Volume II

PUBLIC HEARING

before

New Jersey.

COMMISSION TO STUDY CERTAIN AUTOMOBILE INSURANCE MATTERS, INCLUDING A "NO FAULT" AUTO ACCIDENT INSURANCE PLAN.

[Created under Joint Resolution No. 4 of 1970]

Held:
April 14, 1971
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

George W. Connell [Acting Chairman]
Assemblyman Eugene Raymond, III
Senator John A. Lynch
John J. Brown
William K. Duncan
James Hunter, III
David Teese

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I N D E X

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MR. GEORGE W. CONNELL [Acting Chairman]: Ladies and gentlemen, I would like to please call this meeting to order.

My name is George Connell. I am a temporary substitute for Assemblyman Raymond who is our Chairman. He is going to be delayed because of some prior business commitments, but he asked me to get the meeting moving along.

This is the second public hearing of the Legislative Commission to Study Certain Automobile Insurance Matters, including a "No Fault" Auto Accident Insurance Plan, constituted under SJR 20 of 1970, approved June 18, 1970 JR 4.

The other members of the Commission present today, which I will introduce to you reading from my left, are: John Brown, Bill Duncan, Senator John Lynch, Jim Hunter and David Teese.

We have a list of people who will testify at today's hearing. If there are others in the Chamber who wish to testify at a later date, will you please register with Mr. Peter Guzzo, who is sitting over here to my right. He is serving as Secretary to this Commission.

As each witness is called, we ask that he sit at the desk in the front row and speak into the microphone. We also ask that he first identify himself by stating his name, address and the organization, if any, that he represents. If the witnesses have prepared statements, we further request that you make copies available to the Commission members and to the hearing reporter. Prepared statements need not be read in full. Witnesses may request that they be made part of the record and they will be considered by this Commission and the Legislature. Please avoid unnecessary repetition or arguments for or against "no fault" auto accident insurance plans presented by previous witnesses.

For your convenience and ours, we would suggest that your purpose may be fully served by agreeing by reference with arguments presented by others. Our only purpose is to suggest that repetition may be avoided as much as possible.

After each witness has made his statement, the Chairman and the members of the Commission, through the Chairman, may have some questions and we trust that each witness will make himself available to answer these questions. No questions may be directed to the members of the Commission. No questions from the audience will be permitted. If anyone wishes, however, he may submit questions in writing to the Chairman through the Secretary, Mr. Guzzo, for consideration by the Commission. No demonstrations in the Chamber will be permitted.

Now we do have a change in today's agenda. It was announced that we would have Professors Keeton, Sargent and Brainard present this morning. However, all three gentlemen had rather severe time problems and yesterday morning Dr. Brainard agreed that he would postpone his appearance until a week from today, April 21st, so that we could accommodate Professors Keeton and Sargent this morning. By so announcing, I am informing you that there will be a hearing a week from today.

I will now call on the first witness, Professor Robert E. Keeton from Harvard Law School.

R O B E R T E. K E E T O N: Thank you, Mr. Chairman. I am very grateful for the opportunity of appearing before this Commission. The subject matter you have been commissioned to study is one of deep concern to every citizen in this State and in this Nation and it is a subject on which action is imperative.

We have had a long period of study of this matter in various states, a long period of exchange of views by proponents and opponents of changes in the automobile insurance system. We have had the completion within very recent time of a $1.6 million, two-year study of the Department of Transportation. And I would submit to the Commission that the time for prolonged studies has now past and it is time for recommendation for prompt action.

In the written statement I have submitted through

Mr. Guzzo, which I understand will be available to the members of the Commission, I have indicated in somewhat greater detail than I will in my oral remarks this morning the characteristics of what I see as the needed reform of the automobile insurance system, the basic protection proposal. [See page 139 for Professor Keeton's written statement.]

I would like to emphasize in these oral remarks simply some key ideas and then call attention to what I see as two major problems this Commission or any study commission that undertakes this kind of task today will face.

Let me begin by posing this question: What is the state of the automobile insurance system in New Jersey and elsewhere in the United States in this year 1971?

"In summary, the existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system. Both on the record of its performance and on the logic of its operation, it does little, if anything, to minimize crash losses."

Mr. Chairman, those are not my words, but the capsule conclusion of this $1.6 million, two-year study under the auspices of the United States Department of Transportation. I endorse them fully. I agree with them fully. They are thoroughly documented in 23 additional reports published before the release of this 24th report, the final report of the DOT study in March of this year.

The present system for compensating victims of automobile accidents is a demonstrated failure. So we should move on promptly to the problem of action to correct it. That course of action should involve the adoption of a non-fault insurance system. It should have two principal characteristics. These are the characteristics of the Basic Protection Plan.

First, losses should be compensated without regard

to fault, at least up to moderate limits. We would propose a limit of $10,000 as a minimum. By losses, I refer to out-of-pocket losses, economic losses, real losses. These are a social and economic problem, not only for the victims and their families but often for the public as well. Welfare figures from some of our states demonstrate that we are bearing some of these costs in welfare dollars and they could easily be borne through the insurance system, through a private insurance system which would take this extra burden off of the public.

So the first of these principles is that out-of-pocket, economic losses, up to a moderate limit, let us say $10,000, should be paid through non-fault insurance, privately administered. We would propose that this coverage should be compulsory. It is near compulsory, the liability insurance coverage that we have as the basic minimum coverage today in New Jersey and elsewhere. This State and all other states in the United States have long since resorted to a degree of compulsion through our Financial Responsibility Laws in 47 of the jurisdictions and through compulsory insurance laws in the other 3; and particularly in New Jersey where that Financial Responsibility Law is supplemented by an Unsatisfied Judgment Fund to which contributions must be made by the person who does not have the insurance coverage, it comes even nearer to the full degree of compulsion than in those states without such a fund. Unfortunately, what the person contributes to that fund is not enough to provide him coverage. It doesn't even provide him protection against his liability to others, although it does provide a measure of protection and, incidentally, at great administrative cost and cost to the State for the victims.

So what we are proposing goes a very small degree beyond that in terms of the compulsion that has already been used, and I would say wisely. I think we all agree wisely. Even those opponents of genuine reform of the type I urge, including the American Bar Association, urge that compulsory

insurance should be adopted in every state. We differ in this respect only with respect to the form of that insurance.

Once we are agreed that we should require every driver to carry a minimum level of insurance, I would submit that we ought then to turn to the question of making that the best possible form of insurance, the most efficient form of insurance and the fairest form in terms of its treatment of both accident victims and the people who find themselves caught in the gears of the system as defendants in these liability insurance cases. And it is quite clear when we look at the problem from this perspective that we have agreed nationally that we should require a degree of compulsion for the purchase of minimum level insurance by every driver. Then we should make that the best possible form of insurance instead of continuing to live with this system that has been described so eloquently in that capsule from the Department of Transportation summary. So the first principle is make it a minimum level non-fault insurance. We suggest $10,000.

The second essential principle of effective reform is that this must be coupled with a provision to eliminate great masses of administratively expensive, wasteful, small claims and claims which not only produce this waste but also produce a grievous inequity in the disposition of the benefits of the system. It is the case today in every state, including New Jersey, and the empirical studies that have been made include New Jersey within these data, that the injuries of a trivial and small nature produce heavy compensation relatively speaking; whereas the injuries of more severe character result in relatively insufficient compensation. Just to take one figure from the well-documented study of the American Insurance Association which has been later confirmed by the New York Insurance Department study and by others, when the economic losses amount to less than $100 - that is, when the wage loss and medical expense are less than $100 - such a case is disposed of on the average

for 7.14 times the amount of that economic loss. The theory of this other $614 of that $100 loss is pain and suffering. But the fact of the matter is that grows out of the nuisance increment to the value of every small claim because of the fact that it would cost the insurance company well over $1000 to defend that case if it were pressed all the way through to trial and even more if it goes on to appeal.

The consequence is that every small claim, however legitimate, has a nuisance increment to its value. So if we seek to justify this extra payment on the basis of pain and suffering, we are confronted with the anomoly that the cases in which the victims suffer the most grievous pain and suffering receive the least, relatively speaking, for that pain and suffering, while the persons who have these trivial injuries often resulting in no loss other than the medical expense to determine that the maximum injury is bruises - that person receives this extra bonus of several times over the amount of his loss. So we are not merely saving for the policyholders and the public by reducing the administrative cost of a system that focuses on finding fault and spends so much of our premium dollar for that purpose, but we are also correcting a greivous inequity in the disposition of the benefits under the present system, an inequity that cannot be corrected in any other way.

Let me emphasize that those who seek to explain our present problems on the basis of blaming people and who seek to correct these problems by cracking down, for example, on people, by saying let's have more vigorous enforcement against fraudulent claims, are pursuing an impossible goal because the fraud in the system, the dishonesty of people, is not the source of our problem. The source of our problem is the system and this inequity in disposition of small and large claims can never be corrected in any way other than to change the system. So I submit it is time to get about the business of changing to a system that has these two central principles of basic protection.

A bill filed in this State by the group who call themselves People for Automobile Insurance Reform [PAIR] does incorporate the principles of the basic protection plan and I would support that bill and recommend that this Commission support that bill.

Let me turn at this point to two special problems that I think this Commission faces. It is the problem of facing up to the mass communications that will be thrown at you and there are two particular aspects of these communications that will be troublesome especially. One is the matter of estimates of costs.

Five years ago when the national discussion of no-fault automobile insurance was really only getting under way, there was reason for uncertainty about projections of costs. Indeed, it was only about then that the first pioneering actuarial study by Frank Harwayne, an independent consulting actuary, was made under our auspices. Now there is no longer any reason for uncertainty about projections of substantial savings. There is uncertainty about the extent of those savings. The early returns from the Massachusetts experience indicate that we grossly underestimated the savings. It is too early to be sure whether those returns will stand up in the long picture. There are various explanations being offered for why claims have been so few, relatively speaking, in these early months of the experience in Massachusetts. And I do not suggest to this Commission that you should make predictions on the basis of that dramatic experience which would indicate that the savings will be far greater than we ever projected. But it is clear that no longer can there be any legitimate doubt that there will be substantial savings from such a system.

Let me underline at this point certain facts. Number one, no actuarial study of the basic protection plan has ever been made by anyone that projected increases in costs. You will find statements to the contrary made. You will find suggestions that various actuaries have challenged

the projections of reduced costs. But if you will check into the matter, you will find that up to this date - and I think it is pretty clear it will never happen, not having happened up to this date - no actuarial study has been made and reported that projected an increase of costs under the basic protection plan. Let me emphasize also now, I am talking about the over-all costs to the motorist for all of his insurance and I hope the Commission will not be misled by statements that are constantly made that these savings that are projected under the actuarial studies will be eaten up by increased costs because now you have to buy new coverage. We are talking about the over-all costs for the combination of the new and the old coverage. The actuarial studies by Frank Harwayne, the actuarial studies by the American Insurance Association, the actuarial studies by the New York Insurance Department have all approached the problem on this combined basis. The actuarial studies by the insurance companies who came into the legislative hearings in Massachusetts and said, "We will agree that we will write this combined coverage at a lower cost than we have been writing the liability coverage only," - all of those studies have been talking about the combined costs.

Just to illustrate one concrete point, in Massachusetts in the legislative hearings last year on the bill that later become law in Massachusetts, the companies came in at a time when the casualty actuary of the Insurance Department, the State's representative, was saying, "The liability insurance costs for next year will have to go up 30 percent, if no change in the law is made," because we had had this rate freeze for four years and there was an accumulation of needs for increases. The regulatory official himself was saying, "We will have to grant a 30 percent increase," and the companies came in and said, "If this bill is passed, we will agree to write this combined coverage, bodily injury coverage, which includes both non-fault and liability

insurance, at 15 per cent less than the 1970 rate." Since the 1970 rate was going to have to be changed 30 percent from 1970, that means that the total spread, the total savings, was something more on the order of the combination of these figures of 15 and 30, something in the order of 40 percent if you apply it to the final figure that would have applied this year under the fault system, 130 percent of the 1970 rate. So at least 40 percent savings were being agreed to by the companies and this, Mr. Chairman, was the figures that were projected before they began to see the experience that has arisen in the early months of this program in Massachusetts, which means that the expectations now on all hands are that the savings will actually be greater than that very dramatic projection of savings.

There is the concrete experience, but let me emphasize also that there is another line of argument that is made with respect to costs, that often misleads. It is argued that costs will increase for certain persons, not over-all costs but for certain persons. For example, Dr. Brainard has argued that costs would increase for certain persons because he took the position, which was directly contrary to what is written into the proposal in the Massachusetts law after he took this position -- We didn't intend it this way originally. When it was suggested it might be interpreted this way, we drafted the bill so that it couldn't possibly be interpreted this way. Dr. Brainard took the position that there would be a shifting of costs from bad drivers to good drivers, and therefore the good drivers would have to pay more. The easy answer to that is to write it into the bill so it can't happen, which is what we did by requiring the factors that he was urging would make this shift to be taken into account in the fixing of rates.

So I emphasize one must be careful not to be misled by statements that costs will increase for certain persons.

Let me take one example, to be concrete about this. It was said that costs would increase for the person who had excellent fringe benefits because he really is losing the benefit of those under a plan that provides against overlapping. The easy answer to that and the answer we would propose is that any fair rating system would take account of the extent to which a person has other sources of compensation that will reduce his compensation here. You see the present system is a system that denies freedom of choice. This is another point I want to emphasize. If you believe in freedom of choice, you cannot believe in the present system because it denies freedom of choice in many ways. One way in which it denies freedom of choice is that if you want to have adequate liability insurance coverage today and also have good non-fault protection - medical payments coverage, for example, is a non-fault protection - to a limited extent other kinds of wage loss, non-fault protection are available today -- if you want to have both of those things, the only way you can do it is to pay double premiums to buy a lottery ticket so that you can make a profit by getting double payments. It is not possible for you to buy these coverages dovetailed so that you get paid only once for your losses and get lower premiums as a result. The basic protection plan would open up that possibility. So you can buy what you need and not be compelled to buy this lottery ticket in a system that gives you a chance to recover $700 when you have a $100 loss. So we are talking about freedom of choice. And let me make it plain that that freedom of choice extends to the proposition that if you want this double coverage, you can buy the extra coverage with the savings you achieve under the basic protection plan and you will still have some money left over in your pocket. You can get all the benefits you get today and still have money left over.

Therefore, for the person who wants to retain the right to recover pain and suffering, that option is open to him and can be exercised within the savings he would

achieve under the system. And if he wants to keep on operating under a system basically like the present, that choice would be available to him, but he would also have other choices that would serve him much better.

Let me turn now to another matter. You will be flooded - you have already been flooded - the State has been flooded - within the last few weeks with statements, a few of which I have seen, with positive falsehoods about the terms of the PAIR Bill, about the terms of the basic protection proposal. And I urge you, Mr. Chairman and members of this Commission, not to take statements of that kind at face value. This bill is carefully drafted. It has been subjected to the scrutiny of legislative debate in Massachusetts for four years and the legislation was defeated in 1967 in the Senate after having passed the House of Representatives to a large extent, I think, because of the tactics of confusion and obfuscation, a large part of which was erroneous statements about the terms of the bill, not just about projections, about how it would work. A lot of that, at that point, I attribute to misunderstanding. This is a complex problem and a bill that deals with it adequately must deal with a lot of complex matters and the opportunities for misunderstanding are great.

So it was an effective tactic to make assertions about the bill which were incorrect, but which at least raised a cloud of doubt and resulted in postponement of action in Massachusetts.

I think there is much less justification for false assertions about the bill today and some of the press releases and I think some of the statements that have been made before this Commission about the terms of that PAIR Bill are absolutely false.

Let me take one example. It was suggested to you, I understand, that one of the sections of that bill, as applied to the case in which a wealthy man had purchased

$100,000 of added protection coverage and then negligently crossed a center line and injured another person, would have a $100,000 tort exemption applying to the claim of the other person against him. The bill cannot fairly be read that way. That section of the bill referred to allows that tort exemption only if the added protection coverage applied to that injury, and the added protection coverage available to the man who purchased it would not apply to the injury of the other person in the other automobile. So there is no basis for the assertion that that kind of tort exemption was available.

I can understand that a person picking up the bill and reading it hastily might make the mistake of interpreting it that way. I think persons who undertake to engage in this debate owe it to the Commission and to the public to do a more thorough job of understanding and reading carefully the document they are criticizing. But certainly if they fail to do so and offer this kind of erroneous kind of information about the bill to this Commission, you have a problem, yes, but I do urge you to deal with the problem, to make the inquiries that are necessary to find out whether the assertions made are true or not, and to reach a judgment and to recommend action.

In closing my oral statement, let me refer again to the Department of Transportation study. They conclude with recommendations for prompt state action and they suggest guidelines for a revised system, as they say, and I am quoting, "a system that would be more efficient, offer greater flexibility and personal choice, be fairer, give greater incentives to loss reduction, and do a better job over all of reparating victims' losses." In a paragraph then expanded in several pages, they identify those guidelines.

Summarizing that paragraph, they propose a system based on universal, compulsory, first-party insurance. That is what we propose. They propose a system in which insurers

should be free to offer additional insurance coverage above these limits. So we propose. They propose that victims should retain their present right to sue in tort for specified, intangible losses, but the right should be restricted to the truly serious cases. That is exactly what we propose. In the truly serious cases under the Basic Protection Plan, the victim is always as well treated as he is today under the present system and in many instances would be better treated. Indeed, in most instances, he is better treated, at least to this extent, that part of his compensation, $10,000, comes promptly month by month as the losses are accruing so that the person who has a serious injury and real legitimate claim is freed of some of the pressure to settle early that he is now subjected to and, as a result, he is very likely to recover in the long run more under our system. So I say that in the truly serious injury case, everybody is as well or better treated under the Basic Protection system as under the present system.

Continuing with the Department of Transportation guidelines, they say the victim should not be able to sue in tort for economic losses compensated by their own insurers or voluntarily accepted as a deductible. And so we propose.

This system should be implemented, they say, in stages at the state level. They indicate in their report that in their final recommendations of a system they would propose probably higher limits than we now propose. And I would agree with that in the long term. But I think it is appropriate to begin with benefits at a level that we can be reasonably sure under the cost studies will be available even while substantial savings are made in the automobile insurance budget of the ordinary family. So we recommend proceeding this way.

I do wish to say in candor to the Commission that there are other comments in the Department of Transportation study that indicate that they would propose this implementation

possibly with the first stage more limited than we now suggest. To that extent our recommendations differ. There is a suggestion, for example, in that study, that the first stage might deal with medical payments coverage only. I see no reason for not extending to the wage loss as well. The Massachusetts bill already enacted extends to the wage loss as well. The early experience demonstrates there is no great problem about covering wage loss as well as medical expense in this first stage. So I would suggest to this Commission that there is no reason to be that slow and cautious in the first step and the Basic Protection plan itself is an appropriate first step.

Finally, the DOT study suggests that the private insurance industry should service the system which should continue to be regulated by the several states, and that is exactly what we are proposing.

So it turns out that the set of guidelines advanced by the Department of Transportation after this massive study is one into which the Basic Protection plan fits perfectly.

I respectfully submit that this Commission would best serve the interests of the citizens of this State by supporting the Basic Protection plan and the PAIR Bill that incorporates that principle in working for its adoption this year. Thank you, Mr. Chairman.

MR. CONNELL: Thank you, Professor. Are there any questions?

MR. BROWN: Professor, being a member of the Commission and being a layman, going back over the many years when you first started, have you ever involved yourself at all -- We have a serious problem possibly like many parts of the country in New Jersey. We have a very, very bad lack of availability as far as insurance is concerned and also the high cost of insurance. This is based on more or less jurisdiction. A person living in a rural county, even though he might travel x number of miles into major cities, has his rate based not on his own experience rating but on

where he lives. Have you ever gotten yourself involved in, we will say, costs or how efficient a state-operated, compulsory insurance plan would be? In other words, would it be more efficient than the situation which we now have under the system where the private companies are getting away with their tendency to insure more or less into the investment area, we will say?

MR. KEETON: I am not sure I have understood the question. Are you speaking of --

MR. BROWN: In any of your work, in any of your research, the difference between a state-operated compulsory insurance plan.

MR. KEETON: All right. I wasn't sure whether you meant a state-operated or a privately-operated compulsory plan. We have not done any cost study of a state-operated plan. Basically the reason I haven't turned by own research in that direction is that on principle I would urge that our solution ought to be a private insurance solution rather than a government-operated plan. I would turn to a government-operated plan only as a last resort and I don't think we are anywhere near the situation of needing to turn to that last resort.

The reason the private insurance system has broken down and has failed to serve the public is not that it is private rather than public. The reason it has broken down is that it is the wrong kind of insurance. It is the kind of insurance that concentrates on fixing blame and spends so much of the premium dollar fighting rather than using the money to pay benefits. I have the firm belief, if we correct the form of the insurance, then the private insurance mechanism will work effectively and we won't need to turn to a government system.

I think your experience in New Jersey with your Unsatisfied Judgment Fund is a kind of symtom of problems that one might have to face if we turn to a government-operated system generally.

MR. BROWN: Professor, wouldn't you base that on the simple fact that the insurance companies have a tendency to take the very best and leave the poor risks in the State that they don't want to touch. Let's just take workmen's compensation as an example that works hand in hand with private insurers, such as California where you have both plans in effect, and the private insured is able to be competitive, we will say, in a sense with a State-operated plan like in New York State and California under workmen's compensation, where you do have availability. Our biggest problem in New Jersey is we have no guarantee even under your no-fault plan that the insurance companies will open up and sell insurance to the people.

MR. KEETON: I think you can be sure they will. You speak of the California experience. That is not simply a state fund. There is no state fund for automobile insurance in California. There are a number of states that have competitive state funds, so-called, in workmen's compensation, none in automobile insurance. And the availability problem is being solved in a number of states with effective assigned risk plans. You must have with any kind of compulsory private insurance system an effective assigned risk plan to take care of the availability problem. It is the case that we must have some arrangement to assure that every driver, if we are going to require insurance, will be able to buy that insurance, and that can be done through an assigned risk plan rather than turning to government insurance.

MR. BROWN: Wouldn't you say as far as state-operated plans, there is one now working in Porto Rico?

MR. KEETON: What was the first part of the question?

MR. BROWN: You say there are no states involved, but there is the Porto Rican situation.

MR. KEETON: Yes, we have the non-fault. The Porto Rican plan is not writing liability insurance either. The government part is operating only the non-fault system. In so far as it is a non-fault system - incidentally the benefits are

too low to be satisfactory -- but in so far as it is a non-fault system, that is a good step. But I regret very much seeing it done by government insurance rather than private insurance. Early reports from that experience indicate it too is working well. The reason it is working well is that it is non-fault insurance, not that it is government insurance.

MR. DUNCAN: Can I take a turn now, Professor?

MR. KEETON: Certainly.

MR. DUNCAN: Incidentally, we are very happy you are here. You are considered the father of many no-fault plans and it is a pleasure and a privilege to listen to your thoughts on it.

MR. KEETON: Thank you.

MR. DUNCAN: You refer to Massachusetts as an object lesson in the plan you wish to sell. Is it true that in Massachusetts the companies in effect agreed to roughly a 15 per cent cut in rates under bodily injury? Assuming this was the basis upon which your legislation would be enacted -- and, in effect, when we talk about the total policy, I believe BI might make up a third of the cost. But isn't it actually a fact that when the smoke cleared in Massachusetts and the mandatory across-the-board rate decrease ordered by the Legislature was in turn reviewed by the court, in fact the actual policy on a car increased, even though bodily injury went down a few dollars? I believe the Commissioner agreed to roughly a 28 per cent or 30 per cent increase on the physical damage aspects of insurance.

The first thing I would like to pin down right away is the fact that insurance did not go down in Massachusetts; it, in fact, went up.

MR. KEETON: Well, merely to answer that question, yes, would be misleading for this reason: The insurance rates we are paying for all of our insurance -- Let's take the person who buys full coverage, collision, comprehensive, and both bodily injury and liability and no-fault. This

person who buys the full coverage is on average paying less in Massachusetts in 1971 than he would have paid in 1971 if there had been no change in the law. Because our rates on bodily injury portions of the coverages had been frozen for four years, and, as I mentioned a while ago, the projections by the regulator were that they would have to go up 30 per cent. So the saving that the companies agreed to was not 15 per cent; it was 15 per cent below the 1970 rate, which was going to have to be increased by 30. Therefore, the saving was more on the order of 40 per cent of the final bodily injury package. If you take the total costs that persons are paying in Massachusetts today in 1971, compared with 1970, yes, on average they are slightly higher. If you take the total cost that we are paying today in 1971 against what we would have paid today in 1971 if the law had not been changed, the answer is, no, we are paying less.

Also I would propose - I didn't say anything about the vehicle-damage problem in my remarks a while ago - I would propose that the non-fault principle should be extended to the vehicle damage as well. Let's take the case of the person who also is fully covered here. He carries both the liability insurance and the collision coverage. If we applied the vehicle protection coverage, adopting the non-fault principle in the elimination of cross claims on fault here also, most of what a person now pays for property damage liability, when he has this combination, would be saved. In Massachusetts that average figure is around $50. I would suppose it is probably a little lower in this state. Whatever your average figure for property damage liability is, you could expect to save at least three-quarters of that by adopting this principle in the non-fault area too.

So if you put that together, then looking at the over-all package, you are saving very substantially more. I emphasize again it is not just 15 per cent of the bodily

injury package you are saving. If we want to be truly comparative, we ask ourselves not what is the next year's rate going to be compared to this year's rate, but what is the next year's rate going to be compared to what it will be if we don't change the law.

MR. DUNCAN: It is a good answer. But it still comes out that insurance rates went up, even though the public doesn't understand this. We will work on the assumption that the public wouldn't quite look at it in the same way.

If you don't mind, Professor, there was quite a study done on your work - and I am holding to be fair with you the"Keeton-O'Connell Plan of Reform or Regression," and I am quoting from it and I would like to get your ideas on some of the statements made against the Basic Protection Plan. But before I do that, when you talked about the guidelines from the Federal government in such a system, is it true that there are other systems abroad and put forward by many groups that would fit those guidelines, such as a guaranteed protection plan, as advanced by the NAII, the Cotter Plan? These would fit those rough guidelines.

MR. KEETON: No, they would not. They fit some of the guidelines.

MR. DUNCAN: But not all of them?

MR. KEETON: For example, one on which both of those plans are grossly deficient is this guideline that victims should retain their present right to sue in tort for specified intangible losses, but the right should be restricted to the truly serious cases. Neither one of those proposals has such a restriction in it.

MR. DUNCAN: It would be a modification of your plan in a way.

