviously has no wage loss; the student, what kind of wage loss does he have? So when you talk about many of these bills, when you talk about practicalities, you're talking really about leaving the vast majority of the people with nothing but their medical expenses and nothing more; about 65% of the victims will get medical expense.

Now, you've got some limitations, you've got some exceptions where you can sue. And I've heard it said here, that all you're eliminating is the minor cases. I suppose it depends on how callous you are. Let's take a look at the minor cases we're talking about, minor injuries. You can file a suit and get

MR. RIMM (Continued): more than your medical, if you have sustained death, significant loss of any important bodily function or loss of a significant body member in whole or in part, an important bodily function. Is the spleen an important bodily function? Most doctors will tell you no. Your appendix? No. Loss of a significant body member in whole or in part. The distal phalanx of your little finger? What is that? Now, others might say, "Well, your medical expense might reach over \$500 if you have the steering wheel go through you and they have to remove your appendix or spleen." It could be, but there might be some areas where you might not reach it. It is not very likely, I must concede, but what about the loss of a little finger or little toe? How is that going to be a significant body member to most people? You can get that off for about \$100 and you wouldn't spend two days in the hospital.

So these are -- So this is what you're calling your minor cases, and frankly I can't believe that our society has gotten so callous that these kinds of

MR. RING (Continued): Injuries are now relegated to nuisance cases. Frankly the D.O.T. in their study was a little bit more charitable. They considered a person seriously injured that lost two weeks from work, two or three weeks, I don't recall exactly, or if not employed, unable to do your work, your normal activities for six weeks, or spend two weeks in the hospital or have medical expense of over \$500, that's exclusive hospital expense. Now, at least there, if you had some disability for some reasonable period of time, they considered you a serious case in even the D.O.T. Study and this was at best arbitrary. And look what we have gone to, from there.

Now, you've got to have a loss of an important bodily function in order to recover, when someone runs you down in the streets; otherwise you'll have your medical expense that you've got on Blue Cross anyway. And look how it works, in addition to that, that is justified under Section 127. You take certain subcontractables, Social Security, all worked and paid for, and everybody that's disabled for more than six months

MR. KING (Continued): have Social Security. This is deducted from what you have to be paid by your auto insurance carrier.

Medicare, a Senior Citizen gets Medicare and doesn't even get his medical pay. Now, at least if he carries medical pay and he doesn't need it for the most part, he at least gets that from the Company. Under this bill, the retired people eligible for medical -- for Medicare would get naught because those, again, they have no wage loss and they have Medicare that they worked for.

And then, oh, yes, the poor, you've got Medicaid, we haven't even talked about that. That's another class that we haven't talked about, people covered with health insurance. There are Federally sponsored programs that if you don't have private health insurance, then of course you have some -- you have Medicaid that the Federal Government helps the -- the counties to support and that takes care of some of the expense of the poor. So Medicaid, the poor, again, or the unemployed, they have Medicaid, so they get nothing.

In Illinois, when we introduced the -- when we

MR. RINE (Continued): had the Grace case, we introduced in evidence the study by the Federal Government, the Model Cities Study, and we took the target areas, that they called in that study, of how many people in certain areas had an income of under \$2,500 and who the head of households were. And we had a surprisingly large number and I won't go into details but I have it with me if anyone has any questions to ask, but in any event, the large percentage of people, the households were women, unemployed, earnings for the whole family of under \$2,500 a year and getting Medicaid, and even they had some Blue Cross-Blue Shield and other coverages, but nevertheless, this is the type of program I'm talking about; these people would get nothing.

Now, then, maybe you have some reason for all this. As legislators, I'm sure you're not passing laws just because someone tells you these laws ought to be passed, or because you hear that if you don't do something drastic for your citizens, the Federal Government is going to beat you to it.

First of all, there isn't as much truth as I've

MR. RING (Continued): heard here of the Federal threat. I did testify in Congress last week, before the Congress Committee. I don't say that there is no threat. Sure, there's a threat. There are people there that would like to pass a Federal no-fault law. But I don't think that what you do in Maine is going to make an iota of difference in what they do at the Federal level, because let's face it, you've only got a million people. You haven't got 20 million like California or New York or seven million like Illinois. And what you do in Maine is going to add to the statistics, and certainly passing some type of a law might have some effect in that direction, but it isn't going to stop the Federal threat in one iota.

And it also is not true that everyone in Washington suggests that you take away everybody's rights in order to take off the Federal pressure. They don't have any thresholds in mind; they have principles in mind. They do want reduction in claims. They do want first party benefits on a no-fault basis.

MR. KING (Continued): These are the principal goals and I think if you've been reading the papers some time ago I made -- I gave some press release about some -- not a bill, but a concept that I believed in, and they responded to it as saying -- no saying "alternate objectives". That was all right as far as the administration was concerned, and they had no specific bill in mind and frankly I spent two or three hours with them.

So, what I mean, do something that's good for Maine and not -- and don't be pushed into doing something that you know isn't true, that you're apt to do something that is really not good for anybody but a certain special interest group, just because something more drastic that will affect them but will also affect the people, may come out of Washington. I have more faith in what's going to come out in Washington and, frankly, I think it is going to be, if anything does come out, in the final analysis, it will be better than what I've been hearing here.

Now, you can't compare your problem with that of Massachusetts.

MR. RING (Continued):

You know, I was reading the Pinning case the other day, last night when I was flying in here, I hadn't read it for some time, and the reasons given by the Court in supporting -- defining "constitutional", I want to talk about that for a second. They speculated, "Well, what it's going to do, it's going to reduce fraud." Well, if it does, I think that it was needed in Massachusetts because it's a shameful thing to have to say, but after all, it is known around the country, at least it was known, as the whiplash capital or the sprained neck capital of the world. And they did have a problem. Seven out of ten people in accidents come out holding their neck. But I don't have to go into reasons of why that type of a system developed; you all know what it is.

They had and still have the highest premium in the country for putting your car on the road. Yes, they've reduced the bodily injury portion of the premium significantly, and the property damage premium has increased, and I've debated Commissioner Ryan on

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MR. RING (Continued): these figures, and he admits that these figures that you've heard here, and there may be variations of 10, \$20, but nevertheless, the car that's used in these figures you've talked about is generally a 1970 Impala, and the costs that you've heard here I believe were taken on the figure of what a '70 Impala would cost you to insure in 1970, the last year under the fault system, and what it would cost in 1972 for the same car under the no-fault system. And for the most part depending on the zone, there may have been areas where there was about a 10% reduction, but for the most part, and I have some other figures here that were ABA Journal, for the most part there has been an overall increase, and the increase -- the overall increase that I'm talking about is that the cost of the collision and comprehensive has more than doubled.

Now, the stories I heard, and this has been debated and, frankly, I think that Massachusetts' problem has come up in every State, and no one denies any more in the debates I've had that it costs you more to insure a car in Massachusetts today than it did in 1970.

MR. RING (Continued): The argument that is given is that Massachusetts had a freeze for some years, I don't know whether it was two or three years, on property damage prior to 1970, and now that the increase in collision is so high, it's merely the unfreezing.

Well, the trouble with that is that I think in 1971 there was an increase allowed for property damage which was to undo the freeze, or to thaw out the so-called freeze, and then the insurance went up again, collision, in 1972, so that argument of course has that problem that the freeze had been thawed out with the increase the Commissioner allowed before.

