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# 90-60 INVESTIGATION OF AUTO INSURANCE

GOVERNMENT

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## HEARINGS BEFORE THE CONSUMER SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETIETH CONGRESS

SECOND SESSION

ON

### S.J. Res. 129

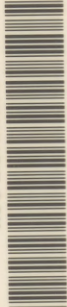
TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO  
CONDUCT A COMPREHENSIVE STUDY AND INVESTIGATION OF  
THE EXISTING COMPENSATION SYSTEM FOR MOTOR VEHICLE  
ACCIDENT LOSSES, AND FOR OTHER PURPOSES

MARCH 12, 13, AND 14, 1968

Serial No. 90-60

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INVESTIGATION OF AUTO INSURANCE

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**TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO CONDUCT A COMPREHENSIVE STUDY AND INVESTIGATION OF ALL RELEVANT ASPECTS OF THE EXISTING MOTOR VEHICLE ACCIDENT COMPENSATION SYSTEM**

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TUESDAY, MARCH 12, 1968

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
CONSUMER SUBCOMMITTEE,  
*Washington D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 5110, New Senate Office Building, the Honorable Warren G. Magnuson, chairman of the committee, presiding.

Present: Senators Magnuson, Hart, Cannon, and Moss.

The CHAIRMAN. The committee will come to order.

**OPENING STATEMENT BY THE CHAIRMAN**

The CHAIRMAN. This morning we will begin hearings on Senate Joint Resolution 129, which would authorize the Secretary of Transportation, in cooperation with other Federal agencies including the Federal Trade Commission, to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system.

This is the first of what we expect will be 3 days of hearings. We have a very impressive list of witnesses. We want to hear them all as they represent all facets of this particular problem.

For more than a year the Committee on Commerce has been carrying out preliminary and exploratory analyses of automobile insurance questions. In January 1967 legislation was introduced to establish a Federal Motor Vehicle Insurance Guaranty Corporation which would protect the public from growing insolvencies among so-called high-risk automobile insurers. It soon became clear, however, that insolvencies could not be considered in isolation, but only in the context of the overall financial stability and general condition of the auto insurance industry. Hundreds of letters from irate citizens, outlining in detail their grievances with our present system of automobile insurance, came to the committee and served to demonstrate the magnitude and gravity of the ills besetting the entire spectrum of automobile insurance.

I must say that the industry itself has not been silent during this period. They have been very cooperative in the objectives and the

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Staff member assigned to this hearing: Michael J. Pertschuk with Francis G. O'Brien as consultant.

goals of this committee's activities and also in supporting Senate Joint Resolution 129.

Following an exchange of correspondence with Secretary Boyd during the summer of 1967, we introduced Senate Joint Resolution 129 on December 14. It was clear to me that a reappraisal of our national accident compensation system was long overdue. Ten other Senators—a great majority of this committee—joined me in cosponsoring this joint resolution. They are Mr. Pastore, Mr. Monroney, Mr. Lausche, Mr. Bartlett, Mr. Hartke, Mr. Hart, Mr. Cannon, Mr. Brewster, Mr. Long of Louisiana, and Mr. Moss. In addition, several other Senators expressed not only a familiarity with the problem but also a willingness to support the resolution.

On February 6 in his consumer message, President Johnson endorsed the proposed Department of Transportation study; we applauded the recognition that he has given to the seriousness of the difficulties the American consumer faces in obtaining adequate automobile insurance coverage at reasonable rates.

The objective of the hearings, therefore, will be to identify the full range of abuses and problem areas which have given rise to criticism both of the industry and the underlying system of fault liability. In this way, the scope of the Department of Transportation investigation will be delineated. Skyrocketing premium rates, arbitrary and discriminatory underwriting practices, questionable investigative procedures and painfully drawn out claim settlements will be among the issues spotlighted. We will also hear evidence of the considerable efforts being made by responsible segments of the insurance industry to remedy those evils which are capable of regulation by the industry itself.

In 1944 the Supreme Court ruled that insurance was indeed interstate commerce and therefore subject to Federal regulation, but in the following year the 79th Congress passed what is commonly known as the McCarran-Ferguson Act, leaving to the States the jurisdiction to regulate and supervise the insurance industry. The legislative history of the act, however, clearly indicates that Congress was making only a conditional delegation of authority, reserving the right to reestablish a Federal role if such action were needed to protect the public interest. The time has now come to reappraise the wisdom of that delegation.

At this point in the record, we will have the exchanges of correspondence between myself and Secretary Boyd, followed by the text of Senate Joint Resolution 129, and the departmental statements that have been received.

(The documents follow.)

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 under-

writing and in our underlying common law 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 enormous 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,  
*United States Senator.*  
JOHN E. MOSS,  
*Member of Congress.*

#### 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 (foregoing 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, contractual 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 affects:
    - 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 type 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:
      - Compensation 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 vehicles 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 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 countries (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.

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THE SECRETARY 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 Depart-

ment 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.

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.*

THE SECRETARY OF TRANSPORTATION,  
*Washington, D.C., July 20, 1967.*

HON. WARREN G. MAGNUSON,  
*U.S. Senate.*

HON. JOHN E. MOSS,  
*House of Representatives.*

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.

THE SECRETARY 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 that 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.

[S.J. Res. 129, 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; and

(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 consultation 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 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 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 preparations 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 subpoena 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 corporations, firms, 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 case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee issued 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.

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#### GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,

*Washington, D.C., March 13, 1968.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the comments of the Department of Defense on Senate Joint Resolution 129, "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 Department of Defense has reviewed the proposed legislation, and strongly supports the apparent purposes and principles embodied therein. As you have pointed out, the President has emphasized our vital interest in assuring the availability of adequate automobile insurance coverage for military personnel, and their equitable treatment on coverage and claims matters. In consonance with your specific request, we have outlined below information which we trust will prove responsive to your inquiry regarding "the nature and magnitude of the problems encountered by members of the Armed Forces in seeking adequate automobile insurance coverage."

Insofar as technical content of the proposed legislation is concerned, the Department would defer to the views of the Department of Transportation and other interested agencies of the Executive Branch.

Within the Department of Defense, detailed guidance on standards for motor vehicle insurance established by state insurance authorities is provided in DoD Directive 1344.6, "Motor Vehicle Liability Insurance," April 15, 1964, as amended (copy enclosed). The directive, developed with the assistance and approval of the House Armed Services Committee, the insurance industry and the National Association of State Insurance Commissioners, currently requires, among other things, that (1) companies possess a state license as a requirement to do business on base in the states in which military installations are located: (2) the sale of military endorsements which deny liability insurance coverage to persons other

than the driver-owner be prohibited; (3) mail order companies meet the same standards as insurers selling on base and (4) Defense installation commanders cooperate with state and local officials.

It is becoming increasingly difficult for the military member to obtain liability insurance. When he is able to obtain coverage, the rates often are extremely high. The position of the insurance industry generally is that liability insurance is issued on the person, as opposed to collision, fire or theft insurance, which is issued on the automobile. Under these conditions, they evaluate the driver rather than the car. Many servicemen loan their car or share driving time on long trips, and as the insurance company has no knowledge regarding individuals who may be driving the automobile, this represents to them a special risk subject to critical underwriting review. However, we have been advised by a number of reliable companies that they will provide liability coverage for the serviceman if the parents are currently insured with the company.

Additionally, a number of companies will carry a serviceman if he has a good driving record. In a number of situations we have checked, it was determined that individuals have either been denied insurance, or rated at a higher premium because of moving traffic violations.

The difficulties encountered by military personnel in the procurement of adequate automobile coverage are enumerated in the Automobile Insurance Study of the Antitrust Subcommittee of the Committee on the Judiciary, House of Representatives, 90th Congress, October 24, 1967, (House Report No. 815). These problems, and a brief commentary thereon, are as follows:

Many companies have special rules against servicemen resulting in a higher premium because—

(1) Many of the military drivers are young, and young drivers generally have the worst records.

(2) The automobiles are used "almost entirely for relaxation and pleasure during off-duty hours."

(3) Passes and leaves "of short duration" are used for quick trips, which involve almost continuous driving, excessive speed, driving over unfamiliar roads, and relief driving by fellow servicemen.

(4) Servicemen lend their cars to buddies more readily than civilians.

(5) Cars are not maintained properly because of "limited finances."

The variance in rates between cities and states for the same coverage is difficult to understand by the serviceman. Excessively high rates make it difficult—even impossible—for many of the younger servicemen to afford adequate coverage.

Certain companies automatically place younger servicemen in the Assigned Risk category. This automatically involves higher rates and implies a stigma against the individual in classifying him as a class risk rather than basing the risk on his driving record.

These are some of the areas of principal interest to the Department of Defense. The majority of complaints from service personnel center on these and related situations. In overseas areas, we know that insurance normally costs more, often because of the laws of the host countries. In Germany, for example, minimum rates are generally higher than in the United States because minimum requirements for insurance start at \$62,500.00 for a combination of bodily injury liability per person and per accident, compared with the \$10,000.00 and \$20,000.00 option generally available in the United States. Further, plans including \$100.00 deductible coverage in Germany generally cost three times the U.S. rate. This situation applies in many foreign countries in which military personnel are permitted to register privately owned vehicles.

Conversely, in matters relating to claims processing, the subject is conspicuous by the almost complete absence of complaints. Domestic claims appear to be handled in a generally satisfactory manner, with no pattern established requiring investigation. Overseas, the same situation generally exists. Legal officers are available at the majority of our installations to advise and assist our personnel in filing claims.

As a related matter, we would note that the Department of Defense takes pride in its overall approach to Driver Training and Safety. Each Military Department, through its Ground Safety Program, places continuing stress on Driver Training and Safety. The Department of the Air Force, for example, reported a reduction of 21% in traffic fatalities in 1967. For the information of the Committee, a report is enclosed reflecting a ten-year record by the Department of the Air Force, including reductions in fatal accidents, disabling injuries, the

accident rate per 100,000 man days, and statistics on private motor vehicle accidents.

The information requested in your letter of February 27, 1968 has previously been forwarded to your Committee.

The Bureau of the Budget advises that, from the standpoint of the President's Program there is no objection to the presentation of this report.

Sincerely yours,

L. NIEDERLEHNER,  
Acting General Counsel.

Total number of fatal accidents :		Accident rate for 100,000 man-days : <sup>2</sup>	
1957 -----	586	1957 -----	13. 7
1958 -----	507	1958 -----	11. 9
1959 -----	478	1959 -----	11. 1
1960 -----	433	1960 -----	9. 9
1961 -----	384	1961 -----	9. 4
1962 -----	426	1962 -----	9. 2
1963 -----	429	1963 -----	9. 1
1964 -----	437	1964 -----	9. 2
1965 -----	355	1965 -----	8. 7
1966 -----	441	1966 -----	8. 6
Disabling injuries : <sup>1</sup>		Private motor vehicle accidents : <sup>3</sup>	
1957 -----	5, 016	1957 -----	4, 541
1958 -----	4, 109	1958 -----	3, 762
1959 -----	3, 534	1959 -----	3, 403
1960 -----	3, 051	1960 -----	2, 960
1961 -----	2, 992	1961 -----	2, 856
1962 -----	3, 062	1962 -----	2, 930
1963 -----	2, 993	1963 -----	2, 889
1964 -----	2, 948	1964 -----	2, 861
1965 -----	2, 687	1965 -----	2, 651
1966 -----	3, 063	1966 -----	2, 670

<sup>1</sup> Must be hospitalized ; 22 days lost for Disabling Injury Case.

<sup>2</sup> Accidents per 100,000 man-days (24 hours) of exposure.

<sup>3</sup> Per accident ; 1 car or 2 Air Force persons driving separate cars classified as 1 accident.

The CHAIRMAN. Our first witness this morning is the distinguished Secretary of Transportation, Alan S. Boyd. We will be glad to hear from you, Mr. Secretary.

**STATEMENT OF HON. ALAN S. BOYD, SECRETARY 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 by Mr. Cecil Mackey, Assistant Secretary of Transportation for Policy Development.

Thank you for inviting me to testify on Senate Joint Resolution 129. 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. 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 compensation. But increasingly—for a host of reasons—the ade-

quacy 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.

Whatever 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. The same figure holds for 1967. 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 canceled 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 disputes 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 insolvencies, 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 Senate Joint Resolution 129 promises to yield a cohesive body of information that should provide a better, more accurate idea of how the existing system works 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 even been conducted in the United States.

Let me give you some idea of 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 assured.

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. Much 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, 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 on 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 5 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) of the resolution 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 non-Government 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 non-Government 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 group, 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.

I should add, I want to emphasize our hopes and intentions in connection with the State insurance commissions. We have received indications that they want to cooperate and fully participate in this study. We welcome their participation and will utilize their resources to a great extent.

The CHAIRMAN. As I understand it, there is a special committee within the Insurance Commissioners' Association on this subject.

Secretary BOYD. Yes, sir.

The CHAIRMAN. It seems to me quite important to note that there will be a number of legal questions involved because of the McCarran-Ferguson Act and certain court decisions. Also, in view of the fact that the State legislatures throughout the country have taken some positions in this field, it seems to me that you will need their full cooperation. Many State legislatures have set up a special committee on insurance. When I served in the legislature years ago we had an insurance committee. Without the cooperation of such groups and without their knowing what is going on, we cannot hope to achieve as quickly as possible any kind of uniformity among the States. Therefore any advisory commission ought to include at least a committee from the State legislatures, not necessarily all 50 of them, but a committee that would give advice on their proper role.

Secretary BOYD. Mr. Chairman, that is an excellent suggestion and we fully expect to do that. I believe that the beneficial results of this study will be directly related to our ability to collect a comprehensive set of data and to the extent that all interested groups participate so that they know how the study is conducted and are a part of it.

The CHAIRMAN. And you have to know what the legislative bodies of the States are doing or planning to do in this field?

Secretary BOYD. Absolutely.

The CHAIRMAN. We did that as you recall, Mr. Secretary, in the auto safety bill. I think we got a lot of good advice from the State legislatures at that time.

Secretary BOYD. Yes, sir.

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 Senate Joint Resolution 129. 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.

Mr. Chairman, there are a few minor technical points which we would like to be able to discuss with the staff. They are not of sufficient importance to even bring up at the committee hearing.

The CHAIRMAN. We will welcome those suggestions. You and I have discussed this study at some length during the past year. We first talked about a preliminary study, and later about the broad study that is the basis of the resolution. We were hoping, once this study got started, that it could be condensed to no more than an 18-month period. Do you think you could do it in 18 months if you had more of the wherewithal?

Secretary BOYD. I am a conservative on this one, Mr. Chairman. It is possible that we can do it in 18 months, and I can assure you this study will have high priority within the Department. However, I would not like to commit myself at this point to saying that we can do it in 18 months.

The CHAIRMAN. Suppose we were to consider an open end on the date, with the clear understanding that, whether it be in 14 months, 18 months, or 20 months, you would complete the study as quickly as you could?

Secretary BOYD. Our Polar Star is to do a comprehensive study as fast as we can. I think that if you can authorize us more time and require us, although it is not necessary to require us, to provide the committee with progress reports, we can keep you up to date on how we are progressing.

The CHAIRMAN. That is what I was coming to. This committee would like to have, as this moves along, reasonable progress reports as to where you are and what you have found out. Also some information as to how the study is moving and what direction it is taking.

Secretary BOYD. One of our purposes would be to establish a regular reporting system to the committee in the event this resolution is adopted by the Congress.

The CHAIRMAN. I am reluctant to place an exact amount on the authorization for a long-term study. It is better in a bill if you have it open-ended because you are going to have enough trouble with the Appropriations Committee anyway, getting any amount. In other words, every fiscal year you are going to have to justify what you are doing.

Secretary BOYD. That is correct.

The CHAIRMAN. And what you are spending the money for.

Secretary BOYD. That is correct.

The CHAIRMAN. That usually is a better way than having a ceiling. I don't like to mention this, but I find that when departments have a ceiling, then that is also the floor—they spend the whole amount.

Senator Moss?

Senator Moss. Thank you, Mr. Chairman.

I was somewhat concerned, as your questioning indicated, about the time element here. And I can understand why the Secretary feels he can't give a very close estimate at this time on the total time required. The need to move along with the study is urgent, as the President has also stated.

Obviously, the study is what we have to have before we formulate any exact policies and begin to draft legislation, if that seems to be required.

I am not sure that I have any questions. I think the Secretary has indicated clearly that he feels the same degree of urgency and concern that we on the committee do.

Thank you very much.

The CHAIRMAN. As a matter of fact, the record ought to show, too, that the Secretary and his group have been working on this in a preliminary way since the beginning of our correspondence last summer.

Secretary BOYD. Yes, sir.

The CHAIRMAN. I am glad we had that correspondence because working in a preliminary way on this problem you found it is pretty vast and complex and involves so many factors that we didn't anticipate at first.

Secretary BOYD. Mr. Chairman, let me throw a few figures out for the record, to give you some concept of what is involved here.

We are talking about a study which involves approximately a thousand companies. It involves, of course, all 50 States. It involves the consideration of at least seven responsible proposals for reform which we will have to study and evaluate. And it involves some consideration of the existing tort liability systems.

We are not planning to get into a study of the reform of the courts. But we cannot ignore the strain upon the courts. As I said in my testimony, we will consider all relevant matters. The insurance and compensation problem is a pretty massive thing for us to get our hands around in an intelligent and comprehensive way. We want to come back to the Congress with recommendations based on substantiated facts. We want to argue about the intelligence of the recommendations, not the accuracy or validity of the facts.

The CHAIRMAN. I think that is the wise way to proceed and I am glad that is also your view. I think the American people are looking for reform and they want it now, and I can understand that. But it can't be accomplished overnight.

I am hopeful, everyone in this room is hopeful, that as you move along in the study some voluntary reforms will be initiated by the insurance companies themselves.

Secretary BOYD. In addition to that, Mr. Chairman, as I recall, the resolution provides, and it is certainly our intention, to submit recommendations whenever we see some answers. It will not be a matter of waiting until the ultimate conclusion of the study. If we can identify a problem and identify what we think are reasonable recom-

mendations to make to the Congress or the industry or the States, we will submit those immediately.

The CHAIRMAN. I think that clears it up for us in the committee. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

Mr. Secretary, in your statement you cite some figures which I would like to inquire about.

You say the administrative costs of the companies approached \$3.5 billion in 1966, and that they paid out more than \$5 billion in 1965. Does that \$5 billion represent all accident losses? In other words, does that represent both personal injuries and property damage payouts?

Secretary BOYD. Yes, sir; that is my understanding of what that figure represents.

Senator CANNON. So if you take that \$5 billion and \$3.5 billion, although we are using different years, they have had an expense of \$8.5 billion against a \$9.2 billion net premium?

Secretary BOYD. Yes, sir.

Senator CANNON. The net premium there refers to, you say, automobile liability insurance. Are you also talking about collision, property damage in that figure?

Secretary BOYD. Yes, sir.

Senator CANNON. So that this sort of gets the overall picture of what is paid, what the administrative costs are, and what the payouts have been.

Secretary BOYD. Yes, sir.

Senator CANNON. This certainly—

The CHAIRMAN. They are startling figures; aren't they?

Senator CANNON. I should say.

On the other point you make, the frequency of cancellations, I was listening to one of the local radio programs the other day that had a discussion on this point, the general subject of insurance. A number of persons commented on the fact that their insurance was canceled out, that they couldn't get any insurance to drive a vehicle.

Certainly in today's age, a person who doesn't have the capability of an automobile is handicapped in his employment.

Secretary BOYD. It puts a burden on the individual which I think at the very least ought to be explained.

Senator CANNON. Having had some experience in the field of personal injury litigation prior to coming to the Congress, I can also say that I had some dealings with some of these companies that had the unfortunate situation of going broke just about the time I got a good judgment against them for some of my clients. So I can be very sympathetic to those people who have been exposed to this sort of situation.

Secretary BOYD. And that can be a very real personal tragedy.

Senator CANNON. I would join with the chairman, Mr. Secretary, and say that this proposed study is a matter of urgency. I would certainly be hopeful that if this resolution is passed—and I have no doubt that it will be—you would proceed just as rapidly as you possibly can to assemble the statistical data that would be necessary before we attempt any legislative action.

Secretary BOYD. Senator, on this point, I would like to advise the committee that we have been in contact with the Federal Trade Commission, and other agencies who will be a part of the interagency group, and those who will participate on the advisory committee, so that in the event this resolution is passed we can have a running start, which is an indication of the priority that we are giving to it.

Senator CANNON. Thank you, Mr. Chairman. That is all that I have.

The CHAIRMAN. I've been thinking about those figures. When you talk about roughly a \$9 billion public investment in a matter as complicated as this, it seems to me that the amount we are suggesting to find out all about it is comparatively small.

Secretary BOYD. Yes, sir. The Department of Transportation is very frugal with the public's money, Mr. Chairman.

The CHAIRMAN. I know you are. [Laughter.]

A great many of us—naturally, because this matter is in the spotlight now—are concerned with the question of insurance for members of the armed services, and those being released from the armed services. If a man is overseas, say in Vietnam, not only he, but also his wife and children may experience difficulty in securing adequate automobile insurance at a reasonable rate.

Have you any information on this? You mentioned members of the military in your testimony.

Secretary BOYD. We are quite well informed on the work that was done in the House by Congressmen Rodino and Cahill and Chairman Celler's committee of the House, which highlights this very point. I don't know what is wrong, but I am convinced from their efforts that something is obviously wrong with the way the system works.

The CHAIRMAN. I understand—and maybe Mr. Mackey can comment—that the Department of Defense will submit some facts and figures and possibly some recommendations.

Mr. MACKEY. Yes, sir. We have had some discussions with them, and I think we will be able to get quite a bit of information. We have also gotten—

The CHAIRMAN. They promised a report to us, too, which will be made a part of the record.

Mr. MACKEY. We have also gotten quite a lot of correspondence since the resolution was introduced, from people who have complaints of this sort.

The CHAIRMAN. That is one area which I think we ought to expedite, move along on right now, as soon as we can get at it.

Mr. MACKEY. Yes, sir.

The CHAIRMAN. Senator Hart?

Senator HART. I am glad to see the Secretary and I will await his report. That is not to say we won't do some other things around here in the meantime.

The CHAIRMAN. We thank you very much. We appreciate your coming.

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

The CHAIRMAN. The next witness we have is Peyton Ford, representing the National Association of Insurance Commissioners.

Mr. Ford? We are glad to see you here, Peyton.

For the record, Mr. Peyton Ford is one of the prominent lawyers in the District, a former Deputy Attorney General of the United States. We will be glad to hear from you.

**STATEMENT OF JAMES L. BENTLEY, PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND INSURANCE COMMISSIONER, STATE OF GEORGIA, ATLANTA, GA., AS PRESENTED BY PEYTON FORD, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; ACCOMPANIED BY GEORGE M. COWDEN, CHAIRMAN, STATE BOARD OF INSURANCE, AUSTIN, TEX.**

Mr. FORD. Mr. Chairman, I would like to introduce Mr. George Cowden, the new chairman of the Texas State Insurance Commission. The insurance commissioner from Rhode Island is also here.

The CHAIRMAN. Before you start to testify, is Mr. Andrew Biemiller here?

Mr. MEIKLEJOHN. No, sir. I am here for Mr. Biemiller.

The CHAIRMAN. I am awfully afraid that we are not going to reach you today, because the bell just rang for the Senate. We will try to squeeze you in tomorrow. Will that be all right?

Mr. MEIKLEJOHN. I would be perfectly willing to submit a statement for the record, if that would help.

The CHAIRMAN. That will be fine.

(The prepared statement of Mr. Biemiller follows:)

**STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS**

Mr. Chairman: My name is Andrew J. Biemiller. I am the Director of the Department of Legislation of the American Federation of Labor and Congress of Industrial Organizations, and I appear here on behalf of that organization.

We appreciate this opportunity to testify in support of S. J. Res. 129, authorizing a comprehensive investigation of the automobile insurance industry by the Department of Transportation.

I am sure I do not need to review in any detail for this committee the prima facie case that has already been made in behalf of such a study: the widespread criticisms 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, based on material from Congressional Quarterly and other sources.

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.

Add to this likelihood that if you are a recent divorcee, a Negro, a barber, or even a clergyman 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 six years before a decision is reached. 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 latest 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 which would be authorized by S. J. Res. 129. He succinctly summarized the principal faults of our present automobile insurance system: rising premiums; arbitrary coverage and policy cancellations; collapse of high risk insurance companies; unfair compensation to accident victims; and the clogging of the courts with automobile insurance lawsuits taking an average of 2½ years just to get to trial.

The AFL-CIO Executive Council first 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."

The Resolution is broadly addressed to the entire insurance industry. The presently proposed automobile insurance investigation is a significant response in the insurance area of greatest current concern to the public.

State AFL-CIO bodies have been engaged in valiant, if not always 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 1957-1959 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 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* (October 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 \$500,000,000.

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 ran 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 insurance coverage and of obtaining it at reasonable cost is becoming an increasingly difficult problem 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, often having little to do with individual driving records. 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 vs. those with sedate sedans and other classifications have become notorious as devices for refusing to insure or for insuring only at a 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 efforts 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 industry was a finding that in a period of six 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 \$100,000,000. The first remedial proposal for federal legislation in the auto insurance field was introduced in the form of a bill to establish a federal guaranty 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 something on four 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, policy-holders 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.

As the Chairman of this Committee has rightly pointed out, "The time has clearly come to reappraise our national accident compensation systems." 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 S.J. Res. 129 and urge its speedy approval.

The CHAIRMAN. Mr. Petrarca, we will try to hear from you before we go to the floor. Why don't you come up here and sit down?

Mr. PETRARCA. Thank you.

The CHAIRMAN. This is Mr. Ralph Petrarca, insurance commissioner of the State of Rhode Island. I want to say to the commissioner that we are sorry your distinguished Senator is not here today. As you know, he has had a personal problem. We are all looking forward to his quick return to the committee. He is one of our most valuable members.

Will you proceed, Mr. Ford?

Mr. FORD. Mr. Chairman, Mr. Jim Bentley was to testify this morning. I wish to make a preliminary statement.

The CHAIRMAN. All right.

Mr. FORD. In trying to get here, his plane crashed. He walked away. He wasn't hurt. So I am substituting for him.

I want to put Mr. Bentley's statement in the record, and I will make a brief summary of it.

The CHAIRMAN. All right.

Mr. FORD. I want to say that the State insurance commissioners welcome this investigation. We feel that it is, as Secretary Boyd stated, time that somebody got the facts correctly stated.

When this study was first talked about, Commissioner Bentley wrote to Secretary Boyd in the early part of 1967 that he would welcome and would give the full cooperation of the State insurance commissioners, would submit any data, lend any personnel or anything else to further the study.

I think one unfortunate thing has occurred in that, at which time the staff submitted certain figures at previous hearings and a staff study, the hearing of the Dodd committee, and by the staff of the House Judiciary Committee. These figures have been used again and again with reference to the insurance system. And I am not speaking for the insurance industry. I think they have proved unfortunate in that the figures contained in the Dodd hearings indicated that vis-a-vis the insolvencies, there was some \$106 million in filed losses in insolvencies.

The commissioners caused a study to be made of the date obtained from receivers or the trustees. Our figure came to around \$16 million. Thus the figure would appear to be inflated by over 500 percent.

On cancellations, the commissioners are acting in many fields and laying guidelines down for most of the States. Industry has actually, in many areas, acted quicker than the commission. I think the question of cancellation is being cleared up and is being carefully watched by the insurance commissioners.

There have been abuses, arbitrary cancellations, unwarranted cancellations, not by all companies, but by many companies. I believe this problem is being met. To give you a few figures here, the percentage of cancellations for the States that I have the figures on, 1963, Wisconsin, 0.57 percent; Maryland, 1.4; Virginia, 1.8; Georgia, 1.24; Michigan, 1 percent; and Washington State, 0.90.

The CHAIRMAN. These are cancellations?

Mr. FORD. Yes.

The CHAIRMAN. All right.

Mr. FORD. That rate is rapidly declining. I think Secretary Boyd's investigation indicates that.

The CHAIRMAN. If the association can also give us the figures on the number of policies in effect in those States, that would be helpful in making comparisons.

Mr. FORD. Some of the figures are in my statement. However, I will furnish the figures you have requested.

The CHAIRMAN. One percent may be a small figure, but it may include several hundreds or thousands of people.

Mr. FORD. Certainly.

(A statement submitted later by Mr. Ford appears on p. 81.)

Mr. FORD. With brief reference to the McCarran-Ferguson Act, of course this committee is very familiar with it, familiar with its legislative history, and undoubtedly familiar with the Southeastern Underwriters Case which permitted the States to enact their own legislative regulations in this field. The States have done so. As far as the Commissioners can ascertain, there has been no public protest. There has been no industry outcry against the way the States have acted in this field.

As far as the Keeton-O'Connell plan is concerned, the statement covers that. We welcome the study. We don't take an arbitrary position on it, although we wouldn't go quite as far as the Commissioner from Rhode Island would go.

In that connection I would like to quote, if I may, a brief statement made by Justice Tom Clark, who is retired but who is now a director of the new Judicial Center established by Congress in December of last year. He made this speech before the New York Law School. He said:

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 programed, a surprising discovery was made. Thirty percent of the cases involved longshoremen claims and three law firms represented 95 percent of the plaintiffs involved; two firms represented 95 percent of the defendants. The cases were FELA and Jones Act actions with similar results. Of the whole number of plaintiffs involved some 10 percent were represented by solo firms. Chief Judge Clary got busy and the dispositions there increased 31 percent 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.

And he further states that one further point would be for the judges to go to work and not take such long vacations and be better trained and better equipped.

In concluding he said:

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 think 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.

That would conclude what I have to say about the Keeton-O'Connell plan, although the Commissioners welcome the study, and we have no preconceived notions about it.

The CHAIRMAN. Mr. Bentley's statement will go in the record in full. We are glad to get this information. We are glad to accept the recommendation of the insurance commissioners, the national association, that they are ready and willing to give us all the aid they can in this

matter. They have in the past. I have talked with Mr. Bentley on other occasions. I think once or twice when you were there, Mr. Ford.

I am pleased with the fact that I had thought that they would set up a committee within the insurance commission on this matter, but his statement says that—

Mr. FORD. We are in the process of setting up a committee.

The CHAIRMAN. You are in the process of doing it.

Mr. FORD. We have an executive committee living with the problem. That committee is too big. We want to have a smaller committee.

The CHAIRMAN. You heard the testimony of the Secretary of Transportation. I am sure that he will want to call upon this committee for their advice.

Mr. FORD. We will cooperate in any way that we possibly can.

The CHAIRMAN. I am glad that Mr. Bentley mentioned, as you also have, a House Judiciary Committee study of automobile insurance. I think it should be understood that the study was preliminary in nature and was carried out by the staff of the Antitrust Subcommittee. They found, as all of us find, that this is a massive subject, and it just can't be covered without a comprehensive in-depth study.

No committee of Congress now has a staff that could carry out such a study. The House group recommended that the Federal Trade Commission make the study; we, some time ago, suggested that the Department of Transportation in cooperation with the Federal Trade Commission and other agencies, should do the job.

Mr. FORD. I would like to point out, too, Mr. Chairman, that the House staff was only given about 6 weeks to make this study, and it will be impossible for them—

The CHAIRMAN. They did the best they could with the time they were given.

Mr. FORD. I would hope that the Secretary of Transportation would give careful consideration to the House study.

The CHAIRMAN. Yes, there is no question about that. When you start to toss insurance statistics around you can get at least a dozen versions of what any one figure means.

Mr. FORD. Very easily.

The CHAIRMAN. Maybe more than that.

Senator Moss?

Senator Moss. I have no questions.

The CHAIRMAN. Senator Cannon?

Senator CANNON. I have no questions.

The CHAIRMAN. Senator Hart?

Senator HART. I have no questions.

The CHAIRMAN. Thank you very much.

Mr. FORD. Thank you.

(Mr. Bentley's prepared statement follows:)

PREPARED 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 under way 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.

At 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 situation. 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 upon 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 amounts 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 percent. (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 accidents, and estimated claimant loss was \$16,725,488.00. 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.) 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 automobile 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.

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 and 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 neglected 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 percent 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 percent 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 percent of the policies in force on an annual basis, and declined to renew only .7 percent. In the State of Virginia an official survey by the Virginia State Corporation Commission in

1966 showed that only 1.8 percent of all auto insurance policies enforced were cancelled for reasons other than nonpayment and only 1.4 percent of the policies filed for renewal were not renewed. A survey in the State of Washington by Professor Wickman disclosed that only .9 percent 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 percent 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 “blackened out” or “red lined” areas within which it will not grant crop insurance. For example, six counties of Western Oklahoma were blackened 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 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 drivers 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 typified 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 report would seem to support that claim. But what is the frame of reference for this allegation? For the same 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. (It should be noted that due to variation in basic limits, amounts between the states and rating formulae, most insured pay less than the \$3.60 average.)

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 regulation of this industry is inadequate. I for one am appalled at such a "shotgun" statement and frankly I believe that this is one area which should be studied as 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 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 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 compensations—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 (As reference material in the 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 Subject, December 30, 1966; Brainard, Automobile Insurance, 1961) had indicated an increase of about 200%, while a similar study conducted by Temple University of automobile accident claims in New Jersey 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 the 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 quote taken from a recent speech of Mr. Justice Tom C. Clark, Ret. (now Director of the Federal Judicial Center (as created by Congress, P.O. 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 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 well as 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 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 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 them 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,
- (4) Automobile 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 these 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
<b>Mandatory uninsured motorist laws:</b>							
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 <sup>2</sup>	1	do	(a)
New York	Jan. 1, 1959	\$10,000 and \$20,000	No	No	3	do	
Oregon	Jan. 1, 1960	\$5,000 and \$10,000	No	2 years <sup>3</sup>	3	do	(b), (c)
South Carolina	Jan. 1, 1960	\$20,000 deductible	No	Unlimited <sup>4</sup>	—	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)
<b>Statutory uninsured motorist laws with right of rejection:<sup>1</sup></b>							
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	No	2	do	
Georgia	Jan. 1, 1964	\$10,000, \$20,000, and \$5,000	\$250 deductible	1 year	5	do	
Hawaii	Sept. 1, 1965	\$10,000 and \$20,000	do	do	6	Prohibited	(c)
Idaho	Sept. 1, 1965	\$10,000 and \$20,000	No	No	3	do	
Indiana	Jan. 1, 1966	\$10,000 and \$20,000	No	1 year	4	do	
Iowa	July 1, 1967	\$10,000 and \$20,000	No	No	3	do	
Kentucky	Oct. 1, 1966	\$10,000 and \$20,000	No	1 year	3	do	
Louisiana	Oct. 1, 1962	\$5,000 and \$10,000	No	do	6	do	
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, 1963	\$10,000 and \$20,000	No	do	5	do	
Mississippi	Jan. 1, 1967	\$5,000 and \$10,000	No	1 year	5	do	(c)
Montana	Jan. 1, 1968	\$10,000 and \$20,000	No	No	3	Prohibited	
Missouri	Oct. 13, 1967	\$10,000 and \$20,000	No	2 years	5	Permitted	
Nebraska	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	\$5,000, \$10,000, and \$5,000	\$250 deductible	No	4	do	
North Carolina	Aug. 1, 1961	\$10,000 and \$20,000	\$100 deductible	3 years <sup>6</sup>	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	January 1963	\$10,000 and \$20,000	No	No	3	do	
South Dakota	July 1, 1966	\$10,000 and \$20,000	No	No	4	do	
Tennessee	Jan. 1, 1968	\$10,000 and \$20,000	No	No	3	do	
Texas	Oct. 1, 1967	\$10,000 and \$20,000	No	1 year	8	do	(c)
Utah	July 1, 1967	\$10,000 and \$20,000	No	Unlimited	4	Permitted	
Washington	Jan. 1, 1968	\$10,000 and \$20,000	No	Yes	3	do	(h)
Wisconsin	Jan. 21, 1966	\$10,000 and \$20,000	No	Unlimited	3	do	

<sup>1</sup> Comments follow.<sup>2</sup> Effective Aug. 28, 1967.<sup>3</sup> Effective June 25, 1967.<sup>4</sup> Effective June 14, 1963.<sup>5</sup> 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.

<sup>6</sup> Effective June 10, 1965.

## COMMENTS OF 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 uninsured 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-and-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  $\frac{1}{2}$  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	69.06
Michigan	36.49	32.32	68.81
Maryland	43.40	23.70	67.10
Ohio	36.64	27.66	64.30
Oregon	38.81	25.27	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 <sup>1</sup>	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	19.05	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

<sup>1</sup> 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
Medical pay	21,291,971
Uninsured motorist	<sup>1</sup> 1,801,470
Increased limits bodily injury	<sup>2</sup> 6,614,619
Total	143,164,622

<sup>1</sup> All classes.<sup>2</sup> \$4,537,180 (NBCU & MIRB) × 1.45787 (NAI's portion nationally of bodily injury business). $\$113,456,562 / \$143,164,622 = 79.25\%$  $79.25 \times \$54.55 = \$43.23$  Countrywide Automobile Bodily Injury Liability Average Rate at 10/20 Limits $\$43.23 / 12 = \$3.60$  Countrywide Automobile Pure Bodily Injury Liability Average Rate at 10/20 Limits Per Month

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.

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RECORD OF OFFICIAL ACTION OF THE STATE BOARD OF INSURANCE, AUSTIN, TEXAS  
GUIDELINES FOR CANCELLATION OR NONRENEWAL OF PROPERTY OR CASUALTY  
INSURANCE

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 canceled 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.

These guidelines shall become effective immediately.

#### 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.

#### STATEMENT OF RALPH A. PETRARCA, INSURANCE COMMISSIONER, STATE OF RHODE ISLAND, PROVIDENCE, R.I.

Mr. PETRARCA. Mr. Chairman and members of the committee, our present automobile insurance system, based as it is on the concepts of liability and negligence, is a mess. I would like to be more subtle than that and more sophisticated but I know of no better way of describing how I feel about the present system. Where at one time very few people owned and used automobiles, today, with the millions of cars on the road, automobile accidents and our methods of paying for the damages caused by these accidents have become a major social problem. Conservative estimates—and these differ somewhat with the Secretary of the Department of Transportation—of the magnitude of this problem indicate that in 1968, 48,000 deaths and 4 million injuries will take place on our highways. The present system is a grotesque sham which forces everyone involved—the insurance company, the agent, the insured, and the courts—to act out a string of illogical and ludicrous charades in an attempt to show themselves or their insureds blameless and the other party totally at fault.

It is a system which tends to overpay those who have suffered minor injuries because of the nuisance and expense of defending against such claims, while undercompensating and sometimes even denying compensation to those most seriously injured.

In 1968, thousands of Americans will be pushed to the brink of financial ruin because of the interminable period of time which elapses between the time of the accident and the eventual court decision. Those who can no longer wait often capitulate and settle for something less than their economic losses. Those who go the full route often find that the reconstruction of events which took place 3 and 4 years ago is an impossible task. In these latter cases, the temptation to bend the truth and even to lie outright often becomes overwhelming in the desperate attempt to recover for the staggering losses of income and medical expenses. Mind you, these are basically honest citizens trapped in the cycle of our present automobile insurance system.

In Rhode Island we decided that although minor improvements could be made in the present system, it would still fail to meet the needs of the automobile age we are in. Accordingly, after intensive study, our Governor, John H. Chafee, has become the first Governor in the Nation to propose to his legislature adoption of what is a modification of the Keeton-O'Connell plan.

The Keeton-O'Connell plan is a brilliant compromise between the present liability system and a complete nonfault system similar to

accident and health insurance. Its key features are payment of net out-of-pocket economic losses up to \$10,000 to all traffic victims regardless of fault by their own insurance company, and grating tort exemptions of \$5,000 for pain and suffering and \$10,000 for all other losses to all covered by such insurance. Beyond these limits and exemptions the present liability system is left relatively unchanged. Overall costs to the insured will be reduced, and payments will be made to traffic victims in a way which can be socially justified.

If any of you have specific questions about basic protection insurance or the details of the proposals we have made for Rhode Island, I will be happy to try to answer them here, or privately later.

As a result of our experiences and study, we feel that there are two very important functions a study by the Department of Transportation can serve:

One, it can produce and develop basic data to be used in evaluating our present system and comparing various alternatives to it.

Two, the interest and activity of the Federal Government will help to convince those individuals and groups which have a vested interest in the present automobile insurance system that a major change is inevitable, and that unless they participate in bringing a major change about, government, either the States or the Federal Government, because of the pressure from dissatisfied citizens, will find it necessary to take the automobile insurance business away from the private carriers and run it itself perhaps as it has been done in the Province of Saskatchewan, Canada.

I would like to interject at this point, I do not advocate the take-over of the insurance industry by the Federal Government. But to dismiss this possibility is naive. What we recommend is that the insurance industry be given the proper vehicle to service the insurance needs of the American public. Our experience in Rhode Island indicates—

The CHAIRMAN. Mr. Commissioner, what we are trying to do here is to keep this in private enterprise.

Mr. PETRARCA. I am sure of that.

The CHAIRMAN. This is one of our main objectives.

Mr. PETRARCA. I am sure of that. I think you will find most segments of the industry agree with that proposition.

Our experience in Rhode Island indicates that certain elements of the insurance industry, and of the trial bar, cling tenaciously to the present system and urge only modifications which would protect their personal economic interest in the system even though those same modifications would sharply increase the cost to the consumer.

In closing, I strongly support the resolution directing the Department of Transportation to make an indepth study of the automobile insurance system. In particular I urge that the Department make an exhaustive analysis and evaluation of alternatives to the present system. As I have indicated, we in Rhode Island have become convinced that major surgery is necessary. We feel that a modification of the basic protection insurance plan devised by Professors Keeton and O'Connell is the best alternative so far put forward, and we hope the Department of Transportation will make an exhaustive analysis of that plan.

The CHAIRMAN. I might say that there will undoubtedly be a great deal of discussion during these hearings about the so-called Keeton-O'Connell plan. Tomorrow we are scheduled to hear from Professor O'Connell himself. We will also hear from members of the American Insurance Association. I would expect that many of these people, chairmen of the boards and presidents of their respective large corporations, will have some comment on the plan. We will be going into that in detail. We are glad that you have given us your views on it.

Mr. PETRARCA. We find it is the only comprehensive suggestion which may be made to date which will alleviate some of the ills of the present system.

The CHAIRMAN. Senator Moss?

Senator MOSS. Thank you, Mr. Chairman.

I found the testimony of the Commissioner very interesting. It is really directed to the heart of the tort law under which we operate in the various States, and the system of court and other procedures that we go through. What you are suggesting, I take it, is that this whole thing be examined anew and moved out of the present basic tort law that we have. Is that true?

Mr. PETRARCA. Yes, sir. Partially. We retain for those most seriously injured the option to go into a court of law and to be compensated for major losses. In other words, we eliminate trials for injuries which create losses up to \$10,000. For those who are more seriously injured we retain for them this avenue that is available to them now.

Senator MOSS. Would your recommendation be, then, that the Federal Government preempt this field so that there would be uniformity among the States, rather than have each State encouraged to make changes in its own basic law?

Mr. PETRARCA. I think the Federal Government can encourage, and possibly create an atmosphere whereby all States will adopt such a position. I think that you will find that even if some States do adopt basic protection, as we advocate, that the differences between States will be no greater than the differences are between States today, where we have differing amounts of financial responsibility, et cetera.

Senator MOSS. They are quite wide today, aren't they, the differences that exist?

Mr. PETRARCA. Yes.

Senator MOSS. Among the States?

Mr. PETRARCA. Yes, they are.

Senator MOSS. So we can expect that they probably will continue to have rather wide differences?

Mr. PETRARCA. I would expect that if some States adopted this drastic departure from our present system and some maintained the present system that you would have a difference of great degrees between States.

Senator MOSS. It is a very intriguing idea and one that ought to be examined. I am sure there will be a lot of warm discussion about it.

Mr. PETRARCA. Senator, may I say that we are convinced it is not only intriguing but it is workable and a great giant step forward in automobile insurance.

Senator MOSS. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cannon?

Senator CANNON. This plan is not yet in effect in Rhode Island, is it?

Mr. PETRARCA. The plan is not in effect in Rhode Island. It has been introduced in this session of the general assembly by the Governor.

Senator CANNON. So it is still only in the recommendation stage?

Mr. PETRARCA. Yes; it is.

Senator CANNON. How do you anticipate insurance costs would compare? Do you have some projected figures?

Mr. PETRARCA. In many respects it is almost impossible to evaluate just what will happen to the rate structure. The only evidence that we have to go upon have been studies which have been conducted by Frank Harwayne in the States of Michigan and New York. In both of those States his conclusions are that rates will be reduced in an area from 15 to 25 percent. We are not resting our case on those recommendations.

Senator CANNON. If a person sues, assuming he has more than \$10,000 in claims, and gets a judgment for \$15,000, would the \$10,000 automatically be paid by the carrier?

Mr. PETRARCA. Yes: up to \$10,000 of economic loss would.

Senator CANNON. And the excess amount, of course, would be subject to your normal tort law?

Mr. PETRARCA. Yes, sir.

Senator CANNON. Is that right?

Mr. PETRARCA. Yes, sir.

Senator HART. What type of a structure do you foresee being set up to determine the amount of the claim where it is less than \$10,000? In other words, who is going to make the determination as to how much is to be paid to a man?

Mr. PETRARCA. Senator, it is a system based on net economic losses. The individual injured in an automobile accident would be compensated for his loss of wages as they are, and his actual medical expenses. The moneys from collateral sources will be deducted from his award. What we are saying here is that no man will be made more than whole because of an automobile accident. We feel this will discourage profiteering and it will discourage the sort of multiplication of special losses which we have under the present system.

Senator HART. In other words, you are saying that he is not going to be paid anything for pain and suffering?

Mr. PETRARCA. That is right.

Senator HART. He is going to be paid a dollar loss for each dollar that he loses because of inability to go to work, he is going to be reimbursed for his hospital and doctors' bill based on what he was billed for and he paid?

Mr. PETRARCA. That is right.

Senator HART. Within that \$10,000 limit?

Mr. PETRARCA. Yes.

Senator HART. So if a man claims a whiplash or a pain and injury, headache, something of that sort, it is up to him to go to court and recover in excess of that amount?

Mr. PETRARCA. That is right.

Senator HART. Have you had any kind of an indication from your legislature as to what they may do?

Mr. PETRARCA. I don't know if I dare speculate what our legislature will do.

Senator HART. I don't want to put you on a spot.

Mr. PETRARCA. We are somewhat more optimistic now than we were in the original stages of this proposal. We find that when we are able to sit down and go over the details and give the legislators an opportunity to avail themselves of all the information we have, that our response becomes much more favorable than it had previously been.

Senator HART. Have you given some thought to the situation where a man has his economic loss guaranteed, and he may consider it is worth taking a chance on whether or not he can get over \$10,000 for pain and suffering, and thus perhaps increase your litigation load?

