

MAINE STATE LEGISLATURE

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STATE OF MAINE
106TH LEGISLATURE

HEARING BEFORE COMMITTEE ON BUSINESS LEGISLATION
ON NO FAULT INSURANCE: LD-1425, LD-1770

BOOK IV OF IV

REPORTER:

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7 Mountain Avenue
Lewiston, Maine

State House
Augusta, Maine
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STATE OF MAINE
106th LEGISLATURE

COMMITTEE ON BUSINESS LEGISLATION

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

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MR. SPANGENBERG (Continued): but innocent victims who have a claim are not being paid in Massachusetts. They aren't making claims." Why? Opinion Research did a study and found 34% of the people who had legitimate claims had never filed them. Why? They've been trained with collision insurance. Put in a little claim, you get a surcharge. Pay an extra premium for three years. It's bigger than the claim you're going to get; it isn't worth it. So they don't put in claims.

Now, that may make an interesting actuarial figure. I think it makes an interesting legislative figure, too. You want to go for a system in which the insurance company can hammer people over the head on these claims as they do with collision claims. I would hope you don't.

But to go on, with the final result of the cost data, Professor Williams came in. He didn't make an independent study. He just averaged all the others.

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MR. SPANGENBERG (Continued): But I'll tell you what the NAI document said. It said, "With paying 11% more because of assigned claims, which is in the bill, comparing this to the man who pays standard premiums, who buys 10-20, your average constituent, 10-20 and 5, that's what he buys. What will it -- the UMVARA bill do to his premium? He said it will increase his bodily injury premium by 80%, on our figures. But he said, we will report only 40% because you are taking away his right to recover for property damage, so he's going to have that loss all by himself, and he won't have a PD premium. So we'll take the premium saving and that will reduce the increase to only 40% increase. But bear in mind the workman who buys the transportation special four years old to drive to work and is careful because the only protection he has is that he can't collect his damages and get it fixed if someone rear ends him at the light. And I was told he will never collect for that, unless you want to buy \$100 deductible collision. He'll say, "What! On that old car? The pre-

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MR. SPANGENBERG (Continued): mium is worth as much as the car." So he'll just take the loss. If he can buy it and does, he'll lose the \$100 anyway. So those costs are in the system, whether you include it in your premium calculation or not. I'm going back.

All the actuaries were doing, was taking their own closed claims. All of them said, "We don't know whether our figures are right, because we don't know how many single car accidents there are. We don't pay them, so they don't get in our files. We don't know how many people trip and fall, getting out of their automobile, and will be paid under UMVARA. Or break a leg in the house and if they have a little larceny in their hearts, will say, "I tripped and fell getting out of the automobile." These will be uninvestigated accidents. I don't think there will be much of that. I have great faith in the basic honesty of American people. But there will be some additional cost not now known.

But let's turn to the DOT studies which started

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MR. SPANGENBERG (Continued): it all. You're only collecting $3\frac{1}{2}$ billion in premiums at the time of the study. You have to collect five billion more to pay the seriously injured. That means the premium has to double, doesn't it? Now, can you really believe an AIA actuary who said, "We will pay all the serious losses for everyone and it will cost you less?" I don't think you can.

The name of the game is cash flow, as I said. Now, let me turn to another point. And I'll be brief. No-Fault originally was advertised to the American public as a way to pay all victims, all losses, and cut your premiums 15 or 20%. We now know it cannot cut premiums 15 or 20%. It has to increase them. Increasing them is unacceptable. So the present game is to run the computer and see, can you pay all victims some losses, which would increase premiums, but somehow steal away the rights of innocent people and add that money back into the pot and

MR. SPANGENBERG (Continued): let's not increase premiums too much. Every legislature I've been before recently and in the documentary that Mr. -- Professor Keeton and I recently cut with others, some insurance company people, the new line of the insurance industry is No-Fault with stabilized premiums. Stabilized, that is, if you enact our No-Fault plan, premiums will not rise.

The point is, if you do nothing, premiums have to come down about 15%. You don't have to stabilize premiums. No-Fault is a way to keep premiums up, not to get them down. Let me give you some proof of that. All mutual insurance companies, all lines, 1969, underwriting loss, 5%. 1971, underwriting profits, 7.3%. That's extravagant. 13% turn around in two years. You want some real shockers? I suppose you think collision premiums might go up, because it costs you more --- much more to repair cars. Underwriting profitability has shown a 25% turn around in two years, from '69 to '71. Why? DOT standards for

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MR. SPANGENBERG (Continued): safer cars. Injuries are going down, damages are going down, deaths are going down, the rates are going down. You don't appreciate how much it means to you to ride in a car with a padded dash, safety windshield, recessed handles, seat belts, collapsible steering column, and banana pad across the steering column. And I'll tell you. No man in the United States wearing a seat belt died last year in any crash in which the impact speed was less than 60 miles an hour. Now, the safer car does make a difference. It reduces injury, which reduces claims, which reduces pay-offs, which has to reduce premiums. Unless you can invent some system to keep them up. 1972, I do have all the numbers from Best's, for all of you on what's happened to the insurance premium dollar, all companies, all lines, for the last decade. It will be illuminating to you and will answer many of the puzzlers, I'm sure, on the insurance companies' own numbers.

1972, I have also a report from the "Wall Street Journal." Those full figures are not out, yet. But

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MR. SPANGENBERG (Continued): I can quote them. Underwriting profitability showed a gain of 1.1 billion and investment income showed a gain of 2.65 billion. Gain! In '72 over '71.

You don't have to worry about the threat, that if you don't do something, that insurance rates will continue to rise. I think what you should worry about is being conned into saying that you ought to enact No-Fault of a particular plan to keep rates from rising, when its only purpose is to keep them from going down. So the final point on threshold, I think, is important. I'll finally get to philosophy.

I debated Dean Cowan who was head of the Drafting Committee. I'd met with Senator Hart, who is an old friend of mine, and testified at Congressional hearings. I've heard over and over again, the same story. Someone has to sacrifice. Everyone has to give up something. Now, the man who is injured in an accident gives up some of his rights. I quote

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MR. SPANGENBERG (Continued): you directly from the documents themselves. You must give up some rights in order to receive the benefits of UMVARA and the other No-Fault plans.

Let me make one point strongly at the outset. UMVARA doesn't give you any benefits at all. No plan gives you any benefits. They're all compulsory insurance plans. Does your life insurance give you benefits? Or do they say instead, "If you pay premiums on your life then we'll pay you when you die." It's a straight contract. And that's all there is to the No-Fault benefits.

Well, they don't give you a choice as we have with life insurance. I can buy it or not and as much as I want or not. I can buy medical "pay" or not as I choose. And I do. Indeed, I can buy auto disability, wage loss insurance. All State offers it. Hewitt testified in Grace vs. Howlett in Illinois on what was Allstate's record with its policy holders, knowing they offered both medical pay and wage loss

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MR. SPANGENBERG (Continued): for disability insurance. They said, "75 to 80% of our policy holders do voluntarily buy medical pay. 1 to 2% of our policy holders do voluntarily buy wage protection insurance," which indicates to me it isn't very popular. And why? They already have it, through Union plans. They don't want to pay two premiums even if they could collect twice. They would rather pay just the one premium, which they do by working and get the benefit. So wage loss is not a popular form and you'll find no public demand that it be given to the public -- I suppose if it were given -- but no popular demand from the public that you make them buy it. It's one kind of insurance they have shown no great interest in buying.

But whatever the plan says, the motorist has to buy it, he has to pay for it, and if he gets injured and collects his benefits, he's done no more than get the benefits he has prepaid.

Now, let's look at the other side saying, "In order to be compelled to buy the insurance and pay the

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MR. SPANGENBERG (Continued): premium, you must give up certain rights and everybody does." What I object to is the bland statement, "everybody gives up something", or the parallel statement, "someone has to sacrifice." Because the only person in the whole world that sacrifices at all is the responsible, law-abiding, decent citizen; who is on his side of the road obeying the speed limit, who didn't crash the stop sign, who had the light, or was standing at the light and was rear-ended. Who gives up any rights? The only one who has them is the best driver, the responsible driver, the perfectly innocent victim. Under No-Fault they say, "That's the man we're after. He's the sacrifice we demand. He must give up his rights to general damages, because we are overpaying small claims." Well, how much will you say that -- we exact this sacrifice from the innocent victims. You don't exact it against the guilty victims. They didn't have the right to begin with. The man on

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MR. SPANGENBERG (Continued): the right side of the road gives up some rights in order to pay and lower the cost of benefits to the man on the wrong side of the road. That's all the threshold means, whether it's a dollar threshold, like some of the bills, or the verbal threshold of UMVARA.

