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Part 4

NO-FAULT MOTOR VEHICLE INSURANCE
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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H. Con. Res. 241

EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO
MOTOR VEHICLE INSURANCE AND AN ACCIDENT
COMPENSATION SYSTEM

H.R. 4994, H.R. 6528, H.R. 4995, H.R. 7514

H.R. 3968 (and identical bills),

and H.R. 3970 (and identical bills)

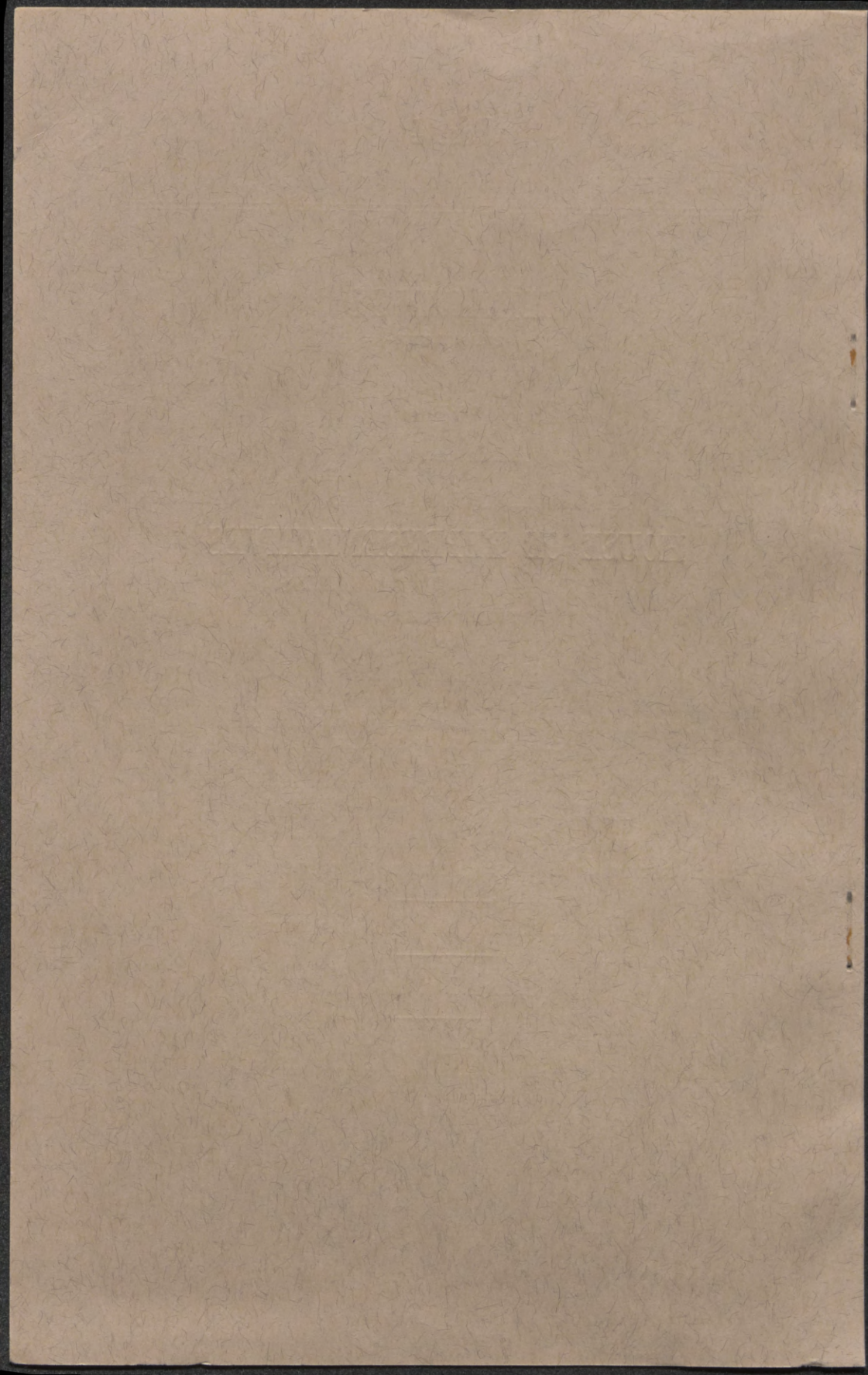
BILLS RELATING TO NO-FAULT MOTOR VEHICLE INSURANCE

APRIL 20, 21, 22, 26, 27, 28, 29, AND 30, 1971

Serial No. 92-28

Printed for the use of the
Committee on Interstate and Foreign Commerce





Part 4

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CONTENTS

(The same table of contents appears in parts 1, 2, 3, and 4)

PART 1		Page
Hearings held on—		
April 20, 1971.....		1
April 21, 1971.....		123
April 22, 1971.....		157
April 26, 1971.....		189
April 27, 1971.....		225
PART 2		
April 28, 1971.....		325
PART 3		
April 29, 1971.....		675
PART 4		
April 30, 1971.....		1175
Text of—		
House Concurrent Resolution 241.....		3
H.R. 3968.....		62
H.R. 3970.....		84
H.R. 4994.....		9
H.R. 4995.....		33
H.R. 5220.....		62
H.R. 5221.....		84
H.R. 5459.....		84
H.R. 5460.....		62
H.R. 6528.....		9
H.R. 7514.....		37
Report of—		
Commerce Department on H.R. 3968.....		88
Office of Management and Budget on House Concurrent Resolution 241, H.R. 3968, and H.R. 4994.....		88
Office of Management and Budget on H.R. 7514.....		89
Statement of—		
Baker, Charles D., Assistant Secretary for Policy and International Affairs, Department of Transportation.....		89
Baylor, James, insurance commissioner, State of Illinois.....		1226
Bernstein, George K., Administrator, Federal Insurance Administration, Department of Housing and Urban Development.....		1321
Chilcott, Richard G., vice president, Nationwide Insurance Cos.....		1206
Clayman, M. Jacob, administrative director, Industrial Union Department, AFL-CIO.....		677
Comey, Dale R., chairman, actuarial committee, American Insurance Association.....		1110
Danstedt, Rudolph, assistant to president, National Council of Senior Citizens.....		163, 167
Davidson, Louis G., past chairman, ABA section of insurance.....		700
Davis, John, executive vice president, Ryder System.....		215, 222
Deacy, Thomas E., Jr., American College of Trial Lawyers.....		700
Denenberg, Dr. Herbert S., commissioner, Pennsylvania Insurance Department.....		225

Statement of—Continued	Page
Dukakis, Michael S., Brookline, Mass.....	124
Edidin, S. M., vice president and general counsel, Hertz Corp.....	215
Farnham, C. Eugene, commissioner of insurance, State of Massachusetts.....	1175
Finneson, Dr. Bernard E., Ridley Park, Pa.....	157
Griffith, Robert W., vice president and casualty actuary, Nationwide Insurance Cos.....	1206
Hanson, John, executive secretary, National Association of Insurance Commissioners.....	581
Harrington, Hon. Michael, a Representative in Congress from the State of Massachusetts.....	123
Hutton, William R., executive director, National Council of Senior Citizens.....	163
Jones, T. Lawrence, president, American Insurance Association.....	1110
Keeton, Dr. Robert, professor, Harvard Law School.....	1175
Klein, Robert, economics editor, Consumers Union of the United States.....	202
Kronzer, W. James, Jr., Texas Trial Lawyers Association.....	570
Kuhn, Edward W., past president, American Bar Association.....	700
Lemmon, Vestal, president, National Association of Independent Insurers.....	1078
Loescher, Samuel M., professor of economics, Indiana University.....	662
McGowan, Robert V., president, National Association of Mutual Insurance Agents.....	270
Mackoff, Benjamin, administrative director, Circuit Court of Cook County, Ill.....	142
Maisonpierre, André, vice president, American Mutual Insurance Alliance.....	605
Markus, Richard M., president, American Trial Lawyers Association.....	299
Max, Frank J., Jr., president, CATRALA, and vice president, Avis Rent-A-Car Systems, Inc.....	215
Mertz, Arthur C., vice president and general counsel, National Association of Independent Insurers.....	1078
Mikva, Hon. Abner J., a Representative in Congress from the State of Illinois.....	189
Morrow, Winston V., Jr., chairman of the board and president, Avis Rent-A-Car System, Inc., as read by John J. Murphy, vice president and director of insurance and safety.....	215, 220
Murphy, John J., vice president and director of insurance and safety, Avis Rent-A-Car System, Inc.....	215, 220
O'Brien, John J., Franklin Center, Pa.....	151
Reardon, Judge John T., circuit court, Quincy, Ill., representing the American Bar Association.....	700
Reid, John N., associate general counsel, American Insurance Association.....	1110
Ryan, John G., attorney.....	1175
Sargent, Hon. Francis W., Governor of the State of Massachusetts.....	1175
Scariano, Hon. Anthony, a member of the Illinois General Assembly.....	189
Schenk, Benjamin, New York State superintendent of insurance.....	325
Smalley, Robert A., president, Hertz Corp.....	215, 217
Steers, Hon. Newton I., Jr., a State senator from the State of Maryland.....	171
Vaccarello, Vince, chief deputy director of insurance, State of Illinois.....	1226
Volpe, Hon. John A., Secretary, Department of Transportation.....	89
Walsh, Richard F., Deputy Director, Policy and Plans Development, Department of Transportation.....	89
Wandel, Dr. William H., professor of insurance, Temple University, Philadelphia, Pa.....	178
Warne, Dr. Colston E., president, Consumers Union of the United States.....	202
Watkins, Frederick D., president, Aetna Insurance Co.....	247
Woodcock, Leonard, president, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW.....	262
Worthington, Lorne R., president, National Association of Insurance Commissioners.....	581

Additional material submitted for the record by—

American Bar Association:	
Article entitled "The Automobile Accident Reparations System and the American Bar Association".....	Page 980
Condensation of recommendations of ABA Report No. 18.....	968
Report No. 18 of ABA special committee on automobile accident reparations.....	705
Vol. 1—Executive summary of recommendations and conclusions, California Governor's Automobile Accident Study Commission.....	999
American Federation of Labor-Congress of Industrial Organizations:	
Biemiller, Andrew J., director, Department of Legislation, AFL-CIO, statement.....	675
Chart: Damage to cars and property.....	693
Chart: Personal injury liability claims.....	692
Chart: Policyholders' own collision and comprehensive.....	693
Price and availability in the market for automobile insurance—fault versus nonfault compensation schemes.....	680
American Insurance Association:	
Article from the Minneapolis Tribune, April 22, 1971, entitled "Bar Should Correct Mistakes".....	1139
Booklet: Highlights of the New Massachusetts Auto Insurance Law.....	1161
Booklet: Massachusetts No-Fault Auto Plan.....	1151
Booklet: Massachusetts Personal Injury Protection Plan.....	1155
Statement of T. Lawrence Jones, president, before the Senate Commerce Committee's Antitrust and Monopoly Subcommittee, December 15, 1969.....	1117
Table—No-fault legislation proposed in 1969, 1970, and 1971.....	1137
American Mutual Insurance Alliance:	
Comparative pure loss costs.....	653
News release dated April 28, 1971.....	661
State automobile insurance studies.....	652
American Mutual Insurance Cos., telegram dated April 26, 1971, from Richard H. Schannen, general counsel, to Chairman Moss, expressing support for AMIA guaranteed protection plan.....	1342
American Trial Lawyers Association:	
Circle charts "Where the premium dollar goes" with notes.....	316
Justification of estimated property damage percentage.....	319
American Trucking Associations, Inc., Peter T. Beardsley, president and general counsel, statement.....	668
Baylor, James, insurance commissioner, State of Illinois:	
Article from Bloomington, Ill., Daily, April 8, 1971, entitled "Ogilvie Insurance Proposals Offer Benefits to Motorists".....	1309
Article from Chicago Daily News, April 6, 1971, entitled "Auto Insurance Reform".....	1305
Article from Chicago Daily News, April 6, 1971, entitled "Risk Firms Hail Ogilvie No-Fault Plan".....	1306
Article from Chicago Sun-Times, April 7, 1971, entitled "For Auto Insurance Reform".....	1308
Article from Chicago Today, April 6, 1971, entitled "For 'No-Fault' Car Insurance".....	1304
Article from Chicago Today, April 6, 1971, entitled "'No-Fault' Car Insurance: Insurers Pro, Lawyers Anti".....	1304
Article from Chicago Today, April 7, 1971, entitled "No-Fault Insurance Passage Predicted".....	1308
Article from Chicago Tribune, April 7, 1971, entitled "The Illinois Plan for Auto Insurance".....	1307
Article from Illinois News, April 29, 1971.....	1311
Booklet: Auto Reparations in Illinois—The Illinois Plan.....	1251
Editorial, station WGN, April 24-27, 1971, "No-Fault Auto Insurance".....	1310
Editorial, WMAQ-TV, April 26, 1971.....	1310
Letter dated April 28, 1971, from Hon. Richard B. Ogilvie, Governor of the State of Illinois, to Chairman Moss, re Illinois plan.....	1230

Additional material submitted for the record by—Continued

Baylor, James, insurance commissioner, State of Illinois—Continued	Page
Newspic, Herald-WHIG, April 6, 1971, "Ogilvie's Insurance Plan"-----	1306
Special message on traffic safety to 77th General Assembly by Governor of Illinois-----	1232
Special message on insurance to 77th General Assembly by Governor of Illinois-----	1242
Bell, Fletcher, commissioner of insurance, State of Kansas, letter dated March 30, 1971, to Congressmen Larry Winn, Jr., and William R. Roy, endorsing the administration approach to reform of the automobile insurance system-----	1340
Blue Cross Association, letter dated May 4, 1971, from Walter J. McNerney, president, to Chairman Moss re health-care costs resulting from automobile accidents-----	1339
Communications Workers of America, statement of Joseph A. Beirne, president-----	1331
Consumers Union of the United States: Exhibit A—Adapted from article "Insurance: The Road to Reform" in April 1971 issue of Consumer Reports-----	208
Independent Mutual Insurance Agents Associations of New York, New Jersey, and Connecticut, statement of National Affairs Committee-----	1333
International Longshoremen's & Warehousemen's Union, statement--	1332
Liberty Mutual Insurance Co., letter dated May 17, 1971, from Robert A. Penney, counsel, to Chairman Moss, endorsing the view that action in the field of no-fault automobile insurance should be left to the States-----	1342
Mackoff, Benjamin, administrative director, Circuit Court of Cook County, Ill., editorial from Wall Street Journal dated April 21, 1971--	147
Moss, Hon. John E., a Representative in Congress from the State of California:	
Article from July 1966 Life edition of Best's Insurance News: Plain talk about the possibility and merit of Federal supervision of insurance-----	657
Biographical sketch of George K. Bernstein, Administrator, Federal Insurance Administration, Department of Housing and Urban Development-----	1321
Tabulation of responses to TV program "The Advocates"-----	659
Motorcycle Industry Council, Inc., statement-----	1337
National Association of Independent Insurers:	
Excerpt from Advance Payments in Liability Claims (Buchheit, Young & Kurtoek)-----	1098
Guiding principles relating to automobile insurance claims-----	1100
NAII dual protection plan-----	1089
National Association of Insurance Commissioners, Iowa Insurance Department budget-----	598
National Association of Mutual Insurance Agents:	
Exhibit A—The role of the independent agent in the marketing of automobile insurance-----	271
Exhibit B—Motorists' insurance—Protection plan-----	273
Exhibit D—State insurance department statistical data, year ending December 31, 1969-----	282
National Association of Mutual Insurance Cos., statement-----	1335
National Council of Senior Citizens, article from New York Times dated April 22, 1971-----	166
Nationwide Insurance Co., plan for reform of the automobile insurance system-----	1213
Rogers, Norman L., president, Lawyer Reform of the United States, statement-----	1338
Sargent, Hon. Francis W., Governor of the State of Massachusetts, technical review entitled "The New No-Fault Insurance Plan"-----	1183
Scariano, Hon. Anthony, a member of the Illinois General Assembly: Table 1.—Members on State legislative committees having jurisdiction over no-fault bills whose occupations were listed as lawyer and insurance—10 selected States, 1969-----	192

Additional material submitted for the record by—Continued
 Scariano, Hon. Anthony, a member of the Illinois General Assembly—
 Continued

Table 2.—Members of 10 selected State legislatures whose occupations were listed as lawyer and insurance, 1969.....	Page 192
Occupational characteristics of senate and house members of 10 State legislative committees on insurance, 1971.....	193
Article from Chicago Today, April 15, 1971, entitled "No-fault Car Insurance Has Faults".....	198
Critique by Prof. Jeffrey O'Connell of the Illinois auto reparations plan.....	199
Schenk, Benjamin, New York State superintendent of insurance, report, "Automobile Insurance—For Whose Benefit?" with actuarial supplement.....	339
Transportation Department:	
Amplification of views on State-by-State adoption of no-fault automobile insurance.....	116
Estimated aggregate number and volume of auto accident liability claims, by type of claim, 1968.....	121
Five-year cost estimates for implementing H.R. 7514 and House Concurrent Resolution 241.....	108
Watkins, Frederick D., president, Aetna Insurance Co., results of Gallup poll on no-fault insurance published in the Courant, April 22, 1971.....	254

ORGANIZATIONS REPRESENTED AT HEARINGS

Aetna Insurance Co., Frederick D. Watkins, president.

American Bar Association:

Davidson, Louis G., past chairman, section of insurance.

Deacy, Thomas E., Jr., American College of Trial Lawyers.

Kuhn, Edward W., past president.

Reardon, Judge John T., circuit court, Quincy, Ill.

American Federation of Labor-Congress of Industrial Organizations:

Biemiller, Andrew J., director, department of legislation.

Clayman, M. Jacob, administrative director, industrial union department.

American Insurance Association:

Comey, Dale R., chairman, actuarial committee.

Jones, T. Lawrence, president.

Reid, John N., associate general counsel.

American Mutual Insurance Alliance, André Maisonnier, vice president.

American Trial Lawyers Association, Richard M. Markus, president.

American Trucking Associations, Inc., Peter T. Beardsley, vice president and general counsel.

Avis Rent-A-Car System, Inc.:

Max, Frank J., Jr., vice president.

Morrow, Winston V., Jr., chairman of the board and president.

Murphy, John J., vice president and director of insurance and safety.

Car and Truck Renting and Leasing Association (CATRALA), Frank J. Max, Jr., president.

Consumers Union of the United States:

Klein, Robert, economics editor.

Warne, Dr. Colston E., president.

Hertz Corp.:

Edidin, S. M., vice president and general counsel.

Smalley, Robert A., president.

Housing and Urban Development Department, George K. Bernstein, Administrator, Federal Insurance Administration.

National Association of Independent Insurers:

Lemmon, Vestal, president.

Mertz, Arthur C., vice president and general counsel.

National Association of Insurance Commissioners:

Hanson, John, executive secretary.

Worthington, Lorne R., president.

National Association of Mutual Insurance Agents, Robert V. McGowan, president.

National Council of Senior Citizens:

Danstedt, Rudolph, assistant to president.

Hutton, William R., executive director.

Nationwide Insurance Co.:

Chilcott, Richard G., vice president.

Griffith, Robert W., vice president and casualty actuary.

Ryder System, John Davis, executive vice president.

Texas Trial Lawyers Association, W. James Kronzer, Jr.

Transportation Department:

Baker, Charles D., Assistant Secretary for Policy and International Affairs.

Volpe, Hon. John A., Secretary.

Walsh, Richard F., Deputy Director, Policy and Plans Development.

United Automobile, Aerospace and Agricultural Implement Workers of America—UAW (International Union), Leonard Woodcock, president.

NO-FAULT MOTOR VEHICLE INSURANCE

FRIDAY, APRIL 30, 1971

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

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

Mr. Moss. The committee will be in order.

At this time I would like to recognize as our first witness Hon. Francis Sargent, Governor of the State of Massachusetts.

The Governor is accompanied by Mr. Christopher Armstrong, a member of his staff.

STATEMENT OF HON. FRANCIS W. SARGENT, GOVERNOR OF THE STATE OF MASSACHUSETTS; ACCOMPANIED BY C. EUGENE FARNAM, COMMISSIONER OF INSURANCE; JOHN G. RYAN, ATTORNEY; AND DR. ROBERT KEETON, HARVARD LAW SCHOOL

Governor SARGENT. Mr. Chairman, I don't have Mr. Armstrong with me but I do have our commissioner of insurance, Mr. C. Eugene Farnam, John Ryan, an able attorney who has worked with him, and Dr. Keeton, who is the designer of the original no-fault insurance, whom I brought with me and I wonder if it might be appropriate for them to be called on for questions.

Mr. Moss. Indeed, if you would like to have them seated with you.

We are very pleased to have you, Governor, as the spokesman of the State who finally determined to take the plunge and, of course, we are very pleased to have Dr. Keeton who has contributed so much to a better understanding of the problems inherent in the present system.

Gentlemen, you may proceed at your own pace.

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

I am very pleased and honored to have the opportunity to share with you and with the members of your committee some of our thoughts and some of our experiences. Actually I am here today with great pride as the Governor of the first American State to put a no-fault auto insurance plan into effect.

I might depart for a moment from the text to say that I am here not only as the Governor of Massachusetts but I have been asked by the National Governors Conference to appear here in their behalf, not

that any of the other States have yet adopted no-fault insurance and without any particular reference to no-fault insurance but in the role of States in the matter of automobile insurance.

Regarding our experience, it did not happen easily. The ideas behind this plan were debated 4 years, and those with special interest in the old system, the trial lawyers and the insurance companies, blocked reform for that long.

Last year, facing financial turbulence and political stress, many insurance companies softened their opposition to no-fault. Today, many favor it. The trial bar, of course, remains solidly opposed.

The bill finally passed in Massachusetts was a mixed bag, the concept there but the details distorted and real reform doubtful as the result of efforts by those who decided to cripple the bill when they saw it could no longer be defeated.

After 40 years of a bad system, I had the chance to sign at least the framework of a good one, and I acted. By then insurance companies had dropped their opposition and supported the no-fault concept. But when they saw the mongrel version of the concept that reached my desk, they threatened to quit Massachusetts to sell no auto insurance in a State where they had profited long and well.

Today, after nearly 4 full months of operation, the system works better than we had hoped. We had to correct the new bill with additional legislation and we had to work around aspects of it that were faulty.

But we did both, and the results are striking.

Costs have been cut to the consumer. Instead of rate increases of 20 to 30 percent that would have gone into effect, we cut bodily injury rates by 15 percent for both compulsory and noncompulsory coverage. Further, motorists had the choice of deductibles to reduce their costs from 6 to 30 percent more. Finally, rather than increases that were asked in medical payments insurance, we were able to make it an excess coverage and cut its rates by 25 percent over last year.

Our insurance commissioner had to approve increases in property damage rates for this year, but the no-fault bill was not involved. And in this area, we directed companies to offer options of \$100 or \$200 deductibles for property damage insurance. More, I am backing the triple option approach to property damage this year to provide more choice for those insuring their vehicles.

So, we have succeeded in first stopping and then reducing the previously steady annual rise in auto insurance costs.

And a 3-month statistical study of no-fault results show the future cost of auto insurance can be slashed further.

The actual number of claims for injuries made to insurance companies in Massachusetts during the first 3 months of no-fault operation has dropped a startling 60 percent. Field examination of those claims, 14,218 of them, shows that the average amount paid out for injuries has also dropped, in this case 36 percent. Plainly those facts mean future insurance cost cutting.

Further, although time may affect those percentages, they are the most valid tests we can make now. We are comparing apples and apples, the minor claims of last year with the minor claims of this year. And even if average claim costs increase as the year goes on and

the number of claims picks up, there is every reason to believe that more rate cuts, on top of those already made, are ahead.

The study also shows a speed up in the rate of claim payments. For it indicates that payments have been made on some 12 percent of the claims reported in these 3 months compared to a payment rate of under 5 percent in the same period a year ago. And, our study shows no-fault is paying more of the injured reporting claims in that a high number of the accidents have produced more than one no-fault claim.

All this information comes from actual examinations of the claims reports made to companies in these 3 months.

Other data from our registry of motor vehicles first of all shows that the number of accidents is up this year over last. But nearly 33 percent fewer people involved in them are reporting bodily injury while some 47 percent more are indicating to the registry that the accident resulted in damage to property of \$200 or more.

What these statistics are saying is hard to know yet. It is simply too early to tell, but for years it has been said the best way to get an insurance company to settle fast for car damage was to claim bodily injury at the same time. It may be that now that a bodily injury claim will be made against one's own company, people have simply stopped claiming an injury in order to speed repair of their damaged car.

Fine, if insurance companies settled and paid for property damage as they should. I doubt they will, and that's why I tried last year and will again this year to reform our property damage system, too.

It's also possible people don't understand their right to quick payment for medical expenses under no-fault. Certainly they got little help from the insurance industry, which deliberately created confusion and doubt among our motorists last fall. The companies threatened a pullout, they mailed out cancellation notices, they fired a volley of double-talking press releases, and it is clear we still need an education program in Massachusetts to explain to our people what they must do, what they can do, and what they don't need to do, despite propaganda.

What counts so far is that claim costs in our State are down 36 percent compared to the first quarter of last year. And what counts even more is that we have high hopes we can cut premium costs further in the year ahead.

But that is not the whole no-fault story.

Auto accidents stagger America. In 1969, they killed 56,000 people, injured four and a half million more and cost 16 and a half billion dollars.

Our legal system leaves to tort or fault law the judgment of which, if any, of the injured deserve compensation. If you can show someone else was to blame, you have a chance to be compensated. Fail, and whistle for your expenses and losses.

Our insurance system has been based on answering the question "Who was in the wrong?" rather than "Who was hurt?" The aim of auto insurance has been to protect financially a driver who may wind up blamed, and therefore liable, for a crash. Our State, for example, has required for 43 years that a driver have a minimum amount of protection against "being in the wrong" in an accident. The purpose has been to provide security for victims, yes, by guaranteeing a driver

could pay damages if the victim of an accident could prove that driver was "at fault."

Most other States have similar financial responsibility laws, showing that most of society believes auto insurance ought to help accident victims by guaranteeing at least the possibility of compensation.

But this fact remains, every liability system today picks and chooses who will be helped and who will be denied help after an accident.

No-fault sees it differently, denying the notion a victim has to find someone to blame to obtain compensation he deserves, fighting the system that today is slow, inefficient and unfair, ending a method that is wildly out of line in its expense to the consumer.

Massachusetts has put into effect a plan that cuts costs, strikes at delay, and most importantly offers an end to a method demanding someone, anyone, be found who can be "blamed" for someone else's misery.

I've made available to you a technical review of our plan and both our insurance commissioner and his former special consultant, C. Eugene Farnam and Attorney John G. Ryan, are present to answer your questions. In addition I've asked Prof. Robert Keeton of the Harvard Law School who worked closely with us during the adoption of no-fault to join us to comment on the Massachusetts start and to give us his views on the national problem.

Mr. Moss. Governor, I wonder if I might interrupt for a moment.

Gentlemen, we have a request by television to cover the Governor's presentation at this point, WQED from Boston. Is there objection to the request?

Hearing none, you can inform the cameras that they can come in.

We would like to wait a moment and we will have you on Boston TV.

(Whereupon, a brief recess was taken.)

Mr. Moss. You may proceed.

Governor SARGENT. Mr. Chairman, thank you. I will continue where I was as nearly as I can recall.

Let me summarize our Massachusetts plan for you, Mr. Chairman.

First, all coverage and protection provided by the old plan is still provided. Simply, we've added a wider medical payments type of coverage on top of compulsory liability insurance. Then, through a tort exemption we've made that coverage the primary and sole source of recovery for the first \$2,000 of loss sustained by injured accident victims.

The injured will look first to the no-fault coverage on the car they are occupying for hospital, medical and lost-wage or its equivalent expenses. Where such coverage is open to them they will have no right to litigate for loss recoverable on a no-fault basis. But where loss exceeds the \$2,000 per person limit, includes other losses, or is otherwise not available, legal avenues and obligations are continued or revived.

We estimate at least 80 percent of claims for personal injury will be closed completely on a no-fault basis, fast, fairly, efficiently. Many others will recover most of their losses this way, and in installments, as losses are suffered, and at a time when help is most needed.

One benefit is gone, the restriction on an injured party's right to recover more than he actually lost, in the name of damages for pain and suffering. That, of course, is how cost is reduced.

Various deductibles are available under our plan, leaving decision on coverage to the consumer, not the insurance industry.

Critics, mainly trial lawyers, claim denial of the right to pain and suffering recovery deprives their clients of due process. But our premise is the public wants auto insurance to cost less and is willing to forgo certain rights to gain that end. No-fault plans usually specify two such expendable benefits, duplicate payments and pain and suffering awards.

Now, let me be clear. Our new system is under court challenge today, and I'll ask Professor Keeton to answer any questions you may have on the court case. Should our court rule that it is unconstitutional, a result that we do not anticipate, we have a different situation, obviously. But, informationally, Massachusetts will never go back to the old system. If we must, we will replace a no-fault system judged unconstitutional by the creation of a State fund for auto insurance.

Our purpose in Massachusetts is simple and direct.

We want a better way of insuring our people against auto accident and injury. And while insurance is not unique in the business community in selling people more than people really want, we want an end to the sale of double and triple recoveries for some injuries.

We want to end compulsory coverage for the sometimes real and sometimes dubious commodity called pain and suffering. Nothing in Massachusetts no-fault law prevents drivers from purchasing duplicate or supplementary coverages, including coverage for pain and suffering. But our fundamental purpose is to provide protection against financial loss to those more interested in low cost than in catching a windfall resulting from the misfortune of accident.

We've made a historic beginning in Massachusetts.

But we have more to do, because the insurance industry even today is trying to undo the good no-fault has done by selling people coverage they don't need. Even though lower claim costs obviously benefit the industry, the industry is frantically trying to protect imaginary lost profits by piling on superfluous coverage.

For example, as mentioned, we made it possible for consumers to cut costs through optional deductibles last year, bodily injury deductibles for those with adequate medical coverage, \$100 and \$200 deductibles in property damage, and so forth.

Instead of offering these options and explaining them to a then bewildered buyer, the industry actually refused, in many cases, to permit people to exercise these choices. Purchase of bodily injury and property damage deductibles has been denied. Worse, some companies have forced customers to buy more property damage than they want under the threat of selling no insurance to them at all.

We won't let them get away with that in Massachusetts.

We mean to see to it that the public can tailor its coverage to its real needs, that the people can make their own choices, not have them decreed and dictated by a hungry industry.

In money terms, a driver in Boston with a single car and a son under 25 has various options open to him.

Full coverage of \$25,000 and \$50,000 bodily injury and \$5,000 property damage at a cost of \$565 a year. Incidentally, last year, before no-fault, that cost was \$600, and this year, without no-fault, that cost would have been \$725 or more.

A thousand dollar deductible for himself and his family would cost \$491, a saving of \$75.

Add to that a \$200 deductible on property damage and the premium drops to \$432, saving \$134.

Add in the full deductibles available and the cost could drop to \$418, nearly \$150 in savings a year.

The trouble is I would have to spend 2 weeks just finding a company that would explain these deductibles to me, then persuade the company to let me buy them.

So we may have need of new and tougher laws to compel the industry to do what it won't do willingly today, offer methods of making good on the promise of lower costs under no-fault. If we determine that need, I will file that legislation. And if abuses reported to us in company-buyer relations are confirmed, certain Massachusetts companies will have some explaining to do to our insurance commissioner.

Further, the ratemaking process needs overhaul. Today it seems not to result in fair and reasonable ratesetting, and it lacks a consumer voice in these decisions. We're looking at ways of dealing with this aspect of the problem.

And, of course, we press for safer highways, safer drivers, and safer, sturdier cars. All three elements figure in holding down the cost of auto insurance.

I have come here today not to urge your passage of any specific legislation before you, but to share our history and experience with you, to offer you whatever benefit you may find in what Massachusetts has done to blaze a trail through the wilderness auto insurance has become.

We offer our help whenever this Congress, or Federal agencies, or other States call upon us. And we look to you and to them for reciprocal help, as our need requires.

I'm pleased to offer the one, and confident I can count on the other, and I am grateful for the opportunity to appear before you today.

Mr. Chairman, I might comment on this question of State-controlled insurance, vis-a-vis a Federal system. As a Governor, and appearing here as a member of the Governor's conference, the Governors, to a man, feel that insurance should be controlled and regulated at the local level, at the State level.

Now, I think that we would all recognize that there is a desirability to have Federal guidelines, to have Federal technical advice and perhaps prodding from the Federal Government, but speaking as a Governor of one of the 50 States, and I believe speaking for all of the 50 Governors, we feel that the main responsibility should rest with the 50 States.

Mr. Moss. Thank you, sir.

Dr. Keeton, do you have a statement to make at this time?

Dr. KEETON. I don't have any formal statement. Perhaps I might take just a moment to underline a couple of points.

The reduction in claim frequency is dramatic, not only because of the numbers involved here 60-percent reduction as figures stand at the moment, but also in comparison with what everyone had predicted, proponents as well as opponents of this legislation.

The predictions varied. All of us assumed that there would be some increase rather than a decrease in the number of claims. The predictions by opponents ran as high as 168-percent increase; that is, a

suggestion that the number of claims would be 268 compared with 100 under the present system.

I suppose a good round figure would have been about 40-percent increase. A figure running somewhere midline among the various predictions.

And yet, what we have seen here in this report of early data is a 60-percent reduction in number of claims. I am very hopeful that, although it may not stand at that dramatic figure, that it indicates that this change to a first party nonfault system has effected the change in claims attitude, public attitude towards claim that has been very much needed and that the end result is the mass experience will demonstrate that the nonfault idea, the central idea is even more effective to serve the public interest than we had ever hoped would be possible.

One other point I would comment on briefly is the treatment of the property damage feature.

As the Governor has indicated in his remarks, he favors the triple-option property damage proposal.

I urge and support that proposal also. I think it is especially needed because the reform of the bodily injury system, without the change in the property damage provision, would leave the individual, the claimant, the individual whose car has been damaged more at the mercy of those insurance companies who wish to bargain harshly than has been the situation when the claimant was free to use, although improperly, this threat of a bodily injury claim to collect on his legitimate property damage claim.

So we feel it is very important.

Mr. McCOLLISTER. Mr. Chairman, I need an explanation of "triple option."

Dr. KEETON. The central idea of the triple option proposal is that all damage to cars, cars alone, not talking about buildings and other property, all damage to cars would be paid under the insurer's policy that owner of the car has purchased and he would have three options.

One option would be to have that damage paid to his car without regard to who was at fault in the accident. That would be a rough equivalent of the present collision coverage.

Deductibles would be available under this option just as they are under the collision coverage.

The second intermediate option would be that he could elect to recover for his property damage the damage to his own car in exactly the same circumstances that he is able to recover today against the other person, that is, if the other person was at fault.

So if he elects this intermediate or fault option, this would mean he would have exactly the same rights he has today if he carries no collision coverage and depends on collecting against the other person except that he would have this advantage.

He would have uninsured motor coverage built into this. Today a person may find himself in a situation of having a good fault claim against somebody else for damage to this car and yet not be able to collect because the other person is financially irresponsible. It doesn't cost much to protect against that little gap and this would be included in the intermediate option.

The third option is that for the first time a person now would be able to make an agreement with the system in effect that he would not sue anybody else for damage to his car and nobody else would sue him.

It is possible to make that option available when you shift to the first party coverage. It is not possible really to make it available in the present system in which we depend on suing the other person and his liability insurance company.

Mr. McCOLLISTER. Did you say this relates to compulsory arbitration of claims that others have talked about as to bodily injury?

Dr. KEETON. No; this is opposite to that idea. The triple option that I am speaking of concerns damage to cars only.

Mr. McCOLLISTER. I meant the third option, to settle it within the system.

Dr. KEETON. No; it is a more drastic option than that. There would be no claim whatsoever. In other words, it gives the person a chance to become a self-risk bearer as to damage to his car. This is a significant option for a substantial number of people. We have this casualty loss deduction under income tax law so that a person who has a relatively high income tax bracket is really paying 100-percent premiums for each lower percentage coverage.

Then there is another group in our society who are overpaying for their coverage for damage to cars. These are the persons who have very low-priced cars, inexpensive old cars. They pay virtually the same premium for property damage liability coverage today as does the owner of the very expensive car because that is the way it has to be under the third party system.

This person would be permitted to elect this third option and eliminate a large part of his property damage liability cost while bearing only the risk of the damage to this \$200 or \$300 car or whatever value you wish.

Mr. McCOLLISTER. But at the same time carrying liability for the suit instituted by another were he at fault?

Dr. KEETON. Yes; that residual liability as it has been spoken of would be covered even under the third option.

Mr. McCOLLISTER. Thank you.

Governor SARGENT. Mr. Chairman, I wonder if I might ask your permission, I have given you my statement and I have some problems back at home and have a flight back.

I wonder if I could leave with you Professor Keeton, Commissioner Farnam, and Attorney John Ryan to answer any questions that you might have.

Mr. MOSS. Do you have objection to that request?

Mr. ECKHARDT. I would like to ask one question, if I might.

Mr. MOSS. All right.

Mr. ECKHARDT. Governor, you speak of reducing premiums by 15 percent but also payout by 36 percent.

Do you consider the reduction of payout and reduction of number of claims standing alone necessarily a desirable situation?

Governor SARGENT. We are very pleased with the results so far and I think I would like to ask Professor Keeton if he would want to comment specifically on the numbers that you mentioned.

Dr. KEETON. Yes. In the first place, the reduction in premium is much more dramatic than a 15 percent.

Mr. ECKHARDT. I am reporting from the statement here. I don't know what it is actually.

Dr. KEETON. May I explain. The 15-percent figure is a comparison between what we are paying for the bodily injury coverages today in 1971 and what we did pay in 1970. But you well know the Governor gave another figure with respect to what it was estimated our rates would have been this year in 1971 if the law had not been changed.

And both the actuaries in the Insurance Department of Massachusetts and the company actuaries had predicted substantial rate increases.

We have had a rate freeze in Massachusetts on this bodily injury coverage for 4 years while this matter was being worked out in the legislative process. The lowest predictions of the necessary increase in rates for this year had been above 20 percent. So to get the comparison of what we are paying today with what we would have been paying, you have to add up this 15 percent plus 20 percent.

Then also you add to that group of savings the additional savings the Governor referred to for those who took the deductibles. So the total saving is very much more dramatic than 15 percent.

Mr. ECKHARDT. Let me interrupt to say I don't want to hold the Governor because I merely wanted to get in the question in his presence.

I assume it can be answered by other witnesses.

Mr. Moss. Governor, I want to thank you for appearing here and I assume that you would like to have this material inserted in the record following your statement?

Governor SARGENT. This would be very helpful.

Mr. Moss. Without objection the material will be placed in the record at this point.

(The material referred to follows:)

THE NEW NO FAULT INSURANCE PLAN

(By John G. Ryan)

INTRODUCTION

On August 13, 1970, Massachusetts Governor Francis W. Sargent signed the country's first "no fault" auto insurance law.

The change was a significant overhaul in a 43-year-old compulsory liability system that had been a center of public controversy for a number of years. The change also marked an end—or at least a pause—in four years of sometimes bitter debate over the no fault concepts that had first captured public attention in Massachusetts in 1967 when the Massachusetts House passed the Keeton-O'Connell "Basic Protection Plan."¹

For a time after enactment of the new law, there was some doubt as to whether or not it would be implemented and a likelihood that if it was, it might require a state insurance fund to make it work. These concerns resulted from two sections of the original Act (St. 1970, c. 670) that led insurance companies, who had been major proponents of the basic change, to threaten withdrawal from the Massachusetts auto insurance market if they were left unchanged. The first were provisions of Section 6 of the Act ordering reductions of at least 15% in the rates for all types of auto insurance. The second were provisions of Section 8 calling for the automatic renewal of all auto policies "except for fraud, conviction for use of unlawful drugs or driving under the influence of liquor, or non-payment of premiums."

¹ Robert Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," Little, Brown and Co., 1965.

Insurance industry objections to the automatic renewal provisions were apparently overcome just eleven days after the no fault law was signed with enactment of St. 1970, c. 774, which revised those provisions and added other features to the new plan. Company concern over the rate cut provisions was ended by a decision of the Supreme Judicial Court² holding the cuts ordered on property damage coverage confiscatory and unconstitutional and by a similar decision by a single Justice³ affecting the cuts ordered for fire, theft, comprehensive and collision coverages.

Thus as this ANNUAL SURVEY article was prepared it was all but certain that the no fault idea will be tested in practice in Massachusetts in 1971. If the plan succeeds as its proponents suggest it will, it may set a pattern to be followed in other states. If it fails, it seems unlikely that alone will end public concern over the liability system and its costs. Only time will prove the plan's worth. In 1971, however, the automobile tort practice will be changed materially.

The goal of this article is to explain the major features of the plan.

For the most part the new statutes will be the guide. The author, has, however, consulted the new auto insurance policy and other regulations approved by the Massachusetts Insurance Department to assist in interpretation. The hope is that the explanation here will give practitioners a place to start in their understanding of what time may prove to be a sound, workable and progressive answer to the long debated automobile accident reparations problem.

A. An Overall View—3 Keys to Understanding

The Statutory Framework.—Central to a proper understanding of the new system is an appreciation of its basic framework.

Two different Acts bring about the reform. Of the two St. 1970, c. 670, is by far the most important and its first five sections contain the only operative revisions of law of immediate concern. The other Act (St. 1970, c. 744) is significant to the bar only for its Section 3 which will be discussed in connection with comment on the constitutional issues raised by the plan.

Simply put, there are three keys to understanding the new system:

1. A new coverage—very much like Medical Payments coverage—has been added to the previous compulsory bodily injury coverage;
2. This new coverage—called "Personal Injury Protection"—has been made the primary source of recovery for the elements of loss it embraces; and
3. The potential of recovering in a tort action for more than actual economic loss in the name of payments for pain and suffering has been restricted.

B. The New Coverage

A Broadened Medical Payments Coverage.—Section 2 of St. 1970, c. 670 contains the basic definition of the new "Personal Injury Protection" (PIP) coverage which has been added to the previous compulsory liability coverage.

Ignoring internal exclusions, the PIP coverage will: Pay to—the named insured and members of this household, authorized operators, passengers including guest occupants and any pedestrian struck by the insured vehicle; The—reasonable expenses incurred within 2 years of the accident for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral expenses; And—75% of wages actually lost as a result of the injury if the injured was employed at the time of accident, or, in the case of the unemployed, "actual" loss by reason of diminution of earning power;

Plus—amounts paid for ordinary and necessary services the injured person would have performed for himself or members of his household had he not been injured: Up to—an amount of \$2,000 per person; As a result of—bodily injury, sickness or disease including death at any time resulting therefrom; Caused by—accident and "not suffered intentionally;" While—in or upon, entering into or alighting from, or being struck as a pedestrian by the insured vehicle; Without regard to—negligence or gross negligence or fault of any kind.

Medical, Hospital Expenses, Etc.—Except for the wage loss provisions and an extension of the time limit to two years, the basic PIP coverage for hospital and medical expenses, etc. is nearly identical to Medical Payments coverage as it has been known in Massachusetts for a number of years.

² The Aetna Casualty and Surety Co. and Others vs. Commissioner of Insurance, November 9, 1970. 1970 adv. sh.

³ Employers Commercial Union Insurance Co. and Others vs. Commissioner of Insurance, Docket No. 69826 Eq.

Construction of such potentially troublesome terms as "reasonable expenses," "incurred," "necessary services" and "while in or upon, entering into or alighting from" (shortened in the policy language by way of a definition to the more workable "occupying") will be aided by precedents dealing with Medical Payments coverage.⁴ Regulations concerning the PIP deductibles made by the Massachusetts Insurance Department supply a workable definition of the Act's undefined "members of the insured's or obligor's household."⁵ Few practical problems will be experienced in giving meaning to the expenses of this type that are recoverable on the no fault basis.

The Wage Loss Benefit.—The major difference between Medical Payments coverage and the new Personal Injury Protection (PIP) coverage is in the provisions.

Medical Payments coverage simply did not deal with lost earnings. PIP does and because it breaks new ground in this area there will probably be more coverage questions relating to the wage loss provisions than any other part of the new plan.

The coverage treats the employed and the unemployed in different ways.

Analysis suggests that the draftsmen attempted to fashion a no fault wage loss benefit for the employed that would avoid some practical problems contained in the traditional rule of damages expressed in *Doherty v. Ruiz*, 302 Mass. 145, 18 NE2d 542 (1939).⁶ As a result a fairly clear statutory benefit for wage loss is provided for the employed to replace the traditional "diminution of earning power" concept.

The benefit for the unemployed also modifies the "diminution of earning power" test of the cited cases.

Interestingly both the employed and the unemployed are additionally entitled to recover on a no fault basis under PIP for "payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household."

Wage Loss For the Employed.—Personal Injury Protection (PIP) entitles the protected person who is employed at the time of an accident to recover on a no fault in the *lesser* of:

1. Amounts "actually lost" by reason of "inability to work and earn wages";
or
2. 75% of this "average weekly wage" for the year immediately preceding the accident during such period or an amount that together with payments received under programs for wage continuation will provide the above 75% of average weekly wage.

"Amounts actually lost" by reason of inability to work and earn wages is the starting test in each instance. This amount is then to be matched against "average weekly wage or salary or its equivalent for the year immediately preceding the accident." If amounts actually lost are less than the amount determined by calculating 75% of average weekly wage, then that lesser amount will be paid without deduction. If however wages have been increasing through the year immediately preceding the accident or stable, then application of the 75% limitation will be used to determine the no fault benefit.

The test seems to be a practical one aimed at preventing inequities in the case of persons who have not worked for a full year immediately preceding the accident or who have had fluctuating earnings during the applicable time period. In so far as the short term worker is concerned it seems likely that the principles of an early Workmen's Compensation case⁷ can be applied to prevent any attempt to compute the amount due on the basis of full year's employment. The principle should lead to computation of the alternative to amounts actually lost by division of total earnings by the number of weeks of actual employment. Determination of what constitutes "average weekly wage"—i.e. tips, commissions, fringe benefits, etc.—may also be aided by Workmen's Compensation precedents.

Once average weekly wage is determined, the amount due when this test is

⁴ For general survey see: Appleman, Insurance Law and Practice, Section 4896 et seq.

⁵ The definition is: Those persons related by blood or marriage, who dwell as a family under one roof, domestic servants, long term guests (a foreign exchange student, for example) and student members of the family who are away from home attending college or school. The term household does not include boarders or lodgers who are not related to the insured.

⁶ Followed in *Marston v. Auto Laundries, Inc.*, 1970 Mass. Adv. Sh. 233.

⁷ *Rice's Case*, 229 Mass. 325, 118 NE 674 (1918).

applied will vary according to whether or not the injured person is entitled to wages "under any program for continuation of said wages . . ."

One of the persistent myths about PIP is the belief that none of the no fault benefits are payable where there are other collateral sources—such as health insurance plans, etc.—available. This is not so. The PIP no fault benefits for hospital and medical expenses, etc., are payable whether or not other insurance applies. The only area where the existence of other sources is significant is in the coverage for wage loss of a person employed at the time of an injury. The statutory "any program for the continuation of . . . wages . . ." will in such a case be the primary source of the employed person's wage benefit. PIP will provide only what is additionally needed to provide 75% of the average weekly wage during the period of disability.

There will be disputes as to what constitutes a wage continuation program within the meaning of the Act. Gertrude Stern's famous "a rose is a rose is a rose" may be the ultimate key to interpretation of "any program" meaning just what it says. Just such an interpretation is bolstered by internal aids such as the limitation in Section 1 of c. 670 "to amounts (of wage) actually lost by reason of the accident" and by the provision of Section 4 requiring claimants to authorize insurers to determine whether or not "such (wage) loss may be reduced in whole or in part as a result of any program calling for the continuance of such wage, salary or earnings (sic) during absence from work." Analysis may also lead to a focus of attention on the term "continuation" with resulting interpretations holding that some types of accident and disability insurance plans are not properly within the expressed meaning.

