AUTHORIZING A STUDY OF THE MOTOR VEHICLE ACCIDENT COMPENSATION SYSTEM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H. J. Res. 958

TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO CONDUCT A COMPREHENSIVE STUDY AND INVESTIGATION OF THE EXISTING COMPENSATION SYSTEM FOR MOTOR VEHICLE ACCIDENT LOSSES, AND FOR OTHER PURPOSES

MARCH 19 AND 20, 1968

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Additional material submitted for the record by—

AUTHORIZING A STUDY OF THE MOTOR VEHICLE ACCIDENT COMPENSATION SYSTEM

TUESDAY, MARCH 19, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman of the subcommittee) presiding.

Mr. Moss. The committee will be in order.

Today, the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce begins 2 days of hearings on House Joint Resolution 958. This legislation was prepared by the chairman of the Senate Commerce Committee, Senator Warren G. Magnuson, and myself, after an exchange of correspondence with the Secretary of Transportation which began on June 26, 1967.

House Joint Resolution 958 was introduced on December 14, 1967, and so that the record will be complete, I am asking unanimous consent that this exchange of correspondence be inserted at this point in the hearing record.

Is there any objection to the request?

Hearing none, it is so ordered.

(The correspondence referred to follows:)

CONGRESS OF THE UNITED STATES,
Washington, D.C., June 26, 1967.

HON. ALAN S. BOYD,
Secretary of Transportation,
Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: We have become increasingly concerned at evidence of major flaws in our national systems for compensating motor vehicle accident victims. Our attention was first drawn to the serious problem of insolvencies among so-called "high risk" automobile insurers. But such insolvencies appear to be symptomatic of fundamental defects, both in automobile insurance underwriting and in our underlying common low and statutory system of fault liability. Sharp underwriting practices, including arbitrary cancellations and failures to renew, geographical, racial and economic blackouts in coverage, and discriminatory, escalating premium rates equally demand appropriate reforms.

Last year, Congress addressed itself to the need for preventing and limiting the severity of motor vehicle accidents. Your Department is now charged with responsibility for carrying out the comprehensive programs of motor vehicle and highway safety which we then authorized. Now we are equally concerned with the just and efficient compensation of those victims whom prevention has not spared. Broadly viewed, the enourmous costs to individuals, as well as to society, of the still increasing traffic toll are costs which must be allocated to our system of ground transportation.

It is for these reasons that we request that you undertake a comprehensive study of compensation for motor vehicle accident losses. We have prepared, based upon our preliminary investigations, the enclosed outline of those subjects which should properly be encompassed by such study.

Are you now in a position to undertake such a study with reasonable dispatch so that Congress might have the benefit of your efforts in determining the proper course of action?

Sincerely,

WARREN G. MAGNUSON,
U.S. Senator.
JOHN E. MOSS,
Member of Congress.

OUTLINE FOR A COMPREHENSIVE STUDY OF COMPENSATION FOR MOTOR VEHICLE ACCIDENT LOSSES

I. Analysis of present U.S. system of compensation for vehicle-induced accident losses:
- A. General description of present system.
- B. Extent of loss incurred:
  - Number of events ("accidents").
  - Character of loss: medical care, economic (foregone income), additional expense, other extent of loss: property, personal injury.
  - Nature of events: kinds, places, causes, human factors, other circumstances.
- C. Compensation for losses incurred:
  - Extent of compensation: aggregate, micro (What proportion of what types and scales of accident-incurred losses was compensated?).
  - Sources of types of compensation: Insurance—Type contractural party; Employer; Public (Government compensation, Treasury via tax deduction as casualty loss).
- D. Features of existing system for providing compensation:
  - Role of legal system.
  - Character.
  - Concepts of fault, contributory negligence, etc.
  - Efficiency (time, etc.).
  - Public investment (physical court facilities, personnel including judges and other participants).
  - Nature of the decision-making system.
  - Role of insurance carriers.
  - Role of the injured.
  - Role of other parties to event.
  - Role of others in system: lawyers, doctors.
- E. Appraisal of existing system for providing compensation:
  - In terms of: efficiency, equity, time, other factors.
  - As it effects: the injured, the legal system, the wrongdoer, the insurance carrier, the public generally.
- F. Implications of the existing system for traffic safety and overall transportation efficiency.

II. Examination of existing public supervision of auto insurance:
- A. General description.
- B. Formal role of government: Federal, State.
- C. Character of present State regulation:
  - (i) Notation of basic differences in types of State regulation; classification of States by type, if possible.
  - (ii) Economic regulation: An appraisal:
    - Requirements for rate filing, prior approval, hearings, etc.
    - Supervision of overall rate of return as reflected in earnings from: premium income, investment income, related income.
    - Supervision of carrier administrative and operating expenses.
    - Supervision of premium rate structure.
    - Supervision of premium classification definition, insurance eligibility criteria, cancellation criteria.

Supervision of underwriting and financial practices.
Supervision of related corporate operations, including affiliated companies.
(iii) Regulation of market structure and market behavior:
Competition among insurance carriers: encouraged, discouraged, inhibited; role of rate bureaus.
Mergers, consolidations.
Intra- and inter-corporate behavior.

D. Cost, administrative features, efficiency, and other attributes of existing State auto insurance regulation.

III. The existing compensation system as it affects the insured motorist.
A. General description, including data on coverage, types of policies, etc.
B. Cost of insurance premiums: changes over time, relationship to other vehicle operation expenses, etc.
C. Invocation of policy provisions: the process of settlement—its character and efficiency.
D. Reliability of carriers: insolvencies, defaults, and other deficiencies.
E. Continuity or modification of policy coverage: cancellation, failure to renew, reclassification, changes in rating.
F. Selectivity of motorists: Policies and practices.
G. Financial responsibility laws: major types, operational features, economic characteristics.
H. Compulsory insurance: the Massachusetts, New York, and North Carolina experience.
I. Uninsured motorist: funds, cost, efficiency, administrative implications.
J. Overall consequences for traffic safety and provision for compensation.

IV. Examination of alternatives to existing system(s) of compensation.
A. Nature and basis of discontent concerning existing system: in general
B. Description, analysis, comparison of major proposed compensation plans, including those of: Morris & Paul, Keeton & O'Connell, Various foreign (England, Australia, New Zealand, and Sweden).
C. Critique, in terms of general criteria (efficiency, administrative feasibility, fairness to participants and public, allocation of funds, etc.) of proposed plans.

V. Conclusions and Recommendations.

DEPARTMENT OF TRANSPORTATION,
Washington, D.C., July 19, 1967.

Hon. WARREN MAGNUSON,
U.S. Senate,
Washington, D.C.
Hon. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

GENTLEMEN: Your recent letter requested our views on the need for a study of automobile insurance and the present capability of the Department of Transportation for undertaking such a study. We certainly share your view that problems created by the present system of auto insurance are of vital importance to the American people.

These problems cannot be properly assessed or resolved without a thorough and far-reaching examination of related issues. The proposed outline of such a study attached to your letter points out the major questions which would have to be answered. There may be others. The effective conduct of a study of the scope suggested would touch on areas which have been the responsibility of a number of Federal agencies and would also entail evaluation of and access to the relevant state and local institutions (e.g., insurance commissions, courts).

A number of issues will have to be reviewed which will raise questions as to the jurisdiction of the Department of Transportation to conduct some phases of such an investigation. For example, a detailed assessment would have to be made of our entire judicial system—Federal, state and local. This would require substantial input by the Department of Justice.

We believe also that there should be a comprehensive analysis of the interrelation of the auto casualty underwriting business and the investment and financial community. Here, both the Treasury Department and the Securities and Exchange Commission would have substantial involvement. Inquiry into auto insurance advertising and promotion would concern the Federal Trade Commission, and use of the postal system for these purposes would require review by the Post Office Department. These are areas which also suggest the necessity of evaluating state and local counterpart institutions such as state securities and fair business practice agencies.

In certain areas the skill, experience and resources of other agencies of the government exceed those of the Department of Transportation. Our ability to effectively lead the study would depend on a clear Congressional expression directing us to provide such leadership. Further, it would be necessary for the Congress to provide adequate funds to staff the study.

Our limited funds available for policy support research are already allocated for contract research in areas of transportation, including the important area of transportation safety, established as priorities by the Department of Transportation Act or its legislative history. Recognizing the importance of the study you suggest, diversion of these funds to an automobile insurance study would severely limit our ability to undertake the studies we consider to be primary to the mission Congress has assigned the Department.

For these reasons we would be reluctant to undertake a comprehensive study of the automobile insurance problem without legislation authorizing the Department to conduct such a study with appropriate assistance from other departments and agencies of the Federal government. Such legislation should provide the Secretary of Transportation with investigative authority, including the power to issue subpoenas, necessary to insure that all relevant data can be obtained, and authorize funds sufficient to adequately staff the study.

We will work with you and your staff and, if legislation is enacted, the Department of Transportation will be pleased to conduct the study and will vigorously pursue it to a successful conclusion in the public interest.

Sincerely,

ALAN S. BOYD, *Secretary.*

CONGRESS OF THE UNITED STATES,
Washington, D.C., July 20, 1967.

HON. ALAN S. BOYD,
Secretary of Transportation,
Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: We are, of course, pleased that you share our concern over the grave defects which have appeared in our automobile compensation system and that you are willing to undertake an investigation of such system if Congress will provide you with the necessary tools.

We recognize that you will need augmented resources to carry out an investigatory task of such prime significance, and we will make every effort to see that those resources are placed at your disposal.

We note that you will soon appear before the Transportation Appropriations Subcommittee, on which Senator Magnuson serves, on July 27. At that time, we hope that you will have a detailed estimate of the funds necessary to get the investigation promptly underway.

We are confident that you will enjoy the full cooperation of those agencies whose competencies can contribute to this task. We are also confident that you will receive the full cooperation of the automobile insurance industry, State and local regulatory bodies and the academic community. Should you subsequently find, however, that you are barred from obtaining any assistance or information which you deem essential, we will then consider such legislative authority as you may need.

Sincerely yours,

JOHN E. MOSS, *Member of Congress.*
WARREN G. MAGNUSON, *U.S. Senator.*

DEPARTMENT OF TRANSPORTATION,
Washington, D.C., July 28, 1967.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Hon. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

GENTLEMEN: Thank you for your most recent letter concerning the proposed automobile insurance study which you have requested the Department of Transportation to undertake.

While I did highlight the need for additional financial resources in my letter of July 19, I nevertheless am still persuaded that there are other equally important requirements that should be met before we could effectively and responsibly undertake a study of the magnitude contemplated. As pointed out in my letter, I believe that the passage of legislation, giving to the Department a Congressional mandate and the requisite legal authority to insure the production of all relevant information, is essential to the success of this proposed study. Without such authority I would be reluctant to commit the Department to such a serious and complex undertaking.

I note also the recent action by the House Judiciary Committee undertaking a study of similar scope. There is some question whether the resources of the Government are best utilized with two separate studies on the same subject—one by the Executive Branch and one by the Legislative Branch.

However, as I hope I clearly stated before—the Department stands prepared to undertake the study you have suggested if the tools which we believe essential to the job in the responsible way which I am confident you would want are provided by the Congress. We are ready to give whatever assistance is necessary in drafting the appropriate legislative measure.

Sincerely,

ALAN S. BOYD, *Secretary.*

DEPARTMENT OF TRANSPORTATION,
Washington, D.C., August 17, 1967.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: It was good to talk to you the other day and to reach a conclusion on the automobile insurance study which you have asked us to undertake.

Our past correspondence and our discussions clearly outline several major questions which must be answered prior to the time that such a study can be started. They are (1) what are the limits of such a study? (2) are there data, of public record, which will provide answers to the many questions that must be answered within these limits? (3) what are the sources of data which are not part of the public record? (4) what additional authority will be needed by the Department to insure that such data can be obtained? (5) what are the time limits of such a study? (6) what staffing and funds are necessary for the Department to complete such a study?

As a result of our most recent discussion, I stated that I would put our available staff resources to work on answering the above six questions and attempt to provide you with a definitive answer by the opening of the next session of the Congress. We agreed to make a decision then as to what further steps should be taken.

Given our limited resources, at this crucial stage of the Department's development, I am hopeful thaat we will be able to obtain some additional appropriations so that this study outline can be prepared in a satisfactory and comprehensive manner. I would be happy to return to the Senate Appropriations Committee to explain our need for additional funding to staff this effort.

Sincerely,

ALAN S. BOYD, *Secretary.*

Mr. Moss. I was most gratified that the President in his consumer interests message to the Congress on February 6 of this year endorsed this type of legislation.

The resolution authorizes and directs the Secretary of Transportation to carry out a study and investigation of our system of automobile insurance.

To do this, the Secretary has been given 18 months and authorized $2 million. However, in view of the critical nature of this problem, I am tending more and more to the view that 18 months is an excessive period of time to take for this study.

It is my expectation that the Secretary will present to the Congress either an interim report or in his final report recommendations which will result in ending: First, the constant and staggering escalation of automobile insurance premiums; second, the oftentimes capricious refusal to issue a renewal automobile policy and arbitrary cancellation of such policy without notice or explanation; third, the gross disparity between premiums paid for automobile insurance and amounts paid out as claims; fourth, the bankruptcy of companies engaged in writing automobile insurance which has left those uninsured through no fault of their own, with great personal financial loss in many cases; and fifth, lengthy claim procedures which only result in nothing more than a loss of time and effort.

So that these hearings may be conducted as expeditiously as possible and to permit members of the subcommittee to more fully explore matters of importance with witnesses, I am requesting that each witness limit himself to a 10-minute summary of his statement which, of course, will be printed in full in the hearing transcript.

(The bill, House Joint Resolution 958, and departmental reports thereon, follow:)

[H.J. Res. 958, 90th Cong., first sess.]

JOINT RESOLUTION To authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes

Whereas Congress finds that suffering and loss of life resulting from motor vehicle accidents and the consequent social and economic dislocations are critical national problems; and

Whereas there is growing evidence that the existing system of compensation for such loss and suffering is inequitable, inadequate, and insufficient and is unresponsive to existing social, economic, and technological conditions; and

Whereas there is needed a fundamental reevaluation of such system, including a review of the role and effectiveness of insurance and the existing law governing liability; and

Whereas meaningful analysis requires the collection and evaluation of data not presently available such as the actual economic impact of motor vehicle injuries, the relief available both from public and private sources, and the role and effectiveness of rehabilitation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Transportation (hereinafter referred to as the "Secretary"), in cooperation with those other Federal agencies which possess relevant competencies, as provided in section 4, is authorized and directed to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system. Such study and investigation shall include consideration of the following—

(1) the inadequacies of such existing compensation system in theory and practice;

(2) the public policy objectives to be realized by such a system, including an analysis of the costs and benefits, both monetary and otherwise; and

(3) the most effective means for realizing such objectives.

(b) The Secretary shall submit to the Congress interim reports from time to time and a final report not later than eighteen months after the date of enactment of this joint resolution. Such final report shall contain a detailed statement of the findings and conclusions of the Secretary, together with his recommendations for legislation and such other action as the Secretary deems necessary to carry out the objectives of this joint resolution.

ADMINISTRATIVE POWERS

SEC. 2. In order to carry out his functions under this joint resolution, the Secretary is authorized to—

(1) appoint and fix the compensation of such employees as he deems necessary without regard to the provisions of title 5, United States Code, governing appointment in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, but at rates for individuals not to exceed $100 per diem;

(3) enter into contracts with corporations, business firms, institutions, and individuals for the conduct of research and surveys and the preparation of reports;

(4) appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, such advisory committees as he deems appropriate for the purpose of consulation with and advice to the Secretary. Members of such committees, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding $100 per day, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Members of such advisory committees shall, for the purposes of chapter 11, title 18, United States Code, be deemed to be special Government employees; and

(5) prescribe such rules and regulations as he deems appropriate, and apply such rules and regulations to reasonable classes of corporations, business firms, and individuals.

COOPERATION OF FEDERAL AGENCIES

SEC. 3. (a) The Secretary is authorized to request from any department, agency, or independent instrumentality of the Government any information he deems necessary to carry out his functions under this joint resolution; and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Secretary and to furnish such information to the Department of Transportation upon request made by the Secretary.

(b) The head of any Federal agency is authorized to detail, on a reimbursable basis, any personnel of such agency to assist in carrying out the duties of the Secretary under this joint resolution.

INTERAGENCY ADVISORY COMMITTEE

SEC. 4. The President shall appoint an Interagency Advisory Committee on Compensation for Motor Vehicle Accident Lossses consisting of the Secretary who shall be Chairman and one representative each of the Departments of Commerce, Justice, Labor, Health, Education, and Welfare, and Housing and Urban Development, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission, and such other Federal agencies as are designated by the President. Such members shall, to the extent possible, be persons knowledgeable in the field of compensation for motor vehicle accident losses. The Advisory Committee shall advise the Secretary on the preparation for and the conduct of the study authorized by this joint resolution.

HEARINGS AND PRODUCTION OF DOCUMENTARY EVIDENCE

SEC. 5. (a) For the purpose of carrying out the provisions of this joint resolution the Secretary, or on the authorization of the Secretary any officer or employee of the Department of Transportation, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee deems advisable.

(b) In order to carry out the provisions of this joint resolution, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any corporation, business firm, institution, or individual having materials or information relevant to the study authorized by this joint resolution.

(c) The Secretary is authorized to require, by general or special orders, any corporation, business firm, or individual or any class of such corporation, firm, or individuals to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to the study authorized by this joint resolution. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(d) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee isssued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

TERMINATION

SEC. 6. The authority of the Secretary under this joint resolution shall terminate ninety days after the submission of his final report under section 1(b).

APPROPRIATIONS AUTHORIZED

SEC. 7. There are hereby authorized to be appropriated, without fiscal year limitation, such sums, not to exceed $2,000,000, as may be necessary to carry out the provisions of this joint resolution.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 22, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of December 19, 1967, for the views of the Bureau of the Budget on H.J. Res. 958, a joint resolution "To authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes."

H.J. Res. 958 would implement, generally, the President's proposal for a comprehensive study of the problems relating to automobile insurance as set forth in his Consumer Message of February 6, 1968. In testimony before your Committee on this measure, the Secretary of Transportation recommended certain amendments relating to the time required to complete the proposed study and the necessary authorization for appropriations.

We concur in the views expressed by Secretary Boyd and recommend favorable consideration of H.J. Res. 958 with the amendments he suggested. Enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director, Office of Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., March 21, 1698.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of December 19, 1967, for a report on H.J. Res. 958, a bill "To authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes."

The joint resolution would authorize the Secretary of Transportation, in cooperation with other Federal agencies, to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system. Such study and investigation would include (1) the inadequacies of existing compensation system in theory and practice; (2) the public policy objectives to be realized by such system, including an analysis of the costs and benefits, both monetary and otherwise; and (3) the most effective means for realizing such objectives.

The Secretary would be required to submit to the Congress interim reports and a final report not later than eighteen months after the date of enactment of this legislation. The final report would contain a detailed statement of the findings and conclusions of the Secretary, together with his recommendations for legislation and other action the Secretary deems necessary to carry out the objectives of this joint resolution.

The joint resolution would also provide that the President shall appoint an Interagency Advisory Committee on Compensation for Motor Vehicle Accident Losses consisting of the Secretary who shall be Chairman and one representative each of the Departments of Commerce, Justice, Labor, Health, Education, and Welfare, and Housing and Urban Development, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission, and other Federal agencies as are designated by the President. The Advisory Committee would advise the Secretary on the preparation for and the conduct of the study authorized by this joint resolution.

Other provisions in the joint resolution would authorize the Secretary to obtain assistance in carrying out his functions from private organizations and from other governmental agencies.

This Department is in accord with the purposes of this legislation and would have no objection to its enactment. Since the primary responsibility for conducting the proposed study would be vested in the Secretary of the Department of Transportation, we would defer to the views of that Department as to the adequacy of the administrative and appropriation provisions of the resolution.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILBUR J. COHEN, *Acting Secretary.*

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 18, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to a request for views concerning H.J. Res. 958, to authorize the Secretary of Transportation to conduct a comprehensive study of the compensation system for motor vehicle accident losses.

Based on a Congressional finding to the effect that the existing system of compensation for loss and suffering due to motor vehicle accidents is inequitable and inadequate, the resolution would authorize the Secretary, in cooperation with the heads of other relevant federal agencies, to conduct a study of all aspects of the existing motor vehicle accident compensation system. For the purpose of the study the Secretary would be authorized to hold hearings and would be required to submit to the Congress a report containing his findings and his recommendations for legislation. Under the resolution the President would be directed to appoint an Interagency Advisory Committee on Compensation for

Motor Vehicle Accident Losses composed of representatives from federal agencies to advise the Secretary.

H.J. Res. 958 would implement, generally, the proposal for a comprehensive study of the problems relating to automobile insurance set out in the President's Consumer Message on February 6, 1968.

With respect to the specific details of the bill the Department of Justice defers to the Department of Transportation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER, *Deputy Attorney General.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., March 15, 1968.

Re H.J. Res. 958, 90th Congress.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of December 22, 1967, requesting the Commission's comments on H.J. Res. 958, we have examined the resolution and determined that it does not appear to affect the Commission's administration of the federal securities laws. Accordingly, we have no comment on the resolution.

If the resolution is adopted, we will of course cooperate to the best of our ability in discharging any responsibilities that may be assigned to us.

Sincerely,

MANUEL F. COHEN, *Chairman.*

Mr. Moss. Before recognizing our first witness today I wonder, Mr. Keith, if you have any observations you would like to make at this point.

Mr. KEITH. Thank you, Mr. Chairman.

I have had a great interest in this subject for a long time. Massachusetts which was the earliest State to have compulsory automobile insurance, has seen the cost of this coverage go skyhigh. It is a very great problem for the people of Massachusetts and for the other States of our Nation. It is a very healthy development that this committee, the Congress and the Department of Transportation are going to try to shed light on this subject.

I hope that the companies and the States will not use this study as a basis for delaying action that they might take to solve the problem in the interim period.

Once again, as was the case last week when we heard from the vice president of the Equitable Life Assurance Society, I advise you of my previous and present interest in the life insurance industry. I might say that I am a part owner of a general insurance agency; when my brother died, I purchased his share of the business. As I stated before, I will use the personal information that I have of this business to further help the public interest in this problem.

I feel certain that there will be no conflict in that relationship. Instead it will make a contribution to a resolution of this very difficult problem which plagues not only the public, but the various and sundry companies and agencies who try to service the public in this area.

Thank you, Mr. Chairman.

Mr. Moss. Thank you, Mr. Keith.

As I observed on the occasion of the previous hearings, I think it is appropriate, it is in accord with the opinion I have formed of you

over the years that we have worked together, that your statement disclosing your interest is a measure of your personal integrity.

I believe that I reflect the views of the committee in expressing our appreciation for your statement.

As is our custom, we shall hear first from Members of Congress. This morning we have several distinguished colleagues, the first of whom is the Honorable George M. Rhodes. Please proceed Mr. Rhodes.

STATEMENT OF HON. GEORGE M. RHODES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. RHODES. Mr. Chairman, I appreciate the opportunity of making known to your committee my views on House Joint Resolution 958.

A study by the House Judiciary Committee has revealed that a majority of State laws covering automobile insurance are either not enforced or are implemented only on a routine basis. The study revealed that arbitrary and unfair cancellations of policies and the refusal to renew policies are entirely too frequent.

I have received numerous letters from citizens who have paid premiums for as long as 20 years to one company, only to find that their policy could not be renewed at age 65, or their premium was raised to the extent that they could no longer afford the insurance. Many of these policyholders were never involved in an accident.

My own State of Pennsylvania has been lax in taking steps to stop this practice, which has victimized many good citizens. The arbitrary cancellation of policies seems to be a practice which hits the elderly who, because of age, are no longer considered preferred risks. However, I do not believe age alone is sufficient cause for cancelling a policy.

I fully support the legislation before this committee. I hope it will result in legislation at the State and national level to protect policyholders from the unscrupulous practices of some companies.

Mr. Moss. Thank you for your brief statement Mr. Rhodes.

If there are no questions, we shall hear next from our colleague from New York, the Honorable Leonard Farbstein.

STATEMENT OF HON. LEONARD FARBSTEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FARBSTEIN. Thank you, Mr. Chairman, for inviting me to appear before your very active and effective Subcommittee on Commerce and Finance. All America knows of your efforts to protect the little man in our society from the great forces of industry and business over which he, as an individual, can exercise very little influence.

These hearings today focus upon the need for a comprehensive study by the Department of Transportation on automobile insurance practices in the United States. As you know, Mr. Chairman, this is a subject in which I personally have been extremely interested for some years, and in January of 1967, together with four of my colleagues in the House of Representatives, I introduced a bill to create a Federal motor vehicle insurance guarantee corporation, and for other purposes. This corporation would protect policyholders and injured persons against insurance company failures. Lack of such protection is one of the most inexcusable weaknesses of the present insurance sys-

tem. At the same time, on the floor of the House, I called for a broad and thorough congressional review of the present practices of American automobile insurance companies.

Sixty years ago, the automobile was a luxury, a curiosity, a conversation piece. No one depended upon it very much for getting to work, for taking the sick to a doctor, or for transporting foodstuffs and other staples to the home. Society, in fact, depended very little upon motorized transportation, and the laissez faire practices of the autobile insurance industry were quite equal to the task of that day and age and for some years thereafter.

Today, however, America is motorized to an amazing degree. An automobile is an absolute essential to the great majority of Americans. Approximately 80 percent of American families own a car, and 25 percent own two or more of them. The safety problems attending the spectacular growth of the motor industry are equally awesome. We now average 50,000 deaths and 4 million injuries on the highway each year. Obviously, the motorists' need for insurance protection is very great indeed in our highly urban, industrialized society of 1968.

Regrettably, the management of America's automobile insurance companies has too often failed to provide the services legitimately expected by today's motoring public. The bill of particulars against them is long and impressive:

1. The cost of insurance is rising at an alarming rate, in spite of record returns to the industry from reinvested premiums;

2. Policies are often canceled, or simply not renewed, on an arbitrary basis and with no reason furnished to the policyholder;

3. Both young and old drivers are discriminated against solely because of their ages;

4. Surcharges are often added to the premiums due to very minor traffic violations, or due to two minor accidents occurring within a short period of time;

5. Many firms refuse to write insurance in low-income areas;

6. Amputee or paraplegic veterans may find their policies have been canceled despite no change in their situation from the time the contract was issued;

7. Such diverse factors as one's marital status, occupation, and employment of spouse may make a driver ineligible for coverage;

8. In a number of instances, private persons have had to hire lawyers to get a fair and prompt settlement of worthy claims from insurance firms; and

9. Between 1960 and 1966, 73 automobile insurance companies went bankrupt leaving an estimated 300,000 policyholders and injured victims to attempt to recover $600 million in claims from combined company assets of only $25 million.

In 1945, Congress gave the power to regulate insurance to the individual States and some of them have done a creditable job overall. But today, the problem of automobile insurance is too complex to be left to the separate action of 50 individual State governments. In my opinion, decisive congressional action is essential to bring order out of the confusion and apprehension that characterizes the automobile insurance situation today.

Among other things, the Congress should insure that premium increases are fully justified by the company concerned, and that earnings from reinvested premiums are fully taken into account in such a determination. Companies must be required to show cause for policy cancellation or the refusal to renew, and the policyholder given an opportunity to appeal that decision to an impartial body. Discrimination based on age must be stopped. Firms should be required to write insurance in low-income areas that are contiguous to their present region of operation.

Special factors presently used to determine a driver's eligibility for coverage should be fully justified by the industry. Legal conditions should be included within each policy to penalize a firm for refusal to settle a worthy claim within a reasonable period of time. The insurance companies themselves must be insured, similar to the way in which the Federal Deposit Insurance Corporation insures the Nation's banks. Finally, and above all else, Congress must insure that the promises made by the insurance companies are clearly understood by the policyholder, that they are fair, and that they are kept.

These and other specific points should be studied in depth before the Congress proceeds to enact legislation. For this reason, I have informed Mr. Staggers, chairman of the Interstate and Foreign Commerce Committee, that I am willing to have my own bill—H.R. 4007—held in abeyance until the study called for in House Joint Resolution 958 has been completed. This broad analysis of the policies and practices of the American automobile insurance industry has my full support, and I strongly urge that it be completed at the earliest practicable of the Department of Transportation. Mr. Secretary.

Mr. Moss. Thank you for your views Mr. Farbstein.

Our next witness today is the Honorable Alan S. Boyd, Secretary of the Department of Transportation, Mr. Secretary.

STATEMENT OF HON. ALAN S. BOYD, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY M. CECIL MACKEY, ASSISTANT SECRETARY OF TRANSPORTATION FOR POLICY DEVELOPMENT

Secretary Boyd. Thank you, Mr. Chairman, and members of the committee.

I am accompanied today by Mr. Cecil Mackey, Assistant Secretary of the Department of Transportation for Policy Development.

Thank you for inviting me to testify on House Joint Resolution 958.

This resolution authorizes the Department of Transportation, working with the Federal Trade Commission and other Government agencies, to undertake a comprehensive study of the motor vehicle accident compensation system. I welcome the proposed study.

Last week, the Subcommittee on the Consumer of the Senate Commerce Committee held hearings on the Senate counterpart of the House resolution—Senate Joint Resolution 129.

I am pleased by the many endorsements of this study and pledges of cooperation from the industry, the legal profession, and leading experts in this area.

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In a motor vehicle oriented society like ours—where some 100 million autos, trucks, and buses are operated nearly a trillion miles a year by 100 million licensed drivers—it is absolutely essential that we have an efficient, equitable system for providing compensation to those who are injured and to the dependents of those who are killed in accidents.

Since the automobile first came into use as a major form of transportation, we have relied on tort litigation and insurance to provide this compensattion.

But increasingly, for a host of reasons, the adequacy of the traditional techniques for providing compensation has come under intense challenge.

As President Johnson said in his consumer interest message to the Congress on February 6:

> Every motorist, every passenger, and every pedestrian is affected by auto insurance—yet the system is overburdened and unsatisfactory.

Auto insurance clearly has become a major national problem—one that will only become more so as we license more drivers, produce more automobiles, and build more roads.

In recent years the Congress has enacted legislation designed to reduce the number of traffic accidents and to curtail the severity of injuries.

Passage of the National Traffic and Motor Vehicle Safety Act and the National Highway Safety Act—both signed into law in 1966 by President Johnson—authorized the issuance of vehicle safety standards and provided financial aid for the States in support of highway safety programs.

The Department of Transportation is now at work implementing those measures. Much remains to be done, but substantial steps are being taken by my Department, by the States, and by industry to reduce the toll of human life and injury inflicted by vehicle accidents.

What ever we do to check and reduce the number of auto accidents and to minimize their human consequences, however, they can never completely be eliminated.

We must recognize this as a fact and take every step necessary to provide the victims with compensation for their losses.

The scale and importance of the problem is made clear by recalling a few statistics. In 1966, some 53,000 people were killed in traffic accidents. According to the National Safety Council, 1.9 million suffered disabling injuries and, of these, 160,000 were left with some permanent impairment.

This means that each day on the average there were 145 deaths and over 5,000 disabling injuries directly attributable to motor vehicle accidents.

The economic loss of the injured is immense. Medical expense amounted to $600 million. Actual and anticipated wage losses were estimated at $2.6 billion. Property losses aggregated an additional $3.3 billion.

Staggering though it is, the more than $6 billion in economic losses sustained by individuals does not represent the total cost of auto accidents to society.

There are other "hidden" expenses—the cost of operating the courts, investigating accidents, and regulating insurance.

The National Safety Council estimates that the insurance companies' own administrative costs alone approached $3.5 billion in 1966. Partly because of the great expense of administration of insurance—leaving aside the costs borne by all the taxpayers through their support of the court system—it has been estimated that only about half of the premiums collected for auto insurance is paid out in compensation.

As motor vehicle accidents increase—reflecting in part the rising number of automobiles and licensed drivers, and increasing auto use—the costs of providing compensation have followed a steady upward course.

The industry, according to published statistics, paid out $1 billion in accident losses in 1950 and more than $5 billion in 1965.

Paralleling this rise, auto insurance premiums have soared. Automobile insurance net premiums have advanced from $2.6 billion in 1950 to $9.2 billion in 1966.

In some areas premiums have gone up more than 30 percent in the last half dozen years. Increases of from $50 to $100 in premiums paid by the average family have been common in the period since 1961.

This has meant a sharp increase in the cost of operating an automobile, placing particularly great strain on those with lower incomes.

The existing auto insurance system has been criticized on other grounds. Here are a few of the principal allegations that have been made:

Auto insurance policies are frequently cancelled or insurance applications rejected for reasons regarded as either arbitrary or inexplicable. The elderly, the young, members of the military, and Negroes and other members of racial minority groups appear particularly subject to such practices.

Claims for compensation are processed slowly and inefficiently, often leaving accident victims without means to pay for their medical expenses and to receive proper rehabilitative care.

The distribution of compensation is uneven and perhaps inequitable. It has been estimated that from 14 to 23 percent of those injured receive nothing. Small injury claims may be overcompensated, larger claims undercompensated.

Too often recourse must be taken to litigation to receive compensation. Not only is this often protracted and expensive, but it burdens the courts with a great many suits, slowing even more the pace at which disputess can be resolved.

The legal concept of compensation based solely on fault is said by some critics to be outdated and in need of basic reform.

Insurance company failures in recent years raise the fear in the minds of many people that they will never be able to obtain compensation, however clear their right to recovery may be. Since 1961, at least 80 companies have been liquidated or have gone into receivership. A 1965 estimate, based only on 58 of these failures, indicated that 300,000 people had stated claims totaling over $600 million against insurance companies with net assets of no more than $25 million.

All of these problems and allegations—the soaring premiums, delays in payment, arbitrary cancellations and rejections, insurance insol-

vencies, and uncertainties about the fairness of distribution of compensation—are individually of great consequence.

At the same time, however, they are closely interrelated and only by viewing them in their total perspective can they be properly appraised, evaluated, and where necessary, corrected.

The comprehensive study proposed by House Joint Resolution 958 promises to yield a cohesive body of information that should provide a better, more accurate idea of how the existing system workss and how it can be improved.

The scope of the proposed study will be broad and comprehensive. It will carefully consider the effectiveness of the existing compensation system, explore its strengths and weaknesses, and produce appropriate recommendations for reform.

Put in this simple, summary way, the study's actual dimensions and complexities are not fully revealed.

Our preliminary evaluation shows, however, that a great amount of factual information must be developed for the first time. No study of automobile insurance as comprehensive as that proposed in the joint resolution has ever been conducted in the United States.

Let me give you some idea how we would propose to carry out the study if Congress sees fit to approve the joint resolution. In doing so, let me emphasize that this study outline is necessarily tentative and subject to change. I would expect the Department would seek the advice of a number of experts in defining the exact final study plan. Those details can more prudently be considered when the resolution has been adopted and the status of its funding is asssured.

As we view it, the study will be divided into four major phases: organization, data collection, analysis, and the formulation of recommendations and a report.

The first phase would take 3 to 4 months. In this critical period staff will be selected and basic organizational planning will be completed.

The second phase will take approximately a year and will be devoted to the collection of basic research material. Many of the data essential to a sound appraisal of the compensation system will have to be developed through extensive field work, drawing upon the work of statisticians, economists, and other professional personnel.

Court records, insurance company statistics, and State insurance commission data, and other sources of information will be examined.

As you can well appreciate, this will be a major undertaking—but I consider it absolutely essential to develop this kind of informational base so that our analysis and recommendations can be firmly grounded in the facts rather than conjecture and suspicion.

Once the second phase is completed, the third or analytical phase will commence. This will require approximately 7 to 9 months.

The information developed in the second phase will be evaluated and such additional information as may be needed will be collected. Special in-depth issue studies will be carried out as warranted by the circumstances.

The fourth phase, running 3 to 4 months, will involve the formulation of recommendations and the preparation of an extensive final report.

You will note that the sum of the separate periods I have indicated substantially exceeds 24 months. While the net period can be shortened

by overlapping certain of the functions, we feel that an inquiry as extensive as this would require 24 months.

I would suggest, therefore, that section 1(b) be appropriately modified to extend the date for the submission of a final report.

The resources needed to conduct the insurance study will consist of a central core of Government staff experts and nongovernment specialists. Other persons with experience and specialized competence will be employed from time to time.

We expect, in particular, to work closely with the able staff of the Federal Trade Commission. Their competence in the field of economic and market analysis is widely respected. We have already been in contact with Chairman Dixon and members of his staff.

In addition, I would expect the appointment of several full-time nongovernment experts. They would be associated directly with the Office of the Secretary of Transportation and would work closely with my own staff as well as with the other departments and agencies which would form the Interagency Advisory Committee established by section 4 of the joint resolution.

Although the resolution does not explicitly require it, section 2(4) authorizes the appointment of advisory groups. Section 9(o) of the Department of Transportation Act contains similar authority.

Pursuant to these sections, I plan to appoint an advisory group or groups composed of representatives from the insurance industry, other business groups, labor, appropriate professional organizations, State insurance commissions, and from consumer and other public organizations.

Their views and advice will be extremely valuable and I would fully expect to make regular use of these consultative groups throughout the study.

Estimates of cost are extremely difficult to make at this early date. Based on our experience with other large research projects and our review of the work of a number of national commissions appointed in recent years, we feel that our expenses could approximate and perhaps exceed $2 million. Most of these costs would be incurred for the full-time staff and the compensation required to support field surveys throughout the country.

However, consultants will also be required, contracts may have to be let to deal with certain particular problems, some data processing will be required, and government employees detailed to the Department will have to be reimbursed.

All of this adds, in our judgment, to an amount that could be at least equal to the authorization contained in section 7 of the resolution.

Given this, I would suggest that the precise dollar amount identified in section 7 be eliminated and that an open-ended authorization be substituted.

Let me conclude by stressing once more the urgency and vital importance of a comprehensive study of our entire motor vehicle accident compensation system.

As President Johnson said earlier this year:

> We must move now to streamline the automobile insurance system to make it fair, to make it simple, and to make it efficient.

The Department of Transportation stands ready to carry forward the study called for by the President and authorized by House Joint Resolution 958.

It is my firm conviction that this study is a prerequisite to sound reform and the development by the Congress, the States, and the industry of a modern, fair, and efficient compensation system.

Thank you, Mr. Chairman.

Mr. Moss. Thank you, Mr. Secretary.

On your last page next to the concluding paragraph, you suggest the elimination of the precise dollar amount and substitution of an open-ended authorization.

Now, it has been the policy of the Commerce Committee for quite a number of years not to make open-ended authorizations.

In view of this fact, would you state what in your best judgment is the necessary amount to carry out the study and investigation and would you then submit for inclusion in the record how that amount would be allocated to carry out the study and investigation.

Secretary Boyd. The best figure we can give you right now is about $2 million. The general allocation would be as follows:

Staff salary, $575,000; field salaries, $600,000; contracts, $700,000; consultants, $150,000, and administration, $150,000.

The figures are, we believe, conservative.

We are talking about, as I mentioned in my testimony, the automobile insurance industry which generates premiums at a rate close to $10 billion a year and about a thousand companies in 50 States plus the District of Columbia and the Commonwealth of Puerto Rico.

There has been no comprehensive study of the nature we are attempting to undertake. I do not consider myself a conservative in approach, Mr. Chairman, but I learned when I was in a previous position as Chairman of the Civil Aeronautics Board, signing off on accident reports, that it costs a great deal of money merely to develop facts to the point where we can say that we can stand on these facts.

We expect a great deal of assistance from the industry, from the States and from the other Federal agencies. We are not in any way attempting to be extravagant in the expenditure of funds but I think that here is an opportunity for the Nation to obtain an absolutely comprehensive study of the facts of this industry, how it operates, its strengths and its weaknesses. I would hate to find us in a position where $2 million was 75 or 80 percent of what we needed to do that.

As you know, an open-ended authorization would not mean that we would be able to obtain more money just because of that fact. We would still have to justify our expenditures. We are not seeking to spend as much money as we can. We are seeking to spend as little as we can. But I think this is a matter of such vital importance that we should not be subject to an arbitrary dollars limit when nobody really knows what the cost of this study will be.

Mr. Moss. This is my 12th year on the Commerce Committee and during that time I can recall no instance where the committee has departed from its policy of requiring a specific sum.

I would doubt seriously that even if this subcommittee were to unanimously recommend to the full committee that we would be able to secure enactment of an open-ended authorization.

I would suggest, therefore, that you call upon the resources of your Department to try to come up with a figure that you feel would be adequate.

I would also ask that you submit for the record a more definitive statement of the allocation of the $2 million. If you could give us, not at this time but supply it for the record, the number of staff, the type of contracts that you comprehend as being required, in other words, a fuller exposition of the requirements that you gave us a few moments ago.

Secretary BOYD. We will give you our best detailed judgment with the understanding that we are also looking into the future and we can't guarantee——

Mr. MOSS. We recognize that.

(The following information was received by the committee:)

PRELIMINARY ESTIMATES OF THE DEPARTMENT OF TRANSPORTATION OF APPROPRIATIONS AND EXPENDITURES REQUIRED TO CARRY OUT STUDY AND INVESTIGATION

SALARY ESTIMATE, $575,000

Duties: Manage, plan, supervise, study, analyze and interpret data.

Cost estimate:	*Man-years*
Phase I	4.5
Phase II	24.5
Phase III	8.0
Phase IV	5.0
	42.0

Average grade of professional staff is estimated at GS–13. Average Salary=$13,500.

(42) ($13,500)=$567,000

Therefore about $575,000.

FIELD STAFF ESTIMATE, $600,000

Duties:

Personal Interviews for—
- New data.
- Verification data.
- Case Studies.

(Possibly also for telephone interviews.)

Cost Estimate: Considering extent of geographic coverage and breadth of probable issues, a field staff of 30 to 40 people over a year's period will be required.

Estimating Technique A:

(30 to 40 people) ($15,000/person)=$450,000 to $600,000

Note that the $15,000 per person estimate includes salary and expenses which is conservative.

Estimating Technique B: Use historic proven estimate of $20 cost per interview, Estimate 4 interviews per day per interviewer and 20 days per month for 12 months.

($20) (4) (20) (12) (30 to 40)=$576,000 to $768,000

Therefore range of estimates are:

(A) $450,000–$600,000.

(B) $575,000–$775,000.

Assume $600,000 as the best estimate.

CONTRACTING ESTIMATE, $700,000

Data Processing and Collating (Sub-Total=$400,000).

Requirement:

(a) Storage of 20,000,000 units of data (possibly 40,000,000) categorized by about 300 parameters.

(b) This data bank will be manipulated a multitude of times in order to obtain various aggregations and more important various regression analyses as well as variance analysis.

(c) A time consuming and medical collating task must be undertaken with about one-half of the data bank. (This is the data from insurance companies which "theoretically speaking" is the same.) The remainder of the data bank will not be so disjointed since most of it will be new or prestructured by the study group.

Cost Estimate: Based on past projects using similar techniques, discussions with representatives from data processing organizations and careful consideration of the nature of the requirements of this study the following estimates were made:

Equipment (Mainly disks vs. tapes)	$200,000
Implementation (System design, data collation, and programming)	150,000
Computer time	50,000
	400,000

NOTE.—Storage of 100 million characters was derived as our basic estimate.

Specialized Studies: (Sub-Total=$300,000.)

Objectives: Studies which serve the purpose of complementing the basic study of accident cases and the compensation system.

Cost Estimates:

Total cost=$300,000 (5 studies ranging between $50,000 to $75,000).

Typical Projects could be:

Reworking existing data to make it applicable to the insurance study.

Interpretation, analysis and correlation of health interview survey data.

Special surveys such as estimates of traffic court system costs.

CONSULTANT ESTIMATE $150,000

Duties: Be members of advisory groups.

Advise management of study design and staff on interpretation of data and knowledge.

(The diversity of the expertise required should be noted. That is economic, medical, legal, social, public health, actuarial, and so forth).

Cost Estimate: Assume Average Fees and Expenses=$100/day.

Estimating Technique A: Assume 1 man-hour of consulting for each 3 or 4 hours of staff time (a reasonable estimate considering this study and our past experience). Therefore (42 man-years) (260 days/year) ($100/day) (⅓ *or* ¼)= $244,000 or $185,000.

Estimating Technique B:

(a) Individual consultants:

Phase I—2* consultants per day ⅓ of time.
Phase II—3* consultants per day ¼ of time.
Phase III—3* consultants per day ½ of time.

Therefore:

(2) (4 months) (20 days/mo.) (1/3)= 53 days.
(3) (13 months) (20 days/mo.) (1/4)=195 days.
(3) (7 months) (20 days/mo.) (1/2)=210 days.

485 days.

(485 days) ($100/day)=$45,800

(b) Advisory groups: Ad hoc advisory groups probably 12 in number (legal, public health, management, etc.) to exist for a month or more with about 5 working days per group and 10 members per group.

(12) (5) (10)=600 days
(600 days) ($100/day)=$60,000
Subtotal=$105,800

Range of Estimates:

(a) $185,000 to $245,000.
(b) $106,000.

Assume $150,000 as the best estimate.

*Not the same consultants for the duration of the Phase.

ADMINISTRATIVE ESTIMATE, $150,000

Duties: Secretarial/Clerical Staff. In addition, office supplies, printing services and travel expenses are included in this category.

Cost Estimate:

(A) 11 Clerical (2 Stenos/5 Secretaries/4 Clerks), $6,800/year for 1½ years—(1.5) ($6,000) (11)		$112,000
(B) Supplies (incl. printing)		25,000
(C) Travel		
3 trips per professional at $75 trip—3×75×27	$6,075	
Per diem—25/day×2 days/trip×81 trips	$4,050	10,000
		147,000

Assume an estimate of $150,000.

Mr. Moss. Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

It is entirely probable that no problem has vexed the State governments, the insurance companies, the buying public more than this particular one.

I can recall, when I was in the State legislature years ago, the public's and the Massachusetts Legislature's concern. Fifteen years later, they are still wrestling with that same problem.

There is so much at stake for the private insurance sector of our economy that I am sure that they have conducted many studies. There is so much at stake in the State government that they, too, must have a great deal of material that could be available. A lot of time and thought must have gone into this.

What I am leading up to is not necessarily a suggestion that the time be shortened but I think that you and this committee, as we quiz successive witnesses, should try to find out just how much of an input is already available.

Certainly, Professors Keeton and O'Connell can give us some information on this subject. They have been firm in their recommendations to the State legislatures regarding a solution in their view. They must have based them upon extensive studies. So, I would hope that we could come up with a more modest figure than is suggested by you in your introductory remarks.

I would be interested in your views if you would care to respond.

Secretary BOYD. All right, sir.

First of all, I would like to say that we have been in contact with Professors Keeton and O'Connell. I know Professor O'Connell. Undoubtedly, they have done a great deal of study. Yet their approach places more emphasis upon a plan of reform rather than the development of comprehensive fact data. However, we expect to be able to develop sufficient data in order to properly evaluate all of the proposed reforms. Let me give you what I think is a relevant parallel, Mr. Keith.

The Interstate Commerce Commission is now in its 80th year of regulating transportation in this country. We have State regulatory commissions in every State of the Union, some of which are older than the Interstate Commerce Commission. Rail and motor carrier transportation have been among the most intensely regulated of industries. While there are mountains of statistics relating to these modes, an effort to try to deal with an industry-wide problem today on the basis of such information is something that can drive you out of your mind

because of the difference in the way the statistics are put together by different agencies and different industries.

It is literally impossible to find out, without a mammoth amount of work, what you already have available.

I think in this age of thriving technology we sometimes tend to assume that because we have computers we can take all of the books and stacks of figures and run them through a computer in order to get all of the answers. However, the computers cannot give all of the answers, believe me.

Now these are our concerns. First, we are trying to exercise a responsible stewardship of the taxpayer's money which is made available to the Department of Transportation in all of its activities.

Second, we feel that in order to do a job on the insurance industry, a study——

Mr. KEITH. You mean a job for the insurance industry.

Secretary BOYD. Well, I was not speaking in the vernacular, but we are trying to do a job for the American public.

We want to do one which is consonant with the quality of what we think we are doing in other areas. We do not want to be miserly and then find out in the end that we will be making assumptions which we cannot support and that we need additional information.

I think this would be a great disservice to everybody involved.

Mr. KEITH. I think the chairman, when he referred to your recommendations for an open-ended authorization, was very realistic. We have had previous experiences, as you know from your years with the Government, with agencies which have come in for additional funds after they tried to stay within their budget. If they made a good case, the funds were there.

Secretary BOYD. Let me say, sir, that we are attempting to give the committee our best judgment. We will follow whatever the Congress does cooperatively and productively.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. Moss. Thank you.

Mr. Murphy.

Mr. MURPHY. Mr. Secretary, will any of your advisory groups, any of those members receive compensation?

Secretary BOYD. Let me throw that to Mr. Mackey.

Mr. MACKEY. I think that we would expect to have the authorization to pay some of the advisory groups. We are not entirely sure at this point exactly what the nature of all the advisory groups would be.

Certainly, the broad industry representation, the highest level, State commissioners, presidents of companies, people of this sort forming an advisory group, normally would not expect compensation as consultants.

We also would have to have some advisory groups made up of professional, academic types, people who are really professional consultants.

I think in order to do the job right we need both. Even when you do not pay compensation you normally pay travel expenses for the people in the advisory groups. With a large representative advisory group that meets fairly often so that it can be useful, even the travel expenses can add up quickly.