What do the dollar thresholds mean? I'll leave you a sheet on that. Medical expenses, total medical and hospital expense of less than \$500 from the DOT statistics, 92.4% of all victims. That is, if you adopt a \$500 dollar threshold, you're saying to over 9 out of 10 people, "We take away your rights. You are the sacrifices we demand." Medical bills, of less than 1,000, 96.7% of all victims. Medical and hospital bills less than \$2,500, another favorite threshold figure, 93.1%.

MRS. BROWN, the reporter: Excuse me, sir. Can you wait just a minute until I flip my tape?

MR. SPANGENBERG. Be happy to.

(A short recess was then had)

MR. SPANGENBERG (Continued): One final number, if you can bear a little more. You've been told how the system will work if we can reduce the payment to the small claimants. I think you should be advised that in the United States 56% of all cases settled, are settled for less than \$500 apiece, for wage loss, medical loss, replacement service loss, general damages, disability payments or whatever. Now, it's true that you can by artificial standards tell people that they are not people, that they are plastic chips or pocketbooks, I don't know how you're going to measure the dollar loss, and their disability and hurt will be on their own. But if you do, you should know that, paying 56% of all cases less than \$500 to settle them, uses up only 7.8% of all the claims otherwise paid. So there isn't very much blame to go get and save. You can't pay your cost out of that, paying the seriously injured victims a 3.4 billion. It's just not mathematically possible.

The issue whether you should treat people as computer data or should deal with them individually, I would suppose depends on your opinion of Americans. I'm an old-fashioned liberal. I was raised to believe

MR. SPANGENBERG (Continued): that there is a difference between right and wrong and I was told you do have a free will. I believe it. I think I have a choice as to what I do, and I think I'm responsible for what I do. And I think that's the true American dream.

Now, there are others who don't think so. You probably don't know that one of the DOT studies was by a psychiatrist named Pryitt, who said that anyone who thinks he has free will or is responsible, is suffering from a hang-over of the Puritan ethic. This is a basic fallacy in the Judeo-Christian thought. That in fact no driver is capable of controlling his own responses. He is either too aggressive, to be restrained, or too simple to know what he should be doing. And therefore, you should not say he is to blame when he runs the light, or leaves the curve at night.

I think Pryitt needs a psychiatrist. I am certain of my belief. And if you'll look at an issue of "Time" about four weeks ago, you'll read of that debate among the psychiatrists, saying that most of the modern men in this field say the future of America depends on the acceptance of the belief that there is individual responsibility. That people do make individual choices

MR. SPANGENBERG (Continued): and must be held accountable for the choice they make. I'm totally opposed to the philosophy because I believe there is a difference between right and wrong and I hope you do too.

SENATOR COX. Thank you. Are there any questions? You've done your work well. Thank you.

MR. SPANGENBERG. Thank you.

SENATOR COX. Any further opponents?

REPRESENTATIVE McTEAGUE. Mr. Chairman, I'm Pat McTeague from Brunswick. I will repeat what I said yesterday about Representative Trask's bill in regard to the undefined and completely incapable of being defined terms. I congratulate Professor Keeton on his candor. I'm reminded of that same problem.

There is another point of the bill, just one, that I would like to make. The promise of lifetime medical care sounds good, particularly to a not so old, old fashioned liberal like me. If I may have an aside for a moment, I am a staunch believer in National Health Insurance, and I hope we have it very soon, because I think everyone should have all his bills paid.

REPRESENTATIVE McTEAGUE (Continued):

But let's look at this bill and see if we've really been given the right score. Lifetime medical benefits will admittedly affect few people, but it will be real important to those people. And it's a good idea.

The only thing is, with this bill it is not a sure idea and I'll tell you why. Because Social Security benefits are a subtractable from the bill. And because I just called the Augusta Social Security office to check on the effective date when Medicare, which as I understand is unlimited in amount, although there are certain fairly minor subtractables in it. But Medicare, as of July first of this year, would be available to every person sick, injured, no matter what the cause, if he is disabled, if he is receiving Social Security disability insurance and has been receiving it for two years.

So with the greatest deference and respect at this time, gentlemen, to the Professor at Harvard whose work in other fields including trial tactics I have enjoyed and I hope used with a mild degree of pride, I would have to state that I'm afraid the

REPRESENTATIVE McTEAGUE (Continued): current state of this bill presents an illusion when it says to you that medical benefits are going to be lifetime, and when the Federal Law as of July first of this year, which is of course before the effective date anyway, says, "No; the Government, through Medicare, is going to be paying your bills." That's a subtractable here, as I understand it, and if I'm wrong, I hope I stand corrected. But that is an attempt, I'm certain not intentional, in effect, it is an attempt to delude us.

Medical care on a lifetime basis in my opinion as an old line Democrat and maybe as a social Democrat, should be paid by the Government under a social insurance system, just like our Social Security benefits are, for the principal reason, that way everybody gets covered, and the coverage and efficiency, which we have talked about Blue Cross, the efficiency itself is superior, far outstrips any insurance company. I am amazed that anyone would try to sell a bill, based on lifetime medical benefits, as a reason in the bill, talking about Social Security, and the Government will actually end up paying. That is an illusion and I'm certain this Committee will spot it and other illusions

REPRESENTATIVE McTEAGUE (Continued): in the bill.

Thank you, Mr. Chairman.

SENATOR COX. Thank you, Mr. McTeague. Any questions? None. Thank you. Any further opposition? Anyone else who would like to speak in favor of the bill? Anyone who wishes to speak, may speak, for or against.

MR. LAWRENCE. Mr. Chairman and members of the Committee: my name is James H. Lawrence, Christian Science Committee on Publication for the State of Maine. In this capacity I represent the Christian Scientists of this State. I have two brief amendments to present, which I can give in writing, similar to the ones which I proposed to the other bills yesterday and can save your time, if you'd like me to just present them to your secretary.

SENATOR COX. Thank you. Anyone else wish to speak?

MR. LAWRENCE. May I do this for both bills?

SENATOR COX. Yes, if you would, please.

MR. LAWRENCE. Thank you. (See Appendix)

MR. FRANK HOGERTY. Mr. Chairman, ladies and gentlemen of the Committee: I agree with the others that we are indeed honored to have Professor Keeton with us today. I heard him speak several years before on his original

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MR. HOGERTY (Continued): personal protection, basic protection plan.

A VOICE. A little louder, please. We can hardly hear you, Frank.

MR. HOGERTY. My main purpose for appearing before you today is to present to you, some more actuarial review figures. I also agree that actuaries do disagree. This is the very point that I made yesterday, and I think it behooves the Committee, and I respectfully recommend, that the Committee undertake its own actuarial review, on any bill that you finally decide upon, before you recommend to the full House and the full Senate, your "ought to" or "ought not to pass." These figures I gave you yesterday, the ones on ID-1, I will take the liberty of referring to the three bills, if you'll bear with me. The ID-1 bill, I gave you yesterday, in three categories, A, B & C. The ID-1420 figures, I did not leave with you because of the urgency of the time yesterday and I will now give those to you.

(See Appendix)

Category A, and for those who were not here yesterday, and do not know what those categories represent, Category A is based on 20/40 BI, 20/40 Uninsured Motorist,

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MR. HOGERTY (Continued): and 10,000 PD. The LD-1420 actuarial review shows a decrease of 4% under this Category. Category B, which represents a review based on 20/40 BI, 20/40 Uninsured Motorist, and 10,000 PD, plus \$1,000 medical payments.

By the way, I did not identify myself to the Committee, I just happened to think. I take too much for granted! My name is Frank Hogarty. I am the Insurance Commissioner.

Category B is a decrease, that shows a decrease of 10% on the rate level. Category C, 20/40 BI, 20/40 Uninsured Motorist, and 1,000 med pay. This Category C is the elimination of property damage to our consideration. Category C under LD-1420 reflects or shows a decrease of 17% in the rate level.

REPRESENTATIVE DESHAIES. Excuse me, Frank. Could you go over that C again, please?