Now, there was some testimony here about how the insurance industry at first fought it, and they did, and now they've come around for no-fault. And the suggestion was left here that they've suddenly thrown away their black hats and are becoming consumer advocates and that is the only reason. Well, take a look at Massachusetts. For the first nine months under the

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MR. RING (Continued): no-fault system -- I thought Maine was cold. Is it always this hot up here?

(Laughter)

Let me just give you these -- Even after the 27.6% reduction see, it started out with a 15% mandatory reduction; this was held unconstitutional, if I recall; then, of course, the Commissioner ordered rebates and say -- I think they got a 15% rebate, and I hope you won't hold me to these figures because it's been long ago, but I know that they also gave a 27.6% reduction. But I heard about it about seven times, because everybody thought it was an additional reduction, to the point where they were paying you to drive in Massachusetts! Actually, what really happened was that after all those reductions, and it appears that in the first year under -- under no-fault in 1972, for the first nine months they paid out \$2,296,802 and for the first nine months in 1970 under the fault system that was so bad for the consumer, they paid out \$13,330,825.

Now, of course this is for a nine month period and I don't have the figures with me, what has happened since.

MR. RUM (Continued): But there is an article you may want to read by Calvin Brazeard, and he's a Professor of Insurance, I think at the University of Rhode Island, and he points out that what's happened in Massachusetts is that the profits of the insurance industry, even after the reductions, and Commissioner Ryan has been trying to get back money for those poor people because they're so miserable, and he has. You know, they fought them and he finally got these rebates back. Nevertheless, according to Brazeard's article, and it's in the Insurance Law Journal, the last issue, and I don't have that number, but it's also in the January, 1973, Volume 44, of the Mississippi Law Journal, he points out that the industry -- that the industry's profits, the gross profits, under no-fault was two and a half times what it was under the fault system.

And this has been somewhat reduced by the forced rebates that Commissioner Ryan has been able to effectuate in Massachusetts. But nevertheless, it is still substantially higher.

Mr. KING (Continued):

And this brings me to another point. You know, you talk about some of the bills that brought on the problem. It is true that back in 1966 and '67, most of the industry was as the AIA man, and I forgot his name, I'm sorry, but in any event, as he stated, that they were having underwriting losses. And particularly the Eastern Stock Companies were not able to compete as well as members of the NAIC, the National Association of ... Association of Insurance Companies, who seemed to do a better job, and they even had some underwriting losses. You also -- I read an article here by Ray Myzenberg, who will be here tomorrow, and I think it is covered in the Mississippi Law Journal, and if it is not, I'll ask Ray to bring those figures out to you, based -- based

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MR. KING (Continued): On Bost, which of course is the Bible for the insurance industry, there has been a complete turn-around in the profits so that the insurance industry instead of being a sick industry, as a result of 1966 and 1967 is making a tremendous profit right now, even without No Fault.

And as a matter of fact, they've talked about reducing premiums under the fault system for the last two years, and this again was testified to by the insurance officials, the Camelback boys who were invited, you know, direct in Washington, as was pointed out here, and I think that was unfair to charge them with conspiracy and I believe they have a right to meet, but they didn't testify, and they came in there and they pointed out that bodily injury rates, and again, I'm not sure whether this is Moore of All-State or Linesman from Kemper, but again, that's available to you. It is all in the Congressional records, but they pointed out that

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MR. KING (Continued): Bodily injury rates were on a decline across the country, and they are. In 1971 and '2, many of the companies gave a 10% rebate on bodily injury coverage, and again it was due to the reduced number of claims: Safer highways, safer cars have resulted in a decrease in the severity of accidents and the number of accidents, frequency, as they call it in the industry, and this has been the result -- or -- or this has resulted in decreased premiums.

Another thing, in Massachusetts at least, the profit allowed for underwriting losses -- You notice how they say underwriting losses. They don't say losses. Commissioner Ryan from your neighboring State gave a press release about that. And his position is, he -- in the press release, he said, for the decade before 1970, it's 1960 to 1970, when the companies were claiming their great losses, that they were having underwriting losses, he pointed out that the Eastern

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MR. RING (Continued): Stock Companies, the AIA that was up here just before me, had shown an underwriting loss of 1.3 billion dollars for 10 years. And yet he pointed out that they had a profit -- investment profit of 11.7 billion. So instead of losing 130 million dollars a year, they were making combined a billion seven, and that is his statistics.

And in Massachusetts, as I understand it, investment profits are considered in fixing the rates for the industry. You have none of these safeguards here.

So you're taking all of their things, you're Limitating rights where it isn't at all necessary, you're not safeguarding anybody with investment or proper protection or anything else against the insurance industry. You're forcing them to buying insurance which they already have, and providing that they cannot be covered if they sue anybody in the next breath. Now, how is this a consumer bill?

And I'm not suggesting that there is absolutely

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MR. RING (Continued): no need for No Fault to some, I have to say. In a State like Maine, frankly, you can live without it. I think if you enacted the right type of law, it isn't going to harm; it may do some good, because there's a couple of things I should have told you. You have all this great health coverage, but there are a few holes. There are some deductibles in some of the plans, in some of the medical plans, and there are some waiting periods in some of the wage loss plans. And in order to plug those holes, certainly at the cost you can buy this type of insurance for, it isn't going to do anybody any harm, even if they pay for it, and most people are willing to pay for it, and it might even do some good. You can buy this type of coverage, by the way, if you already have 2,000 medical, which I think most -- most of your vehicles carry, anyway, from Continental Insurance Company which -- with a health plan for 4 to \$5 a year, they'll pay you 150

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MR. KING (Continued): wage loss for a year. I came back from the State of Washington, Penco Insurance offers \$200 a week free. The President that testified at the hearings they would give their policyholders \$200 a week free, if they carry 2,000 in medical. The Continental policy, by the way, will add on 500 to your medicals, so you have 2,500. Concord Group sells it here for \$6, and National Grange Mutual, I understand will give you 150 a week for two weeks for no additional premium if you will pay for 2,000 medical, and this is the kind of insurance you're talking about now. For 4 or \$5 a year, do you think the people in Maine want to give up all of their rights in case their wife or children or parents are run down by drunken drivers or even careless drivers? I don't believe it.

The same issue came up in Colorado where it was defeated 3 to 1. And that's an interesting

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MR. KING (Continued): thing because one of the members of the Committee questioned one of the proponents about why not excess --- why not excess? The entire industry banded together to fight the Colorado bill. And it provided all of the things that your bill does. There was only one thing wrong with it from their standpoint. Common Cause drafted it and they weren't in the insurance business. They didn't know you have to sell insurance; they thought it was avoiding duplicate purposes of coverage. So when they saw that everybody already had this stuff, they made the bill excess. And the insurance industry fought it tooth and nail because they wouldn't be selling any of that coverage, and it's very profitable.

Now, strangely enough I was back in Colorado just about a month ago to testify against the bill sponsored by the insurance industry. Same bill; one difference: the medical wage loss is primary. Now,

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MR. KING (Continued): they can sell it instead of Blue Cross; now it's a good bill! Now, you're not going to be fooled by that.