MR. KEETON: Yes, and a very much scaling down. The trouble with those proposals and the reason the Department of Transportation does not recommend them is that if you don't put this restriction on these intangible losses in the small cases, you have this problem I refer to of the

unfair distribution of benefits, the heavy over-compensation of the trivial injuries, using up the money, with the result that you don't push up the other benefits to the level we should be doing to take care of the serious injuries.

MR. DUNCAN: Along those lines, it is along this rating and distribution of cost that I would like to quote from here and hear what you have to say about it. [Reading] "Under the Keeton-O'Connell Plan," and this is essentially the same plan, isn't it, Professor Keeton?

MR. KEETON: Yes.

MR. DUNCAN: [Continuing -- "a large portion of the insurance cost is shifted from those people most likely to cause accidents to those persons likely to collect the most money as a result of those accidents. There will be a major redistribution of premium, with some socially-dubious results." These are not my words now.

MR. KEETON: Yes, I understand. They are Mr. Kemper's remarks.

MR. DUNCAN: "Commercial trucking concerns operating fleets of trucks over long distances with heavy use of roadways will pay less than they now do because of the collateral source benefit of workmen's compensation insurance, while a school district operating a fleet of buses over short distances with light roadway use will pay a larger share. A college student with a small sports car will pay relatively less, while a middle-aged man, middle-income family man, with a sedan or station wagon and several children, will pay relatively more than he now does. The plan will definitely create discrimination in costs against the farmer, the small entrepreneur, such as a shopkeeper, and against a high proportion of those who dwell in villages, towns and small cities, since relatively few of such people will be entitled to rate credits because of workmen's compensation and group accident and health insurance benefits."

How could we answer that particular charge?

MR. KEETON: That charge is based on the assumption

that rating under this new system would be done still by criteria that are currently in use rather than developing appropriate criteria to produce fair rating under the new system. Let me use two illustrations to make the point. Incidentally, before turning to those illustrations, let me say that in our original book proposing the Basic Protection Proposal, we did not incorporate rating provisions. We indicated in the book that we were not dealing with the rating problem, but rather with the structure of the system.

This kind of criticism was possible because we hadn't said one way or the other what the rating provisions would be. In the bill that has been filed by PAIR, there is provision concerning the rating. And let me take a specific illustration that he refers to there, the trucks, the long-distance trucks. His argument is that the private passenger car will now pay part of the costs that are currently being borne by the long-distance trucks. Well, obviously, that would be unfair. The long distance trucks, if we properly assessed the risks they create on our highways, do create greater risks and they ought to have to pay a greater share of the premiums. And surely we can design a system that would provide that. Indeed, the PAIR Bill has in it a provision that does impose that higher cost on the fleet of trucks - on the insurance for the fleet of trucks - instead of on the private passenger car.

MR. DUNCAN: How does the bill do that?

MR. KEETON: The way this bill does it is to provide that in the absence of a contrary finding as to the appropriate figure by the Commissioner of Insurance on the basis of experience, a stated percentage of the claims paid by the private passenger car insurer in car-truck accidents would be recovered over by the private insurer against the insurer of the trucks.

Now if that percentage that is stated in the statute turns out not to be the right percentage on the basis of experience, then the Commissioner of Insurance enters an

order changing that, so that the figure will be adapted to what the actual experience is of the relative amount of damage caused by the trucks in comparison with the amount paid to persons in the trucks. Obviously it is going to be relatively small paid to persons in trucks compared to what it is the other way.

So the basic answer to all that line of argument is that it would be foolish to use criteria for rating under the new system just like the criteria under the present system or to use criteria under the new system just like the criteria for accident and health insurance today. And the assumption that Mr. Kemper was making in making that assertion is that that kind of rating would be done. The PAIR Bill prohibits that kind of rating.

Let me take another illustration. It would change distributions of costs in some respect. I don't apologize for that. I proclaim it as one of the virtues. First, a fire insurance illustration to set the background: Two persons in the same community, same fire rate zone, one has a house worth $20,000, the other a house worth $100,000 - for full coverage on those respective houses, the person with a house worth $100,000 pays five times the amount that the person pays with the house worth $20,000 today. Take those same two people, the man in the $20,000 house earns $10,000 a year, the man in the $100,000 house earns $100,000 a year. If the man with the $10,000 earnings is injured and has to be compensated out of the insurance system for a year's loss of wages, $10,000 is paid to him. If the man earning $100,000 is injured and loses wages or income for a year, the system has to pay him $100,000. You would suppose that a fair rating system would make those two people pay different rates, but the present system doesn't. Those two people pay exactly the same rate today and that is another inequity of the system, an inequity in which the liability insurance system forces the low-income wage earners to subsidize the high earners. That would be changed under the Basic Protection

system because the insurance company would be paying its own policyholder in most cases.

MR. DUNCAN: Professor, you are going to have to hold up. You have me really confused. I have a $100,000 house. I pay the same rate but that is based on the amount of insurance I buy.

MR. KEETON: Right.

MR. DUNCAN: If I protect that $100,000 house, I am going to pay more.

MR. KEETON: Exactly.

MR. DUNCAN: You mean the rate per $100 is the same, not necessarily the total cost of the premium. I am going to pay more than the fellow with a $10,000 house if I happen to own the $100,000 house.

MR. KEETON: Yes, but as a $100,000 earner, you are not going to pay more for your liability insurance. You pay the same. You see, that is my point. That is the inequity.

MR. DUNCAN: A good point.

Now with reference to that rating structure - and this is what I was leading to - the answer to that -- In fact, you made a statement at that time, if I may, and suggested at that conference when you were asked the question, "Will this plan create an actuarial nightmare," as follows, "I mean if I had a business dependent as yours is on actual experience of the past, I would be reluctant to see the rules changed very radically because one of my assets, that is, what the past will have as an effect on the future, is greatly undercut in terms of its validity. The industry has feared this and I suppose the industry has also feared rightly that there isn't this logical co-relation between what happens and what kind of rates you get. That often becomes a jungle where cause and effect are very confused, as you know much more bitterly than I." This was your statement to the insurers.

Their response to this - and this is what I am

looking for - was that that was an understatement. "It is our opinion," the insurers, "that the plan will require such a tremendous range in rates as to be incomprehensible to the public, that the total number of undesirable risks going into the Assigned Risk Plans will probably be increased and that the reliance on honest disclosure of collateral source benefits will be so great as to introduce a permanent element of inequity into any rating system which may be devised."

By that, I am sure they mean, if a housewife falls off a chair and she isn't quite honest about it and merely goes back and makes a claim under her insurance policy that she got it while alighting from the car, are we in effect encouraging fraudulent claims?

They made the statement. I have made that addition. Can you respond to that?

MR. KEETON: Yes. First, with respect to the addition, as I said in my remarks at the beginning, fraud is not our real problem here. Of course, I agree that we ought to take into account in designing a system whatever inducements to fraud exist in the system. In that respect, there are fewer inducements to fraud in the Basic Protection Plan than there are in the present system. This lump sum judgment with an inducement to stay off from work a while longer and shoot the moon is a far greater inducement to fraud that leads to more costs in the system that ought not to be there than the kind of inducement you speak of in the housewife case. But anyway, my main point in response to that is that it is not that we have dishonest people that is making our present system fail; it is that the system is wrong itself. For example, a few years ago we had during the process of this development in Massachusetts a Special Fraudulent Claims Board created. It got some dramatic coverage of indictments, the number of fraudulent claims. But how much impact did that have on the rates? Nobody can detect an impact on the rates. The point is that the

source of our costs and troubles is not the relatively small percentage of genuinely fraudulent claims. The source of our problems and troubles is what happens to the great mass of claims in which this overpayment occurs between $100 and $714 in the illustration I gave you a while ago.

MR. DUNCAN: Another question: In Massachusetts, you have an open rating ---

MR. KEETON: Excuse me. I didn't respond to the other part of your question. I will forget it if you would rather go on to something else.

MR. DUNCAN: Let's forget it. You made your point and the question is, "Have they made theirs?" This is what we are really getting at.

The other part of this is: The simple fact is that we are investigating why companies are not providing markets. The price is involved in our investigation, no matter how we look at it. To what extent it takes precedence, could be a point of argument. The point is though that we can't get companies to do business. There are a number of plans being put forth that tend to be plans developed by men like yourself,- legal associations who would not like to see the reparations system changed too much. But we have yet to hear too many comments, with the exception of two trade associations who have adopted a possible look at the system with some slight changes. But what is bothering me is: What could be done tomorrow without any changes in the system - what steps could we take tomorrow - to insure availability of insurance in the State as a first step? None of the things you have told us today would cause any company I know of to say suddenly, "Let's write more insurance in New Jersey."

MR. KEETON: The only steps you could take would be steps such as creating a state fund or an Assigned Risk Plan.--

MR. DUNCAN: We have that.

MR. KEETON: [Continuing] -- with higher rates.

In other words what I am saying to you is the only way you can solve the availability problem immediately is to make people pay higher rates. The availability problem grows out of the fact that the present system has failed to the extent that the companies cannot make money under it, without charging rates that the public won't accept.

MR. DUNCAN: If I can hold you right there for a moment, let's go to Massachusetts. I am a little confused about the situation. They have competitive rating up there, but I understand not in bodily injury. Is it limited to physical damage and not bodily injury?

MR. KEETON: We really don't have competitive rating at all.

MR. DUNCAN: You don't have a competitive rating law in Massachusetts?

MR. KEETON: Well, there is a law on the books that directs the Commissioner of Insurance to set up merit rating and that would lead necessarily to a certain amount of competition unless the Commissioner prescribed the rates for each category. But that law has never been implemented.

Now under the new law that was just passed, there will go into effect in 1972 a merit rating system. It doesn't go into effect this year because it will only go into effect after we have a year's accumulated experience beginning with last September 1st. The law was passed in August. Beginning September 1st, the record starts counting. And we will have a merit rating system next year in Massachusetts. I keep my fingers crossed in saying that. At least, the law says we will, but the law said we would since about 1964, I think it was, on the other system and it has never been implemented. I hope for better results on this one.

MR. DUNCAN: The point is then in 1972, there will be more attention paid to the kind of driver that is in the system in terms of a merit rating.

MR. KEETON: Right.

MR. DUNCAN: He will pay more if he has more accidents or less.

Now would you feel, as has been told to us by some people, that if we were to put our attention to the availability of insurance, with nothing else at this moment, an open competitive rating law with teeth in it might open the markets in this State?

MR. KEETON: No, not unless that open competitive rating law permits the companies to charge more for the high risk categories. In other words, the companies are not going to come in and compete for business they do not want and they will not want the business in the high rate categories unless you let them charge higher rates for it.

MR. DUNCAN: I have been told white-head companies will stay white-head companies, which is in effect what you are saying. They will take the best risks they can at whatever price they can get, if you are saying that. But will not open rating, as has also been told me, allow substandard companies to come in and create a rate that would allow them to take this questionable risk and operate profitably?

MR. KEETON: I would put it a little differently from that. Actually the company would like even better to write the high risk than to write the white hat, if only they could get an adequate rate for it. The reason they would like it better is they get a profit as a percentage of the premiums and if they are writing higher premiums, they get higher profits. The reason they don't want the high risk categories today is that they are not permitted to charge the rates that would be necessary, as they see it, to enable them to cover the costs of writing those high risks. If you simply open the matter up and let them charge whatever the market will bear for those high risks, they will charge them enough to cover their losses and they will be delighted to do the business. The problem is the public is not going to like that because the rates will be too high.

That is why I say, no expedient of that kind is going to work. You have got to change the system to eliminate the built-in, excessive costs.

MR. DUNCAN: You are unable to prove the case that your new system will keep the rates down. Your new system directs itself only to bodily injury. I believe the PAIR Bill does. It only represents a third of the premium. We could only effect, let's say, 15 or 20 per cent of the bodily injury premium. It does not direct itself to the physical damage aspect. So how will the change in the system on the basis of the bill now in keep the rates down when the opening up of the market would show an increased rate?

MR. KEETON: I ---

MR. DUNCAN: Pardon me, Professor. It is very important I stay on the point because I get lost easily.

You are saying that there is nothing in your system as promoted right now that necessarily would indicate, as Mr. Brown put it, that the companies would open up and place the business. Could it be if we simply attached to your plan an open rating law that that might have a little bit more involved with it or what?

MR. KEETON: That could be done, but I wouldn't recommend it because an open rating law is not a magic solution. What an open rating law does is to let the insurance companies charge whatever they want to charge.

MR. DUNCAN: But isn't the Commissioner allowed to go in and say, "Sorry, I don't agree with your rate so you can't charge it"?

MR. KEETON: Yes. Most open rating laws provide some last resort power for the Commissioner. But the critical difference between the open rating law and all the other kinds of rating laws is that the Commissioner has less power and the companies have more freedom. And if you give the companies more freedom in a system in which they say they are losing money on the high risk rates, how will they

exercise that freedom? Just one way - they will charge higher rates for that group.

Let me go back to the assumptions underlying your question. Let me repeat that the savings will be greater than 15 per cent. The fair way to look at the savings is what insurance will cost us next year if this bill is passed and what insurance will cost us next year if this bill is not passed. And that difference will be more than 15 per cent. The PAIR Bill guarantees it to be 25 per cent. Incidentally, there is another point there. I understand the Commission was told that that 25 per cent was only on the bodily injury liability portion. That is not the way I read the bill. But if anybody is worried about that, it is a very simple to put in after that word "bodily injury", including non-fault as well as liability insurance, which I am sure was the intent of the drafters of the bill.

So, in the first place, you have a guaranteed 25 per cent and I think that is conservative. I think the actual experience with the Commissioner's regulatory powers will support a greater reduction than that compared to what the rates would become under the old system as the system settles down and you have experience on which to base your rating. That's the first point - it is not 15 per cent but at least 25 per cent guaranteed and probably more as the system works out.

Secondly, it is not simply on the bodily injury, if you would also adopt, as I would recommend, the same principle for the vehicle damage. And if you add that, then you are getting to something more than 50 per cent of the total package.

There is nothing about this bill on accident compensation that is going to affect the rates on theft, windstorm and such. I agree with you about that and I think we might also expect that those rates are going to continue to climb with inflation.

MR. CONNELL: Professor, I am going to interrupt because

we must move along. Are you aware of the fact that about 10 days ago our Commissioner granted a reduction in bodily injury premiums, about 2 per cent statewide?

Did you want to add something else?

MR. DUNCAN: I wanted to add to that. I have that. The Commissioner suggested that the over-all lowering of the bodily injury premium level was due to a great extent to a sharp reduction in bodily injury claim frequencies. For one group of companies Commissioner Clifford quotes as an example, the number of claim payments per each 100 cars declined 5.5 per cent annually on the average over the three-year period ending March 31, 1970, the latest period for which the insurance industry data was available.

MR. KEETON: That is a happy circumstance. I hope that that and some similar experiences elsewhere in accident frequency, including Massachusetts, may be partly due to some of the drives on design of vehicles and such things as that that have been going forward for the last few years.

MR. CONNELL: Professor, I am going to interrupt again because as part of your proposal or endorsement of the PAIR plan, you talk about this 25 per cent. Mr. Farber testified at our last hearing and when he was asked the question whether he had consulted any insurance carrier and had their agreement that they could write this plan for a 25 per cent reduction, he forthrightly admitted that, no, he had not. I would like to know, do you have any information from any insurance carrier that they could write this PAIR Bill in this State at a 25 per cent reduction?

MR. KEETON: No. I have had no communications with any insurance carrier about the PAIR Bill. I am confident that that figure will stand up though on the basis of the experience in Massachusetts and the attitude the companies took there toward the compromise bill in Massachusetts.

MR. CONNELL: Also, Professor, just to get this record straight, when you argue the point about Massachusetts and the saving in '71, could you give us what the saving

actually is, using your logic? You refer to the fact that an increase should have been granted over the past four years. So we must look at it in '71 with respect to what we would have been paying in '71. What are the people in Massachusetts actually saving percentagewise in '71 with that plan?

MR. KEETON: All right. Let's take a round figure. The average compulsory premium in Massachusetts in 1970 was $70 and we could work with that, but there are plenty of people paying a lot more and to make our figures easy let's take the man who is paying $100 as compulsory premium. That would be less than would be paid in Boston, for example; more than would be paid in many other sections of the state. That person who paid $100 in 1970 is in 1971 paying $85 for his compulsory coverage if he did not take the deductible. If he took the deductible for himself and his family, he is paying 30 per cent less than that $85, which is another $25 saving. It brings it down to $60 approximately. So that person is getting a $40 saving so far.

MR. CONNELL: Well, he is actually saving on your figures about 23 cents a day. Is that right?

MR. KEETON: Wait a minute. I haven't finished.

MR. CONNELL: I'm sorry.

MR. KEETON: Now he also is saving 25 per cent of the premium he paid on medical payments coverage if he carried it before. Let's take a person carrying a couple of thousand dollars of med pay, which is a reasonable amount. Probably the average, particularly if you take into account some people don't carry it at all, would run lower than that. That would cost if I remember the figures - I don't have this exactly - but if my memory serves me correctly it would cost about $12 or something like that. He saves a fourth of that.

MR. CONNELL: That's $3 then.

MR. KEETON: Right. Also the 15 per cent saving against the 1970 rates is applied to the bodily injury excess coverages and to the coverages for what we call extra- territorial

We have this peculiar situation in Massachusetts that the compulsory coverage only applies to accidents on the ways of the Commonwealth and other places to which the public has access. It doesn't apply to guest coverage. One obviously needs the guest coverage and the extra-territorial. That is another $8. The 15 per cent applies to that. We pick up another dollar there. Then the 15 per cent applies also to all the excess coverage that a person carries. So a person who carries $100,000-$200,000 or $200,000-$500,000 gets that 15 per cent on all of that coverage too.

So for the person who carries a good package of insurance, this has pushed our savings up to between $50 and $60. And now you have asked me to compare what we would have been paying, not what the 1970 rates were.

All right. The 1971 rates, under the estimates that were made by the casualty actuary would have been 30 per cent higher. So they would have been $130 - $130 as against this $85 or as against the $60 for the person who took the deductible. So we have to multiply whatever figure we have come to, which is somewhere between $50 and $60, by another about 30 per cent, roughly, to get the amount of savings that the person receives.

MR. CONNELL: Professor, I am sure you have looked into this. What does it come down to per day?

MR. KEETON: I haven't calculated it, but I guess on the figures we were working with, on the 30 per cent of $60, we are getting up to about $75 to $80. Divide that by 365 and we get the answer.

If you think that small amount per day will be an answer to the criticism to the public that rates are too high ----

MR. CONNELL: No. Professor, anything that we can save, we are looking to do. But the public must also, I believe, and I think this Commission feels this way, be made aware of what they are giving up in return for that saving.

MR. KEETON: Yes.

MR. CONNELL: And that is what we are concerned about - cost, availability and what the reparations system presently provides.

MR. KEETON: We are not giving up anything that the present system provides, except for that group of persons who have less than severe injuries and who are now being heavily overcompensated. And we are also giving up the compulsory requirement of double payments. So the things we are giving up are additional compensation --

MR. CONNELL: When you say that, you mean that you are deducting everything that a person now collects under his Blue Cross and his Major Medical and any other plans that he may have with his employer.

MR. KEETON: Right. So we are now giving him an option not to have that duplication. If he wants to keep it, he can have it.

MR. CONNELL: But if he wants to keep it, then his premium obviously is not going to be as low as you have told us.

MR. KEETON: That's right.

MR. CONNELL: It would not be.

MR. KEETON: Correct. If he wants to keep double coverage and buy that lottery ticket, he is going to have to pay for it.

MR. CONNELL: The problem is, I think, that we have to decide: Do we change an entire system for this freedom of choice that you told us about before or is there not a way that this state or any state, the United States, can provide freedom of choice for the public and maintain the reparations system? That is what we are presently engaged in studying and trying to come up with the right answer.

MR. KEETON: And I submit to you it can't be done. You have to get rid of the requirement of buying liability insurance and the use of the liability system in fighting over small claims in order to give this freedom of choice.

And, of course, freedom of choice is not the only advantage here. The better treatment of the victims and the lowering of insurance costs are also very significant advantages.

MR. BROWN: Professor, wasn't it true at the time in Massachusetts when the law was established that four or five of the major auto insurance companies at that time said they would refuse to write auto insurance in Massachusetts?

MR. KEETON: Yes.

MR. BROWN: Now if we propose to the Legislature, we'll say the PAIR plan, we can have the same group of insurance companies not covered by anti-trust who can say to the people in New Jersey, "Even though you say we can reduce this cost by 25 per cent, we are not going to do it. We are just not going to write insurance for you." I am talking about the insurance companies.

MR. KEETON: I know.

MR. BROWN: They may say, "We feel that this is not what the proper cost is." It might only be 7 per cent.

Even with your own feeling, saying you don't like private insurance, we'll say, compared with a state-operate plan, number one, you haven't shown us that 1, 10 or 15 insurance companies will come into the State of New Jersey and say to us, if we come through with what you are talking about, that insurance will be available to the people. And our victims are out there. We are one of the most highly-industrialized states in the nation and we have victims. If insurance companies aren't going to write it, then where do we go from here?

MR. KEETON: First, let me clear up a point about why the companies threated to withdraw in Massachusetts. The companies had accepted the 15 per cent reduction in the coverages that were affected. And what the Legislature did in the political process that followed was to modify that law by applying that 15 per cent across the board to such things as comprehensive fire and theft that were not even being affected by the law. And it was at that point that the

companies said, unless that part of the law is changed, we will withdraw. That part of the law was changed by a decision of the Supreme Judicial Court of Massachusetts and then they withdrew their threat.

So the PAIR Bill has nothing in it of the kind that led to the companies' threat to withdraw in Massachusetts.

On the second point, I don't have any pipeline to insurance companies and I am not going to be able to produce a representation by insurance companies that this can be done. But you have a pipeline to them and if you would ask for an actuarial study of the PAIR Bill by insurance companies, I think you might get the answer you want.

MR. CONNELL: Professor, do you believe it is fair to the public to have newspaper stories carrying statements that this plan can be put in effect at a 25 per cent reduction? Now I understand from your testimony that you are including property damage in that.

MR. KEETON: That is not in the bill. I would add it.

MR. CONNELL: Do you think it is fair to the public to have this story printed in the paper without any background or evidence to support it. That is what we are here for to decide and study.

MR. KEETON: I certainly do think it is fair to the public. I think it would be fair to the public to have the full facts placed before them. And if the full facts are placed before them, this estimate of 25 per cent saving is not without background. It is with the background of an agreement by the companies in the Massachusetts situation on a 15 per cent reduction on a bill that had a much weaker tort exemption than this bill had and, therefore, produced much less savings in elimination of the small-and medium-sized claims.

I am also confident that if this Commission arranged for an independent actuarial study of the PAIR Bill, that independent actuarial study would produce this saving. Now

I see nothing unfair to the public in telling them what is my best estimate and the best estimate of a good many other people about what the savings would be on the basis of existing information, while fully disclosing the limits on the basis of our information. Certainly that ought to be disclosed to the public. But I don't think information should be withheld from the public that that saving is available if this change is made.

MR. DUNCAN: I would like to make a point about just what our Chairman is talking about. Again I will refer to our little book. [Reading] "One of the most regrettable aspects of the whole debacle," - I take exception to the wording here - "had to do with the debate about possible cost savings. In a statement to the Joint Committee on Insurance of the Massachusetts Legislature that he made on March 28th of 1967, Professor Keeton had said that the Harwayne Study concluded that if New York adopted the basic protection plan," and we are talking about the Stewart Plan.

MR. KEETON: No, we were not - our plan.

MR. DUNCAN: The basic protection plan.

MR. KEETON: Yes.

MR. DUNCAN: [Continuing reading]"-- insurance premiums would be reduced by 15 to 25 per cent or more. This statement was repeated over and over again by the press, leading the public," and I suspect many legislators, "to believe that the claims saving applied to all coverages when in fact they applied to less than half of the total insurance premiums."

And that is where we are, Professor. What you are saying is that the bill in here now, as far as you know, does not have the support of the companies - that is (a) - (b), you are not really sure whether it will have any effect on the over-all insurance premiums, but you do feel that if it were enacted, the bodily injury aspects of that bill would be less than what it would have been had a Commissioner

allowed a rate increase in line with what the companies might be asking. The fact remains that there is nothing that could be promised in that bill that will direct itself to reduced premiums. Premiums will still go up and follow their natural course if we adopt that bill. But will it allow the companies to open up in this State and that is the question we are sitting on and can't seem to find an answer to.

MR. KEETON: It will allow the companies to open up.

But, point one, surely it is not the case that we have to wait for the insurance companies to come forward and say they are for a change before a study commission can recommend it. I respectfully submit that this Study Commission ought to make its independent judgment instead of waiting for the insurance companies to come forward and say whether they favor a bill or not. What the Legislature and what this Study Commission should be doing is looking at the matter from the point of view of public interest, and I am sure you agree with me on that, and not saying, "We are at the mercy of the insurance industry and unless they come in and say it can be done this way, then we cannot move." So my first proposition is that there is plenty of basis in the full debate that has been had on this subject for the last several years for a study commission to make its independent judgment, instead of yielding to the necessity of waiting for the insurance companies to come forward and say what they can do.

Secondly, surely no one would take the position that we should not make statements to the public about what the savings would be in the bodily injury portion of the liability insurance and that is what I was talking about and in the context in which I spoke, it was perfectly clear. There was no misunderstanding by the members present in that legislative hearing about what I was talking about. Surely it is not the case that we cannot tell the public

about this saving because somebody might misunderstand that we are not also talking about life insurance premiums or health and accident premiums or even the other premiums on other aspects of the automobile insurance policy. That would be a defeatist attitude to say we can't take a step because there will be the problem of communication with the public. Surely if we put our minds to it, we can over the course of time remove those misunderstandings to a large degree. I don't say we will ever succeed in removing all misunderstandings. There are loads of misunderstanding of the present system. But I do say that we cannot be deterred from taking necessary action because it will be difficult for us to explain to the public exactly what we are doing. That is a task we ought to be willing to undertake.

MR. DUNCAN: Of course, in Massachusetts, the companies did indeed sit down with the Commissioner and agree to the 15 per cent rate cut.

MR. KEETON: They did.

MR. DUNCAN: In other words, what made it successful, at least from that standpoint, was an agreement between the people who were going to produce the insurance as the producers and the political machinery at the time. I think the problem was that no one predicted the politics in the situation when the Legislature legislated an across-the-board increase.

MR. KEETON: No one accurately predicted the politics. There were some predictions it was being done for political reasons and the expectation was that either the Governor would veto the bill or that this problem that would be created with the threat to withdraw would discredit the whole idea. In other words, this was all attached on, admittedly and openly, by opponents of the non-fault portion of the bill. It turned out that the politics backtracked on them. The Governor in that dramatic television message,

described the problem and then said to the public, "If I sign this bill we are going to have a crisis." And then reached over and picked up his pen and signed in the presence of the television audience and said, "Now the crisis is upon us." As a result of all that, the Governor turned matters around and won the political battle. But there were a lot of political projections that were made.