MR. HOGERTY. The coverage is 20/40 BI, 20/40 Uninsured Motorist, and 10,000 -- I'm sorry, 1,000 medical payments. No PD. And the actuary projects a decrease of 17% in the rate level.

Now, on the figures before the Committee, on LD-1425, which I gave to Professor Keeton on this,

MR. HOGERTY (Continued): probably the one he was referring to, which you have before you, here again, it is based on these three categories. Category A, the actuarial projection shows an increase of 13%, Category B shows an increase of 6%, and Category C shows an increase of 10%. I would venture to say that probably, Philip Presley, who is the actuary, which we have consulted, for this preliminary review, and by the way, this is preliminary, would agree probably and be closer to the NAIH actuary than Professor Keeton since he has come up with increases.

The benefits under LD-1425 are, of course, extensive, more so than under LD-1420. Again I commend to your attention the benefits under LD-1425. There are many good areas in this bill, which could be incorporated in LD-1420 making it a good bill, and since

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COMMISSIONER HOGGERTY (Continued): there apparently is the Legislative feeling, at least, -- maybe I'm being presumptuous here, -- but it seems to be the Legislative feeling that No Fault would only pass if a cost savings can be projected. Perhaps 1420 should be used as a guide, but there are many meritorious parts in 1425 which could be included in it.

I do again seriously ask that further actuarial study be made because of the disparity that exists between the figures presented by Professor Keeton and the actuaries from the National Commissioners, the figures that we have obtained, and I'm sure figures that other people have obtained.

One more point, actuarial work: the Department has about -- has about exhausted its funds for actuarial work. We've just been given a bill for the work that has been done on these three bills. We stand ready to assist the Committee further in actuarial studies. However, we are in -- we are going to have to ask the Legislature for money to do this,

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COMMISSIONER HOGERTY (Continued): or we're going to have to go to the Governor and Council. But I do recommend that this be done.

I have with me Mr. Presley's full review, preliminary review, of these three bills. I'd like to leave it with you so that at your leisure you can go over the entire review hopefully with the Committee here today. Thank you. (See Appendix)

SENATOR COX. Thank you. Any questions for the Commissioner? Anyone else wish to speak on ID-1425?

MR. SMITH. I'm Charles Smith, and I come here today as the President of the -- Vice President of the Maine Bar Association, the President-elect. I came here primarily to speak in behalf of another bill the Association is also interested in, to the Committee. But I thought that while I was here and while Professor Keeton was here, it would only be fair to him because he may not stay for all the other presentations on the Bill due to his schedule, to say --

SENATOR COX. Would you please speak into the micro-

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SENATOR COX (Continued): phone?

MR. SMITH. Yes, To say that the Maine Bar Association has voted unanimously to oppose LD-1425.

I know, coming from a group of lawyers, that doesn't carry much weight. I want to speak a little bit about that when I make my presentation in behalf of the bill, the bill we do support, but I thought that I would point that out.

I would like to say, this is on my own while I'm here, that I do not believe that Professor Keeton knows very much about Maine juries, when he intimated that perhaps we could get \$2,000 for pain and suffering from a Maine jury with no more evidence than a fellow saying he had a back ache, because it hasn't been my experience, and I've been around Maine juries for some thirty odd years now, and they're not likely to do that. You have to have a lot more than that, and in passing, I understand why he said it, but I dare say that it would be a new experience in the

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MR. SMITH (Continued): State of Maine! (Laughter)

I would like to say one other thing, that while Professor Keeton says that the Add On system, as he calls it, must increase premiums, that experience has not been borne out thus far in Delaware, nor has it been borne out in the State of Maryland. And so I think perhaps we have to look at actual experience before we make a presumption in this respect. Thank you.

SENATOR COX. Any questions for Mr. Smith? None. Thank you. Anyone else wish to speak on LD-1425? If not, I declare the public hearing closed. We will now take a five minute recess.

(A short recess was then had)

SENATOR COX. Now, we'll reconvene. LD-1770, an Act Providing for No Fault Automobile Insurance. The Committee will hear from Senator Marcotte.

SENATOR MARCOTTE. Mr. Chairman, fellow members of the Committee, I'm Senator Guy Marcotte, from York, sponsor of LD-1770, an Act Providing for No Fault

SENATOR MARCOTTE (Continued): Automobile Insurance.

Now, contrary to Professor Keeton's statement, I believe that this is the No Fault plan best suited to the requirements of the consumer and injured victim of motor vehicle accidents in the State of Maine. This bill guarantees to every insured victim of motor vehicle accident, payment of his or her economic loss, that is, work loss, hospital and medical bills up to a maximum of \$2,000 regardless of fault. It does this without placing artificial and arbitrary limits on one's weekly or monthly work loss or trying to pay tax collector by reducing one's weekly income by a fixed percentage to reflect any income tax withheld from his or her weekly pay. Such percentage limitation discriminates against the poor, who might not have any tax payment, and certainly favors the well-to-do, who normally would be taxed in a much higher bracket than the fixed percentage imposed by most no-fault plans. The Department of Transportation studies indicate that the \$2,000 pay-

SENATOR MARCOTTE (Continued): ment would be sufficient to satisfy in full over 90% of the bodily injury claims in the State of Maine. My bill reserves for the innocent victim of the motor vehicle accident his traditional rights of tort remedy against the wrongdoer causing the accident and does so without imposing any artificial or arbitrary threshold.

To deny persons who have \$499 of medical bills the right to recover for his pain and suffering and other losses, while granting other persons with the \$501 medical expense the right to such recovery seems to me not only arbitrary but highly discriminatory. For it's a well-known fact that the person with the lower medical bill may actually suffer far greater than the person having much higher medical expense.

The argument that the threshold is needed to prevent the useless case, seems to be put to rest by the recent experience in Delaware, a State which imposes no threshold in its no-fault plan. Claims in that State were reduced by 70%. And less than a dozen suits

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SENATOR MARCOTTE (Continued): have been filed within 13 months following the effective date of the Delaware no-fault plan.

The insurance Commissioner of this State has repeatedly pointed out that no-fault plans will not reduce premiums in the State of Maine. I am thoroughly convinced that my plan will not necessitate any increase in premiums, because of the present favorable rate structure to the insurance companies for bodily injury.

LD-1770 also contains provisions seeking to correct some of the current cancellation abuses, practiced in the past by some of the insurance companies.

There are just a few -- these are just a few of the highlights of my bill, which I believe on balance serves the best interest of the people in this State, treating the consumer, the injured victim who is at fault, the injured victim who is not at fault, and the insurer, all equally and fairly.

SENATOR MARCOTTE (Continued):

Now, this concludes my presentation. If you have any questions, I -- I request that you hold them until other speakers are through, because I suspect an awful lot of your questions might be answered, and for expediency's sake, I would recommend it.

SENATOR COX. All right. Are there any proponents for LD-1770?

MR. SMITH. Mr. Chairman and members of the Committee. I'm Charles Smith who appeared before you just a moment ago. I again appear before you in my capacity as Vice President of the Maine Bar Association, and am here to tell you that this is the bill which the Maine Bar Association endorsed.

I told you a few moments ago that, to be absolutely fair, we -- we opposed LD-1425; we take no stand of opposition to LD-1; we take -- we have been unable to examine another bill, which I understand

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MR. SMITH (Continued): is going to be presented to the Committee so we have had no opportunity to review that bill. As far as LD-1420 is concerned, the only feature of the bill that we would like to oppose is what we think is a very high threshold. That is the position of the Maine Bar Association. Primarily that is the same position as taken by the American Bar Association.

And as I said a moment ago, when I come before a group of laymen, talking for a group of lawyers, immediately I'm suspect and because lawyers in this particular field, because much has been said about that in the news media, about the role that lawyers play and about how lawyers' incomes would suffer, I'd like to speak about that just for a minute because I think I'd like to get the record straight in this respect about the role of a lawyer. And I might tell you very frankly, that personally it doesn't make a bit of difference to me financially what kind of a

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MR. SMITH (Continued): bill you're going to pass here. I'm too far along in life. It's not going to make one bit of difference if you pass any bill or if you pass no bill. Frankly, I think we should have a bill. Frankly, I'm in accord with the positions taken by the Bar Association. I think we should support Senator Marcotte's bill.

