

Legislative History for Connecticut Act

SB 230 PA 380 Veto? 1978

Senate 2658-2661, 2678-2702, 2751-  
2753, 3270-3313 (76p)

House 4835-4874 (40p)

Judiciary 977, 980-983, 995-1007,  
1013-1044, 1052, 1060-1063, 1070-1072,  
1075-1076, 1079-1081, 1083-1117, 1122, 1127-1135,  
1140, 1143, 1521-1522 (112p over)

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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GEN. ASSEMBLY  
SENATE

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THE CHAIR:

Question is on the adoption of the Consent Calendar. The machine has been opened. Please cast your vote. The machine is closed and locked.

TOTAL VOTING	35	<u>SB8, HB 5585, HB 5618, HB 5861, HB 5527,</u> <u>HB 5962, HB 5809, HB 5240, HB 5770,</u>
NECESSARY FOR PASSAGE	18	<u>HB 5173, HB 5273, HB 5117, HB 5473,</u> <u>HB 5661, HB 5673, HB 5442, HB 5471, HB 5528,</u>
YEAS	35	<u>HB 5535, HB 5238, HB 5441, HB 5652, HB 5655,</u> <u>HB 5686, HB 5086, HB 5729, HB 5733, HB 5787,</u>
NAYS	0	<u>HB 5743, HB 5827, HB 5141, HB 5302, HB 5304,</u> <u>HB 5505, HB 5610, HB 5620, HB 5643, HB 5914,</u> <u>HB 5997, HB 6011, HB 6003, HB 6009,</u> <u>HB 604, HB 5150, HB 5303, HB 5051.</u>

The Consent Calendar has been adopted.

SENATOR LIEBERMAN:

Mr. President, I'd move for a Suspension of the Rules to allow for immediate transmittal to the House of all matters which we've adopted thus far today that should go to the House.

THE CHAIR:

Without objection, the Rules are suspended for that purpose.

SENATOR LIEBERMAN:

Mr. President, I'd ask now that we go to page 3, Calendar 574. There is one substantial Amendment that is here. There is another on the way and I would expect that while we're debating the first, the second may arrive.

THE CLERK:

Page 3 of the Calendar, Calendar 574, File 473, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for Senate Bill 230, AN ACT CONCERNING PRODUCT LIABILITY ACTIONS.

THE CHAIR:

Senator De Piano.

SENATOR DE PIANO:

Mr. President, I ask that that matter be passed temporarily. I have not

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been able to see the Amendment that we're talking about. I don't think that any other Senator has an Amendment on their desk and I'm asking that the matter be passed temporarily.

SENATOR LIEBERMAN:

Mr. President, with respect to Senator De Piano, the Amendment in question is Senator Guidera's which I believe has been in our possession for a couple of days. The other Amendment coming is co-sponsored by Senator Flynn and Senator Barry and I believe he may be in possession of it right now. It just came up.

SENATOR DE PIANO:

Mr. President.

THE CHAIR:

Senator De Piano.

SENATOR DE PIANO:

Once again, we're confronted with a situation that we're asked to vote on a major piece of legislation which has far reaching effects and nobody has had a sufficient amount of time to study the Amendments. We got a proposed Amendment coming up and I think we ought to have an opportunity before we vote on any thing or talk about anything to see what Amendments are going to be filed on this Bill. I don't think it's fair to any Senator who's representing his constituency to have to be in a position that while he's sitting here listening to an argument that an Amendment is dropped on his desk and he's supposed to read it and know what it's all about. I think that it's unfair and I'd like to have this passed temporarily.

SENATOR LIEBERMAN:

Mr. President, I would be prepared to pass it for a time certain. I intend to take this matter up today and I'll be prepared to pass it until 5:15, at which

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time both Amendments should be in possession of the members of the Circle and we can then proceed to this measure.

THE CHAIR:

Well, we'll see what the tolling of 5:15 does for us. Shall we? Yes, Senator De Piano.

SENATOR DE PIANO:

I don't know if 5:15 is a sufficient amount of time because they're still working on the terminology of the Amendment and I suppose it's going to take at least ten minutes or fifteen minutes to come up to this Chamber and, therefore, it gives us a big five or ten minutes for which to study the Amendment, see its ramifications on this particular piece of legislation and expect us to sit here and intelligently vote on it.

THE CHAIR:

Well, it would seem to me that if there is the consensus of the Circle is not to take the matter up, then I believe that that determination will be made at that time.

SENATOR LIEBERMAN:

Through you, I would agree entirely that if any Member of the Circle wishes when the Bill comes up, to make a Motion to pass retain, I will oppose it, but it is certainly in order.

THE CHAIR:

That would be a proper Motion, certainly. Yes, Senator De Nardis.

SENATOR DE NARDIS:

Mr. President, I don't want you to assume that this is just a two person situation here. There are other people who would like to take the Bill up who have been waiting for a couple of weeks who have read the file copy who know

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something about the Amendments and there is really no reason to delay much beyond the 5:15 hour that the Majority Leader suggests.

THE CHAIR:

Well, that is neither for you to say nor the Minority Leader, nor Senator De Piano. It will be for the Circle to say when the proper time comes. At 5:15 we will make that determination and then Senator De Piano can make whatever Motion he cares to.

SENATOR LIEBERMAN:

Mr. President, in the meantime -

SENATOR OWENS:

Point of Order, Mr. President, if I might ask a question through you, to the Majority Leader. Do you know what the plans are with respect to this evening and a session and what the plans are - if we could get that idea, maybe that will give us - in other words, if we are going to be working into the evening, then it might well be that we could get a little more time and work this problem out. But if Senator Lieberman has already - in other words, if there's a time certain that we're going to adjourn today, then, of course, I can understand Mr. Senator Lieberman's rush to judgment in this matter.

SENATOR LIEBERMAN:

Mr. PRESIDENT, through you, I have no plan. It depends on the length of the debate on the issues before us. I think respectfully to my colleagues - some want to debate this today and some do not and I believe that may be what is at issue here.

THE CHAIR:

Well, let's get on with some other business, meanwhile.

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THE CLERK:

Clerk will now turn to page 3 of the Calendar, Calendar 574, File 473, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for Senate Bill 230, AN ACT CONCERNING PRODUCT LIABILITY ACTIONS.

SENATOR LIEBERMAN:

Mr. President, might I ask that the Clerk announce that we're about to take this so that the people interested can be in the Chamber?

THE CLERK:

The Senate is about to debate the Products Liability Bill. Would all Senators who would like to, return to the Chamber. All Senators return to the Chamber for AN ACT CONCERNING PRODUCT LIABILITY ACTIONS.

THE CHAIR:

The Chair has been read. The Chair recognizes Senator De Piano.

SENATOR DE PIANO:

Yes, Mr. President. I'm going to ask that it be passed temporarily once again, because I feel that we have not had sufficient time to digest this Amendment and I may want to file an Amendment on the Amendment itself and I've just gotten the Amendment about six or seven minutes ago.

THE CHAIR:

Senator Rome.

SENATOR ROME:

Mr. President, through you to Senator De Piano, you wouldn't need an Amendment until we know, if in fact, the Amendment passes. If in fact, it passes, you can make a request to have it ruled substantial, in which case you do have the time that would be necessary.

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SENATOR DE PIANO:

Through you to Senator Rome, I think I should be given the courtesy, as Chairman of this Committee, to have sufficient time to review the Amendment that has just been forthcoming. It's been placed on my desk and it's a major piece of legislation that I don't think that we should hammer through this Senate Chamber in such a haphazard manner. I think we ought to have an opportunity to see the ramifications of this Amendment and to determine whether or not we can vote on it intelligently. Certainly - I might say this, Mr. President, that there are many other -

SENATOR ROME:

The point is well taken. I withdraw my -

THE CHAIR:

Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, might I ask, through you to Senator De Piano, how much time he feels he needs?

THE CHAIR:

Senator De Piano.

SENATOR DE PIANO:

One month.

SENATOR LIEBERMAN:

Mr. President, I would ask that we put the Motion to pass temporarily to a vote because I don't - with all respect to my dear friend, I think really he doesn't want to debate the issue. I think it's been on our Calendar and we should debate it and face it and do what we will with it.

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SENATOR DE PIANO:

Mr. President, I don't think that expresses my view. That is what the Senator from New Haven has just indicated and I think that as a matter of courtesy, I should be given a sufficient amount of time to review the Amendment and not be put in a position that apparently I am in at this time.

THE CHAIR:

I think the only possible resolution that we have an issue here that's been joined. Did you move, Senator De Piano, to pass temporarily?

SENATOR DE PIANO:

I made such a motion at the beginning of the statement.

THE CHAIR:

Very well. The motion then, is to pass this matter temporarily. It's Calendar 574. It's a procedural motion and it is not debateable. Consequently, in the nature of the situation, we'll ask for a Roll Call vote.

THE CLERK:

Immediate Roll Call has been ordered in the Senate. Would all Senators please be seated. An immediate Roll Call has been ordered in the Senate. Would all Senators please take their seats.

THE CHAIR:

Motion that has been made is to pass Calendar 574 temporarily. If you vote yes, you will vote to pass. The machine is open. Please cast your vote. The machine is closed and locked.

TOTAL VOTING	34
NECESSARY FOR PASSAGE	18
YEAS	13
NAYS	21

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The motion to pass temporarily has been lost.

THE CHAIR:

Senator Fauliso.

SENATOR FAULISO:

Mr. President, I'm utilizing what I think is an extraordinary remedy because I've never seen this done before, actually to deny someone a motion to pass temporarily and I'm saddened by that. I, therefore, move that this matter be tabled.

THE CHAIR:

Question is on the Motion of Senator Fauliso to Table.

SENATOR LIEBERMAN:

Point of parliamentary inquiry, Mr. President.

THE CHAIR:

Sure. Go ahead.

SENATOR LIEBERMAN:

Would you state what the motion to table requires to prevail? What vote is it?

THE CHAIR:

My recollection is a simple majority, Senator. Is everybody here? Announce the Roll Call and we'll go right into the vote.

THE CLERK:

Immediate Roll Call in the Senate. Would all Senators please be seated.  
Immediate Roll Call in the Senate. Would all Senators please take their seats.

THE CHAIR:

Motion is to table. The machine is open. Please cast your vote.

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The machine is closed and locked.

TOTAL VOTING	36
NECESSARY FOR PASSAGE	19
YEAS	12
NAYS	24

The Motion to Table has been lost.

I would say that we have a matter before us.

SENATOR FAULISO:

Mr. President, I now move for a recess for 15 minutes.

THE CHAIR:

Motion has been made to recess for 15 minutes. All in favor say aye.  
Opposed? The ayes have it. We will stand in recess for 15 minutes.

Recess is over. The Senate has reconvened.

The Clerk is going to read the Bill.

THE CLERK:

On page 3 of the Calendar, Calendar 574, File 473, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for Senate Bill 230, AN ACT CONCERNING PRODUCT LIABILITY ACTIONS.

THE CHAIR:

Who is going to move the PRODUCTS LIABILITY BILL? Whoever, is all right with me. Senator Guidera.

SENATOR GUIDERA:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill. Mr. President, I think the Clerk has an Amendment with my name on it.

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THE CLERK:

Clerk has Senate Amendment, Schedule A, File 473, Substitute Senate Bill 230, LCO 3855. 3855, offered by Senator Guidera.

SENATOR GUIDERA:

Mr. President, I move acceptance of Senate Amendment, Schedule A and passage.

THE CHAIR:

Would you care to explain it, please, Senator?

SENATOR GUIDERA:

Yes, Mr. President, I'd like to explain it briefly. It is highly technical if you read the copy that's before you so that I'd like to have the opportunity to go ahead and to explain to the Members of the Circle, just exactly what the Amendment accomplishes.

Let me start off by saying that this Amendment, its thrust, its purpose and its intent, is to soften the impact of this particular legislation and to make it fair, not only for manufacturers products, but for persons who may use those products and eventually become injured as a result of the use of those products. My personal opinion was that the Bill that's in the file swings the pendulum too far in the other direction. I think there are a great many injustices in the present state of the law. Certainly it is unfair to people who manufacture machinery and equipment as it stands today. But the file copy, in my opinion, swings the pendulum too far in the other direction and it is the specific intent of this particular piece of legislation to let the pendulum stop in the middle and to balance the equities involved, so that manufacturers and persons who may be injured by machinery and equipment will know that there is a fair rule of law for all concerned. The passage of this Bill, of course, with the Amendment attached

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to it will tend to significantly reduce the cost or at least hold down the costs in the future, to manufacturers by way of insurance premiums and that sort of thing.

The Amendment accomplishes the following. First, it deletes the reference to the common law theory as contained in Lines 19 - excuse me, in Lines 13 through 23 of the Bill because it's already the law of the State of Connecticut. Second, it makes it clear in Line 59 that the 8 year statute of limitations will commence running when the product is sold at retail or leased or bailed to a consumer and it is my intent and I think the common usage of the word would dictate, that the common usage of the word "consumer" means a bona fide purchaser and not a dummy corporation or a sham sale or a sham lease or a sham bailment. The trouble with the language in the main Bill is that the statute would begin to run when a sale took place to a middleman or to a dummy corporation who might stick it on the shelf for a period of years and well before the time that a consumer might actually buy the product.

And that middle man or that sham corporation or whoever it may be might not sell it at retail for a period of years. This stops the statute of limitations from running until the point that it is sold at retail, leased at retail or bailed at retail to a consumer. Thirdly, the Bill changes - the Amendment changes the main Bill to make it clear in Lines 69 to 76, that a written contract for a different period of time, for the commencement of an action, would control and would supercede the language of the Bill.

The language in the file is just to the opposite. Fourth, it changes the main Bill in Lines 78 through 81 to make it clear that the Bill will not apply to law suits pending on the effective date of the Bill. Fifth, it changes the language in Section 4 by setting up a less restrictive rule for modification or

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alteration of the product. It sets up the test of substantial alteration or modification instead of any alteration or modification. Certainly, in my opinion, the Bill as it appears in the file, is defective in that regard because any alteration or modification is much too loose and would allow a manufacturer of a product who really did contribute to the injury of an employee to say that the product was changed in some minor respect. This makes it clear that there must be substantial alteration or modification before there is any escape from liability.

Six, it deletes Sections 5 and 6 in their entirety. Those are Lines 98 through 139 and those sections deal with admissibility of evidence, in section 5 and the state of the art which has received a great deal of negative criticism from some of the members of this Circle and that is in Section 6a and b. In Section 7c-1, Lines 168 through 171, the language of the Bill is changed to provide that it must be shown at trial that the product was the approximate cause of the injury, rather than the immediate physical and producing cause of the injury and thereby sets up a much more intelligent and less restrictive test to apply in the trial court.

Section 7c-2a is changed to delete the words "or discoverable under the then existing state of the art" which appear in lines 178 and 179 and adds language that the warnings accompanying the product must not only spell out risks known to the manufacturer, but ones also which, with reasonable diligence, should have been known. This, in my opinion, is a much fairer test.

Ninth, state of the art is deleted in Lines 185 and 186. Tenth, in Section 7c-4, that section is deleted in its entirety which are Lines 207 through 210, thereby eliminating the requirement that it should be shown at trial, that

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an alternative use of the product, including no use at all, would have reduced or avoided harm to the user of the product. Certainly the test that was in the Bill would be unfair to somebody suffering an injury.

Eleventh, Line 212 is changed to reflect the deletion in Section 7c-4. Twelfth, change in the Bill is that Section 9 is changed to provide, in Lines 26 and 265, that the negligence, fault or responsibility of the injured party shall include his unforeseeable misuse of the product. Thirteenth, a new section 9e is added bringing in the doctrine of comparative negligence.

Workmen's Compensation sections of the file Bill are left in tact. I personally think, Mr. President, wherever you are, that in fact, this Amendment makes it a fair piece of legislation, worthy of consideration by every member of this Circle. Certainly we know that the situation that exists today is unfair in that the statute of limitations can continue to repeat itself over many, many years and a product made today may result in an injury 85 years from today and in fact, result in a loss to the manufacturer, who may or may not be in business at that time or to an insurer who insured him at this point. It seems to me that this is a fair - I don't want to call it a compromise - it's just an attempt to bring the language in the Bill into stricter conformance with what I think a majority of the Members of this Circle want.

I would move the Amendment, Mr. President.

THE CHAIR: (Senator Fauliso in the Chair.)

Will you remark further? Senator Flynn.

SENATOR FLYNN.

Yes, Mr. PRESIDEnt. I will remark. The Bill before us - the Amendment which has been discussed is something I spent a good deal of time on over the past several days. The difficulty with the Bill in the file is that it conjoins so man different things in a manner which makes the total Bill undigestable. I

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think the Amendment that's before us addresses itself to some of those things, but I don't support it because of the confusion that it leaves in others and I call your attention first, to Lines 8, 9, 10, 11 and 12. These remain in the Bill even if this Amendment were to be adopted.

What, for example, does listing mean? What does certifying mean? What does advertise mean? In relation to the type of cases that we're talking about. Secondly, if you go further in the Bill, you note that in the definitions there is no definition anywhere in it of the word consumer. Section 3 which comprises Lines 42 through Lines 97, creates a statute of limitations which would be 8 years maximum from the date of original sale. However, it doesn't restrict it in any way as to the type of product we're talking about. The provision left in in section 4 with respect to alteration really has to be read together with section 2. And when you read those together, you can find that you're going to have this result. If a product is altered or changed in any substantial way, then the original manufacturer is not going to be able to be held responsible so that, for example, if you have some sort of chemical that is combined with another kind of chemical, once that combination takes place, that is a substantial alteration. You no longer have the first element, but you now have a new compound and you have a situation where the injured party would have no redress, in my opinion.

The other important aspect of this that I bring your attention to relates to rights of subrogation and I don't think that most people understand what those are, but what it means simply is that in the event the judgment is issued or rendered by a court in a product liability action, for example, for \$100,000.00 if, at that point in time, the injured party gets a judgment for \$100,000.00, and the injured party has, at that point in time, received \$50,000.00 worth of

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weekly pay benefits and medical bills paid, that's deducted off, in effect, by either his employer if his employer is self insured for Workmen's Compensation purposes or by his employer's insurance company. And the difficulty with that is, not in the usual case, but in those situations where you have self insurance, because what this didn't contemplate was the situation that the State of Connecticut is in. It does not insure itself against Workmens Compensation so what you must necessarily have then, is a situation in the example where I've given, where the \$50,000 is taken off the \$100,000 that the individual would have gotten and that, enures to the benefit of the insurance company who pays the third party, but the state does not receive the \$50,000 back.

So that there is a credit being given from moneys paid to whatever party insures the maker of the product that caused the injury and that \$50,000 credit does not go back, either to the state of Connecticut or to whatever city might be involved.

I think that is a flaw in that section and one which probably would not be contemplated, but one which necessarily has some impact. The other aspect of this that I call your attention to is section 9 and section 10. Section 9 of the Bill, as it would be amended by the Amendment before us, would in effect, change radically the doctrine of strict liability by providing for comparative negligence. So that in the example I gave you, if the individual got a judgment of \$100,000, and it was determined that the injured party was 40 percent negligent and the manufacturer of the product was 60 percent negligent, that the injured person would receive only a fraction of the judgment that we're talking about. Now, why do I point these things out? It's not because I don't think that some start shouldn't be made in this area. I do. I point them out because the Bill, even as amended, is so vague that I think it may well die in the next

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Chamber or require a veto. It substantially effects so many of the rights I just indicated, that I think if either of those things do happen, that you're going to wind up with a situation where it's constitutionality is challenged and probably successfully.

And above all, I think if we are going to do something in this area, we must be fair, and evenhanded about it. And even with the Amendment, that result does not occur. I will, after this Amendment, offer an Amendment which addresses itself to manufacturers of machinery used in manufacture or fabrication of products which I think does make a start. Which I think in a way is drawn as defensible which does not leave a situation where moneys which are now reimbursed to cities which may be self insured or to the state which is self insured, no longer will be reimbursed. It does not create a situation where you have the ambiguity found in Lines 8 thru 12 where we use terms like listing and certifying that really have no applicability to this kind of case and are susceptible to misinterpretation. It does not create the problem that I think we still find with this Bill, as amended, where one kind of compound which may be dangerous in its nature, because it's toxic or noxious, once combined with any other chemical element, will excuse the original manufacturer from any liability.

Those are things which I don't think are really defensible. I don't think they're necessary to meet the problem that we have. I believe a start should be made and I have voted that way today and I spent several days in trying to reconcile some of these things, in listening to some of the arguments and in reading the file copy and the proposed Amendments and the existing statutes. I'd ask the Circle to consider at least, some of the arguments I've made, because I think that what we may be doing here, if we do pass this, is pass it with the hope that somehow it might be cleaned up downstairs or that some other remedial action might

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taken because, as this stands itself, once passed, you have to reconcile yourself to certain, inevitable results and those are, first, that your - despite what has been said - if this is passed this way - substantially changing the doctrine of strict liability. That whole doctrine exists only for products which are especially dangerous in themselves.

And if you provide for comparative negligence, that's 60 percent, 40 percent - the example that I gave you, you're going to substantially affect what someone may be legitimately entitled to, but with no assurance that the rate of insurance someone pays for products liability insurance will be diminished and with no assurance that the Connecticut manufacturer will be able to deal any better with the severe problem he now has, both in cost and availability of products liability coverage.

Secondly, you inevitably are going to create a situation where the injured person has offset against what he receives, a total dollar amount of whatever he has been paid to that point in time by way of Workmen's Compensation and yet, the city which may be self insured or the state which may be self insured has absolutely no recourse to get that reimbursement back.

Third, you do leave a situation, if it passes as we're talking about now, where the alteration of the product substantially, which can happen where you include all kinds of products, talking now about consumer items, talking now about chemicals, where that alteration occurs at the moment in time that that occurs, you then leave each and every person who may be injured and legitimately entitled to some redress in everyone's view, without any remedy. And that's something that should be understood at the time you do this.

Further, when you include all of these kind of items, other than manufacture,

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for example construction, or design, or formula, or development of standards, or words like listing and certifying, there are no definitions of any one of those acts in this particular legislation; whether it's in the original file copy or as amended. And what you have to realize is simply that to the extent that those remain in there, vague and ambiguous, you walk away from here thinking that you've done something but it's inevitably going to be subject to attack as being vague and constitutionally ambiguous.

And the result is, we have a piece of legislation, sometimes as we have had in the past, which benefits no one, which creates litigation, and which must ultimately be cleaned up at a later time. I personally am prepared to make a step in dealing with the problem of product liability but I sincerely say to you, despite the effort that has gone into this by Senator Guidera and I know the time that he has spent, that I honestly don't think that this is the best way to do it.

THE CHAIR:

Senator Ciarlone.

SENATOR CIARLONE:

Thank you, Mr. President. Mr. President, I rise to oppose the Amendment and the Bill. In my judgment, the Amendment and the Bill that we have before us does nothing for the consumer. As a matter of fact, I think it takes away rights that he had before. Further, I believe that this Bill is loosely drafted as Senator Flynn pointed out. I think the test of time in the courts would probably find that it's probably unconstitutional. I also call the attention of the Members of the Circle that we're asking Connecticut citizens to be bound by different liability. If a manufacturer of a piece of equipment in Connecticut leaves his equipment here in Connecticut that that person who is injured on that

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machine is limited by the liability we have in the Bill before us. If that machine is sold to another state outside of Connecticut, then in fact, the person that is injured on that machine has different liabilities. So is that fair for our Connecticut citizens?

Further, one of the things that's said about this Bill - that it's going to curtail or further control the increase of insurance rates. I say to all of you - as I look around the Circle, many of you were here with me three or four years ago - we got ourselves involved in a no-fault insurance situation and many people voted for no-fault under the thought or the guise that their rates would probably not escalate as fast or in fact, perhaps go down. Well, I just ask you all just to consider what your insurance bill is on your cars and just think of this in that same nature.

I think the Bill that we have before us is a Bill that should be sent back to Committee. It should be defeated and I think there should be more thought put into it because, as we all know, we've been on this since 5:00 and I'm not an attorney as you all know, but we have six or seven in our caucus, and there are 12 different opinions. So I think it should go back to Committee and reconsidered next session.

SENATOR BARRY:'

Mr. President, I want to associate myself with the remarks of Senator Flynn and Senator Ciarlone on the Amendment and will not elaborate on the reasons for my objection, but I would like to ask Senator Guidera, through you, Mr. President, if in the Workmen's Compensation section, as in the file copy, which I believe is untouched by Senator Guidera's Amendment, are we to understand that in Line 231, that not only in a judgment against a third party the amount paid out by a liability carrier for the manufacturer, would be reduced by the amount

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paid by the Workmen's Comp carrier, but would that also apply or is it intended to imply to a negotiated settlement which would be the norm rather than the exception? If so, that isn't what the section says.

THE CHAIR:

Senator Guidera.

SENATOR GUIDERA:

Mr. President, I did not draft this particular piece of legislation and my Amendment does not speak to that particular section of the Bill. It is, however, my understanding that the amount would be reduced by the amounts paid under Workmen's Compensation now. Most of the arguments I've heard today and to answer Senator Barry in this respect, all of the comment I've heard from the last four or five speakers has dealt with sections of the Bill which remain untouched by my Amendment. I would be happy to support all of the comments that or most of the comments that Senator Flynn made, through further Amendments. This Bill has been before us for quite some time. If Senator Barry wishes to direct an Amendment to the section that I haven't directed an Amendment to, I'd be more than happy to support him on it. I simply think that if you look at the comments that have been made about definitions, the kind of product we're discussing here, substantial change in products, Workmen's Compensation section, if anybody wants to offer an Amendment, as I have done, I have tried to change just sections that I thought were particularly onerous and were ill drafted. I might have forgotten a few things. If Senator Barry wants to introduce an Amendment, I'd be happy to support it, Senator.

THE CHAIR:

Senator Barry.

SENATOR BARRY:

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Workmen's Compensation section and Senator Flynn and I and I believe Senator Sullivan, are on an Amendment which will follow this one which extracts from the file copy, the entire section having to do with Workmen's Compensation as well as operating on many of the other sections in this Bill. And I might say that we will talk to that Amendment when it comes before us, but if we leave this alone, I think we have a serious discrepancy in this section, and, therefore, I would urge rejection of this Amendment and wait for the next one.

THE CHAIR:

Senator Guidera.

SENATOR GUIDERA:

Mr. President, very briefly, because I know everybody wants to vote and to get on, I'm not the beginning and end of it all. That's for sure. And there are plenty of other Amendments that are pending here that are worthy of consideration and for vote in this Senate in favor of those Amendments. The point I'm making with this Amendment is that if you don't vote for this Amendment, you have a worse piece of legislation for those who are opposed to the legislation in total. This Amendment makes the Bill a better Bill in a number of respects. It does tighten up some language. Does this Bill need some definition? I think it does. My Amendment doesn't speak to that. I hope somebody has an Amendment that defines consumer. I hope somebody has an Amendment that defines what selling or bailing or leasing, at retail, means. These certainly would be very helpful. As far as the definition section is concerned, I might point out that courts give to language in statutes a normal and regular usage. And I don't think it's going to be difficult for them to understand the intent of the legislature and the actual meaning of the language of word like consumer and retail. They're words in common usage. This Amendment is better than the basic Bill. That's all I can say about

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my Amendment. I know that in this Circle, for the last 48 hours, there has been discussion on the very points that are being discussed now and I am beyond understanding why someone hasn't come up with the Amendments that are being now discussed by the Members of the Circle.

THE CHAIR:

Question then is on the adoption - Senator Flynn.

SENATOR FLYNN:

Mr. President, I would, if it hasn't already - ask that it be moved by Roll Call.

THE CHAIR:

Will the Clerk announce a Roll Call in the Senate please.

THE CLERK:

An immediate Roll Call has been called in the Senate. Will all Senators please be seated. An immediate Roll Call has been called in the Senate. Would all Senators please take their seats.

THE CHAIR:

Senator Flynn.

SENATOR FLYNN:

Mr. President, while we're waiting, I want to reiterate what I said earlier at the start of my remarks. I certainly am not finding fault with Senator Guidera for the work he has done. I've done some discussion and work with him on this issue and I want to make that clear if I didn't make it clear enough at the start of my earlier remarks. The fault is not with him certainly or implying any personal criticism but simply with what we have before us.

THE CHAIR:

The machine is open. Please cast your vote, on Senate A.

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The machine is closed and locked.

TOTAL VOTING	36
NECESSARY FOR PASSAGE	19
YEAS	22
NAYS	14

Senate A has been adopted.

THE CLERK:

Clerk has Senate Amendment, Schedule B, File 473, Substitute Senate Bill 230, LCO 3887, offered by Senators Barry, Sullivan and Flynn. 3887.

THE CHAIR:

Senator Flynn.

SENATOR FLYNN:

Mr. President, I would move adoption of that Amendment.

THE CHAIR:

Will you explain it, please, Senator?

SENATOR FLYNN:

Yes, Mr. President. I think some discussion as to how this Amendment came to be would be helpful because it resulted from some very serious review of the file copy and some work by some of us who wish to do something this year and make a start in this field. And I'd ask the Senators to refer to the file copy because in order to understand the Amendment, I think we've got to refer to the file copy. The difficulty with the file copy is that in section 2, it does not limit the kinds of products that we're treating in any way or separate them off. And the difficulty with that is that certain products I think justify different treatment. For example, I think you can make a reasonable argument that the manufacturer of machinery used in manufacturing of products or other equipment

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should not be held in by a telescoping statute of limitations for thirty or forty years. But look how far beyond that particular element we're expanding this. We not only deal with those manufacturers who I think many of us are sincerely concerned about, but we also deal with construction. We deal with design, with something called formula, whatever that is, development of standards, whatever those may be; preparation or even assembly of goods, listing and certifying.

The difficulty with section 2 also is that although there are definitions here of some things, there are no definitions of some of the key elements of this Bill which I alluded to earlier and Senator Guidera alluded to earlier also. No definition, for example, of just who is contemplated to be a consumer. There is no definition of what is first at retail sale. For example, if you're talking about manufacturing equipment which is probably the principle thing that I am concerned about, normally, in ordinary lots, if you're selling a sugar mill or selling a banberry mixer or some other item of heavy machinery, you don't speak of that as at retail sale. It's usually a term or a word used in conjunction with commerce of very much more pedestrian or smaller items.

The other difficulty that I found in trying to do something with Section 3, the statute of limitations, was that you can make an argument, I believe, that that should not telescope out with respect to the kind of machinery that's addressed in this Amendment. However, that's much more difficult to do with various kinds of other items, especially when you read this section with the other sections of the Bill, because you can have a product cast out upon the market, not a piece of machinery. For example, some particular chemical element, once it's combined with something else, under this Bill, no matter how dangerous it is, if it wasn't adequately labelled, if it wasn't adequately posted with cautions, if

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it wasn't adequately packaged to prevent jarring in handling, once that's combined with some other element, you have no more further right of action against the original manufacturer of that product, because it has been substantially altered, as this Bill, as amended, provides.

Further, I had originally hoped that we could eliminate the entire subrogation clause and I did so for some very simple reasons, because I think that sometimes encourages the commencement of these kinds of operations or these kinds of legal law suits that are brought. But what you've been left with here is a situation where the person who is injured gets less - if he's been paid \$50,000 under Workmen's Comp, it goes off his award. The third party or his insurance company that must pay that out, pays \$50,000 less, getting the benefit of what the city or the state may have paid and yet the state of Connecticut, or the city that's involved, receives no return reimbursement.

I think that, Mr. President, is difficult for us to justify and if this kind of language was to have been in here, there ought to have been some way to carve out some exception. I must confess that in my own deliberations I felt that should be left in for the reasons I've outlined. But as I reflected upon all of the elements that we're concerned with, it became clear to me that putting it in created the kind of problem I've described.

What the Amendment does is deal with all actions brought for personal injury or for death or for property damages caused by manufacture of machinery used in the manufacture or fabrication of products. I say those words because that's where the real problem is in Connecticut today. It's not with somebody who's selling consumer type of items. It's the heavy manufacturers who have some of the biggest problems, who have the difficulty in getting insurance or, if they can get it, find difficulty in affordability or, if they can afford it, are con-

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cerned about where it may escalate in the future. This deals with those people. It provides that no action can be brought within a flat 8 years from the date that that particular piece of equipment was originally sold. So that it provides a benefit to that kind of manufacturer upon the passage of this Bill, by preventing the situation where having made a reasonable profit, maybe 40 years ago, he now finds that 40 years later he's being sued for an item that may have passed hands ten times because the 8 years telescoping out, because of resales.

The third thing that it does is to provide an exception under the existing statute of limitations for these kind of actions excepting these kinds of suits only against the kinds of equipment manufacturers I've described. The other thing that it does is to provide that no manufacturer of the kind I've described, should be liable to anyone if having once affixed some sort of a warning or some type of a caution to the product, that is removed by somebody else, after he sells it. Which addresses another concern which in discussion with some of these people, I saw met.

As with so many other issues that come before us, it's a difficult one because it's difficult for us to contemplate all of the aspects of the decision that we're confronted with. We could pass this Bill as it's already been amended, and hope, at the worst, to clean it up next year and that we might be forgiven for the damage done in the meantime. Or we can, if we wish to make a start, make a start with something that makes some common sense. Let's take what is a very complex issue and start with one segment of it and attack it and approach it in a way which we can defend when we leave here. In a way which can be readily understood by the people who are going to be bound by this law; in a way where at least we don't have what most people here will admit tonight that there are some serious problems in definition; some serious problems in language and some

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serious problems in scope. It's difficult, as I say, because it comes to us late. We spent a long day. Many of us have had many problems and things on our minds over the course of a considerable period of time. But I think that if you look at the Bill in the file before us, as I have over the last several days, you'll see that it's not that easy to rescue parts or segments of it, as much as I tried to. My original approach was to try to keep as much of this original file copy of this Bill as we could, without creating a situation which might result in its defeat, either in the House or by veto or in the courts.

I must honestly tell you that it has not been easy. There are conflicting interests and there are competing demands to be met, but if we're really out here to make a start and to make some sensible and some fair and some even-handed approach to what I consider a very serious problem, then let's start with the way that makes some sense. Because unless you really have the answers to some of these other questions, this Bill should not leave this Chamber without this Amendment.

THE CHAIR:

Will you remark further? If not, the question is on the adoption of Senate Amendment, Schedule B. Will you call please, for a Roll Call in the Senate.

THE CLERK:

Immediate Roll Call has been ordered in the Senate. Would all Senators please take their seats. Immediate Roll Call has been ordered in the Senate. Would all Senators please be seated.

THE CHAIR:

Question now is on adoption of Senate B. Senator Strada. The machine is open. Please cast your vote. The machine is closed and locked.

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TOTAL VOTING	36
NECESSARY FOR PASSAGE	19
YEAS	15
NAYS	21

B has been adopted. I'm sorry. Of course - defeated. Thank you.

SENATOR FAULISO:

Mr. President, the Senate Minority Leader would like to confer for a couple of minutes. May we stand at ease? Apparently he has a suggestion to make which he wants to discuss with Senator De Piano.

THE CHAIR:

We will stand at ease momentarily. Now, B has been defeated. We're ready for the Bill. Senator Rome.

SENATOR ROME:

I move adoption of the Bill as amended and ask for a Roll Call.

THE CHAIR:

Question now is on the adoption of the Bill with A attached.

THE CLERK:

An immediate Roll Call has been ordered in the Senate. Would all Senators please be seated. Roll Call in the Senate. Would all Senators please take their seats.

THE CHAIR:

I've opened the machine. Please cast your vote. The machine is closed and locked.

TOTAL VOTING	36
NECESSARY FOR PASSAGE	19
YEAS	23
NAYS	13

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This, indeed, has been adopted.

Senator Strada.

SENATOR STRADA:

Yes. Would you proceed with the Calendar, please? Madam Clerk, would you proceed with the Calendar?

THE CHAIR:

Anything in particular you'd like? I think we've gone through our go.

SENATOR STRADA:

I think if we have, we'll be over on page 27. If I'm correct - the Resolutions. May we start there and proceed there, Madam Clerk?

THE CHAIR:

Senator Rome.

SENATOR ROME:

Mr. President, through you to Senator Strada, Senator, have we taken all the items on that Consent Calendar that have been passed thus far?

THE CLERK:

Yes. We had PT'd some. Everything has been passed that we have done. All the Consent Calendar. We have passed temporarily, a few items, but we are back to about where Senator Strada has put us, under resolutions.

SENATOR ROME:

I'm sorry, Madam Clerk. My question was those items that were transferred to the Consent Calendar, have all that have been transferred been voted?

THE CLERK:

No.

SENATOR ROME:

Mr. President, through you to Senator Strada, is there a possibility that we

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NECESSARY FOR PASSAGE	17
YEAS	33
NAYS	0

The Consent Calendar is adopted. Excuse me, Senator Strada.

SENATOR STRADA: HB 5921, HB 5434, SB 634

Mr. President, I now move for Suspension of the Rules for immediate transmittal of all no starred and single starred items to the House or to the Governor.

THE CHAIR:

Hearing no objection - Senator De Piano.

SENATOR DE PIANO:

Mr. President, I object to the Suspension of the Rules in regard to SB 230 Calendar 574.

THE CHAIR:

Except for that matter, all - except for the matter pointed out by Senator De Piano, all other matters - hearing no objection, the rules are suspended and the matters will be sent to the appropriate Chamber and the appropriate office. Senator Reimers.

SENATOR REIMERS:

I thought I heard Senator De Piano ask for a Roll Call on that.

THE CHAIR:

Senator De Piano has taken an exception to one matter for which a Roll Call will be asked. Please remain in your seats, and the Clerk will announce a Roll Call. Senator De Piano has -

THE CLERK:

Immediate Roll Call has been ordered in the Senate. Would all Senators please

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be seated. An immediate Roll Call in the Senate. Would all Senators please take their seats.

