

Tort Reform

PA 87-227

Senate Bill 1015

**AN ACT CONCERNING THE ENHANCEMENT OF THE RIGHTS OF VICTIMS
OF CIVIL WRONGS**

House	5647-5772	(58p)
Senate	1931-1977	(47p)
Judiciary	402-411, 471-477, 510-520, 540-542, 545- 548, 549, 553- 554, 573-575, 655-661, 682- 683, 713-716, 719-723	(126p)
Total		231p.

Includes subject index

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30 H.R. Proc, Pt. 15, 1987 Sess.,

30 S. Proc., Pt. 6, 1987 Sess.,

Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 1987 Sess.,

1987 TORT REFORM ACT (P.A. 87-227)

LEGISLATIVE HISTORY

I. SENATE SESSION - April 30, 1987

(Subst. for Senate Bill No. 1015) (Session beginning on page 1931)

1931-32 Introduced Senate Amendment A (LCO 7107) (Adopted on page 1972). Amendment is necessary because Tort Reform I (P.A. 86-338) is "technically flawed" and "absolutely unworkable".

Description of Amendment A by Section.

1932-35 Payment of Damages. Amendment provides that when damages exceed \$200,000 and the parties fail to agree on the method of payment, the court shall enter a judgment providing for payment of damages in a lump sum; Tort Reform I provision requiring mandatory periodic installment payments is unfair to the plaintiff and creates an unfair advantage for the defendant; discussion about advantages/disadvantages of lump sum payments versus periodic installment payments.

1935-38 Joint and Several Liability/Uncollectible Damages. Defines amended categories (economic and noneconomic damages); amendment provides that the plaintiff will receive 100% of economic damages from solvent defendant(s) if a liable defendant(s) is insolvent; this amendment does not restore joint and several liability.

1939 Dram Shop. Repeals rebuttable presumption.

1939 Municipal Liability. No changes.

1939 Collateral Sources. Amendment deletes settlements from

the definition of collateral sources because otherwise, there was "a double shot at the victim"; provides that collateral sources that are paid, not payable, are deductible.

- 1940 Property Damage. Is covered by Amendment.
- 1940 Non Profits. Amendment clarifies that a non-profit officer is immune only while performing his or her official duties.
- 1941 Structured Settlements.
- 1942 Payment of Damages. Economic damages mean past and future economic damages.
- 1943-47 Joint and Several Liability. How the Amendment's formula works when the plaintiff is 0% negligent and one liable defendant (60% negligent) is insolvent; collateral sources only deducted from economic damages (1945).
- 1947-62 Joint and Several Liability. How the Amendment's formula works when the plaintiff is 20% negligent and one liable defendant (50% negligent) is insolvent; how to deduct collateral sources (1947-48); plaintiff's negligence is deducted from award (1949) but plaintiff does not contribute to uncollectible damages (1951-52); the amendment does not change Tort Reform I (P.A. 86-338) provision that solvent liable defendants only pay their proportionate share of noneconomic damages if one defendant(s) is insolvent (1955-58).
- 1962-63 Collateral Sources/Health Care Provider. This Amendment incorporates Public Act 85-574 which allowed collateral sources to be deducted from a medical malpractice award.
- 1963-64 Effective Date. Amendment clarifies the fact that a cause of action arises on the date of the accident.
- 1964-65 Non-Profits. Immunity is limited to situations where an officer is exercising his or her policy or decision-making responsibilities.

- 1965-66 Effective Date is October 1, 1987.
- 1967 Payment of Damages. The final judgment will not be rendered until the sixty (60) day period has ended.
- 1968 Dram Shop. Amendment retains seller's liability to an injured person up to the amount of twenty thousand dollars (\$20,000) or to persons injured up to the aggregate of fifty thousand dollars (\$50,000).
- 1969 Effective Date - What Law Covers Actions. "Three standards . . . One, that occurred before October 1st, 1986. One, that occurred after October 1st, 1986. And then October 1st, 1987".
- 1970 Joint and Several Liability. How the Amendment's formula works when the plaintiff is 20% negligent and one liable defendant (50%) is insolvent with respect to noneconomic damages.
- 1972 ADOPTED Amendment A by a vote of 33 (yea) to 1 (nay).
- 1973-76 Statements in Support of Substitute for Senate Bill 1015, As Amended by Senate A. This is a bill for victims.
- 1977 ADOPTED Substitute for Senate Bill No. 1015 As Amended by Senate A by vote of 34 (yea) to 0 (nay).

II. HOUSE SESSION - May 7, 1987

(Subst. for Senate bill 1015) (As Amended by Senate A) (Session beginning on page 5647)

- 5648 Introduced Senate Amendment A (LCO 7107) (Tort Reform II) (Adopted on page 5687).

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- 5649-50 Description of the Amendment. Tort victims can collect 100% of their economic losses; non-profit liability; repeals dram shop rebuttable presumption.
- 5650-51 Statement in Support of Amendment. Tort victims can collect 100% of their economic losses; non-economic damages formula is not changed; dram shop, except for rebuttable presumption, remains the same.
- 5652-53 Effective Date. Clarifies the effective date by covering actions resulting from injury "occurring on or after" the effective date.
- 5653-54 Attorneys. Attorney's employment contract must comply with the Rules of Professional Conduct.
- 5654-55 Payment of Damages/Categories. New categories (economic and noneconomic damages) will be easier for juries to understand.
- 5655-57 Jury Findings. A jury must determine recoverable economic and noneconomic damages; Tort Reform I (P.A. 86-338) is "burdensome, cumbersome and the like".
- 5657-61 Payment of Damages/Attorney's Fees. Periodic installment payments are now optional when damages exceed \$200,000; limits attorneys fees by including fees in the damages award; Tort Reform I (P.A. 86-338) was interpreted as a "possible authorization for an award of attorney's fees similar to punitive damages".
- 5661-62 Payment of Damages/Attorney's Fees. Whether attorney fee arrangements are separate from periodic installment payment agreements.
- 5662-64 Economic Damages. Definition.
- 5664-69 Joint and Several Liability. How the Amendment's formula works when a liable defendant is insolvent; solvent defendant(s) is liable for 100% of economic damages; the plaintiff's percentage of negligence is subtracted from award.

- 5672-75 Joint and Several Liability/Negligent Plaintiff. A plaintiff may only recover economic and noneconomic damages if he or she is no more than 50% at fault for the accident in relation to the defendant(s); how the Amendment's formula works when a plaintiff is 80% negligent.
- 5675-78 Joint and Several Liability. How the Amendment's formula works when a liable defendant's percentage of negligence is less than the plaintiff's percentage of negligence.
- 5678-81 Effective Date. What law applies when the accident occurred prior to the effective date of the Act but the wrongful death occurred after the effective date. Answer - the date of the accident is controlling.
- 5682-84 Joint and Several Liability/Release and Agency. How the amendment works when an agent is released but the principal is not released. Answer - the principal is not released unless named in the release.
- 5684-85 Family Car Doctrine.
- 5686 Effective Date is October 1, 1987.
- 5687 ADOPTED Senate Amendment A (and is ruled technical) by a voice vote.
- 5688-97 Joint and Several Liability. Introduced House Amendment A (LCO 7162) which would provide that defendants are liable for damages in proportion to their respective percentages of negligence; simple amendment which is easy for juries, etc. to interpret and fair to defendants (Defeated on page 5720).
- 5698-701 Joint and Several Liability. Statement in Opposition to House Amendment A. Tort victims need to be protected;

¹ Text of House Amendment A on pages 5720-21.

House Amendment A is not a pure comparative negligence scheme because the amendment provides a plaintiff may only recover if he or she is no more than 50% at fault for the accident.

- 5702-05 Joint and Several Liability. Statement in Support of House Amendment A. A defendant(s) whose percentage of fault is minimal should not have to pay more than his or her share when another defendant(s) is insolvent.
- 5706-09 Joint and Several Liability. How House Amendment A's formula works when there are three liable defendants who are determined to be equally responsible for injuries (building collapse); whether it would be "fairer" when damages are uncollectible from one defendant(s) to have the solvent defendant(s) pay full damages or have the plaintiff lose the insolvent defendant's share of damages.
- 5709-10 Joint and Several Liability. Statement in Opposition to House Amendment A. The amendment would reduce the incentive for persons to protect others from possible injuries.
- 5711-14 Joint and Several Liability/Insurance Profits. Statement in Opposition to House Amendment A. Tort victims will be hurt if they cannot collect total damages when a defendant is insolvent; insurance industry 1986 profits.
- 5715-17 Joint and Several Liability/Insurance Industry. Statement in Support of House Amendment A. Joint and several liability (e.g. "deep pocket") increases the cost of insurance; defendants found responsible should only be liable for his or her proportionate share of damages.
- 5717-18 Joint and Several Liability. Statement in Opposition to House Amendment A. Whether the Legislature supports tort victims (right to collect full damages) or the insurance companies (a policy decision).
- 5718-19 Joint and Several Liability. Statement in Opposition to

- 5747-48 Joint and Several Liability. This legislation is "an attempt to restore victims so they can be made whole".
- 5748-49 Attorney Fee Limitations. Senate Amendment A will increase attorneys fees.
- 5750-52 Attorney Fee Limitations. Introduced House Amendment C (LCO 7236)
which would delete from "damages awarded and received" (for purposes of determining the contingency fee), any amount of economic damages collected pursuant to Section 3 from solvent defendants when a defendant(s) is insolvent; intent of amendment is to make the tort victim whole and decrease attorneys fees.
- 5753-55 Attorney Fee Limitations. Statement in Opposition to House Amendment C. S.B. 1015 as amended provides that contingency fees are based on net recovery (deduct collateral sources).
- 5756-57 Attorney Fee Limitations. Statement in Support of House Amendment C. Intent of the Amendment is to make the victim whole.
- 5758-59 Statement in Support of S.B. 1015 With Amendment. Supporters of Tort Reform I (P.A. 86-338) did not support victims rights and the intent of S.B. 1015 is to restore some of these rights.
- 5760-64 Attorney Fee Limitations. Whether uncollectible economic damages under Section 3 should be given 100% to the plaintiff or shared with the attorney.
- 5764-65 Attorney Fee Limitations. Statement in Opposition to House Amendment C.
- 5764-65 Attorney Fee Limitations. Statement in Opposition to House Amendment C. It is unfair to award attorney's fee on the gross award and S.B. 1015 with amendment remedies

³ Text of House Amendment C on page 5767.

House Amendment A. Defendants found liable should only be liable for his or her proportionate share of damages.

5720 DEFEATED House Amendment A by a voice vote.

5723 Introduced House Amendment B (LCO 7163)² which would provide that if one defendant is insolvent, the remaining defendants are liable for damages in proportion to their respective percentages of negligence; incorporates the liability formula of Tort Reform I (P.A. 86-338); plaintiffs are often negligent and a defendant is only minimally negligent; this amendment is a compromise which makes both the plaintiff and solvent defendants pay for damages.

5731 DEFEATED House Amendment B by vote of 54 (yea) to 80 (nay) with 17 absent or not voting.

Senate Bill 1015 as Amended by Senate A.

5732-38 Joint and Several Liability/"Insurance Crisis". Statement In Opposition to S.B. 1015 With Amendment. Tort Reform I (P.A. 86-338) was never given a chance to work; "deep pocket" theory is unfair and increases the cost of insurance.

