

Legislative History for Connecticut Act

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JOINT
STANDING
COMMITTEE
HEARINGS

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PART 6
1685-2019

1985

MS. ANDRUS: (continued)

Judiciary Committee. My name is Sheila Andrus and I'm an intern for Rep. Ruth Fahrbach. I'm here to speak on Rep. Fahrbach's behalf regarding Bills 5362, An Act To Prohibit Lump Sum Payments of Medical Malpractice Awards and Bill 5364, An Act Concerning the Admissibility of Collateral Source Payments in Medical Malpractice Actions.

The increasing number of court settlements has produced a record breaking awards against physicians and hospitals. The result has been a drastic rise in professional liability insurance cost. This rise is threatened due to --

SEN. JOHNSTON: Sheila, may I interrupt. If you're just going to read those statements, why don't you just give those statements to me and I'll make them part of the record, okay?

MS. ANDRUS: Okay. Pat Fenn, please. Atty. Benjamin.

ATTY. JAMES BENJAMIN: Mr. Chairman, distinguished ladies and gentlemen of the committee, my name is James Benjamin. I represent the Department of Housing. I come to speak on behalf of Committee Bill No. 7015. I also work with the advisory committee on this bill. I think the committee has done a very good job and two main points I'd like to stress that this bill seeks to do.

Number one, to give a uniform standard to the State of Connecticut for condemnation. At the present time, there is a system which is very non-uniform. The Department of Transportation has one system. The (inaudible) has another system, and the interest of the Department of Housing is this. We have to give technical assistance to the different municipalities on condemnation and housing matters and we don't have the staff. Ten years ago, most municipalities had staff under their redevelopment agencies. Today, this staff has disappeared and in most instances, the citizens do not get adequate protection in terms of proper notice and in terms of giving a fair market value for their homes, or for their property. This bill would seek to correct this imbalance.

There would be one single lawsuit. This bill also relates back to Chapter 135 which is important because, under the present system, if there are two or three lawsuits to determine the condemnation, there are also two or three

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MR. WRIGHT: (continued)

physicians being sued because they do, or they want to stop the use of extraordinary measures. I think it's important public policy for us to clearly state that physicians should be able to practice the state of their art and be protected from unnecessary suits. Thank you very much.

REP. WOLLENBERG: Gardner, which bill were you speaking on last?

MR. WRIGHT: 5424.

REP. WOLLENBERG: Can you tell me, two bills, the other two bills that you spoke to, how much would be saved on insurance and on hospital costs by 5362. Do you have any idea?

MR. WRIGHT: No, I can't tell you what would be saved.

REP. WOLLENBERG: How about 5364?

MR. WRIGHT: I can't put a dollar number on those. It obviously would be --

REP. WOLLENBERG: Are there any bills before the Insurance Committee to perhaps limit the amount they can charge for insurance?

MR. WRIGHT: All I know that's in front of the Insurance Committee, is a bill to require a study of malpractice which is something we did 10 years ago and I was a member of the Legislature. I don't think we successfully dealt with it then.

REP. WOLLENBERG: I guess that's going right to the Floor, isn't it, on the Insurance Committee.

MR. WRIGHT: I don't know.

REP. WOLLENBERG: But you have no idea how, what kind of an impact this would have on hospital costs. These two bills that we have before us.

MR. WRIGHT: No, I cannot assign a value to these bills. What I think these bills will do is make sure that more money is directed more readily to the victims instead of being

MR. WRIGHT: (continued)
the people who suffer the injuries instead of --

REP. WOLLENBERG: Well, one other area you are saying HB 5364
in the collateral source that the victim isn't going
to get as much money.

MR. WRIGHT: The victim is going to be compensated for
the loss whatever losses incurred because of the
injury or the treatment that didn't go right.

REP. WOLLENBERG: And if a jury comes back with two
million, do you think, that they find that that
is the cost that would take to make him hold, that
he should get that?

MR. WRIGHT: I think that we have to, the process is for
a jury decide it. I think the jury has to decide
it. I think, I have serious questions in my mind
about the numbers that come back from juries but that
is not what I am arguing here today.

REP. WOLLENBERG: Why would you have serious questions
about the numbers that come back from juries?

MR. WRIGHT: Because I think that part of our jury process
tends to create something that is based very largely
on the motions of the time, and not --

REP. WOLLENBERG: Can you tell me Mr. Wright, I have a
four year old child who was in an automobile accident,
I have something wrong with my back, and I go to a
hospital and through medical malpractice I become a
vegetable and I lay there for the life expediency of
67 years, what is that worth, Mr. Wright?

MR. WRIGHT: Well, first off you are never --

REP. WOLLENBERG: Juries are making mistakes because they
are guided by the motion. You tell me what it is
worth.

MR. WRIGHT: First off, you never can replace the life
that damage has been done whether it was --

REP. WOLLENBERG: What are you saying, then we don't pay them anything?

MR. WRIGHT: No, I think you have to provide care for that individual, and I think that you have to provide the best care possible.

REP. WOLLENBERG: Isn't it a fact that he will never walk again. Isn't that worth something?
Are we concerned only with care?

MR. WRIGHT: You cannot make the individual that you talk about whole, that is beyond our ability to do.
What you can do is provide the best possible care for that person in the situation they are in in my opinion.

REP. WOLLENBERG: We should do nothing for the fact that he will never walk again?

That's not worth anything.

MR. WRIGHT: I don't think there is anything that we can do for that individual.

REP. WOLLENBERG: Is it worth anything in the dollar sum?

MR. WRIGHT: I don't, I don't see how you can establish a dollar sum, and I don't think it will ever benefit the person who suffers the injury and that, I think, is the problem that we deal with.

REP. WOLLENBERG: Let me give you another hypothetical. I am a doctor, I am a surgeon and I am fishing and I get a fish hook in my finger and I go to a doctor and he operates and by some poor, I lose my hand, my master hand, the right hand, and I can never operate again. What is it worth, Mr. Wright?

MR. WRIGHT: I think you can calculate the value of the loss income for that individual.

REP. WOLLENBERG: Who does that?

REP. WOLLENBERG: (continued)
Who should do that?

MR. WRIGHT: I think there are a lot of people who can develop various procedures for calculating the present value of that lost income.

REP. WOLLENBERG: We have that procedure in the jury right now? Isn't that what we have done for years and years and years to make people whole? Is try it before a jury?

MR. WRIGHT: We have done that. I don't think it has worked especially well because I think that we lose sight of what we are attempting to do which is to make the person whole, which and replace the lost income and part of life.

REP. WOLLENBERG: Yes. Pain, suffering, worth anything?

MR. WRIGHT: To some extent. I am not trying to argue --

REP. WOLLENBERG: Well, that is what we have here.

MR. WRIGHT: I understand that.

REP. WOLLENBERG: That's the real issue. You put down here malpractice, you didn't put that on your subject of the bill, you put down malpractice.

MR. WRIGHT: Well, there was a half a dozen bills, no there were --

REP. WOLLENBERG: We have a lemon liability code for doctors.

MR. WRIGHT: Right, that is a different, that is the one I spoke.

REP. WOLLENBERG: We have two that are 5362 and 5364 are malpractice bills--

MR. WRIGHT: You have a screening panel 7769 and perhaps

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REP. WOLLENBERG: (continued)
won't they?

MR. WRIGHT: That's a conclusion that you could draw, perhaps. I would think that in most cases, people are more concerned about doing their job and doing it well and would not want to be responsible for causing harm to anybody. I don't think anybody approached their job in such a way that they are going to deliberately or not be careful about doing their job well.

REP. WOLLENBERG: Less cautious?

MR. WRIGHT: I think that that is possible. --

SEN. JOHNSTON: Discussing 5364, the collateral source bill. I think we may have been talking about notions that aren't contained in that legislation. Noone is talking of not fully compensating a victim, isn't that right? I mean, the plaintiff would be fully compensated for injuries. What the legislative intent is to ensure that a plaintiff would not suffer a windfall judgment.

MR. WRIGHT: 5364, right, the collateral source. If there is, my understanding of the bill, Senator, is that if there are other forms of income or assets available to the person who suffers the damage from the malpractice, that that income would be recognized in determining the whatever additional was provided under the malpractice coverage.

SEN. JOHNSTON: It would have an effect of reducing the award?

MR. WRIGHT: That is right. For cases that have that sort of legal situation.

REP. WOLLENBERG: Does this include life insurance?

MR. WRIGHT: That would not, I don't think that that would be. I would say no not offhand. I would say that the amount behind the payment would be the amount of the payment.

- REP. WOLLENBERG: Not a million dollars worth of life insurance?
- MR. WRIGHT: It is not available to you as a result of the malpractice.
- REP. WOLLENBERG: I suppose it could be, you know, if you die because of it.
- MR. WRIGHT: I suppose it could be. Yeh, I suppose it could be, if you die.
- REP. WOLLENBERG: So you are saying if I take some time to insure myself for a million dollars, then I shouldn't be able to recover anything from someone who harms me?
- MR. WRIGHT: No, I don't think, I would tend to exclude life insurance from that.
- SEN. JOHNSTON: And, so the legislative intent is to the extent that we would not allow a plaintiff to suffer windfall and awards would be thereby decreased, and that would have a direct affect on hospital costs.
- MR. WRIGHT: It would have a direct affect in my opinion on the premiums that would have to be charged for malpractice insurance, both for hospitals and physicians to the extent you have a hospital reimbursement system that passes through in one way or another the cost of malpractice insurance, it would reduce hospital costs.
- SEN. JOHNSTON: With respect to Bill 5362, prohibiting the lump sum payments in medical malpractice awards, are you aware of any other states that have this sort of legislation?
- MR. WRIGHT: I am not.
- SEN. JOHNSTON: I understand that 17 may have this sort of legislation. What is the intent behind structuring the payments out?

REP. SHAYS: Mr. Wright, I want to thank you. I think all of the questions have been very pertinent, but, again, I don't think it is easy to come before a committee in which the members have different experiences, some of them all very similar. It was very difficult to even to raise this bill for public discussion, and I have learned a lot I would say from the questions asked by all the committee members that have made me feel that this may have some problems as well as may be a good way to go. But, I would like to ask you, would, in fact, if Bill No. 5362 passed, an act to prohibit lump sum payments of medical malpractice awards, is it likely that the total awards would be less than if they were in a lump sum.

SEN. For instance, in the Stamford area, we had an award of, I believe, over \$3,000,000 and the individual, a good deal of the payment was for the continued care of that individual for a long period of time and that individual passed away and it became a lump sum to that individual. They had already taken into consideration pain and suffering but also the care of that individual. Is it likely that that award then would not have been as costly if we?

MR. WRIGHT: That would be my belief, yes.

REP. SHAYS: On Bill No. 5364, an act concerning the admissibility of collateral source payments in medical malpractice actions, it is my understanding and I want to be corrected, is the intent of this bill that in considering an award, other types of payments to the individual would be considered and is it my understanding, is that true?

MR. WRIGHT: Yes, if you had other insurance or workmen's compensation insurance or other kinds of insurance benefits that you would collect because of the injury that was incurred, that would mean that your actual loss suffered was less and that would be reflected in the malpractice --

REP. SHAYS: Is it your understanding that now this information is not available to the court?

MR. WRIGHT: That is my understanding.

REP. SHAYS: Thank you. I think it is important to know

SEN. JOHNSTON: Any other questions? Sen. Avallone.

SEN. AVALLONE: I think you just started to expand on it, what is the term collateral source mean to you?

MR. WRIGHT: First of all, does it mean life insurance?

MR. WRIGHT: To me and this is only personal feeling, that is not what I intend, I would intend the benefits that, the other incomes that would come forward because of the results of --

SEN. AVALLONE: If an individual were to have purchased prior to this alleged malpractice a disability insurance policy that would pay him in the event that his being 100 percent disabled, \$1,000 a week, and he paid that premium -- do you think that that ought to be taken into consideration in reducing the award, or let the jury have that information?

MR. WRIGHT: I think that personally that that should be included Senator because without the malpractice then occurring, there would not, there would be the disability that income would not arise. Since the income arises, I think that should be recognized in the malpractice decision in award.

SEN. AVALLONE: What else do you consider to be collateral sources?

MR. WRIGHT: Well, it could be health insurance from your employer that might continue on, disability insurance, perhaps worker's compensation coverage might be involved. It could be a number of things that would become available to you.

SEN. AVALLONE: Okay, that is all. Thank you.

SEN. JOHNSTON: Thank you Gardner.

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REP. TULISANO: Rep. Shays opened up an area that you responded to which I think is important -- I mean you indicated that you thought that if the collateral source rule was announced or information was available, you thought the award would go down, correct me if I am wrong.

MR. WRIGHT: Yeh, I think.

REP. TULISANO: Right now there are a number of areas in which there are either statutory liens or rights of recovery of some workmen's compensation, no-fault insurance, State of Connecticut has a lien, you know there are a lot of liens, that if one gets a recovery, they have to be recompensated for the amount of money, so the individual is not a double shot for the individual. In fact, the jury or the court would come with say x dollars. When the money is distributed, they get x less. With this also have the affect of reducing the amount of potential reimbursement insurance companies and workmen compensation carriers would get if, in fact, the total award went down?

MR. WRIGHT: Well, if it is recoverable now, then it is obviously not going --

REP. TULISANO: You wouldn't consider that a collateral source, then. I mean if you were to have the rule and there was statute by recovery, you wouldn't want that part of the information to go in so that you really got the total --

MR. WRIGHT: Yeh, and would, I am not trying to hide anything --

REP. TULISANO: Some of the things we mentioned are already recoverable, and so, therefore, basically excluded after --

MR. WRIGHT: Yeh, they shouldn't, you would want, wouldn't want to reduce the award --

REP. TULISANO: Okay, thank you.

ATTY. SOROKIN: (continued)
who were able above the age of 18, and that is the issue, that is why the Bar Association is not sponsoring it. If you are interested, I can give you some materials on it.

SEN. UPSON: Any other questions?

REP. TULISANO: Why would Connecticut be different, if we made the age of majority 21 for purposes of support as we are for being able to drink alcohol. Why would that be a tax problem then. What if we restated the law in that manner.

ATTY. SOROKIN: I think that then there used to be Clifford Trusts before --

REP. TULISANO: That's what I mean. We have some adults at 18 --

ATTY. SOROKIN: You cannot satisfy a legal obligation with the funds from a Clifford Trust. Maybe the Clifford Trust law can be revised.

REP. TULISANO: Thank you.

SEN. UPSON: Any further questions. Thank you very much. Dr. Bingham, please.

DR. BINGHAM: Sen. Upson and distinguished and patient members of the Judiciary Committee. My name is David Bingham, I am a physician engaged in the private practice of obstetrics and gynecology in Norwich, Connecticut, and I am President of the organization known as Conn Torts. I know the association of 300 physicians in Connecticut who feel as I do, that the malpractice liability situation has reach intolerable levels of injustice.

HB 5362
HB 5364

The Tort system as it impinges on medical practice has gone arris. The system has become sick. We are seeking a cure for this sickness in our society. Let me make it clear, it is society as a whole which is suffering from this incitious illness, not simply

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DR. BINGHAM: (continued)

physicians. True, physicians feel the pain most acutely. We feel it in economic terms. A \$3,000 malpractice premium I paid when I opened my office in 1973 has risen ten fold in a decade to over \$30,000 last year. At this rate, I expect to pay over \$500,000 a year for my personal premiums within the next decade. Approximately \$5,000 per delivery. Ridiculous, hardly.

As an obstetrician, I expect to deliver at least one retarded or severely defected infant each year, and several infants with learning disabilities or lesser defect. We now expect almost of everyone of these bad results to get litigated. It costs a fortune for an adequate defense even when we win. When we lose, the costs are astronomical. Physicians also feel the sickness emotionally, as we watch one colleague after another going through the throws of litigation, I can assure you that the emotional pain caused by this Tort system is far more acute than the financial loss.

Unless you have been sued yourself, when you work so hard to get where you are, tried your best to do what is right, sacrificed so much in your private and family life to do the kind of work that we do. Unless you have been sued yourself under these conditions, it is hard to understand the degree of pain, anger and disillusionment that accompanies the filing of a suit against you. It is no wonder that more and more physicians are dropping out. The sickness affects our society as a whole more doctor and hospital bills mount higher, while the government plays with various methods of cost containment. The acute economic stress we feel as physicians we pass on in the way of higher fees, and I am sure that some of the more exorbitant fees some doctors charge come in direct response to the emotional and well as the financial squeeze that physicians feel.

If you sweat so hard but then feel society doesn't care enough to protect you from the nightmare of malpractice, it would not be surprising to turn some

DR. BINGHAM: (continued)

of the anger and cynicism into higher fees to pay for your emotional as well as the direct economic losses. And society suffers also, because the medical care that was once compassionate and caring has now become significantly more money-oriented. The angry, distracted physician can no longer count on the relationship of mutual trust and sharing of health care responsibilities with the patient. Instead, we will test for many conditions we feel are unlikely to satisfy the patient; we have done everything to be sure that we are not tripped up by an obscure diagnosis. But with the rising physicians' fees and the cost of extra testing, the patient has an even lower tolerance for failure to get a perfect result or an accurate and immediate diagnosis.

So the tendency to sue increases as the relationship between physicians and their patients deteriorates even further. The vicious cycle of more suits, higher costs, higher fees and more tests only makes the illness in our society worse. A more dangerous and worrisome result is that some of our best physicians become unwilling to do procedures at higher risk. Many are stopping obstetrics entirely, especially our more experienced, elderly, more older physicians who would have preferred simply to decrease their practice load. They no longer can afford to work less. Younger women physicians who wish to raise families and others who wish to work part-time are unable to meet their malpractice premium costs and may drop out altogether.

And the poor in our society may be abandoned altogether. Why should I take the risk of a young woman with nutritional problems? Young women in my practice have more chance of, the poor women, of not only nutritional problems, but high blood pressure and stress-related problems, why take the risk of taking care of these patients when a well-fed, wealthy patient is a lower risk? And will pay more? But because she is a lower risk and fewer bad results occur, she is therefore less likely to sue.

I sometimes wonder why I spent all of those extra years of training in the specialty of obstetrics and gynecology when society seems to want to punish me for working with

DR. BINGHAM: (continued)

the sickest patients and rewards me for attending the least in need. Something has gone clearly wrong.

The bills to address the Collateral Source Rule, 5364, and the Lump Sum Payment of Awards, 5362, have been proposed to provide a cure for two of the most blatantly unjust aspects of our tort system in Connecticut. They deserve your support. The bill before you, which would remove the Statute of Limitations, is an invitation to raise the economic and emotional cost to physician and society alike.

I leave it to others to discuss the specifics of these bills, but I plead with you to keep in mind the critical nature of the sickness we are dealing with, and the urgent need to restore justice to the laws which govern medical liability. Thank you.

SEN. JOHNSTON: Doctor, I'm sorry, I came in during the middle of your testimony. Where do you practice?

DR. BINGHAM: In Norwich, Connecticut.

SEN. JOHNSTON: And what is GM specialty?

DR. BINGHAM: Obstetrics and gynecology.

SEN. JOHNSTON: What is the amount of your liability premium?

DR. BINGHAM: Last year, it was over \$30,000. Now, this year I paid less simply because I drastically reduced my coverage. I could not afford to do otherwise.

SEN. JOHNSTON: I asked this of another, I was going to say witness, but another person testifying, do you suppose that the costs of liability insurance is causing some physicians to consciously avoid certain medical specialties?

DR. BINGHAM: Absolutely. There is no question that if younger people ask obstetricians today whether they should go into obstetrics, that the first thing that they will caution them about is we don't know if you're going to want to practice in a few years. We don't know if you

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DR. BINGHAM: (continued)

can afford to practice. If you're a woman and you want to take time to raise your family, you still pay the same premium if you deliver 5 babies a year or 500, so that you simply are not likely to be able to afford to go into that particular specialty if you can't afford the medical premiums. You'll go into another low-risk specialty, or take care of low-risk patients, not take care of people that all of your extra training may have trained you to take care of.

DR. JOHNSTON: Do you, have you ever heard of the concept of defensive medicine?

DR. BINGHAM: Yes, I've heard the concept of defensive medicine.

DR. JOHNSTON: You might have mentioned that in your testimony, I'm not sure.

DR. BINGHAM: Yes, I did mention that all physicians today have to cover themselves by ordering additional tests that they normally would not choose, or if they were working together in a partnership with the patient, rather than an adversary relationship, they would feel that they should discuss this with the patient and rather than just throwing every test, they would make a joint decision about many of them. They are more likely to just say these tests are necessary because you have to cover your financial risks.

SEN. JOHNSTON: So you're suggesting that sort of strategy is something more than diagnostic medicine; it's really documenting your --

DR. BINGHAM: In obstetrics and gynecology, in the day now of ultrasound and CAT scans and fetal monitoring, the costs are enormous for every single pregnancy. I would say that the extra bills that I myself generate in the last decade are, whether they were in the hundreds for lab tests, are now in any high-risk pregnancy are now in sometimes in the thousands. It is an enormous difference and this is just in one small practice.

SEN. JOHNSTON: How much were you paying for your liability insurance about ten years ago?

DR. BINGHAM: Three thousand dollars. And I did cover that.

SEN. JOHNSTON: You mentioned that. So obviously (inaudible) to say you're passing these increased costs on to the patient?

DR. BINGHAM: For those patients that we can. I can't pass it on for my Welfare patients, because I have a fixed fee schedule from the Department of Welfare. Most of my friends, as a result, have stopped taking care of them. It costs me more for my insurance premium to care for them than I get from the State in repayment. So why care for them? I continue to do so as an ethical matter in my own practice, but I'm not sure I can continue to do so. I also expect 10% of my patients not to pay any bills at all, because most physicians have a group of patients that don't pay, unless I change the system and make everybody pay in advance, become more oriented towards money. I have chosen to let my patients pay when they can, and if they can, and continue to have 10% not paying.