Mr. PETRARCA. We are sure that that sort of thing will happen. I think the improbability of it is that statistics, which have been developed by people within the industry, show that about 89 or 90 percent of the losses today are settled for less than \$2,000. We are talking about an area which isn't close to the range which is encompassed within the basic protection.

Senator HART. Many of those losses, even though they are in relatively small amounts, comparatively speaking, still have a figure in there for pain and suffering, or inconvenience?

Mr. PETRARCA. Yes; they do.

Senator HART. They have some figure other than the pure economic loss?

Mr. PETRARCA. Yes; they do. I think we want to take into consideration, though, if a trial is initiated, if the lawsuit does not exceed \$10,000 in net economic losses plus \$5,000 pain and suffering, there are no legal fees for anyone.

Senator HART. That might tend to discourage them, too. [Laughter.] What has been the reaction from the insurance industry so far?

Mr. PETRARCA. The reaction from the insurance industry is somewhat mixed. For instance, one major company, the Insurance Co. of North America, has come out with a statement saying that they advocate the adoption of something like this plan. I don't want to put words in their statement.

Glens Falls is another insurance company which has said basically the same thing.

The Kemper group has come out in opposition to such a plan.

So the reaction within the industry is mixed. There is no unified position at this time. Although I must say that the activity within the industry, and within the associations which represent the industry, has increased drastically over the past several months and I find them taking a greater interest in this proposal.

Senator HART. Did you make a detailed technical study of the matter before you started talking about this plan?

Mr. PETRARCA. We began the study of basic protection when it was first introduced in the State of Massachusetts in July 1967. The plan which was introduced in Massachusetts was the exact plan which has been drawn up by Professors Keeton and O'Connell in 1964.

At that time the plan passed the Massachusetts House rather easily, but was subsequently defeated in the Massachusetts Senate. Since that time, we have lived with Keeton-O'Connell and with other proposals for reform in automobile insurance.

We have revised the Keeton-O'Connell plan as it was originally drawn. We have made eight major changes in an attempt to blend in the cold realities of the business world with this academic contribution.

Senator HART. Thank you very much. You have certainly presented some very interesting thoughts in the discussion.

Thank you, Mr. Chairman.

The CHAIRMAN. You mentioned a statement by the Insurance Co. of North America.

Mr. PETRARCA. Yes, sir.

The CHAIRMAN. I think it would be proper to put that statement in the record following your testimony. Is that agreeable to you?

Mr. PETRARCA. That is agreeable to me, sir.

I see some representatives from the Insurance Co. of North America in the room. They might have something to add on the subject when they testify.

The CHAIRMAN. We do that often. We put a lot of things in the record, pro and con.

[Laughter.]

Mr. Petrarca, we appreciate your coming down and testifying before the committee. Let me ask you, before you leave: Are you familiar with the position of the National Association of Insurance Commissioners on this plan?

Mr. PETRARCA. Like the insurance industry, I am sure the National Association of Insurance Commissioners is not unified in its position. I think that the favorable reaction from the northeastern States has been much greater than it has been throughout the rest of the country.

Presently in the State of New York, Governor Rockefeller has appointed a blue ribbon committee to study this very proposal.

In Connecticut, considerations are being given to it.

The same in Vermont and in Massachusetts.

So that I think the tempo is increasing.

The CHAIRMAN. Senator Ribicoff, when Governor of Connecticut, was very much concerned about insurance matters. I have discussed this subject with him many times.

Do you know how many States have compulsory automobile insurance?

Mr. PETRARCA. Three States. May I say that our proposal is a compulsory plan.

The CHAIRMAN. What three States are they?

Mr. PETRARCA. Massachusetts, New York, and North Carolina.

The CHAIRMAN. Massachusetts, New York, and North Carolina?

Mr. PETRARCA. Yes, sir.

The CHAIRMAN. Did Massachusetts at one time repeal it and then reenact it? What happened up there?

Mr. PETRARCA. I don't recall.

The CHAIRMAN. At least there was a lot of discussion.

Mr. PETRARCA. The experience there hasn't shaken many world capitals.

The CHAIRMAN. Only three States have what we call compulsory insurance.

Mr. PETRARCA. Yes, sir. The three States that I mentioned have absolute compulsory insurance to a set amount.

Senator HART. What, if any, difference in the rates is there in those States that have compulsory insurance and those which do not?

Mr. PETRARCA. The rates in the State of Massachusetts are probably higher than any other State that I know of. Unfortunately the in-

crease in rates has been blamed specifically upon the fact that they do have a compulsory system. I am not in agreement with that contention. I think there are other conditions in existence in the State of Massachusetts which tend to increase rates other than the compulsory feature.

The State of North Carolina, we hear quite a bit about the fact that the rates in North Carolina are high. And yet since the enactment of the compulsory system in North Carolina the rates in South Carolina, which has a noncompulsory system, have risen to a greater degree than those in North Carolina.

I don't think that we can draw the conclusion that a compulsory system necessarily means an increase in rates.

Senator HART. That was not my point. I was curious. But would you agree if a State has compulsory insurance, that an even heavier duty rests on the Commissioner to insure that there is insurance available at reasonable rates?

Mr. PETRARCA. Yes, sir.

Senator HART. You feel less an obligation in that regard because there is no compulsion?

Mr. PETRARCA. I feel—

Senator HART. Is there a difference? What effect does it have?

Mr. PETRARCA. I feel that we—when I say we I mean many segments of the industry—have been fighting compulsory insurance for so long that we have really forgotten why we were opposed to it in the beginning. I feel that all the actions which have been taken by the various States in the last several years have been to make insurance mandatory for more and more people.

We started off with a voluntary insurance system. Then we added to it financial responsibility laws. Then we added to it uninsured motorists. Then we talked about unsatisfied judgment funds and assigned claims funds.

What we are saying in reality is that anyone who operates an automobile, an automobile which causes four million injuries a year, should be insured or should have a capacity to compensate anyone he injures with that automobile.

Senator HART. Doesn't it follow, to the extent the State imposes the duty of having insurance, that it increases its obligation to pursue aggressively a search for means to produce lower rates, even more aggressively than when all the Commissioners used to do was to make sure they weren't bankrupt and paid on their claims?

Mr. PETRARCA. Yes. I think when we create a system which encompasses within it every person, every registered motorist, that our job becomes somewhat greater than it now is. I think what we must remember, though, in creating the compulsory system is that we do not force people to buy more insurance than they actually need.

I think this is the basic argument behind the use of collateral sources. Because we say, "Look, you must buy insurance. But you don't have to buy insurance that will pay you more than once for any accident which you get into." If people do decide that they want pain and suffering coverage, that they want to be able to collect from Blue Cross and Blue Shield and from another accident or health plan, well and good. But these people should be paying higher premiums.

Senator HART. How many States adequately staff their insurance departments?

Mr. PETRARCA. The State of Rhode Island adequately staffs its insurance department. [Laughter.]

I don't really know, Senator.

Senator HART. Does Rhode Island?

Mr. PETRARCA. I am a relatively new Insurance Commissioner.

Senator HART. You are satisfied that you are adequately staffed?

Mr. PETRARCA. I am satisfied that we can do the job with the staff that we have.

Senator HART. Thank you.

The CHAIRMAN. We will see that that statement is not transported to the Rhode Island Legislature. [Laughter.]

Mr. PETRARCA. Appropriations are over. [Laughter.]

The CHAIRMAN. You are not like Secretary Boyd.

Senator HART. The matter of adequate staffing is a subject that is discussed in every meeting of your national association, isn't it?

Mr. PETRARCA. I think there is a great tendency to say that all insurance departments are understaffed.

Senator HART. Is that an inaccurate statement?

Mr. PETRARCA. I think it may be a very accurate statement, insofar as many States are concerned. I think much of it depends on the scope of the duties that the insurance department has.

Senator HART. As you have described the evolution of their responsibilities, it should follow logically that those staffs should be appreciably increased.

Mr. PETRARCA. If you are asking me if we could do more with a bigger staff, the answer is yes.

Senator HART. That isn't it. Everybody could do more, like a WPA operation. I am talking about what ought to be done in light of the hundred million that you described using the roads.

Mr. PETRARCA. I think that the job that we do in Rhode Island, and the job that I see done in many of the surrounding States, especially in protecting the public against insolvencies, is adequate.

Senator HART. I think you are right on the question of insolvency. I wonder if you would agree that there is much more that could be done with respect to indepth analysis of ratemaking.

Mr. PETRARCA. You are right. I think that if you are talking about giving us the capacity to get involved in the intricate details of ratemaking, that a more substantial staff would be necessary.

Before I leave, Senators, may I say figures were quoted on cancellations earlier. I would point out to you that the great problem is not one of cancellation, it is one of nonrenewal. Admittedly very, very few policies are canceled during the policy term. But I think you should find out for yourselves what the figures are on policies which are not renewed after the policy term has expired.

Senator Moss. Mr. Chairman, would you yield?

The CHAIRMAN. Yes.

Senator Moss. As a matter of fact, the ones that are canceled during the process of the term are normally because it is an installment premium and the premium is not paid.

Mr. PETRARCA. That is one of the reasons. Under the present filings which have been made by the bureaus, the only two reasons that an

insurance company can cancel after it has been on the policy for 60 days, the only two reasons are for nonpayment of premium and loss of license to drive.

The CHAIRMAN. Where is that?

Mr. PETRARCA. That does not take care of the problem on the road.

The CHAIRMAN. Is that in Rhode Island?

Mr. PETRARCA. It is in Rhode Island. I am sure it is now the system used in all States in which the national bureau represents the great bulk of the companies writing business in the respective States.

The CHAIRMAN. There are many automobile accidents which do not involve the loss of license. I have known of some insurance companies which, if you received so many demerits—

Mr. PETRARCA. This is a relatively new feature.

The CHAIRMAN (continuing). For different types of traffic violations, may cancel your policy, automatically in some cases.

Mr. PETRARCA. Yes. The feature I just spoke of—

The CHAIRMAN. You still might have a license to drive a car.

Mr. PETRARCA. What you are saying is very true. What I said went into effect early this year. So it has not been the way of the past.

The CHAIRMAN. Let me ask you one thing I am curious about. When you have a compulsory insurance system such as in Massachusetts or New York, what is the penalty involved if you don't take out insurance?

Mr. PETRARCA. The one we propose for Rhode Island would make the buying of insurance go hand-in-hand with the registering of the automobile. So that it would be impossible to register an automobile without acquiring insurance.

The CHAIRMAN. You couldn't get the certificate of title until you showed you were insured?

Mr. PETRARCA. You could not register the automobile.

The CHAIRMAN. That is how you get at it?

Mr. PETRARCA. The two would be coterminus, the registration and acquisition of insurance.

The CHAIRMAN. How do you follow that through?

Mr. PETRARCA. How do you police it?

The CHAIRMAN. Yes. If I go down with my insurance and say I am insured for a 3-year period, I obtain the registration of the car. Suppose I then drop the insurance or it is otherwise terminated?

Mr. PETRARCA. This is what has happened in Massachusetts and New York. They have found it difficult to police in many respects.

We would expect the complete cooperation of the insurance industry with their notifications to the registree of motor vehicles that the insurance policy in fact has terminated, or has been terminated.

The CHAIRMAN. In other words, if I run an insurance company in the State of Washington, and I have a policyholder registered in Rhode Island, and we cancel his insurance, or it expires, it would be incumbent upon us to notify the registrar in Rhode Island?

Mr. PETRARCA. Yes, sir.

The CHAIRMAN. Suppose we don't do it. Then what?

Mr. PETRARCA. Suppose you don't do it?

The CHAIRMAN. Yes.

Mr. PETRARCA. Two things might happen.

The CHAIRMAN. I am just pointing out what I understand to be the difficulty of followthrough in these cases.

Mr. PETRARCA. Two things might happen. One, the person drives around as an uninsured motorist. Secondly, the company may not be relieved of its obligation called for in the policy because of its failure to notify the registrar that the policy has terminated.

The CHAIRMAN. In other words, that would be an act of negligence on their part.

Mr. PETRARCA. Yes, sir. We do basically the same thing in our assigned risk in Rhode Island. Each person who needs a filing under our financial responsibility law gets one by the company sending such to the registrar. When that filing is no longer in effect the company then notifies the registry and the license or registration is revoked.

The CHAIRMAN. What plan do you have for teenagers, insofar as automobile insurance is concerned? Do you require the parents to take out a policy?

Mr. PETRARCA. What plan do we have?

The CHAIRMAN. What do you suggest in that field?

Mr. PETRARCA. Are you talking about the rates that teenagers pay?

The CHAIRMAN. Teenagers don't necessarily take out insurance policies. It is up to their parents.

Do you require the parents to take it out?

Mr. PETRARCA. Yes.

The CHAIRMAN. Or someone.

Mr. PETRARCA. The compulsory feature is not coterminous with the license but with the registration of the vehicle. Probably the parent would still pay the insurance premium.

The CHAIRMAN. If there are no further questions we thank you very much.

We will recess until tomorrow morning at 10 o'clock when we have some very important witnesses.

I hope all of those interested will come and listen to the testimony. Thank you very much.

(Whereupon, at 11:48 a.m., the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, Mar. 13, 1968.)

#### AUTO INSURANCE: IS IT A PRODUCT OR YOUR BIRTHRIGHT?

##### A STATEMENT OF POLICY AND A CALL TO ACTION BY INSURANCE CO. OF NORTH AMERICA

For the past several years it has become clear that the present automobile insurance system in America is not working to the satisfaction of anyone: neither the consumer, the insurance companies, nor the state and federal governments.

The consumer complains of frequent rate hikes, sudden, sometimes inexplicable cancellations, and interminable delays in settling his claims.

Most companies, faced with increased claims costs on the one hand, and still inadequate rates on the other, are caught in an intolerable two-way squeeze. In the ten-year period from 1956 to 1965, for example, insurance company losses from automobile bodily injury insurance alone came to almost \$1.25 billion more than they had earned in premiums.

Surveying this dilemma, state and federal governments face a flood of proposals that range from the sound and reasonable to those that are wholly impractical and even dangerous to your own interests.

##### *Where did auto insurance go wrong?*

It didn't. It still offers complete protection against a motorist's legal liability under the law. It operates today under the same classic principles of insurance that work—and work well—for your Homeowners policy, your disability insurance, and many other standard and well-accepted forms of liability coverage.

What happened was that the law and auto insurance stood still, while the auto itself and its place in American life changed radically. And so has the concept of modern social justice, with its increased emphasis on financial security for all.

The problem then is that the classic principles of the law as applied to the operation of automobiles, in general, and of liability insurance, in particular, no longer offer a satisfactory solution to a growing social problem.

What is needed is an entirely new approach to the problem presented by the victims of auto accidents—an approach that would harmonize with the thinking and the needs of our modern automobile-oriented society.

*Is auto insurance your birthright?*

For the vast majority of Americans, INA—Insurance Company of North America—firmly believes the answer is *yes*. It is more than your birthright; it is your duty. It is your responsibility to your own family and every other family in America.

Does that mean INA supports a public requirements of auto insurance for all licensed drivers? Again, yes. Though many insurance companies in the past have opposed the principle for valid reasons which appeared to outweigh any possible good that would result, INA believes that requiring all licensed drivers to be financially responsible for the damage they may do to others is a reasonable and sound objective, and one that the insurance industry should unanimously support.

To be perfectly realistic, however, it is clear that for the insurance industry to support such a law to accomplish this, state governments would have to take measures to improve and vigorously enforce licensing, traffic laws, vehicle and highway safety. Last year, for example, 53,000 Americans were killed on the highways and 1,800,000 were injured in 10,000,000 different accidents. Is auto insurance *everyone's* birthright? Only if state licensing and enforcement agencies can sharply reduce the epidemic-like proportions in which drivers are killing and injuring themselves and others on the nation's highways.

INA believes all licensed drivers must be financially responsible, but we do not believe the insurance industry or, for that matter, the nation itself, can indefinitely afford the financial and human losses that careless drivers cost us all every year.

*Is there a better way of dealing with auto liability claims?*

At INA we believe there is. Under the present system an insurance company assumes your liability for damages you caused as the result of a negligent or careless action, thus relieving you of the financial consequences of such action. But today the circumstances involved in most auto accidents usually make it difficult if not impossible to determine who was negligent. Hence the present system is hopelessly outmoded; it delays justice, frustrates the claimant, and costs insurance companies far more than they earn in premiums.

In its place INA strongly recommends that a plan for compensating all innocent victims be adopted—perhaps along the lines of the one advocated by Professors Keeton and O'Connell. Under such a plan, victims of automobile accidents would be compensated for medical and out-of-pocket expenses, such as lost wages, up to, say, \$10,000 regardless of liability. If injuries are permanent and serious and the resulting damages greater than \$10,000, the matter could be taken to court for determination of liability in excess of \$10,000, or some other reasonable amount.

But for the vast number of claims, a fair settlement would be made out of court and in just a matter of days, relieving the paralyzing backlog in the courts, and in the long run even lowering your auto insurance costs.

As strong supporters of the free enterprise system since our founding in 1792, Insurance Company of North America is deeply concerned with the need to satisfy the public interest by finding an insurance solution to these problems. That interest now calls for changes, even radical changes, in the law and in the present American system of automobile insurance, INA, with 175 years of insurance leadership, stands ready to work with the insurance industry and government officials to accomplish that change.

That is why INA is publishing this statement throughout the country. Copies will be sent to Governors, Insurance Commissioners, Federal and State Legislators, and other interested persons. It is time to act.

BRADFORD SMITH, Jr., *Chairman.*

What happened was that the law and auto insurance stood still while the auto itself and its driver in America changed technology. And so the law and the insurance industry were left with the insurance principle of financial security. The problem here is that the classic principles of the law as applied to the operation of automobiles in general and of liability insurance in particular no longer offer an adequate solution to a growing social problem. What is needed is a new approach to the problem recognized by the shifting of auto accidents—insurance—into a world partnership with the thinking and the needs of our modern automobile-oriented society.

It was necessary to go to the law. For the past several years, I have been a member of the American Automobile Association. I have found that the law is not as much a barrier as it is a responsibility to your own health and your own family's future.

There has been a lot of talk about the need for a new approach to the problem of auto liability. I have found that the law is not as much a barrier as it is a responsibility to your own health and your own family's future. I have found that the law is not as much a barrier as it is a responsibility to your own health and your own family's future.

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One of our major goals is the result of our committee's work. A major objective is the 24-hour problem controlling the insurance industry and the insurance companies. I want to say that this is not just a statement, I am making a statement.

**TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO CONDUCT A COMPREHENSIVE STUDY AND INVESTIGATION OF ALL RELEVANT ASPECTS OF THE EXISTING MOTOR VEHICLE ACCIDENT COMPENSATION SYSTEM**

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WEDNESDAY, MARCH 13, 1968

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
CONSUMER SUBCOMMITTEE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, pursuant to adjournment, the Honorable Warren G. Magnuson, chairman of the committee, presiding.

Present: Senators Magnuson, Hart, Cannon, and Moss.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is Senator Karl Herrmann, from my State of Washington, who is chairman of the Joint Interim Committee on Insurance of the State Legislature.

I know Senator Herrmann well, of course. He has done a great deal of yeoman work on this whole insurance problem in the State. As head of the interim committee, he has heard a great deal of testimony, has reviewed the entire problem of insurance as it relates to the State, and is keenly aware of the responsibility of State legislatures in insurance matters. As a result of his activities, there is more than a passing interest in the subject in the State of Washington.

We are glad to have him here to tell us what he found out and to give us the benefit of his experience in this field.

Senator Herrmann, the committee would like you to comment on the State's role in the future, as you see it, in insurance matters. Will you go ahead with your testimony?

**STATEMENT OF HON. KARL V. HERRMANN, STATE SENATOR, STATE OF WASHINGTON LEGISLATURE; CHAIRMAN, JOINT INTERIM COMMITTEE ON INSURANCE OF THE WASHINGTON STATE LEGISLATURE, SPOKANE, WASH.**

Mr. HERRMANN. Thank you, Mr. Chairman.

Our legislative interim insurance committee, which I have chaired for nearly 3 years now, has held public hearings in every major city and geographic area in the State of Washington.

We have recorded testimony, written evidence, and exhibits from hundreds of persons, including expert witnesses and consultants.

One fact emerges clearly as the result of our committee's work: Automobile insurance is the No. 1 problem confronting the insurance industry and the insurance consumer today.

I want to say that that is not just a statement I am making here. In our report to the legislature, Mr. Chairman, we incorporated this in the report before the national spotlight, so to speak, had been focused upon automobile insurance.

The dimensions of the problem—

The CHAIRMAN. I want to say frankly that one of the reasons that I became much more interested in the problem of auto insurance in the last 2 years, and especially within the past year, was my awareness of your work in the legislature.

Mr. HERRMANN. The dimensions of the problem come into sharper focus when we consider a recent statement by one of your distinguished colleagues:

The automobile long ago ceased to be a luxury and became instead an established and necessary ingredient of our American way of life. Just as necessary as the automobile itself is the acquisition of adequate insurance coverage for that automobile. Yet, the major automobile insurance companies are every day tightening their standards of risk evaluation and acceptability. Consequently, for that automobile. Yet, the major automobile insurance companies are every day tightening their standards of risk evaluation and acceptability. Consequently, thousands of ordinary people are in the unhappy position of desperately needing automobile insurance and having no regular company willing to sell to them.

The specific ingredients of the auto insurance problem as we have found them in our State, are rate-ups based on questionable criteria; arbitrary cancellations, rejections, and failures to renew liability insurance, and discrimination of all kinds in extending coverage, particularly where age, race, economic status, and occupation are concerned.

We have found that the young driver and the driver past 65 in many cases are being unconscionably victimized by a system of risk classification that lays unfair emphasis on these age brackets. In this regard, it is interesting to note the findings of a recent study by the State of New York. There it was found that although drivers 65 and older make up 9.6 percent of the driving population, they were involved in only 6.2 percent of the vehicular accidents.

Our committee found that a big factor contributing to unfair cancellations, rejections, and grading for rate purposes was sloppy investigative work by certain retail credit agencies, whose reports are widely utilized by the insurance industry. One insurance agent testifying before our committee said that neighborhood gossip and rumors regarding character and reputation are often used by such inexperienced investigators loaded down with writing 16 to 25 reports a day for insurance companies. He stated that he had observed one such investigator, obviously under the influence of drink, write his reports while sitting in a tavern and obtaining his information from other patrons.

Another case cited to our committee involved a woman who was identified in a retail credit investigator's report for an insurance company as a cabaret employee but who was in reality a legal secretary.

I might say at this time there are evidently reports throughout the country of this kind of misidentity when there may be confusion of names.

The Wall Street Journal carried an article where a minister in a faith that believed in the "bone dry" principle, was canceled mistakenly because his name was the same as the town drunk.

We have had such information coming from these credit agencies all over the country. This isn't something that is uniquely common to the State of Washington.

Upon further investigation by the woman's insurance agent, who was curious as to why she had been refused coverage, it was found that the credit report stated the woman and her husband held loud parties and had trash cans full of beer bottles. The report was based on information from a neighbor who had never been invited to a party at the woman's house.

One "dollar detective," so identified because she was paid \$1 per report, told our committee that she relied on a "sixth sense" in determining the kind of character reports she submitted on an insurance applicant.

One of the ladies in the hearing spoke up and said, "I don't want you coming around my place with your sixth sense."

I had to rap for order, Mr. Chairman, in that particular hearing, because it added more than a little levity to the situation.

An attorney testified before the committee that persons had been canceled in his area because they didn't keep their lawns up, or they had parties, a divorce, or marital difficulties, or even a bankruptcy. He said that if credit reporting agencies are willing to pay only a small amount of money for their investigations, then they should expect a small amount of work, and they also should be made to accept the burden of liability for misinformation.

Under the present law in our State they have immunity. These are privileged communications. There is no way of getting to the credit agencies. They can make all the mistakes they like and they are not liable for slander of character or for any liability in that regard.

The CHAIRMAN. Let me ask this: Is it common practice for the insurance companies not to make the investigations themselves, but to hire a credit agency or similar organization to do it?

Mr. HERRMANN. It is a very widespread practice.

The CHAIRMAN. I am talking about automobile insurance now.

Mr. HERRMANN. That is correct. They also investigate life applicants, and so forth. We have testimony that it is a very widespread practice to yard this out, so to speak, to private investigators rather than have the companies do it with their own staffs.

The CHAIRMAN. I just wanted to know the procedure.

Mr. HERRMANN. It is our view that the auto and the privilege to drive are of such importance to almost every citizen today that credit reports utilized by insurance companies should be accurate, well detailed, and documented.

When you take a man's right to drive away, it should be on true evidence, not upon hearsay and gossip.

Snooping into garbage cans, counting the number of hubcaps miss-from cars in certain neighborhoods, and reliance on neighborhood gossip are no criteria to use in determining a person's insurance rates or whether he should be canceled, not renewed, or rejected.

The whole system of "creaming the market" to select only the best risks has been criticized as not meeting the public need and necessity. Such an approach raises the rates for the average driver.

There is no way around the mathematics. If they skim the cream from the top and you are the average driver then you have to be rated with the people that are poorer drivers, and naturally you are rated up accordingly.

It encourages arbitrary rating based on such dubious guidelines as race, age, trade, profession, or economic status.

The next speaker will give us information pertaining to that, the guidelines of agents in which airplane workers and tradesmen of all kinds are looked upon very dubiously. People who use nicknames and many other minor things that will be taken up by the next speaker.

One of the witnesses in the apple country, in Washington, made this analogy, that we thought was very good as far as explaining the situation is concerned. He said people should be accepted for insurance purposes on an orchard-run basis. He noted that in grading apples, orchardists select the extra fancies, fancies and C grades, dumping the culls. But he said, this cannot be done with people.

This is really where the trouble lies. We have thousands of licensed drivers that find it difficult to obtain insurance except in high-risk companies.

If insurance companies use the apple grower's system of grading, then many licensed drivers may be denied the privilege of driving because they failed to obtain insurance or were forced to go without it because of prohibitive rates. It was argued that poor drivers ought to be put off the road by laws and law-enforcement bodies backed by the courts and State licensing agencies, not by insurance companies.

It has been further presented to our committee by an expert from the insurance industry that to abandon the whole system of classification and go back to a standard rate for all licensed drivers would entail only a 5-percent increase across the board for policyholders.

I had a top executive in the insurance industry tell me that he couldn't understand how they ever got into this in the first place except Sears & Roebuck started it and they all followed suit as a matter of competition.

It was pointed out that the costly system of grading and keeping classification records by the companies would be eliminated. It was his view that people would gladly pay the extra 5 percent for assurance that their right to drive would be protected from the cradle to the grave as long as they didn't lose their drivers' licenses. There has been a good deal of national discussion about the Keeton-O'Connell plan of auto insurance protection, which would reimburse all out-of-pocket losses up to a limit of \$10,000 per person regardless of who was at fault. The plan would change the basic concept of insurance tort law now prevailing. However, the question of grading, acceptance, and cancellation of risks would still be a problem under the Keeton-O'Connell plan.

One witness before our committee asked this question: "If the insurance companies develop an IBM machine or some other means of determining who is going to have an accident on the highway with absolute certainty, and the companies then will insure only those drivers who will not be so involved, then what is the purpose of insurance?" He stated that if the companies would insure him only after it was proven that he would not have an accident, then he would rather place the premium in his savings account than allow the

companies to invest the money for profit to them with no service to him.

This example carries to the extreme the insurance industry's present preoccupation with culling from its list those drivers it suspects will have accidents.

The law should be concerned with eliminating the chronically poor and dangerous drivers from the highways by suspending or revoking their drivers' licenses. Regardless of the plans of liability or compensation, the problem is ever present of how to provide insurance, which in most States is a necessary item to exercise the privilege of driving the family car.

The availability of insurance is even of greater importance to commercial drivers, whose very livelihood and role as family breadwinner depend on their being on the road. It strikes us as highly unfair that an insurance company, concerned with its books of business, should be permitted to rule a professional driver, who still holds his State driver's license, off the road. Yet, such was the case in a number of instances cited to our committee by a union business agent not long ago. He said some insurance companies were pressuring employers to fire professional drivers for a few minor traffic tickets accumulated over periods extending up to 5 years. It was stated that the companies had threatened to withdraw the employers' insurance if they did not fire the drivers in question. The union official pointed out that a professional driver may well drive more miles in 5 years than a nonprofessional would in a lifetime. We have sought to forestall these pressure tactics by the insurance industry in our State by passage at the 1967 legislature of an antisnoop license law. This denies access by insurance companies to a professional driver's records on file with the State department of motor vehicles.

It was shown, Mr. Chairman, in our studies, that the employers are very concerned about their men. They are not going to keep men on the road with expensive equipment if they are too dangerous and too negligent to handle the equipment.

Another practice appearing unfair to some insurance consumers concerns company favoritism toward certain agencies. It was reported to our committee that a party seeking insurance may apply to a small producer or an agent in disfavor and have far less chance of being accepted by the home office as opposed to applicants to a large, influential agency doing a volume of business that is recognized as outstanding by the company. There were also other matters pertaining to an agency's business that were cited as reasons why some insurance companies might turn down people who were not personally at fault.

A particularly serious problem presented to our committee concerns the sales of automobiles with only collision insurance to protect the vendor's interest even though the buyer many times assumes he is fully protected.

This is a system that is used by GMAC and many of the other financing companies. They issue an insurance policy and say, "Your insurance is included in the contract." But when the insured has an accident he finds he has only collision coverage for the protection of the seller's interest.

The liability claim, under financial responsibility, will put the driver off the road if it is not covered by the policy.

I have in my private practice of law had many people come in wondering why the State patrol is picking up their license when they had insurance, and they find out that this limited policy, sold by the finance company at the time the car was purchased, covers only the seller's interest. We don't find this to be true where the insurance is sold by an agent. We find that this is a peculiar situation in the financing industry.

Simply stamping the warning "Limited Policy" across the face of the contract does little good because most people do not read their policies. They usually take the word of the seller that they are fully protected. It was suggested to our committee that the law should be changed so that a vendor can collect on collision insurance only if he has made sure that the insurance policy also includes liability insurance up to a minimal amount, uninsured motorist protection, and protection for the buyer's equity. It was stated that such provisions would go a long way toward reducing the number of uninsured motorists, estimated as high as 75,000 on our State's highways.

Our committee is continually amazed at some of the deceptive techniques employed by a number of insurance companies to avoid fair treatment of the policyholder. One such case involved one of the biggest insurers of autos doing business in our State.

Our files have the complete record and photostat copies of the correspondence that took place in this particular case.

A graduate student in economics at the University of Washington, in Seattle, had his auto insurance suddenly canceled. The letter, which lacked specific reasons for the cancellation, was signed by a Mr. "T. Case." The student tried to reach Mr. Case repeatedly by telephone, but could never locate the signer of the letter. He was always told by the insurance companies' telephone operators that "Mr. Case is out to lunch," or "He's in conference," or "He's sick today."

One day the student was discussing his problem with an official of the university. A secretary whose husband worked as an adjuster for the company involved overheard the conversation and explained why it was that "Mr. Case" was always out. "That stands for 'Tough Case,'" she said. "There is no such person. It's the way the company has of avoiding further discussion with canceled policyholders." Signing phony names on letters to customers is not the solution to the public's growing demand for better treatment at the hands of the auto insurance industry.

It is true that the young student involved was single, drove a sports car, and was in the under-25-age bracket. It is true that some drivers fitting that description are reckless drivers. But it is also true that some drivers fitting that description are among the best and most careful drivers, who have never had a moving violation.

This criticism of classification also applies to matters of race and occupation. The percentage of good drivers is substantial. No class is made up of 100-percent reckless drivers. To upgrade everyone in these classifications is arbitrary and unfair to individuals who have good driving records. One insurance executive in a leading company in Washington State said that the only criteria which should be used in determining a person's rates or whether he should be accepted or rejected involve that person's driving record, which is the only

true test of a driver's performance behind the wheel. This record is available through the State department of motor vehicles.

A presentation was made to our committee in which the activities of insurance companies in the auto line were compared to the early-day activities of power companies that also ignored the public need. It was alleged that these power companies insisted upon making a profit on every meter they installed, and that it evidently did not occur to them that profit areas should pay for service areas if the entire public was to be properly served.

It was further argued that this policy was instrumental in bringing Government into the industry by the establishment of PUD's, REA's and other governmental agencies and the participation of municipalities to supply the public need and necessity ignored or denied by the private operators. It is my belief that this parallel should be well taken as another word of warning to the insurance industry.

It is further my belief that the public can be served best by private industry under proper regulation. And that there should be no conflict between good business and good regulation. And good business should entail a good profit, an adequate profit to the companies.

In 1962 an 11-man committee of distinguished and knowledgeable citizens, including certain Cabinet Members, was appointed by the late President John F. Kennedy "to review legislation and administrative practices relating to the operation of financial intermediaries" and "to consider what changes, if any, in Government policy toward private financial institutions—including insurance companies—could contribute to economic stability, growth and efficiency."

The President's committee was in unanimous agreement on its conclusion pertaining to insurance regulation. It referred to the apparent lax supervision by the States and said:

There are inherent difficulties in regulation by individual states of companies that operate in many states. Furthermore, the setting of national standards may more properly be a function of the Federal Government.

From our committee's studies of auto insurance in Washington State, it is apparent that the problems are broad and complex in scope and extend into areas in which we, as State legislators, have neither the powers nor the resources to proceed.

We are in a position to recommend "tune up" legislation but not a major overhaul of the entire system.

I believe, therefore, that the adoption of Senate Joint Resolution 129 would be an important step toward the proper review of those automobile insurance matters beyond the reach of the States.

The CHAIRMAN. I take it from your testimony that after all the work you have done you have come to the conclusion that auto insurance has become a national problem, not just a State problem?

Mr. HERRMANN. I don't think there is any question about it, Mr. Chairman.

The CHAIRMAN. And that after this study is completed, or as different recommendations are made as the study moves along, the extreme interpretation of the McCarran-Ferguson Act may need to be modified?

Mr. HERRMANN. I think so.

The CHAIRMAN. You make a statement here with which I thoroughly agree: "The only criteria which should be used in determining a

person's rates or whether he should be accepted or rejected involve that person's driving record." And you say this record is available through the State department of motor vehicles. Is this available, say in Washington State, to anyone?

Mr. HERRMANN. No. Not curiosity seekers. It is available to me, the insured and it is available to the insurance companies. To others it would have to be with my consent or permission.

The CHAIRMAN. Suppose I wanted to take out automobile insurance at home and I said I didn't want anyone snooping around my backyard or doing the things you mentioned. Wouldn't the company have a copy of my driving record? And wouldn't that be enough?

Mr. HERRMANN. The company would have a copy of your driving record. But that is only one of the factors that go into the determination of whether they will accept you at all, or whether they will accept you at a standard rate or a higher rate.

The CHAIRMAN. The point you make is, even though they have a person's driving record, that isn't the only criterion they use?

Mr. HERRMANN. No.

The CHAIRMAN. I think you pointed out very forcefully that the real problem, apart from cancellations, is when you apply for renewal, or when you apply for insurance with a different company—

Mr. HERRMANN. That is correct.

The CHAIRMAN (continuing). What category will they put you in?

Mr. HERRMANN. That is correct. And I think that is the reason that there is sound reason and logic in the proposition that a standard rate for everyone who has a license to drive would cause less difficulty in the field. This matter of classification, if we took the people of orchard run, for example, took the whole crop orchard run, mixed everybody together and came up with a 5-percent across-the-board increase, I think we would eliminate 99 percent of the difficulties that now exist. However, the public, as pointed out by one of the other learned members of the industry that I have discussed this matter with personally, has stated that the public now is so well educated on the premise that a better driver gets a merit rating. If they are a model citizen in the community, if they don't drink, if they don't engage in a lot of activities that downgrade them, as far as the insurance companies are concerned, they are going to get this special rate. And then to put them in for a rate where they are sharing with the average driver and the poor risk and the culls in the bottom of the barrel, you might say, that they would probably reject this theory, saying we don't want to pay for these people, we want our special rates.

But on the other hand, I don't think that would cause the furor that we have with the people who find themselves with a rate that is 10 times or more the average rate.

The CHAIRMAN. The Secretary pointed out yesterday, and I imagine you know these things, the high percentage of administrative costs involved, which quite naturally have to be covered by the premiums. What you are suggesting, or the broad principle you suggest, would eliminate a great number of administrative costs which in turn would be reflected in a lower average premium?

Mr. HERRMANN. That is correct. Along that line, it is shown that for every dollar that a victim receives, there is \$3.40 of premium

money spent compared, for example, to social security where there is a dollar benefit for every \$1.02 that is collected by the Department.

The CHAIRMAN. State that figure again. It is important.

Mr. HERRMANN. For every dollar that is paid an accident victim on the highways, or for property or physical injury, there are \$3.40 spent in premiums. For every dollar that is paid out as social security benefit, \$1.02 is received in premium.

The CHAIRMAN. I think that is a very important comparison. In the early days of social security, we started out with a plan to investigate everybody, but the cost of administration threatened to become so great that, if left unchecked, it probably would now be as great as in auto insurance. So we finally adopted a system of broad classifications. Most countries that have social security have also come around to it.

I think you pointed out very well the role of the States in this matter. Do you think this study should take a good, hard look at the possibility of having some uniformity of State laws involving automobile insurance?

Mr. HERRMANN. I think that uniformity is important, especially if you are considering a new plan or new system, and discarding tort liability, and in order for any plan to work properly we should have uniform application of that plan.

The CHAIRMAN. Hopefully it would be a voluntary matter, not one of Federal law. Over the years and only after a lot of hard work and with close coordination, the safety laws of the States have become much more uniform.

Mr. HERRMANN. That is correct. And in other businesses, we adopted the uniform commercial code that is uniform in commercial transactions generally. I think it is in effect in some 37 States or more. It was at the time we adopted it. That applies to all credit transactions and bank transactions and so forth, loans and the like. So that people doing business now, in close communication with the home office, have uniform laws to deal with. I think looking at it from the industry's side, that if you are operating from the home office and you have to deal with 50 entities that are fragmented and going in opposite directions, it is going to be very, very difficult for the industry to operate under those conditions.

The CHAIRMAN. That is why I suggested to the Secretary that by all means he should have on this advisory committee knowledgeable people, such as yourself, from the State legislatures. I think this is essential if we are to have the kind of coordination needed in achieving some degree of uniformity.

Senator Hart?

Senator HART. Thank you, Mr. Chairman.

Senator, your statement was a very thoughtful one and a very useful one. I think we are all for having two voices from the State of Washington this morning. It just struck me that underlying one of your principal points is a problem that has confronted this country for many years and which will continue. Until we get it solved, we will have trouble in all aspects of American life, and not just in insurance. And that is the practice of using factors, conditions, and circumstances other than the good or bad of the individual in making a

judgment as to how he will be treated. You talk about the use of residence or occupation or race as a factor in deciding what the individual will be charged. That is not the way any of us wants to be judged, whether we are buying a home or insurance.

Mr. HERRMANN. That is correct.

The CHAIRMAN. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

What was the reaction of the industry in your State to the hearings that you held?

Mr. HERRMANN. As a result of our hearings—

The CHAIRMAN. Incidentally, I hope that you will provide the committee with a sufficient number of copies of your report.

Mr. HERRMANN. I have brought enough with me to furnish them.

The CHAIRMAN. Please proceed.

Mr. HERRMANN. I would say that their entire attitude has changed since we have instituted our investigation. Their first attitude was that there was no purpose for a committee and their representatives opposed the formation of the committee. They also opposed the continuation of the committee. However, I must say in all fairness that the industry, by and large, has cooperated with our committee. I have never asked for information, I have never asked any member of the industry for help in a given situation, to shed some light on what we were studying, that we didn't get 100 percent cooperation from them.

I don't think they want people looking into their operations and I think that is natural. I don't know of any industry or segment of the business community that wants an investigation, that wants people looking at their operation with a critical eye and giving them publicity on the things that they are not doing and so forth. Aside from that I would say that the attitude of the industry is good as far as cooperating with our committee. They have given us all the information and all of the assistance that we have asked, and they have been most helpful in our investigations.

Senator CANNON. I am happy to hear you say that they have been cooperative. I wonder if they took any specific action with respect to some of these problems that you have pointed up?

Mr. HERRMANN. Yes.

Senator CANNON. In other words, did they change their modus operandi?

Mr. HERRMANN. Yes. One very basic thing. Prior to the last session, a driver was left in the dark. He could be canceled at will in our State by the automobile insurance companies, and he couldn't even get that information of why he was canceled. One company, for example, engaged in mass cancellations. The agent had 42 of his customers canceled for no apparent reason at all. Some were perfect drivers. He called the home office and asked why they were canceled. He was told that it was none of his business. You take care of selling and we will take care of cancellations at this end of the line, and we don't owe an explanation to you or to anyone else.

Our legislature, after conferring with the insurance commissioner of North Carolina, who was very cooperative and had an anticancellation bill, which as he put it, prevented willy-nilly cancellations in North Carolina. We passed a cancellation statute that forced the companies to spell out in their policy the grounds for cancellation,

and we limited them by statute and also made the provision that anyone canceled could get that information upon request. And also that they had to give 15 days' notice by certified mail before cancellation became effective so the party canceled could place his insurance elsewhere if he could get it.

This statute will not go into effect until July of this year. As of January 1 of this year, the companies have instituted a system or a policy that writes a person for the policy period, giving only two grounds for cancellation: nonpayment of premium, or cancellation of your right to drive. They have gone further than our restrictive legislation in that field and they have done it voluntarily. I haven't had the time to see the effect of this, to see if there are any jokers in the deck, so to speak. But on first glance it appears that they have gone further than our statute which we thought was a great step forward in correcting this particular abuse.

Senator CANNON. Does it appear to you as of now that most of them are taking steps to correct the inequities?

Mr. HERRMANN. Definitely.

Senator CANNON. The items that you pointed up in your testimony?

Mr. HERRMANN. Yes. Senator, that is where I think the greatest good is going to come, for the consuming public. I think the industry knows now that it is definitely behind the eight ball. And I think they are going to do their own house cleaning and by doing so they are going to go further in cleaning up this situation than we could do by trying to force them into a situation.

Senator CANNON. That is the point I was trying to get at. It seems to me that if we enact this legislation and the study is made and it points up inequities such as you have related here today, and the industry takes steps to correct those inequities, there may not be any necessity for further action on the congressional level.

Mr. HERRMANN. We should stay on them just like a hound after a rabbit staying two jumps behind. If we take the heat off they will probably go back to their old tactics. I think as long as we have gone this far, even though we are getting cooperation, I think the study that is proposed here is necessary, and the changes in the concepts of law and so forth, are still a vital problem and that there is a great necessity for further work in this field.

Senator CANNON. What happened to the graduate student that their "T. Case" canceled out?

Mr. HERRMANN. I think he finally got insurance, but not with that company.

Senator CANNON. You speak of the professional and commercial drivers, and you indicated that you have by legislative action denied the insurance company access to professional drivers' records. As a former prosecuting attorney who had jurisdiction over the police court, among other things, I found that taxi drivers were quite frequent habitues of the police court. I can conceive of a situation where it might not be fair to the insurance carrier, if information on some classes of professional drivers were withheld.

Mr. HERRMANN. Only in this respect: There is this qualification on what you say. If this cumulative score would go on indefinitely, I would say you are right. But under our system the department of licenses can suspend a license, and they do, upon so many violations. When

your right to drive is suspended in this manner we don't have to go through the courts.

It would be only on minor infractions of where the license department or the department of motor vehicles have not taken the action that the companies would bring pressure to bear to fire this man, even though the law and the licensing agencies have taken no action. We say it should be left up to them. This chronic driver now in our State, the habitual reckless driver, is off the road. They give you a warning ticket from the department that you have had so many points, and there are so many points for being 10 miles over the speed limit, so many points for each violation. They have them listed. When you get close to the point of revocation, you get a notice from our license department that one more offense, or one more violation and you are out.

So really we are not, by this rule, forcing the companies to accept a chronically dangerous driver, because the license department would take him off the road.

SENATOR CANNON. You are saying that until such time as the licensing department says you are no longer licensed to drive, then you can't cancel that man out?

MR. HERRMANN. That is right. We feel, too, we have a double safeguard. Suppose this man is driving a Greyhound bus or he is operating logging equipment. This is work that takes place in our area. He has probably a hundred thousand dollars tied up in a piece of equipment. The employer is not going to allow John to drive that if he doesn't handle it properly.

However, the violations here in the case that was reported to our committee, were not incurred while driving the logging truck. It was with the old jalopy he owned that he got the tickets. There were no marks against him on his professional driving. Yet there was this letter given to the employer that he had to be discharged because his record was such that they would not continue the coverage if he wasn't.

SENATOR CANNON. I want to express my appreciation for a very helpful and constructive statement that you have presented to us here.

Thank you very much, Mr. Chairman.

MR. HERRMANN. Thank you.

THE CHAIRMAN. In that connection, Karl, let me ask you this: Eight years ago this committee approved a bill which I authored, setting up in the Department of Commerce a clearinghouse for drivers' applications.<sup>1</sup> We made its use optional, but all 50 States and the District of Columbia now use it. I imagine our own State department of motor vehicles uses it quite often. If you come into the State and apply for a driver's license, they can check as to whether or not your license has been revoked in California, for instance.

MR. HERRMANN. That is correct.

THE CHAIRMAN. I understand, for the benefit of the committee, that they are now processing daily something like 60,000 reports of revocations, restorations, and search requests. It is a clearinghouse similar to that of the FBI.

<sup>1</sup> The National Driver and Vehicle Information Register is now housed in the Department of Transportation.

Mr. HERRMANN. That again goes back to what we said about uniformity. We have reciprocity with the other States. So that if a person comes to our State, on this rating business pertaining to his driving record and the point system, the points that he gathered, or if he has a clear driving record from his original State, is incorporated in the record.

The CHAIRMAN. It serves a good purpose. It is being used by all States; is it not?

Mr. HERRMANN. Yes, sir.

The CHAIRMAN. Senator Moss?

Senator Moss. I have one question.

In the State of Washington do the carriers have a pool where they must accept high-risk drivers?

Mr. HERRMANN. Yes. We have an assigned risk pool. There is quite a move on now to depopulate it, however. The agents are discouraged from placing them in the pool. We are making a study of that at the present time to see just how the pool is operating and whether it has served its purpose or not. Because now, under "creaming" of the market and classifications, they are taking the poor risk, and setting up rates and reclassifying those that were heretofore thrown into the assigned risk pool. But we do have it in operation.

Senator Moss. You would much prefer to go back to the "orchard-run" basis, rather than having a pool to which they assign the high risks?

Mr. HERRMANN. I think that probably even under the orchard run, that there probably would be a necessity for maybe one gradation. The fellow who is just absolutely borderline, that would have to be in maybe an assigned risk, or some sort of added penalty for being a poor driver.

In discussing this I am probably oversimplifying when I say one rate. But one rate, generally speaking, with one intermediary rate in between.