5738-40 Joint and Several Liability/Insurance Rates. Statement In Support of S.B. 1015 With Amendment. "The issues are how do we make victims whole" and make insurance affordable and available; insurance rates increasing even after passage of Tort Reform I (P.A. 86-338).

5741-43 Insurance. Statement In Opposition to S.B. 1015 With Amendment. The Legislature never gave Tort Reform I (P.A. 86-338) a chance to work and therefore, insurance rates were never given a chance to stabilize.

5743-46 Dram Shop. S.B. 1015 deletes the rebuttable presumption; discussion about the burden of proof.

² Text of House Amendment B on pages 5731-32.

this inequity; S.B. 1015 does allow the attorney to collect more money when a plaintiff collects uncollectible damages from solvent defendants.

- 5767 DEFEATED House Amendment C by vote of 45 (yea) to 91 (nay) with 15 absent or not voting.
- 5768-71 "Insurance Crisis". The crisis never existed; the Civil Task Force requested facts about settlement costs as they relate to "deep pocket" but the insurance companies never provided this information; Tort Reform I (P.A. 86-338) never effected the availability or affordability of insurance.
- 5772 PASSED Senate Bill 1015 as amended by Senate A by vote of 100 (yea) to 37 (nay) with 14 absent or not voting.

WILLIAM F. GALLAGHER, ESQ.
KERRIE C. DUNNE, ESQ.
Gallagher & Gallagher

February 1988

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The House was reconvened at 1:45 o'clock p.m.,
Speaker Stolberg in the Chair.

SPEAKER STOLBERG:

Are there any announcements or points of personal
privilege? If not, will the Clerk please return to
the call of the Calandar?

CLERK:

Please turn to page 13, Calandar 579. Substitute
for Senate Bill 1015, AN ACT CONCERNING THE ENHANCEMENT
OF THE RIGHTS OF VICTIMS OF CIVIL WRONGS. (As amended
by Senate "A"). Favorable Report of the Committee on
the JUDICIARY.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint
Committee's Favorable Report and passage of the bill
in concurrence with the Senate.

SPEAKER STOLBERG:

Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. The Clerk has amendment LCO

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7107.

REP. BLUMENTHAL: (145th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Blumenthal.

REP. BLUMENTHAL: (145th)

May the record reflect that I will absent myself from the debate and from voting on this measure out of a concern for a possible appearance of conflict of interest.

Thank you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Blumenthal of the 145th is absenting himself from the Chamber under our rules.

Clerk has an amendment, LCO 7107, designated Senate Amendment Schedule "A". Will the Clerk please call?

CLERK:

LCO 7107, previously designated Senate "A"
offered by Senator Larson et al.

REP. TULISANO: (29th)

Mr. Speaker?

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SPEAKER STOLBERG:

Is there objection to summarization?

REP. TULISANO: (29th)

Permission to summarize?

SPEAKER STOLBERG:

Seeing none, please proceed.

REP. TULISANO: (29th)

Mr. Speaker, the amendment before us effectively is, will be the bill. It makes a number of changes in file copy and in the original legislation dealing with tort reform.

The most important parts of it is that it makes it clear that 1) that a victim in our society would be able to collect all of their out-of-pocket costs for people who committed torts against them. That is economic damages.

It also makes it clear that the language, passed last year concerning non-profit corporations is , stays in place and reflects the intent of the General Assembly, in that it deals with their actions or their opinions and not in any other kinds of activities they may be engaged in outside of the scope of their opinions or

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policy-making (Gee, it doesn't move very fast, does it?) obligations.

It also makes changes in the Dram Shop Act to remove that section which indicated that the first party, the last person serving was the, there was rebuttal presumption that they were the person who caused their intoxication of the individual causing injuries.

I therefore move for its adoption.

SPEAKER STOLBERG:

Will you remark on Senate "A"? If not,...

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, the bill before us today restores to our law some concern and care for victims of civil wrongs. As the title of the legislation makes clear, this enhances the rights of victims of civil wrongs. What it does is it says that for out-of-pocket costs, economic damages, those that are at fault, will be responsible to make the victimless individual, the faultless individual whole, for economic out-of-pocket losses.

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It makes no changes in our law concerning non-economic losses, that is: pain and suffering. The current formulas stay the same. And, it makes no changes with regard to what we believe the impact of the legislation dealing with Dram Shop. In fact, it may help plaintiffs and make it more responsible for those who, make those who are serving alcoholic beverages imprudently more responsible and subject to being answerable to those to whom they cause damages.

Mr. Speaker, this legislation, in my opinion, is very important. It is important because it puts some fairness back into our system. It is important because it reflects, as I think, the needs of our society. We have to provide for individuals who are injured in our society, and this bill does it.

I move for its passage.

SPEAKER STOLBERG:

Will you remark further on Senate Amendment "A"? If not, ...

REP. KRAWIECKI: (78th)

Mr. Speaker.

SPEAKER STOLBERG:

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Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. A rather lengthy amendment, and while I think I agree with Representative Tulisano about what it may do for victims, I think it does some wonderful things for attorneys, too.

But, just so I understand what is happening in the bill, I would like to ask a series of questions. Through you, Mr. Speaker, Representative Tulisano, as you recall, in discussions that we had in drafting what is now being deleted in line 21, we were advised by the LCO attorneys that the proper terminology for civil actions would be accruing on, and I know that we are changing the language to occurring on or after, and I wonder if, through you, Mr. Speaker, you could explain what the substantial difference is, if any, to that change in language.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. The language that is in the proposal before us this year attempts to

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do exactly what was thought to be done last year. I am not so sure that the LCO ... by saying, accruing was in, ... We are not sure whether the action began with what was meant by accruing or when the incident occurred.

So, this makes it clear that when you seek to recover the damages. A number of commentators thought that the language which was in the proposal last year was more confusing than this, and as an attempt to clarify the language and it is for clarification purposes only. We got that, I think, from the Law Revision Commission, as well as an advisor to the Study Commission.

REP. KRAWIECKI: (78th)

And through you, Mr. Speaker, the new language in lines 26 through 28, where we are making reference to the rules of professional conduct governing attorneys and adopted by judges of the Superior Court, for legislative intent, is there any specific formula or standards that should be noted for legislative intent? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker. From time to time, those rules may change, but current rules also require

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that all, all contingency fee type agreements be in writing, since this past October 1st, and that is by professional association rule-making, and I think that is an attempt to include that also.

REP. KRAWIECKI: (78th)

Thank you, Representative Tulisano. We then go on to create two new definitions: damages awarded and received and settlement amount received. I am under the understanding that section 2 deletes all reference to the four definitions that had been established in last year's act.

Through you, Mr. Speaker, and again, for legislative intent, can Representative Tulisano plug in where the four old definitions would now tie to the referenced two new definitions?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think, in response to, I think I understand the question correctly. The old definition included present out-of-pocket and potentially future economic losses, that is out of pocket, medical care, expenses, and it was

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divided into those two areas and then a non-economic damages up to the date of the trial plus anticipated non-economic damages after the date of judgement.

We just boiled that down to two, and that is economic however: whether future or present, and non-economic: future or present. And the purpose of that is 1) I think to make it easier and more understandable for juries, because they have to compute with this. Because we got some comments, commentaries that were made on the bill as it was adopted last year that it would be very difficult to implement the same through, at a jury process.

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Representative Tulisano. In lines 75 and following, there are the new standards and separate findings of fact are set out in any civil action and it is my understanding that there was commentary and discussion about the fact that the statute that was enacted last year was burdensome, cumbersome, and the like, with regard to those findings

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of fact in that juries and triers of fact may have to find several, would have to establish several different categories.

I am wondering, through you, Mr. Speaker, what the new procedure would be as far as those findings of fact are concerned, since it seems to me that there are a variety of findings that still remain and, through you, Mr. Speaker, can you tell this Chamber how that has been simplified, please?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As I had attempted to answer in the prior response, that I do not deny that it is still going to be difficult, this whole system is difficult for juries and for courts to implement.

But, we do have this system and we are keeping it. We are boiling it down to two areas: recoverable economic damages and recoverable non-economic damages, meaning that which the jury determines, and that is in section 3, ... Let's find section 3.

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...of economic damage means compensation determined by the chart or ^(reverts) fact, the pecuniary losses, but not limited to the cost of reasonable necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity, excluding any potential, any non-economic damages.

That means: present or future. And non-economic damages is for non-pecuniary losses including but not limited to physical pain and suffering, mental or emotional suffering. And so, that they have just got to, when reading section three with section two, they have to make the two findings as to what they consider out of pocket losses are or will be, versus those that are intangible losses.

SPEAKER STOLBERG:

Representative Krawiecki, you have the floor, sir.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. Another question, through you, Mr. Speaker. It, the change in lines 94 and following seems to indicate a substantial change and that being that for all economic damages, we are now ... I will use the word reverting... reverting

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to the system prior to last year's statute where those kinds of awards will be in a lump sum fashion, and then there will be the second category, which would be the non-economic damages. My understanding of this new amendment is that those items are potentially structured however, in the event the parties cannot reach an agreement between them, in also be in a lump sum.

Is that a correct assumption of that additional section?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Paraphrased, but I understand it to be true, and if I understand the question correctly, that one, this section does, as I indicated, would require that there be full payment for economic damages, not this section, but the section with the bill... up to an aggregate of \$200,000.

SPEAKER STOLBERG:

Representative Tulisano, I am not sure that all members of the Chamber can hear you.

REP. TULISANO: (29th)

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Me, they can't hear, Mr. Speaker? That is unusual.

SPEAKER STOLBERG:

Okay.

REP. TULISANO: (29th)

The economic damages, I think Representative Krawiecki is talking about that portion of the bill called structures. Okay.

Last year's bill required a structuring of settle...of payments over \$200,000, with some opportunity for folks to go back in and determine first whether or not they could reach an agreement.

This bill allows there to be voluntary structures, but does not require it. Further, in that lump sum payment, last year's bill, in my opinion, also required or authorized the payment of an additional sum for attorneys' fees over and above the damages. This bill, if you see the brackets, takes that language out, thereby, unlike what Representative Krawiecki said, in fact, reduces potential income to lawyers.

SPEAKER STOLBERG:

Representative Krawiecki, you have the floor, sir.

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REP. KRAWIECKI: (78th)

Through you, Mr. Speaker. On that last point that Representative Tulisano made, as far as I guess payments to an attorney, is it not true that the substantive change with the brackets that you recited was only the timing of when the payments are made?

Through you, Mr. Speaker?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I think that, let me just say, through you, Mr. Speaker, that the reason why we want those brackets in there is because a number of commentaries were made and a lot of discussion was made to which, which would indicate that Representative Krawiecki's understanding of last year's bill was incorrect.

That in fact, this may have been interpreted by some, and was interpreted to be a possible authorization for an award of attorneys' fees similar to punitive damages, which this State has never allowed, but looks like it was opening it up. This was a closing down.

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of any possibility of that chance.

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. Representative Tulisano, through you, Mr. Speaker, the new language in lines 165 and following reads as follows: " in accordance with an order to be entered by the court simultaneously with but separate and apart from the amended judgement, unless prior to the entry of that order, the claimant and such attorney have otherwise agreed and so inform the court.