For practical purposes the great majority of wage continuation plans are formal. It should be easy to determine whether or not wage is continued during absence from work because of an auto injury. Loss adjustment in practice will not prove as difficult as theoretical arguments may suggest. And, as is true of so many other open questions about the new system, the low limits of the no fault benefit and the relationship of the insured to the insurer should combine to keep technical disputes at a minimum.

Finally, in so far as wage loss of the employed is concerned, the Act is directly responsive to criticisms of other no fault plans that initially ignored the possibility that reliance on wage continuation plans might result in unfair exhaustion of those benefits.

Section 2 of c. 670 meets this problem by providing for the application of any amounts saved by the auto insurer because of a wage continuation plan to any later injury where a wage continuation plan would have paid had its benefits not been used for the earlier auto accident. This liability of the auto insurer continues one year beyond its last payment of a PIP benefit. "*Wage*" *Loss For the Unemployed*. The traditional rule⁸ on "loss by reason of diminution of earning power" has also been modified in describing the Personal Injury Protection (PIP) benefit due an unemployed person on a no fault basis.

The status of the injured person on the date of an accident seems to be the test. Presumably there would be no operative wage continuation plan. The only applicable test would be amounts "actually lost by reason of the accident." Thus the body of law⁹ applicable to the "diminution" concept seems not intended to apply. Instead it seems the provisions should be read as restricting the concept in cases¹⁰ holding that one who would not have worked if uninjured, may nevertheless recover for his impaired earning power. Such a result will be to paying the unemployed on a "but for" basis—i.e. the amount he can show he would have earned in an available job "but for" the injury. This is a break with precedent¹¹ but a highly practical one from a claims handling standpoint.

Coverage Extension and Territorial Application.—The final paragraph of the coverage section provides for payment of the plan's no fault benefits to the insured and members of his household in "any case" where those persons incur a covered loss while occupying or being struck as a pedestrian by a vehicle not insured by a policy or bond providing personal injury protection, unless there is a tort recovery for the loss.

This provision extends coverage for insureds and members of their household to a number of situations in which coverage would not otherwise apply.

Here it is important to note that PIP coverage—like the compulsory liability coverage—attaches to the insured vehicle. The insured person occupying another

⁸ *Doherty v. Ruiz*, 302 Mass. 145, 18 NE2d 542 (1939).

⁹ For general discussion see Martin and Hennessey, MPS Vol. 11, Sec. 246.

¹⁰ *Matloff v. Chelsen* 308 Mass. 134 (1941); *Koch v. Lynch* 247 Mass. 459 (1924).

¹¹ *Styres v. Boston Elevated Railway Co.* 206 Mass. 75 (1910).

vehicle (i.e., not his own) or struck by one as a pedestrian will look to the PIP coverage on that vehicle for his no fault benefits.

The coverage extension gives the insured and household members the benefit of their own coverage when occupying or being struck by a vehicle that does not have applicable PIP coverage. It recognizes however that in such a case the injured person may have a valid tort claim. Policy language approved by the Massachusetts Insurance Department¹² clarifies the timing problem by giving the insurer paying PIP benefits a right to a share in the total recovery made subsequent to the no fault recovery.

The policy language¹³ also clarifies earlier doubt as to the territorial application of Personal Injury Protection (PIP) by making it applicable throughout the United States, its territories and possessions and Canada except as to out of state pedestrians.

Finally, it should be noted that unlike compulsory liability coverage, the in state Personal Injury Protection coverage is not restricted to the ways of the Commonwealth and places therein to which the public has a right of access. *The Exclusions.* Two quite different classes of persons are made ineligible for the Personal Injury Protection (PIP) no fault benefits described:

1. A person entitled to payments or benefits under the provisions of G. L. Chapter 152—the Massachusetts Workmen's Compensation Act; and

2. Persons whose conduct contributed to their injury while *operating* a motor vehicle in the Commonwealth:

- a. while under the influence of alcohol or a narcotic drug;
- b. while committing a felony or seeking to avoid lawful apprehension or arrest by a police officer; or
- c. with the specific intent of causing injury or damage to himself or others.

There is also a general type exclusion requiring injury to be "caused by accident and not suffered intentionally."

The Workmen's Compensation exclusion is similar in intent to the exclusion from compulsory liability coverage of any employee of the insured entitled to Workmen's Compensation benefits. It helps preserve the exclusive nature of the Workmen's Compensation remedy and the resulting immunity of an employer from actions at law by his employees meeting the legislative intent of the Workmen's Compensation Act discussed in *King v. Viscoloid Co.*, 219 Mass. 420, 106 NE 988 (1914). Though the exclusion has been subject to some criticism, it seems consistent with prior law.

The exclusion of the second class of persons from the PIP no fault benefit system is optional with insurers. Policy language containing such an exclusion has however been approved by the Massachusetts Insurance Department and will presumably be used in all 1971 policies. It is important to note that the exclusion applies only where such persons contribute to their injury while "operating" an insured vehicle within the Commonwealth. It will have no effect upon passengers riding with or pedestrians struck by such an operator. Finally, although the lack of a PIP benefit may revive tort rights because of the nature of the tort exemption in the Act, it is doubtful that this will have any practical effect since most such operators would be barred from recovery on a tort basis as well as on the no fault basis.

The Deductibles.—An additional coverage feature is the availability of optional deductibles in amounts of \$250, \$500, \$1,000 and \$2,000. These deductibles are authorized by the last two paragraphs of Section 4 of c. 670.

There are two choices:

- 1. A deductive applicable to the policyholder alone; or
- 2. A deductible applicable to the policyholder and members of his household.

The deductible in the chosen amount will be a straight deduction from the Personal Injury Protection no fault payments that would otherwise be made. The Act is clear however that the choice of a deductible does not revive tort rights nor affect the restriction on the right to recover for pain and suffering.

As explained above, the Personal Injury Protection coverage attaches to the insured vehicle. Any deductible will only apply where the purchaser is occupying his own vehicle at the time of injury. By the same token no other party riding with the purchaser except household members will be subject to the deductible.

¹² See "Item 12" of Conditions Applicable to Part I of approved standard policy subparagraph (a).

¹³ See "Item 2" of General Conditions of approved standard policy.

Compulsory Liability Coverage.—As stressed at the outset a proper understanding of the new law demands an appreciation of the fact that the coverage available on a no fault basis is an addition to compulsory liability coverage rather than a replacement of it.

St. 1970, c. 670 does not change in any way the requirements of previous law that motorists carry \$5,000/\$10,000 bodily injury liability coverage as a prerequisite to registration of a vehicle in Massachusetts. Only the insured's exposure to liability has been changed. That, of course, will have the practical result of changing the circumstances in which the liability coverage will respond for damages but it does not change the coverage itself.

Uninsured Motorists coverage is also unaffected and continues to be mandatory for all vehicles.

C. The Tort Exemption

No Fault Benefits Are Primary.—A second key to understanding the new plan, stressed at the outset, is that the Personal Injury Protection (PIP) no fault coverage has been made the primary source of recovery for the elements of loss it embraces. It is the new Act's (c. 670) tort exemption that brings about this result.

In direct terms, Section 4 of the Act provides:

1. That the PIP no fault benefits are granted "in lieu of damages otherwise recoverable by (an) injured person in tort as a result of an accident occurring within (the) Commonwealth;" and

2. That every person who would otherwise be liable in tort is exempt from such liability arising out of an auto accident "to the extent that the injured party . . . is entitled to recover . . . personal injury protection benefits."

The net effect of these provisions in the usual case involving two Massachusetts registered and insured vehicles is that the operators and passengers of each vehicle will look to the insurer of the car they occupy for the previously explained no fault benefits. Only those involved whose losses exceed the \$2,000 no fault limit will have a claim for additional hospital, medical, wage loss, etc. on a tort liability basis. The practical result will, of course, be to eliminate litigation over negligence in the great majority of cases.

Practitioners however must clearly understand the effect of the exemption because there will be cases where it does not apply and because it can effect larger cases and cases where there are claims for damages not available on a no fault basis that will justify litigation.

There is some ambiguity in the key provisions of Section 4.

The exemption seems to apply only "to the extent" that a no fault benefit is available. It has been argued¹⁴ that one result of this is that items such as the 25% of wage loss not payable to the employed on a no fault basis or any additional amounts of wage loss not payable because of a wage continuation program would therefore survive the exemption.

On the other hand, it is possible to read the clause granting no fault benefits "in lieu of damages otherwise recoverable in tort" as a legislative substitution of the defined no fault benefit for all tort damages of the same type within the specified limits.

Though there are obvious disadvantages to preserving the tort remedy for small elements of loss, fairness seems to suggest that it should be continued where no PIP replacement benefit is available.¹⁵ Indeed the Act as a whole is best understood and most easily defended from constitutional attack by focusing on the fact that the tort remedy is being replaced only where a replacement benefit is provided.

Special elements of damage such as unascertained future medical expenses and damages customarily alleged as being in aggravation are not provided for on a PIP no fault basis and under either theory, no tort exemption would seem applicable where they are alleged. Damages for pain and suffering are subject to special statutory exclusion.

The tort exemption does not extend to vehicles insured by a policy not containing PIP. It also does not apply to accidents occurring outside the Commonwealth. There will therefore be actions in tort against vehicles such as buses, uninsured city and town vehicles, etc., that are registered in Massachusetts but not subject to the compulsory law. Massachusetts drivers will be subject to suit by out of state operators operating in Massachusetts and to extra territorial actions

¹⁴ By the author in *The Massachusetts Plan—A Better Way*, Trial Magazine, October–November, 1970, and by others in legislative debate.

¹⁵ See Keeton-O'Connell, op. cit. pages 275 and 276 for justification of this result.

as they are now. And vexatious actions without grounds will still be a part of the practice.

The continuation of "first dollar" compulsory liability coverage will leave the duty of defending and settling third party claims on insurers. Presumably there will be no change in extra territorial difficulties of Massachusetts drivers. Finally under the territorial extension of coverage, Massachusetts insureds and occupants of their vehicles will have valid PIP claims for losses they incur outside the Commonwealth as well as potentially valid tort claims. Massachusetts insureds and members of their households in or struck as pedestrians by vehicles not insured for PIP will have a similar duality of remedy. The terms of the Act suspend the PIP no fault claim during the pendency of any tort actions brought as a result of such circumstances and the approved policy language again solves the timing problem.¹⁶

D. The pain and suffering restriction

A Broad Restriction.—Section 5 of St. 1970, c. 670, contains the restriction on an injured person's right to recover for "pain and suffering" that proponents of no fault identify as the cost cutting part of their programs.

The restriction purports to apply (on and after the January 1, 1971 effective date of the Act) to "any action of tort brought as a result of (injury) . . . arising out of the ownership, operation, maintenance or use of a motor vehicle within . . . (the) Commonwealth by the defendant . . ."

Standing alone the provision might be read as affecting tort actions where the cause of action arose before the Act's effective date that are not entered until after January 1, 1971. It also can be read as affecting tort actions, arising after the effective date, where there is no offsetting Personal Injury Protection (PIP) no fault benefit provided to a plaintiff.¹⁷

The restriction obviously affects a substantive right and would, on precedent,¹⁸ most probably not be construed to have a retroactive effect.

More difficult is the question as to whether or not it is intended to apply where there will be no availability of a no fault benefit. Certainly there is justification for the view that there has been a legislative determination that pain and suffering" should not be compensable under certain conditions and that the breadth of the restriction is intentional. Looking at the Act as a whole in accordance with customary interpretation¹⁹ can however support the view that the restriction is intended to accompany the availability of a no fault benefit.

There almost certainly will be Court tests of this provision before there are definite answers. But, as is true with other questions raised by the Act, an interpretation either way will not materially detract from the plan's success.

The direct terms of the restriction are such as to limit recovery of damages "for pain and suffering, including mental suffering associated with such injury" to cases where either:

1. The reasonable and necessary expenses incurred in treating such injury . . . are determined to be in excess of \$500; or
2. Where expenses are not in excess of the \$500, if the injury:
 - (a) causes death, or
 - (b) consists in whole or in part of loss of a body member or permanent and serious disfigurement, or
 - (c) results in defined loss of sight or hearing, or
 - (d) consists of a fracture.

Again analogies to Workmen's Compensation precedents will assist in interpretation of what the defined injuries embrace. The most difficult term will prove to be "permanent and serious disfigurement" which differs significantly and apparently intentionally from the "bodily disfigurement" of G. L. Chapter 152.

Time may show that the most important single question will be what constitutes "damages for pain and suffering."

Practice will obviously have to be altered in order to more precisely define in pleadings the elements of damages being alleged where either the dollar

¹⁶ See footnote 12, supra.

¹⁷ As in the case of vehicles exempt from the compulsory law, actions against auto manufacturers, etc.

¹⁸ *Welch v. Mayor of Taunton* 343 Mass. 485, 175 NE2d 890 (1962) *Shelist* 1. Boston Redevelopment Authority 1966 Mass. Adv. Sh 565, 215 NE2d 748 (1966).

¹⁹ *In re Robinson* 131 Mass. 376 (1881).

amount or type of injury precludes recovery for "pain and suffering." Again, it is the author's opinion that reasonable interpretations permitting recovery of more than actual economic loss will not thwart the Act's purposes.

E. Other New Features.

Claim Handling Provisions.—Section 4 of the Act contains some detailed provisions on the handling of Personal Injury Protection (PIP) claims that deserve attention of the bar. Particularly pertinent are provisions on the detail required in reporting claims, the rights given insurers to require physical examinations and to obtain information about wages and wage continuation plans and the provisions that failure of an injured person to cooperate may be a defense to an insurer.

Like the Keeton-O'Connell plan, the new Act also contemplates paying losses as they are incurred in instalments each 30 days. And, significantly, claimants are given a statutory right to commence an action in contract in any case where claims remain unpaid 30 days after receipt by the insurer of reasonable proof of the fact and amount of loss incurred. Any party entitled to PIP benefits is to be "deemed" a party to a contract with the insurer for purposes of enforcing this contract action making the coverage a third party beneficiary contract to that extent.

Inter Insurer Subrogation.—Section 4 of the Act provides that an insurer paying Personal Injury Protection (PIP) no fault benefits shall be subrogated to that extent to the rights of any party it pays.

In the great majority of cases, the subrogation right itself would be of little aid to the insurer since the tort exemption will presumably be a defense to an action against many of those whose fault caused the payment. But the Act goes further and creates a new subrogation-like right against the insurer of the at fault but exempt party. This provision will permit insurers to proceed through arbitration or agreement against one another after settlement of losses to recover payments made, costs or processing claims and the expenses of enforcing the new right. In practical effect, if insurers use this provision, it means that the liability exposures of companies remain essentially as good or as bad as they were before enactment of the Act.

The Assigned Claims Plan.—A final new concept is the creation of an Assigned Claims Plan to provide Personal Injury Protection (PIP) benefits to Massachusetts residents (with some exceptions) who are neither insured nor members of an insured's household when they are injured in such circumstances that no PIP benefits are otherwise available to them.

The cases would seem to be limited to persons occupying or struck as pedestrians by uninsured vehicles (i.e. uninsured at least in the sense they have no PIP coverage) and those struck by hit and run vehicles. Claimants are to be treated as though they had a PIP policy and the insurer is to have all PIP insurer rights. Of prime importance will be the insurer's subrogation rights against the non exempt motorist and its rights where tort recoveries are sought by an Assigned Claims Plan claimant.²⁰

The Continuation of Coverage Provision.—Section 3 of St. 1970, c. 744, provides that compulsory liability coverage as it existed prior to the effective date of the no fault plan shall continue in effect in the event that the provisions of c. 670 providing for the tort exemption or the restriction on the right to recover for pain and suffering are held unconstitutional.

This is a somewhat unique "fail safe" device that will assure Massachusetts motorists that no constitutional challenge to the key features of the new plan will expose them to unexpected liability. As a practical matter, it seems unneeded in view of the continuance of liability coverage that is one of the Act's key features. It does not however hurt to have it clearly expressed in the related Act (c. 744).

Other Provisions.—c. 670 and c. 744 contain a number of additional provisions not discussed here. They involve merit rating, guaranteed renewability of policies and the mandatory offer of certain basic coverages to all motorists. Though they are obviously important to motorists and to the insurance industry, none of them can properly be considered parts of the new no fault auto insurance plan with which this article deals. They are instead separable reforms added to the basic reforms described.

F. Constitutional questions

No discussion of the new no fault plan can ignore the fact that the change involves constitutional issues relating to jury trial, due process and equal protection.

²⁰ See footnote 12 supra.

The author believes that the weight of authority²¹ is clearly on the side of the new plan's constitutionality. There is however little doubt that the constitutional issues will be litigated during 1971. Definite conclusions will then be available as a guide to further improvements and progress in the law's consistent effort to adapt to realities and bring itself into harmony with the facts of modern life.

Governor SARGENT. Thank you very much. I appreciate the opportunity of being here and the brains of the insurance situation in Massachusetts will still be with you, but the Governor will leave.

Thank you very much.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Farnam, I assume you are familiar with the DOT report that we have been utilizing in this hearing, "Motor Vehicle Crash Losses and their Compensation in the United States."

Mr. FARNAM. To a certain degree, yes.

Mr. ECKHARDT. On page 49 of the report is a table of estimated automobile liability insurance and operating expenses under existing law.

Have you worked out any breakdown of automobile liability insurance expenses in Massachusetts since the inauguration of the present no-fault plan that would be similar to these figures?

Mr. FARNAM. No, we haven't, Mr. Eckhardt, for the reason that historically in Massachusetts in our rate promulgation procedures, we would under ordinary circumstances in the year 1971 be looking at experience up to 1970. But due to the fact of the inauguration and inception of the no-fault plan in 1971 we felt it was incumbent on us to go directly into the companies and gather whatever information we could to present these statistics that you have heard the Governor relate to you.

And therefore to answer your question, it would be "no" at this point. But of course it will be available at the end of the year.

Mr. ECKHARDT. But you have gathered sufficient information to indicate that rates have gone down 15 percent?

Mr. FARNAM. On that point, Mr. Eckhardt, the companies voluntarily accepted a 15-percent reduction coming into the year 1971. Those are in effect at the moment, the 15-percent reduction.

Now, we have gathered this statistical evidence to point out to you and to all of those who are interested that contrary to the opinion of many, as Professor Keeton has said, the frequency has gone down, the average claim cost has gone down which was completely unexpected in this total picture.

Mr. ECKHARDT. How do you know about the 36-percent decrease in claim cost?

Mr. FARNAM. For the first 3 months of 1970, January to March 31, the average claim was \$205. For the first 91 days of 1971 the average claim cost was \$131.

Now projecting through the 12 months of 1971, if that average claim cost stayed constant, then the reduced, final figure would be 70 percent below the average claim cost of the year 1970.

Mr. ECKHARDT. This is the first 3 months?

Mr. FARNAM. Yes, Mr. Eckhardt.

Mr. ECKHARDT. Now, do I understand correctly that the program applies this way, that you can come in under the no-fault program for a period of coverage of 2 years, nothing past that?

²¹ An excellent summary is contained in a U.S. Department of Transportation study of April 1970, entitled "Constitutional Problems in Automobile Accident Compensation Reform".

Mr. FARNAM. That is correct.

Mr. ECKHARDT. And then after recovering under that program, assuming you have as much as \$500 medical expense, you can go in and bring a tort suit?

Mr. FARNAM. That is correct.

Mr. ECKHARDT. Would that situation not tend to bring the number of claims down during the early period of the inauguration of such a plan among those who may be getting their 2 years coverage under the no-fault and who may yet come in under a tort liability at a later time?

Mr. FARNAM. That is one of the speculations. We don't know. We have nothing to draw on as far as experience is concerned.

Mr. ECKHARDT. That is right.

Mr. FARNAM. That would be a factor.

Mr. ECKHARDT. Would that not tend to make an inordinately large increase in claims at the beginning of a system of this type?

Of course, as you go on you have them feeding in and old claims coming up as the 2 years run out, et cetera. But you have nothing like that here.

Mr. FARNAM. The evaluation we had, we sent examiners into home offices of 190 companies doing business in the States. They were directed to look at losses that took effect after January 1, 1971. So we think this is a clear picture as far as we can go.

Mr. ECKHARDT. Won't it at least be a tendency to decrease the number of claims because of that 2-year moratorium on tort liability in effect?

Mr. FARNAM. Yes; that is a fact, there isn't any question about it, but we believe that reason, one of the best reasons we can advance is that we have attacked that area of the small claim wherein, and I think it might be well to cite to you some of the statistical evidence that we had that we had the highest rate in the country.

Mr. ECKHARDT. I understand all of that. I think we have that before us.

Now, let me ask you this: You indicate there has been an increase in automobile accidents during the period in which there has been a decrease in claims.

Now, if it is not true, if it is not true what I have been surmising, that there may be some degree of delay in the bringing of tort suits, doesn't this reflect merely the fact that persons are injured and are not receiving the same level of remuneration with respect to that magnitude of injury during the period of time?

You see, I can't see that there is anything really beneficial about cutting down remuneration to injured people, if people are being injured at the same rate. I can see some advantage to getting a higher amount of the total insurance dollar to the injured person but I can see no real value, no real social value in reducing the total amount of payout to injured persons. That really doesn't send me. It looks to me like it might be money in the insurance companies' pockets.

Mr. FARNAM. The fact is that prior to the enactment of no fault, as I said, we had the highest premium level in the entire country. We also were two and a half times the national average on frequency. Now, there had to be some reason for this. Why would it be in Massachusetts that we would be two and a half times the national average in frequency?

Mr. ECKHARDT. Let me suggest a possibility. It may be the possibility that persons were getting near the amount they were entitled to.

Mr. FARNAM. Well, I have to admit that is a reverse switch. But in Massachusetts, Mr. Eckhardt, the overwhelming issue from the time I have been commissioner has been the cost.

Mr. ECKHARDT. Well, this is something that very much worries me about some of the underlying philosophy of this plan. And I must suggest that there are many things that seem to be very attractive about the plan but not from the standpoint that I have heard from some of the witnesses.

That seems to be that there are some particular virtues in reducing the total amount of money that gets to the injured party. I don't consider that important. As a matter of fact, I think it is probably more important that the injured party get closer to complete remuneration than he is getting today.

Mr. FARNAM. Well, under our no-fault plan, when we get to the point of the \$500 threshold, they have every right they had prior thereto.

Mr. ECKHARDT. Let me test that a moment.

I think the Governor did say that. He said first all coverage and protection provided by the old plan is still provided. "The injured will look first to the no-fault coverage on the car they are occupying for hospital, medical, lost wage, or its equivalent. Where such coverage is open to them, they will have no right to litigate losses recoverable on no-fault basis. But where loss exceeds \$2,000 per person limit, includes other losses, or are otherwise not available, legal avenues and obligations are continued or revived."

That is what you are saying here.

Let me give you an example. Suppose John Doe, 40 years old, in Seattle, unemployed because the plant is out of operation for a period of time, is injured. Assuming that the State of Washington had the Massachusetts plan, as I understand, he would receive his full medical and, of course, he would theoretically receive 75 percent of his lost wages which is nothing in this particular instance.

Let us assume his medical is \$250 and the injury was in the nature of some type of back injury which he is complaining of, he is an arthritic and at the end of 2 years he discovers he is at least 50-percent incapacitated for the kind of job he had done before. Can he come into court and bring a tort suit to recover that amount under those circumstances as I have set out?

Mr. FARNAM. If his total loss of wages and if he hasn't qualified under \$500 medical, if total lost wages exceed \$2,000; yes.

Mr. ECKHARDT. He didn't lose wages because he was unemployed and his medical was \$250.

Mr. FARNAM. He would still have the right under tort action because his earning power has been diminished.

As a matter of fact, under 75 percent item, the individual has the right for tort action for the difference between 75 percent and his former wages.

Mr. ECKHARDT. But he wasn't making any wages. He was unemployed.

Mr. FARNAM. In this case his earning capacity has been diminished and he has the right of a tort action.

Mr. ECKHARDT. How do you determine that question under the present Massachusetts law? Do you go back to what has been his earning power for some period of time?

Mr. FARNAM. In the prior year.

Mr. ECKHARDT. Well let's assume he was unemployed for a whole year. This is not unusual.

Mr. FARNAM. Then he would still be eligible for a tort action for what he would have earned if he had been working.

Mr. ECKHARDT. Well, let me make my hypothetical situation clear. Let us say that the Boeing Seattle plant has had a layoff which has existed 18 months prior to his injury. He is then injured. His medical is \$250. He brings his claim. He receives the payment for his medical. He simply was not employed for the 18 months immediately preceding the accident and, of course, he is not employed after the accident.

He only draws his medical. He has no other claim but he is in fact disabled to work on the type of job he held before. Can he bring a tort suit?

Mr. FARNAM. I say "Yes," he can because his right to a livelihood has been diminished by the fact he is unemployed so they would use as the base, I expect, in a legal action what he would have earned if Boeing had not been on strike.

Mr. ECKHARDT. I see. He could bring in the fact that he had a capacity to work at that time and that there just wasn't a market for his skills during that year and a half.

Mr. FARNAM. Yes.

Mr. ECKHARDT. Then what do you look back to to determine what his earning power was, what period of time, or do you bring any part of the—

Mr. FARNAM. That would be part of the litigation. That would be up to the attorney but the fact is that he would have the right of the tort action which I think is what you are driving at.

Mr. ECKHARDT. Suppose it were not he but his wife and as a result she was crippled. She was not a wage earner. Would she have any tort claim?

Mr. FARNAM. Yes.

Mr. ECKHARDT. What would that be based on?

Mr. FARNAM. The same point diminution of earning. If she had to hire someone to come in and take care of the household or whatever was necessary, or what she would have done or did do prior thereto would be part of the tort action.

Mr. ECKHARDT. Suppose she didn't work at all?

Mr. MOSS. Mr. Eckhardt, would you yield a moment to Mr. McCollister.

Mr. MCCOLLISTER. That is all right. Go ahead and continue and I will come in again.

Mr. ECKHARDT. Suppose she was not working at all. Suppose she did the ordinary duties of a housewife.

Mr. FARNAM. I would like to yield to my counsel, Mr. John Ryan, the consulting expert on this matter.

Mr. MOSS. Mr. Ryan?

Mr. RYAN. Thank you, Mr. Chairman.

Mr. Eckhardt, in Massachusetts we have had a historic test that we have used for the type of situations that you talk about being in es-

sence recovery for diminution of earning future capacity. Whether he be a housewife or unemployed person, this is one of the elements of damage.

This is generally if a person had a job and that is not really the test. Under the new plan, we have put in a statutory wage loss benefit but that statutory benefit is available only in the circumstances described in the plan.

If that is not available to someone, there is no tort exemption for the tortfeasor and the person can proceed as he did before, in the tort, allege loss of earning capacity and recover under the old test.

Mr. ECKHARDT. Could you show me the language in the Massachusetts plan?

Mr. RYAN. It is the result of the way the exemption in the Massachusetts plan is drawn. You will find that tortfeasors are exempt to the extent that an injured party is entitled to no-fault benefit. An injured person not being entitled to no-fault benefit under the circumstance you describe, the tortfeasor is not exempt and common law rights continue and liability insurance is still there to protect.

Mr. ECKHARDT. If this be true, why don't you simply provide in the act that the no-fault coverage shall be available to the extent of \$2,000 period without negating tort liability.

You are telling me that is the effect of it?

Mr. RYAN. Yes, except that whatever you recover on no-fault basis is no longer recoverable under tort basis. The only area where that is not true is in the area of claims for pain and suffering.

Mr. ECKHARDT. Why the \$500 triggering for medical bills?

Mr. RYAN. I believe, Mr. Eckhardt, that was based primarily upon studies performed by American Insurance Association. It showed under the \$500 level was where overpayment of people with economic loss. And it is my belief that the legislature chose that level on the basis of those statistics that showed that people at \$200 or \$300 level were getting seven times and in some cases five times, four times what the actual medical and hospital costs were that they incurred.

When you hit \$500 level, or you had the definable types of injuries, the "overpayment" in relation to the injury was a lot less and I think that is why the \$500 level.

Mr. ECKHARDT. Let me suggest to you that I think a bill could be much more easily drawn if you don't have a triggering device. If you don't need the \$500 for the purpose of triggering and if a person has his full tort liability after he exhausts \$2,000, you simply have to put nothing in at all about negating tort liability except to provide that the payments under the no-fault plan will be considered as a diminution of the total claims.

Mr. RYAN. That is what the plan does as far as most elements of damages is concerned but that doesn't address itself to the pain and suffering problem and the pain and suffering problem is the dollars beyond economic loss that are being paid out and, as Professor Keeton has remarked, so inflates the cost.

Mr. ECKHARDT. So the light flicks in my mind on that point. In the two situations that I have given you, the two examples, the differences of the tort liability with respect to both the man and the housewife will only be permanent partial disability in terms of loss of earning power and will not include any pain and suffering.

Mr. RYAN. That is correct, unless the injury involves one of the defined exceptions.

Mr. ECKHARDT. So what you have done in effect is change the whole standard of damages in your tort system?

Mr. RYAN. That is correct.

Mr. ECKHARDT. And that is what is reducing your payouts, is it not?

Mr. RYAN. That is the cost reducing element, absolutely.

Mr. ECKHARDT. Now what about the situation of the \$500 medical bill. If that occurs, then can you recover pain and suffering after the \$2,000 level has been exhausted?

Mr. RYAN. If you hit the threshold of \$500 in medical bills, you may bring a tort action as you did before. You cannot rerecover in that tort action any of the medical, hospitals, or lost wages.

Mr. ECKHARDT. So \$500 on the other conditions trigger pain and suffering in a tort action?

Mr. RYAN. That is correct.

Mr. ECKHARDT. But if you don't meet these thresholds, then pain and suffering is removed from tort liability?

Mr. RYAN. That is correct.

Mr. ECKHARDT. Not only under the plan but under any further recovery beyond \$2,000.

Mr. RYAN. That is correct.

Mr. ECKHARDT. Well, then there is a little begging of the question, I submit, in the statement that "but where loss exceeds \$2,000 per person limit includes other losses or otherwise not available, legal avenues and obligations are continued or revived."

Now they are altered. They are continued or revived but they are altered to exclude pain and suffering unless the triggering items exist?

Mr. RYAN. If in the \$2,500 of it was medical bills, that statement is 100 percent correct. If it happened to be a case where \$2,000 was paid out for lost wages, then you wouldn't pay—

Mr. ECKHARDT. I am not quarreling because I recognize \$500 is a relatively low threshold. There could be an exception. Do you include disfigurement as a triggering device?

Mr. RYAN. Yes.

Mr. ECKHARDT. A loss of an eye?

Mr. RYAN. Yes, loss of sight, hearing, disfigurement and a fracture, and a death and dismemberment.

Mr. ECKHARDT. This would not include a situation like an injury to a leg which exacerbated an arthritic condition and resulted in a man who was formerly mobile being reduced to a wheelchair, that would not be covered unless you could show somehow that he spent \$500 in medical, as perhaps he could?

Dr. KEETON. Three days in a hospital.

Mr. ECKHARDT. Perhaps he should be but you are creating a rather artificial requirement that he receive medical attention whether he needs it or not, are you not?

Mr. RYAN. I am not sure that things that aggravate preexisting conditions would not by our courts be held to be separately recoverable. I think that is an open area in the bill.

Mr. ECKHARDT. I see.

Now, I noted that the Governor started his statement in a rather deprecatory vein with respect to this mixed bag and indicated that this

was not nearly as good a bill as might have been desired but the rest of the statement indicates how well it worked.

Can you indicate what side of the picture you are on? Perhaps I ought to ask Dr. Keeton that because he is not answering as a politician.

Dr. KEETON. Well, it was a mixed bag for a variety of reasons. First, the core bill which I supported as a compromise measure is not as strong as I think ideally it should be. It doesn't provide as much in benefits. It stops at \$2,000. I think it ought to go higher. The tort exemption is not as strong as I think it should be but I supported it as a compromise measure and the Governor supported it and a large segment of the industry supported it as compromise measure.

So people were being pulled from opposite sides to this compromise position. In addition to that phase of the mixed bag operation, there were also a number of additions to it that were referred to on Beacon Hill as sugar-coated torpedoes which were put there at the instigation of opponents who hoped either to defeat or discredit the whole no-fault idea by adding these things to the bill.

Some of those have been disposed of. Most of them have been disposed of, that group of sugar-coated torpedoes in one of two ways.

One way was that another bill was passed within about 2 weeks after this one that modified some provisions that were extremely troublesome from the point of view of the virtually perpetual requirement of renewal without examination of the question of what kind of risk the person was.

So some changes were made by legislative modification. A second thing was that there was attached, and the most significant I would say, of the sugar-coated torpedoes was a provision that rates for all automobile insurance, regardless of whether it had any connection with the changes in the bill, would be 15 percent lower in 1971 than in 1970.

Mr. ECKHARDT. I think you have answered. I was really only referring to what was defective about the basic principle of the bill and it seems to me that we only directed attention to the question of the extent of the coverage of no-fault, and triggering for tort action, and the reduction of possible recovering under tort action.

I understand that there can be a lot of things in bills that create a kind of internal suicide mechanism but as far as the structure of the bill is concerned, do you find it satisfactory?

Dr. KEETON. I find the basic idea of what I think is essential to reform is present in this bill. That basic idea is that we must have at least a partial tort exemption to eliminate the small negligence claims. Here is the source of the great injustice in the present system and the great waste.

Mr. ECKHARDT. Yes, and we have had the reply here that this bill does reduce those or reduce the total number of claims to approximately 20 percent, in other words, no-fault catches 80 percent and something beyond no-fault an additional 20 percent.

That seems a rather satisfactory weeding out to me.

Dr. KEETON. I hope it works that effectively. One reason I personally wanted a stronger bill was that I have been uneasy, but the early data indicate that my uneasiness was perhaps not justified, and I hope that proves to be correct in the long term, but I have been uneasy that this

\$500 triggering mechanism was not satisfactory from this point of view.

Those who really want to defeat the system can do so by claiming pain. The doctor then checking on this subjective complaint goes through every diagnostic procedure and runs up more than \$500 medical expense and the triggering mechanism has been exceeded.

Mr. ECKHARDT. It seems to me that maybe though plaintiff's lawyer may be a little paranoid on the other side, that you may be a little paranoid on the side that everyone is going to try to get himself in a tort liability. Would you like to comment on that?

Dr. KEETON. I feared it. I hope very much that it doesn't work out and I am inclined to be optimistic from this point of view. I think the ordinary man on the street takes a given point of view on incurring not needed medical expenses that his doctors tell him are not needed from the point of view he takes toward the question of whether it is fair and appropriate for him within the existing tort liability system to capitalize on what I would call the nuisance increment value to every claim by simply turning it over to his attorney, and it turns out that the attorney can for a claim that involves \$75 of total out-of-pocket expenses settle it on an average in Boston metropolitan area for \$750, 10 times the amount of the out-of-pocket loss.

Mr. ECKHARDT. You see I don't feel that most persons who are injured are sitting around nursing the possibility of getting themselves in a claim.

Mr. KEETON. Neither do I.

Mr. ECKHARDT. So if you give them a good way to proceed, even if you gave them option to go to tort, it seems to me you have done a great deal to reduce the number of claims. That is the thing that worries me about the trigger. The trigger is an extremely difficult and artificial thing. I would like to see it eliminated altogether.

What is your comment about that?

Dr. KEETON. The particular triggering mechanism that is used in the Massachusetts bill is not my first choice but I think it is a reasonable triggering mechanism and I think we do need a triggering mechanism of some kind because without it, I do not think we can reduce the overpayment, heavy overpayment, unfair overpayment of low claims in relation to the underpayment of high claims.

The real injustice in this system in terms of distribution of benefits is that the small claims are very, very heavily overpaid and the large claims are underpaid. I don't think we can avoid that injustice without some kind of triggering mechanism that puts a hurdle in the way of misusing the small claim.

Mr. ECKHARDT. Mr. Chairman, I have some other questions but I will withhold them.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. Any of you gentlemen, probably Dr. Keeton, on page 2, and referring to the line of questioning that Dr. Eckhardt had earlier upon the percentages, the number of claims in these first 3 months has dropped a startling 60 percent. I think it has already been established that that may partly be accounted for by the fact that the claims pipeline had not yet been filled as a result of beginning the new system.

But of the remaining 40 percent, those claims have been reduced by an average amount of 36 percent, leaving a total payout as compared with what it might have been before in the neighborhood of 25 or 26 percent; isn't it really too early to judge then the effect that this will have on premium and on cost? Aren't you a little uneasy about making projections based on just 3 months' experience?

Dr. KEETON. Yes; of course it is too early to be sure of where it will level off. But I think this early experience is enough to indicate that the place where it finally levels off is probably going to be substantially below what any of us would have predicted in advance.

Mr. McCOLLISTER. If that 36 percent reduction has been achieved by reducing the amount paid to beneficiaries of these policies, that in itself may not be an argument in favor of it. What we are concerned with here it would seem is how to achieve for the benefit of the injured party a greater proportion of the premium being paid to him in terms of benefits.

Dr. KEETON. Yes; I fully agree with that. I would add also though that we should not look at this in gross but rather look at the question, what type of claimant is getting less and what type of claimant might be getting more under this system and it is the purpose of the design of this system and my belief that the way it is actually functioning here that the people who are receiving substantially less are primarily these people of the kind I described a moment ago, who had, say, \$75 of total out-of-pocket expense as a result of the accident and on an average these are good cases and bad and on an average were being settled for 10 times the amount of the out-of-pocket loss or \$750 for a \$75 claim. That person is surely going to get less.

Mr. McCOLLISTER. But you really won't know that until you have a good deal more experience and you fill up the claims pipeline and you see what subsequent tort cases arise from these things and that may take as long as what, 2 or 3 years?

Dr. KEETON. Probably before we really have a full picture, yes; but we will gradually be getting more information and the early information is extremely encouraging because it indicates that though the rank of doubt is still large, it indicates that the results are going to be better in the final analysis than any of us would have predicted ahead of time.

Mr. McCOLLISTER. On another subject the Governor made a strong plea for leaving the basic responsibility here to the States. However, he also suggested some Federal guidelines.

Could you define the possible role of the Federal Government in making the system that you propose available to the States?

Dr. KEETON. Yes; I want to make it plain that in speaking to this issue I am speaking only for myself and not for the Governor or anyone else. There are, of course, wide range of varying views on this subject along a broad spectrum. My own feeling is that it would be desirable for us to get some kind of Federal impetus behind this program to encourage State action.

Mr. McCOLLISTER. Can you be more specific?

Dr. KEETON. I do not think that the proposals that have been filed in Congress up to this point are very promising from this point of view. It seems to me that the best prospect for having a Federal initiative that would be effective while still leaving direct action to the States

is a provision under which the States would be required within a reasonable period of time to —

Mr. McCOLLISTER. Please define "reasonable."

Dr. KEETON. Well, I would think in terms of a short span of years, 2 or 3 years or something on that order, long enough for the matter to be studied carefully in the States, but there is no point in bearing the issue longer.

We have had enough studies by this time. The need for action is clear and all that is needed now is time to study the details of the kind of action.

Mr. McCOLLISTER. But if you are not going to know in Massachusetts for 2 or 3 years the real effect of the change, would you not feel that perhaps a little more time might be required?

Dr. KEETON. The kind of proposal that I am talking about, what I am thinking about is a proposal under which nobody would be forced to turn to this system individually but the option would be available to him.

At least for those policyholders who would be willing to make this tradeoff that is involved in giving up your right to these heavy overpayments of trivial claims in return for better protection for the real losses, I think that option ought to be available to him and it ought to be available to him promptly.

Mr. McCOLLISTER. Great. How do we accomplish that encouragement to the States?

Dr. KEETON. I think it can be done, for example, by a bill under which, within a period of time, 2 or 3 years, each motorist, and I suppose you probably would be doing it under the commerce power, who is operating in interstate highways, would be offered this option, leaving it then to the States as to whether a particular State wants to do it on the Massachusetts pattern which, in effect, instead of just giving him the option between the present system and this kind of thing would establish a compulsory no-fault system up to a degree or instead let the State make this option available in addition to the present system.

Mr. McCOLLISTER. Various witnesses have commented on the maze of differing programs always adopted by the States as creating a somewhat difficult situation, States like New Jersey, for example, where they act as a corridor might offer some unusual problems.

Do you feel that this would be the case?

Dr. KEATON. I think those problems of that kind exist at present. We have greatly varied laws with respect to statutes, with respect to immunity and accidents and we survive with them. It is true that they trigger a certain amount of litigation and such but we survive under it and very well and there is no great cry for having one national tort law. And it seems to me we can survive very well under differing State and non-fault insurance laws.

Mr. McCOLLISTER. Thank you.

Mr. Moss. Mr. Eckhardt.

Mr. ECKHARDT. I don't know whom I should address this question to. It relates to the application of the Massachusetts laws of specific types of situations.

Mr. RYAN. I will try.

Mr. ECKHARDT. Suppose a driver from Texas is driving in Massachusetts and he has complied with all Texas insurance requirements. He is engaged in an accident there and is injured. What is the nature of his lawsuit and the possibility of his recovery?

Mr. RYAN. Mr. Eckhardt, he has all of the rights in my view that he had before to bring a tort action against a Massachusetts motorist who, since we continue compulsory liability insurance, has that guarantee of a fund to respond to his injuries. He has no way to get into our no-fault system. He is left to his tort rights and brings the action in our State as he would in the past.

Mr. ECKHARDT. Is he protected by the liability insurance that he now has as he was protected before?

Mr. RYAN. I think he is but I think we are going to need clarification with respect to the pain and suffering restriction as it ends up in our statute does not apply either where there is no exemption from liability.

Mr. ECKHARDT. You mean he comes into your State and he is in an accident and let us assume it was not his fault but the fault of the other party. You have to assume that because otherwise he won't get any recovery anyway under the tort procedures. He hasn't gained anything, he hasn't gained anything from your statute, but he has lost something in the measure of his recovery, hasn't he?

Mr. RYAN. I don't believe he has.

Mr. ECKHARDT. Maybe we better make that clear for out-of-State motorists.

Mr. RYAN. I believe if the court were to interpret the rather broad restriction on the right to recover pain and suffering that if it isn't in the statute, that it ought to be corrected because we should not subject out-of-State people to that.

I believe if it is tested, it will be ruled that way.

Mr. ECKHARDT. If it is not ruled that way, you might run into constitutional questions?

Mr. RYAN. I think that is one of the reasons that it might come out that way because I believe that is the clear intent of the statute.

Mr. ECKHARDT. Suppose a person traditionally normally drives into or across Massachusetts as, for instance, someone living in Connecticut who works in Massachusetts or has to drive across a part of the State in order to get to another workplace.

Is he required to comply with the Massachusetts law before he is protected?

Mr. RYAN. Not if he drives through. If he works in the Commonwealth, we do have some regulation that the Commissioner is more familiar with. I believe if you are there 30 days, you are supposed to be registered as Massachusetts driver and if you register as Massachusetts driver, you have to purchase our compulsory automobile insurance.

Mr. ECKHARDT. For instance, suppose someone is a student at Harvard and—

Mr. RYAN. Students are specifically exempt, are they not, from those types of requirements.

Mr. ECKHARDT. Or a person, say, is in the State working for a period of time but he is staying there and registered and complied with all

regulations of his home State. Is he required then to register and pay the insurance and, if so, in what period of time?

Mr. FARNAM. If he is there over 30 days, he has to register in Massachusetts and he has to comply with the statute.

Mr. ECKHARDT. If he slips up on that and doesn't do so and he is not, of course, covered by the Massachusetts law and I assume he might not be entitled to tort claim.

Mr. FARNAM. That would be the case prior to no-fault.

Mr. ECKHARDT. No, before no-fault he could certainly bring suit against a person who negligently struck his automobile, couldn't he?

Mr. FARNAM. I think that would again be an isolated case that would require some litigation. As you mentioned—

Mr. ECKHARDT. I assume that almost every case is in a sense isolated and requires litigation but do you have any idea about what the result would be?

Mr. RYAN. I don't see that particular instance as a problem at all. I don't see anything in the no-fault plan that would prevent that person, simply because he had failed to properly register his vehicle, from proceeding on a fault basis.

Mr. ECKHARDT. What about a Massachusetts citizen that just doesn't comply? What happens there?

Mr. RYAN. There is a class of people who are precluded from bringing an action against the assigned claims plan which the new statute sets up and included in that class of people are people who should register their automobiles in Massachusetts but who have not.

However, that is a remedy against a nonavailability to a Massachusetts citizen of a no-fault benefit that is not a result of his fault.

Mr. ECKHARDT. Yes. But suppose it is his fault. Suppose he just ignores it. He is driving a car that he bought from a friend. Nobody knows. He is simply driving it without paying the insurance. Does he still have any tort liability claim?

Mr. RYAN. I believe he does. I wouldn't see why he wouldn't.

Mr. ECKHARDT. You mean a citizen being close to ignore the plan by just not paying?

Mr. RYAN. The plan, Mr. Eckhardt, exempts tort feasons from liability only to the extent and for the precise and exact extent, with the exception of the pain and suffering, that a no-fault benefit is available to the injured person.

As soon as no-fault benefit for any reason, with perhaps one exception, is not available, tort rights are revived and the action can be brought.

Mr. ECKHARDT. Even if it is his fault that he didn't get coverage? Would this be correct if a man just doesn't comply, just buys him a car, a second-hand car and drives, and someone hits his car, the other person obviously negligent. Can he then bring a tort suit but cannot claim pain and suffering is that his situation? Or can he not bring suit at all?

Mr. RYAN. I believe he can bring the tort suit and can recover pain and suffering. That is a little open area. We used to have a nuisance-on-the-road doctrine. We no longer have that. Nonompliance with those type of statutes does not bar tort claims.

Mr. ECKHARDT. Suppose he buys liability insurance but ignores no-fault insurance altogether, is there any penalty against him at all for closing that route?

Mr. RYAN. Yes; if he is a Massachusetts registered person involved in an accident in Massachusetts, and he proceeds in tort against the other party, then the company has the right under the statute and through policies not to pay him. His company has the right not to pay him his no-fault benefits until the tort action is concluded.

Mr. ECKHARDT. But he just hasn't bought tort benefits.

Mr. RYAN. If he is registered in Massachusetts, he has no-fault benefits.

Mr. ECKHARDT. Well I am simply assuming a case in which he simply didn't register in Massachusetts and simply ignored the statute with respect to no-fault. I want to know what the penalty against him is. Would it be the loss of his recovering from the liability insurer?

Mr. RYAN. I do not believe so.

Mr. ECKHARDT. Would it be the penalty of losing his pain-and-suffering claim in the tort suit?

Mr. RYAN. Again I do not believe so but I think——

Mr. ECKHARDT. Would he be fined?

Mr. RYAN. Certainly he would, violating some criminal statutes.

Mr. ECKHARDT. What is the penalty; do you know?

Dr. KEETON. There are fines, imprisonment, and loss of license.

Mr. RYAN. As a matter of fact, they repossess the automobile if you live in the State for 30 days and you have out-of-State plates on it and you are stopped.

Mr. ECKHARDT. Suppose he is from out of State and he has resided there over 30 days, are the same penalties and fines applicable to him?

Mr. RYAN. Yes. There are, I believe, many exceptions to that. Obviously servicemen, students by statute, and there may be others that I am not familiar with.

Mr. ECKHARDT. What about pedestrian, suppose a pedestrian is struck by an automobile, what is his situation?