Senator Moss. There are two factors. They certainly should have every inducement for a person to drive safely and do everything possible to encourage him to drive safely. On the other hand, as you said, if he never has an accident he really doesn't need insurance. It is the fellow who has one that needs insurance.

Mr. HERRMANN. That is correct.

Senator Moss. And the other person involved, who is injured by the driver, ought to make sure he has some insurance so that he has protection.

Mr. HERRMANN. That is correct. We are dealing with an industry here where it isn't something you can buy in the open market like coffee. We are dealing with an activity that is coupled with the public interest; I have often said that it can be pointed out in our State capitol. Next to the legislative building with a dome about the size of the National Capitol, there is an insurance building, and "Insurance" is written in the granite. You don't see a hamburger building or a grocery building but insurance is so coupled with the public interest that right from its inception it was realized that it is subject to regulation because it is vital to the people.

I think most of us would rather have our telephone removed from our home than to have it known our insurance was canceled. It rates right along in importance to people with telephone service, communication, transportation, pure food and drugs, and all of those activities that are of vital concern to the people.

The CHAIRMAN. And in the State of Washington we elect our insurance commissioner by popular vote.

Mr. HERRMANN. That is correct.

Senator MOSS. Thank you very much.

The CHAIRMAN. Thank you, Senator Herrmann. We appreciate your coming. We will look forward with great interest to reading the report of your committee.

Mr. HERRMANN. I enjoyed this. I considered it a real privilege to come before you.

Senator HART. Mr. Chairman?

The CHAIRMAN. Senator Hart.

Senator HART. There was something Senator Herrmann raised here and I think we ought to use this hearing as a means of underscoring it, not alone for those in the industry or here in the audience, but for any reader of this record. Senator Magnuson mentioned the clearinghouse that he helped establish for driver's licenses. You commented, and it was missed, on the credit rating bureau practices, which are shocking and offensive when you learn of them. We ought not to think that that affects you just as you seek insurance in Spokane or Seattle, because increasingly in this country there is almost a national clearinghouse of credit rating information. And some hambone, who downgrades your credit in connection with an automobile insurance application, can ruin you for life all across the country as these credit rating bureaus expand and exchange information. And that matter may one day be of concern to this committee.

Mr. HERRMANN. We had a very interesting presentation, Senator, to our committee by a man from Portland, Oreg., who is in the labor department of the State of Oregon. His work is entitled "The Unrelenting Society." He told about the very unfair situations that have arisen in other fields of credit, and job placement. He used secretaries and other examples in his book in showing how people's lives have been completely ruined. And even though some people have rehabilitated themselves and gone the straight and narrow for a good many years, they can still go back, and the statute of limitation never runs out, they can go back 20 years and still stigmatize people for some mistake or something in their record that actually ruins their lives, so to speak.

Senator HART. And there is no remedy available to correct it.

Mr. HERRMANN. No.

Senator HART. Because if you are concerned about an FBI informer, someone who never gets on the stand, just try to find the fellow who murdered you with a credit rating.

The CHAIRMAN. Thank you. Thank you, Senator.

The next witness is Orman Vertrees, staff reporter, Seattle Post-Intelligencer. Mr. Vertrees is a distinguished member of the press in our area. About 21½ years ago he dug into this whole field and wrote a series of articles which lead, I think, to a great number of us perking up our ears and reading and finding out what a problem this was. I thought the committee would be pleased to have him tell us the results

of his experience. It is the finest group of articles I have ever seen written.

I want to say to the rest of the press, he ought to be up for an award sometime.

We are glad to hear from you.

**STATEMENT OF ORMAN L. VERTREES, STAFF REPORTER, SEATTLE  
POST-INTELLIGENCER, SEATTLE, WASH.**

Mr. VERTREES. Thank you, Mr. Chairman.

I am Orman L. Vertrees, a staff writer for the Seattle Post-Intelligencer in Seattle, Wash.

I am pleased to appear before you today, at the request of your chairman, to offer information gathered by our newspaper over the past 2½ years concerning what we believe to be problem areas in the field of automobile insurance.

We hope this information will be of value to you in considering S.J. Res. 129, which would authorize a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system.

Our newspaper first began to question certain insurance practices in November of 1965. I was assigned full time to interview a number of persons who had complained of unethical treatment at the hands of some salesmen and companies in the field of accident and health insurance. As a result, the Post-Intelligencer published a series of articles that concluded with these criticisms of the Washington State Insurance Commissioner's office:

Too often taking the side of the insurance company against the policyholder when disputes over claims arise; loose control over shyster salesmen; only prefatory investigation of complaints, and lack of aggressive action against the unethical, borderline companies. Our original series of articles triggered a staggering response from our readers. In a matter of just a few weeks, we received in excess of 500 letters and telephone calls on insurance matters, most involving complaints from the insurance consumer. One letter, from Frank White, of Seattle, made this point:

Seattle wants from its newspapers' writers more objectivity in the "bread-and-butter" field of writing, such as food, clothes, shelter and personal maintenance. There is where a large percent of the citizenry is hit the hardest.

I singled out this particular letter because it seemed to sum up best the widespread and recurrent cry for consumer protection that was to follow most of the 200-plus articles on insurance that our newspaper has published since the original series in November of 1965. In our view, there are few other areas of consumer interest in more urgent need of Federal attention today than insurance. During our investigation, it was found that the State Insurance Commissioner's office, with a staff of 65 employees, was trying to handle nearly 2,000 complaints a month with only three deputies. One of those deputies also served as the fire marshal in a rural town. This philosophy of consumer protection at the state level where insurance is concerned is perhaps why we are here today.

An analysis of insurance complaints received by the Post-Intelligencer showed that automobile coverage was by far the most critical

area. There were numerous instances of cancellation or failure to renew policies without any explanation from the company to agent or policyholder. There was evidence of mass cancellations. Seattle's central area, populated largely by minority groups, found its rates higher and coverage harder to obtain. Those in certain occupations, such as longshoremens, bartenders, servicemen, waitresses, entertainers and, of all people, aircraft workers—the Boeing Company employs thousands in the Seattle area, its headquarters—were frowned upon by some auto insurers. Ever-increasing auto insurance rates without public hearings likewise aroused concern, primarily from newspapers and the Washington State Labor Council. There were a number of complaints concerning the effectiveness of the assigned risk pool.

In some instances certain insurance companies seem to have a 19th century concept of capitalism and the public interest. A specific case that comes to mind involved the Seattle-based General America Corp., the holding company for the Safeco Insurance Group. I have brought along their manual for the committee's benefit.

The CHAIRMAN. May we have that for our files?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Thank you.

Mr. VERTREES. A little over a year ago, a Seattle insurance broker sent me a copy of a pamphlet, then in its 15th printing, entitled, "Automobile Underwriting Pointers." The manual had been circulated by Safeco to several thousand of its agents. It has subsequently been withdrawn after severe criticism by the Post-Intelligencer and Washington State legislators, including Senator Karl V. Herrmann, who also has been before your subcommittee today.

The manual warned agents to look with disfavor upon the "lower laboring classes, aircraft employes, longshoring classes, etc.," where auto insurance was concerned. It said that if someone liked to be called by a nickname, such as "Shorty" or "Scotty," he might not be conservative enough in outlook to qualify for auto insurance. It also warned that how a child's hair was cut should have a bearing on whether or not the family auto was to be insured.

The CHAIRMAN. You know, back home I am known as "Maggie." I suppose that could have some bearing on my auto insurance.

[Laughter].

Mr. VERTREES. You might have trouble, Senator.

The manual noted that too high a percentage of persons in "sub-standard occupations" would affect the agent's overall business. It said the agent should try to keep risks generally on the same social plane as himself, limiting coverage for the well to do as well. This manual also warned against accepting various risks in K.O., or "Keep Off," areas. It said that such areas tend to have a high crime and vandalism frequency. The impact of this type of thinking on the part of some insurers became evident some time later when I was assigned to take a close look at insurance problems facing minority groups in Seattle's depressed Central area.

One of those interviewed was a Negro legal secretary, Miss Vera Jones, 21, who lived in a rooming house at 1459 21st Avenue. Her auto insurance had been canceled, and she learned by the grapevine that the company had refused her coverage because she parked on the

street and because bands of juvenile delinquents supposedly roamed the area. Miss Jones said that neither she nor any of the other tenants in the roominghouse had ever had their cars burglarized in that neighborhood even though they all parked their autos on the street. Crime analysis maps at the Seattle Police Department showed that indeed there were relatively few car prowls in her neighborhood. The maps showed that during the 3 months preceding my interview with her, there had been a total of 22 car prowls in Miss Jones' district. Another district, more fashionable perhaps than Miss Jones' and inhabited mostly by middle-class whites, experienced a total of 78 car prowls during the same period. Both prowler car districts were of comparable size. Other downtown districts showed even greater frequencies of car prowls. Jerome Williams, at Evergreen Underwriters, 2312 East Madison, one of the few Negro insurance agents in the city, said, "Insurance companies don't want us to represent them. It never has been easy for a Negro agent to represent any of the recognized insurance groups."

A whole new area of insurance abuses was opened up in the case of Tony Skahan, a member of another minority group. Skahan, a Yakima, Wash., cattle rancher, said he felt he was paying extremely high insurance rates on his car simply because he is an Indian. He continued:

No one would deny that there is a reluctance on the part of insurance companies to cover Indians. We do not ask for any preference but only that each application be considered on an individual basis. We realize that the insurance companies wish to classify broadly on determining risk. However, classification based on race, no matter how actuarially sound, is a classification that is forbidden by the United States Constitution. The failure of insurance companies to cover Indians is also harmful to those involved in financial or accident transactions with them.

Skahan also said that insurance agents were reluctant to assist Indians in preparing forms for insurance under the assigned risk plan. This plan, called the Washington Automobile Assigned Risk Plan, might seem to the casual listener to be something that is connected with State government. It is, however, operated by the insurance industry and was designed supposedly to take care of those who could not obtain insurance on the open market. The plan's manager, Calvin E. Koch, admitted that the industry is trying to depopulate the pool. "We are trying to discourage agents from automatically turning to the plan. We believe that with a little effort, they can find a market."

As you Senators who have been following insurance matters closely in the past few years may remember, the market for the substandard driver has not been a pretty prospect. A U.S. Senate subcommittee has found that some 80 high-risk auto insurance companies have gone broke since 1960, often because of dishonest or incompetent management. They filled a vacuum created by legitimate industry; their slam-the-suitcase and pull-the-phone-off-the-wall style of business left hundreds of thousands of motorists without insurance and millions of dollars in unpaid claims. Much of the insurance industry seemed more concerned with skimming the cream off the market than trying to curb these get-rich-quick operators. Many in the substandard category thereby were forced to go without insurance or put themselves at the mercy of the high-risk companies.

The Washington assigned-risk pool had about 22,000 drivers in 1964. It had about 14,000 in 1966. Agents are discouraged from placing business in the pool by the low commissions. They get only 8 to 10 percent commissions for those assigned to the pool while 15 percent or better is the going rate on the market. Of course, the dollar size of the commission would be much greater if a driver were placed with a high-risk insurance company, where his premium may go up \$1,000 a year. Since many drivers in this category can't afford to pay this much at one time, or even a quarterly premium, this leads to premium financing. This is a process whereby the insurance buyer borrows money, often at a high rate of interest, so he can pay his premiums in advance. This permits the insurance companies to invest his premiums and make still more money.

It also allows finance companies, agents or brokers, and special premium-financing operations to pile their charges on top of premiums already boosted out of sight. Many times, it is the Negro, the Indian, and other economically depressed consumers who must bear this heavy load.

Besides low commissions, another reason why insurance agents perhaps were slow to produce the required application forms for the assigned-risk pool was that the forms were legal-size sheets chock full of exacting questions on both sides. They had to be notarized. The chore for agent and applicant in filling out such a form is underscored by these figures for the Washington assigned-risk pool:

In 1956-57, 7,123 of 18,699 new applicants were returned for corrections. In 1957-58, it was 7,398 of 20,742. It continued to run about one-third returns until 1962-63, when it dropped off to 4,579 out of 17,977. It has been going down since, but still, in 1964-65, there were 2,587 of 15,220 returned for corrections.

Perhaps the P-I is somewhat more sensitive to insurance matters than many other newspapers because we have concentrated on the industry for the past few years. Maybe that is why we find a little pamphlet entitled "Insurance and the Automobile; Paying the Price of America's Highway Mayhem: A Background Memo for the Press" so hard to accept in its entirety. The pamphlet is currently being circulated to the press by the Insurance Information Institute, which not long ago opened a Seattle office. The pamphlet states:

First, it should be made clear that any motorist who has a license to drive can obtain auto insurance today. If a motorist is found unacceptable to any company because of a poor driving record or other reasons, he may obtain insurance from the "assigned risk" plan. These plans operate in every state, and all auto insurers licensed to do business in a state are required to participate . . .

A motorist who cannot obtain as much coverage as he wants in the "assigned risk" plan can usually obtain the coverage, from a "high-risk" company specializing in this type of business. Many large, financially stable companies have set up special "high-risk" subsidiaries.

As we have pointed out earlier, the industry is trying to depopulate the assigned-risk pool in Washington State, and its forms and commissions discourage applications under the plan. So, contrary to the pamphlet's contention, many in Washington State cannot obtain insurance from this source. We also have noted the sorry treatment accorded the public by a segment of the high-risk insurance industry. The pamphlet sidesteps this prospect by noting that many large, financially stable companies have set up special high-risk subsidiaries.

Our newspaper has reports on the criteria some companies apparently use in determining the substandard risks to be transferred into such subsidiaries.

One man told us that his insurance agent informed him not long ago that he was a "high risk" and would henceforth be covered by a "bulldog" company just formed by his regular insurer. It turned out that the agent had been told by the company to comb his files for any policyholder who had turned in any claim during a certain period of time. Such claimants were to be placed in the new high-risk subsidiary. The man who came to the P-I said the only claim he had ever turned in to the company was for a windshield broken by a flying rock. Yet, he was classified as a "high risk" and his premium went up accordingly when he was transferred to the new subsidiary.

It was significant to me that Senator Magnuson, in his address to the Senate last December concerning Senate Joint Resolution 129, noted: "Consumers are concerned about rapidly escalating rates. \* \* \*" This is certainly true in the State of Washington. In June of 1966, when our newspaper began to take a closer look at the ratemaking procedure in Washington State, we were flabbergasted to find that the State insurance code contained this provision: "A filing and any supporting information shall be open to public inspection only after the filing becomes effective." The thinking of at least a portion of the insurance industry on this secrecy provision was set forth in the February 1966 issue of the authoritative trade journal "Best's Insurance News." Said Best's:

Recent original thinking has brought out means of turning down rates filings which produce in a number of states a demand that all increases be subject to public hearings. It is at the circus of a public hearing where further original reasons for rejection can be expected to turn up.

Public hearings have always seemed to us to be a basic part of our democratic processes. I shudder to think what the reaction of the Senators on this subcommittee would be if the hearing today were described as a circus.

At any rate, our State insurance commissioner agreed as a matter of policy to hold public hearings and notify the press whenever a major filing was under consideration by his office. A rate analyst in his office said that no one had objected, in at least the previous 5 years, to any requests for rate increases. June 9, 1966, the commissioner held a public hearing concerning requests for rate increases from the National Automobile Underwriters Association and the National Bureau of Casualty Underwriters, who represented some 52 insurance companies doing business in the auto line in Washington State. A spokesman for the NAUA said at the hearing that Seattle had a "severe auto-theft problem" and that was why NAUA companies needed a 4-percent increase in comprehensive rates for Metropolitan Seattle. Our newspaper subsequently checked with Seattle Police Chief Frank C. Ramon and reviewed the police department's annual reports for 1960 through 1965.

Chief Ramon said that Seattle had experienced a steady decline in auto thefts for the period "in spite of the most meticulous type of reporting we know how to contrive." The department's annual reports bore him out. Another law enforcement officer with specific knowledge about auto thefts said that generally stolen cars are not

damaged. "Not too many of the stolen cars that we see are badly damaged or damaged at all," he said. "They are sometimes dirty and out of gas and, if they have been missing a long time, are not cared for, but they are not usually damaged." He estimated that 7 out of 10 stolen cars escape damage.

The apparent discrepancy between what the insurance companies' spokesman and the Seattle police chief had to say about the stolen car problem in Seattle set our newspaper to delving further into the rate-making process and the thinking behind it. We subsequently published in July of 1966 a nine-part series of articles dealing with investment income and its relationship to the setting of insurance rates. The series in large part was based on our research into the "Proceedings of the National Association of Insurance Commissioners." It appeared that the insurance industry's practice of excluding investment income in figuring underwriting profits or losses was rooted in historical but highly controversial grounds. Nevertheless, our State insurance commissioner took the position that investment income could not lawfully be considered in ratemaking.

This controversy is still boiling around the Nation, and it was interesting to note in the February 23, 1968, issue of the Wall Street Journal that New Jersey's commissioner of banking and insurance had ruled that auto insurance companies must use part of their investment income to offset future rate increases. The newspaper pointed out that Kentucky and Maryland had adopted similar rulings more than a year ago.

I do not wish to imply by mentioning our stolen car or investment income research that we consider ourselves experts in any way in the vast and complex field of insurance ratemaking. I bring it up solely to underscore the fact that our newspaper, a publication of general interest and circulation, considered the problem of spiraling premiums so important as to assign a staff writer full time to report on these matters. We have found few segments of the general public, ourselves included, possessing the resources and expertise to question these continued applications for insurance rate increases. If our State insurance commissioner's office does have the resources and expertise, it apparently does not have the inclination. A number of persons, including Mr. Joe Davis, president of the Washington State Labor Council, AFL-CIO, seem to feel the commissioner's office has been dominated by the industry it is supposed to regulate.

It is gratifying to see that the Federal Government also is interested in examining existing governmental supervision of auto insurance, as evidenced in Senator Magnuson's letter of last July asking the Secretary of Transportation to undertake a preliminary analysis of our system of compensating for motor vehicle accident losses. In my opinion, the Federal Government is today the only source of the will, the powers, and the resources to undertake the kind of thoroughgoing study of the auto insurance industry demanded by the public. The Insurance Information Institute's "background memo for the press" cited earlier in this statement, makes this comment:

Basic solutions must be brought about primarily by lawmakers, government, and other agencies of society which have the power to effect such changes. For the most part, the insurance industry can play a cooperative and counseling—but not a decision-making—role.

In our own State, we found the insurance industry not only uncooperative but downright combative where reforms were concerned. One large insurance company went so far as to write letters to a number of our major advertisers, suggesting that our newspaper had a "credibility gap" and that it might be wise to stop advertising with us. I'm proud to say that despite such letters our editors and our publisher, Mr. Dan Starr, never once suggested that we pull our punches where criticism of the industry was concerned.

At the 1967 session of our State legislature, the insurance industry maintained more than 30 lobbyists, who opposed nearly every insurance reform measure under consideration. In addition, they tried, unsuccessfully, to deny the chairmanship of a legislative insurance investigating committee to Senator Herrmann, who had shepherded a hard-hitting package of reforms, endorsed by our newspaper, through to the Governor's desk.

But piecemeal reform State-by-State does not seem to us to be the answer to the grassroots demand for action. It is our view that the Federal Government eventually should be asked to step in and help the States control, as one critic described the insurance industry, "the last of the uncontrolled giants." It is our hope that this subcommittee will take positive action on Senate Joint Resolution 129 so that an in-depth study may be made of auto insurance. It appears to us that the questions raised concerning the industry go beyond the powers of the individual States to answer.

In conclusion, I would like to quote from an editorial that appeared in the February 16, 1966, issue of the Seattle Post-Intelligencer. The comment was made following Senator Magnuson's request that the Federal Trade Commission undertake pilot studies in certain areas of insurance:

This newspaper believes a measure of state insurance regulation will always be needed. But the inability of the states to regulate beyond their own borders is now too thoroughly documented to ignore. What is needed is a dovetailing of federal and state laws to control adequately the multi-billion-dollar industry.

Washington State may be thankful it has a U.S. Senator of Warren G. Magnuson's stature.

The CHAIRMAN. I thank you for your kind remarks.

On one part of your statement, the Senator from Michigan and I share the same feeling. This could be a cause of some of our problems in the cities today. You cite the *Miss Jones* case, and many like it, I know. When you looked into it, you found that car problems were sometimes greater in other districts, in the so-called richer districts. Yet Miss Jones, because of where she lived, had to pay a higher premium?

Mr. VERTREES. That is correct.

The CHAIRMAN. This is one kind of discrimination that probably occurs all over the United States. It adds to the dissatisfaction and resentment. I don't mean to suggest that it is the sole cause of our problems, but it certainly contributes to them.

Mr. VERTREES. That is correct.

The CHAIRMAN. You also mentioned evidence of reluctance on the part of insurance companies to cover Indians, just because they are Indians. We have lots of Indians in our State. I would guess the percentage of bad drivers is no greater among them than for any other group.

Mr. VERTREES. That is correct.

The CHAIRMAN. I suppose you could give this committee case after case, instead of just citing typical cases?

Mr. VERTREES. I tried to pick out the highlights Senator.

The CHAIRMAN. Did Senator Herrmann say they were looking at the automobile assigned risk plan? Is that the same as the pooling plan?

Mr. VERTREES. That is correct.

The CHAIRMAN. The same idea?

Mr. VERTREES. Yes.

The CHAIRMAN. They give it a fancier name?

Mr. VERTREES. That is right.

The CHAIRMAN. Senator Hart, do you have any questions?

Senator HART. No, Mr. Chairman. I am delighted to meet the author from the Post-Intelligencer of a report which I had inserted in the hearing record on riot insurance last summer. The report was hard hitting and, I am sure, factual.

Mr. VERTREES. Thank you, Senator.

Senator HART. As the Chairman suggested, you don't have to be a Ph. D. in psychology to figure out what makes people mad. Discriminatory treatment makes people mad. All of a sudden white people feel that they are being discriminated against in certain areas in the purchase of insurance, and so they are getting mad.

Mr. VERTREES. Very true.

Senator HART. Just as the other group found that they were on the short end for several hundred years.

The CHAIRMAN. Senator Herrmann stated that some of the companies were making changes since these practices started. Have you found that true?

Mr. VERTREES. The same broker who sent me this manual, said the State regulation concerning cancellation seemed to have loopholes because it was the nonrenewals where they were hit hardest. So the percentage figure on cancellation, I think the Rhode Island commissioner pointed this out yesterday, it may be low but the problem may be in nonrenewals. This pamphlet points out that agents should be very careful about people who have had insurance with other companies but are now coming to them for insurance because the manual says the other companies have ways of getting a person to request that his coverage be dropped. That way it probably doesn't show that he had been canceled, but in effect he was canceled; he was asked to drop.

The CHAIRMAN. What is the general cancellation trend with respect to age groups? Does the insurance premium get higher as you get older? Do they abruptly cancel at a certain age? What did you find out?

Mr. VERTREES. I think the elderly driver has a real problem. I too point out that over the years many had very clean records but when they reached retirement age, that was the end of the road.

The CHAIRMAN. When they reached a certain age?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Did you find there was an arbitrary cutoff at a certain age, or did they first select certain policyholders?

Mr. VERTREES. I couldn't say, Senator, at age 65 that was it, or any particular age. It just seemed that the elderly were affected.

The CHAIRMAN. Do you feel, as does Senator Herrmann, that although the States have primary responsibility for automobile insurance, it has become so complex that it is now actually a national problem?

Mr. VERTREES. That is my feeling, Senator.

The CHAIRMAN. We will look very carefully at this pamphlet. Are there any recommendations that you would make for State legislative action while this study is going on? Take our State, for example. You spoke of the insurance commissioner's office. Although I haven't the figures, I would think that the number of staff personnel you cite would be fairly typical. Is that correct?

Mr. VERTREES. I believe that our department actually is one of the better run departments, as I understand.

The CHAIRMAN. The numbers for other States might be even less.

What should we do in the interim? Have you any suggestions to give the committee?

Mr. VERTREES. The suggestions I would have would tend to be sort of a piecemeal approach. I think in our own State, for one thing, I was concerned about the retail credit reporting, because it seemed like these dollar detectives could come up with all sorts of gossip, and that would be the basis for maybe your rates or whether you were canceled or not. My feeling was that these reporting agencies should be liable in some way for the accuracy of their information. In our newspaper, if we say something that is not correct, we can be sued. But I think these are things that would probably be sort of piecemeal, finger-in-the-dike approaches.

The CHAIRMAN. We hope this study is going to be a good one, and in depth. We don't want to jump off any cliffs or take any crash action. In the interim, I am sure there will be some steps that can be taken immediately, by the States, or by the Federal Government in conjunction with the States.

As the Secretary pointed out, the completion of the study may take 2 years. I don't know whether the committee will give him that much time or not. We do, however, want the study to be thorough and well thought out.

I hope, Mr. Vertrees, that you will continue your efforts at home so that where there is some action the legislature might take on an obvious solution to a problem, it will do so. I know Senator Herrmann will continue to do everything he can.

Legislative bodies sometimes are slow to move. What you have done has stimulated a great deal of voluntary action on the part of the companies themselves and, as you suggest, some piecemeal legislation may be in order until we get the whole thing cleaned up.

If there are no further questions, we thank you very much for coming.

Mr. VERTREES. I appreciate the opportunity.

The CHAIRMAN. Congressman Cahill, we will be glad to hear from you. You are a member of the House Judiciary Committee; are you not?

Mr. CAHILL. That is right, Senator.

The CHAIRMAN. Please proceed.

STATEMENT OF HON. WILLIAM T. CAHILL, REPRESENTATIVE IN  
THE CONGRESS OF THE UNITED STATES, FROM THE FIRST DIS-  
TRICT OF THE STATE OF NEW JERSEY

Mr. CAHILL. Senator Magnuson, Senator Hart, Mr. O'Brien, I am glad to be here.

First, I want to express my appreciation for the opportunity to testify before this distinguished committee.

Senator, I don't have any formal statement.

The CHAIRMAN. All right.

Mr. CAHILL. I would like to discuss with you and Senator Hart some thoughts that I have concerning what I conceive to be one of the great problems of our society today. I would like to start off by saying that I oppose the Resolution 129. My present feelings are that since it is a joint resolution, I will oppose it when it comes to the House of Representatives.

By saying that, this is not in any way to evidence any disagreement with the statements that have been made by the chairman, Senator Magnuson, who has made a great contribution, in my judgment, to this overall cause, or to that of the Secretary who testified yesterday, because I recognize the problem here.

As a matter of fact, as early as April 12, 1967, I pointed out to the Members of the House of Representatives the tremendous and widespread public dissatisfaction with our Nation's system of automobile insurance.

In June of 1967, Representative Peter Rodino, of New Jersey, and myself, requested a comprehensive investigation of the automobile insurance industry by the House Judiciary Committee.

I am sure both Senators and staff recognize that as a result of this request Chairman Celler directed a preliminary study which was concluded on September 30.

The results of the preliminary study confirmed what had long been pretty obvious to any knowledgeable observer of the automobile liability insurance industry in the United States; that is, that, as has been testified to by the very knowledgeable representatives from the State of Washington, who preceded me, we have had soaring premium rates, we have had arbitrary coverage and policy cancellation practices, we have had insurers insolvencies, we have had congested court dockets, et cetera, et cetera, ad nauseum, and ad infinitum.

As a matter of fact, the abuses are so well known that in my judgment it serves no useful purpose for me, or indeed any other witnesses, to keep repeating them because I think they are known by all Representatives and Senators.

The House Judiciary Committee in summing up the results of this study concluded, and I quote:

By any objective standard in performance of the automobile insurance industry in the United States, it is unsatisfactory. The system is slow and expensive and the companies do a poor job.

Then the report concluded:

Materials in this report make it abundantly clear that further investigation of the automobile insurance system in the United States is in order. Further investigation is mandatory should Congress find it necessary to enact constructive legislation that would alter the present automobile insurance regulatory system.

Parenthetically may I say that in my judgment at least the insurance industry has shown marked improvement since the inception of this congressional interest. And I think it is to the credit of the industry that there is some effort being made at this time, at least in my judgment, to correct some of the abuses that either were not known by the industry or were known by some of the more representative companies, and now I think a real effort is being made to correct them.

So I think even to this date, Senator, you and Senator Hart have done a commendable job in evidencing this congressional interest.

Since I am opposed to this resolution, and since I concede the necessity for an overall investigation, I certainly must have some alternative, and I do.

I believe very strongly that either the committee headed by Senator Hart on the Senate side, or the committee headed by Chairman Celler on the House side, or some other appropriate committee of the Congress should make this investigation. It should not be assigned to the Department of Transportation.

I say that for several reasons. First of all, if it is made by a committee of the Congress, in my judgment the time of the investigation would be much shorter.

The present joint resolution, as I understand it, would authorize the Department of Transportation to conduct an investigation over an 18-month period. The investigative time in my judgment at least, by a congressional committee, would be much shorter.

The Judiciary staff, for example, indicated that a special subcommittee could conclude a comprehensive investigation within 1 year.

I think too that it must be understood that on the House side a staff has already done a great deal of preliminary work, and I am sure on the Senate side, Senator Hart's staff probably have done a great deal of preliminary work which in all probability must be duplicated.

I think, too, under the system as it was explained to me that is proposed in the Department of Transportation, the chain of command would not be quite as efficient. I think too that you would have a diffusion of administration.

I think you would require the procurement of new staff and equipment, and if the cooperation of other agencies and departments of the Government is found to be necessary, then I think you might have serious questions and the progress could be hindered by interagency clearance and procedures.

I think also we ought to consider the cost of it, particularly in these days when the Congress is cost conscious. As I understand it, the present resolution would authorize an appropriation of approximately \$2 million.

The Judiciary Committee report, on the other hand, indicated that a special subcommittee could conclude the investigation for approximately \$313,000.

More important than any of that, however, in my opinion at least, is the delay that will be occasioned in the formulating of remedial legislation. Assuming, and conceding, that the Department of Transportation would make a tremendous study, an indepth study, it would

take approximately 2 years to do it, and then what they would really do would be compiling statistics, compiling opinions, compiling reports, and compiling recommendations. Then they would have to submit what they felt, based upon the expertise of that Department, was suitable material for legislation.

At that time it seems to me that the appropriate committees of the Congress would then be called again to evaluate these results. Then they would be called upon to call back witnesses. For example, let's assume that the Keeton-O'Connell plan were recommended by the Department of Transportation. It would seem to me if for no other basis than that experienced by the State of Massachusetts, that both Houses of Congress, through their appropriate committees, would want to hear from both Mr. Keeton and Mr. O'Connell, both of whom I have had the opportunity of meeting and both of whom I have great respect for. As you may know, in that State the Massachusetts House of Representatives passed the Keeton-O'Connell plan after inadequate debate and consideration. The house action was hailed by the press as promising to solve all problems of traffic victim compensation. Passage by the senate was practically guaranteed. However, prior to senate action, public debate revealed many of the defects inherent in the Keeton-O'Connell plan and the legislation failed to gain the support of the senate.

In any event, the appropriate congressional committees would want to cross-examine both of the formulators of this plan. They would want to point out some of the problems inherent in these plans.

I would also recommend to you a carefully drawn and well thought-out, and provocative statement by Mr. Bradford Smith, of the Insurance Company of North America, which I have recently read. Again, this statement may be something that might be recommended to the Transportation Department's consideration. But I am sure Mr. Smith would be the first one to concede that that, too, should be subjected to interrogation, questioning, and evaluation by appropriate committees of the Congress before it would be recommended for legislation.

And so it seems to me, for that very reason, what we need, Senator Magnuson and Senator Hart, is a forum. We must discover, through the able Senators, Representatives, and their staffs, what the precise alternatives are. We need to have competent interrogation so that any weaknesses that may be inherent in a change in the automobile liability system can be brought out and discussed.

We need a forum where the press can know what is going on and the public can know what is going on.

It seems to me that after the Department of Transportation study is completed, regardless of how efficient it is and how excellent its performance, it will not represent the thinking of the men who are going to do the legislating. It will have to be reevaluated. It will need to be rediscussed, and it will have to be gone into in depth. You are thus requiring that an additional 2 years elapse prior to the advent of what, in my judgment, is very, very necessary legislation.

May I say, first of all, that I think this problem really started, Senator, back in 1944.

I would like to read to you what the Supreme Court of the United States said in reference to the problem. And I quote from the Supreme Court decision: "Our basic responsibility in interpreting the commerce

clause is to make certain that the power to govern intercourse among the States remains where the Constitution placed it. That power as held by this Court from the beginning, is vested in the Congress, available to be exercised for the public's welfare as Congress shall deem necessary. No commercial enterprise of any kind which conducts its activities across State lines has been held to be wholly beyond the regulatory power of commerce under the commerce clause. We cannot make an exception in the business of insurance."

You will recall, Senator, that as a result of that decision we had the implementation by the Congress of the McCarran-Ferguson Act. And I would only point out this, because I am sure both of you are more knowledgeable than I am in this particular field, I would point out that this act was enacted in 1944, in the middle of a war, when the international problems were vital in the minds of most Representatives and Senators.

It was a hurriedly drawn act, approved almost unanimously by the insurance industry who were understandably very anxious to avoid antitrust jurisdiction. It was enacted into law, in my judgment at least, without adequate hearings, and without adequate discussion.

It seems to me that first attention should be given by the Congress of the United States to some amendments to the McCarran-Ferguson Act. I think that is absolutely essential.

May I say this, Senator—

The CHAIRMAN. We may well have to consider some legislative action.

Mr. CAHILL. Let me say, also, that if we are going into an objective and comprehensive investigation that will take at least 2 years, I don't think the Department of Transportation is really the Department to handle it. I can conceive perhaps of some conflicts that might develop within the Department itself, recognizing, as I do, the jurisdiction that it has over automobiles, over highway safety, over safety matters in general. It well may be that there might be some conflict as to really what is involved in the causing of so many accidents that are taking place on our highways. It well may be that the investigation's results and recommendations would be directed to expanding or perpetuating that jurisdiction.

Lastly—and then I would be delighted to submit to any questions the Senators have—it seems to me that there are many things that recommend themselves for immediate action, right now. Right now. As the gentleman from Washington has so eloquently stated, one of them is premium rates. Something has to be done immediately in this respect.

Secondly, discriminatory underwriting practices must be promptly eliminated.

Third, policies. I am sure the Senator recognizes that in some States of this Union today some companies are issuing policies that apply only within the limits of that particular State. If the driver leaves that State and is involved in an accident, there is no coverage. It seems to me there must be minimal standards recognizing as we do today that the automobile is indeed an instrument of interstate commerce.

Next, on policies, it is ridiculous in my judgment to expect more responsible companies to compete with other companies that are permitted to operate within the borders of some States with inadequate

capitalization. These poorly managed and regulated companies are permitted to write policies that have no real meaning to the insured. Citizens of almost every State have experienced the tragic results of insurer insolvencies.

Pennsylvania alone, over the course of a couple of years, had experienced, I think, 20 to 30 insolvencies. I just can't believe that the State-oriented commissioner system can be considered to be doing the best job that should be done when we are experiencing all of these insolvencies. It seems to me that there must be some minimal standards, national standards of capitalization, and there must be some minimal standards of inspection, so that we can be sure at all times that as these companies write policies they will have enough money to pay any claims that might result.

I also believe that we have to recognize before we get into this investigation, that the effort which will be required is an enormous one. There are many things that go into a change in the existing system. It will be a tremendous and most challenging assignment for any committee. It seems to me that some of the more important things that are affecting the public so seriously should be taken care of first. I think that, and I have mentioned this before and I will submit in the statement some arguments in favor of some effort being made at an early date of finding some way of taking care of the small claims.

I think, Senator, really if we are able to take care of the small claims, \$2,500 or less, we are going to find that it will be very beneficial to the insurance industry. It may not be beneficial to the bar but it will be certainly something in the overall that the lawyers should not find too objectionable. Most importantly, it will be tremendously beneficial to the public.

In effect, what I am saying is that I agree wholeheartedly with both distinguished Senators in the work that they have already done. I think they have both been leaders. But I think that to assign this to the Department of Transportation is not going to solve the problem. I was interested to note, as one of the men from Washington said, that no industry wants an investigation. It is an amazing thing but the insurance industry in this country does want an investigation at this time. And they want it by the Department of Transportation.

I think it ought to be made by the Congress. I think it ought to be made by the Senate committee or it should be made by a House committee. I think that if you want to utilize the Department of Transportation, if you want to utilize the Labor Department, if you want to utilize the Justice Department in assisting and completing that investigation, good. But to merely assign it to the Department of Transportation, and then say we must wait until that is completed, nothing else should be done until then, I think it is a very bad mistake.

The CHAIRMAN. We don't expect to wait—at least that is my intention, and Senator Hart's, too—until the whole study is completed. I think time and time again during this hearing we have suggested that there may be some remedies that are obvious and that can be applied quickly. I know that you and your colleagues in the House also want to get this job done. We don't want to quibble unnecessarily about how it is to be done so long as it is done.

There are frequent differences of opinion between the two bodies. I imagine Senator Herrmann feels quite at home here listening to your

testimony. He had some trouble, too, in the Washington State Legislature on who should look into the insurance problem.

I understand that the Judiciary Committee accepted the recommendation made in the staff study, that the Federal Trade Commission should carry on with the major study.

Mr. CAHILL. No, sir; that is not correct. The staff concluded that the Federal Trade Commission should do it. It was then brought before the full committee not on a resolution to assign it to the Federal Trade Commission but solely on a motion to accept the staff report. And I pointed out at that time that this was not a resolution to assign it to the FTC, and several others did, too. The chairman insisted on a vote and the vote was only 16 to 14 to accept the staff study.

And then it was my understanding—and I have since talked to the chairman many times—a formal resolution was to be presented in which it would be spelled out what the responsibilities of the FTC were. A joint resolution is prerequisite, and this has never been presented to the Judiciary Committee.

We pointed out, if I may add, that it seems rather foolish, for us to expect the Senate to approve a resolution authorizing the expenditure of several million dollars for the FTC when one of your own committees, that of the distinguished Senator from Michigan, has announced its intention of conducting an investigation. On that basis I think the chairman recognized that it would not be approved by the Judiciary Committee. It now has remained in limbo.

I want to say one thing. I personally have no preference whether it is done on the House side or on the Senate side.

The CHAIRMAN. You do have a little, don't you?

[Laughter.]

Mr. CAHILL. Really I guess I should favor the Senate. I know they are more learned.

[Laughter.]

The CHAIRMAN. I am sure that neither of us wants the impression to be left that we will simply stand by when the need for legislative action is clear-cut and immediate. Do you agree?

Mr. CAHILL. Yes, sir.

The CHAIRMAN. And how we do that, we will have to work that out between ourselves.

Mr. CAHILL. Yes, sir. I am hopeful. I can't speak for the Senator. I am hopeful that this resolution will not defer the Senator from Michigan in the work that he has been doing, and the announced purpose.

The CHAIRMAN. We intend to take action ourselves when the need is obvious. But it is our judgment that because we face a tremendous task, we ought to have a study which could be run in parallel with some of our own activities in the Congress.

I understand that Congressman Moss will have hearings next week on his resolution, which is identical to the one which is the subject of this hearing.

I do hope we won't get into any jurisdictional disputes. I am sure you don't lend yourself to that—it won't get the job done.

Mr. CAHILL. May I ask: Is it my understanding that it is your feeling that along with the indepth study by the Transportation Department, that there would run at the same time some congressional hear-

ings on some facets of this for the purpose of bringing about early legislation and remedial legislation to correct some of the obvious inequities?

The CHAIRMAN. The Secretary stated that he will submit periodic reports both to this committee and to the proper committee in the House. We will examine them carefully. It is just possible that something could be done before this session ends. I don't know. But we could well have something to work on when we begin the next session.

Mr. CAHILL. I am heartened by that assurance.

The CHAIRMAN. I don't know if I will be here or if you will be here. If we are, we will both work on it.

I think the cost of the study is going to be about the same no matter where it is done. I really do. I have watched such matters on the Appropriations Committee a long time. I know that we have to have some legislative oversight on this. We, too, thought of the Federal Trade Commission at one time. But when we talked with the Federal Trade Commission, we inferred that they would rather work in conjunction with the Transportation Department on the study and I hope that will be effected.

Senator Hart, you were mentioned several times.

Senator HART. This is the day I shouldn't have come. [Laughter.]

I have to live with my chairman, and I share some of the points of view that you expressed, Congressman.

This, however, I would like to underscore: When my chairman discussed the introduction of this study resolution, he was aware of the intention on the part of the Antitrust and Monopoly Subcommittee to continue our hearings. He made it very clear to me that in the remarks he would make in introducing the resolution, he would express his conviction that this indepth study—not too academic, I hope—should go forward. But at the same time I think he also encouraged the Antitrust Committee to go forward. Even without that encouragement we intend to go forward.

Mr. CAHILL. I am very gratified with the Senator's remarks.

The CHAIRMAN. At this point, if the Senator will yield, I would like to put in the record what I said at that time. I will read a portion of it:

In calling for this Department of Transportation investigation, it is certainly not our intention to foreclose inquiry into such implications by the Antitrust and Monopoly Subcommittee. Chairman Hart has already indicated that his subcommittee plans to continue its examination of the impact of the McCarran-Ferguson Act on automobile insurance and such investigation is both timely and appropriate.

(The full statement follows:)

In conclusion, Mr. President, I would like to state that there are, of course, automobile insurance practices which may well have serious antitrust implications. In calling for this Department of Transportation investigation, it is certainly not our intention to foreclose inquiry into such implications by the Antitrust and Monopoly Subcommittee. Chairman Hart has already indicated that his subcommittee plans to continue its examination of the impact of the McCarran-Ferguson Act on automobile insurance and such investigation is both timely and appropriate. There is no question but that the work of the Antitrust Subcommittee in this field will be of great value to the Department of Transportation in evaluating the broad picture of automobile accident compensation and the insurance industry. For these reasons I am particularly pleased that Chairman Hart of the Antitrust Subcommittee has joined in cosponsoring this resolution.

Mr. CAHILL. Very good.

I would like to close my remarks if there are no further questions—  
Senator HART. Just a comment, Congressman.

We scratch each other's back around here so often that nobody pays attention. If the papers ever get around to printing the story, there will be two names that will be prominently mentioned in terms of the contribution they have made in protecting both the American consumer and the insurance industry. It will be Congressman Cahill and Congressman Rodino at the top of the list. I mean that.

I know everybody thinks you say this because you are supposed to say it. But it is true. I don't know where we will come out on our hearings. There is one "hooker," and there is no need of blinking at it, and I assume this risk.

Once this 2-year massive study is authorized and under way, you know exactly what we will be hit with if we come out with some piece of legislation or legislative recommendation, or if we even try to get a committee to sit down to discuss it. They will say—those who are reasonably content with the situation as it is—we can't do it, we shouldn't do anything, there is a great study underway. And those fellows are smart and you all know that. I know the ploy.

We will just have to try to beat it if we conclude that legislation is desirable.

Mr. CAHILL. Senator Hart, I had the opportunity of addressing a bar association in Connecticut. It was a bar association, so the lawyers were there. I said to the lawyers—and I happen to be one, and I am very proud of my profession—that they have a lot of work to do to straighten out some problems that exist, that the insurance industry had a lot of work to do to straighten out the problems, and I felt that a great many of these problems could be resolved without a lot of Congressional intervention if these people would recognize what is wrong and do something about it.

I am heartened to say that I really think they are doing something. I think that the lawyers today are making a real intensive study of alternates, and are really trying to find some way of stopping the court congestion, they are trying to find some way of getting the small claim arbitrated, in other words, to get it out of the court calendars. They are doing a good job in Philadelphia and other areas of the country.

I think the American Trial Lawyers Association are really making a real effort.

In a recent magazine Senator Magnuson had a very excellent statement, and it was accompanied by excellent statements by all facets of the entire complex problem, and it was really well done.

Senator HART. I saw it.

Mr. CAHILL. It put into sharp focus for everybody the enormity of this problem. I think Professor O'Connell, whom I saw here today, has done a good job—I commend him publicly and I am pleased to do it again—in bringing out some of the problems that exist. He has articulated his position very well.

It all adds up to the fact that I really believe for the first time that it is now recognized by everybody that there is indeed a great social problem and that something must be done about it. Hopefully it will be done by those vitally affected by it in the first instance.

If not, then we will have no alternative as the representatives of the people but to do something about it.

The CHAIRMAN. You know, Congressman, I have been around here a long time, and in this Committee. Senator Hart, too. We have found that not much is done until we introduce some legislation.

Mr. CAHILL. Absolutely. That is why I want to commend you, Senator.

The CHAIRMAN. We find also that we have to do as Senator Herrmann suggested, and be the hound after the rabbit all the time.

We have no desire to interfere with the private enterprise system of insurance. But sometimes you have to apply the right kind of pressures to keep it that way. Our objective is to keep insurance in the private enterprise system.

Mr. CAHILL. Right.

The CHAIRMAN. And it will only be kept that way if we work together and attack this problem in a sensible way.

Mr. CAHILL. Yes, sir.

It is interesting to me, at least, that I don't understand really how the insurance industry today can efficiently and effectively work under the existing system where they have to do business in 50 different States with 50 different commissioners, some of whom are knowledgeable and some of whom are not, some of whom have staffs and some of whom do not, some of whom are reasonable, intelligent and capable, and some of whom are not.

It seems to me that this poses a tremendous burden on a good company that really want to do a job, and I think a great many of them do. I share your deep concern that unless we find some way of helping them help themselves, that indeed the very thing that we all want, including the insurance industry, may be disappearing.

Thank you very much, Senator Magnuson, and thank you Senator Hart.

The CHAIRMAN. Thank you.

Senator HART. Thank you.

The CHAIRMAN. Thank you for coming over.

Senator Hart.

Senator HART. Mr. Chairman, yesterday—and Congressman Cahill reminded me of it when he spoke about the State insurance commissioners—in the statement which was presented on behalf of the president of the National Association of Insurance Commissioners, Commissioner Bentley, reference was made to staff reports on automobile insurance both by the House committee, to which Mr. Cahill just referred, and to the Antitrust Subcommittee of the Senate. And that statement said that “Both staff reports on automobile insurance contain seriously misleading statistics with regard to insurance companies’ insolvencies.” And went on to say: “Specifically, insurance company insolvency totals included by the Dodd Staff Report”—that is the Senate Subcommittee on Antitrust—“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.’”

I was puzzled yesterday and didn't want to rely on my memory, which was very foggy. Since then I have checked my memory. The impression I had yesterday confirmed we issued no report, and I assume that Mr. Bentley must have been referring to the hearing about it.

The CHAIRMAN. I guess so.

Senator HART. And some figures that were in that. There were four tables printed.

The CHAIRMAN. And I believe there were some other statements printed in the Congressional Record.

Senator HART. Figures that Commissioner Bentley was referring to, to the best of my knowledge, were used in a floor speech by the able Senator from Connecticut when he introduced a bill for the establishment of the Federal Motor Insurance Guaranty Corporation in January of last year. Those figures are based on projections of the original figures contained in our hearing record.