But objectively, I think I can come here today, and maybe I couldn't have done this ten years ago, and tell you it's not going to -- not going to have any -- make any difference to my finances, by the time any bill gets into effect and I'm probably going to be retired, or semi-retired, anyway. In fact, my partners now sometimes accuse me of being semi-retired at the present time.

I would like to say something about the role that lawyers play. When this thing started off, if you recall the early history of this, and I've been in this battle now for some five, six, seven or eight years. It started off, the lawyer is making too much money out

MR. SMITH (Continued): of the fault system, out of the automobile system. And because he does, if we -- if we just took this away, we could materially reduce, if we took away what the lawyer makes, while it would hurt the lawyer, it would materially reduce the premium. We could pay everybody something and at the same time the premium would be reduced. Well, that sounds good to most people, because they dislike and distrust lawyers generally. I don't mean by that, that individually they don't; perhaps they don't; they like their lawyers. They know that Charlie Smith, now, he's a good lawyer. But the rest of the lawyers, you know, they're not to be trusted.

This is a century old attitude -- it's -- you go back to Shakespeare and he wanted to shoot all the lawyers, you know, and Carl Sandburg wrote, "What makes a hearse horse snicker when he hauls the lawyer's bones?" And this has been going on for years and getting worse at this time. And so, we -- we're the scapegoats for this whole matter. And whenever we try to raise our

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MR. SMITH (Continued): voices about some of the -- some of the problems we anticipate for the injured victim or the consumer, we would adjust on any specific No Fault plan, we were entirely shouted down, in a sense because we had already been destroyed before we opened our mouths.

Now, I suppose that a great deal of that -- a great deal of distrust still exists. It has -- at the same time, and you know there's a lot of these No Fault bills, particularly, like UMVARA, and 14 -- bills like 1425 to some extent or to a lesser extent. It has also played into the hands of the insurance companies and when I say something about insurance companies, please do not misunderstand me, that I am an enemy of the insurance companies. I am not. The insurance companies have been very kind to Mrs. Smith and I over the years. Reluctantly, I might say at times, but they have, I am sure, provided us with some of the nicer things in life, that we've been able to enjoy. So I -- I have nothing against

MR. SMITH (Continued): insurance companies. I'm all for insurance companies. I understand insurance companies. They're in business to make money and that is, that's what they're supposed to be doing, and I understand that that's what their management wants to do. But you see, if they could sell something very easily, why, by just saying, we are going to wipe out the lawyer, we're going to do this to the lawyer, if they could at the same time silence the lawyer, that this is a good way because the public will buy that very quickly. It has been done before and I'm sure it's going to be done again.

Now, in addition to this, the other thing that I do want to point out, and I want to -- to make it, if you can get the lawyer out of the picture somehow or other by just ruining the fault system, then you have nobody to, so to speak, to keep the insurance company honest.

Now, while there are provisions in there in case they don't pay, you -- the claimant can take

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MR. SMITH (Continued): you to Court and do all of this type of thing, you're talking about a clearer type of litigation. You're talking about two, three, \$400, which the insurance company doesn't want to pay and they'll end up -- not all companies, some are very honest and just; and others, what is generally known in the trade, they -- they chisel a little bit, they will end up by saying, "All right, you can go to Court if you want to, you know, but if you go to Court on this -- on this case, because we don't think you're entitled to that last two weeks wage loss that we paid you, what's going to happen is, that you're going to have to spend two or three days waiting around, and if you don't win, you know, under this bill, you may have to pay our lawyer's fee, etc., etc. So here, we'll give you half your claim and lock it up." That's -- That's the normal practice. That's not anything that's going to change. A lot of it is not going to change with no-fault. This type of thing is going to continue. Now, I understand, it's part of

MR. SMITH (Continued): the game and I'm -- I'm not -- I'm not getting all upset about it, at this late stage in life. Maybe when I was young and gung-ho, I might have, but no longer. It's -- It's part of the way the game is played.

All I want to do is point that out. That if you can get rid of the lawyer, you have really nobody to keep these insurance companies honest, in any respect along the way. This is what the issue is, abolish the tort remedy completely or abolish it partially, so that you destroy the rights of a lot of people. This is one of the things that you in effect are doing, when you do this. When you limit the tort remedy of the -- of the -- of the individual, what you are in fact doing, is appointing the wolves as guardians of the sheep. Now, you -- this -- this -- this is one of the things that's going to happen.

Now, let me -- let me say something about one of the reasons why I think the -- the -- the Bar Association looks with favor upon the 1770. I think

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MR. SMITH (Continued): you have to look at the bill which you have before you. It's the easiest one to understand. It doesn't have any gimmicks in it. And a lot of these bills, if you read through them are -- are full of gimmicks. And you can read through this bill and it doesn't have any. It's -- It's pretty simple language, and, as Senator Marcotte points out, the DOT studies show that this is going to pay everybody that is injured within the State of Maine or at least 90% of the people that are injured, possibly more, probably more from the figures that I've heard here today, their full economic loss. Now, if they want to sue after this, they -- they still have that right to do it. If they were -- if a person who was innocent, and somebody wrongfully caused him a lot of aggravation as a result of this, if they feel that for the misery -- human misery they've been through, and a lot of people let me tell you this, because I've dealt with these people for over 35 years in my life. A lot of them, a lot of injured people go through an

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MR. SMITH (Continued): awful lot of misery and there's something particularly aggravating about an injury which was caused to you by somebody else through no fault of your own. And I've talked with people in my office a great many times about this, you know, and there is the Workmen's Compensation Law, which is a no-fault law, and which is a --- a --- a --- where you get part of your pay during your loss. I've had people coming into my office time after time and say, "Well, can't we do something about all the aggravation I've been through? I wasn't to blame for what happened to me." And I said, "No, that's --- that's the end of the rope for you. You can't go any further because the law exempts the employer, exempts the employer from any further liability." So, this is a factor that we don't want to overlook. I think Mr. Spanenberg a few moments ago emphasized this very well. People who are injured through no fault of their own and through the wrongdoing of somebody else, feel parti-

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MR. SMITH (Continued): ularly aggrieved. I --
I've lived with this for a great many years.

I once remember, I tried a case which I was going to try and recommended we settle the case for a sum substantially less than what the jury gave my lady, and I went down and thought she was going to be very happy with what the jury said she could have, and I remember the first words that she said to me, nothing about the amount of money that the jury had decided. She said, "That jury vindicated me." You see, this is the -- this is the feeling people have.

When you get into a total no-fault law, that is, what we want to call total no-fault, then -- then I say to you that you -- believe me, you're going to cause a lot of people a lot of grief, specifically, the innocent victim of an automobile accident.

There's nothing wrong with collecting for pain and suffering; there's nothing wrong with collecting for permanent injury; nothing wrong if you've got to live with pain for the rest of your life, and collecting

MR. SMITH (Continued): something for it. The juries in Maine, it's been my experience, are not overly generous with anybody's money. And they-- they think the thing out pretty well. It's been my experience that they do very well in this respect.

I suspect that probably I don't -- the Special Committee that studied this, would probably say to you, in Maine that we perhaps don't need the no-fault law. We're doing pretty well as we are. And that -- That's probably true.

However, I am one of the school that believes that somewhere along the way, there should be some immediate economic benefits. This bill 1770 has included that provision. I think that should be reduced to 15 days after the company is notified.

It has the provision in here that, I think I should speak about that, -- that insurance rights of reimbursement, it's on page 4, Section 138, that allows attorney's fees on part of the -- of the no-fault benefits that have already been paid. That is, if you

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MR. SMITH (Continued): recover them, you pay them back to the insurance company that paid them out to the insured. I think, perhaps, that should be eliminated. I think perhaps that the insurance company should have the benefit of -- of getting back their -- their -- part of that \$2,000 or whatever part that they paid out. I think they should have the benefit of getting back in full. I see nothing wrong with amending it in that respect.

Otherwise, I -- I don't think that I would suggest too many amendments to -- to this. I -- I am pleased with the cancellation provision. This is a thing we run into constantly. Lawyers run into more than anybody else. They come into your office and want to know why the insurance company cancelled. My own father, I remember, for many, many years, had driven an automobile and was insured with the same insurer, had no accidents, had a good record. When he was 65, they dropped his insurance. This was a company -- the cancellation policy that the company had. We've had many of those practices in the past,

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MR. SMITH (Continued): and this bill does much to -- does much to -- to prevent that. You have to go through certain routines with the Insurance Commissioner and certain notification procedures before you can cancel somebody's insurance; you can't cancel it out arbitrarily. I think that is -- I think that is a very commendable provision.