Mr. RYAN. A pedestrian in Massachusetts has access to the automobile, the Massachusetts registered vehicle's no-fault benefit for his medical and hospital expense. He is barred from recovering for pain and suffering as are all of the others in the system.

Mr. ECKHARDT. If he is not an automobile driver, nevertheless, who does he sue?

Mr. RYAN. He sues the automobile who struck him whether he is an automobile owner or not because such a high percentage of those instances obviously involve liability of the driver, it seems desirable to bring the action directly against the vehicle that struck him.

One of the things that perhaps you are not familiar with in the Massachusetts plan is that plan provides for interinsurer subrogation so eventually the insurer paying the no-fault benefit, where his party was not at fault, washes it out either through arbitration or by agreement.

Mr. ECKHARDT. Is there subrogation on the basis of fault?

Mr. RYAN. Interinsurer subrogation is a statutory right of the insurer who has paid no-fault benefit to recover from insurer of the car that would have been at fault for the expenses and benefits that is paid.

So fault is the ultimate criterion as to where the loss is going to fall.

Mr. ECKHARDT. So somewhere behind the Massachusetts curtain there is the determination of fault with respect to the insurance company at least.

Mr. RYAN. Absolutely.

Mr. ECKHARDT. Would you care to comment on that proposition, Dr. Keeton?

It seems to me that puts a load of cost on this plan that may be unnecessary.

Dr. KEETON. Yes; my perspective on this is perhaps different from others present here but I viewed that as a theory which will be almost irrelevant in practice and the reason is this: The insurance company that has paid the nonfault claim has this right to proceed by subrogation, arbitration only, and not in court against the other insurance company. If they don't recognize it now, the insurance companies will surely recognize after a while that it will save them a lot of money if they will just sit down once a year and wash out all of these things against each other.

Mr. ECKHARDT. Let me suggest it will save the purchaser of insurance a lot of money.

Dr. KEETON. Exactly. That is why I don't worry about this provision because I think that since the companies realize and will realize that paying adjustors and lawyers to wrangle over these subrogation claims is wasteful, they will do it instead on what you might call an actuarial process. This will be reflected in the loss data and the loss data, of course, will be taken into account in the rating.

Mr. ECKHARDT. I must say I don't share your sanguine view of that because I think the only thing insurance companies are concerned about is certainty and they are not at all concerned about or at least minimally concerned about total expenditure of money as long as the purchasers of insurance are paying it.

Dr. KEETON. I can agree with you if you mean that in general the insurance industry would like to administer its system that has higher payouts because they make a profit as a percentage of their premiums and the premiums are calculated on the payout. But the point I am making here is that when we examine the record of their experience with respect to what are allowable expenses, then in the rating process the rates that are set after experience, instead of having to be predicted as they were this year without the benefit of experience, will reflect what the actual expenses have been.

Meanwhile, the company that is operating this year with this year's rates collected will find that it can save its money and have cash in the pocket as income, net income for this year if it spends less on this process of fighting with other companies and washes these things out on an actuarial basis in great numbers so there is the built-in incentive to the company to make more profit by eliminating this useless expense.

Mr. ECKHARDT. But it can't eliminate that expense unless it gets other companies to agree to it because it would be in a disadvantageous position.

Dr. KEETON. I agree with you. My expectation of the way this will operate: first, large companies with lots of claims against each other will recognize this opportunity for saving by simply washing those claims out against each other and as the operation occurs and the benefits become apparent, the idea will spread more broadly.

Mr. ECKHARDT. I am very concerned with testimony we have had before this committee with respect to various costs within insurance

industry. Most of those who come to us about too much money being paid in insurance premiums and paid out on the policies usually look to the plaintiff's lawyers as the cause of it. But, the figures we have had run approximately like this: 15 percent of the litigation costs of the claimant, approximately 15 percent to the litigation costs of the defendant, approximately 15 percent of the cost of disseminating insurance, that is sales cost and so forth, and approximately 15 percent in other insurance company overhead leaving approximately 40 percent for recovery.

Now it utterly shocks me to see some of that 15 percent that involves the insurance companies litigation costs treated with such kid gloves when we are so willing to try to wipe out other burdens on insurance premiums.

Dr. KEETON. It would shock me too if I felt that is what is happening. One of the objectives of the no-fault proposal and the Massachusetts proposal specifically is to attack that 15 percent of claims administration cost on the defense side by eliminating a large part of the litigation over very small claims.

Mr. ECKHARDT. But we should eliminate it, it seems to me, all together if we are concerned about erasing all of what people say are anachronisms of the past, we should also eliminate fault and subrogation which is undoubtedly a burden on the system; is it not?

Dr. KEETON. I don't disagree with you on that. What I say, as I started in response to this question, that while this is theoretically a bad thing from my point of view, I don't worry about it practically because I see an incentive built into it for insurance companies to recognize the sensible thing for them to do to make a little more profit year by year is to quite fighting over these claims which only involve shifting money to another and the next claim will be shifting it to the other company.

Mr. ECKHARDT. You have inefficiencies that will continue almost indefinitely in the business community unless a little good is produced by legislative bodies and I don't feel that they will be erased unless it is addressed publicly.

Dr. KEETON. If you prove to be correct, then I certainly would join in urging that this provision be modified in the Massachusetts bill.

As I indicated, I would have preferred it not be there in the first place but it seemed to me in the process of wrangling over what might be a suitable compromise bill that this was one that was not worth fighting over because there were many more important things.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. Speaking generally of the total cost of automobile insurance costs and efforts to reduce that cost such things as fragile automobiles, escalating medical costs, "inefficiencies of the system," there is a fourth factor and probably others related to the fact that some people cause more accidents than others.

I would be interested in knowing what Massachusetts has done to tighten their driver license laws to take the bad driver off of the highways?

Dr. KEETON. This law itself does not represent any change in that respect, except in one respect. This law has built into it a provision for a kind of merit rating that goes into operation next year on the

basis of data beginning to be accumulated as of September 1 last year shortly after the law was passed.

Under those merit rating provisions, persons convicted of moving violations will have surcharges and they can be rather substantial. The statute sets up some presumptive figures and authorizes the Commissioner of Insurance to set those figures differently on the basis of experience as it accumulates.

Also that merit rating provision provides for discounts for accident-free drivers.

On the basis of this experience those things in the law will tend to encourage and fortify the criminal sanctions. My own personal view is that we cannot expect the compensation system really to do the job here. The job has to be done by vigorous enforcement of the criminal sanctions and licensing regulation and that is a matter of course under the registrar of motor vehicles in Massachusetts rather than in the insurance commissioner.

Mr. McCOLLISTER. Thank you.

Mr. Moss. Are there further questions?

If not, the committee thanks you for coming down and giving us the benefit of your testimony.

Our next witness is Mr. Richard G. Chilcott, vice president, family insurance, Nationwide Insurance Companies, accompanied by Mr. Robert W. Griffith, vice president, casualty insurance actuary, Nationwide Insurance Companies.

STATEMENT OF RICHARD G. CHILCOTT, NATIONWIDE INSURANCE COMPANIES; ACCOMPANIED BY ROBERT W. GRIFFITH, VICE PRESIDENT AND CASUALTY ACTUARY

Mr. CHILCOTT. Chairman Moss and members of the committee, I have with me today Mr. Robert W. Griffith, vice president and actuary of our companies, and who was chairman of our study group back 3 or 4 years ago, and I would appreciate the opportunity, when questioning comes, if I may refer to Mr. Griffith.

Mr. Moss. You may.

Mr. CHILCOTT. Thank you, sir.

My name is R. G. Chilcott. I am a vice president of the Nationwide Insurance Companies with responsibility for our family insurance lines, one of which is private passenger automobile insurance. Our home office is in Columbus, Ohio, and we are the fifth largest insurer of automobiles in the United States.

I want to thank this committee for the invitation to appear here today, and for the opportunity to discuss our company's position on the automobile insurance system. We have made copies of the complete plan available to the committee. In the interest of conserving the committee's time, I would like to have it included in the record.

Mr. Moss. Would you like to have the entire proposal placed in the record?

Mr. CHILCOTT. I would appreciate it very much, sir.

Mr. Moss. Without objection, that will be the order of the committee. (See p. 1213.)

Mr. CHILCOTT. It is widely recognized that there are deficiencies in the auto insurance mechanism and that some change should be made.

The present system is not satisfactory to our industry, to the public, or to regulatory authorities.

There is concern about the rising cost of auto insurance, as necessary as we believe rate increases to be, and about the availability of insurance, and the methods of compensating accident victims.

Remedies for these problems are not entirely within the control of the insurance industry. Many contributing factors have been identified through the abundant information accumulated in studies and hearings at State and Federal levels. So I will not attempt to review those causative factors today.

But to the extent that the system itself is a factor, we are conscious that efforts to change that system necessarily pose two major questions:

First of all, how shall the system be changed? There is no shortage of proposals now, and there undoubtedly will be more.

Second, how and by whom shall any new system, whatever form it may take, be regulated and controlled? This question reduces itself to the basic issue of Federal regulation or State regulation.

I would like to address myself, briefly, to this latter question before I comment on the system itself.

As a matter of business philosophy, and, indeed, as a working principle, Nationwide has long supported a concept of self-determination and the decentralization of authority. We conduct our business that way.

Accordingly, we favor State regulation of the auto insurance industry. We strongly support the position of the vast majority of insurance companies that the auto insurance business should be regulated by the States, within the framework of the McCarran Act.

This is not to say that the Federal Government cannot make a major contribution to the solution of auto insurance problems that beset the States. We believe that a tremendous improvement is possible if there were to be greater uniformity in auto insurance laws and systems among the States.

We further believe that the need for greater uniformity is becoming increasingly important. There is a wide diversity of system and regulations among the States now; the differences could become even greater at this time when many proposals for change are being made and the adoption of different plans by different States would compound the problem.

It is our judgment that State insurance departments should continue to provide direct regulation of insurance companies but that they should allow a full measure of open competition, the beneficial effects of free enterprise, which we believe to be the best regulator of prices, products, and services. The primary concern of the State insurance department would be to assure maximum competition consistent with insurance company solvency and equitable treatment of policyholders. Federal involvement would be limited to a review of the performance of State insurance regulation within prescribed Federal guidelines adopted to encourage reasonable uniformity of insurance plans.

In regard to the system itself, many proposals for change appear to be workable. We have studied H.R. 4994 as we have studied many other bills and many other plans. We find that there is much in H.R. 4994 that we could support, and frankly, some provisions which we

would recommend be revised. But our purpose here, as agreed upon at the time the invitation was extended to us, is not to examine the Federal legislation before this committee but rather to explain Nationwide's own proposal for auto insurance reform.

As background, I would like you to know that from 1956 to 1965 Nationwide offered an auto insurance policy which gave the accident victim a choice of accepting guaranteed benefits, regardless of fault, or of pursuing his claim under the liability, fault, system. Nationwide discontinued this unique protection plan early in 1966 mainly because it did not receive the support and industry participation essential to its success.

Now on the basis of that long experience supplemented by extensive research, and after thoughtful and prolonged deliberation, we at Nationwide have concluded that some form of first party auto insurance system, without regard to who caused the accident, would be beneficial to the public as well as to the auto insurance industry itself.

Therefore, we are recommending that a complete first-party reparations system be adopted in each State, and that the liability system be abolished in respect to auto accident claims.

Specifically, we believe that a complete first-party system is entirely feasible. That it would tend to hold down the cost of auto insurance, even though there would be no guarantee of an immediate decrease.

That it would make insurance readily available to all motorists. That it would provide adequate compensation for all auto accident victims.

That it would bring about more prompt and equitable settlement of claims, without the time-consuming and expensive procedures of litigation.

That it would improve customer-company relationships because each company would be dealing directly with its own policyholders and not with third parties.

While we believe that a system of compensating accident victims without regard to fault would be in the public interest, we also acknowledge that the benefits, as we see them, cannot be attained without giving up certain rights of recovery under the present third party, or liability system. The most obvious ones are the right to sue under tort law, and the right to recover for intangible or unmeasurable losses, such as pain and suffering. I will discuss this subject in more detail further on in this presentation.

Before I submit to this committee the details of Nationwide's plan for a first-party system, I would like to preface my description with a few qualifications:

First, in offering our plan for consideration, we are prepared to respond to questions, now or later, at the convenience of this committee. In the meantime, we are preparing a model bill which could be adapted for use in any State.

Second, this is a complete first-party plan. It is new. It is not a compromise or a modification of other plans that have been proposed.

Third, we are under no illusions that our plan will answer every conceivable problem relating to auto insurance. But we believe it is superior to the existing system, and better than any of the other proposals for change that have come to our attention.

Fourth, we are not irrevocably committed to the system which I am about to explain to you. We are keeping an open mind. We are pre-

pared to measure any other system, new or old, against our proposal and to adjust our position as may be indicated by later evidence. But, as of now, we do not know of a system which, in our judgment, will go as far toward resolving the problems associated with the auto liability system.

I would like to enumerate some of the major ones only to put the report in perspective and to remind you of the problems that Nationwide seeks to remedy.

First, there is the question that the principle of tort liability as it applies to auto accidents and the continued validity in a society characterized by the phenomenon of almost universal car ownership.

Second, the steadily increasing dollar cost of automobile liability and auto medical damage insurance. Economic losses from auto accidents under any system will steadily increase in the years ahead unless by some miracle automobile accidents become fewer and such economic losses as wages, garage labor rates, hospital daily room costs, and doctor fees decline.

There is an alleged inefficiency in the present system. The process of determining fault under the tort liability system is often time consuming and costly.

Under the adversary system, it is necessary that each accident be investigated by legally trained personnel to determine the individual responsible for the accident. Once fault is determined, the system calls for sometimes lengthy negotiation with the injured person in order to establish a dollar value of the injured person's losses.

In case of disagreement, the courts are asked to make a final determination, both as to the issue of fault and as to the issue of damages. Cost of legal services, both for the plaintiff and for the defendant is expensive.

The present tort system encourages the buildup of so-called specials because it is on them that settlement for general damages on pain and suffering is based.

There is often delay and inadequacy in recovery of economic loss from auto accidents. The tort liability system provides no guarantee that economic losses resulting from automobile accident will be compensated at all. Many accident victims can't establish negligence. Others may recover only partially for their losses or injuries.

Recovery is often slow because substantial delay is inherent in the adversary system. It is claimed that there is a lack of other relationship between the amounts of settlement and the extent of losses in automobile accident cases.

Relatively small claims are often overcompensated, whereas accident victims with substantial injury are sometimes often inadequately compensated.

Availability of automobile insurance to all carowners tied in with tort liability system has been the enactment of laws requiring carowners to prove that they are financially responsible before they can operate their cars on the Nation's highways.

The lack of availability of insurance, where it exists, militates against the adequate protection of the public. One way or another, criticisms of the existing situation are related to the liability upon which automobile insurance is based.

Nationwide has concluded that the best way to insure compensation to all victims lies in a system under which compensation for eco-

conomic loss will be provided without regard to fault and on a first-party basis between insurer and the insured.

The liability system will be completely replaced by a compulsory first-party system. Policyholders would recover their loss from their own insurance companies. The owner of a car could no longer sue a person who caused the accident nor could he be sued by someone else.

This is a main point of contention. Critics of the no-fault proposal argue that it relieves negligent drivers of their responsibility, but the fact is that the careless driver is rarely held accountable in an economic sense under the present system.

Actually after someone has been determined to be the guilty person, often at great expense, he pays nothing. It is his liability insurance company that has the bill and eventually all of its policyholders.

What happens is that all of society then chips in to pay the bill for him through a cumulation of premium dollars administered by the insurance mechanism.

Of course, in the public mind, the wrongdoer should be punished, but we submit that it is more appropriate that punishment be handled under the criminal law. Is it not at least valid then to ask whether the insurance industry should continue to spend millions of dollars to identify the wrongdoer when in actual practice, the whole society pays for the damage that he caused anyway?

Nationwide's plan is designed to make the injured party whole by taking care of his economic loss arising from medical expenses on an unlimited basis. Short- and long-term wage loss, 85 percent of earnings up to 200 percent of the State average weekly wage. All other economic loss, including expenses reasonably incurred for services in lieu of those the injured person would have performed without income.

Costs of rehabilitation, with incentives to return to work, on an unlimited basis. Survivors benefits up to \$30,000. Property damage, actual cash value for automobiles, up to \$15,000 for other property.

This coverage is designed to make certain that every person injured in an automobile accident can recover his economic loss.

The Nationwide plan has several features which distinguish it from other plans. One, the plan would be more comprehensive in conventional benefits than other plans. It would meet the criticism that too often the existing system fails to meet reasonably the total economic loss incurred.

Examples of this greater comprehensiveness are to found in the unlimited payment for reasonable and necessary medical expenses, including that incurred in extended care facilities and for medically supervised home care services, and payments for extended disability income up to age 65.

A rehabilitation benefit would be included that would provide for cooperative procedures involving the claimant, the insurer, and the bona fide rehabilitation agencies. The plan provides incentives to return to gainful employment. The plan avoids the pitfalls of scheduled benefits by, in the case of medical procedures, basing compensation on reasonable and necessary costs rather than on fixed limits per procedure, and in the case of wage loss, incorporating an upper limit that will be automatically adjusted to the level of average weekly wages in the State.

Survivors' benefits are designed to serve during an adjustment or tiding-over period and hence, in the case of survivors of principal wage earners or housewives, are payable in monthly installments.

In the case of survivors of wage earners, the installments are related to previous earnings.

The plan is not affected by payments received from other sources of insurance or wage continuation plans except for those provided under governmental programs which do not impose a need test.

Secondly, competitive administration in a free enterprise system. The plan contemplates and indeed has an essential element, implementation through a competitive system of pricing, merchandising, and product development. The public interest is best served by a competitive system for the following reasons:

One, the best claims and other policyholder services can be expected to result from a competitive system. Each company may be expected to try to excel in providing policyholder satisfaction because such satisfaction is a principal ingredient of any company's program to grow and to increase its share of the market.

Two, a competitive system will serve best to keep the price of the product at a level which will reflect most efficient administration. It can be expected that companies will compete in devising first improved and more efficient methods of claims administration, and secondly, methods for reducing general expenses.

Competitive efforts to reduce costs will help offset inflationary trends. Under the competitive system, an effort will be made to achieve improved ways to relate premiums paid by policyholders to the hazard insured.

Fourth, a competitive system will encourage making available to the public a product that excels the statutory minimum. Examples of what may be offered are higher limits on wage loss for the upper income groups, loss of use coverage under damage to property, and payment for pain and suffering.

Fifth, it is basic to the free enterprise system that competition provides better regulation of prices, products, and services than that which can be effectively imposed by the Government.

Six, a plan providing for minimum statutory benefits under private competitive administration is in accord with the limit of current public and Government thinking and practice.

Equitable distribution of high hazard risks. Every company and agent will be required to accept every applicant for insurance. High hazard risks will be insured under a standard uniform rating plan established by the industry. Poor drivers will have to pay higher premiums under any system. It is doubtful, however, that premiums charged to poor drivers will pay for losses they produce. To spread the cost of insurance, these high hazard individuals, a reinsurance provision would be established. This will permit any policyholder to be insured.

Present plans have many elderly, youthful, low income and military personnel drivers. Some of these, under the reform plan, would be acceptable at normal or standard rates. Relatively few risks would need to be involved in the reinsurance process.

It provides for an uninsured claim fund. Compulsory insurance is never completely enforceable. Hence, an uninsured claim fund is estab-

lished to provide benefits to persons who are not members of a car owning family and who are involved in an accident with an uninsured automobile.

It will provide policyholders with residual liability coverage especially for out-of-State drivers.

The Nationwide plan for reform responds to the problems associated with the existing system of liability with increasing costs of auto insurance, delay and inadequacy in recovery of economic loss and, the availability of protection.

Features of the plan designed to meet these problems are:

(a) As a first party, no-fault system, the plan lends itself to the prompt, timely payment of benefits for economic loss without the delays associated with the adversary system.

(b) Because benefits would be associated with measurable or ascertainable economic loss, there would be a closer correlation between the loss or damages and the amount of recovery.

(c) Because benefits would be associated with measurable or ascertainable economic loss, ability to recover would not be reflected to the liability limits of someone else's automobile liability policy.

(d) Because all injured parties would be eligible for recovery, the plan directly meets the social problem created by hardships resulting from delayed payments or unmet losses arising from automobile accidents.

(e) A first party system is customer and consumer oriented. It places a premium on prompt and efficient service; in addition it enables the customer to deal with the company of his choice. The insurance product under the Nationwide plan should be more available to the public than is the automobile liability product.

This would be true because, one, more applicants will be desirable to insurance companies than is now the case. Two, there will likely be a narrower spread in premium rates than exists today.

Under a first party system, the spread of rates between adult and youthful drivers and between metropolitan and nonmetropolitan areas will be less.

Three, the optional reinsurance provision for special class business will broaden the voluntary insurance market to include all licensed drivers and will remove the stigma of the assigned risk plan.

The plan may serve a socially useful purpose in clarifying the distinction between economic loss arising from auto accidents and criminally irresponsible behavior resulting in accidents. Settlement by the insurer of a loss now serves to absolve the guilty wrongdoer from criminal penalty.

The plan holds promise, in spite of compensating all injured persons for their total economic loss, of establishing the total costs of the existing system because it should eliminate the cost now incurred for that part of pain and suffering which cannot be identified as economic loss.

Eliminate that part of settlements, included in the pain and suffering referred to above, which does not reach the injured person because of contingent fees. Eliminate expense incurred in connection with subrogation. Reduce claims investigation, litigation and arbitration expenses.

Reduce the cost of the court system which now spends a substantial proportion of its time on automobile accident case. Gives impetus to the elimination by various forms of health insurance of duplication of benefits.

That, Mr. Chairman, is a summary of the material that is in the book and hopefully conserves some of your time.

(The Nationwide plan referred to follows:)

A PLAN FOR REFORM OF THE AUTOMOBILE INSURANCE SYSTEM

PART I—STATEMENT OF THE PROBLEM

The existing auto liability insurance system has been the subject of increasing concern during the last decade. Nationwide Mutual Insurance Company has long been concerned with the type of system and insurance product that would meet the real needs of the auto owning public. Our concern has resulted in specific attempts to meet these public needs ranging from our revolutionary family compensation coverage introduced in 1956 to our action of adopting a five year guaranteed renewable auto policy in 1968. The family compensation coverage provided for payment for medical expenses and wage losses to all persons injured in an auto accident, regardless of fault, provided that those who had a right to payment because of the negligence of our policyholder would sign a release. This coverage was meant to supplement the legal liability system.

As another evidence of the company's concern for meeting the auto insurance needs of the public as well as answering the mounting criticism of the present system, a research committee was appointed to study the social, political and economic aspects of the existing auto insurance system. Prominent in the research group's efforts has been in-depth investigation of all the alleged shortcomings of the automobile tort liability system as well as the public and legislative criticism directed at insurance industry practices. This investigation included an examination of the many plans which have been advanced since 1930.

The research group has identified the major areas of concern as follows:

I. The principle of tort liability as it applies to auto accidents and its continuing validity in a society characterized by the phenomenon of almost universal car ownership

A related consideration is the increasing difficulty of establishing fault for auto accidents in these days of high powered automobiles and high speed highways. The following quotation from one critic of the tort system will serve as an example:

"The whole system of liability insurance rests squarely on the accepted premise that each individual should be held accountable for his misdeeds. I am sure this was recognized in human relationships long before the principle was formally set forth in law. It has worked well in criminal law because the individual can, indeed, be made accountable—by jail sentence if need be.

"It does not work so simply in automobile liability insurance. The fact is, the wrongdoer in an automobile accident is rarely held accountable in an economic sense. Actually, after a wrongdoer has been determined to be the guilty person, often at great expense, he pays nothing—it is his liability insurance company that pays the bill. What happens is that all society chips in to pay the bill for him through the accumulation of premium dollars administered by the insurance mechanism.*

"Is it not at least valid to ask whether the insurance industry should continue to spend millions of dollars to identify the wrongdoer when, in actual practice, the whole of society pays for the damage he caused anyway?"

II. The steadily increasing dollar cost of automobile liability and auto physical damage insurance

The gradual increase in the numbers of automobile accidents combined with the inflationary effect of almost every element involved in the evaluation of economic losses from automobile accidents has necessarily forced the price of both automobile liability and physical damage insurance upward in recent years. Although

*In the public mind the wrongdoer should be punished. It is more appropriate that punishment be handled under the criminal law.

the public understands that the cost of repairing automobiles and the cost of repairing human bodies is steadily increasing, they are not happy when it comes their turn to pay their share of these economic costs. The public also realizes from their reading of the daily newspaper that numbers of automobile accidents are on the rise, but again, they are unhappy when they are asked to pay their part of these increased costs—particularly if they, themselves, have been fortunate enough to have avoided an automobile accident in the recent past.

Lest the point be missed, *any* automobile accident reparations system, whether it be the present system or some other, will be confronted with the need to finance payments for injuries and for damaged property. Economic losses from auto accidents under any system will steadily increase in the years ahead unless by some miracle automobile accidents become fewer, and such economic losses as wages, garage labor rates, hospital daily room costs, and doctor's fees decline.

The concern about rising automobile insurance costs has thrown the limelight on certain features of the present automobile reparations system. This is so because these costs are necessarily built into the insurance premiums which the public is asked to pay. Critics of the system make these points:

1. *Inefficiency.*—The process of determining fault under the tort liability system is often time-consuming and costly. Under the adversary system it is necessary that each accident be investigated by legally trained personnel to determine the individual responsible for the accident. Once fault is determined, the system calls for sometimes lengthy negotiation with the injured person in order to establish a dollar value of the injured person's losses. In case of disagreement, the courts are asked to make a final determination, both as to the issue of fault and as to the issue of damages.

2. *Cost of legal services.*—The tort liability system supports and fosters the provision for expensive legal services. In the case of the plaintiff, he must pay his attorney, usually on a contingent fee basis. For the defendant, there must be costly defense counsel which is usually paid by the defendant's insurance company which becomes a part of the expense that must be considered in setting the insurance rate.

3. *Excessive build up in medical costs.*—It is claimed that the present tort system encourages the build up of so-called "specials" because it is on them that the settlement for general damages on pain and suffering is based. Together, these increase medical costs and increased amounts for pain and suffering maximize the amount of the plaintiff's attorney's contingent fee.

III. Delay and inadequacy in recovery of economic loss from auto accidents

The tort liability system provides no guarantee that economic losses resulting from automobile accidents will be compensated at all. Many injured persons or persons with damaged property are uncompensated because of their inability to establish negligence on the part of some wrongdoer. Others, where fault is questionable, may recover only partially for their losses or injuries.

Even where there is full recovery for both economic and intangible losses under the tort liability system, such recovery is often secured only after substantial delays. These are the delays inherent in the adversary system where fault must first be determined and finally the amount of damages established—sometimes via the judicial process. Even a delay of a few months works a substantial economic hardship on many accident victims.

It is claimed that there is a lack of reasonable relationship between the amounts of settlement and the extent of losses in automobile accident cases. Studies have consistently shown that relatively small claims are over compensated whereas accident victims involving substantial injury are often inadequately compensated.

Critics of the tort liability system emphasize that the uncertainty, the delay, and often the inadequacy of compensation imposes substantial hardship on members of the public and that therefore consideration should be given to some type of reparations system which is based on a no-fault principle.

IV. Availability of automobile insurance to all car owners

Tied in with the tort liability system has been the enactment of laws requiring car owners to prove they are financially responsible before they can operate their cars on the nation's highways. To protect society, such laws have been progressively strengthened over the years until today the vast majority of car owners find it necessary to purchase automobile liability insurance. Licensing authorities and the judiciary are often criticized for permitting dangerous drivers to continue to jeopardize the life and property of the general public. But because

many of these dangerous drivers are still permitted to drive, the insurance industry is asked to provide insurance protection for them, often at substantially inadequate rates. In a free enterprise society, and particularly one where a substantial degree of competition exists, automobile insurance carriers must necessarily attempt to attract as customers the vast majority of car owners who are average or better than average drivers. The small residue of drivers who fall in the marginal category often find it difficult to secure auto liability insurance at standard rates. The insurance industry makes provision for insuring these drivers under the so-called automobile insurance plan, usually at rates that are grossly inadequate for this group of drivers.

A phenomenon of recent years has been the inability of insurance companies to secure adequate prices for their product in some states.

The natural consequence of being forced to operate at an inadequate price is a tightening of the market for automobile insurance—forcing many car owners who were formerly considered average risks into the marginal risk market.

The lack of the availability of insurance, where it exists, militates against adequate protection of the public.

PART II—A PLAN FOR REFORM

A. A First Party Reparations System

It is clear that the criticisms of the existing system are overwhelmingly intimately related to the tort liability system upon which automobile liability insurance is based. This fact leads to the conclusion that the best long-range solution to the problem of assuring compensation to all automobile accident victims lies in the development of a system under which compensation for economic loss will be provided without regard to fault and on a first party basis between the insurer and the insured. In other words, the tort system, as far as its application to automobile bodily injury and property damage is concerned, would be eliminated and completely replaced by a compulsory first-party system. This means that policyholders would recover their economic loss from their own insurance companies. The owner of a car could no longer sue the person who caused the accident nor could he be sued by someone else.

The details of such a first-party system are spelled out in Exhibit I. In general, it is designed to make the injured party whole by taking care of his economic loss arising from:

1. Medical expenses—Unlimited.
2. Short and long-term wage loss—85 percent of earnings up to 200 percent of the state average weekly wage.
3. All other economic loss including expenses reasonably incurred for services in lieu of those the injured person would have performed without income.
4. Costs of rehabilitation (with incentives to return to work)—Unlimited.
5. Survivors' benefits—Up to \$30,000.
6. Property damage—Actual cash value for automobiles; up to \$5,000 for other property.

This coverage is designed to make certain that *every* person injured in an automobile accident can recover his economic loss. To accomplish this objective it is necessary that these benefits be made compulsory. This plan is designed to provide reasonable coverage at reasonable rates. For those who feel that they should have higher benefits, optional coverage at an additional charge will be made available.

The plan, as outlined, has several features which distinguish it from other plans. Some of these features are truly innovative.

1. The plan would be notably more comprehensive in conventional benefits than other plans have offered and hence would meet the criticism that too often the existing system fails to meet reasonably the total economic loss incurred. Examples of this greater comprehensiveness are to be found in the:

- a. Unlimited payment for reasonable and necessary medical expenses, including that incurred in extended care facilities and for medically supervised home care services.
- b. Payment for extended disability income up to age sixty-five.

2. A rehabilitation benefit would be included that, uniquely, would be an integral part of the benefit system and provides for cooperative procedures involving the claimant, the insurer, and bona fide rehabilitation agencies.

3. The plan uniquely provides incentives to return to gainful employment. This is accomplished by disregarding, in the computation of the benefits to be paid, a portion of the earnings in new employment.

4. The plan avoids the pitfalls of scheduled benefits by:

a. In the case of medical procedures, basing compensation on reasonable and necessary costs rather than on fixed limits per procedure; and

b. In the case of wage loss, incorporating an upper limit that will be automatically adjusted to the level of average weekly wages in the State.

5. Survivors' benefits are designed to serve during an adjustment or tiding-over period and hence, in the case of survivors of principal wage-earners or housewives, are payable in monthly installments; in the case of survivors of wage-earners, the installments are related to previous earnings.

The plan does not deal directly with the problem of payments received from other sources of insurance or wage continuation plans, etc., except for those provided under governmental programs which do not impose a needs test. Under current conditions, taking into account these other sources of duplicate payments would have very uneven, and a probably inequitable, effect. Furthermore, it would not be long before other system would themselves preclude duplication as they now do with Workmen's Compensation.

B. Competitive administration in a free enterprise system

The Plan contemplates and, indeed has as an essential element, implementation through a competitive system of pricing, merchandising, and product development. The public interest is best served by a competitive system for the following reasons:

1. The best claims and other policyholder services can be expected to result from a competitive system. Each company may be expected to try to excel in providing policyholder satisfaction because such satisfaction is a principal ingredient of any company's program to grow and to increase its share of the market.

2. A competitive system will serve best to keep the price of the product at a level which will reflect most efficient administration. Specifically, it can be expected that companies will compete in devising:

- a. improved and more efficient methods of claim administration, and
- b. methods for reducing general expenses.

In this connection, it is important to recognize that the trend of increasing medical costs and increasing wages will inevitably cause the insurance cost of the proposed compensation system to increase. Competitive efforts to reduce costs (both expenses and loss costs) will help offset these inflationary trends.

3. Associated with the preceding point is the fact that experience demonstrates that under a competitive system a persistent effort will be made to achieve improved ways to relate premiums paid by policyholders to the hazard insured. Competition assures a more equitable distribution of the cost of insurance.

4. A competitive system will encourage making available to the public a product that excels the statutory minimum. Examples of what may be offered are higher limits on wage loss (for the upper income groups), loss-of-use coverage under damage to property, and even, as suggested by Keeton-O'Connell, payment for pain and suffering.

5. It is basic to the free enterprise system that competition provides better regulation of prices, products, and services than that which can be effectively imposed by government. The concern of government should be to assure maximum competition consistent with insurance company solvency.

6. A plan providing for minimum statutory benefits under private competitive administration is in accord with the climate of current public and government thinking and practice; e.g., specialized products developed and produced by private enterprise under competitive bidding for governmental use. To duplicate in government the know-how already possessed by private insurance agencies would be wasteful and inefficient.

C. Equitable distribution of high hazard risks

Every company and agent will be required to accept every applicant for insurance.—High hazard risks will be insured under a standard, uniform rating plan established by the industry.

It is recognized that under any plan, there will be drivers whose loss experience or driving record will make them undesirable as insurance risks. These drivers will probably have to pay higher premiums under any system which

allows competitive rating or classification. It is doubtful, however, that premiums charged to these poor drivers will be adequate to pay the losses they produce. There is, therefore, a need to provide for a method to spread the cost of insuring these high hazard individuals equitably among all individuals insured in a state. The basic principle to spread such risk will be reinsurance—in contrast to the pool arrangement of the assigned risk plan—so that the policyholder can be insured in the company of his own choice. Policyholders to be reinsured would be a different group than presently in the assigned risk plans. Present plans have many elderly, youthful, low-income, and military personnel drivers. Some of these, under the Reform Plan, would be acceptable at normal or standard rates. Relatively few risks would need to be involved in the reinsurance process. See Exhibit II for the outline of this reinsurance proposal.

D. Uninsured claim fund

Acknowledgment is also given to the fact that compulsory insurance is never completely enforceable; hence an insured claim fund is established to provide benefits to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile. A similar principle is applied to property loss.

E. Residual liability

Assuming the enactment of this plan in a given state, it will be necessary to provide policyholders with a residual liability coverage especially for out-of-state driving where the tort system is in effect.

PART III—EVALUATION OF THE PLAN

The Plan for Reform serves to meet the problems associated with (a) the existing system of tort liability, (b) increasing costs of auto insurance, (c) delay and inadequacy in recovery of economic loss and (d) the availability of protection, as they were reviewed in Part I of this Report. Features of the plan designed to meet these problems are:

A. As a first party, no-fault system, the plan lends itself to the prompt, timely, payment of benefits for economic loss without the delays associated with the adversary system. The tort system presents controversy as to the question of fault as well as the amount of damages. There may still be some controversy under the first party system as to the amount of loss but this should be minor.

B. Because benefits would be associated with measurable or ascertainable economic loss, there would be a closer correlation between the loss or damages and the amount of recovery. Thus, the plan avoids results which are now found where individuals with substantially the same loss are reimbursed with substantially different amounts.

C. Because benefits would be associated with measurable or ascertainable economic loss, ability to recover would not be restricted to the liability limits (or even existence) of someone else's automobile liability policy. (The effect of this limitation is particularly evident in coverage for the assigned risk, the underinsured, and the uninsured.)

D. Because all injured parties would be eligible for recovery, the plan directly meets the social problem created by hardships resulting from delayed payments or unmet losses arising from automobile accidents. Under a liability insurance system, it is the innocent third party who suffers when a car owner fails to carry insurance. Under the suggested first party system, failure to carry insurance penalizes only the car owner and his family.

E. A first-party system is customer and consumer oriented. It places a premium on prompt and efficient service. In addition, it enables the customer to deal with the company of his choice. Consequently, by replacing the adversary system and providing for the payment of benefits by the injured person's own insurer, a more wholesome relationship between the insurance industry and the public will result.

F. The public should find that the insurance product under the Plan is substantially more available to it than is the automobile liability product. This will be true because under the Plan:

1. More applicants will be desirable to insurance companies than is now the case. Examples of the more acceptable risks are the youthful, the elderly, and servicemen.

2. There will likely be a narrower spread in premium rates than exists today. It is expected that under a first-party system, the spread of rates between adult

and youthful drivers—and between metropolitan and non-metropolitan areas—will be less.

3. The optional reinsurance provision for Special Class business will broaden the voluntary insurance market to include all licensed drivers and will remove the stigma of the assigned risk plan.

G. The Plan may serve a socially useful purpose in clarifying the distinction between economic loss arising from auto accidents and criminally irresponsible behavior resulting in accidents. To too large a degree today the settlement by an insurer of the loss serves to absolve the guilty wrongdoer from criminal penalty.

H. The Plan holds promise, in spite of compensating *all injured persons* for their total economic loss, of stabilizing the total costs of the existing system because it should:

1. Eliminate the cost now incurred for that part of "pain and suffering" which cannot be identified as economic loss.

2. Eliminate that part of settlements, included in the "pain and suffering" referred to above, which does not reach the injured person because of contingent fees.

3. Eliminate expense incurred in connection with subrogation.

4. Reduce claims investigation, litigation and arbitration expense.

5. Reduce the cost of the court system which now spends a substantial proportion of its time on automobile accident cases.

6. Give impetus to the elimination, by various forms of health insurance, of duplication of benefits.

These reduced costs will be counterbalanced by the fact that the Plan will compensate many more people than under the present system simply because fault no longer has to be established to receive payment.

Exhibit I

AUTOMOBILE COMPENSATION COVERAGE

This coverage would completely replace the present tort system for property damage, injuries and death arising from automobile accidents.

This is a compulsory compensation coverage for property damage, bodily injury, and death resulting from automobile accidents. The coverage compensates for:

1. Collision damage to the described automobile and to other property (but not including other automobiles).

2. Injury and/or death to the insured and his dependents resulting from any automobile accident.

3. Injury and/or death to other occupants of the described automobile who have no coverage under their own policy.

4. Injury and/or death to pedestrians and cyclists who are struck by the described automobile and who have no coverage under their own policy.

5. Other out-of-pocket expenses, including paid help, transportation, and miscellaneous loss.

The coverage is payable without regard to fault and without regard to other forms of insurance except that it shall be excess over like benefits payable by Workmen's Compensation and by governmental programs which do not impose a needs test such as Medicare, Social Security, Veterans' Plans, and State Temporary Disability Benefits.

Coverage provisions are tied closely to rehabilitation services and are designed to encourage early recovery from serious injury.

The basic compulsory coverage is outlined below. Higher limits of coverage for extended disability income and for survivors' benefits will be made available for those who desire to purchase it.

DAMAGE TO PROPERTY

To pay for accidental collision damage to the described automobile and to other property (excluding other automobiles). Damage to the described automobile will be subject to a deductible selected by the insured. Damage to other property will not be subject to the deductible provision. The coverage limit on damage to the described automobile is its actual cash value; the coverage limit on damage to other property is \$5,000. Comprehensive coverage will be made available but will not be compulsory.

MEDICAL PAYMENTS AND REHABILITATION EXPENSE

To pay all reasonable expenses for necessary medical, dental, surgical, ambulance, hospital, extended care facility, professional nursing, and medically supervised home care services; to pay all reasonable expenses for necessary prescribed prosthetic devices; to pay for reasonable funeral costs up to \$1,000.

To pay all reasonable expenses not included above for necessary rehabilitation center services; for occupational, physical and speech therapy; for prostheses and other adaptive mechanisms, including training in their use; and for vocational counseling, pre-vocational training, vocational training or retraining, work try-outs and placement services. The company shall not be liable, however, for any costs of rehabilitation which are available and accessible from existing public or community rehabilitation services.

DISABILITY INCOME

To pay the benefits stated in the schedule below during the period of disability up to and including sixty days following the accident. The period of disability is defined as the time during which the injured person is unable to engage in his regular occupation or, if not employed, in those normal pursuits to which he is accustomed. The injured party must be under the care of a licensed physician.

EXTENDED DISABILITY AND REHABILITATION INCOME

To pay extended disability income stated in the schedule below, after sixty days from the accident and up to age sixty-five, if:

(1) The injured party is actively engaged in restorative procedures as recommended by the company which are reasonably designed to correct or substantially reduce his injury or to prepare him for a different and appropriately selected occupation for which he would not be handicapped;

(2) Both the injured party and the company agree to continue such procedures and so long as the injured party cooperates with bona fide rehabilitation agencies.

(3) The injured party is unable to actively engage in restoration procedures for good and sufficient cause.

In the event that the injured party assumes a different occupation at a reduction of income from his occupation prior to the injury, the extended disability income will be continued and will be determined by deducting two-thirds of the injured party's earnings from the income benefit.

INCOME SCHEDULE

<i>Beneficiary</i>	<i>Income Benefits</i>
1. Person earning a regular income.	1. 85 per cent of weekly wage or weekly earnings up to 200 per cent of the average weekly wage in the state.
2. Housewife.	2. \$50 each week.
3. All others.	3. \$25 each week.

SURVIVORS' BENEFIT

To pay the benefits stated below for death within five years following the accident, payable to the surviving spouse or to a duly appointed representative.

<i>Deceased</i>	<i>Benefits</i>
1. Principal wage earner with dependent child surviving.	1. 100 per cent of three years' wages or three years' earnings up to a benefit maximum of \$30,000, payable in equal monthly installments.
2. Principal wage earner with no dependent child surviving but with spouse surviving.	2. 100 per cent of one year's wages or average yearly earnings up to a benefit maximum of \$10,000, payable in equal monthly installments.
3. Housewife with a dependent child surviving.	3. \$5,000 payable in one year in equal monthly installments.
4. Child under ten years of age.	4. \$1,000—lump sum payment.
5. All others.	5. \$2,500—lump sum payment.

(Where the deceased fits the description in more than one category, that category with the higher benefits will be applied.)

UNINSURED CLAIM FUND

This fund will be administered by insurance companies designed to provide these coverage benefits for injury to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile or automobiles. This fund will not provide coverage, however, to the owner of any uninsured car or to his dependents. All other injured parties will have coverage.

This fund will also be used to pay for damage to other property (excluding automobiles) where damage results from collision involving an uninsured automobile.

Exhibit II

A REINSURANCE PROCESS TO ASSURE EQUITABLE DISTRIBUTION OF HIGH HAZARD RISKS

In order to broaden the insurance market to include all licensed drivers and to remove the stigma of the assigned risk plan, an "optional reinsurance provision for Special Class risks" is recommended. (Special Class risks are those high hazard individuals who, because of driving record, physical or mental disability, or some other personal characteristic, warrant special rating.)

Each company would be required to insure any individual who seeks coverage. The company would have the option to reinsure any individual from whom it had collected a Special Class rating under a standard, uniform rate plan established by the industry. All companies doing business in a state would be required to participate in the reinsurance losses or profit on the basis of each company's total car years of exposure to the total of all car years of exposure in the state. This would have the effect of distributing to each individual insured in the state an equal share of the cost which cannot, because of prohibitively high rates, be passed on to high hazard risk individuals. Since not all Special Class rating cases would require reinsurance, neither the individuals involved in reinsurance nor their agents would know who the reinsured cases are.

The insurance carrier would be required to cede 100% of the premium to the reinsurance pool. A commission equal to the ceding carrier's expense level including loss adjustment expense, as shown in its insurance expense exhibit, or 30%, whichever is smaller, would be paid. Actual losses would be paid by the insurance carrier and recovered from the reinsurance pool.

In conjunction with the reinsurance pool, there should be an industry committee to work with regulatory authorities of the individual states. Machinery should be set up to review those insured whose records would indicate the need to consider whether or not the individual should be allowed to drive. The committee would also be responsible for policing the industry and for establishing safeguards to prevent individual companies from abusing, or profiteering from the commissions in, the reinsurance arrangement.

Mr. Moss. I certainly want to compliment you for what appears to be an outstandingly constructive statement before this committee. It is the kind of information which is of great value to the committee as it wrestles with this very complex problem.

Mr. ECKHARDT. Frequently a person who is injured and is incapacitated totally or very severely has built his life and his obligations around his earnings, as for instance a doctor may well be a man with a family of four or five, maybe a couple of kids in school, and so forth.

On the other hand, his secretary may be a single woman without many responsibilities. At least I think this would be a more or less typical situation. But as I read your plan, if the doctor is injured severely, he may receive considerable pain and suffering, he may be incapacitated for continuing to work as a doctor, but his maximum under this plan would be twice the wage of his secretary if she is around the average for that State, and he would receive no pain and suffering benefits, no matter how guilty the party who drove into him is.

And this would be the absolute cutoff for him because, as I understand your plan, it is altogether comprehensive and it is in lieu of tort liability; am I correct on that?

Mr. CHILCOTT. Yes, sir; you are correct as far as your understanding of the plan is concerned. It is true that this plan does not compensate the exceptional case to which you have referred.

The plan does compensate providing the opportunity for the doctor and others in the economic status, where they can do so and want to do so, to make available to themselves coverage for these other losses, higher weekly payments, and higher benefits.

Mr. ECKHARDT. What is its effect on a situation in which a pedestrian who is not covered by any insurance, who doesn't in fact drive a car and is the recipient of injury?

Mr. CHILCOTT. Drive it. Well, the pedestrian is covered under the provisions of the policy of the car that strikes him if he is a noncar-owner or doesn't belong to a car-owning family. So you get the same benefits from the insurance company of the car who struck him. Or if he had an automobile himself, his own policy would be applicable.

Mr. ECKHARDT. If the person who is struck is unemployed, what would be his recovery, only his medical and hospital?

Mr. CHILCOTT. We would attempt to establish what he would have earned if he had been employed, remembering the case about which you were asking the Governor's representatives. We would attempt to establish what his employment would have been, what his earnings would have been if he had been employed, assuming that he was out of work temporarily.

Mr. ECKHARDT. Well, let's assume, for instance, The Southwestern Bell Telephone Co. has an age of retirement at which it may compel retirement of a female employee of around 60; I forget the exact age.

A person has been compelled to retire and she is trained totally as a telephone operator. She is injured. Under your plan, what is the measure of her economic loss?

Mr. CHILCOTT. And she is in the retired status and has not been earning a livelihood?

Mr. ECKHARDT. And her income from actual retirement pay is only a relative small fraction of what her earnings had been.

Mr. CHILCOTT. I guess I would have to touch, Mr. Eckhardt, on a little of the philosophy of our plan.

Mr. ECKHARDT. First, though, this would give her nothing other than her medical and hospital regardless of what would be available for partial disability under present tort law and what would be available for pain and suffering.

Mr. CHILCOTT. Yes, sir; this is right. If she is not actually earning additional income beyond her employment, there is no reimbursement for wage loss. Unemployed persons, retired persons, and students are provided disability benefits of \$25 a week. But I would like to give you the benefit of just a little of the efforts we were making as we studied the system. The effort was geared to determine what is the best way to compensate the greatest number of people, assuming we didn't have any system now for handling the economic losses resulting from automobile accidents.

And when we go down that road, there are going to be a few situations probably, unless they provide for it by these additional

coverages which would be available, there are going to be a few situations where they will not be able to recover on the same basis that they would have under the tort system, but I think we need to remember that the DOT studies to which reference was made a little while ago have indicated that a substantial number, and I believe, well, that the majority of small accidents are overcompensated and the great majority of the larger ones are substantially undercompensated.