SENATOR DE PIANO:

Mr. President, can we have a clarification on the vote for the people that weren't here?

THE CHAIR:

Senator De Piano is objecting to the Suspension of the Rules on what proposition, would you state again, Senator De Piano?

SENATOR DE PIANO:

Calendar No. 574, Products Liability.

THE CHAIR:

In view of that, a Roll Call is required.

SENATOR HOULEY:

What is the - sir, I don't have my Calendar. I put it away. The title of that particular Bill?

SENATOR DE PIANO:

It's on page 3, through you Mr. President, to Senator Houley. It's on page 3, it's the third from the bottom and it's Calendar No. 574, AN ACT CONCERNING PRODUCT LIABILITY ACTIONS. And can we have a clarification of the vote?

THE CHAIR:

Vote, with the suspension of the rules, requires a two thirds vote and are you prepared to vote? Senator Sullivan.

SENATOR SULLIVAN:

Mr. President, would you clarify the vote? There seems to be some confusion. A vote yes would object to Suspending the Rules, am I correct?

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THE CHAIR:

No. A vote -

SENATOR SULLIVAN:

His Motion was an objection to Suspend the Rules and if -

SENATOR STRADA:

Mr. President, Point of Order. The Motion was to suspend. The objection was made by Senator De Piano so if you want to suspend the Rules, you will vote yes. If you want to object, you will vote no.

THE CHAIR:

Quite clear. All right. Are you prepared to vote?

SENATOR HANNON:

Mr. President, just one remark. To urge Suspension of the Rules so that whatever defects exist,

THE CHAIR:

The Motion is not debateable. The machine is opened. Please record your vote. The machine may be closed. Clerk please tally the vote. The result of the vote?

TOTAL VOTING	33
NECESSARY FOR PASSAGE	22
NAYS	12
YEAS	21

The two thirds has not been attained. The Rules are not suspended.

SENATOR STRADA:

Mr. President, just to announce as was stated before, that the Session will convene at 1:00 P.M. -

THE CHAIR:

Make it 2:00 P.M.

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SPEC. SESS.  
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RESOLUTION CONCERNING THE PRINTING OF THE JOURNALS OF THE  
SENATE AND HOUSE OF REPRESENTATIVES of the 1978 RECONVENED  
SESSION.

THE PRESIDENT:

Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, I move adoption of the resolution. It is  
self-explanatory.

THE PRESIDENT:

Remarks? If not, all in favor of the resolution say  
Aye. Opposed Nay. The Ayes have it. THE RESOLUTION IS ADOPTED.

THE CLERK:

The Clerk is ready with the Calendar.

SENATOR LIEBERMAN:

Mr. President, on the Calendar, listing the three Senate  
bills that were vetoed by the Governor, I would, at this time,  
for the purpose of bringing the matter before this chamber,  
move for Reconsideration of Public Act 78-380, Senate Bill 230,  
AN ACT CONCERNING PRODUCT LIABILITY ACTIONS.

I would hope that we could adopt this on a voice vote  
so as to get the matter before us.

THE PRESIDENT:

The question is on the motion to Reconsider Public Act  
78-380. All in favor please say Aye. Opposed say Nay. The Ayes  
have it. THE MATTER MAY BE RECONSIDERED.

Senator Rome.

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T R ROME: 8th

Mr. President, I move repassage of Public Act 78-380, File 473, Senate Bill 230. AN ACT CONCERNING PRODUCT LIABILITY ACTIONS. And I would yield to Senator Guidera for the discussion.

THE PRESIDENT:

The Chair recognizes Senator George Guidera.

SENATOR GUIDERA: (26th)

Mr. President, I'm sorry, did Senator Rome make the motion to override? (The answer was yes, off the microphone)

Mr. President, speaking to the issue, about a month ago we passed here in this chamber what I think was one of the better pieces of legislation for the growth of economy in the State of Connecticut that we passed in a long, long time. We said to business and industry, especially to industrialists, that we wanted them here in the State of Connecticut. We recognized what some of their problems were. We recognize that government could have an impact upon their cost of doing business. I think we were saying at the same time that we were willing to do something for consumers who were being passed on these very large costs incurred by products liability insurance. Unfortunately, the Governor has vetoed this measure and I think, really, that veto says that there is nothing that this state is willing to do in this session of the General Assembly, or this is, at least, one item it is not willing to take up to increase business, especially in the industrialized areas of this state.

Sure, each state would have to pass a law and it would

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have to be relatively uniform in order for us to have legislation throughout the United States. But it could have started here. As a matter of fact, Connecticut could have kept the trend going. There are six or seven states this year that have passed product liability legislation and I think if you look at their legislation, you will find that Connecticut had the best thought out, the best planned piece of legislation.

We are not talking in products liability legislation about taking away a fair sum of money from a lot of people. We are talking about probably reducing huge liabilities in a very few cases. I was somewhat surprised that labor took the position it did on the bill because it does not, in my opinion, represent a blow to labor. It doesn't affect the average working man. In fact, the passage of the bill would have been good to the average workingman because there should have been either reduced or stabilized prices in consumer items because of the ability of the manufacturers not to have to pay huge sums in products liability legislation, ah, in products liability premiums. I think it is a mistake that the veto occurred. I would like to see this circle override the veto. I would like the circle to tell business and industry in the State of Connecticut that we want them here. I would like them to know that we can do something about the rising cost of products, the exposure of individuals to huge lawsuits and the millions and millions of dollars.

We took out, as you may remember, with my amendment to

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the bill, a great man of the provisions all of the provisions really, which were obnoxious in nature in the sense that they might actually hurt the average consumer. The consumer continued to be protected under this piece of legislation and at the same time there was not just an automatic windfall given to anyone who is injured by any machine made at any time in the past.

Mr. President, I think that this circle should exercise its responsibility. I know that this is an election year and there are various groups lobbying each individual in this circle. Some are in favor of the legislation and some opposed to the legislation. This is not a Republican or a Democrat issue. This is an issue in which we either stand up for a fair piece of legislation that's fair to those who are injured and at the same time, fair to those who manufacture products. We are trying desperately throughout this State to attract business and industry and yet, at the same time, we have a piece of legislation like this which is, in my opinion, wrong, and in the opinion of a great many people wrong and yet we do nothing about it. I would like to see this circle override. I realize the vote was twenty-three to thirteen on the first round and we would need one additional vote in order to override this veto. It is absolutely necessary. I don't think it is an issue on which there ought to be a great deal of yelling and screaming except to say that this is a fair piece of legislation. It is fair to one and all. There is nothing, in my opinion, unfair about this legislation; and I think in the opinion of a great

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many people in the state, editorial writers and others that this is not an unfair piece of legislation, but is long, long overdue.

I would urge the members of the circle to override this veto and to enact it.

THE PRESIDENT:

Senator Fauliso.

SENATOR FAULISO: (1st)

Mr. President, may I, through you, sir, propound several questions to Senator Guidera. I assume, Senator Guidera, that you have before you the Governor's message on the veto. And may I ask, sir, number one, your response to the reason that she assigns namely, - however, this bill does not protect Connecticut manufacturers from suits brought in another jurisdiction on any goods shipped or used outside of Connecticut. Consequently, there would be no premium saving for these goods which constitute a sizable majority of products manufactured in Connecticut. That's number one.

Number two, the question of subrogation and those areas where we have self-insurers. Will you respond please to that.

And thirdly, the bill also provides that in any products liability action, a manufacturer shall not be liable for any injury, death or property damage caused by a product which has been substantially altered or modified. Product alteration is defined to include failure to observe routine care and maintenance. Would you please respond to the reasons which she has

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set forth in her message.

SENATOR GUIDERA:

Mr. President, there is no question that this act would only apply to Connecticut. This General Assembly cannot enact laws for other states, but it is noteworthy, I think, that other states have begun to pass this kind of legislation and as I understand it, there are at least six states who have so passed this kind of legislation this year. There is no question but that this matter must be addressed by the Congress of the United States for all of the states in the Union. I believe that Congressman Sarasin, in fact, has such a piece of legislation now pending before the Congress of the United States and should it pass it would affect all the fifty states. But you have got to start someplace. We pass uniform laws, ah, commissioners of uniform laws, uniform commercial codes, various other uniform laws are enacted on a state-by-state basis. If this were to be done nationwide, we would have some uniformity in this kind, ah, type of legislation and I think it would be important. We can only enact for Connecticut. Were this bill to be effective in the other forty-nine states, I would be happy to see it be so, but we cannot do that. It can only affect Connecticut, but it is a start. We can only affect what we can affect. I can't remember the other two points, Senator. Would you repeat those again, please?

SENATOR FAULISO:

The other reason which she assigned was that a section

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of this bill provides any award to a plaintiff in a product liability action shall be reduced by an amount equal to any sums the plaintiff may have received under the state's workmen's compensation laws. We are particularly concerned with those principals who are self-insured, like some municipalities and indeed the State of Connecticut. How do you respond to that reason.

SENATOR GUIDERA:

It would be reduced, Mr. President. We asked the Democratic majority to sit down with us on this piece of legislation and this was one of the points in the bill that could have been resolved at that time. Nobody was willing to sit down with us. Nobody was even willing to discuss this matter. Certainly this is a provision of the bill which if it is of concern to a great many people in this circle could certainly be worked out very early in the next session of the General Assembly.

Your third point?

SENATOR FAULISO:

The third point is the product alteration is defined to include failure to observe routine care and maintenance.

SENATOR GUIDERA:

I think that should be in the law, Senator. That's obviously a provision within the bill. I disagree with the Governor when she uses that as a reason to veto this legislation. If you manufacture a product and you fail to, ah, and you sell

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it and the person who purchases that piece of equipment fails to take care of it, fails to observe regular routine care and maintenance of that product, and for that reason, it causes injury, I fail to see why the manufacturer of the product should suffer a million dollar lawsuit as a result of the failure of the user when he is given instructions as to normal care and maintenance, why he should suffer some damage. The fact of the matter is, and this particular point, points up the inequity in this statute as it exists today very, very clearly. The point is, I think in our law today, that no matter what cause there is for the equipment or the machinery causing damage to an individual, causing injury, it seems as though we have gotten to the point where, because the manufacturer supposedly has a deeper pocket than anybody else, let's hit him. Well the insurance companies have said, Mr. Manufacturer, if you want a deep pocket, you are going to have to dig deep into your pocket to pay the premium. I think we all know, for example, that if we are to buy an automobile and we don't take regular care of it, if we don't put any oil in the automobile and you are driving down the street and the pistons freeze up on you and you are driving along the turnpike at eighty-five miles an hour when that occurs and you have an accident and kill ten people, that's failure to observe routine care; and it seems to me that whoever manufactures that car should not be responsible for your failure to observe routine care. The question of fact, it is a question of fact as to whether or not the user failed to maintain and regard

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routine care. And whether that was the factor in the injury that occurred; if the manufacturer cannot show that routine care was nonexistent, if he cannot show that even though there was not routine care the injury occurred, then he is going to be responsible. I think this is, ah, I'm sorry to say it, a ruse for vetoing this piece of legislation and I think that the Governor dug deep into her pocket to find reasons for vetoing it.

THE PRESIDENT:

Senator Fauliso.

SENATOR FAULISO:

Mr. President, the reasons incorporated in the message, I think are very cogent and very persuasive, and in my opinion, irrefutable. It has been acknowledged that we cannot legislate for other states. The response to that is that we cannot do it, that other states have to take care of their own problems. And yet, here in this state, we are asked to legislate because there is a crisis; there is a threat of escalation of premiums. So that, Mr. President, it would seem to me that what we would be doing, and as the Governor pointed out, something which would be prejudicial to the people of our state. And, indeed, other people and other citizens in other states would not have the law applicable to them. So it is true then, perhaps, we ought to wait for that kind of uniformity where the law will be applicable to all citizens in the United States. And it is acknowledged, certainly for the second reason, that we have self-insurers, that a windfall will occur to the insurer. It

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would be prejudicial to municipalities and to the State of Connecticut if they were to be deprived of the subrogation right. And Senator Guidera acknowledges that; but his response was I was willing to sit down and to work out the problem.

Now thirdly, Mr. President, the reason assigned by the Governor makes a lot of sense also on the question of routine care and maintenance. Under this provision, a plaintiff could be denied recovery for not properly maintaining the product even if the failure to do so had nothing to do with the injury sustained.

Mr. President, the Governor's message then concludes that it is my belief that a comprehensive study should be undertaken with a report to be made to the next session of the General Assembly on the best way to contain these spiraling costs. The Office of the Governor will be pleased to cooperate with the General Assembly in such an undertaking. The additional burdens imposed on our Connecticut consumers are not justified by what would be at best minimal premium savings for Connecticut manufacturers.

Now, Mr. President, this is indeed an important piece of legislation. I have taken the liberty to review the debate on this particular subject; and, Mr. President, Senator Guidera, as I understand it in reviewing the debate, moved for adoption, and time after time he made illusion to the file copy as being unsatisfactory, and time after time, he made references to invitation on the part of any senator or group of senators to

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work out a compromise. And Mr. President, what happened. The amendment that was offered by Senator Guidera was never subjected to public scrutiny or public input and truly there were other people in this circle that had worked hard and long and conscientiously on an amendment and that amendment, Mr. President, was not even considered. There wasn't an attempt even made to sit down with the two groups to make some attempt to reconcile differences. Mr. President, at the outset, let me state that I believe firmly, sincerely that we should be the leader, the trailblazer in this respect, in product liability law. There is no question, in my mind, that something must be done. We must pass a law, however, that is just, that has moral quality. We have not passed such a law. What we have done, Mr. President, is highly prejudicial to the rights of those people who are exposed to the products manufactured in the State of Connecticut and those products that come into the State of Connecticut. We recognize that manufacturers and the business community have rights. We recognize that the people who use these products have rights. The challenge here is to balance those rights. I don't think it is fair for us to pass a law in the atmosphere of haste such as we did in the last week of this session, of the session that was just adjourned. That was done in haste. It was an irrational approach. Mr. President, this is, indeed, the insurance capital of the world. We have a responsibility to create high standards. We have an opportunity to tell the world that we have concern and to pass a law that is

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equitable. Equitable not only to the manufacturers, to the business community but equitable to the user. That is the challenge. And we recognize that this law is inadequate. Why enact a law that is unjust and indeed immoral. We want to treat a law that is just, moral and truly serves the general public and serves also the manufacturers. Mr. President, it is unfortunate that many of us did not take time to read the Inter-agency Task Force on Product Liability, U. S. Department of Commerce, and in this report, Mr. President, the Task Force Briefing Reporter identified three principal causes of the product liability problem. Liability insurance rate-making procedures, tort litigation system and the manufacturing practices. I read this very carefully. I don't know how many of us did examine that report. But it is interesting, Mr. President, that at the congressional hearing, several of the representatives of our local insurance companies, one of them responded apologetically, saying, we do not have hard facts and statistics concerning product liability. Unfortunately, we have lumped, so to speak, product liability with general liability. And this was the sentiment throughout. This was the expression of the representatives of the insurance industry; so that we don't have any statistics. It is interesting to note also that in our own state there is reference that there is some fifty-eight percent rise in product liability cases. Without mentioning the number of cases, a fifty-eight percent rise from what? A hundred cases from the previous year? Ask any lawyer

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in this circle. I haven't had a product liability in fifteen years. I have asked trial lawyers. Some of them have said, I haven't had one in ten years. So, Mr. President, the point is that there is no crisis. We ought not to press the panic button. Let's do this in a calm atmosphere, one where we could be more rational. One where we could produce a law that is based on justice. This is not a just law. And I think that the approach here is this - that we ought to sustain the veto, but in the same breath, be prepared, be prepared in the next session of the Legislature to come forth with a bill that is equitable, one which we will hold up to the general public and to the world as a product of the Connecticut Legislature and one which will be a standard.

Now the insurance companies have a moral obligation. Thousands of dollars have been spent in the last week to campaign to override the veto. I believe in strong advocacy. Mr. President, the Madison Avenue sales pitch will not work with the people of the State of Connecticut. They deserve sound, just, rational laws. There has been a distortion, a prevarication, if you will, of the situation in Connecticut. There is no crisis. Don't raise and crank-up a panic; an artificial one, if you will. I think we deserve more as intelligent senators to treat this matter objectively. Time after time we knew that we were dealing with a measure that was not subject to scrutiny, not subject to public examination; and yet we want to thrust this on the public of the State of Connecticut. Shame on the

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industry, and shame on us if we do not sustain the veto. This is not the proper atmosphere. This is not the calm deliberation. What we need, and what the insurance industry certainly should establish, are sound rules, high standards. That's the responsibility of industry. That's what the world is looking for. Because our industry is first. It is the capital of the world. In doing less we demean ourselves. We bring shame upon us. This is indeed opposed by the municipal mayors, by the Conference of Municipal Mayors. It is opposed by labor. It is opposed by all of us who have made a comprehensive study. It is opposed by the commerce task force. Ladies and gentlemen, we are not doing here anything that is detrimental to the best interest of all the people; and we are here to keep our fiscal community strong and healthy because it makes a vital contribution to our economy; but in the same breath, let us not do anything that will hurt the rights of people. Thank you, sir.

THE PRESIDENT:

Senator DePiano.

SENATOR DEPIANO: (23rd)

Mr. President, I rise in support of Governor Grasso's veto and to sustain this veto. I think that when we consider the products liability problem here in the State of Connecticut, we have to start very basically. How did this come about and why is there this big drive on this products liability bill which passed this Senate and which I characterize as probably

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the most horrendous piece of legislation that we have passed and the most anti-consumer legislation without any help to industry, although they were acting under that guise. Why has that come about? It has come about because industry has now complained, and justifiably so, that the premiums for product liability insurance is overwhelming and really affecting their business and margins of profit. And why do we have such a high premium? And what will the products liability bill do in regard to that premium? The answer is by the very testimony of one of the proponents of the bill, Mr. Norman Parsells, who represented industry - the answer is that passing the product liability bill, whether it be in this session or the next session will not in any way decrease the premiums that these companies in Connecticut will have to pay, because those premiums are set on a national experience. So that no matter what we did in Connecticut, the relief that industry was looking for was not available to them no matter whether we sustain the veto or whether the bill passed and Governor Grasso had not exercised her right to veto.

I have received communications which I think have been very misleading from people in manufacturing who are acting in good faith and who have been apparently put up to the act of sending legislators letters in regard to this product liability bill. I have taken the liberty of getting on the telephone and talking to industry and now I have a public forum in which I can make the statement so that they can all hear.

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I think that their efforts should be directed towards the insurance commissioner in this state, to launch an investigation to get these insurance companies that charge these rates, because the experience in product liability cases has been very poor in the courts. You might be shocked in hearing that statement, but about eighty to eighty-five percent of the cases that are tried result in no verdict for the plaintiff at all. No verdict for the injured person because it is so difficult under the existing law to prove a products liability case. I agree with Senator Fauliso. I have been a practicing lawyer for twenty-two years. I have tried many cases, thank God, and I have had in all my experience, one products liability case. And I think that I speak for many members of the Bar when I say that most lawyers will not take a products liability case unless it is blatantly a true products liability case for the reason that it is such an expensive proposition to prepare one of these cases. And you just don't do it on a lark.

So what I would like to say is that not only is the bill horrendous because of its provisions which we are all familiar with and which I will not waste the time of this circle; but I will go on to say that we should divert our constituents to write to the insurance commissioner to let's have an investigation of not only the rates of products liability in Connecticut but how about the rates that we are being charged

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for our automobile insurance and for our malpractice insurance. Let's get the pressure on him to have an investigation that will dig into these problems, especially in view of the fact that when you stop and think that the insurance industry in this country of ours made one billion six hundred million dollars profit last year. Thank you.

THE PRESIDENT:

Thank you, senator. Senator Madden.

SENATOR MADDEN: (14th)

Thank you, Mr. President. I will be very brief as I believe the handwriting is on the wall. I would simply like to say that the main issue here, on this particular bill, is leadership or rather the lack of leadership from the people that are in control of this particular General Assembly. And the people that are in the majority in the executive branch of this government. If we had gotten that leadership back when we were in session, I don't believe that we would be here discussing this bill today. But even though the members of the minority were willing, had ideas, were willing to sit down and discuss it with either the Governor or her representatives or the leadership in this House and the lower House, it was not forthcoming. I think that it was designed to let this bill flounder and then veto it and give the semblance of leadership when it was over; because that's what we have in the Governor's veto message. All of a sudden now, she is ready to sit down and form a task force to study the issue so that we can have

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some great pronouncements between now and November. I tell you, ladies and gentlemen, I won't be fooled by that. I don't think the members of industry will be fooled by it and I don't think those people whose jobs are going to be lost because companies folded up between now and next legislative session because the entrepreneur decides that it is not worth it are going to be fooled. It will be tough to tell them when they are on the unemployment line that we are going to form a task force and now I am ready to deal with the issue, but when the opportunity was here and we were here in session and had the time to do it, I just didn't have the time fellas and I am sorry about that. I hope your families are O.K.

Obviously, it is a Connecticut bill, but I tell you if Connecticut doesn't provide the leadership on an insurance industry problem, I am not going to be looking for forty-nine other states to provide that leadership. We are the insurance industry capital of the world, so says the President Pro Tem. And he is right. So why shouldn't we be the one to take up the issue, deal with it squarely and bring forth our ideas on it and how it ought to work. I tell you I am extremely disturbed over this particular piece of legislation's failure. I am extremely disturbed because I think it is typical of the kind of leadership that we are not getting in this particular state from this administration. We have a problem. We didn't deal with it. I think it is a doggone shame. I'm ready to vote to override the Governor's veto. I certainly hope that you do.

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THE PRESIDENT:

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Senator DeNardis.

SENATOR DENARDIS: (34th)

Mr. President, the distinguished President Pro Tem of the Senate has made some very interesting revelations here this morning. He claims that the legislation has not been subject to scrutiny. It has not been subject to public examination. It was passed in an atmosphere of haste. It was passed by virtue of an irrational approach. Senator Fauliso, I agree with your characterization of the final days of the 1978 session of the General Assembly. In fact, it was worse than haste. It was absolute and utter chaos in which several major pieces of legislation, pieces of legislation that had been under consideration not only for a year but for two or three or more years, got shunted to the final days and in that kind of atmosphere, how can we provide a due and proper deliberation. It is a shame, a crying shame, that a matter of such moment, a matter of such importance as product liability, the soaring costs of insurance which have been documented time and time again, documented in Washington, documented in Hartford, documented in every state capitol, discussed for the last three or four years in every responsible business and legal journal can be so minimized, could be so reduced in importance as this issue was reduced during this session of the General Assembly. Business firms, we are not talking about captains of industry and the firms that they run, we are talking about small businessmen and women and

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I have received numerous communications not from the giant corporations and industries of this state. I have received hundreds of calls, letters, telegrams, oral communications over the past two years from small business people in this state who are choking on the costs of doing business, choking to the point of suffocation and extermination; and a leading element of that is the cost of product liability insurance. And we can blithely turn our back on this issue and say, it is not a perfect piece of legislation and we will continue it for another year and we will study it some more. We had all the time in the world to study this issue and to come up with a good piece of legislation and Senator Madden hits the nail right on the head. It's the leadership of this General Assembly that allowed for those disgraceful last few days and the loss of important legislation including this one that are to be held responsible.

And in terms of this issue being a one of national significance, yes, it is being debated in the Congress of the United States. And yes, there may be legislation in 1978, but who can tell. Congress moves in such slow, exceedingly slow ways. It may be 1980, 81 or well into the 80's before something satisfactory is devised by that august body.

In the meantime, states are taking the lead, as they should. Fifteen states to date and I had hoped Connecticut would be the sixteenth state. And that's what our federal system is all about because when there is a problem and when the federal

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government doesn't act and state government perceives it to be a significant enough problem, they act. They acted with no-fault automobile insurance so that now there are sufficient number of states that have gone on record with no-fault laws; and now the Congress is finally, in its wisdom, getting around to the notion that perhaps we need a national no-fault automobile insurance program. But not until the states petition and that's the way it worked with unemployment compensation, with workmen's compensation and with a variety of other laws now which are regarded as national. The states took the lead. They passed it first and after there was a significant showing of support among the states, then the Congress was inclined, in fact compelled, to act.

The same thing is unfolding with respect to product liability insurance. And if we ever needed reform of our tort law in this area, we need it and we need it now and we need it bad. And it is interesting the coalition that is supporting the override. Interesting because labor and the consumer groups, in my opinion, are being taken for a ride. They are being taken for a ride by the trial lawyers of this state and the trial lawyers of this state have but one purpose in mind and you know what it is. And yet they have been able to sanctify and sanitize their motives and their drive by getting two reputable organizations like the AFL-CIO and the CCAG to come along with them. And they are being taken. And I say to those groups, get off the train because the trial lawyers have a well-known, well-mapped

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out destination and that's profit, and profit at the expense of everybody who has to confront the legal system. It's a shame what we do here, we don't override this veto. We are not living up to the responsibilities that we have to the economic climate of this state and yes, to the consumers of this state.

THE PRESIDENT:

Will you remark further? Senator Fauliso.

SENATOR FAULISO:

Mr. President, after listening carefully to Senator DeNardis and Senator Madden, I confess that they paint with a very broad brush. They have not responded to the reasons set forth in the Governor's message. They have dealt with a general dissertation saying that some bills were passed in the haste of the session. Somewhat disconcerting is their presentation. I had hoped that they would concentrate and deal with the issue before us. What was most disturbing also is the reference that the alignment runs something like this; and this is what the CPIA put forth. Who supports S.B. 230? Answer: The Connecticut Business and Industry Association, the Insurance Association of Connecticut, the National Association of Wholesale Distributors, various associations representing insurance agents, virtually every local chamber of commerce in Connecticut, local manufacturing associations, trade associations such as the National Machine Tool Builders and the National Sporting Goods Manufacturers Association.

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Question: Who opposes S.B. 230? Answer: The Connecticut Trial Lawyers Association.

Mr. President, CBIA was referring to the file copy. After listening to Senator Guidera, I thought there was unanimity. Unanimity in the opposition to Senate Bill 230. And if he has any illusions or if he is mistaken, I ask him to review once again the debate; and as to the amendment, Mr. President, make no mistake about it, the Connecticut Conference of Municipalities, CCAG group, the labor group, The Hartford Courant in its editorial of yesterday, certainly disapproved the bill we passed, and supported a veto. And Mr. President, we cannot make light of the fact that there is an interagency task force on product liability and there is a final report, U. S. Department of Commerce. And Mr. President, those who haven't read it are doing a disservice to themselves and to their constituents, because, Mr. President, it says quite clearly that the absence of data appears to make it impossible to confirm whether insurer price increases in the area of product liability are justified. As insurers appreciate, product liability premiums cannot be utilized to recoup past losses. Nevertheless, it would appear that some insureds may be paying a higher premium than data would justify and others may be paying a lower premium. The burden of proof would appear to fall on the insurers to justify increases of two hundred, three hundred or four hundred percent in premiums where they do not have data based on claims experience that would suggest that increases of this type are proper. Our

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conclusions as to how product liability rate-making procedures might be improved, and this cause of the product liability problem alleviated, appear in Chapter V, at pages forty-eight, and goes on and on, Mr. President, so that what is, ah, what Senator DeNardis, Senator Guidera, and, indeed, Senator Madden have said, certainly cannot be reconciled with the objective report. And Mr. President, we also know, and this is an established fact, that the premiums are based on experience throughout the country. Not on little Connecticut alone and yet they say let us be a leader. Must we settle for mediocrity or must we accept excellence. That is the decision. It's not even mediocrity, Mr. President. It's just<sup>an</sup> immoral, unjust law that we are dealing with; and we have a higher obligation, an obligation to all the citizens to balance the rights of the manufacturer, to balance the rights of the consumer and that is the challenge; and to walk away from this trailer session saying that there is any one of us who doesn't recognize the problem, who doesn't want to come to grips with it, certainly would be a grave error. I am concerned. I want to anticipate that there will be, some day down the road, a problem, a problem of greater magnitude, but I don't want to do it under these circumstances; one which has been the product of an irrational and a bad law. And I say to all of you, let's get down to brass tacks, let us do the work, let us acknowledge that this is not right. It's not good and deal with it forthrightly.

THE PRESIDENT:

Senator Ciarlone.

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SENATOR CIARLONE: (11th)

Thank you, Mr. President. I rise to sustain the Governor's veto. When this bill was before us originally, I voted in opposition and I still feel the same way today. I, like many others, am concerned about the rising insurance premiums on products liability. However, when I am told, as we have heard a couple of times on the floor here today, that the rates are established by the national experience throughout the country, I don't see how this bill here will have any effect on the industry in our state. I agree with those that have said that a task force should be established so we might really take a close look at the entire insurance premiums as they are set up in our state as it relates to cars, property damage and malpractice insurance. I think this is an area where the insurance commissioner has been somewhat lax and I think we have to get moving and give that study. I don't subscribe to the arguments by our opposition that if a bill of this nature isn't adopted, businesses will be closing. I submit to all of you that if businesses are closing in Connecticut, there are other factors and factors of more serious consequence. Those factors are high energy costs, inefficient plants and a labor market that does not have the skills to meet the new jobs in our society.

If we can all go back a few years ago, you might remember that we had a famous no-fault bill. This no-fault bill was supposed to be a panacea for the increase of insurance premiums.

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Well, what we did, ladies and gentlemen, we passed a no-fault bill, and took away many of the rights that people had and I think what we are paying for insurance now is academic. So I say to all of you, don't act in haste. In the next session, those of us that will be here, it is six months off and I think we can look into this situation and in greater detail and come up with legislation that will really be beneficial to the constituents and the businesses in our state.

THE PRESIDENT:

Senator DeNardis.

SENATOR DENARDIS:

Mr. President, the distinguished President Pro Tem replies to earlier remarks that Senator Madden and I made indicating that we were not responsive to the points that he has raised, and a point that Senator DePiano has raised. Further, he tries to dazzle us by waving in front of us a report, a federal report, on product liability as if he has studied the matter carefully and closely and is going to issue the final word on the matter. And I will grant that he has probably studied it carefully because he does do his homework. But I, too, know of that report, Senator Fauliso and members of the circle, I do know of that federal interagency task force on product liability that was set up during President Ford's administration, and I do know that the recommendations that they came out with last year to allow firms to receive a tax deduction for money that they set aside in an insurance reserve may not be the answer

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to this problem. The Culver-Nelson Bill, which embodies that recommendation, is having trouble in the Congress, precisely because small business firms don't have the cash flow to be able to set up the kind of reserve fund the interagency report asks for. And even if the Culver-Nelson Bill is passed, big business may get some relief on product liability but small business, the small businesses that I remarked about earlier, that I am primarily concerned about, will get very little relief because of the cash flow problem, because of the inability to set up a reserve fund. So there is nothing antithetical, Senator Fauliso, in the State of Connecticut reforming its court law to help small business in this area even if the Culver-Nelson Bill or some version at the federal level which embodies the concept that it was, ah, recommended by the Federal Interagency Task Force is adopted. There are at least three different approaches to this problem. The tax deduction, a federal re-insurance program and reform of our tort law, and we can have reform in all three of those areas to achieve lower product liability insurance costs. So what we could do here in Connecticut, now, would be of assistance and would not run at cross purposes with the current thinking in the Congress of the United States.

THE PRESIDENT:

Senator Johnson.

SENATOR JOHNSON: (6th)

I rise to associate myself with the remarks of Senator

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Madden and Senator DeNardis in several respects and also to state my own ambivalence in voting to override the Governor's veto. I voted for this legislation to begin with, I will vote to override the Governor's veto; however, I would like to address myself to some problems that I see.

I do believe that the evidence for reform is impressive and in spite of the general statements, I would rather say of my respected colleague, Senator Fauliso, I think when you can get letters from manufacturers that give evidence that over a two year period their premium went up, in one example, three thousand, two hundred dollars to a hundred thousand dollars or five hundred dollars per 190 employees, you have got to say something is wrong. Something is terribly wrong. But it isn't just a matter of insurance premiums. It's also a matter of the legal cost that companies must sustain to defend themselves against suits that in the end do fail. In addition, it is the larger question of fairness. And I think all of us have been aware, as we have read the papers over the last few years, of the sense that the system was out of balance, that common sense dictates that he who uses the product does have a responsibility for using that product in some kind of reasonable fashion without alteration or without at least significant alteration and so on. And I won't go back over those issues. But the concept of fairness is important here and I think that's one that some of us who are voting as I am going to vote are responding to at a very deep and decisive level. I also feel that the solution is

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ultimately at the federal level and I think that Senator DeNardis has given some very good examples of the relationship between the state concern and the closer relationship between state representatives and officials and the public and the way the momentum must be built up to generate a federal solution. I say we are in the process of generating that federal solution and if no federal solution comes then it will be our responsibility to look and see whether in fairness we should maintain our own statute. But that would be done in due course.

I also feel that there are some serious weaknesses in this bill and I would like to say for the record two things. First of all, those weaknesses are, in fact, a result of the legislative process working poorly. And Senator Fauliso complained about good amendments that have been thought out carefully and there was not time to consider them. I would remind him that there was a bipartisan group who was scheduled to get together and come up with some amendments that we would all then have time to consider. We would have time to get responses from those groups who have very responsibly been concerned with this and have been mentioned here on the floor today. But, in fact, that group never met. The amendments were put before us at the last minute with the exception of Senator Guidera's that was ready a number of days in advance; and the whole process was poor, and we knew we were in a situation that was compromising to us all. We knew it was all or nothing. So we went all, but we all have to admit that there are many things in that bill

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that we are going to have to come back to. We are going to have to come back to the issue of hazardous substances in light of the (next word unintelligible) limitation. We are going to have to come back to the problem of fibrous materials and the effect of those on people and the fact that eight years may not be long enough for that kind of coverage. We are going to have to come back to the problem of the self-insured, the municipalities, the implications of that which were not brought out nor clear at the time of passage. And I think we are going to have to come back, and this gets back to a problem that Senator Fauliso complained about a few minutes ago, and that is that we were not addressing ourselves to the Governor's veto message.

And I would like at this point address myself to that veto message and say that I would want to come back and add the word relevant to Section 7 in a number of instances. The injured party's disregard of or failure to comply with any legislative enactment or administrative rule or order. I have gotten opinions from lawyers that say that relevance would be considered, that there would have to be proof of approximate cause. That is not entirely satisfying to me. I would want to add in there the word relevant. And I think in the Governor's message, where she says under this provision, a plaintiff could be denied recovery for not properly maintaining the product, even if the failure to do so had nothing to do with the injury sustained, her objection, in the opinion of a number of lawyers,

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is not legitimate because there has to be this proof of proximate cause. But I would like to clarify that, clarify that in the statute. I think that it would be our responsibility in the next session.

It is being suggested to me to get the attention of the circle, Mr. President. However, I feel that those who want to listen are listening and I am about to conclude.

THE PRESIDENT:

Well, I think, Senator Johnson, that you are entitled to the attention of the circle. I noted that you gave attention to the other speakers when they were speaking. And I will ask that those senators who want to carry on conversations, go outside in the corridor, please. Wait a minute

SENATOR JOHNSON:

I do find myself talking louder and louder

THE PRESIDENT:

Just a minute, just a minute, Senator - and those people who are spectators are guests of this circle and you will remain silent. Go ahead, Senator, do your thing.

SENATOR JOHNSON:

Thank you, Mr. President. I did find myself talking louder and louder. I am aware that the members of the circle have received a lot of information on this subject and that all of you wish that I would shut up and sit down and you could vote and go home. However, I feel that as a responsible representative of my constituents, especially when I feel that

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there are some very important amendments that must be made in the next session that I feel that I must state that I vote to override this because I feel that it shows direction. It will build up momentum for federal change, that federal change is ultimately the appropriate solution and that even with this specific bill had we been able to enjoy a healthy legislative process, we would have come forward today as Senator Madden very clearly pointed out with a bill that would not have received a veto, that we would not be standing here today arguing about.

I think it is our own fault that we came up with a mediocre piece of legislation and we would need to refine it in the next session. I stand here to say that I would be an active participant in the effort to propose and pass the appropriate amendments.

THE PRESIDENT:

Can you think of anything new to say about this, Senator Rome?

SENATOR ROME: (8th)

I believe so.

THE PRESIDENT:

Very well. Go ahead.

SENATOR ROME:

Mr. President, members of the circle, as a matter of fact, the first thing I would say is had you allowed me to give the opening prayer, it would be "God, may our words be tender and soft, for tomorrow we may have to eat them."

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And I think that all of the members of the circle who have spoken, either for or against the sustaining of the veto, have made it abundantly clear that this is a piece of legislation whose time will very shortly come. I think each member of the circle who has spoken has indicated that we do have a problem. The new material, Mr. President, is that we have gone off on the wrong issue. We have gone off on the question of the insurance issue and how this would affect the insurance industry. The insurance industry and their rates are going to be determined by the insurance commissioner and the actuary tables. What we really are forgetting, and the reason for the legislation, and the reason for the concern when Senator Guidera tried to work with the members of the majority, as well as members of the House, in drafting appropriate product liability legislation is that we really are concerned and must show that concern for the small manufacturing concern in Connecticut. The large manufacturer in Connecticut and throughout the United States will continue to have the ability to pass on the rising cost of product liability insurance to the consumer and the consumer does lose. But the consumer loses greater, and greater concern should go for that small manufacturer who cannot invest in new products, for that small manufacturer that cannot sustain the products, the new products, that he has already undertaken to develop and to produce because the rates of product liability insurance for that small manufacturer, for that small industry, for that new product are

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really growing, growing to the point of diminishing returns for the consumer in the State of Connecticut. And if you think seriously about the basis of Connecticut's economy, it reminds the small manufacturer. Too little is done for that group of individuals and corporations and partnership. And this was a design to do something in that area. Sure, it should have been done at a federal level. Sure, all the states ought really to have provided simultaneous legislation in this area, but that doesn't diminish the necessity for someone to stand out front and be the leader. I applaud Senator Guidera for his drafting of legislation which intended to do just that. I applaud all of those persons, including Democrats, who worked with Senator Guidera in hopes that we could reach a compromise on legislation that met everyone of the concerns, not only of the Governor, but every member of the Senate. I think that we have got to show that concern and if I listen carefully and if your words will mean something, in the next session of the General Assembly the small manufacturer and our concern about the prohibitive cost of insurance in the product liability area will be of concern to those of you who return.