There are a number of bills here that are all right: The Delaware bill; it's really an insurance company bill, it's the AIA bill. And I'm not here to speak for any particular bill; I'm here to speak against one. But certain things were raised.

Did -- The AIA representative mentioned the yes-fault. Well, he should learn a lesson from Bob Short, the Commissioner of Insurance of Delaware. He had some other people do that, the Firemen's Fund. Do you remember that nice, fancy, costly ad? These people are so much out for the consumer, they're spending millions of our dollars for advertising for No Fault. And they have a nice ad, the license plate ad. Do you remember it said: "These two states" -- and it showed the states of Florida and Massachusetts -- "have No Fault. How about your State?" Bob Short,

otherwise there'd be a lot of Delawares or New England  
system so very few people can be covered, because  
really talking about the abolition of the tax  
means anything but modest and vague loss. They also  
so let's not kill ourselves. We built decent  
money they were wasting in false advertising.  
officers to reimburse the policymakers for the  
he wanted them to pay. He wanted the company or the  
the megaphone ad any more. Part of that suit was,  
interested because you know that you don't see  
he made that part of the suit, and that's a rather  
They entered into a consignment decree, and I think  
doesn't call them to Paul. And you know what?  
at Travelers Insurance 110 years ago. Blue Cross  
describing what the Paul meant, Travelers offered  
cree, and this issue was, who is the AIA to  
send them, and they entered into a consignment de-  
Bolavirus, didn't appreciate the humor, so he  
Mr. KING (Continued): the Commission of

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MR. KING (Continued): Oregon is exactly the same. They pay you just as promptly as anybody else.

By the way, this other confusion we ought to clear up on the table. There's always this confusion about how long you have to wait under the tort system, and so they are going to take care of it. They are going to take away your right to go to Court, and you don't have to wait at all. Now, isn't that a nice way to cure a problem?

So they're confusing the No Fault and the fault system. We have a dual system now. Even before the present debates on No Fault, the insurance actuaries testified in the Grace case that only 2% of All-State policies carry wage loss in addition to medical, and that's all No Fault is.

And you don't have to wait for a court suit to come up in Court to collect your medical and

MR. KING (Continued): wage loss. You've gotten paid the minute you presented your bills in the past, and you can get it that way now.

Now, it's true that under the old policy you sometimes had to wait until the treatment was totally completed; and I think that's equitable, and provisions for prompt payment I think do some good in correcting that problem. But you never have to wait for your medical and wage loss, so if they're telling you that you're going to be left with a medical, you getting a bargain, is just telling you something that's totally untrue, and confuses people that don't understand it.

Let me just say, then, one or two other things. There was a lot of talk here about -- and there's other bills here, by the way, before I get to property damage that I'm going to close with because there was so much said about it. There's other bills; there's Senator Marcotte's bill that, again,

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MR. RINE (Continued): gives you all of the No Fault benefits, doesn't take a thing away that I told you other companies are giving away or adding for nothing, as far as the wage loss, if you carry the medical, and you can make some change in that type of a bill, but I would recommend that in the event of recovery, you would not -- you would reimburse the carrier paying the No Fault benefits, but give them a lien right for 100% so there's no attorney's fees, there's no incentive on lawyers to take this type of case.

Most people, when they get their medical and wage loss, unless they live in Boston, seem to be satisfied, unless they got injuries worth talking about.

And I might say here that talking -- just to jump back to the Delaware, which is the other bill, there's a -- Bob Short again, the Commissioner of Insurance for the State of Delaware, wrote an article in Trial Magazine, I think it's the last

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MR. KING (Continued): issue; where he stated, that the decrease in premiums was 70% under the Delaware plan. And if you practice any law, you'd understand why. When you take these little cases and people are paid their wage loss and medicals in full, they are not going to make a claim for the bruises and contusions they may have gotten because there's nothing to talk about. A lot of these little claims as a matter of fact are invited by the industry. You have a property damage claim and they won't pay you. You've got \$400 and they want to pay you three. So, they'll grab their neck, and then cheat the company that's out to cheat them. I'm worrying about it. You're taking away their right to go to Court at all, so you're making them fair game so they'll now be cheated easily. If they pay them, it eliminates those small claims.

The question was asked, what percentage of

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MR. KING (Continued): the claims are just 80%  
84% according to the P.O.T. Study. And, frankly,  
I think the Tierney bill also solves the problem.

Let's face it, I'm not here on behalf of any  
company. We couldn't care less whether it's a  
private insurer or a not for profit corporation.  
But the fact is that Blue Cross is in this business,  
and the fact is that in Maryland, where you have  
\$2,500 first party coverage bill, you know, they  
have what they call a state fund there. They  
solve the problems in Maryland very easily. They  
said, "OK, you don't want to insure these people,  
then the State will insure them," and then they insured  
themselves through Blue Cross. And for a \$2,500 pack-  
age Blue Cross will pay the medical and wage loss and  
I think they work through a subsidiary, for \$17 a year  
according to Alan Rosnick, the representative from  
that State. And you can get the package now from the  
other insurers. GEICO sells it for \$15, and they've

MR. RING (Continued): got a 10% reduction in premium. All they had to do was threaten the industry to compete with them, and yet when the Maryland bill was first passed, there were all kinds of stories by the industry that it would increase rates 30%, and when it came right down to the wire, rather than have the State of Maryland selling insurance, they cut their premium on an average of 10%.

So let me tell you a little then about property damage. I must say that I disagree wholeheartedly with my good friend, Herb Bennett, who spent so much time here telling you how great that is. I think it would be the worst mistake that you could make, and if you added that onto the horrendous, you know, tort limitations under the bill as it now is, you really would be accomplishing a great thing and do all the worst you could possibly do.

MR. RING (Continued):

It is true, what some of the members on the Committee have said, that there's a lot of problems in Massachusetts and Florida with the property damage recovery. First of all, collision is No Fault and when you handle property damage, and this is what I have against Mr. Ross's bill, if you have property damage on a No Fault basis, what you're really saying is that people can't recover for their property damage and they've got to then buy collision insurance. Well, a lot of us have second cars that we don't feel we want to pay a premium on for collision coverage. You've got a car that's worth five, maybe \$300, and you use it as a second car. You'll have to buy liability, but you may not want to spend the money for the collision coverage because it's two-thirds of the premium; at least it is for the comprehensive. So when you get up to that, then, now look what happens.

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MR. RING (Continued):

In 84% of the cases you're hit in the rear.  
You have to now go fix your car on your collision  
insurance and have \$100 deductible.

Again, as Mr. Shaefer I think testified from  
State -- from All State -- Laurel was from State  
Farm on what I mentioned earlier -- but anyway he  
testified and gave an example of his wife driving  
in a shopping center. A lady backs up in the --  
in the -- in the area there, you know, the parking  
area, and causes damage to his wife's car because  
the other lady is in a hurry to get to the beauty  
shop. His wife or he has to stand the loss. So  
if you get into compulsory property damage, you're  
not doing anyone a favor. The insurance industry  
doesn't want it because they realize the problems  
from the people. You know, every time they lose  
-- they get in an accident, they've got to spend  
100 bucks. Whereas most of these cases, not all,  
but most of these cases, are pretty clear on lia-

MR. KING (Continued): liability.