Mr. ECKHARDT. Why then not go ahead and take care of your small accidents and try to bring them up to reasonable compensation without simply wiping out the large accident claims to anything like the level of reparation which is necessary to make a person anywhere near whole? Let me point out that in the very debilitating accident, the very severe accident, economic losses are trivial compared to the loss of the wholeness of a man, and yet this system wipes out tort liability in that situation.

I am repelled at this idea that economic loss is the only thing that should be compensated for.

Mr. GRIFFITH. Let me make this comment. One of the problems we identified as a problem we needed to do something to solve is the cost of insurance. In the jumbo case, the kind you are referring to, we wanted to make sure that the person was compensated for reasonable economic loss and further makes provision for him to purchase additional economic loss for that which was not covered under the plan itself if he chose to do so.

But we have to find a way to reduce the cost of the system if we are to reduce the cost of the coverage.

Mr. ECKHARDT. It seems to me this whole attitude is to reduce human problems to statistical problems.

Do you know the kind of cases we are talking about? As an insurance man you should and you are willing to wipe these cases out no matter how much fault is involved on the side of the person it injures.

Mr. GRIFFITH. As far as intangible losses are concerned; yes.

Mr. ECKHARDT. These are not intangible, they are the loss of the ability to sleep with your wife or to play golf or to fish or to drive your car. These are tremendous losses and to simply say that because there is not enough money being paid into the smaller cases we are going to wipe these out altogether, is, I think, a shocking concept.

This is not done under the Massachusetts act. It is not done under any of the other suggestions that we have had before us except I think one. But I am utterly shocked at a situation that will treat so callously the catastrophic loss.

Mr. GRIFFITH. From an economic standpoint, we are trying to make the person whole. Beyond that, no. And that is the case you are talking about.

Mr. ECKHARDT. It seems to me that is to treat a man as a producing machine rather than a human being. That is all I have, Mr. Chairman.

Mr. MOSS. Mr. McCollister?

Mr. MCCOLLISTER. All I would like to say is to add "Amen" to Mr. Eckhardt's comment.

Mr. GUTHRIE. Mr. Chilcott, we received testimony from the president of the National Association of Independent Insurers and your company was listed as one of the members of that association. I am

interested. He gave strong testimony that seems to be opposed to the concept involved here. How did that association arrive at that policy?

Mr. CHILCOTT. One of the privileges of membership in the National Association of Independent Insurers is that you are not bound by the position of the association.

As a matter of fact, Mr. Griffith and one other representative who works with me did participate in the development of the plan that I assumed was presented to you here, NAII plan.

And we support the concept of that plan except that we just do not feel that it goes far enough. If an effort is to find the way to compensate the most people for economic losses resulting from automobile accidents, if that is our objective, then we feel that this system as far as it goes is fine.

But we do not feel it goes quite as far as it should.

Mr. GUTHRIE. On page 3 of your statement you stated Federal involvement would be limited to a review of the performance of State insurance regulation within the prescribed Federal guidelines adopted to encourage reasonable uniformity of insurance plans.

Could you be more specific about what you contemplate there?

Mr. CHILCOTT. Well, in the previous testimony, the point was made, I believe, about the number of different kinds of systems that are coming about and it is our feeling that some Federal guidelines which would provide some minimum standards would be helpful and would bring about the change that we feel is inevitably ahead of us because of the public pressures for it.

Mr. GUTHRIE. Do you feel that these guidelines or standards or minimum requirements could work without the Federal Government getting into the area of economic regulation?

Mr. CHILCOTT. We believe that is possible and that it has been demonstrated in some other areas.

I would like to reemphasize my point that we would certainly hope that the regulation can be maintained in the States within the framework of these guidelines.

Mr. GUTHRIE. You analyzed H.R. 4994 apparently. You address yourself to it. Do you feel that provides an acceptable basis for establishing standards for the States?

Mr. CHILCOTT. As we indicated in the statement, we believe there are many of the provisions of H.R. 4994 that are very good. We mentioned having some suggestion for change and I would like to run over those if I may.

First, most of the advantages which are to be gained from elimination of the tort system with respect to personal injury are likewise applicable to damage to property. And for that reason, we believe it would be preferable to eliminate the fault system for damage to property as well as for personal injury.

Rather than writing auto insurance coverage as excess over other sources of benefit, we believe it would be more direct and efficient to make auto insurance the primary coverage in the case of automobile accident injuries. This way the insurance provides the major coverage and one insurance company could settle the entire loss without the need for going into additional expense of investigation. Also it would facilitate development and administration of effective rehabilitation procedures as integral part of auto insurance coverage.

It is desirable to eliminate duplicate insurance coverage and it is expected that other forms of insurance would then become secondary to auto insurance for auto insurance injuries. Studies have generally concluded that the tort system is inadequate when it comes to provide compensation for very serious injury, as Mr. Eckhardt was pointing out. It would be preferable therefore to provide coverage for loss of earnings to age 65 which is a part of our plan.

Disability benefits should be provided for housewives and other unemployed persons in order to compensate for disadvantages which occur when they are disabled.

Since all of the evidence points to the fact that the tort system is inadequate to compensate cases involving serious injury, it would be preferable not to retain tort in cases of catastrophic harm. Rather the unlimited medical expense feature in combination with disability benefits to age 65 we believe would do superior job of compensating for serious injury.

The benefit in the case of death we believe should be designed to take into account the need of survivors, for example, the benefit might require 3 years' wages up to \$30,000 if deceased is principal wage earner with dependent child surviving. Then 1 year loss of earnings up to \$10,000 maximum where deceased is principal wage earner with no dependent child survivor.

Mr. ECKHARDT. You are getting over again to the Nationwide system that you described earlier.

Now, I am sure you have done cost studies of the plan that you have proposed. Could you give the subcommittee some idea of what it will mean in terms of premiums.

Mr. CHILCOTT. We believe from all of our studies and in addition to all of the studies we made on our own back in 1968 thereafter, we have also checked our studies with an even larger volume of statistics gathered by the American Insurance Association and they supported the original studies. We believe that at least the cost of automobile insurance would not be increased as a result of the wider spread of benefits.

At the moment we are not making any claim for great savings because there are some economic factors that, if they continue under whatever system we have, we believe the costs are going to keep going up and so at best we believe this provides a substantially improved method of compensating for economic losses and to a lot more people without increasing the costs. In other words, we believe it will stabilize the cost of auto insurance.

There are two other points, if I may, that I would like to suggest.

Mr. ECKHARDT. This is with respect to H.R. 4994?

Mr. CHILCOTT. This is for H.R. 4994. The feature of the plans which prohibits the rejection, cancellation, or refusal to renew could be enhanced by a companion measure.

The act we believe should incorporate a provision whereby equitable distribution of high hazard risk will be accomplished by spreading those risks among all companies.

Finally, the common uniform statistical plan and requirements for standard policy provisions and class of risks, and rating territories represent we believe too heavy a burden to the insurance companies with attendant high incidence of expense.

The State regulation network operating under Federal guidelines is preferable to full-scale regulation which we believe would be almost automatic if all of the statistical gathering and statistics plan which we understand the bill would provide for were adopted.

The Federal guidelines we believe could be designed to bring about reasonable uniformity of standards and State regulation and then use of the State plans could be considered.

The primary concern of course should be to assure maximum competition consistent with insurance company solvency. We believe that Federal supervision should be limited to review of the State regulation.

Mr. Moss. Mr. McCollister?

Mr. McCOLLISTER. You mentioned in your testimony that you had an optional plan available from 1956 to 1966. I am sure that the fact that there was no wide overall elimination of tort liability accounted for some of the difficulties of it.

Was it part of the difficulty too that the consumer was unwilling to trade certain benefits here for his availability of pursuing the wrong doer for causing him injury? Wasn't that some part of the problem and, if so, didn't it indicate that maybe the consumer is not as no-fault oriented as you might suggest.

Mr. CHILCOTT. Well, let me generalize on it and then I will ask Mr. Griffith to comment just a minute. I think the answer to your question is a qualified yes. There was that concern. The person who was almost sure that they didn't have any opportunity to recover under the tort system utilized the benefits and took advantage of them and many others decided to follow the tort law but really we believe that even more important than that was the fact that it wasn't adopted and utilized on an industrywide basis. We believe that if it had been, that there would not be the need for many of the discussions that are taking place now.

Bob, do you want to comment on that?

Mr. GRIFFITH. Yes; I think you are quite right, Mr. McCollister. Our experience under it was that if a person were given a choice to pursue his right in tort versus accepting a schedule of benefits, that if he had any right in tort at all or thought he did, he would pursue the tort right rather than accept the schedule of benefits. Part of the problem I think was that schedule of benefits was lower than it should have been as adopted in 1956.

Mr. McCOLLISTER. That was still equated to the cost?

Mr. GRIFFITH. It was still equated to the cost of the coverage provided him, but bear in mind that we are charging him a premium above which he would pay with other companies for straight medical payments and that creates a competitive problem also, so there is a limit beyond which you cannot go from a price standpoint to make the benefits as adequate as you might have liked to have made them.

Now, to the question of whether people want to abandon the right of tort—

Mr. McCOLLISTER. Excuse me, didn't that suggest then that if every company were compelled to offer only this no-fault basis, that perhaps the presumed reductions in cost might not really be there?

Mr. GRIFFITH. The plan that we have offered to you today will cost more from the standpoint that more people will be receiving greater benefits than the present system provides.

That increased cost, to the greater number of people and higher benefits, has to be included in the insurance premium. The way we get around the extra costs that builds into the system is to provide that there shall be no intangible benefits paid.

Mr. McCOLLISTER. I understand that.

Mr. Moss. Any further questions?

Mr. ECKHARDT. I have one question. Does the plan envisage subrogation on the basis of fault?

Mr. GRIFFITH. No, sir.

Mr. Moss. Gentlemen, I want to thank you for your appearance here.

You indicate that you have a model bill under study.

Mr. CHILCOTT. It is in the drafting stage.

Mr. Moss. When it is drafted, will you supply a copy for the committee?

Mr. CHILCOTT. Yes, sir. Thank you, Mr. Moss and gentlemen of the committee, for this opportunity.

Mr. Moss. Thank you again.

The committee will now recess until 1:30 at which time our first witness will be Mr. Baylor, the insurance commissioner of the State of Illinois, followed by Mr. Bernstein, the Federal Insurance Administration Administrator.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 1:30 p.m. the same day.)

AFTER RECESS

(The subcommittee reconvened at 1:30 p.m., Hon. John E. Moss, chairman, presiding.)

Mr. Moss. The subcommittee will be in order. We have Mr. James Baylor, insurance commissioner of the State of Illinois.

STATEMENT OF JAMES BAYLOR, INSURANCE COMMISSIONER, STATE OF ILLINOIS; ACCOMPANIED BY VINCE VACCARELLO, CHIEF DEPUTY DIRECTOR OF INSURANCE

Mr. BAYLOR. With me, Mr. Moss, is Mr. Vaccarello, chief deputy director of insurance in Illinois. He has done yeoman work in the department, particularly in the area of this automobile reparations. I would like very much for him to sit with us, if he may.

Mr. Moss. Certainly.

Mr. BAYLOR. I have brought with me a letter from Governor Ogilvie. Governor Ogilvie expressed to me personally his disappointment at not having the opportunity to appear.

He is vitally interested in this matter. He asked Mr. Corcoran, who is heading the Governor's office here in Chicago to attend this meeting and Mr. Matthias, both of whom are here sort of as an indication of the Governor's personal interest in this, and I will deliver that to you, a letter from Governor Ogilvie.

Mr. Moss. Is that the letter that is here?

Mr. BAYLOR. Yes.

Mr. Moss. Without objection, the letter of Governor Ogilvie to me as chairman of the committee will be placed in the record. (See p. 1230.)

Mr. BAYLOR. If I may, let me read a prepared text. I think it would quicken the pace.

The Illinois Department of Insurance is well aware of the condition of the automobile reparations system as it relates to the situation of automobile accident victims. Becoming informed through a study initiated by Governor Ogilvie, we have promulgated a program of change of that system to bring relief to that situation.

The Illinois plan, for which implementing legislation is before the general assembly, is a comprehensive approach to correct the deficiencies. Basic to it is the realization that the concept of tort liability is not fundamental to those deficiencies. They are a product of the administration of the reparations system. Our only goal in every consideration in the preparation of the Illinois plan was to overcome the deficiencies. To the extent those deficiencies lay in inadequate benefits, we would extend those benefits. To the extent they lay in the judicial process, we would streamline the procedures. We propose to remove the reason to sue, not the right to sue. There's not a farmer in Illinois who would suggest the way to cure a sick cow is to kill the cow.

The fact is that in Illinois, and I believe other States, the leaders of government are going forward on all fronts to reduce the occurrence of auto accidents and to bring relief to their efforts. Accident reparation is only one phase of that overall coordinated program of action. And historically in our State has this been true. We have not been dependent on the threat of Federal intervention to meet the needs of our Illinois citizens. The present reparations system is a product of individual State action on individual State initiative.

The States are capable of recognizing and providing for the needs of changes in the circumstances to which those actions apply. If it were the States and the variations developed within the States reflect that ability to continue to do so. That Nebraska, Wisconsin, and other States provide for comparative negligence in contrast to Illinois which is a contributory negligence State indicates further the ability of the States to exercise judgment and do what their elected officials believe is best for their citizens of their States.

It is imperative to realize that the deficiencies of the present system are not the result of the actions of the individual States, but the product of changes in the circumstances to which those actions apply. If it were true that the deficiencies are a result of government action—or inaction—nonetheless would it be true were the reparations system a function of the Federal Government rather than the several States. Certainly there is nothing in the Federal Government's favor in comparing the advantages and deficiencies of reparations currently to injured workmen as against those of the State workmen's compensation system.

Particularly is it important to retain a multistate auto reparations system, I believe, to avoid the disadvantages that would be inevitable if we had only one, inflexible, uniform Federal program. Obviously there are some short-term advantages to uniformity. But the long range inhibiting effects against change to obtain improvement as that will become needed are gross by comparison.

On a national basis the differences between the States is not a deficiency of the whole reparations system. In practice the differences are one of its strengths. Only where differences exist can realistic judgment

be exercised to obtain improvement. Only when proposed changes can be evaluated in practice can they be established as advantageous and sound. As a rhetorical question, who can say one or another proposal is the better—until it is tried? Solely through action on a State-by-State basis is this possible.

Should we acknowledge a need for national standards for a reparations system on a State-by-State basis? Our position again in the short term there might be some advantages. The establishment of national standards might be an incentive or prod to action in some States that otherwise would not respond. But also in the short term, national standards would, not might, have an inhibiting effect on the States which will accomplish their needs without them. Legislators in whatever legislative body known that the pressures against change are one of the strongest forces they must overcome. To add to that the limitation inherent in the existence of national standards could be disastrous to obtain improvements to meet the changing conditions of tomorrow and all the tomorrows to come.

While it is true that significant change in any institution under government is slow in the minds of its proponents, necessarily—and fortunately—is this so. Two points are particularly important. First the recognition of the problem is evolutionary and the solutions for it must be sought out, both of which are time-consuming processes. The occurrence of divine revelation in such mundane matters as auto reparations is infrequent at best. In Illinois and in other States these changes are in the process of accomplishment. The DOT studies have been one of the greatest assets to all interested in obtaining relief to the problems; but their being the accomplishment of a Federal agency is no argument for Federal legislation as the remedy to the problems which those studies identify.

In Illinois and in other States, I believe, there is recognition among the public of the matters we are discussing here today. It is obvious that substantial effort is being made by all interested parties—the several branches of Government, including the bar; the news media, not only in its reporting of the news, but in its editorial position; the insurance industry, which didn't create the reparations system, but works within it; and the consumer groups—to effect significant change to reach the same goals which will be obtained by the enactment of the Illinois plan.

Secondly, there must be a realization that nonaction by the States in some instances describes a positive, not negative attitude. There are those who support a Federal reparations system only on the grounds the States won't act. And as proof they show that they proposed a Keeton-O'Connell plan and "it died in committee." The only proper interpretation, I believe—rather than impugning the motives or integrity of the State legislators—is that by the nonadoption of the proposal before it the enlightened legislature was rejecting that as an acceptable solution or means of relief to the problem. Rejection as well as adoption should be regarded as positive action. The fact is that the legislatures have recognized the inherent inadequacies in the arguments for those types of plans—whose proponents would cure the sickness by killing the cow. It is no valid criticism of the Illinois plan that it doesn't meet the criteria that only its critics have established as the basis for an acceptable program.

One important point, as I read the reports of proceedings before the Congress in these matters, has not received the analysis it deserves—what the reparations system it. Basically it has two parts—one, the determination of who should recover damages, how he would recover them and in what amounts; second, the resources for the recovery of those damages. They are two separate things yet so closely interwoven as to be one. We call it the reparations system. If either becomes the object of the jurisdiction of the Federal Government, inevitably will become the others also. To expect that the Federal Government can control through Congress the first part of the reparations system while the States will regulate the second is to anticipate we have learned to unscramble the egg.

We urge your recognition that Illinois, as a leader among States, typifies what can and will be done by all the States in the field of auto reparations; that at neither this time nor in the foreseeable future is there any reason for the Federal Government to preempt the field from the States or to intercede through a program of Federal standards; that to do so would be unwarranted interference with what the States are more capable of doing and will do best for their respective citizens.

I mentioned in the presentation the support we have had for the Illinois plan, and in this committee have given you, this booklet does describe the report which we gave to Governor Ogilvie. It is divided into several portions, but the essence of the plan is described in summary, as I recall, at the beginning of the bottom of page 13.

In support of this, we have been most gratified by the response from the Chicago news media. We have had strong editorials in favor of the plan which we presented to Governor Ogilvie.

These are described in the photocopies which also are in your kit there, not only the newspapers but the TV and radio people have given us very strong endorsement.

I have included here also, two special messages which Governor Ogilvie has given to our general assembly. Again, I think it is indicative of the formal program that the State of Illinois has throughout the field of which auto reparations is only one part.

Because we have referred to the Illinois plan here, and I realize that you have not seen a lot of publicity about it, if I may, I would like Mr. Vaccarello, who as I indicated, is the primary author of this plan, I would like to have him at least give you a brief summary of the concept that we have undertaken here.

Mr. Moss. All right.

Mr. VACCARELLO. Mr. Chairman, and honorable members, briefly highlighting the Illinois plan are these points.

The Illinois plan requires Illinois auto insurance companies to pay within 30 days and without regard to fault up to \$2,000 in medical for up to 1 year, 85 percent of wage losses up to a maximum of \$150 per week for 1 year and over \$4,000 over a period of 1 year for reimbursement of the replacement of the essential services.

In addition to that, the plan provides that auto insurers in Illinois must offer to the consumer \$100,000 of excess coverage for each accident which would extend the medical coverage for an additional 5 years, the wage loss for an additional 5 years, the service loss benefits

for an additional 5 years, and also provide benefits to dependent survivors of the deceased in an auto accident, also for 5 years.

This excess coverage by law would be provided in lieu of the current uninsured motorist coverage so that we would have a situation where there would be up to \$100,000 of coverage which would pay in the event of any accident involving an injury as opposed to the current Illinois uninsured motorist provision which pays but \$20,000 per accident, and then only if the victim is the victim of an accident involving an uninsured motorist and again only if there is liability on the part of the uninsured motorist.

The plan does not deprive any person of any of his present rights to sue. However, through the prompt payment of economic losses, both the need and the reason to sue are fairly well eliminated.

With respect to the incentive to sue, the incentive to sue on the part of plaintiffs and attorneys is lost, primarily through a limitation on the pain and suffering awards which can be made in cases where there is relatively no injury or relatively minor injury.

The plan, as conceived and developed, and as currently placed before the Illinois Legislature provides for prompt return to the policyholder of a large portion of the premium dollars he pays out for insurance at a time when he needs it the most, and it deals with remedies to the deficiencies in the system, rather than irreversibly altering them.

Those are the fundamental points in the Illinois plan which we thought you might find of interest to have highlighted.

Mr. BAYLOR. Could I ask that the materials which we have presented to you in addition to Governor Ogilvie's letter to you, sir, be included in the record?

Mr. Moss. Yes, indeed; and without objection they will be so included.

(The letter and documents referred to follow:)

STATE OF ILLINOIS,
OFFICE OF THE GOVERNOR,
Springfield, Ill., April 28, 1971.

HON. JOHN MOSS,
Chairman, Commerce and Finance Subcommittee, Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

DEAR CHAIRMAN MOSS: Last fall, I asked the Illinois Department of Insurance to make an extensive study of the auto reparations system in Illinois and to prepare recommendations for its improvement. *The Illinois Plan* for insurance reparations reform evolved from that study.

Although developed by the Illinois Department of Insurance independently of the Department of Transportation's Motor Vehicle Crash Losses Study, *The Illinois Plan* meets or exceeds the recommendations of that study. It is designed to help alleviate human anxiety, provide expanded benefits of accident victims, speed justice, reduce court backlog, and stabilize and possibly even reduce the spiraling cost of insurance.

I share Secretary Volpe's view that: "The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."

There is substantial evidence the experience in the various states is not sufficiently the same to require absolutely uniform auto reparations reform. Though it may be desirable for one state to adopt a program to meet its particular situation, that program may or may not meet the needs of the people of other states.

Some argue that reparations standards imposed by the federal government are essential to motivate states which otherwise would not act. However, those same standards easily could become a detriment to those states where action is being

taken on the state's own initiative. All too often federal proposals become minimums for accomplishment, while at the same time they stifle new approaches.

I realize the good intensions manifested in federal action, but I believe that there is not sufficient justification for a federal program at this time. It was only six weeks ago that the final recommendations of the Department of Transportation's two-year auto reparations study were made public. States should be given an opportunity to examine the data contained in that study and to evaluate the recommendations.

We in Illinois already have developed a program for state insurance reparations reform and are working for the enactment of the legislation to implement that program. Other states are doing the same.

I regret that I am unable to be with you today. However, I have asked James Baylor, Director of Insurance, and Vincent B. Vaccarello, Chief Deputy Director of the Department of Insurance, to extend my remarks and to answer any questions that you may have.

Thank you.

Sincerely,

RICHARD B. OGILVIE, *Governor.*

SPECIAL MESSAGE ON
TRAFFIC SAFETY

RICHARD B. OGILVIE
GOVERNOR OF ILLINOIS

TO THE
77th GENERAL ASSEMBLY

THURSDAY, JANUARY 28, 1971

To the Honorable, the President of the Senate, the Speaker of the House, and the Members of the Seventy-seventh Illinois General Assembly:

Highway safety—rather the lack of it—has been a source of deep sorrow and shame in the American past. It is not a new problem suddenly thrust upon us and dubbed a “crisis”.

For too long we have lived, and too often died, with conscious awareness of this tragedy. It is high time that we set our sights, marshal our resources, and make steadfast our commitment to erase this blight from our land. The citizens of Illinois deserve no less.

Therefore, it is with great anticipation and hope that I submit for your consideration the following special message on a subject of vital importance to Illinois.

* * *

The statistics of highway horror in Illinois are all too familiar: thousands of lives lost each year; tens of thousands of people injured, crippled and maimed; millions of dollars worth of property destroyed; skyrocketing insurance rates and repair bills; valuable resources of a healthy society wasted in this senseless carnage.

This situation today makes it almost impossible to believe that there was once a love affair, of sorts, between the American and his automobile. It was phenomenal while it lasted. Those were the days when driving a car had a marvelous excitement. Whole generations of Americans came to identify the automobile with youth, with a gaudy, glorious, irretrievable sense of power and adventure.

Vast industries—oil and steel and glass—flourished because of this love affair with the automobile. Whole new facets were added to the American culture—the drive-in theater, the shopping center, even the parking meter. The stabling of the family car became a major factor in housing: it has been estimated that 13 percent of the floor space in the average home is devoted to the family car.

But in the 1970's the old, glowing exaltation of driving a car is gone. The whole affair has gone sour. We speak now of fumes and congestion. We worry now about bad roads and bad drivers, about poorly-constructed cars and the high costs of keeping them running. We have begun to search for ways to extricate ourselves from our costly dependency upon this source of frustration.

It is a basic value in our society that man must be secure in his own environment, and that includes his driving environment. That security must include protection from the wanton and reckless assault on human life that occurs on our roads each year. We cannot strive as public servants to raise the quality of life in our time only to see so many lives taken so brutally, so casually, by traffic accidents. Man, we must insist, has a higher destiny than to sacrifice his life on the highway.

Our concern must be total. We must not deal with isolated issues in accident prevention, but with all aspects of man's driving environment. We must consider the delicate balances among such elements as the driver, the road he drives on, the car he drives in, and the spiraling climate of costs that surrounds him.

It is this total set of interrelated concerns that should have occupied our efforts to date. It is to this total picture that we must direct the whole perspective of what we are seeking for Illinois.

Consider the implications of our highway network. There are over 135,000 miles of road in Illinois. The 1971 highway program for Illinois will cost almost one-half *billion* dollars.

Today's road system is a highly complex, powerful—and not entirely benign—organism. Highways literally determine the future geometry of the nation—where the towns and commercial centers and industrial complexes of the future will be. So highways must be constructed with concern for esthetic, ecological and sociological considerations in addition to economic and engineering factors.

The modern highway system is deeply and antagonistically involved in man's almost visceral fight for space. It is built to serve us, yet at the same time, it competes with us for space. Vast tracts of land in our cities are devoted to the automobile. A crosstown ride in a busy city at rush hour will demonstrate how the auto and the roadway annihilate space and air in more senses than one.

There must be a better balance between the esthetics and economics and engineering of a roadway system, including the engineering of its safety. Obviously, the engineering of roads demands a perspective and purpose.

At one time it was all quite simple. The early roads often followed animal trails or grew out of the old Indian footpaths. Thus, they tended to trace a "high and dry" route that would not be flooded by spring rains or melting snow and that might be kept clear of leaves by the wind. They also tended to follow the line of least resistance. Today there is no such line. The routing of the modern highway involves a lengthy process of persuasion and negotiation that makes the Cold War seem simple.

But one thing we are agreed upon is that the modern highway must be made safer. In the last few years we have advanced enormously in this respect. We are able to compensate now for some of the insidious dangers of highway design—the dulling, lulling effect of long hours of driving that comes not just from the monotony of an undeviating roadway but from the almost hypnotic thrum of tires going over the expansion joints in the roadway surface.

We know that proper materials design can ensure a good gripping surface for the tire when it's raining and yet provide a road surface which will not hold water that turns the highway into an ice sheet in the winter. We have learned the importance of road signs that

break easily under impact instead of standing so firm and unyielding that they crush any car that careens off the road into them. I am pleased to say that these and other developments in safety engineering are almost routine parts of the highway program in Illinois.

Such safety engineering developments have an enormous impact on accident statistics. Since the state and federal governments began working together on the nation's road system, and particularly since they went to work in 1956 on the 42,500 mile Interstate Highway System, the safety factor has increased significantly. The death rate on the Interstate System amounts to half that on other roads in the comparable areas. Indeed, it has been calculated that more than 5,000 lives a year are saved through the engineering and use of the Interstate System, as compared with travel on older roads.

We know now not only that we *must* make roads safer but that we *can* make them safer, and that the mind of man is capable of controlling this particular aspect of his driving environment.

However, this is not our only area of concern. We must also attack another factor in the driving system — the car itself. Its very fragility is one of the agonizing reflections of a deteriorating quality in our lives.

There was a time when autos were sturdy enough to survive a hard bump undamaged. Today they fall apart too easily and are then difficult and costly to repair.

There are few things more distressing in everyday life than the trend to more fragile cars. The cost of such fragility in human misery — in damage to the human body — is incalculable. The cost in money — in damage to the car — is enormous: this year Americans will spend more money to repair cars damaged in accidents than they will on the entire space program, and far more than on the SST.

When we speak of re-ordering the priorities in American life we must speak not only of national issues, but of eliminating the iniquitous and costly experiences of everyday life. This certainly includes the experience of having endlessly to repair the cars coming off Detroit's production lines. It is unthinkable that a nation which could land

men on the moon will not design—will not *demand*—a car-bumper that can prevent damage and injury in a five or ten mile an hour collision in a shopping center parking lot.

In seeking the balance of a safe driving environment, we must recognize how carefully all the elements in that balance work together, and how easily they are unbalanced by impetuous or misplaced concepts.

For example, we have heard much about revolutionary methods of insuring autos, as well of insuring auto passengers, drivers and pedestrians. Certainly, insurance is a vital part of the cost factor in our driving environment.

Just recently I requested the Illinois Department of Insurance to examine and evaluate the various programs which have been recommended in Illinois and other states concerning changes in the automobile reparations system. The department's report will be ready in mid-March.

In addition, legislation has been suggested relating to the sounder regulation of insurance companies and the protection of individuals whose insurance companies become insolvent. The Illinois Department of Insurance soon will outline legislation for your consideration in these areas.

Despite our concerns for safer roads, sturdier cars and fuller protection against damage, the weakest point in the driving system is man himself. If we believe man is capable of improvement, we must strive for greater perfection in his performance on our highways. In some cases, such as drunken driving, we must protect man, as well as society, from himself. This must be done through the denial of a driver's license to those who would endanger the driving environment.

That there has been a certain ambiguity in the licensing of drivers in the past is due, I suspect, to the lack of a clear-cut demand from the community that dangerous and drunken drivers be taken off the road. Occasionally this has resulted in a lamentable leniency in the granting of licenses to those whose driving capability is limited. In Kansas a few years ago, one official discovered that ten percent of those who received state aid-to-the-blind payments were still licensed to drive!

Fortunately, this situation is changing. In the past two years, 22 states have tightened their regulations regarding the implied consent provisions for revoking driver's licenses. Moreover, in recent years, some 26 states, including Illinois, have joined in a driver's license compact in which we exchange data on convictions for major offenses within our jurisdictions, including drunken driving. We refuse to license a driver whose license is under suspension or revocation in another member state.

We must continue to expand these positive and aggressive approaches to highway safety.

This administration pledges here and now to call upon the resources of all concerned citizens and agencies of state government to develop and implement a program for progress to make Illinois the number one state in the union in every aspect of traffic safety.

Our plan is ready. It embraces the balance demanded in an effective effort to enhance our driving environment.

* * *

I urge the General Assembly to support the following action steps in our safety program:

First, We must provide not only more roads but *better* roads. In the first two years of my term as governor, we have built or improved more than 3,800 miles of roadway in the State of Illinois. In the next year, we are planning to build and improve some 1,000 miles more. The improvements are in safety, as in all other features of road-building. We expect, for example, to have the new breakaway road-sign available for our highways in all corners of the state. The new East-West extension of the Illinois Toll Road will include the most modern safety features in the country.

Second, We must make sure there are safer drivers in those cars. I will soon ask the General Assembly to enact a breath test law for Illinois, as proposed by the Governor's Traffic Safety Coordinating Committee. We are presently one of only four states without such a measure. This bill will allow the suspension for three months of the driver's license of anyone who refuses to take a breathalyzer test when arrested for drunken driving.

Underlying this law is the notion that driving on the state's highways is a privilege which carries with it certain responsibilities. It is assumed that an individual who earns a license implicitly agrees in advance to take the test in the event he is arrested for drunken driving. If he elects to abrogate his part of the agreement by invoking his constitutional right against self-incrimination, then the state is empowered to withdraw its privilege by suspending his license.

This law is a good one. The test is a good one. The procedure is recommended by the National Highway Traffic Safety Administration and is supported by the Illinois State Bar Association. It is the most important single measure in the alcohol-control aspect of our traffic safety program.

Third, We must work to get safer cars on these new roads. I soon shall suggest to the General Assembly legislation that will require that all new cars sold in Illinois by 1973 be designed to withstand an impact up to five miles per hour. This Safe Bumper Law is just a start. In addition, we plan not only to support the U. S. Department of Transportation in its quest for safer cars, but we are going to search for further ways to make them mandatory in the State of Illinois. We must continue to insist that automobile manufacturers increase their efforts to improve the safety and durability of today's cars and make them less susceptible to theft.

Fourth, We must continue our vigorous program of enforcement of traffic laws, a program which in the last two years has shown remarkable progress and success. During that period we have expanded the State Police force in Illinois by 200 men. That is an increase of almost 15%. Not only have we given the State Police more men, we have also given them new equipment—the most modern equipment available in law enforcement. One result has been a significant increase in the number of arrests and convictions for traffic violations.

This year we will concentrate on an extensive series of new in-service training programs for all State Police personnel. We will double the staff of the safety education unit in an effort to bring safe driving information to more and more of our citizens. We will continue to provide our State Police with the most modern law enforcement equipment available.

In addition, I have asked the director of the Department of Law Enforcement to conduct an in-depth study to determine whether a further increase in the size of the Illinois State Police force is desirable. The director will make his recommendations to me on this matter no later than September 1, 1971.

Fifth, The Coordinator for Health Services has proposed an exciting and imaginative plan for the statewide organization and coordination of medical facilities which can be utilized for the emergency care of people who are critically injured, including injured victims of highway accidents. It is the first such statewide plan in the country and could easily become the model for the nation.

I have asked the Coordinator of Health Services, the State Comprehensive Health Planning Agency and the Department of Public Health to take whatever steps are necessary to ensure the initiation, implementation, and coordination of this much-needed program. I ask all state agencies to lend their full cooperation in this effort to make Illinois the leader in resolution of this problem.

Sixth, The Department of General Services is to be commended for its efforts in providing the safest possible state-owned motor vehicles for use by state employees. I have asked the Department of General Services to survey what the state can do to further ensure that state-owned motor vehicles are the safest available and that they are equipped with the latest in safety features.

Seventh, I have asked the Secretary of State to explore new ways in which Illinois can participate even more fully in the National Drivers Register. This service allows for the exchange of information among the various states regarding drivers' license suspensions, revocations, and convictions for traffic offenses. With complete and current information exchange, we can live up to our obligations under the Drivers License Compact and remove chronic offenders from our streets and highways.

Eighth, I have asked the Illinois Commerce Commission to survey the increasing hazards posed by grade level railroad crossings throughout the state and recommend procedures by which we can speed the installations of protection systems at these locations. In addition, I

shall soon suggest legislation which will increase by 50% the amount of state money contributed to the Railroad Grade Crossing Protection Fund.

There are over 16,000 highway/railroad grade crossings in Illinois. Illinois has many more miles of main line railroad and a far greater volume of railroad traffic than any other state. Protection devices have been installed at nearly 900 crossings since the Grade Crossing Protection Fund was established 15 years ago. Yet 100 people are killed each year in the state at railroad crossings. We must expand our efforts to eliminate such hazards.

Ninth, We must make people more aware of the need for traffic safety. Recently I appointed an individual to serve as an adviser to the governor on traffic safety. She will keep me informed of the latest advances in traffic safety as well as advise the public of the critical necessity for improved highway safety.

In addition, the Governor's Traffic Safety Coordinating Committee is currently engaged in an extensive public information campaign directed toward making our roads safer. The "Illinois Traffic Alert" program which is funded by that committee has reminded drivers all over this state of the increased need for traffic safety.

Tenth, I shall continue to encourage the members of the Governor's Traffic Safety Coordinating Committee to continue their efforts to identify safety problem areas. We must develop solutions that can quickly bring Illinois into compliance with the National Highway Safety Act and into the position of the Number One Safety State in the Nation.

* * *

These ten points in our Illinois Safety Program are only the beginning. We must — and we shall — go further.

Fortunately, some of the programs which we have pursued in the past two years are now beginning to show results. Illinois had the lowest automobile death rate in 1970 than in any year since Illinois began keeping records almost a half-century ago. Traffic deaths were down almost 10% over 1969. Some 200 lives were saved! Illinois now has one of the fastest declining automobile fatality rates of any state in the nation.

There is no single reason for this success. It is the result of a determined balance among the elements of the driving environment—better roads, safer cars, better licensing and stricter law enforcement. However, we must not be satisfied so long as there are people killed or injured on our highways.

We have committed ourselves to the betterment of our society, to an improvement in the quality of life for every man, woman and child in Illinois. We must work together in making our highways safer, in making the whole environment and experience of driving a more pleasurable one. It will take constant vigilance on the part of us all.

It is only through resolute purpose and formidable effort that we can make Illinois first in traffic safety.

SPECIAL MESSAGE ON

INSURANCE

RICHARD B. OGILVIE
GOVERNOR OF ILLINOIS

TO THE

77th GENERAL ASSEMBLY

THURSDAY, MARCH 25, 1971

To the Honorable, the President of the Senate, the Speaker of the House, and the Members of the 77th Illinois General Assembly:

The turbulence of recent years has been accompanied by an erosion of confidence in our private enterprises as well as our public institutions. In another day of unrest, Abraham Lincoln said that "the dogmas of the quiet past are inadequate to the stormy present." This simple, direct call for *progress* is relevant to the rising concern over insurance protection for the public.

Insurance is an institution which has fundamental importance for our society. It is a medium of protection that is vital to our personal and family security, as well as to commercial growth. It affects the lives of every one of us, and is an important element of consumer costs. It is an institution built upon private enterprise and personal responsibility, yet an institution which enables the community to share the costs occasioned by accidents and disasters.

Insurance is one of the great industries of Illinois. Each year, Illinois residents pay more than \$4.5 billion in insurance premiums. The state of Illinois annually collects tens of millions of dollars in taxes and fees from the more than 1,350 insurance companies doing business in this state. More than one hundred thousand people in Illinois depend upon the insurance industry for their livelihood.

It is our responsibility as public officials to see that the insurance industry as a medium of protection and investment truly operates in the best interests of the consumer. The qualities of fidelity and trust must be inherent in every insurance enterprise. The need to maintain these qualities requires our state government to assume a significant regulatory role in safeguarding the interests and welfare of the insured and the insurer alike.

Today, mindful of the importance of the soundness of insurance as an institution, I am submitting to you my recommendations on matters of insurance reform which I believe to be of special concern.

* * *

Legislative Proposals

Most of us are only too aware of the problems which Illinois residents may encounter in the area of automobile insurance. People are angry. They are angry about increases in insurance premiums, the relative unavailability of certain insurance coverages at reasonable costs, seemingly arbitrary cancellations, unsatisfactory claims settlements, unreasonable court backlogs, and insolvencies of insurance companies.

These are problems of deep concern to the consumer. When they arise, they become major problems in people's lives, and they should be of concern to elected officials, government agencies and the insurance companies themselves.

During the last several months, the Illinois Department of Insurance, in cooperation with the Insurance Laws Study Commission, has formulated one of the most extensive legislative programs ever presented to the General Assembly. These legislative proposals will grant additional authority to the Illinois Department of Insurance to protect the general public from those few unscrupulous agents, brokers, and insurance companies who would coldly defraud the consumer.

This program consists of more than 25 major proposals. They include legislation to:

1. Increase the capital and surplus requirements for new and existing companies, and to require increased security deposits consistent with the liabilities which the companies undertake. In addition, the department would be

given authority to act where the continuation of a pattern of operations would tend to create a hazardous financial condition at some time in the future.

2. Bring out-of-state mail order companies and holding companies under the regulatory authority of the department, and to give the department more authority over annual financial statements which are submitted to the department, as well as in situations in which companies fail or refuse to comply with department directives.
3. Increase the amount of brokers' bond from \$1,000 to an amount more commensurate with the brokers' important responsibility to their clients, the policyholders.
4. Require insurance companies to report agents who "involuntarily" resign for reasons connected with integrity or ability.
5. Expand the availability of insurance by requiring all companies to participate in a broadened automobile assigned-risk plan.
6. Give the department authority to require improvement and expansion of the "Fair Plan" — the property insurance program for the residual or marginal market.
7. Create an insurance insolvency fund which will provide protection for the innocent person who is the policyholder or claimant of an insurance company which becomes bankrupt.
8. Modify the existing reparations system — the system by which individuals who are injured in automobile accidents receive compensation for their injuries.

I should like to expand on the significance of several of these proposals.

Insolvencies

Perhaps the most urgent proposal pertains to the enactment of an insurance insolvency fund law for Illinois. The Department of Insurance has repeatedly urged the passage of such a bill, which would

provide protection for the person who is a policyholder or claimant of an insurance company which becomes bankrupt and goes through liquidation.

Let there be no doubt about my position on this matter. I unequivocally pledge my wholehearted support to the effort to give the citizens of Illinois an insolvency fund law. *This law must be enacted at the earliest possible date.*

Illinois has had a dismal record of insurance company liquidations. Within the last 13 years, 29 insurance companies have been placed in liquidation in Illinois — more than in almost any other state. Twenty-six of these companies were declared insolvent and placed in liquidation prior to 1969.

The bankruptcy of these companies has created severe hardships for many innocent persons: Approximately 300,000 in Illinois have had policies with or claims against at least one of the now-defunct companies. Liquidations have, in many instances, left injuries unredressed, hospital bills unpaid and unpayable, people incapable of supporting households, and the lives of individuals and families in shambles.

The protection of innocent policyholders and claimants against insurance company liquidations is a continuing problem and a serious concern of mine. It is one which relates not only to those policyholders and claimants who are involved with the liquidation, but also to the reputation and structure of the insurance industry of Illinois. Twenty-six other states have enacted some form of insurance guarantee fund law — most within the last two years. Illinois, a leading insurance state, must take similar action.

The protection of people against possible future insolvencies of insurance companies must not, however, be our only goal. We must also dedicate ourselves to the expediting of claims against those companies which have already been declared insolvent and placed in liquidation, and to the avoidance of any continuation of regulatory policies that have failed to prevent insolvencies.

Present liquidation procedures are slow and cumbersome. Only after all claims against a particular company in liquidation have been evaluated and the amount of payment agreed upon can money be paid to claimants. Our present liquidation procedures, which are *required*

by state law, even at optimum efficiency may not permit the payment of claims for many months — or even years. Claimants are frequently forced into borrowing money, using up savings, or occasionally declaring bankruptcy while awaiting the resolution of their claims. And more often than not, people with legitimate claims receive only a fraction of the amount to which they may be entitled.

When I entered office two years ago, there were 22 insurance companies still in the process of being liquidated. During 1967 and 1968, only one company — with only 14 claims — was closed out and the claimants of that company paid.

In January of 1969, I ordered a detailed study to be made of the companies in the process of being liquidated in order to establish a priority system for the closing out of as many claims and companies as possible. Within two years, the Bureau of Liquidations of the Department of Insurance evaluated more than 37,500 individual claims and closed out ten of these 22 estates.

More claims were evaluated and more liquidations terminated in two years by the bureau than in the ten years prior to 1969. Some claimants who had been waiting for a decade finally received payment.

Of course, our obligations extend beyond the enactment of an Insurance Insolvency Fund Law and the expediting of claims against insolvent insurance companies. We must *prevent* insolvencies.

During the last two years a revitalized Department of Insurance generated and implemented a new approach to insurance regulation. The goal of this young program is to prevent insolvencies. Regulation for "solidity" attempts to do this by placing greater emphasis on determining the financial trend of the company. It is designed to forecast, by the use of computer analysis and other modern management techniques, whether the current condition and operation of the company will allow it to remain viable.

The traditional concern of state insurance departments has been to determine whether insurance companies meet the minimum requirements imposed upon them by law. Should a company fall below the minimum legal requirements, it is placed in liquidation. Regulation for solidity does more than accept this bare minimum scrutiny.

Prevention of Abuses

The operation of insurance companies according to the letter and the spirit of the law continues to be one of our major concerns. We are equally concerned, however, with looking to the future ability of a company to meet all requirements and to remain a viable, going concern. In this way, we intend to prevent companies from becoming insolvent.

Our determination to engage in a forward looking, scientific policy of insurance regulation is also reflected in the department's budget for next year. For the year prior to my entry into office, the budget for the Department of Insurance was \$2.6 million. For 1972, I have recommended a budget of \$4 million, permitting an increase in staff to about 300.

Such an investment of money and personnel is both necessary and proper. It is the duty of the state to protect its 11 million residents and the tens of billions of dollars which they have paid in premiums to obtain protection.

With the 45 new staff members the department hopes to hire in the coming year, the examination and auditing of insurance companies can bring about even stricter compliance with the law. The department's consumer complaint division will be expanded. A new electronic data processing system will provide better supervision of company activities. There will be more efficient processing of the more than 151,000 licenses issued annually by the department.

Our goals must be the protection of the consumer and the enlightened regulation of the industry. Beyond the protection of the consumer, we must provide the opportunity for the vast number of hard-working and responsible agents, brokers, and companies to receive the public trust they deserve.

Rates

Any consideration of insurance must address the question of auto insurance premium rates. We are all aware of the increases in these rates during the past several years.

Automobile insurance in Illinois currently operates under a competitive rating system law which expires on August 1 of this year. The Department of Insurance has recommended that the system be permitted to continue.

Some argue that the present system has not been in operation long enough for proper evaluation of it to have been made. There may well be reason to extend the system's lifetime in order that its usefulness may be determined conclusively.

This question deserves the most serious consideration by this General Assembly. The alternatives to the present system should be considered as well. Our ultimate concern must be the impact which our actions will have, both in the short term and over the years, upon the delivery of insurance services to the people of this State. It is my hope that the system which is finally adopted, after a trial period satisfactory to the General Assembly, will at least *stabilize*—and possibly *reduce*—the spiraling cost of automobile insurance. The policyholder must be provided the best possible insurance coverage at the lowest possible cost.

We must not forget, however, that the most effective way to reduce the cost of auto insurance is to reduce the number and severity of auto accidents. The cost of automobile insurance will continue to go up as long as the number of automobile accidents increases, as long as the cost of automobile repairs goes up, and as long as more and more people are injured and killed.

Lower rates will not come until we have made an unparalleled effort to take the drinking driver and the reckless driver off the road. This means we need an implied consent law with teeth in it, now.

Lower rates will not come until automobiles are built to withstand minor accidents and to provide more protection in major accidents.

Lower rates will not come until all of our roads and highways are built with safety as an uppermost concern.

Accident Reparation

Various proposals have been recommended in Illinois and other states concerning changes in the automobile reparations system—the system by which individuals who are injured in automobile accidents receive compensation for their injuries. One of the major goals of each of these proposals is to stabilize or to reduce the cost of insurance, but they also seek to alleviate human anxiety and speed justice.

Earlier this year, I requested the Illinois Department of Insurance to evaluate those proposals. That report will be submitted in the near future.

It is my belief that any recommendations must, at a minimum, provide:

- Extra insurance service and protection for drivers, passengers and pedestrians.
- Immediate payment to the insured of medical bills, lost wages, and other expenses — while the victim is in the hospital or recuperating — not years later upon settlement of a court case.
- Payment to policyholder claimants of a greater percentage of the total premium income of the companies; the present payment rate under bodily injury liability coverage is now only about 50 per cent.
- Sanctions to prevent the filing of fraudulent law suits.
- Reduction of court backlogs.

Nothing could more endanger our driving environment than the knowledge that the most reckless of drivers will not be held accountable for their actions. The tort and criminal system of law, as well as the insurance rating system, should be strengthened in order to deter the dangerous driver and to shift the cost of accidents to the individuals who are primarily responsible for automobile accidents and deaths.

We have heard a great deal about the unacceptable backlog of cases which now clog many of our courts, primarily in our urban areas. In the Circuit Court of Cook County, it takes almost five years for a case to come to trial and hence, for the accident victim to recover his losses.

There is no doubt that through better and more efficient operation of the court system this backlog of cases can be eliminated—or at least reduced. That is not the only answer, however.

We should strive not only to handle the existing cases more efficiently, but also we should attempt to decrease the number of law suits which are filed. These are several ways of doing this. Certainly part of the solution is actively to discourage the filing of fraudulent law suits by severely increasing the penalties for such action.