We have checked those projections. Actually, they seem a little conservative to me.

Additionally, Senator Dodd in that speech recognized that the \$600 million was the estimated amount being demanded, claimed, and took account of that in his remarks by discounting the \$600 million claim by approximately 80 percent. This is admittedly a difficult statistical problem. I suggest it ought not to be labeled an unfair method, discounting 80 percent.

The Commissioner further said:

Reliable data obtained from receivers or trustees by state insurance departments shows that figures used in the staff study are wholly unreliable.

I would ask that there be submitted for this record that data so that this committee can have an opportunity to evaluate it.

The CHAIRMAN. We will ask Mr. Ford to submit that data and we might also ask Mr. Bentley to come here at a later date, if he wants to, to testify.

Senator HART. I will be glad to have him.

(The four tables referred to by Senator Hart appear on pp. 84-89.)

(The following data were subsequently submitted for the record by Mr. Ford:)

FORD, AYER, HORAN & LESTER,  
ATTORNEYS AND COUNSELLORS AT LAW,  
Washington, D.C., March 21, 1968.

Re Senate Joint Resolution 129.

HON. WARREN G. MAGNUSON,  
Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.

MY DEAR SENATOR MAGNUSON: It is indeed unfortunate that Mr. James L. Bentley, President of the National Association of Insurance Commissioners, was unable to appear before your Committee. I appreciated the opportunity to appear before the Committee to summarize the highlights of Mr. Bentley's statement. Like many summaries, however, in a desire to be brief, certain points were not stated as they would have been if the entire statement had been read.

The purpose of this letter and the exhibits attached hereto which may be included as part of the record is to answer certain of the questions which have been raised since the presentation of Mr. Bentley's statement.<sup>1</sup>

<sup>1</sup> See p. 25.

You, as chairman, noted that it was not so much a problem in the number of policies which were cancelled, but the number of policies which were not renewed. In my brief statement I cited only the percentages with regard to the former—however, it should be noted that on pages 7 and 8 of Mr. Bentley's statement percentages for nonrenewals are set forth. For example, only 2.06% of the policies in Wisconsin which come up for renewal are not renewed, and similarly in Maryland only .7% of the policies are not renewed and in Virginia only 1.4% of the policies are not renewed. These are the present available figures. In response to your request we will be glad to bring them up to date and obtain figures for the total number of policies written in each state cited, in order to evaluate the percentage figure.

The National Association is aware that abuses in this area do exist and it has exerted its efforts to see that guidelines and legislation with regard to cancellation and nonrenewals are enacted and implemented. In this matter many states such as Texas have already responded with modifications and amendments of existing laws and guidelines to meet the current problems. A copy of the guidelines recently adopted in Texas has been attached to Mr. Bentley's statement. The point which we of the NAIC wish to make is that the number of cancellations and nonrenewals is not great when viewed in the total insurance picture; that is, total policies written and total amount of the risks taken.

As was pointed out by Senator Hermann of the State of Washington, legislation was recently enacted in that state and the industry has responded with even more sweeping policy changes. Generally overlooked is the fact that many years ago the states acted to provide basic liability and property damage insurance to licensed motorists cancelled or not renewed by their insurers. There is no need for motorists to turn to "high risk" specialty companies. They may obtain such insurance by simply applying to plans maintained by each of the 50 states, District of Columbia and territories. The insurance is then assumed, generally for three year periods, by one of the many authorized automobile insurers.

The question was asked which states have uninsured motorist statutes and which states have compulsory automobile insurance. Attached to Mr. Bentley's statement is a table showing the legislative enactments relating to uninsured motorists and compulsory insurance. Also attached to this statement is a table setting forth the cost for automobile coverage in the various states for the basic minimum amounts of personal injury and property loss protection. Enclosed herewith are two additional exhibits relating to uninsured motorist statutes.

The thrust of Mr. Bentley's statement, in addition to pointing out new areas for investigation and study (pp. 18-19), was to point out past errors contained in prior hearings and staff studies. This is especially true with regard to the problem of insolvencies.

In Mr. Bentley's statement at pages 5 and 6 he noted that the figures with regard to insolvencies was inflated some 500%. Certain questions have now been raised with regard to this statement. Accordingly, we believe that it would be helpful to set forth the context in which this statement was made.

At page 67 of the House Judiciary Antitrust Subcommittee Staff Report, it was stated "More than 300,000 persons were policyholders, or accident victims with claims. Claimants, many seriously injured, are seeking an estimated \$600 million out of collectible assets of \$25 million. While claims probably will be settled for a much lesser amount, the claimants recovery in fact is jeopardized by the bankruptcies." (Citing as authority footnote 90, Senator Dodd's 1967 statement introducing S. 688). It should be noted that Secretary Boyd at page 4 of his statement made reference to and relied upon these same figures.<sup>2</sup> The origin of this statement is supposed to be in the four exhibits and tables (Exh. 1-4) furnished by the staff during the Insurance Industry Hearings held by the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary held May 12 and 13, 1965. It is these hearings which we have mistakenly but inadvertently referred to as the "Dodd Staff Report." See Appendix I attached hereto.

At the hearings the four exhibits referred to above relating to the insolvency of some 58 companies were submitted. Exhibit 3, Table 3 listed some 24 companies

<sup>2</sup> These same figures have been cited in a number of speeches given by a member of the Senate Subcommittee Staff.

and claim information with regard to such companies in such a fashion which lent itself to comparison.

The receivers of those companies in the Spring of 1967 estimated the ultimate net loss to automobile bodily injury and property damage claimants as a result of the insolvency of these companies. This information was incorporated in the comparative survey and reflects that the estimates of the receivers, on a liberal basis, forecast a net loss to claimants of only \$16,162,232. See Appendix II attached hereto.

The claimant loss figure of \$600 million which has been used in the House Judiciary Antitrust Subcommittee Staff Report and by Secretary Boyd is obviously inflated because it apparently includes the claims asserted by all types of creditors. The figure of \$100 million was quoted passingly by Senator Dodd in his Floor Speech introducing S. 688 and it is this figure which Senator Hart considers an 80% discount. The \$106 million in filed losses in automobile personal injury and property damage cases (Exhibit 3, Table 3) is itself 500% greater than the actual figures from receivers.<sup>3</sup> At the time the House Judiciary Antitrust Subcommittee staff report was being prepared the Association furnished these insolvency figures but nonetheless the report used the \$600 million figure by footnoting Senator Dodd's statement of January 26, 1967.

On April 4, 1966 Mr. Willis A. McVey, Assistant Casualty Actuary, State Board of Insurance of Texas, prepared a memorandum in which the premium income of 51 of the 58 insolvent companies in the six-year period 1960-1965, as limited to automobile insurance, was consolidated. The other seven companies for which no premiums were reported either went into receivership in 1960 or 1961 and premium figures were not available, two of the companies wrote no automobile insurance and the outstanding business of one company was fully reinsured. The aggregate of premium income for the 51 companies described in the report for six years was \$178,847,475, an average premium income of less than \$30,000,000 annually.

This study reflects that out of the companies listed in Exhibit 3, Table 3 of the Dodd Report, automobile loss and premium information was available for 18 of those companies. Those 18 companies in the six-year period had premium income of \$72,942,375, and the receivers' estimates of the ultimate net loss to automobile injured and property damage claimants as a result of insolvencies would be \$15,534,744 or 21.3% of the premiums.

The \$72,942,375 sample of the \$178,847,475 premium income of the 51 companies is completely creditable and representative.

Thus, it is reasonable to estimate the ultimate net loss as a result of insolvencies bodily injury and property damage claimants as a result of the insolvencies of the companies listed in the Dodd Report at 21.3% of \$178,847,472 or a loss of \$38,094,511 over the six-year period, 1960-1965. The average annual loss from insolvencies was \$6,350,000 a year. See Exhibit III attached hereto.

Parenthetically, the \$6 million cost figure from automobile insurer insolvencies relates to current annual automobile premiums of \$10 billion. That produces an insolvency loss risk of 60 cents out of each \$1,000 of premiums. By comparison, the Federal Savings and Loan Insurance Corporation deposit protection costs at least 83 cents (more dependent upon asset and liability mix) per each \$1,000 of deposits but with protection confined to only those accounts of \$15,000 or less.

Without regard to the precise figures, the State Commissioners recognize that any insolvencies raise serious problems and the Commissioners have done much to alleviate the problem and intend to continue to exert their efforts to protect the public from insolvent companies.

This discussion with regard to insolvency figures further serves to highlight the point which we of the Association wish to make and that is, a study such as is here proposed is essential in order for *all* the available data to be assembled and assessed, lest inaccurate basic assumptions be made.

Sincerely yours,

PEYTON FORD,

*Counsel for National Association of Insurance Commissioners.*

<sup>3</sup> See footnote 90, Harkins Report, H.R. No. 815, 90th Cong., first session, October 24, 1967, at page 67.

## JURISDICTIONS WITH U.M. LAW

Delaware	North Dakota <sup>2</sup>
District of Columbia	Oklahoma
Kansas	Puerto Rico
Maryland <sup>1</sup>	Vermont
New Jersey <sup>2</sup>	Wyoming

## STATES WITHOUT INSOLVENCY PROVISION

Maine	Montana
New York	Nevada
Virginia	New Mexico
Alabama	Ohio
Alaska	Pennsylvania
Arizona	Rhode Island
Colorado	South Dakota
Hawaii	Utah
Indiana	

## APPENDIX I

## EXHIBIT I

TABLE 1.—LIQUIDATIONS BY STATE OF DOMICILE AND NUMBER OF PERSONS INSURED<sup>1</sup> FOR INSOLVENT INSURANCE COMPANIES WRITING HIGH-RISK AUTOMOBILE BUSINESS, 1960-65

State of domicile and name of company	Date of receivership	Number of States admitted	Operating on nonadmitted basis	Number of persons insured at time of receivership <sup>2</sup>
<b>Illinois:</b>				
Lake States Casualty	October 1965	1	(?)	30,000
Bell Casualty Insurance Co.	September 1965	1	(?)	4,400
Bell Mutual Insurance Co.	do	1	(?)	60,000
Banner Mutual Insurance Co.	June 1965	2	No	7,000
Bedford Mutual Insurance Co.	April 1965	1	No	1,600
Whitehall Mutual Insurance Co.	January 1965	1	No	7,400
Monroe Mutual Insurance Co.	November 1964	1	No	3,800
Multistate Interinsurance Exchange	September 1964	1	(?)	33,000
Oxford General Casualty Mutual Insurance Co.	April 1964	1	(?)	300
Cosmopolitan Insurance Co.	November 1963	10	Yes	130,000
Adams Mutual Insurance Co.	October 1963	1	No	2,800
American Bowlers Mutual Casualty Co.	do	1	No	56
General Union Mutual Insurance Co.	June 1962	1	(?)	1,800
Central Casualty Co.	March 1962	34	Yes	42,000
<b>Pennsylvania:</b>				
Lawn Mutual Insurance Co.	April 1965	1	(?)	4 142
Delaware Valley Mutual Casualty Co.	February 1965	1	(?)	3,000
Commonwealth Mutual Insurance Co.	February 1964	1	(?)	4 0
Empire Mutual Insurance Co.	January 1964	1	Yes	20,000
Graphic Arts Mutual Insurance Co.	December 1962	1	(?)	10,000
Springfield Mutual Insurance Co.	do	1	(?)	4 1,000
State Mercantile Mutual Insurance Co.	November 1961	1	(?)	4 44

See footnotes at end of table, p. 85.

<sup>1</sup> Unsatisfied Claim and Judgment Fund: Effective 6/1/59. Fund is financed primarily by assessment of insurance company (maximum is 2% of premium). The remainder needed is assessed against uninsured motorists. Applies to BI and PD claims with \$100 deductible. Include BI in hit-and-run and insolvency cases for residents (non-resident if his state has a reciprocal arrangement with Maryland.)

<sup>2</sup> Unsatisfied Claim and Judgment Fund: Effective 4/1/55. Fund is administered by a board, part of whose members are insurance company executives. It is funded by a maximum \$25 fee 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).

<sup>3</sup> Unsatisfied Judgment Fund: Effective 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.

## EXHIBIT I—Continued

TABLE 1.—LIQUIDATIONS BY STATE OF DOMICILE AND NUMBER OF PERSONS INSURED<sup>1</sup> FOR INSOLVENT INSURANCE COMPANIES WRITING HIGH-RISK AUTOMOBILE BUSINESS, 1950-65—Continued

State of domicile and name of company	Date of receivership	Number of States admitted	Operating on nonadmitted basis	Number of persons insured at time of receivership <sup>2</sup>
<b>Missouri:</b>				
Midwest Mutual Casualty Insurance Co.....	November 1965.....	( <sup>3</sup> )	( <sup>3</sup> ).....	60,000
Surety Insurance Exchange.....	June 1965.....	1	No.....	2,500
Allied Western Mutual Insurance Co.....	July 1964.....	2	Yes.....	24,000
American Midwest Mutual Insurance Co.....	November 1963.....	1	Yes.....	10,000
Guaranty Insurance Exchange.....	August 1962.....	4	Yes.....	100,000
Missouri Union Insurance Co.....	June 1960.....	1	No.....	1,000
<b>Indiana:</b>				
International Automobile Insurance Exchange.....	March 1964.....	18	No.....	20,000
Insurance Corporation of America.....	December 1962.....	1	Yes.....	41,700
Universal Automobile Insurance Co.....	October 1962.....	4	Yes.....	3,500
United Mutual Insurance Co.....	March 1962.....	1	No.....	2,300
United Public Insurance Co.....	June 1965 <sup>4</sup> .....	24	Yes.....	* 0
<b>Michigan:</b>				
Preferred Insurance Co.....	January 1964.....	35	No.....	* 0
Exchange Casualty and Surety Co.....	April 1962.....	12	Yes.....	38,000
Michigan Surety Co.....	February 1962.....	43	No.....	18,800
<b>Wisconsin:</b>				
Market Mens Mutual Insurance Co.....	May 1962.....	12	No.....	64,000
Superior Mutual Insurance Co.....	May 1961.....	6	Yes.....	36,000
<b>West Virginia:</b>				
Crown Insurance Co.....	May 1964.....	3	Yes.....	765,000
National Automobile Insurance Co.....	September 1960.....	1	Yes.....	15,000
<b>Texas:</b>				
Career Insurance Co.....	July 1964.....	2	No.....	* 27,200
Government Services Insurance Underwriters.....	September 1963.....	1	Yes.....	29,500
<b>Florida:</b>				
National Home Insurance Co.....	April 1962.....	3	No.....	( <sup>3</sup> )
Equity General Insurance Co.....	June 1961.....	49	No.....	( <sup>3</sup> )
<b>California:</b>				
Cosmopolitan Insurance Exchange.....	December 1964.....	1	No.....	1,000
All Coverage Insurance Exchange.....	November 1962.....	1	No.....	36,000
<b>Maryland:</b>				
Chesapeake Insurance Co.....	November 1965.....	12	No.....	20,000
National Motors Insurance Co.....	March 1964.....	2	No.....	55,000
<b>Maine:</b>				
Washington Insurance Co.....	December 1965.....	( <sup>3</sup> )	( <sup>3</sup> ).....	( <sup>3</sup> )
Washington Mutual Insurance Co.....	do.....	( <sup>3</sup> )	( <sup>3</sup> ).....	( <sup>3</sup> )
<b>Tennessee:</b>				
Monticello Insurance Co.....	July 1963.....	1	Yes.....	40
<b>South Dakota:</b>				
Security General Insurance Co.....	April 1964.....	6	No.....	40
<b>South Carolina:</b>				
First Citizens Fire and Casualty Co.....	August 1963.....	1	No.....	20,000
<b>Minnesota:</b>				
American Allied Insurance Co.....	August 1965.....	1	Yes.....	120,000
<b>Massachusetts:</b>				
Suffolk Insurance Co.....	November 1964.....	1	No.....	31,500
<b>Delaware:</b>				
National Automobile Insurance Co.....	September 1960.....	4	No.....	( <sup>3</sup> )
<b>Colorado:</b>				
Western Standard Indemnity Co.....	April 1961.....	1	No.....	40
<b>Arkansas:</b>				
United Automobile Insurance Co.....	April 1964.....	50	No.....	4,500
<b>Nebraska:</b>				
United Benefit Fire Insurance Co.....	November 1965.....	17	( <sup>3</sup> ).....	* 40,000

<sup>1</sup> The persons insured under an automobile liability policy includes the policyholder, the spouse and other residents of the household, permissive users, and persons or organizations legally responsible for use.

<sup>2</sup> These data are based on estimates of persons insured derived from the number of policyholders or policies in force furnished by the receiver. In table 1, number of persons insured was estimated by multiplying policies in force by 2.

<sup>3</sup> Data not available.

<sup>4</sup> All or a number of policies were canceled, allowed to expire, or assumed by another insurer prior to receivership.

<sup>5</sup> In rehabilitation since January 1961.

<sup>6</sup> From May 1963, date of conservatorship, to time of receivership, some 16,620 policies in force were canceled, allowed to expire, or assumed by another insurer.

<sup>7</sup> 50,000 of these persons insured were Missouri residents.

<sup>8</sup> Nearly all of these persons insured were Michigan residents.

<sup>9</sup> Estimated by company officials.

Source: Compiled from data furnished by State insurance departments, receivers, and attorneys for receivers. These data may be found in the files of the subcommittee.

EXHIBIT 2

TABLE 2.—ASSETS AND CLAIMS FILED, EVALUATED, APPROVED, AND PAID AS OF NOVEMBER 1985, FOR INSOLVENT INSURANCE COMPANIES WRITING HIGH-RISK AUTOMOBILE BUSINESS

State of domicile	Name of company	Filed		Evaluated by receiver		Approved by court		Paid		Value of assets for purpose of liquidation	Estimated percent of dollar amount claimed which will be paid based on—		
		Number	Amount	Number	Amount	Number	Amount	Number	Amount		Amount filed	Amount evaluated	
Illinois	Lake States Casualty	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)			
	Beil Casualty Insurance Co.	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	2,965,420			
	Bell Mutual Insurance Co.	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	3,182,118			
	Banner Mutual Insurance Co.	6,000	\$11,000,000	(1)	(1)	0	0	0	0	4,500,321	4.5		
	Bedford Mutual Insurance Co.	135	70,000	(1)	(1)	0	0	0	0	89,785	128		
	Whitehall Mutual Insurance Co.	250	180,000	(1)	(1)	0	0	0	0	657,321	32		
	Monroe Mutual Insurance Co.	1,463	3,736,386	(1)	(1)	(1)	(1)	(1)	(1)	(1)			
	Multi-State Inter-Insurance Exchange	2,086	17,541,044	(1)	(1)	0	0	0	0	7,498,212	2.7		
	Oxford General Casualty Mutual Insurance Co.	438	4,036,132	(1)	\$46,170	0	0	0	0	889,400	2.3		
	Cosmopolitan Insurance Co.	21,945	68,654,699	(1)	(1)	0	0	0	0	3,638,483	5		
	Adams Mutual Insurance Co.	651	4,771,861	(1)	102,161	250	\$102,161	0	0	10,142,000	3		
	General Bowlers Mutual Casualty Co.	8	33,439	(1)	(1)	0	0	0	0	11,10,780	3.2		
	American Union Mutual Insurance Co.	192	265,285	(1)	73,957	61	73,957	0	0	12,98,638	29		
Central Casualty Co.	13,340	32,552,952	(1)	932,390	2,822	531,186	0	0	11,222,028	4	140		
Pennsylvania	Lawn Mutual Insurance Co.	(1)	(1)	3,339	932,390	(1)	(1)	(1)	(1)	196,239			
	Delaware Valley Mutual Casualty Co.	1,158	2,859,184	(1)	1,140,000	0	0	0	0	40,238	1.6	3.5	
	Commonwealth Mutual Insurance Co.	1,668	3,742,246	(1)	1,500,000	0	0	0	0	1,107	.03		
	Empire Mutual Insurance Co.	1,090	6,299,076	(1)	2,520,000	0	0	0	0	4,070	.06		
	Graphic Arts Mutual Insurance Co.	50	61,852	(1)	30,000	0	0	0	0	7,665	1.2		
	Springfield Mutual Insurance Co.	60	29,219	(1)	60,28,000	0	0	0	0	2,085	6	7	
	State Mercantile Mutual Insurance Co.	(1)	(1)	22	9,500	22	9,500	0	0	(1)	719	0	0
	Surety Insurance Exchange	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	100,055		
	Midwest Mutual Casualty Insurance Co.	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	142,000		
	Allied Western Mutual Insurance Co.	4,250	(1)	(1)	2,000,000	0	0	0	0	0		7	
	American Midwest Mutual Insurance Co.	10,000	(1)	(1)	(1)	0	0	0	0	145,000			
	Guaranty Insurance Exchange	(15) 3,800	(1)	(1)	(1)	2,500	2,000,000	2,500	83,000	(10) 94,000	4	4	
	Missouri Union Insurance Co.	(1)	(1)	(1)	(1)	(1)	(1)	250	(1)	(1)			
Indiana	International Automobile Insurance Exchange	8,300	12,151,776	8,300	6,265,731	0	0	0	0	1,700,000	1.4	28	
	Insurance Corp. of America	1,254	5,000,000	(1)	2,000	2	2,000	0	0	157,892	3		
	Universal Automobile Insurance Co.	5,368	(1)	2,650	2,000,000	0	0	0	0	134,000		6	
	United Public Insurance Co.	1,631	(1)	1,631	282,548	0	0	0	0	26,000		9	
	United Mutual Insurance Co.	(1)	(1)	(1)	(10) 656,000	0	0	0	0	400,000	50	60	
Michigan	Preferred Mutual Insurance Co.	10,800	809,323	(1)	428,714	0	0	0	0	1,508,000	1.6		
	Exchange Casualty & Surety Co.	17,900	26,743,000	12,350	3,022,131	12,400	3,022,131	0	0	398,633	6		
	Michigan Surety Co.	8,500	25,914,000	4,649	3,857,619	5,068	3,857,619	0	0	1,876,402	6.6	41	
	Market Men's Mutual Insurance Co.	8,000	13,135,000	2,400	1,770,000	0	0	0	0	1,264,749		71	

West Virginia.....	Crown Insurance Co.....	5,000	(1)	5,000,000	(1)	1,876	(1)	227,334	0	0	0	0	352,000	7
Texas.....	National Automobile Insurance Co.....	1,906	(1)	991,331	(1)	650	(1)	2,760,000	0	0	0	0	290,000	3
	Career Insurance Co.....												300,000	11
	Government Services Insurance Underwriters.....													
Florida.....	National Home Insurance Co.....	3,539	(24)	3,539	(24)	3,539	(24)	712,337	559	442,337	539	442,337	(25)	80
	Equity General Insurance Co.....	2,500	(26)	7,202,410	(26)	2,500	(26)	630,000	0	0	0	0	157,624	2.3
	Cosmopolitan Insurance Exchange.....	7,456	(27)	8,545,887	(27)	7,456	(27)	1,116,605	0	0	0	0	800,000	9.9
California.....	All Coverage Insurance Co.....	(1)	(1)	(1)	(1)	(1)	(1)	300,000	0	0	0	0	325,000	108
	Chesapeake Insurance Co.....	(1)	(1)	(1)	(1)	(1)	(1)	1,200,000	1,700	938,977	0	0	940,000	78
Maryland.....	National Motors Insurance Co.....	(1)	(1)	(1)	(1)	(1)	(1)	338,178	0	(1)	(1)	(1)	(1)	100
Maine.....	Washington Insurance Co.....	(1)	(1)	(1)	(1)	(1)	(1)	338,178	0	(1)	(1)	(1)	(1)	(1)
	Monticello Insurance Co.....	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0	(1)	(1)	(1)	1,000,000	(1)
Tennessee.....	Security General Insurance Co.....	386	(1)	275,661	(1)	386	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
South Dakota.....	First Citizens Fire & Casualty Co.....	600	(1)	1,257,000	(1)	600	(1)	(1)	0	(1)	(1)	(1)	350,000	30
South Carolina.....	American Allied Insurance Co.....	6,032	(1)	443,577	(1)	6,032	(1)	(1)	0	(1)	(1)	(1)	350,000	78
Minnesota.....	Suffolk Insurance Co.....	13,000	(1)	9,000,000	(1)	13,000	(1)	(1)	0	(1)	(1)	(1)	500,000	5.6
Massachusetts.....	National Automobile Insurance Co.....	4,711	(1)	10,700,000	(1)	4,711	(1)	1,230,000	0	(1)	(1)	(1)	(1)	(28)
Delaware.....	Western Standard Indemnity Co.....	2,635	(1)	74,038	(1)	2,635	(1)	(1)	(1)	(1)	(1)	(1)	713,000	6.6
Colorado.....	United Automobile Insurance Co.....	435	(1)	1,848,893	(1)	435	(1)	316,652	411	316,652	0	0	104,000	6
Arkansas.....		2,500	(1)	(1)	(1)	2,500	(1)	(1)	(1)	(1)	(1)	(1)	(1)	33
Nebraska.....														(29)

<sup>1</sup> Data not available.

<sup>2</sup> Includes agents' balances, \$575,980, estimated reinsurance recoverable, \$65,000, cash on hand, \$14,439, and time certificates of deposit, \$310,000.

<sup>3</sup> Includes agents' balances, \$85,368, estimated reinsurance recoverable, \$71,748, and time certificates of deposit, \$25,000.

<sup>4</sup> Includes agents' balances, \$24,832, estimated reinsurance recoverable, \$106,505, cash on hand, \$18,984, and time certificates of deposit, \$350,000.

<sup>5</sup> Includes agents' balances, \$1,640, estimated reinsurance recoverable, \$63,700, and cash on hand, \$25,444.

<sup>6</sup> Includes agents' balances, \$9,257, estimated reinsurance recoverable, \$681, and cash on hand, \$48,382.

<sup>7</sup> Includes agents' balances, \$448,212, estimated reinsurance recoverable, \$40,000, and cash on hand, \$10,000.

<sup>8</sup> Includes agents' balances (or uncollected premiums) \$53,500, estimated reinsurance recoverable, \$35,000, and cash on hand, \$900.

<sup>9</sup> Includes agents' balances (or uncollected premiums) \$1,560,000, estimated reinsurance recoverable, \$600,000, cash on hand, \$227,000, and time certificate of deposit, \$1,251,483.

<sup>10</sup> Includes agents' balances (or uncollected premiums) \$113,000, and cash on hand, \$29,000.

<sup>11</sup> Includes agents' balances (or uncollected premiums) \$5,700, and cash on hand, \$5,080.

<sup>12</sup> Includes agents' balances, \$87,172, and cash on hand, \$11,465.

<sup>13</sup> 244 claims in the amount of \$28,050,000 were filed by United Cab Association (petition for bankruptcy pending) on behalf of individual members; no action has been taken on these claims as they have not been liquidated.

<sup>14</sup> Includes agents' balances, \$275,394, estimated reinsurance recoverable, \$385,908, cash on hand \$76,859, and time certificates of deposit, \$483,865.

<sup>15</sup> Receiver mailed 10,000 proof-of-claim forms.

<sup>16</sup> Includes \$11,000 for administrative costs.

<sup>17</sup> Claimants were paid 40 cents on the dollar when estate was closed in January, 1965.

<sup>18</sup> Receiver reduced all claims by some \$5,400,000 to bring them within policy limits.

<sup>19</sup> Includes general trade creditors' claims of \$44,176.

<sup>20</sup> Includes general trade creditors' claims of \$31,000.

<sup>21</sup> Includes 3,000 policyholders' unearned premium claims evaluated for \$270,000.

<sup>22</sup> Does not include \$5,000,000 reinsurance claim filed by receiver of Exchange Casualty & Surety Co., of Michigan.

<sup>23</sup> Receiver reports that there are many other claims pending.

<sup>24</sup> Receiver estimates claimants will receive 10 cents on the dollar.

<sup>25</sup> All claims have been paid and receivership is currently in the process of winding up its affairs, according to the Colorado Insurance Department.

Source: Compiled from data furnished by State insurance departments, receivers, and attorneys for receivers. These data may be found in the files of the subcommittee.

EXHIBIT 3

TABLE 3.—ANALYSIS OF CLAIMS, BY TYPE, SUBMITTED TO RECEIVERS OF INSOLVENT INSURERS WRITING HIGH-RISK AUTOMOBILE BUSINESS, 1960-65

State of domicile	Name of company	Amount of personal injury and property damage claims				Policyholders' claims <sup>2</sup>			
		Filed	Evaluated	Approved	Unpaid <sup>3</sup>	Filed	Evaluated	Approved	Unpaid <sup>3</sup>
Pennsylvania	Delaware Valley Mutual Casualty Co.	\$2,859,184	\$1,140,000	0	\$1,140,000				
	Commonwealth Mutual Insurance Co.	3,742,246	1,500,000	0	1,500,000				
	Empire Mutual Insurance Co.	6,299,076	2,520,000	0	2,520,000				
	Graphic Arts Mutual Insurance Co.	61,852	30,000	0	30,000				
	Springfield Mutual Insurance Co.	29,219	28,000	0	28,000				
	State Mercantile Mutual Insurance Co.	9,500	9,500	0	9,500				
	Allied Western Mutual Insurance Co.	2,000,000	2,000,000	\$83,000	2,000,000		\$200,000	0	\$200,000
	Guaranty Insurance Exchange	12,151,776	6,167,842	0	6,167,842				
	International Auto Insurance Exchange	671,140	625,000	0	625,000				
	United Public Insurance Co.	25,783,000	135,714	0	135,714				
Michigan	Preferred Insurance Co.	2,532,131	2,532,131	2,532,131	2,532,131	\$293,000	\$293,000	0	293,000
	Exchange Casualty & Surety Co.	7,25,914,000	3,816,919	3,816,919	3,816,919	8,764,000	8,764,000	0	490,000
Wisconsin	Michigan Surety Co. <sup>(4)</sup>				2,000,000	40,700	40,700	0	40,700
	Market Mews Mutual Insurance Co.	11,13,035,000	11,2,000,000	0	2,000,000	12,100,000	12,100,000	0	100,000
West Virginia	Superior Mutual Insurance Co.	13,1,770,000	1,770,000	0	1,770,000	14,170,000	14,170,000	0	170,000
	National Automobile Insurance Co. <sup>(5)</sup>	777,618	870,000	0	870,000	188,810	188,810	0	(4)
Texas	Career Insurance Co.	442,337	442,337	442,337	442,337	1,890,000	1,890,000	0	1,890,000
	Government Services Insurance Underwriters	17,082,410	520,000	0	520,000	14,270,000	14,270,000	0	270,000
Florida	National Home Insurance Co.	258,382	258,382	0	258,382	30,000	30,000	0	30,000
	All Coverage Insurance Co.	334,900	334,900	0	334,900	61,899	61,899	0	61,899
Maryland	National Motors Insurance Co.	288,200	288,200	0	288,200	155,377	155,377	0	155,377
	Security General Insurance Co.	1,657,476	241,988	241,988	241,988	140,239	140,239	0	32,154
South Dakota	First Citizens Fire & Casualty Co.								
South Carolina	United Automobile Insurance Co.								
Arkansas									

1 Insurers have been omitted where data showing type of claim is not available.  
 2 Namely claims for return premiums, property damage, and out-of-pocket expenses for which reimbursement is sought.  
 3 Evaluated or approved claims less paid claims to November 1965.  
 4 Not included under "Claims—Evaluated by Receiver" in exhibit 2, table II, herein.  
 5 Represents 7,000 claims.  
 6 3,800 return premium claims were filed, 3,020 were allowed, and 780 remain open.  
 7 9,900 claims were filed; 5,872 were allowed (3,151 disallowed), and 877 remain open.  
 8 8,000 return premium claims were filed, 6,500 were allowed (1,500 disallowed), and none are recognized as open by the receiver.  
 9 1,700 claims were filed and 4,868 were allowed.  
 10 8,000 return premium claims were filed, and 1,200 were allowed (600 disallowed).  
 11 Represents 4,500 claims.  
 12 Represents 2,500 return premium claims and 500 trade creditor claims.  
 13 Represents 1,950 claims.  
 14 Represents 450 return premium claims, and property damage claims.  
 15 As of July 1965, 1,876 loss return premium and miscellaneous claims filed in gross amount of \$637,517 were adjusted to \$227,334, and recommended to the court for approval.  
 16 Represents 650 claims.

17 Represents 539 claims.  
 18 Represents 3,000 claims.  
 19 Represents 800 claims.  
 20 Represents 1,700 return premium claims.  
 21 Represents 1,200 claims.  
 22 Represents 500 return premium claims.  
 23 Represents 270 claims.  
 24 Represents 1,469 return premium claims.  
 25 Represents 232 claims.  
 26 Represents 5,800 return premium claims, and other policyholder claims.  
 27 Does not include \$42,510 of approved administrative expenses (\$51,178 claimed) of \$130,372.  
 28 Includes return premium claims of \$9,867, and property damage and other policyholders' claims of \$28,657.  
 29 Represents 539 claims.  
 30 Represents 800 claims.  
 31 Represents 1,700 return premium claims.  
 32 Represents 1,200 claims.  
 33 Represents 500 return premium claims.  
 34 Represents 270 claims.  
 35 Represents 1,469 return premium claims.  
 36 Represents 232 claims.  
 37 Represents 5,800 return premium claims, and other policyholder claims.  
 38 Does not include \$42,510 of approved administrative expenses (\$51,178 claimed) of \$130,372.  
 39 Includes return premium claims of \$9,867, and property damage and other policyholders' claims of \$28,657.

Source: Compiled from data furnished by State insurance departments, receivers, and attorneys for receivers. These data may be found in the files of the subcommittee.

## EXHIBIT 4

TABLE 4.—SUMMARY ANALYSIS OF AGGREGATE EXPERIENCE OF INSOLVENT INSURERS WRITING HIGH-RISK AUTOMOBILE BUSINESS, 1960-65

[Number of insolvent insurers, 58; number of States of domicile, 21]

	Number of persons insured	Number of companies
Number of persons insured at time of receivership related to number of companies involved.....	1,200,842	53

## NUMBER OF CLAIMS RELATED TO NUMBER OF COMPANIES INVOLVED

	Number of claims	Number of companies
Filed.....	171,037	40
Evaluated.....	69,728	25
Approved.....	25,775	11
Paid.....	3,289	2

<sup>1</sup> Includes only those companies for which claims were submitted for court action as of Oct. 31, 1965.<sup>2</sup> Includes only those companies for which distribution was authorized as of Oct. 31, 1965.

## AMOUNT OF CLAIMS RELATED TO NUMBER OF COMPANIES INVOLVED

	Amount of claims	Number of companies
Filed.....	\$284,224,931	33
Evaluated.....	30,307,563	27
Approved.....	11,725,234	12
Paid.....	525,337	3

## AMOUNT OF PERSONAL INJURY AND PROPERTY DAMAGE CLAIMS RELATED TO NUMBER OF COMPANIES INVOLVED

	Amount of claims	Number of companies
Filed.....	\$100,706,197	15
Evaluated.....	20,258,763	17
Approved.....	9,951,852	7
Paid.....	525,337	3
Unpaid <sup>3</sup> .....	28,082,476	19

## AMOUNT OF POLICYHOLDERS' CLAIMS RELATED TO NUMBER OF COMPANIES INVOLVED

	Amount of claims	Number of companies
Filed.....	\$2,858,840	9
Evaluated.....	3,127,053	9
Approved.....	885,854	6
Paid.....	0	1
Unpaid <sup>3</sup> .....	3,657,753	11

<sup>1</sup> Includes only those companies for which claims were submitted for court action as of Oct. 31, 1965.<sup>2</sup> Includes only those companies for which distribution was authorized as of Oct. 31, 1965.<sup>3</sup> Evaluated or approved claims less paid claims to November 1965.

## APPROXIMATE PERCENTAGE OF CLAIMS PAID TO CLAIMS FILED, EVALUATED, AND APPROVED

	Percent of filed claims	Percent of evaluated claims	Percent of approved claims
Number of companies involved:			
34.....	5		
24.....		35	
3.....			26

## APPENDIX II

COMPARATIVE SURVEY, BODILY INJURY AND PROPERTY DAMAGE CLAIMS, EXHIBIT 3, TABLE 3, SENATE HEARING (DODD) REPORT, PT. 12, JANUARY 1966, VS. RECEIVER SURVEY, SPRING 1967<sup>1</sup>

State of domicile	Name of company	Claims from Senate report <sup>2</sup>	Estimated claimant loss, 1967 survey <sup>3</sup>
Pennsylvania	Delaware Valley Mutual Casualty Co	\$2,859,184	\$1,140,000
	Commonwealth Mutual Insurance Co	3,742,246	750,000
	Empire Mutual Insurance Co	6,299,076	500,000
	Graphic Arts Mutual Insurance Co	61,852	160,008
	Springfield Mutual Insurance Co	29,219	25,200
Missouri	State Mercantile Mutual Insurance Co	9,500	9,620
	Allied Western Mutual Insurance Co	( <sup>4</sup> )	( <sup>4</sup> )
Indiana	Guaranty Insurance Exchange	( <sup>4</sup> )	( <sup>4</sup> )
	International Auto Insurance Exchange	12,151,776	834,000
Michigan	United Public Insurance Co	671,140	733,500
	Preferred Insurance Co	25,793,000	2,200,000
	Exchange Casualty & Surety Co	25,914,000	3,220,000
Wisconsin	Michigan Surety Co	3,816,919	3,127,000
	Market Mens Mutual Insurance Co	13,035,000	1,073,000
	Superior Mutual Insurance Co	1,770,000	528,000
West Virginia	National Automobile Insurance Co	1,777,618	263,256
Texas	Career Insurance Co	870,000	156,609
	Government Services Insurance Underwriters	442,337	0
Florida	National Home Insurance Co	7,092,410	617,868
California	All Coverage Insurance Exchange	908,977	300,000
Maryland	National Motors Insurance Co	258,382	900,000
South Dakota	Security General Insurance Co	343,000	187,427
South Carolina		( <sup>5</sup> )	( <sup>5</sup> )
Arkansas		( <sup>5</sup> )	( <sup>5</sup> )
Total		106,836,636	16,725,488

<sup>1</sup> Survey forms distributed to receivers by State headquarters of National Association of Insurance Agents and collected by its national headquarters. Amounts assembled for this comparison by Texas Insurance Department.

<sup>2</sup> Amounts are "Filed Claims" or "Evaluated Claims" or "Approved Claims", in that order of availability, from Exhibit 3, Table 3 of Senate Hearing Report.

<sup>3</sup> Amounts are totals of claims, less (1) receivership payments to date and (2) conservative receiver estimates of future payments. Where receivers declined to estimate future payments, gross amount of claims has been included. These amounts are regarded as extremely conservative.

<sup>4</sup> Missouri receivers replied that a classification of claims as between automobile and others had not been maintained and could not be obtained at this time without some burden of expense.

<sup>5</sup> Survey forms not completed.

Notes: (a) The details relating to some of the individual companies have been supplied on a confidential basis and this confidence should be honored. Release of the company detail could adversely affect the receivership estates. (b) The totals in this report are not confidential nor privileged and such totals may be used.

Comment: The \$105,836,636 of claims is from a total of \$112,782,312 calculated from Exhibit 3, Table 3 of the Senate Report on the basis used in this comparison, a representative 95% of the Report total. The conservatively estimated \$16,725,488 of ultimate loss to claimants represents 16% of unpaid claims as contained in the Senate Report.

## APPENDIX III

## MEMORANDUM

APRIL 4, 1966.

To: Wm. Hunter McLean, Chairman, Texas State Board of Insurance.  
 From: Willis A. McVey, Assistant Casualty Actuary.  
 Subject: Subcommittee on Antitrust and Monopoly—High-Risk Automobile Insurance.

In accordance with your instructions, we mailed a questionnaire to the twenty State Insurance Departments listed in the "Dodd" Report in an effort to secure the automobile premium writings of the "High-Risk Automobile Companies" which failed in those states from 1960 through 1965. The information on the two Texas Companies was readily available in this Department. A total of 58 insolvent companies was involved.

Also, in accordance with your request, we directed another inquiry to an outside source, the National Bureau of Casualty Underwriters, in an effort to secure the automobile premium writings of these same companies for the purpose of: (1) serving as a double-check on the information secured from the other 20 states and (2) perhaps securing premiums on some of the 58 companies which might not be available in the State Insurance Departments since all these companies are now in receivership.

Overall, the response from the other state departments was extremely good. From the limited number of states which were unable to provide us with the information requested, we were able, in most instances, to fill in with the information which we secured from the National Bureau of Casualty Underwriters.

The data we received from the other states was on a direct *written* basis, whereas, the premiums we secured from the National Bureau of Casualty Underwriters was on a direct *earned* basis. However, our analysis reveals that this was of no real consequence in collating the statistical data.

The statistical data approximates 100% of the writings.

The consolidated recapitulation of this data was prepared as follows:

*Exhibit I* contains the premium data, separately, for Automobile Bodily Injury, Automobile Property Damage and Automobile Physical Damage, covering the years 1960-1965 including the data as *actually reported* by the other states and the National Bureau of Casualty Underwriters. In most instances, no premium was reported for the year a particular company became insolvent, since no Annual Statement was filed.

EXHIBIT I<sup>1</sup>

Year	Bodily injury	Property damage	Physical damage	Total automobile
1960.....	\$23,099,615	\$12,850,430	\$12,429,336	\$48,379,381
1961.....	25,922,996	13,473,140	11,158,049	50,554,185
1962.....	23,109,004	11,992,911	9,461,325	44,563,240
1963.....	9,886,162	6,555,028	4,133,719	20,574,909
1964.....	5,691,593	2,711,582	2,129,837	10,533,012
1965.....	2,456,862	875,354	910,532	4,242,748
Total.....	90,166,232	48,458,445	40,222,798	178,847,475

<sup>1</sup> Contains the statistical data as actually reported by the various State insurance departments and the NBCU.

Set out below is a comparison of the total B.I., P.D. and Physical Damage automobile premiums written for the 51 insolvent companies listed above compared with the total automobile premiums written for *all* companies on a country-wide basis (Fifty States and the Dist. of Columbia), for the years 1960 through 1965:

## EXHIBIT II

(1) Year	(2) Total premium, 51 insolvent companies	(3) Total premium countrywide	(4) Ratio col. (2) ÷ col. (3) (percent)
1960.....	48,379,381	6,168,780,702	0.78
1961.....	50,554,185	6,342,142,178	.80
1962.....	44,563,240	6,967,464,065	.64
1963.....	20,574,909	7,020,076,217	.29
1964.....	10,533,012	7,582,032,235	.14
1965.....	4,242,748	<sup>1</sup> 8,000,000,000	.05
Total.....	178,847,475	42,080,495,399	.43

<sup>1</sup> Estimate based on previous year's experience.

## CONCLUSION

The total Automobile premium written by the insolvent companies for 1964 and 1965 is only 1 to 1,055—or for each \$1.00 of premium written by the insolvent companies, \$1,055.00 in premium was written by all companies.

The ratio of Automobile premium written by the insolvent companies compared with the total Automobile premium written by all companies, on a countrywide basis, (\$42,080,495,397 ÷ \$178,847,475) is 1 to 235—which means for each \$1.00 of premium written by the insolvent companies, \$235.00 in premium was written by all companies.

The total Automobile premium written by the insolvent companies compared with the total Automobile premium written by all companies on a countrywide basis (\$178,847,475 ÷ \$42,080,495,397) represents only 43 hundredths of 1% of the Nationwide Automobile premium written for the years 1960-1965.

Of the seven companies for which no experience was reported, two of those companies wrote no Automobile insurance; three of them went into receivership in 1960 and one of them went into receivership in 1961; and the remaining company was reinsured. Therefore, the actual reporting of Automobile premium for the insolvent companies approximates 100%.

## APPENDIX 1A

List of insolvent companies whose experience is included in Exhibits I & II and the source from which such experience was obtained:

## STATE OF DOMICILE AND NAME OF COMPANY

ILLINOIS <sup>2</sup>	WISCONSIN <sup>1</sup>
1. Lake States Casualty	31. Market Mens Mutual Insurance Company
2. Bell Mutual Insurance Company	32. Superior Mutual Insurance Company
3. Banner Mutual Insurance Company	WEST VIRGINIA <sup>2</sup>
4. Bedford Mutual Insurance Company	33. Crown Insurance Company
5. Whitehall Mutual Insurancy Company	TEXAS <sup>2</sup>
6. Multistate Interinsurance Exchange	34. Career Insurance Company
7. Oxford General Casualty Mutual Ins. Co.	35. Government Services Insurance Underwriters
8. Cosmopolitan Insurance Company	FLORIDA <sup>2</sup>
9. Adams Mutual Insurance Company	36. National Home Insurance Company
10. General Union Mutual Insurance Company	37. Equity General Insurance Company
11. General Casualty Company	CALIFORNIA <sup>1</sup>
PENNSYLVANIA <sup>1</sup>	38. Cosmopolitan Insurance Exchange
12. Lawn Mutual Insurance Company	39. All Coverage Insurance Exchange
13. Delaware Valley Mutual Casualty Company	MARYLAND <sup>2</sup>
14. Commonwealth Mutual Insurance Co.	40. Chesapeake Insurance Company
15. Empire Mutual Insurance Company	41. National Motors Insurance Company
16. Graphic Arts Mutual Insurance Company	MAINE <sup>2</sup>
17. Springfield Mutual Insurance Company	42. Washington Insurance Company
MISSOURI <sup>2</sup>	43. Washington Mutual Insurance Company
18. Midwest Mutual Casualty Insurance Company	TENNESSEE <sup>1</sup>
19. Surety Insurance Exchange	44. Monticello Insurance Company
20. Allied Western Mutual Insurance Company	SOUTH DAKOTA <sup>2</sup>
21. American Midwest Mutual Insurance Company	45. Security General Insurance Company
22. Guaranty Insurance Exchange	SOUTH CAROLINA <sup>2</sup>
INDIANA <sup>2</sup>	46. First Citizens Fire and Casualty Corporation
23. International Automobile Insurance Exchange	MINNESOTA <sup>2</sup>
24. Insurance Corporation of America	47. American Allied Insurance Company
25. Universal Automobile Insurance Company	
26. United Mutual Insurance Company	
27. United Public Insurance Company	
MICHIGAN <sup>2</sup>	
28. Preferred Insurance Company	
29. Exchange Casualty and Surety Company	
30. Michigan Surety Company	

See footnotes at bottom of p. 93.