MR. DUNCAN: But we would agree that nothing was forced on the companies that they did not agree to.

MR. KEETON: That's right.

MR. DUNCAN: They did agree to the bodily injury change and that's what they got.

MR. KEETON: That's right. I don't say we should take any pride in that, that we had to wait until the companies came around and agreed on a watered-down proposal. The Massachusetts Bill, you understand, I trust, is not what I recommend. It is very much scaled down. It has the central idea of the tort exemption in there and I hope it is firm enough to work on the long range. But it is not nearly as strong as it should be.

MR. CONNELL: Professor, I am going to interrupt only for your sake. It is now a quarter to twelve. I know you have to leave.

MR. KEETON: Yes, and thank you very much.

SENATOR LYNCH: Just one point.

MR. CONNELL: I am sure there are other questions, Senator Lynch. I just wanted to call attention to the time, Professor. I have a note here that you must leave at Noontime.

MR. KEETON: Yes. Thank you very much.

SENATOR LYNCH: Professor, as I understand your testimony, you favor the abolition of all small claims in tort.

MR. KEETON: Right.

SENATOR LYNCH: Now what kind of claims are you talking about?

MR. KEETON: We use as the measure of the tort exemption - and this is carried forward in the PAIR bill - the elimination of pain and suffering claims for the first $5,000 of pain and suffering under the current standards, so that the person who has an injury severe enough that a jury would today give him an award of more than $5,000 may collect under the fault claim the award in excess of $5,000. He collects under that $5,000 only if he has bought one of the optional coverages for pain and suffering benefits.

SENATOR LYNCH: Who determines whether or not that claim is going to be worth $5,000?

MR. KEETON: Eventually the jury. And one of the reasons for using this is that it eliminates all problems of inequity among different kinds of injuries because this general jury standard of what is reasonable and fair compensation is the one that is used.

Now as a practical matter, of course, the exemption is self-policing in this sense, that that $5,000 figure is high enough that it is only a tiny percentage of the claims that are within target range of getting a $5,000 or higher jury finding for pain and suffering. Those that are in the target range will still have to be tried. But the injury cases, such as the $100 of medical expense, those cases are not even in the ball park for the $5,000 finding. So the trial lawyer and the claimant, when he understands what the system is under the advice of the trial lawyer, would choose not to file claims in those instances.

SENATOR LYNCH: In other words, you are in favor of repealing the tort system as we know it for claims under $5,000?

MR. KEETON: Of pain and suffering, yes.

SENATOR LYNCH: Pain and suffering.

MR. KEETON: Right. Of course, on the economic loss side, you can look at it as simply a credit. He loses only what he will be picking up under the non-fault payments.

SENATOR LYNCH: Can he maintain a suit?

MR. KEETON: He can maintain a suit in tort if he has more loss than the amount that will be paid under the non-fault benefits. If he has only up to $10,000 of loss, he cannot maintain a tort action but he gets it all paid under the non-fault so he doesn't lose anything on the economic loss.

SENATOR LYNCH How about pain and suffering?

MR. KEETON: Pain and suffering is the part that is lost in the small cases unless he buys the optional coverage.

SENATOR LYNCH: How about permanent disability?

MR. KEETON: Same problem - that is, if the permanent disability is one that produces either economic loss in excess of $10,000, he gets compensated for that under the tort, or if it produces pain and suffering in excess of $5,000, he gets compensated for that.

SENATOR LYNCH: I can't quite follow you. If I am walking along the street and a workman drops a bolt off a second-story window where he is working and strikes me, I can sue him, right?

MR. KEETON: Yes.

SENATOR LYNCH: If I am in a supermarket and fall on a clutter of vegetables and I can prove negligence on the part of the owner of the store, I can recover, correct? If your dog bites me, I can recover, correct?

MR. KEETON: Yes.

SENATOR LYNCH: But here if a person is injured as the result of the negligence of another person, he can't recover.

MR. KEETON: Not quite so. He can recover and he will recover regardless of fault for all of his economic loss. You see, once you look at the automobile compensation system as an insurance system, which it truly is, because more than 99 per cent of all payments today are made by insurance, then the question becomes: How can we use this

insurance system most effectively? And I think if you put to the member of the public, after fully explaining the choice to him, this question: Which would you rather have, a lottery ticket, even for the severe injury case on the chance that you might be the one at fault or partly at fault and be barred, or would you rather have full compensation for economic losses up to a reasonable limit and give up this right to overpayment of the small pain and suffering claim?

SENATOR LYNCH: Well, we don't need a new system to permit recovery for economic loss or loss of wage and medical pay. That is available today by purchase.

MR. KEETON: At extra cost.

SENATOR LYNCH: For an additional amount.

MR. KEETON: Not without a lot of limitations on the scope of its application.

SENATOR LYNCH: One company in New Jersey offers a policy for economic loss up to $7500 a person, a year.

MR. KEETON: Up to how much?

SENATOR LYNCH: $7500 a person per year, the first year.

MR. KEETON: But with internal limits.

SENATOR LYNCH: No deductions - only the right of subrogation.

MR. KEETON: Internal limits on the amount of payment - for example, not more than so much for a day lost wages, not more than so much on certain kinds of medical. There are several companies now that are offering additional non-fault coverage and I applaud that.

SENATOR LYNCH: There is one company in New Jersey and the President of the corporation was here at the last meeting but was unable to testify because we had so many witnesses. His name is Dave Green and he is with the Motor Club of America. I hoped he would testify that day, but since he didn't, I hope he comes back next week to let us know about his plan. Thank you, Professor.

MR. BROWN: Professor, I will be finished with two questions. Number one - and I have to agree with you on what you said with regard to the Commission making an independent study and independent opinion. But then five minutes after you said that, you admitted that in Massachusetts the people - and when I say the people, of course, I am talking about their elected or appointed representatives - had to sit down with the insurance companies. So as long as the insurance companies have this unholy grip, that we have to go to them - and you talked about freedom of choice - what freedom of choice do we have?

MR. KEETON: They have that unholy grip only because we don't have public servants who are willing to deny that grip. And I would urge you to lead in that direction.

MR. TEESE: Professor, one question, please: If, as you have indicated, you equate loss at least up to $10,000 to monetary loss, both for medical, hospital and for lost earnings, what about the victim of an auto accident - and it has been dealt with in part here - who has had relatively minor loss incurred for tangible, measurable dollars, but has had some substantial physical injury, but not one which our present system equates in excess of $10,000? Is there any injustice being worked here, do you think?

MR. KEETON: Yes. You see one of the things about the Basic Protection proposal in contrast, for example, with the Massachusetts bill which uses schedules of certain types of injuries for this purpose, is, if the disability or disfigurement, or whatever kind of thing it is, is serious, it would justify an award of more than $5,000 for pain and suffering and to that extent the compensation is still available under the tort action. So all that we have eliminated in the tort field is what I would call the small- and medium-sized cases. I would include the medium-sized

because we need to put that tort exemption level high enough to put it out of target range for the great mass of trivial injuries.

MR. TEESE: But you are using as a standard the very thing that you want to defeat and eliminate --

MR. KEETON: That's right.

MR. TEESE: -- which is kind of a paradox, isn't it?

MR. KEETON: Not when you put this alongside the data on the sizes of settlements of claims so that you get some sense of whether or not there would be many cases in which the plaintiff and his lawyer would find it worthwhile to make the claim over $5,000 for pain and suffering.

MR. TEESE: Assume that this were put into effect today. Three years from now, what would we be using as the measure of damage in an instance of that kind? Would we reach back to three years and say that these standards would make this more than $10,000?

MR. KEETON: I suppose you might say, yes, if you wish, but in a truer sense there isn't any question of standards at all except what is reasonable and fair. And what is reasonable and fair today is not what it was two years ago or ten years ago or twenty years ago. And I am sure it wouldn't be the same two years hence.

MR. TEESE: Thank you.

MR. CONNELL: Professor, thank you very, very much for coming down. We appreciate it a great deal.

At this time I would like to call on Professor David Sargent, Suffolk University Law School, Boston.

D A V I D J. S A R G E N T: Mr. Chairman and members of the Commission: My name is Professor David J. Sargent of Suffolk University Law School in Boston, Massachusetts.

I had originally contemplated discussing with you the so-called Cotter Proposal this morning, but having

listened to Professor Keeton again, I would like to address my remarks, at least initially, to what he had to say to you.

Some eight years ago, Professor Keeton appointed me as a member of the advisory panel for what came to be known as the Keeton-O'Connell Basic Protection Plan. Although I very soon became opposed to that plan, I did continue to serve on it until such time as the plan was made public, some five years ago.

I have spent most of my time in the ensuing five years discussing, debating Professors Keeton and O'Connell and others, the subject of non-fault insurance. I would like to discuss with you this morning my reasons for opposing all of the existing non-fault plans that have been proposed to date.

I would like to start my discussion by agreeing with the statements made by the Commission and by Professor Keeton as well that indeed there are some very, very serious problems in the area of automobile insurance. There are problems with regard to the arbitrary cancellations of policies and failure to renew policies, particularly for the elderly. There are problems with regard to so-called red-lining practices whereby the inhabitants of certain non-white neighborhoods find it almost impossible to buy insurance at any price. There are problems with regard to poorly funded insurance companies that go out of business and leave thousands of unsatisfied judgments. And there are problems with regard to insurance rates.

But it is my opinion that the Keeton-O'Connell plan, Governor Rockefeller's plan in New York, the AIA plan and the Cotter plan and the other plans that have been proposed at least to date really don't even address themselves to these problems. As a matter of fact, I think that you not only will fail to solve any of the existing problems by adopting the Keeton-O'Connell plan but you will get some new problems that you never dreamed of before.

I would like to start my discussion by reminding all of you of the compulsion that presently exists throughout the United States for motorists to buy liability insurance. In the States of Massachusetts, New York and North Carolina, that compulsion is complete. But you have a great deal of compulsion, as Professor Keeton pointed out to you, in the other 47 states, including New Jersey as well.

Now we are asked to consider the adoption of a compulsory non-fault system. The public might very well think from this that all we are really talking about is the substitution of one form of compulsory insurance for another. But the change is much, much greater.

From almost the very beginning of this country, as you men well know, if a man was injured in any way, other than in a workmen's compensation type case and he sought recovery for his injuries from another, he was required to prove that that other person was at fault. If he proved that that fault did exist and that he had causally-related injury, then that innocent victim was entitled to recover for all of his medical expenses without any deduction. He was entitled to recover for all of the loss of his earning capacity without any deduction. He was entitled to recover for all of his human loss or as we sometimes call it, pain and suffering, without deduction.

By the same token, if he had injured himself through his own doing, that man was left to his own devices, whatever he had voluntarily seen fit to set aside to take care of just this kind of possibility, whatever collateral sources he had voluntarily purchased to take care of himself and his family.

Professors Keeton and O'Connell and Governor Rockefeller would virtually abolish our concept of negligence and our distinction between right and wrong and substitute in its place the philosophy that it really doesn't matter how you drive your car - you are still entitled to recover.

Under the original Keeton-O'Connell plan, drunken drivers would be compensated, dope addicts operating under the influence of narcotics, the criminal who crashes his motor vehicle while trying to elude the police - he too is entitled to compensation - the man who is guilty of gross negligence, the man who intentionally runs through a red light, the teen-ager who participates in a drag race on a crowded highway and crashes head-on into an on-coming motor vehicle. Under these non-fault plans, or at least under many of them, these people are entitled to exactly the same kind of benefits as the innocent victims that they perpetrate a disaster upon.

I think it only fair to stop and ask ourselves the question: If you are going to make payment to these wrongdoers who are denied payment under our traditional tort system of justice, how do you finance the payment to them? The answer in my opinion is very simple. You take benefits away from innocent victims and put that money into the hands of the wrongdoers who perpetrated the disaster upon them. It may be not immoral or improper to pay wrongdoers as well as innocent victims. But I think there is something very immoral about paying wrongdoers instead of paying the innocent victims and in my opinion that is exactly what happens under the Keeton-O'Connell plan. I think that this destroys the most basic principles of fair play and personal responsibility.

Some have hailed the Keeton-O'Connell plan as a new and revolutionary idea. But in my opinion, it is only a stripped-down version of something called the Columbia plan which was first proposed in 1932. It is interesting to speculate, if the idea for Keeton-O'Connell is really so attractive, why didn't any American jurisdiction in the ensuing 38 years see fit to adopt it? The answer is that the Columbia plan and all of the plans in between Columbia and Keeton-O'Connell were vastly more expensive than our present liability system. But Professors Keeton and O'Connell

have attempted to eliminate that expense objection in a very direct way. They have reduced the benefits. I am sure it is obvious to all of you, you can reduce the cost of any insurance plan by reducing the benefits the victims are entitled to receive under it.

Under the original Keeton-O'Connell plan which is generally, as I understand it, the basis for the PAIR bill in New Jersey, every motorist would be compelled to buy an accident and health insurance policy. And according to the terms of that accident and health policy, if that motorist or any occupant of his motor vehicle or any pedestrian received an injury which arose out of the ownership, maintenance or use of that motor vehicle, then that victim would be entitled to something called net economic loss. Net economic loss means your wage loss plus your medical expenses added together, minus these deductions. Under the original Keeton-O'Connell plan you have to deduct all collateral sources that you either receive or that you are eligible to receive. That means you have to deduct sick pay, wage continuation plans, union fringe benefits, Blue Cross, Medicare, Medicade, Social Security and the like. Then if you had any loss above and beyond those collateral sources, you then had to deduct an additional flat $100 out-of-pocket loss. Then if you had any loss above and beyond collateral sources plus $100, you had to deduct an additional 15 per cent of your wage loss. Note that under that accident and health policy under no circumstances are you ever entitled to a penny for pain and suffering.

If the objective is to give to the people of New Jersey cheap insurance in every sense of that word, you can give them cheap insurance by taking the exact same deductibles that are in the Keeton-O'Connell plan and putting them into your existing liability system. How much do you think it would cost an insurer in the State of New Jersey to write a liability policy if after it was adjudicated that

his insured was at fault, he didn't have to pay the victim to the extent that the victim had collateral sources - he didn't have to pay the victim for $100 out-of-pocket loss on top of collateral sources - he didn't have to pay for the first 15 per cent of wage loss on top of the first two deductions - and he never had any exposure to liability for the human loss, for the pain and suffering? That kind of deductions in the present liability system ought to be able to make you give that policy away because almost no one is going to receive any benefits and almost no one is going to receive any meaningful benefits under the Keeton-O'Connell plan.

This in my opinion is cheap insurance. But you have reduced the cost of insurance, if at all, only by drastically reducing the benefits.

The late Richard Wolfrom, who was the Chief Actuary for the Liberty Mutual Insurance Company, said that the reduction in benefits under the Keeton-O'Connell plan were so shocking as to raise the question whether they will last over the long haul. I don't think the American public wants a reduction in benefits that is shocking. Of course, they want cheaper insurance. But they have to be made to understand that you are going to get pretty much what you pay for your insurance premium dollars.

Professor Keeton said this morning that there is no actuarial estimate to indicate that the Keeton-O'Connell plan won't effectuate a saving and I differ with him very strenuously on this point. As you were scheduled to hear today and as you will hear, I guess, next week, Dr. Calvin Brainard, who is the Chairman of the Department of Finance and Insurance at the University of Rhode Island, did a one year study on the economic feasibility of the Keeton-O'Connell plan. When he came to Boston testifying on the Keeton-O'Connell plan, he said that if he were going to advise the motoring public on the desirability of the plan, he would have to break that public down to two groups: the

traditionally good driver and the traditionally bad driver. His advice to the good driver is that you should abhor this plan because it will cost you more money and give you less benefits. His advice to the bad driver is that you should embrace this plan because it is made to order for you.

It is interesting to point out to you, and Dr. Brainard being a very modest person probably won't, but Dr. Brainard did this one-year economic feasibility study on the Keeton-O'Connell plan under a grant from the Walter E. Meyer Foundation and that is exactly the same foundation that gave Professors Keeton and O'Connell tens of thousands of dollars to come up with their plan. When they had concluded it, Dr. Brainard was commissioned to do an economic feasibility study and in short he concluded it was not economically feasible.

I think you might also be interested in knowing that Mr. Richard Bailey, who is the Chief Actuary for the Insurance Department of the State of Michigan, looked over the actuarial estimate done by Mr. Harwayne, and certainly Mr. Harwayne who is now with the Insurance Department of the State of New York is a very well respected actuary. When Mr. Bailey looked over the 29 variables that go into the determination of the rate, he found on the 4 that he examined in detail, there were in his opinion errors of as much as 100 per cent. On just the 4 variables that he studied in detail, he found errors of as much as 100 per cent. He stated, therefore, that there was nothing which could convince him that there really would be any saving by adoption of the Keeton-O'Connell plan.

But I think whether it is going to cost you more or less, we ought to be interested in what you really get in exchange for your insurance premium dollars. Consider, if you will, under the Keeton-O'Connell plan what would happen if a union employee had agreed sometime during the course of his working years via his union representative that

instead of getting an extra $5 a week in his pay envelop, he was going to start to accumulate some fringe benefits. He was going to start to accumulate a medical policy and some sick leave benefits. And suppose that that man under that contract has worked there long enough, putting aside, remember, $5 of his own money for a rainy day, so that he now has 5 weeks of sick leave coming to him and he has a $2,000 medical payment kind of insurance for hospitalization and doctors. Suppose that that union employee is parked at his curb some Sunday morning getting ready to go to church and there is no problem in determining fault - he hasn't even turned the key in the ignition - and he is hit in the rear end by his drunken neighbor who is just finishing up a very late Saturday night. He is injured and he sustains a broken leg. He is hospitalized and he ultimately returns to work after, let's say, 5 weeks. But that man's leg, although healed to the point where he can go to work, is never going to allow him to do the things that perhaps make life worth living for him and for most of us. He maybe again can never go skiing - he can never bowl - he has to be careful playing with his children. And for the rest of his life he knows, particularly as old-age approaches, he is going to have a lot of additional aggravations. It is a normal condition for a broken leg, for an adult, at least. That man can't recover a penny from anybody. He can't recover against his own compulsory accident and health insurance carrier because he has these collateral sources, which he bought and paid for separately. And he can't recover against the drunk who hit him because this is the other major feature of the Keeton-O'Connell plan: Every wrongdoer automatically has an exemption from liability to the extent of the first $10,000 worth of special damages and the first $5,000 worth of pain and suffering. He doesn't recover from anybody. But the drunk who hit him - let's assume he not only is irresponsible in the way he drives his car but this is the kind of man that never bothered to

hold down a steady job and have some sick leave benefits. He never bothered to accumulate collateral sources. His insurance company says to him in effect, "Step right up, Mr. Irresponsible, you are just the kind of man we want to take care of. We don't care about all of the innocent people that you injured. This plan is designed just for the likes of you."

People who can't recover under the existing tort system because they are wrongdoers and who, secondly, - and you have to fall into both of these categories in order to get any benefit -- and who, secondly, do not have collateral sources, those are the only people who can benefit under the Keeton-O'Connel Basic Protection Plan.

Professor Keeton told you this morning that the reason for this is that nobody should make a profit. He talks about a windfall that may result from a person recovering once from his Blue Cross for his injury, his medical bills, and recovering again from his automobile accident health insurance carrier. But what profit has a man made if he bought and paid for two separate insurance policies? Why isn't he entitled to be paid under both of them?

Consider, if you will, the analogy of life insurance. If one man buys a $10,000 life insurance policy and his neighbor buys two policies and pays double the premium, would you think of saying to the estate of the man with two policies on the occasion of his death, "You are only entitled to be paid by one policy because that is all your neighbor saw fit to buy"? Or consider, if you will, the analogy of Social Security. Two men live side by side and one of them saves $20,000 during his working years by living frugally. The other man doesn't save a penny. Would we think of saying to the man with the $20,000 in the bank when he reaches the age of 65, "You have got to spend, you have to use up, you have to exhaust all of your collateral sources before we will start paying you Social Security"? Or does he get that together with whatever he voluntarily

set aside to supplement this? Under the Keeton-O'Connell plan, you do exactly the opposite. You reward people for being imprudent and you penalize others for having been prudent.

But perhaps most interesting in this connection is to remember that more than 85 per cent of all of the public of particularly New Jersey, but this is true for the entire United States - in New Jersey it is undoubtedly higher because you are a wealthy state in contrast to some of the states--more than 85 per cent of all of the members of the public already have some collateral sources. How long do you think it will be before those collateral sources are dried up? The Keeton-O'Connell plan is really a parasite that lives off other benefit? But how long do you think it will be before Blue Cross and Blue Shield, for example, will rewrite their policy so as to provide, as has already been done in workmen's compensation cases, that Blue Cross is not responsible for medical bills to the extent that the injury arises out of an automobile accident? How long do you think it will be before unions renegotiate their contracts so as to provide that a person is entitled to sick leave benefits - and you can give him additional weeks of sick leave - but he is not eligible for sick leave benefits to the extent the disability arises out of a motor vehicle accident?

When these collateral sources are dried up, the cost of the Keeton-O'Connell plan has got to skyrocket dramatically. The plan is based upon - Mr. Harwayne's estimate of cost is based upon the fact that 85 per cent of the population have these collateral sources. But when you eliminate those collateral sources - and they will be eliminated - then the cost of the plan has got to skyrocket dramatically.

I also find great objection in the failure to allow people to recover for that first $100 of out-of-pocket

loss. Under the original version of the Keeton-O'Connell plan, that $100 deduction applied to each and every person who was in that motor vehicle. That meant that if a man and his wife and three children were out for a Sunday drive and again they were hit by a wrongdoer, drunk or otherwise, the head of that household could have a $500 out-of-pocket loss in a motor vehicle accident that was not his fault.

You heard this morning some discussion about the Massachusetts plan - 15 per cent saving - and you wanted to know what that translates to. Fifteen per cent saving on the compulsory insurance for tens of thousands of motorists in Massachusetts comes to $3.80 per year. That is what they are saving in exchange for having given up tremendous benefits.

I would point out to you also that the reason that under the original version of Keeton-O'Connell you didn't let people recover even for all of their actual economic loss - you made them absorb the first $100 loss themselves, which you can delete or not as you like, but if you do delete it, it pushes the cost up - is that you need all of those hundred dollars and you need all of the savings resulting from the other deductions as well in order to pay the same kind of benefits to the wrongdoers, the same kind of token subsistence-type benefits. Some people will tell you that the reason for this is that it is socially desirable when a man is injured in a motor vehicle accident to make sure that he gets prompt and adequate medical attention and becomes once more a productive member of society. And they will tell you that even the drunk who is injured in a motor vehicle accident is a very nice fellow, except when he is intoxicated or at least on this one occasion when he was intoxicated, and whether that be true or not, he certainly has a lovely wife and fine children and someone has to take care of them. But isn't it peculiar, the people who make this argument to you don't have the same compassion for people that are injured in other ways?

Isn't it surprising that if the poor old drunk should fall down on a dirty old banana peel in the bar room and break his leg, then he is not entitled to recover despite the fact that he has a wife to take care of and groceries to buy for his children, etc.? If that drunk should manage to stagger out onto the street and fall on a defect in the sidewalk, then he is not going to recover either. But, boy, if he can just hang on until he gets to his motor vehicle, then his problems are over. And he doesn't have to have an accident in the ordinary sense of the word. All he has to do is bump his head as he gets into the car or fall dead-drunk out of the car onto the sidewalk and he is entitled to compensation. You don't have to prove an accident in the ordinary sense, only an injury which arises out of the ownership, maintenance or use of a motor vehicle.

Professor Keeton has often said that I talk too much perhaps about the question of the drunken driver and I understand that under the PAIR bill, it is true that the drunken driver has been excluded. But that, at least, is not in sympathy with at least one of the authors of the Keeton'O'Connell plan who believes that drunks should not be excluded. He said once you start excluding certain kinds of wrongdoers, it is no longer non-fault insurance. Supposedly they are going to save money by never making inquiries into who was at fault. And when you start eliminating this wrongdoer and that wrongdoer, you once more have the expense objection of determining who was drunk and was he really drunk and was it casually related to the incident. And if you really want to exclude the drunk, then if you are going to have gradations of wrongdoers, isn't the culpability of the man who while sober intentionally runs a red light probably as great as the man who without knowing it became intoxicated? Why not exclude him too?

Once you continue that line of reasoning, you get right back to the present system and say, we don't let wrongdoers recover, at least if their wrongdoing was

even in a comparative negligence state, greater than the negligence of the other party who was involved.

I think the drunk is a tremendous problem on our highways. You have asked about how you can cut the cost of insurance. I think if you can find a system to get the drunken driver from your highways, you will cut that cost. More than 27,000 Americans died last year, in one year, almost the equivalent of what we have lost in the war in five years. Twenty-seven thousand were killed by drunken drivers. Dr. William Hadden, who was the Director of the National Safety Institute, said in referring to this figure, "I am not referring to the man who has had a drink or two socially. I am talking about the man who has consumed a pint or more shortly before getting behind the wheel of a motor vehicle. That's the kind of man who kills 27,000 Americans every year." And if Professor Keeton had talked on this subject, he would say, although that is a dramatic figure, that applies only to the fatality and the fatality isn't the real reason for the rise in cost of insurance. It is all these little cases.

He might be interested in knowing that about two years ago now, in England they adopted some very stringent laws concerning the use of breathclizers and some very stiff sanctions for people who failed that test. That is rather commonly known, but what isn't perhaps as commonly known is that one month after the adoption of these tough laws in England the over-all accident rate dropped 40 per cent. Would you have any problem with regard to the cost of insurance in New Jersey if you could reduce your number of accidents by 40 per cent?

Contrary to what Professor Keeton told you this morning about there having been a reduction in the number of accidents in Massachusetts, there has been an increase since the adoption of the non-fault system. There has been a reduction in personal injury claims which I will talk

about a little bit later on, but there has been an increase in the accident frequency itself.

If you want to take care of everyone, then why don't we adopt a system of national health insurance and say that any man who is unable to work because of either injury or illness is entitled to have his medical bills paid and give him a percentage of his wages? Why is it that we want to convert a social problem into an automobile problem? Don't we want to take care and have as much compassion for the man that develops lung cancer as we do for the family of a man who voluntarily becomes intoxicated? Let's take care of him also.

One of my greatest objections to the Keeton-O'Connell plan is their denial of the right to recover for pain and suffering. And make no mistake about it, you never recover for pain and suffering from your own compulsory accident and health insurance carrier, under absolutely no circumstances. And it is impossible to buy that coverage, contrary to what Professor Keeton told you this morning. It just can't be purchased.