Now, I am taking that totally out of context, but the section that it falls into, can I take that to mean that if I have a client who comes in and he and I agree that no matter a court may find, no matter what the trier of facts may find, if I agree to take his case, and I want one third and I want it at the time of settlement, that we can in fact reach that agreement and short-circuit any structured settlement portions of this bill.

Through you, Mr. Speaker?

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SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

I apologize to Representative Krawiecki. I really don't understand the question. There are, since there are no longer any required structuring, I don't know if you can call that as short-circuiting, since it is not required. So, the parties may agree to what they please, with regard to how that money is put together.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. Representative Tulisano, an additional question. In lines, well, in section 3, sub (a) has been apparently rewritten to now redefine economic damages in a definition non-economic damages in a definition, and how it applies as a percentage allocation against various defendants.

For legislative intent, can you advise this Chamber how that new provision interacts with the old statute? Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

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I apologize again. I really don't understand the question. Would you rephrase it, please?

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker. Representative Tulisano, I am trying to find out how the new language in section 3 (a), I guess the whole section three probably has to be taken as a whole, how that interacts and differs from the old statute that was adopted a year ago.

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think earlier, we had discussed this issue in that we just left two types of damages, economic damages and non-economic damages. Before, we had future and present economic damages and, I think that is one issue that is involved.

Then, we redefined recoverable economic damages, that amount that they actually have to get from a potential defendant, to include findings of set-offs, credits, comparative negligence, added to remittitur and the other reductions that may be required by the

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bills. So that, thereby, effectively possibly reducing recoveries that may be had, by making it clear that all of the possible, the collateral sources, the, any other credit that may be gotten, are reduced to the first instance, and that is clearly defined here, where it may have been left up in the air before. Although, I am sure that was the intent in last year's bill.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Representative Tulisano, one last question. In lines, well, it is sub (g), on page 9, it is restating the manner in which uncollectible moneys are to be collected, and I noticed that it is an interesting percentage structure.

I wonder if you could provide an example to the Chamber on how those new recoveries will come into place?

SPEAKER STOLBERG:

Representative Tulisano.

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REP. TULISANO: (29th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Please proceed, sir.

REP. TULISANO: (29th)

An example I might provide is that you have a defendant who is 20% negligent and a defendant who is 80% negligent, but insolvent. The economic damages would be, if they were \$20,000; non-economic damages being \$80,000.

Through you, Mr. Speaker, is this the kind of example Mr. Krawiecki is looking for, to go forward with?

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker. I think that is the type of example. Now, I am trying to...

REP. TULISANO: (29th)

All right, I will go forward.

REP. KRAWIECKI: (78th)

Thank you.

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REP. TULISANO: (29th)

Through you, Mr. Speaker. If there was any percentage that the individual was negligent themselves, the plaintiff had any portion, then it would be pro rata for both classes.

First, the collateral sources are subtracted from the economic damages. So, the collateral sources in our example being \$10,000, that is their first party insurance coverage, as an example, or in other cases, possible uninsured motorist coverage. Of the \$20,000 economic damages, \$10,000 would be subtracted, leaving a \$10,000 award for net economic damages.

The first party would pay 20% of the \$10,000, being \$2,000. The , also 20% of the \$80,000, because he is insolvent, which would be \$16,000. The defendant would not pay any, the second defendant who was 80% insolvent would end up paying nothing, and within one year, if that was so adjudged, the defendant would pay, the first defendant, who was only 20% negligent, could possibly pay the whole remaining of the orphan's share of the economic damages.

Under current law, he would be paying about

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\$32,400. Under the proposal before us, he would be paying about \$38,000. He also would be paying a percentage of the non-economic damages; the same as was provided for in last year. That is how those figures were arrived at.

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Representative Tulisano. Representative Tulisano, is it safe for me to also assume in that same section that what happens is: if you have got that 20% solvent defendant that for economic damages, he will bear 100%, if the 80% responsible defendant is insolvent?

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think that is an unfair statement, because the law that was passed last year says that 1) that he will not be paying 100% of the total economic losses in that situation. First,

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the economic losses take off that portion which is first party coverage of the plaintiffs. Also, you then would deduct some portion of the damages which may be attributable to their own negligence. And, of the remainder, they might be paying 100%, but that is not necessarily 100% of all of the damages, the economic damages.

That is the economic damages after a number of deductions, some of which are by the first party coverage of the plaintiff.

DEPUTY SPEAKER CIBES:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Representative Tulisano, as compared to the statute the way it was adopted last year, what would be the relative impact? Through you, Mr. Speaker, that.

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, the relative impact, as an example on the example I just, ... Obviously, first of all, it depends on how much first party coverage there was. That is one issue; it is an intangible. The other

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intangible is how much at fault the plaintiff may have been. We don't know that issue.

As in the example I gave in our original suggestion, I think, when we talked about economic damages of \$20,000? The total additional cost to the defendant who was 20% negligent would be approximately \$6,000.

He would have paid \$32,400 before; \$38,000 under the new proposal.

DEPUTY SPEAKER CIBES:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Representative Tulisano.

Members of the House, I think Representative Tulisano is correct. The amendment designated as Senate "A" is an improvement over file copy that is in front of you. Those of you that have an interest in the debate between last year's tort reform bill and what is before you, regardless of your point of view, certainly would like to adopt this amendment, because it certainly cleans up a file copy that I think is messy at least and not drafted as well as everyone would like.

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So, at least for purposes of getting a better product in front of us, I think we should adopt this amendment.

DEPUTY SPEAKER CIBES:

Will you remark further on House "A"? on Senate "A"? Will you remark further on Senate "A"? If not, ... Representative Glen Arthur.

REP. ARTHUR: (42nd)

Mr. Speaker, I would like the Chairman of the Judiciary to go through the economic and non-economic again, and a little bit slower. I didn't know when you started subtracting \$10,000 from \$20,000 and taking 20% of that and 80% of that, how you arrived at the figures that you got, and the \$38,000. Would you please?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think we are talking about the example and not the definition of economic damages, is that correct?

The example that I have computed out is based on economic damages of \$20,000. We are seeing a

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scenario where in fact, the plaintiff has no negligence, he is absolutely fault-free plaintiff, okay?

One defendant has been determined to be 20% negligent, the other defendant to be 80% negligent. Also, the plaintiff has had some first party coverage, Blue Cross, CMS, or some other health party, which has provided him with \$10,000 in payments.

So, if there is \$20,000 in economic damages, the non-economic damages are \$80,000. I mean, \$20,000. And, you would subtract that ten of his own money from that twenty, leaving economic damages that have to be compensated for to be \$10,000.

Of that \$10,000, the defendant who is 20% liable would pay 20% of it, or \$2,000. He also would have to pay, of the non-economic damages in that example, would also have to pay a percentage of the non-economic damages as a result of last year's bill, and that amounted to 20% of what we had computed. Our example was \$80,000, non-economic. So, he then would pay \$16,000 for non-economic under last year's bill; \$2,000 for the economic damages. That equals \$18,000 total.

The second defendant who is 80% negligent, was

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determined to be 80% negligent, doesn't pay anything, because they are insolvent. First of all, you would have to wait a year to determine if that insolvency is real after the judgement was rendered. At that point in time, the plaintiff can make a motion to court, and then, again, under last year's bill, would pay 20% of the \$64,000 that was not recovered under non-economic side, which would equal \$12,800.

And, he would pay the remaining economic losses, which is \$8,000: total. So, the total under this proposal before us that the defendant who is 20% would pay: \$38,000, the way I have computed it out: 16 + 2 + 18 + 12.8 . Excuse me, let me correct that. 2,000, 16,000 , 12,800, plus 8,000 for a total of \$38,000. Under current law, he would be responsible for something less than \$8,000 of the economic loss and the total recovery would be \$32,400, and I will be happy to copy this memo out and hand it out, because it is a little convoluted when you watch all the figures come down.

DEPUTY SPEAKER CIBES:

Representative Arthur, you have the floor, sir.

REP. ARTHUR: (42nd)

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Yes, if I summarize what you said, the person who is 20% responsible has to pay his 20% of both the economic and non-economic and for the 80% that is not paid because of insolvency, in the case of the economic, he, the 20% person, must pay all of it, and then 20% of the non-economic loss, instead of all of it.

Is that correct?

REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

I believe that is a correct summary of what occurs.

REP. ARTHUR: (42nd)

Thank you.

DEPUTY SPEAKER CIBES:

Will you remark further on Senate "A"? Will you remark further? Representative John Savage.

REP. SAVAGE: (50th)

Thank you, Mr. Speaker. Through you, a question for the Head of the Judiciary Committee.

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DEPUTY SPEAKER CIBES:

Please frame your question, sir.

REP. SAVAGE: (50th)

Yes, let me take a different example, and I think one that might occur and might really wreck a hardship on a homeowner.

Supposing I had a constituent who had a youngster that left his kiddie car on the side of his lawn, not on the sidewalk, but on the side of his lawn, and a druck came staggering down the sidewalk, sometimes on and sometimes off, fell over the kiddie car, hit his head and was very seriously injured.

Now, in the view of the court, the man that was intoxicated might have a responsibility of, let's say, 80%, depending on what the judge said. The homeowner might have a responsibility of a fraction thereof, 20%, the figures you used, and what would then happen under both of these proposals, last year's and this year's?

REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

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Representative Tulisano.

REP. TULISANO: (29th)

Between last year's and this year's, as I understand it, exactly the same thing would happen. One would have to be at least 51% negligent to be, to have some liability. In other words, the plaintiff has to be less than 51% negligent for them to bring an action, and in your situation, you are indicating that he is 80%, so there would be no cause of action in either situation.

DEPUTY SPEAKER CIBES:

Representative Savage, you have the floor, sir.

REP. SAVAGE: (50th)

Yes, thank you very much. I think this does help a great deal in clearing up some concepts of the bill.

DEPUTY SPEAKER CIBES:

Will you remark further on Senate "A"?

Representative Robert Farr.

REP. FARR: (19th)

Mr. Speaker, a couple of questions, follow-up questions on that. Representative Tulisano, if, however,

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you had a situation where three parties were involved, the homeowner was 10% negligent, the plaintiff were 40% negligent and the third party were 50% negligent, in the, so that you would, as I understand it... To give you an example of this, if you had the telephone situation, where the telephone company installs a telephone, and they install it next to a stairway.

The owner of the premises installs a railing, and the railing is either loose or inadequate, and a patron who is intoxicated is using the telephone, falls over the railing and is injured. It is determined that the telephone company is 10% negligent, the patron is 40% negligent, and the bar owner is 50% negligent.

Am I correct in reading this, that under the old law, the telephone company would not have any exposure because they would be less, their negligence was less than the plaintiff? And under this, they would?

Through you, Mr. Speaker? To Representative Tulisano?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

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Through you, Mr. Speaker. If I understand it correctly, I don't think so. I mean, 10%... Under the old law, all I can tell you is that if one were 10% negligent, if you, if the findings and in the situation described, I would find it a stretch of my imagination to find negligence on some of the parts, the parties to who negligence is being attributed. But, be that as it may, under the old law, you pay 10%, your own economic damages. You pay 10% of the non-economic damages, and you pay 10% of the offered ^(orphan) share of both economic and non-economic if there was liability.

So, I don't think there was no recovery before, if I understand the statements made, and I do admit I didn't follow it that well. I was trying to write it down while it was being given.