In addition, we should work toward a reparations system which does not encourage victims of automobile accidents to file unnecessary law suits in the first place. A more effective means of handling relatively minor automobile cases should be developed so that accident victims can obtain relief without having to go to court.

It has been estimated that approximately 75 per cent of the automobile injury cases which are filed in the Circuit Court of Cook County involve claims of less than \$3,000. Most of these are settled without ever going to trial. And yet the accident victim frequently waits several years before receiving payment for claims. An alternative to this procedure must be developed.

* * *

Doubtless there are persons who will disagree with certain of these proposals—some because they are too extensive, others because they are not radical enough.

But I would hope that no one would disagree with the need for progress in the problem areas which I have identified. The causes for dissatisfaction are clearly visible. And I would hope that no one would deny, in this encompassing industry so deeply involved with the public interest, that we have duties which must be met to correct past oversights, to rebuild public trust, and to provide for a better future.

Recognizing these overriding concerns, I urge that in considering these proposals each of us might doubt a little of our own infallibility and work for legislation which seeks to improve the institution of insurance in Illinois.

In this spirit I ask your cooperation, and pledge you mine.



ILLINOIS DEPARTMENT OF INSURANCE

RICHARD B. OGILVIE, GOVERNOR

JAMES BAYLOR, DIRECTOR

AUTO REPARATIONS IN ILLINOIS

.....

THE ILLINOIS PLAN

AN EQUITABLE PROGRAM FOR REFORM

MARCH 31, 1971



STATE OF ILLINOIS
DEPARTMENT OF INSURANCE

JAMES BAYLOR
DIRECTOR OF INSURANCE

March 30, 1971

525 WEST JEFFERSON STREET
SPRINGFIELD 62706

STATE OF ILLINOIS BUILDING
160 NORTH LA SALLE STREET
CHICAGO 60601

Honorable Richard B. Ogilvie
Governor of Illinois
Springfield, Illinois 62706

Dear Governor Ogilvie:

Your recognition of the inadequacies of the reparations system relating to damages arising out of automobile accidents is most significant to the citizens of our State. That system, having developed over generations, has come about in a piecemeal fashion unrelated to any overall plan. Its inadequacies have become manifested in many ways.

Although cynics or those with vested interests may urge the status quo remain, we believe a change according to an extensive plan can provide more realistic benefits to a greater number of injured persons, can bring relief to existing deficiencies - both without affecting adversely the rights of our citizens or taking away the advantages of the existing system.

The human element in damages arising out of an automobile accident can never be equated to, that is, having no sameness as, the materialism which exists in the present reparations system. With people primarily in mind, we have developed an improvement in reparations for our Illinois citizens.

Having had thousands of contacts in the Department of Insurance with members of the public who have come to us for help in dealing with their situations arising out of automobile accidents, we have given careful consideration to the problems they face. Representing both plaintiffs and defendants, lawyers have conferred extensively with us as they are aware of their clients' needs. Recognizing that the primary source of benefits for automobile injury reparations will come from the insurance companies, we have discussed with the men who manage those companies their role, their ability to provide the needs as we have pointed them out. Realizing that Illinois is unique, we have talked to other insurance commissioners not only to obtain their views toward our program but also to learn how they are going about providing the needs of the people in their states so that overall we shall obtain compatibility. Developed to the greatest extent in detail by Mr. Vincent B. Vaccarello, Chief Deputy Director of the Department of Insurance, the program we present reflects the changes to meet Illinois' needs.

As we have worked to create this program since September 1970, we are interested to note Secretary of Transportation John A. Volpe's statement before the Senate Commerce Committee on March 18, 1971. He, as do we, "see no point in dwelling here on the problems and disabilities of the present system...the present system is not working well and should be changed." What we propose does "begin promptly to shift to a first-party, non-fault compensation system for automobile accident victims...done in such a way that we can reverse ourselves if the actual performance does not meet our expectations." Our plan does provide "that all medical and rehabilitation costs be recoverable from the victims' own insurers on a first-party, non-fault basis."

I emphasize that what we propose will not make any radical departure from the traditional American judicial system. Rather does it call for a supplement to it. In so doing we anticipate that that judicial process can serve even more effectively the significant matters of litigation for which it was designed. Nor would we abandon the concept of personal responsibility. Rather would we augment that in mandatory extension of the benefits of first-party coverages to persons injured by the person insured. His responsibility to them would be met without a legal determination of fault.

By the adoption of the Illinois Plan, our State will be in the vanguard of improvement to the reparations system. In so doing we shall fulfill by action our promise, "In The New Illinois, We Accommodate!"

Very truly yours,

James Baylor
James Baylor
Director of Insurance

TABLE OF CONTENTS

Foreword	i
List of Tables	iii
I. A Review of the Deficiencies in the System	1
II. Proposals for Reform - Past and Present	5
III. Conclusion	10
IV. The Illinois Plan	13
V. The Illinois Plan: A Discussion of the Recommendations	17
VI. Legislative Proposals	31
VII. Bibliography	49

AN EQUITABLE PROGRAM

FOR

REFORM IN THE PRESENT SYSTEM OF AUTO REPARATIONS

I. A REVIEW OF THE DEFICIENCIES IN THE SYSTEM.

The effects of motor vehicle accidents continue to impose an increasingly heavy financial and personal burden on every consumer in Illinois and involve a waste of human and economic resources far greater than is generally realized.

In 1969, over 30 million vehicles, one out of every 4 on the road, were involved in 2 million accidents which killed more than 56,000 persons and injured more than 5 million others. Auto accidents cost the citizens of this country over 16 billion dollars a year - \$375 for the average family of 5 - and place tremendous burdens on our judicial systems and society in general. The evidence points to further increases in these statistics.

From 1962 through 1969, the annual national highway death toll climbed 38 per cent; the number of injuries increased almost 50 per cent; and economic losses from traffic accidents spiraled from \$8.5 billion to \$16.5 billion, a jump of 94 per cent. It is reasonable to presume the upward trend will continue.

The human costs - the pain, injuries, fatalities, heartbreak and loss of loved ones - are borne directly by the accident victims and their families, but the total economic loss and the costs of accidents in Illinois are shared by every consumer in Illinois.

In addition to increased insurance premiums, the burden of these costs is shared in many other ways, including:

State and federal funds to those in need of financial or medical assistance;

Taxes to support and expand the judicial systems;

The increased cost of goods and services managed by the highway system.

If these direct and indirect total costs to each citizen of Illinois were computed it would stagger the imagination of even the most disenchanted consumer.

Recognizing the enormous dimensions of the problem, Governor Richard B. Ogilvie, in a special message on traffic safety delivered January 28, 1971, to the members of the newly convened 77th Illinois General Assembly, stated in part:

"Highway safety - rather the lack of it - has been a source of deep sorrow and shame in the American past. It is not a new problem suddenly thrust upon us and dubbed a crisis.

"For too long we have lived, and too often died, with conscious awareness of this tragedy. It is high time that we set our sights, marshal our resources and make steadfast our commitment to erase this blight from our land. The citizens of Illinois deserve no less....

"The statistics of highway horror in Illinois are all too familiar: thousands of lives lost each year; tens of thousands of people injured, crippled, or maimed; millions of dollars worth of property destroyed; skyrocketing insurance rates and repair bills; valuable resources of a healthy society wasted in this senseless carnage....

"When we speak of re-ordering the priorities in American life we must speak not only of national issues, but of eliminating the inequitous and costly experiences of everyday life....

"... we have heard much about revolutionary methods of insuring autos, as well as insuring auto passengers, drivers and pedestrians. Certainly, insurance is a vital part of the cost factor in our driving environment.

"...I have requested the Illinois Department of Insurance to examine and evaluate the various programs which have been recommended in Illinois and other states concerning changes in the automobile reparations system...."

The excessive costs generated by these frequent and expensive accidents have resulted in ever-expanding, valid, widespread public dissatisfaction with the present system of automobile accident reparations. The often repeated criticisms of the present system are that it is incomplete; it is inequitable; it is inefficient; it promotes exaggerated claims; it is slow, and it is expensive.

Because the present system of automobile reparations involves the application of tort law principles, it results in the denial of recovery to many persons injured in auto accidents even though, the laws of negligence are not always applied as written and many more claimants recover than would be expected under the law. Despite this elasticity the system provides only a partial and too often incomplete answer to the problem of reparations for injuries sustained in auto accidents.

In evaluating whether the system is an efficient and equitable means of distributing the cost of auto accidents, rather than offering protection to individuals from the financial consequences of their own negligence, studies demonstrate that the system often pays too much for minor injuries and too little for serious ones. Under the liability system a seriously injured person may receive considerably less than his economic losses while inflated settlements of relatively minor claims are made in order to avoid the cost of litigation.

Another inequity in the system is the high cost of auto insurance for those who live in congested urban areas. This congestion, coupled with the haphazard nature of loss payments under the system, produces higher than average accident ratios and claims without any compensating relief from loss expenses or payments.

The payment of general damages such as pain and suffering promotes and encourages falsification, dramatization and exaggeration of injuries. Claimants are prone to distort and obscure the truth in order to obtain higher settlements or verdicts. This leads to a cynical and socially undesirable situation which both subverts the purposes of insurance and adds unnecessary substantial costs to the present system.

Delay in the payment of economic losses is inevitable due to a settlement process which requires the determination of facts not easily obtained and the evaluation of legal liability. Although only a small portion of claims are actually tried, payments in the non-litigated claims are subject to time-consuming bargaining and compromise. Where there is a serious loss, the delay in reaching settlement may be extended considerably. Court congestion, where it exists, aggravates the problem.

Another deficiency in the system becomes apparent through the comparison that less than \$.50 is paid out of the auto bodily injury liability premium dollar as a benefit to claimants, but \$.67 of the workmen's compensation premium dollar and at least \$.90 out of the group accident and health premium dollar is paid to claimants. The comparative difference is in part due to the relative costs of determining fault and the settlement process.

As a result, lawmakers, regulatory officials, consumers and others have been evaluating virtually every aspect of the system of auto reparations to determine how inefficiently it is operating and whether it serves the best interests of the public.

Included in this evaluation is an examination of the traditional legal process for determining fault and damages for injuries suffered in automobile accidents.

In an appearance before the Senate Antitrust and Monopoly Subcommittee, on December 15, 1969, T. Lawrence Jones, President of the American Insurance Association, presented evidence that a major segment of the auto insurance industry was undergoing a process of critical self-analysis when he stated:

"The American public deserves a better automobile insurance system than it has today - one that will be available to all people; one that will provide payments promptly and as expenses are incurred; one that will provide rehabilitation and productive contribution to society; and, one that will have more reasonable costs, fairly allocated."

A number of studies, including the recent comprehensive investigation by the United States Department of Transportation, have been highly critical of this system and have urged its improvement or reform.

On October 7, 1970, in a statement delivered before the Senate Commerce Committee, Secretary of Transportation John A. Volpe said the facts developed in his Department's two-year study of automobile insurance demonstrate that changes in the present system are needed and that reform "offers its best opportunities at the state level."

The existing system, he said, "is not serving the accident victim, the insuring public and society as well as it should. We should seek to improve its performance.

"The factual findings of the Department's study of the motor vehicle accident compensation system make it evident to me," he continued, "that improvements can be made in a way to redress losses sustained in auto accidents.

"...the extensive study we have conducted dramatically demonstrates that the scale of the auto accident problem has simply become so immense that the techniques which may at one time have been adequate may no longer be sufficient, in every respect, to present-day realities. What we must do now...is begin the search for a more effective, more efficient way of meeting this challenge."

The overriding goal, he said, "should be a compensation system that is efficient, offers greater flexibility and choice, is fair, gives maximum incentives to loss reduction, and that in the final analysis, does a better job of repairing victims' losses than the one we have today."

II. PROPOSALS FOR REFORM - PAST AND PRESENT.

The criticisms leveled at the system are not of recent origin. They have persisted for at least 40 years. As far back as 1932 a proposal entitled the "Columbia Plan" outlined an auto compensation system which eliminated damages for pain and suffering, eliminated the right to tort recovery and provided a schedule of benefits similar to workmen's compensation.

In the 14 years from 1932 until 1945, a variety of ideas and alternatives surfaced; however, no changes of any substance were enacted into law, nor was any impetus for change generated, except in the Province of Saskatchewan, Canada.

In 1946, the Province of Saskatchewan enacted a low benefit compulsory coverage for compensation in cases of death, medical expense and loss of income arising out of automobile accidents - without regard to fault. The Plan includes compulsory bodily injury and property damage liability insurance and comprehensive physical damage insurance, including collision, with a \$200 deductible for private passenger cars. Under the no-fault personal injury compensation coverage, weekly indemnity is provided for a maximum of 104 weeks at \$25 and at \$12.50 for a similar period for partial disability. The maximum death benefit is \$5,000 for a primary dependent and \$1,000 for a secondary dependent. with a maximum of \$10,000 for one death. Dismemberment benefits are provided up to \$4,000 and there is a supplementary allowance of \$2,000 for out-of-pocket expenses. Benefits are deducted from any liability award. The no-fault coverage, as well as the compulsory liability and physical damage coverage is written only by the Government while private insurers write any excess desired by the consumer.

Because the Saskatchewan Plan was, at that time, considered a radical departure from the traditional concepts of auto reparations, it did not produce any great movement for change in other areas of North America and the various proposals for reform in the system continued to pass unnoticed - except in the academic community - for the next 15 years.

From 1960 to 1965 the subject of court delay, increases in claims, lawsuits and rates, as well as other deficiencies which led to the current criticisms of the system, began to surface and relief was sought on an individual problem-by-problem basis. Proposed solutions led to the initiation of advance payments and other experiments to relieve the claims cost problems, emphasis on the pretrial disposition of law suits and a number of other innovations. Hindsight demonstrates, however, that the real problem was the need to develop a comprehensive, organized and coordinated approach which would have recognized each situation as a symptom of the total auto

reparations problem, rather than each as an unrelated problem. Had this been the case a solution might have been achieved containing a series of related modifications to the system wherein each of the modifications would have complemented and increased the effectiveness of the others. Even if such a plan had been proposed it is reasonable to conclude from their past histories that the various vested interest groups affected would have combined to defeat it, regardless of need. Proponents of reform, undaunted by these obstacles and the general lack of interest displayed, continued to press for change with little success and even less publicity or attention - until 1965.

In 1965, Professors Robert Keeton of Harvard and Jeffrey O'Connell of the University of Illinois Law Schools published a study entitled "Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance." This study presented a far-reaching indictment of the existing tort liability system as applied to auto insurance; proposed radical changes in the system; and included a complete model statute which propelled their recommendations out of the realm of theory into the arena of hard practicality.

The Keeton-O'Connell Plan essentially provided for: elimination of tort liability in auto accident cases where out-of-pocket losses are under \$10,000 or pain and suffering is under \$5,000; and compulsory first party insurance up to \$10,000 to meet all economic losses of whatever kind arising out of automobile accident injuries.

As early as 1967, Keeton-O'Connell bills were introduced in several states including Massachusetts, Michigan, Minnesota and here in Illinois by Representative Anthony Scariano. In Massachusetts the bill passed in the House of Representatives but failed to obtain passage in the Senate. In other states where it was introduced, the Keeton-O'Connell type of bill received very little attention or action. However, the introduction of these concepts began to focus a considerable amount of attention on the system of auto reparations and stimulated interest in the criticisms made about the system.

As soon as it became apparent that serious consideration was being given in many quarters to plans similar to the Keeton-O'Connell proposals, various insurance company executives, insurance oriented associations and a number of organized bar groups quickly began condemning the proposals as solutions which abandoned traditional principles of personal responsibility and deprived injured parties of opportunity for full and complete redress of wrongs.

Major insurers, as well as two of the largest insurance trade associations, also attacked some of the cost saving assumptions

included in the Keeton-O'Connell proposal as highly questionable while a third insurance trade association initiated a study of the proposals.

In 1968, the Commonwealth of Puerto Rico enacted a law containing a series of proposals, similar to the Saskatchewan Plan, which provides compensation to persons injured in automobile accidents, regardless of fault, through a monopolistic commonwealth fund. All medical costs are covered. There is a maximum benefit of \$5,000 for dismemberment. For other injuries the scale is 50% of salary with a \$50 maximum for 52 weeks and a \$25 maximum for the next 52 weeks. Common law actions are not barred but the party responsible has immunity to the extent of recovery under the act. Immunity does not apply where recoverable loss exceeds \$1,000 for physical and mental suffering, including pain, humiliation and similar damages, nor where damages exceed \$2,000 for other injuries.

Apparently motivated by a growing interest in the possible inequities and shortcomings of the auto reparations system, the Congress of the United States, in 1968, authorized the commencement of a two year study by the Department of Transportation on the subject of automobile insurance. In addition, Senator Philip A. Hart of Michigan, Chairman of the Subcommittee on Anti-trust and Monopoly of the Senate, began to conduct hearings on the subject. These activities have resulted in volumes of research and reporting.

In September of 1968, a leading insurance trade association published a response to the Keeton-O'Connell proposal which concluded that the principal defect in the Keeton-O'Connell proposal was its retention of the tort system for major claims and its limitation of recoveries. The association recommended a complete first party no-fault program in which all economic losses would be paid without regard to liability or fault and with no overall limit on the amount recoverable. The Plan included a limit of \$750 per month for wage loss with optional higher limits available to those whose earnings suggest a need for higher limits.

This total no-fault plan invoked another round of written and vocal opposition from the bar groups and the remainder of the insurance industry. By this time, however, the growing awareness of the subject among the general public and the news media had led to substantial editorial reaction. The overwhelming majority of newspaper, radio and TV reaction was favorable to modifications in the system of auto reparations.

As interest in the Keeton-O'Connell and other proposals continued to expand, those opposed to abandonment of the tort system devoted considerable time in an effort to analyze the existing system for areas in which improvements could be made without radical departures from established tradition. One of the most widely publicized of these proposals was a series of changes introduced by former

Insurance Commissioner Cotter of Connecticut. These changes include provisions for mandatory first party coverage of medical expenses up to \$2,000 and wage loss up to \$500 per month; limit pain and suffering recovery in tort action to 50% of reasonable medical expenses less than \$500 and 100% of medical expenses over \$500; and provide for mandatory arbitration of claims under \$3,000 and a limit of 25% on contingent fees for plaintiff attorneys.

During this period various insurance industry executives and trade associations began to advocate support for a limited modification of the tort system along the lines of the Cotter Plan; however, the bar groups remained rather constantly opposed to virtually all proposals for change.

Unfortunately the general public has come to apply the label of "no-fault" to virtually everything that has been proposed with the result that recently developed plans and legislation have been labeled as "no-fault" programs in spite of the fact that some of them make absolutely no inroads into the fault concept. The application of this "no-fault" label generates a great deal of negative reaction from those who would presume that any plan with that label involves an abandonment of the tort system, or at least a radical change in it, whereas just the opposite is usually true. This reaction, coupled with the opposition of vested interest groups, has erected formidable barriers in the path of those who would propose any enlightened remedial modifications in the system.

During 1969 and 1970, the impetus for change continued as proposed legislation and recommended changes were introduced in Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, West Virginia and Wisconsin. In Illinois, Senate Majority Leader W. Russell Arrington introduced a series of legislative proposals similar to those contained in the "Cotter Plan" while Representative Anthony Scariano re-introduced a plan which embodied the Keeton-O'Connell concepts. In spite of the fact that both measures received a considerable amount of attention, neither generated sufficient support for passage at that time.

Although legislation was enacted only in Minnesota and Massachusetts, the proposals became, in many cases, the basis for generating additional interest, concern and study. As a result, a number of responsible states have established commissions to evaluate the need for change.

The Minnesota Plan, which became effective January 1, 1970, requires all auto insurance companies to offer an optional first party coverage in their policies with an option on the part of the insured to reject this coverage. The required coverage might be described

as an expanded medical payments coverage. It provides at least \$2,000 for medical expense and \$60 per week for at least 52 weeks in wage loss. Also required is a \$10,000 minimum death benefit. Such payments are subrogable so that the insured may not recover the same amounts in tort action. It is unlikely that this plan will have a significant impact on auto insurance costs because it is optional and a high rate of rejection of the coverage has taken place.

The Massachusetts "Compulsory Personal Injury Protection Plan" which took effect January 1, 1971, provides for a mandatory first party medical and disability coverage with benefits up to \$2,000 total for both medical expenses and 75% of loss of wages and salary. Insurers have subrogation rights for amounts paid under the first party provisions. Tort actions for special damages can only be brought if the special damages exceed \$2,000. No pain and suffering award is permitted in any action unless the medical expenses exceed \$500 or there is death, dismemberment, disfigurement, loss of sight or hearing, or fracture.

The more recent proposals for change and demands for reform have not been limited to the United States. Since January 1, 1970, the Province of British Columbia has been following a plan called "Enriched Accident Benefits" which provides for compulsory insurance including personal injury benefits on a no-fault basis under a fixed schedule, with option to sue the 3rd party. The first party benefits include reasonable medical expense reimbursement, a \$5,000 death benefit, and weekly payments to a surviving spouse. Medical and rehabilitation expenses are paid as accrued and weekly disability indemnity and 80% of salary are paid in amounts up to \$50 per week, possibly for life.

On February 12, 1970, Superintendent Richard Stewart of New York published a report, endorsed by Governor Rockefeller, in which he recommended a full no-fault program. This proposal included unlimited medical and lost income benefits with elimination of tort liability. Wrongful death was excluded from the plan. A bill encompassing these changes was introduced in New York that year and hearings were held; however, the proposals failed to obtain passage because of the broad sweeping changes they sought to make in the tort system.

Consumers Union, in its July 1970 issue of Consumer Reports, generally embraced the idea of no-fault insurance, primarily on the theory that it would save money and that the consumer would get more satisfactory treatment when dealing with his own company than he does in a third party situation.

On September 14, 1970, Senator Hart introduced Senate Bills 4339 through 4351 (the Uniform Motor Vehicle Insurance Act). These bills include a first party benefits system providing unlimited benefits for reasonable and necessary medical, hospital and

rehabilitation costs and up to \$30,000 for loss of income or for surviving dependents of wage earners. The Act permits tort actions only for catastrophic injury cases and in death cases when the amounts involved are in excess of their reimbursed economic loss. No action of substance has as yet resulted from these proposals. We anticipate that early this year The Department of Transportation will also offer a comprehensive proposal. The direction in which it seems to be moving reflects that its proposal will be a sweeping federal recommendation in terms of mandatory no-fault coverages and extensive limitations in the tort system. To date it has published over 20 volumes on its studies and findings.

III. CONCLUSION.

Our examination and study included an evaluation of material from representatives of state insurance departments and the federal government; recommendations which have been considered in other states, notably Connecticut, Massachusetts and New York; statistical compilations, legislative research and public attitude surveys; the results of field experiments with new claims-handling methods; as well as bar and industry proposals.

Our discussions with regulatory officials from other major states support our conclusion that immediate steps must be taken to provide the consumers of Illinois with the type of relief which will serve to remedy the deficiencies in the system of auto reparations. The consumer must be offered the possibility of relief from those situations which have contributed to insurance rate increases year after year. He must be offered protection from the economic losses and the financial burdens suffered as a result of injuries received in an automobile accident, and the protection must be made promptly available to him. The consumer should also be provided with a means to obtain the prompt resolution of those issues which become the subject of dispute.

Our study of the thousands upon thousands of complaints which this department annually receives from those consumers who have been the victims of the deficiencies in the system, leaves no doubt in our minds about the need for prompt and effective relief. These complaints cannot be discounted or ignored as the disgruntled outcries of but a few of the millions of consumers. On the contrary, consumer surveys have provided ample evidence that the complaints which actually surface are representative of thousands of other disenchanted consumers.

The many and varied plans, studies, proposals and counter-proposals reviewed presented interesting contrasts. Although almost everyone interested in the situation agrees that a problem exists and something should be done, viewpoints differ widely regarding the type of changes indicated. However, they can be basically categorized as either evolutionary or revolutionary.

At one extreme end of the scale are the conservative evolutionists who urge that nothing be done other than very minor and often illusory modifications of court procedures and the adoption of measures which would permit damage recoveries in certain situations not now recognized. Some of these proposals, unfortunately, would raise costs to the already overburdened citizen in the form of additional, unwelcome premium increases, tax increases to expand the judiciary and other indirect costs with minimum, if any, offsetting benefits.

At the other extreme end there are the revolutionists who propose untried and unproven sharp departures from the traditional tort liability system such as the elimination of all personal accountability for destructive and negligent driving. To implement these departures would require extensive legislative and judicial changes and would result in a system compelling everyone to insure himself completely against all the consequences of injury and damage from another person's wrongdoing. These proposals have usually been supported by experts offering data predicting substantial decreases in insurance premiums. It should be noted, however, that these predictions have been challenged by many other equally prominent experts as unrealistic promises.

The Illinois consumer, plagued by the same problems that have led to criticisms of the system and the additional burden of ever increasing inflationary insurance rate increases, is entitled to a change that includes realistic proposals offering the hope of premium stabilization or reductions; however, surveys have also demonstrated that the public has never fully manifested the desire to obtain a system of compensation which benefits everyone alike, whether he is the wrongdoer or his victim; or which deprives the seriously injured citizen of his right to obtain damages for pain, suffering and other losses from the guilty party; or which divests him of his right to a judicial determination of issues - whether his case is large or small.

Following extensive review and analysis of the situations which Illinois consumers face, we concluded that modifications in the present insurance and tort liability systems are both necessary and inevitable in order to provide a solution which will best serve to resolve the problems and protect the rights and interests of the people of Illinois.

The most reasonable approach in obtaining a solution appears to be the development of a change in the system of benefits which is evolutionary in nature and which does not involve unnecessary radical departures to correct the existing deficiencies, and which adapts the system to current social, economic and judicial conditions.

We believe the Illinois Plan recommended in this study meets these criteria by fully utilizing concepts which have been tested and found suitably workable and responsive to a solution of the problems

presented by the present system. The Plan blends together the most desirable features of the many reform proposals studied, some of which have already been implemented by legislation in some states. Some of the recommendations represent innovations based on years of experimentation and research by insurance regulators, courts, insurers, various bar groups, the academic community and others.

The recommended proposals provide for the prompt compensation of the great majority of automobile accident victims, including many who now receive either little or nothing from the present system of auto reparations. This is accomplished by requiring all Illinois auto liability insurers to provide injured policyholders and guests, as well as injured pedestrians, with prompt payment of their hospital and medical bills, lost wages and other miscellaneous expenses up to certain stated amounts.

In this manner the Plan would also return to the policyholder a larger percentage of the premium which he pays in the form of benefits when he needs them most.

The Illinois Plan accomplishes these goals without proposing unnecessary changes in the tort system but rather, preserving, protecting and improving the opportunities of the citizen to obtain prompt and equitable adjudication of his rights in those cases where differences of opinion exist. This is achieved by reducing the need to litigate, thereby reducing the demands currently made upon the judicial system to a sound, workable level. This, in turn, will allow the balance of all types of remaining cases to be disposed of more speedily.

In addition, the Plan also retains accountability for negligent driving, thereby allocating the major share of the premium burden to those who present the greatest hazard; preserves the concept of responsibility in tort and protects an innocent injured party's right to recover additional damages from a wrongdoer over and above those compensated by the basic coverages provided in the Plan; adopts guiding standards governing general damages in the less serious cases; speeds up procedures for litigating small claims; stabilizes the cost of auto insurance by reducing nuisance claims and suits; attacks major cost ingredients, including fraudulent claims; cuts the overall cost of the auto reparations system; and assures availability to the public of optional excess coverage, at modest cost, which would raise the basic limits of medical and income continuation protection in the event of a major injury.

Implementation of the proposed Plan will offer Illinois consumers realistic opportunities for the stabilization of automobile insurance rates and will also result in the installation of a system which is designed to encourage the elimination of unnecessary costs

and expenses. The predicted economies afford the further possibility that the consumer will benefit in the form of future rate savings. These are opportunities which do not exist in the present system.

However, the Plan must not be judged by these factors alone. Its intrinsic value lies in the hope which it presents and the remedies which it provides for the deficiencies in the present system.

The recommended Plan will also obtain other essential and dramatic changes. For example:

1) Solidity: One of the more significant responsibilities of this department is to provide a system of regulation which will both minimize the possibility of financial impairments and insolvencies and which will result in the sounder financial condition of Illinois insurers. At the present time the evaluation of a company's financial condition depends to a large extent on the sufficiency of reserves in cases where damages are unliquidated, e.g. bodily injury. These reserves constitute the major portion of a company's stated liabilities and any insufficiency unmatched by adequate surplus funds would result in bankruptcy. The problem is compounded by court delays which cause the number of unliquidated claims to increase over and above the number a company should normally carry on its books. This Plan would substantially reduce the total dollar amount of questionable unliquidated liabilities through either their prompt disposition or their replacement by liquidated liabilities, or both, and result in a more accurate evaluation of their financial condition.

2) Market Capacity: There has been a great and valid concern about the inability or unwillingness of companies to offer liability insurance in certain areas. One of the reasons for this has been the high number of accidents and the personal injury claims which develop in these areas. Adoption of this plan should result in fewer claims of the 3rd party type and consequently enable insurers to write business which now ordinarily poses a greater liability risk.

IV. THE ILLINOIS PLAN.

Following is a brief outline of the major proposals recommended:

1. Mandatory Minimum Medical, Hospital, Funeral, Income Continuation and Loss of Services Benefits.

Every private passenger auto liability policy issued or delivered in Illinois must provide the following minimum 1st party benefits:

- A. Medical, hospital and funeral benefits: \$2,000 per person.
- B. Income continuation benefits: 85% of lost income subject to a benefit limit of \$150 per week for 52 weeks.
- C. Loss of services benefits: Reimbursement for expenses incurred to replace services ordinarily performed by an unemployed injured insured subject to a benefit limit of \$12 per day, for 365 days.

Applicable Notes

- 1) Benefits should extend to pedestrians.
- 2) Payments are deductible from Uninsured Motorists' Coverage.
- 3) Workmen's Compensation exclusions allowed.
- 4) No deductibles (1st day coverage).
- 5) The benefits should be primary and paid in addition to any other collateral benefits.

2. Excess Loss Coverages.

Every private passenger auto liability policy issued or delivered in Illinois must make available to the insured and members of his household - on an optional basis - coverage which will provide the following minimum benefits upon depletion of the mandatory coverages:

- A. Additional medical and hospital benefits.
- B. 85% of lost income subject to a benefit limit of \$150 a week for 260 weeks.
- C. Reimbursement for expenses incurred to replace services ordinarily performed by an unemployed injured insured, subject to a benefit limit of \$12 per day, for 260 weeks.
- D. Dependent survivors benefits of 85% of wages subject to a benefit limit of \$150 per week for 260 weeks.

Applicable Notes

- 1) Right of rejection permitted.
- 2) May be purchased in lieu of Uninsured Motorists' Coverage or benefits deductible from Uninsured Motorists' Coverage.
- 3) Workmen's Compensation exclusions allowed.
- 4) Minimum aggregate limits of 50/100 for all benefits.
- 5) Benefits should be primary and paid in addition to any other collateral benefits.

3. Limited Exclusions Permitted.

First party mandatory and optional excess coverages may exclude the payment of benefits where such payment would be in violation of public policy (to drivers of stolen vehicles, et cetera).

4. Prompt Payments of Benefits.

- A. Payments to all insureds should be made promptly upon receipt of proof of loss.
- B. Where losses can be reasonably presumed to extend beyond a 30 day period, partial payments should be made no less often than every 30 days.

5. Offset.

Benefits available to the insured from his insurer are deducted from any verdict or award obtained by the insured against a wrongdoer.

6. Subrogation and Inter-Company Arbitration by the Insurer.

- A. Companies are subrogated to the extent of any 1st party payments made.
- B. As a condition of doing business in Illinois, property and liability companies must be members of inter-company arbitration.
- C. Inter-company claims (B.I.,P.D., et cetera) must be processed through binding inter-company arbitration.

7. Uninsured Motorists.

- A. All payments made under any 1st party coverage are deductible from the insurers Uninsured Motorist Coverage liabilities.

8. Advance Payments.

- A. Prompt payments of property damage losses in cases also involving personal injury and partial advance personal injury payments should be encouraged.
- B. Evidence of advance payments should not be admissible and payments should be credited against any settlement or verdict.

9. General Damages.

Except in serious cases such as those which involve death, dismemberment, disfigurement, permanent total disability

or permanent partial disability, damages for pain and suffering should be limited to 50% of the first \$500 of medical expenses and 100% of the excess over \$500.

10. Arbitration - \$3,000.

Court supervised mandatory arbitration should be provided in all auto injury or property damage cases where the amount in controversy is \$3,000 or less, with rights to a trial de novo. Arbitration of matters not in litigation should be permitted.

11. Fraud.

Monetary penalties, imprisonment and the mandatory temporary suspension of all licenses involved in the acts of the participants (medical and legal licenses, et cetera) should be enacted as penalties for participation in fraudulent claims.

12. Medical Discovery.

All claimants and insureds should be required to furnish medical information and submit to physical examinations.

SUMMARY.

Implementation of the recommendations proposed are designed to result typically in this situation for the Illinois citizen:

- 1) The injured insured victim of an auto accident will be able to obtain prompt payment (every 30 days) for the majority of his medical expenses, lost wages and miscellaneous expenses without having to sue or make a claim against another company, but he will still have the right to sue or make a claim against the wrongdoer for those expenses or general damages for which he does not have benefits available under his auto policy.
- 2) In the event he must sue to recover, he should be able to receive a prompt trial because:
 - a. Nuisance claims will have been eliminated from the trial calendar; and,
 - b. Inter-company disputes will have been removed from the trial calendar.

If the amount in controversy is less than \$3,000, he will have the right to prompt arbitration of the dispute. But, if the

amount exceeds that, he will receive a speedy trial because of the removal of many cases from the courts by this Plan.

In effect, his own insurance company pays most of his losses on behalf of the alleged wrongdoer's company and then, without clogging up the courts, the company attempts to collect from that alleged wrongdoer's company the amounts advanced.

V. THE ILLINOIS PLAN: A DISCUSSION OF THE RECOMMENDATIONS.

1. Mandatory Minimum Medical, Hospital, Funeral, Income Continuation and Loss of Service Benefits.

The legal system and insurance system of auto reparations have been criticized on the following grounds among others:

Too large a percentage of the insurance premium dollar is spent on fees and court costs, in comparison to the recoveries by injured parties.

In cases where liability by a negligent wrongdoer may exist, investigation and negotiation of the claim and litigation create a delay between the time medical bills and wage losses are incurred and the claim is settled.

An accident victim is not assured a source of compensation for his losses when he is injured in a one-car accident, or in a multiple car accident where liability is impossible to determine or does not exist.

Neither the system of liability insurance coverage nor the traditional legal tort system applicable to automobile accidents was ever intended to compensate everyone injured in all types of situations. It undertakes only to provide a policyholder with protection in the event of an action against him and to give an accident victim a remedy where another person negligently caused his injury.

However, remedies within the insurance system are available to meet these problems. The Illinois Plan requires that all insurance companies issuing private passenger automobile insurance policies in Illinois provide coverage for the prompt payment of the following benefits:

- 1) Medical and Hospital Benefits: Payment of expenses for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services, up to a limit of \$2,000 per person.

- 2) Income Continuation Benefits: Payment of 85% of the income (including salary, wages, tips, commissions, fees, et cetera) lost by an income or wage-earner, up to a limit of \$150 per week for 52 weeks per person.
- 3) Loss of Services Benefits: Where the person injured was not an income or wage producer at the time of the accident, payments of benefits in reimbursement of expenses incurred for services ordinarily performed by the injured person, up to a limit of \$12 per day for 365 days per person injured.

These benefits are payable automatically, to the policyholder, members of his family, permissive users of the insured car, guest passengers in the car and pedestrians struck by the car.

The policyholder and his family will be protected not only in accidents involving the insured car, but where injured either while occupying or by being struck by a car that is not covered by similar coverage.

According to research conducted in connection with auto insurance studies performed by the Department of Transportation, approximately 95% of the persons injured in automobile accidents incur income losses of less than \$7,800 and medical expenses of less than \$2,000. With the coverages proposed, the vast majority of auto accident victims will receive prompt payment of their medical bills, regardless of the type or cause of accident, plus income loss payments up to the prescribed minimum limits.

Except for injuries covered by workmen's compensation systems, payment under these coverages must be made irrespective of whether the injured party receives benefits from other sources, such as employer wage continuation payments, unemployment compensation payments of accident and health insurance, etc. In this manner the system of auto insurance reparations provides the remedy to correct its own deficiencies, rather than receiving the direct benefits paid by - and intended for - others.

To the extent that there is any duplication of benefits from collateral sources, the elimination of that duplication should provide a considerable amount of relief in those areas, and enable those non-auto consumers and insurers, as well as employers, employees, unions and others to obtain either expanded and more comprehensive benefits within their systems or reduced rates.

Even though the Plan provides prompt payment of most of the economic losses which the injured victims suffer, they are not prevented from making a claim against the wrongdoer, or his insurance company, for other damage or losses they may have incurred as a result of the accident, including pain and suffering.

This recommendation should result in a substantial reduction of litigation, especially in those questionable liability cases where the injured victim is forced to sue or make a claim because he has no other means of obtaining compensation or reimbursement for his economic loss. In addition, it would also return a greater portion of the premium to the person who paid it - the policyholder - when he needs it most. In effect these coverages force the insurer to pay damages which the injured victim might otherwise have to resort to litigation to obtain.

2. Excess Loss Coverage.

The Department of Transportation study, as well as other recent studies of the auto reparations system, has devoted considerable attention to the problems of seriously injured persons who do not have a source of insurance or other funds available to cover all of the economic losses they suffer. These include victims of single car accidents, victims of questionable fault accidents and others who have no legal right to recovery against a third party, as well as those with a valid right of recovery, but whose losses are so great as to exhaust their own benefits as well as the liability limits of the party at fault.

To correct this problem the Illinois Plan offers a proposal which will neither alter the present tort system nor deprive the seriously injured of valuable existing rights and remedies.

We recommend that "Excess Loss Coverage" be offered with every private passenger automobile insurance policy covering the policyholder and his family when the benefits under the basic coverage have been depleted for expenses and losses up to an aggregate \$50,000 limit per person and \$100,000 per accident, regardless of the type or cause of the automobile accident. The "Excess Loss Coverage" would provide these benefits:

- 1) Medical Benefits: Payment of expenses for medical surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services, with a \$2,000 limitation of the benefits payable for funeral services.
- 2) Income Continuation Benefits: Payment of 85% of the income (including salary, wages, tips, commissions, fees, et cetera) lost by an income or wage-earner, up to a limit of \$150 per week for a period of 260 weeks per person.
- 3) Loss of Services Benefits: Where the person injured was not an income or wage producer at the time of the accident, payments of benefits in reimbursement of expenses incurred for services ordinarily performed by the injured person, up to a limit of \$12 per day for 260 weeks.

- 4) Survivor's Benefits: In death cases, payment to a dependent wife or child, of a survivor's benefit of 85% of the income the deceased earned, up to \$150 per week for a period of 260 weeks.

For the many Illinois motorists who do not have other comprehensive medical income continuation insurance programs, this optional coverage will afford extensive loss protection at a very low cost and will provide a simple and inexpensive way to obtain broad general coverage which might not otherwise be carried by the insured.

The overall cost of this insurance would be reduced even more if the named insured purchases this coverage in lieu of Uninsured Motorists Coverage. In that event he would have the additional benefit of coverage for all of his major economic losses without the need to establish liability, as is the case with Uninsured Motorists Coverage.

For the same reasons as have been advanced with respect to the mandatory coverages, it is our recommendation that this coverage be primary and offer payment regardless of collateral sources.

3. Limited Exclusions Permitted.

Insurers are permitted to exclude benefits to those injured persons whose illegal, anti-social or intentional actions led to or caused the injuries involved; however, the benefits recommended would still be payable to innocent victims injured by or as a result of these acts.

4. Prompt Payment of Benefits.

In order to provide immediate payment to the injured person, the Plan provides that payment of all benefits must be made every 30 days, even though the medical expense, loss of income or other expenses continue for a longer period of time.

This provision will enable the victim to begin prompt payment of his bills and avoid the consequences the average income earner faces when he loses his source of income and faces unpaid bills.

In order to avoid arbitrary or capricious denial of claims or delay in their payment, we further recommend that the insurer pay the victim triple damages for a wilful or wanton denial or delay in the payment of his benefits.

5. Offset.

To avoid duplication of payments within the system for the same losses and to further minimize costs, the benefits available under the coverages provided should be deducted from any settlement or award the injured party obtains.

6. Subrogation and Inter-Company Arbitration by the Insurer.

As outlined earlier, under this Plan an injured person retains the right to make a claim or to sue a wrongdoer for any damages for which he is not entitled to compensation from his own insurer, including general damages (pain and suffering). However, the insurer is subrogated to the extent of any first party payments made. This is a continuation of the concepts pursued ordinarily in the case of first party payments.

In order to reduce court congestion and provide the innocent victim with an opportunity for a relatively prompt trial in the event of a dispute, every effort must be made to eliminate or reduce the amount of litigation which can be resolved through other means.

Many of the cases which are currently pending in Court involve disputes between insurance companies. They arise most frequently when a company has paid its policyholder and then tries to collect from the company which insures the alleged wrongdoer.

These cases have added unnecessarily to the problem of court congestion. Each of these pending cases prevents another necessary case from receiving a prompt trial.

Under the Illinois Plan the issue of which insurance company should ultimately bear the losses paid must be resolved by mandatory binding inter-company arbitration. Only where demonstrably necessary will subrogation action be permitted.

As a result the benefits will be paid to the injured victim first and then the companies must decide between themselves which should bear the loss. The Plan requires all companies to belong to this system of inter-company arbitration and has the effect of preventing them from using the courts to resolve this type of dispute among themselves.

This form of arbitration, combined with the benefits afforded by the system of small claims (\$3,000) arbitration should provide the type of relief which will enable all parties to obtain a prompt judicial resolution of matters in dispute - whether they are serious or minor in nature.

7. Uninsured Motorists.

The Plan proposes a continuation of the system of allowing the insurer to deduct from the benefits payable under Uninsured Motorists Coverage the benefits which the insured has already received for the same damages or losses from the insurer.

8. Advance Payments.

In those cases in which liability has not yet been established but the probability exists that a policyholder may be held liable, most enlightened companies have adopted the practice of making advance payments to injured victims to cover medical and other expenses as they accrue. In instances where serious injuries are involved, these have often included rehabilitation treatment. This financial assistance enables the injured victim to recover as quickly as possible without having to exhaust savings, incur extra debts or reduce his standard of living as a result of his economic losses. Persons to whom these payments are made are not required to sign a release, and retain their right to sue; however, the amount advanced is later deducted from the final settlement.

In order to encourage an expansion of this concept, the Illinois Plan recommends that advance payments or offers of advance payments made by a person or an insurance company as an accommodation to a person who is injured or who has sustained a property damage loss, should not be construed as an admission of liability in any subsequent judicial proceedings. It is also intended to further promote the practice by liability insurance companies of making immediate advance payments for property damages in those cases where the party is not ready to settle or to present a final claim for injuries. This proposal will eliminate the excuse that the making of such payments without requiring a release is or may constitute an admission of liability.

This recommendation, together with the proposal providing for immediate payment of basic medical expenses and income losses, should aid greatly in providing automobile accident victims with quick payment for basic economic losses, including the cost of prompt repairs to, or replacement of, their damaged automobiles.

9. General Damages.

T. Lawrence Jones, President of the A.I.A. and a leading proponent of a total no-fault system presented some very accurate and persuasive criticisms of the system when he recently observed that:

"The other cancer in the existing system is payment for indeterminate damages or dignitary harms, chiefly the so-called pain and suffering. This is the catch-all category of damages that introduces great evils and great expenses into the auto insurance system. Not without reason has it been said that awards for pain and suffering pander to the 'jackpot urge.'

"As for expenses, payments for indeterminate damages, or non-economic losses, account for 58 per cent of each dollar of insurance benefits paid to claimants. This becomes particularly noticeable in the lower range of awards where people regularly collect three, four and even more than seven times their actual economic losses. Unfortunately, the people who are seriously injured and for whom payments for pain and suffering would be more just and more understandable are not the ones who receive these insurance bonanzas. Many of them barely recover their economic losses, even when awards for indeterminate damages are included.

"...We do not deny that pain is real or that people often experience substantial inconveniences as a result of an auto crash. The issue is whether dollars can remedy that pain, particularly dollars given long after the pain has gone. Even if one accepts the contention that dollars buy pleasure and pleasure compensates for pain, it is still important to weigh that dubious benefit against the evils that these immeasurable damages bring into the reparations system. Here are eight of those evils:

"1. The system becomes discriminatory. Because pain itself is not measurable in dollars, the controlling factors become the status and appearance of the plaintiff and his ability to arouse the sympathy of the fact finder; the nature of the personal wrong; the character of the defendant (a corporate target or an inoffensive individual); race, nationality and ability of the plaintiff to communicate. Obviously, there can be great disparity between awards to two people suffering the same injury and the same pain. As a matter of justice, is one man's pain worth more or less money than another's?

"2. Because dollars cannot alleviate pain, they introduce a profit factor into the system. This creates the temptation for exaggeration, if not for outright fraud.

"3. Dramatization of injury encourages over-utilization of medical facilities, which already are burdened, impeding recovery and creating psychological impact on the injured party.

"4. Loss of respect for the legal profession for its role in helping build up the appeal of the plaintiff's case. Hence, the appellation 'ambulance chaser.'

"5. A degrading of the medical profession, creating a whole class of doctors who are required to aid in the construction of the plaintiff's case.

"6. A loss of respect for the courts and our system of jurisprudence. For many people, their only contact with the courts is an auto accident litigation, and they form the impression that all litigation is the same kind of 'grand lottery.'

"7. The immeasurable nature of the element of damages actually encourages litigation, contributing to court congestion and thereby preventing our judicial manpower and resources from being used to better advantage in the proper handling of criminal cases.

"8. The fact that they are the major cause of the rising cost of auto insurance. Instead of insurance costs rising in direct proportion to the increases in medical expenses and salary losses, they go up more, the result of the multiplying of those items by a factor for pain and suffering."

The Special Committee on Automobile Insurance Problems of the National Association of Insurance Commissioners, in a 1969 report, stated, in part:

"P & S involves the luxury of permitting highly speculative nonpecuniary damages when other victims may be only partially or not at all compensated for their economic losses.

"Furthermore, there is a certain aversion to a system paying the most to persons who try to maximize their pain and suffering and paying the least to victims who try to minimize it....

"...in considering the question of costs we must be careful as to the role of pain and suffering in any given proposal.

"Pain and suffering awards have been and are an important element in the existing system. Furthermore, they have been a highly visible element to the public. Viewpoints can be expected to vary from individual to individual and perhaps from area to area. This is a highly volatile subject involving deep seated feelings, the legal profession and the legal system. The issue raises significant questions of public policy.

"On the other hand, the National Safety Council points out six principal classes of accidents: motor vehicle, work, home, public, farm and school. For many accident victims there is no recovery. But a substantial percentage are protected under accident and health coverage, workmen's compensation, social security, etc. These do not provide compensation for pain and suffering. Thus, there is wide public acceptance of the absence of pain and suffering benefits...."

Proponents of total no-fault programs advance these reasons as a basis for urging the total abolition of all right of recovery for pain, suffering and other intangible elements of general damages.

While we agree that these reasons validly demonstrate the need for remedial action in the area of intangible damages, we believe that the total or substantial elimination of this basic right of recovery would be unwarranted and contrary to the interests and desires of Illinois citizens. It would mean that recovery for pain and suffering would no longer be available for a young man seriously disfigured or scarred in an accident, or a person badly crippled for life by a reckless driver, or those who have lost an arm or leg or suffered a loss of sight, hearing or any of the other vital senses.