Under the Keeton-O'Connell plan, you can never recover for pain and suffering against your own company, but you can recover for pain and suffering against the wrongdoer if you can prove pain and suffering in excess of $5,000. Now this term "pain and suffering," I think, is largely misunderstood. Market Facts Survey did a survey on this question within the last six months. They asked the public whether or not they favored a retention of the existing liability system and a large majority said, yes. They asked the public whether or not they favored a system whereby the wrongdoer was treated the same as the innocent victim and they said, no. They were asked the question: Do you favor the right to recover for pain and suffering? A bare majority said, yes. They then went on to explain to them what pain and suffering was really all about, that if a man loses his leg, he doesn't have an awful lot of

pain always. After a certain period of time he reaches an end result medically and he doesn't feel anything, but that leg is gone. That man is never again going to be able to take a walk on the beach or go dancing or play with his children. That is the human loss. Is he entitled to compensation for it? Do you, the members of the public, want to be compensated for that kind of loss. That is what paid and suffering really means. They put the same question to the same people again and the number of people who favored the right to recover for pain and suffering as thus described increased dramatically. There was a bare majority anyway. When it was explained to them in these terms, there was a tremendous increase in the percentage of those who answered, yes.

Under Keeton-O'Connell they say you can't recover for pain and suffering. Why not? Well, some people will tell you it is too intangible, it is an inflated figure, you just take a multiple of special damages and that is what you call pain and suffering. They tell you that you can't put a price tag on the value of a headache, that if you are stretched out on a Stryker frame for three weeks, you can't translate that into dollars and cents. But as one of you gentlemen suggested this morning, why is it that we are miraculously able to measure pain and suffering on the man who breaks his leg by slipping on a dirty old banana peel in a supermarket, but for some reason we can't measure pain and suffering when he breaks that same leg in a motor vehicle accident?

Of course, pain and suffering is not capable of exact mathematical determination. It is really an expression, in my opinion, of the community conscience as to the value of that injury. And if you compare similar injuries throughout the United States, industrialized areas such as New Jersey to industrialized areas on the west coast, you will find an amazing correlation. How do juries do it? Well, juries have a tough time with a lot of fact questions.

I suppose it is about as difficult as you can imagine to determine the value of a man's reputation. But I haven't seen any legislation designed to eliminate the right to recover in tort for libel and slander. If we can value a man's reputation, then why can't we value and determine realistically the amount that ought to go for compensation for the human loss? And I think that you can do it. Even Professors Keeton and O'Connell admit that you can, but they say you can't recover for the first $5,000 of pain and suffering. Well, if you can't measure pain and suffering, then how do you get to the first $5,000 plateau from which they will let you measure it? What happens under the Keeton-O'Connell plan? In response to one of your questions this morning, you try a case against a wrongdoer and the jury would return a verdict that the defendant was in fact guilty of negligence and the plaintiff free from negligence and that there were casually-related injuries. But then the judge would have to have a special verdict to return in which you would figure separately the value of pain and suffering. And when that special verdict was returned - say the jury returned a verdict of $4900 for pain and suffering, which I am sure all of you well know is not the nuisance claim that Professor Keeton was talking about - that's a very serious case - the judge would have to turn to the jury and turn to the plaintiff, the innocent victim, and say, "You can't really measure pain and suffering in that amount. And you, Mr. Plaintiff, who have had a trial before a jury of your peers and have been told that someone else wrongfully inflicted $4900 worth of human loss on you, you are not entitled to a penny because the wrongdoer has an exemption from liability for the first $5000." But if you should instead find that the pain and suffering is worth $5100, then you have reached the promised land where even Keeton-O'Connell admit you can measure pain and suffering. But the wrongdoer doesn't get $5100, which is now agreed to be a fair value for his pain and suffering, he gets $100

because again the wrongdoer has the $5,000 exemption.

To me, this is most unfair. It is the key feature of the Massachusetts plan which you have heard discussed this morning. Under our plan which is a modified non-fault plan, you recover for $2,000 of economic loss. That is the maximum that you can recover. It is made up of your wages plus your medical expenses, minus generally your collateral sources. And you can recover on a tort basis for pain and suffering provided that you prove $500 in medical bills or you have a fracture or you prove permanent and serious disfigurement or death has resulted or there is a total loss of sight or hearing.

What is so magical about $500 in medical bills? That means that the rich man suffers an awful lot more than the poor man does. If you live in the ghettos of Newark, I will guarantee you that they are pretty much comparable to the ghettos of Boston where the people who are injured in that area go for medical treatment to a city hospital or to an evening clinic where they pay perhaps $4 per visit as a maximum. And the doctors who practice in that locality do not charge excessive rates. But if you live in an affluent section of New Jersey or in an affluent section of Massachusetts, the typical doctor's bill for the first visit, for writing the report and making the initial examination in an accident case, runs from $15 to $25 and every visit thereafter $10 to $15. So the rich man reaches that magic plateau much more quickly and much more surely than the poor man. It would seem to me it is going to take the Christian Scientist a very long time indeed to get $500 in medical bills. But that goes again to the constitutionality, whether or not that is a denial of equal protection.

These are some of the things which I find most objectionable under the Keeton-O'Connell plan and I would point out to you in reference to this pain and suffering argument that Professor Keeton told you this morning if you

wanted to you had an election. He talked about choices. He said, if you want to pay for it, you can buy pain and suffering protection. That is not so. Under his plan, you can as an option purchase something that is called pain and inconvenience protection. That is pretty close to pain and suffering at least in sound, but it doesn't mean anything at all the same. It means that if you want to, by paying an additional premium, you can get an additional $100, $200, $300 or $400 per month when you are actually out of work in lieu of pain and suffering. So if you purchase this extra coverage and you are out of work for two months, you have lost your leg, you return to work and the leg is still gone, then even with that extra coverage, if you bought the maximum, all you are entitled to is $800 for the loss of that leg from your non-fault insurance carrier. That is not pain and suffering. He knows it and you know it and I know it. That is, as retired Justice Clark of the United States Supreme Court said within the last month, "Giving to innocent victims the same kind of computerized, dehumanized, scheduled benefits that have proven so unsuccessful in workmen's compensation." Justice Clark, who certainly doesn't have any axe to grind, was considered one of the greater liberals of this country. He has come out with a stinging indictment of non-fault insurance. He says that the adoption of it will destroy one of the basic bulwarks of freedom in this country. He says that fault is not difficult to determine. He says that it is very easy to determine "in the overwhelming majority of cases."

Professor Keeton would have you believe that if you are injured in a motor vehicle accident under his plan, you just walk up to your friendly insurance company and present your bills and they will automatically be paid. If that is true, then why do we have all the litigation we do in workmen's compensation. That is non-fault insurance.

In the State of Texas, for example, where they

try their workmen's compensation cases in the same courts that handle their automobile litigation, they have 8 times as many suits for workmen's compensation as they do for automobile injuries, 8 times as much non-fault litigation as fault litigation. 98 per cent of all auto tort cases are settled without a trial. That is a pretty good statistic. I don't think you can possibly have that good a statistic under a non-fault system.

Professor Keeton has said that one of the things that he hopes to do is eliminate the possibilities of fraud. And one of you used an example that I often have. You talked about the household injury that a man only alleges to have been sustained in the unwitnessed single-car incident - the case of the man who falls down in the bathtub and injures his back or in shovelling snow injures his back or something of that nature, and being fraudulently disposed, he starts looking for insurance premium dollars from automobile insurance, to pick up some of the slack while he is out of work.

Under the present system if that same, fraudulently-disposed person wants to get some automobile insurance premium dollars, he has to either stage a phony accident or at least convince an adversary insurance company that there was an accident and that the other person was at fault. Under this system he doesn't have to go through that elaborate pretense. All that man has to say is that in his own privacy he felt a twinge in his back as he was getting into the car, getting out of the car, putting on new seat covers, changing the tires, opening the trunk, putting up the radio antenna. Again you don't have to prove an injury which arises out of accident as we generally understand that term, but only an injury which arises out of the ownership, maintenance or use of a motor vehicle.

That has caused Jim Kemper who is President of the Kemper Insurance Companies to say that that provision, which is in every non-fault insurance plan that I have seen, makes

it virtually impossible for an insurance company to successfully defend against the household injury that is only alleged to have been sustained in the unwitnessed, single-car incident. How do they disprove it? It is extremely difficult. Fraud is far easier to perpetrate. And for the man who is really fraudulent, what you do is subsidize him. He can stay home, go to a doctor for medical treatment, receive a portion, at least, of his wages, have his medical bills paid, regardless of whether or not he wins the tort suit, and he knows every day he stays out of work he not only is being paid a portion of it while he stays out and his medical bill is paid, the more valuable his tort case is likely to be, the more likely he is to take substantially over that $5,000 exemption. So for the true fraud, you have given him a base from which to perpetrate the fraud.

The only thing you have done is to deny to decent, honest people who won't do that, their right to recover what they are actually entitled to receive.

These are some of the objections I have to the Keeton-O'Connell plan. I am sure you are interested and have heard a lot about the question of whether or not lawyers are going to be adversely affected by this plan and I assure you that whether they are or not, I won't be because I am not now engaged in the trial of cases of this nature and have not been for many years. But an honest answer to that question is, of course, it hurts lawyers. If this is the only thing wrong with the plan, it ought to be adopted and it will be adopted.

I have likewise been asked the question whether or not this plan is bad for the insurance industry. And that depends in large measure, in my opinion, upon what part of the insurance industry you are talking about. As you know, the American Insurance Association, the old-line stock companies, Hartford, Aetna and so forth, are in favor

generally of this non-fault insurance. The other two large insurance industries, the American Mutual Insurance Alliance and the National Association of Independent Insurers, are generally opposed. There are some cross-overs in those various groups, but those are the general breakdowns.

But their reasons aren't terribly altruistic. The AIA is in favor of non-fault insurance because they have proven to be very non-competitive. They have lost almost 10 per cent of the market in the last ten years and they have lost it to the independents and to the mutuals. And they would like to get rid of an unprofitable line of business, from their point of view, and move into something else.

I think also you have to be mindful of the fact you are talking about several billions of dollars worth of insurance that is written each year on a liability basis. That is billions of dollars worth of business that the life insurance can't generally compete for. They don't generally write casualty coverage. But if you switch from a liability basis to an accident and health basis, that is several billions of dollars worth of business that the life insurance companies can and will compete for because they do write accident and health coverage.

So whether it is good or bad for the insurance industry depends upon what segment of it you are talking about. But whether it is good or bad, that is not a very good reason for opposing the plan either. But in my opinion, this plan is bad for the public.

I think when you have concluded your hearings, you will agree with me that the adoption of non-fault insurance is not the solution to our present problems. Thank you very much.

MR. DUNCAN: That was a wonderful talk. Thank you very much.

MR. SARGENT: Thank you.

MR. DUNCAN: Can I ask you one question: What

do you suggest as to something we could do now to solve our insurance problem in New Jersey if what you are saying is you won't solve it with a no-fault approach?

MR. SARGENT: I think there are several things you might consider. Much has been said about the question of cost - and that certainly is paramount, I suppose, for the average member of the public. One very simple thing that you could do that would reduce the cost of insurance dramatically is to consider the feasibility of adopting a bumper-impact law, as they have in the State of Florida. I have been appointed as a member of Governor Askew's special committee on auto reparations in Florida. One of the good things that the Florida Legislature has already done is to enact legislation providing that beginning in 1973 no new car can be registered in the State of Florida unless it is constructed to withstand a front and rear bumper impact of 5 miles per hour without causing any property damage whatsoever.

Now as you have suggested this morning, more than two-thirds of the insurance premium dollar goes for physical damage as opposed to the bodily injury payout. If you could just eliminate the damage in the 5-mile-per-hour and under case, you would save on the average $200 per vehicle for each of the vehicles thus involved, and that would come to somewhat in excess of $2 billion a year. That's how much you could save. The reduction in your collision insurance and the reduction in your property damage insurance would be fantastic.

Another thing that I think should be considered is the adoption of a bill that I proposed in Massachusetts and which, at least for a time, appeared to have some substantial chance of passage, which I call a modified financial responsibility law. Under this plan, people who have claimed that they have been driving for 20 years or 30 years or whatever and paying all of this money into the auto insurance pool and never have been involved in an

accident ask, why should they have to pay these higher rates. I would say to them via this legislation, if you want to, you can buy a deductible of $100, $200, $300 or $400 per victim. You would still be fully insured and you would irrevocably authorize your insurance company to settle all claims that were made against you, but in the event that they did settle the claim, then you would be become, if you elected this deductible, personally responsible to reimburse your insurer, in the case of settlement, 80 per cent up to the first $400 that was paid up to encourage settlements, and if it went to trial and you were found to be at fault, then you would have to pay back the full amount of the deduction that you have elected.

That really gives the public a choice. If you think that you are such a safe driver and you are not going to cause accidents, then you would elect this kind of a deductible. But it wouldn't in any way take away benefits from the innocent victims. They are still guaranteed recovering everything. It is just that the insurance carrier is going to get reimbursed from those people who are found to be at fault. Of course, you would deny this kind of deduction to people who had demonstrated by their past driving records that they were wrongdoers and that they were likely to be guilty of the same kind of conduct in the future.

I think that that is a new approach which, at least, I think many people would find great satisfaction in.

I think so far as your problems of marketability, which I guess in New Jersey is as big a problem as you have, that you could consider a lot of things other than the adoption of non-fault insurance. I don't think that marketability is going to be increased one bit by the adoption of non-fault insurance. In fact, I think it will be dried up.

Under the Massachusetts plan that has been adopted, non-fault insurance, the proponents of the bill estimated that there would be an increase in the number of claims paid out. Now you are paying both the innocent and guilty.

They said this would result in an increase of 25 per cent. You would have 125 per cent as many people getting benefits as received benefits under the old system. Other people contended that you might increase the number of claims by 200 per cent. But even the proponents said a minimum was a 25 per cent increase. Former Superintendent of Insurance in New York, Superintendent Stewart, estimated under non-fault insurance, the Rockefeller plan, a 45 per cent increase. You are paying more people. The question is how many more. Well, in Massachusetts, we are paying 20 to 25 per cent of the number that we used to pay. In other words, we have had a 70 per cent drop, not an increase which even the proponents predicted. They said we would have some kind of an increase. We had a 70 per cent drop when we have had an increase in the number of accidents or the accident frequency.

I will tell you one of the reasons for it and that is because three days prior to this law going into effect, you had 150,000 people in Massachusetts that didn't have any insurance and in our state you can't put your car on the road the 1st of January unless you have insurance. And people were frightened. They talked about setting up a state fund to take care of the emergency. Finally, these people were all placed. But with non-fault insurance, you have great intimidation so far as the claimant is concerned. I am sure I am not the only person who has experienced having had two broken windows in my motor vehicle, side windows that I think run in the vicinity of $30, and they really broke, as far as I know, because of some defect in the cranking mechanism. During a one year period of time I submitted a bill for $30 and my insurance was cancelled. That same kind of intimidation is going on now in Massachusetts. The public is being told, "Yes, if you are out of work for a week and you had $100 lost wage, you are entitled to 75 per cent of last year's average weekly wage plus your medical bills, minus your collateral sources. We will put

the claim in for you but you aren't going to get much anyway after you deduct your collateral sources. And next year you may have or I many have as your agent some difficulty in writing insurance for you at all, as you already have in the collision area."

To give you an idea of the intimidation that exists in Massachusetts, why people aren't filing claims, there is a provision in that bill, similar to the one in the PAIR bill, to take care of so-called assigned claims. That means in essence the pedestrian who is a resident of New Jersey or in this case Massachusetts who is hit by an out-of-state car. There is no non-fault insurance applicable. So in order to take care of that kind of a claim, they have provided that all of the insurers have to band together and on a proportionate basis assume those cases and pay them.

The bill provides that the insurance industry will set up a system to implement the plan. You heard this morning Professor Keeton tell you that five years ago we set up a fraudulent claims bureau, which rather strikes terror in the minds of most people. I called the Insurance Commissioner within the last week and I said, "What has been done for the purpose of implementing this assigned claims plan?" He said, "It is very simple. Any pedestrian who is hit by a motor vehicle out-of-state and doesn't have insurance can get his application by going to the fraudulent claims bureau." How many members of the public do you think are going to go to the fraudulent claims bureau to get an application?

Those are some of the things that I think you could do as well as setting up a really realistic merit-rating system to truly penalize wrongdoers.

MR. DUNCAN: I have a question right there. You say a truly, workable merit-rating system. You mean clearly marking the line for the good and the bad driver.

MR. SARGENT: That's right, based only on moving violations.

MR. DUNCAN: Not like your glass-breakage sort of thing.

MR. SARGENT: Right.

MR. DUNCAN: Now without taking a regulator's individual personality into consideration at the moment, can a climate such as you envison be fostered in a state where there is no open rating or competitive rating bill involved? Is this part of your recommendation? What about that aspect of it?

MR. SARGENT: Well, answering the second part of your question first, the only way in which I would be in favor of opening rating, open competition - and I think this goes a long way toward the question of marketability -- is to make sure that if an insurer wanted to come into New Jersey and compete, I would let him compete provided that he gave the same percentage discount to all classifications of drivers so as to prevent someone coming into the market and creaming the so-called good risks, very low risks, and then refusing to write any of the bad risks. He doesn't want those so he doesn't go out and compete for them. Let there be competition, but if somebody wants to compete and charge 2 per cent less, then guarantee the public that that 2 per cent less will be charged for all of the rate classifications, however many there may be. I think that has something to do with market availability. He can get some of the good, some of the bad, but he has to grant that 2 per cent for any risk that he writes.

MR. DUNCAN: Is there such a program abroad today anywhere?

MR. SARGENT: There is legislation that I, at least, participated in the drafting of some five years ago in Massachusetts. If you would like, I would be more than happy to find it and provide you with it.

I think, secondly, in response to your question, that if you have a merit rating system, which I agree should not

depend on whether you have blonde hair and I have brown and so forth, as some rating classifications now do, and whether I am a divorced person and you are not, as many rating classifications now do -- College professors happen to be a bad risk in the eyes of many people. I think these are unrealistic. But I think if you penalize people for being wrongdoers and you set up a point system, which I understand you have or did have at least some kind of point system in New Jersey, based upon moving violations only, and then set a dollar price per point that was accumulated, that you would be amazed at how much of a reduction you could achieve for people who didn't accumulate points and how much of a deterrent you would have with regard to forcing people not to drive, for example, when they knew that they had been drinking. Put that deterrent in so that those points exist for a period of years. It may be one thing for a man to say, "If I become intoxicated, I'll pay a fine and leave," but if he is reminded every year, assuming he pays his insurance on a yearly basis, for five years by paying a 50 per cent additional premium because of that drunken driving conviction, I think it has a tremendous deterrent effect.

MR. DUNCAN: Isn't that a fact right now? A drunken driver would be penalized by his company either by a higher rate or the inability to obtain insurance.

MR. SARGENT: That may well be, but that is only because the discretion of the insurance company provides that that is so. I would require that he would be compelled to pay these additional amounts. As a matter of fact, I am not sure that isn't a rather desirable way of refunding your uninsured motorist fund.

MR. DUNCAN: One more question about availability: To summarize very quickly then, you don't see no-fault; you see the present system basically good.

MR. SARGENT: I certainly wouldn't want to leave the impression that I don't think there are many inequities

in the present system, there are. But I think they can be cured and should be cured.

MR. DUNCAN: But without a whole basic shift.

MR. SARGENT: Right.

MR. DUNCAN: Again we are back in New Jersey and we are very much sitting on the problem. Now what companies have you directed your attention to that you might have talked to that suggest that because of what you support, they necessarily will open up and write insurance in the state?

MR. SARGENT: I can't tell you that specifically in regard to New Jersey I have asked the question, "What would you like to be done in New Jersey to make it more attractive for you to write business?" But I think if the insurance industry in any state were told that they can get a fair and adequate rate, whatever that may be, -- And you have to take into consideration a lot of things in the determination of rates. One of the things that Professor Keeton didn't point out to you this morning when he said that there might have been a 30 per cent increase if we hadn't adopted this new system - he didn't point out to you the fact that we are just on the verge of requiring that insurance companies in the determination of their rates - and our rates are set by the Insurance Commissioner with prior approval - figure in income on loss reserves, investment income and things of that nature which they had not historically done. How much that would result in a saving, I don't know. I don't think anyone really wants the insurance industry to lose money. But I, for one, would like to know exactly how much they are losing or winning. I think there is at least reasonable doubt that there are very many insurance companies, if any, that are truly experiencing an out-of-pocket loss, to use Professor Keeton's phrase.

I think when you have a system whereby an insurance company can take in $10 million and give back some of the

$10 million this year and some of it next year and some of it three years from now and some of it four and five years from now and they have the use of this money during that four- or five-year period of time, someone has to make an awful lot of money out of the use of that money for that length of time. I would like to know exactly what it is and I think that ought to inure generally to the benefit of the public buying insurance.

MR. DUNCAN: I would like to say on this investment income that you are suggesting then that some attention to the rate should be given, a responsive sort of feeling that a company should make a profit. But you do question at the moment their method in determining whether they do make a profit or not.

MR. SARGENT: I think they have been terribly secretive about the whole thing. Maybe things are as bad as they paint it for us, but I don't think they have made a very convincing argument, at least to me.

MR. DUNCAN: I would like to get your idea of the validity of this statement, which is called, "A Case for Insurance Rate Reform," and captioned "investment income." It says:"--perhaps the most common misunderstanding in most quarters arising in discussions of so-called investment income. Briefly, the laws and regulations of various states, including New Jersey, require that an insurance company maintain a reserve from which to reimburse a policyholder in the event of cancellation, either by the insured or by the company, in a reserve for unpaid claims. The core of the misunderstanding is the belief that investment income on these reserves, if included in rate-making, would result in substantially lower premiums to policyholders. Most insurance authorities contend that investment income on such reserves should not be included in rate-making statistics. But even if it were included, actuaries estimate that premiums could be reduced by not more than 1 1/2 cents per dollar or $1.50 for every hundred dollars of annual

premium."

Now they are saying even if you did include it in, it isn't going to mean that much. Is that a valid statement?

MR. SARGENT: I think the only insurance authorities that say that you shouldn't comput it are insurance authorities that are paid by the insurance industry.

Secondly, I just don't know whether or not it would be as small as they say or much larger, as many other people have said. I would like to have someone conduct a thorough investigation of the actual rating system and once and for all find out exactly what is going on.

Your Insurance Department, I am sure, does not have the facilities to completely examine this matter in great detail. In Massachusetts when they present a case for a rate increase,-the Insurance Department is a very small department - they physically walk into the hearing room with about 35 Campbell soup boxes piled with statistics. They don't have any real facilities. They have some general compilations of what is contained in those boxes. But they don't have any facilities for the purpose of going into the company's physical records and determining exactly what does happen and where the money goes and why and how much they do make on investment income. I don't really believe the figure, but I don't have any proof it is wrong either.

MR. TEESE: Professor Sargeant, have your studies taken you to the conclusion that change is indicated or some reform in the present reparations system for auto damage?

MR. SARGENT: There is no question in my mind, sir, but what there must be change.

MR. TEESE: Can you suggest some to us?

MR. SARGENT: I have suggested one in the property damage area and I have suggested one in the bodily injury area as such. I think you ought to do everything that you can to make sure that all innocent victims receive all of the loss that they are entitled to receive.

You have some big problems as to whether or not this means that you ought to adopt a system of comparative negligence. I agree that it is a rather archaic system that provides that if I am 1 per cent at fault in a motor vehicle accident and you are 99 per cent at fault, I can't recover anything against you. But the trend is in Massachusetts - it happened that it went into effect the same day as our non-fault law. We adopted a comparative negligence statue that went into effect January 1, 1971. I think that is desirable.

I think you ought to get rid of whatever immunities you continue to have.

I think you ought to consider the desirability of perhaps some first-party insurance, if you want to call it non-fault insurance, as an addition to, but not in substitution of giving full benefits to the innocent victims. That doesn't mean that I want double compensation. What I really advocate is something called a cross-over plan or a third-party medical plan, as presently set up as maintenance insurance on our automobiles. That means that I do and you do and everyone else, or most everyone, and the premium isn't very large. And if we are involved in a motor vehicle accident and we hit each other, I recover my medical bills from my insurance carrier and you do from yours. Then whichever one of us finally prevails in the tort suit, we are paid again for the medical bills. I would like to eliminate that by providing that we insure each other on a third-party basis, but only as to medical, and thus avoid the duplication. My med pay carrier pays you; your med pay carrier pays me on a non-fault basis. Then whichever one of us ultimately wins the tort suit, you treat that victim who won the suit as having received an advance payment. He still has recovered everything, even the wrongdoer has had his medical bill paid, and you don't have that overlap, the double compensation, that many people, including Professor Keeton, find so objectionable.

MR. TEESE: At the outset you indicated you came prepared to speak on the subject of the Cotter Plan. You changed your mind and eloquently discussed the Keeton-O'Connell Plan and I wonder if you care to make any comment regarding the Cotter Plan.

MR. SARGENT: The Cotter Plan which is now sometimes being proposed by some insurance industries, as you know, is the brain-child of the Insurance Commissioner of the State of Connecticut, who is now that state's Congressman, William Cotter. It has many of the same faults that I find in the Keeton-O'Connell plan; that is, you recover on a non-fault basis for a portion of your medical expenses. Excuse me. You are reimbursed for your medical expenses and a portion of your wage loss, minus in some instances, at least again, your collateral sources. Then you are allowed to recover against the wrongdoer in a tort action, except that now in the tort action, the wrongdoer has an exemption from liability to the extent of the out-of-pocket loss that you have already been paid and that is, of course, as it should be. But when you try to recover for pain and suffering, the human loss, you are told again that all you can recover is 50 cents on the dollar of your medical bills. In other words, if you had $500 in medical bills, you can recover for pain and suffering, $250; and beyond $500, they let you recover rather magnanimously dollar for dollar. So if you had $1,000 in medical bills, you would recover a total of $750 in pain and suffering. Again that could not exclude some extremely serious injuries. That is a wholly unrealistic approach. What do you do with the person who has welfare treatment? What do you do with the Armed Forces personnel that are injured and receive free medical treatment, or disabled veterans? I don't think pain and suffering is anywheres near as difficult to measure as some people would lead you to believe.

MR. CONNELL: Professor, part of our resolution requires us to make a study of the present methods of compensating victims of automobile accidents through court proceedings with other judicial or quasi-judicial proceedings, including a possible review -- well, you already talked about comparative negligence. How do you feel about arbitration, a system such as that?

MR. SARGENT: I would certainly be strongly in favor of the so-called Philadelphia Plan of arbitration, which makes mandatory arbitration of cases under $3,000. It has worked, to my knowledge, very satisfactorily in Philadelphia. It is being tried on an experimental basis in Erie County in Up-State New York and I think that is a very good idea. I think it has a lot of possibilities.