And for that reason, as long as we understand that the votes here are not to override the veto, the debate here has been of some meaning and some importance. Thank you.

THE PRESIDENT:

Senator Cloud.

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SENATOR CLOUD: (2nd)

Mr. President, I stand before this circle as one of the senators who was a proponent of this particular piece of legislation in the area of product liability. And I want to indicate to the members of this circle that I remain firmly committed to the concept of product liability reform. However, the bill that is before us, that has been vetoed by the Governor and in her veto message has raised some issues which some of us were concerned initially when we voted in favor of this piece of legislation; and I believe that it really is a question of whether you deal with the flaws that are raised by the Governor's veto by way of amendments next session or do you believe that the areas of flaw are so important and so significant to this piece of legislation that they really ought to be studied further with a view toward being sure that we attempt to bring and pull together the consumer groups, labor, business and industry and those committees that have the primary responsibility in this General Assembly of coming forth with a workable products liability bill. I, for one, believe, members of this circle, that it would be more prudent for this body to look upon the areas of flaw that have been set forth in the Governor's veto message to this General Assembly to be considered areas of major concern and therefore should not be dealt with by way of an amendment so that we override the Governor's veto, but to take the appropriate steps and to have the committees that are responsible for the, ah, presenting to this General Assembly

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a bill that is workable and bringing together those consumer groups bring in to the Legislature and industry to work on a piece of legislation that is so important to business and industry in this state.

Therefore, I am going to vote to sustain the Governor's veto and as I do so, I make a commitment which I hope all of us will to study further the development of a workable products liability bill; one that indeed helps Connecticut business and industry and yet provides the kind of protection that our consumers in Connecticut deserve to enjoy.

THE PRESIDENT:

Senator Flynn.

SENATOR FLYNN: (17th)

Mr. President, through the Chair, I would like to pose a question to Senator Guidera.

THE PRESIDENT:

Senator Guidera.

SENATOR FLYNN:

And that question is in Section 4, first paragraph, reads in the bill as was passed - in any products liability action the manufacturer shall not be liable for any injury, death or property damage caused by a product which has been substantially altered or modified.

I would ask, Senator Guidera as one of the proponents of the legislation, if he would give us the definition of what is meant by substantially altered or modified?

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THE PRESIDENT:

Senator Guidera, do you care to respond?

SENATOR GUIDERA:

Yes, Mr. President. Senator Flynn asked me this exact same question when the bill was before us before and I will give him .....  
is no definition within the bill of substantial alteration. I told him at that time and I will repeat now that it is a term that has common usage, that courts normally apply common usage and should have absolutely no problem in applying a standard as intended. I also indicated at that time that if anybody had an amendment to come up with a definition of substantial alteration or if this circle would give me additional time, I would be happy to come up with such a definition. This circle was in a haste to either pass or defeat this piece of legislation and nothing was done at that time.

THE PRESIDENT:

Is the Senate ready to vote?

SENATOR FLYNN:

No, Mr. President, at least this senator is not. I have a copy of the transcript of the debate on April twenty-seventh nineteen seventy-eight, and nowhere in that transcript did I ask Senator Guidera to define that at that time. I want to point that out now. I want to point out also that as of this moment he has not defined what he means by it.

But I would like to pose a second question, and that is,

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does this bill apply to food products, manufactured food products?

THE PRESIDENT:

Senator Guidera.

SENATOR GUIDERA:

It does not, in my opinion, Mr. President.

SENATOR FLYNN:

And the third question, Mr. President, and that is simply, where in the bill are food products excluded from coverage in this piece of legislation, as drug products were?

THE PRESIDENT:

Senator Guidera.

SENATOR GUIDERA:

Ah, Mr. President, I haven't looked at the bill in a couple of months. There is a section in here that deals with definitions, I believe, and if the Senate will give me a few minutes, I will respond.

I see no section in here, Mr. President, which deals specifically with the question of food products. I thought that there was a, and it may be in here and I just can't pinpoint it at the proper time, but I do not see a section that deals with food products.

THE PRESIDENT:

Senator Flynn, DO you are to inquire?

SENATOR FLYNN:

Mr. President, there is no section which excludes food

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products. If you read SEc. 1, it defines a product liability action to include all actions brought for or on account of personal injury, death or property damage caused or resulting from the manufacture, construction, design, formula, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, advertising, packaging or labeling of any product. The only exclusion you will find is an exclusion for prescription drugs which sets forth that the law does not apply to certain kinds of drugs. There is no question in the actual bill before us that the law, does, in fact, apply to food items.

As I think about this bill, I think, Mr. President, that anyone of us can make a mistake. I sure made mine. I am sure you have made yours and there is hardly a person here who hasn't made his or her own. It is one thing to make a mistake, but it is another thing to righteously compound the error. We have talked about everything here today except what this particular bill says and that's really what the issue is before us. I would invite you to read one simple section of it. In any products liability action, and I think we have already established we are talking also about food products, the manufacturer shall not be held liable for any injury, death or property damage caused by a product which has been substantially altered or modified. It's clear enough. So what that means is that if a manufacturer produces a substance that is toxic or poisonous, fatal or permanently disabling at the point in time

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that particular substance or chemical becomes combined with any one more elements or chemicals in the ingredients of that food product, the original manufacturer is off the hook. So whatever commitments you've made, any of the citizens here who have promised to support this bill, I would ask you before you finally vote to read it; and without going into the technical details that we have already gone into at the time this bill was voted upon, that reason ought to be reason enough to sustain this veto. We are not being asked today to determine whether or not we think there is a problem with product liability. Personally I think there is, but that's not the issue. We are not being asked here today, this afternoon, to determine whether we are for Governor Grasso or some other candidate or whether we ally ourselves with certain consumer groups or manufacturers, because that's irrelevant. What we are being asked to determine is whether this particular piece of paper, the language that is included in this bill, is going to govern people of the State of Connecticut until the next time the Legislature convenes and adopts some substitute or remedial action. That's the issue. Now if you want to walk away from here and make Connecticut the only state out of the fifty where someone can eat a prepared food product, a can of beans, a cupcake or whatever else, die from it because somebody sold the person or the firm that prepared that product that kind of a noxious ingredient, then vote to override the veto and that's the result evitably that you will accomplish. And understand that when you do it because that's the issue not any other things

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that have happened here. Having said that, I would like to point out one other thing that applies to the entire subjectmatter. And that simply is that there are different kinds of products. You certainly can make an argument that if somebody alters a machine product in a way in which it was not intended that that individual should not be able to hold the original manufacturer responsible. But it is quite another thing to say that if you produce a particular chemical or produce a particular ingredient that maybe harmful, that may be obnoxious that maybe crippling or may be fatal, that once that is combined in some kind of a food product, that by virtue of that substantial alteration or combination the person who is dead or the person who is crippled for life does not have any right or action to seek redress in damages. Let's not talk about trial lawyers because the family of that person is the person or the people who we have got to be concerned about. And that's the kind of issue that this bill presents. Whether we should have taken up this kind of an issue this year at all? Yes, I think so. I voted twice against the chairman of the Judiciary Committee to take this matter up. But what we do here has to make sense and this bill does not.

THE PRESIDENT:

Senator Putnam.

SENATOR PUTNAM: (5th)

Mr. President, just briefly. I have heard that very

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often. I will try and be. Senator Flynn brought specifically out for all of us why, I personally support the passage, the override of the Governor's veto. Specifically, and I would hate to have anyone think that I do this so that tainted food can be sold to children and grandmothers. I don't. I don't believe anybody here does. When a person buys a product for use in that person's company it becomes that person's responsibility to insure that it is clean, that it is used correctly, that it is combined within that person's company correctly. To say that it is not the responsibility of the manufacturer but it is the responsibility of the woodsman who cut down the tree, even though there was alteration two or three times, in my opinion, is the basis why we have this law. It is my opinion why it is necessary. It does not strike me as correct that a person should be able to sue the manufacturer of a rubber product that is used by an automobile manufacturer in making a car. It is the responsibility of Ford Motor, Chrysler to use correct products in correct ways in their cars and the liability, which is exactly what Senator Flynn spoke to, should remain with that corporation that sells to the public.

Secondly, there is a finality in everything. An eight-year limitation, statute of limitations, does not seem to be incorrect in which to fix the liability. To say that asbestos takes thirty years is a fine statement but when it was sold the government, the industry, the people, the labor unions felt it was a solid well-founded product. It was not sold with the

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intent of killing people today. We are simply trying to put a finality on the ability to sue and to put a responsibility on the manufacturer of the final product to be responsible that their equipment is sound, usable and safe. I support it for that reason, I believe this override is something we should do.

THE PRESIDENT:

Senator Guidera.

SENATOR GUIDERA:

Mr. President, I wish to point out one thing for the members of the circle that what we are speaking about in this particular piece of legislation is products liability theory and the ability to bring a suit on the basis of a products liability theory.

As to the processing of food, any manufacturer who would put out a product, any food which was contaminated in any way, an individual would be able to sue him on the basis of simple negligence theory. He would not have to rely on a products liability suit.

THE PRESIDENT:

If there are no further.. Senator Flynn.

SENATOR FLYNN:

Mr. President, I have to respond to that. What we are talking about here is whether or not you are able to sue the original manufacturer of the particular product that caused the death or the disability or the illness. You might, in fact, be

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able to sue the baker or the company that prepared the combined ingredients; but the point I am making is that if you pass this bill today, you have lost your right to sue the initial manufacturer at the point in time, the one particular product or chemical or food ingredient that he manufactured is combined with other elements.

THE PRESIDENT:

The Clerk please announce an immediate roll call in the senate.

THE CLERK:

An immediate roll call in the Senate. Would all senators please take their seats. An immediate roll call has been ordered in the Senate. Would all senators please be seated.

THE PRESIDENT:

Ladies and gentlemen, the motion before the circle is to repass this legislation, so that if you vote yes, you are voting to repass; if you vote no, you vote to sustain the executive veto. Are there any questions on that? A yes vote is a vote to repass. A no vote sustains Governor Grasso's veto. The machine is open. Please cast your vote. The machine is closed and locked.

Total Voting . . . . .	36
Necessary for Passage . . . . .	24
Voting Yes . . . . .	18
Voting Nay . . . . .	18

THE GOVERNOR'S VETO HAS BEEN SUSTAINED.

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HOUSE

PROCEEDINGS  
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4645-4993

REP. GREEN (69th):

Thank you very much, Mr. Speaker, in the affirmative please.

THE DEPUTY SPEAKER:

The Clerk will please note. The lady from the 69th District in the affirmative. Clerk please announce the tally.

THE CLERK:

Total Number Voting.....	141
Necessary for Passage.....	71
Those voting Yea.....	132
Those voting Nay.....	9
Those absent and not Voting.....	10

THE DEPUTY SPEAKER:

The bill is PASSED.

THE CLERK:

Cal. 1320, Sub. for S.B. 230, File 473, An Act Concerning Product Liability Actions, as amended by Senate Amendment, Schedule A. Favorable report of the Committee on Judiciary.

REP. GILLIGAN (28th):

Mr. Speaker, I move acceptance of the Committee's favorable report and passage of the bill in concurrence with the Senate.

THE DEPUTY SPEAKER:

The question is on acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate. Would you remark, sir?

REP. GILLIGAN (28th):

Mr. Speaker, the Clerk has an amendment LCO 3855.

THE DEPUTY SPEAKER:

The Clerk has in his possession LCO 3955 which is designated as Senate Amendment, Schedule A. The Clerk will please call the amendment. It's 3855. Is that correct, sir?

THE CLERK:

Senate amendment, schedule A, LCO 3855.

THE DEPUTY SPEAKER:

The gentleman seeks permission to summarize. Is there any objection?

REP. GILLIGAN (28th):

Mr. Speaker, this amendment is an attempt to define more specifically those causes of action in the various rights and responsibilities between plaintiffs and defendants in products liability suits. While the original concept of the doctrine of strict liability in court is expressed in such a reportive way of the restatement reports. Second, with sound bulletins, terms and policy in reasoning, certainly excesses in subsequent application and interpretations of the doctrine have created a situation in which manufacturers have been subjected to ever increasing liability and in some instances, have found it difficult to obtain insurance. Mr. Speaker, I move adoption of the amendment.

THE DEPUTY SPEAKER:

The question is on adoption of Senate Amendment, Schedule A. Would you remark, sir? If not, all those in favor of Senate amendment, schedule A please indicate by saying Aye. Those opposed. Senate A is Adopted. Will you remark further on the bill as amended. Rep. Robert Gilligan. You have the floor, sir.

REP. GILLIGAN (28th):

Mr. Speaker, I move passage of the bill as amended.

THE DEPUTY SPEAKER:

The question is on passage of the bill as amended.

Would you remark. Rep. Ernest Abate.

REP. ABATE (148th):

Mr. Speaker, Thank you very much Mr. Speaker. Ladies and gentlemen of the Assembly. As might be apparent to you at this stage in the proceedings, I am not supportive of the file copy as amended. There are certain provisions in the file copy that stands before you that I can support and support enthusiastically. There are, however, many provisions that are inimical to the best interests of consumers in the State of Connecticut. When this bill came to committee and we had public hearings on the bill, it became apparent to me that the major issue which was of concern to manufacturers in the State of Connecticut was the issue relating to the statute of limitation. By far, the overwhelming majority of manufacturers who appeared before the Committee to give testimony on this bill addressed their comments specifically to the statute of limitations. Under the existing statute in Connecticut, the liability of a manufacturer is almost endless. The problem with the bill before us is that it does not legitimately address the issue of statute of limitations. In a products liability action and in accordance with the bill as amended, a products liability action is any action brought whether it be in strict products liability or simple negligence and I would welcome any comment on that during the course of this discussion today. If one were to look at the

definition section of what a products liability action is, it clearly indicates a products liability action shall include all actions brought for or on account of personal injury, death or property damage caused by or resulting from manufacturer, etc. of any products. So a products liability action is not just simply strict products liability in this case. We're talking about negligence action, simple negligence actions as well, I would contend. And in accordance with the law now, an action must be brought within 3 years of discovery but in no event, may it be brought later than 8 years from the date that it was originally manufactured, least sold or baled. Now, the bill as amended indicates that an action can be brought within 3 years of discovery but not later than 8 years from the date that the manufacturer of the final product parted with its possession or control or it was originally sold at retail or lease or baled to a consumer, whichever incurred last. It can have a situation here where a product is manufactured but it is not finally leased for the first time for a period of years for example, after manufacture. You have a situation therefore where the liability of the manufacturer can be extended well beyond the 8-year period from the date of original manufacture and in my opinion, a manufacturer's liability ought to be determinant. It ought to be fixed. It should not extend beyond the 8 years from the date that it was manufactured and sold by the manufacturer for the purposes for which it was intended. The bill before you doesn't do that so for those of you in the Chamber today who are interested in good products liability legislation; for those of you who are

concerned about the fact that the statute of limitations now as it stands in the statutes is not good and for those of you who think that the bill as amended will provide a better statute of limitations, I'm going to give you an opportunity to consider another statute of limitations that really addresses the problem, that puts a real limitation on the manufacturer's liability. You've got 8 years from the date of manufacture or from the date that the product left the control of the manufacturer so it's limited; it's not related to bailment, to lease or to sale. Mr. Speaker, the Clerk has an amendment, LCO. No. 4917. Will the Clerk please call the amendment and may I be allowed summarization?

THE DEPUTY SPEAKER:

The Clerk has LCO 4917 which shall be designated by the Chair as House Amendment, Schedule A. Will the Clerk please call.

THE CLERK:

House amendment, schedule A, LCO 4917.

THE DEPUTY SPEAKER:

The gentleman seeks permission to summarize. Are there any objections to the gentleman summarizing this amendment? Please proceed, Rep. Abate.

REP. ABATE (148th):

Thank you very much, Mr. Speaker. Ladies and gentlemen, the amendment that I have just offered indicates that an action in a products liability action must be brought within three years of discovery, but not later than 8 years from the date that the manufacturer of the final product parted with its possession or control, so a manufacturer's liability is

limited to within 8 years from the date that that product left his control. Or you can bring an action against the seller, a lessor or a bailer no later than 8 years from the date of the original sale, lease or bailment so we're talking about a retailer, your action can only be brought within 8 years from the date of that original sale but the manufacturer is only on the hook for a period of 8 years. That's it. It doesn't tie in with bailment as it does in the file copy before you. The file copy before you isn't going to address the kinds of issues that were raised by manufacturers who came before the Judiciary Committee. Now, if you want good legislation and honest legislation, don't be persuaded by the argument that, by God, you don't want to address the issues this evening by amendment because if you do, the bill's going to die because one thing I've learned from this chamber, I've learned from Rep. Stevens and I think it's a damn good lesson. He taught me this. If we get close to the end of a legislative session, we don't reject honest, good pieces of legislation, amendments, simply because we're close to the end of the session and there isn't going to be enough time to act on it. This is the first opportunity we've had to legitimately address this issue of products liability and we're doing it sincerely. The accusations will be made that my effort is designed at killing this bill. I offered this kind of a suggestion in the Committee. I offered to resolve this issue by addressing the real problem and that is the problem of statute limitation. So what you've got before you today is what I'm offering to you right now. It's better

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than what you have before you in the file copy as amended. Not only does it specifically address the issue of statute of limitations. It also addresses another issue. In the file copy as amended, the bill shall apply to all action brought after the effective date of this act. An individual could have a cause of action pending right now, something that happened years ago. You could have it pending; his attorney may be ready to bring that action in court. We're changing the law today. We're saying that it applies to all actions brought after the effective date. What we may be doing, by this, is in fact foreclosing one from bringing suit in a products liability action because we're changing the statutes of limitations. We're changing the law substantively so we may in fact, be denying some consumer who's already been preparing his case but hasn't filed the suit from, in fact, bringing his action because we're saying it applied to all actions brought after. My amendment addresses that problem. It says that it has no application. This bill will have no application to causes of action which have arisen prior to the effective date of the act. Now, isn't it fair to say that if a cause of action has already arisen, that it shouldn't be denied by legislation here before this General Assembly. We want to preserve causes of action that are already existing. Let's address future causes of action. Well, the amendment that I'm putting before you actually does that and I welcome argument on my amendment from anyone in the chamber that tries to tell me that this isn't fair. I move adoption of the amendment, Mr. Speaker.

THE DEPUTY SPEAKER:

The question is on adoption of the House amendment, schedule A. Would you remark?

REP. GILLIGAN (28th):

Mr. Speaker, I think it's clear. It was stated that this would limit this would limit this cause of action to 402A actions. The legislative intent of this bill was abundantly clear. The Senate by enacting the amendment that was previously adopted by the house struck from the body of the bill, language dealing with negligence and struck from the bill, any actions sounding in breach of warranty. What the effect of that is is that preserves those actions for any plaintiff who is aggrieved on those bases. This bill, this evening, deals specifically with strict liability in court and nothing else and let that be the legislative intent. Now, Rep. Abate indicates for the moment, anyway, that we should be concerned with the manufacturer and would oppose a strict 8-year statute limitation. This statute of limitations is fair as it stands in the file. To those of you who were concerned with shutting off prospective claims, it seems to me that this is an inconsistent claim on the part of the proponent of the amendment. The bill as it is in file as amended by the Senate amendment would permit the cause of action to be brought for an unlimited period of time in the case where the manufacturer parted with the product, gave it to the retailer, the retailer had it on the shelf for 15 years or 25 years or 40 years, then sold it to a consumer. That consumer would still have a period of 8 years to bring suit thereafter.

So, for the moment, then, I would suggest we reject the amendment. Now, Rep. Abate has said that we should not listen to the argument that we're going to lose the bill this late in session. The claim has been made by the opponents of the bill in the Senate that they have the votes to defeat suspension for consideration of this bill tomorrow. Make no mistake about it. If we amend this bill in any way, it's going to die in this calendar, the calendar of the Senate. 13 people voted against the bill in the Senate. They're 13 hard opponents. 8 of them are lawyers and they have pledged that they will defeat the bill. If there are any amendments, they will defeat suspension. That's the reality of the situation. I urge rejection of this amendment and any other amendment.

## THE SPEAKER IN THE CHAIR

THE SPEAKER:

The gentleman of the 121st.

REP. FRANKEL (121st):

Mr. Speaker, very briefly, in support of the amendment. There were 12 words, 12 very important words that the Senate added to line 59 in your file copy and the thrust of those 12 words in effect, prevents an 8-year cap. Every time a product is leased, the 8 years begins to run again and again and again. There is no 8-year cap which I think many people expect this bill to do. I've discussed this measure with the proponent and he concurs that is his understanding that every time a product is leased or every time there is a bailment, the 8-year period is renewed as to that particular person. I think if you wish to

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have an absolute statute of limitation for 8 years so that both manufacturers as well as consumers can have a comprehensive meaningful law and you'll support the amendment offered by Rep. Abate. Thankyou, Mr. Speaker.

REP. STEVENS (119th):

Mr. Speaker, remarking on the amendment, what was some general remark that unfortunately will apply to the other amendment also. I'm one who is torn in the debate on this bill. I happen to consider products liability one of the most important pieces of legislation to come before this session of the Legislature because I am convinced it's a serious problem for Connecticut employers. They are looking to some relief in the 1978 session. I've also spent a great deal of time reading the bill that has come down from the State Senate and there are problems in the bill that normally would be corrected by amendments and I don't like hearing the argument that if we amend this bill, it will die in the State Senate because as you all know and my good friend from Stamford said, I've been one who has risen consistently to say that argument should never be used on the floor of the House and what troubles me greatly is that I'm convinced that that's a very accurate statement tonight, that the State Senate will kill this bill if it goes back up there. I'm convinced from talking to members of this chamber and members outside this chamber and it makes it difficult for all of us because it means you can't really consider the merits of an amendment if you want the bill. And there's something wrong with the legislative process when it comes to this point.

And it disturbs me as one who has been here for 12 years to see that these techniques have been successful, once again, at the end of a legislative session. But they have been successful because that's it and Rep. Gilligan is correct, if it goes back upstairs, products liability is dead for the 1978 session and I unfortunately think it was maneuvered that way. Not from this chamber but from the other chamber. And if we don't let legislation stand or fall on its merits, then we're not doing our job and it means that special interest, no matter what side of the issue it is, has once again triumphed over the legislative process and I have to tell you tonight that it looks to me like special interests and I don't care which side you want to be on, the manufacturers or the trial bar. Special interests have taken over the issue of products liability tonight. Not you, not me, they have determined what we do and that's wrong but it's a fact of life. Rep. Gilligan is correct. If the bill goes back upstairs, it's dead. And that means that we've got to accept a less perfect bill. And I would hope at some moment in some session, the message would sink in and cross party lines that we don't run this assembly when that happens, that we leaders don't run it, that you rank-in-file committee chairmen don't run it. It's run from the outside. Whenever a special interest can maneuver a bill on the Senate calendar or the House calendar and play games the last minute and put us in a box like this, the people of the state lose because you're faced with no law or an imperfect law and it's the best example I've seen in my 12 years tonight and it's what makes me vote against amendments

and I don't like it but you have to make a balance in everything you do here. And the question is a balance on the amendments with no bill or a bill that's less perfect and the ----- off ----- and ----- xa ----- at's happening on this bill. Each of us has to make up our own decision in our own mind and the unfortunate thing is, you don't make it on the merits. But just remember, we've been maneuvered into this position by people who were never, never elected, and it's a sad commentary on the system.

REP. LAVINE (100th):

Mr. Speaker, I just can hardly believe what I've heard because it smacks a sham in hypocrisy. Last night, I heard the distinguished minority leader stand up and give exactly the opposite lecture and he gave the lecture to the Chairman on the Finance Committee and when he finished, I voted with him on the amendment that he proposed and I intend to consider each one of the amendments as they come along tonight and do the same thing I did last night and not complain about the system. I'm not changing my opinion from one night to the other.

REP. GILLIGAN (28th):

Mr. Speaker, I move that when the vote be taken, it be taken by roll.

THE SPEAKER:

The question is on a roll call vote. All those in support of the motion of the gentleman of the 28th will indicate by saying Aye. More than a sufficient number is in support and the roll call will be ordered. Will you remark further. If not,

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will all the members please be seated. Staff and guests please  
 come to the well and the machine will be opened. Have all (record  
 the members voted. Is your vote properly recorded? If so, 40)  
 the machine will be locked and the Clerk will take a tally.  
 Clerk, please announce the tally.

THE CLERK:

Total Number Voting.....	141
Necessary for Adoption.....	71
Those voting Yea.....	35
Those voting Nay.....	106
Those absent and not Voting.....	10

THE SPEAKER:

House Amendment, Schedule A Fails.

REP. ABATE (148th):

Mr. Speaker, needless to say, I am disappointed in  
 the vote that I have just seen cast on that particular amend-  
 ment. Nobody in the chamber rose to argue that the amendment  
 that I offered was not a good amendment. In fact, there was  
 probably a unanimity of opinion that the amendment that I  
 offered was better than what you had before you in the file  
 copy as amended and I really think that we're abrogating res-  
 ponsibilities when we begin to take positions in this chamber  
 simply because of the late hour of the session. I am disappointed,  
 frankly, in the comments made by Rep. Stevens because I always  
 thought that when those comments were made in the past, they  
 were made with a great deal of conviction, and that circumstances  
 would not dictate the position that he adheres to. I'm still  
 not going to abrogate my responsibilities thought. I'm going  
 to call to your attention another and then another and perhaps

another deficiency existing in the bill before you. I'll try to do it briefly recognizing that my efforts may be futile. I want to call your attention to a provision now in the bill. This is what you're going to vote on, probably; you're going to probably vote red on my amendment in just a few minutes here, when I call it but I want to tell you now beforehand, what it is you're likely you're going to be voting against. I want you to think about this. There's a provision in the bill, now, that says in any products liability action, the manufacturer shall not be liable for any injury or death or property damage caused by a product which has been substantially altered or modified. There is no definition for substantial alteration or modification. However, the next subsection goes on to say, product alteration or modification shall include failure to occur routine care in maintenance. This is an absolute defense. O.K. In a products liability action, a failure to observe routine care and maintenance is an absolute defense notwithstanding the fact that due to the manufacturer's negligence, somebody sustained severe injury, death or property damage. Here's an example and it'll be in the extreme. A manufacturer manufactures a lawn mower that requires a certain fuel oil on a regular basis, every month or so, certain fuel oil has to be used in this lawn mower. Routine maintenance, the instructions say that you must on a weekly or a monthly basis, replace the fuel oil with this certain kind of fuel oil. It's not done. If failure to maintain the machine in accordance with standard routine maintenance, the lawn mower explodes. O.K. The person is severely injured. It's

determined that the explosion had nothing to do with that, that this guy failed to maintain this thing in accordance with normal routine care and maintenance. You think he has a cause of action against that manufacturer, no. No, he has no cause of action because product alteration or modification as used in this act shall include failure to observe routine care and maintenance and in any products liability action, the manufacturer shall not be liable for any injury, death or property damage caused by a product which has been substantially altered or modified. No cause of action. Severe injury. Now, you've been led to believe tonight that the state of Connecticut has to have this legislation right now. Have you really thought about what the effect on products liability insurance premiums will be if we enact this bill tonight or if it becomes law in the State of Connecticut. Do you realize that manufacturers that are affected by escalating premiums and significant premiums sell their products outside of the State of Connecticut and that this bill is not going to have any affect on the consumer that purchases that lawn mower outside of the State of Connecticut but it's really going to have an adverse affect on the consumer within the State of Connecticut. If you talked to the representatives who were really supporting this legislation, to the representatives from the business community who really support this legislation, they'll be the first to admit that the effect on premiums will be negligible. What they want is they want Connecticut to enact this legislation as an example. They want Connecticut to be like other states in the United States

that have enacted this legislation and there are a few that have. This is legislation that they're seeking to do nationally. But the way, they're doing it nationally is not successfully through Congress but by going to the individual states in trying to persuade them to adopt legislation that's going to solve all the problems. Think about the Connecticut consumer. He's the guy who comes up on the short end of this thing because he is bound by the provisions in an act that's before us tonight, a bill that's before us tonight, so remember, the absolute defense that I referred to if an individual fails to follow routine maintenance and care. Mr. Speaker, the Clerk has an amendment, LCO 4915. Will the Clerk please call and read the amendment?

THE SPEAKER:

Will the Clerk be good enough to call LCO 4915 which shall have the style of House Amendment, Schedule B. Will the Clerk, please call and read.

THE CLERK:

House amendment, schedule B, LCO 4915, offered by Rep. Abate, 148th District. Strike lines 90 to 93 inclusive and reletter remaining subsection accordingly.

REP. ABATE (148th):

Mr. Speaker, I move adoption of the amendment.

THE SPEAKER:

The question is on adoption of House amendment, schedule B. Will you remark, sir?

REP. ABATE (148th):

Mr. Speaker, ladies and gentlemen, my amendment simply

removes from the file copy as amended the provisions that I referred to in introducing this amendment and I hope you'll give me your support, Thank you.

REP. SCULLY (75th):

Mr. Speaker, I rise against this amendment, not that it isn't in plain language. I think the bill itself is in plain language. It does not say that there's another part of the machine that's defective and cause an explosion, you cannot recover. It very plainly says that if you don't follow the rules, that part of the machine explodes, then you cannot recover. I think this has been an effort this evening to nitpick at this bill, even us from being a leader in the state. I think that I tried to argue the other night about a bill that should be done by all states including New York. I think this is something that should be done by Congress too. If Congress won't take the lead, why should we take the lead. I think it's a bad amendment and I urge everyone to vote against it.

REP. GILLIGAN (28th):

Mr. Speaker, Rep. Abate as usual states his case very eloquently but what he failed to indicate to you, what he failed to stress is that in the case of the failure to change oil in a lawn mower, he overlooks the fact that the bill specifically as amended by the Senate includes no recovery from a product that has been substantially altered or modified. The key word is "substantially". It's now a matter of proof and you can't tell me that there's any reasonable person who would stress reality to the point that's been made this evening. Furthermore,

what Rep. Abate I think would have you believe is that there would be no recovery at all. That is not the case. This bill, and please bear this mind throughout this evening's discussion, addresses only causes of action brought under strict liability. Sec. 402A. Second retorts. There still could be recovery. Under the other theories of liability, specifically negligence or breach of warranty. This is an extreme example and to argue the philosophical side of this, the purpose of this provision in the bill - it rests on the fact that a manufacturer, just like anyone else, should not be responsible for alterations and modifications that are made by a person that they have no control over whatsoever. I urge rejection of the amendment, Mr. Speaker.

REP. FRANKEL (121st):

Thank you, Mr. Speaker. I am puzzled. Look at your  
Product  
file copy, lines 90 to 93. /Alteration or modification, etc.  
shall include failure to observe routine care and maintenance.  
Rep. Gilligan would have us believe that routine care and  
maintenance really has nothing to do with this act but it's  
there. It's in your file copies, product alteration or modifi-  
cation shall include failure to observe routine care and  
maintenance. It's there for a reason. It's not there for no  
reason at all. The suggestion is that care and maintenance  
has nothing to do with the bill. It certainly does. It's tied  
into the section before that. I have to take exception to the  
Rep. Scully. Read your file copy, Sec. 4, a complete defense.  
A complete defense if you have substantially modified or altered  
the product and that includes in the definition of alteration,

failure to observe routine care and maintenance. It says nothing about causation which is what Mr. Abate was explaining with his example. You can modify your lawn mower with a new handle and have it explode and you would have an absolute defense. The suggestion by Rep. Gilligan that this just applies to certain kinds of actions, strict liability. I think he suggests that as a result of what we've done and the Senate amendment by deleting a portion of line 13 to 23. I don't agree with the leashes of those things, somehow absolved, the other portion of the litigation. Sec. 8 says that product liability includes and goes on to list all kinds of injuries, property damage, etc. There's no question but that the amendment you have before you addresses a very serious deficiency. It opens up the world, the manufacturers who are looking for defense to defend a good cause of action. You're taking away from consumers a good and proper right by the use of what is in fact a frivolous defense and you're giving manufacturers this frivolous defense by allowing this section to stay in. In response to some of the comments that have been made about killing this bill if we don't amend it, this bill ought to be killed if it goes the way it is now. It's not a bill with a few deficiencies that we can perhaps fix up. It's a disaster and I would suggest that unless we can amend it properly, we ought to defeat it.

REP. FERRARI (15th):

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of this amendment and I'm not going to belabor the members of the House with a lot of information concerning the points that have been raised by Rep. Frankel and Rep. Abate.

What I do ask you to think about is think about your constituents. Think about the possibility that young breadwinner, a constituent of yours, might go outside one day to start up his chain saw to cut down a tree and have the chain come flying off and kill him and his family be barred from recovering against the manufacturer because he didn't oil it or because he changed the handle on it or because he did something else which bore no relation to what caused the accident. Think about it and if you think there is a possibility that that may happen, vote for the amendment. (record 41)

REP. MATTIES (20th):

Thank you, Mr. Speaker. A question through you to Rep. Abate, please. Rep. Abate, using your lawn mower, through metal fatigue, the rotary blade broke and whipped out and hit somebody in the leg and injured them severely, would it be a defense on the part of the manufacturer if they hadn't changed the oil periodically.

REP. ABATE (148th):

Mr. Speaker, through you, although you can imagine that it would be a defense in looking at this file copy, looking at this bill before you, failure to observe routine care and maintenance is considered substantial modification and the manufacturer is off the hook if a product has been substantially modified. So, yes, it would deny recovery.

REP. MATTIES (20th):

Thank you and Mr. Speaker, through you, I'd like to address the same question to Rep. Gilligan. Rep. Gilligan in the case of metal fatigue where a rotary blade broke and injured a person, would lack of routine oil changes, periodic oil changes

be a defense.

THE SPEAKER:

Would the gentleman care to respond?

REP. GILLIGAN (28th):

Mr. Speaker, through you, if there was a causal connection between the failure to maintain the product and the ultimate malfunction of the product, then there would be no liability under strict liability in force. There would, however, be liability and negligence or for breach of warrant. However, you must regard the manufacturer's point of view. I ask anybody in the chamber and we can all yell and make emotional arguments but could a manufacturer be responsible for a person who buys a product and who does no maintenance whatsoever and no routine care and keep this for 5 or 6 or 10 or 15 years in its unrepaired and unmaintained status. Should he warrant that product indefinitely? Well, isn't there some responsibility on the part of the purchaser of the piece of equipment and especially hazardous equipment to take normal precautions against the breakdown of that equipment. The answer to your question is, if there's a causal relationship, yes, it would bar a recovery under this particular cause of action but not others. If there was no causal relationship, then it would not bar recovery.

REP. MATTIES (20th):

Thank you, Representative. Mr. Speaker, just commenting very briefly. I would support the amendment. I think we are opening a loophole and it does concern me and I do support the amendment. Thank you.

REP. COATSWORTH (32nd):

Mr. Speaker, I would like to ask a question of Rep. Gilligan regarding his last answer. I would like to ask through you sir, if Rep. Gilligan could show me in the file where it says, some causal relationship has to exist in order to claim, in order to receive some relief. Where is it in the file before us, in the instance that the gentleman of the 20th pointed out that any alteration or modification would have to be proven as a causal factor in the accident.

THE SPEAKER:

The gentleman from the 28th to respond.

REP. GILLIGAN (28th):

Mr. Speaker, the answer to your question is, it is basic court law that there must be a clause of relationship, furthermore, we're making legislative intent here tonight as we proceed, and I think that is the clear intent of this. Furthermore, the act has to be read from the 4 corners of the act and if you'll pay attention to the last amendment adopted by the Senate, it provides that comparative negligence shall apply to this, to any action brought under this statute and therefore, it's implied that there has to be some causal connection and therefore some (inaudible).

THE SPEAKER:

The gentleman from the 32nd you have the floor, sir.

REP. COATSWORTH (32nd):

Mr. Speaker, again through you to Rep. Gilligan, is it not true that we are changing in effect, case law by passing the statute?

THE SPEAKER:

Does the gentleman care to respond?

REP. GILLIGAN (28th):

Mr. Speaker. No, it is not my opinion, if the legislative body as an expression of its legislative intent, intends that there be approximate clause connection between the malfunctioning or the failure to maintain in injury, and that will be exactly parallel to the case laws that exist today.

THE SPEAKER:

The gentleman from the 32nd, you have the floor, sir.

REP. COATSWORTH (32nd):

Mr. Speaker, again and again before this House we have talked of legislative intent. And, again and again the courts of this state, courts have told us time after time that legislative intent is what the statutes we passed say it is. And, I can find no language in this legislation or any Senate amendment file copy or anywhere else that would lead me to believe that this amendment would be unnecessary. In fact, without this amendment any failure at all to provide routine care and maintenance would get any manufacturer off the hook for anything. I believe as I'm sure others do, the case for this amendment has been well made, and I would urge you to adopt the amendment.

THE SPEAKER:

Prepare to vote on the amendment.

REP. ABATE (148th):

When the vote is taken, may it be taken by roll, Mr. Speaker.