Mr. MURPHY. Thank you. I have no other questions.

Mr. Moss. We are very pleased to have the ranking minority member of the committee present, Congressman Springer. Do you have any questions?

Mr. SPRINGER. Mr. Chairman, if you would accommodate me for just a few minutes, I would like to ask the Secretary a few questions.

Mr. Moss. Certainly.

Mr. SPRINGER. Mr. Secretary, I take it that you are entering on this so-called investigation, and I anticipate you are probably going to get your money, without any previous experience or thought or preconceived ideas about this?

Secretary BOYD. Absolutely.

Mr. SPRINGER. This is not for the purpose of putting you on the spot, but do you know anything about the question of insurance and premiums with reference to automobile insurance?

Secretary BOYD. Personally?

Mr. SPRINGER. Yes.

Secretary BOYD. Only to the extent that I did engage in the law practice for a while. It seems like many years ago, Mr. Springer. My mother was an insurance agent.

Mr. SPRINGER. You have defended insurance companies and you have been plaintiff's representative, your experience is to that extent?

Secretary BOYD. Yes, sir. I have formed no conclusions except for the fact that we have a major problem which needs to be dealt with.

Mr. SPRINGER. Let me ask you this: Preliminarily at this point what do you think the one, two, three problems are in the insurance business?

I am talking about this insured premium idea.

Secretary BOYD. I have not attempted to rank things before but offhand I would say that the question of rejections and cancellations which appear to be arbitrary, are major problems.

In this society where we have relied so heavily on tort liability, the presence or absence of an insurance policy can have a major impact on the future life of an individual who happens to be involved in an automobile accident.

Mr. SPRINGER. That is just two things you know exist, is that correct?

Secretary BOYD. Yes, sir.

Mr. SPRINGER. You don't have any idea or preconceived notions as to what caused that?

Secretary BOYD. No, sir.

Mr. SPRINGER. I want to be sure because it is awful important to not get any preconceived ideas about what brought this about.

I happen to know a little bit about the background and probably not a great deal more than yourself. This one question is going to arise, Mr. Secretary, and I hope you are going to go into it.

You are not going to produce, I hope, out of all this program which is going to increase the cost of insurance to people generally in this country. Now that is the first thing when you come back that I am going to ask you when you come back with recommendations.

So when you go out you will know what I am going to ask when you come back.

Secretary BOYD. I must confess that I would be either surprised or astounded, in Noah Webster's words, if that were the result of our study.

Mr. SPRINGER. I hope you are right, Mr. Secretary, because actually, the cost is pretty high now.

Now there is one thing which I find out and I have seen, for instance, that premiums have risen from 2.6 to 9.2, which is in the neighborhood of four times as much.

My own insurance has not risen that way at all.

Secretary BOYD. Of course we are talking here, Mr. Springer, about the tremendous increase in the number of automobiles or owners covered.

Mr. SPRINGER. What you are talking about is net premiums have increased from 2.6 to 9.2?

Secretary BOYD. Yes.

Mr. SPRINGER. Are you talking about the fact that the premiums have quadrupled? I am not sure if that is what you mean.

Secretary BOYD. No. If you will look at the next paragraph——

Mr. SPRINGER. I see, it has gone up 30 percent in the last half dozen years?

Secretary BOYD. In some areas.

Mr. SPRINGER. In some areas.

I have inquired as to why my insurance policies have not risen because I know they have in some other companies. I find that the one I happen to belong to is a highly selective company. Therefore, I am getting a premium commensurate with this and they have so advised me under some circumstances, "We don't think we would want to insure you."

Do you see what I mean?

Secretary BOYD. Yes, sir.

Mr. SPRINGER. Now I do not know if you have any idea here of coming back with one that is going to insure 100 percent of the people or is still going to give a choice to the companies to select the ones they want to insure.

You are familiar with the Maryland situation, are you not?

Secretary BOYD. Yes, sir.

Mr. SPRINGER. Do you live in Maryland?

Secretary BOYD. No, sir.

Mr. SPRINGER. Does the committee know the Maryland situation? What, in effect, it does is that the insurance companies in Maryland insure everybody that wants to be insured that they can insure. There are left over several hundred or several thousand who are so-called noninsurable. They won't take them.

The Maryland Department of Insurance takes those few thousand, divides those thousands among all the companies who insure in Maryland.

Isn't that right, Mr. Secretary?

Secretary BOYD. That is my understanding.

Mr. SPRINGER. That is the way I understand it. With the result that you do have these companies insuring a large number of what ordinarily would be considered noninsurable.

Now I think in the public interest you have to determine whether this is worth it, whether the cost should be passed on to somebody else who is the careful driver.

I hope you will cover all this in your report when you do it.

Now let me come to the second point if you will bear with me for just a moment. I am familiar with what Dr. O'Connell has done at the University of Illinois, which is my hometown. Now this new approach to the question of insurance, and I am not sure, maybe we should not be in the area of where we were at least thinking about a new approach to this whole thing, but I surely would want to know what it is going to cost.

Secretary BOYD. Yes, sir. If I may go back for a minute, one of the things that makes me a little edgy about the money required for the study is that we are discussing extremely important issues. I believe it would be a tragedy if we are not able to do a thorough job of looking at all of the implications and evaluating all of the alternatives. I am very concerned that we may run out of money before we get the facts. I do not want us to come back here with a report which is incomplete in major respects.

Mr. SPRINGER. May I say that insofar as I am concerned, I do not expect this to cost millions and millions of dollars, but whatever is its cost, you ought to have.

If you are going to do the job, I think it ought to be done thoroughly.

Secretary BOYD. That will be our approach.

Mr. SPRINGER. I hope it will not come back with a lot of blame on insurance companies and nothing else.

If we do not come up with more than that, that is the reason I am starting on this side over here instead of on the other body where you have a bunch of prima donnas playing this song morning and night like a violin, finding fault with the people who are in business, and nothing else.

I hope you will come back, Mr. Secretary, with good, solid recommendations and not a blame on things that have already taken place.

If we are going to correct it, let us correct it.

Secretary BOYD. I agree. We are looking primarily for answers.

Mr. SPRINGER. I am glad to hear that because I don't think that ought to be the approach which you take. You have always been a pretty solid citizen in the jobs you have held in the Government, and pretty responsible. I am happy that you are the one who is undertaking this.

Secretary BOYD. We will give this all the priority that circumstances permit in the Department.

We have Cecil Mackey, Assistant Secretary, and his Deputy, both of whom are well grounded in studies of this type. We are going to put together what we think will be a fine professional staff. We will conduct it on the basis of an objective examination of the automobile insurance situation and its impact on the people and the various implications of different types of responsible suggestions which have been made for alternative methods of compensation.

Mr. SPRINGER. Mr. Chairman, thank you.

Mr. Moss. Thank you.

I would just like to observe as the author of the resolution that it is clearly my intent and desire that the study produce facts rather than assess blame and I know that because of the fact that additional information was necessary, Senator Magnuson and I determined that the best approach would be the avenue of study rather than any definitive legislative proposal to deal with the problem.

Many were advanced and considered but it was obvious that we needed to have a study as a prerequisite to any sound legislative solution.

Mr. SPRINGER. Mr. Chairman, I want to commend you because I think that is the right approach.

Mr. Moss. Thank you.

Mr. Guthrie, I believe you have some questions.

Mr. GUTHRIE. Mr. Secretary, in light of the urgency that is felt about this particular situation and the fact that you apparently are seeking a further period of time than the resolution provides for now, 24 months as I understand it, it seems to me that the record would be more useful if you could go into greater detail on what you contemplate doing during the four phases into which you indicate you are going to divide this study and investigation.

For the first phase you mention you are going to allot 3 or 4 months for staff selection and completion of basic organization and planning.

Can you spell out more fully what is going to be involved there?

Secretary BOYD. Yes, sir. First of all, under the Civil Service Commission rules while it is possible with no more effort than it takes to move mountains to go through the process in less than 90 days, you can only go to that well about once or twice in a Government career I have found.

We will have to identify and talk to people. We will have to talk to the heads of agencies, the professionals, and so forth, in order to make sure that we have an adequate and qualified staff. During this period we would also outline the future course of the study.

Mr. Mackey might like to elaborate a little more on this first phase.

Mr. MACKEY. The recruiting problem of identifying enough people who have the qualifications we would like and arranging for their availability will take time. People in the academic world who are knowledgeable in this area are not available immediately.

People who would come from State commissions or perhaps company backgrounds have to make some arrangements.

So you simply can't get organized.

Mr. GUTHRIE. There is a staffing problem primarily and not organizational planning?

Mr. MACKEY. We are already doing as much as we think we can before the resolution passes. We have made contacts with all the other Government agencies. We have made contacts with a number of people in the industry. But there is a limit to what you can do before the bill is actually passed.

Mr. GUTHRIE. You assign 1 year to basic collection of material, court records, insurance company statistics, State insurance commission data, and so on.

How do you propose to go about this? Are you just going to send investigators out to accumulate this material? What do you propose to do in this area?

Mr. MACKEY. I think the first thing is to remember that we really can't answer the questions nearly as precisely as you would like or as we would like.

We do not know the exact nature of the data which does exist in the States or in the companies. It would only be after we get a qualified staff together who can make some determination regarding what data

is available and its form that we can really get the investigation underway.

Secretary BOYD. Let me add one thing, too, if I may, Mr. Guthrie. We are confident from their statements that the State commissioners, the industry, and other interested parties, are going to cooperate fully.

It is entirely possible, however, that as you get into the heart of the issues there may be some variations on what is meant by cooperation.

I do not in any way mean to imply less than full cooperation but we may feel that we need things which they feel are not within the purview of what they expressed as cooperation. We really cannot find out until we get to the study itself.

Mr. GUTHRIE. Just taking one facet of the information you are going to seek, court records. How would you relate court records to some of the conceivable recommendations you might make at the end of this particular study and investigation?

Mr. MACKEY. Certainly one of the problems that has been identified is the delay in the courts. We have only limited information as to what types of cases cause the delay and what parts of the process are really involved.

I think if you are going to examine the compensation system you have to look with much more detail into what goes on from the time of the accident until the actual settlement. A settlement of a case may take 2 years; and, in some cases, 4 or 5 years.

The problem apparently differs from city to city, and State to State, as to the nature of the delay and what causes it.

Mr. GUTHRIE. The third phase, 7 to 9 months assigned for the evaluation of data and collection of needed additional information.

Are you anticipating computerizing the information you acquire?

Mr. MACKEY. I would certainly think that a great deal of it would have to be put on computers.

Mr. GUTHRIE. It is just a reaction, I confess, but it seems to me a long period of time, 7 to 9 months, to evaluate this data.

Mr. MACKEY. We have not found any real shortcuts to thorough analysis, unfortunately.

Mr. GUTHRIE. Are there other things that you contemplate doing that would explain this period of time?

Mr. MACKEY. We would certainly expect some overlap as the data begins to come in. As phase two is underway you can begin some of the analysis, so that you do not finish one period and then pick up another.

Again, there is a limit to how much you can compress.

Secretary BOYD. As I mentioned in my testimony, Mr. Guthrie, a lot of these are separate items but they are clearly interrelated.

There may well be a number of these items, on which, as we move along, we can issue interim reports. We fully expect to do that to the extent that we can.

On the 7-month period for evaluation, however, one of the things we anticipate is that as we start putting this mass of data together we will find that there are some gaps in our information. We will then have to find some way to plug these gaps, in order to have the kind of comprehensive fact analysis we are discussing.

Mr. GUTHRIE. Then the last phase is 3 to 5 months assigned to the formulation of recommendations and preparation of the final report.

I would assume that your recommendations would be coming up in interim reports that are provided for in the joint resolution.

Secretary BOYD. In some cases. But when we get to the final report we will have to coordinate the views of a number of the advisory committees and those of the intergency committee. I tell you sincerely it will take a lot of time to coordinate the draft with these groups, to review their conclusions and to do the redrafting and editing of a final draft.

Mr. GUTHRIE. Am I taking too much time, Mr. Chairman?

Mr. MOSS. No; if you have more questions, go right ahead.

Mr. GUTHRIE. I wonder, Mr. Secretary, if you are in a position to state to the subcommittee some of the reasonable alternatives as far as recommendations are concerned that might result from this study and investigation.

Secretary BOYD. I have no idea, Mr. Guthrie.

Mr. MOSS. Are there any further questions?

If not, Mr. Secretary, I want to express the appreciation of the committee for your appearance this morning and yours, also, Mr. Mackey.

I assure you your views will be given very careful consideration. I would appreciate receiving at the earliest possible moment the data figures as a substitute for the open end and the additional information requested of you. (See p. 19.)

Secretary BOYD. Thank you, Mr. Chairman. I must confess that I had not added up my totals. The figure that I gave you totals $2,175,000. Inflation has struck again.

Mr. MOSS. I thought you were a little above the $2 million.

I wonder if you will submit also for the record and for the information of the committee a biography of Mr. Mackey.

Secretary BOYD. Yes, sir; we will be very happy to.

Mr. MOSS. It will be included at this point in the record.

(The biography requested follows:)

BIOGRAPHY OF M. CECIL MACKEY, ASSISTANT SECRETARY FOR POLICY DEVELOPMENT, DEPARTMENT OF TRANSPORTATION

M. Cecil Mackey is an Assistant Secretary in the Department of Transportation. He is charged with the responsibility of developing overall policies, plans and programs to assure balanced development in the Nation's transportation system. This includes the development of research projects, policy studies, and program planning.

Mr. Mackey is a native of Montgomery, Alabama. He attended the University of Alabama, where he earned the A.B., M.A., and LL.B. degrees, and the University of Illinois, where he received a Ph. D. in economics. He is a member of the Alabama bar.

He has been an Assistant Professor at the University of Illinois, an Associate Professor of Economics at the U.S. Air Force Academy, and an Assistant Professor of Law at the University of Alabama. He also spent a year at the Harvard Law School as a Ford Foundation teaching fellow.

Prior to his present appointment, he was with the Office of the Under Secretary for Transportation in the Department of Commerce as Director of the Office of Transportation Policy.

Mr. Mackey was sworn in as Assistant Secretary of Transportation on March 8, 1967.

Mr. MOSS. Mr. Secretary, we again appreciate your appearance, and you gentlemen are excused.

Secretary BOYD. Thank you, Mr. Chairman and committee members.

Mr. Moss. Our next witness is our colleague, the Honorable John Murphy, from the 16th District of New York.

Mr. Murphy.

STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MURPHY. Thank you, Mr. Chairman, for the opportunity to testify in support of House Joint Resolution 958, to authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses.

The automobile has had more influence on this Nation than any other machine. Its use has reduced the size of the Nation to where traveling hundreds of miles a day is a common experience. The automobile has given us freedom and mobility unequalled in any other nation.

But the price of this convenience and freedom has been high. More than a million and a half people have been killed in automobile accidents in the United States since the first automobile was invented; 50,000 people will die on our highways this year alone. Of the more than 100 million cars roaming our highways this year one in four will be damaged in an accident.

Our first concern should be to present these accidents, and the National Traffic and Motor Vehicle Safety Act of 1966 is a significant step in the right direction.

Under this act, the Secretary of Transportation is authorized to establish safety standards for all motor vehicles.

A second law, the Highway Safety Act, will assist State governments in upgrading highway design standards and driver licensing and training requirements.

Even the perfect safety legislation will not prevent all accidents, however, and thus we will always have the need for a system of automobile insurance.

Today, there are 900 of these automobile insurance companies in the United States competing for more than $9½ billion in premiums paid by drivers each year.

Recently, public attention has been focused on the operations of this industry. Increased accident rates, soaring repair costs, and intensive competition are beginning to strain the economic strength of the industry.

Consumers are complaining about rapidly rising insurance rates, what to many seem to be arbitrary cancellations and failures to renew, claims settlement policies which are often ineffective and unfair, and a growing number of failures among high-risk companies.

Committees in both the House and Senate have conducted studies of these problems which have uncovered a number of abuses in the industry.

Just last year the staff of the House Judiciary Committee made the statement that—

> By any objective standard performance of the auto insurance business in the United States is unsatisfactory. The system is slow, incomplete and expensive.

The companies and organizations involving furnishing this service to the public in many respects do a poor job.

One major problem is the discriminatory underwriting practices which appear to exist to a significant degree. Committee files are full of complaints covering a wide range of abuses, including arbitrary cancellation, failures to renew, geographical, racial and economic blackouts in coverage, discriminatory premium rates, and unfair claims settlement practices.

Mr. Chairman, in the National Observer a writer named Mark R. Arnold had an article published called "Everybody Is Unhappy: Why Changes Are Being Proposed for the Auto-Insurance Industry." In that article he details many of the abuses I just mentioned and some specific cases. I would ask for the edification of this subcommittee that this article be submitted for printing in the record.

Mr. Moss. If there is no objection, and hearing none, the item will be included at this point in the hearing record.

(The article referred to follows:)

[From the National Observer, Mar. 11, 1968]

EVERYBODY IS UNHAPPY: WHY CHANGES ARE BEING PROPOSED FOR THE AUTO-INSURANCE INDUSTRY

(By Mark R. Arnold)

WASHINGTON, D.C.—Everybody is unhappy with auto insurance.

Those who sell it, about 900 insurance companies, complain they can't make a profit on it. Those who buy it, the motoring public, bemoan the increasing cost of the premiums. And those who lay claim to its benefits, the auto-accident victims, say it takes too long to collect.

What's more, the system gets less efficient, more expensive year by year. This year 100,000,000 cars will roam the nation's highways. One out of four will be damaged in accidents. The result: more claims, longer delays, higher settlements, increased premiums.

How will it all end? Probably in some radical changes in the concept of auto insurance—but don't expect them until the 1970s.

SENATE HEARINGS OPEN

This week the Senate Commerce Committee, besieged with complaints from irate motorists, puts auto-insurers' practices on the line in three days of hearings. Chairman Warren G. Magnuson of Washington, who is fashioning a role for himself as a champion of consumers, argues that discriminatory and sharp underwriting practices exist "to a significant degree."

The hearings may ignite some sparks, but the fires will smolder for at least another two years. Only one measure is on the legislative calendar, and it should pass Congress almost unanimously. It authorizes, at President Johnson's request, a two-year study by the Department of Transportation into "all aspects" of the auto-insurance industry. Its expected cost: $2,000,000. Most lawmakers favor delaying any action until the report is in.

What's wrong with auto insurance? A day spent flipping through the Magnuson panel's voluminous files turns up complaints like these:

An Auburn, Wash., youth, 19, with a perfect driving record learns his coverage has been canceled when he enlists in the Air Force. He can give up driving or take a policy with a high-risk company, at twice the price.

A Lantana, Fla., man, injured permanently nine years ago when his car was struck in two separate accidents, can't collect on either claim because both companies maintain the disability was incurred in the other accident.

A Palos Verdes Estates, Calif., family had its insurance rates raised $200 after a speeding, drunken driver operating at night without lights crossed a divided highway and struck their car head on.

The insurer of a Sibley, Iowa, farm couple in their 70s, refuses to renew their policy. The husband had one claim last year, the couple's first in 35 years with the company.

CONTROVERSIAL, BUT LEGAL

Industry spokesmen insist these cases are not typical. Still, such examples abound, and many of the most controversial practices are legal under the laws of many states. A survey of the $10-million-a-year auto-insurance industry last year by staff members of the House Judiciary Committee concluded:

"By any objective standard, performance of the auto-insurance business in the United States is unsatisfactory. The system is slow, incomplete, and expensive. The companies and organizations involved in furnishing this service to the public in many respects do a poor job."

The rising chorus of complaints, plus the failure of 70 "high-risk" companies since 1960 (leaving 300,000 people, many of them badly injured, with $100,000,000 in unpaid claims), has strengthened calls for Federal regulation of an industry that is now subject only to state control. But the larger question this week's hearings will raise is whether an insurance system based on the concept that benefits should be awarded only upon a finding of negligence is adequate to meet the needs of a nation on wheels.

The distinguishing feature of this nation's auto-insurance system is that its basic coverage does not protect the insured against his own loss. He can elect to have loss coverage (fire, theft, collision, medical payments) added to his policy but the basic coverage protects him not from loss but only from liability. His policy, simply stated, is a commitment from his company to cover the losses of the other party to an accident if the insured caused them by reason of negligence.

The operative word is negligence: No negligence, no payment. A motorist with basic coverage is not protected against injuries sustained in an accident in which no one was at fault—if for example two cars skid on icy pavement and collide—or if he is in an accident in which both drivers are equally at fault. Similarly, if a driver has a heart attack and loses control of his vehicle, causing injuries to someone in another vehicle or to a pedestrian, the injured party cannot collect unless it can be proven that the first driver had reason to anticipate a heart attack.

PROBLEMS OF THE SYSTEM

The implications of this system are worth considering. First, because benefits are paid only in the event of proven negligence, many accident victims are not compensated at all. Furthermore, because the relationship between victim and his source of redress—the other party's insurer—is an adversary one, settlements sometimes depend as much on one's ability to pay the high costs of litigation as on the justness of the claim.

In practice, studies show, small losses tend to be overcompensated, and large losses often go unsatisfied. In addition, so clogged are courts by the mounting volume of personal-injury accident suits that the average case is on the calendar 31 months (six years in Chicago) before it is heard.

The result is waste and inefficiency. So great are outlays for legal fees, investigation, court costs, and administration, for example, that it cost companies an average of $2.20 in 1967 to pay an accident claimant $1. By comparison, it cost Blue Cross $1.07 to process $1 in benefits.

Reinforcing these shortcomings are others attributable not to the system but to practices within the industry. One prime target of criticism is selective underwriting.

There was a time, at least in textbook theory, when companies would bind anyone licensed to drive. Rates would be set, in accordance with the classical definition of insurance as a sharing of risks, so that the contributions from each insured would raise enough money in the pool to protect any insured from hardship.

PRESSURES OF COMPETITION

Competitive pressures in the postwar years have changed all that. Increasingly, companies find that to remain competitive they have to develop techniques for evaluating the potential hazard each client represents. And so they set up "pools within pools," with rates adjusted accordingly. Today the competi-

tion for "preferred-risk customers"—those who don't drive much and never have accidents—is so keen that whole occupations are treated with suspicion.

One West Coast company, the Automobile Club of Southern California, told a congressional committee it advises agents not to write policies on athletes, entertainers, auto salesmen, persons wo have moved three or more times in two years, students, or radio-television personalities. According to congressional testimony, another company, Continental Insurance, wants to avoid sports cars ("They are not purchased by the sedate, cautious, and defensive type persons"), while other companies charge higher rates or refuse to underwrite divorced women (they're considered unstable), clergymen (preoccupied), longshoremen, barbers, bartenders, unmarried servicemen, or people with nicknames like Scotty or Shorty.

Insurance companies, of course, have been discriminating against certain categories of motorists for years, with few outcries. Teen-agers, for example, who—the companies can show statistically—tend to have higher accident rates. But questionnaires sent by the House Judiciary Committee in the course of its 1967 study, elicited admissions from several companies that they cannot statistically support some of their occupational exclusions.

PROTESTS OVER NONRENEWAL

Similar controversy surrounds the question of cancellation or nonrenewal of a policy by an insurer. The files of state insurance commissioners bulge with letters from irate motorists whose companies no longer want their business. The most common reason that companies drop motorists (aside from such reasons as nonpayment of premiums) is an excessive claims record. Often, however, companies refuse to give any explanation for failing to renew a policy.

Moreover, many motorists complain they have been dropped as a result of accidents deemed by police to be the fault of the other party. One insurer, pressed for an explanation by a motorist who was dropped after an accident for which he was not liable, wrote:

"It has been established beyond the shadow of a doubt that the individual who is involved in auto accidents, regardless of whether he appears to cause them or not, is much more likely to have accidents in the future than is the person who is accident-free . . . [Studies have shown] that involvement in an accident, regardless of who was at fault, was the important consideration."

What makes the plight of a policy-holder dropped for reasons beyond his control even more troublesome is the fact that other companies often adopt a hands-off policy toward motorists whose insurance has been canceled or not renewed, regardless of the reason for the action. States the House Judiciary Committee report:

"Some companies have rigid standards against accepting, for a period of three years . . . a policy-holder who has been canceled by another company. If insurance is obtainable at all, it frequently is obtainable only at an increase in rates and with limitations in coverage."

EXAGGERATION CHARGED

Industry spokesmen argue that sharp and discriminatory underwriting practices are often exaggerated. They cite figures indicating that cancellations and nonrenewals affect only 1 per cent of the policies written. Senator Magnuson, on the other hand, points out that with 90,000,000 insured motorists on the road, a 1 per cent nonrenewal rate is significant. He is distressed further that the industry has never offered figures showing the percentage of cancellations and nonrenewals among motorists who have had claims filed against their policies.

Many Americans, while deploring discriminatory underwriting practices, nevertheless defend them with the argument that business, after all, has a right to choose its customers. Critics of the auto-insurance industry, on the other hand, say the right cannot be absolute in situations in which the customer has no choice but to buy while the seller can choose not to sell. And auto insurance or its equivalent is compulsory in all states.

In theory the imbalance between buyer and seller introduced by compulsion is righted by the existence of state insurance commissions. Critics, however, argue that most commissions have been less than zealous in protecting buyers' interests against arbitrary industry practices. The House Judiciary Committee report found evidence of "co-operative arrangements" between state regulators and in-

surance companies that, it said, probably "can not be attributed solely to symbiosis."

Whether the answer to the industry's ills lies in Federal regulation is a matter the Department of Transportation will spend the next two years in trying to determine. Even at this early date, however, it is apparent that the system is in for some changes.

BASIC PROTECTION PLAN

The most talked-about proposal for change is a plan put forward by two law-school professors that would transform the auto-insurance system from one that protects against liability to one that protects against loss. The Basic Protection Plan of Professors Robert E. Keeton of Harvard and Jeffrey O'Connell of the University of Illinois is a system of direct compensation in which auto-insurance claims would be paid out the way health and accident claims are paid out—by an insured's own company without regard to fault.

The victim of an accident would forward his medical and other bills to his company and be recompensed. The plan has two immediate advantages. It creates a mutual self-interest—prompt, equitable settlement—between the insured and his source of redress, the company that insures him; and it avoids the time-consuming and often fruitless search for negligence. As insurance critic Daniel P. Moynihan has pointed out: "Much of the time it is impossible to determine who, if anyone, was to blame for the accident, but it is always possible to find out who gets hurt."

"Automobile accidents are caused by human drivers, acting heedlessly. They remain private wrongs by private citizens. No compelling reason exists to abolish private responsibility . . . ."

And so the great auto-insurance debate continues. And premiums soar. In Boston, the policy that sold for $264 seven years ago now costs $528. In Manhattan, $700-a-year premiums are common. Nationwide, private-passenger liability insurance rates have risen almost 30 percent since 1960, reflecting the rise in hospital expenses, repair bills, jury awards—and a traffic-injury toll climbing 60 percent faster than motor-vehicle registrations.

Insurance men find it harder and harder to push rate increases past state insurance commissioners not noted for their hard-nosed attitudes toward the industry in the past. "We're taking a hell of a beating, financially and psychologically," one insurance representative confided in Washington the other day. "Something's going to have to give, or our product is going to become so expensive that no one will be able to pay the price."

Mr. MURPHY. It is only fair to put the problems in perspective, however, and industry sources point out that only 1 percent of total policies are canceled or not renewed. But as Senator Magnuson pointed out in a recent Senate speech, 1 percent of 90 million is not insignificant.

In six major cities across the Nation a recent study found that rates have been rising at 5 to 6 percent a year, or two to three times the cost of living. This hits hardest at low- and middle-income families who are least able to afford the high rates.

Today, approximately 30 million of 102 million licensed drivers are classified as high-risk drivers. Insurance companies can sometimes cite statistics to show that some types of drivers are more costly to insure, but the study of the House Judiciary Committee showed that often statistics do not support high-risk classifications.

A second major problem revolves around the obvious flaws in our national system for compensating motor vehicle accident victims. For example, in 1967, it cost most companies an average of $2.20 to pay an accident claimant $1. By comparison, it costs Blue Cross $1.07 to process $1 in benefits. The disparity is alarming.

In addition, the legal machinery to handle personal liability cases is not sufficient to cope with the increasing number of these cases. An

average case is on the calendar for 31 months—6 years in Chicago—before it is heard.

There is an additional problem today resulting from the failure of many high-risk companies. Since 1960, 70 of these high-risk companies have failed, leaving 300,000 people, many of them badly injured, with $100 million in unpaid claims.

All of these flaws and abuses in our present system of automobile insurance are now focused at the national level. Under the McCarron-Ferguson Act, States were given the jurisdiction to regulate and supervise the insurance industry. But today there is an obvious need for a national review of the entire system. Pressure has come, not from past congressional studies, but from an increasingly loud and demanding public.

Today this subcommittee is answering that public outcry. You are being asked to consider House Joint Resolution 958, which would authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle losses.

The comprehensive study authorized by this joint resolution will provide the information on which the Congress may determine national policy in this vital area of consumer interest. I see no reason why such a study would not be welcomed by responsible elements of the insurance industry as well as the automobile driver, and the public in general, because both suffer from the inadequacies of the present system.

I urge this subcommittee to take prompt, affirmative action on this legislation.

Mr. Moss. Thank you very much, Mr. Murphy.

Mr. Keith?

Mr. KEITH. No questions, Mr. Chairman.

Mr. Moss. I have no questions at this time but I do want to commend you for an excellent statement and express my personal appreciation for the clear commitment to support the resolution.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Moss. Our next witness will be Mr. Ken Meiklejohn appearing on behalf of the department of legislation of the AFL-CIO. Mr. Meiklejohn.

STATEMENT OF KENNETH MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. MEIKLEJOHN. Mr. Chairman, Mr. Biemiller who was scheduled to testify, wanted me to express his regret that he could not be here. He is unavoidably detailed. He asked me to appear in his stead.

My name is Kenneth Meiklejohn. I am a legislative representative of the American Federation of Labor and Congress of Industrial Organizations.

As Mr. Biemiller would have done if he had been here, I appear here on behalf of the AFL–CIO.

We appreciate this opportunity to testify in support of House Joint Resolution 958, authorizing a comprehensive investigation of

the automobile insurance industry by the Department of Transportation.

I am sure, Mr. Chairman, I do not need to review in detail for the members of this subcommittee the prima facie case that has already been made in behalf of such a study: the widespread criticism of the prices and underwriting practices of the industry, and the importance of establishing an efficient and equitable system of automobile insurance for the motoring public and for all citizens who may ever be involved in an automobile accident.

Let me just mention a few of the kinds of abuses that have been developing, in part summarized from the Congressional Quarterly, material we have received from members of our unions and material we have obtained from other sources.

Let us suppose an elderly man is driving down a suburban street. Suddenly he is hit in the eye by a BB shot from a gun fired by an unidentified child. The man swerves off the road and hits a little girl.

Who was to blame? A boy with a BB gun whom the police never found.

But under the current method of distributing insurance claims, unless the boy is found and his parents sued, no one gets any insurance money from the accident.

Or suppose you are a recent divorcee, a Negro, a barber, or even a clergyman. In such circumstances you might not be holding an insurance policy in the first place. Some insurance companies have been shying away from these people as too great a risk.

Or, if you live in Chicago and go to court to obtain compensation for damages, it may be 6 years before a decision is reached in your case, no matter how meritorious it may be. Courts throughout the Nation have a huge backlog of cases.

Or, if you are involved in an accident—even a relatively minor one—you may find that your policy is canceled.

Or, perhaps more frequently than anything else, when you open your next premium notice you may find that you will have to pay more for the same insurance. Insurance rates have risen dramatically in the last decade.

Working people are among those hardest hit by soaring car insurance costs and arbitrary cancellations. With factories now so widely dispersed and beyond the reach of obsolete public transit systems, their car is for many workers the lifeline to their jobs. But insurance companies can, and all too often do, threaten that lifeline through their ability to withhold insurance, or at least to extract crushing fees for it.

On such a record, we believe, clearly the performance of the automobile insurance business in the United States is unsatisfactory. The system is slow, inadequate, and expensive. We have the right to expect far better performance from the companies and organizations involved in furnishing this essential service to the public.

The President of the United States in his consumer message of February 6, called for the major study such as would be authorized by House Joint Resolution 958. He succinctly summarized the principal faults of our present automobile insurance system: rising premiums; arbitrary coverage and policy cancellations; collapse of high-risk in-

surance companies; unfair compensation to accident victims; and the clogging of the courts with automobile insurance lawsuits taking an average of two and a half years just to get to trial.

The AFL–CIO Executive Council called for a thorough investigation of the insurance industry and the development of Federal legislative remedies in a statement on February 24, 1967. This call was reinforced by a policy resolution of the AFL–CIO convention in December 1967.

This resolution on consumer protection reads in part as follows:

> Congress should undertake a general investigation of the insurance industry in all its aspects, with a view to enacting remedial legislation for abuses and bringing the entire industry under Federal regulation. In the automobile insurance field, proposals for revising the liability basis for insurance payments should be given definite consideration along with other possible remedies.

While we feel, Mr. Chairman, that it is time that the entire insurance industry was brought under Federal regulation in the public interest, the proposed investigation of automobile insurance practices would be a significant response in the insurance area of greatest immediate concern to the public.

State AFL–CIO bodies have been engaged in continuing, though rarely successful, efforts to fight the spiraling rate increases sought by the insurance industry from State insurance departments.

Rates were raised in 24 States in 1964, 40 States in 1965, 23 States in 1966, and the trend continued in 1967.

By December 1967, according to the Consumer Price Index, auto insurance rates were up 45.1 percent over the average for the 1957–59 period, in contrast to a rise of 18.2 percent for all items priced for the index. In some areas auto insurance bills are reported to have jumped as much as 200 percent in the last 10 years.

It has been reported that in at least 20 States, auto insurance rate changes are made without public hearings, and in some cases without public knowledge until after the insurance commissioner has acted on the request for a rate increase.

Rising premiums have invited serious questions as to the validity of underwriting losses claimed by insurance companies as a basis for the constant rate increases. In particular, attention has focused on the failure to take adequately into account any part of the investment income of the insurers in ratemaking.

An analysis published in Forbes magazine (Oct. 15, 1967) indicated that the 16 largest publicly held casualty companies earned over $1.5 billion in investment income, while reporting underwriting losses of some $500 million.

The proportion of the automobile premium dollar that goes into claims payments has been shown to be shockingly low, primarily because of high administrative costs, including salesmen's commissions and excessive costs for claims adjustment.

It has been estimated that actual compensation to accident victims amounts to little more than 50 cents on the premium dollar, and some estimates run much lower. This contrasts with 97 cents on social security contributions, 93 cents on Blue Cross hospitalization premiums, and 83 cents on group accident and health insurance.

Automobile insurance today is a practical necessity for anyone licensed to drive a car. But the problem of obtaining and keeping in-

surance coverage, and especially of obtaining it at reasonable cost, is becoming increasingly difficult for large categories of the 102 million licensed drivers in the United States.

It has been reported, for example, that 30 million drivers are classified as substandard risks by the insurance industry, although many of these people have never had an accident.

Much publicity has attended the revelation of esoteric risk classifications. Age, race, occupation, marital status, what a jury might think of the person in a court case, residence in a slum area, sports car owners as against those with sedate sedans and other classifications have become notorious as devices for refusing to insure or for insuring only at high cost.

Complaints of arbitrary cancellations and failures to renew insurance coverage, together with the prospects of Federal investigation and regulation, have already resulted in moves by the insurance companies to moderate abuses in this particular area.

The effort by the large insurers to cream the market for preferred risks has fostered the growth of unsound companies specializing in high-risk insurance.

One of the early results of congressional probing into the auto insurance industry was a finding that in a period of 6 years, some 80 auto insurance companies had gone bankrupt, leaving more than 300,000 policyholders and accident victims high and dry, with an estimated loss of over $100 million.

The first remedial proposal for Federal legislation in the auto insurance field was introduced in the form of a bill to establish a Federal guarantee fund to make good on the claims against insolvent insurers.

The mounting grievances over the unsatisfactory performance of the automobile insurance system have now reached a full head of steam. Few so-called consumer issues touch the lives of such a large proportion of American families, including the 14 million families of workers represented in the trade union movement.

The occupations of working people include many of those apparently most suspect to insurance companies—such as unskilled workers, stevedores and warehousemen, aircraft workers, barbers, beauticians, bar and liquor store employees, entertainers and even union representatives.

We recognize that the industry does have problems. Medical costs are up nearly 30 percent since 1958, and the insurance industry pays some amount of 4 million medical bills a year. Car repair costs have doubled in 10 years. Jury awards increase in size constantly. Insurance men complain that nearly 90 percent of drivers' claims are fraudulently inflated by dishonest repairmen, policyholders themselves, doctors and lawyers.

Proposals for fundamental reform are now being put forward ranging from opening up group insurance coverage to revision of the entire system of tort liability along the lines of the Keeton-O'Connell plan, including direct Federal operation of a basic automobile insurance program.

We cannot pretend to superior wisdom as to the best solution to the ills of the auto insurance industry, but we are frank to say that we have little confidence that these problems can be ultimately resolved by

voluntary action on the part of the insurance industry or by action of the 50 separate States.

In the investigation of proposals for basic alteration of the auto insurance system, we would urge that full advantage be taken of the experience under workmen's compensation legislation, a system admirable in concept but with many drawbacks in actual practice. We would hope that any new system of accident compensation would represent a distinct improvement over the past.

Mr. Chairman, in behalf of the AFL–CIO, we heartily endorse House Joint Resolution 958, and urge its speedy approval.

Mr. Moss. Thank you, Mr. Meiklejohn.

Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. Meiklejohn, have you any experience in the insurance business, or are you just speaking as one of Mr. Biemiller's staff?

Mr. MEIKLEJOHN. I am speaking as one of Mr. Biemiller's staff and appearing in effect on his behalf.

Mr. KEITH. My experience in the general insurance business and in the automobile insurance is essentially as an insured—a premium-paying insured—who shares the concern of this committee and this Congress and this country.

I do think that in the case you point out here, about the boy with the BB gun who is to blame, and perhaps a later witness can speak to this point; but it is my recollection that perhaps, in some States there is a medical payment policy that could be purchased providing for protection of the innocent bystander that was hurt. I believe that I have such coverage on my policy that would have protected me against any liability that I might have incurred there. I think this is the same philosophy that is expressed in the Keeton-O'Connell plan. I think it has been made applicable in cases like this in some States.

Mr. MEIKLEJOHN. Yes. I was not trying to use this illustration as being a universal rule but this kind of situation does arise.

As a matter of fact, this kind of situation happened to a member of my family. My father was hit under similar circumstances while he was riding in a car and the same problem arose. Fortunately, there was no subsequent injury to anyone on that occasion.

Mr. KEITH. The point I am trying to make is that this really undergirds the argument for such a study.

Mr. MEIKLEJOHN. Yes, that is right.

Mr. KEITH. Because I believe that there are policies available now, and there should be more information disseminated about them so that the alternatives could be understood by the insurance-buying public.

And those of us who think we have a pretty good policy because the premium is low may in reality have an expensive policy. We shall have saved the premium but exposed ourselves to a liability.

Mr. MEIKLEJOHN. Yes, I think that is right.

As I say, we are not trying to generalize too much from this particular insurance but simply to illustrate the kind of situation that can arise.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. Moss. Mr. Meiklejohn, I have no questions. I want to thank you for appearing here on behalf of Mr. Biemiller and the AFL–CIO, and you are excused.

Mr. MEIKLEJOHN. Thank you very much, Mr. Chairman.

Mr. MOSS. Our next witness is David J. Sargent, professor of law, Suffolk University, Boston, Mass., member of the advisory panel on the Keeton-O'Connell plan.

Mr. Sargent, we are very pleased to have you here.

STATEMENT OF DAVID J. SARGENT, PROFESSOR OF LAW, SUFFOLK UNIVERSITY, BOSTON, MASS.

Mr. SARGENT. Thank you very much, Mr. Chairman.

I am very happy to appear before this committee in support of the House joint resolution calling for a broad-scale investigation of automobile insurance.

I agree with everything that has been said here this morning concerning the necessity for such a study.

I agree that there are problems today with regard to arbitrary assignment, the failure to renew, cancellations, fully funded insurance companies and high rates.

But as a member of the Keeton-O'Connell Advisory Panel, I am in the somewhat unusual position of being irrevocably opposed to the Keeton-O'Connell approach to solving these problems.

As a matter of fact, I don't think that the Keeton-O'Connell plan even purports to solve any of these problems with the possible exception of rates.

It is my opinion that they do not succeed in this endeavor and that rates under the Keeton-O'Connell plan would be much higher than they are today.

Now my remarks which you have a copy of are considerably longer than the time you have indicated you would like your witnesses to restrict themselves to and, therefore, if I can——

Mr. MOSS. How long would it take to read your statement?

Mr. SARGENT. I would like to simply go over it in a summary way and not detain you too long.

As all of you know, there is a great deal of compulsion in the United States today to buy automobile liability insurance. In 47 States this compulsion is in the form of so-called financial responsibility laws.

In three States, New York, Massachusetts, and North Carolina, this compulsion is complete.

Now, Professors Keeton and O'Connell propose something that they call compulsory basic protection. I am afraid that the public may well think that all we are talking about is the substitution of one form of compulsory insurance for another.

But the change is much, much greater. From the very beginning of this country if a man was injured in any way other than in a workman's compensation type case and he sought recovery from someone else, he had to prove that the person from whom he was to recover was at fault, that he, the claimant, was free from fault, and that the injuries of the claimant were approximately caused.

If he proved these three things he was entitled to recover for all of his medical expenses, all of the loss of his wages, and for all of his payments suffered without any deduction.

By the same token, if he could not prove that the person from whom he sought to recover was at fault, he was not entitled to recover a penny.

Now Professors Keeton and O'Connell would change all this. They would substitute for our concept of negligence, the philosophy that it does not matter how you drive your car, you are still entitled to recover.

Under the Keeton and O'Connell plan the drunken driver, the dope addict, the criminal who is trying to escape from the police and crashes his motor vehicle, the man who intentionally runs through a red light, the teenager who participates in a drag race on a crowded highway, all of these people are entitled to recover.

I think it only fair to ask yourselves the question, how are you going to finance this kind of system?

The answer is very simple. You are going to take money away from innocent victims and put it in the hands of those who perpetrate the disaster. This violates the principles of fairplay and responsibility.

Professor Keeton says there is nothing immoral about compensating wrongdoers, and I agree. I am not at all opposed to a system whereby the wrongdoer recovers in addition to the innocent, but I am opposed to the system whereby the wrongdoer recovers instead of the innocent and that is exactly what happens under the Keeton and O'Connell plan. Some have described the Keeton and O'Connell plan as a new and revolutionary idea but it is neither. The idea for compensating victims on a nonfault system was first proposed in 1932 in something called the Columbia plan.

I think it interesting to note that in the ensuing 36 years not a single American juristic has seen fit to adopt any of the other compensation plans. One reason for this is that every plan that was proposed until Keeton and O'Connell was vastly more expensive than the present system.

Now Professors Keeton and O'Connell have attempted to eliminate the expense objection in a very direct and simple manner. They have taken away all the benefits. Now it is obvious that you can sell cheaper insurance if you want to reduce the benefits that are payable under the terms of the policy.

Under the Keeton and O'Connell plan, all motorists would be required to buy an accident and health policy even though most Americans already have accident and health coverage.

So for most people this would be a duplication of coverage. You would be entitled to recover something if you were injured in a motor vehicle accident, you would recover from your own insurance carrier regardless of fault, something called net economic loss.

But in the determination of net economic loss you first compute what your lost wages were and you add to this the cost of medical expenses and then you deduct all amounts which you either receive or which you are eligible to receive from collateral sources.

That means you deduct Blue Cross, Blue Shield, union fringe benefits, accident health policies of any other nature, social security, medicare, medicaid, Government employee benefits, all of these must be deducted.

And in excess of the deductions for collateral sources you deduct $100 of the wage loss in excess of collateral sources. You then deduct 15 percent additionally of the wage losses and finally you deduct everything for pain and suffering.

Now if the objective is to provide cheap insurance you can certainly do it by putting the same deductibles into a liability system and I think that policy would cost extremely little because almost no one would be entitled to be paid.

I have a great objection to the deduction for collateral sources. I would suggest to you the analogy of a man who, perhaps, works as a union employee and at some time during the course of his employment it is agreed that instead of an extra $5 a week in his pay envelope he will receive some kind of accident and health protection, some kind of sick leave benefits, and suppose that this man who has now worked in this job long enough so that he has accumulated $2,000 worth of accident and health coverage and he has also accumulated 5 weeks of sick leave.

Suppose some Sunday morning he is on his way to church and his neighbor is coming home from a night on the town in an intoxicated condition and before he leaves the curb the union employee is hit in the rear end so that there is no question about fault.

If this union employee has damages of less than 5 weeks out of work and his medical expenses do not exceed $2,000, he will not recover a penny from automobile insurance premium dollars. He cannot recover against his own insurance company because he has collateral sources and he can't recover from the wrongdoer because each person automatically has an exemption from liability to the extent of the first $10,000 worth of special damages and the first $5,000 worth of pain and suffering.

But on the other hand, consider the case of the drunk who hit him. Suppose this man is irresponsible not only in the way he drives his car but he is also irresponsible in that he never bothered to put $5 aside for a rainy day.

The insurance company will say to him in effect: "Step right up, Mr. Irresponsible, you are just the kind of man we want to take care of. We don't care about all those innocent people you injured. This system is designed for just the likes of you, people who are both bad drivers and who fall into the approximately 25 percent of the population who do not have collateral sources."

Another deduction that I think is most unfair is the deduction of the right to recover for the first $100 worth of economic loss in excess of collateral sources.

This may seem to be a trivial sum but remember this deduction applies to each and every person who is injured. So if a man is again out for a Sunday ride with his wife and three children and he is hit by an intoxicated man, if you will, and all five are injured, this man who is the head of the household, assuming they are all seriously injured, will have a loss of $500 in a motor vehicle accident that was not his fault.

But again, take the case of the drunk. He will recover for all of his loss in excess of that first $100. So I think it only fair to say that a great deal of the $500 which the innocent do not recover is used in order to pay the claim to the wrongdoer.

We are so concerned, supposedly, in the case of the automobile about the drunken driver. The argument is made that he probably is a very nice fellow and that he certainly has a lovely family and he

has mortgage payments and it is too bad for him to get into difficulty for this reason, but I suggest to you that if the drunk should fall down in the tavern, no one is going to bother to take care of the problems that he may have financially.

If he staggers out into the street and falls down in a defect in the public highway, his intoxication will prevent him from recovering.

We now have a system under Keeton and O'Connell that if he can just hang on until he gets to his automobile then his problems are over because he does not have to do anything other than hit his head as he enters his car because Keeton and O'Connell agree to pay you for all injuries which arise out of the ownership, maintenance, and use of a motor vehicle.

You don't have to have an accident in the ordinary sense of that word. Now I think that this is most unfair and most unusual. We have spent millions of dollars in this country trying to convince the public that alcohol and gasoline don't mix. Here comes a plan which says that the one safe place for the drunk is in his motor vehicle. If you want to reduce the cost of insurance, then get the drunk off the highway.

In England, when they recently adopted some rather stringent breathalyzer tests, the accident rate dropped 42 percent in one month. If you reduce the number of accidents by 42 percent, then certainly you will have a drastic reduction in the cost of insurance.

The Director of the National Safety Bureau, Dr. Haddon, said on Friday of last week when he testified in Boston, that the intoxicated driver accounts for more than 50 percent of all highway fatalities. He said that this was truly sick driving. He was not talking about social drinkers. He said he was talking about people, and to quote him, "who had consumed a pint or more shortly prior to getting into their motor vehicle."

I think it is unusual that where everyone agrees that the drunk is a major cause of our accident problem we are now going to have a system which says the automobile is the place where the drunk is the safest he can possibly be.

Another objection that I have to the Keeton-O'Connell plan is that it does not allow a recovery for pain and suffering.

Now the alleged argument for this is that pain and suffering is just too intangible, you can't measure it, you can't relate in dollars the value of pain.

Now I, at least, understand this argument but Keeton and O'Connell are not very consistent, I think, on this point. They never allow you to recover for pain and suffering against your own insurance company but they will allow you to recover for pain and suffering against the alleged wrongdoer if the pain and suffering exceeds $5,000.

So what happens, in effect, is that if a jury returns a verdict of $4,900 for just the pain and suffering, the judge has to turn to the jury, in effect, and say: "You don't know what you are doing, you can't measure pain and suffering in that amount and you, Mr. Claimant, who has heard the jury say that his pain and suffering is worth $4,900, you get absolutely nothing."

And yet if a jury comes back and says that the pain and suffering is worth $5,100, you are now in the area where even Professors Keeton

and O'Connell admit you can measure pain and suffering, this claimant does not get $5,100, he gets $100.

I don't think you will ever convince the American public that when they have $5,100 worth of pain and suffering and a jury has determined that that is what they in fact endured, that all they are really entitled to get is $100.

Perhaps my greatest objection to the Keeton-O'Connell plan is that millions of Americans will be deceived into believing that they have some kind of liability protection. Today, if a person has a minimal liability policy, as Congressman Keith knows, en masse our compulsory coverage is only $5,000 and $10,000, but if a man has a minimal policy he knows that he is entitled to a complete defense in the event that suit is brought against him, meritoriously or not. He knows that the insurance company will investigate for him, that they will try the case if it ultimately comes to trial and the insurance company at their expense will bring in medical experts for the purpose of trying to minimize the amount of the damages.