MR. DUNCAN: Professor, if you found yourself in a position where you could make a choice and you were matching off a modified Cotter Plan or Cotter Plan approach, all again modifications of the extreme plans, and you were faced with choosing, let's say, Cotter in its pure form with all the implications that went with it and a mandatory med pay plan, mandatory meaning it goes along with the BI and PD, with some provision in changing med pay to a minimum limit of, say, two, three, four, five thousand dollars, a weekly indemnification under that -- now we don't have compulsory insurance in New Jersey -- at least from the choice of the Cotter Plan and a compulsory, reworked med pay plan, what would you favor?

MR. SARGENT: Well, I know what the Cotter Plan is. My difficulty is that I don't know the specifics of your modified med pay plan. I am not sure that you need either one of them. It is my understanding - and correct me if I am wrong - but I was of the opinion and belief that New Jersey had temporary disability income benefits.

MR. DUNCAN: We do.

MR. SARGENT: If everyone is receiving, practically, a portion of their wages in reimbursement, which by the way

under the Keeton-O'Connell plan he would have to deduct from what he otherwise would be entitled to, then I don't think you have a tremendous problem of people who don't get prompt and adequate medical attention because of the fact that they don't have the money to pay for it. I don't truly believe that in this country there are people that don't get adequate medical attention - at least in this part of the country - I shouldn's say that throughout the country -- but at least in the northeastern section, I don't believe that there are people who don't get adequate medical attention when they are injured in a motor vehicle accident because of their momentary or even permanent inability to pay for it. I just don't believe it.

Secondly, I think if you already have a system whereby everyone receives temporary disability income when they are out of work as a result of any injury, then you don't need non-fault benefits that are applicable just to injuries sustained in a motor vehicle accident. You already have that kind of coverage and I think it is just a duplication and an expensive one. You are writing an insurance policy and then if you deduct temporary disability income and you deduct Blue Cross and Blue Shield, what has he really purchased?

MR. DUNCAN: I thought that did lend itself to what you said was one of your solutions - I buy protection for you and you buy protection for me.

MR. SARGENT: No. What I meant to say is that we already have a system whereby most people voluntarily do carry medical payments insurance. So I am not talking about a new form of insurance, a new coverage being different.

MR. DUNCAN: The only change I was suggesting, if most people were buying it - and I don't know that that is true at this point ---

MR. SARGENT: I can't tell you specifically for New Jersey, but I can tell you throughout the country that

this is true. A very high percentage of people do voluntarily carry medical payments insurance.

MR. DUNCAN: What would be illogical about the next logical step to not change the system and merely make it mandatory to carry medical payments?

MR. SARGENT: That I don't object to at all. You were adding on the wage portion. To make mandatory medical payments coverage, I would be strongly in favor of on a first-party basis or a third-party basis.

MR. DUNCAN: I see. Suppose med pay was not reworked --

MR. SARGENT: Was not what?

MR. DUNCAN: -- was not reworked, but you could purchase as an optional benefit from the insurer a weekly wage benefit loss.

MR. SARGENT: -- which you already can anyway. Anything anyone wants to voluntarily buy for himself is fine. But I think there is something basically wrong in compelling me to insure myself against my losses which someone else causes.

MR. DUNCAN: So you are for the med pay as is, as a logical choice between Cotter and this possible plan?

MR. SARGENT: That's right.

MR. DUNCAN: Now how am I protected in this state for that uninsured driver, for that man who is neither compelled nor does he buy insurance, other than the UCJ Fund?

MR. SARGENT: You are talking now just about your medical bills?

MR. DUNCAN: Yes.

MR. SARGENT: If you have purchased what I call this third-party medical, it specifically provides that in the event that there is not a carrier against whom you can proceed for your non-fault, third-party medical benefits, then you can recover against your own company exactly as you would today.

MR. DUNCAN: I maybe gave the wrong impression. I should say in terms of economic loss, no, but in terms of pain and suffering, where do I go? Supposedly in this state I can go to UCJF, The Unsatisfied Judgment Fund, but I have to be put to a lot of inconvenience to do that.

MR. SARGENT: Certainly it is desirable where you have a cost factor to always have uninsured motorist coverage anyway.

MR. DUNCAN: We have optional uninsured motorist coverage in this state. Would it also be logical, if you follow that line of thought, that uninsured motorists then would be part of the compulsory package, not compulsory in the sense that everyone has it, but it would be part of the package that must go together?

MR. SARGENT: The only reason why I would suggest that it might be better to have it compulsory is because too many people don't understand much about insurance until they have some difficulty. I don't think the average member of the public understands the difference between tort property damage and collision, for example, or bodily injury. They simply know they get a bill for a certain amount of coverage and they hope they never have any trouble. I think if you don't have uninsured motorist coverage, compulsory, mandatory, that an awful lot of people might decide for a saving of a few dollars that they are not going to elect it when they really don't know what they are giving up.

MR. DUNCAN: If then the total package is BI, BD, that we are envisioning at the moment, med pay, compulsory and uninsured motorist, you wouldn't really need an Unsatisfied Judgment Fund then, would you?

MR. SARGENT: Well, you still have the problem of the pedestrian who is injured and doesn't own the car. If he is hit by an uninsured car, he has no place to go if you don't have an Unsatisfied Judgment Fund. There are some other areas where you are going to have some gaps if you don't have an Ininsured Motorist Fund.

MR. BROWN: Professor, I want to say I appreciate your remarks as far as union contracts are concerned and I think you realize not only in auto insurance but in health we have a serious problem in the country and that is why we are talking about a National Health Act. In fact, I think one of the Senators from your state is involved in it. One of the big things we are faced with in the state is the return on the dollar. In other words, if you talk about commercial health and accident, if you talk about Blue Cross, they are in the area of operating expenses anywhere from 17, 18 to 20 per cent, where you get a good return in benefits as far as this type of purchase is concerned. But yet with Keeton-O'Connell and Stewart from all the facts and figures we have been able to accumulate, we drop to this big 14 1/2 cents on a dollar as far as returns go. Can you give me an answer on that?

MR. SARGENT: I think that that 14 1/2 per cent figure is completely erroneous. What they do is say that a certain amount of the premium dollar goes for insurance overhead and supposedly that will stay pretty much the same. The acquisition cost will probably stay about the same. Then they say a certain amount is paid over to the innocent victim and in New York, Spectators Insurance by States, indicates that that figure is somewheres in the vicinity of 65 or 68 per cent roughly. Then Keeton, O'Connell and Governor Rockefeller take from that and say, well, of course, out of that you have to pay the attorney and, of course, there are many claims where there is no attorney; and then he is receiving to some extent double compensation, so they deduct that too, to the extent that you had Blue Cross and Blue Shield. Then they say above and beyond that, quite a bit of that dollar is paid for pain and suffering and that isn't a real loss. Finally they say, the only economic loss for which he is being reimbursed and which he hasn't already been reimbursed for is 14 1/2 cents. That is completely irrelevant.

MR. BROWN: Then what you are actually saying is the return on the premium dollar is as great under our present system of automobile insurance as it is, we will say, with any other type of system, Social Security, Workmen's Compensation, Blue Cross or Blue Shield?

MR. SARGENT: No, it isn't. But I would like to point out to you why not. It is higher than for Workmen's Compensation. There is no question about it. But Workmen's Compensation insurance is cheaper and returns a bigger percentage of the premium dollar to the victim for one very interesting reason that doesn't exist in the automobile insurance and, that is, number one, that the person who is carrying the insurance is in rather firm control of the circumstances under which a possible injury can arise. He has great incentive to make his plant safe, to require his employees to comply with safety regulations, etc. And he knows, if an injury does occur, he probably is going to have a witness to it. One of the other employees or one of the supervisory people will be witnesses and he won't have many fraudulent claims.

Contrast that with the automobile. What control do you and I have over the millions of people that may pass by us in any state in the union where we may drive? What control do you and I have over whether or not there will be people who in unwitnessed, single-car incidents claim reimbursement? Under Workmen's Compensation, it doesn't matter how you received the injury as long as you sustain it on the job, arising out of the general scope of the employment. In automobile insurance, you are only entitled to receive payment, theoretically, for injuries that arise in that motor vehicle or getting into or out of it. That is entirely different. You are going to have an awful lot of litigation on the subject as Kemper said, as to whether or not the injury really is associated with the automobile incident that is insured against and you are going to consume a tremendous amount of money in that. This whole

concept, I think, is germane to your question of litigation.

Justice Clark also said in his indictment of non-fault insurance that it is a misnomer really to say non-fault insurance, and that automatically means that you are not going to have litigation and the expense that goes with it, which is what you are concerned with, how much you are going to eat up with expense.

MR. BROWN: It is just a shame that Justice Clark and our Chief Justice didn't get together. We might be in better shape.

MR. SARGENT: I am aware of what Chief Justice Weintraub has had to say about the subject.

MR. BROWN: The other big question, of course, that bothers our people, and I am talking about the working men, as far as our state is concerned, and that is the non-renewal and cancellation problem. And I appreciate your remarks on the bumper-impact law in Florida. But here we have a fellow who is making anywhere from $5500 to $7500 a year. He has his home, he has his children to support and everything else. And suddenly for the most ridiculous reasons, even under the moratorium called by our own Commissioner, we have had these cancellations and non-renewals where the man just can't get insurance. He has to drive back and forth to work. He needs his automobile, but he just can't buy insurance at a price he can afford. He is then thrown in this area not only of assigned risk, but what Mr. Duncan was talking about, the New Jersey Claim Division, which we find is useless because of the way it is operated. The insurance companies take the better part of all the insured and the risks they don't want to take go back to this financial risk plan that we have in New Jersey. Do you believe that there is anything that we could possibly do, going along with your private system, as far as cancellation and non-renewal are concerned?

MR. SARGENT: The only thing that I can suggest to you is a provision in the Massachusetts plan that was passed, which I had something to do with initially, at least, which provided that an insurance carrier could not refuse to renew and could not cancel any person 65 years of age or over if such person had been so insured with them for three years - or you can make it whatever period you want - unless there was proof of nonpayment or unless they had been convicted of some moving violation. You could just not refuse to insure them. That was the only true consumer-protection feature of the insurance bill and the insurance industry threatened to leave the state, en masse, unless that section was deleted and that is one of the things that the Governor gave in on and it was deleted. But I think that is the kind of thing that somebody sooner or later has got to have a showdown with them on. I think it is terrible, as you suggest, that you insure a man from the time he enters the driving age or at least has his own car, perhaps in his early 20's, and he gets to be 60 or 65 and they have never paid a penny on his behalf and he has paid thousands of dollars in and just because he is now more likely to have an accident, they want to get rid of him.

I think it is absolutely a foolish system which says in the years when a man is least productive, we are going to charge him the most for insurance and in the years when he is most productive, we charge him the least. What they are really doing is saying, "We don't want anyone on the road except young drivers or old rich drivers." The only people that are really penalized are the poor. The rich man or young boy can always get insurance if he pays for it. I think we ought to figure out that everyone is going to be young, middle-aged and aged some time and you span it out over that period of time and let them pay the same rate throughout their lifetime, subject to inflation.

MR. CONNELL: Professor Sargent, on behalf of the

Commission, we certainly want to thank you very, very much for coming down here and taking the time that you did. We appreciate your remarks. We have all learned a great deal.

I take this opportunity now to adjourn until 2:15, at which time the first speaker will be Arthur Blake, followed by William Murray, Richard Moore and Professor Tuan at 3:00 o'clock, following that will be Phil Auerbach, Mr. W. J. Robertson and Mr. Henry Legowski.

[Recess for Lunch]

Afternoon Session

MR. CONNELL: Gentlemen, I expected our Chairman to be here by now but he isn't. So I am going to take the liberty of getting this session underway.

Our first speaker this afternoon will be Arthur Blake, an attorney from Jersey City.

A R T H U R J. B L A K E: Thank you, Mr. Connell.

There has been a great deal said here this morning by Professor Keeton and by Professor Sargeant. I shall attempt not to duplicate in any way what they have said, although I must confess that some of my ideas that I intend to express may be repetitious.

I have submitted a statement to the Commission. My particular purpose in commenting today is to point out what this is going to cost the public if no-fault is enacted. I have outlined them in my statement. I would like the privilege of just commenting on them, if I may.

The first thing it will cost the public is: Damage to the automobile, regardless of how sustained, is not covered. One may purchase coverage by a collision policy, as you can today, but the cost will be greater because there is no subrogation allowed.

Medical bills and hospital bills are not payable under these plans if there is another source. Under present Blue Cross and/or Blue Shield, there is no subrogation,

but if Blue Cross and Blue Shield are going to pick up these benefits under the no-fault plan, either the contract in Blue Cross will be changed to allow subrogation or the Legislature will allow it and it will therefore increase, if it is not allowed, the cost of the present Blue Cross or the so-called no-fault insurance.

Blue Cross and Blue Shield contain limits of the number of days of hospitalization and it is very easy for Professor Keeton to say, "You can buy what you want," but if Blue Cross is going to pay for accidents of this nature and you use up the time on the policy which you are allowed for hospitalization and then you have a serious illness which is not covered because you have used the time allowed, you have suffered a severe loss.

Where the employer pays wages or there is a plan, either state or private, to pay for lost time for noncompensable conditions, there is no benefit under this plan. The question, therefore, is: How long will private plans pay for this coverage which is being utilized by this no-fault system?

There is also the problem of the loss of sick time. If a person working under a union contract has a guarantee of 30 days of sick leave and he uses 25 of those days, he has suffered a loss for which there is no compensation under the present plan submitted by Professor Keeton and other expondents thereof.

There is nothing in these plans for the loss of an eye, a limb or a permanent injury. There is no coverage for accidents outside the state. To have this coverage, a person must buy more insurance.

Under all of these plans, the larger the family of an individual, the larger the exposure because you have more people generally in the car and the cost would be larger for limited benefits.

People using their cars in pools to go to work, back and forth, in which wage earners are riding, would

have greater expense for their coverage because there is more exposure.

The scarred, the maimed, the crippled, the dead - under most plans permit tort recovery, but who pays for the extra coverage?

These are merely ten items that have occurred to me as being something that is going to cost the public if this type of insurance goes through.

I have heard a great deal this morning about pain and suffering. Professor Keeton put a label on it, up to $5,000, up to $10,000, whatever his figure. It seems not only in the courts today but in perhaps considering this problem, we are forgetting that this is a nation of individuals and there is no individual who has a case which is not serious to him. And nothing is more serious to an injured person than his injury, regardless of who thinks it is serious or who thinks it is not.

Mr. Chasan was here last week and Mr. Selikoff. Both of them covered a great deal of territory in the comments which they made. Professor Sargeant has eloquently covered the picture so far as opposition to the no-fault is concerned and also made recommendations to this Commission of things which he feels will work.

I can talk longer but I shall not because repetition is something you gentlemen do not need.

I would say to you that I endorse wholeheartedly what Professor Sargeant has said. I add the comments which I have enclosed in the memorandum and thank you for the privilege of being heard.

MR. CONNELL: Are there any questions?

MR. BROWN: Just one thing I would like to point out, rather than questions. Number one, under your statement, damage to the automobile.--Do you do much travelling?

MR. BLAKE: Do I do much travelling?

MR. BROWN: Yes.

MR. BLAKE: Yes.

MR. BROWN: Do you realize how many automobiles are

floating around this state with dented doors and fenders because people are afraid if they turn them in, they will be cancelled out?

MR. BLAKE: That is a problem. There is no question about it.

MR. BROWN: It is a real serious problem.

So even under the tort system, the present system we have, people who buy insurance and pay for insurance are unable to collect for fear of cancellation and non-rewal.

MR. BLAKE: I don't know the reason. So I can't argue on that point.

MR. CONNELL: Any other questions, gentlemen? (No response.) Thank you, Mr. Blake.

Our next scheduled speaker is Mr. William J. Murray, who is going to defer to Mr. Philip Auerbach, an attorney from Monmouth County. Mr. Auerbach, are you representing a group here?

P H I L I P G. A U E R B A C H: I am representing the Trial Attorneys of New Jersey, Mr. Connell.

As Arthur Blake has said to you, there is not too much that we as trial lawyers can tell you that you have not already heard or will hear about.

I think if we are in a peculiar position to talk with a degree of expertise on any particular area, it would be the approach of the individual to his day in court. I know I have tried many civil cases and I have been in workmen's compensation and I think that my brethren in the trial bar would agree that there is a feeling by the litigant after he has had his day in court, whether he has been successful or unsuccessful, that justice was meted out. So on an individual case basis, the present system works. Obviously, the proponents of no-fault could not say it does not work on an individual case basis.

The problems which they point out are on the

entire system. They seem to indicate that there is a growing backlog of cases. They indicate that quick payment is required. They indicate as well that the tort-feasor should be entitled to payment along with the individual who was free of neglect.

Let me just say a few things about this, if I may. The Department of Transportation, through the auspices of the University of Michigan - I know you are probably familiar with it - had a study of public opinion about the present system. Of those who were questioned, 65 per cent favored the retention of the present system; 22 per cent were opposed to it. Of the 22 per cent who were opposed to it, many of them brought to mind some of the questions which Mr. Brown has brought up. The principal objection to the insurance system was high cost, unavailability of insurance. Only 2 per cent of those who objected to the present system found any fault with the system under which we now live. So, generally speaking, the people are satisfied with the system.

Certainly there are problems in it. I don't think, for instance, that the adoption of no-fault will bring about a quick payment to the individual who suffers economic loss. We have been told that under the no-fault system, if there is any other source of payment for medical bills or for loss income, the no-fault insurance carriers will defer first to that type of payment. Now can ycu imagine an insurance company making a quick payment for medical bills when they feel there might be Blue Cross or Blue Shield coverage, without actually investigating whether under an employer's plan the individual is entitled to recover for his medical bills or economic loss? I can't. It would seem to me that under the no-fault system there will be delays as a result of the investigative process and there will be quarrels with the insurance company.

I would not stand before you and suggest that the present system is perfect, that there is not room for

improvement. As most of you gentlemen are aware, we have been in the throes of discovery in attempting to determine what ways in which the premium payer in New Jersey would best be assisted.

Two of the areas of change which our members deem feasible would be in the area of first-party coverage and compulsory arbitration. I think, for instance, a bill might include a mandatory requirement that the insurance carriers provide not only for medical payments loss but also for economic loss. I know that the Motor Club right now writes a policy which includes such a type of protection.

Certainlyunder that provision, an individual who so desires it can obtain a quick recovery for his medical bills expended and for any economic loss.

Most of our members as well have been enthused about the compulsory arbitration plan which is in action now in Philadelphia and in Pennsylvania. I know that all of you gentlemen are quite familiar with the plan. But for the record might I say that they have been extremely successful with that plan in Pennsylvania and in Philadelphia particularly. I understand, after speaking with the administrator of the plan, that they dispose of more cases by way of compulsory arbitration in the City of Philadelphia than they do in the entire court system in a particular year and that they can dispose of these cases within a period of six months. As you are aware, an individual in Pennsylvania who has been subjected to arbitration is entitled to an appeal as a matter of course. Statistically only 8 per cent of all the people who have sat as litigants in arbitration will take an appeal and only 3 per cent will actually try their cases. So compulsory arbitration has actually disposed of 97 per cent of all of the "minor claims." I think this is a system which might prove beneficial in New Jersey.

I was going to conclude by referring you to a statement that was made by John A. Volpe, United States Secretary of Transportation, but I will just give the essence of what he says, and that is, there is no easy panacea - this is a very complex problem. I have been sitting back admiring the amount of work you gentlemen have done and the knowledge that you have on these proposals. It is a complex area. There are alternatives and he suggests that we move slowly and that we move by way of experience and I would vouchsafe that idea. Thank you.

MR. CONNELL: I just want to ask one question, Mr. Auerbach. Representing the trial attorneys of New Jersey, what is their position with regard to compulsory medical payments, just quickly?

MR. AUERBACH: Well, we haven't reached the point of deciding whether or not we would be in favor of compulsory medical payments. I think almost all our members certainly feel that some type of first-party coverage should be brought about so that the policyholder volitionally, at least, can obtain it. We haven't yet discussed the compulsory aspects of it.

MR. CONNELL: Any other questions, gentlemen? [No response.] Thank you very much, Mr. Auerbach.

Mr. Murray, an attorney from Jersey City.

W I L L I A M J. M U R R A Y: Good afternoon, gentlemen. I am appearing here as Chairman of the Committee against No-Fault Insurance on behalf of the Hudson County Bar Association.

I did appear before this Commission on January 29th with my two associates and we went into the subject in quite depth and, frankly, there is not too much I can say after hearing Professor Sargent and the other gentlemen today pertaining to the "ifs, ands, and buts" of no-fault. But basically if we would examine the insurance industry today, we would know that first-party coverage is really no-fault coverage. For the year of 1969, as compiled by

the State Farm Mutual Automobile Insurance Company, for first-party coverages for that year, the total of the premium dollar was 45.4 per cent; whereas fault, third-party coverages, the amount of the premium dollar was 54.6 per cent. The most interesting item of all in the break-down as to personal injury and PD is the fact that out of the total amount of the premium dollar, 53.6 was paid for vehicle damage, both comprehensive, collision and also the third-party loss.

In regards to the high factor of the cost of this coverage on property damage, the report that was submitted by Dr. William Hayden, President of the Insurance Institute for Highway Safety, to the United States Senate investigation, indicated - and these are statistics - as to front-end damage at 5 miles per hour for a 1971 model, it was $331.69; as to a 1970 model, the cost of the damage was $215.64. So definitely we can see if we proceeded with a bumper statute, as was stated here before, to cut down any damage caused by that type of impact, we could see the savings immediately. This is further indicated at the different stages of speed and the damage to the 1971 models is greater.

Now in New Jersey we had the roll-on of coverage U. This was not a compulsory insurance; it was a roll-on. What happened is the insured would have to reject the particular coverage. The same situation could be brought about in New Jersey by passing a statute whereby there would be a roll-on for medical pay and also for loss of income. Just for your enlightenment, in regards to a $5,000 major medical, the particular premium rate for a six-month period is $6.80 on your best risk. Well, the worst risk would be the $22.40. As to the cost for a six-month loss of income, based on $50 a week, the amount would be $2.40.

As far as the major medical provision, there is the right of subrogation and under the present cost analysis,

you don't apply the collateral source rule. In other words, you do not get credit, the carrier doesn't get credit for Blue Cross or any other private plan. The implementation of it would be on the roll-on the same as coverage U that we have.

I think the basic element in the insurance business today in New Jersey is, number one, the carriers not wishing to write in areas such as Paterson, Newark, Jersey City, Camden and Trenton, because of their bad experience in their comprehensive, their personal injury and property damage.

Now we all must concede one factor, that an insurance company, if it got the proper classification and got the proper premium and they made a profit, would write the risk. The only question is: How do you solve the pressing problem of today of getting insurance to the individual? The only way I feel that you can solve this problem is by passing a no-prior rate approval bill with the anti-trust provision tacked into that law where if there is any getting together to fix the rate, you still could have the Commissioner of Insurance investigate and prosecute that.

Also to the answer of the problem of undercutting on a particular classification, you could also have an unfair insurance practice act. The guarantee to make sure that we would have coverage in areas that are not productive would be that it would be mandatory for the particular carriers to write in that area, so they couldn't get the cream of the crop in other places. I feel with the proper supervision, with the manpower the Commissioner has which could be to use in policing rate-making, these conditions would not arise. I think the situation could be corrected.

I would like to further state that we do have in New Jersey a law whereby there are only two reasons for cancelling a policy, one, I believe, is drunken driving and the other is revocation of a license. What the public

has been confused about is the fact that Commissioner Clifford put a moratorium on for 90 days for non-renewable situations. But in New Jersey we have a statute pertaining to that and the only correction I can see that would be needed would be the fact that we would have to do something about the companies not renewing. I think if there were guidelines put into being, the companies would follow them, and I don't think in the State of New Jersey the presidents of big insurance companies would ever become involved in fixing a particular rate because they are, as are the majority of people, honorable people and they are trying to do a job.

MR. BROWN: Mr. Murray, it is hard for me to believe you, who are an attorney, could be so naive as to make that statement as to what the good insurance companies are going to do as far as fixing rates. Let me put this to you, as an attorney, as a trial attorney: What is the fee for the average compensation case in the State of New Jersey?

MR. MURRAY: Are you talking about workmen's compensation?

MR. BROWN: Workmen's compensation.

MR. MURRAY: It runs about 18 per cent. The carrier pays a fee of roughly 12 per cent of the attorney's fee and the petitioner pays 6 per cent. By statute, you are authorized to get 20 per cent.

MR. BROWN: Would you say that under the tort system right now it runs around 33 1/3 per cent?

MR. MURRAY: 33 1/3 per cent plus cost, or some attorneys take 40 per cent.

MR. BROWN: The part that amazes me is the only thing every attorney we have had testify so far - although this Commission's job is to go into the problems of insurance, why people are denied it, why the costs are so high, why the working people just can't get their hands on it - can

talk about is that somebody is putting their hands in your lunch box and you people don't like it.

Why don't you come out, as attorneys, and give us something besides your fancy figures on bumpers. We know this. But why don't the trial attorneys, the Bar Association of New Jersey, give us something that the Commission can lend some weight to, as to what can be done?

MR. MURRAY: I am glad you asked that question because I kind of anticipated you would because I was down here last time. Frankly from a personal point of view, I wouldn't care if they terminated the practice of law in the State of New Jersey because then I would just go to medical school.

MR. DUNCAN: First of all, just to get myself clear - I don't have a radical statement to make of any kind - if I understand you correctly, obviously you take the tack that no-fault, as Professor Sargent has put it, doesn't take a place in your consideration at the moment. You addressed yourself to things that you think could be done to solve the availability problem.

MR. MURRAY: Yes.

MR. DUNCAN: I wanted to be sure that I understood what you were saying. First, open competition would be one of your thoughts, representing the Hudson County Bar Association. You go on record as advocating this, with safeguards.

MR. MURRAY: Right.

MR. DUNCAN: -- with proper safeguards. You want the right for a company to earn a profit.

MR. MURRAY: Yes.

MR. DUNCAN: I would like to ask you this: If one of the reasons we are here today is that companies aren't, or they say they are not, earning a profit, because otherwise I don't think we would be here today, I would have to ask you if you thought personally or whether the Bar

thought that a state-operated fund could operate in the same manner and operate at a lower cost. I think maybe we should once and for all dispose of this if, indeed, it can be disposed of.

MR. MURRAY: Well, personally I have been involved in Fund cases and I think the particular experience we have had in the State of New Jersey with the operation of the Fund has been very unsatisfactory from the attorney's point of view, from the plaintiff's point of view, and also from the Judiciary's. I think Mr. Capozzi stated they were on the brink of bankruptcy two years ago.