REP. FARR: (19th)

Through you, Mr. Speaker. My question was that I understood under the old law that if the negligence by the plaintiff were greater than the negligence of the party they are seeking to recover against, that under the old law, if they are seeking to recover because there is an insolvent defendant, then they

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would not recover. Is that correct?

REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

My understanding of the old law was somewhat different. I thought it was to the total negligence, and I don't think that has been changed in this proposal before us. But, I think that we understand that law differently. It is in the totality, not to any one individual.

DEPUTY SPEAKER CIBES:

Representative Farr.

REP. FARR: (19th)

I can't locate that section right now, so let me just go on for one second and ask you about two other questions that I have concerning this.

The first one relates to the question of recovery in paragraph one, section 1, where we now talk about wrongful death or damages to property occurring on or after the effective date of this act. I understood

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that you had explained that that clarified the old language which talked about civil actions accruing on or, seeking to recover damages resulting from claims, I think it used the word accruing. Now, we use damages occurring on or after the effective date of this act.

My question to you is: if you had an individual who was involved in an automobile accident on September 29th, was taken to the hospital and died on October 29th, under this language, the wrongful death occurred after October 1; the accident occurred prior to October 1. What does occurring refer to?

Through you, Mr. Speaker, to Representative Tulisano?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Again, and I beg the indulgence of Representative Farr. I am trying to follow and it is a difficult kind of a debate, but... That takes care of, that adds occurring to, damage to property occurring on or after the effective date of this act.

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Last year, the reform measure did not apply to property damage. The proposal before us expands aspects of the law from last year to property damage also. So, to read on line 24½, we are talking about damage to property occurring. I think that is the occurring he is referring to... on or after the effective date of this act, which would be...

Correct me if I am wrong. I may be following you in the wrong place.

DEPUTY SPEAKER CIBES:

Representative Farr.

REP. FARR: (19th)

No, my question relates, Through you, Mr. Speaker, the question relates to, the new language now reads: "In any claim or civil action, to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after the effective date of this act."

The question that I am not clear on is if a wrongful death occurs as a result of an accident that happened prior to the effective date, but the death occurred after the effective date, what is the

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controlling language?

Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Wrongful, as I understand from last year's debate and now I believe this year's debate, the wrongful death arises out of the incident that occurred, whatever date that injury occurred, the accident.

REP. FARR: (19th)

So, it is your, for legislative intent, it is your understanding then, that even if the death occurred after October 1, it would be controlled by whatever law was in effect at the time of the accident.

REP. TULISANO: (29th)

At the date the incident occurred, correct.

REP. FARR: (19th)

Another question to you is on line...

DEPUTY SPEAKER CIBES:

Please proceed, sir.

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REP. FARR: (19th)

Through you, Mr. Speaker, lines 358, when it talks about a release. It is, the new language says a release does not discharge any other person liable upon the same claim, unless so provided, unless it so provides, rather.

My question is: since that is all new language, if you have a situation where you have an agent and you give a release that names the agent, does this language now say that the release doesn't in fact release the party for which the agent was acting? Through you, Mr. Speaker, to Representative Tulisano?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, would you please, ... Through you, Mr. Speaker, I am trying to follow that question. What kind of an agent, agent for the defendant or agent for the plaintiff? What are we talking about here?

DEPUTY SPEAKER CIBES:

Representative Farr, could you rephrase your

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question?

REP. FARR: (19th)

Yes, through you, if you have an agency relationship and you have, say a truck driver who works for a company, and you bring the action, and you give a release to the truck driver, who is an agent for the company that he is driving for, does that then, does this language say that we do not release, we release the truck driver but the company is not released?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think the language is intended to make it clear that if there are, if there is someone who has been severally involved, the truck driver is settling individually cannot bind the other individuals. But, if they are taken as a total, they could, and that would be providing that it were being done on both, on behalf of both parties.

I think that is what we are talking about, that that is what the question is involving.

REP. FARR: (19th)

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Well, as I understand it...

DEPUTY SPEAKER CIBES:

Representative Farr.

REP. FARR: (19th)

I understand your response, Representative Tulisano. Then, if you had a situation where you had a truck driver, an insurance company representing that truck driver and the insurance company settled it and they got a release that only named the truck driver instead of the truck driver and the company, that the company would not be discharged. Is that correct?

REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

I think that is correct. They are not discharged then, unless they were named.

REP. FARR: (19th)

And if you had a situation where you had a family car doctrine and you had an individual who was driving the automobile and you got a release to

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that individual, you gave a release to the child, as I understand it, am I correct in saying that the parent then would not be released, because you had settled with the child, but not with the parent?

Is that correct? Through you, Mr. Speaker, to Representative Tulisano?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think, under the family car doctrine, that in fact the child is operating is then the agent of the, so you would have to get the release from the parent, because they are not operating on their own at that point in time. Being somewhat different from the employer/employee relationship, who may have two different operations.

Also, I don't think, the three, if you look at the bill on line 355, the family car doctrine has been stated under last year's law: "shall not be applied to compute contributory or comparative negligence." So, that runs into this whole system, in which the family car doctrine is taken out in terms of responsibility.

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REP. FARR: (19th)

One final...

DEPUTY SPEAKER CIBES:

Representative Farr.

REP. FARR: (19th)

One final question, Representative Tulisano.

As I understand what this, this bill or amendment would do, the effective date of this amendment is October 1, '87, since it does not have an effective date. Is that correct?

REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

It has no effective date; that is correct.

REP. FARR: (19th)

So that, what this bill would do is to keep all of the present laws in effect until October 1, '87; nothing would be changed. And, no actions based upon present law would be in any way changed. Is that correct?

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REP. TULISANO: (29th)

Through you, Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

That is correct.

DEPUTY SPEAKER CIBES:

Representative Farr.

REP. FARR: (19th)

Thank you.

DEPUTY SPEAKER CIBES:

Will you remark further on Senate "A"? Will you remark further on Senate "A"? If not, all those in favor of adoption, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CIBES:

Those opposed, indicate by saying no.

REPRESENTATIVES:

No.

DEPUTY SPEAKER CIBES:

The ayes have it. The amendment is adopted
and is ruled technical.

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Will you remark further on the bill? Will
you remark further on the bill? If not...

REP. JAEKLE: (122nd)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Jaekle.

REP. JAEKLE: (122nd)

Mr. Speaker, thank you. I have got to confess
that I was getting a little lost on some of the
questions and the answers in the debate. I don't know
how everybody else was doing following what is going
on, what the file does, what the amendment does, what
last year's law was, what the pre-last year's law was...

I am a lawyer, and I was here last year for
a lot of, I guess for all of that debate. I think
the easiest way I would like to frame one of the issues
on this debate is by calling an amendment. The Clerk
has the amendment. It is LCO number 7162. Would
the Clerk please call the amendment, and may I be
permitted to summarize in lieu of Clerk's reading,
please?

DEPUTY SPEAKER CIBES:

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Clerk is in position of LCO number 7162, designated House Amendment Schedule "A". Will the Clerk please call?

CLERK:

LCO 7162, designated House "A" offered by Representative Jaekle.

DEPUTY SPEAKER CIBES:

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

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Is there objection to summarization of the amendment, LCO number 7162? If not, Representative Jaekle, would you please proceed to summarization?

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. This amendment goes to, I am not sure what we call it anymore. But, it is the joint and several liability issue. The amendment before us would suggest that in the case where a plaintiff is injured and there are multiple

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defendants that basically each defendant will be liable for the same amount of damages that he was responsible for.

An example, and I hate to keep throwing out percentages, because that is where I got lost, but... If a defendant was 50% responsible for somebody's injuries, they are liable for 50% of the damages. It is that simple, straight up, straight down; that is how it works. You pay to the plaintiff in exactly the same proportion that you were responsible for causing the damages.

I move adoption of the amendment, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Questions on adoption. Will you remark further, sir?

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Really, trying to offer this amendment to frame the issue before us. We have the file copy; we just adopted a 17 page amendment. It makes a lot of technical changes to the law last year, some of them pretty good, but also makes some policy decisions as well, and some changes.

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of some of the policy decisions that were made last year. And one of them is in the area of joint and several liability.

Really, what I thought this body should do was to decide exactly how you wanted to compromise, split the difference. What do you want the system to be?

Now, before there was tort reform, it used to be that if you were the plaintiff, and you sued a whole bunch of people, anybody that you could show was at all responsible for your injuries, 10%, 50%, 1%, as long as you got them somewhat responsible for your injuries, you could go after them for the total amount of your damages, a million dollars, even though they were 1% responsible. That used to be the law. That was called joint and several liability.

Each defendant was jointly responsible to pay your damages, but also severally, individually responsible. And maybe you have heard the term deep-pocket. You want to sue somebody that has a lot of bucks. That used to be, you would search for the defendant. As long as they had some money, that was what you wanted in that case.

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Because if you could show that they were even minimally responsible for causing your injuries, as long as you proved it, you knew that they had the money to pay every penny you were out, lost wages, medical bills, the back still hurts for the rest of your life: pain and suffering. You got them. That was the deep pocket.

Well, last year, we changed the law. It may be a little complicated. What I am offering now is simple. Somebody is responsible for 10% of the injuries to you, or me, to the plaintiff in the action, the person bringing the law suit. They are 10% responsible for your injury, for your suffering, for your damages. They caused 10% of your injuries? They pay 10% of the costs, if it is the million dollar judgement, and they were 10% responsible for putting you there, they pay 10% of that million dollars.

Real simple. Used to be, you got them 10%, they pay the full million. Now, what I am offering is 10%, they pay 10%. Real simple. Now, in fairness, I should explain what we did last year, and this is where it gets a little more complicated.

The law in Connecticut now is: if you are 10%

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responsible, you pay 10%. And if the plaintiff could not collect that 90% from somebody else, they are insolvent, they skipped to Brazil, or wherever you skip to these days... They are called the orphan shares. Couldn't recover from the other parties who were responsible.

What we did last year was we didn't say, no, you just pay 10%. We didn't do that. We didn't do the real simple approach that I am offering now. We would say: you pay 10% and when you stop chasing the other defendants and can't get anything, anybody that had money has to pay the percent on the percent. A little complicated.

What we have now adopted,... oh, by the way, the file copy kind of went back to, you got the 10%, you pay the 100%, so the amendment was better than the file copy, but the amendment says: for economic damages. Lost wages, medical bills, pants were ripped: economic damages, you know, provable economic damages, that is what they are. We are back to the old law.

Even if the plaintiff was also responsible for their own damages, I guess I think of the three

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car collision. They happen, and the plaintiffs, the poor person who ended up being injured. So, they are the one who sues, or they don't have the insurance that they can't recover against, so they have got to sue the other two people. And let's just say everybody is one third; I like easy percentages. Everybody is one third responsible: the plaintiff, maybe their brakes were at fault. They didn't, you know, they couldn't stop going into that intersection. So, they are considered a third responsible for their own damages.

One of the other cars went through the red light. They were one third responsible. The other guy was a drunken driver: whatever hypothetical, but I am just saying 1/3, 1/3. 1/3, plaintiff and two defendants.

Old law: didn't matter whether both defendants were solvent. Find one defendant, you were home free. What I am offering now is, if a defendant is one third responsible, he pays one third of the dollar amounts of the injuries. Last year, we'd say, pay a third, and if the other defendant was that orphan, he would

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pay a third of the third.