But that means that the remaining 80% that are paying their bills are paying through the nose and the cost is enormous.

SEN. JOHNSTON: Thank you, Doctor. Sen. Upson?

SEN. UPSON: I think a lot of our professions are the same about payments. What is Conn. torts?

DR. BINGHAM: Conn Torts is an organization; we just felt that the --

SEN. UPSON: Is it (inaudible, two speaking at once).

DR. BINGHAM: It's an association of physicians.

SEN. UPSON: And when was it founded?

DR. BINGHAM: Just last year. It was founded with the frustration that the system wasn't working and that the system includes our medical society and the system of people that we thought should be here protecting us and many of whom are here today to protect us, but that they

DR. BINGHAM: (continued)
needed some help because there's so many other medical
issues they have to deal with.

SEN. UPSON: Physicians, what surgeons, or just all the
general --

DR. BINGHAM: There's 300 physicians in our group; we cover
every single specialty.

SEN. UPSON: Now, do you have, have you set up your own, or
part of a, I believe the Connecticut Medical Society has
their own insurance?

DR. BINGHAM: In my, what, this group? This group --

SEN. UPSON: No, no, I know that doesn't have that, I realize
it.

DR. BINGHAM: Yes, I did join the CMIC which is the Connecticut
self-insurance plan for physicians in Connecticut.

SEN. UPSON: All right. And does that still mean it's going
to be \$30,000 a year?

DR. BINGHAM: As I said, I took a drastic reduction in my
coverage in order to decrease my fees for this year, but
over the schedule for the next few years, is going to
put me right back in the same category, if they can
afford to give me this coverage. I was a member of the
American College of Obstetrics and Gynecology and covered
through their group plan. I'm a Board certified
obstetrician, which means I've gone through higher
training and taken special boards, so their lowest-risk
pools for obstetricians was covered by a plan for all
Board certified obstetrician-gynecologists. This plan
was discontinued this year. The insurance company lost
so much money, they said heck with you, we won't cover
you and if it wasn't for CMIC, I probably would not be
covered at all this year.

SEN. UPSON: And so and that coverage, is that as it's going
to cost you \$30,000 this year?

DR. BINGHAM: It is not going to cost that much this year, but --

SEN. UPSON: How much will it cost this year?

DR. BINGHAM: But my tail will, and I have no idea how much it will cost, because the tail depends on the Statute of Limitations, which is before you. If you decide to eliminate that, that means that my tail for coverage is going to extend indefinitely for the rest of my life. Any injury that occurs this year, if 17 years from now a child then --

SEN. UPSON: (inaudible, two speaking at once) has not been assessed for this year, is that correct?

DR. BINGHAM: Mine this year is \$8,000.

SEN. UPSON: Eight thousand dollars. So you've gone from 30 down to 8, is that correct?

DR. BINGHAM: Yes.

SEN. UPSON: And what do you know if the other States, like New York, what do people --

DR. BINGHAM: In New York State I would have to pay \$80,000.

SEN. UPSON: All right. And Rhode Island or Massachusetts?

DR. BINGHAM: Ah, they're inbetween those two figures.

SEN. UPSON: Inbetween 30 and 80?

DR. BINGHAM: Yes.

SEN. UPSON: All right. So, actually, you've, when you say you have less coverage, what does that mean?

DR. BINGHAM: What that means is, for instance, if I get sued this year, I'm covered this year. If something happens to me this year and they sue next year, I'm not covered next year.

SEN. UPSON: If you don't --

DR. BINGHAM: For this year's suit. I was called to witness --

SEN. UPSON: You mean if you don't, explain that again. If you are sued this year and you have coverage for one year at a time, --

DR. BINGHAM: That's exactly it. But that, so they are, they have covered me in a very limited fashion, just for anybody that sues me in the current year.

SEN. UPSON: Correct.

DR. BINGHAM: And because they never had to cover for any previous years, that is very cheap coverage. But if I left practice today, or at the end of this year, and two years from now, because the Statute of Limitations has not run out, one of my patients who's got a retarded child, --

SEN. UPSON: Oh, I see.

DR. BINGHAM: Sues at that time, I will have absolutely no coverage unless I buy this coverage indefinitely into the future and the longer you make the Statute of Limitations, the higher my ultimate bill for this year will be.

SEN. UPSON: I see. Thank you.

SEN. JOHNSTON: Any questions? Rep. Mills?

REP. MILLS: Good afternoon, Doctor. Could you please tell me about the length of time it takes to settle one of these cases?

DR. BINGHAM: Well, I was called to be a part of one that occurred during my residency at the University of Michigan that occurred in 1970, last year I testified. So, again, take up to 15 years in some States. In the State of Connecticut, most of them are several, 4 to 5 years before the actual settlements occur.

REP. MILLS: And yet you have to pay your insurance on time limits during the year to --

DR. BINGHAM: Well, not only do you pay that, but you pay it on a rate of what you expect today's suits to cost and I

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DR. BINGHAM: (continued)

have no idea what they're going to cost in terms of settlement 5 years from now, because the case that I was talking about in 1970, the coverage for the physician involved that I came to testify in behalf of, his coverage was \$70,000. They were asking many, many millions of dollars in that case. The coverage for the insurance company, although he had a tail, but it was only for \$70,000.

SEN. JOHNSTON: Rep. Shays?

REP. SHAYS: Sir, I feel that I must ask you this question. You said 10 years ago it was \$3,000 and then it come to 30 over 10 years. Did your income as a physician increase tenfold? I don't need to know what it was, but did it increase tenfold, do you think?

DR. BINGHAM: Nowhere near. No, it, I would say it did, my income did increase during that time, but I was in my first year of practice at that time, so my income was extremely limited. If you want to know some dollar amounts --

REP. SHAYS: No, no, my question was --

DR. BINGHAM: I would say that I have in 10 years I have about doubled, but I was starting from scratch.

REP. SHAYS: Right. Well, you're not started from scratch, but I understand. Can you give me one or two examples of what you consider outrageous cases?

DR. BINGHAM: I think one of them was the question of somebody who was injured and gets a settlement in court for the rest of their life. In obstetrics, what that means, generally, is an injury that occurs at delivery. A child who is unable to sit up, or is unable to function, has mental retardation, blindness, or some other severe handicap. If this handicap is going to require medical care for life, then the settlements that have been given have sometimes been as much as \$5 million. Nationwide, there have been a number this high. Not yet in Connecticut, and that's one reason that our costs are a little lower than some States.

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DR. BINGHAM: (continued)

But in that range is what I'd expect if something happened today. Last night I was up at 2:00 in the morning, delivered a baby, if that child had respiratory difficulty and was right now shipped to U Conn, retarded, as a result of something that family would probably sue. I would expect to pay about \$5 million if I lost in terms of my, if we lost that case. Now, if, the outrageous thing about it is, if that \$5 million payment is made in a lump sum, there is no incentive for this family to care for that child whatsoever. In fact, many of the families that have gotten these lump sum awards have been divorced within 2 or 3 years and then the property settlements that you've been talking about (inaudible) split and there is no responsibility to care for the child at all. If you gave this lump sum --

REP. SHAYS: I was really asking about specific cases, and I know your general fear, but can you give me some specific examples of cases, you don't have to go into great detail, in your general area obviously there must be some or else we don't need this bill.

DR. BINGHAM: Yes. There are some.

REP. SHAYS: I don't need to know the names involved, but I'd like to know --

DR. BINGHAM: In fact, most of the cases, very few are now going to court. Let me give you an example.

REP. SHAYS: Does that mean that, then, they're not publicized or what?

DR. BINGHAM: Thaty they are (a) not publicized, but (b) let me give you an example of the terror that I live under.

REP. SHAYS: Okay.

DR. BINGHAM: I'm covered for a million dollars. I told you that the expected loss would be \$5 million on this kind of a case.

REP. SHAYS: Potential loss --

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DR. BINGHAM: Potential loss. I'm ready to go to court. I think I've done everything right, I've got all the best people to testify before me, for me in my behalf, ready to go to court. My attorney tells me doctor, I think you've got a good case, we've got the best people around. But I've got to tell you one thing. Nationwide, when those courts see a retarded child and they see this couple who has no source of income adequate to cover for that child, that there's a chance you're going to lose. I say well, how much of a chance, and they say well, let's figure nationwide on cases that we felt were good, your chances of losing are still 10-20%. Okay?

Now, if we pay off this family at \$800,000, they will accept that, because they'll get it now and they won't have to wait 4 years for the court and they don't have the choice (inaudible), but if we go to court and we win, it's gonna cost you a lot of time, a lot of heartache, and about \$50-100,000; your insurance company will pay for it, but if you lost and it's 5 million, 4 million is coming out of your pocket.

Now, I have children, they are now at college. I have a house mortgage to pay --

REP. SHAYS: We understand that, I mean --

DR. BINGHAM: There's no way I'm gonna risk that \$5 million loss, even if it's 20%. I'm gonna settle for \$800,000 and get out. And the insurance company --

REP. SHAYS: My time is going to be running out here, so let me ask you one or two other questions. It's not your testimony that Connecticut is the highest in the nation, but I understand it's your testimony that it's pretty bad now, it's worse in other States, we can look at what's happening in other States and see the direction we're headed, and that's your concern, is that not correct?

DR. BINGHAM: That's right.

REP. SHAYS: Okay. Thank you.

SEN. JOHNSTON: Rep. Blumenthal?

- REP. BLUMENTHAL: Thank you for being with us today, Dr. Bingham. I'm curious about the reduction in the premiums that you pay. You paid \$30,000 in what year was that?
- DR. BINGHAM: Last year, for lifetime coverage. In other words, if an injury, last year if a child got injured last year and they didn't sue until 3 years from now, I was still covered for my whole life.
- REP. BLUMENTHAL: And this year you're paying an \$8,000 premium?
- DR. BINGHAM: And this year I'm paying an \$8,000 premium, but the day that the year runs out, I have no coverage for any injury that occurred last year. I have then got to buy my new year's premium, plus my coverage for last year, so my premium rate is going like this for the next 4 years, but in the meantime I've bought myself a \$30,000 saving.
- REP. BLUMENTHAL: I see. Are there any other elements of coverage that were reduced or eliminated to get your premium down to \$8,000?
- DR. BINGHAM: The problem is that I'm not sure that I'll ever be able to buy that tail. Most of the insurance companies have said I don't want to cover you for life. Look at what's happening. They're getting sued 17 years later, in some States.
- REP. BLUMENTHAL: When you talk about the costs of malpractice, you're talking about the cost of malpractice insurance, is that correct?
- DR. BINGHAM: That's right. But the cost, I'm saying, is really, the financial one I can pass on to the patients, it's really the emotional one, the fear, the paranoia, that is going on and the unwillingness of people to take care of the poor and the sick anymore, just take care of the low-risk people that pay, we'll just let the poor people, let somebody else take care of them.
- REP. BLUMENTHAL: Well, focusing for the moment on 5362, which would eliminate lump-sum payments, what assurance is there, what language is there in that bill that the

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MR. SWEETLAND: (continued)

of the New Jersey State Medical Underwriters. I'm here to speak in behalf of 2 bills and in opposition to a third dealing with medical malpractice actions. I'm presently the chief operating officer of the doctor owned company in New Jersey. We insure 7,000 physicians and I have been involved with them for 8 years. Prior to that I was an employee of the Travelers Insurance Company for more than 16 years, the last several of those years, I was their officer responsible for medical malpractice insurance countrywide.

HB 5362
HB 5364
SB 326

In addition to my duties in New Jersey, I am the administrator of the American Physician Insurance Association. That organization consists of 36 doctor owned companies coast to coast, and I have been a spokesman for that association for the last 7 years. There has been quite a bit said dealing with the so called resurgence of the malpractice crisis. I don't think you need a rehash from someone else about the emotions involved but I do want to say that I firmly believe that the crisis is returning, the crisis of cost, and the impact of that cost on the consumer of health care across the country.

The bills before you deal with some aspects of controlling that cost, and I believe that passage of such legislation in various places across the country is necessary to relieve the problem as it is emerging. Frankly, if New Jersey and Connecticut suffer the consequences of what is going on in lower New York's state, we will indeed have a severe problem. There are many similarities as I see them between my experience in New Jersey and conditions in Connecticut. I would like to emphasis just one other thing before I get into details of the bill, however, I think it is important that you recognize the physicians are attempting to do their part of the job in correcting the problem.

This ought to be said. The prevention of lawsuits is the paramount objective of doctor owned companies, and as I say, then now insure more than half the physicians across the country. By setting up their own individual companies, they have been able to isolate information necessary to work on the cause of loss. Let's talk briefly about House Bill 5362 dealing with prohibition of lump sum payments. And another way of recommending or

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MR. SWEETLAND: (continued)

requiring the use of periodical payments. It has been said that this would prevent windfall results in the event of a death of a successful plaintiff. I'd like to stress a few other points on that doesn't get brought up very often but is very significant. When a payment is made in a lump sum, and it is intended to last for the life of the person, it gets invested, and that investment income, the interest income is taxable.

In a payment that is made over a period of time by an insurer, each individual payment is the payment of a claim and is not taxable. That particular difference is substantial when you are dealing with a life long care for a disabled person. There are other features of this bill that are important. I think that it has been stressed already that there is a need to keep from having heirs and assigns receive the residue of that portion of the award that was allocated to life-long care. I am not speaking for a reduction of justifiable awards on the basis of a jury's decision relating to pain and suffering, or past expenses.

We are talking about future costs. In fact, both this bill and House Bill 5364 are really dealing with providing a more accurate assessment of the actual dollar damages. They don't seem to me anyway to attempt to prevent the jury from establishing its view of the value of the loss. In the case of this second bill, the collateral source bill, we are talking about evidence of the existence of other sources. It is still of the jury to decide just how much that will impact and their decision on an award.

There have been some questions raised on the value of these two bills, and the answers have always been we can't tell. Well, frankly, I am not going to let a lot more light to that, because you can't determine particularly on this evidentiary bill what impact it will have on a jury until you see it in action. But actuaries in support of mandatory collateral source offsets have said that the impact would be some 10 to 15% of premium. And the Rand study which was also referred, done by the Institute of Civil Justice, even puts a higher estimate on it. I think the question of the impact of periodic payments is also hard to evaluate, but certainly it would

MR. SWEETLAND: (continued)

significant. Frankly, the way things are going, the primary objective here is to reduce the rate of increase. We are talking about a trend back over time which is far more substantial than the inflationary trend, in terms of the cost of professional liability insurance and that piece that has been passed on to the health care consuming public.

Finally, as regards to Bill 326, an alteration or elimination of the statute of limitations as it is now written in Connecticut, I would say that in New Jersey we have a statute which is from discovery as opposed to from the incident, and frankly, we therefore have virtually no statute. We continue to get cases reported years after when it is now alleged that either the problem is first discovered or in the case of our state the court has expanded the interruption of what discovery means to include not only discovery of the fact that you have been injured but the discovery of the fact that you have the ability to be compensated, and that could mean that all the time going from one expert to the next and getting an indication that there is a liability doesn't count. It is when you finally find somebody who agrees with your point of view that the statute starts to run in our state.

I'm not saying that that is how it is going to be in your state.

REP. WENC: I want to know how legitimate those kinds of claims really are. I mean if you go to 10 people who say you don't have a claim, and you would think the person would have the guts to go in with an action?

MR. SWEETLAND: I can't speak for exactly what happens here, but it certainly happens in New Jersey.

REP. WENC: Well, that's why we have Connecticut --

MR. SWEETLAND: I would say having lived here and been one of your constituents, by the way, I lived in Rocky Hill, that there is a lot of similarities. I think, for example, in our state, we have some 40 attorneys who are truly qualified and know what they are looking at in a professional liability case. We like to do business

MR. SWEETLAND: They analyzed the effects of changes in the law which had occurred in other states and whether or not they have been beneficial. Now the main area where such laws have been changed was California where a law incorporated both the periodic payment requirement and the collateral source rule along with some other, they tried to segregate the impact of each item, but it was very difficult.

The percentage impact I referred to was the collateral HB 5364 source piece. The impact of periodic payments, I hesitate to put a percentage on, but it's meaningful. It's clear that this is --.

REP. WENC: Okay, but the only evidence you have is that the Rand Corporation study which we may be able to take a look at if it's made available to this committee and the 10% to 15% reduction in insurance premiums as a result of enacting the collateral source legislation.

MR. SWEETLAND: I'm identifying for you what one set of actuaries would project. I can't speak for how a Connecticut company will respond, but I do think there have been other who would agree that it was a beneficial impact in insurance costs as a result of these kind of changes.

REP. WENC: Okay, but that's the only evidence that you really have at this point in time.

MR. SWEETLAND: As far as quantitative, yes, I think that's a very significant generalization I can make in that California where those laws passed is the one area where we have not seen the rapid increase in rates.

REP. WENC: I see. Do you have any figures, you're down in New Jersey, as to what the median medical malpractice settlement award is before trial? Is there a median state by state that's determined by, let's say, an insurance company such as yours?

MR. SWEETLAND: Well, generally, we would keep that kind of information as to what our result is in trial versus prior to trial.

REP. WENC: Yes, what's the --?

MR. SWEETLAND: Our average payment and settlement is probably \$10,000 lower than our average payment in court.

REP. WENC: Okay, but now you're talking about in New Jersey. Do you have a specific figure as to what the median is prior to trial and then after judgment?

MR. SWEETLAND: You're asking this regarding New Jersey?

REP. WENC: Yes, and then I'll ask you for --.

MR. SWEETLAND: Those two numbers are \$80,000 approximately within \$10,000 after trial and \$70,000 before trial. That is indemnity value, now expense value is probably another \$10,000 as well.

REP. WENC: Okay. And how about in Connecticut? Do you have any figures?

MR. SWEETLAND: I'm afraid I do not have any data for Connecticut.

REP. WENC: Okay. With respect to the self-insurance system that you describe, what, could you please describe for me what rate making procedure is? Do you have to go to a state insurance commission in order to establish your rates as to how much you can charge for premiums per year?

MR. SWEETLAND: Yes, as it is done here, we analyze past loss experience projected on out into the future on an average basis, then review it as it relates to each specialty classification, produce differentials around that average and identify a set of rates to request from the commissioner for full usage.

REP. WENC: With respect to projecting into the future, I anticipate that you have to make some projection as to what future claims will be and you will offset that against how much you receive in for premiums on a yearly basis to get whether or not you have an underwriting loss or an underwriting profit. Is that the case?

MR. SWEETLAND: That is correct.

REP. WENC: Okay. Could you explain to the committee how you base your prediction or projection for future claims?

MR. SWEETLAND: Certainly, it comes as a result of an analysis

MR. SWEETLAND: (continued)

in the past pattern of reported claims. I'd insert that it becomes far more uncertain when you have a longer statute of limitations and you have a greater increment to establish for that part that is not yet reported. But what we do is we examine the history of each incident year as it unfolds. For example, in our case, the 1980 year, after on years time had only had \$250,000 in payments while we collected \$25 million in premiums. Today, we paid more than \$25 million against that year, but it took that long and we look at the pattern as it unfolds and superimpose it on the results we have on the subsequent years and set reserves as a result.

REP. WENC: Okay. With respect to the collateral source bill, what is your intent with respect to including as a collateral sources to be presented before a jury? Are there specific items that you have in mind? I see the legislation doesn't specify what the collateral source --.

MR. SWEETLAND: That's right. As I read it, it suggests any sort of a recovery that relates to the injury involved as I thought so that it could definitely deal with worker's compensation and certainly health insurance, hospitalization and the like. Whether or not it does deal with the proceeds of life policies, I can't say. I think that would have to be ironed out. It was mentioned that there are those who have paid the premiums for this insurance. Why should they suffer? Well, if you examine the realities of it, the majority of the premiums for such coverage are paid by employers and we're really talking about off-loading the system in general, this double cost.

REP. WENC: Okay. Thanks.

SEN. JOHNSTON: Thank you, Mr. --, Oh, I'm sorry, Sen. Avallone.

SEN. AVALLONE: I see it as a very broad question and if it is I'll try and narrow it for you. To create a list of all of the issues in this entire malpractice premium insurance issue, some that are raised directly in this bill (inaudible) I assume are answers to problems and I've heard many of the problems in testimony and outside. Can you try and list for me not only the economic features involved, as you've tried to already, but any other (inaudible) because only by putting all of the issues on the table could I

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SEN. AVALLONE: (continued)
enforce a solution.

MR. SWEETLAND: That's quite right. I think it has been mentioned earlier today there is definitely a psychological issue. The impact on the physicians has been devastating. Supplementing what was said by Dr. Bingham, I think one other thing I've seen is physicians no longer recommend that their children study medicine. This is a consistent thing I've seen come through. You don't want to get involved with that. They are defensive more than in their requested tests, but the relationship between the doctor and the patient is severely effected and it should be recognized.

The economic issues, as you say, have been, have been quantified. I would suggest to you, though, that another item to raise is we now see of is at the federal level that if efforts are not made to solve this at the local level, there will be passage of other legislation. There's something in the House now.

SEN. AVALLONE: And what is the nature of that legislation?

MR. SWEETLAND: It's an attempt at no-fault which I think we would all oppose.

REP. TULISANO: Except for Carter and Wright.

SEN. JOHNSTON: Rep. Wenc followed by Rep. Baronian.

REP. WENC: Excuse me, I just have one more question I'd forgotten to ask, but the physicians appear to be taking the position that these two pieces of legislation will reduce their insurance premiums and I wondered if there were other options available to them and I haven't look at any of the case law across the country, but to your knowledge, has there been any intervention on the part of physicians' groups questioning the validity of some of the insurance companies are requiring them to pay when they go before the rate making authority in each particular state? For instance, I questioned you previously about your predictions about future claims. Have you ever been attacked in the rate making process as to whether or not that particular future claim prediction is a valid one which will obviously affect your bottom line and cause you to either maintain

REP. WENC: (continued)
your insurance premium or go in for a rate increase? Has
there been litigation to your knowledge in that regard?