MR. DUNCAN: I understand what you are saying about the UCJF. Addressing ourselves to the fact that there are factions abroad that might suggest it is best for the private sector to get out of the automobile insurance industry, period, in this State, and that the State of New Jersey should take upon itself that which is necessary to operate and set rates and sell and provide the service - do you have any feelings on that matter?

MR. MURRAY: Well, if you had individuals who knew what they were doing - you could get them from insurance companies and pay them - and divorce politics from the situation and have it an independent operation, I would see no reason why it could not be done. But we all know what happens with government. You have bureaucracies and things of that sort and you have turnover in personnel because of politics.

MR. DUNCAN: Then your personal feeling is that it could not be operated successfully or as successfully as the private sector is now operating it.

MR. MURRAY: I don't think it could be. I don't think they have the know-how for it.

MR. CONNELL: Thank you very much, Mr. Murray.

At this time I would like to call Mr. Robertson. It is a little bit out of order, but I understand he has

a problem. He has promised he will be brief.

W I L L I A M J. R O B E R T S O N: My name is William Robertson. I live in Marlton, New Jersey, and I am representing the South Jersey Claims Men's Association.

Mr. Chairman and distinguished committee: We wish to thank you for being given the opportunity to testify here today. The report you are about to hear is respectfully submitted on behalf of the executive committee of the South Jersey Claims Men's Association, a group of dedicated claim adjusters who have devoted uncounted years of service to this industry, in what we feel has been a professional manner.

MR. CONNELL: Mr. Robertson, may I interrupt and ask you to do us a favor, because we do have a commitment to Professor Tuan. Could you just summarize your report rather than read the entire statement in detail.

MR. ROBERTSON: Can I skip portions of it, sir?

MR. CONNELL: Yes, please.

We feel the present premium dollars spent by each auto policy holder could be much more practically utilized. By proper utilization of these dollars, we sincerely feel that the insured driver or passenger could properly and adequately sustain his normal manner of living without financial worries brought about by injury sustained in an accident, serious enough to be disabling either temporarily or permanently.

We wish to propose to you that no drastic changes are needed in our present tort system. We are not properly utilizing the tools we have at our hands in their most advantageous manner.

We wish to discuss various portions of the standard family auto policy and suggest how they could be used in a way concurrent with the present day.

First, the physical damage portion of the auto policy is an optional coverage and deals with collision and/or

comprehensive. I realize you gentlemen are all familiar with that, so I am going to skip portions of this.

The amounts generally sold are $50 and $100 deductibles with occasional amounts of $250 or $500 being available. Since I have written this report, as of April 2nd, ---

MR. CONNELL: The Commissioner has now said it must be $100.

MR. ROBERTSON: Right. We submitted the idea of $50 deductible collision is as obsolete as the $1,000 new family car.

To go on, in comprehensives, the small paint claim, the broken antenna, the lost hub caps, all claims that are normal comprehensive type losses many times are more expensive to process than the total value of the claim. The days of "full reimbursement" for petty claims has come to an end.

Both as an incentive to take better care of his own property and due to the fact that no substantial monetary loss has been sustained by the insured - the purpose and meaning of the word insurance - we would make the following recommendations.

The elimination, of course, which has taken place already, of the collision deductible below the $100.

Two, we would further suggest that a considerable dollar amount could be salvaged, without any appreciable financial burden to the policyholder, by applying a nominal deductible to comprehensive claims. We would suggest a mandatory deductible of $25 on all comprehensive loss, exclusive of windshield glasses. We have excluded windshield glasses due to the fact that this is a loss which seldom does the insured driver have any control of whatsoever. Nothing would prevent a person from driving many years without having a glass loss, and suddenly being confronted with two or three losses in one year through no fault of his own.

As you can see at this juncture, many dollars can be saved both by the insured and the industry without financial burden to any, except the careless driver. We mentioned earlier we intended to suggest more practical ways to spend the auto premium dollar. To this point, we have shown how money could be saved; now we might suggest how these found dollars could be most effectively spent.

One of the chief faults of our present auto tort system as outlined by the advocates of "no fault" seems to be, as we understand it, the fact that injured parties are not compensated for personal injuries or wages as the result of an accident for which they may have been negligent to some degree. As you know, any negligence bars recovery under our present tort system. We would like to answer the "no fault" advocates with some good practical ideas without disbanding a system we have lived with these many years, and which system we have found to be the most equitable. We don't propose a change in the tort system, but rather we advocate a helping hand to the parties who have been somewhat negligent.

We have had an approved endorsement for the auto policy, available in this state for many years, which provides for a weekly income for a named insured, injured and disabled as a result of an automobile accident. The cost of this endorsement is $6 per year and provides $50 a week to be paid as long as the injured insured is disabled. This is subject to a brief waiting period and a change in definition pertaining to disability after one year. I spoke earlier of using these found dollars. This is the direction we sincerely believe they should be properly spent. Why this endorsement has not been properly publicized or offered for sale, I can't answer. But, in our opinion, this is the most practical solution to the one big complaint as pertains to our present system.

We would suggest that this endorsement be brought up to date with the following modifications: Make readily

available a policy endorsement providing $100 per week for the named or principal family wage earner who might be injured and disabled as a result of an auto accident. Provide $50 per week for this named insured's spouse if also injured and disabled. These should be treated as separate claims but should be cumulative in benefits. This could be provided with an estimated extra policy cost of $18 a year, much of which could be supplemented by the savings on the physical damage amounts presented. This premium does not fluctuate with age or your place of residence. This is a standard, flat fee for any and all insured drivers. We are not actuaries or even underwriters, but I believe even the average motorist will readily note the practicality of this proposal. This, gentlemen, is, we believe, the solution to the problem presently at hand. We so strongly believe this to be so that we would recommend the insurance commissioner advise the companies writing auto insurance in this state to widely publicize such a modified endorsement and offer the same for sale as part of the auto policy with the said coverage included unless refused in writing.

This is half of the great financial loss brought about by disabling auto accidents. The other portion is the problem of medical expenses.

Generally today such coverage is provided in amounts of 500-1000-2000-5000 dollars. This is a widely purchased and popular coverage and not much need be said of it at this time. We would comment, however, that very serious injury cases are not properly covered and the minimum limit available should be raised to $1000. The cost difference here is $2. We would further suggest that the basic $1000 med pay endorsement carry additional coverage for the serious injuries in the form of full coverage for the first $1000 and 50 per cent of expenses for $1000 up to $5000 or possible total coverage of $3000, if medical

treatments exceed $5000.

I have quoted some rates here which are right out of the manual. You can see, as I noted earlier, the savings in the deductible amounts are considerable between the $50 and $100.

The $28 savings for a driver under 25 would more than adequately carry this wage proposal that I have mentioned earlier.

With a saving of $20 per year on physical damage, based on current rates, insurance companies can provide a policy with $100 per week income for any disabled insured and $50 per week for secondary insured, for $18 or $2 per year less than the insured is presently paying.

For an additional $6, life insurance or dismemberment coverage can be added, covering both insureds, for $5,000, each.

Persons carrying present med pay of $500 could purchase, again using current rates, our proposed $1,000 full coverage and $4,000 50/50 coverage for $10 a year, $5 more than the present basic auto rate.

With a truly practical approach, this is all the statistics we will bore you with. Plain facts, however, are that only the reckless or careless could fail to see the obvious here.

As you can see, we have not suggested any sweeping radical changes, nor have we intended to present such a program. We have intended to present, through the eyes of the professional claim man, a program we feel would most benefit, at reasonable cost, persons most deserving of insurance benefits. Indeed, all of our group would be most pleased to be able to more adequately compensate injured parties. Given the proper tools, we will use them well. No claims adjuster I have ever met enjoyed walking away from a truly injured party, after having denied his claim. Our proposals will not stop denials of some claims, nor will it alter proper redress to the courts, under the present system,

but it will surely more justly compensate countless parties injured in auto accidents who were never given consideration or relief before.

I had mentioned here some things that we had considered regarding automobile safety and I am going to skip another portion, if I may.

MR. CONNELL: If you will, please.

MR. ROBERTSON: We would recommend that the first drivers license issued to a new driver, after having completed his driver's training and having passed his test, be issued (1) a separate, distinct color, and be noted "provisional drivers license" - this for the term of one year. We would limit his driving to the hours of 6:00 A.M. to 12:00 Midnight, and further provide space on the reverse of the license where any magistrate or judge would be required to list any moving violation conviction, and upon the second conviction, the second convicting magistrate would be required to immediately take possession of such license and forward same to Trenton with the accompanying necessary documents. This loss of license should last a minimum of 6 months and be effective immediately upon the second conviction.

Further, along the theme of youth and speed, it is inconceivable to us that a 1956 Chevrolet could have grown an engine designed to power a 1970 Oldsmobile, without someone asking "how" or "why". Common sense would dictate that many of these "hot" engines were never a legitimate purchase. We advocate the employment of additional spot checkers at state inspection stations for the purpose of inquiring "how come". To assist in this discouragement of overpowered autos, not designed for such speed, and to further discourage theft and stripping of such new cars, we advise the following:

1. Require all dealers of new or used cars to record the motor number on title as well as the serial number.

2. Require anyone purchasing a replacement engine to take a bill of sale for said engine to the nearest Motor Vehicle Department and pay an appropriate fee to have the title changed to so indicate such change.

These steps, combined with spot-checking at motor vehicle inspection stations, could only have favorable results. Auto theft, in addition to being a great expense to all insurance companies and auto owners, is one of the great hazards of driving today.

I thank you for your kind consideration in letting me testify at this time. Having been here last week and having had the benefit of listening to some of this rhetoric, I have added a wee bit at the end that I would like to have the opportunity to read.

Having been fortunate enough to have attended the previous session of these hearings, it is quite apparent the commission is interested in availability of insurance for a much greater number of drivers, persons finding coverage through carriers or the assigned risk plans prohibitive due to cost. In order to alleviate this problem, we would suggest the following possible solution:

Make available to the uninsured motorist, or rather make mandatory, a liability policy, designed over the present basic auto policy, with coverage provided on, but limited to 80 per cent of adjusted claim, and the policyholder liable for 20 per cent. We feel claims under this type policy should be adjuted by independent companies, and if the plaintiff and adjuster fail to agree to settlement, the only resolution should be binding arbitration. As one of the faults of the present system is classification according to age and area of residence, we would recommend all drivers purchasing this coverage start out with a clean slate, and all be rated the same, further, let their driving record alone dictate any future premium adjustments or surcharges. Claims under this coverage would be processed through the state under an expanded department presently servicing the Unsatisfied Claim and Judgment Fund.

The term "State Insurance" would be just that.

The insured would pay a premium calculated by statisticians necessary to do the job. For example, if such coverage was $100 plus the fee for license plates, this premium would be put into a pool and dispersed properly as claim settlements are made. This $100 figure is undoubtedly low and is only for purposes of explanation.

What happens if an insured under this plan has an accident?

Mr. Smith has 80-20 coverage and reports an accident promptly to the proper authority. The accident is assigned to an adjuster who investigates and determines Mr. Smith is negligent and legally liable for the accident. He further determines that Mr. Brown, the claimant, is injured and has sustained damages that they agree to settle for $4,000. The adjuster pays the entire $4,000, then notifies the insured he must reimburse the fund $800 or his 20 per cent. At the same time, the insured's motor vehicle records are stamped "lien" and he should be notified he must pay the Fund an amount equal to or exceeding 12 monthly payments, $66.66 minimum in this case, on the 1st of each month. These payments must be made at this rate or the insured does not receive application for plates or driver's license. The annual premium for the oncoming year should then, and only then, be surcharged for a reasonable time.

In the event the Fund begins to operate at a deficit, the deficit must be borne by the parties responsible for the situation. In this case, let's put the blame where it really belongs, with the carriers, the Bar, the insured and the general public.

The carriers should contribute cash to this deficit fund, not to exceed a percentage of their gross premiums written throughout the state. This is a penalty for underwriting practices that have contributed largely to the situation as we now have it. But carriers would less likely suffer shock losses under this coverage and would have an interest in keeping the fund solvent, and perhaps would even

contribute some knowledge and some leadership.

The insured should contribute in the form of surcharge, directly, as to his negligent operation. As this policy would be noncancellable, additional surcharges should be tacked on for gross negligence, such as alcoholics, etc.

The Bar should contribute indirectly by having the arbitration board set his fee at a reasonable amount, directly in relation to the work involved, not according to the seriousness of the injury of the client. We all realize the work involved in a case where the plaintiff lost a leg through no negligence of his own, and low policy limits, is a "no work" case and the plaintiff is entitled and needs every available dollar.

The general public should contribute by being made to realize they are the ones that always, ultimately bear the cost of negligent driving. Operation of a fund such as this would eventually be reflected in premiums.

We sincerely believe that all persons who can afford to operate an auto in this state could afford this type coverage. Injured parties would not go without adequate compensation. Drivers under this plan would not be totally devastated financially as a result of an accident for which they have been determined to be legally liable.

Much of what we have suggested here amounts to bringing the unsatisfied claim and judgment fund up to today's standard. Some ideas are new. We respectfully urge their consideration. Thank you.

[Mr. Robertson's written statement can be found beginning on page 150 of this transcript.]

MR. CONNELL: Thank you very much, Mr. Robertson. Are there any questions, gentlemen? [No response.]

I am going to have to make a change here, since we are running 17 minutes late, and introduce at this time Professor Kailin Tuan of the Department of Economics and Finance, Upsala College, East Orange, New Jersey.

K A I L I N T U A N: Mr. Chairman and honorable members of the Commission: I welcome the opportunity to be here to put forward my proposal to reform automobile insurance in the State of New Jersey and perhaps in the Nation. I deem this quite an honor for me to be here this afternoon.

I have devoted my entire productive life for the past quarter of a century in the study, teaching and research in the subject of insurance. I have lived in the State of New Jersey longer than in any other part of the world. Since 1955, I have been teaching in Upsala College in East Orange. Last year I was named Director of the Institute of Insurance Education and Research. However, I do not consider myself a purely ivory tower academician. I also have had ample experience in the insurance industry from bottom to top. I have been marine underwriter, fire underwriter, life underwriter with major insurance companies, licensed life insurance agent and general insurance broker prior to my teaching and I have worked on the very top level as consultant in long-range corporate planning to billion-dollar insurance company. So, therefore, I feel qualified to say something on this critical issue. Furthermore, what I am going to say is based on my observation in the State and in the Nation.

I do not want to tackle this issue entirely on an emotional basis. I want to approach the issue from a theoretical point of view and I believe I have been considered as one of the very few not only in the State but in the entire Nation in economic circles to view this problem from theoretical analysis. I would appreciate if you follow, with me, the brief outline that I have prepared. My statement is prepared in outline form since the time extended me was rather short. I have done my best and tried to put my thoughts in this outline form.

The first part deals with the problem and issues. Much has been said already. I merely restate it in different

forms. I would appreciate if you would read a brief article here in the current issue of the Journal of Insurance, entitled, "The Second Insurance Revolution." [Professor Tuan distributes to Commission members copies of Journal of Insurance.] This article which I have distributed to you is a condensation and the complete text has also just been published in the April issue of the Best's Review. I only received a few copies. If you wish to have this, you can get in touch directly with the publisher and ask for the April issue of Best's Review, Property Liability edition.

In this article and in my previous articles, I consider the present system of automobile insurance has already been paralyzed, not only automobile insurance but the entire property and casualty insurance business. The present function of insurance, according to the traditional theory, is to eliminate risk for the insured, eliminate the risk to the insurer or permitting him to earn profit to reduce the costs of risk to society. On all these counts - you judge it - the present system has failed miserably. It does not eleminate risk to any driver of an automobile. By merely buying an insurance policy does not mean your risk has been eliminated. You buy a policy of ten-twenty liability limits. However, your actual liability may be fifty thousand, you do not know. Insurance in no way eliminates your risk.

The insurance does not eliminate risk to the insurance company either. Traditionally in the operation of insurance based on the probability theory, the risk to the insurance company and to the insured is the literal sense of risk and not as I have defined it. It is only based on the chance of loss. But the actual chance of loss in an automobile accident, like death in life insurance, is not against the insurance company but rather in favor of the insurance company. The chance decreases rather than increases.

So the problem is not the problem of chance of loss, rather the loss he suffers. The traditional insurance

theory has never attempted to analyze the amount of loss he suffers and the underlying causes of losses. Clearly the volumes of study indicate the present system is sheer waste to society in terms of cost and so forth, tangible and intangible costs.

Furthermore, the present system fails to answer the question of social equity. The premiums are determined to pass on the chance of loss according to the concept of actual equity. You have a better automobile, you have to pay a higher premium, higher and higher. The insurance company never asks you why this loss is credited to you, for what reason. They never attempt to. That would complicate their calculation.

The present system aims to distribute all the automobile losses to the insured through premium payments according to actuarial equity. It fails to analyze the causes and origins of the losses, thus neglecting to distribute losses to parties other than the company's captive insureds.

The refinement of the rating structure only pushes the cost of insurance to the individual insured higher and higher. Such being the case, I make my stand clear, I am against file and use rating - no use.

Concerned only with actuarial equity, the present insurance system chooses not to face the question of ability to pay.

But society has reached the stage that it can no longer tolerate having this crucial question unanswered. Even insurance executives are beginning to ponder the issue, for example:

> "... we wouldn't have to go far to find a young man who is earning less than $6,000 a year and who must pay more than $600 a year for full auto insurance coverage, which he needs. That's 10 per cent of his income for auto insurance alone. I do not believe the companies are charging too much; but I do believe the insured is paying a disproportionate amount of his income for car insurance."
>
> These are not my words. I quote from R. G. Chilcott.

He is Vice President of Nationwide Insurance Company. I quote from his article that appeared in Best'sReview, November, last year, issue.

What prices underwriting losses? The insurance companies complains legitimately, according to the traditional theory, they suffer underwriting losses. But the lesson that ought to be learned by insurance company executives and actuaries is that modern insurance is no longer a closed system. The insurance companies still operate on the belief of the last century, based on life insurance, that is, only the insured-insurer relationship, nobody else. That is not true today. It has not been so well over half a century since the introduction of workmen's compensation insurance in 1911 and of group insurance in 1912.

There are many other parties outside the insured-insurer equation, who, directly or indirectly, either interfere or disturb the effective operation of the simple insurance device based on the pure theory of probability and an unrealistic expectation of stability in an era of dynamic changes. These non-contracting parties include the third-party claimants, lawyers, medical practioners, juries, judges, car manufacturers, repairmen, insurance commissioners, and in a distant way, the Council of Economic Advisors, the Federal Reserve Board and the Treasury Department. The economic policy influences inflation or unemployment and influences the cost of insurance as well. It is these people who have more to say in determining the size of loss rather than the insurance companies. Therefore, the insurance companies actually have their hands tied by somebody and they cannot operate effectively as in simple life insurance. Even life insurance is now changing dynamically.

Secondly, the root of the present auto insurance crisis lies in the fact that the insurance mechanism is running into a collision course with the negligent liability system. The present casualty insurance is supposed to eliminate risk. Risk means uncertainty of loss. Here now the

negligent system creates uncertainties after occurrence of events and beyond the capacity of the present insurance device based on the traditional concepts and practices centered around the probability theory to eliminate. That is the root of the crisis, according to my analysis.

Now we come to the social character of automobile accidents and losses, again a theoretical analysis.

First, the contribution from Professor Kimball who is the Dean of the Law School of the University of Wisconsin. Several years ago he suggested the concept of socialization of risk. These are not his statements, but are based on the concept he suggests.

In the motoring age and in an environment of intensified urbanization that together characterize contemporary America, the risk of automobile accident presents itself in everyone's everyday activities everywhere. Since the risk of automobile accident endangers everyone in American society, clearly the risk has become socialized.

The second part - Fundamental versus Particular Hazards - from Late Professor C. A. Kulp, who was Dean of the Wharton School of Finance and Commerce, who was a teacher of mine, for I was at the University of Pennsylvania as a graduate student. Strangely this part of his contribution, because it was incompatible with the probability theory has never been accepted by the insurance business or given serious consideration. He classifies hazard into fundamental or particular. The particular hazards are personal in origin and created by individual activities and affects the individual himself, or a limited number of people, to a degree controllable and preventable. The fundamental hazards are very impersonal, impersonal in origin, impersonal in consequences. These are mostly social-economic in origin. To a very limited extent, the individual has no control over its happening.

Kulp further states, "Whether a hazard is to be classified fundamental or particular is generally fairly clear at any given time and place; its classification may

change in social or natural conditions, the advance of human knowledge or capacity for social action. Whether a hazard is fundamental or particular depends, in the last analysis, on current public opinion concerning the responsibility for the cause and consequences of the hazard." Hazard, as you see, is defined as a condition that may create loss or increase the chance of loss.

It is my opinion, in a closer examination according to my analysis, the automobile hazard had already been transformed in the decades of 1950 and 1960, from a kind of particular hazard to, at least, a semi-fundamental hazard. Now, in the 1970's, we ought to recognize and accept the automobile hazard as a kind of fundamental hazard in the affluent society of America. This ought to be so, especially considering the consequences of automobile accidents which more often than not affect the interests of others rather than only the driver. It is very impersonal. When you have an automobile accident, do you know who you are going to hit? No, you do not choose the people you hit. Nobody knows who they are going to hit on the street or on the highway. So even though the origin may be individual, the consequences of automobile accidents are very impersonal and the control of the individual for not having an accident in the present urban environment in driving automobiles is not entirely applicable. I do not say impossible. The person should have some control over it, but he is rather limited. It is just like accidents to workers. You ask the worker to control the accident.

I go to my own contribution - Classification of losses into natural, economic, social and mixed. I have said this elsewhere, but you can also see it in this article here. The traditional theory never goes beyond the immediate condition, the cost of loss, and they do not search deeper, as I said before, to the cause or origin. Yes, it is the icy road a person was driving on that caused his car to skid and have an accident or whatever. But let me ask you this. In Philadelphia we have a transit strike. Undoubtedly,

because of it accidents occur. But you may ask a man why he has to drive there today. If there was no strike there, he would not have to drive in the traffic jams which cause accidents. So, therefore, it is the strike that forced him to drive and be on the road in the first place and unfortunately under that kind of conditions, an accident happens. Therefore in terms of their origin, losses may be divided into three categories: nature losses, economic losses, and social losses. Some losses may fall into one category neatly; others do not. For example, unemployment is purely of economic origin. Urban riot is a social loss clearly. But many losses may have in fact acquired a mixed character of intertwined natural-economic-social origins and hence, become a new breed of mixed losses.

In my opinion, automobile losses are a kind of new breed of what I call mixed losses, losses of all kinds of natural or personal economic-social origin. It is a natural loss because of the failure of the operators, car-owners, and the pedestrians to exercise care appropriate to meet the demand in a motor age and this is the fundamental weakness of human nature.

Economic loss -- defective new cars due to mass production methods; failure of auto manufacturers to introduce safety devices, emphasizing styling rather than safety; and many workers have to drive automobiles to work.

Social loss -- society dictates traveling by motor vehicle as the fundamental means of transportation; medical, legal system and social morality expands the magnitude of individual and aggregate losses. Blue Cross as an institution forces people to be hospitalized in order to be paid. It is not the individual. Social customs encourage more and frequent uses of the automobile for travel; for example, legalized long holiday-weekend period. Do our legislators ever calculate how many more people die on the highway because of long weekends, such as celebrating George Washington's Birthday on Monday instead of Wednesday? It is society that pushes people to follow that custom. Therefore,

we have more people dying on every long weekend. The National Safety Council can predict how many will die over such a long weekend. He is induced to travel on the highways by society in the first place.

So based on my analysis, I make the following proposals, not just on a patchwork basis, but complete restructure of the system. These even Mr. Chilcott of Nationwide also suggests. He has said the system has to be changed.

First, I propose to abolish the New Jersey Unsatisfied Judgment Fund. It has been a complete failure. It opens the door for cheating.

Two, abolish the New Jersey Automobile Insurance Plan (Assigned Risk Plan). If the present tendency persists, more and more people will be forced into that beleaguered program with high cost and humiliation. Insurance companies consider poor class of people in poor territory a poor risk. People with clean records have to be pushed into Assigned Risk if they cannot pay the premiums.

Three, exempting automobile compensation and benefit payments from New Jersey workmen's compensation insurance program and the temporary disability insurance program. The benefits are to avoid duplication of coverages and to shift part of employers' contributions under these programs to finance the proposed automobile insurance program.

My main proposal is next, establishing a cooperative system of automobile compensation insurance program. I have studied the concept of cooperative insurance for many years. Private insurance, of course, is old orthodox. Social insurance by government also has become a little orthodox since your only solution is either private insurance or social insurance.

In the final report of the Department of Transportation study, they again only examined the two approaches, social insurance and private insurance.

I, today, formally advocate here in this State a third alternative or middle-of-the-road approach, a cooperative insurance system.

First, compulsory insurance to be required for all drivers and car-owners who are residents of the State, effected through annual payments of insurance premiums with car registration and/or driver-licensing.

My supporting reason - socialization of risk affects everybody.

Advantages: It eliminates uninsured motorists' problem within the State. As I said, our present system of insurance is a failure.

An enormous amount of savings will be realized as the result of eliminating policy-issuing, record-keeping, marketing and underwriting.

I also suggest compulsory insurance for out-of-state travelers. Otherwise we cannot solve this. If we do not have nationwide automobile insurance, this presents a problem. My suggestion is only half way. Out-of-state travelers, when entering the State, be required to be insured through a trip insurance coverage by making payment of premium at toll gate of highways leading into the State. When they pay the toll, they pay 25 cents extra to cover them for accidents occurring in the State. As I said, this arrangement will not be necessary when ultimately there is nationwide compulsory automobile insurance in effect. Although we can compel compulsory insurance in our State, we cannot refuse travelers from Connecticut, from Kentucky, from Florida. We are all aware of the nickname of our State, the corridor state. The day before yesterday there was a bus accident on the New Jersey Turnpike and the injured people all were from out of State, no residents of the State.

Benefits. Benefits are to be provided to victims of motor vehicle accidents based on the principle of compensation without fault, in lieu of the negligent liability. This is to recognize motor vehicle accidents as a kind of fundamental hazard.

Benefits are applicable for personal injury and non-automotive property damage. Non-automotive damage is

limited to $5,000 per accident.

Personal injury benefits will include: medical expenses; loss of income not exceeding 75 per cent of gross monthly earnings, subject to a limit; services performed by an injured non-wage earner, for example, a housewife who is injured; funeral expenses. All personal injury benefits will be subject to a maximum limit of $10,000 per person and of $50,000 per accident. Benefits will be paid as accrued. No benefits will be allowed for pain and suffering.

Financing. Here again I consider this my unique contribution, based on my theoretical analysis of the classification of losses.

The traditional theory puts all the financial burden on the insured and the insurance company. That is not the case, as I see it.