The amendment that we just passed for economic damages, we are back to that one defendant, even though only 1/3 responsible, let's say. He might still pay all the defendants' collective or joint, well, joint and several, damages for the economic portion. And we, in fairness, we do keep the tort reform version for the non-economic damages. Getting more complicated? I have been trying to make it simple, because it is a simple amendment.

It is a little hard to explain where we were, what we did, what the file was, what the amendment that passed did. I am just saying that we have to decide, and we have that power today, to decide what the policy is going to be in this state for apportioning damages between responsible parties.

I am offering an amendment that is real simple. Whatever percent you were responsible for causing an injury, that is the percent of the total damages you have to pay. You caused half of the problem? You pay half of the bills. Simple. Much simpler than the amendment before us which would have you paying half of the economic and half of the non-economic in

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that case, but then if somebody is insolvent, you would pay the other half of the economic, but only half of the other half of the non-economic.

That is a little complicated. I am offering real simple to this Chamber right now . Easy for juries, easy for courts, easy for lawyers, and probably more importantly, really fair to the parties in this State. It is not a question, are you favoring plaintiffs? Favoring defendants? We can make some shades of policy decisions on that, too, but you could be a defendant. It could have been your car whose brakes failed, and you are the defendant.

Maybe you don't even have insurance, so we are not necessarily taking about insurance companies now either. Real simple and I believe fair. You pay your fair share of damages, and that share is determined by how responsible you were for even causing any damages to anybody. It is a straight percentage.

It's that simple, and I really thought the Chamber should know, as we are debating this policy, because I think that is the guts of the bill as amended before us. What is going to be the policy of this

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State for apportioning damages between responsible parties? And i offer very straight up, whatever you did, you pay for. No more, no less.

I urge adoption of the amendment.

DEPUTY SPEAKER CIBES:

Will you remark further on House "A"?

REP. TULISANO: (29th)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, a question to the proponent of the amendment.

DEPUTY SPEAKER CIBES:

Please frame your question, sir.

REP. TULISANO: (29th)

Do I understand, through you, Mr. Speaker, Representative Jaekle, that you are now proposing pure comparative negligence?

DEPUTY SPEAKER CIBES:

Representative Jaekle, would you care to respond?

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REP. JAEKLE: (122nd)

Mr. Speaker, I suppose the simple answer is yes, as it effects apportioning damages between defendants. The modified comparative where you rise over the 50% is not being changed by this at all, so that is... That is why I have only caveat, but I believe for the purpose of your question, I am saying yes.

REP. TULISANO: (29th)

Through you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Representative Tulisano.

REP. TULISANO: (29th)

I rise to oppose the amendment. I guess pure comparative negligence would sound interesting. It is something we should consider. But, having proposed that last year and having had the Minority Leader, then the Majority Leader, reject it last year as having no consensus for pure comparative negligence, we don't have that before us this year.

The proposal before us today doesn't quite do, and the last caveat clears it up, what has been indicated. Each pays their own share. It is not quite that. Each pays their own share if the plaintiff or

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if the complaining party has been less than 51% negligent. Then, we start getting into own shares. What Representative Jaekle was talking about, and why I was a bit confused, I mean, he talked in terms of pure comparative negligence. That is: everybody pays their own share.

That is not what is being proposed here today. Only a portion of the part for which the, only that portion of a defendant's share is what he is proposing, if the plaintiff is less than 51% negligible. So, we are not talking about all those other cases when people have called, have caused you injury.

So, it seems to me what we are trying to do here is to gut the proposal Senate "A" has been amended to effectively go back to last year's law, now that we have got the issue of comparative negligence cleared up and straightened out.

Our concern here this year is to make sure we have no people, no individuals, no citizens of this State left victimless, left as victims because of legislation that this General Assembly passed. You know, we hear terms of 10%, 20%, well that is a difficult

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thing for any jury to do as well as any of us here who are trying to compute out what we are really talking about.

But, the reality is that there are situations, when we are talking about economic damages... Let's go, we have heard all the extremes here today. Some of it is very difficult to determine. But, there are cases where, but for that 10% of negligence, there would be no injury whatsoever, despite the 90% of the negligence.

Let me give you an example that was given to me a little while ago. There is a three car accident; the 90% negligent was in the third car; 10% negligent was in the car, the car directly in front of them, and of course, the fault-free individual was parked underneath the Stop sign. How fair is it? All I was was a little too close. I didn't do anything for me to pay some damages.

Well, we are not making you pay all the damages to begin with, only the economic damages, if it comes to that. But, what is most important about this is: but for you being there, there would be no damages.

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So, sometimes we get all hung up in the 10%, 20%, 90%. Let's look at the victim, and how it occurred.

All of them are causative of the injuries to the fault-free individual. And I think this amendment really is intended to gut the intent of this legislation before us today. It is not, the bill before us, as amended, is not a big leap backwards. It is, in fact, probably a leap forward in terms of how we make the economics of enforcing our laws work. It probably does a great deal to improve that, and we have addressed the needs of victims in our society.

We have addressed the needs of victims in lots of areas, and we are expanding those areas in which we address those needs. And it seems wrong that last year we did something in this very narrow area which we can do something about this year.

I would hope, Mr. Speaker, that we reject this amendment.

DEPUTY SPEAKER CIBES:

Will you remark further on House "A"? Will you remark further on House "A"?

REP. JAEKLE: (122nd)

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Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Jaekle.

REP. JAEKLE: (122nd)

The Chairman of the Judiciary Committee is very good. Does everybody understand comparative negligence and contributory negligence in here? Tell you what. I don't even have to explain it, because it is in Amendment "A" that we passed. It is on line 230 through 238. It is already part of what we have in front of us.

And do you know what? What is already passed, what is already Amendment "A" is: oops, if the plaintiff is more than 50% responsible for his own injuries, he doesn't recover. I mean, that is not my amendment. That is what we have already passed. I just don't want anybody confused by that, because that is the law in Connecticut. That is the law in Amendment "A". That is the law under the amendment that I am proposing.

We are only talking about when the plaintiff is less than 50% responsible, under the bill. Old law, new law, amendment, mine: that is where we are.

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I don't really know what that has to do with the discussion on the amendment. That is why I said that the Chairman is pretty good.

Step backwards, step forwards, last year's: no, I will confess. This isn't last year's version. I would like to keep it last year's version. I thought we made a legitimate compromise between joint and several liability and a kind of individual only for your own percentage. I think we made a nice split.

The bill before us, for economic damages, does go back to old law. You find the defendant that is even 1% responsible. Yup, that might mean that but for his 1%, all of those injuries to the plaintiff wouldn't have happened. But, you know, it used to be that if the plaintiff was 1% liable, they couldn't get anything only. The plaintiff at only 1% liable, that goes back to the early '70's. If the plaintiff was 1% liable, they didn't get anything.

Now, we compare it. That is what I am exactly talking about doing with this amendment. If you called it pure comparative negligence, that is pretty much true. Everybody pays exactly the percentage

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that they caused injuries to. It is about as simple as that. Not confusing. Is this repealing comparative? No. Is it putting it back to contributory negligence? No, whatever those terms really are.

It keeps the current law in there. But, it effects how you treat the defendants really. Is any defendant supposed to be responsible for every other defendant? That is really the question. That is the policy question before us.

I don't happen to think that is fair. If I only cause 10% of somebody's injuries, should I have to pay 100% of their damages? Their economic damages? Medical bills, we have heard a lot of debates. Those aren't low. Lost wages, somebody could be injured and be out of a job for a long time. That could be substantial. Property damage, who knows what can happen in certain property damages cases? That could be substantial.

If I am only minimally at fault, should I be exposed to paying all of the damages? I think not. And that is what this amendment says. Maybe it cuts the apportionment a little harsh, but you know what?

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It cuts it exactly the way somebody's actions cause somebody's injuries. Harsh? I say fair. I say equitable. Cause half of somebody's damages, you should only have to pay, ... cause half of their injuries, you should only half to pay half of their damages.

It is that simple. I think we should support it. At least, we should all be aware, and the reason I offered the amendment, aware of the policy decision we are making, and it is a very important one. I am putting this before the body, because we can do something real simple, and it won't take lawyers writing treatises and commentaries to understand it, and be rewritten and be confusing to juries. It is straight up, straight forward, fair. You pay in the exact percent.

Thank you.

REP. LUBY: (82nd)

Mr. Speaker, a question for the proponent of the amendment?

DEPUTY SPEAKER CIBES:

Representative Tom Luby. Please frame your question, sir.

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REP. LUBY: (82nd)

Thank you, Mr. Speaker. I would ask with regard to the proposed amendment, how it would apply in a situation as follows: a building collapses. It turns out that people are killed; families lose the economic income of the deceased for the expected lifespan of the people that were injured. It turns out that it has been determined that there are three firms, engineering firms, let's assume. Each firm is negligent. Each firm could have prevented the loss of life, had they acted properly, so that if any one of those three engineering firms had not been negligent, there would have been no loss of life.

Under your amendment, is it true that although any one of those three engineering could have, if they had acted properly, prevented the loss of life and the loss of income to the families, under your bill, none of those engineering firms would be responsible for that full loss, although they could have prevented it?

DEPUTY SPEAKER CIBES:

Representative Jaekle, would you care to respond, sir?

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REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Sometimes simple questions have some complex answers. If it was an action brought in wrongful death, meaning the people weren't ...let's say... covered by workman's compensation and thus precluded from bringing such an action. So, if it was an action brought in a wrongful death, against three such firms, each firm would be responsible for one third each of the damages, and if each firm had assets, the families would receive a third recovery from Defendant 1, a third recovery from Defendant 2, a third recovery from Defendant 3, and thus would have received a 100% recovery from the three at that point equally negligent defendants.

Through you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Representative Luby, you have the floor, sir.

REP. LUBY: (82nd)

Thank you. Mr. Speaker, just one further question to the proponent of the amendment. Why should not an engineering firm that, if it had acted properly, pay the full amount? If there are

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other entities that cannot pay? In other words, why should this engineering firm that, because of its negligence did not prevent this loss of life, and it could have... Why isn't it fair that that engineering firm, if the other engineering firms are insolvent, why isn't it fair that this company that could have prevented it, had they been non-negligent and didn't, pay the full bill?

DEPUTY SPEAKER CIBES:

Representative Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. It is a good question, and I guess I will give you an answer something like this. If there had been a particular official, we are talking hypothetically still, I am sure... who when he inspected a particular job site could have found a problem and didn't, and had it been found, it could have been corrected, and thus, something could have been prevented, and a jury says: well, yea, but you know, really the people who did it were wrong. But, this guy, John Jones, a family man...

Those three firms were really responsible,

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but this guy, but for his... you know... failing to find some problem, none of it would have happened. We are going to say he is 1% responsible, because, but for his action, it might not have happened.

I don't think John Jones should pay 100% of the damages. He should pay 1%, if he is found to be 1% responsible. I think everybody should pay in accordance to their culpability. How wrong they were, and if somebody is found to be only 1/3 wrong, and that is what we are talking about.

We are talking about a wrongful death action. Negligence, kind of failing to do the right things: if somebody is only 1% wrong, they should only be on the hook for 1%. That is how I answer it. Because I think that is fair to all parties involved. Through you, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Representative Luby, you have the floor.