MR. SWEETLAND: You say litigation, I'm not sure of litigation.
Certainly there have been interventions in terms of the
rate analysis level in varying states, including our own.
The public advocate routinely intervenes in rate filing
of professional liability insurance.

The fact of the matter is, over our history, every time
we reassess those projections, they were low. Add to your
consideration the fact that in my particular state there's
150 largest insurance companies in the country, only one
will write the business. Here perhaps it's three or four,
but that's it. If this was so profitable, I fully expect
there'd be a few more around.

SEN. JOHNSTON: Rep. Baronian.

REP. BARONIAN: Yes, Sir, in New Jersey, are you experiencing
the same problems as New York with, I know there's an
ongoing debate in the New York Times about the malpractice
and as recently as, I think the day before yesterday, they
had another editorial (inaudible) stating that some of the
people that will suffer will be the large cities because
many of these doctors who have to pay these exorbitant
malpractice fees will think twice about practicing in the
city and move to suburbs and places that where is less
risk.

MR. SWEETLAND: We're a reverse recipient. We get doctors from
New York fleeing the costs over there. It is a concern to
us when they come across the Hudson, keep the same patients
in Manhattan and ask them to take the tubes to come see
them. We can still wind up in the New York courts. I think
what has been cited in the New York problem is happening
countrywide. As far as the instability of the profession
and the concern about those leaving, retiring early, it's
happening everywhere.

REP. BARONIAN: Yes. Thank you.

SEN. JOHNSTON: Sen. Avallone.

SEN. AVALLONE: Yes, I just want to ask you a question. In

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SEN. AVALLONE: (continued)
determining your rate, as premiums are paid in, those are invested.

MR. SWEETLAND: Correct.

SEN. AVALLONE: And what percentage do you attribute to those investments?

MR. SWEETLAND: In determining our rates, we discount the expected total loss. In our case, again because the statute has this, provides for this very long tail, the impact of expected investment is 35%. We take 35% off the total expected loss before we build the rest of the rate. I know there's a discount in the rate calculation here in Connecticut. I can't tell you how much.

SEN. JOHNSTON: Thank you very much.

MR. SWEETLAND: Thank you, Senator.

SEN. JOHNSTON: Dr. Sadowski.

DR. SADOWSKI: Sen. Johnston, Members of the Committee, my name is Dr. Joe Sadowski. I'm a neurosurgeon practicing in the City of Hartford. I'm also President of the Connecticut State Medical Society. I am here to state the society's position in opposition to S.B. 326 which is an act the subject of which is the statute of limitations and wrongful death and negligence actions.

I feel, as has been stated by previous speakers, that extended the statute of limitations indefinitely from the date of an act or omission will find us in negligence and wrongful death actions including medical malpractice actions. This bill would increase the costs of medical care. It would do so because it would increase the cost of malpractice insurance the physicians have to pay. Many statements have been made here already as to the way in which the costs of physicians' malpractice insurance has escalated over the years. I think if a price of new car had escalated over the past ten years the way malpractice insurance has, a Chevy would cost somewhere between \$60,000 and \$70,000.

I think all of you have been given a statement and I don't feel that it's necessary for me to read the entire statement.

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DR. RIPPS: (continued)

lower these expenses without the denying the injured party his full rights and his day in court and the State Medical Society has endorsed bills 5364 and 5362 because we feel that these represent a step in the right direction. Now without tampering with the jury and without tampering with the award 5364 provides the court a way to prevent unintended double payments and in states where this statute exists like Pennsylvania, apparently large savings have been demonstrated.

With 5362, we see another measure by which the plaintiff can be given his full and just reward, but this is done in such a way as to minimize the tax bite as well as the likelihood that his custodians or his family may mismanage the award. Evidently there's been some increasing number of cases where recipients of large sums have squandered the money and become wards of state and we had a case like that in Danbury where a young man got turned on to drugs.

I've been told that installment payments are becoming more and more popular anyway by virtue of the tax advantage, but hopefully this statute would make installments the rule rather than the exception. Now these measures assure the fair compensation of the injured plaintiff. It's fair to tell you that a lot of physicians feel these aren't hardly enough because they don't do anything to diminish the avalanche of new claims or of skyrocketing unrealistic awards much less the problem of preserving high medical standards in the face of the coming cost crunch and there already has been some debate about cost saving DRG measures that may precipitate suits and I'm referring to the inferior brand of pacemakers that some hospitals have been installing and reusing a disposable hospital drapes and supplies.

And this brings up the last point which has to do with Committee Bill 326. This bill seeks to extend the statute of limitations. As I mentioned initially, not right doesn't necessarily go wrong. And as a physician, I think it's unfair to judge someone on the basis of outmoded standards. In the past year, I've inserted three different types of total hips in my patients, not because I'm capricious or because they needed this variety, but simply because the rapidly changing technology and the availability of the latest systems demanded it. In other words, the total hip that I installed in January was considered old fashioned

DR. RIPPS: (continued)

by December. Honestly. Now if indeed I can't be judged in December, but it was accepted in January, how can a jury be expected to do this for a period of years. Medicine is the discipline of continuing self-education. So it makes it very difficult to determine where one should draw the line. But suffice it to say that the physicians in the state feel that the current statute of limitations should be left alone. I thank you very much for this opportunity and that concludes my comments.

SEN. JOHNSTON: Thank you. Did you have something to say, Doctor?

DR. RICHARD MUNCH: My name is Doctor Munch. I'm a practicing physician. I appear here pretty much as a citizen, just to share an experience. I would like to speak in support of Committee Bill 5364, collateral sources payment. I would like to just share an experience. This is an experience I've had in my own practice and it might give you some feeling for the inadequacy of the present law.

In 1977 I treated a 75 year old man who was hit by a pickup truck. He was almost killed. It took us two months to get him out of the hospital. This in fact was not a malpractice case, but it does show how collateral source payments in our present system is very, were really unjust. The majority of this man's bills were paid by Medicare. The driver of the pickup truck who hit this old man made an out of court settlement the sum of which I'm not privy to. I was there to appear as a medical witness during his trial where the plaintiff sued the City of Torrington for an improperly marked crosswalk. The City of Torrington was judged, had a \$100,000, correction \$150,000 judgment made against it. Much of the basis of this judgment was on the amount of medical bills that were generated. The jury was not privy to this information nor was the judge at the time the award was made. So to further compound what I thought was the injustice is the plaintiff had on to die by the time this came to trial. So all of this money went to the heirs and the people who settled the case. And I just want to speak against this bill. I do know the hour is late --.

SEN. JOHNSTON: Thank you. Questions? Thank you, gentlemen. Wendy Haller. You're not here with a group, by any chance,

ME. FLYNN: (continued)

Carrying this out a little further, actuaries most also develop a rating factor based on what the total claims of cost without taking into consideration any other factor such as collateral sources.

In Connecticut, there is no collateral source protection and this restricts the actuaries when they calculate their rates into having the ability to take any other sources into consideration to compensate the (inaudible)

Enactment of House Bill 5364 will go a long way in reducing the amount of jury awards, therefore, hopefully reducing actual and projected claim costs and hopefully reducing the cost of insurance protection for the individual physician.

Regarding periodic payment of damages. That's a little (HB 5362) tough for one to predict any kind of percentage decreases or any kind of decreases that could be passed on to a physician as far as the cost of malpractice insurance goes. However, periodic payments, by having periodic payment schedule similar to those that have been working with workers compensation general liability, to guarantee that the dollars are paid to the individual, that dollars are for, not necessarily for anyone else involved.

SEN. JOHNSTON: Joe, you'll have to summarize.

MR. FLYNN: Okay, then I'll go to page 3 because there were some questions asked earlier regarding what's going on in Connecticut and I think it's important that you understand what is going on in Connecticut.

In Connecticut, the physicians in Connecticut, because of the horrendous situation that's going on in professional liability, are going to be restricted come October 1 to two professional liability insurance markets. Any time you get into a situation like that, it becomes a very continuous situation for anyone buying a product.

Medical malpractice combined ratios in the State of Connecticut presently for insurance companies operating here, are not unlike the national average of 149% which means that for every dollar that the insurance companies take in, they're paying out \$1.49 after investment income, for claims.

MR. RENNIE: (continued)

In this Session of the Legislature, by rejecting the Woodcock prohibition on speech, you will affirm that in Connecticut, infringement on and intolerance of religious speech has no place in our statutes or in our notions of freedom and democracy.

SEN. JOHNSTON: I have one question. Kevin, would it be safe to say that you think that this bill is a lemon?

REP. TULISANO: All right.

SEN. JOHNSTON: Leslie Brett. Dr. Conrad. Before you start, Leslie Brett had to leave and we will make his testimony part of the record.

DR. WILLIAM CONRAD: Mr. Chairman, members of the committee. My name is Dr. William Conrad. I live in West Hartford and I practice medicine at Hartford Hospital. I'm also president of the Connecticut State Society of Anesthesiologists. And I've come to testify in favor of House Bills 5362 and 5364.

Over the past few years, there's been a traumatic rise in the number of malpractice cases in our country. And recently in a report, it was noted that there are now more than three times the number of malpractice cases that occurred ten years ago.

SEN. JOHNSTON: Excuse me, Bill. Excuse me, we can't hear the person testifying. Go ahead, Bill.

DR. CONRAD: The insurance industry reported that in 1983 there were 16 malpractice cases per 100 doctors. By 1975, the year previously known as the year the medical malpractice crisis, there were only five cases per 100 doctors. This marked rise in 1983 was even 20% greater than the number of cases in 1982.

The awards are also breaking records. There have been several hundred cases in which the awards were greater than \$1 million. The same (inaudible) in the (inaudible) insurance company, the largest medical malpractice carrier, can see no change in this steadily increasing trend.

Medical malpractice claims add significantly to the cost of health care nationally. Some premiums increased more than 100% per year. In 1983 alone, the awards for

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kpt

JUDICIARY

April 12, 1985

DR. CONRAD: (continued)

malpractice cases totalled \$2 billion. An AMA group survey reported in the New York Times on January 17, 1985, 40% of the AMA Members stated that they ordered additional diagnostic tests and 20% of the members ordered additional treatments due to fear of being sued. This additional cost of this "defensive medicine" was projected to be between \$15 billion to \$40 billion, and this cost was ultimately paid for by the patient.

ATTY. If the fear of being sued were eliminated, this high cost of defensive medicine, which is a large part of the high cost of health care, would evaporate. Part of the solution to the medical malpractice crisis requires closer observation of the performance of physicians by the medical community.

As Dr. James Sammonds, Executive Vice-President of the AMA stated, "Physicians must do everything they can to improve the practice of medicine to insure its high quality, and define the discipline physicians who do not practice up to the profession's standards."

But the current crisis of medical malpractice must also be dealt with by others, starting with tort laws in the Judicial system. The present two bills are a start in dealing with this crisis and I support them 100%.

SEN. JOHNSTON: Do you have any questions? Thank you, Doctor. Dr. Lilly. Richard Lilly.

DR. CONRAD: He is on call tonight and had to leave, but he is also in support of this.

SEN. JOHNSTON: Okay, thank you. Richard, Atty. Richard Breder.

ATTY. RICHARD BIEBER: I am a plaintiff's lawyer, but I sincerely feel that medical, that there's not a medical malpractice crisis but that medical malpractice insurance is too high. I've looked at the rates and I think that maybe there should be an investigation of the rate making process, because as I see it, as I understand it, one of the companies has collected over \$50 million and paid out less than \$1 million in premiums. One of the companies this year, collected \$19 million this year and paid out \$736,000. I mean, any way, and the way they justify that is they say, well, we better pay for claims in the future.

MR. HOLTH: (continued)

actions that we've been involved in. The abrogation of community standard of care has generated a lot of the malpractice cases that you see before you know. Up in the northeast corner of the state, for example, utilization of scalp test is not a norm. It is in other areas of the state. The utilization of a general statewide standard of care has brought to bear much better care up in those areas as a result of malpractice actions within the (inaudible).

I think the negatives from these bills are the, first of all, the negative effect on the contingency system that's (HB 7769) involved. Secondly, the waiting of a panel finding as a substitute for jury evidence adds a totally and unnecessary and additional impediment to the plaintiff's processing of a case. We have it existence already in Connecticut, a screening procedure that hasn't, to my knowledge, been utilized at all.

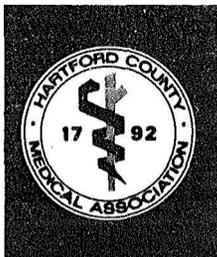
Finally, the collatoral source rule is easily answered by simply talking of the fact that when you use that, if you were to invoke the collatoral source rule, abrogate (HB 5364) the collatoral source rule as it presently stands, you would accomplish nothing more than a shunning of insurance payments from one side of the fence over to another side. What I mean by that is that the right of lien, of CMS Blue Cross and other carriers against recovery in a lawsuit depends upon a portion of that recovery representing the amount that they had already paid out. So that when we recover in a medical malpractice action, that money, by virtue of a legitimate subrogation claim, will go right in the packet of the CMS and Blue Cross or any other hospital insurer. There is thus no net economic effect in abrogating the collatoral source rule. Thanks.

SEN. JOHNSTON: Susan Omilian. Robert Byrne.

MR. ROBERT HOULE: Mr. Chairman, I'm Robert Houle representing CARD. In deference to the time and hour may we file our statement in support of Raised Committee Bill 6584, An Act Conversion of Personal Property and I summarize, Mr. Chairman, by simply stating that it's a good bill and it ought to pass. Thank you.

SEN. JOHNSTON: Interesting. Chester Fairlie.

Hartford County Medical Assoc'a'io



Tel. (203) 525-2108

2099

1000 Asylum Avenue, Hartford, CT 06105

POSITION STATEMENT
of the
Hartford County Medical Association
and the
Connecticut State Medical Society
on
House Bill Number 5364

Chairman Johnston, Chairman Wollenberg, members of the Judiciary Committee, I am R. Leonard Kemler, and I am here to represent the 1,665 physician-members of the Hartford County Medical Association and the 5,000 physician-members of the Connecticut State Medical Society.

My testimony today principally concerns House Bill 5364 -- An Act Concerning the Admissibility of Collateral Source Payments in Medical Malpractice Actions, but before turning to my specific comments about the proposed act, I want to thank the Judiciary Committee for its decision to raise both this bill and House Bill 5362 -- An Act Prohibiting Lump Sum Payments for Medical Malpractice Awards. We appreciate being given the opportunity to discuss these further.

You have heard and doubtlessly will hear more about the reasons why medical liability tort reform is necessary in the current medical malpractice environment. If my remarks are repetitive, I hope you will bear with me. The costs that have been talked about, whether they are the direct costs of medical malpractice insurance or the costs of defensive medicine are not paid by physicians. These costs are our expenses and like any other businesses, we pass our costs to the consumer, in this case to the health-care consumer.

When our insurance premiums rise forty percent, as they did last year and are likely to do again this year, we might try to absorb some of the increase for the short-term, but the cost is ultimately passed on to society. Slowing the rate of escalation in medical liability expenses is importantly a cost-containment issue that greatly affects the affordability of health-care for our citizenry.

House Bill 5364 is a measure that should help to reduce medical liability expenses without being unfair to claimants who have legitimate grievances and are entitled to compensation for harm that has come to them. At the same time, a Rand Corporation study has estimated that the adoption of such a bill can save up to eighteen percent in medical malpractice insurance costs.

The language in the bill you are now considering, however, should be modified in several ways if it is to be effective and fair to all, and let me stress the word all, who are concerned. Since the reasons why these elements should

be included are, we think, self-evident and to spare time, I will just list them, though I will be pleased to answer any questions you have about them if we are mistaken.

- ~~1.) sums paid or payable to a claimant from collateral sources should be admissible to the court, not to a jury. A jury's role should be to determine when an award is warranted and what should be the amount of the award;~~
- 1.2.) the offset of collateral source amounts should be mandatory to avoid double-payments;
- 2.3.) where insurers have been given subrogation rights, there should be no offset;
- 3.4.) amounts that a claimant or his or her family have paid to secure a collateral source benefit should not be offset; and
- 4.5.) with the exception of insurers' subrogated rights, claimants should be specifically protected against attempts to recover from them benefit amounts that have been paid.

Thank you for attending to my comments. We hope you will give House Bill 5364 a Joint Favorable Substitute vote, along the lines we have described.

Respectfully submitted,

R. Leonard Kemler, M.D.
Chairman, Committee on Legislation
Hartford County Medical Association

Vice-chairman, Committee on Legislation
Connecticut State Medical Society

Delivered to: Judiciary Committee
April 12, 1985

TESTIMONY OF MARION RANKIN; HB'S 5364, 5362

GOOD AFTERNOON, SENATOR JOHNSTON, REPRESENTATIVE WOLLENBERG, MEMBERS OF THE COMMITTEE. MY NAME IS MARION RANKIN AND I AM FROM GUILFORD, CONNECTICUT. I AM A RETIRED PERSON AND A MEMBER OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP).

I AM HERE TODAY, NOT AS A REPRESENTATIVE OF AARP, BUT AS A CONCERNED CITIZEN TO SPEAK IN FAVOR OF TWO BILLS ON YOUR AGENDA TODAY. THEY ARE HOUSE BILL 5364, AN ACT CONCERNING THE ADMISSIBILITY OF COLLATERAL SOURCE PAYMENTS IN MEDICAL MALPRACTICE ACTIONS, AND HOUSE BILL 5362, AN ACT PROHIBITING LUMP SUM PAYMENTS OF MEDICAL MALPRACTICE AWARDS.

THE ISSUE OF RISING HEALTH CARE COSTS IS OF GREAT CONCERN TO SENIOR CITIZENS. THE FASTEST GROWING SEGMENT OF OUR POPULATION IS THE 85 AND OVER GROUP. THERE ARE 2 1/2 MILLION NOW LIVING IN THE UNITED STATES AND IT IS ESTIMATED THAT THIS GROUP WILL DOUBLE TO 5 MILLION IN THE NEXT 15 YEARS.

SENIOR CITIZENS CANNOT AFFORD TO KEEP UP WITH THE EVER-GROWING COST OF HEALTH CARE. BECAUSE OF OUR AGE, WE MUST VISIT PHYSICIANS MORE THAN OTHERS. THIS MEANS THAT HEALTH CARE IS A LARGE PORTION OF OUR OVER-ALL COST OF LIVING. MANY OF US LIVE ON FIXED INCOMES OR RELY ON GOVERNMENT PROGRAMS TO HELP US PAY OUR DOCTOR BILLS.

THE SHARP INCREASE IN THE NUMBER OF MALPRACTICE LAWSUITS AND IN THE SIZE OF AWARDS GIVEN IN THOSE CASES HAS CAUSED MALPRACTICE PREMIUMS TO INCREASE DRAMATICALLY. THE RATES HERE IN CONNECTICUT HAVE DOUBLED EVERY THREE YEARS. THIS INCREASE IS PASSED ALONG TO US, THE CONSUMERS. AND IT HITS THE ELDERLY THE HARDEST.

COLLATERAL SOURCE AND PERIODIC PAYMENT LEGISLATION WILL HELP KEEP HEALTH CARE COSTS DOWN, WHILE ASSURING FAIR COMPENSATION FOR THOSE WHO HAVE BEEN NEGLIGENTLY INJURED. I URGE YOUR FAVORABLE CONSIDERATION.

INFORMATION: Bills #5362 & 5364

The increasing number of court settlements has produced record-breaking awards against physicians and hospitals. The result has been a drastic rise in professional liability insurance costs. This rise has threatened to divert professionals from specialized practice as well as caused an increase in medical costs for patients.

Because of this increasing cost, insurance companies have been raising their rates in order to keep up with losses that result in the many recent claims. Some medical insurance companies have been forced out of business leaving a limited market with high rates. In an attempt to alleviate some of the burden, medical organizations have formed physician-owned insurance companies. These non-profit organizations have been a positive response to the limited insurance alternatives and high premiums. This is due to the fact that the revenue is channelled back into the company and thus keeps the rates as low as possible.

Not only are the physicians and insurance companies plagued by the number of claims, but the average increasing cost of each claim. Since 1979 there have been 196 awards totalling one million dollars or more in medical malpractice cases and the American Medical Association estimates a 12-15% annual increase through the 1980's.

I.

One means of reducing the cost of liability insurance and claims would be the passing of Bill #5362 that would prohibit lump-sum payments of medical malpractice awards. Seventeen states have passed this payment of medical expenses as they are incurred, rather than speculate the cost of one lump sum. The advantages of this are:

1. Payments are made as needed, thus the purpose is achieved.
2. If the plaintiff dies, there is no windfall to the plaintiff's heirs at the expense of the physicians.
3. The insurer can fund periodic payments much more cheaply than lump-sum payments.

4. There is no speculation as to how much the plaintiff will need: Payments will occur over the lifetime or disability.
5. There is less chance that the plaintiff will squander funds for future medical bills.

This periodic payment resolution has saved the Norcal Mutual Insurance Company (California) two (2) million dollars.

It lessens liability costs for doctors because insurers are able to fund them at the lower rate. In turn the physicians save money and these savings will be passed on to the patient through lower medical rates.

II

Bill #5364 - The admissability of collateral source payments in medical malpractice actions:

The collateral source rule is a rule of evidence that prevents a jury from learning that the plaintiff has been compensated from another source (such as health insurance or worker compensation) The rule results in a windfall for such a plaintiff - he is able to recover two times the amount for the injury.

This rule should be changed to include a mandatory offset rule. This would still prevent the jury from knowing if the plaintiff has already received compensation, but the amount of compensation would be deducted from the award set by the jury. This would prevent a windfall for the plaintiff as well as still allow the jury award what they deemed fair.

This mandatory offset rule is considered by the Rand Corporation Institute for Civil Justice to be a tort reform that would have the greatest impact on the size of malpractice awards.

Over the past year we have worked hard in Connecticut to contain Health Care costs. These proposals are an excellent opportunity to further this effort. I respectfully request your serious consideration of this legislation. Thank You.