But under the Keeton and O'Connell plan, millions of Americans will buy that which they are compelled to buy and when suit is brought against them the insurance company will say, "You have an accident and health policy with us, go out and investigate the case yourself. Hire your own lawyers, bring in your own medical experts." You have no one to defend you in the event suit is brought against you.

True, you have an exemption from liability to the extent of $10,000 worth of economic loss and $5,000 worth of specials but you do not have anyone who is going to defend you for the purpose of trying to determine whether the amount of damages is in excess of that exemption.

Now much has been said today about the problem of court congestion. I agree that where it exists it is a terrible problem but you can determine that court congestion is not a problem in those areas that have enough judges.

For example, Florida, where is a constitutional guarantee that there will be one superior court judge for every 50,000 population. But whether that is the answer to court congestion, I would simply point out to you that court congestion will be a further problem and a greater problem under the Keeton and O'Connell plan because under Keeton and O'Connell there is the possibility of two separate jury trials.

One, a jury trial against your own insurance company on the compensation case and; two, a claim against the alleged wrongdoer for damagees in excess of the amount of the exemption.

And finally, something has been said today about the fraudulent claim. I think that all lawyers and everybody associated with this problem are very conscious of fraudulent claims and they would all like to avoid them, but under the Keeton and O'Connell plan fraud will be even easier to perpetrate than it is now.

As a matter of fact, the former registrar of motor vehicl'ers in Massachusetts, now a judge in the probate court, James Lawton, has said the Keeton-O'Connell plan would be a "fraudulent claims bonanza." As an example of what I think he has in mind, let me suggest to you a case of a man who is injured bowling or something of this

nature, shoveling snow, and he fraudulently wants to get some insurance company dollars, automobile insurance company dollars, to help him out during his period of disability.

Today, he has to either stage an accident or get another fraudulent friend to say there was an accident and the other person was at fault. Today under the adversary system, you have to convince someone that there was another motor vehicle which was guilty of negligence.

Under the Keeton-O'Connell plan there is no necessity for this fabrication. If a man injures his back bowling, under the Keeton-O'Connell plan all he has to do is to say in his own privacy he felt a twinge in his back as he was washing his car, putting a battery in the car, changing the tires, because again, under Keeton and O'Connell, you do not have to prove an accident, you only have to prove there was an injury which arose out of the maintenance, operation or use of a motor vehicle.

So I think these are some of the things I find particularly objectionable to the Keeton-O'Connell plan. I am sure that this committee is aware of the fact that many of the national news media have indicated that the objection of the organized bar associated to the Keeton-O'Connell plan is that it is going to result in a loss of income so far as attorneys are concerned.

I would like to point out to you that, first, I do not actively practice law, I am not a member of the American Trial Lawyers Association, which has been most active in the fight against the Keeton-O'Connell plan, and I would admit, and I think they will admit that the Keeton-O'Connell plan is a bad plan for lawyers, but that is not a very good reason to oppose it.

I think that the Keeton-O'Connell plan perhaps may be a bad plan for casualty insurance companies but that is not a much better reason for opposing it, either.

Most imoprtantly, I truly believe that the Keeton-O'Connell plan would be a disaster for the public of America if it is ever enacted.

I, therefore, welcome this study and I urge its enactment.

Thank you very much.

Mr. Moss. Thank you, Dr. Sargent.

(Professor Sargent's prepared statement and curriculum vitae follow:)

STATEMENT OF DAVID J. SARGENT, PROFESSOR OF LAW, SUFFOLK UNIVERSITY, BOSTON, MASS.

There is no doubt that there must be changes in the automobile insurance laws and a broad scale study must be made of the entire issue by Congress.

There have been many proposals to solve this problem and one of the most dangerous, exploding on the horizon of America, is an old and discarded auto insurance idea, dressed up in frills and sent forth to confuse and charm an unsuspecting public. This is the so-called Keeton-O'Connell Plan which, if adopted, will perpetrate a disaster on the entire public and destroy our concepts of justice.

This disaster walks in the guise of "social reform" and "revolutionary improvement." It is neither. It is, in fact, reactionary and regressive.

At present the rash of public complaints of abuses of our auto insurance system has led to this and other Congressional committees demanding a full investigation by federal agencies.

The Keeton-O'Connell plan does not answer the complaints of arbitrary assigned risks, refusal to renew, non-explained cancellations, block assignment by race, creed and color, discrimination by age and occupation, involuntary

bankruptcies, and discriminatory underwriting practices. The Keeton-O'Connell proposal, far from stemming the flow of these complaints, will create such tremendous public dissatisfaction as to cause a flood of complaints resulting in almost certain federal regulation of the insurance industry.

The system of justice, under which our nation has existed from its earliest days, requires that when a man is injured and seeks recovery for his injuries from another, he must prove the other person guilty of negligence, he (the claimant) free from contributory negligence and the injuries caused by the defendant.

If he proves these three essential elements, he is entitled to recover for all medical expenses (without any deductions), his loss of earning capacity (without any deductions) and for all his pain and suffering (without any deductions.) If the defendant was not at fault, the claimant is not entitled to recover a penny. This system recognizes the philosophy that a man should not profit from his own wrong.

The Keeton-O'Connell plan would abolish the concepts of negligence and contributory negligence. They would substitute the philosophy that it does not matter how you drive your car, you are still entitled to recover.

The Federal government and private organizations have spent millions and millions of dollars to educate the public that drinking and driving do not mix. But the Keeton-O'Connell plan would eliminate this concept and encourage a disregard for safety-on-the-road principles.

For example, the drunken driver, the criminal who crashes his car while fleeing from the police, the dope addict, the hot-rodder who participates in a drag race on a crowded highway, the man who intentionally runs through a red light or stop sign—all are entitled to recover under the Keeton-O'Connell Plan, even though they may have caused grevious injury to innocent persons as well as to themselves.

OLD PLAN REVISED

It is only fair to ask: How are we to finance payment to those people who now do not recover under our system justice?

The answer is simple: Keeton and O'Connell would take money out of the hands of innocent victims and put it into the pockets of wrongdoers who perpetrated the disaster upon the innocent. To me, this violates the most basic principles of personal responsibility and fair play.

Some have described the Keeton-O'Connell Plan as "new and revolutionary." But, in fact, it is truly a stripped-down version of the Columbia Plan, first proposed in 1932. If the Columbia Plan is, in fact, the basis for the Keeton-O'Connell Plan, one may well wonder, if it is truly so attractive, why not a single American jurisdiction in the ensuing 35 years has seen fit to adopt it?

The answer is: The Columbia Plan and all other plans proposed since then have been vastly more expensive than our present system of liability insurance. Keeton and O'Connell have attempted to eliminate the "expense" objection by removing all the benefits.

The Keeton-O'Connell compulsory accident and health policy requires all claimants to deduct:

1. All amounts actually received, or which they are eligible to receive, from collateral sources (Blue Cross, Blue Shield, union fringe benefits, sick leave, Medicare, Medicaid, wage income protection, etc.).
2. The first $100 of net economic loss (in excess of deductions in 1.).
3. 15% of the actual wage loss in excess of amounts deducted previously in both 1. and 2.
4. All payment for pain and suffering.

It is obvious: You can reduce insurance costs by reducing benefits. A $1,000 life insurance policy sells for a smaller premium than a $10,000 policy.

One can easily see if the same deductions were taken away from the present liability insurance policy, the cost would be almost nothing because there would be virtually no benefits.

The cheapest insurance is no insurance: You pay nothing and you get nothing.

VIRTUALLY NO BENEFITS

The Keeton-O'Connell compulsory insurance plan will be sold for a substantial premium, but will provide most claimants with virtually no benefits.

Professor Keeton argued in Masssachusetts the cost of his compulsory accident and health plan would be 15 to 25% less expensive than the present $5,000/$10,000

compulsory liability insurance. He bases his contention on an actuarial study by Mr. Frank Harwayne of New York City.

But, Mr. Harwayne's study is at best an estimate, since there is no reliable experience on which to base a definite conclusion of costs. In fact, there are other actuarial estimates that indicate the cost of the Keeton-O'Connell compulsory accident and health policy will be even more expensive than the cost of a $5,000/$10,000 liability policy.

Dr. Calvin Brainard, Chairman of the Department of Finance and Insurance, University of Rhode Island, has stated:

If I were advising the motoring public, I would have to separate the good drivers from the bad. I would tell the good drivers to abhor the Bill because it would cost them more and give them less benefits. But I would tell the bad drivers to embrace the Bill because it is made to order for them.

Dr. Brainard did a one-year study on the economic feasibility of the Keeton-O'Connell Plan under a grant from the Walter E. Meyer Foundation of Hartford, Connecticut—the same Foundation which sponsored and underwrote the Keeton-O'Connell study.

M. G. McDonald, Chief Actuary for the Commonwealth of Massachusetts, has determined the cost of the Keeton-O'Connell compulsory policy (accident and health) would be 19% more expensive than the cost of a $5,000/$10,000 liability policy.

Robert Bailey, Director of the Actuarial Division, State of Michigan, has indicated there are many fallacies in Mr. Harwayne's basis for stating there would be a reduction in cost.

But, whether the cost is to be less—as Harwayne estimates—or more, as other experts indicate, we must consider what the public is getting for its premium dollar.

Undoubtedly, there is not a subscriber to this publication who would receive a penny from the Keeton-O'Connell insurance carrier for medical expense even if he were hit in the rear at a red light by a drunk.

The reason for this is the plan requires that in the determination of net economic loss, you must deduct all of the other insurance benefits which you receive or are eligible to receive. For example, let us consider the case of a union member whose union arranges that instead of an additional $5.00 weekly raise, he would receive, in lieu, certain sick leave benefits and an accident and health policy.

This employee, in effect, puts away $5.00 a week for a rainy day. And, at the end of a given number of years, he has accumulated five weeks of sick benefits and a $2,000 accident and health policy.

If this employee is injured when his car is struck by a drunk driver and he is out of work for five weeks and has medical bills of less than $2,000, he will recover not a cent from his automobile insurance.

THE IRRESPONSIBLE DRIVER

Let's consider the drunk who hits the union member and who, himself, is injured. Let's assume that this man is irresponsible, not only in the way he drives, but in failure to buy income wage protection and an accident and health policy.

He never bothered to save the $5.00 a week for a rainy day. To that man the insurance company will say: "Step right up, Mr. Irresponsible, you are just the man we want to take care of."

Professor Keeton maintains there is nothing wrong with this. A man is not entitled to make a profit from an injury. But the innocent driver paid two premiums. The Keeton-O'Connel philosophy penalizes a man for being prudent.

Virtually no one will benefit under Keeton-O'Connell, except those who are irresponsible in the way they drive their cars and irresponsible in failing to protect themselves and their families against the pitfalls of life.

Let's consider the analogy of life insurance. One man chooses to buy a $10,000 policy and when he dies his estate is paid $10,000. But his neighbor buys two $10,000 policies and he dies. We don't say to his estate, "You are only entitled to $10,000."

The holder of these two policies bought and paid for this additional coverage.

Social Security is considered one of the greatest social reforms in American life. The Keeton-O'Connell Plan also purports to be a social reform.

But let's contrast them:

Under Social Security, two neighbors earn the same salaries. But one lives a frugal life and manages to save $20,000. His neighbor spends what he earns and has no savings. When both reach 65, the Social Security Administration doesn't say to the frugal man: "You must use up your $20,000 before we pay you your benefits."

Let's assume again that a man is injured by a drunk in January and is compelled to exhaust his sick leave benefits and accident and health benefits.

If this same man becomes disabled in June, due to a non-automobile related disability and incurs medical expenses and suffers lost time from work, he has no protection to fall back on since he was compelled to exhaust his benefits for an automobile injury which was not his fault.

Again—to show the injustice of the Keeton-O'Connell compulsory plan—let's consider the obligatory deduction of the first $100 of net economic loss usually, for example, lost wages and medical expenses in excess of sick leave benefits and accident and health insurance. This deduction may appear to be small, but it applies to each and every person injured in a car accident. That means, if the innocent driver is riding with his wife and three children, and all five are hurt and each incurs medical costs over $100, the total loss to the family head (policyholder) is $500 for an accident not his fault.

But the drunk who hit him can recover for all of his medical expenses and wage loss in excess of $100.

Obviously, the $500 which was not paid to the innocent victims is in large measure paid to the drunk who hit them.

The compulsory Keeton-O'Connell policy pays absolutely nothing for pain and suffering—i.e., loss of a leg, an eye, or disfigurement by facial scarrings.

Keeton and O'Connell explain this exclusion by contending that pain and suffering is so intangible it can't be measured. They say, "It is impossible to determine how much a headache is worth." Or, if a man is stretched out on a Striker frame for three weeks, you can't determine the worth of his pain and suffering in dollars. So they won't pay him anything.

If this argument has any validity, if pain and suffering really is not measurable, then it is *never measurable.* But if it is *ever measurable,* then it is *always measurable.*

But Keeton and O'Connell are inconsistent on this point for they *do not allow* any payment for pain and suffering under their compulsory policy, but they *do allow* recovery for pain and suffering against the wrongdoer in excess of $5,000.

What is so magical about the figure of $5,000? Who has the right to set that or any other figure? Why is it, if a jury finds in a suit against the wrongdoer that pain and suffering is valued at $4,900, the court has to, in effect, say to the jury: "You don't know what you are talking about, pain and suffering is 'too intangible' to determine."

But, if the jury should award $100 for pain and suffering, then the judge must say: "You now know what you are doing and you can determine with certainty the value of pain and suffering."

And then the judge has to turn to the innocent victim and tell him that, although the jury determined his pain and suffering was worth $5,100—and although this means the jury is in the magical area where admittedly it can determine with certainty the worth of pain and suffering—the recovery is not going to be $5,100 but *only $100.*

But what is perhaps the greatest misconception is that the public is unaware that the compulsory Keeton-O'Connell policy is NOT a liability insurance policy, but is essentially an accident and health plan, which, for the vast majority of most Americans, is an unnecessary duplication of the insurance coverage they have already purchased.

Keeton and O'Connell does give an exemption from liability to the first $5,000 worth of pain and suffering and the first $10,000 of other damages.

BUT, it does not EXEMPT a person from being sued and, if a compulsory Keeton-O'Connell policyholder is sued, he must retain his OWN lawyers, his own investigators, and his own medical experts—all at his own expense even if it develops that the claimant's damages are not in excess of the amount of the exemption.

Imagine public reaction when so many people buy pretty much the minimum coverage (and experience has shown they're going to buy this kind of policy),

and they come to an attorney with a writ and are told this is going to cost $1,000 to defend, even though he may win the suit.

Professor Keeton states that he doesn't recommend that anyone take only basic protection. He says one should take additional liability coverages as any well insured person would today. A well insured person doesn't get by on $5,000 or $10,000 worth of liability coverage.

Professor Keeton alleges that the cost of this additional liability would be the same as the cost of what one now pays for a corresponding amount of excess liability coverage. But, there is no basis for Professor Keeton's contention. For example, in Massachusetts the minimum compulsory liability has a $5,000/$10,000 limit. To double this amount—$10,000/$20,000—costs only 15% more than the $5,000/$10,000 policy price. The reason for this is simple: a large portion of the premium dollar in the original $5,000/$10,000 liability package is for the cost of investigation and defense. Thus, to be insured for twice as much as before, the cost of administration and the probable cost of defending the suit has already been figured. It doesn't cost the insurance company more money to defend a case in which the damages are $10,000 than it does to defend the case in which the damages are $5,000.

Since the costs of administration and defense have already been figured, the additional 15% simply covers their exposure to additional liability, but practically no additional cost of administration.

But although the Keeton-O'Connell policy provides for an *exemption* from liability for the first $5,000 of pain and suffering, it is not a liability policy. Therefore, if one wishes to secure liability protection against suit from the $5,000 exemption on upwards, one can not buy, for example, the additional $5,000 worth of liability at the small cost of 15%.

One must buy a brand new liability policy into which the entire cost of administration and defense must be figured. This will be much more expensive.

Thus, for the person who is well insured because he has purchased a liability policy, as well as the compulsory Keeton-O'Connell accident and health policy, the composite cost of this package is greater than the cost of an equal amount of straight liability insurance.

Yet, with this added cost, he will, if he is injured by a wrongdoer, lose:

1. The benefit of collateral sources.
2. The first $100 of net economic loss beyond his collateral sources.
3. The first 15% of his wage loss in excess of 1 and 2 above.
4. The first $5,000 worth of pain and suffering.

Thus, as Dr. Brainard has aptly said: "The good driver pays more and get less benefits."

Professor Keeton, in talking of fraud, has indicated that there is more fraud than there should be. I am certain that every lawyer and every citizen regrets it. We do not want it; we'd like to do something about it.

Let's examine the Keeton-O'Connell Plan and see if it truly alleviates the problem of fraud.

Today, if a man injures his back bowling or shoveling snow, and "wants" to find somebody to pay for the injury, our adversary system compels him to charge that someone else hit him in a motor vehicle and that the other person was at fault.

Professor Keeton may talk about the phantom auto accident cases all he wants, but the fraudulently inclined man still has to indicate in law that there was someone else involved. The fraud may have to go to a friend and stage a dummy accident, or at least say they had one.

But, under the Basic Protection Plan, one is not compelled to do that. The Basic Protection Plan covers one for economic loss arising out of the ownership, maintenance, or use of a motor vehicle. It covers the drunk when he stumbles getting into the car or when he stumbles out. If he hurts himself at this time, he's covered.

If one hurts his back polishing his car, he is covered. If one injures himself putting in a new battery he is covered. If one is hurt opening the car door, he is covered.

Now where is the greater opportunity for fraud—in an adversary system where one must convince a court that somebody else struck him and the other person was at fault? Or in a system where the person need only allege that—in his own privacy—he got a twinge in his back polishing his car?

In Massachusetts, the former Registrar of Motor Vehicles and now Probate Judge in Plymouth County, James R. Lawton, has characterized the Keeton-O'Connell Plan as "A Fraudulent Claims Bonanza."

Professor Keeton says that court congestion is a big problem. In many metropolitan areas, there is no question but that it is.

In Massachusetts, however, the Chief Justice of the Superior Court, G. Joseph Tauro, took a public stand on this portion of the Keeton-O'Connell Plan to state that "there's nothing which indicates that the Keeton-O'Connell Plan will in any way reduce litigation."

In fact, court congestion will be compounded. In the Keeton-O'Connell proposal, there is the possibility of having two cases whenever there is any kind of serious injury. One may have one suit against his own insurance company, and then a second suit against the alleged wrongdoer. And, one may have a right to a jury trial in both cases.

Professor Keeton points to the small claim. He says (and I hope I'm not paraphrasing him incorrectly) that these small claims are almost a blackmail on the insurance company—people say that they were hurt when, in fact, they really weren't—or they say that the other person was responsible when, in fact, he really wasn't.

Keeton adds that, on this basis, the insurance company will pay $300 to $400 just to get out from under because they know it would cost them $1,000 to defend the suit.

Yet that problem will still exist, except that instead of an insurance company it will now be the individual who will bear the expense of the lawsuit.

For example, an individual is involved in a motor vehicle accident. He has just the basic protection policy, a compulsory policy, and someone brings suit against him. He knows he wasn't at fault. He knows if the case is tried to conclusion, he's going to win. But, he also knows that it's going to cost him $1,000.

As a matter of fact, if it costs an insurance company $1,000 to defend a case, working on a mass basis with full-time lawyers and full-time investigators and doctors who probably work on a cheaper rate bulk than they do on individual cases, what is it going to cost an individual?

Isn't there—if one wants to think that there are some people who will blackmail—the same opportunity to blackmail under the Keeton-O'Connell Plan as under the present system, except that the blackmail is against the individual, since the money (where there is nothing but the basic protection plan) must come out of the pocket of the individual rather than out of the insurance company?

The only person who stands to benefit under this system is the bad driver who is also an irresponsible citizen in that he has failed to meet his obligations to himself and his family by not having purchased accident and health insurance and wage income protection.

As the former Lt. Governor and Attorney General of the Commonwealth of Massachusetts, Francis E. Kelly, has said:

"This Bill should not be called Basic Protection. It should be named the 'Drinkers and Reckless Drivers Protection Bill.'"

CURRICULUM VITAE OF PROFESSOR DAVID J. SARGENT

Professor David J. Sargent was appointed by Prof. Robert Keeton of Harvard University School of Law for three years as an unpaid member of the important Advisory Panel for the Keeton-O'Connell Basic Insurance Plan.

Known both as a scholar and an authority on automobile insurance plans, Professor Sargent has lectured before bar associations and other interested groups throughout the nation and has authored basic papers used in research on the subject. He has appeared before numerous state legislative bodies including the New York Joint Legislative Committee on Insurance as well as legislative committees in Massachusetts, Connecticut, and Rhode Island.

A teacher at Suffolk University Law School—one of the five largest accredited law schools in the nation—since 1955, Professor Sargent was named to a full professorship in 1962. He is responsible for courses in tort law, trusts, wills and agency.

During the administration of former Attorney General for the Commonwealth of Massachusetts Edward W. McCormack, Professor Sargent served on the

major Advisory Committee on Public Charities charged with the responsibility of revamping the statutes governing public charities dating back to Colonial Days. The Committtee's work has become a referring standard for State regulation of public charities in the majority of the 50 states and has been used by Foundations specializing in this field.

Professor Sargent received his pre-legal training at the University of New Hampshire and was graduated from Suffolk University in 1954, magna cum laude and president of his class.

He was admitted to practice in the New Hampshire Bar after receiving official notice of the highest mark recorded in a bar examination in that state.

He was admitted a short time later to the Massachusetts Bar. He is an active lawyer and a frequent consultant by members of the Massachusetts Bar.

He is a member of the American Bar Association, Massachusetts Bar Association, Mt. Vernon Lodge, A.F. and A.M. and the Alpha Delta Law Fraternity (whose most noted member is the Retired U.S. Supreme Court Justice, Tom C. Clark).

Mr. Moss. As I indicated in my remarks following the questions of the very distinguished Member from Illinois, Congressman Springer, it was because of the conclusion reached by me and by Senator Magnuson that we introduced the resolution calling for a study.

The conclusion that there were not sufficient facts upon which to base any legislation. So, of course, we are not considering as a legislative vehicle the Keeton-O'Connell plan.

I believe that we sought, as the other body did, the views of the representative of that plan on the wisdom of a study. It is in a sense in the context of the study only that we are interested in any plans or proposals because until that study is made, I do not think we would be qualified to make the kind of judgments as to whether or not there is a need for Federal legislation or the nature of that legislation which might ultimately be required.

Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

I concur in the sentiments which the chairman has just expressed with reference to the mission of this committee at this stage of the game.

I do think that it is helpful to get some education of the sort that you have offered because it is going to be a long and slow process whereby we become qualified to sit in judgment of the recommendations of the Commission 2 years from now more or less.

It is my understanding that no State has thus far authorized the Keeton-O'Connell approach. Is that correct?

Mr. SARGENT. That is true. As you undoubtedly know, it passed the house of representatives in Massachusetts very surprisingly and it was then sent to the senate where it was, after 3 weeks of study, and there had been no study in the house, defeated or at least there was an adverse recommendation by the ways and means committee, 9 to 1, ultimately it was defeated on the floor of the senate 28 to 10.

But I think that the problem with the Keeton-O'Connell plan is that a plan which promises to pay both the innocent and the guilty and cost less money than a system that pays just to the innocent has greater lure.

It is awful difficult to be opposed to that kind of plan.

As you undoubtedly know, in Massachusetts when the bill did pass the house of representatives, the Governor, John Volpe, said that despite the fact he had a plan of his own, the Keeton-O'Connell plan had considerable merit.

Yet 5 days later, the Governor had to say that if it passed the Senate he would veto it because he, too, I think, was confused by the promise of the plan as opposed to what it actually gave.

Mr. KEITH. You heard my exchange with the representative who preceded you?

Mr. SARGENT. Yes, I did.

Mr. KEITH. Is the medical payments feature of the insurance that is offered in the State of Massachusetts in a way in keeping with the Keeton-O'Connell philosophy?

Mr. SARGENT. It might be termed something of a baby Keeton-O'Connell because under your own medical pay if you were injured in the example that the previous speaker suggests, the man who was hit by the BB gun, he could recover from his own insurance company for his injuries.

Mr. KEITH. Would not the third party recover?

Mr. SARGENT. Under the normal med pay coverage, no, there would be no recovery, although the insurance companies are at least discovering the possibility of something called the third-party med pay whereby all people you hit would be entitled to compensation regardless of fault.

Mr. KEITH. This is one of the great concerns of this committee, this innocent third party, and I would think that the insurance companies could use some ingenuity and come up with some solution to that kind of problem.

Mr. SARGENT. As a matter of fact, I think they can do it and save money in the process, because today if you and I insure ourselves on med pay and we collide with one another, we recover against our own insurance company so far as the medical is concerned, and then we may have to fight it out against each other so far as total recovery.

But if we have policies whereby my company automatically pays you and your company automatically pays me, so for as med pay is concerned at least, then that in effect is really only a compulsory advance payment.

What is paid out is ultimately credited to the amount that you are entitled to on a tort basis. So I think they can save money, they can avoid a duplication of payment for the same claim and yet I think do it at a very slight increase in cost, if any.

Mr. KEITH. As I mentioned in my preliminary remarks, this is a very old problem in the State of Massachusetts.

When I was in the State senate my constituents were concerned about automobile insurance coverage and costs. I asked some people who were professionally well qualified in the insurance business and some members of the public who had been preeminent in their expressing of concern for civic problems of this sort, to meet with me and to discuss ways of solving this problem.

My proposal was based upon the experience that I had had with a catastrophe policy that was written to cover hospital and surgical insurance. This was at that time a new concept, first, that the insurance companies had brought onto the market shortly after World War II. It provided, in the case of hospital and surgical insurance that an individual could buy a policy to pay only major hospital and surgical bills. It was based upon the recognition that in the smaller claims a large proportion of the expense involved was in administra-

tion. And so there should be a substantial deductible clause; second, there should be a coinsurance clause so that the insured would have an interest in the settlement of the claim. This coinsurance clause and deductible clauses eliminated a great many of the smaller claims. It would give the parties involved if it were applied to auto insurance, a feeling that the insured was himself carrying some of the risk. The insured and the injured parties would have an interest in keeping the claim costs down. This, in turn, would keep the premium down.

My father, who had been in the State senate, said, "Well, Hastings, if you offer that plan, they will say you are in cahoots with the insurance companies, you are not looking out for the policyholder"; so, too, did Governor Herter. They advised me against this thing. I, incidentally, was not in the general insurance business but I was associated with it, in that my father and brother were in that business.

One of my colleagues in the State senate, Richard Lee, who had won by 10,000 or 11,000 votes in 1952, thought that it was a good plan and he filed a bill in the State legislature which would have provided a study of the proposal that I have just outlined. His opponent did exactly as Mr. Herter and my father said they would. This was the chief campaign issue in the campaign that followed. Lee won but only after a recount.

I would like, however, forgetting the political overtones that we have discussed here, to have you comment as to whether or not there is any merit in the application of this approach which I suggested at that time to the problem that confronts us today.

Mr. SARGENT. Yes, Congressman, I think there is great merit in the possibility of doing either of two things. You certainly could cut down appreciably on the cost of insurance by writing a policy whereby the person who was injured had a certain deductible which he had to endure the cost of, himself.

How much this would be, I don't know. How much it would be eroded over the years by juries and judges simply adding onto the amount of recovery because they knew there was the exclusion for the first $100 or $200 or $300 in the form of deduction, but at least that is one possible approach.

Another approach is the one you suggested, in effect you are not insuring a person against liability for the first $100, $200, or $300 worth of damages which may be assessed against him.

You are making him be a self-insurer with regard to that loss. I think there is no question but what this, No. 1, would result in greater highway safety and; No. 2, it is certainly going to result in a considerably smaller insurance premium charge.

By the way, on that same point, I am sure you are familiar with a proposal made by your colleague, Congressman Cahill from New Jersey. We had a seminar——

Mr. MOSS. We will hear from him tomorrow.

Mr. SARGENT. He, I am sure, will give you another suggestion dealing with the problem of the small claim which I think is a very novel and very interesting one.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Guthrie.

Mr. GUTHRIE. Dr. Sargent, you have indicated that you find a study desirable. You have endorsed House Joint Resolution 958. Consequently, you apparently feel there are some problems in this area.

Mr. SARGENT. Oh, certainly I do.

Mr. GUTHRIE. It would seem to me desirable, Mr. Chairman, if Dr. Sargent were willing, to have him submit for the record what he regards as being the problems in this area and reasonable alternatives for solving them.

I gather you feel that the Keeton-O'Connell plan is not of much benefit as applied to these problems. What solutions do you see as being reasonable ones?

Mr. SARGENT. One thing that I certainly think has to be taken care of is the problem with regard to arbitrary cancellations and arbitrary refusal to renew automobile insurance policies.

I would suggest as one method of curing this legislation either by the States, and by the way, the commissioner of insurance of the State of Vermont, Mr. Hunt, has already made a proposal in Vermont to do this, which provides that once an insurance policy is written by a company it cannot be canceled except for motor vehicle violation conviction or for nonpayment of premium.

Now I think that cures the problem to some extent.

Now the Keeton-O'Connell plan does not approach it in this way and in my opinion does not do anything on that problem.

When the argument is made that there is a problem with regard to insurance rates, with regard to the fact that not enough people are compensated, I would say that if there are inequities in the present system, then cure the inequities rather than abolish the entire system.

I would strongly advocate the adoption where they do not already have it as part of their law, of comparative negligence, whereby if a person is injured and he is at least partly at fault he recovers something, depending upon the proportion which his negligence bears to the total amount of negligence rather than the rather harsh rule that if you are even 1 percent at fault you are entitled to recover nothing.

I think something ought to be done with regard to the problem of the young driver and the aged driver. I think that the system is grossly unjust which says, in effect, that when you are the least able to afford to pay for insurance we will charge you the most and in the years when you are most able to afford it we will charge you the least.

I think there is much to be said for the fact that all of us—assuming we will have a normal life span—will be young, middle age and aged, and that it is far better to spread the loss of insurance evenly throughout those years because I think it is an undue burden on young drivers and on aged drivers.

I certainly would recommend that you consider the possibility of insuring the driver rather than insuring the motor vehicle.

I think that when you now have a system whereby tens of millions of drivers pay nothing for insurance, this is unfair.

I think you could spread the base by insuring drivers and I think it would be much more equitable.

I think that the one suggestion that was made concerning auto insurance by Mr. Moynihan in an article you may have read in the New York Times a few weeks ago, one thing he said which impressed me considerably was that the amount you pay for motor vehicle injuries ought to have some relation to the amount of driving that you do.

His thought was that you would finance all of the injury payments out of social security and fund it by adding a few pennies onto the gasoline tax.

Now the theory of that to me makes some sense, but I suggest that you might accomplish the same thing by insuring the driver, because if I, in most instances at least, own a motor vehicle and I am single and I have no other close members of my family living with me, I think in the normal course of events my car is going to be on the highway less and exposed to the hazards of the highway less than the motor vehicle of my neighbor which is owned by one man but he drives, his wife drives, and he has three teenage children that drive. That car will be on the highway a considerable greater amount of time than mine is.

I think that is something at least to be considered. It may have drawbacks but one great advantage to it is that I am strongly opposed to rating people, either because of their race, the red lining of certain nonwhite areas, or age, youth or advanced age, but I am strongly in favor of rating people based on personal driving experience.

I think it is an awful lot easier to do this if you are going to rate individual drivers than if you try to rate a car. The car does not do the injury, the driver does. Therefore, I think that that is something that at least ought to be considered.

Mr. GUTHRIE. Your thoughts on this subject are very provocative. If you could draw back and perhaps submit in writing all of the problems you see in this particular area and alternative solutions to them, it would be very helpful.

Mr. SARGENT. I would be more than happy to.

Mr. MOSS. If that is agreeable, we will hold the record at this point to receive the response in writing.

Mr. SARGENT. Fine.

(The information requested was not available at time of printing.)

Mr. MOSS. I have no further questions. Mr. Keith, have you any questions?

Mr. KEITH. No questions, Mr. Chairman.

Mr. MOSS. I want to thank you very much. I feel that your statement was very thought provoking and very informative.

Mr. SARGENT. Thank you.

Mr. MOSS. Thank you for your appearance.

I ask unanimous consent now that there be included in the record at this point a statement from Mr. William A. Stringfellow, general manager of the National Association of Mutual Insurance Agents.

Is there objection?

Hearing none, the statement will be included in the record at this point.

(The statement referred to follows:)

STATEMENT OF NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS

Mr. Chairman and gentlemen of the committee, on January 26, 1968, our President wrote to Secretary Alan S. Boyd offering our assistance in the study contemplated by this resolution, when and if it was authorized. We should like to repeat the offer to this committee and to also offer our full support. (See letter following statement.)

The statement of the chairman of the Senate Commerce Committee in support of the resolution which appears in the Congressional Record for Thursday, December 14, 1967, is in our judgment a careful and constructive review of the circumstances and problems that have brought about this proposal. We particularly applaud that portion of Senator Magnuson's statement in which he said "What is clear, however, is the need for a comprehensive, objective and nonpartisan study.

The issues which we have been discussing are fundamental and must not become enbroiled in a narrow partisanship, for if they are to be resolved, we need solid information and facts, not emotional charges and counter charges."

We think it is also important to emphasize another portion of his statement, to the effect that ". . . the soaring rate of accidental death and injury on the Nation's highways" statement in the fifth paragraph is part and parcel of this problem and we would hope that the Department of Transportation in making its study would not confine itself exclusively to the insurance and/or compensation problem per se, but include accidents, their cause and efforts to reduce both their frequency and severity as they relate to this problem, which the able Senator has well described.

May we suggest that on page 2 of the resolution under line 16 item (3) the words "the most effective means for realizing such objectives" may well give to the Department of Transportation the privilege if not the mandate to determine to what extent the tragically high frequency and severity of automobile accidents is complicating this already difficult problem.

We would further, Mr. Chairman, like to point out specific measures which have been taken, either by segments of the industry or the industry at large, toward an improvement of this situation, efforts which have been significant and costly.

The assigned risk programs which the industry has provided in all states to take care of those who were not eligible for voluntary insurance have served an extremely valuable and needed purpose at a very considerable cost to the industry. The cost to the companies can be measured in excessive loss ratios, but our members and other independent agents have served the administrative needs of these unfortunate members of society at a cost far below the level of satisfactory operation because of the relatively low commission paid and the necessarily burdensome service procedures. In short, the servicing of assigned risk business by the agency system and other segments of the industry has been a public service.

Our national association and our thirty-six state and regional associations have consistently supported automobile inspection laws, driver education laws or voluuntary driver education programs, better licensing laws and the more rigid reinforcement of safety and licensing regulations. We have also supported the uninsured motorists provisions in automobile policies, including coverage against the insolvency of the carrier for the adverse car. It is to the credit of the industry that the very liberal nature of the basic automobile liability policy has contributed to its increasing cost. The automobile liability insurance policy in almost all forms has been broadly liberalized over the years to where it offers what we believe to be all needed protection by policyholders. This significant progress in our business toward the better protection and servicing of the public has been supported by our associations and our members (as well as other segments of the industry). These efforts and this progress should not be ignored at times like these when there is a tendency to criticize both the companies and the agents for what we alleged to be faults in the system.

We suggest that it might also be well considered that although the processes of government move slowly at the state level as well as the Federal, that there has been enormous progress in the areas previously cited here as well as others. For example, rigid cancellation laws are becoming more and more the rule rather than the exception, and they are being supported essentially by most segments of the industry, including our association. The concept of advance payment in liability cases and rehabilitation is moving apace and our Association has supported these constructive changes and trends. The fact that they do not take place all at once is a credit to the good sense of the industry, which after all is the trustee of the funds of the policyholders as well as the servant of the public.

Even today a group of ten companies are experimenting with a very liberal guaranteed benefits payment program in one state and are contemplating other states, all designed to better serve the interest of the policyholder. Our Association is considering carefully these experiments and as soon as our Board meets again we will in all probability lend support to these very constructive efforts.

If one may ask why we have not done all these things long ago, then we would say that the problem has been an evolving one. In the realm of human affairs it has not been an enormously long time since the first liability policy was issued on a wagon team. That the industry, state legislatures and state regulators

have not solved all of the problems of compensating victims of automobile accidents in a perfect way, is in our judgment, not surprising. The industry's good name is a part of our concern, and so our support of the resolution is based on the premise that while we have not been perfect in our efforts, the evidence will show that the industry, company and agents alike, has made very valiant efforts to cope with a sky-rocketing problem, arising largely from circumstances beyond its control. We refer to the statistics in your statement of December 14th to the effect that there have been 1.6 million people killed since the coming of the automobile, that over 50,000 will die this year and that 100,000 will die in 1975 unless the death rate is arrested. Without suggesting that we have done all that we might, we do suggest to you that here is the root of the problem and we cite these figures to support our proposition that this study should include the efficacy of safety regulations at both the state and federal level.

We feel free to offer this comment, Mr. Chairman, because we were perhaps the first national organization to support the national traffic and Motor Vehicle Safety act of 1966, which gave to the secretary of Transportation authority to establish safety standards for automobile vehicles and the companion measure which was designed to assist state governments in upgrading highway design standards and driver licensing and training requirements.

We would be the last to criticise the necessarily slow pace of the programs under these laws and we are glad that they are slow enough to be prudent and wise, but we suggest that their effectiveness can have a very direct bearing on this study and on the need for such changes (if any) as may appear desirable in the present compensation system. We would cite to you the efforts of the Insurance Institute of Highway Safety, which we have always supported and continue to support, but we know that much will be said about that from other sources, since it is financed by all of the insurance companies.

In offering the support of our association, Mr. Chairman, we suggest that ours is an organization of approximately 17,000 independent agents, very close to the grass roots reaction of the problem cited by your resolution. These are home town agents, integral parts of their local societies and economies and a very basic part of our American free private enterprise system. While generally speaking, insurance companies will be the source of information and assistance of a technical nature, it is our view that our members may by virtue of their intimacy with the local problems be helpful to the Department of Transportation in this effort.

May we suggest that we are concerned at what sometimes appears to be a wholesale condemnation of the existing tort liability system. It is not perfect, but it has served the insuring public for a great many years and it has not yet been demonstrated that the system per se is at fault. We do not necessarily take the position that no other system will do the job, but we suggest that an improvement of the existing system could well be a much more desirable approach to the problem. Its basic principles are tried and proven over many years. As a result the procedures and institutions under which it functions are established and understood. If our court system does (as is sometimes alleged) become inefficient, who among us would say that we should discard the system? It is our tentative thinking that we might best repair the house rather than tear it down.

Finally, Mr. Chairman, let me suggest that our membership has a great stake in the results of this study. We too are citizens. We too are members of the public. We too have dedicated our lives to serving the members of the American public with professionalism and with fairness. If we are to continue to do our job well and to improve on it by overcoming some of the difficulties which have grown up as this phenomenon visited itself on us, then whatever changes if any are made should take into consideration the very unique fiduciary relationship of an agent to his policyholder, which has characterized our business for many years. If we have not been perfect, we think it can be said that there have been no major scandals in our business for many, many years, and the few that did trouble us many years ago were not related to the automobile insurance business. We have been regulated by the legislatures, we have been adjudicated by the courts and we are now being tried by public opinion. This is fair enough for an industry as large as ours, but we ask that our membership have its day in court before your committee at such time as the final report is made as well as during its completion. It is important to our 17,000 members, their approximately 50,000 employees and the literally millions of policyholders they serve.

While we believe this study can best be conducted at the national level, our support of the resolution should not suggest that we have any reservation about the continuance of state regulation of our business. We are unequivocally dedicated to the proposition that this is an activity that can best be regulated by the states. The many remedial measures already taken, or in the process of being taken by the state legislatures and state insurance departments, is evidence of their awareness and ability to deal with the problem where it should be dealt with, at the local level. We also commend and support the efforts of the National Association of Insurance Commissioners, with whom we also cooperate.

In conclusion, may be repeat our support of Senate Joint Resolution 129 for a study by the Department of Transportation. May we offer our full cooperation and may I thank you Mr. Chairman and members of the committee for this opportunity to express our views.

NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS,
Washington, D.C., January 26, 1968.

Hon. ALAN S. BOYD,
Secretary of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: President Johnson's call for "a major study of automobile insurance" in his recent State of the Union address was received by our association with great interest. As you may recall, on July 31, 1967, we wrote Senator Magnuson commending his request for a comprehensive study of automobile insurance by the Department of Transportation. A copy of that letter was sent you.

Since it now appears that your department will be undertaking this study, I have been authorized to reaffirm our association's commendation and offer of assistance to you and your staff in this vast undertaking. Our members—more than 16,500 independent mutual property and casualty insurance agents—are dedicated to serve their policyholders and the American public in the most effective manner possible. In fact, we feel it is our obligation to do so. The interest shown by you and the President is therefore most gratifying to us.

It is our hope that this comprehensive and impartial study will have the unqualified support of the Congress and the automobile insurance industry. You may be assured that the National Association of Mutual Insurance Agents stands ready to help.

Sincerely,

FRANK K. BAKER, *President.*

Mr. Moss. The committee will now stand in adjournment until 10 o'clock tomorrow morning.

(Whereupon, at 12:15 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, March 20, 1968.)

AUTHORIZING A STUDY OF THE MOTOR VEHICLE ACCIDENT COMPENSATION SYSTEM

WEDNESDAY, MARCH 20, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman of the subcommittee) presiding.

Mr. Moss. The committee will be in order.

I would like to have the record reserved at this point to receive a statement from the Honorable Ronald Reagan, Governor of the State of California, on behalf of the National Conference of Governors in support of the resolution.

Is there any objection?

Hearing none, it is so ordered.

(The document referred to follows:)

STATEMENT BY HON. RONALD REAGAN, GOVERNOR OF CALIFORNIA, CHAIRMAN, COMMITTEE ON TRANSPORTATION, NATIONAL GOVERNORS CONFERENCE

Mr. Chairman, I appreciate this opportunity to submit a statement concerning the auto insurance study proposed in H.J. Res. 958. In my capacity as Chairman of the Transportation Committee of the National Governors' Conference, I can report that the Transportation Committee adopted a policy statement supporting the auto insurance study by the Department of Transportation. The Committee expects further reports and possibly will take further action at their Annual Conference in July. This action was taken at the Governors' recent Mid-Year Meeting in Washington, D.C. The Committee recommends that the states offer their full cooperation to the Department of Transportation in the proposed study.

I have noted that several witnesses before this Subcommittee have called attention to the auto insurance laws of California. They have described them as being progressive and as a model for other states to follow.

I am pleased that California is setting this example of excellence. Our competitive insurance rate law in widely regarded as a model and has worked successfully. Rate setting by a political body in a business where several companies compete is contrary to our Nation's free enterprise system. Auto insurance is not like a public utility requiring certain government regulation. It ought to be free to offer the best services in a competitive market. We have found in California that the citizen consumer is the one who benefits.

We are pleased that last year Florida, Georgia, and Indiana enacted new rating legislation closely modeled after our law.

States can lead the way in developing more workable auto insurance legislation. Each of the fifty states have served as a laboratory of government testing various forms of insurance regulation. Some have worked very well, as in California. We have a special study commission in California looking into ways in which we can improve our own laws.

Mr. Chairman, I would like to leave with you a few recommendations for consideration:

1. The resolution should be amended to allow for representation of state Governors, state insurance commissioners, and state legislators on the advisory committee proposed in Section 4. Or else a separate state officials advisory committee should be formed.

On January 23, 1968, following an announcement of the proposed Department of Transportation auto insurance study, I sent a telegram to Secretary Boyd requesting that a representative of the Governors be appointed to any task force or committee conducting the study.

By virtue of the McCarran-Ferguson Act, passed by Congress in 1945, the states have specific jurisdiction to regulate and supervise the insurance industry. Therefore, any investigation or study of auto insurance will, to a large extent, be an investigation of the adequacy and effectiveness of state insurance laws and regulation. It becomes mandatory, therefore, that the states participate in a meaningful way in the Department of Transportation insurance study. The state officials should be represented.

2. I suggest that the Department of Transportation study determine the actual extent of the problem of the high cost of auto insurance. There are some logical reasons for higher costs such as normal inflation and more and better coverage in the form of higher liability limits, theft and towing charge coverage, medical payments, uninsured motorist protection, etc. We also know that automobile costs and values have greatly increased and naturally have affected insurance costs.

3. I recommend that the Department of Transportation consult with the states on the existent tort-liability systems. They should look into the non-fault type of system which is now being studied by the American Bar Association. Since the tort-liability system is a basic part of our American system of justice, careful study is needed before any drastic changes are proposed.

Many states are eager to improve their auto insurance systems. There are several bills pending in state legislatures to incorporate new ideas and new systems of insurance.

My committee is willing to give its full cooperation to the Department of Transportation study. We realize that ultimately the responsibility to deal with the problems of the auto insurance industry, and the policy holder, and the accident victim rests with the state governments. We are willing to carry this responsibility.

Thank you.

Mr. Moss. I would also, at this time, like to submit for the record an article from the New York Times magazine section entitled "Next: A New Auto Insurance Policy" by Daniel P. Moynihan.

(The article referred to follows:)

[From the New York Times magazine, Aug. 27, 1967]

NEXT: A NEW AUTO INSURANCE POLICY

(By Daniel P. Moynihan)

(NOTE.—Daniel P. Moynihan is director of the Joint Center for Urban Studies of M.I.T. and Harvard, and chairman of the Secretary's Advisory Committee on Traffic Safety Research of the Department of Health, Education, and Welfare.)

In a decade during which considerably more in the way of purposeful social change has been promised than has been delivered, it may well turn out that one of the most important developments was one not at all intended, scarcely noticed, and even now barely appreciated. Somehow, during this time, America began to be sensible about the automobile.

Given the other problems that face the nation, this may seem a modest event. But in the aftermath of a half century during which those problems were all but systematically neglected in the face of any demand, howsoever irrational, made in the name of the automobile, it suggests a change in attitudes of fairly large consequence.

By the end of the nineteen-fifties the automobile was causing four distinct sets of problems, all of which were getting out of control, and none of which was seriously being attended to.

First, the cars were not always carefully built, and in terms of crash-injury protection often hideously designed. Driver training and licensing verged on the

superstitious. The result was a massive public-health problem; something like one vehicle in three was ending up with blood on it.

Second, automobile exhaust fumes had become a major source of air pollution, a matter then approaching the point of crisis.

Third, Federal highway construction was radically altering the design and function of American cities, usually to the sharp disadvantage of the inner-city poor, but with no means for taking such effects into account.

Fourth, the system of accident insurance and claims litigation was steadily paralyzing the American legal system, and at immense cost to everyone involved.

In a series of swift and decisive moves, Congress imposed Federal controls over each of the first three sets of problems. (In the case of highways it was essentially a matter of redirection.) Only the last remains untouched, and clearly this issue also is now being joined. Congressional hearings are about to begin; automobile insurance is about to become a national issue.

The new era in traffic safety, in air pollution and in highway construction came quietly, almost stealthily. Starting in 1964, Congress began enacting legislation having to do with safety features for Government-purchased vehicles, tire standards, automotive exhaust controls and the like.

No great notice was taken until President Johnson in the 1966 State of the Union message proposed a general measure providing for safe cars. Then in a rush of events ending in a Rose Garden ceremony nine months later on Sept. 9, 1966, the decisive battle was fought and won. The largest manufacturing complex on earth, which into the sixth decade of the 20th century had persisted as an utterly unregulated private enterprise, was of a sudden subjected to detailed and permanent Government regulation.

Next, a Department of Transportation was established, making highway design a matter of Cabinet-level responsibility, with a clear mandate to end the mindless obsession of the Bureau of Public Roads with pouring concrete regardless of the consequences to the urban environment.

Nothing comparable has occured since the estabishment of railroad regulation in the late 19th century. But the process was essentially different. The establishment of the Interstate Commerce Commission in 1887 was the result of basic changes in the political attitudes of the nation, preceded by decades of controversy. The National Traffic and Motor Vehicle Safety Act of 1966, by contrast, was preceded at best by a few dozen articles in small magazines and professional journals, and perhaps three books written almost simultaneously with the legislation.

Probably not 50 men in the United States were even aware that President Johnson was going to send up a highway safety proposal. (And not one of them would have predicted it would pass the House of Representatives unanimously!) These were essentially apolitical events.

Thus, not one but two traffic safety bills were passed in 1966. The second of these, the Highway Safety Act of 1966, established pervasive Federal regulation of the traffic safety activities of state governments. Driver licensing, traffic laws, emergency medical services, driver training, all these previously exclusive state concerns fell under Federal control. It was surely the largest single transfer of authority from the state to the Federal level of this generation, indeed one of the largest in American history, but it passed almost without comment.

Similarly, official attitudes toward highway construction have profoundly, but almost silently changed. "Half the people in this building" an Assistant Secretary of Transportation remarked recently, "will die happy if we never again build a foot of urban highway. The construction of urban highways will continue, but the era when government viewed them as an unquestionable good is over.

What happened was that people changed their minds about the automobile. Or rather the people who have the power to direct such matters in America did so. The scientist Michael Polanyi has called attention to how much more common this process is than is generally recognized. One day a society appears to be operating within a well-established and untroubled system of belief, the next day it turns out to have abandoned its old convictions in favor of entirely new ones. (Walter Lippmann suggests something of the same process in his "law of accumulated grievances.")