MASSACHUSETTS <sup>2</sup> 48. Suffolk Insurance Company  COLORADO <sup>1</sup> 49. Western Standard Indemnity Company	ARKANSAS <sup>2</sup> 50. United Automobile Insurance Company  NEBRASKA <sup>2</sup> 51. United Benefits Fire Insurance Company
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## APPENDIX 2A

List of insolvent companies whose experience was not available, either from the state of domicile, or from the National Bureau of Casualty Underwriters:

## STATE OF DOMICILE AND NAME OF COMPANY

ILLINOIS 1. Bell Casualty Insurance Company (no Automobile business written) 2. Monroe Mutual Insurance Company 3. American Bowlers Mutual Casualty Co. (Wrote Workmen's Compensation only)  PENNSYLVANIA 4. State Mercantile Mutual Insurance Co.	MISSOURI 5. Missouri Union Insurance Company  WEST VIRGINIA 6. National Automobile Insurance Co.  DELAWARE 7. National Automobile Insurance Co.
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## APPENDIX 3A

## MEMORANDUM

MARCH 18, 1968.

To: George M. Cowden, Chairman, Texas State Board of Insurance.

From: Willis A. McVey, Assistant Casualty Actuary.

Subject: Subcommittee on Antitrust and Monopoly—High-Risk Automobile Insurance.

On March 8, 1966, this Department mailed a questionnaire to the other 20 State Insurance Departments listed in the "Dodd" Report as having insolvent companies. In this questionnaire, we secured the total automobile premiums written in all states from 51 out of the 58 companies listed in the "Dodd" Report.

The total automobile premiums written by these 51 insolvent companies from 1960-1965 amounted to \$178,847,475 and was summarized in a memorandum written by me to Hon. Wm. Hunter McLean under date of April 4, 1966.

In the spring of 1967, a second questionnaire was sent to the various State Insurance Departments and receivers in order to secure loss information for those 24 insolvent companies listed in Exhibit 3, Table 3 of the "Dodd" Report. We received claimant loss information on 22 of these companies.

A question has been raised regarding the approximate \$6,000,000 annual claimant loss on the insolvent companies listed by the "Dodd" Report as referred to at the top of page J-11, in the Report of the National Association of Insurance Commissioners' President's Committee on Federal Motor Vehicle Insurance Guaranty Act, June 15, 1967.

We have just completed another verification of this \$6,000,000 annual claimant loss from an entirely different approach—and, in my judgment, it is proved up beyond question.

<sup>1</sup> Experience for the insolvent companies listed for these states was obtained from the National Bureau of Casualty Underwriters.

<sup>2</sup> Experience for the insolvent companies listed for these states was obtained directly from the records available in those State Departments or the Receiver.

From the two previously mentioned surveys, we received reliable automobile premium volume and claimant loss information for 17 out of the 24 companies listed in Exhibit 3, Table 3, "Dodd" Report. (See Exhibit Attached.) This exhibit shows these companies wrote \$72,942,375\* in automobile premiums from 1960-1965 and had claimant loss at the time of receivership, or at time of survey, in the amount of \$15,534,744\*—a loss ratio of 21.2972 per cent.

In our 1966 survey, we found that 51 of the insolvent companies wrote \$178,847,475 in automobile premium volume from 1960-1965. Assume these companies also had a loss ratio of 21.2972 per cent (the 17 companies mentioned are also included in the 51 company survey). That would produce \$38,089,504 in losses for the six years 1960-1965.

Therefore, \$38,089,504 divided by 6 = \$6,348,250—the claimant loss, annually, for the insolvent companies listed in the "Dodd" Report.

Total automobile premium volume, nationwide, is now running at approximately \$10,000,000,000.

TOTAL AUTO PREMIUM AND CLAIMANT LOSS FROM 17 COMPANIES OUT OF DODD REPORT (EXHIBIT 3, TABLE 3)

State of domicile	Name of company	Total auto premium (1960-65)	Claimant loss
Pennsylvania	Delaware Valley Mutual Casualty Co.	\$2,442,771	\$1,140,000
	Commonwealth Mutual Insurance Co.	2,636,865	750,000
	Empire Mutual Insurance Co.	1,700,969	500,000
Indiana	Graphic Arts Mutual Insurance Co.	2,157,094	160,008
	Springfield Mutual Insurance Co.	72,378	25,200
	International Auto Insurance Exchange	14,091,893	834,000
	United Public Insurance Co.	2,101,095	733,500
Michigan	Preferred Insurance Co.	17,870,696	2,200,000
	Exchange Casualty & Surety Co.	7,554,479	3,220,000
Wisconsin	Michigan Surety Co.	-38,134	3,127,000
	Market Mens Mutual Insurance Co.	8,712,351	1,073,000
	Superior Mutual Insurance Co.	2,587,450	528,000
Texas	Career Insurance Co.	139,980	156,609
	Government Services Insurance Underwriters.	2,703,294	0
California	All Coverage Insurance Exchange	4,176,613	0
Maryland	National Motors Insurance Co.	1,805,949	900,000
South Dakota	Security General Insurance Co.	2,226,632	187,427
Total		72,942,375	15,534,744

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. We will recess until 9 a.m. tomorrow morning.

(Thereupon, at 12:20 p.m., the subcommittee was adjourned, to reconvene at 9 a.m., Thursday, March 14, 1968.)

\*Omitted are the figures from one Pennsylvania company and one Florida company because premium information was not available.

## INVESTIGATION OF AUTO INSURANCE

THURSDAY, MARCH 14, 1968

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The subcommittee met, at 9 a.m., in room 5110, New Senate Office Building, pursuant to adjournment, Hon. Howard W. Cannon presiding.

Present: Senators Cannon, Moss, Cotton, and Scott.

Senator CANNON. The committee will come to order.

The first witness this morning is Mr. Craig Spangenberg, chairman, National Committee on Public Affairs, American Trial Lawyers Association. You may proceed.

### STATEMENT OF CRAIG SPANGENBERG, CHAIRMAN, NATIONAL COMMITTEE ON PUBLIC AFFAIRS, AMERICAN TRIAL LAWYERS ASSOCIATION, CLEVELAND, OHIO

Mr. SPANGENBERG. Good morning, Senator.

On behalf of the American Trial Lawyers Association, we have no doubt whatever that the automobile insurance has become a national headache. But we also believe that the headache can be relieved by fairly simple remedial aspirin, rather than by total decapitation.

I am sure you understand that the Keeton-O'Connell plan absolutely destroys the liability insurance system as we know it today and would substitute instead a form of compulsory health and accident insurance in which every person who drives would be required to carry his own sickness, disability, and accident insurance, but would have to forgo his traditional rights and remedies.

In speaking on that subject I realize that a great deal of complaint is made that trial lawyers as such have a financial stake in the present system and speak from a point of view which is an interested one because of their financial outlook.

There is no gainsaying that there is an interest. I would point out however that many trial lawyers have gone into the law as a service profession, motivated by an ideal of serving the public, and the responsible leadership of the trial lawyers is not, in this situation, motivated simply by considerations of what is or is not good for the lawyer as distinguished from what is or is not good for the public.

The American Trial Lawyers Association is composed largely of members who represent the injured individual.

We live our lives within the present system. I think we know very well what its strengths are and what its weaknesses are. We have

developed position papers that we think would cure most of the ills if not all the ills of the present system.

I am bound to say that when we come down to a really effective cure, we find that it will take legislation. There is nothing a trial lawyer can really do about the present system because he doesn't produce it. He is the result of it.

It must be quite obvious that if all insurance adjusters settled all claims promptly and fairly, there would be absolutely no need for a trial bar. We come into the case only after the insurance company has approached the victim and has negotiated a settlement which the victim then refuses.

In the event there is dispute between the insurance company and the injured person, the method that we use in America today to settle that dispute is the community forum of the jury. We believe in the jury system. It has evolved over centuries of human experience. It is a system that has withstood what we think is the ultimate testing force, and that is the test of time. It is a system based upon the basic proposition that individual freedom and individual rights are balanced by individual responsibility.

We believe that the constitutional guarantee of right to jury trial should not be lightly discarded. And we believe too that the framers of the Declaration of Independence spoke a fundamental truth when they wrote of the right of the pursuit of happiness, the right to enjoy the normal pleasures of life, to be unscarred, unmaimed, uncrippled, to bowl if you like to bowl, to hunt if you like to hunt, to fish if you like to fish. They are very valuable rights indeed. It is those kinds of rights that a jury deals with in the aspect of a claim called pain and suffering.

Pain and suffering may simply be the disability of a blinded eye or permanently painful knee or arm, which not only impairs a man's ability to find other work but also impairs the more important right to enjoy a life that he has outside of working hours.

If all a man is, is the right to work and wear some clothes and live under a roof and eat, he is no better than a slave.

What we call freedom is freedom to enjoy ourselves in a way that generally requires a sound body.

The concept of fault which is attacked by many critics of the system is as old as human experience. The basic belief that liability should follow fault, although ancient, we think is a valid one. In fact the opponents of the Keeton-O'Connell plan have recognized that in the writings.

I quote from their book on basic protection which in discussing the fault principle says this:

The public believes in that principle strongly enough that they would seriously object to any system that tried to do away with it completely. Many proposals that would have abolished altogether the role of fault in traffic cases just never got anywhere.

We think that observation, made against the old Columbia plan, which was the springboard for the Keeton-O'Connell plan, is still valid. If you talk to a man in the street he still believes in fault.

The belief that when a wrongdoer does a wrong that the victim ought to be made whole is fundamental to the present tort system, and we think it is fundamental in all human life.

Far and away the common accident that we see today is a rear-end collision at a stoplight or, in city traffic, a rear-end collision when a car is waiting to make a turn into a driveway or shopping center. Certainly the people in the standing car in that situation are completely innocent.

We seldom try these cases because of any dispute over fault. What we are trying are medical issues, how much damage was done by this, how much is due to an old arthritis, or due to some prior injury. Did the people really need to stay off work as long as they did? And those tough questions will remain under any compensation plan when certainly you will want to see how much is owed to the people under the compensation plan.

The other common injury in city traffic at least is the side-street collision, the person who runs a light, runs the stop sign. The working trial lawyer doesn't think that fault is much of a problem, nor does any policeman or claims adjuster.

There have been articles written in Trial magazine by people who deal with claims who make the same point, that fault is the easiest thing to decide in most automobile accidents because the record of the accident is always there in skid marks, damaged metal, pieces of glass that tell where it happened and generally what happened without the need of eyewitnesses.

The only statistical studies on these I think come out of the University of Chicago which demonstrates that the jury handles fault very well indeed. Professor Calvin, who was in charge of those studies concluded that a jury handled it as well as or better than any single trained judge because the jury doesn't have the individual sets and biases and interests of a single judge. It is just the number of the jury and the commonsense of the jury which would lead to good results.

The problem here is that it is so hard to get the case to the jury. But again this is not a universal problem. There is no delay in Miami, there is no delay in Los Angeles now, though there was some years ago. There is no delay in St. Louis. There is enormous delay in New York, bad delay in Chicago. These are all urban areas.

I think a fruitful area of study for any committee is to find out what are the reasons why some areas that seem the same have no delay, and other areas have heavy delay.

I don't want to prejudice the study but I think you will find the difference is that areas with very little delay have about one county judge of general jurisdiction for every 50,000 to 55,000 of the population in the county. And in the areas that have enormous and shattering delay have one judge for up to 120,000 or even up to 200,000 people in the county. Brooklyn is often cited as a bad delay area. They haven't had a single new judgeship added in 45 years. One judge is trying to take care of the needs of almost 200,000 people, with the result that their criminal docket is 2 years behind and today in Brooklyn you can't get a civil case tried at all because every judge has been assigned to the criminal docket.

This is happening in my county of Cleveland. We have had six new judges added in recent years and we sent seven over to criminal court, so we lost one from the civil side.

Although we have added judges we haven't helped the civil side at all. The reason this is important is that I think the tort system is remarkably efficient in its use of judicial manpower.

The recent Columbia studies in New York studied every accident in New York in 1 year and pointed out that by the time every accident was disposed of, 30 percent had been settled directly by the people or no claim had been made, 70 percent had hired a lawyer, which is a high percentage, but New York is a litigious place. Of the 70 percent, only 35 percent filed suit, 3.2 percent went to trial, 1.5 percent went to verdict. This means that 98½ cases out of every 100 were settled within the workings of the claims adjuster-lawyer-adversary system.

It means this, that if a judge tries one case he causes the disposition of 65. Because the one case tried is the standard setter. It is a value setter. It lets you know how juries are handling problems, what they think of value, what they think of fault. So that it doesn't take a great deal of judicial manpower to set those standards upon which the whole of the system will work.

If you can eliminate delay, a problem chiefly of judicial manpower, and other problems that need to be studied, then I think the system will work very well on time.

There is another thing that could be done about that, and that is the elimination of the small claim.

In my formal presentation I have pointed out one area that in some places at least contributes very largely to delay. There has been a concerted effort by the bar in Pennsylvania to get rid of small cases by voluntary arbitration in which lawyer give of their time to sit as arbitrators and both parties agree to submit it to one man. This is useful and efficient and is to be encouraged, to be sure.

The point I want to make is that they find a great many of these cases that are clogging up the docket are rather trivial in amount and have to do with subrogation.

Under the present system if an insurance company has collision damage or comprehensive liability coverage on a car, and pays the driver for the repair of his car, the insurance company is then subrogated to his rights and can bring an action in its own right against the other driver, saying he was at fault. If the other driver is insured, and well over 90 percent of them are—I think the figure is 94 percent in the country today—the other driver's insurance company will defend.

Obviously this means that a single insurance company will be bringing actions to recover its collision losses, but at the same time it will be defending other claims brought by other carriers for their subrogation of losses. Clearly, on any longrun actuarial bases these things have to wash out. Over a course of 5 years, whatever a company gets back by a subrogation claim against another insurance company, it certainly must pay out on its liability side to the other insurance company.

This is an enormous economic waste. There is really no reason why the subrogation system should be retained. You don't subrogate a life insurance company and say that it may sue the next driver if he kills the insured victim at an early age so that it imposes loss on another life insurance company.

Insurance on property damage could certainly be written as straight insurance without the subrogation right at no real cost to the companies. Indeed, to eliminate the handling of these crossover claims which have to wash out I think would result in some saving.

I suggested that remedies were needed. This immediately raises the question, what kind of remedies, State or National, on which many have spoken. I don't think it is a State problem. I think there has to be a national solution. May I say here generally our clients don't complain about the cost of insurance. It is rarely we hear that kind of complaint. When we get the calls they are from people who have not been renewed, have been canceled, or can't get coverage and want to know what we can do, and we have to tell them, "Nothing." The insurance company has an absolute right to cancel you if they choose. Your only remedy is to go to the assigned risk plan.

If you go to the assigned-risk plan you will be limited in the amount of coverage you can buy, which we think is wrong. You will not be able to buy medical pay in many States, which we think is wrong. You will not be able to buy uninsured-motorist coverage if you are in an assigned-risk case, which we think is wrong.

We see no reason why the assigned-risk buyer has to be limited in the kind of insurance he can buy, provided he is willing to pay the premium for it, and many of them are. But there is no way to control that on a State or local level.

We see the results of modern sophisticated claims analysis, that is, the statistics would show that a man who gets a divorce, in the year after his divorce is likely to be emotionally disturbed and staying out later at night than he used to, and his habits are irregular for a year or 18 months and his accident rate is a little higher than that of a man who is not divorced.

This may be true. But seriously does it justify setting up a whole new rating system for this man for 1 year, or does it justify canceling his policy or refusing to renew it? The fact that on a statistical basis you can justify 90 different rates doesn't mean that it is really fair and reasonable to the consuming public to have 90 different rates.

Some years back the insurance companies wrote pretty much flat rate. There were very few different classifications. The youthful driver to be sure has a higher accident rate, but in the broad range of the ordinary adult driver there were no rating distinctions between the different kinds of occupations, the different races, the different economic statuses that we see today. And the companies did very well, better than they are doing today. They competed as equitably as they do today.

What has happened today is that a few companies have gotten computer happy. They have developed the most elaborate rating structures, and then on the competitive basis everyone else is following. The followers have to follow. And the only solution we see to that problem is to have some minimum national rating standards in which you say these are the bases on which you may rate, these are the bases on which you may not.

If everyone is bound by those standards then we are back to a system in which they can all compete fairly and there will be no competitive advantage given to one or the other on rating.

I think the same can be said about nonrenewals and cancellations.

What is needed here is a fair minimum standard, but not a maximum standard. If an individual State wants to do more for its citizens than other States, we think they should be allowed to do it.

We are concerned about the States that under the present system do absolutely nothing for their citizens. There are many States in which the insurance commissioner has no right to review any rate. He merely puts it on the bulletin board. He receives a filed rate but he cannot question it nor can anyone else. Nor can the insurance commissioner in many States question at all the fairness or reasonableness of the cancellation or nonrenewal of a policy.

If your car is parked in your apartment house garage and someone sideswipes it and your company cancels, saying you are a bad risk because you have had an accident, there is no way the insurance commissioner in any State can say this is unreasonable and the policy must be reinstated.

The industry is largely unregulated today. We think it has not performed well in the public service. We think further that you can't really say that the few industry leaders who are anxious to reform the system can compel those not so public spirited to engage in the same reform. Nor is it right to take away from the companies that are anxious to write 5-year noncancellable policies the right to compete fairly with companies that will not do that.

I would think that the responsible leaders, many of whom will talk to you here, would realize that all they want to do, all they are willing to do, is something that all the other companies should be compelled to do so that you do not put them at a competitive disadvantage with those offbeat and off-line companies that have caused many of the problems.

Senator CANNON. Mr. Spangenberg, I am going to have to ask you to wrap up in a couple of minutes because you have already gone about 10 minutes over your allotted time. Your complete prepared statement will be made a part of the record. We have many witnesses to hear.

Mr. SPANGENBERG. I will close quickly.

Senator CANNON. I think we understand what your position is. You have made it clear that your organization is ready and anxious to cooperate in the study and that there is a need for such a study. I would hope personally that you would not prejudge certain parts of the study at this time.

Mr. SPANGENBERG. I am trying not to. I was trying to outline areas where I thought a study was needed. I would say the same thing about the Keeton-O'Connell plan. I think study is needed here as to how many drivers are uninsured, how many do not have at the present time some form of private insurance, that is, what is the area of gap that needs to be closed.

I think serious consideration should be given to the claimed cost statistics on the Keeton-O'Connell plan and I am sure that if a study is conducted it will do so.

In the 1 or 2 minutes that you suggested I might have, I would like to make this observation about the approach suggested to a non-fault compensation plan. The authors of any of the plans that say they will compensate everyone realize that the cost of compensating everyone fully would be quite prohibitive and therefore suggest that you take away from the injured man a part of his rights.

For example, Keeton-O'Connell say they will pay wages up to \$10,000, but only 75 percent of wages. There is a preliminary 10 percent deduction, followed by a 15 percent deduction.

When they say we will pay wage loss it is a take-away plan that pays 75 percent of wages. It is a take-away plan that says if you are crippled and disabled, mutilated, maimed, you may have a jury trial, and if the jury says that this is worth \$5,000, you will get absolutely nothing. They will take away the first \$5,000 of any jury verdict. If you get a verdict of \$6,000 you will recover \$1,000.

We see no justification for any plan that takes away any right from the completely innocent victim. And here we would hope that any study would look at the plans in Saskatchewan, in Ontario, where there was a massive 3-year study, the results of which are available to you, in Sweden, Germany, France, England, all of which have gone through the kind of hearing you contemplate, all of which have come up with plans which handle it.

And the distinctive part of every plan is that it takes away nothing from the innocent victim. It leaves him his traditional remedy but buttresses it with some form of insurance at a fairly low level to take care of the real hardship case. That kind of solution has been studied by Conard and others in the Michigan studies.

We would hope that your investigation is broad scale not only on what has been done in this country, what statistics are available here, but what has been done throughout the world with this very difficult and thorny problem.

Senator CANNON. Thank you. Senator Cotton?

Senator COTTON. One quick question.

You have studied carefully the Keeton-O'Connell plan?

Mr. SPANGENBERG. Indeed I have.

Senator COTTON. And you have called attention to one distinct flaw that you have observed in it. Overall I gather you think that the Keeton-O'Connell plan is impractical and unsound.

Mr. SPANGENBERG. I rather believe the actuaries would say it will cost more, rather than less, than the present system. We all feel that it is wrong to take away anything from the innocent victim. We aren't concerned whether you pay the drunken driver.

Senator COTTON. I understand that.

Mr. SPANGENBERG. If you want to pay him, that is a social problem. We are concerned about the deductions that it takes away from the innocent driver.

So far as cost of salesman's commission, underwriting, claims handling, it does nothing. All the problems discussed here on cancellation and who you write and so forth remain. It does nothing about those basic problems. We think it is those basic problems that are causing most of the present public dissatisfaction. It is that area that I think the public is looking to Congress to solve.

Senator COTTON. Thank you. You have answered my question thoroughly. I have no more questions.

Senator CANNON. Senator Moss?

Senator MOSS. I have a quick question.

The two deficiencies to which you point are lack of judicial manpower and the subrogation, which you think is wasteful. Are there any other specific areas that you could put your finger on where the present system is not working?

Mr. SPANGENBERG. When I say lack of judicial manpower, that is State, not Federal. We now have enough Federal judges through Congress to take care of that.

There are difficulties in the early stages of claim negotiation. For example, I don't know of any company that will pay for the property damage claim, even in the clearest liability case, without the demand that you settle the personal injury claims too, even if you don't know how big they are and the people are still under treatment. This is a matter of individual company policy.

The real area for cost cutting, and I mentioned that in the prepared statement, is an area in which you have already started work in the Commerce Committee, the Highway Safety Act and particularly the Automobile Design Standards Safety Act. This is the real hope.

I will tell you from the trial lawyer's standpoint the major case we see is the low speed urban rear end collision. And there is absolutely no reason why anybody should ever be injured in one of those.

As soon as your new design standards come out with adequate head-rests, adequate shoulder harness, and you compel people to wear them, you will totally eliminate the injury. You eliminate the injury, you eliminate the claim and the costs. Costs are going to come down as you force better standards of automobile design and better standards of highway design.

Senator MOSS. Thank you.

Senator CANNON. Thank you very much.

(Mr. Spangenberg's prepared statement follows:)

PREPARED STATEMENT OF CRAIG SPANGENBERG, OF CLEVELAND, OHIO; CHAIRMAN, NATIONAL COMMITTEE ON PUBLIC AFFAIRS OF THE AMERICAN TRIAL LAWYERS ASSOCIATION

Senate Joint Resolution 129 requests authorization for the Secretary of Transportation to conduct a comprehensive study of all relevant aspects of the existing motor vehicle accident compensation system. There can be no doubt that an impartial, broad-scale study of all the elements of the problem is needed, and needed now. Automobile insurance has become a national headache. It is quite possible the headache can be cured by using some remedial aspirin rather than by decapitation.

A thoughtful diagnosis of the root causes of the present public complaints about a system which is not working well should lead Congress to the proper remedy. The American Trial Lawyers Association—an organization of approximately 25,000 trial lawyers—is ready and anxious to cooperate in the proposed study program. We live our lives within the present system, representing the injured victims of accidents who are vitally affected by its workings, and know better than most its strength and its weaknesses. We believe the good can be saved, and should be saved, and the bad can be eliminated. It would be a disaster to destroy the entire present system and substitute some untested, unpredictable partial-compensation scheme in its place.

In America today, we use the community forum of a democratic society—the jury—to determine questions of right, and wrong, and value. Our procedure has evolved over centuries of human experience, and has withstood the ultimate testing of the forces of time. Our system is based on the proposition that individual freedom and individual rights are balanced by individual responsibility. The right to enjoy the normal pleasures of life, the right to the pursuit of happiness, has a value to be cherished as much as the right to earn wages for useful work. A man who recklessly inflicts pain, disfigurement and disability upon his neighbor ought to answer for his wrong, and the innocent victim ought to be made whole.

The concept of fault is as old as human experience. The belief that liability should follow fault is as ancient, and still as valid, as the belief that summer follows spring. The ability of the civil jury to determine fault is just as great today as it was when the founding fathers wrote their constitutional guarantees.

The only major statistical study of the way in which juries actually function—the University of Chicago Jury Studies—proves beyond question that juries handle and resolve the issues of fault exceptionally well.

The jury system in practice is remarkably efficient. The often quoted statistics of the Columbia study in New York showed that of all persons injured in automobile accidents in one city in one year, 70 per cent retained a lawyer, 35 per cent filed suit, 3.2 per cent went to trial, and only 1.5 per cent went to verdict. A total of 98.5 per cent were disposed of by claims adjustment or by lawyer settlement, with settlement values determined by that very small percentage which went to verdict. It follows that when a judge and jury try one case, they produce the settlement of 65 claims by setting law standards and value standards.

What is undeniably bad about the present system is that it takes so long, in some places, to get that one case into the courtroom. Some great urban areas have no delay, but they have one judge of general jurisdiction for each 50,000 people in the county. Other urban centers, with only one judge for 120,000 to 200,000 people, have four and five year delays. The public interest would be well served by a realistic study of how much judicial manpower is needed to make the present system effective.

These are some of the questions to be answered :

Assuming an average judge of average competence, average health, average drive and ambition, what is a reasonable caseload for him?

How many thousands of citizens can be well served by a single judge?

What is a fair ratio—in the great metropolitan courts of our nation—between the number of judges assigned to criminal law, to family law, and to civil cases?

What would the state's cost per person be to provide an adequate supporting professional judicial administrative system—including cost of courtrooms, bailiffs, jurors, and the cost of clerical aid to eliminate nonjudicial business detail and paperwork?

What proportion of funds should the court budget be allowed in the over-all governmental budget, taking into consideration the necessity of justice in our democracy?

It would certainly reduce congestion and delay in all courts if there were some reasonable way to eliminate a great bulk of small claims which soak up time, expense and judicial man-hours to no one's benefit or profit. One great source of small-claims litigation is the subrogation case. When an insurance company insures a car for collision damage and pays the claim, it is subrogated to the rights of its insured driver and can bring action against the other driver whose negligence caused the collision. The other driver is usually insured, and his public liability carrier must defend the claim. These subrogation cases, in which one insurance company attempts to pass on the loss to another insurance company, take up much court time. If all such claims were abolished, it should not increase rates at all. Over the long run, whatever a company gains by recovering subrogated property damage losses from another carrier it will lose by paying out subrogation claims to some other carrier. Whatever it gains on the property damage ledger it will lose on the public liability ledger. The cost of litigating the claims is a total economic loss, even though it benefits the lawyers who handle these claims. There is no more reason for the property damage insurance to be subrogated than there is for the life insurance company to be subrogated when its insured is killed at an early age.

Another subject worth study is whether the workmen's compensation insurance carrier ought to be subrogated to the rights of the injured employee. When an employee, such as a cab driver, delivery truck driver, or salesman is injured in an automobile collision, he is entitled to workmen's compensation benefits. The state fund or insurance carrier then is subrogated to the employee's rights against the other driver and may recover back the compensation benefits paid. It would reduce automobile liability costs if this type of subrogation was abolished. The compensation fund would then stand the whole loss, as it does on all injuries in the shops or off the highways. The injured employee would be entitled to full recovery, if he were the innocent victim, but this would mean the recovery only of the *difference* between the limited schedules of workmen's compensation and the full value of his injuries.

The best method of reducing insurance cost is to reduce the number and the extent of claims by reducing injuries. Injury is preventable. Congress, and the Department of Transportation, have already taken a major step to reduce insurance costs by promulgating safe highway design standards, and motor vehicle design standards under the Motor Vehicle Safety Act of 1966. Trial lawyers know that the most common, most troublesome type of injury in urban

traffic is the extension-flexion spinal injury caused by the whiplash action of a rear-end collision. A seat belt does not prevent this type of injury, but secure head rests and adequate shoulder harnesses will. These safety devices will soon be mandatory, and in time will eliminate this injury. The reduction of the injury resulting from collisions will eliminate both litigation and claim cost—as well as eliminating needless human suffering.

The cost of insurance protection is a matter of concern to the 102,000,000 drivers in this country, most of whom are insured. The premium paid by the consumer reflects the cost of advertising and promotion, sales commission, clerical and administration expense, a profit for the business, and the cost of receiving, investigating, adjusting, defending, and paying claims.

When an insured driver is liable for the injury his negligence may cause, the amount of the claim will depend on the medical bills, the hospital bills, the wage loss, the automobile repair or replacement cost, and the fair value of the misery and disability of the victim. United States Department of Labor Statistics show that for the period of 1950-1966 the cost of hospital care increased by 191 per cent, the cost of automobile repair in parts, labor and replacement increased 119 per cent, the level of hourly wages and the cost of repaying lost wages rose 103 per cent, and the cost of medical care rose 89 per cent. Accordingly it is not surprising that liability insurance premiums rose by 91 per cent in the same period. It is unrealistic and unfair to compare premium increases with the Consumer Price Index or indexes of the general value of the dollar. The cost of such items as food, clothing, rent and home furnishings are not involved in claims.

Even though the over-all increase in premium cost seems reasonable when compared to hospital charges and wage levels, local rate differentials are baffling. Why should the same policy cost twice as much in Des Moines, Iowa as it does in Topeka, Kansas? Why should the same policy cost five times as much in Boston, Massachusetts as it does in Columbus, Ohio, and eight times as much as it does in Tallahassee, Florida? This is not to suggest a uniform national rate, but it would seem possible to develop minimum standards for rating methods that would make the differentials both comprehensible and reasonable.

If the experience of the members of the American Trial Lawyers Association is a fair sampling of public attitudes, the cost of insurance is not the area of primary concern. Relatively few of our clients complain about premium rates, except in places like Boston, Manhattan and San Francisco where rates are many times the national average. The great bulk of complaints concern underwriting, renewal, and cancellation practices. In this area the individual consumer is helpless, needs protection, and would be greatly benefited by enforceable minimum standards.

A study of underwriting practices should include consideration of the types and limits of coverage offered. Why should uninsured motorist coverage be limited to \$10,000, even though the buyer is willing to pay the premium for higher coverage? Why should uninsured motorist coverage not include the later insolvency of the other driver's carrier? Why should uninsured motorist coverage not be mandatory, or at least a mandatory offer, with every liability policy?

Why is medical pay insurance limited, and often denied to the liability policy purchaser—especially on "assigned risk" policies? Why should finance plans for long-term purchase of new and used cars be permitted to include comprehensive and collision coverage, while eliminating public liability coverage on the "insured" car?

The compensation schemes for paying out to all victims of automobile accident, regardless of fault, require hard analysis on the points of necessity, practicability, and justice. One argument advanced to justify compensation plans is that some 43 per cent of accident victims are said to recover nothing under the present system. The percentage figure is invalid. It relates only to litigated tort cases. There are insurance industry surveys which show that 82 per cent of the population are protected by hospital expense insurance, 75 per cent by medical and surgical expense insurance, and 70 per cent against lost earnings by health and accident insurance, union disability benefits, and employee mutual benefit plans. In addition, several states have disability benefit plans which protect all employed workers for sickness and accident disability for up to six months, at which point Social Security takes over. Reliable statistics are needed. Just how many drivers and passengers do have some form of protection? How big is the gap which ought to be closed? Should accident disability benefits be restricted to automobile accidents alone, which account for only a fifth of all bed-disabling accidental injuries? Would it be preferable to extend Workman's Compensation

Systems or Social Security Systems to pick up the slack for the employed or self-employed who do not now have disability or hospital benefits?

If it seems socially desirable to pay partial wage loss and partial rehabilitation expense to all accident victims, including the drunken driver, the wild speeder, and the inherently reckless who maim themselves as well as others, is it really fair to create the fund by stripping their rights away from the innocent victims? The Keeton-O'Connell plan, for example, is noteworthy for the size of its deductions; taking away from the deserving litigant the first \$5,000 of the actual jury verdict for permanent disability, suffering and misery. It is a plan designed to overcompensate the wrongdoer, and undercompensate the innocent, not because this is right but because it might be cheap.

Other countries, other governments, have studied the automobile problem and solved it quite differently. Ontario, for example, recently completed a massive three-year study (which is available for review) and evolved a plan for regulating automobile insurance and compensation. It is quite similar in approach to the Saskatchewan plan, and the plans in Sweden, West Germany, France and England. The significant feature of all these plans is that they do not diminish in any way the traditional rights of the innocent victim. The personal liability claim remains, in all these countries, supported by social insurance plans which pay disability benefits and medical and rehabilitation costs. The successful litigant generally repays the state fund. Another striking difference is in the insurance limits. Ontario and Germany provide much higher minimums than any state in the United States (\$35,000 in Ontario) and England prescribes open end insurance with *no upper limits*. What would it cost, in this country, to provide adequate protection? The one class of persons who really suffer extreme hardship, who are rarely compensated in any decent proportion to their injuries, are those who suffer extreme injury and permanent, painful and costly disability. They need help the most and get it least both under the present system and the Keeton-O'Connell type of compensation scheme. Although the so-called Basic Protection Plan does allow tort actions when the economic losses exceed \$10,000, the Plan does not provide any insurance protection to cover the defendant or pay the verdict.

A workable solution might be to have a social security type fund to pay a limited substitute wage schedule for disability and for medical and hospital care to those accident victims who have no other source of funds; to retain the traditional, constitutionally guaranteed right of action for the innocent victim; to provide for repayment of benefits by successful litigants, which is not only fair but will discourage needless small claims; and to provide from public funds (perhaps by gasoline tax) for excess insurance for the rare case of major disaster. Such a plan, coupled with suitable regulation of underwriting, renewal and cancellation practices; and reasonable accounting, reporting, and rating practices, should make the modified present system an effective instrument for social justice.

Senator CANNON. The next witness is Prof. Jeffrey O'Connell, College of Law, University of Illinois.

#### STATEMENT OF PROF. JEFFREY O'CONNELL, UNIVERSITY OF ILLINOIS LAW SCHOOL

Mr. O'CONNELL. Mr. Chairman, members of the committee. I agree with Mr. Spangenberg that the problems of automobile insurance and automobile claims are susceptible of a relatively simple solution. Not very surprisingly, he and I part company at that point.

I think the basic difficulties of automobile insurance stem from the very simple fact that the insured event, at least for the smaller and medium-sized claim, is much too complicated. You can be paid after a traffic accident only after making a claim against the other driver's insurance company, which owes no loyalty toward you, on the basis that you were free from fault and the other driver was at fault, when, contrary to Mr. Spangenberg's assertion, it is very hard oftentimes to tell just what happened in the agony of a split second of collision.

Also, you make a claim for a totally undetermined amount. Not only for your out-of-pocket loss, your wage loss and medical expense, which is relatively easy to determine, but for your so-called pain and suffering, which, of course, is very hard to translate into dollars.

The result is that all traffic claims today are dominated by attitudes of confusion, distrust, and hostility accompanying a negligence lawsuit. And the result in turn is tremendous waste. Fighting over these issues results in frequent lack of compensation, with many people being paid not at all, especially among the seriously injured, and many others, especially among the trivially injured, being largely overpaid.

The result too is a symptom that insurance is very hard to get. Contrary to some other witnesses I think that the present problems of a restricted market for automobile insurance are direct outgrowths of the cumbersome fault system which is choking the insurance mechanism and therefore making it very difficult for many to get insurance because the system is working so very badly.

When you stop and think of it, lawyers really have to admit that the present system is very cumbersome and very difficult. Lawyers charge a third or more of what is paid to a traffic victim for helping him to get paid. And they insist that they earn it.

I am willing to assume they do. But the only way they can earn it is by helping people to get money that must be very hard to get. Otherwise, how can they justify charging so much to help get it?

But the question that I ask is: Why should it be so hard, and why should it be so expensive, in so many cases to get paid after an automobile accident from automobile accident insurance?

Mr. Spangenberg stated the difficulty is not fault. We know who is at fault in these accidents, he says. That is not what the best statistical study ever done on automobile insurance showed—a study done by Professor Conard and others referred to by Mr. Spangenberg in another connection.

They did an exhaustive survey asking both plaintiff's lawyers and defense lawyers what were the principal obstacles to settlement. And they found with remarkable statistical unanimity between the two groups that there were two areas fought about most: Who is at fault, and what is the value of pain and suffering. Not the medical questions, as Mr. Spangenberg asserts.

Indeed, the experience under widespread accident and health insurance, and under medical payments coverage of the automobile insurance policy itself, all of which claims are settled with negligible dispute and negligible litigation compared to automobile accident insurance, indicate that the medical issues are not what we are fighting about.

The lawyers in Conard's study told the story themselves. They are fighting about fault, and they are fighting about the value of pain and suffering in the great mass of smaller and medium-sized claims. And that is why the basic protection proposal——

Senator CANNON. Of course the medical items are items that can be readily ascertained. They are just a dollars-and-cents matter.

Mr. O'CONNELL. Precisely. But what is the aching arm worth? It is worth a lot more to you than to me if I were arguing with you about what it is worth.

Conversely, you would be likely to take that attitude with me. Inevitably, that is what happens. What happens, indeed, is that pain and suffering is not paid for. The nuisance value of the claim for pain and suffering is paid for. Thus, the trivially injured, who hasn't really suffered, is paid four, five, 10 times his loss, and the seriously injured person, who really suffers, get a fraction of his out-of-pocket loss.

Under the basic protection plan, on the other hand, in great mass of cases where there is today overpayment of the small claim, your own insurance company will pay you only for your out-of-pocket loss—that is pay for your wage loss and medical expenses, without reference to who was at fault in the accident, up to \$10,000 of loss, which is the present limit applicable in most States under negligence liability insurance.

In return, we make a trade. Under the plan, in return for everybody being paid for his out-of-pocket loss promptly by his own insurance company, which owes a loyalty toward him, he will give up his claim, within roughly the same range of coverage, to sue for negligence. What we have really done is this: Today I am insuring you, and you are insuring me on the basis of fault, and that is a very cumbersome system. Instead why don't I insure myself, you insure yourself, and we will wipe out our cross claims against each other, which are benefiting mostly insurance companies and lawyers anyway, under the new plan money would come to us directly rather than going through a very expensive insurance overhead and going into lawyers' pockets.

I think, frankly, any solution of this system will have to turn on this kind of trade. If you will examine the proposals by the American Trial Lawyers, here and elsewhere, you will see every significant proposal they make entails adding on more cost: And, not as incidentally, adding to lawyers' income.

I suggest to you that a system already overburdened by much too much payout to lawyers does not call for that solution. That is not the solution we should be looking for.

Let me explain in one way how the basic protection plan would work in fact. The basic protection plan would not pay to the extent that other insurance pays, which is not what happens today. The present negligence system pays regardless of how much insurance you have with the result that many people really profit from an accident.

Most people don't want to profit from an accident. They want their out-of-pocket loss back. The basic protection plan would pay them that.

Note what a beneficial effect this will have on, for example, the aged or the serviceman today who find it is very hard to get insurance. All of a sudden those people will become, as they should be, in one respect, very good risks.

Let's take the aged person involved in an accident and put him under a system whereby his own insurance company pays him his out-of-pocket loss to the extent it hasn't been paid from another source. The aged person is probably covered by medicare. He probably has a pension. The result is that payout to him under this kind of a system is very small.

The result is he taxes the insurance mechanism relatively little. The result is that his rate ought to be lower, a break which he does not get today.

Similarly, take the military person who finds it very hard to get insurance today. The military person is, in one respect, a marvelous insurance risk. His pay goes on. The Government takes care of his injury in a military hospital.

Why shouldn't he have lower rates? He should under a system where his own insurance company is paying him to the extent that he has actually lost money.

I might say that the basic protection plan, contrary to Mr. Spangenberg's assertion, will save money while paying a lot more people.

We have had actuarial studies done in an Eastern State, New York, and a Midwestern State, Michigan. Both of those studies show that we will pay substantially more people at substantially less cost.

Let me say, gentlemen, that no private insurance company, casualty actuary in this country—and let me assure you they have studied our plan and studied our figures—has publicly challenged that a basic protection-like solution will cut automobile insurance costs. No casualty insurance company actuaries has challenged that finding.

I want to say in conclusion, concerning the problems of access to insurance, concerning the problems plaguing State regulation of insurance, concerning the insolvencies of some high-risk insurers, all of these problems are symptoms, I suggest to you, of the basic illness of paying the great mass of small- and medium-sized claims on the basis of fault.

And, until that ill is erased, other ills are not only going to be maintained, but probably proliferate. That is why I suggest that it would be a mistake, for example, to switch to Federal regulation of insurance, if you retain thusly the fault criterion. I think too it would be a mistake to switch to federally owned and operated insurance, if you thus retain the fault criterion. Similarly, I think it would be a mistake to retain State regulations, if you thus retain the fault criterion.

I also think that any study which is done by the Department of Transportation or which is done by the Congress is going to very soon see as the primary issue this question of nonfault insurance for the great mass of smaller claims.

I suggest also that in the meantime, the States should not be encouraged to wait for the Federal study. The States should be encouraged to act on this premise themselves.

The basic protection plan is currently before the legislatures of California, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, and Rhode Island. Change is coming, and it ought to come fast.

Thank you, gentlemen.

Senator CANNON. You indicate in your prepared testimony that there is very little litigation of accident insurance claims, as compared with liability insurance?

Mr. O'CONNELL. Yes.

Senator CANNON. How do you account for the high amount of litigation in workmen's compensation cases?

Mr. O'CONNELL. That is a very fair question.

I think the basic problem with workmen's compensation may be from two sources. In the first place, you have under workmen's compensation scheduled benefits—so much for stiffness of the finger, so much for a hernia, so much for other specific injuries. That, coupled with the low rates maintained for the scheduled amounts, means that

there may be tremendous scrambling to get into the right category because the payments have been kept cruelly low.

Payments started out in the early part of the century at a fairly decent level. But they haven't kept pace with the increased cost of living.

The much closer analogy to the basic protection proposal would be health and accident insurance where you don't have scheduled benefits, where, as you suggest, you pay the benefits without much dispute.

The insurance company, paying medical bills all the time, knows which doctors' bills must be scrutinized. If you pay out-of-pocket loss, this scrambling to get in the right category will not exist any more than it does in health and accident insurance.

Senator CANNON. What effect would your plan have on litigation with respect to negligent design or construction of motor vehicles?

Mr. O'CONNELL. My own hunch is, frankly, that it would help. I think one of the great problems with negligent design of the car, and I think the design has been heedlessly and needlessly unsafe, is that both the insurance companies and the lawyers have been hypnotized by the question of which driver has been at fault. That's an easy question to litigate. Neither has really focussed on the car and asked what is wrong with the car, because there is so much money to be made by suing and alleging fault; that is, saying the driver was negligent.

If that question is removed in the great mass of cases I think both the insurance industry and the lawyers will begin to ask, what other issues could be litigated here?

And a very worthwhile use of legal talent, as opposed to the mad scrambling of who went through the stop sign 3 years ago, could be focused on what is the matter with that car. That is the question we often ought to be fighting about.

The insurance companies, too, have been very deficient, once they have paid out money, in not asking "shouldn't we get indemnity or contribution from the fellow who put a sharp edge on the interior of this car that knocked our payee's eye out?"

I think once you have eliminated the question of the driver's fault, there will be a much more likelihood that we will really focus on the negligent design of the car, as I think we should.

Senator CANNON. One final question, as far as I am concerned.

You indicate now that a number of States already have this problem under consideration. Do you think the States are going to get action fast enough, or is it going to take some type of Federal action?

Mr. O'CONNELL. Once again, that is a very good question because I think that issue is very much in doubt. I don't think we know at this point. The Commissioner of Rhode Island was here 2 days ago, and indicated they wanted very much to enact the basic protection plan in Rhode Island. I think, frankly, the attitude of the insurance industry is going to be very crucial here.

I must say that I think the insurance industry has for too long bitterly opposed any substantial change in the negligence liability system. I think there are voices within the industry now which are beginning to see the necessity for such change.

The crucial question, I think, is whether the industry is going to see that they can't apply some very modest patchwork which, I think

too many of their proposals up to now have entailed, and whether they really push fundamental reform.

Senator CANNON. Don't you think, if this resolution is adopted to start a study, that this will in effect hold the feet of the insurance companies to the fire, so to speak, and might actually force them to come up with a solution rather than await a Federal solution?

Mr. O'CONNELL. I hope that is so. But they are supporting this study. I don't know many people who support holding their own feet to the fire. That worries me. One of the worries concerning the study—and I am for the study and I think the people in the Department of Transportation thus far indicated as interested in the study are first-rate people and will do a good study—is the danger that people will say that as long as the Federal Government is studying it, let's not do anything for 2 years.

That's the danger I see, and that is what I want to avoid. I want to be sure that the insurance companies see this as not an opportunity to wait 2 years, but to continue, as some have said they want to do, to press for some solution now.

Senator CANNON. Some people have contended that by giving this responsibility to the Department of Transportation we might really be delaying the matter further than if Congress were to say let's go ahead and do it ourselves.

Mr. O'CONNELL. Yes. Senator Hart indicated yesterday there is no reason for the Congress to wait on this study either. I think there are aspects to this problem which are susceptible to a ready solution. I think congressional committees should continue their work, just as the States should.

I think the Federal Government study should be looked upon as a source of a possible long-term solution but none of us should delay, in the Congress or in the States, on the excuse that the problem will wait 2 years. I don't think it will.

I honestly think, too, judging by the caliber of the people in the Department of Transportation, that they are not going to need 2 years to study this problem. I think they are perceptive enough, so that they are going to see the basic need and come up with a proposal far in advance of even a year and a half.

Senator CANNON. Senator Moss?

Senator MOSS. How long ago did you advance this idea of a basic protection plan? How long has this been under discussion?

Mr. O'CONNELL. Senator, we proposed it first December of 1964 in an article in the Harvard Law Review, which I must confess is not widely read on the newsstands. [Laughter.]

Our idea then gained pretty wide circulation from that time on, both in popular journals and in legal and insurance journals. So, it has been in the air now, in 1965, 1966, 1967, and 1968.

Senator MOSS. Have there been other similar ideas that have been examined within the industry over a longer period of time?

Mr. O'CONNELL. Yes.

The basic idea of switching to nonfault insurance for automobile claims has really been in the air surely since 1932, with many different proposals: Indeed, as far back as 1919.

I think one problem has been that most of the proposals that have been made have been very sketchy. I think Professor Keeton and I

were the first ones to draft a complete bill which a legislator could take and put in the hopper. This made a lot of difference. When ideas were being advanced as ideas without a specific legislative proposal, it was an easy thing to dismiss them or discuss them too abstractly.

I think also it is fair to say that up until a few years ago, the insurance industry and the lawyers have combined in bitter opposition to such change. But the attitude, at least within part of the insurance industry, has changed. Many in the insurance industry have seen the necessity of a more sane system of automobile insurance. Some members of the bar have, too.

Senator MOSS. Thank you very much.

Senator CANNON. Thank you, Professor O'Connell.

(The complete statement of Prof. O'Connell follows:)

PREPARED STATEMENT OF PROF. JEFFREY O'CONNELL, UNIVERSITY OF ILLINOIS  
LAW SCHOOL

There are very few major problems facing this country susceptible of relatively simple solutions. Certainly the problems of foreign policy, civil rights, and urban affairs, for example, are not. But the problems of automobile insurance really *are* susceptible to a relatively simple solution.