HB 5364
From - Philip O'CONNOR Collateral Source
2136
Did NOT speak

The Need for Mandatory Adjustment of Verdicts to
Prevent the Recovery of Double Compensation in Civil Actions

(HB 5364)
Current law contains a serious ambiguity which may permit parties in civil actions to recover double, or even multiple, compensation for their injuries. The Connecticut Defense Lawyers Association, an organization of 287 members, employed primarily in representing defendants in civil actions, urges the General Assembly to rectify this situation by enacting legislation which would limit monetary awards in civil actions to a single, complete recovery.

It is a fundamental principle of civil justice that persons injured by the wrongful conduct of others are entitled to full and fair compensation for their injuries and no more. How much compensation is fair is generally decided by a jury or by a voluntary settlement between the plaintiff and the defendant. However, when two persons are liable for the same injury, it often happens that the plaintiff will settle with one of them and proceed to obtain a jury verdict against the other.

Under the common law, the jury was informed of the amount which the plaintiff had already received in partial compensation for his injuries and, thus, could take this amount into consideration in deciding how much additional compensation was full and fair. A 1976 public act prohibited the introduction of settlement agreements to the jury and gave the court the right to set off prior settlements. In 1982 the Connecticut Supreme

Court ruled that the permissive nature of this set-off provision invaded the function of the jury because, in essence, it gave the court the final say on how much compensation was proper.

A 1982 public act re-established the rule that the jury should not be informed that a plaintiff has already received settlement payments. It also reaffirmed the principle that a trial judge who believes that a verdict is excessive has the right to order a "remittitur," i.e., require the plaintiff either to accept a reduced verdict or to submit to a new trial. But, the 1982 act did not specify to what extent, if any, the court should consider prior settlement amounts in deciding whether to order a remittitur. Moreover, even if the court does consider those amounts, under traditional remittitur rules it will not reduce the verdict to reflect the jury's assessment of full and fair compensation unless the verdict plus the prior settlements equal an amount which is clearly excessive or exorbitant. Thus, under current law the jury's evaluation of plaintiffs' damages will routinely be nullified, and some plaintiffs will recover double or multiple compensation for their injuries. Of course, this can only occur in cases where the plaintiff happens to have more than one defendant to sue. A plaintiff who is injured by the wrongful conduct of only one person will be entitled to receive only full and fair compensation--which is all any person should be entitled to receive under the law.

In order to ensure that civil litigants are treated fairly and consistently and that some plaintiffs do not receive a double recovery

for their injuries, verdicts should be adjusted in cases where the plaintiff has already been partially compensated, to ensure that the plaintiff receives only full and fair compensation for his injuries. This can be done easily and routinely by the court, without any prejudice to the plaintiff. The attached draft proposal demonstrates how verdicts can be adjusted so as to carry out their proper function: to provide full and fair compensation to injured persons. The Connecticut Defense Lawyers Association urges the General Assembly to enact this proposal and restore the balance between the rights of plaintiffs and defendants in civil actions.

Contact: Philip O'Connor 525-5361

AN ACT CONCERNING THE RIGHT TO A JURY TRIAL
AND THE COLLECTION OF DOUBLE DAMAGES

Section 52-216a is repealed and the following is substituted in lieu thereof:

An agreement with any tortfeasor not to bring legal action or a release of a tortfeasor in any cause of action shall not be read to a jury or in any other way introduced in evidence by either party at any time during the trial of the cause of action against any other joint tortfeasors, nor shall any other agreement not to sue or release of claim among any plaintiffs or defendants in the action be read or in any other way introduced to a jury. HOWEVER, ANY PARTY LIABLE TO PAY THE VERDICT MAY INTRODUCE EVIDENCE TO THE COURT THAT THE PARTY IN WHOSE FAVOR THE VERDICT WAS RETURNED HAS RECEIVED MONEY OR OTHER VALUE IN CONSIDERATION OF AN AGREEMENT NOT TO SUE OR RELEASE OF CLAIM REGARDING THE DAMAGES UPON WHICH THE VERDICT IS BASED. THE COURT SHALL ADJUST THE VERDICT BY DEDUCTING THE TOTAL OF ANY SUCH AMOUNTS. If the court at the conclusion of the trial concludes that the verdict, AS ADJUSTED, is excessive as a matter of law, it shall order a remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. If the court concludes that the verdict, AS ADJUSTED, is inadequate as a matter of law, it shall order an additur, and upon failure of the party so ordered to add the amount ordered by the court, it shall set aside the verdict and order a new trial. [This section shall not prohibit the introduction of such agreement or release in a trial to the court.] IN ACTIONS TRIED TO A COURT, THE COURT SHALL DETERMINE THE PLAINTIFF'S FAIR AND JUST DAMAGES AND SHALL OBSERVE THE SAME ADJUSTMENT PROCEDURE SPECIFIED IN THIS SECTION.

My name is Dr. William Conrad and I am President of the Connecticut State Society of Anesthesiologists. I have come to testify in favor of House Bills #5362 and 5364.

Over the past few years there has been a dramatic rise in the number of malpractice cases in our country. In a recent AMA report, it was noted that there are now more than three times the number of malpractice cases than occurred 10 years ago. The Insurance industry reported that in 1983 there were 16 malpractice cases per 100 doctors, while in 1975, the year previously known as the year of the medical malpractice crisis, there were only 5 cases per 100 doctors. This marked rise in 1983 was even 20% greater than the number of cases in 1982.

The awards are also breaking records. There have been several hundred cases in which the awards were greater than \$1 million. The St. Paul Fire and Marine Insurance Company, the largest medical malpractice carrier, can see no change in this steadily increasing trend.

Medical malpractice claims add significantly to the cost of health care nationally with some premiums increasing more than 100% per year. In 1983

alone the awards for malpractice cases totaled \$2 billion.

In an AMA survey, reported in the N.Y. Times (January 17, 1985), 40% of the AMA members stated they ordered additional diagnostic tests and 27% of the members ordered additional treatments due to fear of being sued. The additional cost of this "defensive medicine" was projected to be between \$15-40 billion, and this cost was ultimately paid for by the patient. If the fear of being sued were eliminated, this high cost of "defensive medicine", which is a large part of the high cost of health care, would evaporate.

Part of the solution to the medical malpractice crises requires closer observation of the performance of physicians by the medical community. As Dr. James Sammons, Executive Vice President of the AMA, stated, "Physicians must do everything they can to improve the practice of medicine, to assure its high quality and to find and discipline physicians who do not practice up to the profession's standards."

But the current crises of medical malpractice must also be dealt with by others, starting with tort laws and the judicial system. The present two bills are a start to dealing with the crisis and I support them 100%.

THANK YOU

QUESTION: Is there a responsible legislative solution? 2160

ANSWER: **Yes.**
A package of bills, similar to the response of the General Assembly in the 1970's, could be enacted.

QUESTION: What are the components of the 1985 legislative solution?

ANSWER: The package contains two parts:

- 1) **HB 5364.** Judges would reduce jury verdicts by the amount of insurance which the plaintiff has already received from his own insurance company.
- 2) **HB 5362.** In any jury verdict exceeding \$100,000, that portion allocated to future medical expenses and other future damages would be paid when incurred rather than years in advance.

QUESTION: If judges were required to reduce the jury verdict by the amount of insurance already received, wouldn't the injured party end up "short changed?"

ANSWER: **No.**
In most cases, the plaintiff has already been reimbursed for medical costs, lost income, and the like by government or private insurance programs. If the judge deducts some or all of these payments from the final judgement this will avoid double payment to the plaintiff. A 1983 Rand Corporation Study shows that where a mandatory collateral source offset has been in effect for two years, it has resulted in a 50% reduction in the amount of jury awards, and therefore in substantial savings to the health care system.

QUESTION: How would the payment of future expenses over a term of years help resolve the malpractice insurance crisis?

ANSWER: Because the insurer will pay the plaintiff for his expenses as they are incurred rather than "up front", the insurer can save between 7-14% of the cost of claims incurred in one year (Peat, Marwick, Mitchell Report to the Pennsylvania Medical Society.). This cost savings will be reflected in the cost of health care to the public.

This system is also a benefit to the plaintiff because it prevents premature loss or dissipation of the award. It would also provide a tax advantage to the plaintiff in that an award received as an annuity would be tax free, whereas the investment income on a lump-sum award would be taxable. Structured settlements are now commonly negotiated among the parties in cases settled outside the court system.

QUESTION: Who would benefit by the enactment of HB's 5364, 5362?

ANSWER: EVERY CITIZEN OF THE STATE OF CONNECTICUT, AND THE STATE ITSELF. Ultimately, it is the public who pays for the rapidly increasing cost of professional liability insurance, whether through actual healthcare costs or through state taxes which pay for health care for those who can not afford to do so. **PASSAGE OF THESE BILLS WILL HELP CURB RISING HEALTH COSTS WHILE ASSURING THE AVAILABILITY OF QUALITY HEALTH CARE FOR OUR CITIZENS.**

CONNECTICUT STATE MEDICAL SOCIETY
PROPOSED SUBSTITUTE LANGUAGE HB 5364

2162

The Admissibility of Collateral Source Payments in Medical
Malpractice Actions.

Section 1. (NEW) In any action for damages for personal injury or wrongful death, whether in tort or in contract, arising out of the rendition of professional services by a health care provider in which liability is admitted or is determined by the trier of fact and damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts paid to the claimant from all collateral sources which are available to him; however, there shall be no reduction for collateral sources for which a subrogation right exists. Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence from the claimant and other appropriate persons concerning the total amounts of collateral sources which have been paid for the benefit of the claimant or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any restriction in the award by any such amounts.

Section 2. (NEW) For purposes of this section:

(a) "Collateral sources" means any payments made to the claimant, or on his behalf, by or pursuant to:

1. The United States Social Security Act; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits.

2. Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by him or provided by others.

3. Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services.

4. Any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(b) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the state of Connecticut to furnish health-care services, including but not limited to a physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, naturopath, osteopath, health maintenance organization, or hospital, and an officer, employee, or agent of such provider acting in the course and scope of his employment or agency related to or supportive of health-care.

Section 3. (NEW) Unless otherwise provided by law, no insurer or any other party providing collateral source benefits as defined in section (2) shall be entitled to recover the amounts of any such benefits from the defendant or any other person or entity.



THE CONNECTICUT HOSPITAL ASSOCIATION

2184

TESTIMONY OF JOSEPH S. COATSWORTH
VICE PRESIDENT, GOVERNMENT RELATIONS
CONNECTICUT HOSPITAL ASSOCIATION

APRIL 12, 1985

SENATOR JOHNSTON, REPRESENTATIVE WOLLENBERG, MEMBERS OF THE JUDICIARY COMMITTEE, MY NAME IS JOSEPH COATSWORTH AND I AM HERE REPRESENTING CONNECTICUT'S NONPROFIT HOSPITALS TO URGE YOUR SUPPORT FOR SEVERAL MEDICAL MALPRACTICE REFORM MEASURES BEFORE YOU TODAY.

HOSPITAL MALPRACTICE RATES ARE RISING IN CONNECTICUT AND NATIONWIDE, IN SOME INSTANCES BY AS MUCH AS 100 PERCENT, DUE TO INCREASES IN NUMBER OF CLAIMS AND AMOUNT OF AWARDS. ACCORDING TO JURY VERDICT RESEARCH, INC., THE AVERAGE MALPRACTICE AWARD AGAINST PHYSICIANS AND HOSPITALS AS A GROUP INCREASED 300 PERCENT BETWEEN 1973 AND 1982, FROM \$240,717 TO \$962,258. ST. PAUL FIRE AND MARINE INSURANCE CO., THE LEADING U.S. MEDICAL MALPRACTICE UNDERWRITER IS RAISING ITS RATES FOR HOSPITALS 30 PERCENT THIS YEAR BECAUSE THE FREQUENCY OF CLAIMS HAS DOUBLED SINCE 1977 AND THE SIZE OF CLAIMS IS INCREASING 12 TO 15 PERCENT ANNUALLY. THE CONNECTICUT HOSPITAL ASSOCIATION AND ITS MEMBERS STRONGLY SUPPORT HOUSE BILLS 7769, 5362 AND 5364 AS POSITIVE TORT REFORM MEASURES WHICH WILL HELP TO EASE THE CURRENT MALPRACTICE CRISIS.

HOUSE BILL 7769, AN ACT CONCERNING A MEDICAL MALPRACTICE SCREENING PANEL WITHIN THE JUDICIAL DEPARTMENT, WOULD ESTABLISH A PRE-TRIAL SCREENING PANEL, COMPOSED OF A JUDGE, A PHYSICIAN, AND AN ATTORNEY TO DETERMINE WHETHER OR NOT A MEDICAL MALPRACTICE CLAIM HAS SUFFICIENT MERIT TO WARRANT PROCEEDING TO TRIAL. CONNECTICUT CURRENTLY HAS A VOLUNTARY SCREENING SYSTEM ON THE BOOKS WHICH HAS BEEN INEFFECTIVE; THIS BILL WOULD MAKE SCREENING MANDATORY.

PRE-TRIAL SCREENING PANELS ARE PREREQUISITES TO TRIAL. A PLAINTIFF IN A MALPRACTICE ACTION MUST ARGUE HIS CASE BEFORE A SPECIAL PANEL WHICH RENDERS A DECISION ON WHETHER A LEGITIMATE QUESTION OF LIABILITY EXISTS. THIS DECISION IS NOT BINDING ON THE PARTIES AND DOES NOT PRECLUDE A PLAINTIFF FROM INITIATING A LAWSUIT.

THE PURPOSE OF PRE-TRIAL SCREENING IS FOURFOLD:

1. TO REDUCE THE VOLUME OF NONMERITORIOUS LITIGATION;
2. TO REDUCE THE BACKLOG OF MALPRACTICE CASES WHICH ORDINARILY PROCEED TO TRIAL;

TESTIMONY
APRIL 12, 1985

PAGE 3

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HAS PROVEN SUCCESSFUL ELSEWHERE.

WE ALSO SUPPORT HB 5362 AND HB 5364 AS RESPONSIBLE MEASURES TO ADDRESS THE MALPRACTICE PROBLEM.

HB 5362 WOULD PROHIBIT MALPRACTICE AWARDS FROM BEING PAID ON A LUMP SUM BASIS. PERIODIC PAYMENTS WOULD PREVENT UNINTENDED WINDFALL COMPENSATION AND LESSEN PROFESSIONAL LIABILITY COSTS. HB 5364, BY PERMITTING THE ADMISSIBILITY OF COLLATERAL SOURCE PAYMENTS IN MALPRACTICE CASES, WOULD REDUCE THE POTENTIAL DOUBLE RECOVERY FOR THE SAME INJURY, PARTICULARLY FOR EXPENSES WHICH ARE COVERED THROUGH INSURANCE PROGRAMS. AGAIN, THIS PROPOSAL WOULD PREVENT UNINTENDED WINDFALLS TO PLAINTIFFS.

CONNECTICUT'S HOSPITALS URGE YOU TAKE A POSITIVE STEP TOWARD MEANINGFUL TORT REFORM BY APPROVING THE THREE BILLS BEFORE YOU.

H-405

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1985

VOL. 28
PART 17
5933-6352

6016

kck

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House of Representatives

Wednesday, May 15, 1985

CLERK:

House Bill 5284, as amended by House "A".

Total number voting 149

Necessary for passage 75

Those voting yea 135

Those voting nay 14

Those absent and not voting 2

DEPUTY SPEAKER BELDEN:

The Bill as amended is passed.

CLERK:

Page 12, Calendar 611, Substitute House Bill No. 5364, File No. 753, AN ACT CONCERNING THE ADMISSIBILITY OF COLLATERAL SOURCE PAYMENTS IN MEDICAL MALPRACTICE ACTIONS. Favorable Report of the Committee on Judiciary.

REP. JAEKLE: (122nd)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. May this item be referred to the Committee on Insurance and Real Estate.

DEPUTY SPEAKER BELDEN:

The motion is to refer Calendar 611 to Committee

kck

182 6017

House of Representatives

Wednesday, May 15, 1985

on Insurance and Real Estate.

Is there objection? Hearing none, so ordered.

CLERK:

Calendar No. 613, Substitute House Bill No. 6443,
File No. 759, AN ACT CONCERNING SWIMMING POOL SAFETY.
Favorable Report of the Committee on Judiciary.

REP. JAEKLE: (122nd)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. May this item be
recommitted to the Committee on Judiciary.

DEPUTY SPEAKER BELDEN:

The motion is to recommit Calendar No. 613.

Is there objection?

REP. RYBAK: (66th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Rybak.

REP. RYBAK: (66th)

Mr. Speaker, I wish to object only for the purpose
of making a brief explanation as to why this bill is

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offer for one's involvement and participation, and I have not tested it myself, but it will be available tomorrow from ten to one in the Hall of Flags for those who wish to experience what I understand is a very convincing experience.

SPEAKER VAN NORSTRAND:

I'm advised by my colleagues in the Senate that Lieutenant Governor Fauliso already tested it and not found it wanting.

Are there other points of personal privilege or announcement? If not, we'll return to the call of the Calendar.

CLERK:

Page 10, Calendar No. 611, Substitute for House Bill 5364, File No. 753, AN ACT CONCERNING THE ADMISSIBILITY OF COLLATERAL SOURCE PAYMENTS IN MEDICAL MALPRACTICE ACTIONS. Favorable Report of the Committee on Insurance and Real Estate.

REP. VANCE: (123rd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Morag Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. After a very long day,

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it's a pleasure to bring out such a non-controversial bill at this hour. I move the acceptance of the Committee's Joint Favorable Report and passage of the bill.

SPEAKER VAN NORSTRAND:

The question is on acceptance and passage. Will you remark?

REP. VANCE: (123rd)

Thank you, Mr. Speaker. The purpose of this bill is to allow in malpractice suits the ability of the judge after the award is determined by the jury, to deduct from that award any benefits which an individual has received as a result of their hospital insurance or certain other forms which are termed collateral sources.

The intent of this bill is to help stabilize the increasingly high cost of malpractice insurance. There's no question that malpractice insurance is paid by the consumer. You may say the doctor earns a fantastic salary and can afford it. He may do so, but we, the consumer, the patient, pay the cost for malpractice suits. This legislation has been adopted in 15 other states, and the legislation we bring before you has survived the test of constitutionality, particularly in the State of Florida, after which this bill is drafted.

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Mr. Speaker, I believe that gives a rather brief synopsis of the intent of the legislation, and I would like to call an amendment, LCO 8113. Will the Clerk please call and may I be permitted to summarize?

SPEAKER VAN NORSTRAND:

The Clerk please call LCO No. 8113, designated House Amendment Schedule "A".

CLERK:

House Amendment Schedule "A", LCO 8113, offered by Rep. Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The lady seeks permission to summarize. Is there objection? Please proceed.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. What this amendment does is clear up language that you had before you in the file copy. It is a technical amendment. It does in no way change the intent of the legislation, and I would move its adoption.

SPEAKER VAN NORSTRAND:

The question is on adoption of House "A". Will you remark? Will you remark?

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REP. BLUMENTHAL: (145th)

Mr. Speaker. Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Thank you, Mr. Speaker. May I be excused in order to avoid an appearance of conflict of interest, please?

SPEAKER VAN NORSTRAND:

The Journal will so note, sir.

REP. RYBAK: (66th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Michael Rybak.

REP. RYBAK: (66th)

I ask the same privilege, Mr. Speaker.

SPEAKER VAN NORSTRAND:

The Journal will so note, sir.

Will you remark further on the adoption of House "A"? Will you remark further on the adoption of House "A"?

REP. WENC: (60th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. David Wenc.

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REP. WENC: (60th)

Yes, Mr. Speaker. A question through you, to the proponent of the amendment.

SPEAKER VAN NORSTRAND:

Please state your question, sir.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. Rep. Vance, could you please indicate to me the applicability of this amendment to liquidated collateral source payments? That is collateral source payments that have been paid to the injured party.

SPEAKER VAN NORSTRAND:

Rep. Vance, do you care to respond?

REP. VANCE: (123rd)

Thank you, Mr. Speaker. I would be able to respond, perhaps, a little easier, if the question were rephrased in English for the layman.

SPEAKER VAN NORSTRAND:

Rep. Wenc, are you up to that?

REP. WENC: (60th)

I'll give it a shot. Thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

I know it's hard for a lawyer. I know. I have the same trouble myself, Rep. Wenc.

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REP. WENC: (60th)

Yes, Mr. Speaker. The amendment relates to the bill and as I understand the bill, collateral source benefits received by the injured party would be used to reduce damages.

REP. VANCE: (123rd)

Mr. Speaker, no contest.

REP. WENC: (60th)

My question, Mr. Speaker, through you, is whether or not this amendment applies to only collateral benefits that have already been paid to the injured party, at the time that let's say a settlement occurs, or a jury verdict is returned? Or is it applicable that is, if there are future damages, that is if the injured party needs damages to be paid over a period of time after a settlement or jury verdict, and those collateral sources, collateral benefits have not been paid, is this amendment applicable to those?

SPEAKER VAN NORSTRAND:

Rep. Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. Thank you, representative, for rephrasing the question. It's a little easier to understand as you've done this a second time. My

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understanding of the bill is that collateral sources would apply at the time the jury made its decision. Any benefits that had been paid to the individual prior to that date would be under consideration for deduction from the award. It does not take into consideration, as I understand it, any future benefits that the individual would be entitled to.

SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you. Hello.

SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. Thank you, Rep. Vance. I think that cleared up my concern about the intent of what this amendment does. Second question, through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

REP. WENC: (60th)

Yes, Rep. Vance, this, well I think the second question perhaps applies to the bill itself, Mr. Speaker, so I'll reserve my question until the amendment is

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adopted and we discuss the bill.

SPEAKER VAN NORSTRAND:

Thank you, sir. Will you remark further on the adoption of House "A"? If not, all those in favor indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER VAN NORSTRAND:

All opposed, indicate by saying nay.