The point is that the private automobile, as authors Alan K. Campbell and Jesse Burkhead say, "is undoubtedly the greatest generator of externalities that civilization has ever known." Its only possible rival, they add, would appear to be

warfare among nations. One day the country woke up and found it had decided many of those externalities simply did not have to be tolerated indefinitely.

Something just like this is now happening with respect to the automobile insurance system. The problem is precisely parallel to that of automobile safety. The system is not working well as such, and its secondary effects are wasteful and expensive. On either ground change is in order, and given both, change is as near to urgent as a world of competing sorrows will permit.

The presumption that the automotive companies knew more about their business than did their critics went on for a prolonged period of time, and then suddenly was reversed. That same onset of disbelief is now happening to the insurance companies. Change is upon us.

What is involved, however, is not just the insurance system, but the business system. The automobile industry let free enterprise down pretty badly: it did nothing serious whatever about the problem of vehicle safety until its freedom to do so on its own was taken away.

If the insurance industry does no better, we shall doubtless end up with improved liability arrangements, but in the process we are likely to have discredited the integrity and competence of American business management to a point that liberals and conservatives alike must view with dismay.

There are two senses in which the automobile insurance system is not working well. First, it is an extremely *costly* system. Twice as much is paid out in insurance premiums as is received back in insurance benefits. Moreover, the cost of the system would appear to be especially heavy for the poor, and others who can least afford it. Second, it is a grievously *incomplete* system, which fails to cover many of the most serious accidents.

The present system is, for the most part, based on the concepts of tort liability that developed a century ago. In essence, an individual buys protection against the risk that he will *negligently* cause an accident that will injure another person, or damage another person's property. If that should occur, his insurance company is responsible for compensating the victim, up to the amount of insurance coverage. The company, as it were, goes to court and argues the case.

The problem with the system starts right there, at the beginning. It has to do with the nature of traffic accidents. If they were orderly, discrete events, in which cause and effect could be clearly discerned and ascribed to this person or that, then the present insurance system would work well enough. But accidents are nothing of the sort. In the present stage of motor-vehicle transportation, accidents, perhaps specially minor ones, typically involve a whole range of contributory factors for which the concept of a single "cause" or "negligent party" is very near to absurd.

There are something like 13,600,000 automobile accidents per year in the United States. Given the present driving population, automobile stock, and road system, it is unlikely that any but a fraction of these accidents could be prevented, and impossible in the case of a great number to state with any certainty who is responsible. Moreover, as the number of automobiles increases, it can be stated with confidence that the number of automobile accidents will also increase.

The result is an insurance system that is inherently unstable. The number of accidents goes up and up, and so does the number of claims and counterclaims. No one involved has any incentive to moderation or reasonableness. The victim has every reason to exaggerate his losses. It is some other person's insurance company that must pay. The company has every reason to resist. It is somebody else's customer who is making the claim. Delay, fraud, contentiousness are maximized, and in the process the system becomes grossly inefficient and expensive.

A study of traffic accidents in Michigan has shown that "for every $1 actually paid into the hands of the injury victim, $2.20 must be contributed by insurance policyholders and taxpayers." By contrast, group health programs such as Blue Cross and Blue Shield can deliver a dollar of benefits for only $1.07, and the Social Security Administration can do so for $1.02 (not counting, it is true, employers' costs in collecting social security taxes).

Moreover, scholars such as Alfred F. Conard have shown that while settlements of small claims are if anything overly generous, just the opposite is the case where serious injuries and losses are involved: "The plain fact," he writes, "is that if one suffers large economic losses from lost wages and extended medical treatment, he cannot expect to recoup these losses from tort law." Just as certainly, the system is biased against the poor, who are least able to wait out the years of litigation which insurance companies are free and able—and all too often anxious—to use as a bargaining weapon.

In their monumental study, "Automobile Accident Costs and Payments," Professors Conard and James Morgan quote persons who have found themselves caught up in the personal injury automobile accident claim process.

"They were trying to humiliate me for a quick settlement."

"If I had been financially able, I would have held out longer."

"It was too long to wait for a settlement. It seems like insurance companies prolong cases too long."

"It was pretty miserable—justice isn't for the little man. I've had enough of courts. If you have [a] sharp lawyer, you're all set."

"It just dragged and dragged. It threw me from being a self-supporting woman, so that I'm dependent on others."

"The settlement was unfair, but the lawyer said take it or you might get nothing."

"[My lawyer] wanted me to say something that wasn't true. I wouldn't tell a lie for money."

Automobile accident litigation has become a 20th-century equivalent of Dickens' Court of Chancery, eating up the pittance of widows and orphans, a vale from which few return with their respect for justice undiminished.

If the system is stacked somewhat against the traffic victim who is poor and cannot wait out litigation, or who is stigmatized in some way that will deprive him of sympathy before a jury (e.g., a teen-age "hot rodder"), it is also true that the insurance companies are in an equally difficult position. Given the present system, they are by definition the enemy of the victim: it is the role of the company to argue that the victim's injuries, no matter how hideous, are not as serious as he claims, etc., etc. Not exactly a lovable role, nor necessarily a persuasive one given the disparity in the resources between the giant corporation and the lone individual.

Moreover, given the system as it is, other than by beating down claims, the only way the companies can compete with one another is by seeking out "preferred" clients who presumably will have fewer accidents than average. There appears to be some basis in fact for the notion that certain classes of drivers will have a lower rate of accidents than others. People appear to drive as they live, and some live more dangerously, less responsibly than others. The problem, however, is that it is rarely possible to identify such persons individually; it is absurd to think of denying them insurance en masse. In any event, it is socially necessary that automobile insurance be as near universal as possible. Nonetheless, insurance companies—some more than others—seek to "cream" the market, with results that verge on outrage.

For a decade now, students of the subject have been convinced that groups such as Negroes, teen-agers, divorced women and others are significantly discriminated against in the writing of automobile insurance. Perhaps more significantly, many companies writing automobile insurance appear to make it a practice to cancel policies of drivers who have accidents or otherwise get involved with the law. The New Republic writer James Ridgeway reports the experience of a North Carolina man whose policy was canceled.

Asked why, the company said, "Investigation reveals that your automobile coverage was terminated due to circumstances surrounding a parking ticket which your wife received recently." The woman had protested the ticket to the police, because, she said, the meter was broken. Nonetheless she paid the fine. (In this case, the best guess is that by protesting the ticket, she gave the company an opportunity to define her as an unsuitable customer.)

A sociological phenomenon of sorts appears to be at work. Insurance agents are for the most part careful middle-class persons who are suspicious equally of working-class (not to mention lower-class) types who might tend to get into trouble, and educated types who might cause it. Occasionally the categories overlap. A University of California professor on his way back from a world tour stopped in Cambridge last spring to give a series of lectures. He and his wife took a small furnished apartment, and bought a car, thinking to drive back to Berkeley. He applied for insurance at a nearby Sears, Roebuck branch, but unaccountably was turned down. Several days later, a stranger mailed the professor the rejected application form. It apparently had been thrown away by the insurance agent, who had written across it in ball point pen, "Lives on Wrong Side of Massachusetts Avenue."

For some time evidence has been mounting that a very large proportion of persons whose licenses are revoked or suspended continue nonetheless to drive.

And there is hardly any question that this is the case with a great number of those who merely lose, or do not obtain, insurance. This is the beginning of the incompleteness of the present system: the large number of drivers who have no liability insurance, either because their state does not require it, or because it has been canceled.

The uncompensated accident victim had become a social problem as early as the nineteen-thirties, when probably fewer than half the cars on the road were insured and when, as one student put it, "Accident insurance [was] the privilege of those with some surplus income."

Some of the most appalling cases of incomplete coverage, however, arise not from the failure of drivers to insure themselves, but from the concept of negligence as the operative principle behind liability. As applied to traffic accidents, the concept is obviously flawed. For example, in a line of 20 cars, car No. 1 suddenly brakes. A disturbance is generated in the line of cars behind it. The disturbance grows more instable. Finally, car 14 rams into the rear of car 13. Which driver is responsible? Nonetheless, the system manages through various conventions and, fictions to point to some guilty party in most cases. But there are many instances in which clearly neither party is at fault, *and as a result neither party is liable.* A California bar report, soon to be published, recounts a number of such cases:

Two cars, properly driven, collide on a skiddy road without the fault of either. One driver loses his eyesight and the other has to have both legs amputated. Each carries heavy body injury liability insurance. Neither can recover. Reason: No recovery unless the plaintiff can prove the defendant to have caused the injury by his negligence. Here neither was negligent.

One party is traveling down a freeway at 75 miles an hour; the other at the moment decides to change lanes and does so without signaling. The resulting smashup demolishes both cars and sends one man to the hospital with a broken pelvis and the other is killed. Each carried full bodily injury and property damage insurance. Neither can recover for personal injury or damage to the car. Reason: Each party was guilty of contributory negligence.

Defendant runs his car across a sidewalk and smashes into the front room of a simple cottage, killing the grandmother and crippling for life the little children. The cause of the accident was that the driver was hit in the eye with a bullet from a B-B gun shot by someone unknown. The driver carried public liability insurance, but the injured persons cannot recover. Reason: The injuries were purely accidental; the driver wasn't to blame.

Finally, there is an increasing problem of insurance companies that go bankrupt. There is no reason to doubt the general validity of the industry claim that over the past decades they have lost something like $1-billion. One result is that, of the 3,000-odd companies that sell some form of property and liability insurance, 73 have failed during the past five years, leaving the policyholders without protection. In consequence there is now a growing number of cases in which accident victims are left helpless. The plight of the victims, if never standard, has nonetheless a consistency to it: the promising high-school athlete, the smashed school bus, the endless operations and deformed limbs, the mortgaged farm and ruined parents. The firm that had insured the truck had gone bankrupt.

As stated earlier, the secondary effects of the present insurance system are wasteful and onerous. The most ironic—and absurd—of these secondary effects is that the liability system has worked in such a way that the influence of the insurance industry in the field of traffic safety has been almost entirely negative. The central myth of the pre-scientific stage in this field was that drivers are responsible for accidents *and can be made not to have them.*

This view harmonizes so well with the tort system of adjudicating traffic accidents on the basis of who was at fault that over the decade preceding the imposition of Federal safety regulation, the insurance industry was steadfastly indifferent to or even opposed to all serious proposals made in the field. In logic, those in the insurance industry should have been at the forefront of traffic safety research and development. In fact, with the honorable exception of the Liberty Mutual Company, their voice was indistinguishable from the chorus of Yahoos in Detroit bellowing about the "nut behind the wheel." They set up the usual trade associations, staffed with the usual incompetents, and spent much of their time conferring citations on one another.

The most serious secondary effect of the existing insurance system, however, lies in its impact on the courts. This process begins with the use of the police to enforce the traffic laws, as a result of which the incidence of arrest by armed

police in the United States is the highest of any society in history. (In 1965 the California Highway Patrol made two million arrests.) The jam starts there, and is followed by a flood of accident litigation cases that derive, in part at least, from the original criminal case. We have now reached the point where accident litigation accounts for an estimated 65 to 80 per cent of the total civil court cases tried in the United States. This in turn has brought us to the point where delays in justice here are the longest of any democracy on earth. It now takes an average of 30.1 months to obtain a jury trial in the metropolitan areas of the nation. In Westchester and Kings Counties, it is 50 months plus. In Chicago it is 69 months plus.

A legal expert in the field, James Marshall, has argued that persons involved in or witnessing an automobile accident are not really capable of reconstructing it in court. The event is too complex, and levels of perception too low. (How would a witness to a shooting respond to a question as to which way the bullet was traveling?) A *fortiori* the attempt to reconstruct such an episode three, four or five years afterward is nigh impossible. Thus the question must be asked whether a social concern of the highest order—the administration of justice—is not being sacrificed to one of a much lower priority, the reenactment of traffic accidents. (As indeed the whole cops-and-robbers, shoot-em-up paradigm for managing the road system must be questioned. It was not just chance that the riots in Watts and Newark began with police arresting a motorist.)

There is little likelihood, however, that greater efforts toward the administration of justice—more judges, or whatever—would change matters. A New York survey has shown that of 220,000 annual claims of victims seeking to recover damages caused by another's fault, only 7,000 reach trial, and 2,500 reach verdict. Given the number and rate of accidents in the existing transport system, a kind of Malthusian principle governs the courts: the number of litigated cases will automatically increase to use up all the available judicial facilities and maintain a permanent backlog. At the time when issues of justice, violence and civic peace are of immediate and pressing concern, to devote the better part of the judicial (and an enormous portions of the legal) resources of the nation to managing the road system is the kind of incompetence that societies end up paying for.

Only one adult response is possible: the present automobile insurance system has to change.

Two courses are open. Given the profit-and-loss record (which doubtless is more complicated than we know), it would on present appearances be a favor to the insurance industry to get it out of the traffic accident business altogether. A simple means of doing this would be for the Federal Government to begin automatically providing all licensed drivers with a minimum amount of insurance against injuries and property loss that they might suffer. Claims could be adjusted in much the same manner as the workmen's compensation system that has been operating for a half century in most states. Awards would be made on the basis of loss rather than fault, and much of the vast, clumsy apparatus of claim, counterclaim, litigation, delay and evasion might be done away with.

Financing such a system might be the easiest part of all. The Federal Highway Trust Fund obligated $3.4-billion in highway-user taxes in 1966 solely for the construction of the Interstate Highway System, which is scheduled for completion in 1973. We are therefore approaching the point when we must decide to go on pouring concrete at the enormous pace of the past decade even after the InterState System is finished or whether to taper off somewhat.

One alternative use for the taxes that were imposed to build the Interstate System would be to finance an insurance system. Automobile liability premiums came to $8.3-billion in 1965; given the egregious wastefulness of the present system, the sums are not disparate. For an extra penny or so in gasoline tax, an efficient national system of accident compensation could be established, modeled perhaps on the existing accident compensation system for Federal employes. This would involve considerable dislocation for those now employed by or involved with the private insurance industry, but these are, generally speaking, valuable workers for whom an orderly transition could be arranged.

By this all too familiar process, government would reform industry. The alternative is for industry to reform itself. A proposal to do just this was put forth last year by Robert E. Keeton of the Harvard Law School, and Jeffrey O'Connell of the University of Illinois College of Law in their book, "Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance." After a definitive exposition of the ways in which, and the reasons why, the present system does not work, they propose a substitute that is simplicity itself.

As Keeton and O'Connell see it, the basic flaw in the present system has to do first with the concept of liability in traffic accidents, and, second, with the relationship between the insurance company and the driver. As stated, for most accidents liability is an elusive and unproductive question. With 103,000,000 licensed drivers, there are going to be an enormous number of accidents regardless. The larger social need is to compensate those who are injured, or whose property is damaged, in such a way as not to bankrupt those who are putatively responsible. Hence they propose a system which would suspend the issue of liability for the first $10,000. The insurance companies would routinely pay up to $10,000 per victim for out-of-pocket losses, which consist principally of medical expenses and wage losses. Much of the time it is impossible to determine who, if anyone, was to blame for an accident, but it is always possible to find out who gets hurt.

The key difference between the Basic Protection plan and the old workman's compensation system is that the new plan eliminates the need to make the often very difficult judgment as to what a sprained back, etc., is worth. The victim is simply paid, by his insurance company, whatever his actual losses in wages and medical expenses and property damage are.

Under this system, persons would still go to court when the injury is permanent and serious—i.e., costing more than $10,000 and, it is hoped, involving someone else's responsibility. But the overwhelming number of small cases would be handled quickly and efficiently out of court. In that way the danger is avoided that in the effort to make settlements prompt, but moderate, some victims with large and legitimate claims will be forced to settle for less than a jury would award.

The second and crucial element in the Keeton and O'Connel Basic Protection plan has to do with the relationship between the insurance company and the driver. As they see it, much of the present misery derives from the fact that this relationship is, with but rare exceptions, an adversary one. The company wants to pay as little as it can; the victim wants to get as much as possible.

Keeton and O'Connell argue that this is inevitable given that the company insures the other fellow. They propose to solve it by the simple process of having the company insure the victim. This is exactly what happens, for example, with fire insurance. Householders buy their own insurance. If their house catches fire, regardless of who is responsible (barring fraud), their company compensates them. The settlement process involves a relationship between a business firm and one of its clients. Thus, the many hundreds of thousands of fire insurance claims are settled each year with nothing like the turmoil accompanying automobile claims.

It is hard to fault the Basic Protection scheme. The authors are right in their facts, and right in the all-important perception as to what it is Americans are good at. We are good at maintaining business relationships once a basis for mutual self-interest is established. The Basic Protection plan would establish one. Moreover, they are right in seeing the insurance issue as part of the general issue of Taming the Automobile, to use the title of a long law review article by O'Connell which proposed many of the present Federal safety programs. (His book, "Safety Last," written with Arthur Myers, was judged by Lewis Mumford to be the best of its kind, in competition even with Ralph Nader's redoubtable "Unsafe at Any Speed.")

Professor Conard has written of Basic Protection that it is "surely one of the most important law books of the current decade. . . . To find legal effort on a similar scale, one would have to go back over 30 years to the famous study by Frankfurter and Green of the labor injunction." Variations on the Keeton-O'Connell proposal are certainly possible. Thus the Massachusetts Democratic Advisory Council has proposed a mixed system, with Basic Protection for personal injuries and liability insurance for property damage. But in all its essentials, it is hard to deny the fundamental rightness of the Basic Protection plan.

Nor is it difficult to see that it provides the private insurance industry with a means for insuring that their business stays private. What then has been their reaction?

The ominous and manifest fact is that the reaction so far has been not very different from—has been very near identical to—that of the automobile industry to the criticism of vehicle design that began in the mid-nineteen-fifties and ended a decade later with Federal regulation. Let it be clear that the rather small group of persons who formulated what are now the general outlines of public policy in traffic safety did not at first assume that Government regulation

was inevitable or even desirable. Almost to the last moment it was fully within the powers of the industry to take on the task itself.

Detroit is now routinely ascribing higher prices to safety regulations, and industry spokesmen recurrently offer dark forecasts of their future under socialism. The conservative economist Milton Friedman has deplored the whole development, stating. "Time and again, laws passed to protect the consumer have ended up by restricting competition and so doing the consumer far more harm than good. Is it too much to hope that one of these days we shall learn this lesson before we enact a new law rather than after?"

A fair point. (Although how much competition there is in an oligopoly such as automobile manufacturing and just how much profits can be hurt in consequence, remains to be seen.) But it is also fair to ask if private industry will ever learn to listen to responsible criticism before it is too late.

Anyone who went through the battle of automobile design will have doubts. Somehow, with the giants such as Ford, Kettering and Sloan gone, the industry fell into the hands of hired managers with a deficient sense of personal responsibility, and possibly also of personal influence. Interestingly, the one company that did take some chances in the name of traffic safety was Ford, which had remained under family direction. But in general the executives in Detroit had little but disdain for their critics, dismissing them as busybodies, Democrats or worse. (Actually, some were solid Republicans, motivated more by a sense of professional ethic than of social reform, but if anything more effective for that reason). The industry listened instead to those who assured it nothing was the matter, and paid fortunes to public-relations advisers who merrily marched them off the cliff.

Some insurance industry executives have given Keeton and O'Connell a hearing. Once again the place of honor goes to Liberty Mutual, with the Aetna and the Kemper companies also playing a role. But by and large the reaction of the industry has been rather like that of the ancient regime, hoping to live out their own careers and resigned to the deluge that follows.

This may be good enough for executives in Hartford getting on toward retirement. It is not good enough for the nation. We are paying a great cost for our present mental slovenliness in this area, which we certainly should not and probably cannot afford.

What is to be done? The first and obvious step is the opening of Congressional hearings, a matter under preliminary study by Representative Emanuel Celler of New York, and others. The role of the Congress in enacting the safety legislation was superb: there is probably not another democratic legislature in the world that could have taken on a private interest the size of the automobile industry and legislated as calmly and effectively in the public interest. It is to be noted that Congressional involvement in this area began with the Interstate Commerce Committee hearings of Representative Kenneth Roberts of Alabama in 1956. Congress was far ahead of both the public and the executive branch, and when the time came to legislate did so with immense competence and style.

As a second step, it is altogether reasonable to ask that the professional business schools of the nation involve themselves with this issue. In the decade that preceded the imposition of Federal regulation on the automobile industry they remained silent. It was a time of moral crisis, but the great complex of business-oriented academics, with their unparalleled access to the business world, maintained their neutrality. The views of Dante and President Kennedy on such persons are well known. But America, as David Riesman reminds us, is a land of the second chance. The business schools have such a second chance: to take on the issue of automobile insurance and develop a community of opinion as to what can and should be done.

Similarly, the American bar has a responsibility here. Apart from the American Trial Lawyers Association, the legal profession contributed almost nothing to the effort to obtain safer automobiles. With respect to automobile insurance, not just the responsibility of the legal profession is at stake, but also its integrity. As much as half the income of American lawyers is earned in accident litigation. For the bar to remain silent about, or actively oppose, reform of the insurance system would have implications that scarcely need elaborating.

But the essential step is for the leaders of the insurance industry itself to take on the issue—directly, openly, willingly. Is this out of the question? Some small part of the future of American private enterprise will be determined by the response to that possibility.

Mr. Moss. I am pleased at this time to welcome a colleague from our full committee, the Honorable John Dingell. Please proceed as you see fit, Mr. Dingell.

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman and members of the subcommittee, for the record, my name is John D. Dingell; I am a Member of Congress from the 16th District of Michigan. I wish to thank the Chair and subcommittee for giving me the opportunity to testify in behalf of House Joint Resolution 958.

Mr. Chairman, I wholeheartedly endorse and urge prompt passage of House Joint Resolution 958, which would authorize a much-needed and long-overdue comprehensive study of automoblie insurance practices. As you know, the President in his consumer message last month recommended that the Department of Transportation, in cooperation with the Federal Trade Commission, undertake an investigation of the automobile insurance industry.

The pending bill provides for just such a study, under the direction of the Department of Transportation, but with the full cooperation of other agencies, including the Federal Trade Commission.

The problems of the automobile insurance industry, and of more and more Americans with the industry, are mounting daily. Time in its January 26, 1968, issue headlined its "Time Essay" of that week, "The Business With 103 Million Unsatisfied Customers." In this essay it is stated that "there is no question that the U.S. auto-insurance system is a model of expensive inefficiency." In 10 years the average premium has gone up 55 percent. The cost of automobile insurance for many families, especially those with teenage drivers, has become almost prohibitive—but at the same time practically unavoidable as well.

Yet in spite of these skyrocketing rates, insurance companies have been facing growing losses. Car repairs keep getting more and more expensive, but medical costs and bodily injury claims have been rising even faster. And in their efforts to protect their investments, one company after another has taken advantage of policyholders, canceling policies with little or no justifiable cause and raising rates on others. Claims, particularly those involving court action, are taking longer and longer to process and are often far from satisfactory in their resoultion.

Many proposals have been put forward to resolve these critical problems, ranging from having the Federal Government get directly into the automobile insurance business to revisions of private insurance so the victims, rather than negligence lawyers and other middlemen, become the true beneficiaries of insurance. Of course, we must also intensify our efforts to prevent these costly accidents which are the main reason for the insurance predicament we find ourselves in.

Under the traffic safety and automobile safety laws passed in 1966, the Department of Transportation is already engaged in efforts to promote the safety of our highways and of our automobile vehicles. It is highly appropriate, therefore, that the Department undertake a study on automobile insurance and all related aspects of accident com-

pensation systems. This is an essential first step in bringing about reforms in a situation that is causing uncounted agonies for thousands upon thousands of our citizens, a situation we cannot allow to continue. I therefore urge prompt approval of this resolution.

Mr. Moss. Thank you for your views Mr. Dingell. If there are no questions we shall hear next from another colleague, the Honorable Joshua Eilberg.

STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. EILBERG. Mr. Chairman, there is no facet of business today which affects the American public, either directly or indirectly, more than automobile insurance.

Automobile insurance is a giant business today. Complete figures concerning automobile accidents and insurance are not available for later than 1966, but I feel sure they have increased since.

In that year of 1966, there were 102 million drivers licensed to operate 96 million vehicles in the United States. There were 13,600,000 accidents in which 53,000 persons were killed and 3,700,000 were injured. In these accidents, 24,300,000 automobiles were damaged.

During the same year, automobile insurance companies collected $9.2 billion in premiums.

And what do we find? This past January, Time magazine termed auto insurance "The business with 103 million unsatisfied customers."

I have been inundated, as I am sure each Member of the House has been inundated, with complaints from constituents concerning automobile insurance. The public has been victimized in various manners and the public is without protection on the Federal level.

In my own State, Pennsylvania, thousands of motorists have fallen prey to unscrupulous insurance operators. In good faith, the motorists have paid insurance premiums and thought they were covered.

But after becoming involved in accidents, they found the companies had disappeared, leaving their claims and the claims against them unpaid.

In the same manner, others who had purchased automobile insurance in good faith from mutual companies, found themselves assessable when the companies mysteriously went out of business.

There are many other complaints. There are arbitrary cancellations because of age, health, or accidents. There have been mammoth increases in premiums as a result of a single accident—whether or not the motorist was responsible.

In fact, disregarding these instances, the average premium has increased 55 percent in the past 10 years.

In view of these facts, in January 1967, I introduced H.R. 4006, which calls for the establishment of a Federal Motor Vehicle Insurance Guaranty Corporation, which would operate in the same fashion as the Federal Deposit Insurance Corporation.

H.R. 4006 would not only protect the motorist from damages if and when his insurer failed, but it would provide for Federal examination of insurance companies to make sure the public is protected from fly-by-night, opportunistic, and dishonest insurance companies.

But what is being considered here today, gentlemen, is House Joint Resolution 958, authorizing a comprehensive study of the automobile insurance industry by the U.S. Department of Transportation, in cooperation with other appropriate agencies.

Similar to my many colleagues, I believe that what functions can be left to the discretion of the several States, indeed should be left within the jurisdiction of the States.

But, Mr. Chairman, I believe it is eminently clear that automobile insurance is a business involved in interstate commerce. Further, it has been shown that many States cannot or will not perform the necessary investigation and regulation of automobile insurance.

If my colleagues feel more investigation is necessary before proceeding with needed legislation in this field, I cannot be a naysayer. Action in this field is not only justified, it is long overdue.

Therefore, Mr. Chairman, I urge without reservation speedy enactment of House Joint Resolution 958, so that we can at last move forward to execute our responsibilities to the public which we serve.

I thank you.

Mr. Moss. Thank you Mr. Eilberg.

Our next witness is another colleague, the Honorable William Green.

STATEMENT OF HON. WILLIAM J. GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GREEN. Mr. Chairman, as one of the first Members of the House of Representatives to urge a full airing of the practices, finances, and policies of the automobile insurance industry, I am pleased that we are making progress. Less than a year has past since Representative Cahill and I spoke on the floor of the House urging a congressional inquiry.

I think it is commendable that the Department of Transportation will be undertaking such a study, but I also think it is necessary for the House to investigate every facet of this problem, and as soon as possible.

We are dealing here with a problem that has grown for more than a decade to the point where it affects millions of Americans daily—through constant pressure for rate increases, through discriminatory practices, through the cancellation and nonrenewal of policies.

What's more, there is the question of fairness to the companies themselves. They claim that they cannot survive in the fact of the constantly rising cost of accidents. In order to make ends meet, they have raised the cost of premiums by 100 percent, 200 percent and even 400 percent in some places in the country.

In my home State of Pennsylvania, we have another serious problem. More than 20 fly-by-night mutual companies have ceased to operate, and they have left individual policyholders responsible for the millions of dollars of debt they incurred. While admittedly, these sums are not as great as the more than $4 billion the insurance companies paid out in claims, they fall much harder on the individuals who must bear them. There is, too, the serious question of insurance companies' bookkeeping methods, which would go unchallenged. Through their own method of computing statistics and through keeping profits from investment separate from income, companies have

been able to picture themselves on the brink of financial disaster in order to get State approval for rate increases. These are all serious questions which will go unanswered for several years if the Department of Transportation alone conducts the study.

Secretary Boyd indicated that it would require some time to hire staff, to set the guidelines and to get his probe underway. I think it would be a minimum of 2 years before we have any meaningful report from him if he is to do the job that is necessary. But the problems I have mentioned in brief face the American automobile owner daily and want attention right now.

I was pleased to learn that Senator Hart is holding hearings in the Senate Anti-Trust Subcommittee. I think it is important for the House of Representatives also to provide some light in this area.

Mr. Moss. Thank you for your views Mr. Green.

We shall hear next from the Honorable George Miller of California. Please proceed, Mr. Miller.

STATEMENT OF HON. GEORGE P. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Miller. Mr. Chairman, I am very appreciative of having been afforded this opportunity to express my support for House Joint Resolution 958 which will authorize an intensive study by the Department of Transportation into the tragic consequences, physical and economic, suffered by those injured in automobile accidents and the adequacy of our present system in the compensation and protection of our citizens.

The present system, which applies the common law principles of negligence and is administered by our civil courts with the extensive use of jury trials, has shown signs of great strain under the enormous volume of litigation. In many areas this has resulted in extended trial delay and high costs of adjudication. Another criticism has been that widely varying amounts of damages are awarded for similar injuries depending upon location of trial, makeup of the jury and other factors not relevant to the merits of the case. Also, the award for damages is a one-time lump sum payment with no provision for continuing medical care or allowance for either future improvement or further deterioration in the physical condition of the claimant.

It also appears that in the modern automobile accident many times there is a highly complicated fact situation where events often take place involving mere seconds of time and calling for highly sophisticated judgments and quick physical responses. It is extremely difficult, if not impossible, to apply the traditional common law standards as to what constitutes negligence, reasonable care, and prudent conduct in such cases.

I know that members of the bench and the bar together with the automobile insurance industry have worked diligently in their attempts to establish an orderly, responsive, and uniform system of compensation and protection on behalf of our citizens. However, the problem is of such magnitude so as to necessitate a national effort toward arriving at its solution. This investigation will give all interested groups the opportunity to contribute toward a comprehensive evaluation of all aspects of this increasingly serious national problem which

is so costly in terms of human suffering and consequent economic hardship.

Mr. Moss. Thank you for your brief statement, Mr. Miller.

We have yet another Member to hear from today. Our next witness is the Honorable John Tunney.

STATEMENT OF HON. JOHN V. TUNNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. TUNNEY. Mr. Chairman, first I would like to commend you and the other members of your committee for the outstanding work you have done in this field.

I feel that House Joint Resolution 958 to direct the Secretary of Transportation to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system, should be enacted.

Second, as you know, I cosponsored a previous bill which you introduced to establish a Federal Motor Vehicle Insurance Guarantee Corporation. This bill would protect all those who hold auto insurance policies from losing the protection offered by the company insuring them if it goes into bankruptcy.

The proposed new Federal corporation is patterned closely after the Federal Deposit Insurance Corporation which protects the savings in bank accounts, and who have a claim against a bankrupt company would be paid.

This legislation would be particularly helpful to those senior citizens whose insurance policies are canceled after they reach a certain age and who must seek out high-risk companies. The rate of bankruptcy is much higher with these companies. It will also help our servicemen who have difficulty getting companies to insure them and who must also rely on high-risk companies. Most military posts require that a serviceman's car be insured. According to the Senate Antitrust Subcommittee, servicemen lost hundreds of thousands of dollars to fly-by-night insurance companies. I believe that the passage of this legislation will help the States to regulate the auto insurance business and protect policy holders. The legislation would reinforce but not replace State insurance regulation.

Significant facts, showing the need for this legislation have been brought forth during hearings held by the Senate Antitrust and Monopoly Subcommittee in May of 1965. The hearings showed that over a 6-year period, 73 companies writing motor vehicle insurance had been placed in liquidation or receivership. These companies were chartered in 22 States and over half were writing auto insurance policies in States other than their home State. This resulted in a loss of over $100 million to over 300,000 policyholders and accident victims. Between 1945 and 1959, approximately 98 property and casualty insurers have been declared insolvent and liquidated. According to the Senate Antitrust Subcommittee the estimated public loss was $150 million.

The purpose of this legislation is to guarantee the contractual performance of insurers issuing motor vehicle insurance policies in interstate commerce. It also provides coverage for insurers issuing interstate policies if they desire to apply for guarantee status.

As the people of California in particular know, the automobile can no longer be considered a luxury but is a necessity. And as all automobile owners know, auto insurance is also a necessity. In 1966, for example, $9 billion in premiums were paid by over 100 million drivers owning over 80 million vehicles. I believe that this legislation represents a very moderate and reasonable solution to a very serious and complex problem.

I hope that this legislation will be one of the matters which will be considered once House Joint Resolution 958 is enacted.

Once again, I would like to commend your efforts and lend my support to House Joint Resolution 958.

Mr. Moss. I am pleased to welcome as our next witness this morning a very distinguished colleague, the gentleman from New Jersey, the Honorable William T. Cahill.

STATEMENT OF HON. WILLIAM T. CAHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. CAHILL. Thank you, Mr. Chairman and members of the committee, I shall try to be brief, recognizing as I do the work of this subcommittee and recognizing also that I have expressed my views before the other body.

Mr. Chairman, while I do recognize the need for an in-depth study of the automobile liability insurance industry, based upon what I am sure has already been ample testimony before your subcommittee indicating the soaring rates, the arbitrary coverage and policy cancellation practices of the various companies, the great number of insolvencies that have occurred throughout the country, the congested court calendars, and so forth, I do not believe that this is the proper route to take.

I do not thing that this resolution assigning this task to the Department of Transportation is best. I say that beause I feel that all of these problems are so well known to all of the representatives of the people here in Congress and there is so much objective testimony available to prove the abuses, that really what we need now are some immediate remedies.

And I have to believe that to give this assignment to the Transportation Department for a period of 2 years at a cost estimated, I see by this morning's paper, by the Secretary of $2 million will not as I see it do anything except compile additional statistical data and prolong the deliberations of your committee or any other committee of the Congress until that study is completed.

It seems to me, Mr. Chairman, in all candor, that either your committee or some other appropriate committee of either the House or the Senate should assume this responsibility and conduct this investigation, directing, as it will, a priority system so that, as the testimony is adduced, and as the facts are developed, legislation can be proposed and hopefully enacted into law.

Now as you know, the Judiciary Committee did conduct a staff study. They estimated that the cost of conducting an investigation, an appropriate, adequate investigation, would be approximately $313,000 as compared to $2 million.

They estimated that it could be completed within 1 year.

Now this is a legislative committee and hopefully those who would serve on it would devote the necessary time to it. They would be associated with adequate and qualified staff.

So that when the facts, as I think they would, demonstrate the need for immediate legislation, these members could hopefully prepare and present such legislation to the entire Congress.

So that from the standpoint of cost, from the standpoint of time, from the standpoint of having a committee that is a legislative committee here in the first instance, the testimony, to become knowledgeable so that having determined what is necessary, could implement it without too much delay.

It seems to me that the proper route to take here would be a congressional committee.

I would also say, Mr. Chairman and members of the committee, that last week when I appeared before the committee headed by the Senator from Washington, that the Senator from Michigan publicly stated, and this was confirmed by the chairman, Senator Magnuson, that in spite of this assignment to the Department of Transportation his subcommittee was going to continue its investigation from the standpoint of making a determination, as I understand it, whether or not the insurance industry should in fact be placed under the antitrust laws of the United States.

So, as I view it, all that the Department of Transportation can do and will do is to compile a great number of statistics, which I would assume they will get in the first instance from the insurance companies themselves, from the Association of Insurance Companies, from the ratemaking bureaus, all of which is readily available to any committee of the Congress.

So, in summary, for the reason that I think, No. 1, it will be less costly, and, No. 2, it will be done more quickly, and No. 3, with no intention of being critical of the Transportation Department, I really believe that a committee of this Congress would be more qualified to do the work and, therefore, would have the research at its command the same as the Department of Transportation, but would have the added quality of being able to implement forthwith what was necessary.

It seems to me that the Congress should do this work.

Now the Supreme Court has said that it is a congressional responsibility. We have to make this determination what, if anything, is to be done in relation to the automobile liabilities insurance industry and not the Department of Transportation.

As you known, this problem began originally back in 1944 when the Congress I believe really, concerned as they were in that year with international problems, hastily, and I think without sufficient in-depth study, enacted the McCarran-Ferguson Act, which eliminated the effect of the Supreme Court's decision in relation to automobile liability, and, in fact, all insurance.

Therefore, Mr. Chairman, I would suggest that some thought be given by this committee to assuming, itself, if it would, or perhaps as I know the chairman has done in the past, conferring with appropriate other committee chairmen, for the purpose of making a determination whether or not this work could be done by an appropriate committee of this Congress.

I think, Mr. Chairman, there are three or four things that are very essential that should be considered almost immediately. First is whether or not the insurance industry can really today effectively operate under the existing system of State regulation, with 50 different commissioners coming up with 50 different types of regulation, and with all of these companies basically involved in interstate commerce, how they can really effectively, in spite of their very best effort, do the job that has to be done, confronted as they are with 50 different regulatory agencies.

Second, it seems to me that there ought to be some minimal standards almost immediately as far as policies of insurance are concerned.

As you undoubtedly know, policies are issued in some States in this Nation which only insure the driver of the car and only protect the public for accidents that occur within that State.

So, we have the situation today where a man may be insured in Massachusetts but if he goes across the line to Connecticut and is involved in an accident the person injured in Connecticut is not covered and the driver of the Massachusetts car is not protected.

We have, as has been evidenced in Pennsylvania, flagrant violations, it seems to me, and I am sure the gentleman from Pennsylvania is aware of the number of insolvencies that we have had.

This all indicates to me inadequate investigation in the first instance of the capital structure of the company and inadequate supervision of the continued operations of the company in the second instance so as to insist that adequate reserves be present.

These things, it seems to me, cry out for immediate attention. I think there should be some minimal standards on policies, there should be some minimal standards on capitalization; there should be some minimal Federal involvement for the purpose of insuring that these companies continue to have adequate funds to write the policies that they are writing.

I think as far as insolvency is concerned, we need some legislation, perhaps along the lines of the FDIC so that we can protect our public.

Mr. Chairman, you know better than I, because I know how interested you are in all matters that come before your committee, that this is indeed, today, with over a hundred million automobiles, a social problem of great magnitude.

I commend you and all of your members for your interest in this matter and want to assure you that while I oppose the assignment of this responsibility to the Department of Transportation for the reasons I have given, I nevertheless applaud the interest that is evidenced here because I think it is something that the Nation really needs. Hopefully, when the matter is discussed on the floor of the House, a great deal of facts can be presented which I think will recommend the procedures that I have outlined; namely, an investigation by a legislative committee of the Congress.

Thank you very much, Mr. Chairman, for this opportunity of appearing before you.

Mr. Moss. Thank you, and I want to assure you that the committee will give very thoughtful consideration to the suggestions you have made.

I would observe that the study would not contemplate in any way the foreclosure of this field for possible legislative action upon an appropriate showing of need for that action.

While the study, itself, has, under the general guidelines stated by the Secretary yesterday, been indicated as a 2-year study, the committee will be following very closely, if the study is finally authorized and that is the avenue the committee determines upon when they meet in executive session to consider the resolution, and the interest and the continuing followup will be maintained very carefully, as it was by the Commerce Committee during the course of the study which I think was most productive a few years ago of the operations of the securities market of this Nation and a study which you may recall resulted in the most far-reaching amendments to the act since its original adoption back in the early 1930's.

So that the Commerce Committee has had the experience of charging an agency with a study while continuing an oversight function and legislating within the area concurrently with the progress of the study.

Mr. CAHILL. Mr. Chairman, I have had in mind, personally, some positive approach to this problem—such as the introduction of specific legislation.

I have hesitated to do it until the road was outlined that we should follow. I did not want to encumber this subject matter but I do have in mind some specific approaches.

As I say, I have hesitated. Would it be your thought, that if specific legislation was introduced at this time, that if it were assigned to your committee, you would feel that hearings could then be held pending the study by the Transportation Department?

Mr. Moss. It has always been my policy, upon the introduction of legislation, to try to give the author a hearing and permit him to present the case he has.

If it is a persuasive case, one well founded on fact, then I think the committee has a responsibility to act on it. I do not believe in shelving legislation, in acting as a barrier to the consideration of legislation.

Mr. CAHILL. I appreciate that very much. I say to the chairman that I mention it because Senator Hart commented the other day that he, at least to me, evidenced concern that if this matter were assigned to the Transportation Department that it then might be argued that we should not consider any specific legislative approaches until that study was completed, which would be in effect to shelve all positive legislation for a minimal period, it seems to me, of 3 years.

I am delighted to observe that you share my thinking that if there is some creditable and productive and progressive and constructive approach, that at least the author of the legislation would be given his day in court.

Mr. Moss. I think the gentleman recognizes that for some 14 years I have chaired investigating committees with rather broad authority in certain fields and that notwithstanding the in-depth investigations underway by those committees, I have attempted to continue to constructively contribute to legislation affecting or touching upon the subjects under the most penetrating study by the committee.

I feel that is an appropriate policy, there is no conflict at all in such a policy.

I feel that I would reflect the views of a number of the members of the committee. I welcome the comments of the gentleman from Pennsylvania.

Mr. WATKINS. Thank you, Mr. Chairman.

I want to apologize for being late. I am happy to see my distinguished colleague from New Jersey whom I think all of us on both sides of the aisle respect his views and respect him as a Congressman for the hard work he does on Capitol Hill.

Frankly, the reason I was late this morning, Mr. Chairman, is that my automobile was stolen last night.

Mr. CAHILL. I hope you recover it.

Mr. WATKINS. I hope they don't find it.

I apologize for not being able to hear your testimony. I shall read the record. I am sure it will be constructive and helpful what you have said here, not knowing what you did say.

You understand this legislation here is for a study only?

Mr. CAHILL. Yes.

Mr. WATKINS. I notice in talking with the chairman you feel as though the time is ripe for some positive legislation?

Mr. CAHILL. Yes.

Mr. WATKINS. May I ask the distinguished gentleman how does your insurance department of the State of New Jersey feel about this? Are you in about the same trouble as we are in Pennsylvania?

Mr. CAHILL. I will say, really, that I think we have a good insurance department in the State of New Jersey. I think the commissioner is doing his very, very best. I think he is qualified and capable.

It is interesting to note that since the efforts have been made, I think, nationally in this entire problem, that for the first time our Governor, through the attorney general, appointed a public defender to represent the public in opposing a rate increase that was requested by the companies.

Heretofore, it has been almost a one-way street, where they collected the data from the ratemaking bureaus, presented it, justified an increase, and it was given.

The public was very ably represented and an application for an increase of some $30 million was denied. For the first time our commissioner held that the investment income of an insurance company had to be considered in an overall evaluation whether or not that company was making a fair profit.

So, I would say to Mr. Watkins that I think that New Jersey has now taken a very progressive and helpful view in this overall problem.

I think that they now recognize, unless the courts upset it, that in any future application by any company in the State of New Jersey for a rate increase that the overall income or loss of the company, including in the investment portfolio, will be considered.

Mr. WATKINS. In other words, you feel as though the State of New Jersey is interested in the Federal Government getting into this business?

Mr. CAHILL. I cannot speak for the State of New Jersey but I will say this, I think—whether the representatives of the company will say it publicly or not, I don't know—but I think today the knowledgeable officials of the better companies recognize that some Federal intervention absolutely has to take place.

I think, Mr. Watkins, that 50 commissioners, some qualified, some not qualified, some arbitrary, some objective, no company today can really, I think, efficiently operate under that system.

Mr. Moss. Would the gentleman yield?

Mr. WATKINS. Yes.

Mr. Moss. I would like to state that the National Association of Insurance Commissioners has endorsed the study.

As you may recall, at the opening of this session, I made a reservation in the record to receive a letter from the Governor of California on behalf of the National Conference of Governors, also supporting the study resolution.

Mr. WATKINS. I think that is the answer to it.

I know that in Pennsylvania we are, in other words, experiencing quite a little difficulty and complaints on rates and we have not been as fortunate as you have been in New Jersey.

Every consumer of insurance, every recipient of it, everybody is dissatisfied today. I happen to know a little bit about it. I pay a fair premium in the business I am associated with and it is up, up, up every time you turn around.

I wonder sometimes what happens to your cost if you miss your insurance.

Another thing we find is that there are many complaints by people who have been refused insurance due to the fact of where they live. That makes it pretty dangerous. That is a pretty broad statement to ask, where you live, but that is true.

I don't want to go into the type of people being denied but some of the minority groups can go out and hit your automobile and kill your own family, with no insurance or anything else.

In Pennsylvania, too, we have the Compulsory Insurance Act. Once you have an accident, regardless of whether you are responsible or not and you don't have insurance, as soon as the department gets hold of it you are without a driver's license.

I shall review everything you have said. I am sure it is going to be helpful here. But I think we are going to have to give very serious consideration to this legislation, myself.

Mr. CAHILL. I recognize in the 10 years I have been here the contributions that the chairman has made to a great many of the social problems of this country and the contributions that this committee has made.

I was delighted to have him say that even though the study is authorized, as it is being conducted he will not bar any hearings on any legislation which he feels is appropriate.

I thank you very much.

Mr. Moss. I thank you for your statement.

Mr. WATKINS. I would like to join you in your statement. I appreciate my chairman very much, myself. Once in a while we tangle up. It is not too often. We just don't "gas" each other on this committee. It is a real pleasure to work with him.

Mr. CAHILL. I concur wholeheartedly. Thank you very much.

Mr. Moss. Thank you. We appreciate your testimony this morning. It will certainly be considered.

Mr. CAHILL. Thank you.

Mr. Moss. Our next witness is Prof. Alfred Conard, professor at the Law School of the University of Michigan.

STATEMENT OF ALFRED CONARD, PROFESSOR, LAW SCHOOL, UNIVERSITY OF MICHIGAN

Mr. CONARD. Mr. Chairman, and members of the committee, I would like to congratulate this committee for taking an interest in the problem of automobile injury reparation as a Federal problem.

For 5 years I made a study of facts about automobile injuries and the payment received by victims, and at the end of that time I gave some of my conclusions in 1964. I think this was a good deal before there had been much talk of Federal interest in it.

I wrote at that time in the Michigan Law Review:

> Any program that seeks to eliminate these evils on a state-wide basis is boxing with shadows. . . . Any program for the aid of automobile injury victims will be more effective if it is built on a Federal base. (63 Mich. L. Rev. 325).

I am happy to gather from remarks already made here that this is not in issue at this time, that you are not really debating whether it is a Federal responsibility; but debating how the Federal Government should approach it.

I gather also from what I have already heard that I do not need to tell you about the disastrous problem of people who are uncompensated or inadequately compensated, nor about the soaring insurance premiums.

I think that in order to try to concentrate on the approach to this problem which might add most to what you have heard from other sources, I would like to say that it is a mistake to view this problem primarily as one of negligence law and negligence liability insurance.

There are, in fact, many programs which tend to the relief of the injury victim which operate better, faster, and more efficiently than negligence liability insurance does.

I will mention them primarily in the order in which they arrive to the aid of the victim. The first thing he gets the benefit of is health insurance—when he goes to the hospital for medical care with assurance of payment.

The next thing that he gets the benefits of is sick leave from his employer, or temporary disability insurance, which pays some part of his wages while he cannot work.

The next thing in order which is likely to benefit him is not his liability insurance, but his loss insurance—for collision and property loss. Sometime within a couple of weeks or a month he is likely to get some payment for his property loss and the damage to his car. If he is in one of the more seriously injured groups, the fatality or total disability, he will get, not later than 6 months later, the benefits of social security.

These will last for the rest of his life, for the rest of the lives of his survivors if they need them.

Then 2 or 3 years later, he may get a chunk of money from a negligence liability settlement, generally too late to have given him the health care that he needed, too late to have paid his grocery bills during the time when he was out of work, and too little to support him during the period of his disability or the dependency of the people whom he leaves without a source of support.

Now not only are there many different programs in effect here but they have very different costs. To start with the beginning, group health in this country generally operates——

Mr. WATKINS. Excuse me.

Mr. Chairman, is the gentleman going to talk off-the-cuff on this thing or is he going to follow his statement?

Mr. MOSS. The gentleman is summarizing the statement.

Mr. CONARD. I am dealing with things that are in the stattement. I am not following it page by page.

Mr. WATKINS. I don't want to be searching through here.

Mr. MOSS. Mr. Keith and I suggested that in the interest of conserving time we have summary statements from the witnessses and we will file the full body of the statement in the record immediately following the oral presentation.

Mr. WATKINS. I certainly concur in that, Mr. Chairman.

Mr. CONARD. Thank you very much, Congressman. I am sorry to have puzzled you.

With regard to the costs of operation, most group health operates at an administrative cost level of under 10 percent, in some States under 5 percent.

I do not have figures on sick leave and temporary total disability. We can say that sick leave payments are made with almost negligible costs of administration, possibly under 10 percent.

Social security operates at an administrative cost commonly estimated at around 3 percent.

In the negligence system, the cost of operation is about 56 percent of the social input. If we turn that around the other way it means that for every dollar of benefit to an accident victim, received through negligence liability, that premium payers and taxpayers have contributed $2.25. That is the cost of delivering $1 of benefit through that system.

Now, I am not an advocate of abolishing the tort liability system, but I say that in approaching this problem we should view all of these regimes which are contributing to the relief of the injury victim, and we should adjust the roles of those regimes, and adjust them to each other.

We should link them so that they do not fall on top of each other like a tumbled-down building, but so that they support each other.