In discussing that, I talked to the Chairman on Liability from Kemper and All State or State Farm about a survey and they found out that it could determine fault in 90% of the cases by looking at the police report, and, frankly, No Fault isn't going to change that because you still have to get the police report to see who is in the car and to see who is making a claim for medical expenses and to see who may have a more serious injury than they're supposed to, under Liability, and they're still bickering over the medical bills, you know, whether hysterectomy was caused by the accident and that type of stuff. So that would be a slight savings, but that's about it.

So anyway I appreciate all the time you've given me, Mr. Chairman. If there's any questions on any specific matter, I'll be glad to try to answer them.

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SENATOR COX. Representative Tierney?

REPRESENTATIVE TIERNEY. I know it's quite unusual but could I make just about a 30 second statement on something that's happened earlier? As you might recall, I asked questions of Mr. Underwood regarding the Delaware experience and he challenged my -- my information. Remember I said there was a claim reduction of 42%. I'm not wed to answering challenges, I guess, but anyway, as long as I left the room, I didn't go out -- out to cry, I went out to call Mr. Carlin, C A R L I N, Staff Attorney to the Insurance Commissioner, State of Delaware. If somebody wants to check to make sure I called, his phone number is Area Code 302-678-4661. And verified my statement that there's been a reduction of 42% in the claim case. But then he said, and I quote, "The AIC has been distorting the Hell out of those statistics all over the country", end of quote. I just want it on the record.

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SENATOR COX. Any questions for Mr. Ring?

REPRESENTATIVE DESHAIES. Just one. Mr. Ring, very early in your presentation, you mentioned something about a DOD Study.

MR. RING. Yes.

REPRESENTATIVE DESHAIES. 92% of the claims were under \$500 in medicals? I believe that's correct. I think I understood you correctly.

MR. RING. 92.4.

REPRESENTATIVE DESHAIES. All right. 92%.

MR. RING. I'll -- I'll accept that. Still and all, it was a little bit lower. I'd say it was just about 90 or 89.

REPRESENTATIVE DESHAIES. We'll accept 92%, fine. 92% represents what percentage of the overall cost of claims?

MR. RING. The overall cost? Frankly, I don't know the answer to that but the -- the -- the major loss, economic loss, is suffered by a small percentage of claims. I would say that --

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REPRESENTATIVE DESHAIES. Can you answer my question?

MR. KING. Yes. In answer to your question: The problem with the bill, sir, is that this bill does not take care of the 2% with the catastrophic loss injury; you've got a \$2,000 bill that takes care of the people that are supposedly presently compensated under the present system. I didn't want to get into that, but now that you've asked. Now, there is -- the theory of No Fault of the proponents is -- in the AIA meeting we've talked about it, -- because the theory of the Federal plan is that if you take away the rights of 90% of the people that you would have more money for the remaining 10% or 3%. Actually, the DOT Study showed the people who had an economic loss of 10,000 never recovered in full under all systems; that is not just the tort system or the collateral source I talked about. But that takes in about 99.5%, about 99%, or currently 98%, depending on whether you believe the

MR. RING (Continued): --- the Congress Committee or the insurance industry. The Congress Committee says the figure -- that more than 1% don't recover. The insurance industry when they testified just the other day, on February 7th, gave this beautiful chart that the Congress Committee later said was not wholly accurate, but this is the dispute which we had. In any event, if you're going to take care of people that have losses, you know, catastrophic losses over 10,000 economic loss, or over \$25,000, you have to take away the people's rights at the other end of the spectrum and we've already had a discussion about that. When you take care of people with losses of \$2,000, you're not taking care of people that are under --- that are overcompensated. What you're doing, here you're under the present system that you say is so bad, you are going to equalize it, but you turn right around, and you're taking everybody else's rights away too and that makes everybody equal, according to some of the

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MR. RING (Continued): people we have in Washington.

SENATOR COX. Any further questions? None. Thank you very much, Mr. Ring.

MR. RING. Thank you, sir.

SENATOR COX. Are there any others here who wish to speak? We don't want to cut anyone off who has to catch an airplane. Mr. Rocheleau?

MR. ROCHELEAU. Mr. Chairman, ladies and gentlemen: I'm one of those who have to go, the group that has got to leave, and I shall be very brief.

My name is Francois Rocheleau, R O C H E L E A U. I'm a lawyer in Westbrook. I have been associated with the negligence business for about 23 years and my income would be affected if we have pure No Fault. However, I'm getting along in years and I think I can make it doing something else. But I want to tell you -- Before I go any further, I want to say also, I'm a distant relative of Mr. Ticebury's. I hope you don't ask any questions afterwards! (Laughter)

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MR. ROCHELEAU (Continued): First of all, I will say to you gentlemen that I don't think the threshold bill is reasonable. And the reason I say that is this: I can take any one of you, any person here almost, and if you tell me that you have back ache, or a neck ache, a sore shoulder, a problem with your ankle, I mean, I can send you to a very capable orthopedic surgeon who will perhaps treat you a few times and charge you \$25. I could -- Anyone of you for the same type of injured ankle, send you to another type of doctor, specialist, general practitioner, anything around, and he'll bill you \$500. I guarantee everyone of you that you'll get five or six or seven or \$1,000 worth of treatment, and I've seen this happen for the last 23 years. And I can't begin to believe that the threshold is going to do anything but ruin a lot of people, the integrity of a lot of honest motorists, and ruin a lot of doctors and lawyers, too, perhaps in the process.

MR. ROCHELEAU (Continued):

I want to tell you about a case I had that will illustrate this point very well. In 1969, I had a woman, a fisherman's wife, who fell through a porch. She injured her shoulder; she injured a small bone in her shoulder. We tried the case three years later. The case is in -- in the Maine Reports; it's history, the name of the case is Horr, H O R R against Jones. It's about 157 Maine. Mrs. Horr had \$50 medical bills. She went to one of the best physicians in Portland, a man who is now dead. And he put her arm in a sling. The injury was to a small bone in her shoulder, so it was a very painful injury. By the way, the doctor's name was Ackerman; I know most of the lawyers here have heard of him. And the bill was \$50, we went before the jury, and this couldn't happen in an automobile accident, and the testimony was, three years later, that this woman would have a painful shoulder the rest of her life. She was about 50 years old, then. I've seen

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MR. BOCHELMAU (Continued): her since. She still takes Codein every day of her life.

Under some of these bills, under a No Fault bill, this woman would have been paid the \$50 medical bill. Her husband was a fisherman. She wouldn't have had any insurance.

Finally, let me say that I came here, I don't come here often enough, none of us do come before the Legislature unless someone prods us to come here. But I was here five or six or seven years ago with the Maine Trial Lawyers to which I still belong, and we were talking about comparative negligence. We were the eighth State in the union to adopt comparative negligence, that is, the Maine Legislature. At that time, no one here could recover in any type of an injury case unless you were entirely free of fault of any kind. You had to be in the exercise of due care; you could not contribute 1% to your injury; the most ridiculous

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MR. ROCHELEAU (Continued): Law you ever heard of. 42 States continue to have that law. After this Legislature changed it, and said, "we'll balance the negligence of both parties," and we came up, this same group of people were here, I recognize many of them, and this Legislature, the Maine Legislature passed a comparative negligence -- the comparative negligence bill, a very fair law and the law that has done a lot of good for everyone -- everyone in this State. Massachusetts, however, which had all this problem, which needed people like Keeton and O'Connell, Massachusetts never did anything about their due care problem. Neither did 42 other States. If all -- If all the States had done what -- what this Legislature has done about six or seven years ago, we -- I'm sure we wouldn't be here today talking about No Fault.