REPRESENTATIVES:

No.

SPEAKER VAN NORSTRAND:

The ayes have it. House "A" is adopted and ruled technical.

House Amendment Schedule "A".

In line 8, delete the words "for losses sustained".

In line 19, insert a period after the word "claimant" and delete the words "or are otherwise".

In line 20, delete the words "available to him."

In line 25, delete the word "him" and insert in lieu thereof the word "such" and after the word "injury" and before the comma insert the words "or death".

In line 26, delete the word "restrictions" and insert in lieu thereof the word "reduction".

In line 55, insert a period after the word "employment" and delete the words "or agency related to or".

Delete line 56 in its entirety.

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In line 62, after the word "entity" and before the period insert the following: "as a result of any action for damages for personal injury or wrongful death arising out of the rendition of professional services by a health care provider. The provisions of this section shall apply to insurance contracts issued, reissued or renewed on or after the effective date of this act".

SPEAKER VAN NORSTRAND:

Will you remark further on the bill as amended?

REP. WOLLENBERG: (21st)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, the Clerk has LCO No. 5787 on her desk. Could she call and please read this?

SPEAKER VAN NORSTRAND:

The Clerk please call and read LCO No. 5787, designated House Amendment Schedule "B".

CLERK:

House Amendment Schedule "B", LCO 5787, offered by Rep. Krawiecki, Neumann, Wollenberg, Foley, Farr, Frankel, Karsky, Prague and Wenc. In line 31, after health delete the comma and substitute or in lieu thereof and delete quote, or income, end of quote.

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In line 32, delete disability. In line 33 delete or income. In line 34, delete disability coverage. In line 41, insert a period after services and delete the following, quote, semi-colon (3) any contractual or, end of quote. Deletes lines 42 to 44, inclusive, in their entirety.

SPEAKER VAN NORSTRAND:

The amendment is in your possession, sir. What is your pleasure?

REP. WOLLENBERG: (21st)

Mr. Speaker, I move adoption of the amendment.

SPEAKER VAN NORSTRAND:

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

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Mr. Speaker, what this will do would be to exempt income disability from this collateral source bill. This bill is modeled after the Florida bill and after much debate on the floor, and after having been involved in court decisions in Florida, we've looked at some of the court decisions and in one it specifically indicated that any insurance such as disability income, disability insurance or coverage or any contractual or voluntary wage continuation plan

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provided by employers and so on, as stated, we're deleting in the file copy, should not be considered in evidence as collateral source. This makes sense to me because these are outside of, these are privately, voluntarily entered into perhaps, or the product of contracts such as labor contracts and things of that nature.

They are also in many cases, prospective in nature. And with that in mind, I would ask that this amendment be approved.

SPEAKER VAN NORSTRAND:

The question is on adoption of House "B". Will you remark?

REP. VANCE: (123rd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Morag Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. I'm sure all of my colleagues are very much aware at this point that we are encouraging and thank you very much for your support of the First Amendment. We would hope that future amendments would be given very careful consideration and not adopted. Primarily because the amended version is drafted as

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carefully as we can draft it, to be in conformance with Florida which has been through the constitutional test. As part of the Florida statutes, they do include in their collateral source, income from disability benefits. That feeling being that an individual was compensated during his period of disability, and in most instances was compensation that was received without his having to pay a premium for it.

And the bill does provide now that should an individual have paid a premium for individual disability coverage, that that premium would be considered as part of the award and would be returned to him as part of the award. This is going to be a very personal decision for each and every one of you and I would certainly urge that you make the decision yourself, but if we are going to adopt legislation that has sort of stood the test, I would urge you to stay with the bill as we have amended it, and not make any further changes including this amendment, although I certainly understand why the proponents support it. Thank you, Mr. Speaker.

REP. ADAMO: (116th)

Mr. Speaker, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Joseph Adamo.

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REP. ADAMO: (116th)

Thank you, Mr. Speaker. I rise to support the amendment and I do so for a very basic reason. I think the very basic reason is this. Those benefits, the benefits protected by this amendment, are the result of contract negotiations. A give and take process. And generally speaking, the give and take process works this way. In lieu of a wage increase, you take medical benefits, or you take a sick leave benefit, or you take a pension benefit, just as my own department did in 1972 and '73.

How do you compute that? How do you compute the lost wages over a period of eight or nine or ten years that this employee gave up to get that benefit, to enjoy that benefit? I support the amendment. I hope you will.

REP. PRAGUE: (8th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Edith Prague.

REP. PRAGUE: (8th)

Thank you, Mr. Speaker. I rise to support this amendment. I certainly agree with Rep. Adamo and I would like to tell you further that I discussed this bill with the present president of the Connecticut Medical Society,

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Dr. Whalen, who happens to live near me and is a personal friend. And he totally agrees with the concept of this amendment. That we should not deduct as a collateral source of payment any kind of disability income or sick benefits that people have used to support their families, to support themselves during this period of disability. What the Connecticut Medical, what Dr. Whalen is concerned with are the hospital bills, and the high medical bills. Those are the collateral source payments that should be deducted from the award, not the retirement benefits or the sick benefits or the pension benefits.

I urge you people to support this amendment.

Thank you.

REP. GELSI: (58th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Frederick Gelsi.

REP. GELSI: (58th)

Mr. Speaker, I rise in support of this amendment, and I think to carry the point made by Rep. Adamo and Rep. Prague just a little bit further, the benefits of retirement and disability plans, because I'm sure all of us are aware, are under ARISA, the federal government. They are negotiated, they're approved by the federal

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government. The federal government back around 1975 felt so strongly that the American men and women working in this country were being raped of their benefits with companies leaving this country, and moving out, that they wanted to protect the men and women that work in this nation. And here we want to give it to the doctors. Unfair, not right.

If we're really being kind to the people who pick up an extra plan, they want to pick up some extra protection in the event that they're hurt, we're going to give them their premiums back. That's really kind. I think this amendment should fly and I think we should kill the bill.

REP. NARDINI: (115th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Joseph Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. Mr. Speaker, through you, a question to Rep. Wollenberg, please.

SPEAKER VAN NORSTRAND:

Please state your question, sir.

REP. NARDINI: (115th)

Thank you. Rep. Wollenberg, in a case such as a

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malpractice case, could in effect, don't the attorneys include loss of income in settlements sometimes?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, I don't know whether the attorneys do or not. The court does.

SPEAKER VAN NORSTRAND:

Rep. Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. Then in fact what you're asking for is again, I believe what the bill is addressing is the stopping the people from collecting twice, once from the private insurance carrier and once in the court of law. And I don't know if your amendment would do that. I think that again it goes back to letting them collect twice, once under the private policy that we all agree they paid a premium for and probably are entitled to. However, I think it should be included in the court case when it goes before the judge for settlement. And I think you're deleting that out of the bill by your amendment.

SPEAKER VAN NORSTRAND:

Is that a question, sir?

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REP. NARDINI: (115th)

Yes, Mr. Speaker, it was a question, through you.

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Through you, Mr. Speaker. Mr. Speaker, we could go on a long while and I don't know if anyone here wants to go on. I know the minds are probably pretty well made up on this bill. What's been going on the last few days in the Hall is going on now. I wasn't born yesterday. I understand.

But I think you should understand also that when the knife slips and someone is paraplegic for the rest of their lives, I don't know who should pay for that. But the person who had the knife slip shouldn't pay for it. And you're talking about saving money by malpractice, through malpractice insurance, and no one has told me how much money it will save by passing this amendment or this bill as amended if we pass it.

This is, well, it's on the bill.

SPEAKER VAN NORSTRAND:

Rep. Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. Mr. Speaker, I'm not saying

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that anyone should pay for the malpractice of a doctor in the event that a knife slips, as Rep. Wollenberg says. I think what the bill is attempting to do is to cut costs in the malpractice area, and that allowing persons to collect twice, once under a private carrier, and once in a court of law in the case before the judge in the settlement, that's not just. And I certainly sympathize with people who went through that, and they certainly have a right to take it to court and present their case.

However, I think that again this should be admissible in the court of law, that they are in fact receiving disability income from someplace else, and should not collect twice on it. That's all I'm coming from.

REP. WENC: (60th)

Yes, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. I'd like to address the amendment. What the amendment does is basically it excludes from the definition of collateral source in your file copy certain items. First of all, it would exclude payments of wages while the injured party is disabled.

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These payments come into play as a result, sometimes, of a contract between the employer and the employee. It would also exclude sick leave and vacation leave. Now, these provisions for sick leave and vacation leave are ordinarily a part of an employment contract, and are valuable rights to the employee.

It would also exclude from the definition of collateral source pensions to disabled injured parties. Pension payments such as veterans, disability pensions, disability retirement, pensions to policemen, firemen and postal workers. Now, unless these items that I've just mentioned are excluded, then the amount of damages that are owed to the injured victim as a result of let's say a doctor's negligence, would be reduced by the amount that individual receives from the independent source, whether it's income disability, sick leave, vacation leave or pension payments.

I think that's unfair. Because the wrongdoer, that is the negligent doctor or the negligent individual on the hospital staff would benefit if his damages were reduced. He wouldn't owe as much money to the injured plaintiff. He would receive the benefit. He would receive the benefit, the wrongdoer would. This is a radical, radical change in the liability jurisprudence

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in Connecticut.

Now, when the plaintiff, that is the injured party, is unable to work and the employer pays him wages pursuant to a contract, then a loss occurs. And that loss may be shifted from the injured, excuse me, the negligent party over to the innocent employer, who pays wages while his employee is in the hospital recovering. But under the file copy, the innocent employer cannot recover from the wrongdoer. The wrongdoer gets a pretty good bargain under the file copy here.

Now, sick leave and vacation time. When an injury forces an employee to use up his sick leave or his vacation time, in order to continue his salary, there is clearly a loss. The employee has to use up his valuable benefits to pay off damages to reduce his just compensation in order for the negligent doctor or the careless hospital staff person to benefit.

I think that this amendment would protect the very important employee rights. I would urge that this amendment be adopted. The file copy is making a radical change in what's called the collateral source rule. Now, I'll just take one more minute of your time here, with respect to this and because I don't believe the collateral source rule has been defined to you.

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The file copy abolishes the collateral source rule in Connecticut. And what is the collateral source rule? The collateral source rule prevents a wrongdoer, let's say a negligent doctor, from reducing the amount that he owes his victim by the amount which the victim has received from other independent sources, such as an employee health benefit plan, or an income disability plan. The collateral source rule is not new. It's been part of American jurisprudence since the middle of the 19th century. Every state has adopted it. Only recently has it been chipped away, and now that's what's occurring here in Connecticut.

The reason, the philosophy underlying the collateral source rule is that the loss has occurred because of the doctor's wrongdoing, his negligence, his carelessness, and whatever medical services, wages or pension benefits the injured party receives should go to the benefit of the injured party, and should not go to the benefit of the wrongdoer. So when buzz words come up like double recovery, it's a buzz word and that's probably all that was thrown to you in conversation in the hallway.

It's a buzz word, because there's another side to a buzz word, and it's that when the wrongdoer doesn't have to pay damages for the injury he's caused you, then he

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receives a benefit. I urge adoption of this amendment.

REP. NANIA: (63rd)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Anthony Nania.

REP. NANIA: (63rd)

Thank you, Mr. Speaker. On the amendment, I feel like a rare species today. I'm one of the few of us, I guess, who support the bill and oppose the amendment. I just want to make sure that we're all voting on the same thing. The amendment is offered with the idea that the bill would include such things as income disability, pensions, sick pay, vacation pay, as collateral sources. In fact, my understanding of the bill is that of that list, only income disability would be included as a collateral source and admissible as a collateral source.

I think that if we're going to vote on this amendment we ought to make our decision based on the idea that yes, we are in favor of income disability being admitted or not. I personally think that income disability is a form of insurance just like any other kind that is payment in cash for injuries suffered, and therefore I think it should be admitted as a collateral source.

Thank you.

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REP. NARDINI: (115th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Joseph Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. For the second time on the amendment, Mr. Speaker. Mr. Speaker, I just want to set the record straight, I guess. If I led anybody astray before with the remarks I made. I couldn't agree with Rep. Wenc more. The employees do have the rights and they certainly should be entitled to them. They've paid for them or they've earned them or whatever. But no one is saying to reduce the settlement. In the file copy I don't see where there's a cap on settlements for malpractice. There's no cap in there at all.

What we're doing is we're only allowing the evidence to be entered and be presented for the case, and if they want to increase, meaning the attorneys, to increase the settlement out of pain and suffering, I don't see any restrictions in the bill that say they can't do that either.

I urge defeat of the amendment, and let's vote on the bill.

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REP. ADAMO: (116th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Joseph Adamo.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. For the second time.

With a great deal of respect to my colleague, Mr. Nardini,

I think that it just seems to follow that if it's not

going to be included, certainly, or if they really want

to include it, it's going to reduce the settlement.

Putting that aside, however, I think the important issue

here on this amendment is that this has a very drastic

and telling effect on collective bargaining in the State

of Connecticut and on those agreements already reached.

I think it's so compelling, Mr. Speaker, that when the

vote be taken on this amendment, Mr. Speaker, it be taken

by roll call.

SPEAKER VAN NORSTRAND:

The gentleman from West Haven has asked when the

vote be taken on House "B" it be taken by roll. All

those desirous of a roll call vote indicate by saying

aye.

REPRESENTATIVES:

A Aye.

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SPEAKER VAN NORSTRAND:

The 20% rule has been satisfied. When the vote is taken it will be taken by roll. Will you remark?

REP. FOX: (144th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. John Wayne Fox.

REP. FOX: (144th)

Thank you, Mr. Speaker. Mr. Speaker, I rise to support the amendment and through you, I would like to pose a question to Rep. Wollenberg.

SPEAKER VAN NORSTRAND:

State your question, sir.

REP. FOX: (144th)

Through you, Mr. Speaker. Rep. Wollenberg, is it not true that in many instances one does not know what weight or lack thereof a given jury would give to the issue of income or lost income?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, that's correct. Only if I could know.

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SPEAKER VAN NORSTRAND:

Rep. Fox.

REP. FOX: (144th)

Through you, Mr. Speaker, then does it not follow that unless we have this amendment, it is quite possible that we would be deducting from a jury verdict dollars to which a jury gave no verdict for an award?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, that's correct.

SPEAKER VAN NORSTRAND:

Rep. Fox.

REP. FOX: (144th)

Through you, Mr. Speaker, I think those answers indicate the importance of this amendment, because without it we could be deducting from the recovery a plaintiff receives, money which is a practical matter that he or she was never awarded. I recommend to this body the adoption of this amendment, so that we don't defeat the claims of injured parties in that fashion.

REP. FUSSCAS: (55th)

Mr. Speaker.

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SPEAKER VAN NORSTRAND:

Will you remark? Rep. Peter Fusscas.

REP. FUSSCAS: (55th)

Thank you, Mr. Speaker. Through you to Rep. Wollenberg.

SPEAKER VAN NORSTRAND:

State your question, sir.

REP. FUSSCAS: (55th)

Through you, Mr. Speaker, I'd like to get this straight. When the jury awards damages, do they or do they not, are they or are they not aware of the other benefits or the financial condition of the so-called victim?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, they are not.

SPEAKER VAN NORSTRAND:

Rep. Fusscas.

REP. FUSSCAS: (55th)

Through you, Mr. Speaker, then when the jury awards damages, do they not assume a zero level of benefits that would be coming in, and that the damages that are awarded are awarded only on the nature of the injury, and the

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circumstances, and so on and so forth?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, the jury takes into consideration hopefully all the facts that are presented. The age of the individual, whether or not he lost work, whether or not he has a family, the injury, the extent of the injury, medicals, anything that's put in as far as evidence goes, the jury takes into consideration and then makes an award.

If you've seen some of the movies, you've seen which is not altogether fictional, which are not altogether fictional, you have seen the jury come out and say in one particular movie, can we double the award. And you know, the judge doesn't have control over it at that time, of course they can. They make the ruling. They don't tell you that they gave him \$20 a day for 85 days that they said he was out of work. They don't tell you that they gave him x number of dollars because his medical bills were \$50,000. They don't repay that and repay his lost wages. They come out with a verdict, of \$100,000. But then afterwards, what this would say, the judge then says, okay, now we deduct from that, a, b and

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c and as Rep. Fox states, you don't know whether they made a finding for \$20 a day or any income, so they may be taking away money that they never gave, the court may take away money the jury never gave them.

REP. FUSSCAS: (55th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Fusscas.

REP. FUSSCAS: (55th)

Thank you, Mr. Speaker. Through you, then, it's my understanding the way that the system is set up is that the jury should make an award based upon what the jury feels to be a 100% compensation for damages on the injury received. Is that correct?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, but they might not take into consideration any particular amount that is stated that is lost. They don't necessarily have to take into consideration the fact that he lost x number of days of work, and can never work again in his life. They may. But to the extent, I don't know, and they probably don't in many cases.

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SPEAKER VAN NORSTRAND:

Rep. Fusscas.

REP. FUSSCAS: (55th)

Thank you, Mr. Speaker. I had a left-handed question, but I'm not going to ask it.

SPEAKER VAN NORSTRAND:

Thank you, sir.

REP. SAVAGE: (50th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. John Savage.

REP. SAVAGE: (50th)

Thank you, Mr. Speaker. I rise to speak against the amendment. I find it rather difficult to speak against the amendment without speaking against the bill. I think that one of the previous speakers was perhaps intermixing his remarks against the bill with remarks against the amendment. And I will try not to stray.

The principle that we're working with here is one of the overall cost of our medical program in this country. Our, we've had a runaway on our costs and part of these costs are in the malpractice area. Now, this amendment simply is one of the chips we're chipping away at what this bill attempts to do. This bill attempts to lower the

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cost initially perhaps, to the insurance company, but ultimately to each and every one of us through the cost that we pay in malpractice insurance when we go to the doctor's office. I first got interested, and that would get into the bill so I won't get into that at this point. But, I urge those of you that support the bill to vote the amendment down. It's simply chipping away and we'll hopefully speak later on the bill.

REP. FUSCO: (81st)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Angelo Fusco.

REP. FUSCO: (81st)

Mr. Speaker, I rise in enthusiastic support of the amendment, and I would like to comment those people who had the courage to raise an amendment that will offer protection to a number of those people that I represent that have worked long and hard through the collective bargaining process to ensure their rights. Thank you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Thank you, Rep. Fusco. Will you remark further?

REP. BARONIAN: (20th)

Mr. Speaker.

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SPEAKER VAN NORSTRAND:

Rep. Maureen Baronian.

REP. BARONIAN: (20th)

Yes, Mr. Speaker, a question through you, Mr. Speaker, to Rep. Wollenberg.

SPEAKER VAN NORSTRAND:

Are you ready, sir?

REP. BARONIAN: (20th)

Are you ready? Through you, Mr. Speaker, is it not possible that the judge cannot take into consideration the collective bargaining process. If this, if your amendment was defeated, and the bill was passed, does that preclude the judge from determining, making his own decision as to what can be paid and what cannot be paid in a case where settlement has to be made after the jury comes to a conclusion as to the amount of money that the plaintiff should receive?

SPEAKER VAN NORSTRAND:

Rep. Wollenberg, do you have all the information at your fingertips?

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker, through you. As I wrest the microphone away from colleague, no, the judge is, it's mandatory for the judge to consider what the file

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copy and the bill says. And that's what he has to consider. There's no discretion here for him to make a decision any other way.

SPEAKER VAN NORSTRAND:

Rep. Baronian.

REP. BARONIAN: (20th)

Thank you, Mr. Speaker. I still feel that this particular amendment would damage the intent of the bill and I think we should vote against it. And I will comment later regarding the whole process of malpractice. Thank you.

SPEAKER VAN NORSTRAND:

Rep. Glenn Arthur.

REP. ARTHUR: (42nd)

Mr. Speaker, I heard one of the opponents of this amendment say that there could be a malpractice award or malpractice determined if someone had committed a malpractice, a slip of the knife as Rep. Wollenberg says, and yet there would be no award. Would Rep. Wollenberg please explain that a little bit further? A scenario, I'm a workman on a highway, I've been hit by someone who was breaking the law, and I suffered medical problems and loss of work and so forth. When wouldn't a judge give an award for someone who has in fact done wrong in a malpractice suit?

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SPEAKER VAN NORSTRAND:

Rep. Wollenberg, do you understand the question?

REP. WOLLENBERG: (21st)

No, I don't, through you, Mr. Speaker, no, I don't understand the question.

REP. ARTHUR: (42nd)

I'll rephrase it. Rep. Fox said, asked the question is there award always in a malpractice suit, and your answer to that question was no, sometimes there's no award. And I'd like to have that explained to us.

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. ARTHUR: (42nd)

I think that's what he said and I think that was your reply.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, I don't recall exactly what I said, but I think I understand your question now, and in response to the question, Rep. Arthur, because you bring a negligence action against someone does not mean that you necessarily recover. So that a malpractice action can be brought and the defendant could be found not guilty of malpractice, I suppose. So there would be no recovery.

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REP. ARTHUR: (42nd)

Well, in that case, was the malpractice case was defeated in effect.

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. ARTHUR: (42nd)

Through the Chair, sir.

SPEAKER VAN NORSTRAND:

I recognize a certain degree of intimacy in the recent inquiries, but --

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker. I don't like to put it in terms of defeated, I would rather say and whoever my helpmate is, I appreciate it.

REP. ARTHUR: (42nd)

A second question.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

REP. ARTHUR: (42nd)

Why would not, in a decision where the malpractice suit, the person who has brought a malpractice suit won the suit, that there was malpractice, and in fact went before the jury to present the facts of what he in fact suffered in losses, both material, physical, mental and

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so forth, would not that jury decide, would not that jury consider the loss of wages and so forth in their decision of the amount of a dollar award?

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. ARTHUR: (42nd)

Through you, Mr. Speaker.