Specifically in this regard, I would like to refer to the notorious collateral benefits rule. When a claimant goes into court he proves his wage loss, he proves his doctor bills, he proves his property loss, and he does not mention and is not required to mention, and the defense cannot show that in fact all of those have been paid long since.

Now this not only results to some extent in double payment but results in something which has first been paid under an extremely efficient low-cost system, being paid over again in the most expensive of systems that we have.

Now, how should we approach that? As we approach this problem, we have to ask what are the ways in which we can most economically contribute to the welfare of injury victims.

One of the most economical ways is health insurance. My suggestion as to what should be studied first is making health insurance compul-

sory for everyone who owns a car, covering him and the occupants and eventually, possibly the pedestrians whom he might hit.

Second, I think a study ought to be made on extending the coverage of social security for survivorship and disability benefits for those who are not already covered by social security. Fortunately, Congress has, in the past 15 years, so expanded disability insurance that most of our laboring work force is covered by it. Nevertheless, there are key groups which are not covered by it. These are young people in the work force who have not yet acquired the necessary quarters of coverage, and young people in the student group who have not yet joined the work force; and these, as we know, are particularly accident prone.

So, I would suggest that this study should certainly concentrate on the ways of expanding our best and most efficient and direct programs.

Now, second, what to do about negligence liability. That is a system of rules which grew up a hundred years ago and was very appropriate to the reign of Andrew Johnson but which does not have very much to do with the Presidency of Lyndon Johnson.

It grew up at a period when there was no liability insurance, there was no collision insurance, there was no health insurance, there was no social security, there was no temporary disability, and there was very little sick leave.

As a result, we have a group of rules which work very badly today. I think that the study of negligence liability must give attention to some of the weak spots in the negligence system. There are a great many of these but I will simply point out a few which I think call for immediate attention.

No. 1 I have mentioned, the collateral source rule. That rule simply does not make any sense in a day when we have all these other programs.

A second problem to which I would like to call your attention is the compensation of pain and suffering, or damages for pain and suffering.

If you imagine a guilty driver paying money out of his own pocket to an injured person for his pain and suffering, it probably is enough if the jury finds it is the fault of the driver. But today those damages are paid by insurance companies out of premiums contributed by every one of us.

Now, if you were to put compensation on a legislative basis like social security, and you had to tax every citizen for the money that comes out, would you tax citizens to pay for pain and suffering? I will observe that no government, to the best of my knowledge, ever has; and no individual has ever voluntarily bought insurance against pain and suffering.

Yet, what we have today through liability insurance is the fact that you and I, and every other automobilist, is being taxed to contribute to this fund which pays out large amounts for pain and suffering.

Now there are two other problems about pain and suffering in practice. One of them is that the people who try to live with their sorrows don't collect very much here. The people who collect are those who dramatize them—those who are willing to brood over them until the jury awards the damages.

In the second place, pain and suffering is the way to blow up a hundred dollar claim into a $500 claim. I think this is so commonplace that everybody knows about it.

Now one reason why we have pain and suffering damages and why the lawyers will fight, and I say justifiably fight, to save them, is because it is only through pain and suffering damages that you are even able to collect your money damage.

If you have a thousand dollar property damage, specific damage, and you have a third of that going to collection expense, you do not end up with a thousand dollars; you end up with $667, unless you are allowed to add on top of that the pain and suffering.

So the real function that the pain and suffering damages do is to pay the lawyers' fees.

Frankly, I think the pain and suffering of the plaintiff is a very odd way to measure lawyers' fees. I would suggest that when we decide what we want people to be paid, we should provide for the payment of the collection expense. The insurance company which refuses to pay a perfectly clear liability case should be liable for the collection expense as well.

I know very well some of the insurance people who will testify before you will say, "Our company does not do that. We tell our people to pay just claims off the bat," but there is no one with any experience who doesn't know that somehow the adjusters don't get the message. And because they are overworked or because they are trying to make a good record—they are trying to save over the reserve value of the claims—the fact of the matter is that they refuse to pay, or neglect to pay, small claims unless they are blown up with a pain and suffering addition to them.

Consequently, I say that as we eliminate pain and suffering we ought also to add a reasonable collection expense and that should have another side to it, too.

Where the claimant refuses to take a reasonable offer from the insurance company, they should be allowed to deduct from their eventual payment the cost of the defense which they have been put to by a man who litigates needlessly.

Now another element which urgently needs attention is the cutting out of small claims. Simply eliminate the payment of small claims and let people take care of them themselves, say, under a hundred dollars.

I grant this is a shocking sugestion, but I will say that to a large extent this is exactly what happens to most of us. Unless we want to tell the defendant that we have a bad back or we have excruciating headaches, the fact of the matter is that we bear our small claims.

Now because of the fact that it costs two dollars and a quarter per dollar of benefit to pay any claim through the negligence system, but it costs more proportionately for the small claims, frankly, we would all be better off if we paid our own small claims.

This is one of the places where we could get a very considerable saving in the administration of negligence liability.

I know your time is short. I think I will leave you with that brief highlighting of what seem to me to be some of the key problems which you face.

I am very happy that you propose to appropriate what seems to me to be a modest sum of money to study a problem which is having a tremendous effect on the welfare of our people and on their freedom to operate automobiles.

Thank you very much.

(Professor Conard's prepared statement follows:)

STATEMENT OF ALFRED CONARD, PROFESSOR, LAW SCHOOL, UNIVERSITY OF MICHIGAN

I. THE NEED FOR CONGRESSIONAL ACTION

The Committee on Interstate and Foreign Commerce deserves applause for its decision to examine the problem of reparation for automobile injuries. The failure of our society to provide for adequate reparation of automobile injuries is causing needless suffering, losses of productivity, and feelings of injustice. At the same time, the soaring costs of liability insurance are making automobile ownership impossible for many poor Americans. If they cannot own automobiles, they cannot emerge from the congested cities where public transportation is available, and cannot hold jobs at outlying factories. The present system of reparation produces two kinds of victims—those who are inadequately compensated for their injuries, and those who are charged the high insurance premiums required by a wasteful system.

Congress is properly concerned because poverty, productivity, interstate commerce, and justice are involved. Congress has itself contributed to the stream of traffic by supporting highway building, and the automobile itself is a product of interstate commerce. The problems are too vast to be solved by private individuals or by state governments alone. The federal government holds several of the keys to the puzzle.

II. IMPOTENCE OF THE STATES

The law of automobile injuries has fallen into obsolescence partly because it has been left to the states, and the states are powerless to make fundamental changes in the system. The stream of traffic is interstate. If my state of Michigan were to pass a uniquely rigorous insurance law, it would do nothing to protect our citizens against vacationing motorists from Illinois and Ohio. If we were to attempt to put heavy burdens on visiting motorists, it would probably have no effect except to scare a few tourists away from our vacation industry. Other states have similar problems.

A serious attempt to design a one-state reform is involved in the "basic protection plan" of Professors Keeton and O'Connell. In the opinion of many observers, it creates problems of conflict of laws which are insuperable.

We long ago learned that railroad and airline transportation are federal concerns. We have already recognized that highways are federal concerns. It is time to recognize that automobile injury reparation is a federal concern too.

III. FALLACY OF SUPPORTING THE PRESENT INSURED TORT LIABILITY SYSTEM

It would be a mistake for the federal government to come to the rescue of the insured tort liability system as it now operates. This is only one of several reparation systems operating to supply injury reparation, and it is by far the most expensive, ineffective and wasteful of all three systems.

The system is expensive in that it makes the public pay $2.25 for every dollar of net benefit delivered to injury victims under the insured tort liability system. Comparing other systems, we find that workmen's compensation costs about $1.45 for every dollar of net benefit; individual life insurance about $1.40; group health about $1.10; social security about $1.03.

The system is not effective to provide medical restoration and rehabilitation to the disabled because the victim doesn't know whether he will be compensated, until months or years after the treatment would have to be administered.

It is not effective to relieve short term distress for the same reason—the delay and uncertainty of payments.

It is not effective to relieve long term destitution and poverty because the damages are paid in a lump sum which is easily dissipated, and is inadequate to

provide lifetime support for a permanently and totally disabled victim, or a dead victim's dependents.

The system is wasteful because it pays the most generously to the least needy, and most inadequately to the most needy. An injury victim with a total dollar loss under a hundred dollars is likely to be repaid more than three times his dollar loss; but a victim with a $25,000 loss is most likely to be repaid less than a quarter of his dollar loss.

The system is not effective to punish or deter negligence. Because of the umbrella of liability insurance, motorists are largely insulated from the financial effects of their accidents. A survey showed that among defendants who were actually sued, 33 percent did not even know how the case was settled.

If the federal government is to come to the rescue of automobilists and automobile injury victims, it must first set up a rational system of protection. This would be consistent with what the government did in the 1930's when it came to the rescue of banks, home mortgages, and savings and loan associations. It rescued them, but it also reformed them.

The trouble with negligence law is that it is a pack of rules appropriate a century ago when the president was Andrew Johnson. There was no liability insurance, no collision insurance, no health insurance, no sick leave pay, no temporary disability insurance, and no social security system. It does not fit the facts in the era of Lyndon Johnson, when all these other programs have been added.

IV. ELEMENTS OF A SUPPORTABLE SYSTEM OF REPARATION

Fortunately, the tort system is by no means the only system presently contributing to the reparation of automobile injuries. Victims of automobile injuries receive reparation from group and individual health insurance, from sick leave and temporary disability programs of their employers, from collision insurance on their automobiles, in fatal cases from individual and group life insurance and from the survivorship insurance of the social security administration, and in permanent total disability cases from the disability insurance provisions of the social security administration; and finally from tort liability insurance. These programs have been named in the approximate order in which they come to the rescue of the victim. The tort liability system is usually the last in time to arrive, and very commonly the least operative in restoring or maintaining the welfare of the injury victim.

It is therefore foolish to focus our attention, as suggested by the Keeton-O'Connell plan, on a comprehensive system which would replace negligence liability law. That is only part of the problem. We should look at each of the different programs of reparation, and see how we can expand the role of those which are most useful, and interrelate the roles of the different systems for maximum efficiency and economy. Taking this approach, we will find that negligence liability does not need to be abolished, and that there are definite values in retaining it. Rather, the job is one of enlarging the roles of some of the other programs, and of adjusting the tort law to take full advantage of the contributions of the other systems.

The principal directions in which we should move may be indicated as follows:

1. Health insurance should be broadened and deepened to assure the optimum restoration and rehabilitation of every accident victim.

2. Subsistence for the totally disabled and for the dependent survivors of the dead under the social security system should be extended to those victims of automobile accidents who are not already covered.

3. Programs of sick leave and temporary disability benefits for employed persons should be broadened, and should be recognized as a factor in the reparation of automobile injuries.

4. Negligence liability and liability insurance must be modified so as to reduce the waste and misapplication of resources which now characterize them, particularly in the following ways:

   a. reduce underwriting expense;

   b. reduce duplicative pay-outs by crediting against negligence liability the benefits to which victims are entitled under other programs;

   c. eliminate damages for pain and suffering and with them the excessive litigation and overpayment of small claims which they occasion;

   d. make fair claims collectable by assessing the costs of collection against defendants who turn down a reasonable demand;

   e. eliminate small claims from negligence liability in automobile cases.

V. REHABILITATION INSURANCE

The first objective of any reparation system should be to rehabilitate injury victims, using "rehabilitation" in a broad sense to embrace comprehensive care from first aid through occupational retraining (if needed). Rehabilitation not only relieves the individual's own misery, but enables him to carry his weight in society. The tort liability system is a failure in this connection, because its payments come too uncertainly and too late; even when the victim is certain of payment, he has to make an agonizing choice between money and treatment.

The way to handle this problem is not a matter for speculation or dispute. Decades of experience under workmen's compensation laws have demonstrated an effective way of handling it. This is to provide for unlimited restorative and rehabilitative treatment which is not subject to a policy limit, and which is wholly disconnected from cash payments. Insurance companies have successfully written this kind of coverage for years under workmen's compensation laws.

There is already a foundation for this kind of insurance in the customary automobile insurance package. This is the medical payments coverage, sometimes called "family protection." This should be made compulsory in every state; it is much more beneficial than the tort liability coverage which most states directly or indirectly require. However, the low policy limits which are now prevalent should be raised. Eventually the insurance can probably be written without limits, as are medical benefits under workmen's compensation. This increase could be made in stages, so as to acquire actuarial experience as we go.

The insurance should cover the occupants of the insured automobile, and any other person injured by operation of the car which is not otherwise covered.

Congress could appropriately require this kind of insurance for every automobile that is driven across a state line, or on a federal highway. In practice, states would probably fall into line very quickly and require this kind of policy to get an automobile license. They might have done it long ago, except for the complication of one state's requiring anything which isn't required by the state next door.

The probable costs of a program of restoration and rehabilitation for automobile injury victims is not presently known, but experience proves that this type of risk is not uninsurable, and that the cost is bearable. The social costs of rehabilitation will be more than repaid by the social gain of returning injury victims to productive roles in society.

The costs of such a program to motorists should be minimized in every practicable way. First, the writing of such insurance should be opened to all types of insurers; it should not be an inseparable part of the tort liability package; it might be more economically attached to group health insurance, most of which is written at a fraction of the overhead cost which characterizes tort liability insurance.

Second, the cost of rehabilitation insurance must not be simply added to the existing cost of liability insurance. When it pays for expenses which would otherwise be charged to liability insurance, the latter liability should be reduced. This can be achieved by a law providing that a victim's rights to rehabilitation benefits must be *credited* against any claims under tort liability. As between the two kinds of insurance, the rehabilitation insurance should do the paying, because it will not incur the delay, expense and controversy which is inevitable in tort liability.

Third, motorists should be permitted to buy their rehabilitation insurance with deductibles of one or two hundred dollars, just as they generally buy their collision insurance. Most people can pay small medical bills out of their own pockets, and should be permitted to do so if they wish.

VI. SURVIVORSHIP AND DISABILITY INSURANCE

A man or woman should not be a pauper because of an automobile accident which disables him or her, or kills or disables his or her sole source of support. Luckily, this is an infrequent phenomenon, because the survivorship and disability provisions of the Social Security Act protect most of our population. But there is a significant group which they do not protect, and which is peculiarly prone to automobile injuries. This group comprises the young men and women who have not yet begun to work, or who have not yet worked for the ten years which give full social security coverage.

The only economical way to close this gap is to amend the Social Security Act to cover disability and survivorship cases occasioned by automobile accidents, and not otherwise covered. This would involve a rather trifling extension of the social security system, with immense benefit to the individuals involved. Like the rest of the social security program, it should be paid for by taxes; but it should not be paid for by payroll taxes since the affected individuals may not be on a payroll. It should be paid for by an automobile registration tax. This should be calculated at an amount which would pay for the estimated *additional* disability and survivorship benefits occasioned by this extension of coverage.

Obviously this is an appropriate program for federal action, and one which would be out of the power of the states. The federal tax could be collected along with state annual automobile license fees.

To balance off the addition to their registration taxes, motorists should get some reduction in their liability insurance premiums. This would be accomplished by providing that all social security benefits for disability and survivorship are to be credited against tort liability. This will not only avoid duplicate payments; it will also save a great deal of administrative expense, since social security operates at an administrative expense rate of about 3 percent, compared with about 56 percent for insured tort liability.

VII. RATIONALIZING NEGLIGENCE LIABILITY AND LIABILITY INSURANCE

The rise of insurance companies specializing in high risk, the troublesome growth of assigned risk systems, and the prohibitive costs of liability insurance in special areas illustrate the impasse into which negligence liability and liability insurance have led us. Liability insurance premiums have risen beyond the capacity of many automobiles to pay, but still fall short of liability costs in many companies. The failure of a few liability insurance companies organized to accommodate special risks emphasizes the crisis. It is essential that the costs of liability insurance be controlled. In part, this must be accomplished by changing the rules of liability, and in part by adapting the insurance instrument.

Reducing underwriting expenses.—Forty percent of liability insurance premiums today go to the costs of the insurance process—selling policies, rating customers, and adjusting and defending claims. These costs are considerably higher than those experienced in many other areas of insurance, and can be reduced by applying the lessons learned elsewhere.

The most important reform is to admit group underwriting. Since nearly 20 percent of the insurance premium goes to agency commissions, it is probable that at least 15 percent could be eliminated by group underwriting. This has proved immensely successful and beneficial in health and life insurance. Not only does it reduce the costs of insurance acquisition, but it eliminates much of the necessity for risk rating. Thus it would presumably alleviate the assigned risk problem.

At least one insurance commissioner has recently announced the permissibility of group underwriting. This possibility must be made more widely available.

Crediting collateral benefits.—Another needless cost of liability insurance is paying for things that have already been paid for, or will be paid for, by other, less expensive programs. Under the present law, a claimant sues for and collects damages for medical and hospital expense even if it has already been paid for by his health insurance; for loss of pay, even if it is already made up by sick leave; for disability even if it is going to be compensated by Workmen's Compensation and Social Security. It is easy to see how this got started a hundred years ago, when collateral benefits, if any, were chiefly gifts from friends or charities. Today, with group health insurance, social security, workmen's compensation, sick leave, disability benefits, survivorship benefits, and private pension funds, disregard of collateral benefits is indefensible. It leads to overpayment of claims, over-utilization of congested health facilities and lets aggressive claimants make profits out of minor injuries.

The old rule of disregarding collateral benefits must give way to a new rule of crediting collateral benefits against damages for negligence.

Damages for pain and suffering.—Damages for pain and suffering must be eliminated from ordinary automobile negligence cases.

Damages for pain and suffering immensely increase litigation. Survey evidence shows that they are second only to negligence questions as a source of controversy. Damages for pain and suffering also lead to the wasteful overpayment of small claims, where the amount of pain and suffering is very little. Damages for

pain and suffering are unfair, because they do not benefit people who minimize their misery, but only those who brood on it and dramatize it. If one could measure pain and suffering, one would probably find that injury victims *increase* their pain and suffering by recalling it, reviewing it with their lawyer, and retelling it for the purpose of collecting money.

Three principal arguments are made for pain and suffering damages. First, it is said that people who have suffered extreme shock may need special psychiatric care, or removal from a noisy location, or time off from work. But these are economic losses, which can be proved as such.

Second, it is said that the wrongdoer should suffer the extra deterrence of the extra damages. However, most pain and suffering damages, like other damages, are not paid by wrongdoers; they are paid by innocent premium payers, through insurance. To punish the wrongdoer, the proper remedy is "punitive damages," not damages for pain and suffering.

Third, it is said that damages for pain and suffering are necessary to make other damages collectable; the lawyers' fees are often paid out of the extra award for pain and suffering. There is some truth in this argument, but damages for pain and suffering are a preposterous way to value lawyers' services. A better way is to provide for payment of reasonable collection expenses—my next topic.

Collection expenses.—In order to encourage both claimants and insurance companies to settle claims fairly and economically, both sides should be given an incentive to make and to accept fair offers. This can be done by providing that the insurer should pay reasonable collection expenses when he has refused an offer to accept the amount eventually found due; similarly, the insurer should be able to deduct his costs of defense, when the claimant has refused an offer of as much as is eventually found to be due. This type of provision would greatly speed up settlements, and would eliminate one of the principal justifications of damages for pain and suffering.

A further advantage of adding collection expenses is to eliminate the sense of injustice which arises today when insurance companies refuse to pay property damage claims in spite of clear liability. They count on the claimant's giving up the chase. Some claimants give up, but others learn to pad their claims, chiefly by alleging pain and suffering. Awarding collection expense would enable them to collect just claims by just methods.

Small claims.—One of the greatest wastes in present-day liability insurance is the investigation, evaluation, and payment of small losses. It is a waste because the costs of investigation and evaluation, plus the insurance overhead, are likely to be two or three times the original loss. Since most of the beneficiaries are the same as premium payers, the effect of payment is to multiply their own costs. Since minor losses are within the capacity of automobilists to pay from their own pockets, they would be collectively benefited by paying them directly, rather than through liability insurance.

The sensible solution is to eliminate liability below a deductible limit, which might be set initially at $100. In the light of subsequent experience, it could be raised or lowered.

For many non-litigious automobilists, this rule would merely formalize what already happens, when they bear their own small losses because it is easier than trying to collect damages. For the litigious, it would remove the impulse to spend more time and expense trying to collect a small claim than it is worth. The big gain would be to premium payers, because their insurance companies would be relieved of a substantial fraction of their case load.

VIII. A STAGED REFORM

The reforms proposed here can be done in easy stages. It is not necessary to introduce a new, untried system, nor to make the entire transformation at a single leap. Although these reforms lead toward a fundamental restructuring of the whole system of reparation for automobile injuries, it is to be done by little steps, which can be separately adopted, and separately modified in the light of subsequent experience.

Separability.—Rehabilitation insurance for motorists could be required without broadening social security, and without changing negligence liability law except to the extent of crediting the rehabilitation benefits against negligence damages. Social security could be broadened without introducing rehabilitation insurance, and without changing the tort law. Among the proposed reforms of negligence liability and liability insurance, either of the first two reforms can

be made with or without any of the others. Group underwriting can stand on its own feet, and so can the crediting of collateral benefits.

However, there are three of the proposed changes in negligence liability which must be parts of a single package. Damages for pain and suffering should not be eliminated unless at the same time collection costs are added. Otherwise, it would be impossible for a claimant ever to recover the full value of his money loss, no matter how clear his right. When collection costs are added, it will become immediately necessary to cut out liability on small claims. Otherwise, tremendous numbers of very small claims which are now dropped, to everyone's advantage, would overwhelm insurance companies.

Graduation.—Each of the reforms proposed can be introduced with a certain dollar limit which can be raised or lowered as later experience indicates.

Rehabilitation insurance, for example, would start with the familiar limits which now govern the medical payments insurance which many automobilists now carry. Subsequently, in the light of experience, the limits could be raised. Eventually this insurance might be written, as in the case of medical benefits under the workmen's compensation laws, with no limit except the amount of treatment which could usefully be given to the injury victim.

The extension of social security could also be made gradually. It might start with registered automobile owners and licensed drivers, thus providing a list of the persons covered. At a further stage, it would include members of the families of owners and drivers, who could also be listed at the time of license renewal. The remaining step of including other passengers or pedestrians would be minimal.

The crediting of collateral benefits should also begin with the most obvious subjects for credit, and be extended in steps to include others. Crediting should begin with health insurance. At a time when the costs of health insurance are in a state of crisis and medical care facilities overtaxed, it is essential to diminish every channel of overpayment and every incentive to over-utilization of facilities. Double health insurance should be recognized as containing the same perils as double fire insurance. The proposed requirement of health insurance for all autoists would make the crediting of benefits all the more urgent.

The crediting of social security benefits should come next. The value of survivorship and total disability benefits over a lifetime may amount to tens of thousands of dollars; it is preposterous to ignore these in awarding damages. It is sometimes argued that they should be paid from automobile insurance rather than from payroll taxes. But it is the public which pays them in either event. The big difference is that when the public pays through liability insurance, it pays an operating expense rate which is 40 times the rate under social security. Where an economical, almost universal regime like social security is doing a job, the automobile premium payer should have the full advantage of it.

After providing for the crediting of health insurance and social security benefits, legislation could move on to crediting proceeds of sick leave, temporary disability, and property loss. These areas involve progressively more difficult problems.

IX. THE FEDERAL ROLE

The vital role for Congress and the federal government is develop a nationwide plan for automobile injury reparation. The plan should include federal legislation, state legislation, and voluntary action by automobilists and insurance companies. Private individuals and insurance companies cannot do it by themselves, because archaic rules of negligence law stand in the way of fundamental reform.

The states cannot do it by themselves, because some of the essential links require federal law. The states cannot impose requirements on out-of-state drivers without installing. European-type border controls, and they cannot govern the effects of lawsuits which take place in other states.

The federal government alone can develop a plan, in cooperation with representatives of state governments, private insurance companies, and private automobilists. Congress can then require the necessary kinds of insurance for driving outside the residence of the driver or automobile owner. Congress can also enact rules of liability which will apply to accidents involving drivers and passengers outside their own state. These are matters of interstate commerce.

Congress can also extend social security, and can provide for the effects of social security benefits in lawsuits by the persons entitled to these benefits.

Finally, Congress should make efforts to bring all state laws up to a minimum standard. This can be done by differentiating in grants of highway aid, giving more to those states which meet minimum standards.

But Congress should not eliminate all state individuality. States should be allowed to impose greater standards on their own citizens, in accidents with other citizens of the same state. But citizens who comply with the rules of their own state, and with the national standards, should be free to drive throughout the nation without being subjected to unforeseen liabilities.

Mr. Moss. Thank you, Mr. Conard.

Mr. Watkins.

Mr. WATKINS. I wish to thank the gentleman for coming in and testifying. You speak about the pain and suffering. Of course, where a person really has pain and suffering that entail doctors' bills and trying to find out just what is wrong with him and trying to cure it.

You mention about eliminating claims of a hundred dollars or less. Where are there any claims of a hundred dollars or less in any accident today?

In fact, to give you an illustration, the Interstate Commerce Commission sets a set amount you report to them in the transportation business. I found out through experience that we tried to estimate our claims, what they would be through our men picking up the damages, investigators on the road.

They said, "Well, this damage will only be $150." You would wind up with the person you were involved in the accident with submitting a bill for $750 or $800.

In fact I remember at one time at the Interstate Commerce Commission because we didn't report it, we thought the damage was under the amount mentioned that was not reportable, that we wanted to assess a fine of something like $50,000, or $60,000 for not reporting accidents.

When you talk about a hundred dollars today, that is out of the question. There are no claims under a hundred dollars that I know of.

You can knock a headlight out and damage a fellow's bumper and you have a bill for $250. I don't see how you can eliminate the claims under a hundred dollars. There would be so few of them.

Mr. CONARD. Congressman, your experience very much coincides with my own there.

Nevertheless, on studies of this matter which have been made we do find that the number of small claims is tremendous. In fact, if we take what I think is the most thorough study of this kind made, and this was the Illinois Highway Department study, the broadest base survey I think that has ever been published on this, showing the cost of claims of different amounts, we have this striking fact. There are more auto loses between $10 and $100 than there are between $100 and $1,000. There are more between $100 and $1,000 than between $1,000 and $10,000. This strikes you as odd.

In other words, this is what makes a logarithmic function. When you think about this, it is not surprising that this should be true. Supposing I ask you this: For every person you know that was ever killed in an accident, don't you know of a hundred who had lesser injuries? For every person who was hospitalized, don't you know 10 others who were shaken up and not hospitalized?

For every case where a car was creamed, there were 10 cases where a fender was smashed.

For every case where a fender was smashed, there were 10 cases where just the light was knocked out.

I think, Congressman, that you may be referring in part to a very interesting phenomenon, and that is that the claims that have money loss under $100 get paid off much more than that.

The University of Pennsylvania did a study on this in which they showed that on claims under $100, if the people collected they were very likely to collect more than five times the dollar loss.

They had a $75 cost on knocking out a headlight. They collected $500 if they collected at all.

Mr. WATKINS. I would have to agree with that. I would have to agree that the claims are exorbitant and not fair.

If I may interrupt you, personally, that is my opinion, I don't see how you can say you will eliminate claims under $100 because there would be so few.

Mr. CONARD. Excuse me, it is the monetary loss.

Mr. WATKINS. I don't know of any claim; in fact, my answer to you is due to the fact that the Interstate Commerce Commission demand we report all claims; we don't take any chance on them even though they have a limit.

I forget what the limit is. I think they increased it to $350 or something like that now.

But there is a limit. We report all claims to eliminate fines. I am just wondering how your study worked out on public liability. I think this has turned out to be one of the biggest rackets in America, the payment of public liability claims. The biggest majority of them wind up in the courts where there is any chance to collect any money, where there is any chance at all to make money.

In the decisions that are being made both in local and Federal courts the sums are exorbitant.

Would you entertain an idea, and this is only for the record, and I do not want to consume too much time, Mr. Chairman, but would you think that perhaps in this study there should be some consideration that public liability claims be paid on the basis of compensation?

Mr. CONARD. Congressman, absolutely.

Mr. WATKINS. In other words, a set rule that could be set up that these claims could be settled on a fairer basis. I think some of the decisions are just terrible, are exorbitant, and very hazardous to people in business.

For instance, suppose your car hit a school bus and you injured some children. What would be the result? You have $25,000 to $50,000 liability. You might lose everything you had before this claim was settled.

For the amount of money to be collected under public liability it seems to me there has to be some set form whether you agree with this or not.

I would like to know how you feel, if there has to be a pattern set for the payment of damages under public liability.

Mr. CONARD. I certainly agree with your basic approach here. I would like to correct myself. You said there is no such thing as a small claim and you are right. There is such a thing as a small monetary loss. It becomes a big claim in practice.

Mr. WATKINS. That is right.

Mr. CONARD. So, the thing I am recommending that the people absorb themselves are the small losses.

Mr. WATKINS. You have made no study on a preventive cure for these exorbitant claims then, have you?

Mr. CONARD. We have indeed shown that in the small losses the payments are very much in excess of the monetary loss. I mentioned Pennsylvania because they went down to a smaller level. We took a group under a thousand and we found that losses under a thousand were likely to be paid, if paid at all, more than one and a half times the loss.

On the other hand, large losses, over $25,000, were rarely paid more than a quarter of the loss. This means that we are overpaying little losses and underpaying the big ones.

The cause of that is very clear, Congressman. It is the pain and suffering damages. I could not go along with calling it a racket because the law now says that the individual is entitled to payment for pain and suffering.

Mr. WATKINS. I think it is a racket. Go ahead, I am sorry.

Mr. CONARD. I think we know what the cause of this inflation of the small losses is. It is pain and suffering, that is very clear.

Mr. WATKINS. But you have made no study on a formula on public liability payments.

Mr. CONARD. I did not answer your question on that. No, sir; we did not study any particular proposal.

I think this is well worth studying but, sir; I think when you eliminate pain and suffering and pay economic losses you are down to hard figures.

I think that is what you want to do. I think you can do that with or without a schedule. I think a schedule is certainly worth a study.

Mr. WATKINS. You take claims today that are made and are taken into court. There is a habit of some insurance companies of taking cases to court anyway because they feel that they will die a natural death before they hear them.

I know of cases in Pennsylvania that have been hanging for 6 years. People are either dead or gone and maybe they don't know whom to talk to, the heirs have even left. That is why I think there should be some method.

I thank the gentleman very much.

Mr. Moss. Mr. Guthrie.

Mr. GUTHRIE. Professor Conard, could you state for the record over which the Illinois study was done that you referred to?

Could you supply that information for the record? It might have some bearing on the amount that you stated.

Mr. CONARD. Yes, sir. The base date for the Illinois study was 1958. It is possible that the absolute amounts have gone up.

On the other hand, it is impossible to know, and one of the reasons I am very happy to have the suggestion of a further study is that the 1958 studies, our Michigan one, and the Illinois one, undoubtedly need to be updated.

On the other hand, it seems to me that we probably have a phenomenon in nature here. That is that regardless of anything that hap-

pens to the price level, there are going to be more cases of small damage than large damage. Cars go through the street, they scrape, they touch, they bang.

It is simply in the nature of the physical facts that there are always going to be immensely more of the small cases than the large cases. So I am sure the absolute amounts will go up and although I don't have up-to-date figures, I believe this is what you might call sort of in the nature of the statistics, just like you have illnesses, people lose 1 day. You will find 10 times as many people losing 1 day of work as lose 5 days. You will find 10 times as many people losing 5 days as 50 days.

Mr. GUTHRIE. When you first began your statement you evidenced some satisfaction that there was no question being raised as to whether this was going to be approached at the Federal level or not.

Do you think that the problem that exists in the auto insurance industry today can be approached at the Federal level and resolved effectively there or must it also be approached at the State level?

Mr. CONARD. I understand, you are asking about the regulation of the insurance industry as distinguished from the regulation of negligence liability. Is that correct?

Mr. GUTHRIE. Yes, sir.

Mr. CONARD. I do not feel myself qualified to talk about the regulation of the insurance industry and its adequacy or inadequacy at the Federal level.

I am generally, I would say, favorably disposed to it. It seems to me a reasonable step but I do not claim any expertise on this subject.

Mr. GUTHRIE. Thank you.

Mr. Moss. Before concluding the discussion of your presentation, I would like to observe that you have stimulated the types of questions which I think illustrate the need for the study proposed.

Your presentation is an excellent one and it raises as many questions as it answers. I think that was typical of the presentations yesterday. I hope that it continues to be the thread of the presentations today because in careful consideration given the subject by me, and I know by Senator Magnuson, we reached the conclusion that we had far too few answers to proceed to solve the problems. That is why the study was recommended.

I have no questions at this point.

I want to express the appreciation of the subcommittee for your appearance and for your cooperation.

Thank you.

Mr. CONARD. Thank you very much, Mr. Chairman and Mr. Guthrie.

Mr. Moss. Mr. Vestal Lemmon, president of the National Association of Independent Insurers.

Mr. Lemmon, do you desire to summarize your statement?

Mr. LEMMON. I am going to sketch through it. I have marked out part of it.

Mr. Moss. Would you like to have the entire text inserted immediately following your oral presentation?

Mr. LEMMON. Yes, sir.

Mr. Moss. Is there objection?

Hearing none, that will be the order.

STATEMENT OF VESTAL LEMMON, PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS; ACCOMPANIED BY ROGER DOVE, VICE PRESIDENT; AND JOHN NANGLE, COUNSEL

Mr. LEMMON. I have on my right Mr. John Nangle, our Washington counsel, who was in the insurance business in St. Louis for many years; on my left, Roger Dove, vice president of our association.

My name is Vestal Lemmon, and I am president of the National Association of Independent Insurers. We are a trade association of 350 casualty and property insurers of all types including stocks, mutuals, reciprocals, and Lloyds.

We estimate that companies affiliated with us write more than half the private passenger automobile insurance in the United States.

We appreciate the invitation to present our views to this committee and in this national forum.

The NAII believes that an objective and comprehensive study into the automobile insurance system as suggested in the President's consumer message and in House Joint Resolution 958 is a proper approach.

We feel that the call for a careful study recognizes the complex nature of the legal system under which the insurance business is required to operate and the demands placed on us by a rapidly growing motor vehicle population.

In conferring with our member companies in preparation for this appearance here today, they asked that I emphasize what they feel is a critical point in the present automobile insurance controversy.

For more than 20 years, as the needs and conditions in our motorized society have undergone a drastic metamorphosis, the independent insurance companies of the United States have met change with change.

This is our stock in trade; this has been our formula for success. The challenge of evolution has not fazed us. We have been in the forefront of innovation. We have demonstrated the flexibility to meet new needs with new techniques, new products, new services, a new outlook. We have never fought—and we do not fight today—for the status quo.

The situation being considered by your committee did not develop overnight. It started to build up early in the 1960's as a result of a variety of social and economic factors. We were not unmindful of this trend; it had our closest attention and deepest concern.

As long as several years ago, the top executives of our companies were personally exploring these matters in depth.

Two years ago, their efforts resulted in the NAII recommending that our members voluntarily make available additional coverages and services for motorists in the assigned risk plans. It brought relief to an area troubling some of the public. A year ago, this program was further expanded.

Meanwhile, voluntary restrictions on cancellation were pioneered within NAII, and most of our companies, and the industry generally, soon inserted such provisions in their policies.

In addition, our association developed and supported—and continues to develop and support—model laws regulating cancellation

practices and procedures in every State where legislators and State insurance commissioners feel there is a problem.

To protect the responsible citizen, we originated and have taken the lead in extending to all 50 States measures requiring that uninsured motorist—UM—coverage with insolvency protection be offered with every automobile liability policy.

Forty-two States now have UM laws, and 26 States have the insolvency protection. UM and insolvency bills are pending in five other States as we seek to blanket the country with this protection by law.

We want to emphasize that all these steps were initiated long before there was any substantial national criticism or talk of Federal studies.

Last November, as a direct result of these several years of in-depth studies and consultations, our association announced here in Washington a statement of policy which is unmatched in the history of the property and casualty business—and maybe of any other business.

We enunciated a set of guiding principles in which we pledged that every applicant for automobile insurance—every policyholder—would be considered for insurance and provided insurance on his individual merits.

We declared that this principle would apply regardless of race, creed, color, occupation, whether previously rejected or canceled, whether divorced, or whether a senior citizen.

Now there is a distinction in this wording and this policy that I would not want to be lost on this committee or on the American public. When we say provide insurance, that is exactly what we mean.

Once the initial underwriting period is over—the same kind of investigatory period that a bank has in making a loan, or a store has before opening a charge account—once this period is over and a policy has been issued, the policyholder will not be canceled or refused renewal because of any of the reasons outlined in the guiding principles.

Thus you have a sweeping pledge from our companies that they are committed to a policy of providing—consistent with financial soundness and fairness to all policyholders—continuous coverage for the American motoring public.

Part and parcel of the underwriting discussion, of course, is the furnishing of an adequate market. As the number of motor vehicles on our streets and highways continues to increase, our business must expand its capacity so it can safely insure this mushrooming armada.

Our companies have been doing just this. We have been stepping up to the plate and providing the greatest share of the overall market as well as the greatest share of the new market.

In 1961, our companies wrote $2.6 billion in private passenger auto premiums or 41 percent of the market. In 1966, it was $45 billion or over 50 percent of the market. When final 1967 figures are compiled, we expect that this total will exceed the $5 billion mark.

Since 1959, the number of private passenger cars voluntarily insured by our members and subscribers has been increasing at 2½ times the rate of increase in the total number of private passenger vehicles registered in this country.

Furthermore, in our statement of policy, we propose a mechanism for furnishing automobile insurance to every person who holds a valid driver's license.

We feel this can be achieved by a combination of voluntary action and liberalizing eligibility rules under the assigned risk plans now operating in every State, provided there are adequate rates and a uniform, all-out Government effort throughout the country to remove unfit drivers from the road. This has to be an equal partnership between Government and industry. We can't do it alone.

There was nothing fainthearted in our espousal of these principles. We left no room for hedging; no room for doubt. We stood right in the harsh spotlight of national publicity and took an unequivocal position. Almost every newspaper of any consequence in the United States carried a story on the program. There was extensive coverage in magazines, radio, and television. A copy was sent to every insurance commissioner in the country, which meant that the regulators could look right down the barrel at our companies.

Several Congressmen and Senators were kind enough to commend our statement of policy efforts.

Our member companies found strength and encouragement in this response.

We have had equally rewarding reaction from insurance commissioners, editorial writers, commentators, the public. Commendation has come from other groups such as the million-member American Association of Retired Persons, which publicly praised our efforts to provide a market for senior citizens.

I would like to report to you today—3½ months after our announcement—that we have had only an insignificant handful of complaints. Each complaint was promptly investigated, and where warranted prompt remedial action was taken.

To further implement this program, the NAII is holding regional underwriting seminars with our member companies throughout the country.

In a continuing process, we are finding our companies improving and updating their underwriting rules and practices to meet the spirit and intent of these underwriting principles.

Through voluntary action, we have made dramatic strides in eliminating some of the sources of public dissatisfaction mentioned in statements by Members of Congress and President Johnson.

We sincerely believe that in the areas covered by our statement of policy—and as far as our member companies are concerned—there is not a national problem of underwriting abuses or arbitrary and discriminatory practices. I am convinced that this part of our house is fast being put in order.

One of the surest ways to provide an adequate market and continuing coverage, of course, is to foster competition. This is the cornerstone of the independent philosophy.

Ever since we were organized 23 years ago, the NAII has championed competitive rate laws as best meeting the needs of the insuring public. Fourteen States and jurisdictions now have laws which place major emphasis on competition as a regulator; we favor extending this concept to all 50 States.

In the 1967 legislative year, three States—Florida, Georgia, and Indiana—enacted such legislation. Already the commissioners in Florida and Georgia, where there had been problems in obtaining insur-

ance, report that their markets are opening up. The Georgia commissioner announced recently that there have been more rate decreases than increases under the new law.

The oldest competitive rate law in the country—and the type that has been followed by other States and is endorsed by the NAII—is that which was adopted in California 20 years ago and has been eminently successful.

Because of its explosive growth, tremendous motor vehicle flow and widespread traffic safety problems, California might be expected to have the most critical automobile insurance situation in the country. Instead, it has far fewer insurance headaches than most States.

We believe that competition, as exemplified by the American free enterprise system, is the finest, surest regulator in the public interest yet devised.

With competition in the marketplace—with hundreds of companies vying with each other for the available business—the public is assured of the lowest price, best service, latest innovations in product, and an available market.

Competition is the hallmark of the independent companies. It is the secret behind their success; it is the spur to much of the experimentation and progress in our business.

It has spawned such innovations as uninsured motorist coverage, insolvency protection, noncancellation clauses, advance payments, rehabilitation programs, medical payments coverage, safe-driver discount, special risk coverage, drive-in claims service, good student discount, 6-month policies and installment paying of premiums, deductible policies, and even the assigned risk plan.

The one company in the country today that has any credible experience with a form of an automobile insurance compensation plan—a 10-year experiment which produced solid facts and figures—is one of our competitive-minded members.

Other of our competitive-conscious companies have met a major need by providing a substantial market for military personnel. As a result, NAII members are currently insuring upward of 1,500,000 servicemen of all ages and ranging from the lowest enlisted grades to general rank.

This willingness to experiment, to innovate, to compete has made the NAII workshops and meetings focal points for the industry.

These forums have been in the forefront of developing and introducing new claims practices and techniques, underwriting changes, new coverages, new services, operational improvements; even a question of philosophies.

We have pitted plaintiff bar against defense bar and heard arguments on Federal versus State regulation. At our annual meeting in 1964, we provided what was probably one of the first national platforms for Harvard Prof. Robert E. Keeton, coauthor of the Keeton-O'Connell plan.

We have debated the Morris plan, the Saskatchewan plan, the Ehrenzweig plan.

We have furnished a forum for State commissioners, academicians, U.S. Senators and Congressmen, space scientists, economists, traffic experts, and automobile manufacturers.

We have heard Federal officials, foreign insurance leaders, Governors, big city mayors, non-member-company executives, newsmen, and spokesmen for independent agents' groups.

Little wonder that at the close of our annual meeting last fall, Robert F. Jones, associate editor of Time magazine observed:

> The scope of your interests, as reflected in the speaker's roster, was genuinely engaged; you neither seek comforting, pat answers to the Nation's problems, nor do you turn deaf ears to harsh ones.

The problem areas that I have capsuled today, Mr. Chairman, represent the most urgent matters that have been confronting our industry. They cover most of the grievances and irritants that have concerned you and this committee. They required action. We acted.

Now we must look at the system under which we are operating. This problem does not lend itself to quick decisions. It is too complicated; it is too steeped in the law and the rights of the individual. It requires exhaustive study and deliberation such as is contained in the Department of Transportation proposal. Hasty action could cause irreparable damage.

We are hard at work in this area, too, and will have some tangible contributions to make.

Expert committees of our association are well advanced on investigatory studies. We are participating in experiments which should produce meaningful data. Within the past month, we entered upon a research project with the University of Texas which we hope will be of widespread benefit to every one who is critically examining the present system.

The fund we established at the University of Texas will enable independent researchers there to expedite a project on which they are already embarked pertaining to the problems surrounding the compensation of auto accident claimants. We want to encourage independent, objective research and thinking in this whole area which is of such vital concern to the American consumer and to our business.

In addition, a study committee of our association has approved in principle plans to experiment with a program addressed directly to major criticism of the automobile accident reparations system.

While final details of this experiment have not been worked out, a tremendous amount of research and deliberation has already gone into the preparations for the project, and valuable data has been assembled.

The major benefit of this work and these studies is that hard facts and experience on which to base future decisions will be available. I am thinking especially of public acceptance and reaction, cost factors, and similar test objectives.

We believe the results of such experimentation will be extremely helpful to this committee, to the Federal agencies which would implement Senate Joint Resolution 129, and to our business.

In conclusion, Mr. Chairman, could I respectfully call the attention of the committee to just a few of the factors that combined to put this business in its present position. I am speaking of the socioeconomic forces with which we have had to contend.

At the end of World War II, the motor vehicle registrations in this country totaled an estimated 34 million. Today, that figure is estimated

at 97 million. In the short span of two decades, we have been transformed into a nation on wheels.

The stream of vehicles on our streets and highways is increasing at an astronomical rate of 3 million a year.

Traffic accident deaths and injuries are increasing 58-percent faster than motor vehicle registrations.

It costs almost 50-percent more to repair a popular-priced car today than it did 10 years ago.

In the last 10 years, hospital daily service charges have risen 92 percent and physicians' fees 39 percent.

And if you want to look back 20 years, hospital daily service charges have skyrocketed 354 percent.

We have no control over these inflationary costs and soaring statistics. Yet these are the dollar signs of the times as far as the insurers are concerned when it comes to paying claims and settling millions and millions of cases.

These are the cost figures we are saddled with when we are called upon to honor our contract with the American public—a contract that calls for us to defend, indemnify and provide a service. These factors—and the law as it now exists—are the standards against which our performance should be measured.

In a short period of incredible growth and change and inflation, we have compiled a record of accomplishment, of service, of meeting an unparalleled need. It is a record of vigor and action, of imagination and optimism.

We are proud of this record.

We stand ready to work with this committee and with any agencies you designate in our continuing effort to achieve optimum performance in serving the needs of the American motoring public.

Thank you, Mr. Chairman.

Mr. Moss. Thank you.

Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman. I have no questions. Your testimony is very helpful and very clear.

In the National Association of Independent Insurers, how many various insurance companies do you represent?

Mr. LEMMON. About 350.

Mr. WATKINS. Do you have any members in Pennsylvania?

Mr. LEMMON. We have some, yes, sir. The Harleysville Mutual, Keystone, Erie Insurance Exchange. I would be delighted to furnish a complete list.

Mr. WATKINS. That is not necessary.

I would like to ask one question. Have you had any mutual insurance companies that have gone out of business?

Mr. LEMMON. I suppose every organization in its history has had member companies that become insolvent. We have had a few, unfortunately.

Mr. WATKINS. How many would you say? You have had a few in Pennsylvania.

Mr. LEMMON. I don't believe any of those were our members, Congressman. That is one reason we innovated and suggested this uninsured motorist protection and insolvency protection.

If I am insured in an insolvent company and I hit you, you are protected regardless of my company's insolvency.

Mr. WATKINS. Would be protected?

Mr. LEMMON. Yes, sir. We are trying to pass it in Pennsylvania now. It is in 26 States and we have it in five legislatures at the moment.

Mr. WATKINS. In other words, I take your testimony here that you join in this stduy that is to be made?

Mr. LEMMON. Yes, sir. We did not come down and beat the drums for it, of course, to be honest with you. But we think this is a necessary step at this juncture.

Mr. WATKINS. A study can never hurt, I don't think. Do you?

Mr. LEMMON. I don't think so. I think it will do the business good. We will have a better understanding by the American public.

Mr. WATKINS. You feel like I do, you like to keep the Federal Government out of everything they can.

Mr. LEMMON. I feel that way.

Mr. WATKINS. I feel personally that this insurance business is in bad shape. At least, it is in my State. It has been pretty costly to some people in these mutual companies, the enormous bills they have received.

Mr. LEMMON. Congressman, it is not a new term around here but it is difficult to legislate honesty and integrity in people.

We have had those on occasion but they are sporadic. We had them in Illinois. But that situation is being cleared up in Illinois and I think it is being cleared up in Pennsylvania.

Mr. WATKINS. Not entirely, I notice you don't mention it in here at all but would you be in favor of some set form of settlements on public liability claims, the way we settle workmen's compensation claims? You know the courts are cluttered with cases of public liability.

Mr. LEMMON. That is said, Congressman, but I think you will only find that cluttering of the courts in certain big cities like Philadelphia, New York, San Francisco, Chicago. Actually, countrywide only 5 percent of the personal injury claims or thereabouts go to suit or are taken to suit. Only 2 percent are ever litigated. So this is a pretty good number.

Mr. WATKINS. Two percent?

Mr. LEMMON. Two percent, I believe, are litigated.

Mr. WATKINS. What State is this?

Mr. LEMMON. This is countrywide. These are published figures. Each year the insurance companies have to report them in their annual statements and they are consolidated by the national publications. It is a very low amount.

We had a check made recently. The first year on personal injury claims I believe it was about, it might vary a point or two, but 78 or 79 percent of the claims are settled in the first 12 months.

Mr. WATKINS. That is quite a record.

Mr. LEMMON. I think that is generally true in the industry. Now there are exceptions, of course.

Mr. WATKINS. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. Moss. Mr. Blanton?

Mr. BLANTON. Mr. Chairman, I have no questions.

Mr. Moss. I have no questions, Mr. Lemmon.

I do want to express the appreciation of the subcommittee for your statement. I have no doubt if the study resolution is authorized that the Department will give very careful consideration to the views expressed by you.

Mr. LEMMON. We will be very glad to cooperate in furnishing any information we are able to.

Mr. Moss. Thank you.

Our next witness will be Mr. Melvin L. Stark, manager of the Washington office of the American Insurance Association.

Mr. STARK. Is it your desire to now have incorporated in the record the entire text of your statement so that you can summarize it in consonance with the notice made at the start of the hearing?

STATEMENT OF MELVIN L. STARK, MANAGER, WASHINGTON OFFICE, AMERICAN INSURANCE ASSOCIATION

Mr. STARK. Yes, sir. I have a brief statement to introduce into the record five statements that were submitted to the Senate committee when Senator Magnuson held hearings last week, with the permission of your committee, sir.