THE SPEAKER:

The gentleman requests a roll call when appropriate and all those supportive of the gentleman's request will indicate by saying Aye. The roll call will be ordered. Will you remark further or are you prepared to vote and we shall. Members, please be seated. Staff and guests come to the well and the machine will be opened. Have all the members voted? Is your vote properly recorded? If so, the machine will be locked and the Clerk will take a tally. Clerk, please announce the tally.

THE CLERK:

Total Number Voting.....	140
Necessary for Adoption.....	71
Those voting Yea.....	50
Those voting Nay.....	90
Those absent and not Voting.....	11

THE SPEAKER:

House Amendment, Schedule B Fails.

THE DEPUTY SPEAKER IN THE CHAIR

REP. ABATE (148th)

Mr. Speaker, ladies and gentlemen, I'm encouraged, slightly encouraged by the increase. I think, let me see now, we've picked up another 15 maybe with two more, if I can embarrass you just slightly more, just a little bit more embarrassing. I know you're swallowing hard with each one of these votes. Mr. Speaker, the Clerk has an amendment, LCO 4914. Would the Clerk please call and read the amendment?

THE DEPUTY SPEAKER:

The Clerk has LCO 4914 designated as House C. Will the Clerk please call?

THE CLERK:

House Amendment, Schedule C, LCO 4914, offered by Rep. Abate, 148th District. After line 294, insert a new section as follows: Sec. 11. Nothing in this act shall be construed to exempt from liability a manufacturer who knowingly produces a defective product.

REP. ABATE (148th):

Mr. Speaker, I move adoption of the amendment.

THE DEPUTY SPEAKER:

The question is on adoption of House amendment C. Will you remark?

REP. ABATE (148th):

Mr. Speaker, ladies and gentlemen, this amendment as with the prior amendments which I offered is very simple in concept but very significant in effect. What this amendment does. Mr. Speaker, may I have order in the chamber, please?

THE DEPUTY SPEAKER:

You certainly may, sir. Please direct your attention to the gentleman from the 148th.

REP. ABATE (148th):

Thank you very much, Mr. Speaker. Ladies and gentlemen; as I indicated a moment ago, this effect is very simple in concept but very significant in effect. What it does and it says simply that nothing in this act shall be construed to exempt from liability a manufacturer who knowingly produces a defective product. We've argued many of the deficiencies in the bill this evening and there are many more deficiencies that are yet to be addressed, but what this amendment does, it simply

states that a manufacturer will not be exempt from liability if he intentionally manufactures a product in a defective condition. Now if one would carefully look at the file copy as amended, one would see that there are many opportunities because of the language in the file for manufacturers to produce a product, give some warnings, provide for normal maintenance, and of course, hope that in fact, normal maintenance would be a year or two or that certain instructions will be violated, and therefore, you would be exempt from liability. This amendment simply says that he would not be exempt from liability if he knowingly produces a defective product. All we're trying to do is to get the manufacturer who knowingly produces a defective product.

And I'll bet you're all saying now - come on, now, what manufacturer is going to produce a defective product. That doesn't happen, does it? Well, let me just give you a short recitation as to a manufacturer that did produce a defective product and I'll let you know how they did it. Ford Motor Co. produced a Pinto awhile back and after design and manufacture of the automobile, it became apparent that there were certain deficiencies in the automobile. And I'm not fabricating this statement, this is documented, ladies and gentlemen. It became apparent that there were certain deficiencies in the automobile. What they did - they did a cost benefit analysis. They looked at what the benefits would be of modifying the deficiencies that they knew existed in the product. They said the savings were as follows: There would be a saving of 180 burned debts. There would be a saving of 180 serious burned injuries. There would be a saving of 2,100 burned vehicles. There would be a

(record  
42)

unit cost savings of \$200,000 per debt, \$67,000 per injury and \$700 per vehicle. O.K. That's the benefit side of this analysis. Then they looked at the cost side. They said sales of 11 million cars and 1.5 million light trucks - unit cost was \$11 per car. This was to remedy this defect that they found to exist in the automobile and \$11 per truck. The total cost was \$137 million where the total benefit to the consumer was 49.5 million. What do you think they did? They manufactured the vehicle with the defect. And the reason they did that was the cost far outweighed the benefits. Somebody was killed and they recovered against the manufacturer in a different state. What this does in the State of Connecticut because of the potential inimical effects of what you got in the file copy. What my amendment does, is that it says nothing in the act shall be construed to exempt from liability a manufacturer who knowingly produces a defective product. Now, how can you vote against that amendment? I move its adoption.

REP. GILLIGAN (28th):

Mr. Speaker, I'll tell Rep. Abate how we can vote against this amendment, at least, I can. There's nothing in this act that prevents a person from suing in that situation that he just related to you. That is wanton, reckless, negligence. Wanton disregard for the safety of another human being and I suspect that that was the basis upon which his recovery was awarded. We're just talking about strict liability cases with this measure. Strict liability cases apply under the Restatement of Courts, even where the manufacturer took the utmost of care.

And did everything that a reasonable man could to to eliminate any risk. Manufacturers are still exposed to some liability under strict liability in court. This bill would in no way preclude plaintiffs and the child bar from presenting those types of actions. Don't be deluded. It has no effect whatsoever by this measure. I urge you to reject this amendment.

REP. FRANKEL (121st):

Mr. Speaker, through you, a question to Rep. Gilligan. Rep. Gilligan, you indicated to us that the statutes of this bill deals solely with strict liability and the situation that Rep. Abate alluded to could not possibly be covered by this bill. Could you show me, sir, where in the file copy, this bill is limited strictly to so-called strict liability?

REP. GILLIGAN (28th):

Mr. Speaker, I think I answered that on the first amendment but I'll do it again just to show that I'm not avoiding the question. The Senate amendment struck that section, originally as drafted, this file copy providing for governing all actions including negligence and breach of warranty. If you look from lines 13 forward, Rep. Frankel, you'll see that those were specifically deleted for just that reason so as to preserve these types of coverage and that is the clear and abundant legislative intent of this bill should it be enacted.

REP. FRANKEL (121st):

Through you, Mr. Speaker. I'm aware that the Senate struck lines 13 thru 23 but what I see is lines 5 thru 13 that say, products liability action shall include all actions, all

actions brought for or on account of personal injury, death or property damage, caused by or resulting from the manufacture construction, etc. Now, can you tell me, sir, how by deleting lines 13 thru 23 which appears to be surplus language, that somehow changes the meaning of lines 5 to 13.

REP. GILLIGAN (28th):

Mr. Speaker, through you. The testimony in the Senate, the intention of both the House and Senate is explicit; it is being made explicit this evening that there shall be no recovery or that this bill will not affect those actions on in negligence or warranty and let it be the intent of this House.

REP. FRANKEL (121st):

Mr. Speaker, commenting on the amendment, specifically Rep. Gilligan's comments. I respectfully disagree. I think as Rep. Coatsworth indicated before. We can't change what a bill says by standing up here and saying, what we really need is. The way the system works is the court looks at the language we have. If it's clear, they're not going to go to legislative intent. Legislative intent is only a so-called court of last resort when the court has to clarify an ambiguity. Striking lines 13 to 23 is striking surplus language. If you look at lines 5 to 13, you will see that the very kind of situation that Rep. Abate referred to in his amendment is, in fact, covered. All Actions on account of property damage is the result of manufacture. It says nothing about strict liability in your file copy and I don't think we can create legislative intent by standing up and declaring what we really mean to say is. I can't really

comprehend how one could not support this amendment. The hypothetical - I should say not the hypothetical example is ludicrous. Ford Motor Company decided it was cheaper to allow 180 burn deaths, 187 burn injuries and 2100 burn vehicles, it was cheaper for them to do that than to fix the cars. They said, "well, sure we know we'll lose 180 people and there will be so many burn deaths, etc., but it's cheaper." It only costs us \$49.5 million in the law suits, whereas it costs \$137 million to fix the cars, so, let them burn. The amendment is quite simple. It does something which we all know needs to be done. No manufacture should be allowed to circumvent the law when he knowingly produces a defective product and that's exactly what the amendment says. And, we can't create legislative intent to do that by declaring that's what we want to do. If you believe that this is a proper approach, I urge you to support this amendment. I can't see in good conscious how you can avoid doing it. Thank you, Mr. Speaker.

THE DEPUTY SPEAKER:

Would you remark further on Amendment "C"

REP. PAWLAK (105th):

Mr. Speaker, I thought I would just sit here and listen to the debate which is very interesting. It became more and more interesting as time went by. One of the things which I've discerned is that there are more and more loopholes in it every-time somebody gets up to speak about it and getting larger inside the last one, it seems to be large enough for a truck to drive through. It seems to me, Mr. Speaker, intent or not the

language of the bill is what determines what is supposed to be provided. Our arguments here, our comments, our disagreements back and forth don't provide any kind of satisfactory guide as to intent. I think the last amendment proposed is an excellent attempt to close a big loophole and I urge support of the amendment.

THE DEPUTY SPEAKER:

I'll try your minds, all those in favor.

REP. COATSWORTH (32nd):

Mr. Speaker, I have just two brief questions, very brief questions to ask Rep. Robert Gilligan.

THE DEPUTY SPEAKER:

I hope they are brief responses, sir. Please proceed.

REP. COATSWORTH (32nd):

Mr. Speaker, through you, may I ask Rep. Gilligan whether he believes that the file before us as amended by the Senate, specifically includes liability for a manufacturer who produces, knowingly produces a defective product?

REP. GILLIGAN (28th):

Mr. Speaker, through you, would you please rephrase the question?

REP. COATSWORTH (32nd):

Mr. Speaker, once again, Rep. Gilligan, is it your understanding that a manufacturer who knowingly produces a defective product would not be covered, would or would not be covered by the file copy or legislative intent?

REP. GILLIGAN (28th):

Through you, Mr. Speaker. A manufacturer who knowingly

produces and puts a defective product on the market, would still be liable if we're going to enact this statute. There's no question in my mind that he would.

REP. COATSWORTH (32nd):

Mr. Speaker, through you, sir. If we defeat this amendment would it be legislative intent that we specifically exclude him from coverage?

REP. GILLIGAN (28th):

Through you, Mr. Speaker. No.

REP. COATSWORTH (32nd):

Mr. Speaker, this amendment reads nothing in this act shall be construed to exempt from liability a manufacturer who knowingly produces a defective product. Defeat of this amendment in the legislative record in history of this state, would in my opinion allow any manufacturer who knowingly produces a defective product to get off the hook. For those who think that legislative history or legislative intent is a real consideration or a court of last resort and that's surely the message. Please vote for this amendment, so that, there will be no doubt in anyone's mind of what we intend in this legislature.

REP. SPONHEIMER (103rd):

Mr. Speaker, I was not going to speak on any amendment of this bill because I come from an area in which the manufacturers in our area are beset with problems from products liability. And, even in my own family, my father is involved with a company with products liability problems. But I know when I sit here and I could see a good amendment at times, that there is no way

that this bill should go us without this amendment. We're doing nothing in this bill with this amendment other than to say that if someone manufactures a defective product they are not excluded from this bill. I was honestly appalled when I read or when I heard the Ford Motor Company statistics but I know enough about big business that I don't speak as a small business scenario for big business but they do costs analysis and they figure losses to insurances or whatever reasons and they find out how much they need to cover it and how much it's going to cost them. And, people are now saying, and I said it myself that it's too late to amend a bill. Well, it can't be that late and I'm wrong at times I would admit because I use the same argument, the same way everybody does when they are against an amendment to send the bill back. To consider the fact, that the Senate could get out at 11 o'clock or noon today and just wait around for our actions. It's a very simple amendment and I respect Rep. Gilligan and his arguments for the bill. I'm going to vote for the bill but what we're doing here is not destroying the bill. It's very simply stating that if someone knowingly manufactures a defective product, they knowingly are doing it. There figuring how they can make money and not be caught through litigation involved. Now, someone is going to get up and say your just saying that because your lawyer. I haven't never even brought a products liability suit. I wouldn't even know where to start to be honest with you, none of my opponents have even brought one but I can sit here and listen to the arguments of Mr. Abate and Mr. Coatsworth, two people of whom I probably disagree with as much as I agree with in the last two weeks,

don't understand that we must pass this amendment. Just listen to what the people are saying. You're doing nothing but protecting someone, then let's send the bill back. It will be passed. There will be bills passed tomorrow. Let's not kid ourselves. This is one good amendment for this bill. Now, I'm not going to vote for 10 or 15 amendments and try and kill the bill. This is going to be the only one I'll vote for. This is a good amendment, it's for the good of the bill. It's for the good of every person of this state.

THE DEPUTY SPEAKER:

(record 43)

We will try your mind.

REP. GILLIGAN (28th):

Mr. Speaker, I can't let this pass. In the discussion with Rep. Abate earlier this evening we had a very spirited discussion which we are having this moment. This was one of the lesser important amendments, as I understood it. It's on the order of a motherhood amendment. Now, we're casting a position of a "when did you stop beating your wife" type of proposition by Rep. Coatsworth. I would ask through you, Mr. Speaker, a question of the proponent of the amendment.

THE DEPUTY SPEAKER:

You have the floor, sir.

REP. GILLIGAN (28th):

Through you, Mr. Speaker. Rep. Abate, could you show me where in the file there is anything that would tend to absolve a manufacturer who knowingly creates a defective product?

REP. ABATE (148th):

Mr. Speaker, through you. The file is loaded with

provisions that exempt a manufacturer from liability if certain action is not performed on the part of the consumer. We debated one earlier this evening. It was an amendment that I think had some significance and I can sense that the membership was supportive except somehow the argument that the lateness of the hour has some persuasiveness and that was the amendment that indicates that failure to observe routine care and maintenance. A manufacturer can knowingly produce a defective product and just because that product has routine maintenance requirements, if those routine maintenance requirements aren't followed that manufacturer is off the hook, notwithstanding, the fact that he knowingly produced a defective product. The amendment before/<sup>us</sup>circumvents that kind of possibility.

THE DEPUTY SPEAKER:

We'll try your minds, all those in favor.

REP. FRANKEL (121st):

I would ask when the vote is taken, it be taken by roll.

THE DEPUTY SPEAKER:

The question is on a roll call vote, all those in favor of a roll call will indicate by saying aye. More than 20% have answered in the affirmative, roll call is in order. Members please take their seats, staff and guests please come to the well of the House. The machine will be opened. Have all the members voted? The machine is locked. Clerk please take a tally. Clerk please announce the tally.

THE CLERK:

Total Number Voting.....141

Necessary for Adoption.....	71
Those voting Yea.....	61
Those voting Nay.....	80
Those absent and not voting.....	10

THE DEPUTY SPEAKER:

House Amendment Schedule "C" FAILS.

REP. ABATE (148th):

Mr. Speaker, ladies and gentlemen, it's apparent it's obviously apparent that no matter how effective the debate is on this and frankly I think that the amendments that have been put before you this evening have been very fair amendments. Everyone has to admit that. I think everybody recognizes that they were amendments that would patch loopholes in this legislation. I've got several more amendments but I understand what the attitude is in this Assembly this evening. I'm cognizant of the attitude, totally disagreeing with the attitude but I'm aware of what it is and I'm going to withdraw the amendments which I have offered, although the temptation is great to go forward with them because I want to point out again and again the deficiencies in the bill. I think we, those of us who are attempting to improve this legislation have offered very good amendments to this point and time. Amendments which would have made this bill a far better bill. Nobody can say with any certainty that if this bill had gone to the Senate, that they would not being reasonable men have reconsidered their action and have accepted the amendments. There seemed to be agreement that the amendments were good amendments but I'm not going to go forward with the amendments I have, but unfortunately, I can't support the bill even though it has some provisions which

are commendable by far the weight of provisions in this bill are inimical as I said at the outset to the interests of people in the State of Connecticut. Not business, people.

Thank you.

REP. SHAYS (147th):

Thank you, Mr. Speaker, as one who has supported two of these amendments and voted against one, I would like to ask Rep. Abate, why as Chairman of the Judiciary, he did not present these amendments in the Judiciary Committee and make it a better bill then?

REP. ABATE (148th):

Mr. Speaker, through you. Mr. Speaker, as I said at the outset this evening I offered as a compromise to this particular bill in the Judiciary Committee a bill that would have addressed the issue of the statute of limitations which was by far the most significant issue before you this evening. I listened to the testimony carefully, I talked to the manufacturers, they convinced me that the real issue was one of statute of limitation. I made a representation that I would wholeheartedly support a statute of limitations modification and I would have done my best to persuade the representatives on the Judiciary Committee from the Senate who are inclined not to be supportive of this legislation at all. The compromise I offered was not accepted, business and industry association representatives wanted to go with the entire bill and that's why I took this opportunity to address the deficiencies that I found that stand in the bill.

REP. SHAYS †(147th):

Through you, Mr. Speaker. The question I'm asking is, why didn't you introduce these amendments that you are offering now in the Committee to make it a better bill in Committee. I realize you're saying that you offered an alternative but since the alternative didn't go why didn't you suggest that in Committee these amendments that you are suggesting now.

THE DEPUTY SPEAKER:

Remark further on the bill.

REP. LAVINE (100th):

Mr. Speaker, we've heard a quaint definition of legislative intent this evening. It means what you and I say may somehow work itself into the law. But just in case that happens to be so, I think there's certain language in here which we really should have explained to us because, indeed, if the bill does go as I believe it will. I think it's incumbent to know what some of these terms actually mean in the bill and let me put the question through you, Mr. Speaker, to Mr. Gilligan, what does "substantially altered" mean on page 3 of the bill and I'll find the line for you. It's the 3rd amendment which would come at line 89.

REP. GILLIGAN (28th):

Mr. Speaker, through you. There are no definitions for "substantial altered" for a very good reason that's up to a judge or jury to determine as the facts present themselves.

REP. LAVINE (100th):

Mr. Speaker, through you. In section 7, where it talks about there's no duty, where it says "warnings required under this act shall be regarded as adequate if they would put

intended uses of ordinary skill and judgement on notice. What does "ordinary skill and judgement", Mr. Speaker, through you.

REP. GILLIGAN (28th):

Through you, Mr. Speaker. "Ordinary skill and judgment" is exactly that which the case law, the law of the State of Connecticut presently provides for, that's what is known as the reasonable man standard.

REP. LAVINE (100th):

Mr. Speaker, On line 146, it uses the language "generally known to users" . What is "generally known" mean. Mr. Speaker, through you.

REP. GILLIGAN (28th):

Through you, Mr. Speaker. "Generally known" is again to be determined by the trial.

REP. LAVINE (100th):

Well, Mr. Speaker, obviously, there's all sorts of legislative intent, then. The legislative intent which we can spell out and there's legislative intent which we can't spell out but I would say to you, if there's a great deal of language in here which is not very clear and I think it would have been helpful had we had some definitions.

THE DEPUTY SPEAKER:

Prepare to vote. Will the members please take their seats. Ladies and gentleman, please, I beg of you. Prepare to vote. The machine will be opened. Have all the members voted. The magic hour is near. Have all the members voted and is your vote properly recorded? The machine will be locked. The Clerk will please take a tally.

House of Representatives

Tuesday, May 2, 1978

307  
re  
(record 44)

The Clerk please announce the tally.

THE CLERK:

Total Number Voting.....143  
Necessary for Passage..... 72  
Those voting Yea.....106  
Those voting Nay.....37  
Those absent and not voting..... 8

THE DEPUTY SPEAKER:

The bill is PASSED.

Members of the Chamber before I depart for a few minutes I would wish you all "Good Morning".

THE SPEAKER IN THE CHAIR.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 3  
857-1353

1978

MR. BEIDER (Continued): the year before they only had 210 million dollars in profits.

Now, the way I want to put it in prospective is even if you assume a ten percent rise in the cost of living, I've got news for you, let's assume a 20 percent rise in the cost of living, if Aetna took only a 20 percent rise in the cost of living over the 210 million dollars for last year, they should have 42 million dollars added to their profits, they would have 252 million dollars in profits this year, with a 20 percent rise. Instead, not being satisfied, and not, of course, being the barracudas that they are, they took only 417 million dollars in profits this year. Their lies have taken us all in. The ads are insidious and so are the legislative positions they take. Today we see one of the results SB 230 of the poison tentacles of the insurance industry. They have duped and drugged the manufacturing industry into pushing for the bill you have before you.

There's an article in Business Insurance, which is not an insurance publication but rather is calculated to the purchasers of insurance and it's written by a very perceptive young lady named Mary Krackowicki. What she talked about was -- and I just want to quote some of the things from her. Insurers so completely control the flow of information about their business that they have been able to create a shortage in product liability insurance while they simultaneously receive or rather engineer accolades from the press for their efforts at trying to solve the shortage through legislative and tort reform.

Belt #3 A broker charging insurance companies with deliberately withholding product liability insurance from manufacturers even when they could well afford to write it, it's not available at any price. Insurance companies desparately want to get tort and legislative reforms enacted but they can't do it alone. So in order to get manufacturers to rally to their cause, they're making it impossible for manufacturers to purchase products liability insurance unless those reforms are enacted.

The manufacturers, and by the way, I feel for the manufacturers. They are caught in this squeeze but the manufacturer, she says, pushed almost to desparation, will therefore clamor for the same legislative and tort reforms that the industry wants which will eventually be of enormous financial gain to guess who? The insurance companies. She then says that maybe part of the blame belongs to business writers wooed and subdued by



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SEN. DE PIANO: It means we're eating a lot of peanut butter.

MR. BEIDER: An awful lot of peanut butter, I know my kids do.

SEN. DE PIANO: I know that you're well prepared. If you could just summarize what you have. There are a lot of people who want to speak --

MR. BEIDER: I understand that. Let me address the highlights now of the specifics of the bill.

[SB379]

SEN. DE PIANO: Right. I wish you would bring it to --

MR. BEIDER: It is proposed the statute of limitations once again be gone into by your Committee and be more restricted than you made it last legislative session. Right now it's -- I want to just point something out to you, that if the roof God forbid, if the roof of the Hartford Civic Center should collapse eight years and one day after it was built, killing and maiming 10,000 people that are in it, under strict tort liability Connecticut citizens who are in it, this is under the present law, Connecticut citizens who are in it will have no course of action under strict tort liabilities. If a fan from Massachusetts came down to watch that other team or some team and was maimed and goes back to Massachusetts, he can bring a lawsuit under strict tort liability in Massachusetts.

What effectively was done, that assumes that one of the people he can sue is doing business in some fashion in Massachusetts, but that Massachusetts citizen has more rights than a Connecticut citizen. That's what the law is and what the insurance industry wants to do and unfortunately the manufacturers are being a part of that. I don't think they really want to be, is to more restrict that.

Right now it's eight years and anything beyond eight years you can't sue. And by the way, that's an era where manufacturers are putting out their products and saying they'll last a lifetime. Automobiles, airplanes, many of these things are meant to be -- to live more than eight years and yet there's a restriction.

Even the task force in its most limit says that 12 years ought to be applied, not eight years and I don't even agree with that because I think it's going to be deemed to be unconstitutional.

SEN. DE PIANO: So your organization is not in favor of decreasing --

SB 230

MR. BEIDER: No, in fact we're in support of another bill that's before you today which withdraws the years qualification on statute of limitations.

Well, again without getting to bore you, the insurance industry wants you to pass a law which says that if a product is in any way altered then the manufacturer is never liable for an injury, inspite of the fact that the purpose of the laws are to keep manufacturers on their toes and in spite of the fact that a manufacturer may know that a particular product is always altered by people when it comes out and a small amount of money can fix a product so it can never be altered, this law says you can't sue the manufacturer for that.

The state of the art defense, they want you to say that as an absolute defense to a lawsuit, if everybody in the industry was doing it that way nobody can sue if somebody is injured by the product. The one thing that the interagency task force which was made up, by the way, of representatives from insurance companies and everybody, the one thing that they agreed on was that absolutely should not be in a law. There should be no state of the art limited to -- and that's on -- well, whatever page it is, I'm sorry. That's stated very specifically that that's the one thing that they don't believe should be allowed and that is industry to set its own standards that are absolute defenses and I'm not lying to you.

Instructions or warnings, they say something to the effect that if the average person can understand it or if it's reasonable, then there should be no lawsuit. When you say average people, what that really means is that 50 percent of the public is below average, 50 percent is above and one person is average. Now, if that bill is passed, that means that 50 percent of the people in Connecticut if they don't understand a particular warning -- by the way, I don't understand a lot of warnings and I may fall in that lower 50 percent, but I don't understand a lot of mechanical warnings. I have to be really lead by the nose on a particular thing, but if this Section 6 passes and that 50 percent of the public doesn't happen to understand the warning because it's written for the senior 50 percent, then that means that the lower 50 percent may not have a lawsuit; they may be out on their wings in spite of the fact that they don't know what they're supposed to follow.

The law is an abortion, I'm sorry to say it. It is horrible. The only thing that the Connecticut Trial Lawyers can agree to, and this shows that they're not totally against manufacturers, is in Section 2 of the statute, where the word

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MR. BEIDER (Continued): manufacturer is added to that list of people which can bring a suit over within a year after they're sued against people who are responsible to them. I think that that should be in there. It's probably by inadvertence that it was not in the initial bill, but manufacturers should have the same rights as distributors and sellers to sue over within a year.

The real question is whether you're going to take away rights of Connecticut citizens, making them second-class citizens in this country with someone, in the insurance industry, demonstrating convincingly to you with statistics that you're justified in doing so.

I'm sure you're not going to do it. If you'll see the last part that I underlined down there, the task force came to the conclusion that the burden of proof would appear to fall on the insurers to justify increases of 200, 300 or 400 percent in premiums where they do not have data based on claims experience that would suggest that increases of this type are profit -- are proper. The burden should be on the insurance industry to show you figures, dollar and cents, that even I in the lower 40 percent or 50 percent of the public with brains should -- that you should deprive Connecticut citizens of rights.

Don't believe their panic, poor-mouthed caterwalling. We've been forced to swallow it in the past.

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REP. RITTER (Continued): available if the legislature should authorize it. Is that not so?

NORMAN PARSELLS: Well, let me tell you what I know about it, and that's all I can tell you. The bar association at one time sent out a questionnaire to its members asking whether they would be interested in supporting such a plan, and the response was overwhelmingly in favor of it. Now I think, my own opinion is, that the bar association ought to send out another questionnaire in which they are much more specific, and say, would you pay \$50 a year to belong to such a plan and so on. Such a questionnaire has been prepared by our committee; I believe it's gong to be sent out in the near future. Yes, I think the bar association probably would set a plan up, but I can't guarantee it. It costs money.

REP. RITTER: Yes, I understand that.

NORMAN PARSELLS: In North Carolina, for example, it cost the bar association \$45,000 to set up their initial plan. Most places where it's done, it's done by either a foundation taking some money in or the members of the bar putting some money in.

REP. RITTER: I have talked to some of the officers and they have indicated to me that they are very confident that if we get approval, they said, from the legislature, that there will be a plan.

SEN. DE PIANO: Thank you very much. Joseph Skelly.

NORMAN PARSELLS: I'd like to state, if I might --

SEN. DE PIANO: Excuse me, I thought you were finished.

NORMAN PARSELLS: No. 230, product liability. Last year this happened to me, and I waited five hours to reach the second topic.

SEN. DE PIANO: This time you only had to wait an hour and a half. That's not too bad.

NORMAN PARSELLS: I'd like to speak very briefly on Raised Committee Bill No. 230, an act concerning product liability actions, and only really on two sections. I'm not here to defend the insurance companies or to tell you about my

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NORMAN PARSELLS (Continued): cocktail experiences, but I have lived closely with product liability now for about three years. The two sections which I'd like to talk about are Section 2A, which establishes the statute of limitations of eight years from the time of the manufacturer of the final product parted with its possession or control or sold it, whichever occurred last, and Section 5A having to do with the state of the art defense which applies in cases based on design defects.

Both of these are of the utmost importance to the Connecticut manufacturer. First let me talk about the eight year statute. Without this limitation, the manufacturer can be sued 25 years after he manufactures a product. He has an open ended liability. Under these circumstances --

SEN. DE PIANO: Excuse me. Isn't it true that the existing law is eight years now?

NORMAN PARSELLS: Yeah. All this does is make a slight change, but you've got a bill in here --

SEN. DE PIANO: That's what I wanted to know.

NORMAN PARSELLS: But you've got a bill in here which would repeal it.

SEN. DE PIANO: All right. But you're saying this legislation would make a slight change. What's the slight change over the eight years?

NORMAN PARSELLS: Well, it establishes the date as being the last date that it leaves the manufacturer's hands.

SEN. DE PIANO: Eight years from the date it leaves the manufacturer? That's what this bill does.

NORMAN PARSELLS: That's what this bill does.

SEN. DE PIANO: The other law gives you eight years from the time that the defect is discovered.

NORMAN PARSELLS: Right. Three years from the time the defect is discovered.

SEN. DE PIANO: How was the eight years under the existing law as you interpret it now?

NORMAN PARSELLS: When it leaves his hands or is sold, whichever is later and the other law talks about sale, lease or bailment.

NORMAN PARSELLS (Continued): It's a very slight change.

SEN. DE PIANO: from the manufacturer, while in the other hand it goes from the product -- if the product goes from the manufacturer to the distributor, the eight years would run from the time it left the manufacturer and not the distributor.

NORMAN PARSELLS: No. That's what would happen under this law.

SEN. DE PIANO: what would happen under this bill?

NORMAN PARSELLS: Right.

SEN. DE PIANO: So what you're doing is that if some product --

NORMAN PARSELLS: You're cutting it back.

SEN. DE PIANO: What you're doing is if some product is sold by the manufacturer who may be directly responsible for the defect, that what we're doing is sayin well since he set u a chain where he sells to the Distributor A who sells it to Distributor B and four or five years later it ends up in the ultimate consumer's hands, that consumer would only have a cause of action of eight years -- really would be only four years or three years.

NORMAN PARSELLS: If that happened you're right.

SEN. DE PIANO: If that happened.

NORMAN PARSELLS: Against the manufacturer. The problem is that --

SEN. DE PIANO: What's the reasoning? You're in favor of the shortening of the statute of limitations period, am I correct?

NORMAN PARSELLS: Yeah, I am.

SEN. DE PIANO: What's the reason?

NORMAN PARSELLS: Well the basic reason --

SEN. DE PIANO: Inaudible.

NORMAN PARSELLS: The basic reason -- the basic problem with the law today frankly -- you're a lawyer and you know this as well as I do. That's what happened in the field of product liability is that the law has developed in the last five years starting

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NORMAN PARSELLS (Continued): with the cases in California, which the other courts have picked up. So that today the manufacturer is playing a ballgame which he started with certain rules and today he's playing it with different rules. And he's got a lot of products out in the market.

I have one client who, for example, has a million, five hundred thousand of one particular product out in the market. At -- and he hasn't made that product in six years. At the time that he made that product, which was made to the very best state of the arts specification and was the best in the field, the law -- these cases hadn't developed. Now he's facing a risk which is absolute under the present -- not in Connecticut because we do have a statute -- but he's facing a risk which is indefinite.

SEN. DE PIANO: That's what bothers me. Just what you said. Not in Connecticut. Because if you're living in Massachusetts or you're living in Chicago or you're living in Wyoming, and that particular product hurts that individual, the manufacturer is responsible for it.

On the other hand, you are saying here in Connecticut, look Connecticut people, we're only giving you eight years and now we're looking to cut it back.

NORMAN PARSELLS: You're partially correct. What I have to say in answer to that is that due to the experience that we've been having, there's a need for a limitation. Now I agree with you and I agree with what was said earlier that the Connecticut citizen shouldn't be worse off than a guy from Massachusetts. But you have to -- so I personally would love to see a federal statute limitation, but I don't see that coming. At least not very rapidly. So what I'm saying is Connecticut should do what several other states have done in the last year and adopt its own statute of limitations.

SEN. DE PIANO: Which we did sometime ago.

NORMAN PARSELLS: Yeah, I agree with that.

SEN. DE PIANO: statute just about what, two years ago?

NORMAN PARSELLS: Yeah. All this does is modify it.

SEN. DE PIANO: from the time of injury, I believe.

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NORMAN PARSELLS: That's right. Let me tell you in '77 Utah, Oregon and Colorado adopted statutes. One of them a six year statute and two eight year statutes. Ohio and Pennsylvania are probably going to adopt similar statutes this year, we don't know, but it's gone through one house. Let me tell you what happened to three of my clients in the last year because this shows you what really -- why it's a ractical matter.

I don't care about insurance companies. I hate to have to pay premiums or to be unable to get insurance and I'll discuss that later. But one of my clients is a specialty machinery manufacturer in Bridgeport. 23 years ago they sold a machine to General Motors. It's been in operation for 23 years and this year they got sued because the man hurt himself operating that machine. Another client, another machinery manufacturer in Bridgeport, made a casting to the exact specifications of the customer --

SEN. DE PIANO: Let's get back to the 23 years, cause I just went through one of those cases. The statute of limitations  
cause I just went through one of those cases.

NORMAN PARSELLS: No. In this particular state there is no statute of limitations.

SEN. DE PIANO: Well we were talking about an eight year statute of limitations, weren't we, from the time of the manufacture?

NORMAN PARSELLS: Yeah.

SEN. DE PIANO: If it was manufactured 23 years ago, you said?

NORMAN PARSELLS: I know. But this particular manufacturer was not sued in Connecticut.

SEN. DE PIANO: Oh.

NORMAN PARSELLS: He was sued in Michigan.

SEN. DE PIANO: Then we can't help him with the law in Michigan.

NORMAN PARSELLS: No. You can't. But you can not repeal the present statute which is requested by one of the bills here today.

Another client, a machinery manufacturer, made a casting to

NORMAN PARSELLS (Continued): the exact specifications of his customer, which was a large machinery manufacturer. That was put in a cast iron strainer. The strainer was sold to a wholesaler who sold it to a steamfitting company which installed it in a building. Later the pipe and the strainer in the pipe burst and a great deal of damage was done to three people, three tenants of the building. Suit was brought against everybody along the line and I think there were seven defendants in that case. My client's position was that it manufactured this casting exactly to the specifications of the customer and it had no liability.

Nevertheless, the insurance company settled that case for over \$100,000 and demanded contribution from my client, which obviously protested as a matter of principle.

Let me read you the Dear John letter, and it actually is a Dear John, which he got from the lawyer for the insurance company. "I am writing to confirm to you that settlement has been reached in this lawsuit. Because of the great amount of risk we faced as the ultimate manufacturer of the casting under strict liability product liability law, your insurer believes the settlement at the figures achieved presented the only practical option in contrast to the great risk of going to trial. We may not like all of the laws in our society, but we must face them realistically in order to survive." That gave my client great comfort, that bit of philosophy.

SEN. DE PIANO: Wait a minute. Your client didn't have to pay unless he wanted to pay.

NORMAN PARSELLS: My client was --

SEN. DE PIANO: I settled it for  
\$100,000 --

NORMAN PARSELLS: And your share is so much and we --

SEN. DE PIANO: insuring one of the other  
individuals who was a defendant, is what you're saying.

NORMAN PARSELLS: It was our insured.

SEN. DE PIANO: Your insured's company settled it?

NORMAN PARSELLS: Absolutely.

Mr. Chairman, today -- it's almost impossible to try a product liability case successfully for a defendant because

NORMAN PARSELLS (Continued): of the state of the law today. And in spite of what --

SEN. DE PIANO: Wait a minute. Do you have any statistics that will indicate the percentage of -- rather the number of cases that are brought on products liability and the number of successful recoveries? Are you aware of that statistic?

NORMAN PARSELLS: Only my own clients. No I'm not.

SEN. DE PIANO: It's very, very low because it's just the opposite. I say this respectfully, it's ver , ver difficult for a plaintiff to bring a lawsuit up on products liability and to recover, not the other way. This comes from all the defense lawyers that I've talked to about this particular bill and gotten their input and the statistics that are available. It's extremely difficult for the plaintiff and very, very costly to recover on products liability.

NORMAN PARSELLS: Well, with great respect, Mr. Chairman, and I've been living in this field for three years. That's not my experience. And let me tell you, and this is one of the things that Mr. brought out. He said the insurance company doesn't insure for punitive damages, and that's true in most cases. So it doesn't have any effect on the premiums. That's a lot of baloney. Of course it has an effect on the premiums. Because what happens is that every plaintiff today -- I don't say every plaintiff, but most plaintiffs -- who sue for actual damage throw in a request for a million or two million extra for punitive damages and what happens is that the client is perfectly willing to defend his suit, but the insurance companies are not willing to defend the suit. And because they're worried about the danger of punitive damages, they pay a high figure to settle the actual damage case and that is reflected in your insurance premiums, if you can get insurance.

SEN. DE PIANO: Statistically, how many people do you know in the state of Connecticut since our doctrine of strict liability have recovered punitive damages?

NORMAN PARSELLS: Well, we don't have punitive damages in Connecticut so that's not a problem in Connecticut.

SEN. DE PIANO: That's my point. So we're not talking about the problem here in Connecticut.

NORMAN PARSELLS: No, that's not a problem in Connecticut, obviously.

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SEN. DE PIANO: So that the premiums in Connecticut are not affected by a risk of punitive damages that you just stated?

NORMAN PARSELLS: Oh, that's not true. It may be.

NORMAN PARSELLS (Continued): That's not true. It may be. I have one manufacturer client in Connecticut. I have with me a study made -- and we paid \$15,000 to have a study made -- to see where we could get insurance and I also have a quotation from the insurance company. Right now our insurance premiums paid in Connecticut by this manufacturer are 5 percent of his gross sales. 5 percent of his gross sales.

SEN. DE PIANO: Don't we get back to the basic line on that, Mr. Parsells, on the premium wherein the insurance company quotes the premium they want and there is no way you can rebut whether that's reasonable or not? Isn't that true?