We do not believe the public will - or should - accept proposals which would deprive them of the right to damages in these and similar situations of serious injury. These conclusions appear to be well supported by the results of public attitude surveys which we have reviewed.

In our opinion the remedial action necessary lies in the establishment of reasonable governing standards designed to control relatively unwarranted payments and awards in minor injury cases; stabilize or reduce the cost of the system; and resolve the more frequently expressed criticisms of the present system governing compensation of injuries in automobile accidents. These can be generally summarized as follows:

- 1) Too much of the premium dollar goes for so-called pain and suffering ("intangible" damages) and not enough for purely economic losses.
- 2) Seriously injured persons with valid claims sometimes fail to recover all their economic losses, while settlements and awards to those with minor injuries or exaggerated claims average several times their economic losses.

- 3) Pain and suffering damages in cases of minor injuries are so nebulous as to be difficult or impossible to measure objectively.

The Illinois Plan proposes that awards for pain, suffering, mental anguish and inconvenience be limited to an amount equal to 50% of the first \$500 of reasonable medical and hospital treatment expenses and 100% of such expenses over \$500 with no limitations to those cases which involve death, permanent total or partial disability, disfigurement or loss of limb.

Under this proposal, damage awards for pain and suffering in the case of seriously injured persons such as those in the examples presented will continue to be determined exactly as they are at present, without any statutory limitations. However, awards to persons with minor injuries involving no permanent complications will be subject to the standards.

10. Arbitration - \$3,000.

Another of the most widely publicized criticisms of automobile accident consequences is the length of time often required to litigate an automobile accident personal injury matter in the courts. The tremendous number of auto accidents and the necessity for determining their cause and evaluating the resulting injuries and damage occasions some delays, especially where disagreement arises as to either of those issues.

Viewed from the standpoint of both time and cost, the system is least efficient where it involves litigation of the smaller cases - those entailing minor injuries, or just property damage. The time and expense involved in the trial of a lawsuit under the traditional judicial system can be justified in controverted cases involving thousands of dollars, but it is inefficient to utilize the same expensive and time-consuming process for the determination of every disputed small claim.

The solution can be achieved by remedial steps within the basic structure of the system.

On February 17, 1958, the Municipal Court of Philadelphia installed mandatory arbitration for all cases in which the amount in controversy was under \$2,000 (last year the limit was raised to \$3,000). Prior to 1958, a backlog of cases had built up, causing trial delays of 24 to 30 months. From 1958 through 1967, this system of arbitration resulted in the disposition of more than 60,000 cases while the waiting period for a regular trial was reduced to three months. By 1968, the delay was reduced so significantly that it became possible to obtain a trial in 30 days.

According to Philadelphia's commissioner of arbitration, Alex Bonnie, "this program has been successful due to the cooperation and enthusiasm of the lawyers themselves. Service on the arbitration panel is purely voluntary, and yet we have a pool of 2,500 lawyers to draw from. It's especially heartening to see the young men just recently admitted to the bar coming in to sign up for duty as arbiters. And, of course, the current list of prospective panel members includes many senior members of the bar, prosperous practitioners with busy calendars, who still answer the call of public service."

Public acceptance of the system, as well as its acceptance among claimants appears very high. Daniel P. Ryan, a member of the Defense Research Institute, says, "In the 10 year period ending on December 31, 1967, over 62,000 cases were referred to arbitration. Statistics on concluded cases indicate an appeal rate of less than five per cent, and only a small percentage of appealed cases have been actually tried. Of those tried, a majority have resulted in disposition similar to that of the arbitration panel." Adds Ryan about the arbitration system in general, "This plan was greeted with skepticism when first suggested. However, one cannot quarrel with its success. I urge the compulsory arbitration of small claims as an ideal solution to the backlog problem in appropriate jurisdictions."

Arbitration of small claims not only assists in clearing up court backlogs, it also reduces costs. The cost of arbitrating a case is about one-tenth the cost of trying the same case in court. This significant difference is largely attributable to the elimination of the costs of salaries for court personnel, maintenance of court rooms, payment of jurors and other court expenses.

During the last 10 years the actual cost per case has turned out to be approximately \$65, a figure which is many times less than the average cost of a court trial.

The only major challenge to the system was on constitutional grounds. Shortly after passage in 1952 of the legislative act allowing county courts to set up arbitration panels, the act's constitutionality was challenged on the grounds that it was a violation of the due process guarantee of the Fourteenth Amendment and the right to trial by jury conferred by the Pennsylvania Constitution. However, the act was upheld by the Pennsylvania Supreme Court on the basis that reasonable conditions could be imposed on a litigant's right to a regular court trial.

Critics of arbitration have said that the simplified procedure encourages the filing of new claims. However, in an article published in 1968, the former arbitration commissioner, Frank Zal, stated that he could find no evidence of this, but only evidence of increased settlements of claims before suits are ever instituted.

Occasionally it is charged that the flexibility and informality of mandatory arbitration tends to break down the traditional safeguards built into the judicial process. One can argue, however, that justice is best served by speedy disposition of cases, and as former commissioner Zal reported in 1968: "It is almost the universal opinion among all litigants trying their cases in mandatory arbitration that justice is administered with real judicial-like stature...justice is being meted out with courtesy and businesslike efficiency." Commissioner Bonnie says that the continuing success of the system means that the limit for size of cases will probably soon be raised to \$5,000.

The encouraging achievements of the mandatory arbitration system in Philadelphia have led the International Association of Insurance Counsel, the American Trial Lawyers Association and the Defense Research Institute to consider it in other jurisdictions.

A similar system of arbitration was instituted on a three-year trial basis in New York State on September 1, 1970. As of December 31, 1970, the program, tested in Monroe County which includes the City of Rochester, had disposed of 151 of the 328 cases assigned. Of this total, 60 were settled and 91 disposed of by awards after hearing. An average of only 75 minutes was required for each case. Other areas of New York are indicating an interest in the program.

Arbitration, together with the other recommendations in this Plan, can provide an appropriate answer to the criticisms that the system is slow and expensive.

The success of arbitration in Philadelphia has established that a remedy for court delay - where it exists - can be found within the system without depriving our citizens of the right to a trial. The radical elimination of the tort system is not the only solution.

There is no reason to believe that a compulsory arbitration system for small claims would not lead to the same beneficial results in Illinois.

The Philadelphia Plan - Arbitration Statistics, 1958 to 1967.

Total cases referred to compulsory arbitration		66,025
Reports and awards filed	40,541	
Settled and discontinued cases	15,831	
Miscellaneous dispositions	<u>3,749</u>	
Total cases completed		60,121
Deferred cases	338	
Continued cases	626	
Hold cases (at request of counsel)	<u>2,234</u>	
Total cases in process but not ready for trial		3,198
Cases processed and pending before panels	<u>1,249</u>	
		<u>1,249</u>
Total cases processed		<u>64,568</u>
Unassigned cases		<u>1,457</u>

11. Fraud.

The law currently prescribes penalties for those convicted of intentionally making or attempting to make fraudulent personal injury or property damage claims. However, there is still widespread concern regarding the unabated continuation of these practices and the effect these claims have on the cost of automobile insurance. Recent investigations in Illinois and other areas have dramatically illustrated that some claimants, policyholders, garagemen, chasers, doctors, lawyers, organized fraud rings and others look upon the personal injury system as a way of making easy money. Although the number of fraudulent claims is small in comparison to the total number of claims, they constitute a serious threat to the integrity of the legal system, the premium paying public and those whose claims are valid.

These claims have become a significant factor in the cost of insurance and must be stopped.

The only significant way to combat fraudulent claims is to enact stronger legislative measures which will invoke deterrent penalties.

The Illinois Plan recommends that the penalties be increased and that the licenses of those convicted be temporarily suspended, pending the outcome of a hearing, where that license authorized the convicted felon to participate in the fraud in the capacity for which he was licensed (a lawyer representing a claimant, the treating doctor, etc.).

12. Medical Discovery.

Whenever an injury claim is made or a personal injury lawsuit has been filed, every effort should be made to obtain its prompt conclusion. Quite often the prompt disclosure of medical information enables each side to reach an early amicable settlement. In order to assist in these efforts we are recommending that steps be taken to provide for disclosure where it becomes necessary so to do.

VI. LEGISLATIVE PROPOSALS.

The following legislative language has been designed to provide examples of the type of statutory provisions which must be considered for inclusion in the final draft of the legislation necessary to implement the proposals made in this report.

Because the recommendations in this Plan involve various segments of the Statutes other than the Insurance Code, as well as the need to amend certain other existing provisions, it is not our present intention to draft and present these recommendations as one complete act or article.

The final draft of our legislative proposals will be prepared and submitted for consideration within the next 5 days.

Section .Mandatory Extension of 1st Party Coverages and Benefits.

(a) On and after the effective date of this Article every policy delivered or issued for delivery in this State insuring against loss resulting from liability imposed by law for accidental bodily injury or death suffered by any person arising out of the ownership, maintenance or use of any private passenger automobile registered or principally garaged in this State and insuring 5 or less private passenger automobiles, shall provide coverage affording payment of the following minimum benefits to the named insured and members of his family residing in his household when injured in any motor vehicle accident, and to other persons injured while occupying such insured automobile as guest passengers or while using it with the permission of the named insured, and to pedestrians struck by the automobile in accidents occurring within the State:

- (1) Medical, Hospital and Funeral Benefits: Payment of all reasonable and necessary expenses arising from the accident and incurred within one year from the date thereof for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services, subject to a limit of \$2,000 per person.
- (2) Income Continuation Benefits: Payment of 85% of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an income or wage-earner as a result of total disability arising from the accident, subject to a limit of \$150 per week for 52 weeks per person.
- (3) Loss of Services Benefits: Where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits shall be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of \$12 per day for 365 days per person injured.

(b) Every insurer subject to the provisions of paragraph (a) of this section shall also offer, at the option of rejection by the person named in the policy as insured, coverage affording payment of the following minimum excess loss benefits to the named insured and members of his family residing in his household upon depletion of the medical, income continuation and loss of services benefits provided by the insurer in the same policy and subject to a total minimum aggregate limit of not less than \$50,000 per person and not less than \$100,000 per accident:

- (1) Medical, Hospital and Funeral Benefits: Payment of reasonable and necessary expenses arising from the accident for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services; provided, however, that the benefits payable for funeral services shall not exceed \$2,000.
- (2) Income Continuation Benefits: Payment of 85% of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an income or wage-earner as a result of total disability arising from the accident, subject to a limit of \$150 per week for a period of 260 weeks per person.
- (3) Loss of Services Benefits: Where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits shall be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of \$12 per day for 260 weeks per person injured.
- (4) Survivor's Benefits: In the event the injured person dies within one year of the date of the accident, a survivor's benefit equal to 85% of the average weekly income the deceased earned during the 52 week period preceding the accident, subject to a limit of \$150 per week for a period of 260 weeks, shall be paid to a surviving spouse dependent upon the deceased for income, or, in the event there is no surviving spouse, to the surviving children dependent upon the deceased for income. Payments to a dependent surviving spouse may be terminated in the event such surviving spouse dies leaving no surviving dependent children or remarries. Payments to a dependent child may be terminated in the event the child attains majority, marries or becomes otherwise emancipated, or dies.

(c) As used in this Section, the term "private passenger automobile" means a sedan, station wagon or jeep-type automobile not used as a public livery conveyance for passengers, nor rented to others, and includes any other 4 wheel motor vehicle used as a utility automobile, pickup truck, sedan delivery truck or panel truck with a load capacity of 1,500 pounds or less which is not used primarily in the occupation, profession or business of the insured;

(d) The benefits set forth in this Section shall be paid by the insurer of the vehicle to the injured person except:

- (1) Where any person insured under a policy providing such benefits is injured in an automobile accident while occupying or being struck by an automobile not insured for such benefits under another policy, the benefits shall be payable by the insurer affording the benefits, provided, however, that such benefits shall be reduced to the extent of any similar automobile medical, income continuation, loss of services or survivor's benefits coverage available to the injured person under such other automobile policy.
- (2) No person shall recover benefits under the coverages prescribed in this Section from more than one policy or insurer on either a duplicative or supplemental basis.

(e) The benefits set forth in this Section shall be paid regardless of collateral sources, including but not limited to the existence of any wage continuation benefits except:

- (1) Such benefits shall not apply to any direct or indirect loss or interest of, or for services or benefits provided or furnished by, the United States of America or any of its agencies coincident to a contract of employment or of military enlistment, duty or service.
- (2) Such benefits shall be reduced or eliminated if the injured person is entitled to benefits under any workmen's compensation act of any state or the Federal Government.

(f) Whenever an insured shall purchase the excess coverage provided in paragraph (b) of this Section, the insured shall be notified by the insurer of his right to reject the coverage provided for under Section ¹ _____ of this Code.

¹

Refers to Uninsured Motorists Coverage

Section . Uninsured or Hit-and-Run Motor Vehicle Coverage.

(1) On or after the effective date of this Article, no policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be renewed or delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7-203 of "The Illinois Vehicle Code" for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, except that the named insured shall have the right to reject such coverage whenever the named insured purchases the excess loss coverage prescribed in Section of this Article.

(2) For the purpose of this coverage the term "uninsured motor vehicle" includes, subject to the terms and conditions of such coverage, a motor vehicle where on, prior to or after the accident date the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified in the policy because of the entry by a court of competent jurisdiction of an order of rehabilitation or liquidation by reason of insolvency on or after the accident date. An insurer's extension of coverage, as provided in this subparagraph, shall be applicable to all accidents occurring after the effective date of this Article during a policy period in which its insured's uninsured motor vehicle coverage is in effect. Nothing in this Section may be construed to prevent any insurer from extending coverage under terms and conditions more favorable to its insureds than is required hereunder.

(3) In the event of payment to any person under the coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, with respect to payments made by reason of the coverage described in paragraph (2) above, the insurer making such payment shall not be entitled to any right of recovery against such tort-feasor in excess of the proceeds recovered from the assets of the insolvent insurer of said tort-feasor.

Section . Exclusions Permitted.

(a) The insurance company may exclude benefits to any injured person covered under the policy, where such person's conduct contributed to the injury in any of the following ways:

- (1) intentionally causing injury to himself;
- (2) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;
- (3) operating a motor vehicle without a license or after suspension or revocation of this license;
- (4) operating a motor vehicle upon a bet or wager or in a race; and
- (5) while seeking to elude lawful apprehension or arrest by a police officer;
- (6) while operating or riding in a vehicle known to him to be stolen;
- (7) while in the commission of a felony; and

(b) The company may provide such other exclusions as may be approved by the Director of Insurance as consistent with public policy.

Section . Prompt Payment of Benefits.

(a) Payment of the benefits set forth under this Article shall be made promptly after valid proof of loss has been submitted to the insurance company. The existence of a potential cause of action in tort by any recipient of the benefits prescribed in this Article shall not obviate the insurer's obligation to promptly pay such benefits; provided, that if prior to timely payment by the insurer of such benefits, payment in whole or in part of his loss is received by the recipient from a third person who is or may be liable in tort for such loss, or from the agent or insurer of such third person, either by way of advance payment or settlement of the potential liability of such third person, the recipient shall disclose such fact, and shall not collect benefits hereunder to the extent that such benefits would produce a duplication of payment or reimbursement of the same loss. In the event of any duplication of payment or reimbursement of the same loss, and to the extent of the amount involved, the insurer may deduct said amount from any present or future benefits to which the recipient is or may be entitled.

(b) Payments under the coverages provided in this Article shall be made periodically on a monthly basis as expenses are incurred. Benefits for any period are overdue if not paid within thirty (30) days after the insurer has received reasonable proof of the fact and amount of expenses incurred during that period. If reasonable proof is not supplied as to the entire claim the amount supported by reasonable proof is overdue if not paid within thirty (30) days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty (30) days after such proof is received by the insurer. In the event the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same. In the event the insurer is required by such action to pay any overdue benefits, the insurer shall, in addition to the benefits received, be required to pay the reasonable attorney's fees incurred by the other party. In the event of a wilful refusal of the insurer to pay such benefits, the insurer shall pay to the other party, in addition to other amounts due the other party, an amount which is three times the amount of unpaid benefits in controversy in the action.

Section . Offset.

(a) If any person receiving or entitled to receive benefits under the provisions of this Article files an action for damages for bodily injury, sickness, disease or death arising out of the same automobile accident in any court in this State, such benefits shall be disclosed to the court, or in the event of arbitration of such action, to the arbitrators, and the value of such benefits shall be deducted from any award recovered by such person in such proceedings prior to the entry of a verdict or award and shall not be considered a part of the verdict, award or recovery obtained by such person.

Section . Subrogation and Arbitration by Insurer.

(a) Except as otherwise provided in this Section, where an insurance company has paid benefits provided under this Article to an injured person the company paying such benefits shall, to the extent of such payments, be subrogated to any right of action for damages by the injured person against the alleged wrongdoer.

(b) Every insurance company licensed to write insurance in this State pursuant to the provisions of Class 2 or Class 3 of Section 4 of the Code, shall be deemed to have agreed as a condition to doing business in this State or maintaining its license after the effective date of this Article that (1) where its insured is or would be held legally liable for damages or injuries sustained by any person to whom the benefits provided in paragraph (a) of Section 1 of this Article have been paid by another insurer, it will reimburse such other insurer to the extent of such benefits, but not in excess of the amount of damages so recoverable for the types of loss covered by such benefits or in excess of the limits of its liability under its policy, or (2) where its insured is or would be held legally liable for property damages or destruction sustained by any person to whom payment has been paid by another insurer, it will reimburse such other insurer to the extent of such payment, but not in excess of the amount of damages so recoverable for the types of loss covered by such insurance or in excess of the limits of its liability under its policy, and (3) that the issue of liability for such reimbursement and the amount thereof shall be decided by mandatory, binding inter-company arbitration procedures approved by the Director of Insurance.

(c) Any evidence or decision in the arbitration proceedings shall be privileged and shall not be admissible in any action at law or in equity by any party or parties.

Section . Uninsured Motorists Coverage.

All benefits provided under this Article may be deducted by the insurer from any recovery received by an injured person under Uninsured Motorists Coverage as defined by Section of this Code.

Section . Advance Payments.

(a) In any claim or action in tort brought against any person as a result of bodily injury, sickness, disease or death caused by accident and arising out of the operation, ownership, maintenance or use of a motor vehicle, the person against whom such a claim or suit for damages is made, or if such person is insured against loss by reason of his liability to pay such damages, the insurer of such person may make or offer advance payments to such claimant, or plaintiff, as the case may be.

(b) For the purpose of this Section, the words "advance payment" shall be construed to include, but are not limited to the following: Any partial payment, loan or settlement made by any person, corporation or insurer thereof, to another, which is predicated upon possible tort liability or under the contractual obligations of the insurer to the injured party or on his behalf, including but not limited to medical, surgical, hospital, rehabilitation services, facilities or equipment, loss of earnings, out-of-pocket expenses, death claims, loans, bodily injury or property damage, loss or destruction, and any offer thereof.

(c) This Section shall be applicable to any action commenced in this State, regardless of the situs of the accident, location of the property or residence of the parties.

(d) The making of an advance payment shall not interrupt the running of the Statute of Limitations, provided that any person, including any insurer, who makes such advance payment, shall at the time of the first payment, notify the recipient thereof in writing of the date the applicable Statute of Limitations will expire.

(e) In any action in which the defendant, his insurer or any other person has made or offered to make an advance payment to or on behalf of any claimant prior to trial, any evidence of or concerning said advance payment shall not be admissible in evidence or construed as an admission of liability in any action brought by the claimant, his survivors or personal representative, to recover damages for personal injuries or for the wrongful death of another, or for property damage or destruction.

(f) In the event, however, that such action results in a verdict in favor of the claimant the defendant shall be allowed to introduce evidence of such payments after the verdict has been rendered and the court shall then reduce the amount awarded to the claimant by the amount of payments made prior to trial.

(g) No such payment made pursuant to the provision of this Section by an insurer on behalf of an insured shall be construed to be in lieu of or in addition to the limits of liability of the said insurer under any existing policy of insurance, but such sums paid in advance shall be deemed to have been made pursuant to the limits of said policy and shall be credited to the insurer's obligation to the insured arising from such policy and shall be deducted therefrom.

Section . General Damages.

(a) In any action in tort brought as a result of bodily injury, sickness, disease or death caused by accident and arising out of the operation, ownership, maintenance or use of a motor vehicle within this State, such damages as may be recoverable for pain, suffering, mental anguish and inconvenience shall not exceed the total of a sum equal to fifty percent of the reasonable medical treatment expenses of the claimant if and to the extent that the total of such reasonable expenses is \$500 or less, and a sum equal to the amount of such reasonable expenses if any, in excess of \$500.

(b) For the purpose of this Section medical treatment expenses mean the reasonable and necessary value of services rendered for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services.

(c) The limitations prescribed in paragraph (a) of this Section shall not apply in cases of death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement.

(d) The court on its own motion or the motion of either party shall designate an impartial medical panel of not more than three licensed physicians, to examine the claimant and testify on the issue of the reasonable value of medical treatment services, or any other issue hereunder to which such expert medical testimony would be relevant.

Section . Mandatory Arbitration of Small Claims - \$3,000.

(a) In counties with a population of 200,000 or more inhabitants, the Supreme Court of this State shall, by Rules of Court, provide for the arbitration of all cases where the cause of action arose out of the operation, ownership, maintainance or use of a motor vehicle and where the amount in controversy may not exceed \$3,000, exclusive of interest and costs.

(b) In all other counties the Supreme Court of this State may, by Rules of Court, provide for the arbitration of all cases where the cause of action arose out of the operation, ownership, maintainance or use of a motor vehicle and where the amount in controversy may not exceed \$3,000, exclusive of interest and costs.

(c) The Court shall maintain a list of attorneys within its jurisdiction who have agreed in writing to serve as arbitrators, subject to the right of each attorney to refuse to serve in a particular assigned case and subject further to the right of any party to show good cause why an appointed arbitrator should not serve in a particular assigned case. The Court Rules shall provide that the case subject to arbitration shall be assigned for hearing to a single arbitrator selected by the Court from the list of arbitrators in reasonable rotation. Any party to arbitration may, upon payment of the additional costs involved therein, request that the arbitration hearing shall be before a panel of 3 arbitrators selected in the manner as provided. Any such request shall be filed, and the required payment made, at such time as the initial complaint or answer is filed with the Court.

(d) Cases which are not at issue and whether or not suit has been filed may be referred to arbitration by agreement of reference signed by counsel for both sides in the case. Said agreement of reference shall define the issues involved for determination in the arbitration and may also contain stipulations with respect to agreed facts, issues or defenses. In such cases, the agreement of reference shall take the place of the pleadings in the case and be filed of record.

(e) The Rules of the Court may provide for the taking of evidence in the form of reports, statements, itemized bills, or in any other manner without the procedural and evidentiary limitations which obtain in jury trials.

(f) The arbitration award shall be in writing, signed by the arbitrator or by a majority of the arbitrators, if it is heard by a panel of 3, and filed with the Court. The award shall be entered by the Court in its record of judgments, and shall have the effect of a judgment upon the parties unless reversed upon appeal.

(g) Except as otherwise provided in this Section, either party may appeal from an award of arbitrators to the Court in which the case was pending under the following rules:

1. The party appellant, his agent or attorney, shall make oath or affirmation that "it is not for the purpose of delay such appeal is entered, but because he firmly believes injustice has been done."
2. Such party, his agent or attorney shall pay all costs that may have accrued in such suit or action.
3. Such appeal shall be entered, and the costs paid, within twenty days after the day of the entry of the award of the arbitrator on the docket.
4. All appeals shall be de novo both as to the law and the facts.
5. The provisions of this paragraph shall not be applicable to those cases of arbitration heard pursuant to paragraph (d) of this Section.

(h) All arbitrators shall have such power to administer oaths or affirmations, to issue and enforce subpoenas, and to conduct the hearings, as the Rules of Court shall provide.

(i) This Section shall not apply to arbitration agreements between insurers, whether mandatory or voluntary.

Section . Fraudulent Claims.

(a) In any claim or action arising out of the operation, ownership, maintenance or use of a motor vehicle, any person who directly or indirectly (1) obtains or attempts to obtain, from any other person or any insurance company in this State, either as a policyholder or a claimant, any money or other thing of value by falsely or fraudulently representing that such person is injured or has sustained an injury or damage to property for which money may be paid by way of compensation for medical expenses incurred, wage loss sustained, or damages determined to be due as pain, suffering, inconvenience or damages of the same or similar nature, or (2) makes any statement, produces any document or writing or in any other way presents evidence for the purpose of falsely and fraudulently representing any injury or damage to property or exaggerating the nature and extent of such injury or damage, or (3) cooperates, conspires or otherwise acts in concert with person seeking to falsely and fraudulently represent an injury or damage to property or exaggerate the nature and extent of such injury or damage to property, shall, if the sum so obtained or attempted to be obtained is less than \$100, be fined not more than \$500 or imprisoned in a penal institution other than the penitentiary for not more than one year, or both; and, if such sum is \$100 or more, be fined not less than an amount equal to three times the sum or sums so obtained or attempted to be obtained or imprisoned not more than 10 years, or both.

(b) In those cases where, upon conviction under this Section for obtaining or attempting to obtain a sum of \$100 or more, the person so convicted participated in the obtaining or attempt to obtain the sum or sums involved under authority of any license or licenses issued by any unit of State or local government acting pursuant to the Constitution of the State of Illinois the court shall further order the immediate temporary suspension of the license or licenses involved and issued and shall mandate an immediate inquiry by the body or bodies charged with the responsibility and duty of issuing or supervising said licenses to determine whether said licenses should be permanently suspended or revoked.

Section . Medical Disclosure.

Any person who claims damages for personal injuries arising out of the operation, maintenance or use of a motor vehicle from another person or benefits therefor under an insurance policy shall upon request of the defendant or insurer from whom recovery is sought submit to physical examination by a physician or physicians selected by the defendant or insurer as may reasonably be required and shall do all things reasonably necessary to enable the defendant or insurer to obtain medical reports and other needed information to assist in determining the nature and extent of the claimant's injuries and the medical treatment received by him. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this Section, evidence relevant to such noncooperation shall be admissible in any suit or arbitration proceedings filed by the claimant for damages for such personal injuries or for benefits under any insurance policy.

Section . Authority of the Director of Insurance.

The Director of Insurance shall have the authority to issue and promulgate all necessary rules, regulations and definitions necessary to implement the provisions of Sections of this Article. He shall also have the authority to approve schedules of reasonable maximum benefit payments for specified medical services which insurers may incorporate into their policies of basic mandatory or optional excess coverages herein prescribed.

VII. BIBLIOGRAPHY.

BACKGROUND MEMORANDUM ON AUTO ACCIDENT REPARATIONS
and
RECOMMENDED PROGRAM FOR AUTO REPARATIONS IN ILLINOIS

- The Illinois Plan -

Considering the magnitude of literature on the subject of auto accident reparation systems, the following reference material is intended to provide a partial, yet responsible accounting.

A. Books, Booklets and Pamphlets

American Insurance Association. Report of the Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations. 1968.

American Mutual Insurance Alliance. Perspectives on Auto Insurance Reform, n.d.

Brainard, Calvin H. and Stephen A. Carbine. Price Variability in the Automobile Insurance Market. United States Government Printing Office, Washington, August, 1970.

Conrad, A. F. Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation. Ann Arbor, University of Michigan Press, 1964. 506 pp.

Connecticut, State of, Department of Insurance. A Program for Automobile Insurance and Accident Benefits Reform. Hartford, Connecticut, 1969.

Country Mutual Insurance Company. Policy Position: Automobile Insurance. n.d.

Day, John G. Economic Regulation of Insurance in the United States. United States Government Printing Office, Washington, July, 1970.

Defense Research Institute, Inc. An Analysis and Critique of An Automobile Insurance Proposal. Milwaukee, Wisconsin, 1969.

- Ferreira, Joseph, Jr. Quantitative Models for Automobile Accidents and Insurance. United States Government Printing Office, Washington, September, 1970.
- Henle, John. Rehabilitation of Auto Accident Victims. United States Government Printing Office, Washington, August, 1970.
- Hold, William T. Motor Vehicle Assigned Risk Plans. United States Government Printing Office, Washington, August, 1970.
- Insurance Information Institute. Existing and Proposed Auto Insurance Systems. New York, Spring, 1969.
- . Existing and Proposed Auto Insurance Systems. New York, Summer, 1970.
- . Insurance and the Automobile. New York, 1968.
- Jones, T. Lawrence. The Complete Personal Protection Automobile Insurance Plan. American Insurance Association, 1969.
- Keeton, Robert E. and Jeffrey O'Connell. Basic Protection for the Traffic Victim. Little, Brown & Company, 1965.
- Kimball, Spencer and Herbert Denenberg. Mass Marketing of Property and Liability Insurance. United States Government Printing Office, Washington, June, 1970.
- Klein, David and Julian A. Waller. Causation, Culpability and Deterrence in Highway Crashes. United States Government Printing Office, Washington, July, 1970.
- Market Facts, Incorporated. Consumer Attitudes Toward Auto Insurance. Chicago, n.d.
- Massachusetts Association of Independent Insurance Agents and Brokers. Special Report on Massachusetts Auto Insurance and other Relevant Laws. Boston, 1970.
- Olson, Douglas G. Insolvencies Among Automobile Insurers. United States Government Printing Office, Washington, July, 1970.

Olson, Douglas G. and August R. Ralston. An Analysis of Complaints in Selected Automobile Insurance Markets. United States Government Printing Office, Washington, July, 1970.

Reinmuth, Dennis F. and Gary K. Stone. A Study of Assigned Risk Plans. United States Government Printing Office, Washington, August, 1970.

State Farm Insurance Companies. The Massachusetts Personal Injury Protection Law: Position Paper. Bloomington, Illinois, 1970.

Stewart, Richard E. Automobile Insurance ... for Whose Benefit? State of New York Department of Insurance, New York, 1970.

United States Government Printing Office. To Senate Resolution 233, Automobile Liability Insurance. United States Senate, Hearing before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, Washington, July, 1968.

----- Automobile Accident Litigation. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, April, 1970.

----- Automobile Personal Injury Claims, Vol. I and II. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, July, 1970.

----- Comparative Studies in Automobile Accident Compensation. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, April, 1970.

----- Constitutional Problems in Automobile Accident Compensation Reform. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, April, 1970.

----- Driver Behavior and Accident Involvement: Implications for Tort Liability. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, October, 1970.

- Economic Consequences of Automobile Accident Injuries, Vol. I and II. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, April, 1970.
- Insurance Accessibility for the Hard-to-Place Driver. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, May, 1970.
- The Origin and Development of the Negligence Action. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, March, 1970.
- Public Attitudes Supplement to the Economic Consequences of Automobile Accident Injuries. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, September, 1970.
- Public Attitudes Toward Auto Insurance. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, March, 1970.
- Structural Trends and Conditions in the Automobile Insurance Industry. United States Department of Transportation, Automobile Insurance and Compensation Study, Washington, April 1970.

B. Prepared Papers

- American Mutual Insurance Alliance. General Bulletin, August 28, 1970.
- Defense Research Institute, Incorporated. Defense Research Institute Urges Investigations of Cost Savings Claims by No-Fault Proponents. Milwaukee, Wisconsin, 1969.
- Hall, John W. The Automobile Insurance Underwriting Problem, 2nd ed., The Center for Insurance Research for the Bureau of Business and Economic Research, School of Business Administration, Georgia State University, Atlanta, Georgia, 1969.
- Hewitt, Charles C., Jr. Actuarial Critique of "Automobile Insurance... for Whose Benefit?". Allstate Insurance Company, n.d.

Imbler, C. C. Balance - the Key to Reform.

Keeton, Robert E. and Jeffrey O'Connell. Alternative Paths Toward Nonfault Insurance.

Memorandum in behalf of the National Association of Independent Insurers, submitted to the Governor's Automobile Accident Study Commission of the State of California, 1970.

National Association of Independent Insurers. The Failings of a No-Fault Scheme.

C. Periodicals

Arrington, W. Russell. "Courts, Torts and Insurance Reform," Illinois Bar Journal, Vol. 58, No. 11 (July, 1970).

"Automobile Insurance," Consumer Reports, Vol. 35, No. 6 (June, 1970), 332-343.

Conard, A. F. "The Economic Treatment of Automobile Injuries," Michigan Law Review, 63 (1964), 279-326.

O'Connell, Jeffrey. "Basic Protection - Relief for the Ills of Automobile Insurance Cases," Louisiana Law Review, 27(1967), 647-667.

-----". "Taming the Automobile," Northwestern Law Review, 58(1963), 299-399.

Ridgeway, James. "Automobile Insurance: No Risks Preferred," The New Republic, February 22, 1969.

D. Speeches

Bohlinger, Alfred J., National Association of Independent Insurers. Speech before the Insurance Committee of the New York State Assembly. New York, March 10, 1970 and May 21, 1970.

Blume, Paul C., National Association of Independent Insurers. Speech before the Casualty Insurance Adjusters Association of Chicago. Chicago, Illinois, February 18, 1970.

Lemmon, Vestal, National Association of Independent Insurers. Speech before the Sixty-first Annual Convention of the Oklahoma Association of Insurance Agents. Oklahoma, April 25, 1970.

Schaffer, Donald L., Allstate Insurance Company.
Speech before the New York State Joint
Legislative Committee on Insurance Rates and
Regulation. Rochester, New York, May 21-22,
1970.

Wise, Paul S., American Mutual Insurance Alliance.
Speech before the Joint Legislative Committee
on Insurance. New York, May 1, 1970.

E. Legislation

Commonwealth of Massachusetts. "Automobile Insurance
Reform," Laws of 1970, Ch. 670 (S.1580), as
amended by Ch. 744 (S. 1607).

State of New York. Senate Bill 8849. March 10, 1970.

United States Senate. Bill S. 4339. Ninety-first
Congress, Second Session.

-----, Bill S. 4340. Ninety-first Congress,
Second Session.

-----, Bill S. 4341. Ninety-first Congress,
Second Session.

F. Broadcasts

Westerkamp, Richard. "No Fault Automobile Insurance,"
Part I and II. WBBM-TV, Chicago, Illinois,
November 9-10, 1970.

[From Chicago Today, Apr. 6, 1971]

FOR "NO-FAULT" CAR INSURANCE

We thank Gov. Ogilvie for putting his weight behind an overdue program of "no-fault" auto insurance. The form he recommends is limited, with mandatory coverages up to \$15,000 and court-administered arbitration of disputes involving less than \$3,000. But its key provision is to guarantee prompt payment to motorists and pedestrians of badly needed costs within 30 days of an accident.

Under the present system, with its emphasis on litigation, an accident victim with a legitimate claim can wait years for a settlement thru long court wrangles over such fine points as who should have slammed on the brakes first. Fast cars and crowded thoroughfares make it virtually certain that anyone who drives will have an accident at some time or other, and the question of liability, except in certain clear-cut cases, has little point.

Ogilvie's plan, based on a seven month study by James Baylor, state director of insurance, calls for benefits within limits to be paid without regard to fault, with settlement left to the insurance companies. Only cases involving larger sums would be taken to court. Service costs and lost wages would be paid for a year based on 85 per cent of loss.

Besides its obvious benefits to motorists, the "no-fault" concept will help the court system itself by eliminating many of the costly and time consuming cases that crowd court schedules. Insurance companies would be required to settle disputes between them out of court.

We don't agree with critics of the no-fault plan who say it would allow bad drivers to escape notice. Traffic laws can be enforced aside from the insurance question, and we certainly favor just punishment for such offenders as drunk or drugged drivers. But as it concerns insurance, the no-fault plan should be adopted. The legislature should act favorably on Ogilvie's request to get it started.

[From Chicago Today, Apr. 6, 1971]

"NO-FAULT" CAR INSURANCE: INSURERS PRO, LAWYERS ANTI

(By Robert Glass)

Gov. Ogilvie's "no-fault" auto insurance plan for Illinois is regarded by some Chicago lawyers as premature, filled with loopholes and deplorable.

Insurance company officials, however, are responding with such praise as "evolutionary" for the 12-point program revealed yesterday to speed settlement of accident claims.

Lawyers say the generous loss-of-income provision, which permits benefits of up to \$150 a week for 260 weeks, will encourage claimants to stay off their jobs long after they normally would have returned to work.

This and other objections were voiced by lawyers during a *Chicago Today* survey. Basically, the "no-fault" plan would:

- Provide \$2,000 a person for medical, hospital and funeral benefits.
- Allow 85 per cent of lost income up to \$150 a week for 52 weeks.
- Reimburse people up to \$12 a day for 365 days if they are unable to perform services for which they previously received payment.

The proposal, prepared by James Baylor, state director of insurance, outlines optional coverage, which would increase benefits.

Ogilvie has asked for legislative enactment of the package.

Policyholders, members of their families and pedestrians would be assured benefits within 30 days regardless of who is at fault in an accident. Mandatory coverage would have a limit of \$15,000 a person, altho insurance companies would be required to offer optional coverage starting at \$50,000 a person and \$100,000 an accident.

Ogilvie said the plan would reduce a backlog of personal injury cases particularly in Cook County. Some lawyers disagreed.

"I think the governor's program is a little premature, altho we fully appreciate the problems with the backlog," said James A. Dooley, an attorney with offices at 111 W. Washington St.

"I do not believe the plan will eliminate the number of lawsuits because . . . the right of insurance companies to sue . . . is not subrogated.

"One of the biggest inequities is that a person who is at fault can get paid."

Dooley admitted that arbitration of personal injury cases up to \$3,000 and property damage cases up to \$5,000 will help reduce the court backlog.

Philip H. Corboy, a lawyer at 33 N. Dearborn St., said:

"The inequities in the plan are unbelievable.

"By giving an injured person up to \$150 a week for 52 weeks you are going to have a lot of people laying off the job. This factor alone will cause insurance companies to raise their rates sky high."

George Rothchild, head of the Development Law Committee of the Chicago Bar Association, said a special committee will be appointed to study the plan.

Frank Greenberg, former bar association president, commented that he is pleased to see a "no-fault" program "get off the ground."

Ogilvie, meanwhile said he will take steps to hold insurance costs in line if the need arises.

Insurance officials appeared to be pleased with the plan.

Paul S. Wise, president of the American Mutual Insurance Alliance, a group of 100 auto insurance firms, said:

"We support this evolutionary approach to auto insurance reform because it will provide quicker payments to accident victims for their basic economic losses, ease the burden on congested courts and help stabilize insurance costs to Illinois motorists, while retaining the principle of making drivers responsible for negligence."

David Phillips of State Farm Insurance, Bloomington, Ill., noted that his company is supporting "no-fault" plans in 22 states, altho Massachusetts is the only state with such legislation enacted.

[From the Chicago Daily News, Apr. 6, 1971]

AUTO INSURANCE REFORM

Gov. Ogilvie's no-fault insurance plan for settling personal injury claims would end frustrating and costly delays for most auto accident victims. Farther reaching than many such plans proposed in other states, it would require a motorist's insurance company to pay within 30 days all claims for his own injuries and those of his passengers—up to an over-all limit of \$15,000 per person. The payments would be made without regard to who was at fault in the accident.

In revealing details of the program, the governor estimated it would eliminate nearly 75 percent of the bodily injury lawsuits now filed. But since one insurance company would be entitled to recover costs from the company of the driver who was actually at fault, there would still be much litigation at that level. The Ogilvie plan, however, aims to reduce this somewhat by providing for court-administered arbitration of disputes involving less than \$3,000. Suits for more than that amount would be tried in existing courts under normal procedures.

In theory, at least, the plan should help reduce the logjam in Cook County Circuit Court. In any event, a large percentage of the persons injured in accidents would be spared the time and expense of trials that now are often delayed five years.

The \$15,000 limitation would not prevent individuals from seeking higher damages—but to do so they would have to resort to time-consuming lawsuits. The net effect of no-fault should be to discourage capricious suits by those tempted by the possibility of winning a few extra dollars, regardless of the merits of their cases. The more seriously injured who are clearly entitled to more than \$15,000 doubtless would—and should—go to court for a settlement of their claims. No-fault should enable them to obtain a speedier settlement.

Many details of the governor's program are open to challenge, such as his proposal to limit compensation for lost wages to a maximum of \$150 a week. This seems unrealistically low in this era of high wages and high costs. Similarly, the \$2,000 limitation on medical, hospital and funeral expenses for each person involved in an accident seems meager. But these points can be adjusted in the Assembly after the legislation is introduced. Meanwhile, Gov. Ogilvie and State Insurance Comr. James Baylor, who conducted the seven-month study on which the plan is based, have made an impressive beginning on a phase of insurance reform that is lagging in most other states. Only Massachusetts now has a no-fault law, and Minnesota is in the process of drafting one. If Illinois can produce a better plan, it may help head off federal action in this field.

[From the Chicago Daily News, Apr. 6, 1971]

RISK FIRMS HAIL OGILVIE NO-FAULT PLAN

By Phillip J. O'Connor

The insurance industry has reacted favorably to Gov. Richard B. Ogilvie's proposed no-fault car insurance program.

Thomas F. Reynolds, general manager of the Illinois Insurance Information Institute, which represents 25 Illinois-based firms that write 75 percent of the auto insurance in the state, said:

"The general reaction of the Illinois companies as a group is favorable in support of the principle of what Gov. Ogilvie and State Insurance Director (James) Baylor are attempting to achieve.

"The Illinois insurance industry is hopeful that a program along these lines can be worked out in the General Assembly."

Burton F. Harris, senior vice president of Continental Casualty Co., a member of the CNA Insurance Group, said "Our company feels that property and liability insurers operating in Illinois should welcome this reform in the present system of auto accident reparations."

Judson B. Branch, chairman and chief executive officer of Allstate Insurance Co., which ranks second in Illinois and nationally in the amount of auto insurance it writes, said:

"We are pleased that Gov. Ogilvie's proposals would reserve individual responsibility for bad driving. Allstate believes that the laws on auto accidents can be, and should be, modernized in an evolutionary way."

A spokesman for State Farm, which writes more auto insurance in Illinois and in the nation than any other firm, said that State Farm is "very anxious to see how it (Ogilvie's plan) works out."

"We're trying to judge what is best for our policyholders. Two years ago we asked our 11 million policyholders if they thought motorists should be responsible for their negligent acts.

"We got 3 million responses and 9 of 10 policyholders said they thought motorists should be responsible for their negligent acts."

Major features of Ogilvie's plan, which will be drafted into proposed legislation and introduced into the Legislature, include payment of benefits of up to \$15,000 per person within 30 days regardless of who is at fault.

The settlement of claims would be left up to insurance companies, with court-appointed arbitration of disputes involving claims of less than \$3,000.

Medical, hospital and funeral costs would be covered up to \$2,000 for each person involved. A provision is made for compensation of up to 85 percent of wages lost for the first year, with a \$150-per-week limit.

[Newsclp Herald-WHIG, Apr. 6, 1971]

OGILVIE'S INSURANCE PLAN

Gov. Richard B. Ogilvie's plan for reforming Illinois' auto insurance has not been spelled out in detail—at least not in legislative form—but his limited "no-fault" plan would seem to represent one of the most forward steps offered yet by any state. Even federal auto insurance reforms that have been discussed would not seem to go as far.

Automobile insurers, one can be reasonably confident, may not buy the Ogilvie proposals, at least not completely. The legal profession, much of which thrives on the adversary type of litigation that now accompanies almost every auto accident of any consequence, will oppose it bitterly. Most automobile owners, if they study it carefully, probably will applaud. And that is a big plus for the governor.

What the governor's plan—as recommended by a study commission—might do to already prohibitively costly auto insurance rates, is something not even the average actuary can figure at this point. But most realistic motorists will accept, we believe, the basic common sense of such proposals. One might add that especially motorists in the Chicago urban area would buy it, after seeing adversary suits arising from auto accidents remain in court, unsettled, for five years and

more—often until victims of accidents have died, and for years after fantastic hospital expenses have been incurred.

What the governor's plan—still to be detailed for the General Assembly—might eventually mean to the motoring public, to insurance companies, to the victims of traffic accidents, cannot at this point be answered definitely. Only experience with such a program can answer that.

But in general it is difficult to buy the arguments of critics, in view of our sorry experience with present auto insurance, the outrageous speculative quality of many suits brought under it, the way such suits clog our courts, and the high cost of such procedures to the insurers of automobiles and their owners—cost automatically reflected in the ever-rising cost of auto liability insurance.

Certainly the General Assembly must consider most carefully the governor's proposals to be spelled out in definite legislative proposals, and certainly members must brace themselves for probable lobbying assaults by skeptical insurers and by lawyers who now profit handsomely from our present adversary system of settling auto accident claims.

[From the Chicago Tribune, Apr. 7, 1971]

THE ILLINOIS PLAN FOR AUTO INSURANCE

Gov. Ogilvie has accepted a modified "no-fault" auto insurance plan drawn up after a seven-month study by the Department of Insurance, headed by James Baylor. Illinois thus moves well ahead of most states in the quest for a better insurance system than the costly, cumbersome and often unfair one that now bedevils motorists and the victims of auto accidents.

As a lawyer himself, the governor is entitled to further credit for moving boldly into an area which is anathema to most of the legal profession. The proposed reforms would eliminate a great deal of trivial litigation.

Like the reforms suggested in Washington and elsewhere, the Illinois plan is "no-fault" only to a limited degree. It is a hybrid scheme designed to eliminate the necessity of determining legal fault in most personal injury cases, while at the same time preserving, with respect to more serious cases, the concept that a dangerous driver must be responsible for the results of his actions.

Under the Illinois plan, policies written in this state would have to provide for prompt payment of limited amounts: up to \$2,000 per person for medical expenses, up to \$150 a week [for one year] for lost pay, and up to \$12 a day [also for a year] for extra costs such as child care. It would allow "pain and suffering" claims only up to an amount less than actual medical costs, thus holding down a particularly bothersome sort of litigation known in the trade as "bump and bruise" cases.

The Illinois plan differs from other proposals in some respects. While others generally have a deductible clause or a waiting period before medical costs can be claimed, the Illinois plan calls for full payment "from the first day and the first dollar." This, it is felt, is fairer to the poor and would eliminate the need for further action to recover these amounts. It calls for compulsory arbitration, rather than court action, for small claims and disputes between insurance companies. It provides for optional extension of "no-fault" coverage to larger amounts.

The plan would not change the guilty driver's liability for claims beyond the specified limits. It does not involve property damage claims, which would continue to be handled as at present. And it would not affect the practice under which many insurance companies adjust their premium rates according to the policy holder's driving record.

The changes that are proposed are, in a sense, moving into unexplored territory. The legislature will be subjected to all sorts of pressure, from advocates of broader no-fault coverage [such as the American Insurance Association] to those who oppose all no-fault coverage [such as the trial lawyers]. Nobody is quite sure what effect this or that change will have. But the plan does meet the tests stated earlier by the governor. It calls for prompt payment of essential needs, it would eliminate a lot of superfluous litigation, and it offers the hope for a reduction or at least a leveling off of premium rates. The guilty driver would still be punishable—by lawsuit, by criminal prosecution, and by higher premium charges. If the legislature can keep its eye on these fundamental goals, not let politics intrude, and not be distracted by self-serving or irrelevant arguments, it should be able to give Illinois a good auto insurance law.

[From Chicago Today, Apr. 7, 1971]

NO-FAULT INSURANCE PASSAGE PREDICTED

By Renee Covington

Illinois motorists may save money on auto insurance premiums if the General Assembly accepts a no-fault insurance plan proposed by Gov. Ogilvie.

And there's a prediction from Dave Brown, a vice president of the Kemper Insurance Co., that such legislation has an excellent chance for passage.

Brown said he believes that the governor's version of a no-fault plan would reduce the court backlog of accident claims.