Mr. Moss. Is there objection to having the five statements inserted at this point in the record?

Mr. WATKINS. No objection, Mr. Chairman.

Mr. Moss. Hearing no objection, it is so ordered.

Mr. STARK. Our organization, the American Insurance Association, is grateful for the opportunity to present its views regarding House Joint Resolution 958. Our organization is a trade group comprised of 169 property and liability insurance companies doing business throughout the United States.

The large majority of these companies write automobile insurance, and the policies are sold through independent insurance agents and brokers.

We favor the proposed legislation sponsored by Chairman Moss, and the member companies of our organization will lend support and assistance to the study proposed by this resolution.

With your permission, we are submitting for the record, statements presented by five of our executives before the Consumer Subcommittee of the Senate Commerce Committee on March 14, 1968, when hearings on the companion bill before the Senate (S.J. Res. 129) were held by Senator Magnuson.

These informative statements were delivered by the following executives:

T. Lawrence Jones, president, American Insurance Association.

Fred H. Merrill, chairman of the board, Fireman's Fund Insurance Companies.

H. Clay Johnson, president, Royal-Globe Insurance Companies.

William O. Bailey, vice president, Aetna Life and Casualty.

Harold Scott Baile, Senior Deputy General Manager and General Counsel, General Accident Fire and Life Assurance Corp, Ltd.

(The statements referred to follow:)

STATEMENT OF T. LAWRENCE JONES, PRESIDENT, AMERICAN INSURANCE ASSOCIATION, NEW YORK, N.Y.

My name is T. Lawrence Jones and I am President of the American Insurance Association, a trade organization of 169 stock insurance companies writing property and liability insurance. Practically all of our member companies sell automobile insurance policies throughout the nation. The sales representatives of these companies are independent agents and brokers. Some of our companies file or promulgate their insurance rates independently; some belong to rating organizations which file or promulgate rates for them.

We welcome the opportunity to appear before you today. American Insurance Association and its member companies on a number of occasions have strongly and publicly supported state and federal studies of automobile insurance and the underlying tort liability system. Specifically, we urge passage of Senate Joint Resolution 129, authorizing the Department of Transportation to undertake a comprehensive and detailed study.

As an industry we are very much aware of criticism about the present system or systems of compensation of automobile accident victims and of automobile insurance as to its role and performance in that system. We have endeavored to analyze and understand these criticisms and to respond to them. In doing so we have had to come to the conclusion that the criticisms were not directed to basic problems but to symptoms of basic problems.

The criticisms have been directed to the rising cost of automobile insurance, the alleged slowness in the paying of claims, the unevenness of recovery by accident victims, the difficulty of some car owners in obtaining insurance, and the fact that some victims do not recover at all.

The industry has not failed to respond to any of these complaints. However, the efforts to treat them have revealed to us that the real problem was not the specific objectives of criticism but the nature of the present system of compensation and a question as to whether it measures up to the expectations and desires of society today.

As far as automobile insurance is concerned, we are convinced that much of the criticism results from a misunderstanding of the role that insurance plays in the present system. The rising costs and number of accidents have created a price squeeze for the industry. The prevailing rate levels are not adequate to cover the risk of some drivers and thus their policies are very difficult to place on a voluntary basis.

We want to make several comments about these criticisms and present the industry's analysis and response to them. We would observe here that the number, scope and complexity of the problems argue well for the passage of S.J.R. 129, and the need for the comprehensive study it authorizes.

MAJOR NATIONAL PROBLEM

The operation of 96 million motor vehicles by 102 million licensed operators in the United States illustrates the scope of the subject we are considering. Though insurance is a mechanism for economic security subsidiary to the auto itself, its widespread need and recognized worth has made auto insurance a service of major significance to the general public. When related to accidents, injuries, death, economic loss, and the method of compensating the auto accident victim, it is not surprising that the operations and functions of insurance companies have attracted so much public attention.

The isues involved are truly national in scope; they differ only in degree from state to state. Therefore, a comprehensive survey is appropriate. In our estimate, the Department of Transportation is eminently equipped to supervise that study, particularly in view of its previously assigned responsibility in the field of traffic safety.

The position of the insurance business in the general frame of reference is frequently misunderstood. We are long past the point of recognizing that the automobile is a necessity of life. It has become such an integral part of our economy and society that no man and no business can escape concern and responsibility for the vitality of the traffic system.

COST OF INSURANCE

The cost of automobile insurance is one of the major causes of complaint in recent years. Yet the cost is a product of our total experience.

The business of insuring automobiles is a highly competitive one with more than 900 companies actively writing these policies in the United States with premiums of $9.6 billion written in 1966. Against a 1966 backdrop of 53,000 traffic fatalities and 3,710,000 traffic injuries resulting from 13,600,000 accidents, it is evident that an enormous human problem is basic to the total subject.

With accidents and their economic consequences constantly on the increase, private passenger automobile insurance premiums countrywide rose 23 per cent from January 1, 1960, to December 31, 1966. From 1958 to 1966, average claims costs for auto property damage rose 46 per cent and average claims costs for bodily injury rose 31 per cent. The economic cost of auto accidents to the American public is currently estimated to be $13 billion a year.

At the heart of these statistics is accident prevention, which is fundamental to the reduction of automobile insurance costs. The frequency of accidents and the surging cost of claim settlements must be controlled and made manageable as a prelude to reversing the upward trend of auto insurance rates.

TRAFFIC SAFETY

The American Insurance Association companies have a long record in the traffic safety field. It is frequently overlooked, particularly today with the stress on car safety design, that the insurance industry was in the forefront of driver education and literally financed and nurtured the traffic engineering profession. We are proud of these accomplishments and of many others in the field of highway safety. We support the activities of the National Highway Safety Bureau and strongly endorse those federal and state programs directed to raising the standards of traffic safety and compliance so vital to effective programs. In addition, we are one of three auto insurance trade associations supporting the Insurance Institute for Highway Safety based in Washington, D.C.

REGULATION

The insurance business is subject to state regulation and supervision. Our organization has long been committed to the system of state regulation, and we are dedicated to making it a viable and responsible governmental concept with full regard for the primary public interest. With particular reference to rating laws and regulations, we believe in a flexibility of pricing our product so that the business can respond to the needs of the market place and make insurance available to the public at all times and under conditions which allow insurers to make a reasonable profit.

MARKET SUPPLY PROBLEMS

In the decade from 1956 to 1966, the automobile insurance industry has suffered a series of annual underwriting losses from automobile liability insurance. If it were not for income from investments, the consequences would of course be much worse. These unsatisfactory operating results have been the root cause of many complaints about automobile insurance. In the presence of continued annual auto insurance losses, there has occurred a constriction in the market availability of automobile liability insurance. This could be predicted for any business enterprise whose operations were not producing a reasonable return. This constriction has had undesirable consequences in the field of underwriting practices and with regard to cancellations and non-renewals of policies. Although company underwriting practices from time to time have been criticized, we believe that overall the insurance industry is doing a responsible job in making liability insurance available to motorists.

Automobile liability insurance is in quite a different position from other products and services. With regard to other products and services, the seller's concern is usually with the buyer's desire to pay at the prevailing price. The motorist regards liability insurance as essential. In fact, it is a "must" for most prudent

car owners. For the driver who has been involved in accidents, the essentiality of insurance is even greater. Thus, in many cases, the person who is most in need of insurance so that he can continue to operate his car is, in fact, not infrequently an undesirable risk at prevailing insurance rates because of his poor driving record.

Cancellation and non-renewal practices in recent years have come under critical observation. "Cancellation" refers to policy termination by the insured or the company during the policy term. "Non-renewal" refers to the decision not to continue an existing policy at the expiration of its stated term.

Since 1961 our companies have voluntarily restricted their rights to cancel after the initial 60 days of the policy period, which period is needed to investigate and review risk information. In December 1967, the voluntary non-cancellation plan was very substantially revised. Today, there are only two reasons for cancellation: (1) failure to pay premiums and (2) suspension or revocation of a driver's license or registration. While these are voluntary steps, American Insurance Association, with other groups, is sponsoring in all states legislation designed to confine cancellation by the insurer after the first 60 days to non-payment and suspension or revocation of license or registration.

Our member companies are certainly sensitive to the insurance requirements of motorists. As a supplement to the voluntary market, it should be noted that automobile assigned risk plans are available to provide liability insurance in all states.

PRODUCT DEVELOPMENT

It is sometimes overlooked, and certainly rarely fully understood, that the automobile liability policy has bene expanded over the years to afford broader protection and to provide supplemental benefits to meet new public demands. It has been greatly broadened and supplemented through—

(1) extension of drive-other-car coverage,
(2) automatic substitute automobile coverage,
(3) medical payments coverage,
(4) uninsured motorist protection, and
(5) voluntary limitation on the right of companies to cancel.

These new features add to the cost of the policy but we think they are fully warranted in terms of the added protection afforded by them.

COURT INTERPRETATION

We are all aware of the trend in the courts to interpret policy provisions adversely to the insurer and to construe existing laws to assure a monetary recovery for traffic accident victims. These trends have added substantially to the cost of automobile liability insurance and clearly raise the question as to whether the courts are actually seeking an accident reparation system rather than a tort liability system based on the concept of fault.

CLAIM HANDLING

The handling of claims is a most important function of any liability insurance company. All meritorious claims should be promptly and fairly paid; on the other hand, it is the obligation of an insurer to resist claims when there is no liability. It is the latter responsibility which frequently places insurers at cross purposes with other social aims. Insurance companies, for example, are under constant pressure from the courts to settle cases, including cases of very doubtful liability, the purpose being (1) to avoid an overwhelming backlog of suits on the court's calendar and (2) to compensate traffic accident victims.

While the figures may differ in urban as compared to rural areas, it has been estimated that in New York City (a highly litigious area) 60% of all personal injury claims, not just automobile, are concluded without the institution of a lawsuit. Of the approximately 40% that result in suits, less than 4% of the total number of claims reach trial and less than 2% are actually tried to verdict. Thus, it is clear that the processing of this mass of personal injury litigation is vitally dependent upon settlements by insurers. As an illustration of the importance of the settlement process to our courts, liability insurers were told by a distinguished lawyer and former judge that, if liability insurance companies in New York City reduced the number of claim settlements by as little as 5%, the impact on the courts would be catastrophic and the whole system would collapse in a matter of months. Insurance companies are acutely aware of their settlement responsibility and their part in making the system work.

IMPOSING JUDICIAL PROCEDURES

Our member companies have always sought to cooperate with the judiciary in exploring and experimenting with different techniques to handle litigation expeditiously. American Insurance Association companies took the initiative in helping institute a masters' plan in a principal court in New York City, pursuant to which personal injury and property damage claims are heard by two masters—one from the plaintiffs' bar and one from the insurance company ranks—all serving as volunteers with no compensation. This masters' plan has been highly successful.

NEW SETTLEMENT PROCEDURES

All principal companies today are using settlement procedures which were unheard of a few years ago. First, they began with settling property damage liability claims without taking a release. In that way the claimant could obtain immediate reparation for his damaged car without waiting to determine the extent of his personal injuries. This idea has been greatly expanded. Today, companies are paying medical and hospital costs and loss of wages as incurred without taking any release; leaving to the future the final determination of the total claim. Results so far have been most gratifying from the standpoint of the injured person, who receives reimbursement for out-of-pocket losses when he needs it most.

NATURE OF LIABILITY POLICY

We believe there is a general misunderstanding of the purpose of an automobile liability insurance policy. It was developed many years ago as an accommodation to the tort liability system. Its purpose was, and in theory still is, to protect the assets of the negligent driver. It is a policy sold to a potential wrongdoer. It was not designed nor intended to provide benefits to traffic accident victims. True, the automobile liability insurance policy is a source of compensation to traffic accident victims, but in most states it is only supposed to provide these payments when the victim is free of fault and the insured is negligent, and then these payments are just an incidental benefit arising from the indemnification of the insured for his liability under law.

DEVELOPING REPARATION SYSTEM

The public attitude has been changing over the years. Today, the emphasis has shifted to compensating the traffic accident victim rather than protecting the assets of the wrongdoer. This suggests that the public now wants to see every injured person properly and fairly compensated for his losses rather than engage in protracted proceedings to determine who caused the accident. The industry has responded to this growing trend by adding coverages to the automobile policy based on the reparation approach. Medical payments and disability or loss of earnings coverages come under this category. Collision or physical damage coverages always have been on the reparation basis.

However, the present system cannot be evaluated on the assumption that it is a mechanism for providing adequate benefits to all traffic victims. If it were to be judged on that basis, admittedly, the present tort liability system is not an efficient system of making reparations to all traffic accident victims because it was not designed or intended for that purpose.

INDUSTRY STUDIES

American Insurance Association has been well aware of what appears to be a growing dissatisfaction with the present system. We have been engaged in our own studies, reviewing and analyzing the present system and all alternatives, including the basic protection plan proposed by Professors Robert E. Keeton and Jeffrey O'Connell.

We realize that cost is not the only significant factor in determining the kind of system which should provide benefits to accident victims. Nonetheless, we all know that cost is highly important. For this reason, we are now in the process of collecting data which will enable us to determine the prices of a variety of plans, including the Keeton-O'Connell basic protection plan. The raw data is being compiled by twelve participating member companies on the basis of claims currently settled in a stated period. It will cover all claims closed in the stated period by the twelve participating companies in seven states—California, Connecticut, Illinois, Massachusetts, New York, Rhode Island and Wisconsin.

Involved in the project are underwriters, claim executives, actuaries, lawyers, systems analysts, researchers knowledgeable in sampling techniques and data processing programmers. When completed we will be able to present realistic cost estimates on the Keeton-O'Connell plan. We also expect that we will be able to provide cost figures on a variety of plans, including those which would go beyond the Keeton-O'Connell plan and other plans of a more limited nature. In addition, by modifying or adjusting specific aspects of a given plan, we will be able to measure the cost impact of such changes.

INDUSTRY RESPONSIBILITY

The insurance industry in large measure is the administrator of the current compensation system, such as it is, and in this role must adhere to the legal requirements of the law of torts. Many of the criticisms of the industry are traceable to this law and not insurance procedures. Further, as a responsible member of the nation's economic structure we recognize a duty to provide a broad insurance market in a manner that will sustain our ability to continue this function in an expanding economy. Responding to this duty has become increasingly difficult during the past decade for the factors most directly affecting insurance rates, such as hospital and medical care and automobile damage repair costs, have increased at a rate greater than most other elements in the consumer price index, while at the same time the industry has had serious difficulty in securing adequate rate levels.

We are confident that a fair and objective study of the current system and the attendant administration of the system by the insurance industry will place in proper perspective the many aspects of this matter. In addition, we sincerely hope this study will emphasize the urgency of action programs to manage effectively the broader problem of the safe transportation of our citizens with dramatic reduction in accidents and injuries.

The Department of Transportation should be able to coordinate these approaches to a sound and efficient system of compensating victims of automobile accidents.

STATEMENT OF FRED H. MERRILL, CHAIRMAN OF THE BOARD, FIREMAN'S FUND INSURANCE CO., SAN FRANCISCO, CALIF.

My name is Fred H. Merrill. I am Chairman of the Board of Directors and Chief Executive Officer of the Fireman's Fund Insurance Company and its subsidiaries. During 1967, our companies wrote nearly $600 million of premiums, of which approximately $205 million was in automobile insurance. This is our largest classification of business, accounting for 35 per cent of our annual premium income.

Let's begin our discussion of automobile insurance costs with a simple definition of the "product" itself. Automobile insurance provides the means by which the risk of financial loss arising out of the use of a car is transferred from an individual to a company. For this service, the company charges a premium. In the performance of this function, the automobile insurance company can be likened to a conduit. In one end goes the premium dollars of policyholders, and out the other comes some portion of these same dollars to pay claims. It would be reasonable to hope, of course, that sufficient money would remain in the conduit to reward the company for the vital services it is providing. Unfortunately, such has not been the case.

The driving record of the motoring public has required that more and more money be put into the conduit to pay for the claim costs that flow from its end. In the process, the capital stock companies have sustained losses and expenses that exceeded premiums by the staggering amount of $1.1 billion during the past ten years. Exhibit "A" shows the record of this $1.1 billion underwriting loss, and while 1967 figures are not yet available, I strongly doubt that they will do very much to change the picture.

My point is a simple one. The cost of having the insurance company assume our liabilities is directly related to the cost of the automobile accidents we cause, or are involved in, and because this is so, we—the nation's automobile drivers—largely determine our own rates.

Now let's go directly to this matter of rates or auto insurance costs. At one outset, it is important that we all have an appreciation for the tremendous growth and size of the automobile insurance market and the highly competitive atmosphere that exists.

In 1946, at the end of World War II, there were 28 million registered private passenger vehicles in the United States. At the end of 1966, there were 78 million —almost three times more—and nearly 3 million cars are added to our highways each year. Today there are about 3,000 automobile insurers in the United States. These companies collect approximately $9½ billion annually from the sale of automobile insurance coverage.

It is important to understand that automobile insurance largely determines the property-liability insurance company's operating performance. Because the market is so large, it frequently makes up the major share of most companies' business. For that reason, the automobile classification to a very large extent determines over-all company profitability.

It is also true that automobile insurance is the key to the marketing of other lines of insurance. A company must aggressively seek new automobile insureds if it is to operate successfully in the property-liability industry.

These two conditions, then, create a highly competitive environment in which a company simply cannot afford to price itself out of the market. The result is a check mate or control against runaway premium charges.

We see ample evidence of this situation in the continuing refinement in classification systems that has occurred since World War II. The industry has progressed from a very rudimentary rating classification system to a highly refined one which produces different rates not only on the basis of insureds' location, but also on the basis of age of operator, use of automobile, and record of previous accidents. This greatly refined classification system is used competitively as a means to attract the better insureds by way of a lower premium.

Not only does competition act as a barrier to unreasonable insurance costs, but the actual mechanics of revising rates also tend to hold premium costs down. Generally speaking, premium levels in any state are not changed more than once a year; in fact, there are many states in which premium levels have not been revised for two or more years. Further, the rate-making procedure involves an actuarial analysis of *past statistical* experience. Simply stated, companies are always using past experience to forecast future costs. This means that our "product" is priced and delivered before its actual cost is known. Obviously, when claim costs are rising faster than they were at the time the past statistical experience was accumulated, the standard rate-making formulas are almost certain to produce inadequate rates. My point, quite frankly, is that our rating formulas are not entirely responsive to current inflationary conditions. The result frequently is an inadequate premium charge rather than a proper one.

With respect to rising costs, attached Exhibit "B" indicates that during 1967, automobile insurance rates were increased in 32 states for the liability coverages and in 31 states for the physical damage coverages. Rate reductions were effective during 1967 in 2 states for liability coverage, in 10 states for collision coverage, and in 29 states for comprehensive coverage. The effect of rate increases during 1967 *in the states where action was taken* was to increase the level of liability premiums 5.3 per cent and the physical damage premiums 0.1 per cent; combined, the effect of 1967 rate action was an over-all increase in existing premium levels of 3.7 per cent in the affected states. If you take into account that there was no rate activity in some states during 1967, the over-all increase of 3.7 per cent becomes only 2.5 per cent.

Premiums have risen and unquestionably will continue to rise, simply because those benefits that automobile insurance provides involve aspects of the economy on which the current inflationary spiral will continue to have the greatest impact. This fact is clearly demonstrated by attached exhibit "C", which compares the increase in All Items of the Consumer Price Index to those selected items which have a direct bearing on automobile insurance costs. Please note that during the past 14 years, these items have risen at a much higher average annual rate than has the general level of prices reflected in the All Items category of the Consumer Price Index. Further, the rate of inflation has accelerated in the last year throughout the entire economy. For example, while Hospital Daily Service charges increased at an annual rate of 8.0 percent during the six year period 1960–1966, during 1967 the actual increase in costs was 15.5 percent, nearly double the annual rate of increase for the previous six years.

Exhibit "D", also attached, indicates how inflation has caused higher claim costs. During the three year period ending June 30, 1967, the average cost of paid claims for Bodily Injury Liability, Property Damage Liability and Medical Payments coverage have increased $122.00, $42.00 and $33.00, respectively. During the most recent of these years, Bodily Injury Paid Claims rose $59.00, Property Damage Liability claims rose $16.00 and Medical Payments claims increased

$15.00 on the average. When available, later statistics will unquestionably show an even more dramatic increase in costs.

I should add here that the phenomen of higher benefits necessitating higher premiums for the automobile insurance industry has been paralleled by the actions of other programs, such as Blue Cross, Blue Shield and Medicare, all of which are involved in the payment of similar benefits.

Yes, gentlemen, the cost of automobile insurance has gone up, as has virtually the price we pay for any service or product. We recognize also that in the current economic climate, continuation of the present system of providing automobile insurance benefits will almost inevitably result in still higher premiums for the motoring public. As an industry, we do not feel that an ever increasing cost is the solution to the current problem. It is important, however, that we realize that the insurance industry did not create our present at-fault tort liability system. Rather, it responded to its existence and has succeeded well in creating a "product" that fills a basic need within the system. At the moment, industry groups are carefully analyzing and weighing possible alternative automobile insurance systems of reimbursement. It is our hope that an alternative to the current system can be devised which will result in a system of reparations which produce lower insurance premiums for the motoring public.

EXHIBIT A

Underwriting experience—All stock companies

All automobile coverages combined, 1957–66

Year	Premiums earned	Statutory underwriting profit or loss	
		Amount	As percent of premiums earned
1957	$3,295,093,404	−$301,031,523	−9.1
1958	3,534,509,906	−142,265,516	−4.0
1959	3,818,521,979	−18,601,443	−.5
1960	4,065,952,774	54,329,811	1.3
1961	4,145,216,923	41,516,064	1.0
1962	4,309,472,668	−60,365,147	−1.4
1963	4,584,192,772	−109,912,854	−2.4
1964	4,896,030,351	−280,836,201	−5.7
1965	5,409,444,137	−251,863,740	−4.7
1966	6,085,838,638	−32,180,447	−.5
Total	44,144,273,552	−1,101,210,996	−2.5
AUTOMOBILE LIABILITY—BODILY INJURY AND PROPERTY DAMAGE COMBINED			
1957	$2,024,188,622	−$263,383,645	−13.0
1958	2,218,185,138	−196,754,126	−8.9
1959	2,441,155,916	−105,135,125	−4.3
1960	2,627,490,170	−38,910,636	−1.5
1961	2,705,120,637	−58,523,856	−2.2
1962	2,828,230,353	−86,683,263	−3.1
1963	2,989,462,029	−122,121,730	−4.1
1964	3,184,329,856	−233,466,560	−7.3
1965	3,504,350,618	−234,671,247	−6.7
1966	3,895,036,968	−183,164,283	−4.7
Total	28,417,550,307	−1,522,814,471	−5.4
AUTOMOBILE PHYSICAL DAMAGE			
1957	$1,270,904,782	−$37,647,878	−5.3
1958	1,316,324,768	54,488,610	4.1
1959	1,377,366,063	86,533,682	6.3
1960	1,438,462,604	93,240,447	6.5
1961	1,440,096,286	100,039,920	6.9
1962	1,481,242,315	26,318,116	1.8
1963	1,594,730,743	12,208,876	0.8
1964	1,711,700,495	−47,369,641	−2.8
1965	1,905,093,519	−17,192,493	−0.9
1966	2,190,801,670	150,983,836	6.9
Total	15,726,723,245	421,603,475	2.7

Source: Best's "Fire and Casualty Aggregates and Averages," 1967 edition.

EXHIBIT B

PRIVATE PASSENGER CAR RATE CHANGES IN 1967

State	Effective date	Amount of change (percent)	
		Liability	Physical damage
States with changes:			
Alabama	Dec. 6, 1967	+18.9	+6.0
Alaska (1)	Apr. 7, 1967		−2.0
Alaska (2)	Nov. 5, 1967	+13.8	−5.2
Arizona	May 3, 1967	+18.5	−2.2
California	Aug 23, 1967	+.7	−5.1
Delaware	Feb. 15, 1967	+13.9	+7.6
District of Columbia	Feb. 8, 1967	+16.6	+10.1
Florida (1)	Jan. 18, 1967		+13.5
Florida (2) [1]	May 1, 1967	+14.2	
Hawaii	Dec. 1, 1967	+23.4	+13.0
Idaho	Oct. 4, 1967	−5.8	−6.1
Indiana	July 5, 1967	+7.4	−1.5
Iowa	Jan. 4, 1967	+9.1	+3.0
Kentucky	Mar. 1, 1967	+21.6	
Louisiana	Dec. 27, 1967	+17.6	+11.4
Massachusetts	Jan. 1, 1967	+5.1	+4.7
Missouri	Apr. 5, 1967	+10.9	−.9
Montana	Dec. 6, 1967	+16.6	+3.6
Nebraska (1)	Mar 7, 1967		−10.0
Nebraska (2)	Oct. 4, 1967	−.7	−6.6
Nevada	Apr. 9, 1967		+.1
New Hampshire	May 3, 1967	+9.6	+8.7
New Mexico	July 5, 1967	+6.3	−1.2
New York	July 26, 1967	+3.3	+8.9
North Dakota	Dec. 6, 1967	+18.7	+1.4
Oklahoma	Nov. 5, 1967	+.2	−8.1
Oregon	Feb. 8, 1967	+11.7	+5.4
Puerto Rico	Jan. 4, 1967	+5.0	
Texas	Aug. 1, 1967	+2.1	−3.9
Utah (1)	Apr. 7, 1967		−.6
Utah (2)	Nov. 15, 1967	+17.6	−9.5
Vermont	Jan. 4, 1967	+3.3	+1.4
Virginia	Aug. 2, 1967	+8.2	+3.1
Washington	do	+6.2	−8.2
West Virginia	Sept. 1, 1967		−7.6
Wisconsin	Apr. 5, 1967	[2]	+2.3
Wyoming	do	+9.5	−6.9
Average change		+5.3	+.1
Average countrywide change		+3.5	+.1

[1] Independent filing.
[2] No change.

Note: States without changes: Arkansas, Colorado, Connecticut, Georgia, Illinois, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Tennessee.

Source: Insurance rating board.

EXHIBIT C

CONSUMER PRICE INDEX

[1957–59=1.000]

Date	All items	Hospital daily service charges	Physicians' fees	Weekly earnings [1]	Automobile insurance rates
December 1953	0.936	0.770	0.860	0.833	0.888
December 1955	.935	.843	.912	.921	.827
December 1960	1.039	1.154	1.074	1.050	1.122
December 1965	1.110	1.571	1.233	1.317	1.364
December 1966	1.147	1.830	1.329	1.361	1.424
March 1967	1.150	1.942	1.355	1 361	1.431
June 1967	1.160	2.001	1.373	1.339	1.434
September 1967	1.171	2.041	1 394	1.371	1.445
December 1967	1.182	2.114	1.410	1.403	1.451
AVERAGE ANNUAL RATE OF CHANGE (PERCENT)					
December 1953–December 1967	+1.7	+7.5	+3.6	+3.8	+3.7
December 1960–December 1966	+1.7	+8.0	+3.6	+4.4	+4.1
1967	+2.1	+15.5	+6.1	+2.3	+1.9

[1] Weekly earnings of factory production workers.

Source: Bureau of Labor Statistics.

EXHIBIT D

COUNTRYWIDE AVERAGE PAID CLAIM COST TREND (EXCLUDING MASSACHUSETTS), PRIVATE PASSENGER CARS

Year ending—	Bodily injury liability	Property damage liability	Medica payments
June 30, 1964	$803	$158	$209
Sept. 30, 1964	803	158	210
Dec. 31, 1964	809	161	213
Mar. 31 1965	810	165	218
June 30, 1965	816	168	218
Sept. 30, 1965	828	171	219
Dec. 31, 1965	835	175	221
Mar. 31, 1966	857	180	224
June 30, 1966	866	184	227
Sept. 30, 1966	881	188	232
Dec. 31, 1966	896	192	235
Mar. 31, 1967	906	196	239
June 30, 1967	925	200	242
Changes:			
June 30, 1964, to June 30, 1967	122	42	33
June 30, 1966, to June 30, 1967	59	16	15

Source: Insurance rating board.

STATEMENT OF H. CLAY JOHNSON, PRESIDENT, ROYAL-GLOBE INSURANCE COMPANIES, NEW YORK, N.Y.

My name is H. Clay Johnson and I am President of the Royal-Globe Insurance Companies. These companies are members of the American Insurance Association. They are licensed and doing business in the 50 States and the District of Columbia.

The Royal-Globe Companies' 1967 premiums were a little more than $409 million, of which automobile insurance comprised $142 million of premiums.

We strongly endorse the comprehensive study by the Department of Transportation as contemplated by S.J. Res. 129. I say this with full realization that because the automobile insurance business is vast, highly complex and dependent upon personal on-the-spot decisions by many people, there will inevitably result from the study criticisms of the administration of the insurance function in specific cases. As Mr. Jones has already indicated, however, much of the criticism stems from a misconception of the function of the automobile liability policy.

Mr. Jones has indicated that those witnesses representing American Insurance Association companies will highlight separate aspects of the problem and thereby avoid redundancy. My brief remarks will be confined to state rate-regulatory laws.

You will recognize, I am sure, that the rate-regulatory laws under which our business operates are an important part of the automobile insurance system and that many of the cost and marketing aspects of which Mr. Merrill just spoke are directly or indirectly attributable to the character of such regulation.

Most of the state rating laws were enacted in 1946 and 1947 after the passage of the federal McCarran-Ferguson Act in 1945. That Act, as you know, was designed to permit the continuance of state regulation which had been jeopardized by the Supreme Court's decision in the South Eastern Underwriters Association case. The McCarran Act also granted to the insurance industry a qualified exemption from the federal antitrust laws, making them applicable only to the extent that the insurance business was not regulated by state law.

In approving the McCarran Act, President Roosevelt mentioned the necessity of "affirmative action" by the states. The emphasis on affirmative regulation at that time stemmed additionally from the industry's understandable preoccupation with antitrust matters following the SEUA case. It can best be explained by a quotation from the late Senator Kefauver, accompanying his introduction of a file-and-use rate regulatory bill (S. 568, 87th Congress, 1st Session) for the District of Columbia:

"This problem apparently had its genesis in the belief that the McCarran Act's exemption from Federal antitrust action could be achieved only by 'affirmative regulation.' This, motivated more by the desire to obtain antitrust immunity than the need for obtaining the best regulatory system, the States seized upon the requirement of advance approval before rates become effective. Unfortunately, certain of the deliberations of the Congress prior to the enactment of the McCarran Act gave weight to this argument." (Congressional Record, January 23, 1961, page 1045.)

The concept of affirmative regulation meant the necessity of requiring rate approval by some spervisory body. The member companies of American Insurance Association did not agree with this interpretation of the McCarran Act in 1945, nor do we now. It was and still is our view that regulation requiring rate approval is unnecessary and undesirable. Our position did not prevail. The model rating laws deevloped by the National Association of Insurance Commissioners, in cooperation with the industry, while intended to be a compromise between "prior approval" and "file and use," has become a prior-approval law in actual state operation. It requires rates to be filed subject to a waiting period before they can be used. But in practice rate filings under this type of law must receive advance approval by the state supervisors before they are used.

In support of the prior-approval type of law it can be said that in the late 1940's there was a high degree of rate uniformity since the bulk of the autobile insurance business was written by companies who were members of rating bureaus. Under such conditions, a rigid form of rate regulation may be appropriate. Today, however, vigorous rate competition prevails, particularly in the field of automobile insurance. Nevertheless many states are still trying to impose rigid rate regulation on a competitive price structure. This is inconsistent with the basic principles of free competition.

One of the states which did not adhere to the concept of the model rate regulatory law was California and this was because even back in 1945 vigorous rate competition prevailed for automobile insurance in that state. Instead of the model bill California adopted a no-filing law which has operated successfully to this day.

Now there is a growing awareness of a need for change in the rate regulatory laws of other states in order to conform to present competitive market conditions and state rating laws are being reexamined and reshaped to this end. In the past few years, Louisiana has adopted a form of file-and-use law; so has Indiana. Florida and Georgia last year enacted new rating legislation closely modeled after the California law which, as I have already indicated, does not require rates to be filed but still gives the insurance commissioner the general authority to prevent rates from being inadequate, excessive or unfairly discriminatory. Director of Insurance Bolton of Illinois is seeking to have the Illinois prior-approval law replaced by a no-filing, open competition law. It appears, therefore, that many state commissioners are following the lead of Commissioners Bentley of Georgia (currently the NAIC President) and Williams of Florida who came to the conclusion that a rigid prior-approval law is not in the best interest of the public.

We are not alone in our view that the rating laws should be undated to conform to present market conditions. Other major segments of the industry support this view. In addition, the Senate Judiciary Subcommittee on Antitrust and Monopoly endorsed a change in the prior approval laws (Report No. 831, August 29, 1961, p. 119). Similar support was forthcoming from the Department of Justice in connection with rating legislation for the District of Columbia (testimony of Lee Loevinger, Assistant Attorney General, Antitrust Division, Department of Justice, before Subcommittee on Business and Commerce, Senate Committee on the District of Columbia, June 21, 1962).

If S.J. Res. 129 is passed we hope that it will result in a review and analysis of state rating laws by the Department of Transportation since such laws continue to have an important impact on the market capacity of insurance companies to serve the public.

STATEMENT OF WILLIAM O. BAILEY, VICE PRESIDENT, AETNA LIFE & CASUALTY, HARTFORD, CONN.

I am William O. Bailey, Vice President, of Aetna Life & Casualty. I appear here today to share with you my Companies' earnest concern over the problems which have beset the writing of automobile insurance, to urge the adoption of Senate Joint Resolution 129 and to pledge you and the Department of Transportation our full cooperation in the study contempted by that resolution.

Automobile insurance is not the exclusive concern of the twelve-hundred companies which write it. Nor is it solely the concern of the one-hundred million licensed drivers who seek to be protected by insurance. It is equally the concern of every man, woman and child in the United States who is a potential victim of the financial injury which often follows when cars collide.

Other representatives from the insurance industry are testifying on the subjects of accident prevention, insurance costs, claims practices and regulatory patterns. I will direct my remarks to the availability of automobile insurance and the matters of cancellation and nonrenewal which have caused widespread concern.

During 1967 Aetna wrote $414,000,000 of automobile insurance premiums, ranking second in this line among agency stock companies and fourth among all automobile insurers. Over the past five years the number of our insureds has increased by nearly 70%, a rate three times faster than the growth in automobile registrations. Our goal has been and continues to be, to provide a wider and wider market to the insurance-buying public wherever conditions exist which reasonably offer an opportunity for profitable underwriting.

In spite of these efforts and those of other companies, surveys conducted under the auspices of the Insurance Information Institute indicate that four percent of the public report difficulty in obtaining automobile insurance coverage either because of a refusal by a company or because coverage was placed through one of the Assigned Risk Plans in existence in all states. An additional seven percent reported a problem during the last two years of cancellation, refusal to renew or a reduction in coverage previously carried.

Yet, the selling of automobile insurance policies is our business. Surely we have reached some sort of milestone in economic history when sellers are reluctant to expand the market for their product to meet consumer demand.

The key to this paradox, in our judgment, lies in the lack of opportunity for profit from automobile insurance operations. Measured according to the most unfavorable accounting practices critics would impose upon us, individual company rates of return range from the intolerable to the unsatisfactory. My own company has had five successive years of underwriting losses from automobile insurance and the industry as a whole has had a decade of unprofitability.

In an effort to improve, and in most cases to restore, profitability, companies have tightened their underwriting standards and attempted to select policyholders who they believed were less likely to become involved in accidents. Tight markets are the inevitable consequence of an inability to provide coverage at a premium level which realistically reflects the cost of insurance protection.

At a time when automobile insurance is recognized as a necessity for all those who are permitted to operate a motor vehicle, it is understandable that market restrictions and unavailability of coverage should receive the attention of the public and the Congress.

Senate Joint Resolution 129 contemplates a comprehensive study of the system of reparations for the victims of automobile accidents and of the marketing of automobile insurance which is geared to that system. The public's need for protection surely justifies this study. We hope the inquiry will prove both penetrating and searching and will be undertaken in the broadest possible context. From our experience, the overall problems which have been identified are not conducive to piecemeal analysis of symptoms but rather require a searching in-depth inquiry into the underlying and interrelated causes which bring on these symptoms. The scope of the study contemplated by Senate Joint Resolution 129 recognizes this and offers the opportunity for such thorough analysis. We believe such an investigation will yield constructive suggestions for solving the many problems which we now face.

As a prelude to this study a review of what Ætna and other companies have done in the areas of cancellation and nonrenewal to increase the availability of automobile insurance may be useful.

Automobile insurance coverage is generally issued for a term of one year. Both the policyholder and the company may refuse to renew the policy at the end of this period. While historically both the insured and the insurer also could cancel coverage upon notice to the other at any time during the policy period, today the insurance company no longer has the privilege of unrestricted cancellation.

A decade ago, my Company recognized its obligation to the public not to cancel an automobile policy during its term except in those few instances where the insured was demonstrably uncooperative or presented a previously unknown hazardous exposure which created the probability of substantial loss.

Then in 1962 Ætna Life & Casualty and other companies voluntarily restricted their right to cancel a policy except for the following reasons:

1. Nonpayment of premium.
2. Obtaining insurance through fraudulent misrepresentation.
3. Violation of any of the terms or conditions of the policy.
4. Where the named insured or any customary operator of the automobile:
   (a) Had his license suspended or revoked.
   (b) Had epilepsy or a heart condition, subject to a physician's certification with respect to ability to operate a motor vehicle.
   (c) Was convicted or forfeited bail during the previous 36 months for felony, criminal negligence from the operation of a motor vehicle, driving while intoxicated, hit and run, theft of a motor vehicle or made false statements in applying for a driver's license.

And now, as of January of this year, my Company and many others have agreed not to cancel an automobile insurance policy unless the insured has failed to pay the premium or has had his license or motor vehicle registration suspended or revoked. This pledge applies to all present insureds and, after the first sixty days, to all new insureds.

Returning to the subject of nonrenewal, my Company has not been willing to guarantee renewal of all of our present policies because such action could jeopardize our financial well-being and ultimately our solvency. To agree to sell a product indefinitely into the future in the absence of control over the price of that product would be foolhardy indeed. We did, however, earlier this year

voluntarily agree to give notice of our intention not to renew a policy at least twenty days before the end of its current term so that the policyholder may have reasonable opportunity of filling his insurance needs with another carrier while his protection is still in force.

These procedures adopted by many in our industry have unquestionably helped to prevent further constriction of this market and indicate our efforts to date to respond to public concern over market availability. While I do not have any industry figures with respect to cancellation and nonrenewal our own Companies' data for 1967 may be helpful in assessing the magnitude of these concerns. Out of over 1,650,000 auto policies, 43,164, or 2.6%, were cancelled for nonpayment of premium and 14,589, or 0.9%, were cancelled for other permitted reasons. We are satisfied that the further restrictions on our right to cancel introduced early this year will further reduce this figure.

During the same year, we declined to renew automobile insurance for 19,438 policyholders, or 1.2% of the total. We did not renew the policies of an additional 28,988, or 1.8%, because the agent through whom the policy had been written no longer did business with us. Some of these policyholders continue to be insured with AEtna through other agents.

AEtna Life & Casualty seeks to do an increasingly better job in meeting the public's need for insurance protection. If the study authorized by Senate Joint Resolution 129 can contribute to the knowledge, understanding and solution of the basic problems of the automobile insurance business, it will importantly serve the public interest.

STATEMENT OF HAROLD SCOTT BAILE, EXECUTIVE PRESIDENT, GENERAL ACCIDENT GROUP OF INSURANCE COMPANIES

My name is Harold Scott Baile. I am Executive Vice President of the General Accident Group of Insurance Companies, with headquarters in Philadelphia, Pennsylvania.

Automobile insurance premiums represent more than 50% of our companies' writings, which approximate $200,000,000 per year. We therefore have a very substantial interest in the automobile reparation system.

I appear here today to urge your favorable consideration of S.J. Res. #129. We feel it is timely and desirable that there be an impartial objective re-examination of the underlying tort liability principles upon which we rely to relieve victims of the consequences of the automobile accidents.

With the advent of the automobile and victims of its operation, the various legal jurisdictions of this country applied the principle that a person who is free from fault may recover damages only if some third person's wrong or fault caused his injury. With this principle established, the insurance mechanism was employed to protect motorists not for the loss they might sustain if injured, but against the economic loss they might sustain as a result of being held legally liable to an injury person.

Thus, the tort liability principle and the insurance mechanism in combination constituted an automobile reparation system which allowed only some victims to be redressed, and those victims were placed in an adversary position with the payor of their losses.

That system of reparations was conceived shortly after the turn of the century, when there were fewer automobiles traveling, at slower speeds on the highways than there were teams of horses. It is, therefore, not untimely to review that system in the light of present-day traffic and economic conditions, when over 90,000,000 automobiles travel on the highways, with greatly increased horse power and at high speeds, with the result that there are almost 4,000,000 accident victims a year.

By the very nature of the system of reparations that was structured, there are certain incidents which necessarily flow from it, and are inherent in the system itself:

1. There must be a determination of fault. Only if fault exists can anyone be redressed, and this determination requires time. It involves the interrogation and recording of the observations of witnesses, the examination of the scene of an accident for physical facts, the inspection of the vehicles involved, the reviewing of investigations by police authorities, and resort to expert techniques of reconstruction of prior events by the use of photographs and measurements. It involves the human fallacies of observation, recollection, and recitation of events.

There is, therefore, the problem of reconciling and evaluating the conflicting versions of an occurrence. These activities are carried on not only by the insurer, but also on behalf of the injured party, and one is arrayed against the other to resolve the question whether reparations should be made. In most instances, these disputes are resolved by compromise, but when it cannot be, it goes into litigation. There again the litigation procedures necessarily involve delay. Civil procedure today permits protracted discovery proceedings, depositions, interrogatories, physical examinations, production of documents, pre-trial conferences, and eventually, jury trials, perhaps followed by appellate procedures.

To the extent that we depend in the main upon the settlement of these disputes through compromise, since the best compromise is one in which neither party is fully sustained, there is some dissatisfaction on each side of any result.

The fact that there is this adverse relationship and the consequent delay, does not necessarily condemn a fault system of reparations. It is, however, important to recognize that reasonable delay is a necessary incident of the system. One may well conclude that in an orderly system of society there should be some form of retribution accorded against the wrongdoer through our civil courts, and that this is the principle which should guide our automobile reparation system; but if it is, the undesirable but necessary incidence of that form of system, must be weighted against the desirability of adhering to a fault concept. This is one of the questions which we think deserves a careful and thorough objective study.

2. The rules of damages which have been adopted under our tort liability system permit the recovery not only of economic losses, that is, expenses and earnings loss, and other things which can be measured in dollars and cents, but in addition, permits the recovery of a completely non-economic form of damage, an award for dignitary harm, such as pain and suffering. There is no standard for measuring this form of damages. It is left to the fact-finder to apply a theoretical rule of reasonableness. Thus, in the main, it reflects the conscience of a jury. A necessary consequence of this fact is that one who seeks the maximum recovery must, in some way, dramatize his injury to impress the fact-finder with the pain and suffering he has endured. Expert physicians, X-ray films, and other demonstrative evidence are resorted to, to impress the fact-finder. There is, therefore, necessarily involved, more expense and more time, but this is an incident of the nature of the rule of damages inherent in the tort liability system. It produces, by its very nature, variations in recovery by different claimants without relation to any necessary differences in their injuries or losses. But, if we are going to undertake to attempt with dollar awards to compensate for purely dignitary harms, we must recognize that there are going to be variations in the awards received, and that the process of determination of the amount of an award will be delayed. Here, again, it seems appropriate to determine whether society does demand protection, not only against its economic losses, but also some redress for purely dignitary harms, which can never, in fact, be relieved by the dollar award.

We are conscious of an apparent changing public attitude. There seems to be a public feeling that any person injured in an automobile accident should, in some way, be relieved of the consequences of his injuries. Working within the framework of our existing reparation system, the insurance industry has endeavored to respond to this apparent public desire. It introduced into its policies medical payments coverage providing immediate payment to an insured and occupants of his car without regard to fault. In addition, companies in their adjustment practices are following the procedure of making preliminary payments for out-of-pocket expenses and loss of earnings, without making a final determination of fault, and reserving for later determination the final adjustment of the claim. If these are the courses society wants to follow, the question is presented, "Why do we do this, while still preserving the form of a different form of a system of reparations?"

In summary, our present system, by its very nature, denies a remedy to many victims, and awards others varying relief which may be viewed as inequitable to some. It is a system which necessarily involves time, expense, and creates social frictions. It is also a system which attempts to replace non-economic losses by money awards, thus adding to the cost of the system. We think it is appropriate to determine whether these necessary incidents of our present system, which might be considered as defects, are out-weighed by the advantages of the present system. Costs can be reduced if dignitary harms are not compensated; time can be saved if reparation is not dependent upon fault; but do we introduce into our society other evils, if we abandon these long-established principles? It is the

answer to these questions the studies envisaged by the resolution would supply, and we earnestly urge those answers are sorely needed.

Mr. STARK. In the interest of preserving time, I have not prepared any statement that would be duplicative.

However, I am prepared to respond to questions from the committee that are in any manner related to the subject of this resolution.

Such interrogation could supplement the information already available which is contained in the five prepared texts submitted herewith for the hearing record.

Mr. Moss. Thank you, sir.

Mr. Watkins.

Mr. WATKINS. I have no questions.

Mr. Moss. Mr. Blanton.

Mr. BLANTON. Thank you, Mr. Chairman. I have no questions.

Mr. Moss. We have no questions, apparently.

I want to make it very clear that it is not in any manner reflective of a lack of interest but, as I stated earlier, we are seeking the study resolution because we want to learn much more.

Your support of it is appreciated. Your brevity is appreciated. I thank you very much for your appearance here.

Mr. STARK. Thank you.

Mr. WATKINS. I concur in the chairman's statement.

Mr. Moss. Mr. Wallace M. Smith, branch manager of the American Mutual Insurance Alliance.

STATEMENT OF WALLACE M. SMITH, BRANCH MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE; ACCOMPANIED BY F. A. HOLDERMAN, MANAGER, LEGISLATIVE BRANCH

Mr. SMITH. I am Wallace M. Smith, manager of the Mid-Atlantic office of the American Mutual Insurance Alliance. The alliance is a national trade association representing 124 mutual companies writing automobile insurance and other property and casualty coverages, with headquarters in Chicago, Ill. With me, Mr. Chairman, is F. A. Holderman, who is manager of the Alliance legislative department.

Mr. Moss. Do you intend to summarize?

Mr. SMITH. Yes, I will summarize.

Mr. Moss. Would you like to have the entire statement as presented here inserted at this point in the record?

Mr. SMITH. If you please, we would like it that way.

Mr. Moss. Is there objection?

Mr. WATKINS. No objection.

Mr. Moss. That will be the order of the committee.

(Mr. Smith's prepared statement follows:)

STATEMENT OF WALLACE M. SMITH, MANAGER, MID-ATLANTIC OFFICE, AMERICAN MUTUAL INSURANCE ALLIANCE

I am Wallace M. Smith, Manager of the Mid-Atlantic Office of the American Mutual Insurance Alliance. The Alliance is a national trade association representing 124 mutual companies writing automobile insurance and other property and casualty coverages, with headquarters in Chicago, Illinois.

Our member companies offer their unqualified support for the study authorized by House Joint Resolution 958. We agree with the sponsors of this resolution and with the President that there is a need for a comprehensive, objective, and non-

partisan study of the entire system used for compensating automobile accident victims. Our companies welcome such a study for two major reasons:

First, we share the generally held opinion that a review of our present methods of compensating persons injured in highway accidents will be beneficial for the public, the Congress, and the industry. Alliance companies already are engaged in a major program of experimentation, voluntary reforms, and legislative action. Our efforts are based on research which the Alliance initiated more than five years ago. We welcome this opportunity to share our ideas and research information with other groups striving for the same goals.

Second, we are confident that an objective study will clear the air of misunderstandings which are doing harm to the good name and reputation of our industry. We feel that some criticisms of the present system are misdirected or based on unrealistic expectations.

An unbiased study can perform a useful public service by providing a factual basis for sorting out the issues, and for placing responsibility where it rightfully belongs.

One of the most useful results of such a study might be the realization that many of the practices now being criticized are simply attempts to reconcile conflicting interests and objectives. Our industry is constantly dealing with contradictory demands—demands from claimants, from purchasers of insurance, from legislatures and regulatory officials, from the press and academic community. The responses we make to these conflicting demands may not always please everyone, but the responses are not arbitrary. These represent honest efforts to provide practical and equitable solutions to the dilemmas we have to face.

Take, for example, the insurance rating structure. Nearly everyone fancies himself a good driver and feels that he is entitled to low insurance rates. But the fact is that the driving population covers a wide spectrum of driving abilities. In addition, each individual's chances of having an accident are influenced by a great many other factors, including mileage, traffic conditions, weather conditions, and personal habits. The probable insurance loss is further influenced by such impersonal factors as prevailing hospital and medical costs, wage levels, auto repair costs, and the generosity of juries.

As a practical matter, it is impossible for an insurance company to devise an individual rate for each policyholder, based on an investigation of all the factors relevant to his driving abilities and exposure to insurance losses. The cost of doing so would greatly increase the present cost of providing coverage.

On the other hand, it would clearly not be fair to charge the same rate for all drivers, regardless of their individual characteristics and environmental exposure.