Because you're not aware of, what Mr.            said before, the makeup as to how they determine the premiums. In fact, it's a shotgun approach from what I understand

   testified in determining the amount of the premium and should the efforts of your client, the manufacturer, be directed to the insurance company to somehow or other propel them either on a voluntary basis or to legal action or to the insurance commissioner to get some statistics as to why their insurance rates and premiums are what they are.

NORMAN PARSELLS: Let me tell you why they can't do it. As you may recall --

SEN. DE PIANO: Not whether they can do it or they can't do it. Wouldn't that be the approach, Mr. Parsells?

NORMAN PARSELLS: I wish it would be. But let me tell you what happens. Two years ago, when Roy Daly was insurance commissioner, there were 200 manufacturers in Connecticut who could not get product liability insurance and this was spread all over the newspapers. So Commissioner Daly called in some of the companies. He said you fellas have got to find a way to take care of these people. And they did. But I have here a file, as I say we pay Marsh and McLennan, my client pays Marsh and McLennan in New York \$15,000 to try to find an insurance carrier who would take our insurance at any rate because we were being asked to pay 2-1/2 million dollars per year for insurance.

SEN. DE PIANO: That's not the approach we're talking about. The approach we're talking about is that we're at the mercy of an industry that we cannot determine whether or not they're making reasonable profits. I happen to think that 417 million dollars in profit is unreasonable. Just like the

SEN. DE PIANO (Continued): government stepped in against General Motors and a few other companies. We don't do that with the insurance business. So we're at their mercy.  
myself in paying my insurance premiums.

NORMAN PARSELLS: We have an insurance commissioner who is supposed to approve rates and further than that -- the problem is with product liability -- and I'm not defending the insurance companies but I understand their position and the problem is that in most fields you can determine a premium by actuarial experience, by past history. In the product liability field, you can throw all the past history in the world out the window because, as I said, the rules have changed completely.

In the last five years, there have been a hundred verdicts for over a million dollars in this country. Unheard of until the last two years. And it's basically because after the American Law Institute adopted Section 302A, and then the court started to change that by saying well does defect mean design defect, and it doesn't matter whether an article is unreasonably dangerous or not, if somebody gets hurt with it that's enough. These things have made it impossible, I think -- and as I say I don't say rates for insurance companies -- I think that's what they're scared of. And that's what we're told by our insurance consultant.

SEN. DE PIANO: Are you in favor of the bill that says that corporations can be formed to write insurance by filing with the Secretary of State and getting the necessary approval of the Insurance Commissioner so there would be regulation on that company to open up this field for further so there would be some competition?

NORMAN PARSELLS: I haven't seen the bill and the problem -- I don't have any objections at all except I don't see really what that's going to accomplish because it seems to me the Insurance Commissioner has got to approve reserves for that company and it's got to be the same as for any other company. Now if you think that it's going to bring competition into this field, maybe so. I don't know because I have a feeling that the insurance business is not a guess business, that rates are -- what happens as I've seen it over the years is they make a lot of money one year. Then they reduce their rates and they lose a lot of money the next year. And they boost their rates.

I just don't know. I don't have any objections to the bill.

SB 304

NORMAN PARSELLS (Continued): But what I'm really saying here is that the rules of the game right now are way over on one side. I'd like to see them brought back a little to where they used to be.

SEN. DE PIANO: Any questions?

REP. RITTER: Do you know whether there are any states which have set up state funds to assure reasonable product liability coverage?

NORMAN PARSELLS: I don't know of any and I think I would know if there were any. Let me say that what's happened in California where all this started, all the big cases started coming out of California and when you had your Chief Justice Trainer out there writing opinions. That they have now, their legislature has set up a commission to study the need for reforming the tort law in California and that's to report within a year.

So even there they recognize something needs to be done.

REP. RITTER: Have any of your clients or people similarly situated, manufacturers, discussed the possibility of increasing Workmen's Compensation for some of these happenings to use that perhaps as a way of addressing some of the legal questions?

NORMAN PARSELLS: I guess I don't understand how that would operate.

REP. RITTER: Well it's possible that one way to handle some matters here, some portion of what we're talking about, is to have Workmen's Compensation --

NORMAN PARSELLS: Oh I see what you mean.

REP. RITTER: Loss of a finger, loss of an arm, loss of a leg and so forth and maybe do away with some of --

NORMAN PARSELLS: Well there's been a proposal in Congress that would say in product liability cases, they'll adopt some kind of a Workmen's Compensation system so that the amount which any of -- you take away all defenses and anybody gets a limited amount as they do under our Workmen's Compensation law. But that hasn't gone anywhere. I'll tell you, we --

SEN. DE PIANO: You just hit upon something which I think is very interesting. Excuse me, Representative. But no matter what we formally do in this state, there's still a

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SEN. DE PIANO (Continued): made before. It's not going to affect your client's premiums.

NORMAN PARSELLS: I can't quarrel with that. All I can say is that Connecticut is a respected state. If Connecticut does something, Rhode Island looks at that, Massachusetts --

SEN. DE PIANO: It's not going to help our manufacturers in Connecticut pursuant to what you said because the premiums are going to stay the same.

NORMAN PARSELLS: Except you have to start somewhere. I agree with that. I can't quarrel with that.

SEN. DE PIANO: That's where you have to start.

NORMAN PARSELLS: I'd love to see that done. There is a bill and which I think is a first class bill which was put in by Representative but he hasn't even been able to get committee hearings on it yet.

SEN. DE PIANO: So there's no support in Congress for any modification?

NORMAN PARSELLS: Oh I wouldn't say that. Cause I think there is. But it hasn't -- there isn't enough yet.

REP. RITTER: Well the only thing I wanted to press a bit was at least a portion of product liability cases which might properly be interpreted as Workmen's Compensation cases and that segment could conceivably be handled by increasing the Workmen's Compensation benefits.

NORMAN PARSELLS: Well I don't see -- I guess that segment is being handled today under Workmen's Compensation.

REP. RITTER: Yes it could, but one reason that -- if we remove some percentage of liability claims, product liability claims, is that many people properly believe in Workmen's Compensation allowance for loss of a finger or hand.

NORMAN PARSELLS: Yeah, it's not adequate.

REP. RITTER: It's not adequate. And I think you might find great empathy in the legislature for that kind of approach.

NORMAN PARSELLS: Let me say one other thing -- and again I'm not defending insurance companies, but I have a letter here from our carrier. He's been our carrier for three years. Now

NORMAN PARSELLS (Continued): this is your premium and we recommend that you become a self-insured and don't buy our insurance any more.

-----: a n urn mot'vates your c'ent to 'ire you to come here to motivate the legislature to change the laws so that the insurance companies could make more money.

NORMAN PARSELLS: I don't want them to do that. They have to make a reasonable profit like everybody else.

SEN. DE PIANO: Well I wish I was in some industry that made 417 billion. Thank you.

NORMAN PARSELLS: Not I suspect out of product liability insurance entirely.

SEN. DE PIANO: Not every grocer makes all his money on apples, you know. There are other products he sells too. Thank you for coming, Mr. Parsells, and I'm glad you didn't have to wait so long. Joseph Skelly?

JOSEPH SKELLY: Chairman, my name is Joseph Skelly of Hartford, Connecticut. By virtue of last week's snow storm, I speak to you as President of the Hartford County Bar Association, not former President. I was extended because the meeting was cancelled. We in Hartford County, which is the state's largest and the oldest bar association, ask that you consider favorably House Bill 5109.

The concept of group legal service is not new in this country. There have been three United States Supreme Court decisions -- the earliest going back to 1963 -- which have upheld the role of the union or membership group in providing legal counsel to their members. All plans presently in operation in Connecticut, however, are conducted on what is known as the closed panel basis.

That is, the members of the group are provided legal services by a lawyer or lawyers retained by the group, many times in effect in-house counsel. There is nothing wrong with that type of program. It's both legal and ethical.

However, in recent years, contrary to the thoughts of many people, one of the major efforts on the part of the legal profession in this country has been to improve the delivery of legal services and to make it easier for the large segment of people in the middle income group to attain needed legal services.

IAN MC LACHLAN (Continued): court construed that it was retro-active and another construed that it was not. So the change in 5116 over the existing legislation would make it clear that this legislation is retroactive and all written or oral agreements between parents for the support of the children may be enforced by the court.

Thank you very much.

SPEAKER UNKNOWN: Inaudible.

WILLIAM MOLLER: Ladies and gentlemen of the Judiciary Committee, my name is Bill Moller. I am with the law firm of Moller and Horton in Hartford. I am presently here both individually and as chairperson of the Civil Justice Section of the Connecticut Bar Association and I'm not speaking for the Bar Association, but merely our section and more specifically the subsection on legislation.

HB5109

I realize time is running so I'll limit my remarks to three bills. The first is one in which we are in favor, namely the prepaid legal services and in answer to Representative Osiecki's question, we feel that this is a consumers bill because it is rather amazing that at the hearing before the Rules Committee on lawyer advertising, many consumer groups pointed out that 80 percent of the middle class citizens of Connecticut do not have available to them legal services.

We think that the opportunity should be given at least to the county Bar Association or the state Bar Association or the insurance companies to establish this.

The second bill in which we are in opposition is the so-called products liability bill, Bill 230. I think it would save everyone a lot of time and reading if it were merely changed to read "there shall be no products liability cases in the state of Connecticut." I think what the bill has attempted to do is to bring to some sort of panacea to every state in the union when such is not needed.

First, my own observations are that there are very few products liability in the state of Connecticut; we have never yet had any verdict in the vicinity of a million dollars on products liability and, in fact, I think the -- at least from my recollection, the highest verdict to date is in the neighborhood of about \$700,000, which was a medical malpractice case.

Now, the problem with the statute is essentially, I think

WILLIAM MOLLER (Continued): basically we can say -- and I think this is one of the problems that the of the statute have not done their homework as to the applicable law, cause I can say that the statute of limitations for products liability in Connecticut is three years.

The statute of limitations for products liability in Connecticut is four years. The statute of limitations for products liability in Connecticut is either three years or not longer than eight years from the sale or lease or the statute of limitations is six years. And the reason I say that is basically the basic law to date before any amendment is first, that if you sue a manufacturer in negligence, they're still bound by the two year to three year. In other words, that two years from the discovery but no longer than three years from the act or omission. As far as 402A that's presently covered under Section 52577A, at the present time that is the same language as far as I can Belt read, the proposed act No. -- Senate Bill 379 because the #9 key language again is any action brought under 402A for a defective condition shall be brought within three years from the date when the injury is first sustained or discovered or should have been discovered, except that it may be brought -- may not be brought later than eight years from the date of the sale, lease or bailment of such product.

Now I call your attention to several -- many questions I'm sure you will raise yourself, but just quickly going through in Section 1B, user on Connolly versus Hagge when a Chrysler automobile had a defective reverse system. If that car is taken to a repairman and the result is the repairman is injured in our common law, he's covered. Does that mean that if I that the repairman is acting for or on behalf of the injured party? Where does it include anyone because it's limited to a user or consumer of the product?

In the definition, what one word or one area -- because this is supposed to protect a person in Connecticut who is injured in a products liability -- where is the word damages mentioned at all? Where is there any definition of what is a foreseeable compensable injury?

If the legislature is asked to protect the citizenry in Connecticut, then why should there not be a definitive or some definition of what is an injury? What is a personal injury? Why would there not be clearly defined? In fact, if you keep that in mind and then turn over to page 6, in Subsection 7, it provides implicitly that any cause of

WILLIAM MOLLER (Continued): action for death shall be limited to these provisions. What is the cause of action for death? In Connecticut, wrongful death is a statutory cause of action set forth under 52-555 and states the grounds for damages. Under Section 7, there is absolutely no standard -- I defy any judge to attempt to give a charge to a jury as to what are damages compensable for death under this statute.

I also call the Committee's attention to Page 3 and Subsection D, that the provision of this statute shall apply to all actions pending -- all actions pending -- or brought after the effective date. Let's just follow through to conclusion because the cause of action set forth or defined under Subsection A -- in fact it's rather interesting as we look at that subsection -- one of the basic and one of the historical causes of action in Connecticut products liability is nuisance. But apparently whoever drew this didn't quite have the gumption to at least include as a well-recognized legal theory the theory of nuisance.

Nonetheless, there is lumped together each particular cause of action, particularly those on implied warranty or express warranty. That means that if a person was injured as a result of a breach of the warranty of fitness, and let's say that it was within four years from the time of the sale, then under this act that pending action would be invalid because under this act, an action would have to have been brought in three years from the injury. In other words, it says applying to any action now pending. Likewise, there are under Hammon versus Gigliani, there is a number of cases in which you may bring on express warranty and we have a six year statute under express warranty. So let's suppose that someone was injured as a result of a breach of express warranty and brought the action within five years after the sale. Again, that would be invalid. In fact, I think the problem with the statute of limitations which is set up is that it sets up a statute of limitations as far as the manufacture itself. In other words, when the manufacturer in Line 57 and 58 on Page 2, when the manufacturer has parted with its possession or control or sold it, whichever last occurred.

That would make a lovely field day lawsuit if a manufacturer is floor planning automobiles, is the floor planning sale, has he parted with control? Does that mean that if a car dealer gets the vehicle in January but doesn't sell the

WILLIAM MOLLER (Continued): vehicle until a year hence, does that mean that one year has already passed without -- before the consumer actually had it?

Now the other limitations -- for instance, Section 4 on Page 3, that you cannot introduce any evidence of change in design and it says under Line 30 for any purpose. What you're saying by that is okay, we'll eliminate all design defects because at the present time the law provides that in order to prove a defect, or one of the ways you prove a defect is that the manufacturer is aware of the defect and makes a change in design. This then would rule any such possibility of proof.

Please note that the language is also on Page 4 and 5 as far as absolute defenses. I do not see why a person injured in Connecticut by a defectively designed product should be required to put itself to the test of meeting these defenses and particularly when you get on to Page 7 as to the plaintiff proving that he or she were outside the particular limitations of the bill.

Now I don't mean to say that there is not nationwide a possible problem of products liability. But by the same token, if we are going to discuss products liability, I think we should keep it pretty much within the context of our own state of Connecticut and I think the statistics by the Judicial Council and the report by Chief Justice House in January 1977 will show that of all the cases brought in the Superior Court, less than 2 to 3 percent are products liability cases.

The question which I think this legislature should consider is one, are people being injured as a result of using products. And I think that you would have to answer yes. Then the next question comes down is how are these people to be compensated? In other words, at the present time, under the present tort system, it is the opinion at least by subcommittee that the present tort system does give the person the opportunity to present a case and I think the record -- I know it's always interesting to pick up the newspaper and see a large verdict -- but in Hartford County when the O'Brian Paint Company was on trial for ten weeks, and the plaintiff had just terrible injuries, the jury came back with no damages. That wasn't spread about the country. That just isn't newsworthy. When a manufacturer wins, it does not become newsworthy.

So our suggestion would be that this field is a very

WILLIAM MOLLER (Continued): complicated field; that when one attempts to legislate what all of the common-law doctrines are in a bill, because we all know that once a bill at the size of the suggested Senate Bill 230 is enacted, then the inclusion of what is contained therein is the exclusion of  
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And frankly, the feeling of our subcommittee that the bill has many, many -- too many unresolved questions and particularly that it is not -- it just isn't fair to all parties involved.

Lastly, one in which we show that we are true lawyers and which we could not have full agreement is the question with respect to House Bill 5496, restoring the ad damnum clause. As the attorneys know on the Committee, the ad damnum clause is not read to the jury by Superior Court rules and the proposed rules also contain the same admonition. However, at this point -- or let's say effective July 1, 1978, any writ which will be brought will either state that the damages claimed are under \$7500 or over \$7500.

From the standpoint of the insurance carrier, of course having no ad damnum makes it difficult for them to determine whether or not they have to advise their insured whether he or she should seek outside counsel. I think from the standpoint of the public, the public now we'll undoubtedly be getting questions saying you have been sued in this accident, and money damages have been claimed in excess of \$7500, your coverage is \$50,000 or \$100,000, this is to advise you that in the event the recovery is in excess of that you should have your own attorney. So there is, I think, a reason again from the public standpoint of having the ad damnum. From a practical standpoint, we know that the ad damnum has no real determination of the ultimate value of the case.

Thank you very much for your time. If you have any questions I'd be glad to try to answer them.

REP. ABATE: Mr. Moller, I missed your introductory comments. You are here representing what subcommittee?

WILLIAM MOLLER: I am chairperson of the Civil Justice Section, which is the section primarily of lawyers doing litigation in Connecticut Bar Association. Both plaintiffs and defense and we have a legislative subcommittee because of a number of bills coming through.

REP. ABATE: You stated today views which are representative of the views of the subcommittee?

WILLIAM MOLLER: That's correct.

SB 230

REP. ABATE: I would appreciate just some input relative to Section 2 of the proposed bill. Suppose we were to more clearly define the statute of limitations to provide for an action being committed within three years of discovery but not later than eight years from the date that the product left the control or the possession of the party against whom the suit is brought.

that under the current statute that there is really no statute of limitations as it relates to them and they are offering as a suggestion that we keep the time frame, the three to eight years, but clearly indicate that the eight years relates to the case from when the product left either the control or possession, whichever was later, of the party against whom the suit is being brought.

Any reaction to that?

WILLIAM MOLLER: Yes I do. Number one, there is still the -- the manufacturer is not met with, as Mr. Parsells eluded to, a 23 year statute of limitations. Because again, going back to the basic causes of action. As far as negligence is concerned, he has the protection of the two or three year statute. As far as implied warranty under the UCC, a four year statute and under express warranty a six year statute. So the only possibility is under 402A and under 402A the limitation is no longer in eight years under 52577A, eight years from the sale, lease or bailment, to cover the products which you cannot buy but must lease.

So that from a practical standpoint, what we're arguing is the shelf life of the product. In other words, why should the manufacturer -- we have to consider two concepts. Why should the plaintiff or the person injured who has purchased a product that has been on the shelf let's say for two years be penalized because the person from whom he purchased the article had it on the shelf for two years?

REP. ABATE: Inaudible.

I think the legislature initially when it extended the statute to cover a period of eight years  
It's an arbitrary determination obviously, because it said ten years. But what we're trying to address there is the fact that it's not likely that in many cases you're going to have shelf life of eight years.

WILLIAM MOLLER: That's correct.

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WILLIAM MOLLER (Continued): But I think that if you limit it as is done in the present House, Senate Bill 230, you are --

REP. ABATE: I think that language is poor.

WILLIAM MOLLER: Right.

REP. ABATE: Yeah.

WILLIAM MOLLER: But I think that what we should do since -- in other words, that prior to 52577A the question was, and was resolved by the case, whether or not there was a continuing negligence on the part of the manufacturer as long as the defective commodity is in the market. The Supreme Court says no, that you're pretty much limited under 402A since it's a tort action. You're limited to a three year statute.

Then the legislature in order to overcome the case, passed this which I think is workable and my suggestion is why not wait awhile to see what the experience in Connecticut is, because this statute was passed in June of 1976 and to the best of my knowledge has not been that substantial increase

WILLIAM MOLLER (Continued): This statute was passed in June of 1976 and, to the best of my knowledge there has not been  
Belt that substantial increase in products liability cases, but  
#10 our suggestion would be to take a look at what the export  
experience is with these cases, in Connecticut.

REP. ABATE: Just one other point. Have there been any decisions at all, any decisions, in Connecticut that have defined sale in the present statute as being the original sale of the party to be sued, for example the sale would be the sale by the manufacturer to the retailer.

WILLIAM MOLLER: I know of none, Representative Abate.

REP. ABATE: can legitimately then be interpreted as continually extending the liability of the manufacturer. You're talking about any dates in sales, can you see a date -- can you -- is it reasonable to say that even -- even though eight years had passed from the date that the item left the manufacturer's control, but that it was sold by a retailer in the ninth year that, by our present definition, that the manufacturer is still liable.

WILLIAM MOLLER: Yes, because the only case which dealt directly with the words sale, to the best of my recollection, was a case involving the extension -- as you recall 402A was first adopted in the Rosignol case which involved a carburetor in an airplane and we were quite amazed when the Supreme Court extended the concept or the defect to an egg salad sandwich, and in that particular case the only they talked about sale is directly the consumer against the -- quote manufacturer, was in that term of that sale. Under the Remington Fire Arms case or case, where the rifle or fire arm was manufactured, we'll say, let's say example, was manufactured in 1970 and the sale of the fire arm did not take place in , then, under the present statute --

REP. ABATE: Sale of the fire arm by the manufacturer?

WILLIAM MOLLER: No, sale by the retailer --

REP. ABATE: By the retailer. The manufacturer is still liable for it

WILLIAM MOLLER: That's right. That's right. But the problem with attempting to -- and it's a difficult problem -- the problem in attempting to pin down the statute of limitations is that it would be very simple for the manufacturer, for

WILLIAM MOLLER (Continued): instance, in -- I learned to my chagrin once when I attempted to sue Ford Motor Company, that there is no Ford Motor Company that sells automobiles. So it's Ford Motor Company that manufactures them and then they sell them to Ford Motor of New Jersey, or some other subsidiary, and then -- so that you -- you are going to create a problem of -- the ingenuity of corporate counsel in saying, alright, we're going to have Ford Motor Company manufacture them but Ford Motor Company of New Jersey is actually going to sell them. We will sell the cars to them. Then if you could go back to sales, the concept of sales, or release of control, then the eight year would start when Ford sold to Ford Motor Car of New Jersey or -- and then Ford Motor Car of New Jersey would floor plan them to the Ford dealers of, let's say Wagner Ford of Simsbury.

REP. ABATE: In any event, you still had an eight year period that you're subject to liability.

WILLIAM MOLLER: Except that, if a person buys -- let's say a person buys a demonstrator, and that has been used for eighteen months, then he is entitled to, that person is entitled to an eight year statute of limitations was the sale to him. Now, there are several ways of attempting to correct it. If you want to make it the sale of the consumer, then -- you know, the case they always bring up, a Stanley -- a well made Stanley hammer, is sold to a store that has very little use, or customers, then a customer comes along nine years later. By that time, the metal is brittle, a hand is injured. Why should Stanley Manufacturing be liable for such an incident? As a trial lawyer, I say that, I think, most jurors in Connecticut would say that's correct Stanley is not going to be held responsible for that. I think one of the -- what is attempted to be done here is to take some of the common sense away from our juries, because I've been trying jury cases for over twenty years on both sides and it's amazing that the citizenry of Connecticut have pretty good common sense when it comes to a question of whether a person should be compensated or not. Are there any other questions? Thank you very much for your time.

REP. ABATE: Appreciate it. Donald Gray?

DONALD GRAY: May it please the chair. Members of the Committee, my name is Donald A. Gray Jr. I'm President of the Western Connecticut Industrial Council Incorporated. The Council's a thirty one year old, one hundred and sixty two member association, whose membership employs some seventy five

DONALD GRAY (Continued): thousand persons, and is exclusively engaged in manufacturing in the Naugatuck Valley, Litchfield County, Shelton, Cheshire and Northern Fairfield County areas of the State. We express grave concern over the product liability situation as it effects our members. The situation with respect to product liability claims and insurance is in some ways comparable to the better publicized medical malpractice insurance crisis, but the potential economic impact is far more devastating. It could conceivably effect virtually every manufacturing product and every manufacturing process -- the entire basic economy. The problem stems from a 1963 California court decision in which the court ruled that if someone is injured, some one must pay, regardless of fault. Unfortunately, this decision has resulted in the "deep pocket" theory of recovery which states that the person who appears to have the most money should pay, and it is becoming fashionable to think that corporations and insurance companies have so much money that they will never miss it if forced to pay thousands or millions to someone injured while using a product.

The problem results in skyrocketing increased insurance premiums for product liability insurance, even though many of our members have never had a claim, and additional increased costs to the manufacturer directly for attorney's fees and settlements excluded from insurance coverage by deductibles. We have completed a survey of our one hundred sixty two members which indicates that the average premium has increased eight hundred and fifty per cent over the past five years. As you are aware, these costs are a non-productive capital expense, which money could otherwise be used for expansion and the creation of jobs. Several of our members have found the premium to be prohibitive and presently remain uncovered in an uncomfortable and tenuous position where one substantial judgment would effectively put them out of business with the resultant loss of hundreds of jobs.

As we see capital for expansion, research, development, improved safety and job creation diverted to purchase insurance, legal services and awards for events over which manufacturers have no, or partial control, we believe that there is no question but that the state must take some action. So that some sanity and order may be introduced into a chaotic situation, we recommend and support a bill or bills which limit the Statute of Limitations to three years from the date of injury or eight years from the date of original sale; a defense of product alteration or modification; a defense for post accident improvements; a defense for the State of the Art; a labeling and/or warning provision; a workmen's compensation offset and subrogation release and a contributory negligence defense.

DONALD GRAY (Continued): The situation as it now exists is distinctly anti labor and anti consumer in that it disregards inflation which must be factored into prices for product liability; disregards the abandonment of product lines by manufacturers considered, but not proven, potentially dangerous resulting in a loss of choice by the consumer in the market place and the loss of jobs for those formerly making those products; disregards the failure of businesses with attendant declines in competition and jobs; disregards the reluctance of manufacturers to develop and market new products; and further disregards the distinct possibility that those who can, will relocate abroad and import into the United States. Simply stated, enactment of the legislation which we propose would encourage the creation and sustenance of jobs; would encourage and promote job safety; would encourage and promote consumer safety and would substantially benefit the consumer and our competitive position by keeping product prices down.

We see the product liability transcending both parties and all segments of society, and accordingly, we strongly urge bi-partisan support of the legislation in this Session of the General Assembly to retrieve product liability from the arbitrary and vicious principles of absolute liability to the exclusion of any defense and restore it to the basis principles of equity. We would like to thank you for your courtesy this morning, Mr. Chairman, members of the Committee. The Council stands ready to offer you any assistance.

REP. ABATE: Mr. Gray, is it safe to assume that generally speaking most of the members of your Council are annoyed with the present state of the law relative to product liability , only because the premiums that they're paying for insurance coverage are either too high or -- I guess, simply stated they're too high.

DONALD GRAY: I would say that that is partially a fair statement. Another part to that is that our people are not only annoyed but they're being hurt by having to make payments for legal defense and partial settlements which do not come under the product liability policies, payments which are excluded by deductibles, payments for claims which are settled even outside the product liability insurance area to avoid having to give it to the insurance company because of a fear of an increased insurance premium. I think it's a matter of equity here as far as our people are concerned. They are annoyed at the high insurance

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REP. ABATE: How many members in your Council have a business which takes them beyond the boundaries of the State of Connecticut?

DONALD GRAY: I would say almost one hundred per cent of my membership.

REP. ABATE: My thought is that limiting -- limiting the cause of action in Connecticut is not going to have any significant effect on the premiums of the companies that your Council represents will pay.

DONALD GRAY: I think --

REP. ABATE: One hundred per cent of them are dealing outside of the State of Connecticut, probably extensively throughout the United States and -- and if you just improve their position within the boundaries of the State of Connecticut, then you're talking about a liability that is nationwide. I can't imagine that there would be any effect whatsoever on premiums.

DONALD GRAY: Well there's no doubt but what the -- this is probably a federal problem and there is legislation in Washington. However, at this point in time, several states are looking to alleviate the situation by legislation. If we have legislation which limits losses in this state and other states, the insurance premiums, we believe, will at least stabilize, if not come down, because as I understand the insurance underwriting of this aspect is done on an experience basis nationwide. If that company is licensed in x-number of states their experience in product liability will be geared to the premiums for those policies, based on experience in those several states. If we can stabilize the situation in Connecticut, it will have some bearing on the insurance premiums which we have to pay.

REP. ABATE: I think that's beautiful. Any other questions?

DONALD GRAY: Thank you.

REP. ABATE: Thank you Mr. Gray. Mr. Joel.

E. D. JOEL: Thank you Mr. Chairman. Members of the Committee. My name is Eldridge Joel, I'm Assistant to the President. Safeguard Manufacturing, Woodbury, Connecticut. We're a small company manufacturing a high quality stamping press safety pull back device -- been on the market for twenty eight years. We have been concerned with the product liability situation on a third party tort basis for a very long

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E. D. JOEL (Continued): time. We have been active in several business and industrial associations for years to bring this matter to public attention and welcome the opportunity to work with this Committee on the particular Bill Senate 230 which we are considering here. Our product liability related insurance costs have increased over the past years, mainly with the relatively large deductible clause now incorporated in the policy. These increased costs can only come out of what profits are available to reinvest in the business in order to keep our company's products competitive in the market place. Now our own experience, as far as premium increases go, for a period of eight years there has been an increase of fifteen times or fifteen hundred per cent in the actual cost of the premium. The deductible clause which is where a lot of the trouble is that's gone fifty times or five thousand per cent in that same eight year period. This is the trend today with the insurance companies.

We have heard comments from various sources that this Senate Bill 230 is possibly an anti-consumer Bill. Well we wish to squash these comments before they even get started. One there is no part, we feel, of this Senate Bill 230 which prevents any person who suffers an unfortunate injury and has a legitimate claim as the result of that injury from bringing a legitimate law suit, and receiving a legitimate settlement from that suit based strictly on the merits of the case. We say that the Bill simply sets up perimeters or guidelines for these actions. This Bill is, instead of anti-consumer, -- we consider a pro-work-place safety and jobs Bill, since the employer will be required to provide better maintenance and repair of equipment but no subrogation rights against the third party in a products liability action. The pro-jobs reason would be passage of Senate Bill 230 to allow companies like ourselves to remain in business so that we may continue to supply quality, safety equipment to industry at a competitive price.

As regards Senate Bill 379, elimination of Connecticut's present eight year Statute of Limitations, we are opposed to this Bill and would respectfully suggest to the Committee that you allow this Bill to die in Committee. We feel the passage of 230 would effectively eliminate it anyway. We happy to answer any questions, Mr. Chairman.

REP. ABATE: Representative Ritter.

REP. RITTER: You talked about a fifteen hundred per cent

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REP. RITTER (Continued): increase in premiums?

E. D. JOEL: Yes, Mr. Chairman, over eight years, yes. Fifteen times is -- one hundred per cent is one right -- so fifteen times a hundred is fifteen hundred per cent. Fifteen times increase in eight years.

REP. RITTER: Does that reflect an increase in coverage, an increase in your policy?

E. D. JOEL: No, no that's actually --

REP. RITTER: Is everything else being constant?

E. D. JOEL: Yes, that's almost exactly the same coverage over that same period of time.

REP. RITTER: with a five thousand dollar deductible too?

E. D. JOEL: That's the same coverage exists, but they've increased the deductible underneath raising up, so we have, in effect, less coverage what we're paying for.

REP. RITTER: Does it reflect any particular happenings in your own particular business.

E. D. JOEL: As a result, possibly, of a third party tort where we've been dragged in, the rates are set generally and then by company so specifically as applied to us, the answer could be both ways.

REP. RITTER: You're not raised retrospectively in

E. D. JOEL: No -- no we aren't, Mr. Chairman.

REP. RITTER: Those are astonishing figures.

E. D. JOEL: Yes they are and ours are strictly third party tort. We're not direct -- never -- I don't believe we've ever had a direct defendant. We're dragged in -- machinery manufacturer, or the selling agent .

REP. ABATE: On a strict products liability basis.

E. D. JOEL: Yes -- yes, Mr. Chairman.

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REP. ABATE: I assume you inquired of your insurance agent each time you and asked him why, what's the reason for the increase. What was the reaction?

E. D. JOEL: That's the going rate, Mr. Chairman.

REP. ABATE: You didn't ask -- well, why is it --

E. D. JOEL: Yes, we've asked but that's what they want. You have to skirt that issue today, Mr. Chairman. You know --

REP. ABATE: In other words --

E. D. JOEL: Unfortunately that's -- Senate Bill 230 would help companies -- all of us. Believe me. Contrary to some of the comments that you may have heard.

REP. RITTER: I'm assuming for the purpose of this discussion that this does -- probably does not reflect any appreciable income increase to the insurance. Is that a fair assumption?

E. D. JOEL: The premium increase is a net -- you could -- that could be correct, Mr. Ritter, yes.

REP. RITTER: Have you checked that out to assure yourself of that?

E. D. JOEL: Not specific details, no.

REP. RITTER: How about generally in this field.

E. D. JOEL: Generally, I have and the statement, as you made it, is -- they are looking for an increased net and they're then going up with the premiums to bring that net in -- into line. some figures, I may just digress for a moment over here -- a four hundred and seventeen million profit by Mr. . Well, whenever you see a profit figure, we in business would always request you to take a balanced look at it. What were the actual sales of the company or the assets invested, and whenever you see a profits figure

REP. RITTER: a little sophistication on

REP. ABATE: Any other questions. Thank you Mr. Joel.

: Rusty denies you have any sophistication.

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E. D. JOEL: Thank you Mr. Chairman.

REP. ABATE: Mr. Dreissigacker.

P. H. DREISSIGACKER: I'll have to change my format a little bit and say good afternoon instead of good morning. My name is Phillip Dreissigacker. I'm Vice President, Technical Director of the Farrel Company, Division of USM Corporation, which is an unit. Farrel has played an important part in the Connecticut business scene for the manufacture of heavy machinery since 1838, and therein lies some of our problems. I'm speaking in behalf of SB 230 and I'm here today because I, and my company, feel that something must be done to rectify the inequitable condition that exists concerning industrial accidents and the accountability for same. We're not curing the situation with law suits. I would like to have followed Mr. Beider, on this schedule, because I think the testimony we have here should be looked at in the light of his testimony earlier this morning.

I will not repeat the traditionally facts of the growing product liability problem. We all know the problem. What I would like to do is relate the problem into how it effects our company, Farrel, who has been manufacturing machinery for over one hundred years. I have two pictures here, and these are going to be my illustrations, of equipment that we manufactured prior to 1930. You'll note, if you look at the pictures, that that equipment is furnished with safety devices. They are the safety devices complying with the State of New York in the 1920's. Incidentally, these photos were taken, one in the mid twenties and one prior to 1920. Many of these -- oh, incidentally, between 1920 and 1930 we shipped eight hundred machines of that type. Many of these are still in operation today. They've been rebuilt, they've been modified, they've been sold, resold to two, three, and four , very often, with safety devices removed, and most of them there is no identification with Farrel other than the name cast in the basis brain of the housing.

Now half of our lawsuits are for accidents on equipment of this vintage which is still operating today. Yet we have no control, no jurisdiction, or knowledge of the machines. I'd just like to review quickly an example of what we run through when we investigate an accident in order to prepare a very costly defense. Now there's no scare tactics in what I'm stating because we have this documented through the accident investigations, we have set up one person in the company whose sole responsibility is to prepare defense for

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P. H. DREISSIGACKER (Continued): law suits that we have no responsibility for. First, the machine generally was purchased in the used machine market and the customer refused to have safety equipment included in the rebuilt. I believe there is a gentleman in this room who is faced with rebuilding machinery and we have evidence that he has offered safety equipment on a rebuilt . The customers will not buy it. They can't afford it. So they say. Two, working conditions in the shop where the accident occurred are completely unsafe and in noncompliance with OSHA. They're generally small shops. We have very few lawsuits or accidents in major users of our equipment. Number three, the machine operator who was injured turns out to be untrained and, in some instances, by his admission had as little as ten minutes instruction on the machine. Number four, the shop in which the accident occurred was devoid of any organized safety programs and the employer expressed no interest in safety since safety costs money and effects production.

Those four reasons are quite illustrative of the problem. We are not against the concept of workers recovering rightful benefits for their injuries and loss of wages, but why should the manufacturer of the machine be held accountable and responsible for conditions which are the responsibility of the employer? Present legal situation does not promote a safe work place. Under existing worker's compensation laws, the employer is immune from suit by his injured employee and the strict liability doctrine passes the responsibility onto the machine manufacturer who, as I've stated, has no jurisdiction over the work shop or any conceivable control over the machine.

Farrel is further concerned because we have, in industry, now by count -- went through the records last week -- fifteen thousand machines which are over thirty years old and seventy per cent of our law suits occur on machines over thirty years old. Farrel is concerned over the increase in law suits. We've had thirty five new law suits in the past three years, that's seventy five, seventy six and seventy seven, which averages eleven per year. Yet prior to 1973 we had two to three per year, going back to when we started keeping track of it which was about 1968.

REP. ABATE: How many of those suits have been brought in Connecticut? Of the thirty five in the past three years.

P. H. DREISSIGACKER: Hearing the questions you asked of the other speakers, I knew you were going to ask me of that. I'd say, I think we have two out of the thirty five in Connecticut.