The fundamental difficulty with present automobile insurance is that the insured event is just too complicated. You can be paid after a traffic accident only by making a claim (1) against the other driver's insurance company, which owes no loyalty toward you, (2) on the basis that such other driver was at fault in causing the accident and that you were free from fault, and (3) for a completely uncertain amount that includes not only out-of-pocket loss but payment for pain and suffering—whatever that is "worth" in money. The result is that traffic claims today are dominated by attitudes of confusion, distrust and even outright hostility accompanying any negligence law suit.

The result, in turn, is that more money is spent under the present system in the great mass of smaller cases fighting over what is to be paid than is paid. Studies show that under the present system \$2.20 must be paid in for every one dollar that reaches the pockets of traffic victims—with the remainder—\$1.20—being paid for lawyers and insurance overhead.

Take, for example, the problem of determining fault in a traffic accident. Who can know after a traffic accident what happened in the agony of a split second of collision? If you knew what had happened, you probably wouldn't have had the accident in the first place! Thus under the present system, in order to be paid you are required to remember the unrememberable; you are required, in addition, to "remember" that you were free from—and the other driver guilty of—fault. What emerges of course, is not so much memory, as wishful thinking, misrepresentation, or, indeed, outright perjury.

All this squabbling among insurance adjustors, lawyers and motorists has produced enormous pressure on the courts in our urban areas where automobile accident cases typically constitute around two-thirds of the civil jury docket. This produces average delays in our urban areas of over two and one-half years for the trial of personal injury suits. In Chicago, the delay is well over 60 months! (In Chicago and other urban areas of the United States, once you are in a traffic accident, you had better hire yourself a young lawyer.)

Not only must the traffic victim often wait many months or even years for any settlement or trial in his case, but many victims are either totally uncompensated or paid only a fraction of their loss—especially among the seriously injured. On the other hand, the present system provides generous and even profligate compensation—especially among the trivially injured. This is because smaller claims are paid generously and quickly as "nuisance claims" whereas insurance companies, understandably, are ready to battle and delay over the payment of larger claims. In other words, because it is so expensive to battle over the vague variables of who is at fault and the value of a victim's pain and suffering, it costs an insurance company more to fight a smaller claim that it does to pay even an inflated value for it. And the money spent comes right out of the pockets of deserving victims with larger claims, who cannot afford the years of delay before payment and thus are forced to take much less than they de-

serve to get ready cash to replace lost wages and pay medical bills. According to the most comprehensive study of automobile accident compensation, done in Michigan, "The man who has a severe injury is likely to settle for it quickly only if he settles for relatively small amounts."

All this means that the present system fosters that cruelest combination—waste and want. Either is offensive—waste on the one and, or want on the other. But when a system fosters both—in tragic and causal juxtaposition to each other—then a sensitive society will see the righting of that wrong as one of its primary obligations.

The appalling waste of the present system feeds on itself to produce even more waste. Because the system makes payment so fortuitous and unreliable, a responsible person in order to protect himself is encouraged to buy not only liability insurance covering the other driver he may negligently injure but also additional insurance covering the same accident for his own injuries regardless of anyone's negligence. This means that if a victim collects from the liability insurance of the other party, he will receive this in addition to what he is paid under the non-fault insurance covering himself. As a result, in the words of Bradford Smith, the President of the Insurance Company of America, one of the major casualty companies in the United States:

"The public might well charge that the insurance industry has developed a system requiring the motorist to buy twice as much insurance as he needs so that in the event he is injured, he may recover twice as many benefits as he needs.

"That sounds preposterous, but that is, in effect, the present position. So long as the premium for this duplicate coverage is a matter of a dollar or two a policy holder might accept this proposition and look upon it like a football pool, ignoring insofar as possible the fact that he is the football. But when the premiums are substantial and grow larger in response to rising hospital costs, medical costs, automobile repair costs, and legal costs, he rejects this proposition. He can hardly be expected to be interested in paying double insurance premiums. Given the choice it seems clear that he would prefer to pay the single premium and forego any double recovery in return for the elimination of duplication of costs."

This, indeed, is precisely what the Basic Protection Plan, drafted by Professor Robert E. Keeton of the Harvard Law School and myself, attempts to accomplish. Under the Basic Protection Plan, a traffic victim will be reimbursed by his own insurance company for his out-of-pocket loss regardless of whether anyone was a fault in the accident. Once an accident occurs, a traffic victim will be automatically paid by his own insurer—or his host's company if he was a guest in the car, or by the insurance on the car that hit him if he was a pedestrian—for his medical expenses and wage loss up to \$10,000 of loss, the limit presently applicable in most states under negligence liability insurance. (No payment will be made, however, to anyone who *intentionally* injures himself in a traffic accident.)

Along with payment by an insurance company to its own insureds for out-of-pocket loss without regard to fault, the Basic Protection Plan provides by law that all those insured under basic protection will be exempt from civil (but not criminal) liability for negligent driving in the same range of coverage provided by Basic Protection Insurance. This means that whereas today every state requires in one form or another that each driver be insured for the damage he negligently causes to *another*, under the Basic Protection Plan each driver will be insured automatically for whatever damage *he* suffers.

More precisely, under the plan every motorist will be paid for his work \$10,000 of loss by his own insurance company without regard to fault and, in turn, no one will be allowed to sue, based on fault, for the first \$10,000 of out-of-pocket loss, nor for the first \$5,000 of damages for his pain and suffering. In other words, a trade is made—in return for everyone being paid for his first \$10,000 of loss without reference to fault, everyone is asked to give up his claim based on fault to the extent of the negligence exemption. The reason the exemption denies recovery for the first \$5,000 of pain and suffering, as well as the first \$10,000 of out-of-pocket loss, is that if motorists were paid their \$10,000 of loss under non-fault insurance but maintained undiminished their right to sue for pain and suffering with a fault claim, most victims would accept non-fault insurance payment but continue to sue with a fault claim for their pain and suffering. Keep in mind, that it is this very right to claim for pain and suffering under the cumbersome fault criterion which is the chief cause today of smaller claims hav-

ing a wasteful "nuisance" value. Thus, instead of largely replacing the fault system with a more efficient non-fault system, if the right to claim for pain and suffering were maintained undiminished, non-fault insurance would in large measure simply be added on top of the fault system, increasing rather than cutting costs and expenses.

The essential feature of the Basic Protection plan, then, is replacing the fault system in the great mass of smaller and medium size cases—those cases where the "nuisance" value of claims and therefore the waste tends to be greatest—with much simpler insurance whereby an insurer only has to determine (1) whether there was an accident and (2) the amount of the out-of-pocket loss. These are the kinds of determinations that must be made today under most health and accident insurance claims, under which, compared to liability insurance, there is *very* little dispute or litigation. Indeed, this is the kind of criterion for payment used under so-called medical payments coverage—the supplementary non-fault insurance under the present automobile policy—which also leads to negligible dispute or litigation, compared to liability coverage.

A few additional points will help to explain the practical operation of the Basic Protection plan.

Basic Protection benefits will not duplicate benefits from other sources such as sick leave, Blue Cross, or accident and health insurance. As a result, to the extent that loss is covered by other insurance, Basic Protection benefits will not be paid. This will inevitably mean, incidentally, that for the first time automobile insurance rates will reflect one's other available insurance so that the person with a good accident and health program, for example, will pay less for his automobile insurance. Note too that the \$10,000 limit of Basic Protection coverage will mean that all insureds will get valuable coverage that will pay them for \$10,000 of any loss not covered by other insurance.

Standard Basic Protection coverage includes deductibles—deductibles being, as all insurance personnel will agree, an eminently sensible inclusion for insurance coverage. Any able insurance agent will normally recommend that you buy casualty insurance with deductibles as less expensive and more efficient insurance since it costs so much to crank up the insurance mechanism for very small losses. Under Basic Protection, the deductible is the first \$100 of loss of any kind—whether medical or wage loss or, on the other hand, 10% of wage loss, whichever is greater. The reason for the special wage loss deductible is to discourage malingering in that a wage earner will not be earning as much away from work as at work. (For the same reason, an additional 15 percent will normally be deducted from wage loss payment to equal the normal income tax withholding.) Those who wish to "buy down," or eliminate, the deductible will be allowed to do so for a higher premium.

Basic Protection benefits are payable month by month as losses accrue and not in lump sum as are damages in a negligence suit.

Although Basic Protection insurance is limited to out-of-pocket loss and does not cover pain and suffering, a policyholder may, if he wishes, purchase optional "Added Protection" coverage which reimburses him for his pain and inconvenience arising out of an automobile accident. Similarly, although Basic Protection insurance covers only \$10,000 of loss, a policyholder may, if he wishes, purchase additional Added Protection called "Catastrophe Protection," which provides payment up to \$100,000 in addition to Basic Protection Benefits.

As originally drafted, the Basic Protection plan did not cover property damage. Recently, however, Professor Keeton and I have drafted a change under which a motorist is given the opportunity to include damage to his own car under a Basic Protection-like coverage which would also exempt him from liability for damage to others' cars, or, in the alternative, an insured can choose insurance coverage which will provide only liability coverage for the property damage he causes to others. In the latter case, he would also probably want to carry collision insurance covering damage to his own car. Thus, by calling for only one coverage instead of two, the Basic Protection type of coverage for property damage would be more efficient and cheaper.

A Basic Protection insurance policy—like the present automobile insurance policy—will be issued to the owner to cover a vehicle described in the policy. The Basic Protection coverage will be marketed in the same way and through the same sources as present automobile insurance, including the insurance companies and agents currently writing automobile insurance.

The Basic Protection Plan, according to independent actuarial studies for an eastern state—New York—and a midwestern state—Michigan—would pay from

about one and one-quarter to one and one-half as many people are paid under present liability insurance and, at the same time, would cut automobile insurance costs—as *conservatively* estimated—by about 25 percent. In other words, many more people would be paid at substantially less cost. It is also significant to note that despite their extensive examination of these actuarial studies, no casualty insurance company actuaries have publicly challenged the prediction of substantial savings in automobile insurance under the Basic Protection plan.

The essence of the Basic Protection Plan is, as I have emphasized, a simplification of the insured event—to make payment of automobile accident insurance expeditious, widespread and fair. Keep in mind that lawyers are really *barred* from arguing that present automobile insurance encourages such payment. Lawyers charge a third or more of what is paid to a traffic victim and insist that they earn it. I am willing to assume that they do—but the *only* way that they *can* earn it is to help people get payment that must be *very* hard to get. Otherwise, how can lawyers justify charging so much to help get it? But the question that the lawyers cannot answer is *why* it should be so hard and expensive to get paid from automobile accident insurance after an automobile accident.

What has been the attitude of the bar toward such reform of the present system? Keep in mind that, in the words of the *New York Times*:

“With all its faults, this ramshackle [present] system has one nice feature—it is a bonanza for lawyers. It pours an estimated \$500 million each year into lawyer’s pockets, about 20 percent of the legal profession’s total income.”

Unfortunately, the resultant attitude of too many lawyers is shown by a report in the Newark Star-Ledger of a New Jersey bar meeting called to consider the Basic Protection Plan: “[Attending lawyers] denounced [the Basic Protection] . . . plan in a stormy conclave that at times bordered on near hysteria, rendering virtually useless any attempts to rationally evaluate the pros and cons of this proposed reform.” At his first news conference after his selection as President of the American Bar Association, Bernard G. Segal of Philadelphia criticized lawyers who are heavily dependent on automobile accident litigation for their income and thus oppose reform out of what he termed their “selfish interests.” Segal emphasized that many lawyers are concerned about the evils of the present system and are anxious to consider measures for reform.

Lawyers opposing reform do not couch their opposition in terms of self interest: Rather they complain, for example, that nonfault insurance is immoral in that it would mean benefiting wrongdoers by paying a driver who had been drinking for his medical expense and wage loss. The same lawyers overlook the fact that the liability insurance system—which they espouse—is designed to benefit *nobody but* wrongdoers in that it is designed not to benefit victims, but to protect the assets of wrongdoers by paying on their behalf.

Secondly, why shouldn’t people carry insurance to cover their own injury stemming from their negligent lapses? We pay the negligent person—including the drinker—from fire insurance, accident and health insurance, life insurance and, indeed, from most forms of insurance, including supplementary coverages such as medical payments and collision insurance under the automobile policy itself. Why not, then, from the principal coverage under the automobile accident policy—especially when separating out the negligent from the non-negligent is chewing up so much of the automobile insurance dollar? Surely paying injured people who were negligent by drinking or otherwise will not encourage them to drink or otherwise drive unsafely. If fear of one’s own safety and that of one’s family, as well as fear of criminal sanctions or losing one’s driver’s license, will not encourage safe driving, what chance is there that fear of the outcome of an insurance claim months or years after the accident will turn the tide? Finally, if a person is offended by such payments, the Basic Protection Plan, as filed in Massachusetts for the 1968 legislative session, allows a motorist the option of excluding payments from his Basic Protection coverage to anyone, including himself, whose drunken driving has contributed to his injury.

Traditionally insurance companies have also been bitterly opposed to any change in the tort liability system. Lately, some companies have indicated greater receptivity to change but the suggestions emanating from the insurance industry thus far have been for modest patchwork on the present system that scarcely will solve present problems. For example, several insurers recently announced their tentative interest in a so-called Guaranteed Benefits Plan which is the most ambitious detailed change fostered by the industry to date. The plan calls for an insurance company to pay on a non-fault basis up to \$12,500

to "the other driver" unless the company's insured was clearly not liable to such a victim under the negligence criterion. Payment of the greater portion of the available non-fault insurance would bar the victim from filing a negligence suit. Under the plan, then, victims will receive \$5,000 in medical expenses unless, for example, the victim was an obviously drunken driver to whom a company's insured would clearly not be liable. The claimant also has the option of taking up to \$7500 in additional nonfault payments for income loss and pain and suffering or, in the alternative, bargaining and perhaps filing suit against the company based on a fault claim.

Unfortunately, the plan has several key drawbacks. In the first place, it calls for insurance companies to waive their legal rights to refuse to pay where they are not legally liable. No reform can depend on such continuing largesse from an industry. Second, the plan retains the unhealthy situation where the insurance company pays the other driver to whom it is a hostile party with no continuing relationship. Third, unlike Basic Protection insurance but like the present liability system, it continues the intolerably wasteful device of having automobile insurance pay out regardless of what other insurance has already been paid. Fourth, it maintains much of the confusion of the fault criterion with all of its waste by requiring a victim to opt between non-fault benefits and a fault claim: since most people will be ill-equipped to judge what will be due under the fault criterion, they will be forced (as they are today) to go to lawyers to find out. Lawyers, in turn, would be cruelly tempted to advise the course which benefits the lawyer the most—namely the fault claim with its large contingent fee for the lawyer. Finally, the cost of this plan is likely to be intolerably greater than the present system (which is already much too high) in not only, for example, duplicating other insurance benefits, but also in that the new system as it operates will very likely continue to pay about the same to all those who are profiting—and over-profiting—from the present fault system, while at the same time simply adding on new non-fault payments to those not being paid under the fault system.

Of course there are other problems plaguing automobile insurance in addition to those already mentioned: arbitrary cancellations and refusals to renew policies; unfair shifting of motorists into high risk categories; the difficulty of many in purchasing insurance in the first place and the concomitant insolvency of so-called high risk insurers; whether insurance companies' investment income should be included in proper rating procedures, etc.

But all these problems—like the ones mentioned earlier—are symptoms of the basic illness of basing payment in the great mass of smaller cases on fault. Unless and until that basic evil is dealt with, other ills will not only remain but will probably proliferate. On the other hand, if that ill is properly dealt with, many of these other ills will either be eliminated or reduced to much more manageable proportions. This is not to say that the problems, for example, of court congestion, or the availability of insurance to all who need it, will disappear with the adoption of a Basic Protection type plan. But even for those problems of automobile insurance for which Basic Protection may not be a sole solution, there will be no hope of solving them *without* a Basic Protection type solution.

Thus it would be a mistake, for instance, to switch to Federal regulation of insurance if the fault criterion for the payment of most claims was retained. Similarly it would be a mistake to switch to federally run and owned automobile insurance if the fault criterion were thus retained. Similarly, too, it would be a mistake to retain state regulation of insurance while also thus retaining the fault criterion.

In other words, the primary way that the ills of automobile insurance can be cured is by removing the fault criterion for small and medium size claims. Whatever other steps are taken without taking that step will only nibble at the edge of the basic problem.

Professor Keeton and I welcome further study of this problem by the Congress, the Department of Transportation, by the states, by the insurance industry and the bar. We are convinced that all such studies, if properly conducted and focused, will see the wisdom of the Basic Protection approach—if not necessarily, of course, the wisdom of the Basic Protection plan in *every* detail.

The Basic Protection Plan has been filed before the legislatures of California, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, and Rhode Island.

Change is coming and it is long overdue.

Senator CANNON. The next witness is Mr. Charles L. Rue, Jr., member of the board of directors and executive committee, National Association of Mutual Insurance Agents.

**STATEMENT OF CHARLES L. RUE, JR., MEMBER OF THE BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS, TRENTON, N.J., ACCOMPANIED BY GEORGE POTTS, WASHINGTON, D.C.**

Mr. RUE. Mr. Chairman and gentlemen of the committee, my name is Charles L. Rue, Jr. I am an independent property and casualty agent representing the National Association of Mutual Insurance Agents. With me today is Mr. George Potts, of our Washington office and staff.

In keeping with the request of the chairman I will be very brief and assume that the full text of my statement may be made available to the committee.

Our association supports S.J. Res. 129, and hopes sincerely that if it is adopted, the ensuing study will be objective, complete, founded on fact, and not on emotion. We offer the services of our association and its 17,000 members across this country who live and work very close to the grassroots of the problems that are cited in this resolution. We steadfastly support State regulation of our industry, and submit that many remedial actions have been taken. Many are in the process of being taken and they clearly indicate the local awareness of such problems as do exist.

We submit that our industry is and has been working diligently to seek solutions that will relieve the pressure we face. Much has been accomplished, much more will be accomplished.

Mr. Chairman and distinguished members of the committee, we offer our full cooperation to you and to the Department of Transportation, and would suggest also, sir, that the proposed advisory panel have agency representation and we would be privileged to provide that representation.

We thank you for this opportunity to appear before you.

Senator CANNON. Thank you very much for your statement. Your prepared statement will be made a part of the record. We appreciate your offer of cooperation and support for the study. I am sure that your organization will be called on during the course of it if Congress elects to proceed.

Senator MOSS?

Senator MOSS. I am not sure that I have any questions. I am sure it will be a good addition to our record and will be examined very carefully.

Senator CANNON. Thank you very much, sir.

Mr. RUE. Thank you.

(Mr. Rue's complete statement follows:)

**STATEMENT OF MR. CHARLES L. RUE, JR., CPCU NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS, WASHINGTON, D.C.**

Mr. Chairman and gentlemen of the committee, my name is Charles L. Rue, Jr. I am an independent property and casualty insurance agent from Trenton, New Jersey, a member of the Executive Committee and Board of Directors of the National Association of Mutual Insurance Agents and advisory executive

on national legislation to our president, Mr. Frank K. Baker of Hickory, North Carolina. I am accompanied today by the general manager of our National Association of Mutual Insurance Agents, Wm. A. Stringfellow of Washington, D.C.

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. I should like to repeat the offer to this committee and to also offer our full support to Senate Joint Resolution 129. (Letter attached.)

The statement of the chairman 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 your statement in which you said "What is clear, however, is the need for a comprehensive, objective and non-partisan study. The issues which we have been discussing are fundamental and must not become embroiled 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 your statement, to the effect that "... the soaring rate of accidental death and injury on the Nation's highway" statement in your 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 you have so 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 voluntary driver education programs, better licensing laws and the more rigid enforcement 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 are 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 of 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. I 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 criticize 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 16,500 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 be 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, I 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 16,500 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 we 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 testify.

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.*

The CHAIRMAN. The next witness is Mr. T. Lawrence Jones, president of the American Insurance Association. Is Mr. Jones here?

Mr. JONES. Could I have the other witnesses from my group join me?

Senator CANNON. I understand you would like Mr. Fred H. Merrill, chairman of the board, Fireman's Fund American Insurance Cos.; Mr. H. Clay Johnson, president of Royal-Globe Insurance Cos.; Mr. William O. Bailey, vice president, executive department, Aetna Life & Casualty Group; and Mr. Harold Scott Baile, senior deputy general manager and general counsel, General Accident Fire & Life Assurance Corp. Does that cover your group?

Mr. JONES. Yes, sir.

STATEMENT OF T. LAWRENCE JONES, PRESIDENT, AMERICAN INSURANCE ASSOCIATION, NEW YORK; ACCOMPANIED BY FRED H. MERRILL, CHAIRMAN OF THE BOARD, FIREMEN'S FUND AMERICAN INSURANCE COS., SAN FRANCISCO, CALIF.; H. CLAY JOHNSON, PRESIDENT, ROYAL-GLOBE INSURANCE COS., NEW YORK; WILLIAM O. BAILEY, VICE PRESIDENT, AETNA LIFE & CASUALTY GROUP, HARTFORD, CONN.; AND HAROLD SCOTT BAILE, SR., DEPUTY GENERAL MANAGER AND GENERAL COUNSEL, GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP., LTD., PHILADELPHIA, PA.

Senator CANNON. This is a very distinguished group of witnesses. I am not sure but that you have us overwhelmed here this morning.

Mr. JONES. On the other hand, I understood a little while ago that we were coming up here to put our feet to the fire, Senator.

Senator CANNON. I put that in the form of a question.

Mr. JONES. Sir, I am Lawrence Jones, president of the American Insurance Association, and I have with us today some principal executives of our major automobile insurance companies. By their presence they intend to say to the committee that they regard this as a very important matter to the industry. Each will make a statement with regard to some area of the problems that have been raised in connection with automobile insurance and conserve the committee's time by that sharing of responsibility.

Senator CANNON. We appreciate your cooperation with the committee in that regard.

Mr. JONES. First, I would like to say on behalf of the American Association that we support the enactment of this joint resolution. We strongly support it, and we pledge our cooperation to the committee, to the Department of Transportation, and to the other agencies that will participate in it and take part in the study.

The reason that we think such a study is needed is because the problems associated with automobile insurance are very complex. They also exist on a national scale. So we think Congress is very much entitled to do so, and we think it has very appropriately and well chosen the agency to do it because we think there is a strong correlation between the work of the Department of Transportation and highway safety and automobile design, and the insurance aspects of using the highway.

We think a very comprehensive study is needed because the changes, if any, that occur in the present system will be very far-reaching and will have a great deal of social, economic, and political impact. And thus you need a broad base of information in order for the Congress or for the State legislatures to make such a decision. And we think the type of study outlined would give it objectivity and comprehension and will give that kind of information which would be very appropriate.

I would like to say on behalf of our companies that we have been aware of a great deal of criticism of the industry and we have given a great deal of attention to it. We have made adjustments and have tried to adjust to these circumstances. That sometimes is overlooked.

I think in doing this we have found that we think a lot of the criticism against the industry is based on a misunderstanding of the primary policy that we write, the primary automobile insurance policy, the liability policy.

Under the liability policy we do not pay automatically all victims of automobile accidents for their damages. In fact, the obligation we have is to defend our policyholders against lawsuits, to keep him from having to pay all victims. That is our obligation to him. But, if he has an obligation to someone else, to pay it for him, if the policyholder is liable in damages under the laws of negligence.

The compensation system, if you look at it in that way, the existing compensation system, is merely an incident to the part of the policy that costs the most money. If you try to measure the present system as against a standard of how efficient is it as a compensation system, then you are not going to come up with the answer that it is very efficient because it was never designed for this purpose, it was never intended to do this job.

We, too, have ascertained that there seemed to be some desire on the part of the public to change this system and to have what we call "first party" or "primary obligation" from the insurance company to the policyholder. And we have endeavored to provide those. We have added them to our policies for some time. Collision insurance is that kind of coverage.

The obligation runs to the car owner that if your car is damaged we pay for it, regardless of who is at fault or anything else. This is widely sold in \$50 and \$100 deductibles and is usually always required in connection with cars that are being financed. But to this public response we have also added medical payment coverage in which we pay to our policyholder and car occupants his medical expense regardless of any question of liability or responsibility of any party to the accident.

Some of the companies have experimented with adding a type of coverage that repays you for the loss of income. We call it disability income. Not much of this is sold but it would be on the first party basis. The difficulty with these additional factors that we have added to the policy is that they are additional costs to the present automobile liability policy which is the principal cost and the one that so many people say is as much as they can pay.

We believe that much of this criticism of the industry is based on a misunderstanding. The industry has tried to adjust its policy within the framework of the present legal system, the underlying legal system. This adjustment is not feasible in a cost sense.

We hope that a study such as this will develop all these facts and make them available to the Congressmen and the others that are interested in the problem and help you make a decision on it.

Senator CANNON. Is the industry taking steps now to get at this problem of nonrenewals and cancellations of the "T. Case" type that we heard about here the other day?

Mr. JONES. Mr. Bailey will develop that in his testimony, Senator.

Senator CANNON. In view of my question to Professor O'Connell, I wish someone of your group would address the question as to whether or not you are going to get at and stay right with this problem during the entire period of this study. In other words, are you going

to assume that your feet are somewhat helping the fire, and try to do something about it in the meantime, rather than wait and see what happens at the end of the 2-year period?

Mr. JONES. I can give you that pledge with confidence because I know that our companies are studying this as a group. We are continually studying this. We are trying to make adjustments to the circumstance and demands.

The question was asked whether we felt this could be solved at the State level. Frankly, we would like to see some of these things developed at the State level to give us experience. We would not be in a position now to judge whether the States will respond adequately on a broad enough scale to answer the problem, and I think when you have the information before you we would be able to have a judgment as we would hope you would at that time.

Could I have Mr. Fred Merrill speak next?

Senator CANNON. Yes.

(The complete statement of Mr. Jones follows:)

STATEMENT OF T. LAWRENCE JONES ON BEHALF OF  
AMERICAN INSURANCE ASSOCIATION

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 issues 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 percent from January 1, 1960, to December 31, 1966. From 1958 to 1966, average claims costs for auto property damage rose 46 percent and average claims costs for bodily injury rose 31 percent. 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 been 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 to 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 OF DIRECTORS AND CHIEF EXECUTIVE OFFICER, FIREMAN'S FUND INSURANCE COMPANIES, SAN FRANCISCO, CALIF.**

Mr. MERRILL. Mr. Chairman, I am Fred H. Merrill. I am chairman of the board of directors and chief executive officer of the Fireman's Fund Insurance Co. 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 percent of our annual premium income.

I have submitted written testimony for the record. I would like this morning, however, to summarize it and perhaps bring into focus a few points which may have been overlooked in these hearings to date.

The first point to make is that automobile insurance is simply the means by which the risk of financial loss arising from the use of an automobile is transferred from the individual to the insurance company. The price that is paid for that transfer of liability is what we know as a premium. The modern mechanism of the insurance company is simply an evolution of the old tontine system under which in effect the contributions of the many were used to pay the losses of the few. Over the years, that process has, by process of evolution, become a highly developed, highly skilled, and I would say, a most efficient system of taking care of that problem.

In fact, you could liken this whole process to that of a conduit. In the one end go the premiums of the many, and out the other end come, we hope, some profit after all the losses and all the expenses of operating this mechanism have been taken care of.

The unfortunate fact of life is, however, that in this process in the last 10 years, during all the company's writing of automobile insurance, there has been \$44 billion put into the front end of the conduit, and in the process of going through it, \$45.1 billion has been paid out. So there has been a loss in the business of \$1,100,000,000 in the last 10 years. It was never intended that the insurance company should be an eleemosynary institution. We have all kinds of sophisticated actuarial and mathematical processes that become involved in this system. There is a whole array of competitive factors that enter into it. We in fact do not have one simple conduit. We have a proliferation of hundreds and hundreds of insurance companies, all with their own individual conduit, all competing with one another.

We make reference to selection. Well, I think that any conduit, perhaps, would want to select Congressmen and Senators as being better than average risks and we would like to have them in the conduit. The competitive process will tell you, however, that you don't want bartenders or nightclub entertainers because their possibility of risk is greater, so they may have difficulty getting into this conduit.

So as the processes have built up and as the losses of the companies have occurred you have had the manifestations, as Professor O'Con-

nell mentioned, the symptoms of the problem; failure to renew, cancellation and other restrictive underwriting processes. This has been simply a product of losses that have occurred in the business, which brings me then to the second principle that I want to be sure that you understand; that the adequacy of the insurance market cannot be divorced from the adequacy of the rate, or the adequacy of the input into the conduit that I am talking about.

Maybe this is an oversimplification, but it certainly evidences the need for this study proposed by Joint Resolution 129. The public is dissatisfied, the insurance companies are dissatisfied, apparently the legal profession is dissatisfied. So if there is that much dissatisfaction around, something ought to be done about it. Therefore we as a company welcome the interest and urge a complete investigation of all facets. It is not a simple problem. There are many ramifications. And it is not going to arrive at an easy solution. Bear in mind one other set of basic facts, that the insurance companies themselves are not responsible and do not control the elements that enter into the cost of insurance.

Insurance companies did not design the tort liability system. We accommodated ourselves to it. We do not control the frequency of accidents. We do not control the adequacy of our highways. We are not involved in traffic law enforcement. We are not involved in driver licensing standards. We are not involved in, as I say, the tort liability system and the legal fees involved. We are not involved in hospital charges and doctors' bills. And we are not involved in repair costs. But every single one of those elements enters into this product of insurance and the costs thereof.

One final point that I would like to make as Joint Resolution 129 is implemented, and as the President appoints the Interagency Advisory Committee, I would urge that a representative of the U.S. Treasury be added to that list of the Advisory Committee.

I only want to call your attention to the fact again of this \$1.1 billion underwriting loss. In our system of free enterprise, individual initiative and the profit motive, the Federal Government is our partner to the extent of 48 percent. And through the mechanism of the tax loss carry forward and carry back in the Internal Revenue Code, the Federal Government has incurred 48 percent of this \$1.1 billion loss, or it has cost you about \$500 million.

On the other side, the regulation of the insurance business by the several States emanates directly from the power to tax. And during this period when we have incurred losses and the Federal Treasury has incurred a loss, the States have collected something in excess of \$900 million on the \$44 billion of input into the conduit that I mentioned.

I suggest, gentlemen, that the insurance business has been, for the last 10 years, the Appalachia of the American economic scene. Maybe what we need is an antipoverty program.

Senator CANNON. I didn't realize until this time that there were others besides the U.S. Government that were involved in this deficit financing area. Apparently the insurance business is one of them.

Mr. MERRILL. I was afraid the subject might be overlooked, sir.

Senator CANNON. The obvious question that arises in my mind is if you are operating at such a great loss, how are you able to stay in business?

Mr. MERRILL. You have heard I am sure the subject of investment income in ratemaking brought up. You also know that the American Insurance Association has just had completed by Arthur D. Little & Co., a 10-year analysis of the rate of return in the property casualty insurance business. Our overall rate of return for 10 years, including investment income, underwriting gains realized and unrealized capital gains, the entire spectrum of things we do, the overall rate of return for the 10 years ended 1966 was 4.4 percent. That is not a sufficient return to maintain a viable, progressive insurance industry.

Mr. JONES. Senator Cannon, may I add that our companies write all lines of insurance. They are general insurance companies, what we call in the industry multiple-line companies. And we haven't done as badly with other lines of insurance as we have with the automobile insurance. This is one factor.

On the overall profitability, Mr. Merrill has covered that well. I think the Arthur D. Little study is available to you. We can make sure that others are. Prices, profits, in the insurance industry.

Senator CANNON. The Little study is available to us. We haven't yet had the opportunity to analyze it thoroughly.

Senator Moss?

Senator Moss. I have one question of Mr. Merrill.

I believe it was Senator Herrmann yesterday who said that for every dollar that is paid out to some person under an automobile insurance policy, it took \$3.40 of premium paid in. In view of the fact that there is over a billion dollar loss here over a 10-year period I wonder if there is any way that can be reconciled.

Mr. MERRILL. That can't be quite an accurate statement. It depends on how you—we have a process, in the rating law, that permits allowables. In the automobile liability business the average of most companies is that there is about 67 cents—and it varies between 65 and 70 or 71 and 72 cents—of the dollar of premium paid for automobile liability insurance goes back in the form of claims and losses. There is about 30 percent, the company's own expenses, and the premium taxes to the several States. In our business, our payroll alone is between 10 and 12 percent of the dollar. Premium taxes somewhere in the range of two and a half cents of every dollar.

So that you have a factor of about 30 percent for expenses, 65 to 70 percent for losses. Theoretically if you can be under 100, you have made a profit. Unfortunately in this \$44 billion input in the last 10 years that I mentioned, the combined loss and expense ratio has been 102.5. So that for every dollar of premium we have written we have lost 2½ cents.

Mr. JONES. Senator Moss, may I add to that? I can illustrate my major point with some figures here on that if you want to hear them at this time.

Senator Moss. If you will be brief, yes.

Mr. JONES. This depends on how you look at the policy, which is the point I was trying to make. If you look at the policy the way it is written, as a liability policy, then the benefits we pay under it are 70 percent on the dollar. That includes the legal expense of defending the man. It includes all the expense of investigating, and everything else.

If you look at it in terms of how much is paid to injured people, because our policyholder was a wrongdoer in the eyes of the civil law, then it comes to about 63 cents on the dollar. Deducted from that, the plaintiffs or claimants have their legal expense. We don't know what that is. The Consumers Union has estimated it as being another 8 cents on the average, which would bring it down to about 55 cents on the dollar that ends up going in the hands of people that have been injured by someone held to be a wrongdoer.

We submit that if you look at the policy in those terms that is not the way to look at it. In other words, that is not the existing system. Our obligation to our policyholders costs us 70 cents on the dollar.

Senator Moss. You are saying that because of legal services and investigative services and other things, that you supply to a policyholder, that he gets his return there in part and not just from the dollars that he finally puts in his pocket?

Mr. JONES. Because of the tort liability system, the automobile owner, if he has any amount of money or any amount of goods or anything, needs to carry a liability policy. Because of the underlying legal system that is what he has to have. He could buy these other things too if he had enough money. But he has to have that to protect himself. That would come to 70 cents on the dollar. The rest are company expenses, agents expenses, what we call our general overhead—taxes.

Senator Moss. Senator Herrmann's figures may not be absolutely accurate, but if you are just counting the number of dollars actually paid out, he isn't too far wrong on his statement then.

Mr. JONES. We have seen estimates range from 35 to 45 cents on the dollar as being that that actually goes to people injured in automobile accidents. Mostly this depends, I think, and varies in the estimates of people as to what the legal expense of the plaintiff is, or what he gets. But it would be in that range. We see it as 55 cents on the dollar.

Senator Moss. Thank you.

Thank you, Mr. Chairman.

Senator CANNON. Will you proceed with your next statement?  
(The complete statement of Mr. Merrill follows:)

STATEMENT OF FRED H. MERRILL, CHAIRMAN OF THE BOARD OF FIREMAN'S FUND INSURANCE CO. AND ITS SUBSIDIARIES

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 percent 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 bases 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 past year throughout the entire economy. For example, while Hospital Daily Service charges increased at an annual rate of 8.0 per cent during the six year period 1960-1966, during 1967 the actual increase in costs was 15.5 per cent, 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 phenomenon 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

EXHIBIT A—Continued  
 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	.8
1964	1,711,700,495	-47,369,641	-2.8
1965	1,905,093,519	-17,192,493	-.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) <sup>1</sup>	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	+3.0
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	( <sup>2</sup> )	+2.3
Wyoming	do	+9.5	-6.9
Average change		+5.3	+0.1
Average countrywide change		+3.5	+0.1

<sup>1</sup> Independent filing.

<sup>2</sup> No changes.

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 <sup>1</sup>	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

<sup>1</sup> Weekly earnings of factory production workers.

Source: Bureau of Labor Statistics.

EXHIBIT D

AUTOMOBILE LIABILITY INSURANCE COUNTRYWIDE AVERAGE PAID CLAIM COST TREND (EXCLUDING MASSACHUSETTS), PRIVATE PASSENGER CARS

Year ending	Bodily injury liability	Property damage liability	Medical 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.

MR. JONES. We would like Mr. H. Clay Johnson, president of Royal-Globe, to go next.

STATEMENT OF H. CLAY JOHNSON, PRESIDENT, ROYAL-GLOBE INSURANCE COS., NEW YORK, N.Y.

MR. JOHNSON. Mr. Chairman, my name is Clay Johnson. I am president of Royal-Globe Insurance Cos. 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 Cos.' 1967 premiums were a little more than \$409 million, of which automobile insurance comprised 35 percent or \$142 million of premiums.

We strongly endorse the comprehensive study by the Department of Transportation as contemplated by Senate Joint Resolution 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. We are prepared for that.

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, first 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." Thus, 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, Jan. 23, 1961, p. 1045.)

The concept of affirmative regulation meant the necessity of requiring rate approval by some supervisory body. The member companies of American Insurance Association, for whom I speak, 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 developed 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 prac-

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 automobile 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 Commissioner 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 updated 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 (Rept. No. 831, Aug. 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 Senate Joint Resolution 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.

Senator CANNON. On this matter of rating, I don't quite understand the practice. Don't you pool your experience and have a general rating that then fixes the standard rate among a lot of different companies?

Mr. JONES. The rating bureaus perform the function of collecting the loss experience and developing what we call poor loss costs of automobile claims. This is a part of the rate that is promulgated but

it is only a part. The other part is the expense components which Mr. Merrill is speaking of. The companies vary according to their actual expenses. The whole rate, in covering loss and expense, can be inadequate for some companies and adequate for others.

It is interesting that back in 1945 there was one school of thought that said we didn't need any State regulation of rates in order to avoid the impact of Federal antitrust laws if we merely prorated this poor loss cost the way life companies do under the common mortality tables and let each company add its own expense loading to make the whole rate. Actually today there are very few large writers of automobile insurance that do not have independent filings which do that very thing, which do reflect their own expense loading and therefore vary their rate from that charged by other companies. So that in a true sense the rating practices today permissible in the rating bureau rules have developed a large degree of independent filings by automobile writers, certainly the principal writers, to the point where the rating in concert that was present to a large degree in 1945 doesn't exist any longer.

Mr. JONES. May I add from the standpoint of the association, most of our companies do not belong to the rating bureaus. But most of our premium, 58 percent of our premium volume, is related to the work of rating bureaus, and 42 percent is completely independent of that.

Senator CANNON. Of the 58 percent related to the rating bureaus, don't the companies involved pool that information and charge the same rate irrespective of what each individual company's operating expense is?

Mr. JONES. That used to be the case back in 1945. A very high percentage of the business was written according to bureau rates without deviation or variance. Today that is not so. The rating bureaus have amended their rules. They did this a number of years ago so as to permit not only subscribers but members to make independent filings, which they do in very many instances. These independent filings will indicate different expense loadings.

Senator CANNON. Do you have statistical information that you can furnish us on that showing the breakdown between those who use an independent filing rather than those who use the standard rate?

Mr. JONES. Yes. I think our insurance rating bureau can furnish that. We will ask them to do so.

(The information requested follows:)

AMERICAN INSURANCE ASSOCIATION,  
Washington, D.C., March 21, 1968.

\* \* \* \* \*  
With reference to the colloquy between Senator Cannon and President T. Lawrence Jones of our organization concerned with statistical information, related to expense loadings in the automobile insurance rate structure, I am attaching an enclosure which itemizes the desired information.

Independent filings when made by "direct" selling organizations, such as State Farm, Allstate, Geico, etc., contain a reduced expense factor in the rating structure which reflects a lower cost of doing business. This is estimated to be approximately 8 percent. To that extent, the basic loss and loss adjustment ratio can be higher than the 65.5 ratio which exists in bureau rate filings.

I hope this sufficiently clarifies the record.

Very truly yours,

MELVIN L. STARK, *Manager.*

## BREAKDOWN OF LOSS AND LOSS ADJUSTMENT

[In percent]

	Bodily injury	Property damage
Loss and loss adjustment ratio.....	65.5	65.5
Unallocated loss adjustment as a ratio to premium.....	15.4	17.3
Allocated loss adjustment as a ratio to premium.....	26.9	23.7
Losses, excluding all loss adjustment.....	53.2	54.5

<sup>1</sup> 65.5—65.5 for bodily injury; 65.5—65.5 for property damage.

<sup>a</sup> 1.09

<sup>a</sup> 112.5

<sup>a</sup> Unallocated loss adjustment factors.

<sup>2</sup> Total loss adjustment for the latest 3 years is 12.3 percent for bodily injury and 11 percent for property damage. Allocated factor is equal to total loss adjustment minus the unallocated factor.

	Percent
Administration.....	5.5
Inspection and audit.....	1.0
Company operating expense.....	6.5
Production cost.....	20.0
Taxes, licenses, and fees.....	3.0
Total.....	29.5
Underwriting profit and contingencies.....	5.0
Total.....	34.5
Loss and loss adjustment.....	65.5
Total.....	100.0

Senator CANNON. Senator Moss?

Senator MOSS. I have no questions.

Senator CANNON. Senator Scott?

Senator SCOTT. I have no questions.

Senator CANNON. Will you proceed?

Mr. JONES. We would like to have Mr. William O. Bailey, vice president of the Aetna Life & Casualty, who will speak on the underwriting problems which you expressed interest in.

#### STATEMENT OF WILLIAM O. BAILEY, VICE PRESIDENT, AETNA LIFE & CASUALTY GROUP

Mr. BAILEY. I am William O. Bailey, vice president of Aetna Life & Casualty. I appear here today to share with you my company's 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 contemplated by that resolution.

Automobile insurance is not the exclusive concern of the 1,200 companies which write it. Nor is it solely the concern of the 100 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 non-renewal which have caused widespread concern.

During 1967 Aetna wrote \$414 million of automobile insurance premiums, ranking second in this line among agency stock companies and fourth among all automobile insurers. Over the past 5 years the number of our insureds has increased by nearly 70 percent, 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 4 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 7 percent reported a problem during the last 2 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 judgement, 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 5 successive years of underwriting losses from automobile insurance and the industry as a whole has had a decade of unprofitability, as Mr. Merrill cited.

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 the 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 in-

vestigation will yield constructive suggestions for solving the many problems which we now face.

As a prelude to this study, a review of what Aetna 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 1 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 Aetna 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 60 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 20 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 company's 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 percent were canceled, in effect by the insured, for nonpayment of premiums and 14,589, or 0.9 percent, were canceled 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 percent of the total. We did not renew the policies of an additional 28,988, or 1.8 percent, 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, as we believe it can, to the knowledge, understanding and solution of the basic problems of the automobile insurance business, it will importantly serve the public interest.

Senator CANNON. Thank you, Mr. Bailey.

Mr. JONES. If we could point out, it is the fact that the companies started losing money on some of this business, and we think they are very justified—their first obligation is to the people to whom they sell policies, to hold themselves out for a price to hold that man harmless under certain conditions.

If taking on one person jeopardizes your responsibility to others, and you can't do it within the framework of the premium that you are receiving, the better course of action from the standpoint of society and other policyholders and the company and the company's employees is to relieve yourself of a piece of business that you can't handle at a proper price.

We have been in that situation from time to time in different States at different times for the last 10 years.

Senator CANNON. It does seem that the new steps you have taken as of January this year certainly get at the problem of cancellation. No insurance company should be required to carry an insurance policy for someone who refuses to pay the premium. Certainly, in my own opinion, if a man's driver's license is suspended or revoked, you should not be asked to carry a policy then because to insure him if he is going to operate in violation of the law would seem to be a rather absurd situation.

From that standpoint I think this is a very constructive step.

Of course cancellation, as has already been pointed out, is only one of the big problems. Nonrenewal is another big problem that has already been pointed up here. I think this is one of the areas that is going to deserve a lot of detailed study and factual information in connection with working toward a possible solution.

Mr. BAILEY. In the eyes of the public these two are confused. To an individual insured, it is just a matter of time as to whether there will be a cancellation or nonrenewal.

Senator CANNON. Senator Scott?

Senator SCOTT. I have no questions.

Senator CANNON. Will you proceed?

Mr. JONES. We would like to have Mr. Scott Baile, senior deputy general manager of the General Accident Group, talk on the important subject of claim problems.

**STATEMENT OF HAROLD SCOTT BAILE, SENIOR DEPUTY GENERAL MANAGER AND GENERAL COUNSEL, GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP., LTD., PHILADELPHIA, PA.**

Mr. BAILE. Mr. Chairman, since my statement is on file with you, I will not repeat it. Rather I will try to summarize briefly the point I wanted to make.

Senator CANNON. I may say that all the prepared statements will be made a part of the record. You can summarize as you see fit.

Mr. BAILE. As has been pointed out by Mr. Jones and others, our present system of automobile reparations, as we speak of it, represents the combination of a tort liability system on which is superimposed an insurance mechanism, that insurance mechanism being structured to meet the designs and the requirements of the tort liability system.

There are certain elements of the tort liability system which as I see it have certain necessary consequences. There are two factors in the tort liability system. One, the fault is the operative fact which creates the obligation to pay. And two, the principal elements of damages are indefinite; namely, the damages for inconvenience, pain and suffering.

Those two elements, as I see it, have these necessary consequences. First, they require time. Second, they involve expense. Third, they tend to create an apparent uneasiness in the distribution of benefits.

I say they require time because if there is going to be an intelligent determination of fault in an automobile accident, it means the interrogation and recording of the observations of witnesses, it means the examination at the scene of the accident, the examination of the vehicles, the interrogation of police authorities, perhaps even the use of experts to try to reconstruct the past event from physical evidence that remains afterward.

The time is also required, however, to then reconcile as between two sides what that investigation reveals.

That process is one that is mainly accomplished through negotiation between an insurance company and a claimant. It is a bargaining process. You arrive at it "sort of like" in the marketplace.

Similarly, once you have an element of clean, definite damages, where the damages are dependent upon some factfinder's evaluation of pain and suffering, you have immediately introduced a time requirement. It is essential for the party who seeks the maximum recovery he can get to in some way dramatize the injury he sustained.

This means the use of expert medical testimony, X-ray films and other demonstrative forms of evidence to impress the factfinder with the seriousness of an injury.

Thus expense is necessarily required. But more importantly from this standpoint is where you get this unevenness in the distribution of benefits.

I suggest, Mr. Chairman, that these are these consequences of a fault system if you have those two facts in it; namely, fault and clean,

definite damages. And, therefore, to me they pose questions which I think this kind of investigation, objectively made, can contribute a great deal to.

I think the question has to be asked whether the idea that people ought only to be held responsible for their carelessness, is that so ingrained in our public sense of justice that we should retain this?

I think we have to ask the question: Do people expect payment for the inconvenience and discomfort they experience, as well as for the economic loss they sustain? Or has the public expectation shifted so that it expects everyone to be paid, and in order to reduce the cost it is willing to accept the recovery of only its dollar losses?

These questions to me are very serious questions. They involve serious questions of public policy.