Insurance companies steer a middle course between these two extremes. The insurance rate structure fulfills a social need by spreading the cost of motor vehicle accidents over the entire group of auto policyholders. At the same time, it seeks to achieve equity by allocating the cost among groups of drivers on the basis of measurable differences in their loss exposure. What many critics don't understand is that this process has to be sophisticated enough to produce substantal equity, and yet simple enough to be administered inexpensively and fairly for upwards of 100 million drivers.

We also face conflicting demands in the application of insurance underwriting procedures. Most of our policyholders want us to be careful in selecting the people we insure, in order to keep our total losses down and their rates low. This is especially true of the policyholders served by mutual companies. Many companies of the Alliance were started as consumer organizations, with the express purpose of reducing insurance costs through adherence to practices designed to reduce loss exposure.

This continues to be one of our major objectives today. Our dilemma is that this objective is in conflict with society's demand that drivers with high loss exposure be provided with insurance, and at a price they can afford to pay. If we charge these drivers a price commensurate with their actual loss potential, we are accused of pricing them out of the market. If we cancel their policies in order to avoid saddling our other policyholders with the losses they cause, there is a public clamor for protection to be provided regardless of their driving performance. If we accept these drivers at a subsidized rate, we run into strong protests from the average or better drivers who have to pick up part of the price.

The only permanent solution to this problem would be to remove from the highways the drivers who cause an excessive number of accidents, injuries, and fi-

nancial losses. But as yet, the American public has shown little willingness to do so. As a nation, we tolerate a fantastic degree of irresponsibility on our highways. People are allowed to kill, maim, and inflict economic damages on other people with relative impunity, so long as they do it with an automobile. In 1966, this nation's increasingly destructive use of the highways killed 53,000 human beings, injured nearly 2 million, and damaged 22 million vehicles.

Very few of the drivers responsible for this appalling destruction were removed from the roads or required to undergo remedial training. You can go into any state in the Union today and find on the highways people who have repeatedly demonstrated their unfitness to drive. Yet they retain their driver's licenses, or drive without them, because our automobile-oriented society refuses to hold to a reasonable standard of performance.

It is against this backdrop that the insurance industry must deal with such politically sensitive issues as premium surcharges, underwriting standards, rate classifications, cancellation, and nonrenewal of policies. We trust that these issues will be considered in the light of the conflicting demands we are trying to satisfy.

This does not mean that the Alliance is satisfied with the status quo, or that we would defend the actions of all companies in their struggle to cope with the automobile problem. On the contrary, our member companies and other responsible segments of the industry have been working on several fronts to overcome the shortcomings of our present system and to curb abuses on the part of a few companies.

For example, the industry has made available plans in every state to assist motorists who need auto liability insurance and who have difficulty in obtaining it. The Alliance advocates expanded use of these plans and stands ready to cooperate with other segments of the industry in attaining this objective.

Over the years, our companies also have participated in expanding the auto liability policy from a rather limited contract into a package of coverages that provide broad protection to travelers upon the highways. This broadening of protection has been brought about by extending the policy to cover drivers other than the policyholder, vehicles other than the car he owns, and hazards other than the ones originally insured. On example is the widely sold auto medical payments coverage. Another is the Uninsured Motorist coverage, which protects policyholders and their families if they are injured by an uninsured driver.

This coverage, available in every state, has now become the source of protection against insolvencies as well. Twenty-six states now require that companies offer insolvency protection to their policyholders under the Uninsured Motorist coverage. In the remaining twenty-four states, bureau companies and some other insureres have automatically extended insolvency protection to all purchasers of the Uninsured Motorist coverage. In other words, the policyholder and his family can look to their own company for payment should they be injured by a motorist whose company later becomes insolvent.

The insurance industry also has supported measures that would provide more adequate staffs for state insurance departments, and has supported enactment of laws to strengthen the hand of regulatory officials in dealing with companies in shaky financial condition.

Over the years, our industry has sought to alleviate the burden on our inadequate court facilities, which have not kept pace with the growth in population and the startling increase in legal matters of all kinds—particularly criminal cases. As a result of the industry's efforts, an estimated 97 to 98 per cent of all automobile accident claims are settled without the necessity of a trial. Where courts are congested, auto injury cases make up a disproportionate part of the backlog because the courts give precedence to other types of cases and spend relatively little of their available judicial manpower hearing injury cases. However, even in the most congested courts, attorneys with hardship cases can bring them to trial in a reasonably short time by requesting that such cases be moved forward on the calendar. All of these facts are well documented in research done at the University of Chicago and elsewhere.

On the matter of cancellations, the principal stock and mutual rating bueaus have had in effect for the past five years a program of voluntary restrictions on the right of their members and subscribers to cancel private passenger automobile liability policies. As of January 1, 1968, the right to cancel was further restricted to just two allowable reasons: Non-payment of premium or loss of driving privileges. In addition, the guarantee against cancellation was extended to other coverages such as collision, fire, and theft.

The Alliance has publicly declared that it will support state legislation requiring all companies writing automobile insurance to meet a similar standard.

The Alliance likewise has been responsive to criticisms of the automobile liability system, which sets the ground rules for the settlement and adjudication of claims. While the insurance industry is not basically responsible for that system, we are nevertheless deeply involved in it. Our companies felt that they had a responsibility to participate in efforts to make the system more responsive to changing public needs and expectations.

Accordingly, more than five years ago the Alliance began looking for ways to accomplish that objective. We discovered that there was very little available in the way of authoritative data on which valid judgments could be based. In an effort to overcome this information gap, we embarked in 1962 on a research project involving detailed analysis of about 26,000 auto accident claims.

While the project was under way, other researchers were turning up additional information—on the economics of automobile injury reparations, on the attitudes of claimants, on the effectiveness of the American jury system, and on such related subjects as court congestion.

A high-level committee of Alliance company executives began working with this new body of information, evaluating the present system and looking for ways to improve it. One result was a report strongly urging the need for change and suggesting a number of already tested measures which could be taken to get more people paid.

Since then, we have embarked on a bolder and more imaginative approach to auto insurance reform with the development of a test program called Guaranteed Benefits. The Alliance plus a number of non-member insurance companies, both stock and mutual, already are experimenting with this new claims-handling program in two Illinois counties. Another major experiment will start in the near future in New York State. There has been widespread favorable reaction to the Guaranteed Benefits experiment from legislators, the press, members of the public, and officials in many states.

The whole idea of the Guaranteed Benefits experiment is to find out from auto accident victims themselves what kind of changes they want made in the present automobile insurance system and what effect those changes would have on the cost of insurance.

Our objective is to perfect a new way of handling claims that will pay more people, pay them quickly and equitably, and eliminate the irritants which have created dissatisfaction with the present system. We also hope to stabilize the cost of automobile insurance for all categories of motorists.

We believe that these objectives can be accomplished without sacrificing the desirable features of the present system. Just as our system of government has evolved within the basic framework established in 1789, we believe that the practical changes desired in the handling of auto accident claims can be made within the basic framework of our long-established legal system.

For example, the Guaranteed Benefits plan preserves the right of every claimant to have his day in court, if he wants one. Our experimental plan also preserves those aspects of the present system which bring to bear the pressures of the marketplace on motorists who cause more than their share of the accidents, injuries, and economic losses.

The Guaranteed Benefits program produces a number of practical changes which are frankly intended to tip the scales more in favor of the injured victim. If our experiments indicate that the plan is workable, and the Guaranteed Benefits program or some modification of it is adopted generally, automobile accident victims would be assured of receiving up to $12,500. This includes up to $5,000 in medical benefits, to be paid without delay or red tape. Injured claimants would not be required to make a commitment of any kind in order to receive these benefits. In addition, they would be offered a new settlement option covering up to $7,500 in other damages such as income losses, physical impairment, and extra living expenses made necessary by the accident. Survivor's benefits will be paid in death cases.

Claimants who choose to accept this new option would simply be paid the money, without delay and without having to prove that the other driver was at fault. In return, they would agree orally not to pursue a liability claim. We are willing to take their word that they won't sue.

This program is compatible with present operating methods in that payments will be made on a third-party basis in most cases. That is, the other driver's

insurance company will offer the Guaranteed Benefits. This is to avoid the necessity of having two different insurance companies involved in negotiating with the injured person.

We are glad to make available details of the Guaranteed Benefits program to all interested persons, and we plan to release to the public all data flowing from the experiments. We hope this information will be of assistance in the conduct of the study authorized by House Joint Resolution 958.

Let me say again that we fully support a comprehensive, objective, and nonpartisan study. We are ready to assist and cooperate in any possible manner.

Mr. SMITH. Let me say at the outset, Mr. Chairman, that we offer our unqualified support for the study authorized by House Joint Resolution 958.

We agree with you and the other sponsors of this resolution and with the President that there is a need for comprehensive, objective, and nonpartisan study of the entire system used for compensating automobile accident victims.

We welcome the study, sir. We are confident that an objective study will clear the air of misunderstandings which are doing harm to the good name and reputation of our industry. We feel that some criticisms of the present system are misdirected or based on unrealistic expectations.

An unbiased study can perform a useful public service by providing a factual basis for sorting out the issues, and for placing responsibility where it rightfully belongs.

I think one of the major points we want to bring out, Mr. Chairman, is that the usefulness of such a study will reveal many conflicting demands which the insurance industry finds itself subject to today.

We in the industry are constantly dealing with contradictory demands. Such demands come from claimants, from purchasers of insurance, legislators, regulatory officials, from the press, and the academic community.

The responses we make to these conflicting demands may not always please everyone but the responses are not arbitrary. These represent honest efforts to provide practical and equitable solutions to the dilemmas we have to face.

I would like to skip over now, if you please, Mr. Chairman, to page 4 down at the last paragraph. I would like to bring to the committee's attention one of the dilemmas that the industry faces today is the conflict with society's demand that drivers with high loss exposure be provided with insurance and at a price they can afford to pay.

If we charge these drivers a price commensurate with their actual loss potential we are accused of pricing them out of the market.

If we cancel their policies in order to avoid saddling our other policyholders with the losses they cause, there is a public clamor for protection to be provided regardless of their driving performance.

If we accept these drivers at a subsidized rate, we run into strong protests from the average or better drivers who have to pick up part of the price.

We might ask ourselves, What is then the solution to such a problem in attempting to provide coverages or the desire of the public generally, the Congress, the legislators, the academicians, everybody generally who desires the insurance industry to provide coverages without any restrictions whatsoever to the public generally?

We think that the only permanent solution to the problem would be to remove from the highways the drivers who cause an excessive number of accidents, injuries, and financial losses.

But as yet the American public has shown little willingness to do so. As a nation we tolerate a fantastic degree of irresponsibility on our highways. People are allowed to kill, maim and inflect economic damages on other people with relative impunity so long as they do it with an automobile.

I think that the committee knows that in 1966 this Nation's increasingly destructive use of the highways killed 53,000 human beings, injured nearly 2 million, and damaged 22 million vehicles. Very few of the drivers responsible for the appalling destruction were removed from the roads or required to undergo remedial training.

One can go into any State in the Union today and find on the highways people who have repeatedly demonstrated their unfitness to drive. Yet they retain their driver's licenses or drive without them because our automobile-oriented society refuses to hold to a reasonable standard of performance.

It is against this backdrop that the insurance industry must deal with such politically sensitive issues as premium surcharges, underwriting standards, rate classifications, cancellations, and nonrenewal of policies.

These, as you know, Mr. Chairman and members of the committee, are many of the complaints that are current today in this area.

We trust that these issues will be considered in the light of the conflicting demands we are trying to satisfy.

This does not mean that we are satisfied with the status quo or that we would defend the actions of all companies in our struggle to cope with the automobile problem.

On the contrary, our member companies and other responsible segments of the industry have been working on several fronts to overcome the shortcomings of our system and to clear up abuses on the part of our companies.

Now if I may, I will list quickly some the contributions our industry has made in the automobile field. The industry has made available plans in every State to assist motorists who need automobile liability insurance and who have difficulty in obtaining it.

Our organization advocates expanded use of these plans and stands ready to cooperate with the other segment of the industry in attaining this objective.

Over the years, our companies also have participated in expanding the auto liability policy from a rather limited contract into a package of coverages that provide broad protection to travelers on the highways.

This broadening of protection has been brought about by extending the policy to cover drivers other than the policyholder, vehicles other than the car he owns and hazards other than the ones originally insured.

One example is the widely sold auto medical payment coverage.

Another is the uninsured motorist coverage which protects policyholders and their families if they are injured by an uninsured driver.

This coverage, available in every State, has now become the source of protection against insolvencies as well. Twenty-six States now

require that companies offer insolvency protection to their policyholders under the uninsured motorist coverage.

In the remaining 24 States, bureau companies and some other insurers have automatically extended insolvency protection to all purchasers of the uninsured motorist coverage.

In other words, the policyholder and his family can look to their own company for payment should they be injured by a motorist whose company later becomes insolvent.

The insurance industry also has supported measures that would provide more adequate staffs for State insurance departments, and has supported enactment of laws to strengthen the hand of regulatory officials in dealing with companies in shaky financial condition.

Over the years, our industry has sought to alleviate the burden on our inadequate court facilities, which have not kept pace with the growth in population and the startling increase in legal matters of all kinds—particularly criminal cases.

As a result of the industry's efforts, an estimated 97 to 98 percent of all automobile accident claims are settled without the necessity of a trial.

Mr. Watkins, I think that brings in the figure of 2 percent that goes to trial which Mr. Lemmon brought out a moment ago.

Mr. WATKINS. You agree with that?

Mr. SMITH. Yes, sir. Those are public figures.

Mr. Moss. Will you give a clearer understanding of the magnitude of that 2 percent translated into numbers of cases?

Mr. SMITH. We can get that. I don't know whether Mr. Holderman has that figure at hand or not. If not, we can get the figure for the record.

Mr. HOLDERMAN. I can't give you the exact figure, Mr. Chairman.

Mr. Moss. Can you give us an approximation now and we will hold the record for the correct figure which may be supplied by you?

Mr. HOLDERMAN. The number of automobile liability claims in the course of a year goes well up into thousands.

Mr. Moss. Does it go into hundreds of thousands?

Mr. HOLDERMAN. I would suspect it might.

Mr. Moss. Does it go into millions?

Mr. HOLDERMAN. I am not certain.

Mr. Moss. Into a million?

When we talk about 2 percent of a thousand, we are talking of a very small number of cases. If we talk of 2 percent of 10 million, we are talking of a great number of cases.

Mr. SMITH. This is correct. I think it will be a sizable figure.

We have a hundred million drivers today.

Mr. Moss. About one in four or five will have an accident?

Mr. SMITH. I have seen those figures.

Mr. HOLDERMAN. They say 1 out of 10 drivers will have an accident, as I recall, it is an estimate sometimes used. In this respect, you might conclude there would be somewhere in the neighborhood of 10 million accidents. So you have a sizable total figure.

Mr. Moss. I just don't want us to look at percentages and deduce that we are talking of something of no great significance when in fact we may be talking of a massive backlog of court cases.

I think, as the gentleman from Pennsylvania pointed out, in his State the period of time is considerable.

I think the testimony yesterday was that in the city of Chicago it is at least 6 years.

Mr. WATKINS. In Philadelphia, it is same thing.

Mr. SMITH. I think this is something that is very informative for the entire public.

I believe the study conducted as a result of your resolution here can bring out and perform very valuable assistance in informing the public, to the Congress, to the industry.

Mr. Moss. I think it is a situation where we do need many more statistics.

Mr. SMITH. I agree.

Mr. Moss. Mr. Blanton.

Mr. BLANTON. On these percentages and numbers of accidents you say one in ten in your estimation with a hundred million drivers.

Now of these 10 million accidents, how many of them result percentage-wise in an insurance claim?

What I am getting at, the 2 percent he was talking about was accidents that did result in claims. But there is a difference between the number of accidents and the number of insurance claims, too. I think a vast difference.

Mr. SMITH. This is true. What we are talking of here with the 2 percent is the claims which end up in court going to trial.

Mr. WATKINS. Right. But you are talking about the number of accidents?

Mr. SMITH. Yes.

Mr. WATKINS. The number of accidents is far more than the number of accidents that result in insurance claims.

Mr. SMITH. That is true.

Mr. HOLDERMAN. The 2 percent, Congressman, is 2 percent of the 100 percent of claims. How many of the 10 million, if you want to use that figure as a real rough estimate, accidents would result in claims I would not hazard a guess. But of that percentage which did result in claims, 2 percent ultimately wind up in settlements in court.

Mr. WATKINS. I think your question on defining 2 percent is very important. I think we would be faced with that if we went to the full committee.

Mr. Moss. Are you gentlemen able to supply those figures?

If not, I will instruct the staff to supply the figures.

Mr. SMITH. I am certain we can get you some information on it, Mr. Chairman.

Mr. Moss. Promptly?

Mr. SMITH. Yes, sir.

Mr. Moss. Thank you. You may proceed.

(The following supplementary statement was received by the committee:)

SUPPLEMENTARY STATEMENT OF AMERICAN MUTUAL INSURANCE ALLIANCE

Mr. Chairman, in answer to the questions which you and Congressman Blanton have asked, I should like to submit the following data:

The National Safety Council estimates that, in 1967, there were 13,500,000 motor vehicle accidents.

The Mutual Insurance Rating Bureau, an automobile liability insurance rating organization, estimates that, in 1967, there were 5,700,000 claims paid or reserved involving property damage. Cases which are closed without payment are not reported to the rating organizations, so there is no known figure as to the countrywide number of cases closed without payment. Knowledgeable people estimate that the number of cases closed without payment, however, is approximately 30% of the total. Therefore, the total number of property damage cases, including those which are closed wthout payment, those on which there is a payment, and those on which there is a reserve held, would be approximately 8,143,000. Property damage cases are rarely involved in court procedures and consequently are not considered in the balance of the data furnished you herein.

In 1967 the Bureau estimates that there were 1,600,000 claims paid or reserved involving bodily injury or death. Using the same 30% estimate in order to arrive at the number of total claims, including those that are closed without payment, results in a figure of 2,285,000 total bodily injury or death claims in 1967 in the U.S.

In our preceding testimony, Mr. Smith mentioned that 97 to 98% of all automobile accident claims are settled without the necessity of a trial. This referred to bodily injury or death claims.

Thus, Mr. Chairman, the 2 to 3% which do go to trial would amount to 45,000 to 68,550 cases per year, on a countrywide basis. As has been pointed out in our testimony and that of others, the delay which occurs is primarily in a relatively small number of our larger urban areas. Therefore, the number of cases which do go to trial and which are subject to delay is obviously less than the total number of cases which are settled through the trial procedure. We would emphasize that the above figures are our best estimates.

Mr. SMITH. On the matter of cancellations, the principal stock and mutual rating bureaus have had in effect for the past five years a program of voluntary restrictions on the right of their members and subscribers to cancel private passenger automobile liability polices.

As of January 1, 1968, the right to cancel was further restricted to just two allowable reasons: Nonpayment of premium or loss of driving privileges.

In addition, the guarantee against cancellation was extended to other coverages such as collision, fire, and theft.

The alliance has publicly declared that it will support State legislation requiring all companies writing automobile insurance to meet a similar standard.

The alliance likewise has been responsive to criticisms of the automobile liability system, which sets the ground rules for the settlement and adjudication of claims.

While the insurance industry is not basically responsible for that system, we are nevertheless deeply involved in it. Our companies felt that they had a responsibility to participate in efforts to make the system more responsive to changing public needs and expectations.

Mr. Chairman, if I may interject, I would like to come back to the discussion between Professor Conrad and Mr. Watkins about the pain and suffering.

You see, this was brought about by the legal system.

Professor Conard commented about how we—and I don't know whether it was meant critically or not—are charging to take care of the pain and suffering which we would pay out on behalf of our policyholders' liability. But you see, we are caught up in the legal system. We think we are providing a service here.

Mr. Moss. I think the professor made it quite clear that it was his opinion that that portion of the recovery normally went for counsels' fees and he did not attempt to assess blame. He merely explained the evolution of the system without assessing blame.

Mr. SMITH. I bring this up just to point out how we in the insurance industry, Mr. Chairman and gentlemen of the committee, are interwoven in the liability system and how certain things can come about as a result of the operations of that system which we really are not responsible for but we try to improve the situation, being related to it.

Mr. WATKINS. I agree with you; you are not responsible for it.

Mr. SMITH. Thank you, sir.

Accordingly, more than 5 years ago the alliance began looking for ways to accomplish that objective. We discovered that there was very little available in the way of authoritative data on which valid judgments could be based.

In an effort to overcome this information gap, we embarked in 1962 on a research project involving detailed analysis of about 26,000 auto accident claims.

While the project was underway, other researchers were turning up additional information—on the economics of automobile injury reparations, on the attitudes of claimants, on the effectiveness of the American jury system, and on such related subjects as court congestion.

A high-level committee of alliance company executives began working with this new body of information, evaluating the present system and looking for ways to improve it. One result was a report strongly urging the need for change and suggesting a number of already tested measures which could be taken to get more people paid.

Since then, we have embarked on a bolder and more imaginative approach to auto insurance reform with the development of a test program called guaranteed benefits.

The alliance, plus a number of nonmember insurance companies, both stock and mutual, already are experimenting with this new claims-handling program in two Illinois counties.

Another major experiment will start in the near future in New York State. There has been widespread favorable reaction to the guaranteed benefits experiment from legislators, the press, members of the public, and officials in many States.

The whole idea of the guaranteed benefits experiment is to find out from auto accident victims themselves what kind of changes they want made in the present automobile insurance system and what effect those changes would have on the cost of insurance.

Our objective is to perfect a new way of handling claims that will pay more people, pay them quickly and equitably, and eliminate the irritants which have created dissatisfaction with the present system. We also hope to stabilize the cost of automobile insurance for all categories of motorists.

We believe that these objectives can be accomplished without sacrificing the desirable features of the present system. Just as our system of government has evolved within the basic framework established in 1789, we believe that the practical changes desired in the handling of auto accident claims can be made within the basic framework of our long-established legal system.

For example, the guaranteed benefits plan preserves the right of every claimant to have his day in court, if he desires one. Our experimental plan also preserves those aspects of the present system which

bring to bear the pressures of the marketplace on motorists who cause more than their share of the accidents, injuries, and economic losses.

The guaranteed benefits program produces a number of practical changes which are frankly intended to tip the scales more in favor of the injured victim.

If our experiments indicate that the plan is workable, and the guaranteed benefits program or some modification of it is adopted generally, automobile accident victims would be assured of receiving up to $12,500.

This includes up to $5,000 in medical benefits, to be paid without delay or redtape. Injured claimants would not be required to make a commitment of any kind in order to receive these benefits.

In addition, they would be offered a new settlement option covering up to $7,500 in other damages such as income losses, physical impairment, and extra living expenses made necessary by the accident. Survivor's benefits will be paid in death cases.

Claimants who choose to accept this new option would simply be paid the money, without delay and without having to prove that the other driver was at fault.

In return, they would agree orally not to pursue a liability claim. We are willing to take their word that they will not sue.

In other words, we would not ask for a written release from them, Mr. Chairman.

This program is compatible with present operating methods in that payments will be made on a third-party basis in most cases. That is the other driver's insurance company will offer the guaranteed benefits. This is to avoid the necessity of having two different insurance companies involved in negotiating with the injured person.

We are glad to make available details of the guaranteed benefits program to all interested persons, and we plan to release to the public all data flowing from the experiments. We hope this information will be of assistance in the conduct of the study authorized by House Joint Resolution 958.

Let me say again that we fully support a comprehensive, objective, and nonpartisan study. We are ready to assist and cooperate in any possible manner.

That concludes our statement.

Thank you kindly for letting us come here, Mr. Chairman.

Mr. Moss. Thank you very much for your appearance. Mr. Watkins.

Mr. Watkins. Thank you, Mr. Chairman.

I think that you have brought out some very important points. I think you are a good witness. Your testimony certainly will be helpful to this legislation.

I know that you do move into a plan of some settlement without excessive going to courts and having to depend on a jury system under which I am beginning to believe in some of these public liability cases the figures are enormous and require an awful lot of legal battling to break some of them down.

The figures are just out of this world.

Mr. Smith. This program which we described in our comments here, Mr. Watkins, is designed to overcome some of the objections to the present system.

Mr. WATKINS. I noted that. I am glad to see some testimony on it. I don't have the answer as to what can be done but I know in this study there should be some real consideration of it.

Another thing that you bring out that I think, Mr. Chairman, the committee is going to have to look into, the Transportation Department, if this bill is successful, is going to have to give real study to this driver whose record is so bad he should not be on the highways.

Mr. SMITH. We would certainly say amen to that, Mr. Watkins.

Mr. WATKINS. Some of these drivers should not be licensed. I did not mean that when I said people were denied insurance. I meant from another angle. But these bad drivers and I found out something I did not know after all these years, perhaps I should have known it, but I know of drivers that have been in trouble in one State and they go to another State and they get a license there and they can drive an automobile and there is no agreement between the States. You can drive a Pennsylvania car, in other words, with a California license.

I think something has to be done about examining these drivers and finding out why drivers should not be licensed, give him a certain length of time, to get a license in the State in which he is driving, bring his record out so that we can see what kind of driver we are licensing. That is one of our biggest evils. I am glad you touched on it here.

Mr. SMITH. I certainly appreciate your comments. On behalf of our whole industry, I would say thank you very kindly.

The reason that this means something to me personally, Mr. Watkins, is that in many appearances before many legislatures, in appearances before the congressional committees here, it is very seldom that the people involved in those areas ever comment about who is really causing the basic problem.

In my personal observation, Mr. Chairman and members of the committee, you can go into automobile safety, you can go into the highway design, the shortcomings of those and so on, but still basically the accidents are caused by people.

I don't think I can give it enough emphasis that we would certainly like to see the people responsible for this study and the ones who are going to oversee it, give some deep consideration to this personal factor involved here.

For the record, if I may, Mr. Chairman, we have an article here entitled "Epitaph for a Deadly Driver." It is from our publication, the Journal of American Insurance.

It happened in 1956, an accident which is described in this article. It is the worse accident on record in the State of Illinois. This person involved, the cause of this accident, had had his driver's license revoked, if I remember correctly, about three times.

Mr. Moss. Would you like to submit the article for the record at this point?

Mr. SMITH. I would, sir.

The net effect of this was that after many revocations, some arrests, some accidents in the record of this man, his last accident was caused by running head-on into another car. It killed a husband, wife, five children and the wife's parents.

Yet we seem to never get a public awareness of this type of person operating the vehicles on the highways today.

Mr. Moss. Would the gentleman yield?

Mr. WATKINS. Yes.

Mr. Moss. I would like to observe that the Commerce Committee did a number of years ago authorize the establishment of a clearinghouse to be maintained by the Federal Government for the accumulation of records of arrests, suspensions, and actions adverse to the driver so they would be available to any State desiring to participate in an effort to deal with this problem.

Mr. SMITH. I remember it well, Mr. Chairman.

Mr. Moss. So we have a record in this committee of being concerned and taking the action which appeared appropriate.

In the final analysis under the present pattern of law, the licensing of drivers is a State responsibility.

Mr. SMITH. Correct, sir.

Mr. Moss. We hope that it can remain a State responsibility. I think it is one far too frequently taken lightly and this occurs in many instances in courts of lowest jurisdiction and before judges of little or no training.

But the fact is that it does occur and every one of us when we travel the highways are exposed to the danger of the impatient, incompetent driver, and there are many of them.

I think there should be far more rigid requirements imposed than are presently imposed and that the court should more realistically approach the problem of meting out punishment when there are flagrant violations before them.

Mr. WATKINS. Mr. Chairman, I have no objection to making that a part of the record pertaining to this subject.

Mr. Moss. Without objection, the article will be received for the record at this point.

Mr. SMITH. Thank you, Mr. Chairman.

(The article referred to follows:)

[From Journal of American Insurance]

EPITAPH FOR A DEADLY DRIVER

TEN PEOPLE PERISHED AS DEATH FINALLY RULED OFF THE ROAD A LONG-TIME OFFENDER

Ralph Kusnierz' record of driving violations began on April 4, 1956, when he was arrested for making an improper turn. The last entry came on September 7, 1967, when his weaving convertible collided head-on with a station wagon on a highway near Downers Grove, Illinois.

Kusnierz was killed in the crash. In the twisted, burning wreckage of the station wagon police found the bodies of Arthur Hoffmeister, his wife and five children, and his wife's parents.

A policeman at the scene speculated that Kusnierz might have suffered a heart attack. Witnesses said they saw Kusnierz' westbound convertible careen crazily, go through a stop light, cross over the highway center line and smash head-on into the eastbound station wagon. One witness said the convertible was going 80 mph at the time of the crash.

Authorities called it the worst auto accident in Illinois history. Police, trying to piece together the cause of the accident, immediately requested a copy of Kusnierz' driving record from the secretary of state's office. They found out what they had suspected: Ralph Kusnierz was a dangerous driver who should have been ruled off the road.

Since 1956 he had a record of convictions for seven moving traffic violations—once for drunken driving; once for driving with a revoked license; three times for speeding, and twice for lesser offenses. Other notations included two wrecks,

one when he was without insurance, a revocation of his license for drunken driving, and a revocation extended for failure to show financial responsibility.

His driver's license was last suspended on June 21, 1967, after he was unable to obtain insurance after two wrecks earlier in the year. His license had been restored on July 26, 1967, when he was again able to show financial responsibility.

Chicago area newspaper headlines had tagged Kusnierz with the label, "Death Driver." DuPage County Sheriff Lawrence J. Springborn, whose department investigated the accident said, "A death warrant for the Arthur Hoffmeister family was signed July 26 when the secretary of state's office reissued a driver's license to Ralph J. Kusnierz." Judge Raymond K. Berg, acting chief judge of the Cook County traffic court, called for the establishment of a judicial board that would frequently review those cases where a motorist has demonstrated a reckless disregard for the state's traffic laws.

"There must be a new state law that says when a man has this many violations his driver's license should be permanently revoked," said Judge Berg.

After a report to a coroner's jury from the Illinois bureau of toxicology showed that Kusnierz was highly intoxicated at the time of the fatal crash, Chicago newspapers also demanded that something be done to take deadly drivers off the road.

Said Chicago's American: "An entire family has been destroyed through one man's stubborn refusal to learn responsibility; when a driver has demonstrated that he is dangerous as thoroughly as Kusnierz proved it, the state should be empowered to remove the danger permanently."

The Chicago Daily News editorial page commented: "When not 10 but hundreds of people are killed on highways of the United States every week, many in crashes as shocking and needless as this one, the legislators should move to catch up with the people and add teeth to the laws intended to screen out the dangerous drivers."

In an editorial headlined "Potential Murderers on Wheels," the Chicago Tribune asked that a study be made of Judge Berg's judicial board proposal.

An incensed coroner's jury returned a verdict of accidental death through reckless homicide in its investigation of the crash and added: "We ask Secretary of State Paul Powell to take note of this accident and show for what reason the license of Ralph Kusnierz was reinstated after his motor vehicle and insurance record."

Powell's office quickly answered: There was no legal cause to have revoked the license of Kusnierz. Said Joseph Belair, director of the public information division of the department: "From the time Kusnierz got his license back, there was no record of any driving violation. Failure to pay insurance does not make a person a bad driver."

This tragic case typifies the nationwide problem of dangerous drivers whose licenses are in force despite long and conclusive records of serious traffic violations. Such drivers constitute a menace to the safety of others. And they compound the ever worsening problem of automobile insurance losses. Hundreds of thousands of drivers who should not be on the roads carry licenses or evade licensing procedures. They then demand to be insured and cause a disproportionate share of death, destruction and monetary loss on the nation's highways. ("Let's Stop Pampering Deadly Drivers," JOURNAL OF AMERICAN INSURANCE, May–June, 1967).

Recently, a memorial mass was held in a school near the Hoffmeister home in Woodbridge, Illinois, for Arthur Hoffmeister, 28; his wife, Paula, 27; their five children, Beth Ann, 6; Jane, 5; Amy, 3; Peggy, 2; David, 1; and Mrs. Hoffmeister's parents.

Neighbors of all faiths came to pay tribute to a family they describe as persons who loved life and their community and who always did things together. They perished together, too, when death met them head on in an automobile driven by a deadly driver.

Mr. WATKINS. I have just one more question.

The mutual insurance companies— I perhaps am not telling you anything, a lot of people in my State fear them because of mutual aid. There are so many of them that have blown up, people have found themselves with big bills because they were partners in this mutual.

If they became a part of this mutual firm and they get a great, big bill when it comes down to the settlement of the liability. Have you had many cases of this type in your Association here?

Mr. SMITH. We have not had any such cases to my knowledge, with the membership of our Association, Mr. Watkins. I am aware of the situation in Pennsylvania.

You have many mutuals there. You have some very fine ones and I know that you had some insolvencies up there. I think I would agree with Mr. Lemmon's observation, the prior witness here, that in the banking area, in any business area you go into, you are going to find people with unethical motivations.

I don't know how you are going to prevent those people from taking advantage of their position and the public. We certainly do not endorse such operations.

I would call attention particularly of you, Mr. Watkins, in your great State of Pennsylvania and in the City of Philadelphia, the oldest known corporation in this country was formed there which is called the Philadelphia Contributionship for the insurance of houses from loss by fire.

Mr. WATKINS. I am familiar with it.

Mr. SMITH. Mr. Benjamin Franklin was the founder there. That company is a member of our organization. It is still in existence and it is still providing wonderful insurance service to the people of Pennsylvania.

Mr. WATKINS. You are speaking of good ones. But there are bad ones, you must admit.

I wonder if we should not check into it and see if we cannot cure some of the evils that are there.

Mr. Moss. I think, Mr. Watkins, this would be one of the facets of the study.

Mr. SMITH. The insolvency situation is certainly a problem area. We are working on it ourselves.

Mr. WATKINS. It is a problem that should be looked into.

Mr. SMITH. Yes, sir.

Mr. WATKINS. I have one last question.

All the witnesses this morning have spoken of insuring automobiles. When you speak of automobiles, you mean all forms of transportation, trucks?

Mr. SMITH. I think we are speaking primarily here of the family automobile.

Mr. WATKINS. In other words, none of your testimony——

Mr. SMITH. Not on commercial transportation.

I believe most of our comments were directed to this area of the family automobile.

Mr. WATKINS. Thank you very much.

Mr. Moss. Mr. Blanton.

Mr. BLANTON. Thank you, Mr. Chairman. I have no questions.

Mr. Moss. Mr. Guthrie.

Mr. GUTHRIE. I have no questions.

Mr. Moss. I have no questions.

I want to thank you for your appearance. Again, I think the need for the Resolution has been further illustrated.

We have apparently, in your association, resources developed from research which have not been correlated or coordinated in a manner to make them generally usable for legislative judgment or for policy guidance.

I think this great body of information in addition to the original research that the Department will undertake could contribute so much to the understanding of the nature of the problem we are attempting to deal with initially here today.

Thank you, gentlemen, very much.

Mr. SMITH. Thank you, Mr. Chairman.

I might say that any of the information that we have at hand or that we have gained we will be happy to put it at the disposal of the committee or the Department of Transportation.

We will be happy to cooperate as we have indicated in our statement.

Mr. Moss. Thank you, sir.

At this time I request unanimous consent that a statement on behalf of the National Association of Insurance Commissioners supporting the Resolution be inserted at this point in the record.

Mr. WATKINS. No objection.

Mr. Moss. Hearing none, it is so ordered.

(The statement referred to follows:)

STATEMENT OF JAMES L. BENTLEY, PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Gentlemen, I appreciate the opportunity to appear before your Committee as President of the National Association of Insurance Commissioners. For the past two years, Congress, as well as the press, has devoted a great deal of time and effort to the deficiencies of the automobile insurance system. Staff studies and reports have been prepared which include so-called "findings"—most of which have been cursory in nature, without proper factual basis and which are, to say the least, misleading.

When I first learned of Senator Magnuson's and Congressman Moss' desire for an intensive investigation to be conducted by the Department of Transportation, I immediately contacted Secretary Boyd. I would like to quote from that letter:

> I pledge to you the fullest cooperation and enthusiastic interest of our association as you undertake this review. It would be a pleasure to assist your Department with technicians from various states who are skilled in rating, examinations, liquidations, underwriting and all of the many activities of regulation. These men could be made available for whatever amount of time necessary to assist you.
>
> Meanwhile, we are expanding the technical and research facilities of our National Association and continuing to expand the work already underway which has been summarized to you. I will be glad to meet with you at any time to further explore and develop these areas where we might be helpful to you and of course, talk about any new areas of cooperation.

Since that time the National Association has furnished to Secretary Boyd and his assistants a great deal of material to substantiate certain points which I shall mention in this statement.

A this time I would like to again offer the services of the National Association in this project.

BACKGROUND

The Dodd bill

Senator Dodd of Connecticut, in October 1966, introduced a bill, S. 3919, to establish a Federal Motor Vehicle Insurance Guarantee Corporation. This same bill was later reintroduced in January 1967 by Senator Magnuson as S. 688. The so-called "Dodd" bill envisioned the establishment of a governmental organization similar to FDIC to guarantee the contractual performance of insurers writing motor vehicle policies. In connection with the Dodd bill, a staff report was prepared. This report was apparently predicated upon the erroneous assumption of high rates of insolvency, large scale cancellations, and high premiums.

The Dodd bill, well intentioned as it may be, is not grounded upon any detailed study of the industry and its problems. When stripped of its verbiage

the effect of the bill would be higher rates on all auto insureds, good and bad risks alike, and its ultimate effect would be to shift responsibility and the *financial burden to the federal government without helping the consumer.* We oppose this because we sincerely believe this to be a state responsibility that can and will be met by the states.

I believe that a careful and concerned study will find other solutions at levels of government closer to the people and less expensive to the federal government.

Last July your chairman requested Secretary Boyd of the Department of Transportation to prepare a preliminary report setting forth guidelines and techniques necessary for this study of the automobile insurance system. In his letter your chairman indicated four areas to be included in such a study; (1) an analysis of the present United States system of compensation for vehicle induced accident losses; (2) an examination of existing governmental supervision of auto insurance; (3) a comprehensive review of the existing system as it affects the insured motorist; and (4) an examination of alternatives to the existing system of compensation such as the Keeton-O'Connell plan.

Such a study is a sound approach to the complex problems which must be resolved. A dispassionate searching examination would do much to cure the misconceptions which have recently been presented to the public and have gained a certain amount of acceptance by Congress and the press.

THE HOUSE JUDICIARY ANTITRUST SUBCOMMITTEE STAFF REPORT ON AUTOMOBILE INSURANCE

At the request of Congressmen Peter W. Rodino, Jr. and William T. Cahill of New Jersey, the chairman of the House Judiciary Antitrust Subcommittee directed that the staff report relating to its six-week investigation of the automobile insurance industry be published. The staff report recommended that the House of Representatives pass a resolution authorizing the FTC to conduct an investigation of the automobile insurance system and of state regulation of the industry.

As part of the report a large amount of statistical data was included. This data is misleading and founded up improper assumptions. Lest these assumptions be accepted by this Committee and the study group which will be formed, I wish to discuss some of these erroneous assumptions that appear in both the Dodd Staff Report and the House Judiciary Staff Report.

I. Insurance companies' insolvencies

Both staff reports on automobile insurance contain seriously misleading statistics with regard to insurance companies' insolvencies. Specifically, insurance company insolvency totals used by the Dodd Staff Report and cited by the House Judiciary Staff Report pictured 300 thousand automobile claimants "seeking" an estimated $600 million out of collectable assets of $25 million." It is noteworthy that both of these reports use the $600 million amount within the context of automobile claimants even though each of them must be fully aware that the total includes the wildest sort of payments for almost any type of business debt.

Reliable data obtained from receivers or trustees by state insurance departments shows that figures used in the staff study are wholly unreliable. Moreover, such estimated losses do not necessarily represent the amount which would or might have been recovered from the insurers, in the ordinary course of business, if the particular insurers had not become insolvent. Rather the figures used are apparently based upon *the damages demanded by the claimant.* The reports received indicate that this figure is inflated by over 500%.[1] During the period 1960–1965 actual losses paid by all insurers to automobile policy-holders and claimants aggregated $21 billion. Even on a most liberal basis, the ultimate policy loss to claimants from insolvency with regard to automobile insurance is approximately $6 million annually. Actual losses to automible claimants of insolvent companies have not been great when compared to the total losses paid or to the premium volume of the insurance industry. Both staffs were provided with this information, yet their reports do not reflect these figures.

[1] On the basis of information obtained from receivers and trustees total bodily injury and property damage claims totaled $106,836,636 from automobile accidents, and estimated claimant loss was $16,725,488. These figures are a far cry from the $600 million cited in both staff reports. These figures can be expected to be reduced with the changes in state legislation.

Indeed, many states have taken steps in this area to enact some form of insolvency protection statutes. Twenty-seven states provide some form of insolvency protection with the definition of uninsured motorist coverage. Three states have unsatisfied judgment funds which include protection to the motorist insured with an insolvent company. All states and the District of Columbia provided assigned risk plans to which motorists may apply for liability insurance. No lawfully qualified motorist need turn to high risk specialty companies for automobile liability insurance.

II. Cancellations

The staff reports also refer to the problem of cancellations. Understandably, individuals who have had their policies cancelled may be vehement in their criticism. And undoubtedly companies have been guilty of unwarranted cancellation and arbitrary underwriting practices. However, this is not the total picture.

At a recent public hearing conducted by a state insurance department, a locally prominent citizen appeared and complained vehemently that his auto insurance policy had been "arbitrarily cancelled" even though he had not had any accidents. It developed that he had negelcted to mention that he had stated in his insurance application, there were no youthful drivers in the family, when in fact he had two teenage sons living at home and using the family car. The insurer had cancelled his policy when a routine underwriting check revealed the deception.

The most recently available statistics disclose that in Wisconsin, for example, only 0.57% of the auto insurance policies in force were cancelled in mid-term on an annual basis for reasons other than nonpayment of the premium and only 2.06% of the policies that come up for renewal are not renewed. In Maryland, a survey of the state's 11 leading insurance companies compiled in 1964 disclosed that companies and agents cancelled only 1.4% of the policies in force on an annual basis, and declined to renew only .7%. In the State of Virginia an official survey by the Virginia State Corporation Commission in 1966 showed that only 1.8% of all auto insurance policies enforced were cancelled for reasons other than nonpayment and only 1.4% of the policies filed for renewal were not renewed. A survey in the State of Washington by Professor Wickman disclosed that only .9% of the total policies in force, covering an average of 1,650,000 drivers during 1959–1963, were cancelled either by companies or agents. In Michigan less than 1% of the policies written were cancelled.

Some automobile risks are simply uninsurable—as the federal government has found to be true of crop insurance. The government has "blacked out" or "red lined" areas within which it will not grant crop insurance. For example, six counties of Western Oklahoma were blacked out in mid-season in 1966 due to drought.

Any study of automobile underwriting restrictions should recognize that a teenage hot rodder with a dozen reckless driving arrests, the drunken driver with a suspended license, the applicant who falsified an application, etc., may not be entitled to automobile insurance—and in any event are less entitled to insurance than the sincere farmer in the "black out area" designated by the federal government.

Granted there have been instances where insurance coverage has been cancelled or has not been renewed without apparent justification, yet in the total insurance picture these situations are not numerous. Indeed through one means or another, it has been the goal of insurers to extend coverage to every licensed driver. It is interesting to note in this regard the policy of the National Association of Independent Insurers and the various guidelines and legislative enactments which have been adopted in many states. For example, the Texas Insurance Commission has issued guidelines to this effect: (1) family automobile policies should only be cancelled if the named insured fails to pay any of his premiums due; (2) if the driver's license or motor vehicle registration of the named insured or of any other operator who resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period; (3) on policies or coverage written for less than one year, the company should not refuse to renew except as of the expiration of a policy period; (4) insurers should not cancel or decline to renew solely because of the ages of the insured.

Again, assigned risk plans are available to those cancelled motorists of every state.

III. Automobile insurance premiums

The study prepared by the staff of the House Judiciary Antitrust Subcommittee to demonstrate the high automobile insurance premiums included Albany, New York in a comparison of passenger car liability rates of the 50 state capitals. The defect in the comparison is obvious and arises from specifying *one* rating territory of a state instead of the average statewide liability rate. Another inherent fallacy in such a comparison which is not so obvious is the particular *rating classification* specified by the Committee staff. In this case, about 7% of the nation's cars are in the specified rating classification, while 90% are subject to lower rates and only 3% are subject to higher rates.

The Albany, New York comparison typifies the misleading nature of prior studies and in this particular situation led one columnist to observe that there had been a 38% increase in all of New York State's liability premium rates. In fact the average liability rates for New York State, including Albany, for a seven-year period increased only 11.3% and in New York City rates only increased slightly less than 1% for the same seven-year period. The staff of the House Judiciary Committee and I both obtained this information from the National Bureau of Casualty Underwriters, yet there is this disparity in the figures presented.

One other point which I would like to make before moving to another topic is the claim that insurance rates are too high. Certainly the above mentioned staff reports would seem to support that claim. But what is the frame of reference for this allegation? For the same seven-year period just mentioned the Consumer Price Index rose 13%. For the seven-year period from 1960–1967 hospital costs have increased about 64%, medical costs have grown by some 25%, while per capita income itself has moved up some 32%.

Insurance costs like other living expenses have been caught in the cost spiral. In addition to these comparisons, the following figures should be noted:

Automobile thefts have increased 111% in the period from 1956–1966, some 535,225 cars were stolen in 1966 and property loss as a consequence has increased commensurately. The increased traffic statistics are staggering. In 1966 there were approximately 94 million motor vehicles registered, a 24% increase over 1961. In 1966, 52,500 people were killed in automobile accidents and almost 2 million people injured, an increase of over 36% since 1961. This increased loss of property and injury to life and limb has necessarily meant increased costs. Yet insurance rate increases have been moderate. A recent study conducted by the Texas Insurance Department concluded after a nationwide review that the national average premium *paid* for private passenger car basic bodily injury liability insurance at 10/20 limits in 1966 was only $3.60 per month.[2]

The study which has been proposed by Senator Magnuson and Congressman Moss should look into these problems, not merely for the purpose of pointing an accusatorial finger at the automobile insurance system and state regulation, but to ascertain the precise facts.

STATE REGULATION

It is unfortunate that reports such as the House Judiciary Committee Staff Report have as a general proposition stated that state regulaion of this industry is inadequate. I for one am apalled at such a "shotgun" statement and frankly I believe that this is one area which should be studied to clear the air of the innuendo. The implication that State Insurance Commissions are not objective or are overly sympathetic to the industry which they are charged with regulating is simply not justified. I suppose this kind of charge can be leveled at any government agency, indeed it is frequently raised against federal agencies.

The states are constantly improving themselves in this area of regulation as is demonstrated by changing statutes with regard to uninsured motorists, insolvency coverage and the establishment of guidelines for cancellations and nonrenewals. By its very nature insurance deals with local problems—hail in Louisiana, floods in Florida, droughts in Texas, etc.—and local people. Accordingly, it is better regulated by people who know the local problems.

I should now like to make a brief reference to the McCarran-Ferguson Act, P.L. 15, 79th Congress, 1945. The purpose of this enactment was to preserve the role of the state in the insurance industry and it has effectively done so. The states have responded to the provisions of the McCarran-Ferguson Act, and its

[2] It should be noted that due to variation in basic limits, amounts between the states and rating formulae, *most* insureds pay less than the $3.60 average.

philosophy and purpose has proved effective. It is our overwhelming experience, based upon responses from the public as well as the insurance companies, that insurance companies have not indicated any appreciable desire to change the system and in our judgment the public is being fully protected. It is the judgment of the NAIC that the intrusion of the federal government into this carefully structured regulatory system is wholly unnecessary.

THE KEETON-O'CONNELL PLAN

I should like now to turn my attention to a proposal which has received widespread publicity for the past year as an alternative to the traditional system of insurance compensation—the Keeton-O'Connell plan.

The proponents of this plan summarize it as a way to pay automobile insurance claims which is similar to the way health and accident plans are paid—that is, payment without regard to fault. The sponsors of this plan, among other things, assert that it would result in less insurance cost to both the insurer and the insured.

Such a proposal at first blush would appear to be the long sought after panacea. However, before accepting this plan serious consideration must be given to the facts available.

Several legal aspects of the plan must be studied before the plan can be properly evaluated. First, how does the plan in its entirety and particulars compare with what we know about workmen's compensation so that the due process provisions of the federal and state constitutions are satisfied? Second, how would such a plan fit into the already existing scheme of the law in all the states? Would such a plan be unconstitutional in any of the states? Third, accepting the interstate character of many many thousands of accidents what conflict of law problems would be created by acceptance of the plan in some but not all states? Fourth, would the adoption of such a plan really cut down court congestion? What are the actual statistics?

In addition to these obvious areas of research there are more practical considerations—perhaps a more philosophical but certainly a real one is the concept of fault, of liability present in the traditional legal system upon which insurance recovery is founded. The Keeton-O'Connell plan would compromise this factor. If fault is removed what effect does this have on traditional concepts of care and caution.

One of the most salient areas for investigation is that of cost. Backers of the Keeton-O'Connell plan assert cost savings because of reduced court costs, litigation and efficient administration. Yet many view the plan as a package which would serve to stimulate litigation because a litigant has everything to gain and nothing to lose. Further, how many additional claims will be paid if the question of fault is removed?