We need changes. We can't live under a threshold bill. We do need first party benefits.

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MR. ROCHELEAU (Continued): There's no question that the average working man, and that's the type of person that I represent, I only represent small working people who are injured in their everyday lives. I don't have big clients and I know the people -- that they need that weekly pay check. Most of the people I have, belong to unions, they have all types of medical claims, all types of medical gimmicks -- programs. They're not going to benefit too much by some of these bills. I haven't read them all; I've been reading about No Fault since Keeton- O'Connell started back in the year 1966.

So I hope you don't take away most of our people's rights. I hope you do come up with a bill that will have some first party benefit payments so that most people can get -- continue to live. And that if they have a real injury, and some drunken driver or some negligent person that causes this injury, that that person should pay

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MR. ROCHELEAU (Continued): for it, and not all of them; not the -- the people who drive with care and caution. Thank you.

SENATOR COX. Any questions? None. Thank you, sir.

MR. ROCHELEAU. Thank you.

SENATOR COX. Mr. Coyne. Mr. McTeague, I believe you'll be next.

(Conference off the record)

MR. COYNE. Senator Cox, it's ten minutes past five. How long do you plan on staying here?

SENATOR COX. Quarter past! (Laughter)

MR. COYNE. Fine. I want to thank first Attorney King for the free advertising for the Concord Group Insurance Company for their Ready Pay plan. I have today copies of what I would propose and speak to you upon.

My name is James Coyne, of Auburn, Maine, I'm Branch Manager of the Concord Group Insurance Companies and I'm appearing today on behalf of the

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MR. COYNE (Continued): Concord General Group and also the National Association of Independent Insurers, an insurance trade association, of which we are a member and which is comprised of over 500 affiliated companies writing close to 50% of the automobile business in the nation.

Of all the bills that I've seen to date, I appear before you to urge the passage of LD-1420, subject only to the four amendments I will subsequently propose. I urge this action by your committee and by the entire Maine Legislature for the following reasons:

First, an argument to someone's words earlier today, it may be well the last opportunity for this State to determine -- for the State's determination in this crucial area. Indications from Washington are not good. The Department of Transportation (DOT) studies and recommendations urge change in the system and implicit in their comments is the assurance

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MR. COYNE (Continued): that the Federal authorities will assume a take-over role if the several States fail to act. Moreover, the Administration may well be losing patience and may assume a more activist role in the Federal picture if States fail to act. Comments by President Nixon and members of his official family, including Federal Insurance Administrator Bernstein, leave little doubt as to the future of their intentions.

Finally, most of the knowledgeable and official observers in the Capital are of the opinion that the formidable thrust of Senators Hart and Magnuson is being delayed only awaiting a final tally of State inaction and failure. They are literally "lying in the weeds" for the opportunity to smugly demonstrate through the most credible data, that the States will not act responsibly because of the self-interest pressures to which their respective legislatures are subjected.

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MR. COYNE (Continued):

Secondly, I urge enactment of LD-1420 because it embodies the reform measures which will effectively and economically deliver insurance protection to our citizens without disrupting the elements of the fault system which are most deserving of being retained.

In this connection, the proposal assures an equitable distribution of the premium dollars and the prompt payment of benefits to accident victims without -- without regard to fault. It likewise retains the right of the innocent accident victim, in the more serious cases, to recover damages against the wrongdoer for the pain and suffering to which his serious injury subjects him. Of these objectives -- And these objectives are achieved in a program in which the costs are stabilized -- that through the elimination of pain and suffering in the minor cases, the additional No Fault benefits can

NO FAULT

MR. COYNE (Continued):' v delivered at no additional cost to the automobile insurance customer -- or consumer, excuse me.

Finally, we urge enactment of LD-1420 because it places the cost of the automobile accident reparations system where it properly belongs, on the motoring public of the State. In other words, the automobile insurance protection is the primary source from which benefits to auto accident victims is paid. Such a system is highly desirable from both the standpoint of efficiency and public policy. It is effect ... efficient in that it limits the administrative and investigative procedures and their related costs to a single source.

From a public policy standpoint it is highly desirable that any system we retain provide that we may rationally and accurately assess the costs attendant to the operation of the motor vehicle by internalizing all such costs within that system.

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MR. COYNE (Continued): By so doing, we are -- we not only readily determine the extent to which the motor vehicle creates a unique social hazard, but we also assure the total cost burdens created by the hazard are charged exclusively to those creating it -- the automobile owner and operator.

As I indicated to you in the beginning -- beginning, our strong support for LD-1420 is tempered to the extent that I believe four relatively minor amendments could improve the bill and make it far more acceptable to the citizens of Maine. I request your serious consideration of the following:

First, as proposed, the tort exemption language leaves a gap as to a wage earner who has sustained work loss. In this regard, the present language states that there is a tort exemption for liability for damage "regardless of how calculated or the basis for same, up to \$2,000 for any person..." for that draft. What it fails to contemplate is that

MR. COYNE (Continued): wage loss is paid, subject to a 20% reduction. Consequently, to the extent that a worker is deprived of the 20% work loss, he is uncompensated and deprived of the right to recover against the wrongdoer. Such a gap can only cause dissatisfaction for innocent accident victims and motivate them to pursue a frivolous tort claim in order to recover the loss. We suggest corrective language which would permit retention of a tort recovery to the extent that any "economic loss" is not paid or payable under the No Fault provisions.

Secondly, the major thrust of any or a No Fault program, is to produce efficiency in the delivery of benefits. We submit that this objective is substantially thwarted by the provision that No Fault insurance coverage follows the family rather than the automobile. We are of the opinion that far less claims investigations

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MR. COTNE (Continued): will be required, thereby producing cost savings and efficiency, by having the insurer covering the respective automobiles, deliver the benefits to the injured occupants of such automobile and the pedestrian struck thereby. Naturally, this would not prevent the same insurer from providing protection on an excess basis in those instances in which a family member is injured by an uninsured vehicle or in an out-of-state accident.

Thirdly, in order to achieve an equitable degree of loss shifting and preserve the elements of merit rating, we propose that subrogation be permitted at least in those instances where damages exceed the minimum pain and suffering threshold, and I have here \$500, but we'd prefer \$1,000, or in any accident in which a commercial type of vehicle is involved.

Fourthly, experience in Massachusetts and

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MR. COYNE (Continued): Delaware has indicated that a substantial burden is imposed on the owners and operators of motorcycles by requiring them to provide mandatory No Fault benefits. The cost of such benefits in many cases would exceed the value of the motorcycle involved. In order to avoid this undue burden on motorcycle operators, we propose that a deductible provision be included and that they be required only to carry the mandatory No Fault protection to cover any pedestrian struck by them.