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- REP. ABATE: Actually brought in Connecticut. How many of the suits that were brought relate to the machines that were actually produced more than thirty years ago? You indicate you have fifteen thousand machines in the market produced more than thirty years ago.
- P. H. DREISSIGACKER: Now, my statistics may not be too good here but I believe one, was on a -- I'm sure this is in Connecticut -- was on a vertical stamping press that we made in the late -- between 1918 and 1922.
- REP. ABATE: found liable? Were you found liable?
- P. H. DREISSIGACKER: This one hasn't closed yet.
- REP. ABATE: I'm sorry. You stated figures for legitimate concern -- you stated figures in terms of suits. I'm wondering in terms of liability, findings of negligence.
- P. H. DREISSIGACKER: Well, I will admit that in some of these suits we have been relieved from responsibility by either a judge or a jury, but we have had to go through the trauma of a trial.
- REP. ABATE: That's the issue -- that's consistent with what Mr. Moller said earlier which I felt was very relevant, that you've got to presume that you're going to have fair minded jurors who are going to find in your favor
- P. H. DREISSIGACKER: One of the things I will mention though that a little bit, if I could just go on and come back to that if it's still unanswered. Also, our liability Belt insurance premium and, incidentally, Al Joel and I did not #12 go into collusion on this -- our liability insurance premium has increased fifteen fold, fifteen hundred per cent from 1973 to 1978. This, in six years and with a doubling of our deductible from twenty five thousand to fifty thousand. We can't afford to pay the first fifty thousand dollars of every judgment that comes up against this ancient equipment. We cannot afford that. We pay the first fifty thousand of every judgment. Now, why the increase in law suits, in spite of the fact that the federal government has been emphasizing the need for safe work conditions. It's partially because employers have not been willing to assume their responsibility for a safe work shop, and have been protected from fault by worker's compensation laws. Second, the injured employee has found a legal way of supplementing his worker's compensation payments, which in some cases maybe -- maybe he should have

P. H. DREISSIGACKER (Continued): gotten it, for his injuries. And third, quite significantly, the employers worker's compensation insurance carrier has found a way of recovering his worker's compensation payments by taking the worker's comp payments off the tops of the judgments made in favor of the injured employees. Say how -- by collecting from the judgment made against the machine manufacturers. That is being done we know. For some reason workers, their attorneys, the courts and the jury all seem to feel the original manufacturer should bear the financial responsibility. We practice product safety. We manufacture equipment complying with accepted safety codes. As far as our interest in Connecticut as a place of business, we have thirteen hundred employees in the Naugatuck Valley. Upwardly, fifty one hundred in the State of Connecticut. There's Farmington, Berlins, Windsor, Portland and in Waterbury. We want work shops where our machinery is used to be safe and accident free. We're supporting legislation both in the states where our machinery is operated and also federally. Many states are working on legislation, and somewhat more effectively than the federal programs, and I think Connecticut has been very progressive and close to a front runner in this by their actions on the Statute of Limitations last year and we are most encouraged by the current legislative Bill SB230.

Some states have legislation now. We've got spread sheets showing what states have what protection, but Connecticut could be a leader in this, in the interest of promoting a safe work place. We'd like this Bill to set the stage for safer working conditions and a reduction of accidents. We ask that Bill SB 230 be given full consideration and action in this session. Thank you.

REP. ABATE: Thank you very much. Any questions? No questions. Mr. -- it looks like Kent. Fred Kent?

MARY BYRAN: Mr. Kent had to leave

Members of the Judiciary Committee. My name is Mary Byran. I am presently Administrative Manager Corporate Secretary of Bicron Electronics Company in Canaan, Connecticut. Bicron Electronics Company is a small electronics manufacturer, located in the northwest corner of the state, employing seventy people. Our survival depends greatly on the ability to remain competitive and to produce and sell our products at a reasonable cost. We have never had the misfortune of being faced with a product liability claim. However, we have had the misfortune of being faced with a seven hundred and

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MARY BYRAN (Continued): twenty one per cent increase in the cost of our products liability insurance this past year versus fifty four per cent the previous year. Additionally, we find ourselves faced with exorbitant legal fees since in accepting orders for certain products we have found it necessary to develop master sales agreements to protect ourselves. An example of this would be a recent sale of a dc to dc power supply converter to the mining industry where we learned that the end user, to whom our customer had in turn sold the product, was altering circuitry. Therefore, the product we had manufactured to very exact specifications of our customer no longer met these specifications and could in fact, at some future date, be the cause of an injury in the mines. The legal costs involved in taking exception to the quote fine print of our customer's purchase order, and in developing such a master sales agreement, ran in the neighborhood of \$1800 reducing our profit on this particular sale by about three per cent. We feel strongly that allowing the manufacturer to use alteration of a product as a defense and relieving manufacturers from responsibility of products that are correctly used and written instructions are provided, and allowing a state of the arts defense, along with a clear Statute of Limitations would be a step in the right direction.

We therefore urge strong support of SB 230 and thank you for the courtesy and opportunity to express our feelings.

REP. ABATE: Thank you. Any questions?

MARY BYRAN: Thank you.

REP. ABATE: You're very welcome. Joyce Raskin slash Warren Eginton. How do I handle that one?

WARREN EGINTON: Can we reverse that order, Mr. Chairman? Because I have to go to court. Thank you.

REP. ABATE: Yes.

WARREN EGINTON: Mr. Chairman, Representative Parker and other representatives. I say Representative Parker because I think she's been a faithful attendee from the very start this morning until right now. My name's Warren Eginton and until Senator DePiano made his comments this morning about Stamford I would have said I was from Stamford. Now I think I'll join Chairman Abate in saying that I've moved up the line and I practice in Bridgport as well.

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REP. ABATE: I'm from Hartford, actually.

WARREN EGINTON: We practice in Fairfield County. I want to say right off the bat, in view of Mr. Beider's shock delineation between the insurance industry and the manufacturers of Connecticut that I am not here representing the insurance industry. I have no connection with the AIA or any insurance association. I am here to speak for clients of mine who are large and small and the Connecticut Business and Industry Association which represents industries large and small, and I would say this, in the eighteen years that I have specialized in product liability, started with one to two cases in the early years in the sixties, and then when 402A came along and strict liability came in with the Rosingol case, I saw the volume of defense work in our office become ten fold, from two cases to about twenty a year, coming into the office on product liability, and you can not deny, at least in my experience, that there's been a tremendous explosion in this area.

Now as far as the insurance company profits are concerned I can only say this to you. You may have seen in the New York Times, yesterday's New York Times, about the twenty two major Fortune companies coming into Fairfield County. You probably saw that article. Those twenty two companies, many of whom we represent, are increasingly self insured. The reason I do the work for three of them, that I can see on this list right away that I know are self insured, is that the carriers withdrew gradually or made insurance so prohibitive that those companies found it a prudent business decision to become self insured and so we handle this litigation for them. Now that cost is passed along to the consumer and that is why I would not worry about whether this is a pro or an anti consumer Bill, this Senate Bill 230. The fact is that where these costs end up of product defect and product claims and in litigation being settled or tried is right in the pocket of the consumer.

I'd like to speak though in behalf of these small companies and you've heard some of them -- Farrel's not that small frankly, but there are thousands here, small machine tool shops, watch makers, that Connecticut's been famous for, for years. Those are the people who, as they told you -- Al Joel has been very vocal on this -- that they can't get the insurance at all or the insurance premiums are really prohibitive. Now I would say to you just two things about this Bill because Miss Raskin will go through the Bill itself, but there are two areas that I would like to address and one is I would urge you,

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WARREN EGINTON (Continued): by all means, do not pass Senate Bill 379. That would be a step backwards for Connecticut. We have talked, and you gentlemen and ladies have talked today, about the fact that Connecticut is only one state, and you're saying how can whatever you do or whatever you don't do effect what's going on in the United States. I submit to you that it's terribly, terribly important. When you passed the first eight year Statute of Limitations, the first outside limitations in strict liability and tort from the date of manufacture of a product, that statute in 1976 led the way to Colorado ten years, Florida twelve years, Kansas ten years, North Carolina ten years, Oregon eight years, Utah ten years, South Dakota six years. You were the wave of the future and the other states are following you. Now you who are attorneys, and there are many of you here, know you can not get a federal Statute of Limitations in this area. The Statutes of Limitations in the federal courts have followed the state Statute of Limitations in almost all of these cases that you can think of, but you may get a uniform Bill and that is what I think lies in the future here, is a uniform Bill after the states fell in line with various length Statute of Limitations, as they are now. With respect to Mr. Moller where I disagree with him is that I think when you talk about the twenty three year situation that Norm faced, you can't say that negligence was cut off at the end of three years.

Negligence was cut off at the end of twenty three years plus three years because your negligence statutes don't start to run until the injury occurs. So regardless of what you do with this statute, what you are doing by preserving the leadership of Connecticut, by not enacting 379, is that you are saying only to plaintiffs that they can not bring actions in strict liability in tort under 402A after an eight year period. You're not telling them they can't come in on a negligence because they always can come in on a negligence for three years after the tort occurs. Now, the other thing I want to talk about, I'm delighted that Congressman Ritter did come back because he made the only reference today, and I really wanted to address my remarks to him in detail, on Section --

REP. RITTER: I'm not happy with that field demotion. You said Congressman Ritter. We're known here as simple representatives.

WARREN EGINTON: Oh, I'm sorry, I thought, for a minute you had me really shocked because I had asked somebody in the absence of a sign whether you were a Senator and they said no, so I was hoping I'd gotten the right information. Representative Ritter,

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WARREN EGINTON (Continued): since that's a literative, I'm happy to see that. I would like to refer you to paragraph seven section seven of Senate Bill 230, because it goes, I think, well down the line of some of the comments you made earlier today. You'll find, and if any of you've heard Professor Clifford Davis speak on this subject from University of Connecticut Law School, that there are at least six different approaches to how you solve the workman's compensation mesh tailing, dove tailing, and meshing with third party suits. This has been a tremendous problem. You can look at statistics that go all the way from sixty per cent to thirty per cent of what is your volume of work place per centage of total product liability exposure. I can give you one horrible case and I'll make it short, sweet and simple, because you do not have the section seven that we are recommending you adopt. Here's the case we have, where a manufacturer has an employee who is badly injured, severely injured, and the manufacturer and his carrier will pay out under the workmen's comp program significant sums of money, hundreds of thousands of dollars. Now then that employee goes to a lawyer in the same jurisdiction, or another jurisdiction, and he decides to sue the manufacturer of the equipment. Now I'm not talking about the employer of course. I'm talking about that third party manufacturer of the equipment.

He sues him for millions of dollars and the manufacturer of the equipment

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WARREN EGINTON (Continued): and the manufacturer of the equipment then turns around and the employer, so the employer Belt is tied up in so many law suits going through the same thing #13 all over again, that his defense costs are unreasonable. Now you're getting multiplicity of litigation and the only people who benefit are the lawyers; and frankly here I'm speaking in a position, I suppose against my welfare but we have more of this litigation than we need, believe me. I want to see this litigation cut down, and the section seven is the way to do it because here what section seven accomplishes. Under section seven what would happen -- let's take my same case. Our employee is injured. We pay out \$250,000, let's say, under workmen's comp to that employee. Now, the employee then goes down, let's say in New Jersey, and he brings suit against the manufacturer of -- we'll say a fork lift truck, and he sues that manufacturer of a fork lift truck for three million dollars, down in New Jersey.

Okay, let's say the jury eventually comes in with a million dollars. That employee gets that million dollars that he's entitled to get. That's what the jury found he's entitled to get, but the manufacturer of that fork lift truck doesn't pay the million. He pays seven hundred and fifty and our two hundred and fifty that we paid in comp gets credited -- we do not get a subrogation right. The employer is giving up his subrogation right and the carrier is willing to do that, and I submit to you that of all these things you'll study, and Cliff Davis and I have been studying them for a long time, you have before you the most simple approach to this whole problem that I can envision and I urge that section seven on you very strongly. Thank you.

REP. ABATE: Thank you. Any questions? Miss Raskin.

JOYCE RASKIN: I'm not familiar with this. Is this loud enough? My name is Joyce Raskin. I am an attorney with the American Insurance Association in New York. I am here today on behalf of the Connecticut Business Industry Association and the Insurance Association of Connecticut. I've submitted to you a rather lengthy statement; I know the time is late, so I'm only going to use part of it and you can read the rest at your leisure. The current problems with product liability have not reached crisis proportion. However, while the original concept of the doctrine of strict liability in tort as expressed in section 402 A of the restatement of tort, was found both in terms of policy and reasoning accesses and subsequent application and interpretation of that document, have created a situation in which some

JOYCE RASKIN (Continued): businessmen and manufacturers have been subjected to ever increasing liability and they, and others, have in some few instances found it difficult to obtain insurance; either insurance of affordability or availability. This situation arises when the economic capacity of the tort liability system is made to respond to demands beyond its means and beyond its social responsibility. The proposal being considered today contained in SB 230 reflects an attempt to balance the equities in product liability cases and establish guide lines and perimeters for courts in adjudicating issues presented for resolution. The basic premise upon which the suggestions contained in the proposal is that both the tort system and the doctrine of strict liability in tort should be retained. However, restructuring of product liability cases is needed to insure protection of consumers, sellers, and the tort system.

In addition to the definition of a product liability action which is contained in section one, the proposal contains provisions relating to the Statute of Limitations in product cases, defenses based on a plaintiff's conduct, product modification, and only in cases involving design or undiscoverable risk, a state of the arts defense. There's also a coordination of product liability with worker's compensation and a recognition of the duty to warn and a provision relating to the admissibility of evidence of post accident repairs. I am going to direct my comments today to the Statute of Limitations and the defense based on plaintiff's conduct proposals. With respect to the Statute of Limitations I understand there is also a Bill today which would eliminate the outside period. My comments are directed mainly to the absolute outside limitation period because we believe that this -- the use of an absolute outside limitation period balances the equitable needs of the party and reestablishes the correct allocation of incentives and injury avoidance.

In the case of against General Motors Corporation, the Supreme Court of Connecticut held that the applicable limitation period commenced to run from the date of act or complained of, in a strict liability action, which was, in most instances, date of sale. The present Statute of Limitations in Connecticut evidences a fairier consideration of all parties involved in a strict product liability action. Plaintiffs are afforded a period of time measured from the date of injury to bring their action, and an absolute period placed on the times to which defendants are exposed to liability. To eliminate the outside period, as proposed in SB 379, may allow more plaintiffs to sue, but it will do so at the

JOYCE RASKIN (Continued): expense of defendants, whether those  
merely thought to be wrong doers. The results of the system  
under which not all parties are treated equitably, the  
consideration supporting Statutes of Limitations  
and unreliability of evidence caused by  
the passage of time, are enhancing cases of product liability.  
Product manufactured in 1950, for example, may have changed  
hands a number of times and may have been subjected to changes  
over the years. There is no , economic or other benefit  
to be gained from holding a manufacturer or seller liable for  
an injury caused by a product he has neither seen nor had any  
control over for an extensive period of time. Another point  
to consider with respect to the Statute of Limitations is  
that plaintiffs are not denied the remedy merely because one  
type of defendant is no longer available. Often some third  
party will have possession and control of the product which  
causes injuries and will be responsible for that injury.

In cases of capital goods, which are most often effected by  
the outside limitation period, plaintiff usually has the  
worker's compensation system on which to rely. Those more  
closely related to an injury, in terms of time, are often in  
a position to prevent future injuries and liability for injuries  
should rest on them rather than the manufacturer who is no  
longer in a position of control with respect to the product.  
The proposed defenses in SB 230 will evidence a significant  
and effective response to distortions in the current tort  
liability system. This is especially true of the proposal  
concerning comparative negligence. The Supreme Court of  
Connecticut, in against Mohawk Service Incorporated,  
observed that the restatement is farce in its discussion of  
the question of whether or to what extent the contributory  
fault or breach of duty on the part of the user of the product  
should recovery.

Initially, it should be noted that in 1965 when section 402 A  
was adopted, only eight jurisdictions have adopted comparative  
negligence. Today the majority of jurisdictions have adopted  
some form of comparative negligence. There is no reason why  
concurrent developments in the tort system should not be  
synthesized to achieve fairness and equity in the system.  
There is nothing contained in 402A or its comments to warrant  
the results when there is denial of application of comparative  
negligence in strict tort liability actions. Comment N which  
is directed to contributory negligence states that contribu-  
tory negligence is not a defense when such negligence consists

JOYCE RASKIN (Continued): merely in a failure to discover the defect in a product, or to guard against the possibility of its existence. This statement only points out a situation where contributory negligence is not a defense. It does not stand for the proposition that contributory negligence is not a defense at all as evidenced by its reference to assumption of risk. Furthermore Comment G contains a statement, the seller is not liable when he delivers a product in a safe condition and subsequent mishandling or other causes make it harmful. Conduct on the part of a plaintiff, which causes injury, should be considered as other causes in product liability cases. Considering Comments N and G, and the fact that the concept of comparative negligence was relatively new at the time of adoption of 402A, the holding of the Supreme Court in Connecticut in \_\_\_\_\_ that there is nothing to justify holding the seller for consequences of the user's own contributory fault of breach of duty in use of the product, which conduct is approximate cause of the injury, evidences a well reasoned determination of the issue.

The increased liability to sellers created by the application of strict liability in tort was imposed for public policy rather than legally established \_\_\_\_\_ reasons. Just because a seller is responsible for injury caused by defective products even if he has exercised all possible care, does not mean a plaintiff has no duty to act with care. Strict liability in tort can not and should not be equated with willful or reckless negligence, ultra hazardous activity, or the creation of an absolute nuisance. Those situations do not really establish fault beyond ordinary negligence. Liability under 402 A does not even require negligence. To deny use of comparative fault concepts in strict liability would be grossly unfair.

Section eight of SB 230 would reaffirm substantially the reasoning behind the holding in the \_\_\_\_\_ case. It would make a plaintiff's contributory negligence a relevant issue in any product liability suit. The proposal reenumerates the type of plaintiff's conduct that should be taken into account to determine basic contributory negligence, and its excuses which the plaintiff may raise in the event his conduct does not reach the applicable standard of care. Any incompatibility in using a comparative negligence standard for a strict liability cause of action is semantic in nature. An elimination of the plaintiff's negligence in product cases creates internal inconsistencies in the court law. Currently, in Connecticut if a plaintiff automobile driver sues the driver of another automobile in an accident and the manufacturer of the other driver's automobile, the fact that the plaintiff ran

JOYCE RASKIN (Continued): a red light will be considered in his action against the other driver, but not in his action against the manufacturer. This is so even though plaintiff's conduct was approximate cause of his injuries. The effect of this result is the distortion of the system which imposes upon the product manufacturer costs that are probably attributable to others. Furthermore the consequence of eliminating plaintiff's negligence is to misdirect in sentence by requiring manufacturers to take steps to prevent harms that are better taken by others, including product users. Thank you.

REP. ABATE: Questions?

SEN. DE PIANO: I have a question. You said that negligence is not a defense to product liability cases?

JOYCE RASKIN: Not in the area of strict product liability.

SEN. DE PIANO: Well, you mean negligence not in the true sense of the word  
defense. That's negligence.

JOYCE RASKIN: As I understand this present statute in Connecticut, it states --

SEN DE PIANO: With all the allegations in this Bill  
for all the common laws that exist now,  
so when you try a products liability case, if your client has pressed the wrong button --

JOYCE RASKIN: I understand that. In the present product liability statute relating to comparative negligence in Connecticut -- right -- relating to strict liability in Connecticut, it states that contributory negligence or comparative negligence on the fault of the -- on the part of the plaintiff, will not bar a recovery in actions based on strict liability.

REP. ABATE: We -- we've modified that  
a brand new law, the book says that

JOYCE RASKIN: Right -- I understand that. But misuse and assumption of risk are not the only --

SEN. DE PIANO: If I see a machine that's broke, and I go in and I use that machine and get hurt, my use of the machine in the broken condition is negligence and, therefore, that's a defense.

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JOYCE RASKIN: It depends on whether -- whether ... c u ... determines there is a duty to warn that using a broken machine is misuse.

SEN. DE PIANO: You're differentiating -- I just want to correct your thinking if I can because I've tried a lot of products liability cases and I'm saying to you that that's a defense, and that's how they come in and defend ... Standard defenses are misuse, modification, which are all in this Bill now, and also as I said negligence ... when you -- in other words, they don't call it negligence but knowing you've misused something that's not in proper condition to be used.

JOYCE RASKIN: I understand that -- there are other situations though that are not assumption of risk or misuse in the traditional sense which we have listed to be included in consideration for negligence, those being that the injured party disregarded or failed to comply with legislative enactments or administrative rules, that he failed to comply with the worker safety rule.

SEN. DE PIANO: That's all negligence. That's the --

JOYCE RASKIN: That's not specifically pointed out in your present statute which refers to misuse and assumption of risk.

SEN. DE PIANO: I will tell you that that's the law now, that if safety standards and that's how you defend a products liability case. I had a press operator who --

JOYCE RASKIN: Then, in effect, you're telling me there would be no problem passing this legislation.

SEN. DE PIANO: No, it's not needed. That's what the problem is. That's the law of Connecticut.

JOYCE RASKIN: It is not that it is not needed. It is that the law presently in Connecticut under the court liability system is what it is. The Connecticut Supreme Court decided that comparative negligence generally, contributory negligence, should be applied in product liability cases and that was effectively overruled by statute. But that is not to say that the common law, as it exists in Connecticut, can at no time be changed by statute. This would prevent that from happening.

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REP. DE PIANO: What I'm saying to you  
this Bill, that that's the defense that you get.  
The defenses all fall in the same category. Right now

JOYCE RASKIN: I understand that. I see no problem with legislatively  
pointing out exactly and providing guide lines for the defenses.

SEN. DE PIANO: The Statute of Limitations for misuse -- I'd say  
modification. These are all  
defenses now.

If a person's supposed to be using eyeglasses in working on a  
machine and they tell him, hey, you've got to use the eyeglasses,  
he doesn't use the eye glasses and a piece of steel flies off  
that machine and goes into his eye -- he's dead -- he can't  
collect.

JOYCE RASKIN: You're talking about common law as opposed to  
legislative law establishing a defense, and Connecticut already  
has, in one instance, established a defense in contradiction to  
what the common law courts decided.

SEN. DE PIANO: What's that -- what was that?

JOYCE RASKIN: The change in the defense law.

JOYCE RASKIN (Continued): And Connecticut already has in one  
B 1+ instance as to what the defense is based on what the  
#14 common law courts decided.

SEN. DE PIANO: What's that? What defense?

JOYCE RASKIN: The change in the defense based on contributory  
negligence with respect to the Holzer case.

SEN. DE PIANO: But the fact of the matter is the terminology still  
doesn't change the substance of the defense. That's all I am  
saying to you. In other words, what they are saying, that  
if contributory negligence of the individual results in their  
own --

JOYCE RASKIN: I understand what you are saying, I also understand  
what I am saying and I am afraid that possibly you do not  
understand what I am trying to say. What I am trying to  
point out is merely that in 1965 we established the restatement  
of torts came out with 4028. Which is a very good beginning  
point. Since then there have been tremendous development.

SEN. DE PIANO: 402A is a strict liability am I correct?

JOYCE RASKIN: Right.

SEN. DE PIANO: Your complaint is with the basic assumption that  
we shouldn't have strict liability.

JOYCE RASKIN: No, not at all. The concept is very good. However,  
there is a difference between strict liability and absolute  
liability. And the subsequent interpretation of Section 402A  
which was no way ever intended to be absolute liability has  
edged us closer to that. For businesses in the United States --

SEN. DE PIANO: Do you know of any state that has not applied the  
strict liability

JOYCE RASKIN: California.

SEN. DE PIANO: That is the complaint where all the big burden is  
coming from.

JOYCE RASKIN: California has in fact, you asked me.

SEN. DE PIANO: Right, that's where all the big burden is coming  
out of. All the big burden is coming out of California.

JOYCE RASKIN: California recently in Barker against Law of Health Ed the jury should consider not only whether there is a defect in a product in a design case but also the economic feasibility of a different design and whether or not what possible consequences that would have on consumers and others if that other design was used. That puts the jury in a place of being an expert. Of deciding which alternative design were economically feasible, more beneficial to the general public possibly and other things taking into consideration no aspect of cause of defect merely cost benefit analysis which is not the realm of the jury.

SEN. DE PIANO: The jurys end up being experts in every case, because they have to have explanation presented to them and they make a decision --

JOYCE RASKIN: I understand that, but jury is not there to make a hindsight determination as to the cost benefit analysis of the change in the design.

SEN. DE PIANO: Were you here for the presentation?

JOYCE RASKIN: Yes, I was.

SEN. DE PIANO: Did you hear the cost analysis of the --

JOYCE RASKIN: Yes, I did and I think that in some way he read it so that it would be misinterpreted. True, every company does make a certain cost benefit analysis to consideration in a design case.

SEN. DE PIANO: Right. The cost analysis --

JOYCE RASKIN: And in this particular case, they did not say oh, this person is going to blown to smithierines, he said the possibility of injury exists, not the actuality or the sureness of an injury. They merely said the possibility. Now every business takes that into consideration.

SEN. DE PIANO: Were you here when they said the Ford Motor Company had computed at --

JOYCE RASKIN: I heard him say that he got that from a person who received it anonymously and although he said that was in the record, he did not quote from the record. He quoted from an anonymous letter.

SEN. DE PIANO: He said that letter was introduced into evidence,

WILLIAM HOFFMAN (Continued): the manufacture of accessories and controls for the graphics industry. We are among the smaller members, I believe at least in the middle of the group. On behalf of SACIA I would like to speak in favor of Senate Bill 230 and endorse that and object and oppose Senate Bills 312 and 379. One of the comments made earlier are several comments and Representative Bordiere asked about this several times as to why we would be looking for a law in Connecticut when in fact we might not be able to deflect our insurance rates and as far as litigation goes perhaps only a litigation that would be interstate.

Well it is important for us interstate. We feel, we also feel that it is important for Connecticut to be a leader in this area not only because it's a well respected state but because it is the insurance capital of the nation and perhaps the world. We believe that this will point out to some of the other states and perhaps to the congress and in Washington in the ultimate situation although we tend to act very slowly we believe it is the state act in this respect ahead of time that Congress will move more expeditiously on the issue. At this point the State of Utah has moved and acted and passed a law where we hoped Connecticut might be first state but that will no longer be possible.

Along with some of the other gentlemen who spoke on smaller manufacturers this morning, we have experienced over the past few years expensive increases in our insurance premium, most several times 5, 6, 7 800% over a period of a couple of years. And without any adverse decision against us, in fact without complaints in those years of any kind I would like to mention about my particular company, our insurance policy is now on an annual basis at one point in time the insurance companies were quoting on three year periods, although they were cancelled of course on the insurance company basis. We had no claims and much less any adverse decisions against us yet when our premium was due was up and due for renewal in November of this past year, the carrier who was carrying at that time, I will refrain from mentioning any names of insurance companies, refused to requote on the insurance.

Just dropped us about three weeks before the renewal date. They were kind enough to extend it such that we could look for new insurance but they declined to reinsure us. And they had been talking to us a very positive dialogue, their position was that they went into committee underwriters, I just got it by the chief underwriter decided that they weren't going

JOANNE MINER (Continued): figures had to go into the statute, we also would recommend a change in line 45, 46 and 47 to reflect again that the evidence in order to be introduced has to meet the 95, degree of 95% probability of inclusion. We would recommend a change in the language in line 45 which presently reads, "If the court finds the results of all the tests indicate that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly." We would prefer to see language more explicit that if the court finds that the father is not the father of the child, the court shall enter judgment accordingly. I just think that's much clearer. I think that's what line 45 attempts to do, but I think to say shall enter judgment leaves no room for misunderstanding.

Then to follow through, if the results indicate that the alleged father is the father of the child to a degree of probability of 95%, then the question shall be submitted upon all the evidence.

REP. ABATE: Do we have to have statisticians in court to indicate in a particular case what the degree of probability is?

JOANNE MINER: No, the doctors at the blood bank can do that. There is a formula which is used in the HLA test. Again this is the information I received from the two directors I've spoken with. Once they do the test, they then plug all their information into a formula and they come out with a probability of exclusion and a probability of inclusion. So that that information would be available in the letter from the hospital which is presently what is normally introduced to the doctor's testimony at the time of the hearing. It does not require that a statistician be there, merely that the doctor be there.

SEN. DEPIANO: Any questions? Thank you very much.

JOANNE MINER: Thank you. Diane Cadrain.

SB230

DIANE CADRAIN: Good afternoon. My name is Diane Cadrain. I'm speaking on behalf of the Connecticut Citizens Action Group this afternoon.

Mr. DePiano, in deference to your request that we endorse the testimony of previous speakers, I would like to wholeheartedly endorse the testimony of Mr. Beider. I could not

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DIANE CADRAIN (Continued): hope to match his eloquence nor the extent of his preparation. I would like only now to summarize the comments which I have prepared because of the late hour.

Belt #17 My comments are directed, of course, to Bill No. 230 and I submit that there are two supposed aims of the tort litigation system. One is to compensate injured claimants and the other one is to put responsibility for defective products on the people who are in the best position to correct the defects. This bill isn't going to see either of those goals. It's not going to help Connecticut citizens because Connecticut manufacturers are going to be exposed to the same liability for suit outside the State -- Connecticut manufacturers will be exposed to increased tort liability outside Connecticut anyway, and I don't have statistics on this but I think that most Connecticut products are shipped outside Connecticut, and so it's not going to help them any to enact this restrictive tort doctrine in Connecticut.

Moreover, insurance rates, I understand, are set on a nationwide basis so that if Connecticut passes this bill it's not going to help their insurance rates.

SEN. DEPIANO: That's what Mr. Parsells said.

DIANE CADRAIN: I believe that to be the case. Moreover, what this bill would do is just cut back on rights that Connecticut citizens now have. It cuts back the Statute of Limitations. We've discussed that already. It prevents recovery for injuries caused by products which may have been altered in ways that the manufacturer could foresee. That's an alteration of present law. It prevents the plaintiff from introducing evidence of changes in the product's design as bearing on knowledge of the defect, and that's something that's now allowed at common law as well as under the federal rules of evidence. Cuts back on that right. Makes the industry and not the judge and the jury the determinants of the defectiveness of the product because it sets the industry's own standards as determination of whether a product is defective.

As far as recovery for injuries, dangerous products which are made in the same way by all members of the industry, it bars recovery for injuries due to products which are dangerous but which comply with minimal safety standards which are federal regulations, and as you know those regulations are formulated under intense lobbying pressure

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DIANE CADRAIN (Continued): by the manufacturing industry. Those standards are minimal only. This bill would make those standards an absolute defense to claim for liability.

Fails to protect users of less than ordinary skill. As Mr. Beider pointed out, you could construe that to mean 50% of all Connecticut users aren't going to be protected, because what is ordinary. Increases the burden of proof that injured plaintiffs have to have to sustain. I submit to you that this supposed crisis in the insurance industry about which we have heard so much is a manufactured crisis. I think the 417 billion dollar figure which we saw this morning bears me out on that, and I think that what we need to do in Connecticut before we pass a statute like this is to direct a series of very hard questions at the insurance industry. I know they've done that by statute in other States. They passed just last year, Kansas passed a bill that would do just that, and I have a copy of it right here. I believe you questioned this earlier. It requires the insurance industry to file annual reports stating the total premium dollar amount collected for all lines of insurance, the total dollar amount for products liability premiums, and then the amounts of claims for damages against them and what was the dollar amount for settlement, and what was the dollar amount for final judgment. I think that we really need to ask the insurance industry questions like that, and find out exactly how they do set their rates and what they do take into account when they set them.

SEN. DEPIANO: I'd be interested in doing that with car insurance.

DIANE CADRAIN: I think that this statute from Kansas would be a good model for the Connecticut Legislature to follow. If not this year, then some year coming up very soon, and I will

SEN. DEPIANO: Would you let Mrs. Mets have a copy of that or she'll photostat it here today.

DIANE CADRAIN: Yeah, I sure will. I think that what's happening is that a lot of horror stories are getting circulated about the huge increase in premiums and I think that we need to ask questions like this before we believe those stories. Figures that I've seen say that even where premiums have risen, even the most hard-hit industry, those premiums have only been less than 1% of the total amount of sales, even in the most hard-hit industry. That's one of the conclusions of this task force report to which Mr. Beider also referred.

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DIANE CADRAIN (Continued): And I'd be willing to leave that with you. And I just again want to stress that this bill is going to remove rights the Connecticut citizens already have, and it's not going to help Connecticut manufacturers any.

SEN. DEPIANO: Any questions? Thank you very much. J. Arthur Burrows.

J. ARTHUR BURROWS: Anybody mind if I say that this cushion feels good. I've been sitting in a metal chair since 9 o'clock this morning. Members of the Judicial Committee, ladies and gentlemen. My name is J. Arthur Burrows, representing Barnes Engineering Company of Stamford.

I'm here to testify on the magnitude of increased insurance premium costs caused by the renewal of Product Liability coverage despite greatly reduced maximum protection for such insurance.

Let me begin by stating that in the 17 year span of my tenure at Barnes as the person responsible for adequate insurance protection, there has never been a Product Liability claim filed against the company. Retrospectively, no Product Liability claim has ever been filed against the company in the 25 years of its existence. Why? Simply because the company does not manufacture products that are hazardous to either its consumers or its customers' employees or their respective properties or both.

I have provided the members of the Committee that are present with copies of a comparative schedule of Product Liability insurance premium costs and maximum coverage displaying data relevant to the company's last three fiscal years ending June 30, 1975, through 1977. It illustrates the financial burden that carrying such insurance thrusts on small businesses. Ironically in our case, there has been no history of any demonstrated need to insure against such risks.

Now, I'm going to spare you because of the hour the statistics that I gave to the Committee, but just let me say this that basically in the 1975 base year from 75 to 76 we reduced our base coverage roughly in half to save the premium and the premium rose regardless by \$20,000. In the next year when we went to renew we had to raise the coverage for bodily insurance and property damage from \$300,000/\$300,000 to \$500,000/\$500,000. After we did it at a cost of an additional \$5,200 increase in the premium for the primary

PETER H. KASKELL (Continued): on Olin's experience over the past ten years. Warren Eginton has spoken on behalf of Cummings and Lockwood and some of their clients. I don't know, Senator, if you were in the room at the time, mentioning that their product liability business has gone up by a factor of 10 or so in the past 10 years, and from my conversations with my colleagues in other companies, I believe that that's relatively typical.

The core of the problem is the fact that the product liability claims and payments have risen enormously. The increase in insurance premiums is an inevitable consequence of that, and whether or not the increase is totally justified by -- whether or not the premium increase is totally justified, I can't tell you, but I'm convinced that it's largely justified in any event.

The burden obviously is particularly severe on small companies as has been indicated, many can't get insurance at all and could be ruined by a single large judgment. We believe that there does exist an urgent need for a better balance between the legitimate rights of plaintiffs and the obligations of defendants in product liability actions, and we believe that SB-230 would go a long way toward achieving these purposes. SB-379 would be directly in opposition to those purposes by removing the eight year limit which the Legislature adopted just a year or two ago.

A large part, if not all, of the cost incurred by manufacturers in connection with product liability claims or necessity is passed on to the ultimate consumer. In addition, the threat of such claims tends to inhibit the development of new products which not having stood the test of time may present greater risks. We believe that SB-230 clearly would serve the public interest.

SEN. DEPIANO: You feel that that bill would decrease the insurance premiums? Do you get relief by this bill, that's what I'm asking?

PETER H. KASKELL: Let me say that I agree with statements made by other witnesses to the effect that their companies tend to be sued not only in Connecticut, but also elsewhere and, therefore, this is not an action by the Connecticut General Assembly is not a total solution to our problem. Certainly it would, well, it would be -- bills are pending before other State Legislatures of a somewhat similar nature, and we believe that tort law essentially and certainly traditionally

PETER H. KASKELL (Continued): has been a matter of State law, and that it's unrealistic to expect Congress to take meaningful action in this area.

SEN. DEPIANO: What I'm concerned about -- we had in Connecticut I might draw an analogy to this, you're interested in lowering the premiums. If the premiums were not raised astronomically, the probability would be that there would be no big . Now the fact of the matter is we have evidence before the Committee from Norman Parsells, he says no matter what we do with this bill, it's not going to change the premiums. We have no assurance from a representative from the insurance industry saying that if the bill is changed

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SEN. DE PIANO (Continued): a representative of the insurance industry saying that if the bill is changed, if this Bill is accepted then insurance premiums are going to go down and if they're accepted across the country that they're going to go down. We've been in the same situation where the insurance industry has indicated throughout the United States, not only in Connecticut, but right here in this room when I was sitting right there as the public participant a few years ago that if we got No Fault insurance, then No Fault insurance was going to result in a 20% decrease in your policy of insurance on your car.

This is in 1972/73. They told that to every other legislature throughout the United States, the same thing. Now, you know and I know that if anything your insurance premium has gone up since 1973 to now, although we've made in accordance with the request, have gone up 50%, in some cases 60% and in some cases even more, it's to the point where you can't even buy the insurance if they decide they want to lock you up. But the fact of the matter is I'm just wondering whether you're aware and everybody else is because I'm not going to say this again, take the time to do it, that even if this bill is accepted and passed by the Connecticut legislature resolve the problem.

PETER KASKELL: Mr. Chairman I'm obviously not here to defend the insurance industry --

SEN. DE PIANO: No, I'm just saying --

PETER KASKELL: Yes, -- the point -- I don't -- to take your situation I don't know by how much premiums would have -- on automobile insurance would have gone up in the absence of No Fault, so --

SEN. DE PIANO: That's not what they said to us, they said that the premiums were going to go down, what --

PETER KASKELL: Well, I suppose not forever, but -- and the insurance companies have been effected by inflation too, and again, by the inflation in settlements, claims, judgments. But I do definitely feel that this would be a major step in the right direction. Also, insurance is only one aspect of our problem as manufacturers, again taking my company as an example, I think it's fairly typical, until our insurance was terminated altogether, we had for years operated with a deductible of \$250,000, which meant that the great majority of our claims were self insured anyway. So, I think most companies have fairly sizeable deductibles

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SEN. GUIDERA (Continued): are then subject to what I think are extremely liberal laws in places like California and other states in this Union whose whole philosophy in the legislature is that the insurance companies should provide for people who are hurt regardless of who's at fault. Now, by the way, I happen to support this product liability bill, I just simply want to clear up the fact that there are no million dollar lawsuit in the State of Connecticut, and the fact of the matter is that a great many suits are settled by corporations on the basis of their nuisance value, in other words, I think it is quite clear that many times the corporations feel that the plaintiff has no claim at all and should the thing be brought to a jury, would wind up with a pittance, but what it's going to cost you in your legal staff, what it's going to cost you in turmoil and commotion and effort within your corporation it's worth paying ten thousand dollars to get rid of plaintiff X or plaintiff Y. SB230

That's one of the problems in the legal system that we have today and I feel bad for you but I think that corporations, if we're willing to go for this Bill should take the initiative to determine how Connecticut corporations with maybe a better track record than other corporations have around the country, how they can get a lower premium. Call it a safe driver premium if that's what you want to call it, but I don't think it's fair to judge our people by standards nationally.