To recognize the mixed nature of automobile losses, such losses are to be distributed not only among automobile owners and drivers but also among some other parties in order to achieve social equity. Such a combined internal and external distribution scheme is to be carried out through the following financial arrangement:

First, Motor Vehicle Owners and Drivers --

Every private passenger automobile driver is required to pay a fixed sum, to be determined by law, say $25 for drivers below age 25, $10 between ages 25 and 60, $15 over age 60, to the New Jersey Automobile Insurance Association through securing or renewing driver's license. And here I recognize the loss experience of young drivers and old-age drivers.

Every private passenger automobile owner is required to pay a fixed sum, to be determined by law, according to weight class, annually to New Jersey Automobile Insurance Association through car registration. Again I recognize that the more powerful the car, the greater the trouble it can create, the extent of damage. Furthermore, I

recognize ability to pay. The person who can buy a bigger car, usually a more expensive car, is financially able to pay for the expensive car and has more money than the buyer of a smaller car.

Levies on commercial vehicles are to be determined by law, payable with vehicle registration.

Let me say all these figures are very rough because I had a limited time. I did not have any time to do any statistical analysis or actuarial study. It is my concept that counts. So please do not hold to these figures firmly.

The second part, Employers. Every employer is required to make a monthly contribution to the New Jersey Automobile Insurance Association as a per cent of his combined workmen's compensation and temporary disability insurance premiums, to be actuarially determined by law. This sum will be deducted from his workmen's compensation insurance premium and temporary disability insurance premium. Therefore, there will be no additional financial burden to the employer.

Notice, in the beginning, I suggested exempting automobile coverage from the workmen's compensation and temporary disability.

Automobile Manufacturers. Even in the traditional theory, three kinds of hazards are recognized: morale, moral and physical. Defects in cars are recognized, yet the insurance companies never try to collect a penny from the manufacturer because of physical hazard. They only collect from the person. A person without a car cannot cause accidents. It is the combination of the person and the car that causes accidents.

Every auto manufacturer will be levied a 1 per cent excise tax, based on monthly gross sales of automobiles in the State, payable monthly to the NJAIA.

In return for the contribution to the NJAIA fund, the automobile manufacturers will be exempted from products liability attributable to defective automobiles to the extent of no-fault limits in the State of New Jersey.

Here again is the recognition that some defective cars are the unavoidable consequence of mass production assembly-line technique. Automobile companies frequently have to recall defective cars, which are physical hazards. Yet traditionally we have never put any burden on them.

Of course, the 1 per cent I suggest is a rough figure, which should be determined by more thorough actuarial study.

I have not put this in here, but I might also suggest experience rating to the automobile manufacturers to encourage safety through the insurance system. Actuaries have never attempted to make a study of chance of loss on cars. The probability theory can work here beautifully.

Next, New Jersey Turnpike Authority and Garden State Parkway Authority. A percent, to be fixed by law, of the Authorities' revenues is to be paid to the NJAIA each month.

From the point of view of public finance, social benefits have to be balanced with social costs. An automobile accident is part of social costs. Cost to compensate the motor vehicle victims ought to be recognized as part of the social costs of highway traveling, especially considering the chain-car accidents frequently occurring on these super highways.

This unique four-way financing reflects not only the mixed nature of automobile losses but will also help to achieve the purpose of external distribution of losses.

And I have my paper here, in which I for the first time recognize losses should be distributed in other ways besides the insured-insuror relationship. My paper is entitled, "Theoretical Model for the Distribution of Losses," which was presented at the annual meeting of Western Association of Insurance Professors, in 1969, and subsequently at the annual meeting of the American Risk and Insurance Association. I have extra copies here. Anyone interested may have one.

Administration. To administer the program, I suggest a New Jersey Automobile Insurance Association is to be authorized by law, to be established as the State's exclusive automobile insurer to compensate the automobile victims under the law.

The NJAIA is to be organized by private insurance companies with an initial working capital of $20 million. All the present insurance companies and future insurance companies licensed to do automobile insurance business in the State are required by law to participate and subscribe to the capital funds according to their respective share of the automobile insurance business in the State and the future business, of course.

Since the automobile risks have become socialized and the requirement of insurance is compulsory, automobile compensation insurance has thus become a new kind of public utility. Therefore, private insurance companies will be guaranteed a percent investment return on their subscription to the NJAIA capital funds.

The NJAIA will issue no individual policies, nor do any selling or underwriting, Its primary function is to administer benefits to the victims according to law. It will collect statistical data for a rate-making purpose - notice I just mentioned experience rating for automobile manufacturers - by the New Jersey Department of Insurance.

The NJAIA is to be under the supervision of the New Jersey Department of Insurance.

The NJAIA is to work closely with the New Jersey Division of Motor Vehicles to achieve loss control.

There are several advantages of the arrangement. It preserves the role of private enterprises in the insurance business. It eliminates the financial risk to the private insurance companies. Insurance companies complain they suffer underwriting losses. Here they have no risk. It permits cooperation between private business and government to solve an acute social problem. It brings all segments of

the insurance business together to solve the automobile insurance problem. It represents an ideal arrangement that permits the private insurance business to discharge its social responsibility while making guaranteed profit without risk. By having a single administration, it will achieve better results in loss control through working closely with the Division of Motor Vehicles, highway authorities, and applying greater pressures to car manufacturers to produce safer cars.

If you have this theoretical model paper of mine, you will see I define insurance not as a single device, but rather as a system of devices for providing security to those who are exposed to risk by a person or organization, who, in turn, has pursued a planned program for the control and ultimate redistribution of actual losses. Notice I place control before the redistribution of losses. For too long, the insurance device has been simply defined collectively to collect on the one hand and to distrubute on the other. From my point of view and as I suggest here, the control of losses is even more important than the redistribution of losses.

I do recognize present no-fault to a degree and it is also unfair to ask a person whose annual income is $50,000 who has been injured critically to accept $10,000. Therefore, my proposal permits suits. And it also permits the insurance companies to underwrite excess liability insurance on the present competitive basis, through whatever marketing method chosen by the company, including mass marketing techniques. So, therefore, there are two types of markets - the basic market for socialized risk of automobiles and excess market for excess liability.

New Federalism in the Cooperative Automobile Compensation Insurance Program. The problem of automobile accidents and losses is really a national problem in scope and dimension. Witness the great number of cars involved in massive chain-car accidents on the New Jersey Turnpike from out of state. This is so, unlike factories and machinery, as

automobiles are made to be mobile and as such, automobile accidents can occur anywhere. Therefore, the ultimate solution to the problem does require determined national efforts.

The above proposal is made against the current social climate which indicates a national solution of the problem may not come quickly. The Secretary of Transportation has just made a recommendation to the Congress for the solution of the problem on the state level. Such an approach, according to Secretary Volpe, will encourage experiment by states and induce innovation.

But ultimately, as stated in the final report of the Department of Transportation's study, "the systems of the several states must be compatible." It continues to recognize that, if basic reparations system reform were to be left wholly to individual states' initiative without some encouragement, guidance, and at least in the advisory sense, direction from a national perspective, meaningful change might be exceedingly slow in coming.

But unfortunately, the DOT report has made no attempt to provide the very needed guidance and encouragement. To fill in this vacuum, the following proposals are made, with the hope to achieve further cooperation among the Federal government, the states, the insurance business, and the public, to achieve a satisfactory solution of the national problem for all:

1. That Congress enact a law to establish national standards for compensating motor vehicle victims.

2. That the law will direct the Department of Transportation to establish within the Department an "Automobile Compensation Reinsurance Fund" to reinsure the Cooperative Automobile Compensation Insurance programs of the states.

Otherwise, the State of New Jersey will pay many benefits to out-of-state victims who are injured on the New Jersey Turnpike or other highways since we are a corridor state. Then we will have a problem like welfare

and the cost to the citizens of the state will snowball and rise higher and higher. The costs for that part of the program have to be distributed to society.

So, ladies and gentlemen, from my proposal you know now why I called it a cooperative system of automobile compensation. It involves cooperation from all the segments of society, economic and the public. It preserves private enterprise. It preserves state regulation of the insurance business. It fosters state and federal cooperation. It promotes control of losses. It seeks to achieve the cost of automobile accidents to be distributed more equitably, not only among the automobile drivers or insurance companies, but also to others who are directly or indirectly responsible. Thank you.

MR. CONNELL: Thank you, Professor. Are there any questions? [No response.]

Professor Tuan, on behalf of the Commission, I certainly want to express our sincere thanks to you for the effort, time and labor that you put into that presentation. Thank you very much for coming down here to speak to us.

MR. TUAN: It has been my pleasure. Thank you.

MR. CONNELL: The next speaker that we have scheduled here is Mr. Richard Moore, but I see that our Chairman, Mr. Raymond arrived. I don't know whether he wants to come up here or not.

Mr. Moore, please.

R I C H A R D S. M O O R E: Mr. Chairman and distinguished members of the Commission: The Council of Churches of the State of New Jersey believe themselves to have a great deal at stake in the type of automobile insurance system in force in this state. Our responsibility flows not only from the general condition that we are prospective accident victims, nor is it simply because we and the members of our congregations are also premium payers and as such concerned with the economics of accident costs. It

goes far beyond this. The Council has long been a voice for the powerless, the oppressed, and the victims of society's inequities.

Today's auto insurance rates have most severely affected those elements of society least capable of bearing the costs. The costs have long exceeded the prohibitive for many of our minority group citizens, our elderly and our retired. The countless uncompensated victims of traffic accidents continually turn as a last resort to their churches for assistance. We believe the time has come for this state to abolish its present auto insurance system and implement a more equitable and economic system.

The principles which form the foundation of the fault insurance system lead it unavoidably to decide the answers to the wrong questions, at the wrong point in time, in a overly complicated context totally devoid of reality. This preoccupation with the wrong questions gives rise to many fundamental deficiencies which a no-fault insurance system would largely rectify.

I will attempt to characterize the nature of these defects and specify how a no-fault system of insurance would correct them.

Compensation of All Victims

The present fault system of insurance fails to compensate approximately 25% of those people suffering bodily injury in an automobile accident. This occurs because fault law shifts loss only if a negligent third party can be found, and then only if the claimant himself was without fault. Liability insurance pays only for those losses that are shifted. Part of the basic design of the fault insurance system is to leave some accident victims without compensation.

When the fault insurance system does not pay, the loss remains where it first fell--on the victim. It can happen to an accident victim who was himself only slightly at fault, for the defense of contributory negligence bars recovery completely. But it can also happen to a victim who was, even by the standards of fault law, quite innocent of any blame for the accident. As in the case of a victim of an accident where no one's fault can be proved.

A good no-fault insurance system could correct this basic inequity by combining elements of a first-party no-fault system and of a strict liability system. Thus, this approach would make the owner of a vehicle financially responsible for net economic loss resulting from personal injury or property damage to anyone or anything, other than another vehicle and its occupants, arising from accidents in which his vehicle was involved. His responsibility would be fully discharged by insurance and the purchase of such insurance should be compulsory. The driver, passengers and pedestrians injured, in their persons or property, by a vehicle would be equally entitled to claim against the vehicle owner's insurance company.

Delays in Compensation

The fault insurance system, in theory, transfers costs only after a case-by-case determination pursuant to complex legal rules.

Accordingly, under the fault insurance system there must be a significant time interval between an accident and the transfer, if any, of the accident costs. And such a system will be prone to break down under a heavy caseload.

Even where the fault insurance system pays something, it pays slowly. Injured victims of automobile accidents face average delays in collecting under automobile liability insurance that are ten times as long as the delays in collecting under collision, homeowners or burglary insurance and forty times as long as delays under accident and health insurance.

The average delay in paying automobile personal liability claims is usually well over a year. A large claim waits longer than a typical small claim. While waiting, the victim usually gets nothing from the fault insurance system.

The delays are long both in and out of court. The cases that go to trial, which involve the largest claims of all, encounter truly incredible delays often between four and five years. But even for claims that do not go to trial, the fault insurance system takes a long time to pay. And the delays are getting worse, not better.

The fault insurance system makes its payments all at once, in a lump sum, which means that any allowance for future rehabilitation expenses can only be estimated and that there can be no assurance that the money awarded for rehabilitation will still be available when it is needed.

In a no-fault insurance system there would be no economic advantage to delay benefits to a claimant. Accordingly, no-fault insurance would be far more capable of delivering benefits quickly in order to reduce human suffering, hardship and permanent disability.

Many of the long-term costs of personal injury in automobile accidents could be avoided by prompt and complete medical attention and rehabilitation if the necessary funds were available in time.

An injured person who needs medical help usually needs it beginning right after the accident. Rehabilitation procedures--which help an injured person resume normal and productive life and which reduce long-term costs to everyone concerned--often have to be chosen soon after the accident. Money paid quickly after the accident can weight these decisions in favor of the best human repair.

Moreover, a no-fault system would be in a better position to promote the rehabilitation of victims, by paying accident compensation on a regular, periodic bases rather than in a lump sum as in done under the fault system.

A rehabilitation program for a seriously injured person can continue for years. The money for it is needed continuously, and the money is sure to be available for the purpose only if it is paid continuously.

Moreover, periodic payments take the guesswork out of setting the amount of a personal injury award. Unlike a system that pays the whole award at once, in a lump sum, a system that pays for losses and expenses as they accrue obviates inexact and inequitable forecasting as to the victim's chances of recovery, his life expectancy, his future prospects of employment and the cost of his full medical and rehabilitation treatment. Periodic payments should, therefore, lead to more precise awards and should further shorten the delay before the first benefits are paid.

Coordination of Benefits

By far the greatest number of accident victims are entitled to payments from such sources as health insurance (N.Y. State-91%) and income continuation plans.

[illegible] other sources pay significant benefits to victims. But under the "collateral source rule" of the insurance system, these other benefits are generally disregarded in setting the automobile liability insurance award.

I would just like to interject at this point an experience my wife had. She was involved in an accident back in 1966 and she received payments under a major-medical plan under the Princeton School system. Then about a year after the accident a check came through again redundantly for the entire sum of the medical treatment she had received, money that wasn't needed but was kind of a pain and suffering award after the fact when it was really of no real use.

This lack of coordination of benefits between the fault insurance system and other sources is bad, both as a matter of insurance theory and as an impediment to the smooth functioning of the various reparations system involved. It also has bad effects on insurance consumers and accident victims.

One such bad effect is that an employee with good fringe benefits does not see those benefits reflected in an immediate lowering of his automobile insurance premiums.

The interest of consumers in low premiums and the interest of victims in the fullest compensation of net economic loss call for eliminating the duplication of benefits between automobile insurance and other sources of compensation.

A no-fault system could alleviate this situation by not redundantly paying losses already repaid from other sources.

Promoting Traffic Safety

The fault insurance system is inherently incapable of deterring unsafe driving. Individual, last-moment driver mistakes--undeterred by fear of death, injury, imprisonment, fine or loss of license--surely cannot be deterred by fear of civil liability against which one is insured. Indeed, as a matter of logic, the contrary is true.

The careless driver is protected by insurance, while his victim can be left with much of the cost that originally fell upon him. We confront the bizarre conclusion that if the fault insurance system is a deterrent to anything, it is more of a "deterrent" to becoming a victim than to driving carelessly.

Fault law, in theory, shifts accident costs to wrongdoers. Liability insurance, in theory, protects wrongdoers both by defense and by indemnity. The two original purposes are in fundamental conflict. Liability insurance has stripped fault law of its purpose, but society is left to pay for and endure all the complexities of fault law decision-making.

Efficiency

The fault insurance system is inherently expensive to operate.

The system allocates costs and benefits one case at a time, applying complicated legal rules to complicated fact situations, and distributes the costs over large numbers of policyholders. All this requires personal service and a lot of it.

These services are not cheap. The fault insurance system has to have a great deal of money just to run on. These operating expenses are known as frictional or transaction costs. They use up premium dollars on the way from insurance consumers to accident victims.

According to the New York State study insurance companies and agents use up 33 cents of every personal injury liability insurance premium dollar.

Then lawyers and claims investigators take the next 23 cents.

Together these itmes make up the operating expenses, or frictional costs, of the fault insurance system--56 cents out of every premium dollar.

The no-fault insurance system would insure to the victim that as much as possible of the money that is paid into the mechanism is realized in the form of benefits.

To the victim, this increased efficiency means more money available for benefits. To the consumer, the increased efficiency means lower premiums.

Apportionment of Benefits

Even where and when it pays, the fault insurance system distributes the available money with no discernible regard for priorities, let alone intelligent or humane priorities.

Under the fault insurance system--where highly abstract rules of liability and valuation are applied, case by case, to fleeting fact situations--every claim has a value just by virture of its existence. It involves the certainty of administrative costs and uncertainty as to the eventual award. In bargaining over negligence claims, it is worth something to the insurer to get rid of the claim and worth something to the claimant to be sure of getting paid.

In the typical small case, this certainty--closing the claim--is worth more to the insurance company than it is to the claimant. So small claims are overpaid, the excess over economic loss being called "general damages" or "pain and suffering." But in the large case, the certainty is usually worth more to the claimant than to the insurance company. So large claims are underpaid.

A comprehensive no-fault insurance system would pay benefits to any accident victim, whoever he might be. Furthermore, once such a compensation system has undertaken to pay for the victim's loss there should be no reason for the system to stop short of paying for all of his loss. There should be no qualitative distinction among kinds of economic loss. Therefore, the scope of benefits should be unlimited.

Similarly, leaving aside for the moment the matter of balancing benefit levels and premium levels, there should be no limit on the amount of loss which is compensable. A loss is no less a loss by being a big loss. Quite the contrary. Losses are not limited, and benefits should not be. There are more humane ways to economize.

This full compensation should be equally available to the owner, driver, passenger and pedestrian injured by the vehicle.

SUMMARY

In summary, the Council of Churches recommends that this state adopt a no-fault insurance system to compensate victims for losses suffered in automobile accidents, rather than to shift costs according to fault.

This system should compensate the victim for all of his net economic loss.

It should require motorists to buy insurance, but only to cover those losses not repaid from other more efficient sources.

It should allocate the cost of compensating for such losses according to the relative ease with which they can handle that cost.

It should impose special cost burdens on drunken drivers, drugged drivers, drivers using a car in the commission of a felony, and drivers intentionally causing accidents.

It should leave room for voluntary arrangements for coverage beyond what is required by law.

It should use special sanctions to make certain that insurance companies pay claims promptly and fairly.

It should apply to all driving in this State and to none outside.

It should be operated by private enterprise and not by government.

It should pay benefits periodically, rather than in a single lump sum.

We believe that such a no-fault system would be far more equitable. The general result would be that policyholders with low incomes would pay lower premiums than policyholders with high incomes. Policyholders with generous collateral sources of medical and wage loss benefits (e.g., under liberal employee fringe benefit programs) would pay lower premiums than policyholders without such collateral sources. And policyholders with little or no employment income and

with substantial collateral benefits (e.g., retired persons) would pay the lowest premiums of all. In addition, owners of inexpensive and old cars would pay lower premiums than would owners of new and expensive cars.

Gentlemen, I thank you for your time.

MR. BROWN: Mr. Moore, the Council of Churches - whom do they represent?

MR. MOORE: The New Jersey Council of Churches represents 14 denominations, comprising about two and one-half million adult citizens in the State.

MR. BROWN: Who is the head? In other words, you say 14 denominations. Can you give me some of the names of the churches that are involved in the Council of Churches?

MR. MOORE: The Episcopal Church, the Methodist Church, the Presbyterian Church.

MR. BROWN: Of where, sir? Is this on a statewide basis? Are you talking about all the Episcopal Churches and those of other denominations throughout the State?

MR. MOORE: Yes, sir.

MR. BROWN: Who is your President or who is on your Board.

MR. MOORE: The Director is the Rev. Paul Stagg, who is the General Secretary of the Council of Churches.

MR. BROWN: Where is he from?

MR. MOORE: Which church?

MR. BROWN: Yes.

MR. MOORE: In his particular case, he is a Baptist. He was appointed by the General Board of the Council of Churches.

MR. BROWN: Does he serve a church directly or a parish?

MR. MOORE: No. He serves all the churches that comprise the statewide organization.

MR. BROWN: Do you have an office?

MR. MOORE: Yes. It is located in East Orange, New Jersey, 116 Oraton Parkway.

MR. BROWN: Thank you, sir.

MR. TEESE: Mr. Moore, in your opening, you made the observation that countless numbers of uncompensated, needed parishioners have turned to the churches for assistance. Could you tell me, sir, the source of your information?

MR. MOORE: Well, having worked as a minister in several churches myself in the past and having talked with countless other ministers, frequently people that aren't compensated in some way and run into both medical or other economic losses will have to turn to a church and to the general welfare fund of that congregation for assistance. Sometimes it is just temporary and in many cases, if they do receive reimbursement at a later time, they will then repay it to the church. But a great number of them have to go to where they can get immediate sources of funds.

MR. TEESE: I understand that, sir. Are you speaking, however, from a sense of feeling or do you have some reference that might be available to the Commission? This is the first reference in all the testimony we have heard of such a claim as you have just made.

MR. MOORE: There has to my knowledge been no consistent study If any studies were done in this regard, they were done primarily on an individual denominational basis. We could check with the various denominations to see if they have made a case-by-case determination. I rather doubt that studies have been done on that basis.

MR. CONNELL: Mr. Moore, all these victims or parishioners that you are talking about, were they all people that were injured in automobile accidents or are you speaking now about people that are injured generally in accidents?

MR. MOORE: It would be both generally in accidents and also ---

MR. CONNELL: Could you give us a statistical breakdown with respect to the number of parishioners that

went to the church for help that were injured in automobile accidents since that is all we are concerned with?

MR. MOORE: In my own experience as a minister in Rumson, New Jersey, and some other congregations, we had, I think, seven people approach us for assistance from the general welfare fund and I believe four of the seven had been injured in some way through automobile accidents.

MR. TEESE: Do I understand from that that they had not been compensated presumably because they were themselves at fault?

MR. MOORE: In one case I know of, it was a hit and run accident and no fault could then be traced to the person who actually did the act. In the other three ---

MR. TEESE: You are aware, of course, that the State of New Jersey has a system established for compensation for that very thing.

MR. MOORE: Yes.

MR. TEESE: It has been in existence since 1956.

MR. MOORE: Of course, processing through takes a bit of time and in this case the congregation came to their assistance immediately to help with the medical bills.

MR. CONNELL: Did they apply for temporary disability benefits? Did they seek the services of an attorney?

MR. MOORE: I believe they did.

MR. CONNELL: Did they eventually get compensated?

MR. MOORE: Yes, they were eventually compensated.

MR. CONNELL: Then I assume these people you are talking about are people that did not have any Blue Cross, Blue Shield, major med.

MR. MOORE: Yes.

MR. CONNELL: In your experience, you can narrow it down to approximately four people that you personally are aware of.

MR. MOORE: As an individual, yes. My personal experience is four.

MR. CONNELL: How long have you been in the ministry?

MR. MOORE: Only six years, though I have been associated with church work for a much longer period of time.

MR. CONNELL: How long have you been associated with church work?

MR. MOORE: I was ordained originally by an independent congregation many years ago, back in the early 1950's, in fact. But I didn't pursue my formal seminary training and graduate from seminary until 1968. So it is only since that time that I have been formally associated with churches on a wide denominational basis.

MR. TEESE: Mr. Moore, recurring in your statement is the observation that the collateral source of insurance compensation is in point of fact a device of insurance. This, sir, is not true. We are concerned with an automobile damage system of reparations, such a system of law. The insurance we have today is merely a reflection of that. Any change in the insurance has to first come from the change in the law. The collateral source rule as it exists today is a judge-made rule and is one that can be changed by the Legislature and eliminated, at no great change in the insurance protection as it presently exists, but I expect, and it is the work of this Commission to explore, at some reduction in cost to the insurance-buying public of the State of New Jersey. I felt moved to make this observation because it seemed to recur again and again in your statement and it seemed to me to be an awareness of yours that wasn't tracking with the way things really are.

MR. MOORE: It is more of a peripheral matter, I will grant you. I didn't mean to give it over emphasis or stress, which is apparently the impression you got.

MR. TEESE: It seemed to make a big point to you with your wife's experience.

MR. MOORE: Yes. That is my only experience

personally with accidents within my family.

MR. TEESE: You speak also, I think, of lawyers' costs and insurance investigation costs as approximating 23 per cent of the premium dollar.

MR. MOORE: This was from the New York study, as I said. This is the figure they developed.

MR. TEESE: The Stewart Study?

MR. MOORE: The Stewart Study, yes.

MR. TEESE: I submit, sir, that I think your figures are incorrect.

MR. MOORE: I happen to have a copy of the study with me. I am reading from page 34 of the Stewart Study: "First of all, insurance companies and agents use up 33 cents." They have footnote 60. "Then lawyers and claims investigators take the next 23 cents." They footnote that number 61.

MR. TEESE: But the source material for that statement is not otherwise expanded upon?

MR. MOORE: No, it is not.

MR. DUNCAN: Mr. Moore, I am bursting with curiosity. Did you send back the second check your wife got?

MR. MOORE: No. I probably should have.

MR. DUNCAN: You didn't send it back.

Mr. Moore, I am cognizant of the fact that any man that comes here that says he represents the Council of Churches is a fellow that we have to listen to for the very basic reason you represent 14 churches.

MR. MOORE: Fourteen denominations.

MR. DUNCAN: Fourteen denominations, I should say. Roughly how many people are involved here?

MR. MOORE: Roughly two and one-half million people.

MR. DUNCAN: That is a lot of people. I would like to know how many meetings, how many other source materials, other than that one plan you have there, which we have all read as a matter of course -- For instance, have you read the Cotter Plan? Do you know of the existence of the

Cotter Plan because you have picked this plan as your model?

MR. MOORE: Yes. I will give you my sources.

MR. DUNCAN: Not your sources - I mean your group's. This is more than your thinking, I assume.

MR. MOORE: Oh, yes. Right.

MR. DUNCAN: Could you give me an idea of how many people were involved in setting forth the policy that you are reading here and who they were?

MR. MOORE: It would be the General Board of the State Council of Churches. We had a meeting to deal with priorities for the coming year and one of those priorities that was discussed was to move on a no-fault insurance plan.

MR. DUNCAN: But how many meetings and how much time was involved?

MR. MOORE: They established a committee through the office of Government Concerns here in Trenton and that committee was comprised of about eight individuals and they met on about seven different occasions and discussed it at length each meeting, which was approximately three to four hours per meeting, in which various plans and various resources were made available to them and were discussed in depth. The one that they preferred was the Stewart Plan coming out of the New York study.

MR. DUNCAN: And the motivation for the meetings originally was, as you said, countless ---

MR. MOORE: It was the impression of the various leaders of the denominations that this was something that in their own experience, both in their own parishes and congregations, weighed on everybody's thinking, including the ministers of the denominations.

MR. DUNCAN: And how many congregations were polled as to their feelings as to your choice?