On behalf of the Concord General Insurance Group and the NAIK, I appreciate the opportunity -- opportunity to speak before you today and I've been asked to relay the following message: The assurance of a continuing interest of the National Association of Independent Insurers based in Chicago and their staff remains available to provide whatever assistance you may or might want or require in

MR. COYNE (Continued): bringing about the enactment of a highly desirable legislative proposal. Thank you very much.

SENATOR COX. Any questions of Mr. Coyne? There are no questions. Thank you.

MR. COYNE. Thank you.

SENATOR COX. Representative McTeague?

REPRESENTATIVE MCTEAGUE. Senator Cox, members of the Committee: I wish to limit my comments not only because of the lateness of the hour, because I don't have anything original to say on those portions of the bill.

A couple of items: First of all, I would like to respectfully differ from what I understood to be the comment of Mr. Coyne regarding self-interest dictated the procedures of the State Legislature, at least so far as the Maine Legislature goes. This is my third term here, and I believe with the exception of Representatives Donaghy, O'Brien and Boudreau, I think Anne has more time here than I do, we have seen quite a few fights like this one with interest in

REPRESENTATIVE MCNEAGUE (Continued): involved, and I am proud as I know all of you are proud to be a member of this Legislature, and I don't think there is a body involved in the State of Maine whether it be the Concord Group or any other that has reacted to the public any better than this Legislature has.

The particular parts of Representative Trask's bill that I'd like to address myself to appear on page 5. First, section 127, subsection 1: As I read that language, and I have read Title 24A, which relates to Insurance Rate Making and I'm not aware of any particular protective provisions in there, but as I read Section 127, subsection 1, if you are a Senior citizen, 65 or over, and your wife is sued, and your only source of income is Social Security, and your source of medical insurance is Medicare, you are being forced by this bill to buy insurance and to pay money to an insurance company which would not be obligated to pay you anything and would not possibly be obligated to pay you anything in the form of benefits. You're not going to have a wage loss, because by definition you're retired and you're on Social

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REPRESENTATIVE McTEAGUE (Continued): Security and you get your pension check every month. You're not going to have any medical expenses of substance, that are not covered by Medicare.

If this legislature chooses to pass a bill such as Representative Trask's with a reduction in what is supposed to be covered, it seems to me that fundamental fairness would decree that in the case of a person like this Senior citizen cover that I suggested, that we should mandate in the bill that they should only pay a tiny, small premium, because their chance of ever collecting anything is very low and would be very small. It's true they might hit a pedestrian, and I agree with that, and we want him covered, and I'd like to see everyone covered for everything.

But the risk there is very small, and history indicates in the State of Maine that the -- the area of writing medical payments coverage has been terribly lucrative to the industry, almost scandalously lucrative. For the calendar year ending June 30, 1971, the percentage of premium returned to policy holders and their dependents in the form of benefits on medical

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REPRESENTATIVE METAGUE (Continued): payments coverage which is basically what no-fault is, was 37¢ on the dollar. That is a very hardy contrast with Blue Cross and many other companies. I know these folks have to pay taxes, but I do think that we as a Legislature, if we are interested in the consumers and Senior citizens can demand much better than that.

The second section that I'd like to comment is Section 128, having to do with tort liability. I won't bore the Committee with my own philosophical view on that; they might get tired slightly; you've heard both sides of the statement.

Now, let's talk about the -- assume that you're going to have an exemption from tort liability. Let's make it as practical, understandable and litigation free as possible, because the alleged purpose of this legislation, or one of the beneficent purpose of it, is to avoid, not to create litigation.

And I would challenge, not a member of the Committee, because I certainly don't challenge the jury before which I appear, but I would challenge any of the representatives of the insurance industry in this room,

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REPRESENTATIVE McTEAGUE (Continued): or Chicago, or New York or wherever they may be, to give us a definition in a practical case of the meaning of the terms, like, for example, "permanent disability." Does that mean more than six months, like it does for Social Security? Does that mean one year, two years, three years, or does it mean a lifetime? I don't know what it means, and I think in order to find out, if the bill was passed in its present form, that we would consume much time and money in litigation in trying to come up with an answer. That wouldn't seem to me to cut down on litigation; that would increase litigation very significantly.

"Permanent serious disfigurement," again, I don't know what "permanent" means. You might define it as lasting more than six months, but it isn't in here now. What is "serious" disfigurement? Well, to me, the small scar I have on my left cheek isn't serious, but if I had a 17 year old daughter, I might consider it quite serious. "Serious" to whom? Again, you have uncertainty, you have litigation bred, you have people apparently who come up with these concepts who have

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REPRESENTATIVE MCNEALUE (Continued): not yet been faced with the difficulty of administering a plan like this. What is "serious" disfigurement and what is not serious? That is certainly a general standard that I -- that I will suggest to you, will lead to very honest differences of opinion between the insurance companies and injured people, and will lead to litigation.

How about "significant," significant loss of an important bodily function. Pray tell us what is significant and what is, I presume, insignificant or non-significant? Again, another breeder of litigation, uncertainties and hard feelings.

And also, what about "important bodily functions"? Again, important to whom? Which of your bodily functions is important or not important? Is your vision important? Well, I think we can say, of course it is. Does it matter if your vision is reduced from 20-20 to 20-30? My opinion is, it's not too bad, you can correct those things. Where does it stop? You've injured your eye in an accident to 20-100 or does it have to go to 20-400 to observe the legal definition of

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REPRESENTATIVE METAGUE (Continued) : blindness in  
the State of Maine?

Uncertainty. Now, why do these uncertainties exist in the bill? I don't think it's out of any lack of skill in the part of drafting, because I think they have set for themselves an impossible task, that task being to try to define, to try to fit into pigeonholes, human beings and human injury and human suffering. And if there's anything we experienced as the country, in our own experience in life teaches us, people don't fit very well in pigeon holes. You know that if you force a person into a pigeon hole and you don't break the pigeon hole due to the force, you're apt to do some damage to the person. Now, I can't say whether the damage would be permanent or serious or insignificant, but I don't think we want to force Mainers into pigeon holes.

The reason it seems to me that they attempt to use this language which is in a sense a restriction on the \$500 threshold concept is this: it's based on an honest and candid belief that a \$500 threshold, without some modification on it, cannot give individual justice,

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REPRESENTATIVE MCLEAGUE (Continued): Individual peace. You heard Frank Rocheleau, he's left the room, so I'll say it. We tried to have Frank do something different. We think Frank is such an honest and fine guy and such a good Lawyer, he should -- he should be on the bench, but he isn't. He likes Westbrook and he wants to be home at night with his family. Pray tell us, though, how can these attempts to deal with a pigeonhole of the arbitrary nature of a \$500 threshold be successful? They can't be. No one can answer these questions. There's no answer to these questions.

A \$500 threshold is going -- or \$1,000, is going to mean something different to different people. For example, if you live in Portland and go to Maine Medical or to Mercy, I think their rates are about \$60 a day, semi-private accommodations. On the other hand, if you live along the coast in Hancock County, you go to the hospital which I believe is in Bar Harbor, they have a wonderfully low rate of \$33 a day. So what you're really saying by \$500 or \$1,000 threshold is that a man in Portland can still sue even though he's only been in the hospital half the time of the man in Bar Harbor.