Now, I don't know that I have too much more to say. As I said before, it's a very simplistic bill.

I believe in the fact that somewhere along the way there should be, as I started to say earlier, some immediate money flowing to a family to pick up the, maybe it's excess coverage or whatever you want to call it, but to pick up that first impact that happens. Not so much payment of doctor's and hospital bills. Doctors and hospitals can wait. They will wait, they may do it reluctantly sometimes, but they will.

MR. SMITH (Continued):

Sometimes those of us who do not have any -- and many of them perhaps do not or have an inadequate wage continuation plan. When -- When the paychecks stop, this is sometimes a catastrophe to the average family here in Maine and this -- this would be a means of picking up that weekly paycheck during the initial impact. And I think perhaps that's the one thing, or the biggest fault with our present tort system.

Otherwise, I want to say that the tort system has worked over a great many years in the State of Maine. It's worked very well and before we set about abolishing it, I think we should -- I think we should have some second thoughts about it.

I'd be more than happy to answer any questions about this bill or any bill that you might want to ask me something about. I think I'm fairly well conversant with all the -- with all the bills are before us.

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SENATOR COX. Thank you, Mr. Smith. Senator Marcotte asked that we hold all questions.

MR. SMITH. All right. Fine.

SENATOR COX. Any further proponents?

MR. SPANGENBERG. I've already spoken to you, ladies and gentlemen, about UMVARA. I didn't want to leave Maine, having you think I was completely negative in my approach to that. There are some good no-fault plans and good no-fault provisions that I'd like to discuss with you, necessarily briefly, because you've heard most of what I have to say.

As I noted earlier, we found that around the world, there was a well-recognized interest in easing the first shock of an accident, whether the man was right or wrong. This is particularly important to the family of the victim, even if he were totally wrong. And good plans can do that and at fairly low cost. The question is, how far do you go? And here I could encapsulate all that I have to say, I suppose, by saying, I live in Maryland. It has the best insurance reform

MR. SPANGENBERG (Continued): plan ever enacted.

Well, I'm not sure how much you know about the Maryland plan, and I haven't seen that you're going to invite our Mr. Resnick, who was the representative who got most of it through the Legislature. But let me discuss what they did in Maryland and why they did it and what the result has been.

In Maryland they found that most of the complaints they got were not about the fault system and that's a national finding too. I think in the whole DOT study, out of the complaints only 2% had anything to do with the fault system. There were complaints about cancellation, non-renewal, cost, discriminatory rating, the fact that if you are garaged outside of town, and drive into town, you pay a lower rate than if you garage in town and only use the car on the weekends to get out of town. Red lining of some areas in cities, which was a great problem in Maryland, as it is in what we call the ghettos in Ohio, and probably isn't in Maine. But the -- But the discrimination in rating was a serious complaint in Maryland.

MR. SPANGENBERG (Continued):

And also there were many complaints about assigned risk. The insurance industry said they had to charge very heavy premiums for assigned risk, because they had lost ten cents of every dollar they -- two years before, and thirteen cents the year before, and were losing twenty-three cents that year. Maryland said, "Fine, we want to save you the loss. Let's set up a State owned insurance company. Not everyone can come to it. The voluntary market had to reject you twice and tell you that you can only go to assigned risk. Then you come to our company and buy it and, believe me, the premium will be cheaper than it will be in the assigned risk plan." When that bill passed there were 37 insurance lobbyists in the halls screaming for the defeat of all no-fault insurance reforms. I think they wanted to lose that money on assigned risk!

Maryland has since found that 73% of the drivers

MR. SPANGENBERG (Continued): in their assigned risk plan had no driving points at all and had never had one. Some however, had a large Adams apple or wore thick glasses, and some companies will put you in assigned risk if they think you won't look good to a jury. They found that 10% of the people on assigned risk had only one point. So assigned risk is working very well in Maryland and with a State owned insurance company. You may not need it in Maine. You may not have an assigned risk problem, but it's one solution to it.

The more important parts of the Maryland plan are that the company can't cancel you during term except for non-payment of premium or loss of license. And if they refuse to renew, which is more important, because not so many people are cancelled, they just get a notice at renewal time, "We no longer want to write you." One company I know cancelled everybody who had gone ten years without an accident on the actuarial figure that you are now ripe to have one!

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MR. SPANGENBERG (Continued):

Maryland says you have to have a good reason, an objective reason, a verifiable reason that's objectively provable by actuarial statistics in order to refuse to renew. That is, you can refuse to renew, but you must have a reason and tell the policy owner who will be entitled to ask the Commissioner to review it, whether it really is a good reason. Again, you may not have problems in Maine with non-renewals and cancellations, but if it's a serious problem, that's one solution to it.

Now, what did Maryland do about no-fault? Well, they believe the DOT figures that 24 out of 25 people had less than \$2,500 in economic loss, and they said, "That's a good number to select. We will provide that every liability policy must have going with it a first party benefit policy like medical pay, which most people buy anyway. Only this will be medical pay and wage loss, from the first dollar, no limit." You get what you pay for. If you lost \$120 in wages, you get \$120.

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MR. SPANGENBERG (Continued): You don't get 75% of it. You don't have a 7-day waiting period. You don't have upper limits, time limits throughout the term of the policy, which you can place anywhere you want to, two years, three years, four years. And put it where you want it. I found that many of these had lots of medical protection, not much wage protection. Put it all on wage protection, if you want to. Or if you have a big wage protection and not enough medical and not enough

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MR. SPANGENBERG (Continued): for your family and kids or the passengers in your car, put it all there. Put it where you need it. Fill in the gaps in your own program. That's good for the consumer. It lets him decide where he wants to put the benefit that he has paid for with his premium.

Maryland did one other thing that I think was very important, and I want to discuss here a problem. What if you have bought medical pay, but you have Blue Cross, but you work in a shop which gives you protection anyway? You may say, "In my shop they only pay me, so I want Blue Cross to protect my wife and kids. And I want the medical to protect the passengers in my car who might not have anything." So you buy three policies. Well, then if you pay three premiums, I think you're entitled to collect three times. That doesn't bother me at all. I carry four life insurance policies. When I die, I expect my estate to collect every one of them. That's only fair. I pay the premiums on all four of them.

But wouldn't it be nice if you could cut down on the number of premiums you have to pay to get broad

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MR. SPANGENBERG (Continued): protection? Well, Blue Cross came in in Maryland and said, "Look, we're already covering most of your people for hospital and medical. Why don't you say, we can write this coverage if we want to. Just don't exclude us. And we will write it and we'll subcontract wage loss to one of the major insurance companies and we'll provide in our Blue Cross package that if any of you -- if you are injured driving your car, anyone of your family injured in the car, any pedestrian you hit, any passenger or occupant in your car, will come under your Blue Cross policy, get the medical benefits, the hospital, doctors' bills, and wage loss up to the \$2500 limit. But you'll only collect it once. You collect it from Blue Cross, you won't pay the separate Blue Cross and then get this. And since you've collected once, you'll pay one premium." And Blue Cross has indicated that they can write that kind of coverage for a Blue Cross subscriber in the regular market for \$7, which is a very good buy for the consumer. All they had to do was allow Blue Cross to do it.

MR. SPANGENBERG (Continued):

That doesn't mean that I testify in favor of the Blue Cross bill which I saw this morning, which didn't say that Blue Cross could write it. It said Blue Cross would be the only company to write it and no one else could sell any coverage that would duplicate it. I think that's a little too much. It's like my giving the bowl of food to my dog saying "You're a good fellow and you deserve it. Here's your food," and having him eat my arm off up to the shoulder, saying, "I'm really hungry." You can let Blue Cross write it, but I don't see why anyone should have the exclusive right be to designated by you as the only company to write it. But I am sure you appreciate that.

Well, here's a plan where the auto carrier can write it or Blue Cross can write it. It's a no-fault first party payment \$2500, the consumer to put it where he needs it, primary. Now, the fact that it's primary means that it is in addition to any other coverage that he has and here without going into boring details DOT statistics would show that if you make it

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MR. SPANGENBERG (Continued): primary, allowing the consumer to fill his gaps, \$2500 will pay the full economic loss of more than 98% of all victims, 49 out of 50.