REP. LUBY: (82nd)

Thank you, Mr. Speaker. May I speak, just briefly, in opposition to the amendment? As a result of the exchange, I think one of the problems we have

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here is mathematics. Fault is not easily susceptible in all cases to mathematics. Unfortunately, when we talk about percentages, we talk about 100%. When there are cases, abstractly you can have 300% fault.

In the situation where organizations, in particular, in complex projects... each one, if they behaved properly could have prevented a tremendous suffering. However, they don't. We need, I think, to maintain the incentive on such organizations to be sure that they do their very best to fulfill those duties towards us in preventing injury that might occur.

If we pass this amendment, we reduce the incentive, I believe, on these institutions, for example, engineering and construction firms, to properly protect against liability, and it in fact artificially reduces their liability. If I can prevent tremendous personal injury, and I don't do so and I am negligent, I should not be let off the hook because someone else did the same thing.

And I believe that is what this amendment does.

DEPUTY SPEAKER CIBES:

Will you remark further on House "A"?

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REP. BUTTERLY: (68th)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Sean Butterly.

REP. BUTTERLY: (68th)

Yes, Mr. Speaker, I also rise in opposition of the amendment and in support of the bill. I credit the distinguished Minority Leader with what seems on its face a very simple analysis of apportionment of fault, but I must say that a lot of the discussion that I have heard in the Chamber up until now avoids a very real part of this, and a real part of this is the fact, the element of insurance.

I mean, that is really what the bottom line in deep pocket or joint and several liability is. I wanted to make it clear that we are not reinstating a clear joint and several liability system if we vote for the bill today and reject this amendment. But, I just want to point out still another, and hopefully a simpler hypothetical.

A young girl is crossing the road from a candy store that has a liquor store next to it.

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She is struck by an automobile as she crosses the store. Her view was obstructed as she crosses the street by a truck that is parked illegally. The driver is driving 50 miles an hour in a school zone marked 30 miles an hour.

The young girl is damaged or injured very badly, goes into a coma, goes into a convalescent home, incurs, let us just say, \$750,000 of medical bills.

Now, the woman driving the automobile who was driving 20 miles an hour too fast, she has \$20,000 of insurance. Now, other than that, she is insolvent. The beer truck that obstructed the little girl's view, that beer truck has a million dollar policy. As the girl crosses the road, she can't see into the street, because the truck is parked illegally, and when she walks out, she steps out too far and is hit by the car.

The total amount of recovery you are ever going to get from that driver who was driving too fast in a school zone in \$20,000, and if that driver is given 90% of the negligence because of her speeding in

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a school zone, then the person, the victim, the young girl with \$750,000 of medical bills, that young girl is now going to collect \$20,000 from that driver and 10% from the truck driver, or the truck company, the insurance company that insures the truck driver.

Therefore, you are going to have a young girl with \$750,000 in medical bills that received \$100,000 or \$120,000 in compensation. I just want to state that I think the young person that is injured in that instance is the person who is truly the aggrieved person. That is the person that this bill, that the Distinguished Chair of Judiciary is pushing, or has supported today. That is what this bill will address.

And I think it is a fair bill, and I just want to state that one of the first months I was here in this General Assembly, and this is my first term,... I did want to state by the way, although this is my term, I feel very youthful. I am going to announce it is my birthday today, it is Joel's and it is Ron Smoko's, and I found out I am the youngest of the three and I feel good about that.

But, I just want to state that in that first

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month up here, there were statistics released that I think the insurance industry received an 8.7 billion dollar profit for the first three quarters last year, without tort reform. And I think that to say that the reinstatement of this victim's bill today will gut the insurance is certainly an overstatement.

I think this is a bill that will give some fair treatment to some victims. I think the amendment, although it sounds very simple, and yes, you can compute it very simply,... I think if you consider that young girl in that hypothetical I just gave you where she is going to be short-falled \$700,000 or so, I think it just goes to the point that it is just an unfair amendment. It just is not fair to the victim, and I think that we are trying to do on the bill, as amended by Representative Tulisano, is the way we should be voting today.

I plan to vote no on this amendment.

DEPUTY SPEAKER CIBES:

Questions on adoption of House Amendment Schedule "A". All those... Representative Robert Farr.

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REP. FARR: (19th)

Mr. Speaker, briefly, on behalf of the amendment, I think that Representative Butterly has in fact drawn clearly what the issue is. The issue is whether or not you want to have the concept of deep pocket, that if somebody is hurt, somebody must pay, without regard to what they contributed to that hurt.

Representative Butterly says, well, if you have a truck parked on the side of the road and the jury comes back, and even if it is 1% negligence, somebody has got to pay, and it must be you. There is a case in California where a drunk ran off the road, hit somebody that was parked, somebody that was in a telephone booth, and of course, the telephone company paid, because it was their booth, and somebody had to pay. So, it must be them.

Representative Tulisano says, well, if you have a three car accident, and after all, if you are in the middle car and it is, a drunk hits you, destroys your car, injures you for life, but your car rams into another car and a jury comes back and says: well, you were a little close, so you are 5% negligent.

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The drunk is 95% negligent. The drunk doesn't have insurance, so somebody pays. It must be you.

Representative Butterly's answer is, well, it is not you, because the person who pays for the negligence is never in these cases, or very seldom, the actual defendant. It is the insurance company. So the question becomes: do we have a system that just searches out for the highest insurance policy, and whoever has the highest insurance policy pays, without regard to fault? Without regard to the fault of that person who has that policy.

And if you do that, if you do have a system that just looks for the highest policy, what happens is that the premium for that policy gets astronomical. What you do is the person who wins in that case is the person with the lowest policy. He pays the lowest premium. If you are smart and you have got the truck, you keep the policy at \$50,000, and then they go after the driver, because the driver has got a \$200,000 policy. The driver pays. You always go after the person with the highest policy.

And that is the way you determine who pays.

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It is not an equitable system; it is not a fair system. What we are talking about here is simply an equitable system of saying that the person who contributes to, who causes the injury, shall pay a proportionate amount to their contribution.

I think it is a reasonable amendment. I support the amendment.

DEPUTY SPEAKER CIBES:

Will you remark further on House "A"? Will you remark further on House "A"?

REP. FRANKEL: (121st)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Robert Frankel.

REP. FRANKEL: (121st)

This amendment doesn't take us back to last year's bill. It is worse than last year's bill. With last year's bill, as bad as it was, at least after one year you came back in for some contribution. Now, you don't even do that.

The Minority Leader, I agree with him: it is simple. You pay your fair share. But, what happens

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when one of the defendants can't? Then you have someone who is totally without fault and injured being short-changed, is not getting paid for his injuries, for his expenses, for his pain and suffering.

You pay your fair share? Fine, but what happens if one of them can't pay? It is a policy decision that we make. Do we come down on the side of the victim, or do we come down on the side of what it really amounts to, the carriers? This is worse than the bill that we had last year. I would rather live with that than with what is being proposed today.

I strongly recommend you reject the amendment.

DEPUTY SPEAKER CIBES:

Questions on adoption of House "A".

REP. BELDEN: (113th)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Richard Belden.

REP. BELDEN: (113th)

Very briefly, Mr. Speaker. I would just comment on the previous discussion. Should we pass a law that makes a victim out of somebody that just happens to

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be there? And what this amendment is attempting to do is to not make a victim out of somebody who has a 5% involvement, maybe, in the issue, and he is going to get to pay 100% of the cost. How many victims are we going to make?

I will say it again. If you want to take care of the victim, and you can't get the retribution from the individual who was responsible, then make it a social program. Pass separate legislation. But, don't pass legislation that says: wait a minute. John Doe ran over somebody with his car, and lo and behold, somebody happened to be parked on the side of the road and had their truck three inches out away from the curb, and the trucking company happens to have... The individual who hit him doesn't have any insurance, but the trucking company has got a million dollars per incident, and you are going to make the trucking company a victim.

That is the issue, the policy issue we are talking about with this amendment. I think the amendment is a good one.

DEPUTY SPEAKER CIBES:

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

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CIBES:

Those opposed, please indicate by saying no.

REPRESENTATIVES:

No.

DEPUTY SPEAKER CIBES:

The no's have it. The amendment is defeated.

House Amendment "A" :

Delete subsection (c) of section 3 in its entirety and substitute the following in lieu thereof:

"(c) [unless otherwise provided by law, in] IN a negligence action to recover damages [for] RESULTING FROM personal injury, [or] wrongful death or DAMAGE TO PROPERTY OCCURRING [, accruing] on or after [October 1, 1986] THE EFFECTIVE DATE OF THIS ACT, if the damages are determined to be proximately caused by the negligence of more than one [person] PARTY, each [person] PARTY against whom recovery is allowed shall be liable to the claimant only for his proportionate share of the recoverable economic damages and recoverable non-economic damages. [except as provided in subsection (g) of this section.]"

Delete subsections (g) and (h) of section 3 in their entirety and substitute the following in lieu thereof and reletter the remaining subsections accordingly:

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"(g) Upon motion by the claimant made not later than one year after judgement becomes final through lapse of time or through exhaustion of appeal, whichever occurs later, and after good faith efforts to collect from a liable party, the court shall determine whether all or part of a party's proportionate share of the awarded economic damages and noneconomic damages is uncollectible from that party, and shall reallocate such uncollectible amount among the other parties according to their respective percentages of negligence, provided that the court shall reallocate to any defendant an amount equal to that defendant's percentage of negligence multiplies by such uncollectible amount as determined in accordance with subsection (d) of this section. The party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant of the judgement. In the event any such liability is reallocated to a defendant obligated to make periodic payments in accordance with the terms of any agreement or judgement entered pursuant to the provisions of section 52-225a, the payment of the amount so reallocated shall be determined in accordance with section 52-225d.

(h) A right of contribution exists in persons paying more than their equitable share of such claims, as determined pursuant to subsection (g) of this section, whether or not judgement has been rendered against all or any of them.

(i) If a judgement has been rendered, any action for contribution shall be brought within two years after the judgement becomes final. If no judgement has been rendered, the person bringing the action for contribution with must have (1) discharged by payment the common liability within the period of the statute of limitations applicable to the right of action of the claimant against him and commenced the action for contribution within one year after payment, or (2) agreed while the action was pending to discharge the common liability and, within two years after the agreement, have paid the liability and brought an action for contribution.]"

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DEPUTY SPEAKER CIBES:

Will you remark further on the bill? If not, will staff and guests please come,...

REP. JAEKLE: (122nd)

Mr. Speaker?

DEPUTY SPEAKER CIBES:

Representative Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. By the way, I did not forget to ask for a roll call on the last one. Really, I had offered the last one, and the distinguished Majority Leader was right. In fact, we were talking about it on the phone during the debate. It was simple, it was straight forward, was frankly, different. I explained that at the beginning: where we were, what we did, the amendment, this one. Simple.

What I want to do is to offer an amendment that brings us back to the compromise that was made last year on this issue. And, Mr. Speaker, the Clerk has an amendment, LCO 7163. Would the Clerk please call, and may I be permitted to summarize in lieu of Clerk's reading, please?

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DEPUTY SPEAKER CIBES:

The Clerk is in possession of LCO number 7163, designated House Amendment Schedule "B". Will the Clerk please call?

CLERK:

LCO 7163, designated House Schedule "B", offered by Representative Jaekle.