Reason: the plan provides for arbitration in cases involving less than \$3,000 in personal injury and \$5,000 in property damage.

Arbiters would be lawyers assigned by the Illinois Supreme Court to hear claims. They would then report back to the court, which would make the judgment.

Motorists could demand a panel of three arbiters upon payment of costs beyond those normally incurred for having one.

Based on the experience of Massachusetts drivers, the only ones in the nation under no-fault protection, injury claims and insurance costs are likely to decrease.

Bodily injury claims in Massachusetts dropped 50 percent since the plan went into effect in January, officials of that state report.

They expressed surprise at the substantial drop. Statistics comparing 1971 to previous years will be available in July.

One Boston observer, seeking to explain the fewer claims, reasoned that residents are confused by the new law and aren't filing claims as readily as they once did.

Actually, it's not that hard.

When Massachusetts legislators adopted the plan they also ordered a 15 percent across-the-board reduction in insurance rates. Insurance companies went to court and blocked decreases in premiums for physical injury and property damage protection. But they still had to reduce rates for compulsory liability.

In Massachusetts, motorists can get up to \$500 for medical expenses, whether or not they are at fault in an accident. A motorist cannot file suit for compensation for "pain and suffering" unless his medical bills total at least \$500.

Drivers who lose time off their jobs are entitled to 75 percent of their gross weekly pay, up to \$2,000. They can sue to recover wages in excess of \$2,000.

Illinois' proposed plan includes \$2,000 medical payments, 85 percent of lost wages up to \$150 weekly for 52 weeks and other benefits not in the Massachusetts plan.

Months of debate preceded passage of the Massachusetts plan. Two companies threatened to quit insuring motorists in the state, altho both subsequently reconsidered and began issuing policies.

[From the Chicago Sun-Times, Apr. 7, 1971]

FOR AUTO INSURANCE REFORM

Gov. Ogilvie's no-fault auto insurance plan deserves support in the Legislature. We hope that it doesn't get the same treatment similar plans are getting in other states. As pointed out recently by Sun-Times Washington columnist Charles Bartlett, no-fault legislation has been introduced in 21 states but "they lie waiting to be interred by legislators who are lawyers and insurance men."

Ogilvie's plan was written in consultation with insurance companies so that what opposition there is in the Legislature probably will come from trial lawyers who may stand to lose some clients. There are already signs that the Legislature will be in no hurry to take action. Rep. Gerald W. Shea (D-Riverside), assistant minority leader in the House, says legislators may want to hold extensive hearings on the Ogilvie plan "this summer." That means no effort will be made to pass the measure at the current session of the Assembly.

The no-fault system is needed because under the present methods for settling bodily injury claims the courts have become so clogged with cases that auto accident victims may wait as long as five years to collect damages for bodily injuries.

Ogilvie's plan would put cash promptly in the hands of auto accident victims for medical costs, lost wages, etc. It would leave it up to their insurance companies to recover damages if the other party to the accident was at fault. A quick-pay limit of \$15,000 benefits per person would be set. If greater damages were believed justified, a suit could be filed in court as under present practice.

James Baylor, Illinois Department of Insurance director, believes the system would eliminate nearly three-quarters of the bodily injury cases now being filed in the courts.

The insurance companies have agreed with the plan in principle but reserve the privilege of examining details. They are mostly concerned with the preservation of competitive ratemaking now in effect in Illinois; under this system they may set their own rates subject to later disapproval by the insurance director. Since the insurance companies will be experimenting with the no-fault plan they would be allowed flexibility in setting rates. The no-fault plan might even bring lower premium rates in the long run since almost one-fourth of present premiums for bodily injury goes to pay lawyers' fees and court costs.

There is pressure in Washington for a national plan of no-fault insurance. The Nixon administration has recommended that insurance reform be effected at the state level. If the states do not act, public dissatisfaction with the present system will inevitably force action at the national level. Members of the Illinois Legislature should realize they are asking for federal action if they drag their heels on the Ogilvie plan. We believe their constituents would give an overwhelming vote for no-fault insurance.

[From Bloomington, Ill., Daily, Apr. 8, 1971]

OGILVIE INSURANCE PROPOSALS OFFER BENEFITS TO MOTORISTS

The issue—is the “no-fault” insurance proposal in Illinois a step forward or just an empty promise?

If one can avoid calling Illinois' automobile insurance reform proposal “no-fault,” which it isn't, it will be easier to recognize as a direct-payment plan which will ease the concern and worry of many accident victims.

Prepared by the Department of Insurance and proposed by Governor Ogilvie as the basis for amendment of state law, the program seems an ideal one to adequately test changes in traditional insurance law and practice.

The Illinois proposal does not go so far as to wipe out the tradition that those who cause accidents (or their insurance company) should bear the burden of compensation. Nor does it merely tinker with basic insurance practice without suggesting major change.

The aim of the Illinois program, which follows closely many of the suggestions made by a federal commission supported by the Department of Transportation, is to get money quickly to those injured in accidents for doctor and hospital bills and loss of wages.

Importantly, the Ogilvie-Baylor (James Baylor, director of insurance) proposals call for court-administered arbitration of disputes involving less than \$3,000, with larger cases to be tried in court as present if the parties cannot agree. Intercompany disputes as to which is responsible for payment also would be arbitrated.

The basic change involves the liability side of the insurance program. First study of the proposal shows the present system of adjudication of property damage claims to be largely untouched. These, of course, often represent so-called “first party” claims where the insured is dealing with his own insurance company.

The proposal is promoted as a means toward the reduction of lawsuits. If adopted, the direct reparations plan probably will do that. More important for all of us insured drivers, however, is that insurer will be legally bound to meet, as a demand of the insurance contract itself, the first and difficult out-of-pocket expenses of its own customers, fault or no fault.

The right to sue will remain. The law is not intended to eliminate the judicial process, or the test of negligence, in determining such things as the value of permanent injury or a wrongful death claim where \$100,000 or \$200,000 may be fair compensation. Companies would be required to offer coverage of the current type starting at \$50,000 a person or \$100,000 an accident.

Part of the impetus behind Governor Ogilvie's proposals for insurance reform stems from the finding that only about half of the insured's premium dollar gets back to him in the form of reparations. A good deal is eaten up in legal

fees. The governor wants to reduce that bite and it seems that the insurance companies are willing to go along.

Insurance organizations, large and small, are, of course, quite cold to the concept of the federal government setting national standards and procedures. They are a good deal more satisfied and feel more comfortable with state actions.

State actions—if the states act promptly and effectively—will offer a major advantage. A variety of new laws will appear and will be tested by experience. Consumer and seller of insurance alike can profit by mistakes of some states without subjecting the whole nation to a failure.

[WGN Editorial, Apr. 24-27, 1971]

WGN EDITORIAL #71-050—"NO-FAULT AUTO INSURANCE" Saturday, April 24 thru Tuesday, April 27, 1971.

Governor Ogilvie's proposal for what is called no-fault auto insurance should be given most careful consideration by the General Assembly. The Governor's proposals are similar in many ways to the plan now in effect in Massachusetts and to other proposals made during the past several years.

Both the Department of Transportation and a Senate committee which made a general study of auto insurance have recommended that no-fault auto insurance is a sensible approach to the rising cost of coverage. A major cost of auto insurance is that portion of the premium dollar which is spent in determining who is at fault in an accident. For the most part, these determinations are legal, either by agreement between the parties, or through long and costly court cases. The real losers in these situations are the people involved in the accident, and most of the time it is the "innocent" victim, the party not at fault, who loses most, because the system which requires a determination of fault also requires time to make that determination and the professionals in the insurance business and those in the legal and judicial process who do the work.

Under the plan proposed by the governor, payments for medical expenses, lost income and some payments for pain and suffering could be made, or at least begun, within 30 days of an accident. The parties involved would still have recourse to the legal system if unsatisfied with the payments offered. All cases involving more than the upper limits covered in the proposed no-fault provisions would be handled as they are now. In cases where payments are made under the no-fault provisions, insurance companies could seek legal determination of fault. But the man who bought the policy will have had his claim paid without delay, instead of waiting as long as five years while his case worked its way through the crowded courts here.

Basically, this is a simple explanation. If it can be made to work, it should benefit everyone, especially the insurance buying public which has every right to expect that its reasonable claims will be met properly and promptly. We urge the General Assembly to authorize no-fault auto insurance for Illinois motorists.

[WMAQ-TV Editorial, Apr. 26, 1971]

EDITORIAL

THIS IS AN EXPRESSION OF EDITORIAL OPINION BY STATION WMAQ-TV, BOB SMITH, EDITORIAL DIRECTOR, CHAIRMAN OF THE EDITORIAL BOARD IS ROBERT LEMON, VICE PRESIDENT, NBC, GENERAL MANAGER, WMAQ-TV

We have some good but relatively useless advice to offer in this editorial. The advice is, do not get injured in an automobile accident in Illinois.

If you do suffer this misfortune, you're really in a bind. If the accident is in any way your fault, you're never going to get any personal injury compensation. That's the way things are under the present liability insurance system.

And, if the accident is not your fault, it could be as long as five years before you collect any money. That's how long it could take to get a lawyer, sue the other driver and his insurance company, get your case to court, prove your lawsuit and get a judgment. That's an expensive way to resolve your injury problem, and it's one reason why automobile insurance costs so much money.

We believe that Illinois needs a new system of auto insurance. And now is a good time to get it. Governor Ogilvie has proposed some new auto insurance laws

to the state legislature. We feel that Governor's recommendations are sound and that they should be adopted.

Under the new system, your own insurance company would pay your medical bills up to \$2,000, and your lost wages up to \$150 a week for as long as a year. Now these payments would be made by your company no matter who was at fault in the accident. And, in case of more serious accidents, you could still sue the driver at fault for your damages. Any disputes involving less than \$3,000 would be settled through mandatory arbitration.

This plan offers great improvements over the present system. First, the accident victims would get their money without a long delay. And second, it would reduce the number of auto accident court cases, possibly by as much as 75 per cent.

There are some big obstacles to the Governor's plan, however. Some of the attorneys don't like it because they earn a lot of money on those court cases involving auto accidents. And there could be some opposition from the insurance industry.

Also, approval of the plan has to come from the state legislature. And nearly half the members of the legislature are either lawyers or insurance men who might oppose the change.

That's why it's going to take a lot of pressure from the people to get these changes in the insurance laws. And that's why you should let your state senator and representative know how you feel about this issue.

[From Illinois News]

WASHINGTON D.C., April 29, 1971.—Illinois' two top insurance regulatory officials said today that the states have the desire and the ability to handle necessary automobile insurance reform.

James Baylor, Director of Insurance and Vincent Vaccarello, Chief Deputy Director testified before the House Commerce and Finance Subcommittee considering federal auto insurance designed to assure injured accident victims of compensation regardless of fault.

Baylor, whose Department recently completed a seven month study report of the problems in Illinois, said that reform proposals drafted by his Department as a result of the study are now pending before the Illinois General Assembly. He referred to the proposals as a "comprehensive plan designed to provide prompt payment of benefits up to \$15,000 for each injured victim, including pedestrians, without regard to fault. The genius of the Illinois Plan," he added, "lies in its ability to offer remedies to the deficiencies in the system without abandoning it or depriving an individual of his long standing rights. If we remove the need to sue we do not have to eliminate or drastically alter his right to sue."

"The Plan will unquestionably reduce the insupportable volume of court cases—many of which are unnecessary or seek unreasonable damages."

"And we are of the opinion that enactment of this full program may well stabilize or even reduce the present costs of insurance for Illinois motorists."

Baylor noted that the Illinois Plan is among the first originated at state level which will meet the challenges outlined in the broad guidelines set forth as national goals by John Volpe, Secretary of Transportation.

Major features of the plan, which would apply to all passenger automobile insurance in the state, are these:

- Benefits are payable within 30 days to cover expenses of the policyholder, members of his family, persons using the insured car, passengers, and pedestrians injured by the car.

- The benefits are payable, within limits, without regard to whose faulty driving caused the accident. Settlement of this issue is left to the companies and to lawsuits covering major cases.

- Medical, hospital and funeral costs are covered up to a limit of \$2,000 a person.

- Wages lost because of the accident will be compensated at the rate of 85 per cent of the loss for one year, with a limit of \$150 a week.

- Service costs due to the incapacity of an unemployed injured victim—like child care—will be paid for one year, with a limit of \$12 a day.

In addition to the mandatory coverages, Baylor said, companies will be required to offer additional optional excess coverage to insurance buyers.

This coverage would start at \$100,000 per accident. It would extend medical benefit limits, pay for lost income and hired services for five years, and give dependent survivors a maximum of \$150 a week for lost income for five years.

Damages for "pain and suffering," under the plan, would be limited to half the first \$500 of medical expense, and equal to the medical expense thereafter.

The plan calls for setting up court-administered arbitration of disputes involving less than \$3,000, while larger cases would be tried under the present system. Director Baylor commented:

"There is ample evidence that motorists are fed up with their present insurance coverage, for which they must pay promptly, only to have to wait sometimes as long as five years to receive payment for their losses.

"We estimate that nearly three-quarters of the bodily injury lawsuits now being filed can be eliminated, thus alleviating the court backlog, which is most severe in Cook County, Illinois.

The plan, covered in a 54-page study report presented to the Subcommittee, also would require insurance companies to settle disputes between themselves out of court, would provide for tripling of payments when bills are not paid within 30 days, and calls for stringent action against doctors, lawyers and others convicted of fraud in insurance matters.

Baylor said the study analyzed hundreds of theoretical and actual systems of reforming insurance coverage. He added:

"The people of Illinois have been studying the plan and the legislation now pending before the General Assembly to put it into effect. I am satisfied that many will support the Illinois Plan enthusiastically.

"Our major purpose has been to respond to Governor Ogilvie's mandate, which was:

"Attempt to reduce the cost of insurance, alleviate the anxiety of auto accident victims, pay them when they need the money, and reduce the huge number of court cases—most of which are of the nuisance variety—without taking away vital rights of litigation in extremely serious cases."

"I think we have met these goals and the challenge of Secretary Volpe and others that the states should act promptly and vigorously. Our studies show this plan will pay the vast majority of lost wages, medical expenses and miscellaneous costs of well over 95% of the injured victims while excess insurance will cover the balance. The tremendously positive reception which the plan has received from the major segments of the community in Illinois leads us to believe that it will be adopted in Illinois.

"Implementation at the state level" he concluded, "encourages innovation tailored to the needs of a state and offers the opportunity to more quickly adapt as needed improvements become evident. By starting with this flexibility we do not become irreversibly committed to the abandonment of a basically sound system, the system of justice through the right to a trial."

Mr. Moss. Mr. McCollister?

Mr. McCOLLISTER. I have to think a little bit first on how you accomplish this, both establish the quick payment for no-fault and yet at the same time leave the injured party able to resort to tort liability if he wishes to.

Evidently, the theory is that because payment is so prompt and immediate and effected at once, he won't want to sue.

Mr. VACCARELLO. Exactly.

Mr. McCOLLISTER. But where the damages are so great and the injury is so great and the loss of the earnings is so great that it exceeds the limits of the policy, then he will be able to sue?

Mr. VACCARELLO. Yes, sir.

Mr. BAYLOR. That is it, plus there are also built in administrative procedures so that we think there are going to be some substantial savings to the companies so that they are able to pay these extended benefits without an increase in premium.

I think it is very important that any plan that be considered not—

Mr. McCOLLISTER. You mean by subtracting the payment for pain and suffering that that decreases the cost, or makes it unnecessary to

raise the premium to provide for the much broader coverage of people?

Mr. BAYLOR. Yes, that is one of the elements, certainly, and the administration and a variety of other things. Obviously if a person does not have to sue to recover his benefits, there is an obvious saving to the insurance companies. The companies must pass these savings on by way of reduced premiums or extended benefits. We anticipate there can be both under this program.

Mr. McCOLLISTER. What is the status of this proposal in the Illinois Legislature?

Mr. BAYLOR. It has been submitted. It will be heard in the Senate Committee on the Judiciary on Tuesday morning next.

Mr. McCOLLISTER. I would yield to any of my colleagues Mr. Chairman, who remember better than I the statements made by the State Legislator from Chicago who had some comments, the exact nature of which I have forgotten.

I have those here now. Mr. Scariano does not think much of your program, does he?

Mr. BAYLOR. I think the expressions of his thoughts certainly don't indicate he thinks much of it.

Mr. VACCARELLO. We thought it was rather unkind of him to launch an attack of that sort on somebody named Vaccarello. [Laughter.]

Mr. McCOLLISTER. What is the status of the proposition in the legislature?

Mr. BAYLOR. It is up for the first hearing in the Senate Judiciary Committee. We are very much encouraged by the expressions to us in the discussions we have had with legislators.

They were well aware that there is a problem in Illinois. They have had an opportunity to consider other reparation changes, and Representative Scariano has introduced the so-called Keeton-O'Connell legislation.

It has been rejected. This is the point I was going to in my prepared text, which I said that rather impugn the motives of the legislators, that just because they are lawyers and insurance men that they don't want to see reparation improvements.

I think they do, and what the legislator was saying in the rejection of the Keeton-O'Connell plan that he introduced was that "that is not what we want for Illinois." We think they will react very favorably to ours.

Mr. McCOLLISTER. What I don't understand is the relative cost of the extra liability insurance in this case as it compares with the cost of liability insurance in cases where you do eliminate the ability to resort to tort damages. Do I make my question clear?

Surely liability insurance that rides on top of your first-party insurance here would cost more than it would elsewhere, where you remove the tort liability.

Mr. VACCARELLO. We, in our studies, came to the conclusion that this would have basically the same, if not more, opportunities for savings than those plans which had certain thresholds and so forth.

Rather than eliminating the right to sue, we attempted to eliminate the need or the purpose for suing which in the end should provide the same results with respect to the number of suits.

For example, the typical Illinois claimant might have \$200 in medical expenses and \$400 in lost wages. Having been reimbursed by his own insurer promptly, and if not promptly, he can get triple damages under our plan, having been reimbursed—

Mr. McCOLLISTER. What do you call promptly?

Mr. VACCARELLO. We specify that payments must be made within 30 days after the losses are incurred and the proof of loss submitted, and that they must be made regardless of whether there are additional payments to be made in the future or damages or medical bills will continue to accrue. So there are periodic payments provided for every 30 days.

If this claimant who has suffered a relatively minor injury—presuming, of course, that \$200 would reflect a minor injury, which now in some cases it may not—he would have very little incentive to sue after having been paid by his own insurer, and if in bringing the suit the maximum recovery which he could obtain would be \$100, we don't feel the incentive would be there.

I think an example of that is the fact that very few, if any, lawsuits are brought with respect to the \$100 deductibles or collision insurance.

The man has been paid his out-of-pocket loss, he has been reimbursed when he needs it the most, and even if he were to go to an attorney, I doubt that there are very many who could afford to handle the case for \$33.

Mr. McCOLLISTER. Mr. Chairman, I don't have any further questions.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Vaccarello, you say that the Illinois plan does not prevent the right to sue. Can you sue immediately in tort, or must you await the completion of the limitations under the no-fault plan?

Mr. VACCARELLO. You may sue immediately.

Mr. ECKHARDT. And you may at the same time enjoy the rights of the no-fault plan?

Mr. VACCARELLO. Yes. However, the plan provides that in the event of any action against a wrongdoer, the benefits available to the plaintiff under the no-fault coverages would be deducted from any recovery which he receives. Consequently, if he elects to wait 3 years before he gets a trial, he still would have deducted from his award the benefits which he could have recovered under his policy.

Mr. ECKHARDT. There is no subrogation by his insurer against the liability?

Mr. VACCARELLO. Yes, there is subrogation on an intercompany arbitration basis as between insurers, and it is not a judicially supervised arbitration, nor is it part of the judicial system.

Mr. ECKHARDT. Here is what I am getting at. There are two kinds of subrogation that I think could be possible. One would be the subrogation amongst persons paying under the no-fault plan and the other would be subrogation against the liability insurer. Are both extant in this case?

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. What are the limits of liability under the plan?

Mr. VACCARELLO. In the event of a third-party cause of action?

Mr. ECKHARDT. No, limits in payment on the first part.

Mr. VACCARELLO. \$15,000 per person with no aggregate indicated in the plan, and \$50,000 per person with an excess and a \$100,000 minimum aggregate.

Mr. ECKHARDT. And at such time as this is used up, there is no prejudice against tort liability beyond that figure?

Mr. VACCARELLO. No, except that he cannot receive duplicate benefits.

Mr. ECKHARDT. I understand. There is no limitation with respect to the measure of damages with respect to the part of the suit that is on a tort basis?

Mr. VACCARELLO. There is no limitation in those cases where the injury is one involving anything serious. There is a limitation on minor cases of 50 percent of the first \$500, and 100 percent of the balance over \$500. There is, however, no threshold.

Mr. ECKHARDT. For general damages.

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. But that does not apply to the exceptional type cases that you define here as "disfigurement" and so forth?

Mr. VACCARELLO. Yes, sir, that is correct.

Mr. ECKHARDT. And in all those cases, pain and suffering would be available, or any other standard of damage available under Illinois law?

Mr. VACCARELLO. Yes.

Mr. ECKHARDT. If those are not involved, however, then damages for pain and suffering are limited to 50 percent of the first \$500 of medical expenses and 100 percent in excess of \$500?

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. So in effect you really are affording the right to the full gamut of damage recovery in all cases that involve permanent partial disability?

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. And of course, I suppose that, practically speaking, would embrace most possible recovery for pain and suffering anyway, would it not?

Mr. VACCARELLO. I don't believe I understand your question. I am sorry.

Mr. ECKHARDT. Well, it is kind of hard for me to figure out a case that would involve very substantial pain and suffering that did not also involve some permanent partial disability.

Mr. VACCARELLO. Yes. That would be correct. That is the presumption, yes, sir.

Mr. ECKHARDT. I am sort of wondering why it gets you anywhere, or gives you much advantage to limit pain and suffering in these areas.

As you point out, once there has been a payout under the plan up to the total of \$15,000 and whatever other benefits are available, a lot of the cases drop out—I would assume more than 80 percent. Perhaps you have a more exact figure. Of course, you have no experience here.

Mr. BAYLOR. I think your 80 percent is a figure that does pop out. There are a couple of places, though—

Mr. ECKHARDT. I suggest that, because the Massachusetts plan does not give as extensive coverage under no-fault, and they state that much would drop out, and I suppose in excess of what would drop out in your plan.

Mr. BAYLOR. There is support for that among our actuaries, and what we anticipate is that—What is it, 80 percent of the cases?—involve fewer than \$500 in damages, and you recompense these people for the loss. The \$500 case, as lawyers are well aware, if it is subjected to unlimited damages in the present situation, in that case is worth \$1,700 to \$3,500, somewhere in that range for cases in the Chicago market for claims settlement. But you see, under our program there is going to be a very substantial limitation upon the damages in the kind of case that does not involve significant injury so that it has a maximum potential. The \$500 has a maximum potential of only \$600. There is a lot of difference between that and the \$1,735, and that savings goes into providing greater benefits.

Mr. ECKHARDT. What you are saying, I assume, is that what constitutes a small case depends what is coverable on damages. So you don't know how many are going to drop out unless you place a limit on the small cases.

Mr. BAYLOR. That is correct.

Mr. VACCARELLO. The small cases constitute approximately 59 percent of the total claims in Illinois, and in these cases we are talking about an average payment of \$830 on economic loss of \$150 to \$200, which I would submit the economic loss even in those cases has a tendency to be somewhat inflated, because the medicals are used as the basis for the claim in terms of specials.

Mr. ECKHARDT. As I understood the Massachusetts plan, the only thing the triggering device affects is the pain and suffering which would be substantially the situation in your case, though your triggering device would be different. They use \$500 medical.

You use certain defined areas, and frankly I think your areas are quite broad. But your plan really does not preclude any tort suit after the exhaustion of the amount available under the Illinois plan.

Mr. BAYLOR. That is right. We approach it a little differently. We are looking for savings, but our goal is not only to save money, but to provide benefits. One way to provide savings so that you can provide more benefits is to cut out some of the expense.

The small case just does not need a full blown 3-day trial. The arbitration feature in this, I think, is important in cases up to \$3,000, which would be subject to arbitration, realizing, of course, as lawyers that arbitration is only a substitute to a certain point.

We do provide for a trial de novo, but, gentlemen, how many cases are going to be left over after that person has had that opportunity to recover?

Mr. ECKHARDT. As the Keeton-O'Connell plan has gone in Illinois, how does it differ with this plan?

I understand generally what the Keeton-O'Connell plan provides for, but, of course, I suppose it is not absolutely inflexible with respect to the manner in which it is offered in various States.

Mr. BAYLOR. I think it is pretty pure. Jeff O'Connell is a professor at the University of Illinois, and he and Mr. Scariano, I am well aware from the conversations, Mr. Scariano is introducing the O'Connell version.

Mr. ECKHARDT. Where is the area for argument between the Keeton-O'Connell plan in Illinois and the plan you propose here?

Mr. BAYLOR. I think the real point was the rejection of the idea that people should be deprived of the right to a tort liability recovery.

Mr. ECKHARDT. The entire tort liability field was wiped out in the Keeton-McConnell bill?

Mr. BAYLOR. Damages less than \$10,000, it was wiped out. Your right to bring a tort action was gone. I think this is not acceptable to the people of Illinois.

Mr. ECKHARDT. How would this differ? I suppose you could bring your tort action immediately and if you were in your right mind, you would also ask for the no-fault liability and you would go up past \$15,000. Under your plan a part of that \$10,000 that would be barred under Keeton-O'Connell was pain and suffering for partial disability, and it would still be available under your plan, but not under the Keeton-O'Connell. Would that be a difference?

Mr. VACCARELLO. Yes.

Mr. BAYLOR. I think so, if I understand the question.

Mr. ECKHARDT. I am trying to work out what the practical difference is.

Mr. BAYLOR. If you have damages of \$8,000 or \$9,000 under Keeton-O'Connell you can't bring a tort action for it, and under our plan you can.

Mr. VACCARELLO. The difference is, in our plan, there are no arbitrary thresholds, let's say, for example.

Mr. ECKHARDT. What I am thinking about is this: If your plan goes up to \$15,000, someone comes in and gets his \$15,000, and that in effect knocks out his \$10,000 suit, doesn't it?

Mr. BAYLOR. That is right, because you can't rerecover every benefit.

Mr. ECKHARDT. Then you would come in under the no-fault liability if you were only trying to get that amount.

Mr. BAYLOR. It is pretty certain that if you get an injury that involves the kind of damages we are talking about, that \$15,000, then it probably involves one of those elements of permanent disability, et cetera, so that probably then you can present to the jury your argument for general damages.

Mr. ECKHARDT. Suppose you have a case that does not even reach your final limitation amount, but in which the plaintiff feels that if he went under the no-fault plan his actual economic losses and other recoverable losses under your plan would not be substantial. He can choose to proceed with tort liability under that situation?

Mr. VACCARELLO. Yes, he could proceed to pursue his tort liability remedy. However, there are two elements that should be considered here. First of all, he would have his tort remedy in any event under our plan, because as the director points out, with that type of expense and economic loss, unquestionably there would be a tort action initiated anyway.

Mr. ECKHARDT. There could be a situation where he did not have substantial economic loss, but he had other losses.

Let's take the case of, say, a housewife in a situation where the actual injury involved a considerable amount of pain and suffering.

It is conceivable that very little could be obtained under the no-fault process, but that some substantial amount, say \$5,000 or \$6,000, might be attainable in a tort action.

She could then choose to file a tort, and simply ignore the no-fault plan.

Mr. BAYLOR. Yes. Our discussions with doctors, usually, the pain and suffering does come from the kind of injury that does produce the elements that allow this unlimited recovery so that if there is major pain and suffering from a serious injury without a large amount of economic loss, yes, she can go ahead and recover without any limitation based upon our out-of-pocket expenses.

Mr. ECKHARDT. But the Keeton-O'Connell would bar that, because it does not reach the threshold?

Mr. BAYLOR. That is my understanding.

Mr. VACCARELLO. I was going to indicate that during the course of our study we saw that the thresholds were not indicative of the seriousness of the injury or the permanence or lack of permanence of the injury.

Secondly, in Illinois, in the study of the Illinois claimants, we found that 99 percent of the claimants in Illinois had these medical losses under \$2,000, and that that served as the basis for establishing some of our figures, and also with respect to the economic wage loss, 99.8 percent of the claimants in Illinois had wage losses under \$800, which again is the mandatory no-fault first party provision in our claim.

Mr. MOSS. Mr. Guthrie?

Mr. GUTHRIE. Your plan is called the no-fault plan. You certainly would not characterize it as a no-fault plan, would you?

Mr. VACCARELLO. Well, I think it depends, really, on how a person views it. It goes to remedying the deficiencies in the system, and it does meet the goals of no-fault, but we have not put any particular label on it.

Mr. GUTHRIE. But it has been characterized in Illinois as a no-fault plan, but fault plays a part, whether it be under the first-party benefits or under the third-party liability. Isn't that correct?

Mr. VACCARELLO. Yes, sir.

Mr. GUTHRIE. And the record is replete with the position of many who feel that a system that continues this in operation, the use of fault as a basis for determining benefits, is not a very efficient or effective basis.

Mr. VACCARELLO. Well, fault has come under attack primarily because of the deficiencies that were found to exist in the system, and the basic principle under which we operated in performing our study in research and development of the plan was that you could attack it on either of several ways. We preferred to handle it by providing remedies to the deficiencies themselves, the deficiencies here which led to the criticism of the system.

Mr. GUTHRIE. Insurance companies could, and many of them do, provide these forms of coverage that are proposed in your plan now, couldn't they?

Mr. VACCARELLO. Those forms of coverage are available, but not on a very extensive basis.

Mr. GUTHRIE. What you would be requiring people to do is to carry those forms of coverage under Illinois law, is that not correct?

Mr. VACCARELLO. That is correct.

Mr. GUTHRIE. So you are requiring people to do what some insurance companies make available today.

Mr. BAYLOR. Yes, but, if it were done on a mandatory basis without building in the savings that are essential, premiums would be increased substantially, and we do not think that we want to create any system that will increase premiums and what we are trying to do is provide the benefits the people need.

That is our primary concern. Secondly, we want to provide them at the same or reduced costs, and if we can stabilize the long range anticipated insurance premium dollar, that is another benefit.

Mr. GUTHRIE. I have nothing further.

Mr. MOSS. Were there further questions?

Mr. ECKHARDT. Yes. I am confused now.

If you are requiring coverage within these limitations on a first-party basis, then may not a person come in, without respect to fault, and make recovery?

Mr. VACCARELLO. From his own insurer?

Mr. ECKHARDT. Yes.

Mr. VACCARELLO. Yes.

Mr. ECKHARDT. Then the companies are subrogated within the no-fault area, but I understand this to be also true of the Massachusetts plan.

Mr. VACCARELLO. Yes, sir, that is my understanding of it.

Mr. BAYLOR. We expect to find what you were talking about this morning. We expect to find in our discussions with the companies, that there will be a knock for knock. Allstate writes about 15 percent of the market.

We can readily anticipate they are going to have about the same kind of claims against each other. As you pointed out, reality does suggest that they ought to work out a net arrangement.

Mr. ECKHARDT. If you use that as your standard of no-fault insurance, a first party system in which the collections are only from the first party, as far as the injured party is concerned.

You have a no-fault plan, and so does Massachusetts. But if the definition is that the obligation and the liability finally rests there, then you both, both you and Massachusetts do not have a no-fault plan because in both cases subrogation is permitted.

Mr. BAYLOR. That is right.

Mr. VACCARELLO. I hate to admit this, but in the course of our studies we became somewhat confused ourselves as to what was no-fault and what was not no-fault, and the fact that labels were applied to certain things and the same label was then thereafter not applied to something similar to it, and so forth. We attempted to stay away from labels.

Mr. ECKHARDT. Do you know whether or not under the Massachusetts plan one may proceed to sue for tort liability regardless of the amounts involved?

Mr. VACCARELLO. There is a dollar threshold in Massachusetts beneath which I don't believe you can bring any cause of action, and in addition to that I think there is a damages threshold.

Mr. ECKHARDT. I am not sure about it, but I had understood \$2,000 was the breaking point, and below the \$2,000 level your recovery was totally with respect to the no-fault plan.

Mr. BAYLOR. That is my understanding.

Mr. ECKHARDT. And tort liability was completely excluded but your plan is different from that in this respect.

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. That is what I was going to do in my questions to you a minute ago. On the question of subrogation, this matter has troubled me a great deal in the Massachusetts plan and it troubles me in this one, because it seems to me that some of that approximately 15-percent cost of insurance adjustors, and processing of claims costs that we find, at least some amount of that cost would be preserved and would still be a burden on the premium. Really, if the plan is as broadscale as compelled insurance, and therefore virtually everyone is covered, and in addition to that you are going to have to insist on a rather free offering of coverage by all insurance companies, it would seem to me that subrogation is simply an unnecessary load on the premium cost. What is your feeling about that?

Mr. BAYLOR. I think it is unnecessary where you do have companies with large claims, reciprocal claims, one against the other. We do anticipate, particularly with our small companies, where they will not have a high frequency of claims against other companies, that they could find themselves in difficulty and we do have lots of small companies in Illinois, so we do think it is important that if a small company has paid out a large amount of money and would have an action against, say, Allstate, that it ought to be able to pursue this and not just have to drop it because the big companies have reciprocally large amounts against each other.

Mr. ECKHARDT. It seems to me, though, that this is extremely inefficient way of operating. I can't be convinced that merely by calling a kind of litigation arbitration that would not necessarily involve considerable cost.

I know that arbitration as I have seen it is a process by which the judge is paid by the parties, and though it may include some savings—

Mr. BAYLOR. This is a little different. The intercompany arbitration is not set up under the judicial process. It is now a voluntary program between the companies. They use this, their own claims adjustors. For instance, Travelers would not use its claim adjustors, to arbitrate a Travelers claim, but they set up their own claims people to judge each other's claims and they do it on a voluntary basis, but we would mandate that they participate in it.

Mr. ECKHARDT. You mean they come to a conclusion by agreement? It is just negotiation, then, not arbitration, because nobody ultimately decides the differences between the parties.

Mr. VACCARELLO. May I suggest that we felt the first step now in reducing administrative costs and certainly all of the costs have to be considered, including that which involves the judiciary, we felt that the first step was to mandate as a condition of doing business in the State of Illinois, participation in an intercompany arbitration agreement, because as the director pointed out, not all companies do belong to that, and there are a great many expense and judicial benefits in mandating membership to a plan of that sort.

What happens is ordinarily the companies pick up the phone and attempt to negotiate the subrogatable claims between themselves. Not being able to do that, if the other company is not a member of intercompany arbitration, they file a suit in the courts.

Mr. ECKHARDT. But whatever process you have of ultimately determining it, somebody has to look into that question of fault.

You have to have essentially the type of operation that occurs on the part of an insurance adjustor with respect to the question of fault in every case, and I submit that this is a substantial load on the premium dollar.

Mr. BAYLOR. Yes.

Mr. ECKHARDT. It may be, of course, that as a first step you need to do this, but it seems to me when you are asking motorists to accept the proposition of not getting wholly reimbursed for possible claims, that they might have otherwise, you might equally ask insurance companies to forgo the losses here, all in the name, of course, of producing more payout dollars to premium dollars, because that is our ultimate goal, isn't it?

Mr. VACCARELLO. Yes, sir.

Mr. ECKHARDT. That is all I have.

Mr. MOSS. Are there further questions?

Gentlemen, thank you very much for coming to Washington, and giving the committee the benefit of your views.

Mr. BAYLOR. Thank you for the opportunity to do so.

Mr. MOSS. Our next witness is Mr. George K. Bernstein, Administrator, Federal Insurance Administration, Department of Housing and Urban Development.

STATEMENT OF GEORGE K. BERNSTEIN, ADMINISTRATOR, FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. BERNSTEIN. Thank you, Mr. Chairman.

Mr. MOSS. I will place in the record a little biographical material on Mr. Bernstein.

(The document referred to follows:)

BIOGRAPHICAL SKETCH OF GEORGE K. BERNSTEIN

George K. Bernstein of New York City was appointed Administrator of the Federal Insurance Administration on June 25, 1969, by George Romney, Secretary of the Department of Housing and Urban Development.

Previously, Mr. Bernstein had been First Deputy Superintendent of Insurance of the New York State Department of Insurance since March 30, 1967, and before that had been Deputy Superintendent and General Counsel of the Department since 1964.

As Assistant Attorney General of the State of New York in the Litigation and Appeals Bureau, from 1957 to 1961, he argued more than 50 appeals in the United States Court of Appeals for the Second Circuit, several involving landmark decisions in the area of federal-state relations and criminal constitutional law. During this period, Mr. Bernstein also handled numerous appeals and other matters involving various state agencies, including the Insurance Department, some of which had widespread effect on the insurance business and insurance regulation. After leaving the Attorney General's office in 1961, he practiced law in New York City until his appointment to the Insurance Department.

Mr. Bernstein was graduated from the Horace Mann School and received his B.A. from Cornell University in 1955 and his LL.B. from Cornell Law School in 1957. At law school he was winner of the Moot Court Cup and Chairman of the Moot Court Board. He was admitted to the New York Bar in 1957 and to the United States Court of Appeals, Second Circuit, in 1958.

Mr. Moss. Mr. Bernstein, first, let me say that I want to express the appreciation of the subcommittee for your willingness to come here and upon our invitation to undertake to assist this committee in carrying out its responsibilities.

Mr. BERNSTEIN. You are very kind, Mr. Chairman. Thank you, and thank you for the opportunity of coming here.

Your invitation asked that I discuss the programs which our office administers now, to the extent they are of help to the committee. I have discussed them in a brief prepared statement for whatever guidance they can give. If there are any other questions you may ask related to no-fault I will be happy to answer them, but this statement was limited, as you know, to the programs we administer. I don't know whether you wish me to read the statement.

Mr. Moss. I think in this instance, it might be beneficial to have you read it so that the committee is familiar with its entire contents.

Mr. BERNSTEIN. Thank you, Mr. Chairman.

I appreciate the committee's invitation to appear before you today to outline the functions of the Federal Insurance Administration within the Department of Housing and Urban Development, and to provide such assistance to your committee as I can.

The Federal Insurance Administration is responsible for the administration of three programs affecting the property insurance market. These are one, riot insurance, available to any property insurance company which is fully participating in one or more State FAIR plans; two, flood insurance, through which the Federal Government, in cooperation with a pool of private insurance companies, provides policies covering flood and mudslide losses and requires the adoption of appropriate local land use and control measures; and three, a new program of direct Federal crime insurance, to become operative on August 1, 1971, to provide insurance against burglary and robbery losses in States that have not taken action to make such coverage available to their citizens at affordable rates.

The FAIR plan and riot reinsurance program was originally enacted in 1968 as a result of an accelerating deterioration of the private market for basic property insurance—fire and extended coverage—in many of the Nation's urban areas. These property insurance coverages, which are essential to the life and economic well-being of any community, had become increasingly more difficult to obtain as a result of the growing reluctance of property insurers to write in areas which they believed to be blighted, deteriorating or unsound, and especially those believed to be subject to the peril of riot or civil disorder.

The FAIR plan and riot reinsurance program involves a two-part carrot-and-stick approach to the problem. On the one hand, property insurance companies under the supervision of the State Insurance Commissioners form an insurance facility or "pool" referred to as a FAIR Plan (Fair Access to Insurance Requirements) through which any property owner in an urban area can get fire, extended coverage, and vandalism and malicious mischief insurance, subject to a physical inspection of the property to determine its fundamental insurability and the proper State-approved premium rate. In return, the Federal Government sells reinsurance against the risk of excessive riot and civil disorder losses to these companies that participate in a State's FAIR plan.

There are now 28 FAIR plans, in 26 States, the District of Columbia, and Puerto Rico. As of December 31, 1970, approximately 700,000 new and renewal policies are in force through these FAIR plans, with insurance coverage estimated at \$14 billion. This very substantial sum reflects the unwillingness of the private insurance industry to make essential property insurance available in the voluntary market and demonstrates the basic wisdom of the 1968 act.

Riot reinsurance has been purchased from the Federal Insurance Administration by about 430 companies. Riot reinsurance claims have been filed by reinsured companies at a relatively low level. After payment of \$5 million in losses during the 33 months of the program's operation, the riot reinsurance fund has reserves of about \$67 million out of premium and investment income available for future losses.

I might add here there is no appropriation for this program. It is expected to be funded entirely out of the premium income.

A newly created (by the 1970 Housing Act) Office of Review and Compliance in the Federal Insurance Administration is currently examining the FAIR plans to determine whether the companies and the States are complying with our regulations, what improvements are necessary to better carry out the intent of the 1968 act, and to ascertain whether the cost of the insurance provided is reasonable. Examination of the FAIR plans in Massachusetts, Pennsylvania, New Jersey, and New York have already been conducted, and an examination of the Illinois FAIR plan is presently underway. Review of available statistics in the FAIR plan States raises serious question as to the efficiency of their operations and whether the rating procedures utilized are equitable to those insureds for whose benefit the FAIR plan and riot reinsurance act was passed.

The flood insurance program was also enacted in 1968 to provide a type of insurance which, with very minor exceptions, had never been written in the United States. The program is subsidized by the Federal Government with respect to existing structures, but the flood insurance coverage is made available only within communities that undertake the local land use and land management measures appropriate to the flood risk that will be put into effect through local zoning, building codes, and other ordinances. Flood insurance was available as of April 23, 1971, in 574 communities, 127 under the regular program as enacted in 1968 and 447 under the emergency program enacted in December of 1969. This program has experienced relatively few losses and financial impact is low, even in relation to the reduced chargeable premium rates established. But this result is essentially the result of fortuitous circumstances under the program to date, a low number of floods in insured areas.

The crucial test of the flood insurance program is yet to come. By December 31 of this year if flood insurance is to remain available in a community, or to become available to a new community, that community must appropriate local land use and control measures designed to reduce the risk of loss from future flood occurrences, and those measures must be approved by the Department of Housing and Urban Development. If these land use and control measures are not implemented, I believe the program will not have fulfilled its underlying purpose.

The new program of direct Federal crime insurance, authorized in the 1970 Housing Act, and enacted by the Congress following the issuance by the Federal Insurance Administration in July 1970 of its "Report on the Availability of Crime Insurance and Surety Bonds," will become effective on August 1, 1971. This program is necessarily still in the developmental stage. We have made extensive efforts to bring the provisions of the new law to the attention of the State and other officials and insurance industry representatives, in order that each State may utilize the time accorded by the Congress to solve its own critical crime insurance problem, and thus avoid the need for implementation of the Federal program in that State. In this regard, we are also conducting surveys to determine the extent and location of critical crime insurance availability problems, and in which States the Federal coverage will be available on August 1, 1971.

Current indications are that few if any States will enact suitable crime insurance programs. We are thus preparing insurance policy forms, manuals, rating schedules, and underwriting including requirements for protective and preventive measures and devices, so that the program can be put into effect on the target date of August 1 in each State in which an unsolved problem exists.

Pursuant to authority in the act, we are seeking to enlist the assistance of the insurance industry as fiscal agents of the Government in the marketing and servicing of Federal crime insurance. To the extent these services are available at a reasonable price with appropriate cost controls, we will be able to minimize the functions directly undertaken by the Federal Government.

I believe that all three programs administered by the Federal Insurance Administration in HUD represent a considered judgment that an appropriate balance must be struck between the roles of private enterprise and the States on the one hand and the proper insurance needs of the public on the other.

Mr. Chairman, I will be pleased to answer any questions the committee may have.

Mr. Moss. Mr. Bernstein, will the committee be able to avail itself of your actuarial capabilities in the course of its deliberations when it undertakes the executive consideration of the insurance legislation now before us?

Mr. BERNSTEIN. Certainly, Mr. Chairman, we would be very happy to.

Mr. Moss. Mr. Eckhardt, questions?

Mr. ECKHARDT. I have no questions, Mr. Bernstein.

Mr. MCCOLLISTER. I was curious on the Department of Transportation study, perhaps I did not read it very carefully. I was curious as to the savings possible in no-fault as far as the public was concerned.

Mr. BERNSTEIN. The predicted savings from many sources, at least those in favor of no-fault, come around 25 percent, but the DOT recommendations were quite explicit in urging that there be very cautious prediction of savings and that they could not predict an exact savings dollar.

I would say that even if we accepted the 25-percent figure that many actuaries give—and many of them give that for a true no-fault system, with losses for pain and suffering limited to only extensive, disastrous, catastrophic injuries as characterized by the DOT report—but even if

we accept that figure, the only lasting savings built in are probably the change from the litigation to the nonlitigation status.

To a great extent there are other savings that will probably evaporate if we don't have controls built into various other factors in and out of the insurance system.

So, while today, even if we expect a 25-percent savings, unless we have some control over the right of the drunk and reckless driver to the road, the damageability of automobiles, and hospital and medical costs, dollar savings are going to evaporate, and evaporate quickly, and no-fault should not be oversold on the grounds of cost savings.

No-fault has intrinsic benefits, in speed, and equity, and some benefits in cost, but those costs benefits are going to be temporary unless we get control of other factors which this and other committees are addressing themselves to.

Mr. Moss. Mr. Guthrie?

Mr. GUTHRIE. We have had the benefit of reading your speech before the Association of the Bar of the City of New York and in that speech you comment at several points on no-fault auto insurance, and some of your comments are very provocative and you discuss the system of classification, rating territories, and the effect that that has on pricing. It seems to me that would be very useful to have a presentation of that system for this committee's use. Could you proceed to do that?

Mr. BERNSTEIN. I will attempt to do that, Mr. Guthrie.

To take automobile insurance as an example, in 47 out of 52 jurisdictions in the United States—the District of Columbia, and Puerto Rico and the 50 States—there is in effect so-called 220 base classification plans, which, when multiplied by other variations in classifications, produces a situation where you have 11,000 classes into which an individual insured can fall. There are about 650 rating territories in the United States, and while it may not be a totally representative figure, that ends up with something like over 7 million potential slots.

As an example, of what the 220 base classes are, that will mean that if you drive to work less than 10 miles a day you are in one category, and if you use a car only for pleasure, another class, if you use it for more than 10 miles another class, and if you use it for farm purposes, another. Then you multiply that by the factor of whether you are an underage driver. There is a separate classification for every year of age over 16 and up through 29. Then that is multiplied by the factor of whether you are married or not. Then you multiply that by the variations in the safe driver insurance plan. When that is over, you have 11,000 classes. What that means in practical terms, is that bit by bit we are isolating each insured into a special niche and we are abandoning the basic tradition on which insurance was created, which was the law of large numbers, of spreading the risk.

The fact is that the basic principle of insurance involves taking premiums in from some who will not have a loss in the expectation of paying losses to others.

What we are getting to by the composite of all these refinements in classifications, is that people are getting closer and closer to self-insurance. That is not insurance.

Mr. ECKHARDT. Would the gentleman yield?

After you put a certain amount in the savings deposit box to take care of the damages you are likely to incur. Is that it?

Mr. BERNSTEIN. Exactly. Obviously, you have to get isolated out pretty far, but some of the figures that come to mind are, if you are inner city resident of Philadelphia, and you have an accident, and you have an underage driver in your family, you will pay about \$700 for the basic 10-20-5 limits, and that is pretty stiff.

What we are doing is isolating people out into that high-rate area, and, sure, the little old lady who drives only on Sundays may get a very beneficial rate but there are only so many little old ladies.

In the middle, we theoretically have a large group, but the middle is getting smaller and smaller. There is even a company now advertising a 110,000-class plan.