Now, since the cost is low, it makes it a really good buy, and I think that's a good program. One of the reasons the cost is low, is that we investigated in Maryland, how much the insurance industry was paying out on its medical paid insurance, and we found to our surprise that they were only paying out 24 cents of a premium dollar, so that anyone --- so that obviously, they could pay the medical pay and wage loss for that same premium and still have a profit. Indeed, many companies voluntarily in the United States this year, you know, Continental and others saying, "If you have 2000 med pay, we will give you 5,000 wage loss for no increase in premium." Well, that doesn't mean that it doesn't cost them anything. It means that they're paying out so little of the present premium, that to keep it at that level, they would like to add wage loss.

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MR. SPANGENBERG (Continued):

So I think that you will find that your Maine drivers who do carry medical pay that most of them would pay very little more for the no-fault package of the \$2500 limit. I notice the Marcotte bill says 2,000 and I assume that's a bow to the American Bar Association, which rejected -- the Bar said that they were for a no threshold plan and for a \$2,000 benefit plan and I think you will find only a few cents premium difference between 2,000 and 2,500 and I have used those terms, because there are all kinds of statistics about what it means. Well, 2,000 may be enough for Maine. I'm not making any point of that differential, but I will say that in Maryland the 2500 plan has shown that it does work and does protect people.

Now, the threat was that that would have to cost a great deal more. We've been told that today, if you have an Add On bill, it has to increase cost, there's no other way around it. Well, there are ways around it. If we treat people fairly, they react fairly. So

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MR. SPANGENBERG (Continued): if you pay the fellow's wage loss and his medical benefits, and he doesn't have a great deal of complaint, he's very likely to say, "That satisfies me," and walk away and not make a tort plea. Now, that's not just theoretical.

Delaware has had over thirteen months of experience with a simple Add On plan, no threshold. And since you have been told it has to increase cost, I would like to read to you in his exact words, and get them on tape, the official publication of Robert Short, the Insurance Commissioner of Delaware. I quote Mr. Short: "Law firms" -- this is after 13 months of operation of an Add On, no fault plan with no threshold. Quote "Law firms and insurance companies report amazing reductions in bodily injury suits arising out of collisions occurring during 1972. Thirteen months later, less than a dozen suits have been filed by Delawarians. The best available estimates indicate a 70% reduction in suits. This reduction is accomplished with no formal threshold. This success was achieved with no increase in rate level, no one in Delaware has paid more in his total insurance

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MR. SPANGENBERG (Continued): premium, unless he has had a change of classification or an increase in coverage. Many have paid less. Bodily injury rates were reduced as much as 25% by Bureau companies and the average rate level reduction in bodily injury for all companies writing in Delaware was 8.5% statewide at the date of inception. For the first time in memory, no auto insurance rate level changes have occurred in 20 months and none are applied for or anticipated." Now, that's the official report of the Commissioner of Delaware. And I think it answers completely the broad statement that Add On plans have to cost more.

In fact, in operation, if you treat people fairly, you will find they do not press their small claims and the plan can cost less. There is some saving in the elimination of those small claims, to be sure, but it will occur on a -- on a voluntary basis. We don't have enough experience in Maryland yet, to know for certain what will happen, but I can tell you, having heard Mr. Resnick testify before the Senate last week, that although

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MR. SPANGENBERG (Continued): at the time the bill was passed, there were threats by the insurance lobbyists that rates would have to go up 10, 15 and 17%, after the Maryland bill was enacted and put into law, the Bureau companies came in and voluntarily reduced their rates 10% in Maryland. A voluntary reduction on their own, I think because they trusted what had happened in Delaware.

Delaware does offset the recovery with this type of plan providing for an insurance company lien. Maryland says, "No, you bought it, you're entitled to it, no offset at all. Full value for your premium dollar." I don't think this is going to make a great difference in the operating results.

We have found that medical pay by some companies is subrogated, that is, they get it back out of the tort suit. With other companies, medical pay is not subrogated. They pay it, you keep it and you have your tort suit anyway. What's the difference in rates between companies who subrogate and who do not subrogate "med"

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MR. SPANGENBERG (Continued): pay? Zero. Same rate. It makes no difference to the buyer. He doesn't get the benefit of it.

There is one feature that is not in any of the Maine bills, that I have seen, that I would wish this Committee would think on seriously and recommend and perhaps one of you would be disposed to draft the simple legislation that does it. I'm thinking now of the consumer's interest. What does the man and the public want? He does want prompt payment of bills. Right now, most of you are working people and mortgaged up to the hilt. The chattel mortgage is due, the house mortgage is due, everything is due, and that first 50 or \$70 of loss hurts. It ought to be paid right away.

Now, beyond the \$2500 level, the more affluent people can buy all the coverage they want. There's no -- nothing in conflict between a level of compulsory and a higher level of voluntary benefits.

I would say the first protection would be a modest level of no-fault benefits. Beyond that, voluntary protection is available. A second level of protection

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MR. SPANGENBERG (Continued): is, of course, the tort suit. Many people rely on it and the great majority of people in the American public believe in it, and so do you, really, when you think of it.

But there is a third level of protection. What do we do about the uninsured motorist? I really think that if uninsured motorist coverage had been invented thirty years ago, instead of ten years ago, we wouldn't have any of the problems we now have with compulsory plans and no fault plans, because, it's almost a complete answer.

But there is one glaring deficiency in uninsured motorist coverage. A man of good earning power in the community, a responsible citizen, you will find usually carries more than the minimum limits of bodily injury, liability coverage. I don't know how much you carry individually. I carry 500. But I've seen the results of accidents and Mr. Bennett has just persuaded me I ought to put on an umbrella, finally, and as he does. Maybe we're knowledgeable about the damage an automobile can do, but whatever it is, if you carry 50,000 or

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MR. SPANGENBERG (Continued): 100,000 or 250 or 500; whatever you carry, to protect your own assets and to protect the other man, I think is a valid expenditure.

I would like to be able to buy as much uninsured motorist as my liability coverage, so if the uninsured man hits me, I am not limited to your state limit. In Ohio, it's twelve, five. That's all any company will sell you. So if the uninsured fellow hits me, that's the most I could collect. If you lived in Ohio, that's the most you could collect. I'm told in Maine it's twenty. Is that right?

Why not convert over to under-insured motorist insurance, and say, "Look, the insurance company will have to sell you as much uninsured motorist coverage as you carry on your liability policy." If you carry 50, you're entitled to buy 50 uninsured motorist. It doesn't cost much for excess levels, as everyone who carries excess liability levels know. And it wouldn't cost much for excess levels on uninsured motorist. It would be a good buy and I think it ought to be available. To me it's completely wrong that the companies

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MR. SPANGENBERG (Continued): will arbitrarily say, "We will not sell it." Well, three states have said, "You will sell it," and in those states citizens can buy it. And I think the availability of uninsured motorist coverage is a level of protection that many, many citizens would enjoy having.

And if you're going to reform the insurance system, I would think that the three levels of reform are to enact under insured motorist coverage in place of your present uninsured with the limits I have indicated, to match liability with uninsured limits. Enact 2,000 to 2,500 first party benefits but primary. Let the consumer put it where he wants it. I would not put a threshold on the tort system for many reasons, which I have told you: it's unfair and it's unjust. I am completely convinced it's unconstitutional in almost every state in the Union and probably in Maine. It creates problems when it is declared so, as it did in Illinois.

If you combine your tort system, your uninsured motorist coverage system and your first party benefit system and authorize Blue Cross to buy it, I think that

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MR. SPANGENBERG (Continued): you'll find your Maine motorists will have a substantial savings on their insurance premiums and will get more benefits and more coverage. And that's the function of the Legislature. It isn't to make life easy for lawyers or for insurance companies. It's to protect the public and serve the public need. Thank you.

SENATOR COX. Thank you. Anyone else who wishes to speak in favor of LD-1770?

MR. SPANGENBERG. I did say I would leave with you some copies of arguments. I have figures on economic loss. I researched DOT, Bureau of Transportation figures on what accident levels are in Maine. I congratulate you. You have one of the lowest accident rates in the United States, and should have one of the lowest insurance rates. I will leave you a paper on insurance and accounting terms, the statistics on where the insurance premium dollar goes, and the meaning of threshold, the different types of thresholds and what the UMVARA thresholds are. Shall I leave those with your reporter?