REP. WOLLENBERG: (21st)

As I stated earlier, Rep. Arthur, a lawyer would put in all the evidence he had as to damage and loss. He would put in loss of wages, he would put in the fact that he may not walk again for the rest of his life, he may have to have care for the rest of his life, all this evidence would be put in and the jury would then decide based on those facts, what the award might be. Now, if there are two parts to a negligence case, the first is proving that the individual who you're claiming was negligent, was negligent.

Failing that, there of course is no award. You don't go to step two and get the verdict. But, if I understand your question properly, you were anticipating that negligence was found, and thereafter the jury had to consider the facts and make an award. And I don't know, I would hope they consider all the facts. And

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based upon those facts, make the award.

REP. ARTHUR: (42nd)

A further question, through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Please proceed, sir.

REP. ARTHUR: (42nd)

Wouldn't a juror consider these deletions that this amendment would attempt to make in making that award, so that in fact that award would be above and beyond these earned benefits, if in fact the lawyer presented his case correctly? Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

The jury would, if what you're saying is, if the jury knew there was disability insurance and it paid \$20 a day, would they take that into consideration, the answer to that is they would not know there was disability insurance paying \$20 a day. So they would not be able to take that into consideration in making their award.

REP. ARTHUR: (42nd)

Another question, through you.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

REP. ARTHUR: (42nd)

Then what does a lawyer present? This gent's essentially taking money that he has earned through contracts and negotiations. If I were a member of the jury I would certainly ask that question, that's coming to the person legitimately and is above and beyond the malpractice amount that he would receive for the, winning the case, and I don't understand why that wouldn't be presented, taking into effect, and sort of deducting beforehand, like you're trying to deduct it before the judge gets the case.

SPEAKER VAN NORSTRAND:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker. It's not admissible in evidence, Rep. Arthur.

SPEAKER VAN NORSTRAND:

Rep. Arthur.

REP. WOLLENBERG: (21st)

Then --

REP. ARTHUR: (42nd)

Mr. Speaker, I would assume that the jury knows the person has been out of work for a certain period of time and given up so many days of sick leave and vacation

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and so forth, and I just don't understand why then that would not be taken into effect. That that is earned, and that should be considered in that decision.

SPEAKER VAN NORSTRAND:

I don't know whether that's a question or not.

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, it's not allowed under the rules of evidence to be presented that you have \$100,000 worth of insurance that's been paid to you. That is not allowed to be placed into evidence before the jury. By the rules of evidence. And it makes sense in that regard, because, you know, we're assuming here that everybody has a million dollars, or five million dollars coverage in insurance. Many the case where the individual is injured to the tune of \$100, or \$200,000 and becomes a paraplegic where there's \$20,000 worth of insurance and that's it. And they throw in the policy and you don't even go to court, probably, because there's nothing else to gain. And somebody, the State or their family, takes care of this person for the rest of their lives.

REP. NANIA: (63rd)

Mr. Speaker.

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SPEAKER VAN NORSTRAND:

Rep. Nania.

REP. NANIA: (63rd)

For the second and last time. Mr. Speaker, I think that I would like to address particularly the issue of collective bargaining, because I think that's an important point.

When an employee bargains with an employer for his pay, benefits, whatever, and he bargains amongst other things for disability insurance, this would not effect him any differently than it would another kind of insurance in the following way. If an employee lost time at work and the employer's policy paid, and then the employee went to court and won a judgment, if this amendment passes, then that employee would have the same kind of double recovery as would any other person under the other kinds of insurance that the bill includes.

The purpose, it doesn't reduce his wages any. The point is, is this, that if he has no recovery, he gets his employment insurance in the form of disability income. If he does have a recovery, once that judgment is made, then his recovery is reduced by the amount his disability insurance has already paid. That employee in a sense, has purchased insurance just like anyone else

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has purchased insurance. You, as an individual, can go to an insurance company and buy disability income insurance. Assuming, for instance, that you didn't buy it in the collective bargaining process, then that insurance would be set against your award. Similarly, when an employee bargains with an employer, he is in a sense purchasing insurance also. His position is no better or no worse than anyone else, employee or not. And I think that is an issue that needs to be made clear.

This is not an anti-collective bargaining amendment or bill.

REP. GELSI: (58th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Frederick Gelsi.

REP. GELSI: (58th)

Mr. Speaker, a question to Rep. Nania.

SPEAKER VAN NORSTRAND:

Please state your question, sir.

REP. GELSI: (58th)

Rep. Nania, if you had a life insurance policy on your life for two million dollars, and you get out of your car and a truck runs over you on the highway, and your family goes to sue the owners of that trucking firm

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or whoever's carrying that insurance, will the courts take into consideration that he really doesn't need any help, nor family don't need no help because we just paid him two million dollars?

REP. NANIA: (63rd)

I think that's a good question, because it should make clear the following point.

SPEAKER VAN NORSTRAND:

Through the Chair, sir.

REP. NANIA: (63rd)

Through you, Mr. Speaker. The following point should be made crystal clear to everyone. That in the trial of the case, regarding liability, the fact that there is or is not an insurance policy is never admitted in evidence. It does not come into question. The only time at which the fact that there is or is not insurance becomes before the court is once the jury or the court if there's a trial to the court, has already made a decision as to the amount of damages.

REP. GELSI: (58th)

Through you, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Gelsi.

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REP. GELSI: (58th)

Through you, sir.

SPEAKER VAN NORSTRAND:

Please proceed.

REP. GELSI: (58th)

That isn't my question. I understand what the bill is trying to do. My question is, if that truck runs over you, you had two million dollars worth of life insurance and your family sued the person that was responsible, would the courts take into consideration that you had two million dollars worth of life insurance?

SPEAKER VAN NORSTRAND:

Rep. Nania.

REP. NANIA: (63rd)

It seems to be the same question, Representative, through you, Mr. Speaker. I will try to give a different answer. It is conceivable that the judgment to the insured's family or whoever was the plaintiff, would exceed that two million dollars. If that's the case, the court would reduce that judgment by the amount of that policy.

SPEAKER VAN NORSTRAND:

Rep. Gelsi.

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REP. GELSI: (58th)

Well, I have no further questions, but I think that is the case, because I haven't heard of one that Rep. Nania is saying. And when there is a judgment, it's purely awarded on the negligence or whatever has happened and in that particular case, and that's when it's awarded. Why we're doing something special for doctors just beats the heck out of me. Why aren't we relieving the municipalities of responsibilities when they get sued? Why don't we say if somebody's got a medical policy and they break their legs on the sidewalks, the town shouldn't have to pay them anything if they get paid? If somebody walks on my personal property, according to the care, whether that person's working or we don't care whether he goes to work, but whatever those injuries are, that would come out of my policy. Why do we want to make doctors something special?

REW. ADAMO: (116th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Will you remark? Rep. Adamo.

REP. ADAMO: (116th)

I believe for the third time. Really in reply to --

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SPEAKER VAN NORSTRAND:

The gentleman is seeking permission to speak for the third time. Is there objection? Seeing none, please proceed, sir.

REP. ADAMO: (116th)

Mr. Speaker, very brief. My comments and statements were never to be that this bill have any anti-labor or anti-negotiation ramifications. I think however, that the bill does impact on the benefits that have been negotiated and will be negotiated by employees, public, state or whatever in the future, and I think those are the ramifications I'm trying to point to, and based on that, I ask you to support the amendment, please.

SPEAKER VAN NORSTRAND:

Will you remark further?

REP. NANIA: (63rd)

Mr. Speaker, Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Nania.

REP. NANIA: (63rd)

I just want to correct my answer to Rep. Gelsi --

SPEAKER VAN NORSTRAND:

Rep. Nania, you are speaking for the third time, sir. Is there objection? There is no objection, and I

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hope it's not setting an example.

REP. NANIA: (63rd)

Thank you, Mr. Speaker. If you said life insurance, life insurance is not a collateral source under this particular bill. I thought you meant some sort of a personal injury policy. Thank you.

SPEAKER VAN NORSTRAND:

Thank you, sir.

REP. PATTON: (119th)

Mr. Speaker.

SPEAKER VAN NORSTRAND:

Rep. Gerard Patton.

REP. PATTON: (119th)

Mr. Speaker, I have one problem with the situation and I just envision that Person A and Person B are going through their lives. Person A sacrifices to buy insurance, whether he gets it through bargaining or any other way, he is sacrificing to provide himself with insurance for his peace of mind or for his family. B does not. They both have identical situations with malpractice or whatever. They both go to court and they are both prepared to get the same settlement. It seems to me inherently unfair that A, who has provided the insurance for himself, and who has sacrificed all those

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years is having those benefits taken from him and B is not. And I just look upon that as something basically unfair, that if you provide yourself with insurance that when and if that day ever comes to collect the benefits of that insurance, in this situation, without the amendment, you would lose those benefits that you had prepared yourself for through all of those years.

SPEAKER VAN NORSTRAND:

Will you remark further on House "B"? If not, would staff and guests please come to the well of the House. The machine will be opened. The Clerk please announce the pendency of a roll call.

CLERK:

The House of Representatives is now voting by roll call. Please return to the Chamber immediately. The House of Representatives is now voting by roll. Please return to the Chamber so that your vote could be properly recorded.

SPEAKER VAN NORSTRAND:

Have all the members voted? Are your votes properly recorded? If so, the machine will be locked and the Clerk will please take a tally.

The Clerk please announce the tally.

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CLERK:

On House Bill 5364, House "B".

Total number voting	138
Necessary for adoption	70
Those voting yeas	78
Those voting nays	60
Those absent and not voting	13

SPEAKER VAN NORSTRAND:

House "B" is adopted and ruled technical.

REP. WENC: (60th)

Yes, Mr. Speaker. Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. I just have a few questions. I suppose I could direct them to the proponent of the bill, Rep. Vance, because there's been a lot of discussion here about this particular bill reducing health care costs, that malpractice insurance premiums are too high. Well, I've only heard one side of that argument so far, and I guess I'd like to explore a little bit in that arena, if I may, Mr. Speaker. So a question, through you, to Rep. Vance.

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DEPUTY SPEAKER BELDEN:

Please frame your question, sir.

REP. WENC: (60th)

Yes, Rep. Vance, you're the chairman of the Insurance Committee, and I anticipate that this sort of bill is right up your alley. Now, I'm not sure if your committee held a public hearing on this legislation to gather information. I know the bill was referred to your committee and you did vote on it during the last week or so.

But could you please indicate to the Chamber what is the median medical malpractice settlement award before trial in Connecticut? Do you have what the median award is?

DEPUTY SPEAKER BELDEN:

Rep. Vance, would you care to respond?

REP. VANCE: (123rd)

Thank you, through, thank you, sir. It's getting late, through you. As you know, this bill came from the Judiciary Committee. It was referred to the Insurance Committee after we had met our deadline. We were under a time frame of meeting over two days of referral from the floor. Your question regarding public hearing, therefore, is self-answered.

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In terms of malpractice claims in the State of Connecticut, I cannot say to median, however, I will tell you that in 1982, there was an award of \$270,000 against a Connecticut hospital. In August of '83, an award of \$75,000 against a physician. In '83, an award of \$750,000 plus an additional 50 to a spouse, total of \$800,000 against a physician, and in February of '84, there was a two million dollar judgment against a hospital in the State of Connecticut.

You may determine the average, sir.

DEPUTY SPEAKER BELDEN:

Rep. Wenc, you have the floor, sir.

REP. WENC: (60th)

Yes, Rep. Vance, was that pursuant to a settlement before trial, or was that after a jury verdict?

DEPUTY SPEAKER BELDEN:

Rep. Vance, would you care to respond?

REP. VANCE: (123rd)

Thank you, Mr. Speaker. As you're all very much aware, I am not an attorney. I don't ever want to be an attorney. All I can tell you is that what I am reading from is the Jury Verdict Research Incorporated report, Connecticut edition for 1984. And it is only in relation to those cases that relate to malpractice that I have

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cited dollars. Whether they were pre or jury award, I really don't know.

SPEAKER VAN NORSTRAND:

Rep. Wenc, you have the floor, sir.

REP. VANCE: (123rd)

They were dollars, however.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. Those were individual cases, a median I think is perhaps more relevant figure as to whether or not settlements or awards in Connecticut are high, I would give little relevance to those sorts of figures because anyone could go to the Jury Verdict book and pick out awards across the board.

But perhaps --

REP. VANCE: (123rd)

Through you, Mr. Speaker. Point of personal privilege.

DEPUTY SPEAKER BELDEN:

Point of personal privilege is not allowed during the middle of a debate.

REP. VANCE: (123rd)

Point of order, then, sir.

DEPUTY SPEAKER BELDEN:

What is your point, ma'am?

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REP. VANCE: (123rd)

I resent being asked to answer a question, to give what I feel is a valid answer, with an area of reference and being told that my answer is irrelevant. This is not a court of law. This is a body in which we debate an issue, and I think my information should be just as valid as any other person participating in this debate.

DEPUTY SPEAKER BELDEN:

Thank you, ma'am. Rep. Wenc, you have the floor, sir. I would caution the members, it is getting late. The questions should attempt to be relevant to the issue before us. I know it's a very complex issue. And not all members of the Chamber are members of the Bar. Rep. Wenc, you have the floor, sir.

REP. WENC: (60th)

Okay, thank you, Mr. Speaker. Another question to Rep. Vance, through you, Mr. Speaker. Did you have any information as to what the percentage is of the cost of medical malpractice insurance? What percentage is it of the total health care costs?

DEPUTY SPEAKER BELDEN:

Rep. Vance, would you care to respond?

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REP. VANCE: (123rd)

Through you, Mr. Speaker, no, I'm sorry, I do not.

DEPUTY SPEAKER BELDEN:

Rep. Wenc, you have the floor, sir.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. I just wanted to indicate to the Chamber that some of the information that I have with respect to the costs of malpractice insurance as it relates to total health care costs comes from A.M. Best's Casualty Loss Reserve Development, which is the bible of the insurance industry. And I think this gets to the heart of the purpose of the bill. Because the proponents have continually indicated that if this bill passes, insurance premiums will go down and that health care costs will be reduced. And I question that statement.

Because since 1976, the cost of malpractice insurance is actually been steadily declining, as a percentage of total health care costs. Until now, it's 1.5 billion dollars in 1983, and that's less than 1/2 of 1% of the total health care costs, which are 355.4 billion dollars. And the reference to that, once again, is Best's Casualty Loss Reserve which is the bible of the insurance industry.

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Another question, through you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Please frame your question, sir.

REP. WENC: (60th)

There were allegations that the insurance premiums of doctors are somewhat high. Excuse me, Mr. Speaker, I withdraw that question. I'm not going to really ask a question to the proponent, but I wanted to see what percentage of the gross income a physician spends on medical malpractice insurance, and I think this is another relevant figure, Mr. Speaker, because the average American physician spends only 2.9% of his or her gross income, which is currently estimated to be around \$200,000 on medical malpractice insurance. And the cite for that comes from Medical Economics, an article published November 12, of 1984.

So I think there's two sides to the argument as to whether or not this bill is going to have any impact whatsoever on reducing insurance premiums, or reducing health care costs. Because the first question is whether or not the evidence is there to show that there's a problem.

Mr. Speaker, I do have an amendment. Mr. Speaker, the Clerk has LCO 8044. Would the Clerk please call the amendment.

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DEPUTY SPEAKER BELDEN:

The Clerk please call LCO 8044, which will be designated House Amendment Schedule "C".

CLERK:

House Amendment Schedule "C", LCO 8044. Offered by Rep. Wenc.

DEPUTY SPEAKER BELDEN:

The Clerk please read. It's very short.

CLERK:

In line 9, after court insert the following, or upon motion of either party a jury. In lines 16 and 20, aftercourt insert the following, or where appropriate, a jury.

DEPUTY SPEAKER BELDEN:

Rep. Wenc, what is your pleasure, sir?

REP. WENC: (60th)

Yes, I move adoption, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

The gentleman has moved adoption of House "C". Will you remark further?

REP. WENC: (60th)

Yes, Mr. Speaker. What this amendment does is to look at the file copy, and I would call the Chamber's attention to what the file copy does. The file copy

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requires that after liability is found, and damages are awarded, that the court, a judge make a mandatory reduction of the damage award, based on collateral benefits. And only the judge can make that reduction based on evidence that he receives. What this amendment does, Mr. Speaker, is to first of all, keep the mandatory reduction in place, but it provides for a jury to make the determination as to what constitutes a collateral source, what the facts are, whether or not a reduction should be made.

And I offered this amendment for two reasons, Mr. Speaker, and I think they're substantial reasons. First of all, we're talking about a reduction in damages, compensation for injuries sustained by an injured party. That's a substantial right. What's more important, to make a determination as to whether it should be reduced and by what, the individual should have the right to a jury trial or the right to a jury to try the facts as to what constitutes a collateral source. And I think their right to a jury trial is crystal clear in our State and federal constitution.

And in addition, Mr. Speaker, the other reason why I offer this amendment is because there has been some case law that has started to interpret a Florida statute,

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which my understanding the file copy is patterned after. It's Penelos versus Cedar Lebanon Hospital. That case said that the trial court made an error, in making a post-trial reduction of the award when the plaintiffs had requested a jury determination, and they also did not agree with the judge's formula for making the reduction.

I think in order to avoid that pitfall in Connecticut, we should pass this amendment to provide either the injured party or the defense counsel, who represents the insurance company and the doctor, from seeking a constitutionally guaranteed right to a jury trial. And Mr. Speaker, I would request that when the vote is taken on this bill, the amendment, that it be taken by roll.

DEPUTY SPEAKER BELDEN:

The gentleman has requested a roll call vote. I will try your minds. All those in favor of a roll call vote, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BELDEN:

In the opinion of the Chair, the 20% rule has been met. A roll call will be ordered at the appropriate time.

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Will you remark further on House "C"?

REP. VANCE: (123rd)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. I would like to oppose the amendment, primarily to try to think in terms of the person who was awaiting the award. If you're going to have a jury trial, hopefully both attorneys have fully addressed the issue, and go to the court and ask them to make a determination regarding the award, it seems to me the person is getting a fair hearing. If we have another jury have to decide just what collateral source is, we can be delaying terribly the award to the individual.

As you know, most court malpractice cases can take anywhere from five to seven years. The person has been waiting a long time. Also I believe that the bill as we are addressing clearly defines collateral source and what can be considered a reduction from the award, from such an award. We passed the first amendment and I think this reflects the feeling of this body. I would really not like us to go on and amend, amend, amend, pass the

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bill and then fine we do have a great deal of problems.

I would urge my colleagues who are not supportive of the concept to vote against the bill itself, and not try to go on forever with amendments. We feel the language is fairly tight. I would urge you to reject this amendment.

REP. NARDINI: (115th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. Mr. Speaker, we said earlier that this is what was going to happen and this is exactly what is happening. We're chipping away at the bill. There's going to be an amendment probably after this one, too, I would imagine, and we're going to try and present to this body that this bill is flawed and that we should not vote for it in the end anyways.

I'm glad that Rep. Wenc lives in a world of illusion that says that there's no problem with the system. I represent that there is a problem to the system, and with that I'll follow that up with a question, through you, Mr. Chairman, to Rep. Wenc.

DEPUTY SPEAKER BELDEN:

Please frame your question.

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REP. NARDINI: (115th)

Thank you, Mr. Speaker. Rep. Wenc, are you aware currently how many companies in the State of Connecticut underwrite malpractice insurance?

DEPUTY SPEAKER BELDEN:

Rep. Wenc, would you care to respond?

REP. WENC: (60th)

Mr. Speaker, through you, my recollection of the Judiciary Committee hearing is that four companies currently write for medical interests in Connecticut.

DEPUTY SPEAKER BELDEN:

Rep. Nardini, you have the floor, sir.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. I represent that it's a relatively small amount of companies in the State of Connecticut being one of the insurance states in the great United States, to underwrite malpractice insurance. I think that what this bill is an attempt is to address the problem before it becomes a bigger problem. I urge you please defeat the amendment. Let's vote on the bill and if you have problems on the bill, please, vote against the bill. But I just don't want to chip away the bill anymore than it's already been chipped at. Thank you, Mr. Speaker.

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REP. KARSKY: (4th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Karsky.

REP. KARSKY: (4th)

Yes, without delaying the conversation or the debate here too long, but I would like to respond to the remarks made by the previous speaker. Approximately one year ago the Insurance Committee conducted a hearing regarding the availability or cancellation of malpractice insurance. At that time, the report of the Committee was that there was no problem in the obtaining of malpractice insurance in the State of Connecticut.

DEPUTY SPEAKER BELDEN:

Thank you, sir. Will you remark further on House "C"? If not, staff and guests please come to the well of the House. Immediate roll call is ordered. The Clerk will announce the roll call.

CLERK:

The House of Representatives is now voting by roll call. Please return to the Chamber immediately. The House of Representatives is now voting by roll. Please return to the Chamber to see that your vote is properly recorded.

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DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded. All members in the Chamber must vote. Please check the board. Some members in the Chamber have not voted. Rep. Polinsky. The machine will be locked. The Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

House Amendment "C" on House Bill 5364.

Total number voting 136

Necessary for adoption 69

Those voting yea 29

Those voting nay 107

Those absent and not voting 15

DEPUTY SPEAKER BELDEN:

House "C" fails.

REP. KARSKY: (4th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Karsky.

REP. KARSKY: (4th)

Mr. Speaker, yes, Mr. Speaker. There's been considerable debate on this particular bill at least for

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a period of one hour. And not being a lawyer, I must share my concerns with Rep. Vance. When this piece of legislation came before the Insurance Committee, we only had approximately one-half hour to go through this piece of legislation. There were numerous questions that came up at that time. Some of them satisfactorily answered, others not.

In the interim, leading to today, doing a number of research and talking to a number of people, I just wonder really totally what the purpose of the bill is. It's my understanding that basically the purpose of this bill is to reduce the cost of insurance for malpractice in the State of Connecticut. The issue of collateral sources tends to be the beginning point in this particular piece of legislation.