DEPUTY SPEAKER CIBES:

The gentleman has requested permission to summarize. Is there objection? Seeing none, sir, please proceed.

REP. JEAKE: (122nd)

Thank you, Mr. Speaker. The easiest way that I can explain this, I am hoping that through the course of some of the debate, recognizing a lot has been confusing. You are into some legal mumbo jumbo. This is what I think everybody would call the percent on the percent approach to joint and several liability.

If somebody is responsible for 50% of the damage and they are solvent, they pay it. The other 50% is that orphan share, insolvent. They pay that same 50% on the orphan's share. For example, for a

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75% recovery, if you are only 50% responsible. It was the way the policy decision was made last year, and I move adoption of the amendment, Mr. Speaker.

DEPUTY SPEAKER CIBES:

Questions on adoption. Will you remark, sir?

REP. JAEKLE: (122nd)

If I could, Mr. Speaker. This is, as I said in my summation, really is last year's approach to the joint and several liability issue. It is different from the bill as amended in front of us, because, boy, that one is complicated.

It is last year's approach for non-economic damages and pure deep pocket for economic damages. Well, it is not as simple as the amendment that we just voted on, which is: you just pay whatever you really caused, the same percent. This is the pure splitting of the difference. It is the way we went from the old joint and several liability, deep pocket theory. Find anyone that is solvent and you are there, you get it all... to what I just offered, which didn't ask for roll call on, didn't want to, which was you only pay what you caused.

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Yup, you have got the policy decision. The fault-free plaintiff, of course, I hope we all know we are not always talking about fault-free plaintiffs. A lot of time, plaintiffs are somewhat responsible for their own injuries. It happens. And a lot of times, the defendant is only minimally responsible, but may be the one who, the corporation, no sympathy for them, the fattest insurance policy, I suppose not much sympathy for the insurance company.

Do you know who else that minimally responsible but solvent defendant could be? It could be a homeowner; it could be you or me or one of our constituents. He doesn't have that million dollar Traveler's Umbrella policy. I don't even have one of those. I was told that I couldn't get one as an elected official, because I might slander somebody, but... So, I don't even have that kind of protection. I don't know if all of you do. Are you all insured to the max?

Oh, that is pretty good. Well, a lot of people are not. Do you know what happens when you exceed that max? You lose your house. It has happened; it is sad. The injuries that are caused to plaintiffs

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and victims of civil wrongs, I don't think I had ever heard that term before, but... the victims, they suffer. And do you know what happens? Sometimes the defendants who were minimally responsible but solvent, like reaching into their house and their bank accounts and everything they may own that isn't protected from bankruptcy; they lose it.

What we did last year and what the amendment before us does is it splits that difference, I say, right down the middle. That is how we balanced those competing interests: victims and defendants. And the best example I can give you is the person suing two defendants: each defendant, right down the middle, 50/50.

They each joined, their negligence joined to cause an injury to a plaintiff, and each was found to be 50% responsible for those injuries, only somebody didn't have the insurance policy, somebody didn't have the house. Or, somebody took off with all they had before the judge's hammer fell, and you are only left with that one defendant 50% responsible.

What does her pay? He pays his 50%. And what

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happens when the plaintiff finds out that he can't recover from the other defendant? He goes back into court and he says: you were 50% responsible. I can't recover the other 50%. You have got to come up with 50%, and so do I. The plaintiff is fault-free, but you know what, the defendant is fault-free for that other co-defendant's percent negligence. So they split the difference.

And that is how we balanced arguments on both sides of the issue. I can't think of a fairer way to balance the equities. Recognize that it can mean, rather than getting 100% recovery for the plaintiff, they might only get 75%, or... yes, if somebody is only 10% responsible, they are only going to pay 10% of 90. Wow! That is paying nearly twice as much as they were responsible for, but that is the ramification. But, that is how it was balanced in last year's legislation, and it is not a question of pride of authorship. I didn't strike that balance. That was decided overwhelmingly by this Chamber.

I think it was rooted in some pretty common sense. You split the difference. Not as simple,

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not as complex as what we have in front of us, but you know, it must not have been a bad idea, because the bill as amended in front of us treats pain and suffering that way.

This would treat economic and non-economic damages in the same way, the percent on the percent. I urge adoption of the amendment, Mr. Speaker, and I would like to ask on this one, because I think this is the policy that we should have for the State. It is our law today, and it is one I really believe is fair to all parties involved. I believe it is that important a policy decision.

I would like a roll call, and I would request that the vote be taken by roll of this amendment.

SPEAKER STOLBERG:

There is a request for roll call. All those desiring a roll call vote, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

Adequate number is arrived at. When the

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vote is taken by roll.

The Chair feels incumbent to report that he has been told that some of the most outstanding members of the press may have to be leaving early today and,

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SPEAKER STOLBERG:

In order for you to get adequate coverage of your remarks, they should be exceedingly brief. Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I rise to oppose the Amendment. I will be brief. The Minority Leader said he could not think of a fair way. All I ask him to do is to read the Senate Amendment which we recently adopted. In my opinion that is a fair way.

SPEAKER STOLBERG:

Will you remark further on House Amendment Schedule "B". If not will members please be seated. Will staff and guest come to the well of the House, the machine will be opened.

CLERK:

The House of Representatives is voting by roll call,
members return to the Chamber. The House of Representative is voting by roll, members to the Chamber please.

SPEAKER STOLBERG:

Have all the members voted, and is your vote properly recorded? Have all the members voted?

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CLERK:

The House of Representatives is voting by roll, members to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted, have all the members voted, is your vote properly recorded? Have all the members voted, have all the members voted? If all the members have voted the machine will be locked, and the Clerk will take a tally. The Clerk please announce the tally.

CLERK:

House "B" to Senate Bill 1015

Total Number Voting	134
Necessary for Adoption	68
Voting Yea	54
Voting Nay	80
Those absent and not Voting	17

SPEAKER STOLBERG:

The Amendment is defeated.

House Amendment Schedule "B".

Delete, subsection (g) of section 3 in its entirety and substitute the following in lieu thereof:

"(g) Upon motion by the claimant [made] TO OPEN THE JUDGMENT FILED, AFTER GOOD FAITH EFFORTS BY THE CLAIMANT

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TO COLLECT FROM A LIABLE DEPENDANT, not later than one year after judgment becomes final through lapse of time or through exhaustion of appeal, whichever occurs later, [and after good faith efforts to collect from a liable party,] the court shall determine whether all or part of a [party's] DEFENDANT'S proportionate share of the [awarded] RECOVERABLE economic damages and RECOVERABLE noneconomic damages is uncollectible from that party, and shall reallocate such uncollectible amount among the other [parties] DEFENDANTS according to their [respective] percentages of negligence, provided that the court shall NOT reallocate to any SUCH defendant an amount [equal to] GREATER THAN that defendant's percentage of negligence multiplied by such uncollectible amount [as determined in accordance with subsection (d) of this section.] The [party] DEFENDANT whose liability is reallocated is nonetheless subject to contribution PURSUANT TO SUBSECTION (h) OF THIS SECTION and to any continuing liability to the claimant on the judgment. [In the event any such liability is reallocated to a defendant obligated to make periodic payments in accordance with the terms of any agreement or judgment entered pursuant to the provisions of section 52-225a, the payment of the amount so reallocated shall be determined in accordance with section 52-225d.]" *****

SPEAKER STOLBERG:

Will you remark further on the Bill, if not, will members please be seated staff and guest to the Well of the House. Representative Jaekle.

REP. JAEKLE: (122nd)

You do keep me on my toes, Mr. Speaker.

SPEAKER STOLBERG:

Likewise, Mr. Minority Leader.

REP. JAEKLE: (122nd)

Mr. Speaker, I am going to rise in opposition to this

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Bill. It makes some good technical changes, and I suppose I am a little bit redebating that last Amendment, That was about all I thought we should have done to make the Bill pretty good, and you know, it would still have made a lot of changes from last year's Bill.

Makes changes on attorneys' fees, makes changes on structured settlements, makes changes on directors' liability, makes changes on Dram Shop Act. I didn't come before the body yelling and screaming over all those changes just because they were changes, some were technical changes that made sense, that clarified intent, that made it more workable. But the one thing that was changed that can indeed impact the availability and affordability of insurance for citizens of this state was the joint and several liability section of the Bill.

The one that I offered the Amendment on, the one I going to guess is going to be somewhat reflective of maybe the final vote on the Bill. Because we are now changing the system. A system hasn't even being allowed to work. The Tort Reform Legislation from last year went into effect on October 1 of 1986. Any of you hear anybody complaining about that Bill that it reduced their judgments. Anybody here is going to say some plaintiff's

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judgment was reduced by that law?

You know what, you are going to be living in a different State than Connecticut if you can, because that law is only applicable to injuries, happening after October 1, 1986. And you know, those cases probably aren't in court yet, or very few have even been brought to court. I don't think any have been brought to trial yet. And what do we hear, we've heard some law school professors I suppose said they didn't like this section or that section, and it was rewritten. I haven't objected to some of the rewrite occurring, accruing, parties, people, all through there you will find those technical changes.

We are the body that makes the decision. The basic public policy decision on how you balance equities between people. How you strike a reasonable balance between plaintiff's and minimally responsible defendants or at very least partially responsible defendants, and what have we done, we have gone back to the old law. For economic damages, you find that deep pocket and socket to "em, get everything you want. And he has got to find an insurance company that will write him a policy even though he is trying to do all socially responsible things. He abides

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by every safety standard he could think of. You know, maybe his insurance company is even requiring him to do some of that, but the insurance company looks at him and says, you are still exposed. You hire employees, I suppose any employee could be hurt or injured. You manufacture something that people use, cars, the blenders, plumber goes into your house, you do something that could expose the public to injury, and even though we think you are trying to do everything to act as safely and responsibly as possible, some body or some smart attorney might get you on the hook for a little bit of negligence and a little bit of responsibility for somebody's injury

That could mean that we, your insurance company, we are going to have to write a policy so high to cover the whole damage, not just what you cause, but everybody else has caused, and we are going to have to charge you a premium to cover that high policy and we find that you touch some many people, that that potential risk is so great that you know, maybe we can't insure you for everything you might be exposed to. Maybe we can't give you a premium that you can even afford to pay, and stay in business to pay. You know why that is, its because of the joint and several liability section of our laws. Its because a

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defendant can be found responsible for every penny of damage even their 1% negligent, a half of a percent negligent. Those percentages may be hard to determine, but you know, the cases by and large they are going to be determined by people called juries, and I put my faith in juries to be able to decide what percentage somebody was negligent and thus responsible for damages, but as an elected official, I've got to say, no to making somebody pay 100% and the jury of twelve good people says they are only responsible for 10.

That just is wrong and has led to a crisis that may be one of the problems is we saw it last year. Insurance companies said yes, Connecticut was serious. We now can tell our actuaries to start saying we are going to get more level playing field, we may not be on the hook for everything, we can now start adjusting our premiums. Maybe we are going to see "em" go down, I know, I didn't maybe the municipalities benefit, at least that section is surviving on this Bill. But they did go up 50% or did they go up 20 maybe you can never tell what they would have gone up, but last year we were getting situations where businesses were being forced out of business. They were not yelling about 20 and 30% increases in premiums,

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they were saying 100%, 200% increases. While they needed a million dollar limit, maybe they got \$250,000 limit of coverage.