(See Appendix)

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SENATOR COX If you would, please. We'd be glad to have them. Any questions of Mr. Spangenberg? None. Thank you very much.

MR. SPANGENBERG Thank you, Senator Cox.

SENATOR COX Any further questions? Any questions of either Senator Marcotte or Mr. Smith?

MR. SMITH Mr. Chairman, could I just make one comment on what Mr. Spangenberg just said? If I understood -- if I understood what he said correctly, I would point out that in Senator Marcotte's bill, #1770, that each insured shall be obliged to furnish upon request of the insured an amount of uninsured vehicle coverage equal the limit of bodily injury, liability insurance and property damage insurance provided in the policy of the insured. And this bill allows you to buy all the insurance you want. So if I had 100,000 or 300,000, I could have the same limit for uninsured motorist coverage.

MR. SPANGENBERG. Let me amend my remarks, then. Instead of saying I would like to see that in the bill, let's say, "Hooray, it's in the bill!"

SENATOR COX Any other proponents? Anyone wish to speak in opposition to LD 1770?

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MR. BARON. Mr. Chairman, ladies and gentlemen, I'm Richard J. Baron of Augusta, Maine, and I am President of the Charles E. Downing Company, an Insurance Agency doing business in Augusta. I also speak for the Independent Agents Association of Maine.

After listening to the testimony about my industry the past few days, I didn't realize that I was doing business with such a number of lowlifes in my 25 years career in the insurance business. I think if you were back there listening to the talk about your industry, and have it torn apart, I think you'd feel the same way.

Everybody who's been speaking the past few days, has been speaking for one side or the other, but not about the consumer. The Agent's Association has been following no-fault for quite a number of years. In fact, as I am Past Chairman of the New England Insurance Advisory Board, and next week I go in as Chairman of the Eastern Agents Conference, covering the Eastern Seaboard, so that I have been involved with no-fault from the very beginning, in various states. And we've had conferences with various agencies, Agents Associations,

MR. BARON (Continued): company people up and down the Eastern Seaboard. And the fact is, that with all the hoo-rah we've heard the last two days, nobody has been able to come up and tell us about the background of the various no-fault bills, the politics, the persons running for office, the fights about rates and all the other stuff that goes into the various bills, as it has in the past; New Jersey, New York, Maryland, Delaware, and it's an interesting case.

I don't come prepared today with facts, figures and percentages about other state experiences. I think if we're going to take and compare apples with apples, then the thing for us to do is to leave the responsibility to the Committee to pass on to the Insurance Department, to get the facts and figures from the other departments throughout the country. Then you'll have the actual, factual situation to compare with Maine.

When we start quoting facts and figures, we're involved in the different direction in which we approach the problem. I don't agree with all the facts and percentages represented you in the past two days, but I

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MR. BARON (Continued): still do not wish to argue the point. I think this Committee can get the proper facts from the proper people to make up its mind about the various bills.

In the meeting a month or so ago, the Agents Association adopted the position that we are not interested in an industry bill as such, which we've been accused of. We are not interested in the insurance company, because I have a contract with these people. I can either sell their product or reject it. I'm not interested in the by-laws because I'm not an attorney, and all I know is, that when I want them to represent one of my companies in Court, I call him up and he accepts the case and he believes in the profit system and he knows what a cost plus type of bill is all about.

I'm inclined to feel that the last two days, that different people, different parties, have been able to say, "Well, I can do the job better," or knock the industry. Well, the Agents would like to accept their position as such. We have State regulations, number 1. We want a good product, broader coverage, cost savings,

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MR. BARON (Continued): participation by a great number of people. Blue Cross was here the other day and they said, "we can do this, we can do that." Well, my companies have to pay off the top, with no discount on doctors bills, or hospital bills, And for a non-profit organization to have assets of over eight million dollars, I think I would look about expanding my field, also.

We have reviewed these various bills that were presented and printed. Number 1 and 1770 we believe is the type of bill which we cannot endorse because of the cost factor. It's an Add-On bill. And experience has been, and we go along with past experience, all the figures that have been quoted, they've all been hindsight. There's no foresight.

The State of Maine is based upon an average of a million dollars -- a million people population. And all the figures and savings that we've had quoted to us the past few years, is based upon States with a high population, in a case in point, Massachusetts. We've had savings costs quoted time and time again. But nothing

MR. BARON (Continued): was said about the small communities. The big savings will effect bigger and better metropolitan areas. The small ones like Cape Cod, etc., their rates not only did not go down, but in some cases rates were increased.

We'd like to endorse Bill 1420 with the recommendation that a threshold of \$1,000 be established and a limit of at least \$10,000 in benefits. The threshold would be based on medical and hospital costs. I'd like to point out that the 1420 does not make any limitation on work loss. In the majority of states, they have had cutoffs, either on a monthly or weekly basis. 1420 does not do this.

As far as the 1425 is concerned, we cannot argue with Professor Keeton. The only thing is, I think it's a little rich for our blood and the price would be fantastic. We think that the best savings are going to come with 1420 with some editorial changes and we hope with the recommendation of \$1,000 threshold and a \$10,000 limit.

There's one thing that we should bring out concerning 1770. This is a compulsory bill. And I'm sure

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MR. BARON (Continued): that nothing could be done without some kind of a price tag on this for regulation. We've heard figures quoted anywheres from 300 to \$400,000.

SENATOR COX. Any questions for Mr. Baron? None.

Thank you. Anybody else wish to speak in opposition to LD-1770? Anybody else wish to speak either for or against?

MR. BROWN. Mr. Chairman, ladies and gentlemen of the Committee: My name is Wallace Brown. I'm a Deputy Secretary of State assigned to the Court records in the Motor Vehicle Section, of the Motor Vehicle Division.

When a piece of legislation is introduced which pertains to our Department, I always ask myself, "what does this going to do with us, or do to us?" And principally, we think of the price tag involved.

The last speaker, Mr. Baron has indicated that LD-1770 is a compulsory insurance bill. May I state that I have learned today that LD-1420, which was elaborately covered yesterday is also a compulsory insurance bill.

Now, I was one who was requested to appear before

MR. BROWN: (Continued): the Commission in connection with the study of No-Fault, and at that time it appeared that in order to have a good No-Fault law, a compulsory insurance feature was absolutely necessary.

And so I have just been looking into these various bills, these four, and it was brought to my attention that it was not the intention to have LD-1420 as a compulsory measure. But as I said, my attorney, this morning in the Attorney General's office told me that it certainly does carry a compulsory insurance requirement. It also appears that LD-1425 and LD-1770 embodies compulsory insurance features.

Now, I'm here today to tell the Committee that if we have a compulsory insurance bill or a measure attached to a No-Fault law, we want to be thinking about adding about \$400,000 to our budget, because it means that before any vehicle can be registered, proof of financial responsibility would have to be filed and maintained. That means that in the case of any cancellation, a suspension would have to be enforced.

There is always a lot of activity involved in the

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MR. BROWN (Continued): matter of effectively suspending one's registration. It is one thing to suspend it, but another thing to obtain it. A registration is never effectively suspended unless it is removed from the car and taken from the possession of the registrant. And this involves investigators who have to perform this task when the material is not voluntarily sent in.

I also note that in lieu of filing through the financial responsibility in the form of liability insurance, one has the alternative of proving he or she is a self-insurer.

May I say that in LD-1420, the matter of proving the three methods of self-insurance is left to the Secretary of State, Whereas in LD-1425 we find that the same item is placed within the responsibility of the Commissioner. And as the Insurance Commissioner appears throughout the measures, I concluded that this was intended for the Insurance Commissioner to carry out.

Now, we have had a very successful and working financial responsibility law since July, 1941. That is

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MR. BROWN (Continued): a long time, 32 years. It has never provided for an individual to prove self-insurance. The only way that proof of financial responsibility has been able to be maintained is by obtaining a liability policy with a certificate.