The Conard Automobile Accident Costs and Payment Study,[3] had indicated an increase of about 200%, while a similar study conducted by Temple University of automobile accident claims in New Jersey in 1955 indicates that the increase would be approximately 100%. The chief actuary of the Massachusetts Department of Banking and Insurance estimated that if the plan were introduced in his state the cost of coverage required by statute for private passenger car owners would increase from 19% to 35%. This increase would be in a state which already has one of the highest premium rates. Thus, the result may differ from state to state and certainly the study should reflect these figures.

It should be noted that in at least one state where the Keeton-O'Connell plan was at first embraced and in fact legislation passed the lower house. When the problems were ventilated and the ramifications realized, the bill was defeated—with full knowledge that if such a measure were to pass the upper house the Governor would veto the bill.

I wish to make no judgment in the matter at this time. A plan so far reaching as this must be carefully studied from every aspect and every point of view.

However, I would like to conclude this discussion of the plan with a quotation taken from a recent speech of Mr. Justice Tom C. Clark, Ret. (now Director of the Federal Judicial Center (as created by Congress, P.L. 90-290, December 20, 1967), whose duties, as defined by the Act *inter alia* are to study the operations of the courts of the United States) given at the James Madison Lectures at the

[3] As reference material in this statement see: Texas State Board of Insurance, *Report on Automobile Insurance Rating Methods, Insurance Company Profits or Losses, Investment Income as a Factor in Rates and Related Subjects*, December 30, 1966; Brainard, *Automobile Insurance*, 1961.

New York University Law School March 6, 1968 concerning the question of court congestion:

> Much is said nowadays of court congestion. But now we have discovered a new congestion—law office congestion! At Philadelphia in the Federal Eastern District, a computer was put on the court's docket. After some 2,000 cases had been programmed, a surprising discovery was made. Thirty percent of the cases involved longshoremen claims and three law firms represented 95% of the plaintiffs involved; two firms represented 95% of the defendants. The congestion was in the lawyers! Another 25% of the cases were FELA and Jones Act actions with similar results. Of the whole number of plaintiffs involved some 10% were represented by solo firms. Chief Judge Clary got busy and the dispositions there increased 31% last year! The point is: The lawyers must do their part in clearing up this docket congestion problem. I dare say that the remainder of the Philadelphia docket will show up the same way. And I expect the Southern District of New York's 11,000 case backlog will come out in somewhat the same "lawyer congestion" fashion; and in all likelihood the 4,000 case arrearage in the District of Columbia will uncover the same problem, perhaps in different categories of cases; and the 4,000 case load of the Eastern District of Louisiana will probably do likewise, as will the 2,500 cases in San Francisco and the 1,500 in Brooklyn. *And in the state system, where the delay runs as high as 5½ years, the same will probably be true.* Yes, the lawyers will have to remodel their dockets.
>
> We must also improve the stature of our judges, give them the advantages of continued training in judicial education; and, as to state judges, take their selection and that of their staff out of politics; give them longer tenure, and give them more security retirement-wise. Long summer recesses should be abolished and the judges' time utilized on backlog.

Further, Justice Clark made the following statement:

> Let me say, however, that before I would be willing to compromise even one of our present rights, such as is being suggested by some as to trial by jury, it would have to be shown that action was imperative and that there was no other remedy. Before we tinker with the foundations of our legal system let us first get the facts and make an appraisal of the problem. If automobile personal injury litigation, as many think, is the cause of congestion then we must remedy it. But let us first make sure that it is the cause. At the moment the statistics in Philadelphia indicate the contrary.

CONCLUSION

I have mentioned today but a few of the problems which must be included in a comprehensive study of the automobile insurance system. There are many others. The study group should also consider the factors influencing the number of accidents and claims. Some of these would include:

(1) The number of cars driven and miles driven,
(2) The driver education and testing programs across the country,
(3) The safeguards against the influence of drinking and driving,
(3) Automibile equipment safety standards and enforcement of these standards,
(5) The adequacy of our state and federal highway systems, and
(6) Increased traffic problems in urban areas, along with highway construction and maintenance.

The study should take into account the current inflationary pressures, the need for automobile reserve funds and pooling to meet the increased costs of catastrophes and insolvencies. Such a study must also look into the factors affecting the cost of claims.

Yet the solving of each of these individual problems will not be the solution. All of the problems and allegations, as delineated in this statement, are closely interrelated and only by viewing them in their total perspective can they be properly appraised, evaluated, and where necessary, corrected.

Once again let me say that my offices and those of the National Association of Insurance Commissioners stand ready to be of whatever assistance we can in obtaining the information and data which this Committee will need in order to evaluate the problem and to develop a comprehensive and meaningful understanding. I would be happy to designate a committee of select insurance commissioners who would sit with you and your staff on any problem and I will be happy to meet with you at any time to further explore and develop those areas where we might be helpful to you.

BRIEF SUMMARY OF UNINSURED MOTORIST LAWS

State	Effective date	Limits	Property damage	Insolvency provisions	Premium	Arbitration	Comments [1]
Mandatory uninsured motorist laws:							
Connecticut	Oct. 1, 1967	$20,000 and $20,000	No	Unlimited	$5	Permitted	
Illinois	July 1, 1967	$10,000 and $20,000	No	do	4	do	
Maine	Jan. 1, 1968	$10,000 and $20,000	No	No	4	do	
New Hampshire	Sept. 1, 1957	$10,000 and $20,000	No	1 year [2]	1	do	
New York	Jan. 1, 1959	$10,000 and $20,000	No	No	3	do	(a)
Oregon	Jan. 1, 1960	$5,000 and $10,000	No	2 years [3]	3	do	
South Carolina	Jan. 1, 1960	$10,000 and $20,000, and $5,000	$200 deductible	Unlimited [4]	—	Prohibited	(b), (c).
Virginia	July 1, 1958	$15,000, $30,000, and $5,000	do	No	4	do	(c), (d);
West Virginia	June 5, 1967	$10,000, $20,000, and $5,000	$300 deductible	Unlimited	6	do	(c).
Statutory uninsured motorist laws with right of rejection: [5]							
Alabama	Jan. 1, 1966	$10,000 and $20,000	No	No	5	Permitted	
Alaska	Jan. 1, 1967	$15,000 and $30,000	No	No	7	do	
Arizona	Jan. 1, 1966	$10,000 and $20,000	No	No	5	do	
Arkansas	June 9, 1965	$10,000 and $20,000	No	1 year	5	Prohibited	(c).
California	Sept. 18, 1959	$10,000 and $20,000	No	Yes	8	Permitted	(e), (h).
Colorado	July 1, 1966	$10,000 and $20,000	No	No	2	do	
Florida	July 1, 1961	$10,000 and $20,000	No	1 year	5	do	
Georgia	Jan. 1, 1964	$10,000, $20,00 , and $5,000	$250 deductible	do	6	Prohibited	(c).
Hawaii	Sept. 1, 1965	$10,000 and $20,000	No	No	3	Permitted	
Idaho	May 31, 1961	$10,000 and $20,000	No	1 year	4	do	
Indiana	Jan. 1, 1966	$10,000 and $20,000	No	No	3	do	
Iowa	July 1, 1967	$10,000 and $20,000	No	1 year	3	do	
Kentucky	Oct. 1, 1966	$10,000 and $20,000	No	do	5	Prohibited	(f).
Louisiana	Oct. 1, 1962	$5,000 and $10,000	No	do	6	do	(c).
Massachusetts	Aug. 8, 1966	$5,000 and $10,000	No	Unlimited	2	Permitted	
Michigan	Jan. 1, 1966	$10,000 and $20,000	No	do	4	do	
Minnesota	Jan. 1, 1968	$10,000 and $20,000	No	do	5	do	
Mississippi	Jan. 1, 1967	$5,000 and $10,000	No	1 year	5	Prohibited	(c).
Montana	Jan. 1, 1968	$10,000 and $20,000	No	No	3	Permitted	
Missouri	Oct. 13, 1967	$10,000 and $20,000	No	2 years	5	do	
Nebraksa	Oct. 19, 1963	$10,000 and $20,000	No	No	2	do	
Nevada	Aug. 18, 1967	$10,000 and $20,000	No	No	7	do	
New Mexico	Jan. 1, 1968	$10,000 and $20,000	$250 deductible	No	4	do	
North Carolina	Aug. 1, 1961	$5,000, $10,000, and $5,000	$100 deductible	3 years [6]	3	do	(g).
Ohio	Jan. 1, 1966	$10,000 and $20,000	No	No	3	do	
Pennsylvania	Jan. 1, 1964	$10,000 and $20,000	No	No	2	do	
Rhode Island	Janaury 1963	$10,000 and $20,000	No	No	4	do	
South Dakota	July 1, 1966	$10,000 and $20,000	No	No	3	do	
Tennessee	Jan. 1, 1968	$10,000 and $20,000	No	1 year	8	Prohibited	(c).
Texas	Oct. 1, 1967	$10,000 and $20,000	No	Unlimited	4	Permitted	
Utah	July 1, 1967	$10,000 and $20,000	No	No	3	do	
Washington	Jan. 1, 1968	$10,000 and $20,000	No	Yes	5	do	(h).
Wisconsin	Jan. 21, 1966	$10,000 and $20,000	No	Unlimited	3	do	

[1] Comments follow table.
[2] Effective Aug. 28, 1967.
[3] Effective June 25, 1967.
[4] Effective June 14, 1963.
[5] Policyholder must affirmatively refuse in writing the protection offered under this coverage. By such action, the policyholder and his family are the only ones who suffer possible loss and injury.
[6] Effective June 10, 1965.

COMMENTS ON SUMMARY OF UNINSURED MOTORIST LAWS

(*a*) *New York*

(1) Law limits coverage to accidents in New York (extra-territorial coverage available for $1 additional premium).

(2) MVAIC pays benefits to qualified persons, and on claims involving policies issued or renewed on or before 6/30/65.

(*b*) *South Carolina*

(1) Annual fee assessed against uninsured motorists (prescribed by Insurance Commissioner; not to exceed $50 (eff. 11/1/66)).

(2) Fund created by fees is used to pay cost of administration of the "Plan", and balance is distributed among insurers to pay for, at least in part, UM coverage

(*c*) *Arbitration prohibited (by statute)*

The following states have enacted Statutes which prohibit arbitration under UM coverage:

Mandatory UM States

South Carolina.—Section 46–750.37 S.C. Code.
Virginia.—Section 38.1 381(g) Va. Ins. Laws.
West Virginia.—Section 33–6–31 (g), W. Va. Code.

Statutory UM States

Arkansas.—Section 66–3233, Ark. Statutes.
Georgia.—Section 56–407 A(F) Ga. Code Annotated.
Louisiana.—Section 22:1406, D(5), La. Statutes Annotated.
Mississippi.—Section 5, House Bill No. 121 Laws of 1966 (eff. 5–18–66).
Tennessee.—Tenn. House Bill 479, Section 6, Paragraph 2.

(*d*) *Virginia*

(1) After 1/1/67 the insured was given right to contract for UM up to liability limits at extra cost.

(2) Annual fee of $50 (eff. 6/27/66) assessed against unsinsured motorists.

(3) Fund created by fees is used to pay cost of administration of the "Plan", and balance distributed among insurers to reduce the cost of UM coverage to policyholders.

(*e*) *California*

The insolvency provision is not a part of the Statute. Insolvency provisions were provided by a court ruling (9/16/66).

(*f*) *Kentucky (Arbitration)*

Regulation I G 23 of Insurance Department: prohibits contracts which require arbitration.

(*g*) *North Carolina*

(1) $5/10/5 limits with $100 PD deductible eff. 9–1–65. Premium for this coverage $3.

(2) $15/30/5 limits available if liability limits of at least that amount. Premium $4.

(*h*) *Washington and California*

Limits $15/30 from 7/1/68.

SUPPLEMENTARY INFORMATION ON STATE FINANCIAL RESTRICTIONS AND FUNDS

California

Impoundment.—If an individual is involved in an accident and is found to be financially irresponsible, his vehicle is impounded until financial responsibility can be proven.

Maryland

Unsatisfied claim and judgment fund.—Effective date: 6–1–59. This fund is financed primarily by an assessment of insurance companies (maximum is 2% of premium). The remainder needed is assessed against uninsured motorists. Applies to BI and PD claims with $100 deductible. Includes BI in hit-and-run and insolvency cases for residents (non-resident if his state has a reciprocal arrangement with Maryland).

Michigan

Accident claims fund.—Effective date: 1–1–66. State operated fund financed by a $35 assessment on uninsured motorists and $1 on all others. Applies to BI and PD with a $200 deductible on PD. Hit-an-run cases are included in BI.

New Jersey

Unsatisfied claim and judgment fund.—Effective date: 4–1–55. This fund is administered by a board, part of whose members are insurance company executives. It is funded by a maximum $25 per uninsured motorist and an insurance company assessment (maximum is ½ of 1% of premium). Applicable to both BI and PD with a $100 deductible on PD, the plan covers hit-and-run for BI with residents (non-residents if their state has a reciprocal agreement with New Jersey).

New York

Motor Vehicle Indemnification Corporation.—Effective date: 1–1–59. Insurance company operated *and* supported. Pays to limits of $10/20 on BI if the person is not covered under UM coverage. This includes hit-and-run and disclaimer cases. If owner does not produce proof of financial security in a BI case within 48 hours the car will be impounded or stored by owner.

North Dakota

Unsatisfied judgment fund.—Effective date: 7–1–47. State operated with a maximum $1 assessment on all motorists. Applies to payment of judgments obtained by residents in BI cases. Carries a $300 deductible.

COMPULSORY LAWS

Massachusetts

Compulsory for bodily injury liability insurance only. Limits $5/10. Applies to all owners of motor vehicles registered in the state and to owners of motor vehicles operated in state for 30 or more days in the state. Coverage is by Statute and the rates are set by the Insurance Commissioner of Massachusetts. The law covers *only* accidents which occur in the State of Massachusetts. Operation without required proof is punishable by a fine ranging from $100 to $500 or imprisonment for one year.

New York

Compulsory for bodily injury liability and property damage liability insurance only. Limits $10/20/5. The law applies to all owners of registered vehicles in the state. The coverage was established by regulation and covers the territory of the United States and Canada. Rates are established by the insurer, but these rates must have prior approval from the Insurance Department. Violation of law is punishable by revocation of license and a fine of $100 to $1000 and/or imprisonment of one year.

North Carolina

Compulsory for bodily injury liability and property damage liability insurance only. Limits $5/10/5. Applies to owners of all registered vehicles and covers the areas of the United States and Canada. The law is a portion of the Financial Responsibility Law with rates computed on a merit basis by a company-operated bureau. Operation of a vehicle without financial responsibility is a misdemeanor.

PRIVATE PASSENGER CARS, $5,000, $10,000 AND $5,000 AVERAGE RATES, AS OF NOV. 16, 1966

[Based on 1963 distribution]

State	Bodily injury	Property damage	Combined
Puerto Rico	$67.30	$49.35	$116.65
Massachusetts	70.95	38.05	109.00
New York	65.88	27.13	93.01
Rhode Island	59.00	31.28	90.28
District of Columbia	51.47	36.06	87.53
Missouri	56.04	31.38	87.42
Illinois	53.49	31.25	84.74
Minnesota	50.23	28.60	78.83
California	45.63	30.90	76.53
New Jersey	46.73	27.23	73.96
Louisiana	47.84	24.54	72.38
Connecticut	46.51	25.85	72.36
Nevada	41.12	29.19	70.31
Wisconsin	44.49	24.57	60.06
Michigan	36.49	32.32	68.81
Maryland	43.40	23.70	67.10
Ohio	36.64	27.66	64.30
Oregon	38.81	25.72	64.08
Vermont	40.91	22.81	63.72
Washington	36.35	26.15	62.50
Mississippi	41.02	20.39	61.41
Pennsylvania	35.40	25.77	61.17
South Carolina	37.33	22.74	60.07
New Hampshire	36.60	23.30	59.90
Indiana	28.86	30.79	59.65
Tennessee	38.46	20.08	58.54
Arizona	38.08	20.35	58.43
West Virginia	33.07	24.20	57.27
Texas [1]	30.47	24.92	55.39
Utah	27.78	27.53	55.31
Virginia	33.47	20.68	54.15
Alaska	28.50	25.33	53.83
Arkansas	31.17	19.77	50.94
North Carolina	28.20	20.73	48.93
Iowa	24.69	23.18	47.87
Florida	31.89	15.64	47.53
Alabama	27.75	18.97	46.72
Maine	25.53	21.12	46.65
Kentucky	29.69	16.71	46.40
Georgia	27.76	18.30	46.06
Nebraska	23.93	21.87	45.80
New Mexico	24.71	20.64	45.35
Colorado	24.76	20.52	45.28
Idaho	20.93	24.21	45.14
Hawaii	25.32	19.23	44.55
Oklahoma	26.44	16.63	43.07
Delaware	21.82	19.06	40.88
Kansas	22.95	17.63	40.58
North Dakota	18.06	18.19	36.25
Montana	17.55	17.29	34.84
Wyoming	17.52	14.62	32.14
South Dakota	16.90	13.58	30.48

[1] All companies average rate as of Aug. 1, 1966. Does not reflect dividends paid to policyholders.

Source: National Bureau of Casualty Underwriters.

DETERMINATION OF COUNTRYWIDE AUTOMOBILE PURE BODILY INJURY LIABILITY RATE AT 10/20 LIMITS PER MONTH

Private passenger: Texas, earned premiums at present rates for the accident year ending June 30, 1966

Bodily injury	$113,456,562
Med. pay	21,291,971
Uninsured motorist	*1,801,470
Increased limits B.I.	†6,614,619
	143,164,622

$113,456,562/$143,164,622 = 79.25%.

.7925 × $54.55 = $43.23. Countrywide automobile bodily injury liability average rate at 10/20 limits.

†$4,537,180 (NBCU & MIRB) × 1.45787 (NAH's Portion Nationally of B. I. Business).

*All Classes.

PRESS RELEASE, TEXAS STATE BOARD OF INSURANCE, DECEMBER 28, 1967

The State Board of Insurance today announced the adoption of standards of acceptable practice to guide companies cancelling or declining to renew policies. These guidelines are for use by companies writing property-casualty lines of insurance in Texas and are designed to apply to the personal lines which most people buy, namely family automobile policies, homeowners policies and standard fire policies on one-family dwellings and duplexes.

Insofar as the Board has been able to determine, there has not been an abuse of the right of cancellation by the insurance industry in this State; nevertheless, the Board feels that a set of guidelines is needed and has called upon the industry to comply.

RECORD OF OFFICIAL ACTION OF THE STATE BOARD OF INSURANCE, AUSTIN, TEX., DEC. 20, 1967

Subject Considered: Guidelines for cancellation or non-renewal of property or casualty insurance.

GENERAL REMARKS AND OFFICIAL ACTION TAKEN

Came on for consideration by the State Board of Insurance the problems sometimes presented to policyholders because of their policies being cancelled by their insurers or by the refusal of insurers to renew policies on their expiration dates. Although the State Board of Insurance has not had a disproportionate number of complaints about cancellations or the refusal to renew expired policies, cancellations by some property and casualty insurance companies impel the Board to adopt standards of acceptable practice to guide companies cancelling or declining to renew policies, and the State Board of Insurance hereby establishes the following guidelines for all companies writing property and casualty insurance in Texas.

1. The insurance policies most people buy, namely family automobile policies, homeowners policies and standard fire policies on one-family dwellings and duplexes, are presumed to meet the underwriting requirements of the company after a policy has been in effect ninety (90) days.

a. Family automobile policies or family automobile coverage should be cancelled only for the following reasons:

i. If the named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit; or

ii. If the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period.

b. Homeowners policies and standard fire policies on one-family dwellings and duplexes should not be cancelled because the company subsequently changes its underwriting requirements during the term of the policy.

2. Family automobile policies or family automobile coverage, homeowners policies and standard fire policies on one-family dwellings and duplexes should be renewed at expiration unless the insurer gives written notice to the named insured and to the agent or producer at least thirty (30) days in advance of the expiration date that the policies will not be renewed.

With respect to family automobile policies or family automobile coverage, if the policy or coverage is written for a period of less than one year, the company should not refuse to renew except as of the expiration of a policy period.

3. Insurers should not cancel or decline to renew family automobile policies solely because of ages of the insureds.

4. As to any kind of property or casualty coverage, insurers desiring to discontinue the underwriting of certain lines or classes or to withdraw from a geographical area or a particular agency should not summarily cancel all outstanding policies. Instead, insurers should retain until policy expiration date all such policies that met its underwriting requirements at inception date. Thirty (30) days notice of declination to renew should be given to the named insured and to the agent or producer. This guideline is not intended to restrict the ability of an insurer to reinsure such outstanding policies.

5. Each company should keep its underwriting information concerning cancellation or refusal to renew individual policies readily available to the State Board of Insurance, and the records should be retained in accordance with the company's normal retention practices for the "daily reports" of expired policies.

6. The Board hereby gives notice that it expects each insurer to exercise its rights of cancellation with discretion and without discrimination, and expects each insurer to be prepared to explain to the Board the principles which control its cancellation practices when called upon to do so.

These guidelines shall become effective immediately.

WM. HUNTER MCLEAN,
Chairman.

NED PRICE,
DURWOOD MANFORD,
Members.

Prepared by:

PAUL D. CONNOR,
Chief Clerk.

ADDENDA

Statistics have already been offered with regard to the cancellation ratios in Maryland, Virginia, Wisconsin and Michigan. Later information has been developed for the State of Georgia. A recent survey indicates 1.24% cancellation of automobile insurance contracts out of 400,000 contracts sold.

Mr. Moss. Our next witness is Mr. Robert Whittlesey, second vice president of the Auto Body Association of America.

Gentlemen, we are pleased to welcome you. You may proceed.

STATEMENT OF ROBERT WHITTLESEY, SECOND VICE PRESIDENT, AUTO BODY ASSOCIATION OF AMERICA

Mr. WHITTLESEY. Thank you, Mr. Chairman.

My testimony is very short. Before I go into it I would like to preface my statement.

In 1946, I started out as an auto body repairman and then went from there into handling auto damage appraisals.

Then I worked for 8 years as an adjuster for the State Farm Insurance Co., a very happy time in my life, and then opened my own shop.

So I have come full circle in the repair and adjusting business. I feel like a small part of your investigation but we feel that it is quite important to the decision whether or not to have this investigation.

Mr. Moss. Thank you, sir.

Mr. WHITTLESEY. Mr. Chairman and members of the committee I am Robert Whittlesey of Silver Spring, Md., an independent body shop owner, and vice president of the Auto Body Association of America.

We are a national association of independent auto body and repair shops and closely affiliated industries spread throughout the United States.

There are 58,000 auto body shops in the United States including independent and franchised dealer establishments which together employ over 380,000 persons.

Our gross volume of business for the last year exceeded $2 billion of which 75 percent, or about $1½ billion, was controlled by insurance companies.

Our members are deeply concerned about some of the inequities that have grown up in this industry due to certain monopolistic and

coercive practices which encourage the operation of unsafe vehicles and at times result in injustice to the body shop owners and consumers who drive insured automobiles.

SAFETY

Efforts of some insurance companies through their appraisal practices to repair vehicles at the cheapest possible price in current practice will often prevent expenditures vitally necessary for the proper operation and safety of the repaired vehicle.

These practices account for many of the cars that are now operated on the highways in an unsafe condition. The increasing practice of driving severely damaged cars to insurance company operated drive-in claims services often keeps vehicles on the road that should not be driven, and encourages their use for prolonged periods in an unsafe condition with consequent danger not only to the occupants, but to other motorists as well.

MONOPOLISTIC PRACTICES

It has been common practice in many areas for insurance companies to encourage the use of certain shops which by necessity must do work of marginal quality.

These shops tend to overlook such real costs as overhead and depreciation and operate below cost at wage levels far below the standards of similar industries.

Car owners are coerced into going to these shops rather than to the shops where they customarily go and prefer to have their work done.

LOSS OF TIME AND USE

Although not provided in the insurance contract, consumers generally must secure on their own time two or more estimates, and are then often forced to go to a shop in some other area than the one where they customarily have their work done.

There are often long delays in payment, particularly with regard to shops not favored by the insurance companies, which result in hardship on the body shop owner as well as the consumer, who is denied the use of his car.

The current practice of settling insurance claims involves great multiplicity of effort, both on the part of the car owner and the body shop owner, as well as the insurance companies.

When one considers that over $2 billion of body repair work is done each year, and the value of the time lost by car owners alone, the loss to the Nation in productive time represents a very sizable economic loss to the Nation indeed.

INEQUITIES

Often the insured is afraid to make a claim for damage to his vehicle for fear that his policy will be canceled, or his rate for premiums raised. Frequently when an older vehicle is repaired with undepreciable parts, the owner is assessed betterment charges on his vehicle.

Our association has detailed documentation available concerning the above and other related aspects of the industry not specifically mentioned, and urgently requests an opportunity to bring these facts to the attention of the appropriate committee at a subsequent hearing on this subject.

We believe such an investigation would reveal abuses, inequities, coercive practices, and unnecessary loss of productive time for the average citizen now common in this industry that should be corrected, and that the return in increased highway safety, as well as the reduction in charges, and the saving of time of the consumer would far outweigh the cost of such a hearing.

Thank you.

Mr. Moss. Thank you, sir.

Mr. Watkins.

Mr. Watkins. No questions. I think the gentleman's statement is good for the record.

Mr. Moss. Mr. Blanton.

Mr. Blanton. Thank you, Mr. Chairman. I have no questions.

Mr. Moss. I want to express the appreciation of the committee for your appearance. The appropriate entity which would consider further the information you have offered would be the study group to be created by the resolution, if the resolution is enacted into law.

I would suggest that your agency be prepared to supply that material to them, once they are authorized and organized.

Again, I want to express the appreciation of the subcommittee for your appearance.

There being no further questions, you are excused.

Mr. Whittlesey. Thank you very much.

Mr. Moss. The committee will stand adjourned until tomorrow morning at 11 o'clock when it will meet in executive session.

(The following material was submitted for the record:)

Statement of Bradford Smith, Jr., Chairman, Insurance Company of North America

A comprehensive study and investigation of the existing compensation system for motor vehicle accident losses is a necessary and a timely undertaking.

The automobile, as a practical means of transportation available to the general public, has been with us for less than sixty years, and yet in that time it has drastically changed the American way of life, as it is now changing the way of life where its introduction has been more recent.

It has enabled American business to draw services and personnel from a wide area, and to distribute its goods and services over even wider area; it has brought police and fire protection, health and sanitation, and other government services to many; the industry building and servicing automobiles has become a principal factor in our economy, accounting for 4% of our gross national product and employment of 3,200,000 people.

The most dramatic impact has been upon the personal lives and activities of individual Americans.

The automobile frees them from the requirement of proximity to their livelihood and their necessities. It brings within their reach education, entertainment, and expands their personal acquaintances, and enhances their right of freedom and self-determination. Thus it has become identified in the public mind as an essential element of life, liberty and the pursuit of happiness.

Yet in the course of its use, 53,000 people were killed and nearly 2 million disabled last year.

The utility and versatility of the automobile were so readily apparent, and so eagerly sought, that its numbers grew at a fantastic rate—and continue to grow.

Other facilities incidental to its use have been hard pressed to match the pace; and highway systems, parking facilities, facilities for manufacturing fuel, tires, accessories, etc., and for providing services, had to be developed; and whole new systems of marketing these products and services have evolved to accommodate the almost universal public use of the automobile.

Many of these allied products and services did not develop in an orderly fashion. The pace was hectic, and development was frequently disorderly. Competition demanded a high degree of innovation and efficiency. Experimentation has been essential; false starts have had to be abandoned; and radical changes have had to be made in systems which became obsolete before they could be completed.

The insurance industry reacted to the automobile as did many other industries. Existing companies broadened and adapted their facilities; whole new specialty companies emerged; and the insurance industry provided policies for insuring the car, its equipment and accessories, towing and road service, loss of use, accidental injury or death, and, most important, policies for insuring legal liability arising out of the ownership and use of the automobile. All of these insurance facilities are part of the existing compensation system for motor vehicle accident losses and, therefore, are part of the subject of the proposed study.

As in other competitive industries, all of these insurance facilities are constantly being changed and improved; that is, all but one—legal liability insurance.

By its nature, legal liability insurance protects the assets of the insured against depletion through legal liability and the cost of defending lawsuits. The coverage afforded under this particular insurance system varies, therefore, in accordance with changes in the method by which legal liability is ascertained and measured; in the case of the automobile, tort law.

This system is, of course, beyond the power of the industry to change unilaterally. Maintenance of the orderly rule of law precludes the false starts, experiments, and innovations by which other industries have reacted to the rapid evolution of the automobile, but the tort liability law by which legal liability is ascertained and measured is fundamentally unchanged from that which applied before the automobile became common.

The acknowledged public dissatisfaction directed at the automobile liability insurance field is, in fact, a criticism of the tort liability system.

The public has come to accept a substantial number of automobile accidents as virtually unavoidable, and is obviously willing to accept the physiological consequences as part of the cost of using automobiles, but it has also come to expect that all victims of these accidents be compensated.

To be sure, insurance which will individually provide such compensation is readily available in the form of accident and sickness insurance. A great variety of coverages, tailored to suit the individual needs of the purchaser, are available, and new coverages are readily devised as new needs emerge.

But the public has come to look to automobile liability insurance, rather than accident and sickness insurance, as the source of compensation for accident victims, perhaps because they are virtually compelled to buy this form of insurance, or perhaps because having accepted the accident toll as "unavoidable," they feel that some absolute liability should attach to the operation of the automobile. In any event, purchase of both accident insurance and automobile liability insurance is too expensive and usually results in a duplication of coverages. One of the facts which should be developed in the course of this study is the reason for the public attitude toward automobile liability insurance and the extent to which the general public demands that it perform as a no fault compensation system.

Another major area of discussion and criticism of the insurance industry has centered about its ratemaking, underwriting selection, and cancellation practices.

In my opinion, most of these criticisms are traceable to a single factor, and that is the public regulation of insurance rates and underwriting practices which has the effect of substituting regulatory authority for the more effective forces of competition.

Insurance companies deal in matters involving the economic survival of individuals and family units, as well as businesses and industries, and in these dealings they commit themselves to performance and obligation in the future. Public regulation of such activity is clearly warranted to assure that companies are economically capable of performing and do, in fact, perform as they have contracted to do.

However, it appears to us that considerably more attention has been given to ratemaking data and insurance ratemaking than to regulation for solvency.

To a great extent, regulation has taken the form of prior approval of the rates which the company proposes to put into effect. This has the effect of throwing this process into the political arena where it does not receive the objective technical consideration necessary to a successful underwriting venture.

There is nothing mysterious or sinister, or even particularly complicated, about the process of insurance ratemaking. The insurance industry is a highly competitive one and insurance companies determine the price at which they are willing and able to sell their contracts and services just as do businessmen in any other industry. The difficulty is that, before they are permitted to sell their contracts and services at the prices they have determined, they must obtain approval by a government agency.

The political pressures brought to bear on regulatory authorities have tended to hinder innovation and development of rate systems and rating techniques which would produce adequate prices for our contracts; in point of fact, they have had the effect of holding rates at levels which are not compensatory.

Faced with such a situation, the underwriter must either resist that segment of the market for which the approved rate is inadequate, or accept that business at an expected loss.

It is anomalous that regulatory agencies who are supposed to see that rates are adequate and whose primary responsibility is to assure that companies will be solvent and capable of performing their obligations require those companies to engage in business at rates which are known to be unprofitable.

In their attempt to operate within generally inadequate rate levels, underwriters have become highly selective, employing as underwriting acceptability standards, those rating considerations known to identify unprofitable classes of business, but which are not considered in the approved rating systems. They may also employ extensive application procedures and, in some cases, investigations, for underwriting selection purposes.

It must be remembered that, in the case of automobile liability insurance, risks so declined are not deprived of insurance, since the industry maintains assigned risk pools. Experience of the pools, when compared with experience of business accepted directly by the companies, reveals that the selection procedures employed by the underwriter are effective, and that the rates for those risks which do reach the pools are generally inadequate.

An obvious solution to this problem is to remove ratemaking from the political arena, and to permit the many companies offering automobile liability insurance to compete openly with each other. This approach has been advocated by INA for many years and has been the law in California for some time. Similar laws were recently enacted in Florida and Georgia, and the Commissioners in those states report a lessening of the problems of underwriting rejection and cancellation.

Several other states have taken the opposite approach and enacted legislation limiting companies' rights to reject or cancel insurance, even though assigned risk plans are operating in those states. Such regulations and laws present a different problem to company management. Having now been deprived of the right to establish the rate at which the company will sell its contracts and services, and also deprived of the right to decline to sell them at an inadequate rate, management must decide whether to continue in such a market. In this decision companies are ultimately accountable to their owners, who are also members of the public.

The present difficulties of the automobile liability insurance industry stem from the complex evolution of a society which is dependent upon the automobile. Heretofore, investigations and studies have attacked piecemeal such subjects as automobile design, highway design, traffic law enforcement, driver licensing laws, antitrust law as applied to the insurance industry, and tort law. Moreover, these piecemeal investigations have been undertaken by a variety of agencies of the Federal Government, the fifty State Governments, private research organizations, academicians, members of industries affected, and others. Many of these investigations have been exploited for their sensational value, and have produced little in the way of usable information. Our ability to respond fully and effectively to such inquiries has been impeded by their multiplicity and diversity.

We are faced now with a need for a comprehensive objective study of the overall system of which automobile liability insurance is a part.

With the facts developed by such a study as a foundation, legislators can develop appropriate remedial legislation, and the automobile insurance industry can develop a variety of contracts and services to satisfy the public demand.

INA supports the study described in the Joint Resolutions which are the subject of this hearing. The Department of Transportation, with the special staff and the Interagency Advisory Committee described in the Resolution, is best suited to conduct such a comprehensive study, drawing upon the skills and knowledge of the industry, the bench and the bar, the academic community, and accumulating a breadth and depth of data not available through any one of these sources alone.

The provision for appointment of advisory committees offers a vehicle for identifying and prescribing the nature and detail of data required of the insurance industry, enabling us to contribute more fully and effectively than has been possible in previous uncoordinated inquiries.

The Resolution calls for a review of the role and effectiveness of insurance in the system of compensation for motor vehicle accident losses. As members of the private enterprise insurance industry, we are confident that this review will identify our industry as the most effective mechanism for providing compensation over a substantial area of the automobile accident field. A review of the present effectiveness of our industry must take into account the present limitations under which it operates, including the present tort legal system, and the present regulatory system. An evaluation of the prospective effectiveness of our industry must take into account what it could accomplish under different legal and regulatory circumstances, and identify those circumstances which would permit maximum effectiveness.

In the final analysis, private insurance companies offer a service and are judged by the public on the basis of their performance. They must be given a reasonable opportunity to serve the public requirement as they are so well equipped to do by their long experience, their skilled personnel, and facilities dedicated to this purpose, and in so doing they should be given an opportunity to earn a reasonable profit as an incentive to performance in the public interest. Competition among these able companies to provide better and more economical service, and to earn public acceptance, is the best possible assurance that the public will have a wide choice of first rate insurance programs to meet their individual requirements.

The study proposed in the Joint Resolution is the logical first step toward achieving this goal, and it will receive our wholehearted support and cooperation.

AMERICAN AUTOMOBILE ASSOCIATION,
Washington, D.C., March 20, 1968.

Re H.J. Res. 958.
Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

MY DEAR MR. MOSS: The American Automobile Association wishes to go on record in support of H.J. Res. 958. We ask that this letter be included in the printed record of your Subcommittee's deliberations on this matter.

Recently our Executive Committee unanimously approved the following resolution:

"RESOLUTION OF AAA ON CONGRESSIONAL AUTOMOBILE INSURANCE INVESTIGATIONS

"The American Automobile Association has a deep and continuing interest in the subject of automobile insurance in behalf of the motoring public.

"AAA recognizes that complaints, while low in frequency in relation to the volume of automobile insurance, have focused attention upon the varied and complex problems of the administration of automobile insurance, as well as underlying legal principles, statutes and regulations. The extent of attention thus generated, together with changing conditions in the United States, warrant a thorough investigation of the subject.

"Pending Congressional resolutions would authorize and direct the Department of Transportation to conduct 'comprehensive study and investigation of all rele-

vant aspects of the existing motor vehicle accident compensation system', including all phases of automobile insurance.

"AAA supports such a study in order to determine and document the true facts. AAA urges that Congressional authority to conduct such an investigation should require that the investigation be conducted in two phases—the first phase consisting of an objective and thorough compilation and analysis of the existing facts and a report to the Congress thereon; the second phase to consist of whatever recommendations may then appear appropriate.

"AAA points out that, until the completition of such an objective study and report by the Department of Transportation, it would be premature to assume that new laws or regulatory action are in fact required.

"AAA will continue to support constructive efforts to provide fair and reasonable protection to the motorist based upon sound and reliable factual information. To the end that these objectives be realized, the AAA extends its full cooperation and assistance."

You will note we ask for a two phase study of the automobile insurance problem by the Department of Transportation.

It is our belief that there should be no comingling of fact, theory and remedy in the study. Too often in a study of this magnitude and complexity, one finds an interweaving of fact, theory and solution. Separation of fact and solution will prevent confusion and will make for a better dialogue on the study, we believe.

For this reason, we were happy to hear the comments by Secretary of Transportation Alan S. Boyd, on March 19, that he plans a four part study, with separate phases for organization, data collection, analysis and recommendations and that he considers it "absolutely essential" to develop an adequate information base so that his "analysis and recommendations can be firmly grounded in the facts rather than conjecture and suspicion."

Secretary Boyd further announced his intention of making wide use of advisory groups as permitted by H.J. Res. 958. The AAA, representing 10,700,000 motorists, extends its full cooperation and assistance and stands ready to serve on any such advisory group.

With all best wishes, I am

Sincerely,

GEORGE F. KACHLEIN, JR.,
Executive Vice President.

NATIONAL ASSOCIATION OF INSURANCE AGENTS, INC.,
New York, N.Y., March 19, 1968.

Re H.J. Res. 958.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Finance and Commerce, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This presentation is made by the National Association of Insurance Agents on behalf of over 36,000 insurance agencies throughout the United States. Insurance agents are close to the public in their function of selling and servicing all lines of insurance, including automobile. The increased accident rates, soaring repair and medical costs, coupled with insurance rate inadequacies in many areas, are causing severe problems for agents in finding a basic market to properly handle needs of their assureds, with consequent increased use of assigned risk plans at a surcharge.

We are well aware of, and sensitive to, real and fancied complaints of some of the insurance buying public about rates, cancellations, failure to renew, claims settlement practices and insolvencies. We are naturally concerned with all complaints since our ability to prosper in the insurance business is directly related to our ability to satisfy the needs of our customers.

Agents are, of course, in favor of plans which best serve the needs of the insuring public from the standpoints of cost and compensation. In view of criticisms of the present methods of compensating victims of automobile accidents, every effort should be made to find improvements in the system.

We agree with H.J. Res. 958 in its provision for a comprehensive study of automobile insurance. We also believe it to be in order to appoint an inter-agency advisory committee to work with the Secretary of Transportation in conducting the study. A comprehensive study would also require information from all major segments of the insurance industry and, especially, the State Insurance Departments.

Our Association has reviewed with great interest the various proposals that have been advanced as solutions to automobile insurance problems. The plans so far proposed leave many unanswered questions in their ability to fulfill the objectives of improvement in cost and compensation. Impact on the insuring public of major changes in the system should be carefully weighed.

In one recent plan, the authors have claimed advantages in reduction of cost of bodily injury coverage by lowering administrative and legal expenses; by speeding up claim payments and reducing court congestion. This plan, which has received prominence, establishes a compulsory non-fault basic protection in place of liability insurance; abolishes the common law doctrine of tort liability, except where damages for pain and suffering exceeds $5,000 and economic loss exceeds $10,000. Commenting on this plan, a prominent law professor said in an *American Bar Association Journal* article, "A Plaintiff's lawyer would have everything to gain and nothing to lose by trying for a big verdict in a tort suit, secure in the knowledge that he and his client would be taken care of by basic protection no matter what happened in the lawsuit."

This plan and others should have very careful study because of the controversy surrounding them and also because some plans would change the legal concept of fault or negligence, which is centuries old. Statutes and decisions of Federal and State courts have applied the doctrine to all types of accidents involving personal injury or property damage. Changing this legal concept for automobile insurance would involve statutory enactments in every state. It would take years to overcome legal precedents of centuries.

The insurance industry has taken great strides in recent years to make encouraging progress in many areas of automobile insurance, within the framework of the present system of marketing and state insurance regulation. Some of these areas are—

1. Insolvencies are rapidly being eliminated as a problem. The growing acceptance of mandatory uninsured motorist coverage with added insolvency protection, combined with tough regulatory legislation will eliminate even the small fraction of 1% of premiums that have been written in companies which failed.

2. Cancellations, which have never involved more than about 1% of all policies country-wide, have become even more limited under the industry supported model legislation for cancellation limitations.

3. The traffic safety legislation passed by Congress, and implemented by vehicle and highway safety standards, gives real promise of a major improvement in the area which is caused by the spiraling losses for which the system must pay.

In addition, experiments by ten companies with different types of marketing operations are now underway to offer injured motorists a new settlement option providing guaranteed benefits. Those to whom it is offered and accept will be paid automatically without having to prove which driver was at fault. The agents are awaiting the results of this experiment with great interest, since it offers a possible solution within the framework of established law and state regulation of insurance.

Complete studies are also underway in several states by direction of the governor or commissioner of insurance, or by legislative enactment. The three major insurance company trade associations are also conducting thorough studies. H.J. Res. 958 will provide a means to coordinate these and other studies and lead to sharing experience and techniques.

On September 1, 1967, this Association directed a letter to the Hon. Alan S. Boyd, Secretary, Department of Transportation, in which we commended plans for an in-depth, long-range study of the automobile insurance problem and offered our complete cooperation in such a study. We renew our commendation and offer our cooperation in any way in which we can be of assistance in adoption and implementation of H.J. Res. 958.

Respectfully submitted.

DANFORTH LORING, *President.*

INDUSTRIAL UNION DEPARTMENT, AFL–CIO,
Washington, D.C., March 21, 1968.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Industrial Union Department, AFL–CIO, urges the enactment of H.J. Res. 958 which authorizes a comprehensive investigation of the automobile insurance industry by the Department of Transportation.

At the recent convention of the Industrial Union Department, our resolution on Consumer Needs urged: "Comprehensive Federal legislation that prohibits geographic, economic, occupational and racial blackouts, cancellations, discriminatory premium rates and establishes a Federal Motor Vehicle Insurance Guaranty Corporation to protect insurers against insurance company failures. To lower insurance costs and provide full compensation for injuries, we should establish a national accident compensation system and pay auto insurance claims similar to the way health and accident claims are paid."

The automobile insurance industry has for too long followed policies that damn the public. The case has been made over and over again of automobile insurance industry abuses that arbitrarily cancel policies based exclusively on age, race, occupation, and place of residence and other unrelated items and that refuse to insure applicants for the same reasons.

Insurance rates have risen as much as 30% in the past six years. Rates were raised in 40 states in 1965, 23 states in 1966, and the trend continued in 1967. According to the Consumer Price Index, insurance rates increased in 1967 by 45.1% since the 1957–59 base period. All other items priced in the Index averaged an increase of 18.2% for the same time period. In at least 20 states, insurance rates were increased without public hearings.

The public scandal linked with the automobile insurance industry affects working people the hardest. Years of neglect have made our public transit systems obsolete. Increasingly, the only way for an employee to get to his job is to drive. Refusal to insure means that workers in many instances are effectively cut off from jobs of their choice and capability.

H.J. Res. 958 should be approved speedily so that a full comprehensive investigation will begin. Such an investigation would then lead to measures that will give the American public a fair and economical system of automobile insurance.

I request that this letter be inserted in the hearing record.

Sincerely yours,

JACK BEIDLER, *Legislative Director.*

COMMUNICATIONS WORKERS OF AMERICA,
Washington, D.C., February 29, 1968.

Hon. ARCH A. MOORE, Jr.,
House of Representatives, Washington, D.C.

MY DEAR MR. MOORE: On February 13, 1968, the Executive Board of Communications Workers of America passed a resolution urging a wide scale investigation of the practices of the automobile insurance industry, and recommended a possible alternative to existing industry practices.

On behalf of the 420,000 people whom we represent, we ask that you give your earnest attention to this problem.

Sincerely,

JOSEPH A. BEIRNE, *President.*

COMMUNICATIONS WORKERS OF AMERICA EXECUTIVE BOARD, STATEMENT:
INSURANCE OR ASSURANCE?

The advent of the automobile has been an important source of social progress. In our lifetime it has become an almost indispensable mode of transportation, enabling millions of Americans to enjoy the benefits of suburban living by commuting to and from.

Unfortunately this progress has exacted its price. The most noticeable cost of course is the astronomical accidental death and injury rate on the nation's highways. It is estimated that over 50,000 people have died on America's high-

ways in 1967. We also face tremendous problems in the areas of traffic safety, air pollution, and highway congestion. The solution obviously is not to ban automobiles, but to more closely regulate the industries associated with the manufacture and insurance of automobiles.

Recently much attention has been given to the inequities practiced in the automobile insurance industries. The Senate Commerce Committee has been conducting a study of automobile insurance since the early part of 1967, due to what Senator Warren G. Magnuson has called a "ground swell of public opinion."

One proposal to alleviate many of the problems in the automobile insurance industry which has received widespread publicity, proposes to pay auto insurance claims the way health and accident claims are paid—without regard to fault. This scheme of insurance seeks to remedy the evils of inadequacy, delay, injustice, waste, and corruption in the present system of handling claims of traffic victims.

Those who have suffered injuries in automobiles know that prompt payment of compensation is rare, and that the gap between loss and compensation is vast. In general, the injured person must seek compensation from the other driver's insurance company and not from his own company. The system of justice, under which our nation has existed from its earliest days, requires that when a man is injured and seeks recovery for his injuries from another, he must prove the other person guilty of negligence, he (the claimant) free from contributory negligence, and the injuries caused by the defendant. Accordingly, if he proves these three essential elements he is entitled to recover for all medical expenses (without any deductions), his loss of earning capacity (without any deductions), and for all his pain and suffering (without any deductions). If this theory were faithfully administered, most traffic victims would go uncompensated. Happily, this is not the case. Insurance companies are ever mindful of the cost of litigation and fearful of the jury verdict that disregards the judge's instructions on fault, and awards something anyway. Thus, the insurance companies settle with a very high percentage of the traffic victims who make claims—estimated to be as high as 85 percent.

Prompt payment is rare. According to a study published in 1966 the flood of automobile accident trials has produced an average delay of 31.1 months for personal injury trials in metropolitan areas. The longest average delay was 69.5 months in Chicago, followed by periods ranging downward from 51.5 to 46.8 months in Westchester, Kings, Suffolk and Queens Counties in New York State and 50.8 months in Philadelphia. These delays pile up while the parties and their lawyers bicker about who was at fault, and what lump sum damages they suppose a jury would allow if the case were tried.

The long delays, characteristic of this system, produce a cruel injustice that strikes harder as injuries are more severe. A hard bargaining insurance company can buy the claim of such a person with a penurious settlement offer that capitalizes on his pressing needs in face of a long wait for trial. A recent study of traffic accidents in Michigan indicates that a man who has a severe injury is likely to settle for it quickly only if he settles for a relatively small amount. This harsh treatment of the disabled breadwinners and their families is only one phase of a pattern of unfair allocation of the total pool of insurance money available from insurance premiums. The present system, while awarding far too little or sometimes nothing, to some victims makes generous and even unreasonable awards to others.

Accordingly the Communications Workers of America urges the Senate Commerce Committee and the House Judiciary Committee to consider the ramifications of the Keeton-O'Connell plan which postulates; the development of an entirely new form of automobile insurance. This form of insurance would be an extension of the idea of the medical payments coverage—a supplemental coverage one can buy in an automobile policy today. The medical payments coverage should reimburse actual medical expenses up to a stated limit, regardless of who was at fault in the accident. The insurance would do the same for all out-of-pocket loss—wage loss for example as well as medical expense—up to a limit of perhaps $10,000 per person.

As in the case of medical payments coverage, one would buy this coverage for himself and his family and guests; and he would make his claim and recover his

benefits from his own insurance company. The insurance company would be required to pay month-by-month as doctor bills, hospital bills, and lost wages occurred, rather than delaying as under the present system until the injured persons and the company could agree on a lump sum, or have their disagreement resolved in long-delayed trails.

This form of insurance should be coupled with a new law to do away with claims based on negligence, unless the damages were higher than $5,000 for pain and suffering or $10,000 for all other items such as medical expense and wage loss. This would mean that all but a very small percentage of the claims for injuries in automobile accidents would be handled entirely under the new system. The wasteful expense of bickering over fault—with all the cost of the time of investigation, lawyers, and the courts—would be eliminated, except in the few cases in which injuries were very severe.

A result of this system would be to sharply reduce the overhead of the present system. Naturally this greater efficiency would help to reduce insurance costs. Also, eliminating the arguments and multitude of small cases that now occur over fault, lump sum awards, and damages for pain and suffering would remove the chief occasions and opportunities for fraud and exaggeration in the present system. No one should expect that this would eradicate fraud completely, but at least fraud would be substantially reduced and, besides being a good thing in itself, this would tend to reduce the high cost of insurance.

(Whereupon, at 12:10 p.m. the subcommittee adjourned.)

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