I think it's important that this body recognize one thing. That this obviously is not a simple matter. And those states that try to address themselves to this matter of malpractice, those that have been relatively successful have never focused in on only one item within that particular issue of malpractice. What they've tried to bring in is numerous aspects of it.

You will recall that a day or two ago Rep. Chase introduced a study bill here before this committee, to

deal with this issue of malpractice. Again, this is a complicated matter. In all research that has been done up to this point, there has been no clear one item that will reduce malpractice premium costs. Without the exception of one thing, the elimination of malpractice. Without malpractice situations, obviously there is no malpractice.

I think when you begin to look at this issue here of the tort law here in Connecticut you find that what we tend to do, we tend to focus our attention upon compensation. We heard conversation before of the slipping of the knife and we could go through all kinds of horror stories. But the reality is, we tend to focus in on compensation and suffering.

If you look back into a study of the law itself, you find that one of the purposes, one of the purposes of malpractice is as a deterrence to sloppy, slipshod medical practices. The theory is that indeed if a physician or a health care provider, is slipshod in his or her efforts, that that individual should be penalized by or through the claim system. Unfortunately, the reality is that when it comes time to take insurance, physicians are placed into different categories by their specialties. The surgeon, as a category, pays the most

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for his malpractice. Not the surgeon who has fouled up three times, four times, five times. Just the category of a surgeon.

That local provider who pays the least premium is the general practitioner. Now, in looking at all sorts of studies done in the past on this, one of the most effective ways of dealing with malpractice premium costs are by peer reviews. Again, peer reviews of those who are practicing the profession.

Now, I don't want to belabor this, but I think if you take a look, we look at this whole issue of malpractice, malpractice insurance premiums, if you're going to deal with something effectively, and if we all agree that indeed they should be looked at, and indeed the premiums are climbing at an alarming rate, then what we ought to look at are not one factor, not collateral, because our own department, our own Insurance Department has indicated to me, and studies have indicated, that the amount of savings in malpractice premium is almost beyond counting, it's so small.

So if you're voting in these areas, because you think it's going to reduce the premium cost, you're grossly mistaken. It's a hoax. Where they have done studies on it, they have found, yes, the awards have been

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reduced but not necessarily the premiums, and I think that's what we're looking, we're looking to reduce the premium costs.

So don't look at collateral source as being your answer. If you want to answer this question, if you want to deal with this problem, you'd better start looking at some things that aren't going to make the lawyers happy in this place. So I'd better not turn my back over here.

One of the things you ought to look at, and one of the representatives pointed out earlier, I believe, you ought to look at contingencies. If you look at contingency fees, you ought to look at sliding scales, caps. Don't let the physicians off. Peer review. Look at insurance premiums, collected for malpractice as compared to the premiums paid out in suits. You ought to look at that. And don't get stuck with the idea that this is a long lag time, so we must collect over a long period of time. Maybe they're right, maybe they're wrong. Somewhere in one of the hearings, the remarks were made that the United States of America, 8 billion dollars were collected in premiums over a five year period and two billion dollars were paid out. Exclusive of reserves.

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The idea that that difference, and meanwhile they're collecting every year, don't forget, will be utilized to pay off the malpractice suits. Rep. Wenc pointed out that how many big settlements have there been? My information through the State of Connecticut, the State of Connecticut has at most, and I'm not sure they have that, one case that is considered to be a catastrophic case of a settlement of one million dollars.

I have testimony here from members of the Medical Association who do not perceive that as a problem. What they do see is the frequency of the cases.

Another situation that you ought to consider are statutes of limitations. If you're going to talk about limiting the insurance premiums, you ought to look at statutes of limitations as an overall encompassing viewpoint. With all of that background, guess what. I have an amendment.

The Clerk will please call LCO 7659, and please may I summarize.

DEPUTY SPEAKER BELDEN:

The Clerk please call LCO 7659, which will be designated House Amendment Schedule "D".

CLERK:

House Amendment Schedule "D", LCO 7659,

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DEPUTY SPEAKER BELDEN:

The gentleman has requested to briefly summarize.
Is there objection?

CLERK:

Offered by Rep. Prague and Rep. Karsky.

DEPUTY SPEAKER BELDEN:

The gentleman has requested permission to summarize.
Is there objection? Hearing none, please proceed, Rep.
Karsky.

REP. KARSKY: (4th)

Yes, thank you, Mr. Speaker. Mr. Speaker, what
this simply does is rolls in to the study bill that was
moved on the other day, rolls in collateral source and
all these other aspects of malpractice insurance. I
think that's the appropriate place to go. I don't
believe we proved the case on collateral source. I
think this gives us a fine opportunity to use a vehicle
which has already been established which is dealing with
this idea of malpractice premium costs.

DEPUTY SPEAKER BELDEN:

Does the gentleman move adoption?

REP. KARSKY: (4th)

I move adoption, Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

The gentleman has moved adoption of House "D".
Will you remark further on House "D"? Rep. Karsky.

REP. KARSKY: (4th)

I think basically my remarks leading to the
amendment is all I have to say.

DEPUTY SPEAKER BELDEN:

Will you remark further? Rep. Nardini.

REP. NARDINI: (115th)

Thank you, Mr. Speaker. So much for chipping
away. We've done it. We've wanted to defeat the bill
and this will do it, this amendment will put it into a
study. I urge defeat of the amendment, Mr. Speaker. I
think we're taking a positive step, responsible step as
a Legislature to looking to lowering costs for medical
malpractice, hopefully ultimately lowering costs for
medical coverage in the State of Connecticut, and I urge
defeat of this amendment. And hopefully we'll go on
with the bill and vote for the bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Baronian.

REP. BARONIAN: (20th)

Mr. Speaker, I also urge defeat of this amendment.
We don't need another study. Perhaps to incorporate this

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into the study that's presently going to be carried on. This bill that we're talking about is a bill, one of five that came out of the Judiciary Committee. All other four have been defeated. It has been bounced around this Assembly for the past month and a half by members of the Judiciary Committee who do not want this bill passed.

This is the beginning of a process of looking at malpractice. It has been weakened by Rep. Wenc's amendment that passed. It is little now, but it is at least the beginning of a process of doing something about malpractice, that costs every citizen in this state in the form of higher medical fees, and I urge the defeat of this amendment, because it's just another dilatory tactic to put down the reality that this is a situation that Connecticut has to face.

New York is looking at many problems in malpractice, as well as New Jersey. The federal government is also. If regulation is needed, then so be it. And if regulation is needed further for the doctors, then so be that. But it's time something was done. Thank you, Mr. Speaker.

REP. VANCE: (123rd)

Mr. Speaker.

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DEPUTY SPEAKER BELDEN:

Rep. Vance.

REP. VANCE: (123rd)

Thank you very much, Mr. Speaker. As most of you are very, very aware, Rep. Karsky and I are almost always on the same side. We work well together. We almost always concur on legislation we bring before you.

However, Felix, I'm going to break ranks. I would really urge you to not cop out. We've all been here before. We all know the present a study bill when you don't want to vote on the issue syndrome. You know we pass study bills. You also know that they usually get put in the round file and we very, very seldom do anything about it.

Ladies and gentlemen, we do have to do something about this issue. The problem of malpractice is not a case of reducing malpractice premiums. I'm quite certain I've not promised you that this bill will do that. It's a case of trying to stabilize the premiums or reducing the amount of increase in premiums. We are also looking to the fact that the number of claims filed nationally, and please realize this is national figures. It's very tough to get Connecticut figures. The claims filed nationally have increased 114%. Another problem that

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we don't see but exists is the fact that approximately 15 billion, that's a b, 15 billion dollars are being spent each year by physicians with defensive medicine, attempting to protect themselves from potential malpractice suits. We pay that 15 billion dollars.

We heard a citation from A.M. Best Company. They report that in 1983, total losses and expenses of malpractice carriers were two billion dollars. While the premiums collected were 1.57 billion. The frequency of million dollar awards had increased 1,025% from 76 to 81. And any of you who read the paper today know that the dollar has escalated since '81 and therefore claims are escalating.

We also have in the hopper claims that aren't settled yet, and the carriers have to set aside any potential judgment award. So they do have to set monies aside until such time as the award is given. And as far as Connecticut doctors are concerned, I don't remember what Felix said in that the physicians in the State of Connecticut said that there was no trouble getting malpractice. I remember sitting down over at Aetna three years ago with the Medical Society and Aetna, and trying to negotiate a palatable contract that the physicians in Connecticut could afford.

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I also remember the Insurance Committee doing what was totally unexpected and that was giving the doctors in the State of Connecticut the ability to form their own insurance company for malpractice. We did it as leverage. We figured they'd never have to use it because then the carriers would immediately jump in and say we want your dollars. They didn't, they ran the other way. The doctors have formed their own company and that is where the peer review that Felix mentioned, that is so important is now taking place. The doctors are putting their own money into this company, so they're making darned sure that any fellow practitioner is going to toe the line. Because if he doesn't, they're going to pay. So please, we've been here a long time, it's a long night. I don't want to go on forever. Most of you have your minds made up. Please, don't go to a study. Stay with the bill as amended, pass it and then let's go home. Thank you very much.

REP. NYSTROM: (46th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Peter Nystrom. I would remind the members of the Chamber, we're voting on House "D", which guts the bill. I think the issue is very clear and I would

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ask that we try to keep the debate to that issue at this point. Rep. Nystrom.

REP. NYSTROM: (46th)

Thank you, Mr. Speaker. I simply ask for a roll call on this amendment.

DEPUTY SPEAKER BELDEN:

The gentleman has asked for a roll call. I would try your minds. All those in favor of a roll call, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BELDEN:

The 20% rule has been met, a roll call will be ordered at an appropriate time, which I hope is now.

REP. KARSKY: (4th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Karsky.

REP. KARSKY: (4th)

At the risk of getting stoned here. Not that way.

Through you, Mr. Speaker, I'm sure Rep. Vance will be an item in the local newspaper, I guess, after today. I have to disagree, through you, Mr. Speaker. Rep. Vance made some statements about this issue of defensive medicine.

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I have before me or with me here today, the Rand study which reads as follows. There are no good studies to show that defensive medicine is costing Americans billions of dollars in extra cost. This idea, if you start talking about defensive medicine, are we talking about good medicine, or are we talking about the practice of medicine just to utilize the equipment? Now it seems to me that if you are going to a physician, you're looking for the best possible care available. When do you draw the line between good medicine, and defensive medicine?

Don't forget as well that one of the aspects of this whole study issue dealing with a medical profession that indeed does belong to hospitals. Hospitals do buy the equipment. The equipment does have to be utilized. But it seems to me that equipment is in that hospital because they want to provide you the best possible care. So I'm not very, very clear on this idea whether defensive medicine really does reflect upon this idea of malpractice insurance payments.

Again, one of the earlier speakers, I think the purpose of us dealing with this bill is we're chipping away at it, or what we're doing. You've got to understand, at least I think most people came to this Chamber with the

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idea that looking at escalating malpractice insurance premium costs that supposedly were then being reflected in the medical profession, and we're looking at it as a cost effective method. I'm saying to you that at this point nothing that has been brought out has indicated that that is the case. And this is why I feel the best place for this is a study bill where the equipment is already there. I can't believe we're spending \$10,000 for a malpractice study and we're just going to let it go down the tubes. Thank you, Mr- Speaker.

DEPUTY SPEAKER BELDEN:

Will you remark further? If not, staff and guests please come to the well of the House. Immediate roll call is ordered. The Clerk will please announce the roll call.

CLERK:

The House of Representatives is now voting by roll. All members please return to the Chamber immediately. The House of Representatives is now voting by roll. All members please return to the Chamber immediately.

DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded. The

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machine is still open.

The Clerk will please announce the tally.

CLERK: The Clerk will please announce the tally.

House Bill 5634, House Amendment "D".

Total number voting 136

Necessary for adoption 68

Those voting yeas 38

Those voting nays 97

Those absent and not voting 16

DEPUTY SPEAKER BELDEN: House "D" fails.

House "D" fails.

House Amendment Schedule "D".

Strike out everything after the enacting clause and insert the following in lieu thereof:
"The task force established in section 1 of substitute house bill 5110 of the current session shall study, as part of its study on the costs of professional liability insurance coverage for health care providers and hospitals, the probable effects on medical malpractice insurance rates and awards of admitting into evidence the amount of collateral source payments received by the claimant in a medical malpractice action."

REP. CHASE: (120th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Chase.

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REP. CHASE: (120th)

Mr. Speaker, through you, I have a couple of questions. I don't have any amendments, but through you to Mr. Wenc or Mr. Wollenberg. Maybe I'll start with Mr. Wenc. Mr. Wenc, in the bill, I'm looking at lines 9 through 11, and I want to be sure that collateral source rule as it pertains to this particular piece of legislation, deals strictly with malpractice. Earlier in the debate on a couple of other amendments, reference was made to being hit by a truck, that sort of thing. I wanted to make sure that this was strictly malpractice for negligence and malpractice suits.

DEPUTY SPEAKER BELDEN:

Rep. Wenc, would you care to respond?

REP. WENC: (60th)

Mr. Speaker, since I'm not the proponent of the bill, I'm not sure of what use it would be for me to talk about the legislative intent. However, I'd certainly be glad to accommodate the gentleman. But I wasn't exactly sure that he had asked a question. And perhaps he could rephrase it so I could respond.

DEPUTY SPEAKER BELDEN:

Rep. Chase, would you care to rephrase your question?

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REP. CHASE: (120th)

Be happy to. The question is, does this legislation as you understand it, apply strictly to malpractice, medical malpractice actions?

DEPUTY SPEAKER BELDEN:

Rep. Wenc, do you care to respond?

REP. WENC: (60th)

That appears to be the case, based on my review of the Florida legislation that apparently this file copy is fashioned under.

REP. CHASE: (120th)

Okay.

DEPUTY SPEAKER BELDEN:

Rep. Chase, you have the floor, sir.

REP. CHASE: (120th)

Thank you, Mr. Speaker. The next question, and let me make something clear. I'm really asking you because I, and I suppose I could have asked Rep. Wollenberg, I'd really like an attorney's opinion on this. In Section, on line 45, in line 45 it states a health care provider means any person. --

DEPUTY SPEAKER BELDEN:

The House please come to order. Rep. Chase.

REP. CHASE: (120th)

Thank you, Mr. Speaker. In all seriousness, I

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think there's a potential flaw here, and I'm trying to get an answer. In line 45, it refers to a health care provider, and it says means any person, partnership, professional or association, corporation, facility or institution licensed or chartered by the State of Connecticut to furnish health care services, including but not limited to a physician, dentist, etcetera, etcetera.

Could that include an ambulance service?

DEPUTY SPEAKER BELDEN:

Rep. Wenc, would you care to respond?

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. My reading of that particular subsection starting on line 45, I would suggest to the gentleman that yes, perhaps that provision definition could be construed to include an ambulance service. I did review the Florida statutes, and the case log that has developed under the Florida statutes, and I could not ascertain a case that was specifically on point with respect to defining health care provider as you suggested, Rep. Chase, but I would consider that to be part and parcel of the definition.

DEPUTY SPEAKER BELDEN:

Rep. Chase, you have the floor, sir.

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REP. CHASE: (120th)

Thank you, sir. And one last question. Do we apply the admissibility of collateral source payments to any other kinds of negligent cases?

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. One of the concerns that I had, Rep. Chase, through you, Mr. Speaker, is whether or not this bill, file copy would apply to the situation where, let's say a janitor who's employed by a hospital or another member of the hospital staff, negligently maintains the hallways, someone slips and is injured. Perhaps the file copy could be applied in that particular situation and I think that gets away from the intent of the proponents but I think that an argument could be made to construe the file copy in such a manner.

DEPUTY SPEAKER BELDEN:

Rep. Chase, you have the floor, sir.

REP. CHASE: (120th)

Thank you, Mr. Speaker. Through you, Mr. Speaker, a question to Rep. Wollenberg. Rep. Wollenberg --

DEPUTY SPEAKER BELDEN:

Please frame your question, sir.

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REP. CHASE: (120th)

Thank you, Mr. Speaker, through you. A particular award is granted, it doesn't matter which sum. According to this bill the judge would make, no I guess the jury would with the amendment, would make the determination as to what would be deducted from this award. My question to you, sir, is through you, Mr. Speaker, would the attorney's fee be deducted before or after the collateral source deduction was made?

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg, would you care to respond?

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, I, someone was talking. Could Rep. Chase repeat the question?

DEPUTY SPEAKER BELDEN:

Rep. Chase, would you please repeat your question?

REP. CHASE: (120th)

Through you, Mr. Speaker, the question was, if this bill should pass, and an award is granted by the jury, and they determine that there would be a reduction of the award made based on collateral source payments or what is now acceptable as a deduction, would the fee that the person who sustained the injury, the fee that that individual is paying their attorney, would that

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fee be based on the award before or after the collateral source deduction?

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, there is no rule as to the award, as to the amount of the award, as to how it's figured, when it's figured or anything that I know of. So it's impossible for me to answer that question other than if he can give me a scenario and the status and all, I might be able to tell him how personally I would arrive at a fee in a particular case. That's the best way I can answer it. No one makes the, the court does not make the decision as to how much the attorney gets, or when he gets it or the jury does not make that decision.

DEPUTY SPEAKER BELDEN:

Rep. Chase, you have the floor, sir.

REP. CHASE: (120th)

Thank you, Mr. Speaker. I understand what you're saying, Rep. Wollenberg. My concern is, well actually, it's not a concern, what I'm trying to determine is, and I probably, it's a contractual relationship between you and the client. I just want to be sure that with this legislation you're not hurting the injured party, and

reducing that award by any more than would be under normal circumstances, using collateral source payments as a deduction.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Would I personally do it? No.

DEPUTY SPEAKER BELDEN:

Rep. Chase, you have the floor, sir.

REP. CHASE: (120th)

Yes, parliamentary inquiry. Does that count?

Does that response, Mr. Speaker, as legislative intent?

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

I believe he asked the Chair whether that would count as legislative intent. I think legislative intent just for my personal observation is debate on the floor of the House may or may not be taken into account at some point later on. Whether or not the response made by Rep. Wollenberg would or would not depends upon the situation later on. Rep. Chase, you have the floor, sir.

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REP. CHASE: (120th)

Thank you, Mr. Speaker. Now that I'm thoroughly confused, I urge passage of the bill.

DEPUTY SPEAKER BELDEN:

Will you remark further?

REP. LOONEY: (96th)

Mr. Speaker, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Looney,

REP. LOONEY: (96th)

Thank you, Mr. Speaker. Mr. Speaker, I rise to oppose passage of this bill. I believe that much of the debate, Mr. Speaker, has been on issues that are really not addressed in the bill. Discussion of one million dollar verdicts and how bad that might be, and so on, are really beside the point, because this bill does not really address that issue. If a jury believes that a plaintiff is entitled to a large verdict, he or she will still get that verdict. What will happen merely, is that other health or accident insurance will be required to be deducted before the physician's coverage is reached. It won't affect the amount of the verdict.

Because other insurance becomes primary and malpractice insurance becomes secondary. What this amounts

to is special pleading on the part of physicians, Mr. Speaker. The tort is bailed out at the expense of other insurers, and that's simply what this amounts to. I ask, why should we give special treatment to physicians and provide that the injury caused by the negligence of a physician will be compensated at perhaps a lesser level than a comparable injury caused by negligence in some other context.

What this bill amounts to is a piecemeal level at reform of our tort and personal injury system, rather than a comprehensive look at the entire system and whatever flaws and weaknesses it may have. And I think it is seriously flawed and for that reason I urge defeat of the bill.

DEPUTY SPEAKER BELDEN:

Thank you, sir, will you remark further?

REP. GYLE: (108th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Norma Gyle.

REP. GYLE: (108th)

I'll be brief. I just want to say that as a registered nurse I can tell you that people are being tested for very expensive, inappropriate tests for

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everything from beriberi to galloping hangnail, things they would never be tested for otherwise, because doctors are afraid of the suits that people are bringing because they're suit-happy. And if you are suing for pain and suffering, or you're suing for revenge, you have to look at the fact that when a jury awards 3 million dollars for pain and suffering and someone collects six million dollars, it isn't quite fair, and that's why I will support this bill.

REP. WOLLENBERG: (21st)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, I'll be very brief. I just went around the Chamber and I won't ask a question of any of the proponents and people who said we're going to save money. Because I asked some of them privately and they can't tell us, and I won't embarrass them by asking them in the open, they can't tell us the number of dollars we're going to save because they don't know, because it's not very much if anything. And that's what they're saying.

They're walking around and every once in a while

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it slips out. We're going to make money on it, we're going to save it, we're going to take it off your malpractice insurance, we're going to take it off your insurance. It's not so. Not with this bill. That's why when Rep. Karsky had the study bill I voted for it. I think it all ought to be taken into consideration and we do it all at once in a comprehensive package, would make much more sense. I urge defeat of the bill.

DEPUTY SPEAKER BELDEN:

Will you remark further?

REP. GELSI: (58th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Gelsi.

REP. GELSI: (58th)

I don't know what's going to happen with this bill in a few minutes when we vote on it. But I know one thing. We've given the taxpayers in the last week and a half the seat belt law. We've now shot down the used car dealer law from the Senate that went to Appropes. We've given them the big holding company bill, and now we're going to give them a doctors bill. One that's not going to save anybody any money, it was stated by the Madam Chairman of the Committee that this is not going to

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reduce the cost of their malpractice insurance. It's not going to reduce when you go to the doctor, because he's still going to charge you that 17 to 20 to 60 bucks according to what you're going there for. And I think the only people we haven't given anything to, so far in the last week and a half, were the citizens of this state. We ought to defeat this bill and at least give them that much.

DEPUTY SPEAKER BELDEN:

Will you remark further?

REP. WENC: (60th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wenc.

REP. WENC: (60th)

Yes, thank you, Mr. Speaker. I recognize that it's very late and I would just make one request, that prior to voting on this, this Chamber concentrate and focus on the file copy, what's been said in debate today, because up until this point, only one side of the story has been told.