NO FAULT

REPRESENTATIVE McTEAGUE (Continued):

But you know it's not only discriminatory based on geographic areas. It's also a fact, proven in the case before the Illinois Supreme Court, but also we know it from our own experience, that wealthier people pay more for medical services, and maybe they get more service. It takes a poor man longer to reach the \$500 threshold. Where is the fairness in this?

The best way it seems to me to deal with small claims, and I agree with the contention that small claims should be dealt with as efficiently as possible because the administrative overhead in small claims is disproportionately high compared to the level of benefits involved. But the best way to deal with those is to do what all these bills suggest we do. I'd like to see, by the way, a lot more generous -- well over \$2,000 and that's the beginning. Pay the man. Pay him for his out-of-pocket expenses, pay him for -- involving medical and lost wages, and he is not a gentleman who lives in Boston; he is a Mainer. Not one case of fraud in ten years according to tax assessors. If you pay him, I think you'll take care

REPRESENTATIVE MCLEAGUE (Continued): of the problem. If you make the man feel that he is being treated unjustly by some type of \$500 threshold, and you -- and the question comes up, whether he should have a little bit more medical care, or a little bit less, you are taking an honest man by what I would conceive is an unjust system, and making him tempted to insert his own private adjustment on that system, you are making him at least if not a committer of fraud, at least a person bordering on it, and that seems to me to be thoroughly undesirable.

The other question I raise regarding Section 128 involves the part -- the sentence that begins at the very end. "For the purpose of this Section," this is at the end of page 5, "For the purposes of this Section, "costs of medical and hospital expenses" are defined as the reasonable value of necessary services, etc...." I assume that that intends to take care of people in the Armed Forces, people receiving care at Logus Veterans Center, who really don't pay out-of-pocket for medical and hospital treatment. But certainly we don't want to say that no serviceman, no veteran, can ever bring a

NO FAULT

REPRESENTATIVE McNAUL (Continued): suit. I think that you can be a little bit more explicit regarding that problem.

Section 129 says that the insurance company which has paid No-Fault benefits should have a right to reimbursement if there's a recovery in tort by the accident victim. I think that's a good idea and that's a just one and that's an efficient one. The only problem is, they want the insurance company to get 100% back, but as you know Maine has a comparative negligence state -- statute, so that it's possible that an injured fellow who is, say, 25% at fault for an accident himself, will recover only 75% of the damages, and yet the old insurance company, they still want 100%. I think when the injured man recovers only 75%, that's enough for the insurance company.

Rochefoucau gave an example of a small case not involving an automobile, but it involved an injury with full medicals, no permanent disability, but permanent pain and probably a permanent difference in the household of that fisherman and his wife. The language that is in the bill in 128 seems to me to be an attempt to

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REPRESENTATIVE McLEAGUE (Continued): provide for these very human situations, to recognize the arbitrary nature of any threshold, if you don't like, "500, not 499," but you can't do it. By definition, you can't. But I'll tell you one group who can do it, and it takes care of it very well, in the State of Maine, any lawyer or any injured party who is so unwise as to take up the time of the Court and jury with a claim that is of little value. The special group takes care of that, that it elects people like us to the Legislature. That's a jury in the State of Maine. You'd be surprised; you know, the insurance company can get all the medical reports and they can have a claimant examined and that's fine and decent and right. The jury makes pretty short shift of anyone who comes in with a claim and thinks they're going to say, "Oh, my back!" and get five or \$10,000. So it doesn't happen in the State of Maine unless "Oh, my back!" is a ruptured disc that you can prove by a myogram that it has been repaired by surgery. The Tanous Committee, as Senator Tanous testified on fraud, I think there are some occasionally that come up, very

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REPRESENTATIVE MESSAGUE (Continued): rarely; I think they're spotted. They're spotted by insurance company claims investigators who are very frankly and properly a suspicious lot; by insurance company lawyers and even by Plaintiff's lawyers. Because if you are representing a person, you have a license to practice law, and you hope you have a reputation in the community. Someone comes to you and you think his claim is fraudulent or grossly exaggerated, and you accept what he says at face value and you disregard whatever is to the contrary, two things will happen to you as a Lawyer. #1, you won't get a fee on that case because you won't produce much because insurance companies don't pay fraudulent claims and the juries don't award verdicts on them. #2, your reputation is going to go downhill pretty fast. And unlike Boston where people don't know each other, we know each other here and people are concerned with their reputations, lawyers, claims adjusters, and our ordinary citizens, and it just isn't a problem in the State of Maine.

Perhaps, Mr. Chairman, the AIA or one of the other insurance industries involved can provide us with the

REPRESENTATIVE McTEAGUE (Continued): humane definition and with examples, what I find to be a terribly ambiguous phrase that's used in Section 128 and I know the Committee would be very happy to receive that if the Industry could provide it. Thanks for your time, Mr. Chairman. I'll attempt to answer any questions.

SENATOR COX. Are there any questions? Representative Donaghy?

REPRESENTATIVE DONAGHY. I would ask if Representative McTeague could answer any of the questions I asked earlier in the session about the Social Security, etc. I would ask Representative McTeague if Section 127 on page 5 would be excepted, over on the other page, as was said before --

REPRESENTATIVE McTEAGUE. I can't hear you! I'm sorry.

REPRESENTATIVE DONAGHY. I would ask you whether you think that section 127 which consists of the exceptions to paragraph 128 and perhaps alleviates some of the exceptions, you might add "veterans" to it?

REPRESENTATIVE McTEAGUE. Well, Representative Donaghy, I think that the veteran who is entitled to

NO FAULT

REPRESENTATIVE McTEAGUE (continued): service-connected -- whatever treatment at Togus, he has paid for that treatment, not in cash, by his service.

REPRESENTATIVE DONAGHY. I am agreeing with you.

I'm not --

REPRESENTATIVE McTEAGUE. Good!

REPRESENTATIVE DONAGHY. Go ahead.

REPRESENTATIVE McTEAGUE. I -- I -- I think that we should do one of two things if you want to keep this bill because regarding Section 127, you should -- I have no objection to exempting Workmen's Compensation, Social Security and Medicare. I think it's a good idea, really, under the existing -- existing benefit system. But I think there should be language in there that says, if a person is getting Social Security or Medicare or being treated in a VA hospital, that he should have a lot lower premium. I think that would take care of it.

SENATOR COX. Representative Deschutes?

REPRESENTATIVE DESCHUTES. Representative McTeague, let's go back to 127, again. You say the medical benefits for the elderly are not recoverable and so

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REPRESENTATIVE DESHAIES (Continued): forth. And I agree, the rate should reflect the very minor exposure to "med" pay.

REPRESENTATIVE McTEAGUE. Exactly.

REPRESENTATIVE DESHAIES. But on the other hand, would you agree that perhaps older people are more prone to serious or lasting injuries?

REPRESENTATIVE McTEAGUE. Well, I'm obviously outside my bailiwick, Representative Deshaies, I would --

REPRESENTATIVE DESHAIES. This is just an opinion.

REPRESENTATIVE McTEAGUE. My opinion is, I think that if they are injured, their injuries are likely to be slower in healing and they're likely to need more medical care, but I also think and I think the rates they pay for liability show that most of our Senior citizens are pretty safe drivers and I think they're less likely to get in an accident.

REPRESENTATIVE DESHAIES. They could be a passenger, however.

REPRESENTATIVE McTEAGUE. This is true.