I have heard questions of some prior witnesses here that suggested that the insurance industry has stood in the position of objecting to change. I don't think the insurance industry ever in the past has objected to changes in the tort system of liability. I think what the insurance industry has always done is to say that the tort system of liability is something to be determined by the public will, and the duty of the insurance industry is to construct an insurance mechanism that will meet the needs of that tort liability system.

So I suggest, Mr. Chairman, that there is a great desirability in the resolution that has been proposed here and in the investigation that would follow.

I think in that investigation they can find the answers to the question because there is no doubt that cost of insurance can be reduced if dignitary harms are not compensated. I don't think there is any doubt that time can be saved in the making of payment of reparations if reparations are not dependent upon fault. But I think we have to ask ourselves the question: With any other system, do we then introduce into our society other evils if we abandon these long established principles that have been so generally accepted?

Senator CANNON. Wouldn't you at that point also very materially reduce the costs of investigation that you referred to earlier, and of the bargaining and of that sort of thing? There wouldn't be an adversary position between two competing companies at that point.

Mr. BAILE. In my judgment that cost could be greatly reduced if you eliminated the requirement of fault and eliminated the requirement to evaluate these indefinite damages, which as I say causes the social friction. And since somebody once said that the best compromise is one that leaves neither party satisfied, and since we compromise most of our claims, I think we are in the position of leaving neither party satisfied.

Senator CANNON. Having had some experience with adjusters over the years when I was a trial lawyer, I would say that is probably a pretty true statement.

Does that complete your statement?

Mr. BAILE. Yes, sir.

Senator CANNON. Senator Scott?

Senator SCOTT. I have no questions, Mr. Chairman.

Senator CANNON. I want to thank you for a very fine presentation. It has been very helpful to the committee. The way you divided it up has been particularly helpful to us. I think we certainly have the

views of your association. I want to thank you for your offer of cooperation and also for your support of the resolution.

Mr. JONES. Thank you.

Senator CANNON, in closing can I say that we are confident that if society wants to change the basic underlying system to where it is a reparations system, a compensation system, that the private insurance industry can very readily adjust to that and can readily perform under such system as you might want.

May I add also that if we were here with our feet to the fire today, it was not uncomfortable.

Senator CANNON. We appreciated having you here. Certainly this is one of the determinations that I think would result from the study, as to whether or not we are to change the basic underlying premise of insurance. We have seen in testimony here that that basic premise is not meeting a lot of the basic problems today. If these problems cannot be met by the insurance industry on its own volition, we will have to review the basic premise and we also have to review whether or not it is necessary for the Federal Government to step in and establish some broad general guidelines that the industry would have to live by.

Mr. JONES. Can I say, sir, that we do not believe that we can meet all of the objections to the present system voluntarily. One company not a member of our association tried a special policy for 14 years that would conform to meet these needs, and arrived at the conclusion unless the basic laws were changed that this kind of policy could not be used and could not be prevailed upon to meet the needs of the public as expressed by need of a compensation or reparations system.

Senator CANNON. We may have the results of some interesting State experiments in this area during the period of time that this study will require at the Federal level, if it is undertaken.

Thank you very much. We appreciate your appearance here today.

Mr. JONES. Thank you for your courtesy.

(The prepared statement of Mr. Baile follows:)

STATEMENT OF HOWARD SCOTT BAILE, ON BEHALF OF 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 persons' 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 injured 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 wrong-doer through our civil courts, and that this is the principle which should guide our automobile repair 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 frame-

work 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-weighted 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.

Senator CANNON. The next witness is Mr. Bradford Smith, Jr., chairman of the board of the Insurance Co. of North America. You may proceed.

**STATEMENT OF BRADFORD SMITH, JR., CHAIRMAN OF THE BOARD,  
INSURANCE CO. OF NORTH AMERICA, PHILADELPHIA, PA.**

Mr. SMITH. Good morning, Mr. Chairman.

My name is Bradford Smith. I am chairman of the Insurance Co. of North America. I have with me Mr. Edmond Rondepierre, of our legal staff, on my right, and Mr. Thomas C. Matthews, Jr., of Wald, Harkrader & Rockefeller, our Washington counsel.

At the outset, Mr. Chairman, please let me say that I recognize Chairman Magnuson as one of the foremost champions of the consumer in the United States. We share the chairman's concern over the need for public satisfaction because, in our opinion, the continued existence of the private enterprise insurance system is dependent upon the willingness and ability of the companies to satisfy the public need.

We have submitted to you, and I believe it will be a part of the record, a somewhat longer statement. In the interest of saving time we have made a condensation of that statement which, with your permission, I would like to read.

Senator CANNON. Very well. Your prepared statement will be made a part of the record. You may proceed as you see fit.

Mr. SMITH. Thank you, sir.

With respect to automobile insurance, we have no lack of willingness to serve the public. But our ability to do so is becoming increasingly hampered by forces beyond our control. For this reason, we need the help of legislators, and this is why we enthusiastically and wholeheartedly support Senate Joint Resolution 129. As we said in a statement of policy placed in national newspapers this week, it seems apparent that the time has arrived for a comprehensive and objective study of the overall system of which automobile liability insurance is a part.

Sir, if it will be possible, I would like to have a copy of our statement of policy inserted in the record.

Senator CANNON. It will be included in the record at this point.<sup>1</sup>

THE RIGHT THING TO DO ABOUT AUTOMOBILE INSURANCE

A STATEMENT BY INSURANCE CO. OF NORTH AMERICA

In a statement published recently throughout the nation, Insurance Company of North America made its position on the automobile insurance problem plain—and public.

Among other things, we said, "What is needed is an entirely new approach to the problems presented by victims of automobile accidents—an approach that would harmonize with the thinking and needs of our automobile-oriented society."

The answer lies far beyond the control of the automobile insurance companies. It stems 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, licensing laws, antitrust laws as applied to the insurance industry and tort law.

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 have been exploited for their sensational value. These inquiries have been so numerous and diverse that insurance companies have been unable to respond fully or effectively.

Congress is now considering joint resolutions introduced by Senator Magnuson and Congressman Moss to authorize the Department of Transportation to make a single coordinated study of the existing compensation system for motor vehicle accident losses.

It seems apparent that the time has arrived for a comprehensive and objective study of the overall system, of which automobile liability insurance is a part. Consequently, INA wholeheartedly endorses this project. We believe that it offers the best means of finding a satisfactory answer to the public outcry against the present system.

The facts and information developed by the study should put legislators in a position to design appropriate remedial legislation to which the automobile insurance companies can respond with insurance contracts and services to satisfy the public requirement.

INA knows that the automobile insurance system must win public approval for otherwise it may be replaced with something else.

The Congressional hearings, now being conducted, present a great opportunity to lay the foundations for a new and better plan to meet the public requirement. The many thousands of dedicated employees and agents of INA will apply their energy, knowledge and years of training to win the approval of the public for this new system.

BRADFORD SMITH, Jr., *Chairman*

Mr. SMITH. Thank you, sir.

The reasons why we feel an in-depth study by the Department of Transportation is needed at this time were outlined in the text of the full statement which has been submitted for the record.

The public concern with the system for compensating victims of automobile accidents seems to fall into two categories. First is the concern, recently highlighted by the Keeton-O'Connell study and others, with the inequity, the delay, the cost of recoveries, or in other words, with the failure to meet reasonable standards of social justice, that is in the eyes of the public and many others.

This first element of public dissatisfaction is, in fact, dissatisfaction with the tort liability system which is fundamentally unchanged from that which applied before the automobile changed the American way of life. This system is beyond the power of industry to

<sup>1</sup> See p. 46 for the statement of policy.

change, and this is one of the reasons why a study is needed on which informed legislation can be based.

The second category of public dissatisfaction is directed to rate-making, cancellation, failures to renew, and other problems that have been discussed by earlier witnesses. In my opinion, many of these criticisms are traceable to the unwise substitution of regulatory authority for the more effective forces of competition. And it is that feature of current law which has kept rates at noncompensatory levels. A few States, led by California, have shown that competition may be relied upon as the most effective and economic device for protecting the public interest.

I was glad to hear that our friend from AIA appeared to also endorse this view.

We recognize that completion of the proposed Department study will take many months. But what can and should be done in the meantime? First and most important, we urge that, without delay, the rate-making process be removed from the political arena to the competitive marketplace. This we feel will alleviate many problems not only as to rate-making, but also as to cancellations, nonrenewals, and other challenged underwriting practices.

Second, we have already suggested an interim change in the compensation system which the States could adopt pending outcome of the Federal study. An outline of this suggested system was included in recent remarks before the Federation of Insurance Counsel, a copy of which is attached to my statement for inclusion in the record. The four essential elements of this plan are as follows:

1. Compulsory insurance for all registered vehicles. (Of course, this will require legislation.)
2. Two-party insurance up to a given amount, that is, an insurance policy whereby the company pays the actual economic losses of its policyholder, rather than his liability to a third party.
3. Subrogation of the policyholder's rights to his company, so that having already collected his economic loss, the policyholders cannot turn around and collect that again from a third party.
4. The right either to retain or forego benefits from collateral sources at the option of the insured with an appropriate adjustment in the premium.

We believe this concept is wholly compatible with existing tort system and could be put into effect at the State level forthwith.

By contrast, a plan which would require modification or change in the tort system would in many States require a constitutional change necessarily entailing great delay. We think the time here is of the essence.

In closing, let me voice the thought that this hearing and the proposed study represent the type of enlightened government-industry cooperation that is best calculated to help the insurance industry to fulfill its obligation to satisfy the public requirement and at a reasonable profit.

We pledge our full cooperation, Mr. Chairman.

Senator CANNON. Thank you very much for your statement.

Your one proposal to remove the ratemaking authority and leave it wide open to competition raises a few questions in my mind, that is, what do you do then about the hazardous risks, so-called, the high-

rate risks? Are you going to have some type of governmental regulation that says that you must take every applicant that comes along, or that you can be selective, or that you as a company would not bid for these high-risk cases?

Mr. SMITH. I think it has been testified here this morning, Mr. Chairman, that companies are certainly showing a reasonable degree of responsibility. Inadequate rates prevent the companies from showing an even greater degree of responsibility. I believe it to be true, that if given the freedom that I suggest, many of these problems would be solved by the companies. This doesn't mean that they are to be completely free from any regulation whatsoever. For example, in the State of California where you may charge whatever rate you believe to be reasonable, adequate, and not unfairly discriminatory, the companies rating process, their rating activities, and their whole insurance operation is subject to review by the appropriate authority, the insurance commissioner. If an insurance company fails to fulfill the obligations prescribed by law with respect to its insurance operations, among which is to charge rates which are reasonable, adequate, and not unfairly discriminatory, the commissioner has the power to issue a cease and desist order or to take other appropriate action.

Senator CANNON. In one of our presentations this morning we were furnished some statistical data indicating that there had been a very substantial loss by the companies in this type of insurance over a period of years. Is that generally true as far as your company is concerned?

Mr. SMITH. Yes, sir; that is correct. Attached to our statement is an exhibit which will show our underwriting experience for the last 5 years.

Senator CANNON. I am told that in a letter to your stockholders on February 7 this year you announced the formation of a new corporation which would "use capital of Insurance Co. of North America not needed in the insurance business" for making acquisitions in fields some of which are and some of which are not related to the insurance business. My question is, If this business is so unprofitable, where is this capital coming from to go into another venture?

Mr. SMITH. Mr. Chairman, we have been in business since 1792. Our stockholders year after year have left a part of the profits of the business with the corporation. Those profits today constitute a very substantial surplus that we have to operate with. The phrase "surplus surplus" was coined by a recent study made in New York. This is something new to me. I never heard this phrase before. But obviously what it means is the excess of surplus required to conduct the business safely and properly.

Senator CANNON. You are saying that you have been able to build up a surplus then despite your unfortunate experience in most recent years?

Mr. SMITH. Yes. But I also call attention to the fact that this is something over 175 years in the making.

Senator CANNON. Senator Scott?

Senator SCOTT. And involves the assumptions of many different kinds of risk.

Mr. SMITH. Exactly. Our automobile insurance operation constitutes about 22 percent of the whole. We wrote last year, if my recollection

tion is correct, \$151 million in automobile premiums out of a total of in excess of \$700 million in premiums for all lines of business.

Senator SCOTT. Your company was founded by a physician, as I recall. Isn't that right?

Mr. SMITH. That is correct. Dr. Rush.

Senator SCOTT. Dr. Benjamin Rush, a physician, and a signer of the Declaration of Independence.

Would you tell us briefly something about your rehabilitation program which you call MEND?

Mr. SMITH. I would be very glad to. In liability cases it is not always easy to determine at the outset whether you are ultimately going to be held liable for the injuries to third parties or not. There are, however, cases where you can determine that your liability is almost without question. In those cases we move in immediately to offer our services, first by making advance payments to the injured party and second to offer some expert advice and help in rehabilitation procedures. I don't want to take the time of this committee to detail it. There is a considerable discussion of it in our statement as a whole.

I can only say to you, Senator Scott, that the results of this program, we call it MEND, have been really thrilling. They have produced enormously fine results in returning people to the stream of life. And in addition I would like to say that we don't do this entirely without expectation that we will be able to reduce the ultimate loss that we will have to pay.

Senator SCOTT. These payments may include medical expenses, for example, and compensation payments for loss of earnings.

Mr. SMITH. That sort of advance payment is involved. But more importantly, or at least equally important, are the payments made to get the person back into the full stream of life. We have even gone so far as to finance people to go into business to get them going again in a business to which they can accommodate themselves with their handicap.

Senator SCOTT. It is an excellent and responsible attitude which the company shows. We are very proud to have such a company in our community.

Mr. Chairman, I have no other questions.

Senator CANNON. Mr. Smith, the question that seems to be very controversial at the present time is whether or not investment income should be taken into consideration in determining premium rates by the regulatory bodies. What is your view on that?

Mr. SMITH. This morning that question was raised and answered by one of the preceding witnesses here, and I think he did a very good job of it. I would like to add that all we ask is a reasonable return on our invested capital, in the equity we have in the business. This study made by A. D. Little in Boston has shown that the present return on capital is grossly inadequate in terms of today's markets. There isn't any question but that a continuation of that position will bring about a flight of capital from the insurance business rather than bringing it into the business; capital which will be required desperately in view of the necessary increases of service which will be required by our exploding population, our growth of the national product, and so forth.

There has been a great deal of emotional approach to this problem which I think can be properly resolved by an objective study. And I believe an objective study will show that the emotional approach far exaggerates the impact of investment income on the true underwriting experience. My own view of it is that even if investment income from reserves—such as the unearned premium reserve and the reserve for claims incurred—were taken into consideration, it would make very, very little difference in the rate.

Senator CANNON. Thank you very much. We appreciate your presentation today.

(The complete statement of Mr. Smith follows:)

STATEMENT OF BRADFORD SMITH, JR., CHAIRMAN, INSURANCE CO. 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 areas; 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.

(The attachments referred to follow:)

#### EXHIBIT I

##### SOME THOUGHTS ON THE AUTOMOBILE INSURANCE PROBLEM

Address by Bradford Smith, Jr., Chairman of the Board, Insurance Co. of North America

The public criticism of the automobile liability insurance business is feeding upon itself and there is no denying that it has reached proportions which demand action. Moreover, there has been a dramatic shift in the direction of these complaints towards federal government. Meanwhile, state governments, caught in the current of public dissatisfaction, have been moving to satisfy the complaints with regulations and laws dealing with the symptoms of the disorders affecting our business rather than the root causes.

I refer to laws and regulations requiring companies to issue policies at non-compensatory rates; to the denial of applications for compensatory rates; to the required use of the uninsured motorist endorsement in order to pick up the liability of insolvent companies—just to name a few. And the worst of it all is the failure to consider the plain fact that this approach merely serves to aggravate the problem by forcing underwriters to be even more selective in order to survive.

Virtually all observers will agree on the need for corrective measures in the system of reparations in automobile accident cases but it seems that very few will agree on the extent and character of change that must be made in order to satisfy public requirement and, more importantly, to conform to basic principles of social justice. In any event, it is not hard to conclude that the future of our business as a private enterprise is in danger unless insurance companies are able to cooperate with government in bringing about corrective measures. Unfortunately, the needed reforms cannot be made by insurance companies alone—government cooperation is required. And in the process it will be most important for insurance companies to remind themselves once again that their business is especially vulnerable to public dissatisfaction since, as the Supreme Court has said, our business touches the lives of nearly everyone and is thus deeply affected with the public interest.

The loudest complaints come from those who have been turned down for insurance; or who have had to resort to high risk companies of doubtful stability; or have had their insurance cancelled or dropped on renewal; or feel the premium cost is unreasonable; or who have been victims of insolvent companies. But there are other more basic criticisms which are advanced by serious students of our business who maintain that root causes of the problem lie in the tort system which, it is asserted—

Over-compensates some;

Under-compensates others;

Denies compensation to many;

Involves inordinate delays;

Is unnecessarily technical and complicated; and

Is an outmoded and inefficient process for compensating those injured in automobile accidents.

The automobile liability insurance policy is an outgrowth of the present tort liability system and was designed to pay on behalf of the policyholder damages for which he is legally liable and to provide for his defense in lawsuits alleging legal liability. Who is there to say that it fails to serve these purposes—the ones for which it was designed? The complaint that it doesn't compensate automobile accident victims equitably and efficiently is serious enough in itself to prove fatal to the present system, but upon reflection it becomes clear that the fault lies more in the tort system than in the insurance system. And if it turns out that what the public really wants is a two party system which provides reimbursement for loss or damage without fault, let the law be changed accordingly and I am certain that the insurance business will design the necessary insurance. Moreover, they will do a good job of providing for the public requirement along these lines.

What alternatives are offered the motorist under the present law? If he distrusts his chances of recovery under the tort system and wants to be positively assured of recovery, he can buy accident insurance, which is readily available and will compensate him promptly and equitably without regard to legal liability. The difficulty is that the customer cannot substitute such a direct benefits contract for the legal liability contract. For complete protection he must purchase both the accident policy and the legal liability policy.

Thus, accident insurance, as a solution, is impractical unless the law is changed to eliminate liability under the tort system. To the public, purchasing direct benefits policies and being required to also purchase a policy for the benefit of others and having others required to purchase policies for his benefit in the event of legal liability is illogical, inconvenient, and unnecessarily expensive.

But up until now that is the only alternative we have offered to simple reliance on the tort system for recovery of loss due to an automobile accident; and our only explanation has been that it is true that our system involves a duplication of expenses, but there is also a duplication of benefits. If a claimant is successful in his liability action, he will recover this judgment in addition to whatever he recovers from his direct benefits contract. The public might very well charge that the insurance industry has developed a system requiring the motorist to buy twice as much insurance as he needs so that in the event he is injured he may recover twice as many benefits as he needs.

Yes, that sounds preposterous, but that is, in effect, the present position.

So long as the premium for this duplicate coverage is a matter of a dollar or two a policy holder might accept this proposition and look upon it like the football pool, ignoring insofar as possible the fact that he is the football. But when the premiums are substantial and grow larger in response to rising hospital costs, medical costs, automobile repair costs, and legal costs, he rejects this proposition. He can hardly be expected to be interested in paying double insurance premiums. Given the choice it seems clear that he would prefer to pay the single premium and forego any double recovery in turn for the elimination of duplication of cost.

Assuming that most of us in the insurance business agree with this conclusion—and I think we do—we then find ourselves in the unhappy position of telling the public that the companies cannot change the insurance pattern for it is not the insurance system that produces this result, but the legal system. We are convinced that once the public becomes fully aware of this fact they will demand changes in the legal system. And you can rest assured that the numerous studies and investigations currently being promoted will place this and many other facts clearly before the public.

Now what changes in law could be made which would eliminate this duplication and confusion of coverages?

It would be possible (at least in theory) to enact a law imposing absolute liability on the operation of motor vehicles, eliminating the tests for negligence and the tort defenses. Contrary to the understanding of many laymen, I am told that absolute liability is not revolutionary and that there is ample precedent in tort law for such approach—that, in fact, absolute liability predates the fault and negligence concepts in tort law.

Absolute liability has previously been imposed upon ultra hazardous activities, which seems to aptly describe automobile travel, and upon nuisance, which is perhaps even more apt. And I am told that it has customarily been imposed upon keepers of wild beasts. Perhaps if we wait until all cars have over 300

horsepower, tigers in their tanks, and are called cougar, wildcat, barracuda, or what have you, the natural evolution of the law, at its accustomed pace, will provide a solution. Then again, that might take a few years and we don't have that much time.

Under an absolute liability system, injured parties would look to the legal liability insurer of the other driver and, theoretically at least, would not need direct benefits accident insurance. But suppose there is no other driver involved, or he can't be found, or he's uninsured, or his insurance company is one of those that does not respond until forced to do so. Accident insurance would still have to be carried against these contingencies.

But worse yet, if he does recover under such a system, he must deal as a "third party" with an insurance company which he did not select and which will quite naturally treat him as an adversary rather than a valued customer. This would certainly be an awkward system which could not fail to encourage bad practice and rapid disenchantment on the part of the motorist. Moreover, it would have the effect, at least in the injured party's mind, of interfering with his right of free choice in the matter of selecting the insurer to whom he will look for reimbursement.

Let's consider the other extreme. If we abolish tort liability with regard to automobiles and did nothing else, prudent people would purchase the accident policies which we now offer and would simply not purchase liability insurance. Moreover, it seems likely that many motorists would go uninsured, thus avoiding any contribution to the overall accident cost except for their own which, in many cases, would result in their becoming public charges. This is a more revolutionary approach, with less precedent.

Lawyers have said of this approach that it abandons a fundamental concept of our law, that the person causing injury should be liable. This concept has recently been abandoned only in special circumstances, but one is forced to acknowledge that it has certainly been muted by the availability of liability insurance which enables a person to escape the financial consequences of his own negligence.

Perhaps, then, the solution lies somewhere between. At least some part of the system of reparation of loss or damage might be shifted from tort liability to a direct benefits system. Consideration of the public interest would demand as a minimum a shift of that part which provides for immediate medical treatment and rehabilitation procedure and emergency short term income protection.

It appears that such a system would eliminate much of the dissatisfaction by providing direct benefits without regard to fault for the immediate requirements of those injured in automobile accidents, and, most importantly, from a company of their own choice which regards them as customers and not as third parties whose claims are to be resisted. Under such a plan, the tort liability system and the available major medical and other direct benefits programs could be retained for the excess losses, and for those elements of damages which do not lend themselves to specific monetary evaluation.

To be sure, there would be a shift of part of the total cost of compensation to the non-negligent but it would also permit elimination of much of the expense of fraud, duplicate coverage and litigation. A re-allocation of cost to the negligent could be accomplished through subrogation which would be pursued between carriers by arbitration.

One of the most significant savings which we envision under such a plan affects the direct costs but cannot be fully measured in dollars. This is the actual reduction in disability, reduction in economic loss, and reduction in actual pain and suffering which can be realized through advance payments, prompt settlements, prompt medical treatment and prompt rehabilitation procedures. From our experience with other lines of insurance, such as workmen's compensation and accident and sickness, we have learned that such procedures can dramatically reduce the extent of body damage, actually reduce the extent and duration of physical impairment and disability.

This principal has already been recognized in the legal liability field but in very limited form by broadening the policy so that it will respond for the expense incurred by the insured for immediate medical and surgical relief to others at the time of an accident, and by providing for medical payments for limited amounts, payable without regard to legal liability. Our company and others have further extended this principle through a system of advance payments, where the policyholder's liability is clear (or more precisely, where it is clear that he will be held liable), and only the ultimate amount of damages is in doubt.

The results of this latter procedure have been most gratifying, but since it is limited to cases where liability is clear, our attention is focused on a rather brutal fact. We have the knowledge and the means to minimize injuries and suffering but because of the tort liability system we are unable to act until legal liability has been established. Thus, only a limited number of accident victims are benefited by the procedure.

The delay of essential treatment and rehabilitation for years in some jurisdictions is an unavoidable characteristic of the tort system. Even in uncontested cases, investigation to establish that liability exists may take days or weeks. Isn't this a powerful reason for turning away from the tort system at least for that part of the victim's damages which represent immediate treatment and rehabilitation?

There would be further savings to the public, generally through the elimination of the automatic filing of suits regardless of whether or not they are to be tried, plus the elimination of the expense of jury trials in cases involving relatively small amounts. During 1966, INA closed 12,418 suits in connection with INA liability policies, only 1,538 (12%) of which were tried, while 2,594 (21%) were dismissed no payment, and 8,286 (67%) were settled. We successfully defended 891, or 57% of the cases litigated, lost 647, most of which were tried primarily because excessive demands made it impossible to settle them and it seemed appropriate to let a jury determine the amount of liability.

There is still another benefit in such a system which is not translatable into dollars but which is, nevertheless, important to us all. That is the attitude of the public towards law, the courts and jury service (and towards lawyers). Our present system is one which requires jurors to disregard the instructions of the court in order to achieve what they consider a just result. Indeed, if the tort system, with its technical proofs of casual negligence and its technical defenses and measures of damages could be literally applied with mechanical precision, it would be rejected as unjust. It is tolerated because it is circumvented.

But circumvention of laws is a dangerous practice. It undermines the public respect for and confidence in the law. The effect is felt throughout society. A law which must be circumvented to achieve justice should be changed to preserve the just result and to obviate circumvention.

Would the savings inherent in a no fault system fully offset the additional compensation which would be paid, so that the premiums would be less than the present liability premium? I don't know the answer to that—nor can anyone know until such a system has been tried. We do know that more people would be more justly compensated. But let me pose a different question. Must the premium be lower?

In my judgment, a substantial measure of the public complaint about cost stems from their suspicion that they are not getting full value for the premiums they pay. (ORC reports that in November 1967 the general public ranked automobile insurance below prescription drugs and just ahead of cosmetics and toiletries in terms of value given for their money). They have come to regard the purchase of an automobile liability policy as a benefit which they must provide for others. If they saw their automobile insurance as a policy providing direct benefits for themselves, their families, and their guests, purchased from a company of their choice in a competitive market, I suspect their attitude would be different. Moreover, there would be a redistribution of the total cost which would tend to make individual premiums more commensurate with the direct benefits accruing to policyholders rather than the benefits accruing to third parties as a result of the liability incurred by policyholders.

Looking at the facts we must admit that, in response to public demand, the automobile liability policy has actually evolved away from strict tort liability through the provision for immediate medical aid, medical payments and uninsured motorists coverages. And in our administration of these contracts we have introduced advance payments and rehabilitation. Courts, and juries, and lawyers have departed still further from strict tort liability in their adjudication of negligence and determination of damages. It now seems apparent that our liability insurance system has progressed as far as it can go within the framework of the present legal system. This brings us to the point of decision of where to go from here.

Several years ago we became convinced that the public interest and our own survival as a private enterprise demanded a study of the matter as a national problem. We regretted the necessity of having to take this position because of its

possible impact on many of our friends in your profession and others at the state governmental and regulatory level. However, we felt that the problem involves so many different situations in the several states that we could no longer afford anything less than a comprehensive study. Indeed, the social aspects of the problem must override virtually all other considerations. If any of our friends find our readiness to encourage a federal study of the problem unpalatable, I feel certain that an unbiased look at the practicability of diverse solutions among the several states will most certainly soften their criticism, especially if one believes that the continued success of our private enterprise system is dependent upon our ability to respond efficiently to the requirements of social justice.

The statement I have just made was written before the proposal for a comprehensive study of automobile insurance by the Federal Government was announced in President Johnson's State of the Union Message. Needless to say, it has INA's wholehearted endorsement and we are heartened by Washington's recognition of the fact that meaningful solutions to the crisis require as their first step a full-scale study—a course of action that we have advocated for some time past.

Finding the best form of compensation for victims of automobile accidents requires federal direction because it presents a problem of national scope. The wide ranging mobility of the automobile makes it virtually impossible to contain the problem within the borders of a single state. Moreover, the federal government is best equipped to mobilize the talent, resources and information that are available throughout the nation. We are convinced that this is the most sensible and realistic approach to what is probably one of the touchiest and most complicated social problems of the day. We are also convinced that the Department of Transportation is the proper agency to lead the study and we urge that they be given full cooperation by the insurance fraternity.

Your professional careers long have been devoted to justice for citizens injured on our highways. You can further enhance the public regard for your profession by lending your support to the joint resolution introduced last year by Senator Magnuson of Washington, many of his colleagues on the Senate Commerce Committee, and by Representative Moss of California authorizing and directing the Department of Transportation to spearhead and coordinate the study that President Johnson has proposed. That Cabinet Department is best suited to lead the study and its top officials already have made clear their intention to consider fully the experience and views of the insurance industry, including groups such as yours. In short, the intention is to gather all the facts necessary to produce well considered recommendations for action. You should give this worthwhile effort your support and cooperation.

No one knows what the outcome will be but I am certain that the insurance fraternity must cooperate to the fullest extent in the effort to devise a plan that will provide social justice for injured motorists, efficiently and economically, and will be compatible with the free enterprise system—a plan that we can live with.

It has been estimated that the study will take up to two years and after that will come a considerable period of debate before a plan can be translated into legislation. This poses the serious question of what will happen in the meantime. Already at least four states are considering the Keeton-O'Connell plan or something similar. Others may well come up with their own solution and it is not hard to visualize the possibility of a hodgepodge of state laws which will be extremely hard to live with, not to mention the costs which could be overwhelming for many carriers. In other words, there is a good chance that within the next two years we could find the automobile insurance business in an even more desperate situation than it is now.

And for this reason alone our insurance commissioners face a challenge considerably larger than any since the decision in the SEUA case which brought insurance under federal jurisdiction. There lie ahead several years of uncertainty and the need for intelligent action during this period is very great. Above all, our commissioners will have the responsibility for restraining hastily concocted remedies calculated to gain political advantage—a difficult job that may not always be compatible with political aspirations.

And so, if action is to be taken, the best interests of the public and the insurance fraternity will be served by legislation which will give opportunity to find the answer to some of the questions raised while at the same time preserving in reasonable degree as many options for future change as we can. So in an effort to be constructive we are offering for consideration an outline of a plan which

we believe would serve this purpose and could even prove to be the solution for which we are looking.

Also, it occurs to us that the National Association of Insurance Commissioners might very properly be interested in a plan of action to recommend to their membership which, if adopted by states individually, would afford a reasonable degree of uniformity while at the same time preserving for future decision the question of changing some of our basic legal concepts.

We believe that the program we have in mind could be adopted by a single state, or by any number of states, without abandoning the tort system, and would avoid the problems raised by non-fault systems under several state constitutions. The program would be implemented through enactment of a statute requiring standard coverages as a prerequisite to the registration of vehicles. The standard coverages would include a first party direct benefits coverage applicable to all occupants of the insured vehicle, and all persons injured by the insured vehicle except occupants of another vehicle and tort liability coverage as afforded by the present automobile liability policy.

First party coverage would apply to reasonable and necessary hospital and medical expenses, extra expense incurred as a result of accidental injury, and loss of income. Provision could be made for pain and suffering awards in amounts to be established in each case by a medical panel. The statute should permit deductibles and co-pay features in the first party coverage applicable to the named insured and members of his family, at the option of the insured, with a maximum limit on such deductibles and co-pay amounts.

We think there should be a minimum limit of \$15,000 per person on the first party coverage, a maximum aggregate annual retention under deductible and co-pay features of \$500, and a minimum single limit of \$25,000 on the liability coverage. The statute should permit a reduction in premium for the exclusion of collateral source recoveries available to the named insured or members of his family at the option of the insured.

There should be no exemption from tort liability. The first party insurer should be subrogated to the tort right of its insured to the extent of indemnification. The insured should be precluded from recovering in a suit against a third party the benefits recovered under his policy, including benefits from other sources which he elected to exclude and any deductible which he elected to take. The statute should exempt such programs from rate filing requirements.

The statute should be accompanied by legislation prescribing realistic standards for licensing—including provisions for restriction and revocation of licenses—inspection, and traffic safety, and for effective enforcement. Such a program would permit a broad test of the direct benefits system without impairing the existing tort legal system. Experience under a plan of this type will provide factual data for refinement and improvement of the plans themselves, and for the federal study.

Adoption of a wide variety of remedial legislation among the several states would make the task of evaluating experience difficult, if not impossible. Therefore, we urge the insurance commissioners to recommend to their legislatures a program which will be uniform among the states enacting remedial legislation, and compatible with the existing systems in states which do not.

It is imperative that during this time of experimentation insurers be given maximum latitude in the development of coverages to satisfy the statutory requirements, and in the pricing of these new and untried programs. Failure to provide reasonable latitude for companies promptly to obtain compensatory rates will inevitably result in further restrictions of market and withdrawal of capacity.

Insurance has long been regulated by the state and we believe that despite the national aspects of automobile insurance, every effort will be made to avoid a change to complete federal regulation. One way to do this might very well be a statute setting forth national standards pertaining to the use of motor vehicles, i.e., reparation for those injured in automobile accidents, insurance, rules of the road and traffic laws, safety, licensing and enforcement—all to be administered by the states individually.

It is, or course, too soon to tell what direction the federal study may take but, in any event, the chances of keeping regulation of insurance at the state level will be far greater if the states show some real progress toward satisfying the public requirement through a reform such as we suggest.

And finally, let me say that if government, either state or federal, devises a better and more economical system of reparation for those injured in automobile

accidents along the lines suggested herein, I am certain that the private enterprise insurance system through the normal function of competition will devise and offer the public a choice of insurance programs to fit the circumstances.

## EXHIBIT II

### REHABILITATION AND ADVANCE PAYMENTS

Today, the insurance industry accepts the premise that rehabilitation is a recognized part of our daily efforts, and will become increasingly so in the future.

The insurance industry brings to the restoration field a proud record of restoring homes, commercial buildings, ships, cargoes and every other type of personal and real property after the horrors of fires, winds, hail, hurricanes and many other natural disasters. There is no reason why we cannot apply the same creative service with integrity, strength, knowledge and imagination in the restoration of human bodies and lives. We at INA have done just that and are excited about it. We call our program MEND.

The story of MEND officially began January 21, 1966 when senior management of INA enthusiastically approved the program.

In the past, many insurance companies, including INA, have taken great strides forward in rehabilitation under Workmen's Compensation coverages. Now MEND makes it possible for all appropriate cases of physical injury, sickness or disease, arising under any contract of insurance written by INA to be eligible for rehabilitation. This includes cases arising from automobile liability and general liability, workmen's compensation, accident and sickness, hospitalization, major medical and reinsurance coverages. If a paraplegic can be rehabilitated to a productive life with dignity following a work-incurred injury, is it not possible to restore the same individual if his injury occurred in an automobile collision or under a general liability or products liability situation? Is it not the individual that counts, including the ultimate cost to society, and not under what coverage the dramatic event occurred? As insurers, we are in the best position of any group or organization to begin the rehabilitation process. Normally, we receive early notice of the event. Therefore, insurers should be the instigators, coordinators and financiers of the rehabilitation process.

Our program is based upon the skillful application and coordination of its three basic principles, early financial assistance, early medical restoration and vocational and educational training.

#### EARLY FINANCIAL ASSISTANCE

Advancement of funds without a release, or financial rehabilitation as we call it at INA, is merely the first step of the rehabilitation process and is applicable to all claims where there is a legal liability attaching to our insured. Rehabilitation is hard work for an individual and he cannot be expected to succeed if he is worried about family finances. Financial rehabilitation removes this concern so that his full concentration can be applied to this important process. We and other companies have advanced funds for food, mortgage payments, car payments, loss of wages, vocational or academic tuition, as well as medical and rehabilitation costs. It is essential that each case be tailored to the individual since we are dealing with individuals who vary widely in their needs and opinions. This entire procedure is based on prompt payment of our obligations and a spirit of cooperation with the injured party.

One new concept has already achieved wide acceptance—Financial rehabilitation or advancements and the spirit they reflect do reduce cases of needless representation by attorneys and defeat the age-old criticism that insurers are guilty of delay in payment and court congestion.

#### EARLY MEDICAL RESTORATION

As it is INA's goal to restore disabled individuals to productivity in the shortest possible time, prompt and continued medical care of the finest quality is of prime importance in achieving the maximal physical and psychological restoration so necessary to realize this goal. Throughout the United States and Canada, physicians and specialized facilities of the highest caliber are instantly available to us, and when the need for treatment arises in an area where spe-

cialized care and facilities are not available, we can do where possible transport the individual to the best source for appropriate treatment.

#### VOCATIONAL AND EDUCATIONAL TRAINING

It is INA's firm belief that work is profoundly important to every man. It is no less important because he might be disabled. It is essential that a disabled person be able to return to his maximum position in the community but often the nature and severity of an injury or disease make it impossible to achieve this goal without professional help. This usually requires assessment of special aptitudes, exploring job requirements, counseling, vocational training or retraining, job finding, and arranging for job modifications to accommodate unalterable personal limitations. Moreover, financial assistance to the individual in completing an inadequate education or business capital is supplied through MEND in the appropriate cases.

The humanitarian consideration—the hope factor—is of prime importance. This is what MEND is all about—restoring people, mending them back to their maximum potential. Another important objective of MEND is to project an image of the industry that is synonymous with service to humanity. For the general public this should mean better insurance service at lower cost.

As the program is economically sound, certainly we anticipate financial gains. While we have helped others, we have also helped ourselves towards the attainment of that very necessary objective, that is, a reasonable underwriting profit. We recently surveyed 757 closed files, predominantly in the automobile liability category involving our financial rehabilitation program only, wherein we had advanced without release from a low of \$10.00 to a high of \$73,000.00 per individual case. Estimated financial savings in these cases total \$987,083.32. Of 277 closed files in the medical and vocational areas, not all of which are success stories, we have estimated financial savings approaching two million dollars. We have applied our program in over 3000 cases, of which approximately 2000 remain open and active with the number steadily increasing.

In rehabilitation we have been afforded an opportunity which is consonant with sound insurance practices and compatible with the basic functions of insurance, while at the same time producing worthwhile contributions to the health and welfare of the general human community.

### EXHIBIT III

#### 5-YEAR UNDERWRITING RESULTS—UNITED STATES

##### AUTOMOBILE BODILY INJURY LIABILITY

[Figures other than dollars are in percent]

Year	Earned premium	Loss ratios			Underwriting expenses				Total operating result	
		Pure losses	Loss adjustment expenses	Total	Acquisition cost	General expenses	Taxes and fees	Total		
1962	\$38,613,705	59.1	12.3	71.4	20.0	7.3	4.0	31.3	7 102.0	
1963	41,864,256	58.3	12.6	70.9	19.7	7.5	3.9	31.1	102.7	
1964	44,525,010	56.8	12.5	69.3	19.0	7.4	4.0	30.4	99.7	
1965	49,911,795	60.3	12.1	72.4	18.5	6.9	3.9	29.3	101.3	
1966	54,012,417	63.1	12.5	75.6	18.4	8.1	4.2	30.7	106.3	
1962-66	228,927,183	59.7	12.4	72.1	19.0	7.4	4.0	30.4	102.5	
COMPOSITE MOTOR VEHICLES <sup>1</sup>										
1962	\$9,062,616	70.9	9.2	80.1	20.8	7.3	3.0	31.1	111.2	
1963	12,489,812	70.8	8.0	78.8	19.4	7.1	3.0	29.5	108.3	
1964	16,899,882	65.6	8.0	73.6	17.7	6.2	3.0	26.9	100.5	
1965	23,145,049	69.7	7.7	77.4	17.6	6.0	2.8	26.4	103.8	
1966	30,340,172	55.5	7.7	63.2	17.9	6.0	2.9	26.8	90.0	
1962-66	91,937,531	64.5	8.0	72.5	18.3	6.3	2.9	27.5	100.0	

<sup>1</sup> Footnote at end of table.

## BODILY INJURY LIABILITY OTHER THAN AUTO

1962.....	\$32,554,881	36.9	17.1	54.0	20.4	9.6	2.6	32.6	86.6
1963.....	33,849,347	45.1	21.6	66.7	21.0	10.4	3.2	34.6	101.3
1964.....	33,899,601	45.9	22.4	68.3	20.2	9.1	3.0	32.3	100.6
1965.....	34,019,218	38.2	22.7	60.9	20.1	9.2	3.0	32.3	93.2
1966.....	36,341,120	43.8	20.3	64.1	20.1	10.8	3.1	34.0	98.1
1962-66....	170,664,167	42.1	20.8	62.9	20.3	9.6	2.9	32.8	95.7

<sup>1</sup> Composite motor vehicle is INA's direct billed personal auto package policy and hence, includes property damage liability and first party physical damage experience.

Source: Insurance expense exhibit, United States only. Loss and loss adjustment expense are related to net earned premium. All other items related to adjusted direct written premium.

## EXHIBIT IV

## AUTOMOBILE INSURANCE RATE INCREASE, 1957-66

Year	Annual rate increase						Disposable personal income	Consumer price index	Adjusted income index
	Liability			Physical damage					
	Amount	Cumulative	Index	Amount	Cumulative	Index	Amount	Index	
1957...	+11.0	1.110	1.000	+7.7	1.077	1.000	307.9	1.000	1.000
1958...	+8.6	1.205	1.086	+3.3	1.113	1.033	317.9	1.032	1.028
1959...	+3.9	1.252	1.128	-	1.105	1.026	337.1	1.095	1.036
1960...	-2.4	1.222	1.101	-1.6	1.087	1.009	349.9	1.136	1.052
1961...	+1.0	1.234	1.112	-	1.079	1.002	364.7	1.184	1.063
1962...	+2.3	1.252	1.137	+1.7	1.097	1.019	385.3	1.251	1.076
1963...	+2.5	1.294	1.166	-	1.105	1.026	404.6	1.314	1.089
1964...	+3.8	1.343	1.210	+2.5	1.133	1.052	436.6	1.418	1.103
1965...	+9.3	1.468	1.323	+11.0	1.258	1.168	469.1	1.524	1.121
1966...	+5.6	1.550	1.396	+3.3	1.300	1.207	505.3	1.641	1.154

Note: As of 1964 disposable personal income includes income of people living alone.

Source: Department of Commerce, Office of Business Economics, "National Income and Products Accounts of United States—1929-65"; NBCU and NAUA statistics.

## MEDICAL COSTS, COUNTRYWIDE

[Dollar amounts in millions]

	Total costs		Private expenditures						Public expenditures			
			Total		Health and medical services		Health and medical services		General medical and hospital care			
	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index		
1957...	\$21,008	1.000	\$16,082	1.000	\$15,693	1.000	\$4,448	1.000	\$1,707	1.000		
1958...	23,071	1.098	17,592	1.094	17,083	1.089	4,987	1.121	1,882	1.103		
1959...	24,866	1.183	18,959	1.179	18,462	1.176	5,291	1.190	1,911	1.120		
1960...	26,385	1.256	20,020	1.245	19,542	1.245	5,791	1.302	1,952	1.144		
1961...	28,875	1.374	21,835	1.358	21,234	1.353	6,458	1.452	2,203	1.291		
1962...	30,765	1.464	23,153	1.440	22,414	1.428	7,030	1.580	2,140	1.254		
1963...	33,070	1.574	24,784	1.541	23,962	1.527	7,668	1.724	2,275	1.333		
1964...	35,660	1.697	25,697	1.660	25,647	1.634	8,355	1.878	2,447	1.434		
1965...	39,141	1.863	29,423	1.830	28,190	1.796	9,049	2.034	2,512	1.472		
1966...	42,979	2.046	32,094	1.996	30,770	1.961	10,184	2.290	2,594	1.520		

## INDEX OF MEDICAL CASE PRICES

[1957-59=100]

Year	Total medical care	Total medical care services	Hospital daily service charge
1957	1.000	1.000	1.000
1958	1.048	1.049	1.057
1959	1.093	1.100	1.116
1960	1.132	1.145	1.193
1961	1.165	1.187	1.284
1962	1.196	1.226	1.374
1963	1.225	1.262	1.460
1964	1.250	1.293	1.533
1965	1.281	1.334	1.622
1966	1.337	1.405	1.777

Sources: Department of Health, Education and Welfare-Social Security Administration-"Social Security Bulletins." Department of Labor-Bureau of Labor Statistics-"Price Indexes for Selected Items and Groups."

## EMPLOYMENT—CIVILIAN LABOR FORCE

Year	Average monthly figures (thousands)		Total wages and salaries (billions)	Average annual earnings	Index
	Employed	Unemployed			
1957	65,011	2,936	238.5	3,668	1.000
1958	63,966	4,681	239.8	3,749	1.022
1959	65,581	3,813	258.5	3,942	1.075
1960	66,681	3,931	270.8	4,061	1.107
1961	66,796	4,806	278.1	4,163	1.135
1962	67,846	4,007	296.1	4,364	1.190
1963	68,809	4,166	311.1	4,521	1.233
1964	70,357	3,876	333.6	4,742	1.293
1965	72,179	3,456	358.4	4,965	1.354
1966	72,895	2,875	392.3	5,382	1.467

Source: Department of Labor, Bureau of Labor Statistics, "Employment and Earnings—Monthly Report of the Labor Force"; Department of Commerce, Office of Business Economics, "National Income and Products Accounts of United States, 1929-65"; "Survey of Current Business."

## EXHIBIT V

NBCU ASSIGNED RISK PLAN—COUNTRYWIDE FIGURES, 1963-65<sup>1</sup>

## BODILY INJURY

Year	Assigned risks				Total business loss ratio	Adjusted loss ratio, excluding assigned risks
	Earned premium (thousands)	Percent of total industry business	Incurred losses (thousands)	Loss ratio		
1963	\$119,998	3.8	\$132,540	110.5	74.7	74.0
1964	121,973	3.6	140,415	115.1	77.3	76.9
1965	135,202	3.6	139,617	103.1	77.0	76.2
1963-65	377,173	3.7	412,572	109.4	76.4	75.8

## PROPERTY DAMAGE

1963	\$47,504	3.8	\$45,221	95.2	74.7	73.5
1964	49,197	3.7	50,221	102.0	79.4	78.7
1965	57,886	3.9	54,815	94.7	78.1	77.1
1963-65	154,587	3.8	150,257	97.2	77.5	76.5
Grand total	531,760	3.7	562,829	105.8	76.7	73.0

<sup>1</sup> Loss figures include all loss adjustment expenses.

## EXHIBIT VI

	Provision in approved rate	Actual experience	
		INA 1966	INA 1962-66
Loss and loss adjustment expense.....	0.655	0.756	0.721
Production cost.....	.200	.184	.190
Taxes, licenses, and fees.....	.030	.042	.040
General expenses.....	.065	.081	.074
Profit and contingencies.....	.050	Nil	Nil
Total.....	1.000	1.063	1.025

Senator CANNON. The next witness is Mr. Vestal Lemmon, president of the National Association of Independent Insurers.

**STATEMENT OF VESTAL LEMMON, PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, CHICAGO, ILL.; ACCOMPANIED BY ROGER DOVE, VICE PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS**

Mr. LEMMON. Mr. Chairman, and members of the committee, 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 estimated that companies affiliated with us write more than half the private passenger automobile insurance in the United States.