And also nobody ever asked for the figures, and when you ask for the figures, I've gotten some figures, I have to admit, the Insurance Association of Connecticut has provided me with some figures in some areas, but it's very difficult to get those figures. That's a problem. You're not on -- you're not being cross examined here.

SEN. DE PIANO: Thank you very much. Anybody else?

EDMUND G. GLASS: Good afternoon, my name is Edmund G. Glass, I'm an attorney with Olin Corporation in Stamford, Connecticut. Olin is a billion and a half dollar corporation, we're both an employer and a manufacturer in Connecticut, as well as selling a variety of products, chemicals, sporting, arms and others in the State, so we do have an interest in what happens obviously in Connecticut and I think I might respond to a couple of things that have been said rather than go into my prepared notes.

First of all you are essentially correct, we settle many suits for nuisance value. If we had a dollar for every hundred

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EDMUND GLASS (Continued): thousand dollar suit that we settle for less than one percent, literally for \$500 or \$600 dollars we'd be a rich company. One of the changes that this law can bring about is to eliminate those nuisance suits. Nuisance suits where the plaintiff finds a lawyer and brings the suit and he knows he is going to get a nuisance value settlement and we drag it out and we spend a few thousand dollars in legal fees and we end up paying them a bit. We don't want to send an expert to Hartford or to New Haven to testify, we don't want to run up big legal fees and we do it for exactly the reasons you describe.

But one of the sources and one of the things that possibly this Committee can begin to do to cut that down is to tighten up the law a little bit and SB No. 230 is one step in that direction. Now Mr. Kaskell mentioned that I would give you some statistics. The few statistics I have and I stayed away from my insurance statistics, we went through the usual squeeze of lesser coverage for greater dollars and today have no coverage at the primary level. We do obviously have an excess policy to cover major disasters. So when our interest in this law is not to protect our insurance premium or to protect some carrier, it is our own pocketbook that we're concerned about.

In the mid-60's there were roughly ten million dollars in pending claims for products liability against Olin Corporation nationwide. Today, or I should say a year ago there were roughly two hundred million dollars in claims. Now, at the same time our business has doubled, but again

SEN. DE PIANO: Twenty eight years ago, no eighteen years ago.

EDMUND GLASS: I'm sorry from 19 -- I'm talking about 1965 to 1977, twelve years, so the amount of claims pending has gone from ten million to two hundred million, now like I said, business has doubled so this --

SEN. GUIDERA: What do you mean, the amount of claims pending, you mean the ad damnums that are being --

EDMUND GLASS: The ad damnums being sought, right, the --

SEN. GUIDERA: Is that really an indication of what the exposure is?

EDMUND GLASS: It is the only indication we've got, there is probably a better indication in the insurance carrier's reserves or his premiums.

SEN. DE PIANO: It's almost no indication really, if you can tell

MR. GLASS: With all due respect, that question might make sense if you were an insurance carrier. Insurance carriers probably ought to be thinking like that, but from our standpoint, we're looking at S.B. 230, not in terms of insurance premiums but --

SEN. DE PIANO: I'm not talking about that. I'm talking about the fact we're looking to see how bad your law has effected you and how hard you've been hit on it. Everybody says it's a very lenient law. The fact of the matter is -- I don't know whether you've ever tried a products liability case but they're the most difficult case to try to collect on and to try to get to the jury strict liability doctrine, it's very, very difficult to even get your case over the hurdle of a motion for a directed verdict or motion for dismissal to prove the necessary elements. You have to think of the case and that's why I don't understand when people come up here and like that young lady was here before talking about that and don't understand how difficult it is to prove a case on products liability under the existing law. I'm not talking about the new modification or anything else. It is extremely difficult and very, very costly. When you get into that as a plaintiff, you know what the cost of experts are. That costs are the same for the plaintiff.

MR. GLASS: Yes, I understand that and I think where you end up is the ground somewhere between you and the gentleman to your right, which is that there are a lot of cases -- which is that in many cases they are settled not for a nuisance amount but a significant amount because of the fear of the big verdict and as you know I think there is a certain amount of mythology and I think you recognize that mythology in terms of your own questions.

SEN. DE PIANO: As a lawyer you know that the fear is only there if there is exposure and exposure is only there if there is something wrong that you can get hit on.

MR. GLASS: No, the fear --

SEN. DE PIANO: But we get cases where you get somebody in an automobile accident, for example, and you've got three witnesses and the insurance company for the defense has three witnesses that says that the plaintiff went through the light, you can go from now until doomsday, they won't pay you a penny because they know they've got a winner. It's only when there's a chance of losing that you get a settlement.

MR. GLASS: Senator, in the area of labeling, which is of considerable importance in the chemicals industry, and which is dealt with in this new bill, we often are compelled to settle cases in which there is in my judgement as a lawyer no liability, but there is fear of the jury verdict against us. We --

SEN. DE PIANO: What is the risk there --

MR. GLASS: Because today somebody can ignore a label, use a product incorrectly, harm himself and there is a risk of a liability --

SEN. DE PIANO: Well, if the label is not as clear as you think it could have been.

MR. GLASS: There is no label written as to when you cannot ask that question and that's the problem and that's where S.B. 230 is helpful because it begins to provide some objective criteria for designing labels.

One of the problems I have apart from worrying about exposure is advising a large corporation how do we do business tomorrow and in terms of how do we package our products, how do we label our products, how do we make our product as defect-free as possible and they say, what can we do? We've done all these things, are we now fairly safe and the answer is no.

SEN. DE PIANO: (INAUDIBLE) participation finally into our industry, where the consumer is now aware of the fact of what their rights are, what they're entitled to and that they -- not only were they aware of it before, but now they're speaking out; isn't that true?

MR. GLASS: It is in part true, but from the standpoint of a company like Olin which sells chemicals, for example, or other companies like machine tool companies, to other industries, it's not consumer rights, it's Workmen's Comp and third-party litigation that make the bulk of our exposure and indeed again the law here, sir, in Section 7 takes a first step in the direction of beginning to put a better balance in that relationship and as I said earlier, Olin is an employer.

SEN. DE PIANO: Section 7 does what?

MR. GLASS: It begins to put a better -- I believe it's Section 7, yes, it begins to put a better balance in the relationship in between the employer and the supplier in terms of injuries to the employee and even though Olin is an employer in Connecticut, we would rather have this law, because as employers

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MR. GLASS (Continued): we can control our Workmen's Comp sk. W can run a safe shop. As suppliers we sell chemicals to people who may not run a safe shop and are going to injure somebody at our peril; but we believe very strongly in Section 7 as I think Warren Egington earlier stated in some detail is a major step in rectifying that imbalance.

Now, I would be pleased to submit later my earlier remarks which I think virtually everyone has said one way or another earlier.

SEN. DE PIANO: I appreciate it, Mr. Glass, thank you very much.

Archibald Stuart.

HB5089

MR. STUART: It's good after a five and a half hour wait to finally have a social worker come up and hopefully you will pay some heed to what we have to say. These are the lawyers and others.

I'm here representing the National Association of Social Workers and to urge strong support for Uniform Child Custody Jurisdiction.

As a practicing social worker, I think that the area of child custody is becoming one of the most dramatic and serious areas that we have to face. It's estimated in the next ten years that 40 percent of minor children are going to be subjected to a custody action as the result of a divorce or separation. We have been -- looked into what extent child snatching seems to be a problem relating to child custody and determined that apparently in Connecticut five to ten percent of children involved in custody actions are subsequently snatched by parents and taken across state lines.

If that is so, it is possible in the next ten years that one or two percent of our children are going to be child-snatched in violation of custody action. We in social work are very concerned that we avoid all the potential damage that can occur to a child through inappropriate handling of child custody matters in the court. We want these matters to be handled in a stable action, to be hopefully as permanent as possible and hopefully as much in the interest of the child as possible.

It's clearly terribly destructive to a child to have him snatched from a parent, taken across state lines, held in limbo for X number of months or years until these actions can be resolved with the child not knowing where he belongs and we feel that the potential for emotional damage can be very severe.

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MR. STUART (Continued): And I think this act is spreading. I understand it's being considered in Vermont, Massachusetts has now been adopted, New York, Pennsylvania, Ohio, Maryland and Florida and these are some crucial states.

SEN. GUIDERA: Has Rhode Island adopted the Act?

MR. STUART: Not yet.

SEN. GUIDERA: Just is considering?

MR. STUART: Considering, and Vermont is considering it. New York did last year, so -- after some debate, so we're convinced. The act is a uniform act, drafted by a law professor in California to deal with the fact that the Supreme Court has decided that custody actions, so there has been no way other than this act to enforce it.

There has been some pressure for a federal kidnapping statute or that would pertain to this. I think a lot of thinking people would think it was not indicated to handle child snatching through a criminal procedure. We're going to bother the federal courts now with a lot of these cases. Also, this is going to lead to very sporadic justice because in those instances where the child is returned probably the action would be dropped and then some one in a hundred cases where somebody really wanted to press it, that guy might then be fined or put in prison, just because in all the other cases were dropped because the child was returned. I think -- criminal proceedings, I think is a very poor way to deal with the action.

What we want are the children returned to them, not to have the other spouse jailed or fined or whatever was involved. So, the social workers, we've put a lot of energy into this and we considered it. We're convinced that this is a highly important bill and we certainly urge your adoption of it.

SEN. GUIDERA: Victor Lindenheim, Greater Norwalk Chamber of Commerce.

MR. LINDENHEIM: I have submitted copies of the statement. In the interest of time, I'll try to summarize it. SB230

Sen. Guidera, members of the Committee, my name is Victor Lindenheim. I'm Division Manager with the Greater Norwalk Chamber of Commerce. We represent more than 500 firms employing approximately 20,000 individuals in the region comprised of

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MR. LINDENHEIM (Continued): Norwalk, Darien, New Canaan, Weston, Westport and Wilton.

We support Raised Committee Bill No. 230 as an act which provides direction consistent with the Chambers in addressing product liability and tort reform and essentially that direction is the general thrust to establish reasonable balance between the obligation of manufacturers and the rights of injured, those injured.

In our statement we specify our policy statement as we had first put forth in January and most of the provisions are consistent with this bill. I would only add one, that we would endorse efforts that would not allow direct payment of any punitive damages to a plaintiff where expressly warranted by the proven gross negligence of the manufacturer but rather take those funds and pay them to an agency, for example, such as the Consumer Products Safety Commission for research purposes and earlier this morning there was a Mr. Bieder, an attorney, gave a dramatic example of what punitive damages can amount to, in the case of Ford Motor Company where a settlement was made because of a defective gas tank on a Pinto automobile and what it seemed to do was compensate a victim, if he is, in fact, a victim to a point where he can replace his Pinto with a Rolls Royce and that really doesn't do the victim any good nor the general public, so I would just note that addition.

Regarding product liability insurance, there is very little I can add except from the prospective of the Greater Norwalk area and several of our members have on numerous occasions told us of the difficulties encountered in securing and maintaining product liability insurance coverage at any, let alone a reasonable cost, which is typical, as I see here. They indicate that there is seemingly no regard for experience and self-imposed extremes in quality control and safety precautions. There is one firm, for example, that had a manufacturer and processor of pigment and special types of paints to be used, for example, on cans and packaging and that sort of thing and despite a record of no -- within the course of eight years, of no litigation against them, on product liability, their increases were tremendous. I don't have the specific figures and when I say self-imposed extremes of quality control, this particular representative of that company gave us examples where they would -- this was standard procedure for the eight years they had been in business, they were taking samples of every vat and putting it on the shelf, so here I think they had an extreme in quality control, that

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MR. LINDENHEIM (Continued): is, of their -- samples of their paints and pigments and that kind of thing. But still their product liability insurance rose. I can't defend or -- I don't have the evidence to defend or blame the insurance company one way or the other, or the legal system and I don't know what the solution is, but again the problem arises. In the meantime -- well, as a result this has prompted the Chamber to initiate a survey to provide more specific data from a broader range of area firms.

I would ask the Committee if any information that would be developed, would be useful to you. We would submit it within the next ten days or so.

It would be, okay.

In the meantime, we respectfully urge favorable action on the bill before you and thank you for the opportunity to present our views.

SEN. GUIDERA: Thank you and I'm sorry to keep you waiting so long.

Mr. Kuhke, The Stanley Works. I'm not sure if I'm pronouncing that right.

Mr. Roy Young.

MR. YOUNG: Good evening. I am Roy Young. I am Executive Secretary of the Divorced Men's Association of Connecticut. I am from Southbury, Connecticut. We have an organization of 1,300 men and women and we would like to let our thoughts be known on four bills that are before this Committee.

On Bill 5085, we are in full agreement. As a matter of fact, we wish restoration of prior name would be mandated when the woman is the plaintiff in the dissolution act which destroyed her family.

I might enter two caveats on two other bills that are here, one is Bill 5084 on the removal of property. There is a very strong suit brought in the State of Illinois on the removal of property in a dissolution act without due process and it looks like that law will be declared unconstitutional and our law is very similarly written.

On Bill No. 5116 on care, education, maintenance and support of children beyond the age of 18, there is a similar suit brought in the State of Illinois on three sections of that bill claiming that it is discriminatory in that it gives

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MR. YOUNG (Continued): preferential treatment to children of a divorce over children of a solid family circumstance.

The one we wish specifically and mostly to address ourselves to is the Bill No. 5089 which is the Uniform Child Custody Jurisdiction Act.

At the present time the superior courts of this state are committing the crime of legal child snatching in that their awards of custody in dissolution cases are blatantly biased and in direct contravention to the law as passed by the General Assembly.

In most cases when a father knows that a paternal custody is in the best interest of his child or children, he also learned that his only chance of protesting this interest is to flee the state and start custody proceedings in another state which is less biased. Or when a custodial parent denies court-ordered visitation with impunity we will enforce the child's rights to know both of his parents.

Child snatching is a father's court of last resort. By joining the other 17 states in adoption of the Uniform Child Custody Jurisdiction Act, the General Assembly will be effectively demanding that these other states bless and enforce the prejudicial and generally illegal awards of the superior court judges of this state.

We will then be forced to flee the country in order to protect our children. Our children deserve better.

Thank you. Are there any questions?

I might also add if you don't mind, this is the official stand of the Divorced Men's Association and while there are other members here who might wish to promulgate their own views it is not the views of the Association necessarily.

REP. ABATE: Have you left any testimony with us

MR. YOUNG: No, I haven't.

REP. ABATE: I'm sorry, we'll get it from the record.

Mr. VanWinkle, United Technologies. Gladys Yarocki.

GLADYS YAROCKI: My name is Gladys Yarocki and I'd like to talk about Senate Bill 230. I'm President of Torrington Metal Products,

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GLADYS YAROCKI (Continued): a small job shop and manufacturing company in Torrington. We make a wide variety of products, one of which was a wood-burning stove. We have been in business for 29 years. We have not had a single liability claim against us in all that time.

Last year the insurance company who had written our insurance for almost 20 years, dropped the agency we deal with, thereby cancelling our liability coverage.

We were reassured by them that this in no way reflected on us. However, I worked for more than five months to find new coverage. We were turned down by dozens of insurance companies and at one point I had about three insurance engineers in in one day, you know, and it takes about an hour for each to be turned down by all of them.

As our policy was about to expire, I contacted Insurance Commissioner Mike's office. They forced the insurance company to grant us an extension so we could continue our search. All of this for a company with a perfect record.

We were told by one company that a perfect record is not good enough and by another company that a perfect record could work against us, that we were now overdue for a lawsuit.

We finally found three companies which were willing to write the policies for us. The best offer was at a 900 percent increase and the worst one was over 2500 percent increase, but with no coverage for our stoves. This one we took, at this point, grateful for any coverage and just anxious to have the whole thing over with.

We're still concerned with all the stoves that we sold and now have no coverage on. If one is resold by the original owner and improperly installed or misused by the new owner, we are still liable.

For a small company just having to defend ourselves in a lawsuit could be an overwhelming burden. We think there is great need for changes in the whole area of product liability. We urge your support of Senate Bill 230.

:Thank you very much. Rep. Parker.

REP. PARKER: Rep. Parker, I understand you did go to Commissioner Mike for an extension of the time. Did you at that time discuss or ask why you were being cancelled? Did you ask him to investigate?

GLADYS YAROCKI: I wasn't able to talk to him. I called a couple of times, he was in Committee or in a meeting or out or otherwise busy. I talked to his secretary and just explained the situation to her and she said that they would see about getting an extension.

I had talked to the insurance company before that and were turned down for an extension. This company has since gone out of the product liability business altogether, so it wasn't just that they were dropping, you know, us. I tried to get it rewritten, you know, directly, and nothing.

: Whitney Stutch.

MR. STUTCH: My name is Whitney Stutch. I'm president of W. Whitney Stutch, Inc. We're a small manufacturer in Essex, Connecticut. We manufacture machinery, sheet metal working machinery on which the product liability exposure is rather high. We've been down there over 30 years. We've got machines spread all over the country. We're small, I mean really small. We have 16 employees in Connecticut, about 11 out in Utah, at a branch operation.

About -- well, to go into our products a little bit further, specifically we make sheet metal working equipment, press brakes, high-speed band saws and hand bending brakes. About a year and a half ago we were informed by our insurance carrier that they would not renew our product liability. Subsequently we contacted the insurance Commissioner and through the efforts of Mr. who did quite a good job for us, we were able to get a year's extension of the policy. During that time another suit came up. We have had several, and this year when we went back for renewal the premium was about four percent of our gross sales and the deductibles which were imposed were so high that the whole package didn't make any sense at all.

We therefore let the insurance lapse.

Now, we need some help. We are making a perfectly standard product. There's nothing unusual about it that will bite anybody if it is properly used. It -- I would say is less dangerous than a power mower or butcher knife, but there is exposure there and people who are not careful and are not properly trained will cut off pieces of their fingers and there is no way that OSHA or anybody else has been able to devise of making a press brake or a high-speed band saw absolutely fool-proof. You can make it safe but you can't make it so someone can't be injured.

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MR. STUTCH (Continued): Now, we are particularly interested in this Bill No. 230 because we are very anxious that the statute of limitations should be maintained that it should not be repealed. The other two features that we are interested in are the state of the arts provision which is important to us because this changes periodically over the years. A machine that was built ten years ago is not the same as one that is built today. There still is the exposure there. But there are safety features and changes and improvements that are made from time to time.

I would say that the most important part of the bill from our point of view is the one that deals with subrogation of Workmen's Compensation claims. In practically every case that we have had, it has been instigated by the Workmen's Compensation carrier in order to recover their losses for the Workmen's Compensation claim. These are cases where the employee was hurt because he was poorly trained or not trained at all and no safety instruction or devices were provided and sometimes in the case of our last lawsuit, the setup on the machine, the dyes and so on were just about the most dangerous arrangement you could possibly devise.

We have no control over the exact way the machine is used, the exact dyes that are put into it. This is controlled by the user because it is a versatile machine that can be used in many ways.

We are now self-insured. One of our big problems is the time and effort that it takes when we are faced with a claim to process this thing, the legal expenses, but the time and the aggravation are a big burden. It takes at least two or three weeks of my time to go through this, in addition to interrogatories that run over a hundred questions. I had one of them come in, one question out of a hundred and two was state the scientific and engineering principles on which this machine was designed. Now, you could write a book on that.

And it's getting to the point where it is such a ridiculous part of my duty to try to follow these things through and defend ourselves that you begin to lose interest in running a business. So, our big interest is in hoping that this 230 will go through. I think it will be a help to us. In defense of ourselves on the subrogation, particularly, and also on

REP. ABATE: Any questions? Linda Klaps? Not here?  
Belt William Johnson. Mr. William Johnson. Paul Kuznak.  
#22 Lee Mamere. I see that Robert Landers name is crossed out.  
Robert Houser. Frank Pollock. Richard Caperi. Robert  
Clasfield. William Huth. Steve Woods. Here we are.

STEVE WOODS: I have to say you are very patient people. My name  
is Steve Woods. I am a government sales representative for  
the National Federaration of Independent Business.

REP. ABATE: Would you hold it a minute, Mr. Woods.

STEVE WOODS: That's okay. My name again is Steve Woods I am  
with National Federation of Independent Business and we are  
a national organization of small businesses with over a  
half a million members nationwide and a little over 4,500  
members here in Connecticut. We have members in all sectors  
of the economy. I am here today to support Senate Bill 230,  
which we think is a realistic and responsible approach to  
the problem of product liability and we hope that it will  
bring equity and producability back in the area of product  
liability. I have a written statement which I would like  
to leave with this committee and I just have a few general  
comments.

First of all I am not a lawyer, which I think places me in a  
minority here and I find a lot of the arguments to be heard  
are confusing. One of the things I am certain of is in talking  
to our small business members and these are business men and  
women in all sectors of economy, not just manufacturing, but  
many people in the service area they consider product  
liability to be a problem. Of course their first concern  
were the rates. But they are also concerned because many of  
them had their insurance dropped many of them dropped it on  
their own account almost all of them have made some adjustments  
in their insurance to assume higher risks, new higher  
deductibles and all of them are paying higher rates.

I think previous speakers have done an excellent job of  
stating the problem of the escalation in rates. This is a  
particular problem to a small business man because his price  
first of all is much closer to the competitive price. It  
doesn't have as much flexibility and assuming added costs.  
So his first reaction is to take higher deductibles. The  
other speakers have talked about impact on consumers. Some  
of claim this is a consumer bill, I think I would support  
that. The obvious impact is on price. It's a simple  
economic fact that when you have \$3 billion premiums paid  
across the country, untold amounts of money in claims,

STEVE WOODS (Continued): legal fees and things like that, somebody has to pay for it. And I think it is safe to assume it is the consumer and the manufacturer. I think possibly a more serious impact on the consumer is one that hasn't been mentioned today is on the diversity of products. I found in talking to a number of our members that because of product liability they have either dropped product lines or have reconsidered expanding into areas. We did, our organization did a national survey recently where we found that one out of 20 of the respondents have dropped the product line and one out of 6 had not expanded into an area because of product liability. Again this is a problem that impacts on small businesses because they don't have the flexibility.

So what this means is that it has a very restrictive effect on the marketplace. There are few competing products, less price competition, higher prices. I think I have to admit that one of the things I have found particularly distressing today was the the finger pointing that was going on. We find that the lawyers are blaming the insurance companies, excessive profits and the insurance companies seem to be blaming the lawyers for taking unjustified cases. And I think one thing we ought to keep in mind is statistics show that the number of accidents are staying relatively the same. That a number of claims and judgments are going up. I don't think our members I think the small business communities will accept the real solution to the problem, which is to have the insurance department of insurance companies collect statistics, wait a few years and then have the insurance department strict or regulate the insurance company.

I don't think many of our members want to wait that long for relief. I think they also find frustrating the situation where Congress is saying that it is a state problem. The regulation insurance industry has always been a state problem. And now we find the state is saying it is a federal problem. I don't know who is going to solve this. If we have that kind of a response. I don't think small businessmen want to accept these kind of excuses. One other point often business groups and business men are they caught people that they tend to overstate the problem. I'm afraid that there are people that are waiting for businesses to close in droves because of product liability and shut their doors and drastic things like that. I think that's a dangerous attitude because I think the effects of product liability you have right now are less drastic but less obvious but just as

STEVE WOODS (Continued): serious. And these are the effects of rising prices, fewer products on the marketplace. And that the attitudes of businessmen toward doing business in Connecticut, so I just like to add my voice to all those who speak before me in support of Senate Bill 230 and be happy to answer any questions and leave a copy of my statement.

REP. ABATE: Your organization perform a national concern, do you know the result of that whether bills in other states are pending specifically where?

STEVE WOODS: I could bring you a whole file. I can't pick off all the states. I personally am working in two other states in New York and Rhode Island and I know there are bills moving along in both of those states which have provisions very very similar to Senate Bill 230. There has been some action in some of the states, I know as I see correspondence coming across my desk, bills are passed one House or the other House and put before the Governor's desk. I would be afraid I guess I would be afraid for us to sit back and wait until next year and until four states or six states or eight states have taken action. I don't know if that's really the best answer to wait for other states.

REP. ABATE: Any questions? Thank you very much, Mr. Woods. Mr. Villo. Wesley M. New Britain Plastics. Mr. Russo. James Russo. Wilemold. James Russo. Ron Rosenstein. Mr. Rosenstein. William Buell. Polychem Corp. Mr. Jennison.

WHITNEY JENNISON: Thank you Mr. Chairman. I appreciate the warm temperature we have been keeping the temperature down. I am here, my name is Whitney Jennison and I represent the Hartford Special Machinery Company which is in Salisbury. And I want to speak in behalf of Senate Bill 230. Our company is a small company 190 people, we manufacture precision machinery, screws and bolts which we sell all over the world. We are the state of the art world leader for tread rolling machines, that's the end of the sales pitch. But I just wanted to relate and it is somewhat similar to the story that some other people, the concerns that we have had with product liability insurance. We have had one claims that goes back three or four years in some 60 years of building machinery.

In the last three years in 1976 the annual premium went from \$3200 to \$33,000 the next year. And this present year 100,000 that an increase of 3300% I believe, or 33 times what we were paying. It also is employees all know very well 530 some dollars for each employee who works for us, which is

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WHITNEY JENNISON (Continued): more money than we spend for a very very good health insurance plan for our people not there is any relation between the two, but it kind of points Belt out that the size of the bill that we are paying and I #23 think there are certain aspects of 230, it's not a perfect bill, but I don't see anything on the federal level coming along, and I think that anything we can do to strengthen the Connecticut legislation or law pertaining to product liability well tend to help everyone. I am particularly concerned about the fact that the workmen's comp carrier has subrogation rights in most states including Connecticut, I believe, and can recover if there is a separate claim against the manufacturer. To me there is something about that that doesn't seem Kosher. I think that summarizes what I have to say I felt that you might be interested in one more example.

REP. PARKER: All day we've --

WHITNEY JENNISON: Right, I think that we also -- we had one accident we had a claim now that hasn't been settled it was the loss of a hand.

REP. ABATE: You are paying for that, you are paying a foot.

WHITNEY JENNISON: Yes, there has been no settlement.

REP. ABATE: No settlement at all.

WHITNEY JENNISON: Right, we also when we went when we put the policy out for renewal, about 10 insurance companies, we had quotations from two. The rest of them wouldn't take it, for one reason or another.

REP. ABATE: That's the premium you got for the 100,000?

WHITNEY JENNISON: \$100,000 and the deductible on that is a separate load quite a bit.

REP. ABATE: Any questions?

REP. PARKER: All day we have been hearing about the high premium. If the insurance company lowered the premium would this bill still be necessary?

WHITNEY JENNISON: I think that just speaking from the point of view of our company, the thing that we are interested in in seeing happen is having this premium come down or at least stabilize. To get hit by this sort of thing. Whether or not the bill would result and I can understand Senator

WHITNEY JENNISON (Continued): De Piano's point maybe the bill would not bring down, I think it's worth a try, no one knows the answer to that.

REP. ABATE: I think according to this bill will admit that you are not going to have a reduction in premium in the near future with the enactment of this bill. It is something that is not going to happen a number of states have similar legislation. I think you are aware, well aware a long, long

WHITNEY JENNISON: For example, the suit we have pending is in Michigan. So the Connecticut law would not help us. If it happened in the future.

REP. ABATE: If you come here today with almost the thought in mind that it seems this is really going to help them remove this burden of of economic cost. Obviously that is not --

WHITNEY JENNISON: And we are doing business all over the country but I think one little step in the right direction would be Michigan has an interesting feature in their law in product liability and I understand that if the suit is settled but anything over \$200,000 the legal fee is limited to 5% of that amount over \$200,000 so that \$200,000 is kind of a cutoff point and I don't know what the Connecticut law has, but I thought that was interesting.

REP. ABATE: That is. Any other questions. Thank you. Mr. Gluck, Mr. Gluck. Richard DeBell. By process of elimination. We appreciate --

RICHARD DE BELL: I can't tell how much I appreciate your interest in endurance up there and your careful attention I spoke to Mr. Jacob last year when he was down here and this is my first occasion to testify and I am just as glad there aren't too many people behind me to listen.

My name is Richard De Bell I am from Summers, I have listed as representing myself because my employer happens to be a Massachusetts Corporation and I am down here on kind of a busman's holiday and I want to talk what I think is significant in which has been missed all day long and that is that nobody has commented on the subject of safety. Product liability when you get down to the root causes is a question of the management of the large sums of money

RICHARD DE BELL (Continued): involved in the treatment rehabilitation and wage continuation for people who are injured. And that is what product liability is. If you are able to reduce injury then presume you also reduce product liability problem. I think that Raised Committee Bill number 230 has an important relationship to this question in the area of Workmen's Compensation not being a means of removing the employer from the picture. Now because of -- some speakers pointed out a little bit, the major problem is that the employers who have purchased the machinery and speaking of capital goods, the employers who have purchased the machinery has not maintained it or repair it, or instruct the operators the safer use of it, or retain the guards on the machinery.

So as a result there occurs an accident in which case the product liability roles are increased. That was really the main point I wanted to get to was that insofar as the keeping the employer available for impleader at least in the action between the injured party and who is in fact responsible for his injury I think would tend to make employers generally aware that there is an obligation there on their part and that they are in fact going to be held accountable for that.

You have asked a couple of times whether or not cases occurred in Connecticut. And obviously if a company is doing business in 50 states chances are one in 50 that accidents would have occurred in Connecticut. The important point from a safety standpoint is that every accident with which this legislature would be concerned or at least these courts would be concerned occurs in Connecticut and presumably to a Connecticut resident. It is the accidents that we want to reduce and to the extent that this bearing on the Workmen's Compensation Law would enforce on the employer that a great responsibility towards the employees it is a step in the right direction.

REP. ABATE: But some could very well that by suggesting the employer to a great risk of suit you are going to have more than you will on any other case.

RICHARD DE BELL: I am not sure why that is counteract. That sounds like the same thing.

REP. ABATE: The reason without extensive liability coverage,

RICHARD DE BELL: We are talking about coverage, right --

REP. ABATE: Yes, you are definitely Bill 230, because of the increase in provisions that we have in our statute now that you are going to have an employer to be more careful because

REP. ABATE (Continued): the possibility exists of an action. I suppose can be made that our present state of affairs which you may have no insurance coverage or insurance coverage with an economical deductible but you are going to have a great deal of emphasis on state requirements as well to avoid the possibility of suit.

RICHARD DE BELL: But you want to distinguish carefully between the employer and the manufacturer of the equipment with the employer entrusts to his employee. As a matter of fact it is quite true that the product liability situation at the moment has enforced our manufacturers an exaggerated intention to safety but it is also a fact that employers -- that manufacturers have in fact in the past made very concerted efforts, very emphatic efforts to make certain the machines are just safe as they possibly can. So that as this is just an enhancement of an existing thing. Now in that connection, I also had the thought during the day that everybody seems to be engaged in solving everybody and saying that there are liars and that the manufacturers are being overcharged with insurance and that the you know everybody seems to have an axe to grind with somebody else. I would like to think that in addressing yourself to this problem and I suspect you do, as a matter of fact, as you consider that everybody really is trying to do a good job. The manufacturer is in fact trying to make as a good and safe and productive piece of equipment as he can.

The employer is in fact trying to use that equipment at the top of his productivity with ultimate safety to his employees to make a good product, to the people of Connecticut. The employee is certainly not out to injure himself. And the insurer sends along loss prevention people to make sure injury does not occur. And the ocean man comes around periodically within limits of his familiarity, he tries to make sure that no accident occurs. So that there's a basic safe and humanity I think to be expressed in whatever things you come up with.

Also the other thing I would like to talk on one further point as I say I work for a Massachusetts corporation, and I have a decision in a Massachusetts case given to me just yesterday, this is a decision reached on March 10th in the Supreme Judicial Court of Massachusetts and at the end of it the court said our decision is based on present statutory schemes governing Workmen's Compensation and contributions. We are aware of the strong criticism of the rules that the

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RICHARD DE BELL (Continued): third party may not recover contribution from an insured employer and that only a limited circumstances may a third party recover indemnification from an insured employer. And further down such conflicting policy consideration are best resolved in the legislature can be based on full consideration of the competing interests, and ramifications involved with any change of the legislative scheme.

I have listened to so many as to much as Senator De Piano on the essence of large destrictments in the State of Connecticut. Maybe the courts of Connecticut are in fact a little more a little better directed than they are in some of the other states. And I am encouraged to think that is the case. But I think it also the complaint of the Massachusetts legislature is that they didn't have much to work with in the way of laws and I trust as you frame this legislation as others that it will be done carefully.

REP. ABATE: Are you familiar with the Massachusetts statute?

RICHARD DE BELL: I really am not. I am not that familiar with any statute. I am an engineer, which probably also puts me in a minority and I am probably the only guy here that would admit I am from Summers and not from Stamford. But I just am a minority but I thought this safety aspect of things, safety relationships might be helpful to you and I would also say I am reasonably familiar with the product liability standing of our company in Massachusetts and if I can provide any statistics, I would be happy to try.

REP. ABATE: Thank you very much. Any questions?



STATE OF CONNECTICUT  
DEPARTMENT OF COMMERCE  
210 WASHINGTON STREET HARTFORD, CONNECTICUT 06106

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EDWARD J. STOCKTON  
COMMISSIONER

March 22, 1978

CHARLES J. DUFFY  
DEPUTY COMMISSIONER

TO: ALL JUDICIARY COMMITTEE MEMBERS

SUBJECT: PRODUCT LIABILITY LEGISLATION

The problem of "product liability" for manufacturers urgently needs to be addressed in Connecticut. This problem has been escalating rapidly for the past five years and has now reached crisis proportions.

Connecticut companies are deeply concerned about the cost impact of product liability on their competitive position -- and this is more frequently a concern expressed by out-of-state and even overseas companies interested in Connecticut locations.

The Connecticut Department of Commerce strongly supports the adoption of reasonable limitations on the liability of manufacturers. In this regard, SB-230 deserves careful consideration.

Sincerely,

Edward J. Stockton  
Commissioner

EJS:gmh



National Federation of  
Independent Business

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TESTIMONY GIVEN BY:

Stephen P. Woods, Governmental Affairs Representative  
National Federation of Independent Business (NFIB)

Committee: Judiciary  
March 22, 1978

Issue: Product Liability, Committee Bill 230 (SUPPORT)

Representing over 4500 small business firms in Connecticut, NFIB wholeheartedly supports Committee Bill 230 which we believe will return equity and predictability to the area of product liability. With passage of this reasonable and realistic approach to product liability, we are confident that it will help stem the tide of increasing claims and judgements and the consequent skyrocketing product liability premium increases.

Many manufacturers and insurance officials believe product liability has reached the crisis stage. Although they recognize that it is a relatively recent development, they point to such evidence as the increase in the number of claims between 1960-1975 from around 1,000 to 1,000,000 per year and average judgement increases from \$11,644. to \$79,940. (Insurance Management Study) as proof that product liability has indeed reached crisis proportions. As a result of the alarming increases in claims and judgements, product liability premiums have jumped by as much as 1000% in 2 years. Recent surveys have shown that the 1000% increases are the exception; however, increases in premiums of over 50% within the past few years have been the rule. A survey by NFIB of small manufacturers in January 1977 showed that over 40% of the respondents had experienced increases in their product liability premiums of over 50%.

Manufacturers have responded to the high product liability premiums and the uncertainty over future claims in a number of different ways:

- many firms have "gone bare" or dropped all coverage, taking the risk that one judgement would close their business. This reaction is more prevalent among smaller firms that have smaller profit margins, less volume, fewer product lines over which to spread the added costs, and less flexibility to raise prices and

still remain competitive.

--- many firms have adjusted their product liability coverage by taking higher deductibles, assuming a greater risk. Although not as drastic as "going bare", the consequences could be as devastating for a small firm.

The above business responses to product liability place burdens primarily on the particular business through higher business expenses, greater risk-taking, and a general uncertainty about the future of the business. It is important to note that these business costs and factors have a significant effect on a businessman's general attitude towards his business --- that intangible that many believe has the most impact on decisions to expand businesses and job opportunities.

However, the businessman is not the only one who suffers the consequences of the product liability crisis --- the consumer may pay the dearest price of all. Businesses are responding to product liability in other ways:

--- by eliminating product lines and services or by reconsidering expansion into new product lines and services. These decisions restrict the diversity and quality of products on the marketplace. There are fewer competing products, less price competition -- often resulting in higher prices. Of the firms responding to NFIB's survey 1 in 20 had dropped a product line due to product liability and 1 in 6 claimed they had not expanded product lines as a result of the product liability problem.

--- by raising prices to cover increased premium costs and possible claims. The same NFIB survey reported that 25% of the firms had raised prices and 20% expected to raise prices because of product liability. The simple economics of the matter is that someone is paying for the \$3 Billion a year in premium costs, the untold Billions in claims, the amount of legal fees for defending cases, and the time and aggravation of businesses involved in suits --- it is the consumer.

Although product liability is a relatively recent problem, the participants (lawyers, manufacturers, and insurance companies) have found the time to each designate a different scapegoat. The legal profession blames the insurance companies for making windfall profits off product

or unsafe the claimant was in using the product.

Committee Bill 230 is a reasonable approach to a difficult problem. Some manufacturers believe it is a compromise bill of sorts, since they feel it has not gone far enough by not limiting lawyer fees. We believe Committee Bill 230 is a responsible bill because it does not restrict the due process rights of the legitimate claimant.

Business has been accused of over-stating problems --- some claim that this is the case with product liability. Why worry about product liability until businesses leave the state or close down in droves? After all, higher premiums only mean lower profit margins, fewer martinis and fewer golf dates. We believe that those who hold this opinion are fooling themselves. In our contacts with small business members in the state, we find that product liability is considered a major problem. Over 84% of our Connecticut members responding to our January survey supported the tort law changes incorporated in Committee Bill 230 (14% had no opinion, since some of our members are not effected by the problem).