REPRESENTATIVE DESHAIES. Or a pedestrian.

REPRESENTATIVE McTEAGUE. This is true.

NO FAULT

REPRESENTATIVE DESHAIES. I agree the rates should reflect the minor exposure for "med" pay, but I'm not overlooking the fact that older people have a tendency for very serious, lasting type injuries.

REPRESENTATIVE McTEAGUE. I -- I think we're on the same track, and I agree to the fact that the risk may be greater if there was injury, that should be considered too, but I -- I think that since we have Medicare that operates on 90 plus cost benefit ratio, that we shouldn't take Medicare insurance -- our Senior citizens who are getting back 90¢ to the dollar for their Medicare -- Social Security contributions, and put them into a plan to pay that 37¢ to the dollar. This bothers me.

REPRESENTATIVE DESHAIES. One other question: on 128, you raised the question of the definition of permanent disability. I agree, that's -- that's a tough one.

REPRESENTATIVE McTEAGUE. Does anyone have an answer?

REPRESENTATIVE DESHAIES. Under the definitions on page 1 it does define injury, meaning bodily harm. I don't believe that's too difficult to interpret. And bodily malfunction, I don't believe that's too difficult to

NO FAULT

REPRESENTATIVE DESHAIES (Continued): Interpret.

And the case related by Frank Rocheleau here a few moments ago concerns this woman who broke a bone in her shoulder. As far as I'm concerned, this is a permanent malfunction of some sort. And she would not be denied a tort action under this bill. But so much for Mr. Rocheleau, he has left here, and I'm not going to raise that up again.

But you see the permanent disability -- I'm not sure what it means. Perhaps it should be cleared up. Do you have any suggestions as to how permanent disability should be defined?

REPRESENTATIVE McTEAGUE. It's terribly difficult. The suggestion that I would make for the Committee's consideration would be to go in the direction of the duration of the disability and I -- I think something in terms of -- I just think that we artificially define permanent disability under the Social Security Law. They pay them under six months, after six months. That -- that might be some approach that would, you know, help a little bit anyway, if it still manifests itself after six months. It's still somewhat difficult.

NO FAULT

REPRESENTATIVE McTEAGUE. (Continued). That's not perfect, but maybe it would help.

REPRESENTATIVE DESHAIES. I understand. It's partially defined under -- on page 1.

REPRESENTATIVE McTEAGUE. Which -- What subsection are you referring to, Representative Deshaies?

REPRESENTATIVE DESHAIES. Two.

REPRESENTATIVE McTEAGUE. I -- I -- I don't quarrel particularly with the definition of injury. I think that's a perfectly good definition.

REPRESENTATIVE DESHAIES. OK. Maybe you'll have some suggestions as to the -- you might like to offer suggestions on the definition of permanent disability.

REPRESENTATIVE McTEAGUE. Permanent is a word, Representative Deshaies, that's significant.

REPRESENTATIVE DESHAIES. Well, I ask the question because you brought it up.

REPRESENTATIVE McTEAGUE. I -- I can't answer it. Permanent; we can work with. Now do you define significant and how do you define serious?

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

REPRESENTATIVE McTEAGUE. Thank you.

SENATOR COX. Any -- Any further speakers?

MR. HARRIS. Mr. Chairman, members of the Committee, my name is Bob Harris, I'm President of the Maine Insurance Council, an organization of insurance agents. This agent association which make -- makes up the Maine Insurance Council includes the Independent Insurance Agents Association of Maine, the New England Mutual Insurance Agents Association and the Maine Association of Life Underwriters.

The agents appear in favor of No-Fault insurance, and we appear in favor of LD-1420 because it appears to us to offer the best likelihood of a good No-Fault program. The agents feel that they want to meet the needs of their clients, we feel that a workable form of no-fault insurance will enable the agents to service clients with prompt payment of most claims. It is our opinion that the Commission bill LD-1420 most nearly meets this objective. If you want to ask any questions, you may now.

SENATOR COX. Any questions of Mr. Harris?

MR. HARRIS. Thank you very much.

SENATOR COX. Thank you. Anyone else who wishes to speak on LD-1420? All right, the Chair declares this hearing

NO FAULT

SENATOR COX (Continued): closed. All right?

MR. LAWRENCE. I'm glad that wasn't my head! My name is James H. Lawrence, Christian Science Committee on Publication for the State of Maine and representing the Christian Scientists in the State. I have two brief amendments to present here.

On page 2, Chapter 127, subsection 4A, "Allowable Expense," there is a danger there that "any other remedial care and treatment" would be interpreted to mean a form of medical treatment, and we would suggest after "any other remedial treatment and care," the inclusion of these words, "including care and treatment rendered in accordance with a recognized religious method of healing."

And on page 5, under Chapter 128, the last line, Section 128, we would insert following "costs of medical and hospital expenses"; "or remedial care and treatment rendered in accordance with a recognizable religious method of healing."

I won't go into reasons for this, I think, because of the late hour and I would be available to substantiate this, if necessary.

SENATOR COX. Any questions of Mr. Lawrence? Thank you very much.

(See Appendix)

SENATOR COX. Mr. Hogerty.

MR. HOGERTY. Again, like Mr. Harris, I will be very brief. I do think that all the bills you have heard so far, of the ones we have knowledge of in the Insurance Department, that this one would stand the best chance of perhaps being a guide for you to work with and modify. There have been some excellent suggestions here. I think Representative McTeague for one has pointed out several points that should be seriously looked into. I do feel that this bill should be given favorable consideration, for several reasons which I won't go into here now, but the Commission has done most important service here in setting the Committee members up to study No-Fault. And believe me, they've listened to all kind of people talk, and they've devoted an awful lot of work in trying to develop something that would be satisfactory. And I do feel that they have reflected the feelings of many, many people: attorneys, insurance factions of all types. It is true that no member of the public that appeared

NO FAULT

MR. HOGERTY (Continued): before them. I'm really worried when it comes to that subject, that a member of the public might become even more confused than we are. I -- I really -- I want -- They might ask a good question or two, and I think the questions we're hearing now are what we're going to hear -- are -- are questions from the public that should be aired. But I do recommend this bill as perhaps a guide for your Commission.

SENATOR COX. Any questions for the Commissioner?

None, thanks.

MR. HOGERTY. Thank you.

SENATOR COX. Does anyone else wish to speak? I declare the public hearing closed.

ADJOURNED.

REPORTER'S CERTIFICATE

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I, Letha B. Brown, a Notary Public in and for the State of Maine, do hereby certify that on the 18th day of April, 1973, personally appeared before the Committee on Business Legislation of the 106th Legislature of the State of Maine, at the State House, Augusta, Maine, the within named witnesses who testified on this date in the matter of No-Fault Insurance now pending before said Committee, and that thereupon this testimony was stenographically reported by me and later reduced to typewriting, and the foregoing is a full, true and correct record of the testimony given and proceedings had at the hearing on April 18, 1973, before said Committee.

I further certify that I am a disinterested person in the event or outcome of the above named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal of office this 21st day of May, A.D. 1973, at Lewiston, Maine.

S/ Letha B. Brown (L.S.)

A true copy  
Attest:

Letha B. Brown

Letha B. Brown  
Notary Public  
My commission expires  
December 2, 1976