I have with me Mr. Roger Dove, vice president of our association. Senator CANNON. We are happy to have you here.

Mr. LEMMON. 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 Presidents' consumer message and in Senate Joint Resolution 129 is a proper approach. We feel that the call for a careful study recognizes the complex 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 application 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 cancelled 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.

And I believe you, Senator Cannon, had commented had the insurance industry done anything in these categories yesterday. I believe we have stepped up to the plate and met the challenge.

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 \$4.5 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 companies and subscribers has been increasing at  $2\frac{1}{2}$  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 faint hearted 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.

The chairman of this committee, Senator Magnuson, and the member from Indiana, Senator Hartke, were kind enough to commend our statement of policy efforts. So did Congressmen Rodino and Cahill, of New Jersey, who have shown a great deal of interest in auto insurance problems.

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— $3\frac{1}{2}$  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 NAIH 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 both Senator Magnuson 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 being fast 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 NAIH 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 insurance, 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 NAIH—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, NAH 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 NAAI 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 questioning of philosophies.

We have pitted plaintiff bar against defense bar and heard arguments on Federal verses 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, nonmember 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 answer 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 everyone 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 criticisms 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.

Senator CANNON. Mr. Lemmon, thank you very much for that fine and helpful statement.

We also have the statement of policy which you referred to. We will make that a part of the committee files.

Mr. LEMMON. Thank you, sir.

Senator CANNON. The next witness will be Mr. Wallace M. Smith, of the American Mutual Insurance Alliance.

**STATEMENT OF WALLACE M. SMITH, MID-ATLANTIC BRANCH MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE, WASHINGTON, D.C.; ACCOMPANIED BY F. A. HOLDERMAN, MANAGER, LEGISLATIVE DEPARTMENT**

Mr. SMITH. Mr. Chairman, my name is Wallace M. Smith, manager of the Mid-Atlantic office of the American Mutual Insurance Alliance. With me is Mr. F. A. Holderman, who is manager, of the legislative department of our association.

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.

Our member companies offer their unqualified support for the study authorized by Senate Joint Resolution 129. We agree with the sponsors of this resolution and with the President that there is a need for a comprehensive, objective, and nonpartisan 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 5 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 substantial equity, and yet simple enough to be administered inexpensively and fairly for upward 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.

You can see, Mr. Chairman, that the industry is caught squarely in the middle of this situation. What can we do to solve it?

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 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 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. One 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 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. 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 bureaus have had in effect for the past 5 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: 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.

I might interject, Mr. Chairman, the last few pages have been an accounting of some of the contributions made by the insurance industry in this problem area of providing insurance coverages to the public generally. I would say that the alliance has publicly declared that it will support State legislation in many of these areas where legislative action is required, and that we have taken a public stand requiring all companies writing automobile insurance to meet a similar standard relative to the cancellation legislation.

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 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 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 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 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 Senate Joint Resolution 129.

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.

In closing, Mr. Chairman, I would like to leave two observations with the committee and also for the consideration of the Department of Transportation in their study activities.

I think in the last 2 or 3 days here we have heard a number of witnesses, and comments from the committee members themselves, on the desire for a simple, easy solution in providing insurance coverages in the automobile field to the general public.

One observation that I would leave, and I believe it was commented on quite extensively, sincerely at least, by Mr. Lemmon, the matter of providing automobile insurance coverage for a hundred million people in this country is a very complex matter. There is no easy, simple solution to it.

That thought we leave with you.

The other thought is in providing insurance coverages to the public, what are the restrictions or conditions that should be placed upon an organization in the private enterprise system to have them provide services to the public?

In conducting the auto study, those in charge may wish to ponder the following: Would the Government have a life insurance company sell an insurance policy or cover a person who has an incurable disease? Would the Government require a department store or a clothing store to stock all types, sizes, models of clothing, and products it sells?

Should banks be required to lend money to persons of character that have revealed that they have defaulted on loans already, and that have no security to put up for such loans?

In the governmental sector today, of insurance, there are some areas that perhaps should be looked at. I would call your attention to the FHA mortgage insurance. The FHA does not cover all the people who desire to have their mortgages guaranteed by that Federal agency.

In the Federal crop insurance program the Federal Government restricts its coverages and does not go into all counties of the States to provide crop insurance.

I think that these are thoughts, too, that should be taken into consideration in any overall study in the depth that is going to be entered into here, Mr. Chairman.

We are happy to make these available to the committee.

Senator CANNON. Thank you very much. We appreciate your appearance here. We want to thank all of the witnesses who have been very helpful in the matter.

The record will be kept open until March 22, because the Department of Defense, the American Association of Retired Persons, the Auto Body Association of America, and others have requested permission to submit statements for the record concerning Senate Joint Resolution 129.

With that, the hearing will be adjourned.

(Whereupon, at 11 :47 a.m., the subcommittee was adjourned.)

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I think that there are thoughts too that should be taken into consideration in any overall study in the field that is going to be entered into here, Mr. Chairman.

We are happy to make these available to the committee.

Senator Cannon, thank you very much. We appreciate your participation here. We want to thank all of the witnesses who have been very helpful in the matter.

The record will be kept open until March 22, because the Department of Defense, the American Association of Retired Persons, the Army, Navy, Association of America, and others have requested permission to submit statements for the record concerning Senate Joint Resolution 122.

With that the hearing will be adjourned.

(Whereupon at 11:47 a.m., the subcommittee was adjourned.)

## APPENDIX

## STATEMENTS AND LETTERS SUBMITTED AFTER THE HEARING ADJOURNMENT

STATEMENT OF HON. THOMAS J. DODD, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, I want to take this opportunity to express my wholehearted support for S.J. Res. 129 for it is my feeling that a comprehensive study of the automobile insurance system is badly needed.

I was most pleased when the President called for this study in his Consumer Message, and it is my earnest hope that your Subcommittee will act with favor upon this resolution authorizing the study.

When the President recommended that the Department of Transportation be authorized to make this study, he pointed to the scandalous failures of high risk automobile insurance companies which I investigated more than two years ago.

As a member of the Antitrust and Monopoly Subcommittee, I held hearings and conducted extensive follow-up investigations into these high-risk insurance problems and many other problems existing in automobile insurance.

What we discovered was nothing less than astonishing.

We discovered that high-risk automobile insurance companies were failing at a startling rate.

We discovered that from 1960 to 1966 seventy-three companies out of 350 engaged in this kind of business collapsed financially, leaving well over a million persons without insurance.

This investigation uncovered an insolvency problem of such magnitude that it may rank as one of the greatest insolvency crises in the history of the insurance industry.

It was hard at first for me to believe that as many as seventy-three companies had actually failed out of a group so limited in size, but it soon became obvious that a major legislative effort had to be undertaken.

Thus on October 18, 1966, I introduced a bill in the Senate to establish an insurance guaranty corporation, and at the beginning of this Congress, I re-introduced the bill.

The purpose of this bill, which was introduced only after a great deal of study, was to establish a Federal corporation to compensate policy holders and accident victims in cases where auto insurance companies became insolvent. This corporation would protect the public much as the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation protect individuals with deposits and savings accounts.

Once the study gets underway, I hope that this extremely important legislation will be carefully scrutinized by those charged with the study in the Department of Transportation and that it will become one of their foremost recommendations.

In the last three years of the period we investigated, the high risk insolvency problem became even worse. In 1964, 1965, and 1966, forty-four high risk auto insurance companies failed.

Since there are approximately 350 companies doing this type of business throughout the country, it statistically follows that 12.6% of these companies toppled in this three-year period alone. That averages out to an annual failure rate of 4.19%.

Too few people are able to appreciate the real seriousness of that high a failure rate. It is a rate of staggering implications.

Businesses in general are currently failing at the rate of approximately six-tenths of one percent every year. The public's interest in the continued prosperity of an ordinary business is relatively small when considered in relation to its interest in banking or insurance institutions, for the latter are entrusted with the public's funds.

The logical conclusion, then, is that the high-risk insurance failure rate should be far lower than the general business failure rate. But the shocking fact is that it is much higher—about seven times higher.

To further illustrate the incredible seriousness of this failure rate, let us consider the case of the banks.

In 1964 and 1965 fourteen of the nation's 14,281 banks permanently collapsed, creating an approximate annual failure rate of one-twentieth of one percent. The failure rate of any segment of the insurance business should at least be on the same level as the banking failure rate.

But involved and complex calculations are not required to see that the high-risk insurance failure rate is not even close to the banking rate. Astonishingly, it is eighty-four times higher.

This situation has gone far beyond the level of what is tolerable. It is outrageous and should be a source of anxious concern for every responsible insurance man in the country.

The injustices which stem from so many insurance company failures are many and gravely heavy in their impact upon our society.

In enacting the McCarran-Ferguson Act, Congress placed the regulation of insurance in the hands of the states. However, it was only a conditional delegation of authority to be reconsidered—as the legislative history of the act points out—if the states should demonstrate an inability to properly serve the public interest.

But have the states been adequately regulating the business of insurance? Have they been properly serving the public interest?

This rash of high-risk insolvencies and the inability of the states to cope with such a problem have illustrated the underlying weakness of insurance regulation by many of our states.

State insurance regulation for a long time gave the impression of reasonable control. This appearance continued as long as the regulated companies generally were sound and not seriously in need of close scrutiny.

But then one day, not too long ago, along came a type of insurance business which quickly demonstrated that it bore careful watching, and this, as we now can clearly see, was the nemesis of many of our state's insurance departments.

This development was hardly surprising to those who realized that these insurance departments generally fail to maintain examiners sufficient in number and ability to carefully and continually analyze the financial standing of all the insurance companies under their jurisdiction.

Nor was it surprising to those who knew that the state legislatures appropriate for the operation of their insurance departments usually less than 4 percent of the premium taxes and fees collected from insurance companies.

The proven inability of so many states to competently contend with this critical insolvency problem is a deeply disturbing matter.

Thousands of American citizens every year find it necessary to turn to high-risk companies in order to obtain automobile insurance protection.

The automobile long ago ceased to be a luxury and became instead an established and necessary ingredient of our American way of life. Just as necessary as the automobile itself is the acquisition of adequate insurance coverage for that automobile. Yet, the major automobile insurance companies are every day tightening their standards of risk evaluation and acceptability.

Consequently, thousands of people are in the unhappy position of desperately needing automobile insurance and having no regular company willing to sell to them. Too often no choice remains open to them other than the high-risk insurance company.

The possibility that any one of us may become a member of this unfortunate group is not remote. Senior citizens who have had the misfortune of meeting with an accident are receiving cancellation notices every day regardless of how many years they have poured premiums into their company's pocket.

And once an individual has been cancelled, rejected, or not renewed, it is simply an exercise in futility to apply to any other company in the regular market.

Fidelity and a sense of duty to long-term policyholders is rapidly becoming a thing of the past.

Some of these insurance company practices are partially attributable to the squeeze in which companies find themselves caught between the rapidly-rising cost of accidents and closely regulated rates. But this is all the more reason for a truly comprehensive study of our limping automobile insurance system.

Once individuals are driven from the regular insurance market to the high-risk companies they no longer can regard the possibility that their underwriter may collapse as an entirely far-fetched and unreal consideration.

They must face the fact that over a two-year period their odds are almost one in ten of having a worthless piece of paper for an insurance policy.

They must face the fact they can never have peace of mind knowing that an injured person's wounds and suffering may go uncompensated.

They must face the fact that their families can never be secure by their fireside knowing that the insurance company standing between any judgment and their home may become insolvent.

The growing distrust of high-risk insurance companies does little to further the insurance industry's hard-earned and well-deserved image of strength and dependability. But the industry cannot go on dismissing the high-risk insolvency problem as a minor matter.

The time has come to face up squarely to the seriousness of the problem that is before us.

It is my hope that this comprehensive investigation by the Department of Transportation will help us to do just that.

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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 S.J. Res. 129. 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 is 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.

COMMUNICATIONS WORKERS OF AMERICA,  
Washington, D.C., February 29, 1968.

HON. WARREN G. MAGNUSON,  
Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.

MY DEAR SENATOR MAGNUSON: 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.*

#### 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 highways 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 trials.

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.

AUTO BODY ASSOCIATION OF AMERICA,  
East Paterson, N.J., March 11, 1968.

Senator WARREN G. MAGNUSON,  
Chairman, Consumer Subcommittee of the Senate Committee on Commerce,  
New State Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: I am the President of the Auto Body Association of America, a national association of independent and franchised dealer auto body shop owners as well as members of affiliated industries. Our member shops are located in the major cities and towns in thirty states across the nation. These shops have a volume of repair work in excess of \$300,000,000 per year and over 750,000 voters are dependent upon them for a livelihood.

Our members are deeply concerned about some of the inequities and malpractices that have grown up in this industry due partly to certain monopolistic and to coercive practices which encourage the operation of unsafe vehicles, often result in unnecessary and greatly increased expense and loss of time to the consumer, and at times gross injustice to the body shop owners and a broad range of US citizens who drive insured automobiles.

*Safety.*—Efforts of some insurance companies through their appraisal practises and the "election to repair" clause to repair vehicles at the cheapest possible price in current practise will often not permit expenditures vitally necessary to the safety of a repaired vehicle such as the inspection of steering and suspension, and the proper adjustment of headlights and front end alignment, a situation which accounts for many of the cars that are now being operated on the highways in an unsafe condition. Untrained or improperly trained insurance adjusters and appraisers interested primarily in the cheapest possible repair job, often will not permit payment for repairs that are essential for the safety of the vehicle. The practise 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 to the occupants as well as other motorists.

*Monopolistic Practises.*—It has been common practise in many areas for insurance companies to encourage the use of certain shops which by necessity must do work of marginal quality. These shops, encouraged by promises of volume for temporary periods, tend to overlook such real costs as overhead and depreciation, and probably operate below cost at wage levels far below the standards of similar industries. Customers are coerced into going to these shops rather than the shops where they customarily go and prefer to have their work done.

By using a discriminatory discount system, in some areas certain dealer-operated body shops extend discounts on parts to insurance companies which are greater than those given to independent shops, thus stifling and restricting legitimate competition.

*Loss of Time and Use.*—Although not provided in the insurance contract, consumers generally must secure on their own time two or more different 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 body shops not favored by the insurance companies, which results in hardship on the part of the consumer who is denied the use of his car, as well as to the body shop owner. This inefficient and unnecessary procedure probably represents a loss to the nation in productive time of at least \$50,000,000 per year.

*Inequities.*—Often the insured is afraid to make a claim for damage to his vehicle for fear that his policy will be cancelled, or his rate for premiums will be raised. Frequently when an older vehicle is repaired with undepreciable parts, the owner is assessed betterment charges on his vehicle.

The unusual system of accounting generally used by automobile insurance companies in which they treat invested income entirely separate from their profit and loss from underwriting, often makes it appear that they are suffering severe losses from their overall operations when such is indeed not the case. This results in an unjust charge to the public in terms of higher premium rates which are misrepresented as due to higher charges of body shops. The system of charging estimated "incurred losses" at the time of an accident, and then deducting actual losses paid out at a much later time and often for a much lesser amount, actually distorts the true picture still further.

The Association feels that there are many instances where state insurance departments do not take needed action on legitimate complaints.

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 Department of Transportation at a subsequent hearing on this subject and any other related hearing. 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.

Very truly yours,

LOUIS J. BAFFA, *President.*

NATIONAL ASSOCIATION OF INSURANCE AGENTS INC.,  
New York, N.Y., March 18, 1968.

HON. WARREN G. MAGNUSON,  
*Chairman, Consumer Subcommittee,*  
*Senate Commerce Committee,*  
*Washington, D.C.*

DEAR SENATOR MAGNUSON: We respectfully request that the attached letter be made a part of the record of the March 12-14 hearings on your resolution authorizing the Secretary of the Department of Transportation to conduct an in-depth study of the automobile insurance situation.

You will note that this national organization endorses the purpose of this resolution and supports its passage. We commend your statesmanlike approach to the problems stemming out of the widespread use of automobiles, particularly as related to insurance.

Cordially,

DANFORTH LORING, *President.*

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#### Re Senate Joint Resolution 129.

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 S.J. Res. 129 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. S.J. Res. 129 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 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 S.J. Res. 129.

Respectfully submitted.

DANFORTH LORING, *President.*

AMERICAN AUTOMOBILE ASSOCIATION,  
Washington, D.C., March 15, 1968.

Re Senate Joint Resolution 129.

HON. WARREN G. MAGNUSON,  
*Chairman, Consumer Subcommittee, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

MY DEAR SENATOR MAGNUSON: The American Automobile Association wishes to go on record in support of S.J. Res. 129. 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:

AAA RESOLUTION—CONGRESSIONAL AUTOMOBILE INSURANCE INVESTIGATIONS

The American Automobile Association has a deep and continuing interest in the subject of automobile insurance on 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 relevant 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 completion 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 12, 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 S. J. Res. 129. 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.*

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THE TRAVELERS,  
THE TRAVELERS INSURANCE Co.,  
THE TRAVELERS INDEMNITY Co.,  
Hartford, Conn., March 15, 1968.

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

DEAR SENATOR MAGNUSON: We would like to record with your our unqualified support for S.J.R. 129. We believe that the study outlined by Secretary Boyd in his testimony before the Consumer Sub-committee of the Senate Commerce Committee last Tuesday would accomplish a valuable and needed public service. We have reviewed the testimony presented to the Subcommittee by representatives of the American Insurance Association, an organization to which we belong, and wish to concur in the statements made by those representatives.

Upon review of the testimony submitted to the Subcommittee during the recent hearings, some thoughts have occurred to us which we would like to have included in the record. We have incorporated these thoughts in a memorandum which we have enclosed with this letter with the hope that the content will be of some assistance to you and your associates in your further consideration of this Resolution.

Please be assured of our desire to cooperate fully with you and with your Subcommittee in any further consideration which may be given to the Resolution.

We have taken the liberty of sending copies of this letter and the enclosure to the members of your Subcommittee and to the Honorable Thomas A. Dodd and the Honorable Abraham A. Ribicoff so that they will be informed of our position on this important legislation.

Very truly yours,

STERLING T. TOOKER,  
*President.*

The Travelers Insurance Companies being among the largest writers of automobile insurance wish to record support of Joint Resolution 129 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.

Further, we respectfully wish to indicate our opinion that in the public's best interest studies must recognize that the difficulties surrounding matters relating to the existing compensation system are symptomatic of far broader and deeper problems. The urban polarization of our population, the rapidly increasing number of automobiles and drivers, the inadequacy of road systems and traffic control are factors directly influencing the continued rise in numbers of accidents and the inevitable suffering and economic loss resulting from those accidents. While the importance of an objective study of the compensation system is fully recognized, treating only with that system is not sufficient to provide action programs designed to attack the overwhelming and increasing social burden that has arisen. We believe that the Department of Transportation is the most appropriate agency to undertake these broad and far-reaching studies.

Though we have participated in industry efforts to improve the system of dispensing insurance benefits under the tort law, we realized that the way in which we could make the greatest public contribution was to attack the accident and injury situation. Toward this end, we undertook a significant research effort in our Research Center; we organized and sponsored the first large scale conference for traffic safety in 1967 and are co-hosting a second conference this year; we are working with The Institute of Living in Hartford to bring the power of computers to bear on reducing hospital administrative costs and improving patient care; we are opening an auto body repair facility to find better and more economical repair methods and to provide research data for creating safer passenger capsules for automobiles. Details concerning these activities are, of course, available upon request.

Testimony before your committee reflected an evaluation of the insurance mechanism from various points of view and in our opinion introduced information into the record which should be clarified. On several occasions it was stated that racial origin was a determinate both in the selection and in the rating of automobile insurance applicants. Speaking for our own company we wish to indicate that we do not use information concerning the race, creed or color of applicants in either case. Further, our classification plan considers only the use to which the auto is put and the driving record of the operators of the vehicle. The entire driving record including both accidents and convictions for moving traffic violations is reflected in our independent rating plan wherever approved for use by state insurance authorities.

Statements were made concerning the use of location in the rating of individuals. There are rating territories which are a part of rate determination; however, these are generally large divisions reflecting characteristics of population concentration, traffic congestion and geographic distinctions.

The insurance industry in large measure is the administrator of the current compensation system 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 to 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 cost and automobile damage repair costs, have increased at a rate greater than most other elements in the consumer price index. In spite of this trend, the industry has had serious difficulty in securing adequate rate levels under rate regulation administered in many states.

We feel that it is vital that accurate factual determinations be made in exploring the many aspects of this important matter. The study proposed by SJR 129 should provide the best vehicle for objective and efficient fact gathering and has our full and unqualified support.

INSURANCE INFORMATION INSTITUTE,  
New York, N.Y., March 18, 1968.

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

DEAR SENATOR MAGNUSON: I am writing in reference to a statement submitted last week to the Consumer Subcommittee of the Senate Commerce Committee by Orman L. Vertrees, staff writer for the Seattle Post-Intelligencer, during the three days of hearings on S.J. Resolution 129, which would authorize a comprehensive study of automobile liability insurance.

Although the Insurance Information Institute does not represent insurance companies as a legislative advocate, we feel obligated to submit for the record a disclaimer of Mr. Vertrees' implication that we are distributing misleading information.

This does not imply, of course, agreement on our part with every other point made by Mr. Vertrees. We were particularly interested in setting the record straight on this point because it reflects on our reputation.

Mr. Vertrees quoted a section of one of our pamphlets, "Insurance and the Automobile", in which we explained that any motorist who has a license to drive can obtain automobile insurance. Mr. Vertrees challenges this statement, noting that the industry is trying to "depopulate" the assigned risk pool for automobile insurance in the State of Washington. His statement implies that motorists leaving the pool as a result of depopulation are left without insurance.

It is important to define what is meant in insurance circles by "depopulating" the assigned risk plan. The industry is striving diligently to return as many motorists as possible to the regular auto insurance market and thus make it easier—not more difficult—for them to obtain auto insurance.

In view of the fact that the Insurance Information Institute has, I believe, established an outstanding reputation as a source of accurate and objective information concerning property and casualty insurance, I'm sure you understand our desire to set the record straight in this instance.

Cordially,

J. CARROLL BATEMAN.

RETAIL CREDIT CO.,  
Atlanta, Ga., March 19, 1968.

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

DEAR SENATOR MAGNUSON: Statements made during hearings held by your Subcommittee on S.J. Res. 129, with particular regard to investigative activities for the benefit of the automobile insurance industry, have come to our attention. Some illustrations of investigative procedure were cited as critical of the methods used and the consequent results.

It is not our purpose in this letter to attempt to respond to the specific illustrations given by anyone. To the best of our knowledge, none of those situations involved Retail Credit Company. At least, we have not been so informed. However, it does seem to us that such cases are extreme, the exception rather than the rule among responsible investigative agencies.

The purpose of this letter is to state for the record that Retail Credit Company is ready and willing to cooperate fully with any Committee of Congress or Executive Department of the Government in any study of the investigative work undertaken by private organizations on behalf of the insurance industry or any other business.

If there is any information we might provide which would be of assistance to your Subcommittee in its deliberations, please let me know.

Sincerely yours,

W. LEE BURGE, *President.*

AMERICAN ASSOCIATION OF RETIRED PERSONS,  
 NATIONAL RETIRED TEACHERS ASSOCIATION,  
 Washington, D.C., March 20, 1968.

Hon. WARREN G. MAGNUSON,  
 Chairman, Senate Commerce Committee,  
 Senate Office Building,  
 Washington, D.C.

DEAR MR. CHAIRMAN: The National Retired Teachers Association and the American Association of Retired Persons, with a membership of more than 1¼ million older Americans, are genuinely alarmed by certain all-too-common practices in the automobile insurance business of refusal to renew automobile insurance policies of persons over certain chronological ages.

The ages of our members range upward from 55 years and constitute a fairly typical cross section of the older population of our country. Many have given up driving an automobile for reasons of their own. Some, because of physical impairment, make no claim to the privilege of driving because of the risk and danger to themselves and others.

However, many others do have good and valid reasons for continuing to operate a motor vehicle. This group of older drivers meets the often rigid requirements established by their respective states and should not be denied proper insurance protection merely on the basis of chronological age. We believe that good drivers and safe drivers are to be found in age brackets well above the years of 65 or 70. It is our firm contention that chronological age alone is not the determining factor in the risk taken by the insurer.

We should point out to your Committee, Mr. Chairman, that our Associations have not been unmindful of their opportunity to help establish and maintain responsible driving habits among older persons. We have made a major effort to make available to our members the Defensive Driving Course developed by the National Safety Council. Thousands of members have completed the course.

We contend that a practice of refusing to renew previously written insurance protection, increasing premiums, or decreasing the protection simply because the person has reached a certain chronological age violates the basic principle for which the driver buys insurance. We receive what seems to us to be incontrovertible evidence that the above practices are prevalent.

For that reason, we fully support Senate Joint Resolution 129 to authorize a comprehensive study of existing practices in the automobile insurance business. Furthermore, if and when such an investigation is initiated, we believe we can make a unique and valuable contribution during the proposed "data collection" phase of the study. At that juncture of any such study we shall offer to submit documentary evidence available from our Associations' individual members all over age 55 to substantiate what we consider the chief discriminatory practices against older drivers among insurance carriers at the present time.

Respectfully yours,

ERNEST GIDDINGS,  
 Legislative Representative.

AETNA LIFE & CASUALTY,  
 Hartford, Conn., March 18, 1968.

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

DEAR SENATOR MAGNUSON: I am sorry that the pressure of other business prevented you from attending the Thursday hearings on Senate Joint Resolution 129 at which I testified.

I had planned to provide some information which I thought would interest you with respect to the testimony of Senator Karl Hermann of your fine State. I make reference particularly to his statement that classification refinement created more problems than it solved because of his understanding that if everyone were charged the same rate, no one's premium would have to be increased more than 5%.

I have developed our own Company's figures for the State of Washington which I believe reflect the general impact which would result from the use of a single average rate throughout the State. In order to produce the same total premium income, the elimination of territorial rating alone would result in the rural areas

involving 28% of the State's total population being subjected to an increase of 34% while the 20% of the State's population residing in the metropolitan Seattle territory would experience a reduction of 28%.

This considerably wider swing than 5% would further be aggravated by the elimination of existing classification refinement based upon age of operator, use of car and past accident involvement. Some 40% of the insureds in each territory would suffer an increase of nearly 15% if classification variations were eliminated although territorial differentials were maintained.

The extreme illustration of the elimination of both classification refinement and territorial differentials would result in a rural farmer paying over 90% more than he presently pays in order to support a uniform rate for all classifications and territories throughout the State of Washington. Such an inequity contrary to loss experience would not only be unfair but would seriously aggravate the market condition since insurers forced to use an average rate state-wide would compete vigorously for those risks demonstrably developing a better loss experience and avoid those risks in urban territories which have developed both high claim frequencies and average claim costs.

I do not offer this information in criticism of Senator Hermann since I am quite certain that we would all agree on his conclusion of the desirability of average rates if his assumption of a 5% impact were correct. I am equally hopeful that both of you and he would agree that the far greater impact which actually would exist supports the continuation of reasonable classification and territorial differentials in the automobile insurance field.

Yours very truly,

W. O. BAILEY, *Vice President.*

AMERICAN BAR ASSOCIATION,  
AMERICAN BAR CENTER,  
Chicago, Ill., March 19, 1968.

HON. WARREN G. MAGNUSON,  
*Chairman, Senate Commerce Committee,  
New Senate Office Building,  
Washington, D.C.*

DEAR SENATOR MAGNUSON: Knowing of the interest of your Committee in the proposed national investigation of automobile insurance, I felt that you would be interested to know that the American Bar Association's House of Delegates at its recent Midyear Meeting approved the creation of a Special Committee and Commission on Automobile Accident Reparations to study the problem of automobile accident reparations, to establish liaison with concerned groups, including legislative bodies, and to report to the House of Delegates at its Annual Meeting in August, 1968.

The resolution creating the Special Committee and the Commission, with the "Whereas" clauses omitted, is as follows:

"Now, Therefore Be It Resolved that

"(1) In furtherance of the public interest and believing firmly in the adversary system and the preservation of other enduring values of our legal system, the American Bar Association proposes a comprehensive study and investigation of the problems inherent in the prompt and fair disposition of automobile accident claims; and

"(2) The American Bar Association hereby creates a Special Committee on Automobile Accident Reparations, composed of a chairman and not more than eight other members appointed by the President, immediately to begin to study the problem of automobile accident reparations; to establish liaison with concerned groups, including legislative bodies; to conduct or encourage study of the facts and policy relevant to automobile accident reparations; and to report to the House of Delegates at its regular meeting in August, 1968. The Committee shall seek the cooperation and assistance of the American Bar Foundation as it deems appropriate. The President in making appointments to the Committee shall consult the representatives of the Section of Insurance, Negligence and Compensation Law, the Section of Judicial Administration and the Section of General Practice.

"(3) The American Bar Association hereby creates a Commission on Automobile Accident Reparations to assist and advise the Special Committee with its study. The Commission shall comprise not more than 20 members, appointed by the President, and shall consist of the members of the Special Committee on

Automobile Accident Reparations *ex officio*, and may include practicing lawyers, physicians, economists, actuaries, insurance specialists, governmental officials, jurists and legal scholars."

The Committee will follow with interest all studies being made by Congressional committees and government agencies in this general field.

Sincerely yours,

EARL F. MORRIS.

MARCH 22, 1968.

MR. EARL F. MORRIS,  
President, American Bar Association,  
Chicago, Ill.

Dear MR. MORRIS: Thank you for your letter of March 19, 1968, in which you included the partial text of a resolution adopted by the American Bar Association's House of Delegates at its recent Midyear Meeting in Chicago. The resolution approves the creation of a Special Committee and a Special Commission on Automobile Accident Reparations to study the problem of automobile accident reparations, to establish liaison with concerned groups, including legislative bodies, and to report to the House of Delegates at its Annual Meeting in August, 1968.

Your group may wish to consider establishing liaison with the Secretary of Transportation, the Honorable Alan S. Boyd, who would be responsible for a comprehensive study and investigation of all relevant aspects of our existing motor vehicle accident compensation system, under the provisions of Senate Joint Resolution 129. Hearings on this Resolution were held on March 12, 13, and 14, 1968, and I am including the text of your letter and of this reply in the record of those hearings.

Kindest regards.

Sincerely yours,

WARREN G. MAGNUSON, Chairman.

NEW YORK STATE COLLEGE OF AGRICULTURE,  
CORNELL UNIVERSITY,  
Ithaca, N.Y., March 20, 1968.

HON. WARREN G. MAGNUSON,  
Senator, Senate Office Building,  
Washington, D.C.

DEAR SIR: This, I understand, is late for your hearings on automobile insurance. I have, however, wanted to stress points that, generally, seem to be missing in these insurance discussions, Government's objective *should be* as much the health and safety of the driver and traveler as his pocketbook. Hopefully, you may still include my letter in your hearing report.

(1) The automobile insurance problem exists *basically* as a result of the larger automobile *safety* problem.

(2) While automobile insurance has been negative in this regard, Workmen's Compensation insurance covering occupational accidents and certain insurers (such as Factory Mutual) covering fire hazards, *can (and do in several instances) have a tremendous effect upon reducing the hazards or improving the safety record of a particular type of safety or accident problem.* Also, the more successful insurance programs (from safety and business standpoints) utilize incentive features which encourage application of safety measures with resultant cutting of losses, which thereby reduce premiums and make more satisfied customers.

(3) Many facets of automobile insurance violate the American principle of the "incentive system" thereby contributing to the number of accidents, insurance claims, and costs to society as well as the individual. A few of these are:

(a) The *driver* is basically the cause of accidents not the automobile:

(1) The permit or license to drive on public highways should be related to *both* moving vehicle infractions and individual accident records.

(2) Insurance should be on the *driver* not the vehicle.

(3) The average vehicle has several drivers as well as each driver will (on the average) use more than one vehicle, with little insurance correlation either way.

(b) *Classes* of drivers (to determine ratings and "preferred risks") unfairly group individuals of widely varying safety records within the many categories such as age, occupation, residence, distance driven, etc.

(1) *Individual records are possible to secure and should be the basis of rating formulae*—not broad categories which cause *individuals* to develop a “don’t give a damn” or “get all you can” attitude.

(2) While certain of these classes reflect “an exposure hazard” situation, the insurance industry has in other coverages found that the *individual “moral” hazard* is generally more important—again reflecting the importance of the individual in rating.

(4) Insurance regulation (including implementing legislation) generally fails to provide for needed safety facets applicable to the insurance industry.

(a) Insurance records, both for individuals and companies are set up for insurance *business* with little effort to provide built-in safety incentive features.

(1) Feed-back of accident information for use in safety.

(2) Individual rating (by groups of varying loss experience).

(3) Correlation with moving vehicle violations.

(b) Only slight correlation exists in New York State between sur-charges of the Safe Driver Plan with that of the Assigned Risk Plan.

(c) Loss-to-Premium ratios with respect to rating regulation should take into consideration the safety costs (and effectiveness) with respect to individual companies, i.e. a company with an effective safety program should be permitted wider loss-to-premium ratios to help cover the cost of such programs. This would be a regulatory *incentive to companies* for time and dollars spent in correcting the *big problem*, automobile accidents, besides the improving of the insurance situation.

(5) A coordinated safety approach is needed with insurance regulatory departments represented along side: Health, Motor Vehicle, Public Works, and Commerce. In short, until both the Federal Government and State Governments each have an executive Safety Commission with membership from responsible agencies and of a sufficiently high level to *determine* and then *demand* action, our safety problems will continue. These include the present problem of fire insurance or low income housing as well as the automobile insurance problem.

Your effort toward including safety in this current insurance problem and also establishing a high level government safety commission is needed.

Sincerely,

E. W. FOSS, Professor.

INDUSTRIAL UNION DEPARTMENT,  
Washington, D.C., March 21, 1968.

HON. WARREN G. MAGNUSON,  
Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.

Dear MR. CHAIRMAN: The Industrial Union Department, AFL-CIO, urges the enactment of S. J. Res. 129 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.

S.J. Res. 129 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.

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NATIONAL ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS,  
Chicago, Ill., March 22, 1968.

Subject: Automobile Insurance.

Senator WARREN G. MAGNUSON,  
Chairman, Consumers Subcommittee,  
U.S. Senate Office Building,  
Washington, D.C.

SIR: This association has approximately 539 member firms, operating between 1100-1200 offices in over 700 cities in 49 states plus Puerto Rico. Most of our member firms handle automobile accident investigations for the various underwriters.

We would consider it a privilege to cooperate with your committee in its present investigation of the automobile insurance business. We do not maintain, as an association, either local, state, regional or national statistics, however, and our assistance would consist of direct testimony from selected regional representatives—if such would be of assistance.

Our members work as independent contractors for practically all companies on a fee basis and are, of course, not salaried by the carriers.

Please advise specifically if we can be of aid in helping your committee to reach a just decision.

Yours very truly,

BRUCE H. SMITH.

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SEATTLE, WASH., March 21, 1968.

Senator WARREN G. MAGNUSON,  
Old Senate Office Building,  
Washington, D.C.:

On behalf of the Safeco Insurance Group, comprising Washington State's largest insurance organization, we are urging support for the pending legislation authorizing the U.S. Department of Transportation to undertake a complete study of the American automobile liability and insurance system.

We expressed our support for this type of study last August 17 in our letter to you which called attention to Safeco's affirmative role in serving the driving public. The unbalanced press coverage referred to in that letter remains a serious barrier to public understanding of insurance problems. We hope the committee will review that earlier letter.

Today's atmosphere of legislative concern and critical press attacks demands that the American public be given full exposure to all facets of our insurance system, emphasizing its beneficial characteristics as well as its weaknesses.

We at Safeco, together with all responsible companies and individuals in our industry, are anxious for this impartial review and study. We are confident that detailed examination will disclose the problems of auto insurance in true perspective recognize major steps already being taken toward solution, and avoid the distortion encountered when attention is focused only on complaints or problems. Such a study will substantiate many strong points in our present system and will unmask the dangers inherent in some of the proposals for change that are currently being discussed. At the same time it hopefully will suggest and encourage new approaches where needed.

In your recent hearing at least three witnesses suggested a flat rate as a desirable change from present rating classifications. One witness described it as mixing the grade A apples with the culls so that everyone was charged at the "orchard run" rate.

A recent public opinion survey in our state of Washington revealed that 95 percent of the public recognizes that insurance premiums do and should vary

with the individual driver. Very few of the driving public can be classified as "culls" and the "good apples" deserve and expect lower insurance costs which Safeco and many other companies have provided. To eliminate classifications and to insure all applicants at the same rate for all would result in a substantial majority of the public paying more than they should in order to subsidize the remainder. A flat "orchard run" rate represents unfair discrimination in its clearest form.

At the request of the Washington State Legislature, Prof. James A. Wickman conducted a study of the auto insurance market in 1964 in our State and concluded a flat rate would be unfairly discriminatory.

I am forwarding a copy of Professor Wickman's study. It represents an approach approach and technique similar to that which both you and Secretary Boyd have proposed, in sharp contrast with the 1965-67 Washington State interim legislative committee hearings. Publicizing complaints brought to public hearings, without objective research into all underlying causes, does little to explore the manner in which the industry serves America's 100 million drivers.

Our company and others are testing and exploring changes in methods of compensating for auto accident injuries. It is a complex task. Most proposals to change the present concept of tort liability in auto accidents and substitute a "no fault" doctrine founder on the same rock. They fail to solve the dilemma of reducing costs while retaining the necessary ingredients of adequate benefits and social and political acceptability. The Keeton plan represents a very comprehensive effort to find that solution. In our judgment, in spite of its complicated compromises, it also fails.

Before such a sweeping change is adopted, the public should first understand the price it may pay in loss of benefits, loss of individual responsibility, or increased cost for wider distribution of benefits.

The solid strengths of our present legal system, emphasizing individual responsibility and individual compensation for the innocent victim of another's carelessness, are based on many decades of human experience. While we should vigorously search for new and better ways, these strengths should not be discarded without a substantial effort to remove the imperfections of the present system and reduce its costs.

GORDON H. SWEANY, *President,*  
*Safeco Insurance Group.*

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND,  
*Seattle, Wash., March 20, 1968.*

Senator WARREN G. MAGNUSON,  
*Senate Office Building,*  
*Washington, D.C.*

DEAR SENATOR MAGNUSON: We are the legislative representatives in the state of Washington for the Insurance Company of North America (INA) and for the past three years have had the pleasure and privilege of working closely with Senator Karl V. Herrmann, both as chairman of the Washington State Senate Insurance Committee and as chairman of the Joint Legislative Interim Committee on Insurance during the 1965-1967 and 1967-1969 legislative interims. In the course of our work we have had several opportunities to discuss various insurance measures proposed by Senator Herrmann and ourselves with Mr. Orman L. Vertrees, staff writer for the Seattle Post-Intelligencer, who testified at your committee hearing on automobile insurance problems on March 13, 1968.

We have, therefore, read with great interest the full text of the statement Mr. Vertrees delivered to your committee at its March 13 hearing. Mr. Vertrees' statement was printed in the March 14 edition of the Post-Intelligencer. Our attention has been particularly drawn to the following paragraph of his statement:

"At the 1967 session of our state legislature, the insurance industry maintained more than 30 lobbyists, who opposed nearly every insurance reform measure under consideration. In addition they tried, unsuccessfully, to deny the chairmanship of a legislative insurance investigating committee to Senator Herrmann, who had shepherded a hard-hitting package of reforms, endorsed by our newspaper, through to the governor's desk."

Recognizing that Mr. Vertrees' point was not to elaborate upon the activities of the insurance lobbyists, but to illustrate the difficulties that insurance buyers have faced in this state, we nevertheless take this opportunity to clarify to your committee INA's position on the reform measures introduced by Senator Herr-

mann and our activities as INA's legislative representative. We do this not to contradict Mr. Vertrees, but to illustrate INA's concern with current problems in the insurance industry and specifically, its legislative goals here in the state of Washington.

INA's basic philosophy, reflected in all of its legislative work on insurance, is that the promotion of competition beneficial to the insured and insurer is a desirable objective. Our specific long-range legislative program in Washington has been and still is to encourage the adoption of a California type no-filing law in place of the present restrictive prior-approval rating laws. The purpose of this change is to promote competition in the insurance industry which will be to the benefit of the public as well as the industry by the use of a system of rating laws which has worked very well in California these past 20 years. INA believes that a no-filing law will encourage a more responsive insurance industry to develop in Washington, and that the need for a responsive industry is particularly great as this state enters a period of rapid economic and industrial growth.

INA made several presentations on the California system to the 1965-1967 Joint Legislative Interim Committee on Insurance. That committee, in its report to the 1967 legislature, indicated that a more thorough and detailed study of the system should be made before a decision is reached. During the 1967 legislative session, we drafted a bill which would have provided a modification to the present filing and rating laws in this state to exempt large risk (those with aggregate annual premiums in excess of \$10,000) from the prior approval requirements, and thus would have permitted competition to exist in rates and forms as applied to large purchasers of insurance. The purpose of this legislation was to permit a trial run of the California no-filing system in this state in an area which would have affected only a sophisticated group of insurance buyers. Senator Herrmann agreed to cosponsor this bill and made it part of his reform package. We note particularly that the large risk exemption bill was editorially supported by the Seattle Post-Intelligencer with specific reference to INA. Under the leadership of Senator Herrmann, this bill passed the Senate on three separate occasions, but unfortunately was never reported out of committee in the House.

The point is, however, that during the course of the 1967 session, we worked very closely with Senator Herrmann and his insurance package of reform bills in the Washington State Legislature. We also actively and publicly supported a number of the measures in the reform package, especially the extension of the state's Consumer Protection Act to deceptive practices in the insurance industry. We did not oppose any of the reform measures and worked closely with Senator Herrmann and his staff members both in drafting and seeking support for various of these measures. We also fully supported and lobbied for the continuance of the Joint Interim Legislative Committee on Insurance with Senator Herrmann as its chairman, throughout the legislative session in order that the committee might continue its study of the California no-filing system as well as its other unfinished business.

We make this statement only for the purpose of clarifying Mr. Vertrees' statement and to assure you that INA's legislative program in the state of Washington follows the same basic philosophy which Mr. Bradford Smith, Jr., Chairman of the Board of INA, indicated to your committee in his presentation last week. We are confident that the fostering of competition beneficial to insured and insurer alike with adequate powers in state insurance commissioners and other state enforcement agencies to protect the insured is the best means of ensuring that this industry may better serve the public purpose for which it exists.

Very truly yours,

FREDRIC C. TAUSEND.  
THOMAS R. BEIERLE.

STATEMENT OF BOWERS DICE, PRESIDENT, DRIVE SAFE SYSTEMS, INC.

I am president of a corporation known as Drive Safe Systems, Inc., whose offices are located in Dayton, Ohio, and which operates driver training schools in Dayton, Cincinnati, and Cleveland, Ohio, St. Louis, Mo., and Denver, Colo., it having in the past also conducted such a school in Houston, Tex. Drive Safe Systems is committed in its instruction to its students to a philosophy which we call positive driving, that is, that the best way for a driver to protect himself is to protect others through his attitude of benevolence rather than the contrasting defensive theory of "watch out for the other nut at the wheel."

Since the year 1954 through the end of 1967 Drive Safe Systems schools have trained 60,167 students in safe driving. We estimate that 30 percent of those students at the time of their training were 25 years old or younger and would have been entitled to a discount of their automobile public liability and collision insurance premiums if the large nationally known stock insurance corporations had seen fit to honor the driver training background and said students as such companies do in the case of publicly educated students in driver training. However, it has been my sad experience that such large insurance companies refuse to grant such a discount to the students of Drive Safe Systems, Inc., who have successfully completed their course. On the other hand, I have found that certain mutual automobile insurance companies have and continue to grant such a discount from the ordinary premiums to our successful trainees.

The foregoing policy of the large stock companies constitutes a particular hardship to Drive Safe Systems, Inc., in that we are unable to represent in our advertising that such a premium reduction will be enjoyed by those of the 16 to 25 year age group who successfully complete the Drive Safe Systems course.

It seems most pertinent to me that from a survey conducted in Dayton, Ohio, during the summer of 1967 it was determined that Drive Safe Systems students had a lifetime accident involvement of only 13 percent while defensively trained drivers, the principal number of whom were trained in the public school system, accounted for a burdensome 72-percent accident involvement figure. A third category treated in such study was that of the driver who had received no formal training. These motorists as a group were found to have a 63-percent accident involvement record. Yet, the nationally known stock insurance companies abide by their policy of affording drivers who were trained in public schools a premium discount while they refuse to accord the successful students of Drive Safe Systems, and presumably the students of other commercial driver training companies, a like privilege.

It is difficult, if not impossible, for me to state the number of students who have turned away from Drive Safe Systems, Inc., due to the failure of said stock companies to reduce high insurance premiums by the same discount given the public school driver training course graduates. I can say, however, that it has meant a great loss of business to Drive Safe Systems, Inc., and, I believe a proportionately less number of better trained drivers who otherwise would have attended Drive Safe Systems schools and would have been educated with a positive approach.



Since the year 1957 through the end of 1967 Drive Safe Systems schools have trained 60,167 students in safe driving. We estimate that 30 percent of those students at the time of their training were 25 years old or younger and would have been entitled to a discount of their automobile public liability and collision insurance premiums if the latter nationally known stock insurance corporations had seen fit to honor the driver training background and said students as such companies do in the case of publicly educated students in driver training. However, it has been my sad experience that such large insurance companies refuse to grant such a discount to the students of Drive Safe Systems, Inc. who have successfully completed their course. On the other hand, I have found that certain mutual automobile insurance companies have and continue to grant such a discount from the ordinary premiums to our successful trainees.

The foregoing policy of the large stock companies constitutes a particular hardship to Drive Safe Systems, Inc. in that we are unable to represent in our advertising that such a premium reduction will be enjoyed by those of the 16 to 25 year age group who successfully complete the Drive Safe Systems course.

It seems most pertinent to me that from a survey conducted in the Los Angeles during the summer of 1967 it was determined that Drive Safe Systems students had a lifetime accident involvement of only 13 percent while delinquent drivers had a lifetime accident involvement of whom were trained in the public school system. A 1967 accident involvement 12 percent accident involvement figure. A 1967 survey revealed in such study was that of the driver who had received no formal training. These statistics as a group were found to have a 33 percent accident involvement record. Yet the nationally known stock insurance companies abide by their policy of offering drivers who were trained in public schools a premium discount while they refuse to honor the successful students of Drive Safe Systems and presumably the students of other commercial driver training companies a like privilege.

It is difficult, if not impossible, for me to state the number of students who have turned away from Drive Safe Systems, Inc. due to the failure of said stock companies to reduce high insurance premiums by the same discount given the public school driver training course graduates. I can say, however, that it has meant a great loss of business to Drive Safe Systems, Inc. and I believe a proportionately less number of better trained drivers who otherwise would have attended Drive Safe Systems schools and would have been educated with a positive approach.