Now, when you open up the matter of proving self insurance to the Secretary of State or to the Insurance Commissioner, there are various alternatives involved. Now, it has been estimated, and I think the figure probably came from us, that 90% of all vehicles on the highway are insured. That leaves 10%. In my long years of experience in the Department, in connection with this proof of financial responsibility requirement, we continuously interrogate individuals who are before us in connection with their problems as to the status of their insurance. What does the 10% tell you, why they do not have insurance? They say, "Mr. Brown, I can't afford it. I'm married, I'm not earning much money and I have one child or several children." They just can't afford it. I ask you, if an individual cannot afford to buy a liability insurance policy, how is he ever going to

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MR. BROWN. (Continued): prove that he is self-insured through any method that you can think of, whether it's three or thirty-three? Therefore, as it appears that some form of compulsion is going to be necessary to have a workable No-Fault law, why wouldn't it be feasible to tie liability insurance into the 10% and have them join the great percentage, the other 90% of individuals who carry insurance ordinarily?

Finally, there is a provision of two of the LDs - 1420 and 1770, relative to a penalty. There is a penalty relative to a fine or imprisonment, but also these bills provide that the individual shall forthwith forfeit his right to operate a motor vehicle up to one year. Most Mainers use the word "forthwith forfeit." Now, forthwith in our dictionaries means immediately. Is this going to mean that the District Court Judges are going to administer this and take the license at the time the individual is before the Judge?

And furthermore, these bills provide that the suspension shall be for a period up to one year. Who is going to determine the length of suspension? And

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MR. BROWN. (Continued): why shouldn't that be definite? Now, for years, our judges had the authority to also suspend a license in addition to the penalty, but they are pegged relative to the duration of the suspension, and that is this: They may only suspend for a period up to thirty days. It used to be up to ten days. No judge in the State

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MR. BROWN (Continued): of Maine can impose a suspension for a longer period. The Secretary of State is the only one who is empowered to suspend a license indefinitely or for any other length of time.

Now, if the matter of determining the length of suspension which says, "up to one year", is left with us, doesn't that mean that a hearing is going to be involved on these individuals who are convicted of these violations, in order for us, the hearing officers, to determine the length of the suspension? It just occurs to me that these particular items should be spelled out in detail. And I just wanted to leave these for the consideration of the Committee, and in closing, may I say that we are always available to you people at any time to assist in any way possible. Thank you.

SENATOR COX. Thank you, Mr. Brown. Are there any questions? None. Thank you.

MR. McKUSICK. Mr. Chairman, I wonder -- Vincent

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MR. McKUSICK (Continued): McKusick of Portland --

I wonder, this is just on a small point of information, if I might, and this may be out of order. I am directing myself specifically to the dollar point, which Mr. Brown and Mr. Baron have mentioned. In UMVARA, or in drafting UMVARA, the Commissioners faced up to this very problem of whether or not, in order to enforce the compulsory feature of No-Fault insurance, you should require a Secretary of State to determine before issuing the registration of the vehicle, whether they should determine that there is insurance coverage on that vehicle. And the -- the Uniform Act has comments on this and I'm leaving a half dozen copies of the Uniform Act with the comments in full. That's Brackets, Section 7, point -- 7.J, which appears in 1425 at the top of Page 8. Now, in other words, the printing that we have in 1425 puts that in, but the -- the Commissioners on Uniform State Laws believe that the practicality of this bill in no way depends upon that provision, and it could be deleted if the -- if it makes the difference of \$400,000 a year, which I understand it

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MR. McKUSICK (Continued): does, I would certainly recommend that, and this provision reads, which I suggest the reading at the top of page 8, from 1425,

"A motor vehicle may not be registered in this State unless evidence satisfactory to the Secretary of State is furnished that security has been provided as required by this section."

Now, why is it that the Commissioners on Uniform State Laws say this is not an essential feature? It's because, there are other sanctions that are present in the Uniform Act, that we believe, are -- are fully effective in -- in -- in getting the great number of people to carry insurance.

The -- In the first place, the -- the partial abolition of tort liability under Section 5 has a -- has a preservation of abolition of tort liability. As to liability of the owner of a motor vehicle involved in an accident, his security is covered by his insurance.

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MR. MCKUSICK (Continued): If covering this vehicle was not provided at the time of the accident, he does not absolve himself of -- of ordinary tort liability, if he isn't carrying insurance at the time.

Furthermore, he -- if he is uninsured himself under a No-Fault, first party system, he would seek to go to the assigned claims plan to -- to recover. And the assigned claims plan specifically provides that not only is he --- to the extent that he can --- seeks to recover from the assigned claims plan -- I'm speaking about the uninsured motorist that's trying to recover on a No-Fault basis for his own benefit -- He is -- There is applied against him all the optional deductibles that are provided in here, which are a certain part --- 10% of the work loss and --- and --- and other -- other deductibles that are --- are optional in the case of the insured injured party.

Also, there is deducted from any benefit that he can get from the assigned claims plan, an amount of \$500 for every year that he's gone uninsured, which is

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MR. McKUSICK (Continued): a considerable penalty, and we -- we would suggest enough of a sanction in itself, without burdening the Secretary of State's office to have proof of insurance, as a precondition to license and registration. That's just a point of information that I wanted to provide.

SENATOR COX. Thank you.

REPRESENTATIVE JACKSON. May I ask a question? What is the difference between compulsory and mandatory?

SENATOR COX. They are the same in my opinion.

REPRESENTATIVE JACKSON. I wondered because I noticed among the comparisons that I've looked at, they seem to draw a distinction between the two and I wondered what it was.

SENATOR COX. I don't know any distinction. Might be some.

PROFESSOR KEETON. May I respond to that? There's not a Uniform usage on it, but I think the reference that you are making is to a distinction that has been drawn by a lot of people between the various things Mr.

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PROFESSOR KEETON (Continued): McKusick has just been talking about, using the word "compulsory" to describe a system in which you have to have a proof with the Secretary of State, Registrar of Motor Vehicles, something like that, in advance before you can register the car. That's called compulsory. If the requirement is there, that you have, but there is no Bureau to check up on it and you're simply violating the law and subjecting yourself to some other penalty if you have an accident without it, that -- that is being referred to as a mandatory system. Now, that's not a uniform usage though.

In the memorandum that I left for the Committee

(See Appendix)

there's a reference to another usage of this term "mandatory". In the Oregon bill, for example, they require not that you have coverage before you operate the vehicle, but they simply have a financial responsibility law that says that if you get into trouble, then you've got to have the coverage in the future.

PROFESSOR KEETON (Continued): And they add to that, by that Oregon law a so-called mandatory requirement that every liability policy have enough alternatives in it, so in that context, "mandatory" is being used in a different sense to mean that any time you've got a liability policy it is mandatory that it include the no-fault benefits.

REPRESENTATIVE JACKSON. I see. Well, then Massachusetts, would come under compulsory --

PROFESSOR KEETON. Massachusetts is a compulsory --

REPRESENTATIVE JACKSON. -- Oregon would be mandatory.

PROFESSOR KEETON. Massachusetts --

REPRESENTATIVE JACKSON. The three they give would be Illinois, South Dakota, Oregon.

PROFESSOR KEETON. Well, Illinois has been declared unconstitutional. It was not even mandatory in the sense we're talking about now. I suppose. I think that's right. It was not even mandatory in this sense, but in the Oregon sense. South Dakota is not even mandatory in this sense. It's mandatory in the Oregon sense.

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REPRESENTATIVE JACKSON. Thank you.

SENATOR COX. Anyone else wish to speak on LD-1770?

Now, before I close the hearing, I -- there was several references to two other No-Fault bills. In the main, we find that Mr. Spangenberg had one day to read a bill that I have not been able to see in two and a half weeks. I don't know the status of the two bills, but for your benefit we've been under pressure for at least two and a half weeks to schedule these bills so that we'd have ample time to study them. This is one time I'd hoped they'd all be turned in. The way it looks right now, I may very well have to schedule them the last day of the session.

MR. SPANGENBERG. Senator Cox, I was just told that the bill I saw to which I referred, which did not have a number, was a draft of the Blue Cross proposition.

SENATOR COX. You have still done well. I had not even seen the draft. This is the point I'm trying to make. Since there are no other speakers, I'll declare the hearing closed.

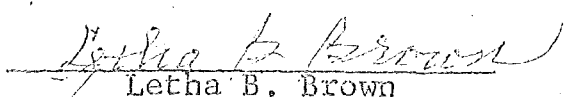
ADJOURNED.

REPORTER'S CERTIFICATE

I, Letha B. Brown, a Notary Public in and for the State of Maine, do hereby certify that on the 19th 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 19, 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.


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