This multiplicity of classifications didn't just happen. It is the product of a form of competition, following the SEUA case in 1945, when insurance was freed from rating controls, and companies started experimenting. As one company found a particularly good gimmick—I don't use the word "gimmick" in a derogatory sense—another company would seek to compete by developing its own gimmicks.

As some companies found basic sales advantages in their methods of operations, other companies figured, "Well, if we can carve out the good risk, if our underwriter can find the good risk, we will write him and we will do better than the other company."

What happened was that as they kept dividing the field up into little pieces, so did the other companies. And the other companies still retained the basic cost advantage of their type of sales procedure on top of a multiplicity of classifications. You kept getting more and more classifications as one company or group of companies copied the others. Despite the fact that there was nothing to stop any company from going to an increased classification system when it saw its competitors doing this, the majority of companies kept increasing classifications, erroneously thinking this would beat the competition.

The most obvious proof of the failure of this multiclassification system from the consumer's point of view is the fact that it is predicated on the idea if a company can get a proper rate for someone, it will write anyone. But our assigned risk plans keep growing.

Ten percent of the market in New York is in the assigned risk plan. In the District of Columbia, you have 30 percent of the fire risks in the FAIR plan. This is because regardless of the classification system, companies are never going to write risks they don't want to write, at any rate unless they are forced, by law.

While accomplishing little beneficial in the way of either price or increased availability of insurance, the multiplicity of classifications has a further negative effect. It destroys the credibility of statistics to the point that you don't know what happened. What good does it to know that the fellow who has four accidents has produced certain losses, when he may be the only fellow in that classification. What good is that for ratemaking purposes, for purposes of teaching you lessons as to the worth of the classification system and the type of experience developed by representative classes of drivers?

Whether we go to no-fault, whether we stay with the fault system, as long as you have this multiplicity of classification, you are going to have the same problems of availability and price.

You are going to have them if you have a first-party system. You are going to have them if you have a third-party system. No-fault is good.

I believe no-fault should be achieved and implemented quickly, but other very basic reforms are not receiving enough attention, and should be implemented just as quickly.

Mr. GUTHRIE. Have you had an opportunity to study section 6 of H.R. 5994, or H.R. 7514, wherein a uniform statistical plan is provided for?

Mr. BERNSTEIN. Yes.

Mr. GUTHRIE. Would this in any way remedy the problem that you have just described?

Mr. BERNSTEIN. As I read it, it provides for the establishment of a federally mandated statistical plan. To the extent the substantive basis of that plan was sound, it would remedy it. Every State Commissioner in the United States has the power—

Mr. GUTHRIE. Are they doing it?

Mr. BERNSTEIN. They are not doing it, and tragically, the direction is the opposite. They are going to more and more classifications. We have sought to urge them in recent months to take a new look.

Mr. GUTHRIE. How successful have your efforts been?

Mr. BERNSTEIN. To date there has not been time to see the effects. We recognize the really tremendous pressures against it. I would say the insurance companies like to do business in the way they have been doing it.

Many people in State regulation and in the insurance industry say, "That is a great idea, but we can never get it through, we can never get away with implementing it administratively." There are too many companies that like that way of doing business.

But developments move very, very quickly, and I know from our experiences in the State of New York with the New York Insurance Department, how little statistics come to mean, and how little you can learn when there is this fragmentation.

One of the things that is doubly tragic, and one of the reasons I think it is so fortunate that Congress enacted the compliance and review unit in the Federal Insurance Administration is that certainly an industry that lives by refined classifications should reflect experience developed thereunder in its treatment of the involuntary market, such as assigned risk plans and FAIR plans.

What we have yet been unable to get, and what no insurance commissioner in the United States today has, are meaningful FAIR plan statistics. Our new regulations do require it—they were effective September 1, last year—but it takes time.

Individual companies have the data, but you can't get it together when you need it. The real tragedy is we get rate increases imposed either on FAIR plans or, because of FAIR plan experience, without regard to actual experience based on these sacred classifications. In those States that we have examined, a State like New York where we have looked at the FAIR plan experience trying to develop meaningful statistics out of this conglomeration of experience, we find that the so-called "ghetto" business, the urban business, is the better business. The loss ratios are not as large as for the hotel or the restaurant in the country, and yet the traditional company worry is that you can't write business in the city because you will lose your shirt.

The companies complain that they are subsidizing social problems, but we are finding that the urban resident is subsidizing the rural resident in the FAIR plan States.

Taking their own statistics, the 1969 figures of the companies in all the FAIR plan States, voluntary and involuntary business as well, what developed is that they made a 7.1-percent profit—their own statistics—before taxes and before investment income.

In the so-called non-FAIR plan States, they had a 4.3-percent loss before taxes and investment income. So there is not a parallel between the fear of the companies of writing in urban areas and the statistics that have developed.

But had not the States taken the action that they did, those 28 FAIR plan jurisdictions, I very seriously wonder how many, if any, of those 700,000 risks would have insurance today in the fire insurance area.

Mr. GUTHRIE. In your operations as Federal Insurance Administrator, you no doubt have day-to-day relationships with the State agencies responsible for administering or regulating the insurance business. I gather that your operations have continued without too much friction between you and those agencies. Is that a fair statement?

Mr. BERNSTEIN. That is correct. Yes.

Mr. GUTHRIE. You have looked at these two bills. Do you think that those two pieces of legislation would operate without intruding upon the economic regulations of the State insurance agencies?

Mr. BERNSTEIN. I think we have very different situations and to answer your question specifically, I think that you would certainly have friction. I would expect very significant and heated opposition by the States, by the State insurance authorities, to this, as a matter of policy. They don't want Uncle Sam sticking his nose in their business, and this is their business.

It is one thing for us to be involved in an involuntary market that no one wants to pay too much attention to, and where the statistics are not even demanded by the States. It is another thing when we start talking about automobile insurance. I think when we talk about automobile insurance, the very existence of this committee and the bills its sponsors, the DOT report, which as I read the testimony from the insurance commissioners, was opposed as going too far also, I think that this type of proposed legislation in and of itself is going to force action at the State level.

Mr. GUTHRIE. Do you see any evidence of that action?

Mr. BERNSTEIN. I think it is too soon. The bills have been introduced, and they seem to be going nowhere with the exception possibly, of Michigan.

But again, I think it is too soon to judge it. I think 5 years is an extremely outside figure. I think it is far too long. I think 2 years is enough. Knowing that you are here, that this committee is sitting here, will give the States the option of acting, and the committee has the ability to evaluate just how unwilling the States are to assume their responsibility before it takes such drastic action as really taking over the automobile field, whether it is by standards, whether by nonregulatory methods, or by regulation.

I feel that it is so drastic, the fight we here can expect is going to be so bloody that to the extent that we want to get in that fight, let's be very sure before we do that the States are unwilling to act. I hope they act. I think we have seen a parallel with the auto insolvency bill.

There, if your bill, and the Senate bill as well had not been introduced, and had not been seriously considered, I don't think you would

have 29 States with insolvency legislation now, but you do. There is a hope of more coming up pretty quickly, too. I think if some of the key States that have not acted yet do not act this year, bills like that will be much more seriously considered than they were last year.

I think that the State should be given a chance, whether it is a chance to act or it is a chance to fail, before we change the current system.

I am not speaking in terms of any sanctity of McCarran-Ferguson, because that act is only as good as the next act of Congress. It is not because you can't do it. It is because of a vast mechanism that have been set up at the State level.

In New York, when I left the department, I think we had 800 employees, and a budget of \$9 million, which is now up to \$11 million. All these people are not going to move to Washington. We could not get them if we wanted them. Multiply this by the amount of expertise that does exist at the State level. I think it would be galvanized much more by pressure of the sort of the joint resolution, something that gives a deadline for the States to act before Congress takes what is obviously, under a resolution like that, a final look at the situation.

I think something like that is enough. To the extent that it fails and I am wrong, and I have been wrong many times, before, I realize it is more than my being wrong, it is millions of policyholders that have something at stake.

But millions of policyholders right now are involved in this system. It is not going to be as simple as passing a bill like this, the inter-relationship of State and Federal with other fields of insurance inter-relating with duplication of benefits, coordination of benefits, who is primary, who is secondary, some of these questions will extend deeply into the regulatory field.

These are questions that I don't think should be answered on a Federal level until and unless you really have to.

Mr. MOSS. Are there any further questions?

Mr. ECKHARDT. You are familiar, of course, with this DOT study.

Mr. BERNSTEIN. Yes, sir.

Mr. ECKHARDT. On page 49 there is a breakdown and a table with respect to insurer's expenses, including insurance claims expenses, insurer's sales expenses, insurer's general underwriting expenses and, of course, an irrelevant section on insurer's investment expenses, insofar as the things we are discussing here.

Are there any expenses involved with respect to the creation of this myriad of different classifications?

Mr. BERNSTEIN. It is the type of expense that even goes into the required policy form committee meetings, the meetings of the rating committees in the companies.

It is an initial expense in terms of internal company expenses, an unallocated expense, but I think it is peanuts in terms of the overall operations.

There are complaints from the producers of how can they deal with an 11,000 class plan.

There are more practical expenses than dollar expenses. I think there are additional expenses, but I don't think in and of themselves they would warrant a change back to a broader classification system.

Mr. ECKHARDT. Don't you think those expenses not definable are very considerable when you consider the time that they occupy, and consider the time of the officials and employees of the company?

Mr. BERNSTEIN. Yes, I do. You could extend that to the employees of the insurers who review all these. The dollars expended are substantial.

Mr. ECKHARDT. I would assume they would probably not fall into the categories of insurers' claims, expenses or insurers' expenses. They would probably fall in some more general heading like insurers' general underwriting expenses.

Mr. BERNSTEIN. Yes, or unallocated.

Mr. ECKHARDT. If we say we have computed about 15 cents of the dollar for insurers' claims expenses—of course, as you understand this table has a universe the estimated automobile liability insurance operating expenses, so it does not include that part of the dollar which is the pay out—but if we assume that this 15 percent, approximately, insurers' claims expenses, and another 15 percent in insurers' sales expenses, there is at least some additional item in the categorizing of the various insured, is there not?

Mr. BERNSTEIN. Yes, there is.

Mr. McCOLLISTER. Would the gentleman yield?

Mr. ECKHARDT. Yes.

Mr. McCOLLISTER. I think it is a kind of a hardening of the arteries that affects the whole body of the patient in selling, in claims, in everything that happens, and I say that from a background of a former IBM salesman who had insurance companies as its customers, and having seen some of the reports that are prepared on those ratings, that you can't measure the time that is spent as a result of that breaking the thing up into such small pieces.

It is great to sell IBM machines with, but I suspect it does not produce the result that helps sell the insurance at a lower cost to a better purpose.

Mr. BERNSTEIN. We have had to face that problem with the crime insurance program, where under the mandate of the act we are an insurance company, and where it is a chicken and an egg situation, we don't yet know which States we will have to operate in.

We are going on an assumption of a severe problem situation in at least a dozen States. We are preparing policy forms and rating territories and classifications. Wherever possible we are operating for spread, for simplicity, as we have in the flood program.

The flood program was new. We had no tradition to have to overcome. Here we had to overcome tradition, and we are. We are going to go to a system based on some totally new concepts that throw out entirely the territorial classifications and judgments of the industry.

We don't think they have proved out in past years.

We think they are far too complicated, and we don't have sufficient data processing services to work with then even if they did prove something, and we don't have access to IBM on that basis.

Mr. ECKHARDT. I gather also from your testimony that these classifications are not necessarily based on any very precise statistics, or information but are rather a somewhat predilection-based determination on the part of those who make the decisions.

Mr. BERNSTEIN. They are very subjective. They have to be, because until the classifications are created, no one will know what the experience within them would be.

Mr. ECKHARDT. If that be true, in many instances the result may be to price certain groups out of insurance coverage, is that not true, that might be quite profitable groups?

Mr. BERNSTEIN. I think the answer is yes; up to the point that they might be quite profitable groups. That may or may not follow. It very well may follow, but you certainly price tremendous segments of our society out of it, and crime insurance in the private market is a perfect example, when a grocery store owner in the Bronx has to pay \$531 for a thousand dollars of storekeepers coverage.

Mr. ECKHARDT. Then of course, if we are then limiting insurance coverage on a somewhat fortuitous basis, the ultimate result is for the unit cost of insurance coverage to increase, is that not correct?

Mr. BERNSTEIN. That is correct.

Mr. ECKHARDT. Thank you, sir.

Mr. Moss. Well, I do want to thank you. I think you have been an excellent witness, and we look forward to being able to call upon you and avail ourselves of some of the capability that you have.

Mr. BERNSTEIN. Thank you very much. We will be of all the help we can.

Mr. Moss. The committee will now stand adjourned.

(The following statements, letters and telegrams were received for the record:)

STATEMENT OF JOSEPH A. BEIRNE, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

The 92nd Congress has an opportunity to pass legislation which will eradicate a great injustice against millions of Americans, and at the same time assure these millions that government is responsive to the individual American consumer.

This legislation is the package that has been introduced in the Senate and the House (S. 945, S. 946, S. 947, S. 948, S. 976, H.R. 4994, H.R. 4995, H.R. 4997, H.R. 4998, H.R. 4999) to establish no-fault auto insurance nationally, and to develop safer cars and honest repair practices.

Millions of Americans, including the hundreds of thousands who are members of the Communications Workers of America, have been seeing only continually rising premium prices, accompanied by dismal delivery of auto insurance protections. They need the benefits which this legislation would provide and—just as badly—they need a demonstration on the part of Congress which shows them that government means more than frustration and taxation.

The elements needed to satisfy those purposes are in the package introduced by Senators Hart and Magnuson, and Representatives Moss, Dingell and Carney.

This is an opportunity Congress should seize.

It is also an opportunity which the Nixon Administration should seize, especially since that Administration has spoken frequently in terms of enhancing the life of the American individual and returning political power to the people.

Establishing no-fault auto insurance on a national basis would be as clear and vivid a demonstration of the rights of the individual consumer over the powerful blocks of lawyers who specialize in auto injuries and the insurance companies, but the Administration, by its Congressional testimony, has shown no willingness to stand with the individual consumer.

Treasury Secretary Volpe's testimony, has said, in effect, that no-fault auto insurance is a good idea but let's allow it to languish in the state legislatures for a while, where it can be stalled easily, so that those who are now milking the consumer's auto insurance dollar can continue to gorge themselves.

It would be redundant for me to go into a detailed discussion of the elements of no-fault—the Congress has the massive study of the Department of Transpor-

tation, and other information which shows that less than 50 percent of personal injury premiums go back to the injured persons, but are eaten up by legal and insurance selling expenses.

The Congress should also be aware that no-fault has been in operation in Puerto Rico for more than a year and a half, and that it has been even more successful than anticipated. All of the scare cries that have come from the opponents of no-fault auto insurance have been dispelled by the evidence of the Puerto Rico experience.

Of course, this will not prevent opponents from buying advertisements to try to scare the public into believing that their right to sue will be taken away if no-fault passes, and other false claims.

Perhaps the most effective counters to the falsehoods of the opponents would be constant reiteration of the following facts:

Of 220,000 personal injury lawsuits in 1968, the victims netted \$700 million and the lawyers netted \$600 million.

Under no-fault, the victim would be paid for the economic loss, but could still sue for additional pain and suffering.

This issue, like so many others, boils down to a matter of educating the people. With auto insurance, the knowledge that it is a problem is established. Many people, additionally, are finding out that no-fault is the solution, but more and more must be informed.

But the public must also be informed about the tactics of the segments of society which want to maintain the status quo which they find so lucrative—the phony claims, the phony ads. Congressional hearings can show this.

All of us who are interested in seeing an America where the individual can feel secure in knowing that his government is responsive to him and to his needs should continually make every effort possible to show that the opponents of no-fault auto insurance are also opponents of responsive government.

STATEMENT OF INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

Soaring premiums, inequitable settlements, lengthy delays in the settlement of claims and unfair cancellations of policies are major reasons why consumers are up in arms over auto insurance. A \$2 million, two and one-half year study of auto insurance conducted by the Department of Transportation has concluded among other things that (1) fewer than half of those persons killed or injured in car accidents receive payments from the present liability system, (2) victims with economic losses of more than \$25,000 are repaid only an average of one-third of their losses, and (3) the major portion of auto insurance premiums goes for court and lawyer costs, and other non-benefit expenses. In New York alone, for example, about 23% of injury liability premiums go to lawyers and claims investigators.

Following completion of its study the Department of Transportation was prepared to make an extensive series of legislative recommendations for reform in the industry. The President, apparently having checked with major insurance carriers and such groups as the American Trial Lawyers Association, blocked them. Richard Barber, who headed up the study, described the President's recommendations for auto insurance reform as "disgraceful sham." Compared to the original Department of Transportation recommendations, he described the White House approach as "pale, anemic, and lacking in substance."

Senators Philip Hart and Warren Magnuson, in opposition to the President, have sponsored meaningful legislation for auto insurance reform. Their approach provides partial no-fault insurance for everyone. One's own insurance company would compensate accident victims for lost wages, medical care costs, and rehabilitation and death benefits immediately, and without determination of fault. Victims could subsequently seek redress through the courts for claims in excess of \$30,000.

The Hart-Magnuson program would allow cancellation of policies only for lack of payment of premiums or loss of driver's license. It would also abolish the legal prohibitions in 36 states against the selling of lower cost, true group auto insurance.

In the long run, the ultimate solution to our auto insurance headaches is government run insurance operated along the same lines as workmen's compensation. Short of there being an immediate prospect for a comprehensive gov-

ernment plan, the ILWU joins the rest of the labor movement in demanding prompt enactment of the Hart-Magnuson proposals for auto insurance reform—a long overdue first step toward making the present system one which is equitable, efficient, and less expensive.

STATEMENT OF NATIONAL AFFAIRS COMMITTEE, INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATIONS OF NEW YORK, NEW JERSEY AND CONNECTICUT

PURPOSE

This statement is submitted in lieu of verbal testimony to outline the position of the Independent Mutual Insurance Agents Associations of New York, New Jersey and Connecticut relative to HR-4994 in particular and the concept of "first party" or "no fault" automobile insurance in general. These associations represent a total of approximately 3,500 independent insurance agencies and 10,000 individual agents. We respectfully request that this document be entered in the record of the current hearings on HR-4994.

POSITION ON FIRST PARTY REPARATIONS SYSTEM

These three associations, individually and collectively, strongly support the concept of a first party automobile accident reparations system, commonly referred to as a "no fault" system. This position stems from an intensive study of accident reparations initiated by our own three-state Auto Study Committee in 1967, the findings of which were published in September of 1968 and can be provided upon request.

Although we have not proposed and do not contemplate proposing a specific reparations plan of our own, our ultimate objective is a pure no fault system. At this time, however, we are prepared to support any limited or hybrid plan which represents an intelligent evolutionary step in that direction.

OBJECTIONS TO TORT SYSTEM

Our objections to the present tort liability system may be summarized as follows:

1. Claim settlements have tended to be painfully slow, with delays of anywhere from several months to several years remaining commonplace in the case of large claims associated with serious accidents.
2. Many accident victims presently receive no compensation for their losses, perhaps because of some insignificant degree of contributory negligence. Similarly, many are grossly underpaid for their losses.
3. A significant portion of many tort settlements is diverted to court costs and legal fees, never reaching the accident victim.
4. The tort system appears to have created serious court congestion.
5. Fault itself, the basis of the tort system, is extremely difficult to prove in many cases and impossible to prove in some.
6. The process of proving fault generates high investigation costs for the insurance companies involved.
7. Finally—despite its supposedly punitive nature, the tort system has apparently done little to reduce our disgraceful highway accident rate or remove chronic offenders from the road.

ADVANTAGES OF FIRST PARTY SYSTEM

Our studies lead us to believe that at least five major advantages would accrue from a first party system:

1. It would result in faster claim settlement. This is a decisive factor in the immediate aftermath of serious accidents, when medical and/or repair bills accumulate most rapidly, when victims most frequently find themselves confronted with financial crisis and when funds are urgently needed for rehabilitation of seriously-injured persons.
2. It would lead to more equitable settlements, with every accident victim receiving reasonable compensation for his losses and a smaller portion of any settlement being eroded by litigation costs.
3. The direct buyer-seller relationship between the insured person and his insurance company would probably minimize the tendency of some companies to resist *all* claim settlements, even those which are clearly justified.

4. It would probably reduce court congestion.
5. It would eliminate the costly and difficult problem of proving fault before compensating the accident victim.

MINIMUM REQUIREMENTS

We consider the following to be the minimum requirements for any acceptable first party reparations plan:

1. It *must* place the automobile insurance in a primary coverage position (See subsequent comments).
2. Mandatory coverage—whether pure first party or some combination of first party and tort rights—must be high enough to insure reasonable repayment and rehabilitation of the accident victim and prevent his becoming a public charge.
3. It must offer sufficient first party protection to cover costs which might reasonably be anticipated in the immediate aftermath of an accident.
4. It must make some provision above and beyond basic statutory coverage for unusual circumstances such as permanent impairment, disfigurement, dismemberment or death.
5. It must offer some form of optional coverage for catastrophic losses.
6. It must provide liability coverage for out-of-state accidents.
7. It must provide ample residual liability protection to cover situations not otherwise covered in the basic provisions of the plan.

PRIMARY VS. SECONDARY COVERAGE

On one point we are adamant and will not compromise: Automobile insurance absolutely must occupy the primary coverage position in the settlement of any and all claims arising from automobile accidents. Conversely, it must not be placed in a position secondary to collateral coverages held by the insured. We base this reasoning upon the following four points:

1. Persons carrying valid automobile insurance who are injured in automobile accidents should not be required to exhaust benefits which they have accrued to protect themselves against natural illness or other mishaps.

2. Administrative confusion resulting from a secondary coverage system would be monumental. It would be virtually impossible to devise a comprehensive rating system for automobile insurance which would mesh with the staggering number of accident, health, medical and income protection plans offered through other sectors of the insurance industry.

Furthermore, shifting administrative costs of processing bodily injury claims to hospitalization insurers would not greatly reduce the administrative burden on the auto insurer, since any accident causing significant injury will undoubtedly be accompanied by a considerable degree of property damage. Hence, the auto insurer is already in the act, and the additional administrative cost of processing the injury portion of the claim would be negligible.

3. The economic cost of highway accidents should be borne entirely by highway users. Yet, a secondary coverage statute, while undoubtedly effecting some savings in automobile insurance premium, would simply shift the burden of highway economic losses to the rest of the public in the form of higher premiums for other hospitalization and/or medical insurance.

4. People buy automobile insurance to protect themselves against losses suffered in automobile accidents, and that insurance alone should protect them fully against all such losses, except where covered by workmens compensation.

Despite our full support of the first party concept, we will commit all of the resources at our disposal against any plan or any bill which relegates automobile insurance to a secondary position.

OBJECTIONS TO HR-4994

HR-4994 has many meritorious provisions, which point toward our own ultimate objectives. However, we have objections (two of them serious) and/or reservations with regard to the following provisions:

1. Sec. 2(12) (A)—definition of "net economic loss." Places automobile insurance in secondary coverage position to collateral coverages. Totally unacceptable to our associations for reasons outlined immediately above.

2. Sec. 3. Virtually mandates compulsory bodily injury automobile insurance on a nationwide basis. While the idea may have some merit, it is infringement

upon state rights. Furthermore, even in such states as New York, one of the pioneers in strict compulsory automobile insurance, a significant percentage of uninsured drivers still find access to the highway.

3. Sec. 5(a)(7)(A)—places certain responsibilities for "a percentage" of net economic loss upon the insurer of a "larger" vehicle. Far too vague. What percentage, and what is a "larger" vehicle?

4. Sec. 5(d)(1)—an ironclad mandatory issue, guaranteed renewal, guaranteed noncancellation provision. This is unprecedented coercion of private enterprise, which would probably lead to bankruptcy of the private insurance industry in short order and would also mandate perpetuation on American highways, by a captive insurance industry, of the criminally negligent and the chronic offender. Even the most stringent state cancellation and non-renewal laws grant exclusions to insurers for such reasons as use of an automobile in commission of a felony, conviction for driving while under the influence of alcohol or drugs, conviction for leaving the scene of an accident, and other serious offenses. This provision of this act would grant free rein to these undesirables. Totally unacceptable to our associations.

5. Sec. 7(a)—would establish, at state level, an "assigned claims plan." The objective is obvious and basically sound—namely, to deal with contingencies not otherwise covered in the basic law. We have no specific comments, no specific suggestions, and our reservations are intuitive rather than tangible. We simply wonder if this is the only, or even the best, approach to this problem. We suggest that this mechanism be reviewed and analyzed very carefully before it is implemented.

If amended to eliminate the five deficiencies outlined above, HR-4994 would be considered highly acceptable to our associations—if presented in the context of model guidelines for state level legislation.

STATE VS. FEDERAL REGULATION

The concept of federally-mandated standardization of automobile accident reparations laws is by no means distasteful to our associations. In fact, it has considerable merit.

However, the concept of federal control of the system is utterly repulsive. It would, for one thing, require the establishment of still another layer of expensive federal bureaucracy, which could rapidly negate any savings that might otherwise accrue from such a system.

Secondly, it would constitute another serious infringement upon state rights, the foundation of which, in terms of insurance regulatory power, was clearly recognized and defined in the McCarran Act of 1945. In context with this, we submit that the states, for the most part, have done a fairly respectable job of regulating the insurance industry.

Finally, we warn that the imposition of additional expensive controls at still another level of government could further inhibit operations of the private insurance industry and further restrict already deteriorating insurance markets.

Therefore, we hope this committee will limit its objectives to the establishment of reasonable standards for auto accident reparations and tread with extreme caution in the area of local control. A very large industry, employing millions of people and serving the entire population of the United States, could be at stake.

Respectfully submitted.

CHARLES L. RUE, CPCU,
Chairman, National Affairs Committee.

STATEMENT OF THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

The National Association of Mutual Insurance Companies, as a professional trade organization, has a total membership of over 1,000 mutual insurance companies in the United States and Canada.

The problems facing the private insurance industry, Federal and State Government in the transportation field, particularly with the automobile, would have probably been beyond the imagination of the first automobile manufacturer and insurance underwriter, yet these problems are very real today. The solution to these problems does not lie in the hurling of accusations between manufacturers, repair shops, insurance companies, the public and, yes, regulators and lawmakers.

The automobile manufacturers feel that the automobiles they produce, with all of their power and cosmetic design, are what the public wants. The automobile repairman feels he has become a "replacement" man, rather than being able to repair. The insurance company has become a maintenance contractor, rather than a protector of the public against financial disaster. The public becomes outraged at having to pay the attendant costs but yet expects to be reimbursed for the first dollar, and many times an inflated first dollar, of every type loss. The regulator and legislator are caught on the horns of dilemma, i.e. protecting the public against abuses, real or otherwise, and making sure the insurance company remains solvent to meet its financial obligations, present and future.

These hearings, hopefully, are not to air more accusations but to bring responsible people together so that responsible solutions can be achieved.

The review of past explorations in the area of the automobile insurance reparations system would serve no useful purpose at this time. To find a solution by using the experience of the past and projecting the results into the future must then be the prime goal.

The National Association of Mutual Insurance Companies feels strongly that an expansion of a first party reparations system in the automobile insurance field is feasible, however, we do not feel that the complete abolition of the tort liability system is the complete answer. A melding of a first party system with tort liability has more merit than completely eliminating a tried and true system (tort) for an unknown plan. If indeed the public wants a reform in the reparations system, then we think it is incumbent on the insurance industry to act responsibly instead of reacting by going off in many different directions and solving nothing.

Our Association has officially adopted the above position as evidenced by the attached addendum A. To expand the first party concept, we recommend a first party injury recovery of \$5,000.00 with the right of recovery through the tort system for the serious injury caused by flagrant violators of the accepted laws of our society. The retention of Uninsured Motorists Coverage should be continued so that the responsible public would be protected against the relatively small percentage of the motoring public that is irresponsible. In expanding the first party concept as respects Bodily Injury Coverage to \$5,000.00 immediate economic losses would be recovered and thus eliminate the need for separate Medical Payments Coverage. Further exploration is possible in the Property Damage and Collision Coverages regarding the expansion of first party recovery. The Property Damage Coverage could also include the first party concept by applying reasonable deductibles when two or more motor vehicles are involved in an accident. The deductible, of course, would not apply to damage to property other than motor vehicles but would be paid without regard to fault only as respects stationary objects such as buildings, telephone poles, etc.

By expanding first party coverage to Property Damage in this manner, the separate Collision Coverage could be eliminated. Thus the automobile insurance policy would become an indivisible package of Bodily Injury, Property Damage and Uninsured Motorists Coverages. Optional coverages such as Comprehensive, Additional Death Benefits, Increased Limits, Towing and Labor, etc. could be offered.

Department of Transportation Secretary Volpe on March 18, 1971 recommended that a period of time be provided for the State Governments to develop and implement plans which would provide a first party reparations system. Secretary Volpe is to be commended for this position in view of the ever increasing drive for more and more Federalism and socialistic trends that have been developing in the past few years.

The National Association of Mutual Insurance Companies supports Secretary Volpe's recommendation and pledges its support to those who are willing to work responsibly for a solution to the nation's automobile problems of today and tomorrow.

The National Association of Mutual Insurance Companies continues to subscribe to a system by which parties injured in automobile accidents are reimbursed for damages sustained on the basis of fault, and to the position that the person at fault should be held responsible for injuries and damages sustained as a result thereof.

The Association recognizes, however, that many persons at fault receive injuries in automobile accidents and that a system providing for reimbursing such individuals, even though at fault, for their medical, hospital, funeral bills and loss of earnings has merit. It is the position of the Association that such loss

to a person at fault can best be handled by reasonable expansion of a first party insurance program for payment to such injured party and at the same time retain the fault concept.

The Association further supports both of these programs and urges that the same be carried out by the inclusion of a fair and reasonable premium charge for such coverages.

STATEMENT OF THE MOTORCYCLE COUNCIL, INC.

The Motorcycle Industry Council, Inc., respectfully urges that operators of and passengers on motorcycles be excluded from first party no-fault insurance coverage of medical expenses, income loss and other tangible economic loss under the various legislative proposals considered by the Subcommittee on Commerce and Finance.

The Motorcycle Industry Council is a trade association whose membership includes the principal importers and manufacturers of two-wheeled motor vehicles marketed in the United States. In addition to vehicle manufacturers and distributors, allied companies such as producers of helmets, batteries, tires, specialized parts, chain and consumer magazines are members of the Council. The trade association has, as associate members, about 1000 motorcycle dealers throughout the United States. To the best of our knowledge the M.I.C. is the only organization which represents the motorcycle industry on a national basis.

Although direct first party insurance against medical expenses and income loss resulting from motor vehicle accidents has been available on an optional basis to automobile owners for some time, such coverage has not been offered to owners of motorcycles since it is generally believed that the substantial risk of personal injury resulting from a motorcycle accident would necessitate a premium charge that would make the coverage prohibitive in cost or unattractive to motorcycle owners.

Although reliable statistics are not available, it is generally accepted that a motorcycle accident involves a higher incidence of serious personal injury to the operator of or passenger on the motorcycle than a passenger car accident does to the operator of or passenger in such a vehicle. This is true because the design and basic characteristics of the motorcycle are such that it presents far greater risk of harm to its own operator or rider than to most of the other highway users.

The limited data available indicate that the risk of serious personal injury or death to the operator of or passenger on a motorcycle in case of accident may be more than twice that sustained by the operator of or passenger in a private passenger automobile. It is also recognized that such data may understate the risk to motorcycle operators and passengers, since many motorcycle accidents which do not involve either another vehicle or a pedestrian are probably not reported.

Because of the substantial risk of injury to operators of and passengers on motorcycles, the premium for direct coverage of medical benefits to such persons might well be beyond the reach of the owners of such vehicles. It is for this reason that such insurance has not been offered in the past to the owners of motorcycles and it is also for this reason that the Council is concerned that mandatory first party no-fault coverage of medical benefits and income loss to the operators of motorcycles might well result in the discontinuance of the use and sale of such vehicles, since many operators could not afford the premium required to carry such risks. Thus they would be denied the benefits of low-cost transportation consistent with their desires and economic circumstances. Beyond that there would be a depressing effect on the motorcycle industry, and also upon all industries that depend on the manufacture, sale and servicing of motorcycles. It is estimated that there are presently 2,800,000 motorcycles registered for highway use in the United States. In 1970 approximately 750,000 new motorcycles were sold in this country at an average sales price of approximately \$600 per unit.

A number of States which have enacted or which are considering a system of no-fault automobile accident reparations have recognized the problem outlined above and have excluded the operator of and passenger on a motorcycle from first party no-fault coverage of medical benefits and income loss.

Massachusetts was the first state to enact a no-fault insurance law with certain restrictions on remedies in tort for motor vehicle accident damages. Al-

though the legislature failed to deal specifically with the motorcycle problem, it did confer on the Commissioner of Insurance extensive regulatory powers which he exercised by providing that the required insurance, in the case of motorcycles, should not extend to the direct protection of owners, operators or guests while operating or riding on the vehicles. The requirement that protection be required for persons not riding on the vehicles, such as pedestrians, was retained. Subsequently, the legislature ratified the Commissioner's action.

A no-fault automobile reparations bill enacted in Florida has excluded motorcycles from the definition of motor vehicles and leaves them under the traditional reparations system.

The legislature of Oregon has passed and sent to the Governor a bill requiring certain no-fault insurance coverages against economic loss arising out of motor vehicle accidents, but the bill was amended to exclude the motorcycle.

In Illinois a bill passed by the legislature and reported to be favored by the Governor and the Insurance Commissioner (S. 976), defines motor vehicles for the purpose of the bill and the definition does not include motorcycles.

California has several measures pending which would require certain insurance coverages of economic loss resulting from motor vehicle accidents or a system of "no-fault" reparations. Several of the pending bills have been amended to exclude the motorcycle from treatment under the general requirements for private passenger automobiles.

In Colorado, a measure was pending in the recent session of the legislature which would have established a type of "no-fault" reparation system, but without abolishing or unduly limiting tort remedies. There, too, the motorcycle was excluded.

Delaware, however, has enacted a law providing for a modified "no-fault" automobile accident reparations system in which motorcycles were not separately treated. There, however, the law leaves opportunity for certain deductible provisions upon election.

It is respectfully urged that your Committee, when considering the system of no-fault reparation for economic loss arising out of motor vehicle accidents, recognize the problems presented by the extension of direct no-fault coverage of medical expenses, income loss and other tangible economic loss to operators and passengers on motorcycles, and take appropriate steps to exclude such persons from this coverage. One suggested method of effecting the proposed exclusion from insurance coverage would be to insert a paragraph along the following lines in the bill.

"Motor vehicle insurance policies on motorcycles shall not be required to insure owners, operators or guests against bodily injuries and the resulting medical costs, income loss and other tangible economic losses suffered while operating or riding such vehicles; provided, however, that such policies shall afford such insurance to indemnify pedestrians injured by such vehicles."

Other methods might involve a definition of motor vehicle for the purposes of the statute which would exclude motorcycles.

It should be noted that the Motorcycle Industry Council, Inc. takes no position with respect to the enactment of legislation providing for no-fault reparation of economic loss arising out of motor vehicle accidents, but merely urges that if such legislation should be enacted, direct coverage for medical expenses, income loss and other tangible economic loss not be extended to motorcycle owners and operators for the reasons set forth above.

STATEMENT OF NORMAN L. ROGERS, PRESIDENT, LAWYER REFORM OF THE UNITED STATES

I do not pretend to represent a large number of people or powerful economic interests. The organization I represent is very new and very small. We want to improve the honesty and efficiency of the legal processes.

This country needs no-fault insurance. Not only because it is a sensible improvement, but because we badly need demonstrations that the unorganized, public interest can win out over organized, vested interest.

The legal profession has no moral right to expect that the automobile insurance system shall be structured primarily for its own benefit. The special pleading of the lawyers should be rejected.

A larger issue at stake here is whether we can afford the luxury of choosing inefficiency over efficiency. In an editorial in the May 14, 1971 issue of Life maga-

zine, it was pointed out that spendable real income declined during the last five years for the average white and blue collar worker. Our standard of living is directly related to the efficiency of our economic activity. The editors of Life stated: " * * * we certainly can improve on such things as an automobile insurance system that pays out only 42 cents in liability benefits for every dollar of premiums collected."

Make-work is not economically productive. Not even when it is done by lawyers and insurance claims adjusters.

BLUE CROSS ASSOCIATION,
Chicago, Ill., May 4, 1971.

JOHN E. MOSS,

Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, Rayburn Office Building, Washington, D.C.

DEAR MR. MOSS: Since its inception, Blue Cross has regularly provided benefits for the cost of health care incurred by subscribers as a result of automobile accidents, regardless of fault. Our traditional concern has been to assure health care rather than to avoid expense by seeking to place liability for an accident upon another party. Although subrogation has been legally authorized and employed in some jurisdictions, much of the care paid for by Blue Cross over the years has resulted in relieving other insurers, such as those covering against costs resulting under a fault concept following an automobile accident, or has actually resulted in duplicate insurance or duplicate benefits. Either of these are unnecessary expense to the insured, or to the public.

Therefore, we are very much interested in the hearings which have been conducted recently by your subcommittee, around the concept of No-Fault Automobile Insurance. We appreciate the opportunity to comment briefly on the one aspect as to which we claim some expert status, i.e., medical payments.

We believe strongly that Blue Cross, Blue Shield and other health care prepayment and insurance coverages should be primary for coverage of health care costs resulting from automobile accidents under either a fault or a no-fault system of automobile insurance. Only if health coverages held by the injured person are inadequate to meet the need for his care should automobile insurance supplement health insurance, in our judgment. We favor clear requirements under automobile insurance requiring non-duplication of benefits. The economics of this arrangement would save premium for the automobile policyholder, both because the automobile carrier would write benefits only on a supplementary basis and because the administrative costs of health insurance are far less than those of automobile insurance.

But the major reason why we are convinced that costs of health care resulting from automobile accidents should be met by health insurance is that there is no other way to influence reduction of health care costs by the providers of services—the hospitals and the physicians and other providers. Automobile insurance, which basically reimburses the patient or expense of medical care, on a dollar basis, cannot apply economic pressures in the interest of reducing the costs of actually providing that care. Health insurance and prepayment, particularly the nation's Blue Cross and Blue Shield Plans, not only can but do influence the costs of delivery on behalf of their subscribers. We must do more, and government must help, but indemnification against costs of care through non-health contracts cannot do so. Public policy, in our opinion, therefore dictates concentration of coverage for health expenses under health programs.

In support of this position, the Board of Governors of the Blue Cross Association adopted on January 23, 1971, a resolution for the guidance of local Blue Cross Plans in states where various No-Fault proposals may be under consideration this year. Without supporting or opposing the no-fault concept per se, the Resolution stated in part:

"That the concept of Blue Cross and other health insurance coverage being primary in auto accident medical care coverage for subscribers be firmly maintained in all areas, including development of necessary coverage provisions to care for medical needs which a State may require to be met on a no-fault basis as a liability of a subscriber car owner."

As you know, some proposals for No-Fault Automobile Insurance provide and others, such as that introduced by Senator Hart, suggest that automobile insurance should be limited in the medical benefits area to covering only what health

insurance does not cover. We support this aspect of such proposals. Particularly in view of the current major public and Congressional interest in approaches to national health insurance, we hope that the deliberations of your subcommittee will support this basic policy.

Sincerely,

WALTER J. MCNERNEY, *President.*

INSURANCE DEPARTMENT, STATE OF KANSAS,
Topeka, March 30, 1971.

HON. LARRY WINN, JR.,
Old Cannon House Office Building, Washington, D.C.

DEAR LARRY: In view of the recent publicity which has been given to the "no-fault" concept of indemnifying victims of automobile accidents, I would like to bring to your attention certain facts and information which, in my opinion, have a bearing on this matter.

In writing to you at this time, I by no means wish to convey the impression that I either support or oppose the introduction of a "no-fault" reparations system in this state. While I recognize that there are serious problems confronting many of our citizens with regard to their automobile insurance programs and while the present tort liability system has made a significant contribution to these problems, I do not believe that sufficient information has yet been developed to support an objective finding that a "no-fault" system is the ultimate in effective solutions for each individual state.

I am impressed by the quality and characteristics of the Department of Transportation's "Automobile Insurance and Compensation Study" and, although I have not seen a copy of Senator Hart's study, I assume it is also a creditable piece of work. Unfortunately, studies of this nature all too often are concentrated around the most complex and profuse problems in the nation and thus do not provide a well-rounded appraisal of the situation as it exists throughout the country. Consequently, legislative reforms developed as a result of such studies usually are designed to eradicate the most pestiferous of problems and ignore or forget the fact that such reforms may not be either necessary or adequate in many other parts of the country. In my opinion, the enactment of a federal no-fault insurance law of the nature proposed by Senators Hart and Magnuson would be a classic example of such legislation. I have no doubts about the sincerity of their approach but I simply cannot agree with their apparent philosophy that anything which is good for one or two states will be good for all.

In view of the foregoing, I wholeheartedly endorse the Nixon Administration's approach that reform of the automobile insurance system should be left to the individual states even though I seriously question that Congress can positively and realistically declare that the states should enact no-fault legislation. It may well be that no-fault legislation, or a form thereof, is the answer to many of the automobile insurance problems but I cannot believe that even the voluminous content of the studies on the subject can support a conclusion that the same solution is needed or would be beneficial to the citizens of every individual state.

I am by no means attempting to say that the no-fault concept will not work or would not be an improvement over the present tort liability system. I am disturbed, however, by the fact that so much effort has gone into a determination of the kind and extent of the problem which exists while relatively little attention has been focused on the causes of the problem and their correlation to all areas of the country. In other words, it seems the studies which have been conducted verify the existence of some very real and disturbing problems and the problems themselves, rather than their causes, have resulted in a condemnation of the entire tort liability system. I am not at all confident that the studies gave sufficient consideration to the rapidly increasing number of motor vehicles, the congested traffic patterns which exist in some areas of the country, the qualifying factors for obtaining a driver's license in the various states, the tremendous upward spiral of medical costs, the differences in state laws relating to the rules of negligence (comparative versus contributory and so forth), the existence of guest statutes in some states, the antiquated structure of our judicial system as expressed by no less an authority than the Chief Justice of

the United States Supreme Court, and the many other factors which have contributed significantly to the dilemma facing the automobile insurance business and policyholders. I cannot believe the implementation of a no-fault system will eliminate all of these contributing factors and, if it doesn't it will not be a final solution to the automobile insurance problems as some of the proponents of the no-fault concept would have us believe.

I certainly do not contend that I am an expert on the major automobile insurance problems confronting the insuring public in all states. I do believe, however, that I possess sufficient knowledge and experience to qualify me to speak with some degree of authority on the most pronounced problems which are of obvious concern to Kansas insureds. Specifically, with regard to automobile insurance, the people of this state are quite perturbed over (1) the rising costs of liability and physical damage coverages; (2) the reluctance of insurance companies to provide automobile insurance coverage for certain classes of insureds, particularly those under twenty-five or over sixty-five years of age and those with a recent history of accidents or moving traffic violations; and (3) the increasing difficulty in obtaining physical damage insurance coverages. A review of these problems will reveal that neither a state nor federal no-fault plan would have any bearing on the constricted market situation as regards automobile physical damage or on the "class" underwriting restrictions. A no-fault system would, however, have an effect on the rates charged for automobile liability insurance but it is possible that this effect would not be a reduction in rates as far as Kansas is concerned.

Obviously, Kansas experience would have to be developed under the no-fault concept before an actual determination could be made on this point. The fact remains, however, that the payment of bodily injury claims without regard to fault would eliminate the premium savings now realized because of Kansas' contributory negligence law and "guest" statutes. There are, I realize, various premium savings features inherent in some of the no-fault plans but whether these features will off-set the savings presently accruing as a result of these elements of Kansas law is an unknown factor at this time. I sincerely believe it is the existence of these unknown factors, not only in Kansas but also in other states, which verifies my contention that consideration of the no-fault concept and the solution of the automobile insurance problems should be left to the individual states and their legislative bodies.

I do believe, however, that the no-fault system is a concept which is definitely worthy of exploration and some members of the Kansas Legislature apparently agree with me. There have been two resolutions introduced during this session of the Kansas Legislature which call for a study of the tort liability system and the no-fault alternative, as well as various provisions in Kansas law which would have a bearing on the subject. One of these resolutions has passed the House and I am quite optimistic that at least one of these two resolutions will be adopted. If this is the case, the people of Kansas will have once again availed themselves of the opportunity to study and develop their own means of solving their common problems in a way which is compatible with their own particular needs and situations. A federally inspired or dictated no-fault law would not appear to be a solution or be as effective or efficient, in my opinion, in solving local problems and, in some states, could even have a detrimental effect.

Please accept my apologies for the length of this letter. I know you are extremely busy, but I cannot over-emphasize my concern that the Congress will feel compelled to act on no-fault legislation simply because there is a problem and not because they are sure that a no-fault system on a countrywide basis is the one and only solution. As you are well aware, the people of this state are quite resourceful and I have great confidence in their ability and in the ability of their elected representatives, to surmount any difficulties they face with regard to their automobile insurance needs. It is my hope that you will support a "leave it to the states" approach on no-fault legislation rather than adopt a "Congress knows best" philosophy which, in my opinion, would not be feasible as far as the no-fault concept is concerned.

With best personal regards, I am

Very truly yours,

FLETCHER BELL, *Commissioner of Insurance.*

NOTE.—An identical letter was sent to Congressman William R. Roy of Kansas.

LIBERTY MUTUAL INSURANCE CO.,
 Boston, Mass., May 17, 1971.

Hon. JOHN E. MOSS,
 Rayburn Building,
 Washington, D.C.

DEAR REPRESENTATIVE MOSS: Liberty Mutual is a large direct writer doing a substantial business in each of the fifty states. In California, we have offices located in Fresno, Long Beach, Los Angeles, Oakland, Pomona, Sacramento, Santa Ana, San Diego, San Jose, San Francisco, and Van Nuys.

We are a Massachusetts Corporation, and as I'm sure you know beginning January 1, 1971 our Massachusetts No-Fault Automobile Insurance Law went into effect. While it is too short a time to draw any firm conclusions, indications are that the new law will reduce bodily injury losses. It appears the law has removed any "profit" to the claimants in an automobile accident where people were little more than shaken up and is resulting in the prompt payments of loss of income and medical expenses, as the law provides.

We are firmly committed to the proposition that insurance companies should be regulated by the States. The advantages are many—not the least of which is sensitivity to local needs. The rising cost of automobile insurance should in no way be related to State regulation, but rather to the inexorable increase in the cost of the ingredients of the automobile accident claim—ie—higher wages, soaring hospital and medical costs and ever increasing awards for pain and suffering. In fact, most companies have not gotten the rate increases warranted by their experience.

It should be noted, that by enacting the nation's first No-Fault Automobile Law, Massachusetts has provided the remaining forty-nine States with a laboratory in which to observe this experiment. We believe that the States should await the results of our law and that the Federal Government should leave all action in this area to the States.

Liberty Mutual is a member of the American Mutual Insurance Alliance which appeared before your Committee and filed a statement on April 28 more completely expressing views consistent with our own.

We appreciate your consideration.

Very truly yours,

ROBERT A. PENNEY, *Counsel.*

[Telegram]

AMERICAN MUTUAL INSURANCE COS.,
 Wakefield, Mass., April 26, 1971.

Hon. JOHN E. MOSS,
 Rayburn Building,
 Washington, D.C.

Please record our strong support for the revolutionary and reasonable approach to automobile reparations reform embodied in the guaranteed protection plan of the American Mutual Insurance Alliance which will be presented to your subcommittee later this week.

RICHARD H. SCHANNEN, *General Counsel.*

(Whereupon, at 3:05 p.m., the hearings were adjourned.)

C