Some firms have closed their doors. However, in most cases, the impact of product liability has been less obvious --- rising prices, dropped product lines, and less business expansion. These effects are more difficult to measure, but have had a very real dampening effect on Connecticut's recovery from recession.

In conclusion, we have been to hearings and discussions on product liability in other states where legal society representatives and others very effectively played on the sympathies of the legislators. They tell of incidents with mutilated bodies and lost limbs. There is no question that these are true tragedies. It is impossible to place a value on someone's life or the use of their legs and arms. The due process rights of these victims must be insured.

However, while we are in a sympathetic mood. Who is shedding a tear for the small businessman who has invested 30 years of his life and all of his families assets in a small firm only to close down, or be forced to retire early, or live in constant fear of those two fates because of the present product liability crisis. We submit it is just as hard to place a dollar figure on their suffering.

liability to offset losses in other insurance lines, and the insurance companies assess blame on the legal profession for bringing too many unjustified suits and for placing undue pressure on government bodies to maintain the present tort laws. The manufacturer and the consumer are the ones caught in the middle.

There seems to be enough blame to spread around since some legal associations and insurance executives claim that products are more unsafe today. Most statistical studies do not support this contention. The number of accidents has remained relatively constant over the years, while the number of suits and the average judgements have mushroomed. However, industry is not ignorant to the benefits of quality control and safety programs, and many have increased their investments in these areas as a result of product liability. Although it is not possible to place a dollar figure on the value of safety and health, many observers believe that the high premiums and judgements are distorting the economic decision made on investments in quality control and safety programs.

It is fair to say that business is not coming to the General Assembly with "hat in hand". Industry is doing much more today to protect the employee and the consumer, and even with a doubling or trebling of its efforts there would still be high increases in premiums and awards because of the present tort laws ---the rules of the courtroom in product liability cases.

Committee Bill 230 addresses those elements of the tort law which have contributed the most towards the product liability problem through:

- establishing a statute of limitations from the date of injury (3 years) and from the date the product parted possession of the manufacturer (6 years). No product is expected to last forever - why should the manufacturer's liability.
- adding product modification or alteration by the claimant as an absolute defense. Under the current system of strict liability in tort, the manufacturer is guilty until proven innocent. The courts recognize the concept of contributory negligence in many other areas (such as automobile accidents).
- clarifying reasonable warnings and instruction requirements. Warning requirements have reached absurd proportions when a manufacturer must warn against every imaginable danger -- again the manufacturer is totally liable regardless of how irresponsi

*10/04*

STATEMENT IN SUPPORT OF  
RAISED COMMITTEE BILL NUMBER 230:  
AN ACT CONCERNING PRODUCT LIABILITY ACTIONS

Delivered Before The Judiciary Committee  
of the General Assembly  
Hartford, Connecticut

10 A.M. Wednesday, March 22, 1978

On Behalf of

THE GREATER NORWALK CHAMBER OF COMMERCE  
NORWALK, CONNECTICUT

Greater Norwalk Chamber  
Statement on Product Liability  
March 22, 1978

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Senator DePiano, Mr. Abate, Members of the Judiciary Committee:

My name is Victor Lindenheim; I am a Division Manager with the Greater Norwalk Chamber of Commerce. We represent more than 500 firms employing approximately 20,000 individuals in the region comprised of Norwalk, Darien, New Canaan, Weston, Westport, and Wilton. We support Raised Committee Bill Number 230 as an act which provides a direction consistent with the Chamber's in addressing product liability and tort reform.

The following statement, issued in January of this year summarizes our position on the issue of product liability ....

The Greater Norwalk Chamber of Commerce, in order to restore a reasonable balance between the obligations of manufacturers and rights of the injured, endorses efforts that would:

1. establish a reasonable time limit within which a manufacturer (or seller) may be legally responsible for a product after it is first sold and delivered (provided that the product is not deemed to be grossly defective by existing standards at the time of manufacture);
2. prohibit any judgement against the manufacturer (or seller) where the product has been substantially altered or modified by any other party including the plaintiff or ultimate consumer and where such alterations or modifications substantially contribute to or are solely responsible for the damages or injuries sustained;
3. base liability on standards generally recognized and prevailing at the time the product was manufactured and sold;
4. if manufacture, packaging, distribution, or sale is subject to State or Federal regulations, allow compliance with these regulations as a legal defense;
5. regarding repairs and alterations by the manufacturer, encourage what should be done and protect the manufacturer from liability when alterations are made after an accident with intent to improve safety in product use;
6. provide clear and reasonable guidelines for the manufacturer regarding his duty to warn of potential hazards of use and misuse of the product;

Greater Norwalk Chamber  
Statement on Product Liability  
March 22, 1978

7. not allow direct payment of any punitive damages to a plaintiff (where expressly warranted by the proven gross negligence of the manufacturer), but rather to an agency such as the Consumer Product Safety Commission for research, and;
8. permit the full amount of Workmen's Compensation or similar benefits received by the plaintiff to offset any tort judgments in the plaintiff's favor.

Several of our members, have, on numerous occasions told us of the difficulties encountered in securing and maintaining product liability insurance coverage at any, let alone a reasonable cost. They indicate that there is seemingly no regard for experience and self-imposed extremes in quality control and safety precautions. This has prompted the Chamber to initiate a survey to provide more specific data from a broader range of area firms. With the Committee's permission, we would like to submit this additional information to you after it has been compiled.

In the meantime, we respectfully urge favorable action on the bill before you and thank you for this opportunity to present our views.

WESTCHESTER-FAIRFIELD CORPORATE COUNSEL ASSOCIATION

120 LONG RIDGE RD., STAMFORD, CONN. 06904

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March 22, 1978

STATEMENT TO THE JUDICIARY COMMITTEE  
OF THE GENERAL ASSEMBLY IN SUPPORT OF  
SECTION 20 AND IN PROVISION .B. 379

*Xerox*

PUBLIC AFFAIRS COMMITTEE

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Westchester-Fairfield Corporate Counsel Association (WESFACCA) is an organization of over five hundred attorneys employed by 136 companies, most located in Fairfield County, some in Westchester County.

We are very much concerned over the dramatic changes which the courts have wrought in product liability law during the past twenty years or so. To generalize, primary emphasis has been placed on whether the plaintiff has suffered damages. The question of whether the manufacturer was negligent or has committed a "tort" or "wrong" has been greatly deemphasized. Many judges evidently believe that the manufacturer can and should spread the risk, i.e. act as an insurer or obtain insurance coverage; and that the manufacturer can and should make his product "risk-free", disregarding whether this is inherently possible or economically feasible.

The problem has been compounded by the tendency of juries to grant ever larger awards. The million dollar verdict is no longer extraordinary. This has a direct effect on the amounts for which plaintiffs are willing to settle claims.

The result has been a skyrocketing in the number of product liability actions brought, in amounts recovered through judgments or settlements, and in legal fees.

As an inevitable consequence, casualty insurance premiums have multiplied, and numerous manufacturers of products considered to entail above average risks, such as pharmaceuticals and chemicals, are now unable to obtain liability insurance coverage at any price, or only with extremely high deductibles.

The burden is particularly severe on small companies, many of which could be bankrupted by a single large judgment.

There exists an urgent need for a better balance between the legitimate rights of plaintiffs and the obligations of defendants in product liability actions. Among the areas which should be addressed are the following:

- Clarify the present product liability statute of limitations.

- Relieve the product manufacturer from liability if the injury is attributable to unauthorized modification (including improper maintenance) by a third party of the product, or of packaging, labeling, warnings or instructional material.
- Define a product manufacturer or seller's duty to warn and instruct.
- Impart to individuals responsibility for care in the use of a product.
- Establish a "State of the Art" defense, i.e. determine whether the product was defective based on the technology available at the time of production.
- Bar product design improvements as evidence of prior defects.
- If manufacture, packaging, or labeling is subject to State or Federal regulations, allow compliance with these regulations as a defense for the manufacturer.
- Eliminate the worker's compensation lien of the employer against product liability judgments and do not hold the manufacturer liable for the negligence or fault of the injured's employer.
- Restore the doctrine of comparative negligence to product liability actions.

S.B. 230 would go a long way toward achieving the above purposes. S.B. 379 would be directly in opposition to these purposes by removing the eight year limit adopted just last year. WESFACCA strongly urges you to support S.B. 230 and to oppose S.B. 379.

A large part, if not all, of the costs incurred by manufacturers in connection with product liability claims of necessity is passed on to the ultimate consumer. Moreover, the threat of such claims tends to inhibit the development of new products, which, not having stood the test of time, may present greater risks. S.B. 230 clearly would serve the public interest.

/amc

STATEMENT BY  
LINDA C. KLATT, COUNSEL  
FOUNDRIES OF NEW ENGLAND FOR BETTER ENVIRONMENT  
BEFORE THE JUDICIARY COMMITTEE  
WEDNESDAY, MARCH 22, 1978

SB 230

Mr. Chariman and Members of the Committee:

My name is Linda C. Klatt and I am Counsel for the Connecticut chapter of the Foundries of New England for Better Environment. Connecticut's foundry industry is comprised of approximately 100 operating units, the majority of which employ less than 100 persons.

The foundry industry is the sixth largest industry in the United States and until recently held the same approximate position among industries in this state. It is estimated that over the past ten years the number of foundries in Connecticut has decreased by at least 25 percent.

One of the major problems facing the foundry industry is how to protect itself against the economically devastating effects of product liability law suits. The traditional means of protection--securing insurance against such risks--is no longer a viable or satisfactory alternative for dealing with the problem.

A nationwide survey of foundry product liability insurance coverage and claims revealed that between 1971 and 1976:

- the cost of insurance coverage quadrupled;
- the number of claims multiplied by five times;
- damages sought multiplied by seven; and
- claims and suits filed multiplied by ten.

A report prepared by the federal government's Interagency Task Force on Product Liability revealed that in nine target product categories, foundry companies suffered the fifth largest premium increase since 1974 (topped only by medical devices,

Linda C. Klatt - Page 2

pharmaceuticals, power mowers and industrial chemicals). Typical of what foundries are experiencing at the present time is the case of one Connecticut foundry whose product liability insurance carrier informed management that it was not going to renew the foundry's coverage. However, after long negotiations, the carrier finally agreed to provide the foundry one-half of its previous coverage but at 12 times the amount of last year's premium. And, this particular foundry had had no product liability claims filed against it.

The cost of adequate product liability insurance protection has risen to such a height that it has become unaffordable for many foundries. In 1976, almost 20 percent of the nation's foundries carried no product liability insurance because of its excessive cost or inability to obtain coverage. It is estimated that today at least 40 percent of the country's foundries have no product liability insurance coverage and therefore are vulnerable to a law suit that could literally shut them down forever.

However, the increasing number of claims and law suits, the skyrocketing monetary settlements and judgments, and the cost and unavailability of product liability insurance are only the effects of what lies at the root of the product liability problem--the current interpretation of the laws pertaining to product liability injuries.

The traditional tort concept of negligence has long been replaced by the more liberal doctrine of strict liability in products cases. Strict liability is based on the rationalization that the manufacturer had control of the production of the defective product and therefore should be held responsible for all damages resulting from such defective product. However, the courts over the last ten years have expanded the strict liability concept into one of "absolute liability" for the manufacturer of a product, the use of which results in an injury to a person.

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Today, in products cases, manufacturers are denied the defense that at the time of manufacture, the product met all required safety standards as well as conformed to or exceeded the manufacturing state of the art at the time of the original sale. They are penalized for improving their products in later years by having evidence of such improvements introduced and used against them at the time of trial despite the fact that at the time of sale the technology allowing for such improvements had not yet been developed. They are held accountable for the improper use of a product despite the fact that they provided instructions and adequate warnings of the dangers of improper use but the user refused to obey such instructions or heed such warnings.

Holding manufacturers "absolutely liable" for their products regardless of the time lapsed since manufacture and date of original sale, regardless of intervening circumstances and actions of other parties, regardless of changed technology, and regardless of the user's own negligence stretches the parameters of product liability law well beyond that which justice should allow.

Connecticut's foundry industry urges your support of those sections of S.B. 230 pertaining to:

- Clarification of Connecticut's statute of limitations;
- Product modification defense;
- State of the art defense;
- Subsequent repairs and improvements; and
- Duty to warn.

Adoption of these five proposals would return some degree of "equity" to product liability litigation while still protecting and providing adequate compensation for those individuals injured as a result of a defective product.

However, the foundry industry urges you to reject the section of the bill

Linda C. Klatt - Page 4

of the bill pertaining to workmen's compensation (Section 7).

Section 7 calls for the elimination of the employer's workmen's compensation lien in product liability cases. The proposal requires the employer to bear the full cost of workmen's compensation benefits due. It requires that an employer who may in no way be responsible for the injury of the worker to forego any relief against a manufacturer of a defective product which was totally responsible for the injury.

Each of the five other major provisions of S.B. 230 strives to bring a degree of "equity" into a system that now holds the manufacturer "absolutely liable" for his products. It is incongruous that the same bill should contain a provision such as Section 7 which merely shifts that "absolute liability" from the manufacturer to the employer.

Equity would be better served by adoption of a system that allows the product manufacturer to prove that the negligence of the employer has contributed to the worker's injury. After such proof, the manufacturer's liability would be reduced in proportion to the employer's negligence, up to the amount of the workmen's compensation lien. Such an approach would more equitably spread the risk of loss and the burden of damages without undermining the effectiveness of the workmen's compensation program.

After being amended to have Section 7 deleted, S.B. 230 would receive the wholehearted endorsement of Connecticut's foundry industry. Passage of S.B. 230, as amended, will eliminate some of the major inequities now found in defending product liability law suits and help temper the economically devastating effects of such litigation. On behalf of the state's foundries, I strongly urge that the Judiciary Committee give S.B. 230, as amended, a joint favorable report.

STANLEY

**T H E S T A N L E Y W O R K S**

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March 22, 1978

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*Keray*

Mr. Chairman, distinguished members of the Committee, my name is David Kuhnke and I represent The Stanley Works and am responsible for loss prevention and handling all liability claims. The Stanley Works strongly supports Committee Bill 230.

This Bill, in our opinion, represents a sound approach toward protecting the rights of the consumer when he is aggrieved by a defectively designed or manufactured product, while equitably defining the responsibility of manufacturer and consumer alike.

Due to the lack of comprehensive legislation regulating product liability actions, Connecticut businesses increasingly have been required to shoulder responsibility for occurrences over which they have absolutely no control. Qualities of a product which under ordinary circumstances would be considered desirable have been claimed to be a defect and consequently become the subject of extensive legislation.

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As an example, the sharpness of a knife, which under ordinary circumstances would be considered desirable if not mandatory, has been claimed as a defect in the knife and extensive litigation has resulted. Though this example seems absurd, it reflects the extremes to which industry is called on to answer for its products.

This developing inequity of responsibilities has been the result of trial decisions based on specialized circumstances with a limited perspective and certainly not legislative intent.

We believe that only through comprehensive legislation, which Bill 230 represents, can the current climate be cleared and responsibilities justly defined. We would therefore urge that Committee Bill 230 receive an affirmative vote.

David B. Kuhnke  
Claim Manager  
The Stanley Works

STATEMENT TO THE PUBLIC HEARING OF THE  
JUDICIARY COMMITTEE OF THE GENERAL ASSEMBLY

By Warren W. Eginton, Esq.  
In Behalf of the Connecticut Business and Industry  
Association Respecting S.B. 230, S.B. 312 and S.B. 379

Ladies and Gentlemen:

My name is Warren Eginton. I am a partner in the law firm of Cummings & Lockwood, located in Fairfield County. I believe that CBIA, the Connecticut Business and Industry Association, has requested that I make this presentation for them for two reasons. They are aware that my practice largely centers in product liability litigation, and they are aware that Fairfield County, Connecticut, has, over the past ten years, become the headquarters' home base for many of the largest corporate entities in the world.

Since a representative of a corporate counsel's organization is here today to speak, I will not present the statistics on the numbers of corporations that have located in Fairfield County, Connecticut, over the past ten years, but will mention such well known companies among them as Xerox, GTE, Olin, General Electric, General Signal, Peabody International, and Richardson-Merrell. You are undoubtedly aware that the Danbury area will, in the near future, become the headquarters of Union Carbide.

However, it is most important that my mention of so many large corporations now making Connecticut their home

base should not obscure or fail to emphasize the importance of Senate Bill 230 to the large number of small companies that have long made Connecticut their home. As you well know, Connecticut is noted for its tradition of skilled craftsmen, especially in the machine tool field. The Connecticut Business and Industry Association speaks for those smaller business organizations, which today are finding it impossible to obtain insurance coverage to protect themselves in the products liability area.

As a resident of Connecticut, I am proud, and I submit that you as legislators should be proud, that Connecticut has been in the forefront of product liability problem recognition. The Judicial Department of Connecticut is the only Judicial Department in the United States which has maintained and submitted product liability records since 1974. Their records show that over a two-year period, from 1974 to 1976, product liability cases filed have increased by 58%, while the total case load on the civil side was increasing by only 11%. If there is a deficiency in the Connecticut record keeping, it is the unavoidable lack of figures concerning product liability claims settled by the parties without an action ever having been filed in court. We therefore see only the tip of the iceberg of the product

liability problem. Nevertheless, this legislature in 1976 became the first of now eight states to enact an outside statute of limitations applicable to strict liability claims in the product defect area. Public Act 76-293 took effect on June 4, 1976 and imposed an eight-year limitation on the institution of an action against a manufacturer or seller of a product. If this legislature were now to pass Senate Bill 379 and thus eliminate that eight-year limitation protection, you would be taking a step backward. Since Connecticut led the way with its eight-year statute, seven other states have enacted similar legislation, ranging from six to twelve years in the time limitation period. Now is hardly the time for Connecticut to reverse its leadership.

With respect to S.B. 230, I especially want to call your attention to Section 7, which deals with worker compensation and third-party actions. Although there have been many different approaches considered to reduce the high cost of multi-party suits involving the same injury, there is general agreement that no solution should in any way reduce the compensation which the worker himself should receive for his injury. The solution proposed in Section 7 is in my judgment far and away the best solution that has been offered. It eliminates subrogation rights of the

employer (and therefore his insurance carrier) and it makes one third-party action against the manufacturer determinative of the amount of money the worker will receive. The manufacturer benefits by receiving a credit for the compensation paid to the worker by the employer, and everyone benefits by the elimination of multiple lawsuits to which the employer would otherwise be subjected.

In behalf of the Connecticut Business and Industry Association and in behalf of its members, large and small, I urge you to give your attention to the provisions of the proposed product liability legislation encompassed in Senate Bill 230 and to enact that bill, while at the same time I urge you to reject the backward steps that would be the result of passing either Senate Bill 312 or Senate Bill 379. Thank you.

## Farrel Company Division

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For some reason, workers, their attorneys, the courts, and juries, all seem to feel the original manufacturer should bear the financial responsibility.

The Farrel Company practices Product Safety. We manufacture equipment complying with accepted safety codes. We have 1300 employees in the Naugatuck Valley and corporately 5100 in the State of Connecticut. We want workshops where our machinery is used, to be safe and accident-free.

We are supporting legislation both in states where our machinery is operated and also federally. We are encouraged by the actions taken by Connecticut on Statute of Limitations and we are most encouraged by current legislation bill SB-230. In supporting Bill SB-230, some meaningful limitations and bounds will re-enforce responsibility and set the stage for safer working conditions and the reduction of accidents.

We ask that Bill SB-230 be given full consideration and action this session. Thank you.

P. H. Dreissigacker/hfm

in the application of 402A.

The proposal being considered today, contained in S.B. 230, reflects an attempt to balance the equities in product liability cases and establish guidelines and parameters for courts in adjudicating issues presented for resolution. The basic premise upon which the suggestions contained in the proposal are based is that both the tort system and the doctrine of strict liability in tort should be retained. However, a restructuring of product liability cases is needed to insure protection of consumers, sellers and the tort system.

In addition to the definition of a product liability action contained in section one, the proposal contains provisions relating to: the statute of limitations in product cases; defenses based on plaintiff's conduct, product modification and, in cases involving design or undiscoverable risk, a state of the art defense; coordination of product liability with workers compensation; recognition of the duty to warn and inadmissibility of evidence of post-accident repairs of improvements.

The first of these, statute of limitations, contains proposed amendments to Connecticut PA 76-293 which currently provides for an 8 year outside limitation period. Under this provision, a product liability action could be commenced up to 3 years from the date the injury was first sustained, discovered or should have been discovered but in no event later than 8 years from time the manufacturer of the final product parted with possession or control, or sold it, whichever occurred last. In connection with this proposal it should be remembered that 402A as originally drafted was based upon cases involving foodstuffs in which cases injury is most likely to be immediate. With application of the doctrine to all products, a different situation arises. Manufacturers and sellers of products with long useful lives are often faced with indefinite exposure to liability even though they have not exercised control over a given product in years. The purpose of the proposal, and the current statute of limitations in Connecticut, is to

eliminate the indefinite exposure of defendants to liability in product liability cases.

Use of an absolute outside limitation period balances the equitable needs of the parties and re-establishes a correct allocation of incentives and injury avoidance. In Prokolin v. General Motors Corporation, 365A 2d 1180, the Supreme Court of Connecticut held the applicable limitation period commenced to run from the date of the act or omission complained of (date of sale) in a strict liability action. The present statute of limitations in Connecticut evidences a fair consideration of all parties involved in a strict product liability action. Plaintiffs are afforded a period of time measured from the date of injury to bring their actions and an absolute limit is placed on the period to which defendants are to be exposed to liability. To eliminate the outside period as proposed in S.B. 379 may allow more plaintiffs to sue, but it will do so at the expense of defendants, whether in fact wrongdoers or merely thought to be wrongdoers. The result is a system under which not all parties are treated equitably.

The traditional considerations supporting statutes of limitation, stale claims and unreliability of evidence caused by the passage of time, are enhanced in cases of product liability. A product manufactured in 1950, for example, may have changed hands a number of times and may have been subjected to changes over the years. There is no socio-economic or other benefit to be gained from holding a manufacturer or seller liable for injury caused by a product he has neither seen nor had any control over for an extensive period of time.

Another point to consider with respect to the statute of limitations is that plaintiffs are not denied a remedy merely because one type of defendant is no longer available. Often, some third party will have possession and control of a product which causes injury and will be responsible for that injury. In cases of capital goods, which are most often affected by the outside limitation period, plaintiffs usually have the workers' compensation system on which to rely. Those

more closely related to an injury in terms  
prevent future injuries and liability for  
than the manufacturer who is no longer in  
to the product.

The proposed defenses in S.B. 230 evi  
sponse to distortions in the current tort  
true of the proposal concerning comparative  
Hoelter v. Mohawk Service, Inc., 365A 2d 1  
is sparse in its discussion of the question  
tributory fault or breach of duty on the p  
bar recovery."

Initially, it should be noted that in  
jurisdictions had adopted comparative negl  
isdictions has adopted some form of compar

liability cases.

Considering comments n and g and the fact that the concept of comparative negligence was relatively new at the time of adoption of 402A, the holding of the Supreme Court of Connecticut in Hoelter, supra, that "there is nothing to justify holding the seller for the consequences of the user's own contributory fault or breach of duty in the use of the product which conduct is a proximate cause of the injury he has incurred," evidences a well-reasoned determination of the issue. The increased liability for sellers created by the application of strict liability in tort was imposed for public policy rather than legally established fault reasons. Just because a seller is responsible for injury caused by defective products even if he has exercised all possible care does not mean a plaintiff has no duty to act with care. Strict liability in tort can not and should not be equated with wilful or reckless negligence, ultrahazardous activity or the creation of an absolute nuisance. Those situations denote legally established fault beyond ordinary negligence. Liability under 402A does not even require negligence. To deny use of comparative fault concepts in strict liability would be grossly unfair.

Section 8 of S.B. 230 would reaffirm, substantially, the reasoning behind the holding in the Hoelter case. It would make a plaintiff's contributory negligence a relevant issue in any product liability suit. The proposal enumerates the types of plaintiff's conduct that should be taken into account to determine basic contributory negligence and the excuses which the plaintiff may raise in the event his conduct does not reach the applicable standard of care.

Any incompatibility in using a comparative negligence standard for a strict liability cause of action is semantic in nature. Elimination of plaintiff's negligence in product cases creates internal inconsistencies in the tort law. Currently, in Connecticut, if a plaintiff automobile driver sues the driver of another automobile and the manufacturer of the other driver's automobile, the fact

that the plaintiff ran a red light will be considered in his action against the other driver but not in the action against the manufacturer. This is so even though plaintiff's conduct was a proximate cause of his injuries. The effect of this result is a distortion of the system which imposes upon the product manufacturer costs that are properly attributable to others. Furthermore, the consequence of eliminating plaintiff's negligence is to misdirect incentives by requiring manufacturers to take steps to prevent harms that are better taken by others, including product users.

The proposal contained in Section 3 attempts to resolve problems created by product modification, particularly as it affects capital goods manufacturers where a third person removes safety devices or fails to maintain or service a product. Manufacturers should not be liable for damages caused by acts or omissions of individuals over whom they exercise no control. Nor should manufacturers be required to insure that no hazardous modification of a product will ever occur nor to warrant a product is incapable of deteriorating to a dangerous state if not maintained. Therefore, defendants are to be liable only for the injury that would have occurred had the product been used in its unmodified condition. Product modification shall include failure to observe routine care and maintenance. Excluded are modifications made in accordance with specifications or instructions furnished by the manufacturer or seller.

The state of the art defenses proposed in Section 5 are limited to cases of design defect and undiscoverable risks. With respect to design defects, the problems inherent in these cases are situations such as second collisions where the claim is not that the alleged defective design produced the collision but that it resulted in an unsafe environment for the plaintiff to be involved in an accident. This reasoning ignores the admonition that a product can not be in a defective condition if subsequent mishandling or other causes make a product harmful. Furthermore, the subtleties involved in design choices are often much

too complex to allow a jury to make a final liability determination. To have a jury decide if the benefits of an improvement are greater than the cost or gravity of danger and to determine the possible adverse consequences to the product and consumers with use of an alternative design as proposed by the California Court in Barker v. Lull, 143 Cal. Rptr 225, also takes out the requirements of cause and defect leaving only a cost benefit analysis in design cases. Considering the inexpertise of juries in design matters such an approach is not only inefficient, it is bound to overburden the administration of the tort system. The proposal would afford a defense that a product's design conformed to the state of the art existing at the time the manufacturer parted with it.

The state of the art defense based on undiscoverable risks is in keeping with comment k of §402A relating to unavoidably unsafe products. As noted this is an area especially applicable to drugs. The defense applies to cases where neither the manufacturer nor others engaged in similar trades or businesses could know through current scientific methodology of the possibility of a particular risk. Implicit in the defense is a requirement that drugs be properly tested. The benefit to be gained by the use of products in this category warrants the result that some of the risks of use be assumed by those who benefit from the product. To be noted in this context is the fact that the FDA has recently introduced regulation proposals which would serve as an incentive to drug manufacturers to introduce and market new drugs.

The duty to warn proposal contained in section six is an attempt to establish the requirement that all the causal elements of a plaintiff's duty to warn action must be proved. One of the problems in duty to warn cases is that the occurrence of an injury inferentially bespeaks the duty to warn against the causative event. All too often, courts ascertain that an injury has occurred and conclude that a warning should have been given. If no warning or a warning deemed inadequate (in retrospect) under the circumstances has been given,

liability is imposed. Due to the large variety of products and the potential dangers posed by a defect in any one or any type of product it is not possible to define the exact contents of an adequate warning or to anticipate every possible instance where a warning should be given. The proposal sets forth broad guidelines by which to judge whether warnings or instructions provided are adequate and enumerates the causal elements necessary to a duty to warn action. Basically, plaintiffs would be required to prove the product was the immediate physical and producing cause of the injury, that there was a failure to provide warnings and/or instructions as to use of the product and that had the warnings been received, the user would have responded to them. Each element of the duty to warn cause of action must be proved by a preponderance of the evidence.

The proposal which coordinates product liability actions with workers' compensation is simple to implement and should be quite effective in terms of lightening the administrative burden placed on the judicial system and reducing transactional costs for parties involved in litigation. The proposed changes in no way undermine the central feature of the workers' compensation law that workers' compensation is the only remedy of the injured worker against his employer. Under section seven any judgment against a third person (manufacturer) resulting from a product liability action is to be reduced by the amount of compensation benefits paid or payable, neither the employer nor his insurer shall have a lien upon a product liability judgment or any right of subrogation and the third person may not maintain any action for indemnity against any person immune from liability (employer).

The 1976 survey conducted by the Insurance Services Office resulted in a finding which indicated that in a majority of payments (58%) employer fault was a causative element in the occurrence of workplace injuries. Based on that finding the proposal reaches the correct result without the cost of a case-by case determination of employer's negligence. The proposal will also have the beneficial

effect of inducing greater investment in accident prevention on the employer's part. Whatever employers may lose by loss of their lien they gain in terms of the administrative savings because they will not have to litigate or defend their claims for subrogation and the increased assurance of immunity from indemnity or contribution actions. Furthermore, courts will receive a benefit in that presence of the employer does not result in the automatic creation of a second lawsuit and protracted litigation on the issue of the employer's negligence in the suit against third persons (manufacturers) will be eliminated. The third party enjoys the deduction against liability equal to the workers' compensation benefits and, since a major litigable issue has been eliminated should suffer lower defense costs. Finally, the injured worker is fully compensated for his injuries since only the source of recovery rather than the amount of recovery has been altered.

The final provision to be considered in S.B. 230 is section four which would prohibit the introduction of evidence of post-accident improvements or changes for any purpose. This evidentiary rule has as its purpose a public policy determination to avoid evidentiary rules which would discourage correction of defects. Numerous exceptions have been created which threaten to engulf the rule. The problem is compounded in product liability cases because there is no effective way to interpret the changes or improvements and there is a danger of complicating the issues if too much of this type evidence is admitted. There is no question that the "other purposes" given for offering this type of evidence can be seriously prejudicial to the product liability defendant. Evidence offered for the purpose of proving the existence of safety devices or design alternatives which were available, although not generally used, results in placing defendants in a position of having to anticipate a variety of possible accidents before they occur.



ADVANCING VOLUNTARY BUSINESS LEADERSHIP FOR A CHANGING STAMFORD AREA

CORRECTED COPY  
(Pgs. 1 & 5)

1135

TESTIMONY BY WILLIAM HOFFMAN  
REPRESENTING  
STAMFORD AREA COMMERCE AND INDUSTRY ASSOCIATION  
AND  
BALDWIN-GEGENHEIMER CORPORATION

*Xerox*

before  
GENERAL ASSEMBLY JOINT JUDICIARY COMMITTEE

regarding  
PRODUCT LIABILITY LEGISLATION

Wednesday, March 22, 1978

Good morning, Mr. Chairman and members of the Judiciary Committee.  
My name is William Hoffman and I am here today on behalf of the approximately 350 members of the Stamford Area Commerce and Industry Association. I appear in my capacity as Treasurer of Baldwin-Gegenheimer Corporation. My company employs approximately <sup>155</sup> ~~115~~ employees and is engaged primarily in preparing equipment for the printing industry. SACIA's membership ranges from the multi-national corporations which have recently chosen Connecticut as their corporate home, to major manufacturers historically connected to Connecticut, and to the smaller, emerging companies such as mine which our State is so interested in cultivating.

I am here today to speak in support of legislation which would do something about the serious, escalating problem of product liability. Several bills, notably Senate Bill No. 230, relate to this issue. We would endorse this legislative proposal. We would object to, and oppose, Senate Bill 312 and Senate Bill 379.

TESTIMONY BY WILLIAM A. FLINT, JR. BEFORE THE JUDICIARY  
COMMITTEE OF THE 1978 GENERAL ASSEMBLY

STATE CAPITOL, HARTFORD, CONNECTICUT

MARCH 22, 1978

My name is William A. Flint, Jr. I am president of the A. W. Flint Company, Inc. of New Haven - a ladder manufacturing firm established in 1880 by my grandfather.

I am here today to urge your support of S. B. 230 containing recommendations for product liability reform. This bill is designed to give Connecticut manufacturers a measure of relief from the soaring costs of carrying product liability insurance for the products they make. In our own case we have incurred cost increases in our product liability insurance during the last three years of about 250%; and the cost increases bear no relationship to our claim history whatsoever!

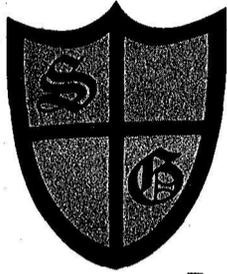
I think this bill will go a long way towards stabilizing product liability insurance costs, as well as making this kind of insurance more readily available once again. During the past four years we have had three different carriers. It was very difficult and expensive to get our present carrier to give us coverage. Without insurance coverage we simply could not continue in business. It is pretty hard to sell a business if you can't get insurance coverage; so the only alternative is liquidation with the inevitable loss of good jobs.

It seems to me S. B. 230 tips the scale back into balance. It is fair to the consumer and puts a reasonable limit on the liability of the Connecticut manufacturer. I hope the Committee will consider this bill favorably.

Jud. Comm.

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## Safeguard Manufacturing Co.

POMPERAUG AVE. - WOODBURY, CONN. 06798

Tel. (203) 263-2137

Testimony on Products Liability S.B. 230 and S.B. 379  
Presented Before the Judiciary Committee - State Capitol -  
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We are a small company manufacturing a high quality stamping press safety pullback device that has been on the market for 28 years, and have been concerned with the product liability situation on a third party tort basis for a long time.

We have been active in several business and industrial associations for years to bring this matter to public attention, and welcome the opportunity to work with the Judiciary Committee to help solve at least some of the above problems with the present S.B. 230 under consideration here.

Our product liability related insurance costs have increased over the past years, mainly with the relatively large deductible clause now incorporated in the policy. These increased costs can only come out of what profits are available to reinvest in the business in order to keep our company's products competitive in the market place.

We have heard comments from 1 or 2 members of this committee, and from some other sources, that this S.B. 230 is an anti-consumer bill. We wish to squash these comments before they even get started. There is no part of this S.B. 230 which prevents any person who suffers an unfortunate injury, and has a legitimate claim, from bringing a legitimate lawsuit, and receiving a legitimate settlement from that suit, based strictly on the merits of the case. The bill simply sets up parameters or guide lines for these actions.

This bill is instead a pro work-place-safety and jobs bill, since the employer will be required to provide better maintenance and repair of equipment with no subrogation rights against a third party in a products liability action. The pro-jobs reason will be passage of this S.B. 230 bill to allow companies like ourselves to remain in business, so that we may continue to supply quality safety equipment to industry at a competitive price.

As regards S.B. 379 (Elimination of Connecticut's present 8-year statute of limitations), we are opposed to this bill, and respectfully suggest to this committee that for the good of the committee and its members, S.B. 379 be allowed to die in your committee. Passage of S.B. 230 would eliminate S.B. 379 in a positive way.

Elbridge D. Joel  
Assistant to the President

JOINT  
STANDING  
COMMITTEE  
HEARINGS

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INSURANCE ASSOCIATION OF CONNECTICUT  
STATEMENT IN SUPPORT OF SB 442  
March 27, 1978

SB 442 would simplify the relationship which currently exists under the workmen's compensation law between an injured employee, his employer and negligent third parties. The provisions of the bill would apply in product liability actions and are designed to reduce the volume of litigation in the courts. A more comprehensive product liability tort reform bill, SB 230, was given a public hearing by the Judiciary Committee on March 22. While the Insurance Association fully supports the provisions of SB 442 for the reasons noted below, we urge the Judiciary Committee to give a favorable report to the more comprehensive proposal, SB 230.

Despite the fact that workmen's compensation laws were enacted to eliminate the need for litigation related to on-the-job accidents, certain provisions of the current law actually promote lawsuits.

Under the existing law, an injured employee may recover both from his employer in the form of workmen's compensation benefits and from a negligent third party. The employers may recoup the amount paid in workmen's compensation benefits by joining in the employee's tort action, by asserting a statutory lien against any recovery from the third party, or, if the employee chooses not to sue, by exercising his statutory subrogation right and bringing suit himself. In those cases where the employer has breached a duty he owes to the third party, the law allows the third party to seek indemnification from the employer.

Under SB 442, and under Section 7 of SB 230, any judgment against a third person (manufacturer) resulting from a product liability action would be reduced by the amount of workmen's compensation benefits the employee is entitled to receive. Further, neither the employer nor his insurer would have a lien upon a product liability judgment or any right of subrogation. Finally, the bill would prohibit claims for indemnity from the employer in workmen's compensation related product liability actions.

A comprehensive survey conducted by the Insurance Services Office in 1976 resulted in a finding that in a majority of payments (58%) employer fault was a causative element in the occurrence of workplace injuries. Based on that finding, SB 442 reaches the correct result without the cost of a case-by-case determination of employer's negligence. The bill will also have the beneficial effect of inducing greater investment in accident prevention on the employer's part. Whatever employers may lose by loss of their lien they gain in terms of the administrative savings because they will not have to litigate or defend their claims for subrogation and the increased assurance of immunity from indemnity or contribution actions. Furthermore, courts will receive a benefit in that presence of the employer does not result in the automatic creation of a second lawsuit and protracted litigation on the issue of the employer's negligence in the suit against third persons (manufacturers) will be eliminated. The third party enjoys the deduction against liability equal to the workers' compensation benefits and, since a major litigable issue has been eliminated, should suffer lower defense costs. Finally, the injured worker is fully compensated for his injuries since only the source of recovery rather than the amount of recovery has been altered.