There's two sides to the story. And today some of us have tried to represent that other side. Because I would submit that this is nothing more than special

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interest legislation. And the reason it's in front of us, the reason it's gotten so far through the process is because the medical establishment and their insurance companies have been able to use all of their economic and political power to lobby this cause. And I think they've done a first rate job in advocating their cause.

But what's their cause? I think their cause is basically two-fold, to restrict the individual rights of health care consumers by limiting their just legitimate compensation. And second, to carve out a special niche for the medical establishment while the rest of us are held to be responsible for our conduct.

The people that really aren't represented in this process are the innocent, injured victims of medical carelessness and medical negligence, because they don't have the organization to acquire the economic and political power to lobby their representatives. So when we vote, before you press that green button, I would just ask you to concentrate and to focus. Who's going to stand between the medical establishment and all their power, political and economic, and that injured victim. It's got to be this General Assembly.

I urge you to defeat this bill. Thank you,

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DEPUTY SPEAKER BELDEN:

Will you remark further? If not, staff and guests please come to the well of the House. Immediate roll call is ordered. The Clerk will please announce the roll call.

CLERK:

At long last, the House of Representatives is voting by roll call. Will all the members please return to the Chamber immediately. The House of Representatives is voting by roll. Please return to the Chamber immediately.

DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded. The machine will be locked. The Clerk will take a tally.

The Clerk please announce the tally.

CLERK:

House Bill No. 5364, as amended by House "A" and House "B".

Total number voting	134
Necessary for passage	68
Those voting yea	97
Those voting nay	37
Those absent and not voting	17

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DEPUTY SPEAKER BELDEN:

The bill as amended is passed.

REP. VANCE: (123rd)

Mr. Speaker, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Morag Vance.

REP. VANCE: (123rd)

Thank you, Mr. Speaker. Before we leave, I would like to thank my colleagues very much for the manner in which we handled the debate. Of course, I'm very grateful for the outcome of the vote. Thank you.

REP. ABERCROMBIE: (87th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Paul Abercrombie.

REP. ABERCROMBIE: (87th)

For the purpose of an announcement.

DEPUTY SPEAKER BELDEN:

Please proceed, sir.

REP. ABERCROMBIE: (87th)

The Energy and Public Utilities public hearing scheduled for 9 A.M. tomorrow morning has been cancelled until 11 A.M. and the Committee meeting immediately following at 11:30. Thank you.

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GEN. ASSEMBLY
SENATE

PROCEEDINGS
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SENATOR HAMPTON:

Through you, Mr. President, it is only in the Treasury Department and only while those investigators are investigating the second injury fund would they be given those police powers. I believe that it's the right thing to do.

THE CHAIR:

Motion is to adopt the report of the committee on conference. Senator ...

SENATOR HAMPTON:

I move its adoption or if there are no questions, further questions, Mr. President, I move it to the consent calendar.

THE CHAIR:

Any objection? Hearing none, so ordered. The Senate will stand at ease.

THE CLERK:

I just want to read into the record on calendar 658, that's Substitute Senate Bill 664, had a House "A" Amendment on it and that Senator Markley moved in passage in concurrence with the House.

Page 2, calendar 891, Substitute for House Bill 5364, File 753. An Act Concerning The Admissibility Of Collateral Source Payments In Medical Malpractice Actions. (As amended by House Amendment Schedules "A" and "B").

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Favorable Report of the Committee on Insurance and Real Estate.

The Clerk has fifteen amendments.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, may I move the adoption of the bill and rejection of all the amendments, Sir? Mr. President, I would move adoption of the joint committee's favorable report and, in concurrence with the House.

THE CHAIR:

The Clerk has amendments. Senator Avallone. Clerk has amendments. Do you want to ...

SENATOR AVALLONE:

Mr. President, I would move rejection of House "A".

THE CHAIR:

Senator Avallone moves for rejection of House "A". Wish to remark?

SENATOR AVALLONE:

Yes. The purpose of rejecting House "A" is a procedural matter. One of the concerns of members in the chamber, in the circle, is that this matter would not be heard in the House in sufficient time to pass this bill. The contents of House "A"

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can be found in LCO No. 8511 which I intend to introduce if my motion to reject House "A" is approved. Again, the contents of House "A" are not going to be deleted from the bill. They will be included in my LCO No. 8511. The reason for this is to assure that this matter would be taken up in the House under Rule 17 if we have a disagreeing action it will go down. If we disapprove an action taken by the House, as soon as the gavel falls on this issue, it will be transmitted to the House, therefore allowing sufficient time to be heard. I have had certain conversations with the parties that are most interested in this legislation in this chamber and in the House. The members of the House have suggested that this bill, as amended, by my LCO No. 8511 would be approved. Now let me tell you what the specific change is in House "A" that will be included in a later amendment, and that is I changed one word, one word. It's not a lawyer's trick. It's one word. The word is in line, I believe, 58, that says, "his injury." Excuse me, in the original file copy that came out of Judiciary, it was, "his injury", what we are now saying is, "such injury." Excuse me. It was "such injury," it's now going back to "his injury." It does not change the intention of the bill. It does not change the purpose of the bill. It does not change the meaning of the bill by any stretch of the imagination. I suggested to members of

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the circle this morning that I would attempt to get approval of this bill so that the purpose of the amendment was not to kill this legislation. Again, I suggest to you that I have accomplished that end. I have spoken to the parties most interested in this. I cannot guarantee anything, but I have assurances that this bill would be approved in the House with my amendment. With the permission of the Senator who brought the bill out, I would like to elaborate on what LCO No. 8511 would do at this time.

THE CHAIR:

You may proceed, Senator. The motion is to reject, however, House "A" and you wish to explain what will happen and that you're incorporating it actually in another amendment.

SENATOR AVALLONE:

That's correct. The other amendment would contain this, which I am asking to reject, and one other element, and that is that this bill be sunsetted three years from now which would make the proponents of this bill come forward at the end of that three year period to indicate that they had achieved what the bill's purposes would achieve and that is all. The arguments against it, and again with your permission, Mr. President, are that there isn't sufficient time in that three year period to determine whether or not the statistics are available because only twenty-three percent of the cases dealing with malpractice

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would have been decided in that three year period of time. My only argument, and I'll go into it in more detail later if that's the desire of the chamber, is that we are being told today, June of 1985, that this bill will save money or stabilize costs. That's what we're being told today as a result of experiences in other states. In three years, with twenty-three percent of the cases being heard, all we're going to need is a trend to show us that the proponents were correct. Why should we fear that? If the members of the House ^{who} were so concerned about this piece of legislation are in agreement, why should we be afraid of letting three years of evidence, twenty-three percent of the cases be heard, come back to us in the General Assembly and tell us that the people are ...

SENATOR ROBERTSON:

Mr. President.

SENATOR AVALLONE:

I thank you for your indulgence.

THE CHAIR:

The motion is to reject House "A". Senator Robertson.

SENATOR ROBERTSON:

Mr. President, I rise to oppose Senator Avallone's motion to reject House "A". House "A" was a technical amendment which specified that only malpractice actions after January 1, '85

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would be affected and that only malpractice actions are covered under this law. I see no reason or no need to reject this amendment. Certainly Senator Avallone has an opportunity to offer as many amendments as he wishes, but to reject House "A" at this point, Sir, makes no sense.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

I understand the difficulty and, once again, I will try to explain procedurally. In order for me to have kept my word to certain Senators in this chamber that this bill would be able to be heard in the House under Rule 17, if we disagree with action taken by the House and send it back down to the House, it's transmitted immediately or it can be transmitted immediately after the gavel goes down as opposed to passing my amendment, asking that the rules be suspended, and it then be sent down. I cannot assure you that at that point in time, it would be taken up. I have assurances from leadership in the House that it will be taken up if we reject "A", put it back in to my amendment and then send it down.

THE CHAIR:

Senator Robertson, I think what Senator Avallone is trying to explain that apparently by prearrangement with the leadership

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of the House, if he takes this course of action, this procedural action, namely rejection of House "A" and which in turn he is incorporating in a new amendment, that the House, at least from the representations made to him, will take action under suspension of the rules. Senator Robertson.

SENATOR ROBERTSON:

Yes, Mr. President. It seems to me, understanding the procedural situation that Senator Avallone is trying to explain, that the easiest or as easy a method since he has the cooperation of leadership in the House is that we retain House "A" and we accept any one of Senator Avallone's twelve amendments and with that same cooperative effort that he has ascertained from the House leadership, they will take up this bill under suspension of the rules and deal with it as amended by Senator Avallone's amendments. Therefore I would insist, or at least encourage, no one insists, I would encourage that we reject Senator Avallone's motion to reject the amendment.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

With leave of the chamber to speak for the third time.

THE CHAIR:

Without any objection, you may proceed.

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SENATOR AVALLONE:

Senator Robertson, our minds work in the same fashion because I asked the same question because I realized it took me a half an hour to understand the procedure before I could present it to this chamber. It has been suggested to me that if we do as you suggest and that is keep "A" and act on one of my amendments if that were the will of the Body that it would not appear on the House calendar and that the House leadership has indicated to me that they cannot make the same assurances that it will be heard, and in order to keep my word to members of the circle, this is why I pursued it. I can only tell you that House leadership on both sides of the aisle were involved in trying to work out the most appropriate procedures and they come up with this particular procedure. That was after I had checked with members of the House to make sure that they would go along with the ultimate result.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, if I might address the chamber for a third time, Sir?

THE CHAIR:

Without objection, you may proceed.

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SENATOR ROBERTSON:

Thank you very much, Sir. Senator Avallone is missing one point. The point is that if we reject House "A" but we don't like his amendment, then the same problem exists with the bill and the bill potentially is dead. I, for one, do not agree with Senator Avallone's amendment, so therefore, I would ask for a no vote on this amendment, Sir. No vote on Senator Avallone's motion to reject.

THE CHAIR:

Question is to reject House "A".

SENATOR AVALLONE:

Mr. President, again with leave, for the fourth time.

THE CHAIR:

Any objection to further remarks? Hearing none, you may proceed.

SENATOR AVALLONE:

Again, I appreciate Senator Robertson's position. However, I don't want to overstep my bounds and debate this issue completely. It took me a long time to understand this entire issue. It took me several hours to come up with what I thought was an amendment that all parties could live with, that, in fact, I have determined that all parties, interested parties, can live with, and I would like an opportunity to explain that entire

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process to you. I'd be happy to do it under this proceeding or I'd be happy to do it if and when we reject House "A" and then open it up for debate, but I would like to think that I have sufficient information that I could give members of the circle that I would have an opportunity to convince you, and I don't care whether it's now or in two minutes under a different bill, but again, I ask leave of the President and the President Pro Tem, because I don't think that the amendment that I want to discuss has been discussed in detail.

THE CHAIR:

Motion is to reject House "A". All those in favor of rejection of House "A"? Roll call has been requested.

THE CLERK:

An immediate roll call has been ordered in the Senate.

Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Members of the Senate, we're dealing with calendar No. 891, Substitute for House Bill No. 5364, File No. 753. Senator Avallone has moved to reject House "A". If you wish to vote for rejection, you vote yea, contrariminded, nay. The machine is open. Please record your vote. Senator Miller. Senator Hampton. Has everyone voted? Machine is closed. Clerk, please

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tally the vote. Result of the vote 6 yea, 28 nay. The motion is defeated. Clerk please call the first amendment. Senator Avallone, did you wish to be recognized?

THE CLERK:

I need an LCO number.

THE CHAIR:

All right.

SENATOR AVALLONE:

LCO No. 5796.

SENATOR HAMPTON:

Mr. President.

THE CHAIR:

Excuse me just for a second please? Senator Hampton.

SENATOR HAMPTON:

Mr. President, I was out of the chamber on legislative business. May I be registered as in the negative on 891?

THE CHAIR:

The record will so note.

SENATOR HAMPTON:

Thank you.

THE CLERK:

Senate Amendment Schedule "A", LCO No. 5796 introduced by Senator Avallone.

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THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President. So that I might discuss ...

THE CHAIR:

Do you move for adoption of the amendment?

SENATOR AVALLONE:

I'm sorry. I move for adoption of the amendment. This bill and this amendment, deal with admissibility of certain evidence after a verdict has been reached in a malpractice action. The express purpose of this legislation, as I understand it, is so that awards in malpractice actions would be reduced, so that malpractice insurance premiums would either be stabilized or would not increase as fast so that savings could be passed on to the citizens of the state of Connecticut who are provided the health care service. This amendment would require that the insurance industry provide the information necessary to establish whether or not the insurance premiums for malpractice insurance for professionals and for professional health care provider institutions are set accurately. Let me suggest to you or state to you emphatically, that I think that the medical profession in the State of Connecticut and, in fact, in the United States of America, is being abused. I think that the insurance premiums for this

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particular insurance are overstated, and I think that they are being ripped off. They're being told that the salvation of this problem and this supposed crisis is bills of this nature of reform. Let me give you some statistics and you decide for yourself, because I know I am a member of the Connecticut Bar Association and as an attorney, I stand before you where some might think I am prejudiced in favor of the attorney. I hope you know me well enough that that's not true, and I would like to present to you the case for the proposition that insurance premiums are too high. In a seven year period, these statistics that I'm going to give you are from A. M. Bess, the insurance industry's statistical bible, not from the trial lawyers, not from the doctors or hospitals, but rather from the insurance companies themselves. In a seven year period, total insurance premiums, seven point three billion dollars. Total investment during the same period on reserves, one point seven six billion dollars. Now how much money was paid in total claims during the same period? One point five billion dollars. Less money was paid out than was earned on premiums. Nobody touched the premiums of seven point three billion. Awards were less than investment earnings. Why? Does that not strike you as a telling statistic? Malpractice insurance premiums in the United States of America,

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one half of one percent of all of the health care costs in the United States, one half of one percent. Is there anybody in this chamber that wants to prevent a young doctor from entering a particular specialty and that he can't because the malpractice insurance premiums are prohibitive. Certainly not I. Is there anybody here that wants to punish doctors if, in fact, a jury establishes that they have made a mistake under our law? Certainly not I. We have set up a study to try and deal with this issue. It is a complicated issue. There are at least ten items set up in a Rand Corporation study that professionals, all professionals, insurance companies, doctors, everybody, agrees should be studied to determine where we should go in this area. Yet what are we doing with this bill? We are taking one of those and we are giving the doctors and the health institutions a leg up. These bills have been in place since 1976 in nineteen other states, yet the insurance industry comes to us today and says, we need seven years to determine the effect in the State of Connecticut. They've had nine years to determine it. They're supposed to prove to us that they deserve to be treated differently than anybody else in our society. They're supposed to meet that burden before we vote on these things. I would think that's a reasonable position. Yet we just rejected that. We said you'd have

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nineteen other states, you've had nine years of experience, but we still want the leg up here in Connecticut, but we won't sunset it in three years because we need seven more years to decide here. It doesn't make sense to me. We can talk statistics all day long and you could decide for yourself. The vote on the last issue suggests to me that I could stand up here all day and talk to you about facts. These are statistics not from the Connecticut Trial Lawyer's Association, not from the doctors. These are statistics from the insurance industry. Let me suggest to you that the American Medical Association started a task force. In February of 1984, they came out with their results. Studied this whole issue. Number one priority. What are we going to do, fellas? Public relations. And when you finally get down to the fourth slot, you get down to the meat of the issue, and that is prevention of bad medicine, 'cause that's what we're all here for. Understand, I don't stand before you indicting the medical fraternity. I do not, but I suggest to you that they have not been strong enough in weeding out and in policing their own brotherhood, because that's what we want to deal with up here. We want to decide are the people of the State of Connecticut getting a fair break in terms of their health care costs in this area and are they being provided good medicine. I suggest to you that we're

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going to deal with insurance premiums once we get the facts from the insurance industry, and this amendment will require them to provide the facts, not the emotions of the issue, but the facts. I suggest that that is reasonable. We are giving them the bill. This amendment merely says provide us with the statistics so that we can determine whether or not you're treating the medical profession fairly. Thank you.

SENATOR ROBERTSON:

Mr. President.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, as I read through LCO 5796 which I believe is the amendment Senator Avallone is pursuing, I feel that the amendment will not solve any problems. I believe that the amendment is flawed and deserves to be defeated and, Sir, I would ask that when the vote be taken, it be taken by roll.

THE CHAIR:

Further remarks? Further remarks? A roll call has been requested. Clerk please issue the call.

THE CLERK:

Roll call's been ordered in the Senate. Will all Senators please return to the chamber. A roll call has been ordered in

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the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Question before the chamber is a motion to adopt Amendment Schedule "A", LCO No. 5796. Machine is open. Please record your vote. Has everyone voted? Senator Schoolcraft. Senator Hampton. Senator McLaughlin. Machine is closed. Clerk, please tally the vote. Result of the vote, 8 yea, 26 nay. The amendment is defeated. Senator Avallone.

SENATOR AVALLONE:

I have one more amendment.

THE CHAIR:

Thank you. Call the next amendment please? Which one do you wish called, Senator?

SENATOR AVALLONE:

7697 please.

THE CHAIR:

Which one do you want?

SENATOR AVALLONE:

7697.

THE CLERK:

Senate Amendment Schedule "B", LCO No. 7697 introduced by Senator Avallone.

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THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Thank you, Mr. President. I move the adoption of the amendment.

THE CHAIR:

Wish to remark?

SENATOR AVALLONE:

Please. This amendment deals with collective bargaining agreements. Let me give you a hypothetical. Member of a collective bargaining agreement, 1983, sits down at a negotiating table and has to make some tough decisions. He decides - he's given two offers - he can have \$10.00 an hour and health insurance plan A, or he can have \$8.00 an hour and health insurance plan B, which is much better for you and your family. So, the fella in our hypothetical chooses plan B. He says, I'm going to take home less every week so that I can protect my family with a better health care plan. He then gets involved in an unfortunate situation where there is a malpractice case. He goes to the trial. He is successful. The jury comes back and says that some professional individual or organization committed a tortious act and they award him x number of dollars. The collateral source rule that you are about to

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approve, would take that wage earner, that member of the collective bargaining unit, make his decision to take home less work to the advantage of the individual who has caused him injury by his or her negligent act, because you see what happens is, those health care benefits that he received prior to the verdict are going to be deducted from what the jury felt he or she should have received. Now, who gets hurt by that type of - in that example? Certainly the wage earner. There is a claim that is double-dipping. Well, your definitions may not be the same as mine. But that wage earner made a decision several years earlier to protect his family, and now, who on the other side of the scale is going to benefit by that decision? Somebody who caused him or her injury. That's who's going to benefit. Now, why should that person benefit, or that institution benefit? Only if society is the winner. Only if health care costs are going to be reduced, at least in my impression. The tort feisor should not be rewarded unless there's proof that health care costs for society are going to be decided. You just heard that there are people who say it will take seven years to make that decision in the State of Connecticut, yet we're going to give them the advantage now. The scales are just as I have suggested they are. A vote against this amendment tips it in favor of one party. I think it's only

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reasonable that you protect that member of that collective bargaining unit who had no idea this was going to happen to him. Thank you. I'm satisfied with a voice vote, unless there's somebody else.

THE CHAIR:

Wish to remark further? Senator Schoolcraft.

SENATOR SCHOOLCRAFT:

Yes, Mr. President. I'd like to have a roll call vote please.

THE CHAIR:

Roll call has been requested. Clerk, please announce a roll call.

THE CLERK:

An immediate roll call has been ordered in the Senate.

Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Question before the chamber is a motion to adopt Amendment Schedule "B", LCO No. 7697. Machine is open. Please record your vote. Senator Casey. Senator McLaughlin. Senator Hampton. Machine is closed. Clerk, please tally the vote. Result of the vote, 6 yea, 27 nay. The amendment is defeated.

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Senator Avallone.

SENATOR AVALLONE:

Mr. President, withdraw all my amendments.

THE CHAIR:

All other amendments have been withdrawn.

THE CLERK:

No further amendments.

THE CHAIR:

We're now on the bill. Senator Robertson. All other amendments have been withdrawn. We're now on the bill as amended by House Amendment Schedules "A" and "B".

SENATOR ROBERTSON:

Mr. President.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, the issue's been debated for enough amount of time. I would, therefore, urge adoption of the bill as amended by House "A" and "B".

THE CHAIR:

Any objection to this? Senator Robertson, want to place it on the consent calendar?

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SENATOR ROBERTSON:

Mr. President, if there's no objection, I would place this on the consent calendar.

THE CHAIR:

Hearing no objection, so ordered.

THE CLERK:

Page 3, calendar 909, Substitute for House Bill 6691, File 1050. An Act Concerning Criminal Records Of Child Day Care Providers.

Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Thank you, Mr. President. I urge acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

The Clerk has an amendment. Please call the amendment.

THE CLERK:

Senate Amendment Schedule "A", LCO No. 7968 introduced by Senator Johnston of the 9th.

THE CHAIR:

Senator Richard Johnston.

SENATOR JOHNSTON:

Thank you, Mr. President. I would urge adoption of the

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Will all Senators please return to the chamber.

THE CHAIR:

Please give your attention to the Senate Clerk who will announce all those items that have been referred to the consent calendar.

THE CLERK:

HB 5364, HB 7230, HB 7660, HB 7674, HB 7877
Page 2, calendar 891, 896, 899, 900, 907. On page 3,
HB 7350
calendar 910. On page 4, calendar SB 970, SB 664
HB 5070, HB 7435, SB 436
calendar 737, 385 and 436.

THE CHAIR:

Any changes or omissions?

THE CLERK:

In case I didn't on page 2, calendar 891.

THE CHAIR:

All set, Aldon?

THE CLERK:

Yes.

THE CHAIR:

Okay. The machine is open. Please record your vote.
Senator Avallone. Senator McLaughlin. Machine is closed.
Clerk, please tally the vote. Result of the vote, 33 yea,
zero nay, the consent calendar is adopted. Senator Schoolcraft.