MR. MOORE: There were no polls taken. In fact, in speaking for the General Board of the Council of Churches,

we speak as well to the congregations. In the truest sense, we are really speaking for the General Board of the Council of Churches, which represents these denominations. As far as being able to speak for each individual parishioner personally, there is no way in which that can be done.

MR. DUNCAN: Then there is some assumption if the Board had gone back to the memberships, they might or might not have agreed with that particular plan.

MR. MOORE: That is true. That is definitely correct.

MR. DUNCAN: So then we have a little bit more on record as to who ---

MR. MOORE: Copies of the statement are distributed to the denominations and go out through the various publications of the Council of Churches to the denominations for their own reference material and also for them to react to and respond to. So a two-way communication does take place. But by no means would I want to leave you with the feeling that we think that we speak for all two and one-half million. The General Board represents in a vague sort of way these two and one-half million people. It is just like any of these other public opinion surveys that have taken place. I would say that the average citizen on the street really does not comprehend what a no-fault system of insurance would entail. I don't think that the information has gotten down to the grassroots level to that extent that the average person on the street really is fully cognizant of all that is entailed.

MR. DUNCAN: No-fault would address itself to that part of the problem which possibly has to do with meting out payments to the public.

Let's talk about availability. In these 7 or 8 three-hour sessions, did the same group address itself to the actual problem that exists, the question of availability, and did they give you possible solutions to availability?

MR. MOORE: No, they did not. They did address the

problem. It came up repeatedly. It was a recurring theme that came up. But as far as any over-all solutions to that problem, they did not have any recommendations regarding that.

MR. DUNCAN: So, in effect, we have a group of people that tells us what they don't like about the present system, what they might like in a new system, but with no real answers as to how to solve the problem.

MR. MOORE: -- of availability.

MR. DUNCAN: -- of availability. Right. Thank you.

SENATOR LYNCH: Mr. Moore, you testified that it takes four or five years for an automobile accident case to come to trial. What do you base your information on?

MR. MOORE: I was using again here the information contained in the Stewart Study.

SENATOR LYNCH: That is New York.

MR. MOORE: This would be New York. This would be the New York study.

SENATOR LYNCH: Do you think the situation presently existing in New York is the same as it is in New Jersey?

MR. MOORE: I have no way of officially knowing that.

SENATOR LYNCH: I can tell you it is not.

MR. MOORE: Fine.

MR. CONNELL: Mr. Moore, actually then I would have to assume from what you have told us, representing some two and one-half million parishioners -- I assume they are all New Jersey people, are they not?

MR. MOORE: Yes, they are.

MR. CONNELL: [Continuing] -- there hasn't been any great hue and cry or clamor to you or your Board to do anything about this problem. This was just something that your organization decided to study and come up with a recommendation. Is that right?

MR. MOORE: This was something that the various ministers that are representing ---

MR. CONNELL: I am talking about the parishioners.

MR. MOORE: The parishioners themselves, only as they conveyed their feelings on the matter that some change was needed to their ministers and to their lay representatives. I shouldn't indicate that it is strictly ministers who are on that General Board. It is not. It is roughly 50-50. So there are a great number of lay members involved.

MR. TEESE: Mr. Moore, recurring in your observations was this fact, or seemed to be in any case, that you equate a broken fender or a dented fender with a broken leg and you would expect that payment would be made for the leg as quickly as one might replace a fender. But that goes contrary to human anatomy. People don't heal that way.

MR. MOORE: No. What I was trying to indicate in that testimony was that whatever treatment would be necessary for that leg injury be made on a continuing basis as the charges accrued.

MR. TEESE: Are you aware that that is being done now as a matter of course? It is.

MR. MOORE: Through what type of insurance system?

MR. TEESE: Automobile insurance, today, routine.

MR. MOORE: I am not aware of this, no.

MR. TEESE: It is happening. It is called advance payment.

MR. MOORE: No, I am not aware of that.

MR. TEESE: It is happening.

MR. CONNELL: Is that all, gentlemen? [No response.] Thank you very, very much, Mr. Moore, for your time and effort.

Our last speaker on the agenda is Mr. Henry Legowski, Local 825, Newark, New Jersey. [Mr. Legowski was not present.]

Is there anyone else in the audience who would

like to get up here and say something, especially something that we haven't heard already? We would like to hear that.

All right. If not - we have extended the invitation - on behalf of our Chairman, Assemblyman Raymond, and the members of the Commission, I guess we will call this to a conclusion. We will meet again a week from today, April 21st. The next meeting will be in the Assembly Chamber not the Senate Chamber. Thank you very much.

[Hearing Adjourned.]

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Statement of Robert E. Keeton
before the
New Jersey Automobile Insurance Study Commission
April 14, 1971

I am grateful for the opportunity of appearing before this Commission. The subject you have been commissioned to study is one of vital concern to every citizen of this state and this nation.

Let me commence my remarks with a question: What is the state of the automobile insurance system in New Jersey and elsewhere in the United States in this year 1971?

> "In summary, the existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system. Both on the record of its performance and on the logic of its operation, it does little if anything to minimize crash losses."

Those are not my words, but the capsule conclusion of a $1.6 million, 2-year study under the auspices of the United States Department of Transportation. They are thoroughly documented in 23 additional reports published before the release of the 24th and final report of the DOT Study in March, 1971.

The present system for compensating victims of automobile accidents is a demonstrated failure.. The central reason the system has failed is that it is founded on fault and liability insurance.

The present system calls out the worst that is in us after an accident, and it suppresses the best. It calls on us to be vindictive, to concentrate on finding fault, to spend billions -- I repeat billions -- of insurance dollars each year in the United States just to assign blame. We should instead make it the primary business of the insurance system to compensate the injured and to provide for their prompt rehabilitation.

In finding fault, the present system spends not only billions of our insurance dollars but also hundreds of millions more in tax dollars each year to pay for the courts in which these cases are tried. And what does the system do about blame, after finding it? The answer is: In most cases, no more than a token response. Let us be clear about this: First, this system does not make the wrongdoer pay for the injuries he caused. Claims are paid instead by insurance companies. Second, the present system does not even make wrongdoers pay in premiums anything remotely approaching what it costs to pay for the injuries they cause. This is true not only when we look at the matter case by case, but also when we look at it in gross. Year after year, the great bulk of premiums out of which claims are paid has been collected from policyholders not involved in any accident during the year -- from the "innocent" rather than the "wrongdoers."

Thus, the billions the system spends year after year in finding fault are wasted.

There will be no end to this waste until we end the misguided fixation on blaming people.

Proposals for retaining a patched up fault system are doubly bad because they doubly concentrate on blaming people. They continue to support a system that makes fixing blame on people its primary business. And they also make the mistake of blaming the demonstrated failure of that system on people rather than on the system itself.

It is time to end this charade in which protectors of the outmoded system are using people as scapegoats for the failures of their system. It is time to stop spending our insurance dollars to blame people. If we must fix blame, let us blame the system, and change it now!

The central concentration of the present system on fault and liability insurance is the reason we have such wastefully high automobile insurance costs today. As shown in a chart attached to this statement, only 14 1/2 cents of the automobile bodily injury liability premium dollar go to paying for out-of-pocket losses not already compensated from some other source. Thus, only 14 1/2 per cent of what we pay for bodily injury liability insurance comes back in the kind of benefits that ought to be the primary objective of automobile insurance.

In state after state, there is a public sense of outrage with the present system of automobile insurance, and it is easy to understand why if we pause to view the system as the public sees it. Put aside technicalities and just ask how the system works. Consider some questions we must answer when we look at the system from this point of view.

Under the present system, what are your chances of getting payments from your own Bodily Injury (BI) automobile insurance if you get hurt in an accident?

The answer is practically zero. It could happen, but only in most unusual circumstances. Every year a good many injured

people are surprised to find out that they get no payments under their own BI coverage. Suppose you don't know the technicalities of automobile insurance. You buy Bodily Injury automobile insurance. Then you suffer Bodily Injury in an automobile accident. It would seem reasonable indeed for you to expect your insurance company to pay you. But that is not the way the system works. Instead, your coverage just means that your company protects you against claims made by other people against you. So if you are the victim, you have to make a claim against somebody else. And his company doesn't owe you anything either unless you prove he was at fault in the accident.

Basing claims on fault made sense back in the horse-and-buggy days when nobody had insurance. But not today. Over 99 per cent of the compensation paid to traffic victims comes from insurance companies or large corporations and not from the individuals at fault.

Yet the system is still built on the theory that when you are injured you must show that somebody else was at fault and must make your claim against him and his insurance company rather than your own. As a result, the system is slow to make payments, it overpays trivial injuries and underpays serious injuries, and it is terribly wasteful because it uses up so much of the insurance dollar to pay for lawyers' fees and other costs of fighting over how the accident occurred and who was at fault.

How might insurance be better used to compensate persons injured in automobile accidents?

We should apply here the same straightforward insurance principle that we apply in most other situations -- for example, fire insurance on your home; health and accident insurance; and even the Medical Payments insurance in the automobile policy. All of these are forms of nonfault insurance under which you get payments from your own insurance company regardless of who was at fault in causing the loss, or even if nobody was at fault. If we used this kind of insurance as the main source of compensation for traffic victims, we could sharply reduce the waste in the present system. We could continue to pay as much to victims as they get today, or even more, and still reduce insurance premiums because of the greater efficiency of this kind of insurance. It would also result in a fairer distribution of payments because it would transfer some of the money now used to overpay trivial claims and pay it instead to people with more serious injuries.

The way the present system deals with damage to vehicles could also be improved.

The nonfault principle should be extended to damage to cars as well as injuries to people. A recently devised plan of "Vehicle Protection Insurance," designed to be integrated with the Basic Protection plan for compensating injured persons, will serve this need.

What would be done with claims for pain and suffering under a nonfault system?

The American Insurance Association plan proposes to eliminate all claims against the other driver based on fault -- thus eliminating all such claims for pain and suffering as well as for other kinds of damages such as wage loss and medical expense. Under the Basic Protection plan, claims for pain and suffering associated with severe injuries would be preserved. We propose to draw the line at $5,000. That is, if pain and suffering is substantial enough to support an award in excess of $5,000, the injured person recovers the excess. He does not reocver the first $5,000 unless he has elected to buy an optional coverage for that purpose. Thus, motorists are no longer forced to pay the high premiums that result when all these pain and suffering claims under $5,000, based on fault, are included in the system.

Instead, under Basic Protection the out-of-pocket losses up to $10,000 would be covered for everybody, and the average motorist, with part of the savings he realizes in insurance costs under this system, could buy an optional coverage for pain and suffering up to $5,000. He would still have part of the savings left over. Thus, because of the greater efficiency of the system, he could get more protection at less cost. And the motorist who chooses to give up claims for pain and suffering under $5,000 saves substantially more on his annual automobile insurance bill.

What effect would a nonfault system have on rehabilitation?

It would be a distinct help. Since medical bills and costs of rehabilitation would be covered for all traffic victims, regardless of fault, no longer would rehabilitation be delayed because of a fight over who was at fault and resulting uncertainty about whether insurance money would be available to cover rehabilitation costs.

Central Principles of Basic Protection

Basic Protection insurance is founded on two major principles -- first, paying losses from traffic injuries up to a moderate limit regardless of fault and, second, doing away with most negligence claims below a similar limit.

Observe the contrast between the nonfault principle of Basic Protection and the fault principle of the present system.

Today, typically, claims are made against the other dirver's insurance company, based on negligence, seeking a lump-sum payment. This payment, if obtained, ignores -- and therefore overlaps with -- reimbursements already received from other sources, such as Blue Cross and sick-leave pay. It also attempts to pay dollars for items not objectively measurable -- that is for pain and suffering -- with the result that there can always be a genuine dispute not only about how much pain there was but also about how much so much pain is "worth."

Basic Protection insurance, in contrast, applies a straightforward, nonfault insurance principle -- the one already applied in health and accident insurance, in fire insurance and even in the medical payments coverage and collision coverage of the automobile policy itself. Thus payments are typically made by one's own insurer rather than the "other driver's" insurer. Also, they are made month by month, as losses occur, rather than in lump sum, and they reimburse only for net out-of-pocket loss, which ordinarily is objectively measurable and not likely to be a source of dispute.

The second major principle of Basic Protection is fulfilled by a partial elimination of liability based on negligence. Claims based on negligence are still permitted for severe injuries, however. That is, an injured person can recover as he does today for so much of his damages as are higher than $5,000 for pain and suffering or higher than $10,000 for all other items such as medical expense and wage loss.

A New Jersey Bill

The central principles of Basic Protection are incorporated into a bill proposed in New Jersey by PAIR (People for Automobile Insurance Reform).

One day less than four weeks ago, the final report of the U.S. Department of Transportation Study was released. That report firmly recommends prompt enactments in the several states of our

federal system to establish a new system for compensating traffic victims --

> "a system that would be more efficient, offer greater flexibility and personal choice, be fairer, give greater incentives to loss reduction and do a better job, overall, of reparating victims' losses."

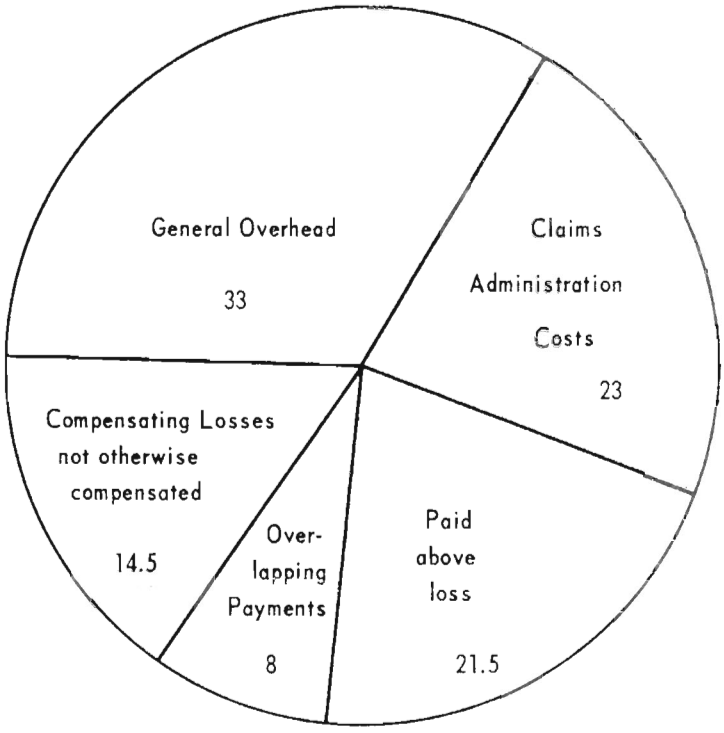
Here, in a paragraph from that report, is a set of guidelines for such a system:

> "This system, as we see it now, should be based on universal, compulsory first-party insurance for all motor vehicle owners covering all economic losses above voluntarily accepted deductibles up to reasonably high limits. Insurers should be free to offer additional insurance coverage above these limits. Victims should retain their present right to sue in tort for specified intangible losses, but the right should be restricted to the truly serious cases. Victims should not be able to sue in tort for economic losses compensated by their own insurers or voluntarily accepted as a deductible. The system should be implemented in stages at the State level. The private insurance industry should service the system, which should continue to be regulated by the several States."

The Basic Protection plan and the specific bill proposed by PAIR fit these guidelines perfectly.

The best way for this Study Commission to serve New Jersey citizens is to recommend and work for the prompt enactment of the PAIR bill.

Where the Automobile Bodily Injury Liability Insurance Premium Dollar Goes



Prepared by Robert E. Keeton
February, 1969

REPORT TO ASSEMBLY

INSURANCE COMMISSION

MARCH 30, 1971

Submitted by

SOUTH JERSEYS CLAIMS MEN'S ASSOCIATION
Legislative Action Committee

W.J. Robertson - Chairman

Al Gealt

Eugene Mc Caffrey

Mr. Chairman- Distinguished committee- We wish to thank you for being given the opportunity to testify here today. The report you are about to hear is respectfully submitted on behalf of the executive committee of the South Jersey Claims Men's Association. A group of dedicated claim adjusters who have devoted uncounted years of service to this industry , in what we feel has been a professional manner. We are here today not as Company employees, nor as emmissaries of any other single interest group. We appear here as professional claim men, attempting to impart the knowledge we have gained to the ultimate benefit of only 1 group- The insurance buying citizens of this State.

Many of the people here today will look upon the claim men as the Simon Legree of this industry. We must take a moment to point out that the claim man is a human being- not devoid of feelings just as all of you are. Please understand that the claim man must operate within the boundaries imposed upon him by the policy contract- not by what he would like to do or not do.

The purpose of our appearance here today is to aid you gentlemen in future legislation, to properly indemnify desirious victims of highway accidents. We have come before you with no miracle plan but rather with a plan that will more properly and equitably imdemnify the person truly confronted by the devastation of a serious auto accident.

We feel the present premium dollars spent by each auto policy holder could be much more practically utilized. By proper utilization of these dollars we sincerely feel that the insured driver or passenger could properly and adequately sustain his normal manner of living without finan-

chai worries brought about by injury sustained in an accident, serious enough to be disabling either temporarily or permanently.

Gentlemen we wish to propose to you that no drastic changes are needed in our present Tort system. We are not properly utilizing the tools we have at our hands- in that most advantageous manner.

We wish to now discuss various portions of the standard family auto policy and suggest how they could be used in a way concurrent with the present day.

1st. The physical damage portion of the auto policy is an optional coverage and deals with collision and/or comprehensive. Generally speaking the comprehensive portion is a dollar for dollar reimbursement of damage sustained by almost any loss that is not a collision. Collision coverage provides reimbursement for less however a predetermined deductible amount is subtracted from each loss. This amount is generally $50.00 or $100.00 with occasional amounts of $250.00 or $500.00 being available but r rare on other than fleets or commercial vehicles.

Gentlemen we submit to you the idea that $50.00 deductible collision coverage is an obsolete as the $1000. new family car. $50.00 deductible was popular when it was about the average weekly take home pay for the factory worker.

The small paint claim- The broken antenna- the lost hub caps- all claims that are normal comprehensive type losses many times are more expensive to process than the total value of the claim. The days of "full reimbursement" for petty claims has come to an end.

continued

Both as an incentive to take better care of his own property and due to the fact no substantial monetary loss has been sustained by the insured- (The purpose and meaning of the word insurance) we would make the following recommendations.

1. Eliminate the sale of collision deductible below the deductible amount of $100.00 as a further saving to company. Hard pressed by being required to stay on the careless driver, and as an incentive for safe driving- we would suggest doubling the amount of the stated policy deductible for the 2nd. chargeable accident in one calander year at the same premium.

Needless to say this would penalize only the careless driver, and in the form of a penalty which would be directly beneficial to the safe driver , in the long run, in an overall savings to the insurance companies, which would ultimately accrue to all insurance buyers.

2. We would further suggest that a considerable $ amount could be salvaged, without any appreciable financial burden to the policy holder- by applying a nominal deductible to comprehensive claims- we would suggest a mandatory deductible of $25. on all comprehensive loss exclusive of windshield glasses. We have excluded w/s glass due to the fact that this is a loss which seldom does the insured driver have any control of whatsoever. Nothing would prevent a person from driving many years without having a glass loss, and suddenly being confronted with 2 or 3 losses in

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one year, through no fault of his own, whatsoever.

As you can see at this juncture, many dollars can be saved both by the insured and the industry without financial burden to any, except the careless driver. We mentioned earlier we intended to suggest more practical ways to spend the auto premium dollar. To this point we have shown how money could be saved, now we might suggest how these found dollars could be most effectively spent.

As one of the chief faults of our present auto tort system as outlined by the advocates of "No Fault" seems to be as we understand it, the fact that injured partys are not compensated for personal injurys or wages as result of an accident for which they may have been negligent to some degree. As you know, any negligence bars recovery under our present tort system. We would like to answer the "no fault" advocates with some good practical ideas without disbanding a system we have lived with these many yearsand which system we have found to be the most equitable. We don't propose a change in the tort system, but rather we advocate a helping hand to the parties who have been somewhat negligent.

We have had an approved endorsement for the auto policy, available in this state for many years, which provides for a weekly income for a named insured, injured and disabled as a result of an auto accident. The cost of this endorsement is $6.00 per yr. and provices $50. a week to be paid as long as the injured insured is disabled. This is subject to a brief waiting period and a change in definition pertaining to disability after 1 year. I spoke earlier of using these found dollars. This is the direction

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we sincerely believe they should be properly spent. Why this endorsement has not been properly publicized or offered for sale, I can't answer. But, in our opinion, this is the most practical solution to the one big complaint as pertains to our present system.

We would suggest that this endorsement be brought up to date with the following modifications. Make readily available a policy endorsement providing $100. per week for the named or principal family wage earner who might be injured and disabled as a result of an auto accident. Provide $50.00 per week for this named insureds spouse if also injured and disabled. These should be treated as separate claims but should be cumulative in benefits. This could be provided with an estimated extra policy cost of much of which could be supplemented by the savings on the physical damage amounts presented earlier. We are not actuarys or even underwriters, but I believe even the average motorist will readily note the practicality of this proposal. This, gentlemen, is, we believe, the solution to the problem presently at hand. We so strongly believe this to be so that we would recommend the insurance commissioner advise the Companys writing auto insurance in this state widly publicize such a modified endorsement and offer the same for sale as part of the auto policy with said coverage included unless refused in writing.

This is half of great financial loss brought about by disabling auto accidents- The other portion is the problem of medical expenses.

Generally today such coverage is provided in amounts of 500-1000-2000-5000- This is a widly purchased and popular coverage and not much need be said of it at this time. We would comment however that the

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very serious injury cases are not properly covered and the minimum limit available should be raised to $1000.-cost difference here is $2.00. We would further suggest that the basic $1000. med pay endorsement carry additional coverage for the serious injurys in the form of full coverage for the first $1000. and 50% off expenses for $2000. up to $5000. or possible total coverage of $3000. if medical treatments should exceed $5000.

For the driver over the age of 25 (according to Stock Company present rates) residing in the Camden Suburbs- owning a 1971 Chevrolet Impala, the cost of 50.00 collision is 91.00

The cost of 100. ded. " " 78.00

a difference of 13.00

Full comprehensive on the same car is $35.00

50. ded. comp. is $20.

25 ded. comp as we recommend would be approx. 28.00

a difference of 7.00

This is a cash saving on physical damage of $20.00 per year.

With this same $20.00 based on current rates insurance Companies can provide a policy with $100. per week income for any disabled named insured Med: $50. per week for a secondary insured- For $18.00 or $2.00 per year LESS than the insured is presently paying.

For an additional $6.00- Life insurance or dismemberment coverage can be added covering both insureds, for $5000. each

continued

Persons carrying present med-pay of $500. could purchase (again using current rates) our proposed $1000. full coverage and $2000. 50/50 coverage for $10.00 per year.

As you can readily see, the suto insurance buying public has never been aware- nor have they been properly informed, just what their premium dollars will buy.

With a truly practical approach, this is all the statistics we will bore you with. Plain facts however- only the reckless or the careless could fail to see the obvious here.

As you can see, we have not suggested any sweeping radical changes, nor have we intended to present such a program. We have intended to present, through the eyes of the professional claim man, a program we feel would most benefit, at reasonable cost, persons most deserving of insurance benefits. Indeed- all of our group would be most pleased to be able to more adequately compensate injured parties. Given the proper tools, we will use them well. No claims adjuster I've ever met enjoyed walking away from a truly injured party, after having denied his claim. Our proposals will not stop denials of some claims, nor will it alter proper redress to the courts, under the present system, but it surely will more justly compensate countless parties injured in auto accidents, whom were never given consideration or relief before.

It is only natural, having discussed some solutions to problems occurring after the accident, that we cover some ideas and opinions that may prevent the accident- Highway safety is an important concern to all of us.

In this era when politics dictate the wooing of the teen age

voter, we must necessarily take the unpopular stand. As claim men, we are all too familiar with the 16 year old girl who has been horribly scarred because someone wanted to show off a bit. As claim men, we also know that no amount of financial reimbursement can ever restore a pretty young face. Facing the situation squarely in the eye, you all know as well as I do the biggest menace on the highway is the teen age driver, 2nd. only perhaps to the drunk. But realistically speaking, we can't do much about that drunk till after he has wreaked his havoc. The teen-ager we can do something about NOW . I was made to understand that a drivers license was a privilege, not a right.

Todays generation should understand the same set of standards. Too many parents do not, nor will not accept the fact that their young Dr. Jekyl turns into the infamous Mr. Hyde when the family car is 2 blocks from home.

We would recommend the 1st. drivers license, issued to a new driver after having completed his drivers training and having passed his test be issued 1- a separate; distinct color and be noted "provisional drivers license"- This for the term of 1 year. We would limit his driving to the hrs. of 6:00 AM to 12:00 PM., and further provide apace on the reverse of the license where any magistrate or judge would be required to list any moving violation conviction, and upon the second conviction , the 2nd. conviction magistrate would be required to immediately take possession of such license and forward same to Trenton with the Accompanying necessary documents.

continued

this loss of license should last a minimum of 6 months and be effective immediately upon the 2nd. conviction.

Further along the theme of youth; speed, it is inconceivable to us that a 1970 Chevrolet could have grown an engine designed to power a 1970 Oldsmobile, without someone asking "how" or "why". Common sense would dictate that many of these "hot" engines werenever a legitimate purchase. We advocate the employment of additional spot checkers at state inspection stations, for the purpose of inquiring "how come". To assist in this discouragement of overpowered autos, not designed for such speed and to further discourage theft and stripping of such new cars we advise the following.

1. Require all dealers of new or used cars to record motor # on title as well as serial#.

2. Require anyone purchsing a replacement engine take a bill of sale for said engine to the nearest motor vehicle dept. and pay an appropriate fee to have the title changed to so indicate such change.

Those steps, combined with spot checking at MV inspection stations could only have favorable results. Auto theft, in addition to being a great expense to all insurance Comapnies and auto owners is one of the great hazards of driving today. One never knows when that oncoming car, pulling into your lane to pass may be driven by a 14 yr. old who is travelling at 75 M.P.H andhas never sat behind the wheel of an auto before. We have heard and seen many public service announcements regarding "lock your car". It's time to do something positive about this. Particularly as respect to the car owner that leaves his car with the keys hanging in it with theidea that he will be "back in a second."

continued

Gentlemen, it's time to penalize such operators, either by local or state-wide legislation.

We fully realize that some of the prior proposals are unpopular, or on the surface would appear difficult to implement, but we sincerely believe all of these ideas to be worth the most concerted effort. These are only some ideas we find are of the greatest current importance.

We thank you for the opportunity of having been permitted this audience, and wish to express our willingness to respond to specific problem areas at any future date, with any group or commission.

We would be most happy to respond to any question, however the responses of individual parties have do not necessarily reflect the opinions of the South Jersey Claims Men's Associations Executive Committee.

Thank you.