I am not hearing about businesses going out of business because they can't afford insurance now, I am not seeing the crisis in insurance that we did last year, and I believe it was because of the passage of the Tort Reform Legislation whose major component that could impact recoveries and judgments and thus what you have to insure against was the joint and several liability section as in the Tort Reform Legislation of 86. But unfortunately, we are taking a step backwards with this Bill, and we are going back to the good old days of smart lawyers finding deep pockets and getting everything out of the deepest pocket, and the deep pockets having to pay more and more insurance to cover themselves for as long as they can afford to.

I thought we had a good thing going in Connecticut to help our Connecticut businesses stay in business in Connecticut, and I am very disappointed that we are taking this step backwards on the joint and several liabilities section. I am not going to fight all the rest, minimal impact, minimal changes, but that joint and several lia-

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bility we are really taking a step backwards, and I am going to urge rejection of this Bill.

SPEAKER STOLBERG:

Will you remark further, Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I would like to respond to the Minority Leader's recent comments. We are not going back to joint and several he has characterized at least two or three times that way. It is not joint and several, it can't be called that, its a hybrid, certainly the individual who has caused injury. The Minority Leader will make you believe that the individual was a faultless defender but then added well only minimally at fault, somewhat at fault, but certainly at fault, they should be held liable.

Where are talking about out of pocket cost only. In the course of liability suits the smallest amount, but the part that hurts individual victims people the most. The Minority Leader said he thought that we were in business here to make sure business stays in business. We are here to help business that's what the Bill we did last year was designed for, so he said in his last comments. I didn't know that's why I was here, I thought I was here to help people. Help people in court, people

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in business, but not one part to exclude the other part, by no means, and we do protect them, and we have not made those changes which affect them. We have made no changes in that which affects the commercial lines the most part, the non-economic area, the area which the awards will be the greatest, but we have suggested changes where people would not be hurt, the small person.

In the priority comments, the Minority Leader is talking about those folks not the large insurance companies, not the commercial, but the little guy who owns a house. Then in his secondary comments he starts talking about insurance rates, insurance companies, and business. I am not so sure what he is talking about, and that's why we had some confusion when the legislation was passed last year.

The issues are how do we make victims whole, how do we make sure people who are innocent are not taken advantage of, and parenthetically let me say, if they are at all at fault, or like the Minority Leader said, we reduce the recovery by their fault amount, remember that. They do pay their own share that's reduce from the recovery. But also how are we making insurance rates affordable for everybody, how we make it more available, those are

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the issues I wrote about last year. And I tell you I campaigned all this year and asked everybody were your rates lowered, was it more affordable? As of last month the rates were going up and the affordability was less available to everybody. Ask anybody whose has got a teenage child in the household what happens to "em". Those are small people, and that's who we are caring about. But as far as availability goes, and cost in the future, this General Assembly, this side of the aisle will be concerned about them in the future.

The areas of hazardous waste, the areas of chemicals hazardous chemicals, ingestion of chemicals, how do we take care of victims, and make that exposure predictable for insurance companies. We are prepared to make that giant leap, but first we must take care of people, passed this Bill and then go on to those bigger issues which are very complexed and which we must deal with. Thank you Mr. Speaker.

SPEAKER STOLBERG:

Members please be seated. Staff and guest come to the Well of the House. Will you remark further. Representative Taylor.

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REP. TAYLOR: (79th)

Mr. Speaker I don't know why Representative Tulisano voted for or against the Bill last year. I don't know why Representative Jaekle put forth his proposals last year. I do know why I voted for the Bill last year, it wasn't jus to take care of big business because there is nothing that we do that affects only big business. If the insurance rates for the big business go up we are going to pay for those. All the little guys are going to pay for those through higher product costs, through higher costs for medical care. We are all going to be affected, it is not just an issue of big business versus the little guy.

We sat through here last year through many long and agonizing hours trying to put together some legislation which would address a problem in the availability and the affordability of insurance in this state. We all knew that the Tort Reform Legislation that we passed last year was really not going to impact any new automobile insurance, homeowners insurance. It was primarily aimed at the business insurance that affect the big companies and the small companies. The guy who owns the corner

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store, the corner garage. Those guys are affected by these insurance rates just as easily as the big fortune 500 company.

We put together a compromise to try to make those rates more predictable so we can bring some stability and then all of us would see the results in the end. I think Representative Belden brought out a very good point. In all of the discussions about how gets hurt, the victims, what portions they are going to get paid. In ,any cases we are creating more victims than ever happen in the first accident. I think we should look very carefully at what we are doing here today, less than six months after the legislation took effect.

If we are going to come back here every single year and continue to meddle with this policy, and continue to make minor changes or major changes, we are never going to reach that point of establishing some stability in the insurance rates so we can see the long term benefits. I think we ought to give the legislation a chance to work. I think we ought to try to not look at the wild cases and the scenarios that everyone can bring up and try to tug at our heart strings. They are very difficult decisions

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to be made, but we have to give this legislation a chance to work. We have to give these insurance rates a chance to stabilize, and we have to recognize that this is not just a big business versus little guy, because in the end the little guys always going to pay for those increased rates. Let's get some stability, let's give the legislation a chance to work, and let's leave it the way it was last year.

SPEAKER STOLBERG:

Will you remark further, Representative Fusco.

REP. FUSCO: (81st)

Mr. Speaker, question to the proponent, through you Mr. Speaker.

SPEAKER STOLBERG:

Please frame your question.

REP. FUSCO: (81st)

Representative Tulisano, could you explain the difference between what we currently have before us, and the Dram Shop requirements of last year.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you Mr. Speaker, yest I do have that, I

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thought we have discussed that in bringing the Bill out, but if you like me to do it again I will.

SPEAKER STOLBERG:

I think from the gentleman's question, he would.

REP. TULISANO: (29th)

Just give me one second to straighten my paperwork. Last year's Bill created a presumption. Just a second my pieces of paper have fallen apart.

SPEAKER STOLBERG:

What every person needs is a good stapler, Representative Tulisano.

REP. TULISANO: (29th)

Through you Mr. Speaker, last year when in the Dram Shop Provisions there was a proposal added that there was rebuttable presumption that the seller who sold alcoholic liquor to the intoxicated person, just prior to the occurrence which injuries claimed would be the person who would be liable, that is, that the last server to the individual would be therefore held, there would be a presumption that that person was the person who caused the intoxication of the individual, which ultimately resulted in the injury complained out. That the presumption was rebuttable, but it was a burden which we believe and

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most commentators believe was inappropriate since it certainly could have been the person before that that caused the intoxication, and the last server as example, maybe a person who was not really involved in causing that intoxication.

REP. FUSCO: (81st)

Through you Mr. Speaker, further question.

SPEAKER STOLBERG:

Representative Fusco.

REP. FUSCO: (81st)

So what would happen now Representative Tulisano, if the party that was charged with serving the last drink to the individual wanted to raise the issue that the individual probably through a collective number of drinks obtained at different locations probably was extremely under the influence before they got to their shop.

REP. TULISANO: (29th)

Through you Mr. Speaker. Under the current law, first of all the last server if the person was under the influence when they got there, is under current law not suppose to serve again. But say an individual walked in the door and you didn't serve "em" they may raise that issue and so the prior servers will be brought in and the

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plaintiff could then show that that person contributed to the intoxication which led to the injury. It goes back to the real theory of Dram Shop which is that the plaintiff has to show by preponderance of evidence that one of the bars maybe liable no matter who it is. So if the next to the last bar got the person drunk, as an example, and the final bar never served them, the plaintiff would be able to go easily towards the person who actually caused the intoxication.

REP. FUSCO: (81st)

Through you Mr. Speaker.

SPEAKER STOLBERG:

Representative Fusco.

REP. FUSCO: (81st)

So the burden of proof not necessarily is no longer with the last place that the person was seen as present.

REP. TULISANO: (29th)

Through you Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

The burden of proof will be on the plaintiff, but it doesn't necessary lay on the last person that served.

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SPEAKER STOLBERG:

Will you remark further, if not will members be seated, staff and guest to the Well of the House. Representative Nystrom. I really did call on you Representative Nystrom.

REP. NYSTROM: (46th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Nystrom.

REP. NYSTROM: (46th)

Thank you Mr. Speaker, if I might Mr. Speaker through you pose couple short questions to Representative Tulisano.

SPEAKER STOLBERG:

Please proceed, Sir.

REP. NYSTROM: (46th)

Thank you Mr. Speaker. Representative Tulisano from the discussion here today, and from the discussion in the Committee, I think it can be said that this Bill is an attempt to restore victims so they can be made whole, is that true? Through you Mr. Speaker.

REP. TULISANO: (29th)

Through you Mr. Speaker.

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SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

That is true.

REP. NYSTROM: (46th)

Thank you Mr. Speaker, again through you. Senate Amendment "A" is there any part in Senate Amendment "A" which causes an increase in attorneys' fees, through you Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

The possibility in one part of that because there may be more recovery under the rest of section there maybe a possibility in those limited cases that one may be able to recover more of an attorney's fee. On the other hand another part of the Bill potentially reduces it in greater number of cases.

REP. NYSTROM: (49th)

Thank you Mr. Speaker, through you that section that might cause attorney's fees to be increased can you tell the Chamber where those funds would come from? Through you Mr. Speaker.

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SPEAKER STOLBERG:

Representative Tuilsano.

REP. TULISANO: (29th)

Through you Mr. Speaker I gather through the contingent fee arrangement that is provided for in Sections 1 and 2 of the Bill that there is recovery for the plaintiff under the contingency fee arrangement.

REP. NYSTROM: (46th)

Thank you Mr. Speaker, in the Judiciary Committee when this Bill was discussed, it was asked if we going to change the contingency fee schedule, and we were told we weren't touching that, at least that's my recollection, I'll say that, that's my recollection, we weren't going to touch that. We are going to leave that alone, we were going to restore the givtims not touch the contingency fee schedule, not raise attorneys' fees.

In senate Amendment "A" under my own opinion, I think we are now not doing that. I think what we are doing, we are allowing as Mr. Tulisano stated for the opportunity for fees for the attorneys go go up in the contingency fee area. If am wrong, I am sure you will point it out to me, anyway he speculated, because of that I'd like to call an Amendment, its LCO 7236.

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SPEAKER STOLBERG:

The Clerk has an Amendment LCO 7236, designated House Amendment Schedule "C", will the Clerk please call. 7236 its a little one.

CLERK:

LCO 7236 designated House "C" offered by Representative Jaekel.

SPEAKER STOLBERG:

Is there objection to summarization, I see no objection. Representative Nystrom.

REP. NYSTROM: (46th)

Thank you Mr. Speaker, I would like to propose a hypothetical settlement. First of all I would start by saying that I think the real important language of this Amendment begins half way through line 29 begins with the word "fee shall not include disbursements or cost incurred in connection with the prosecution or settlement of the claim or civil action other than ordinary office overhead and expenses" for example, if you have a settlement of \$100,000 and then you have a \$10,000 cost for disbursements, they may come from medical bills, and such.

Under Senate Amendment "A" as I understand it, and

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I am not a lawyer, I'll say that right now, I am not an attorney.

SPEAKER STOLBERG:

Representative Nystrom would you try to focus on a summarization and then move adoption if you could please.

REP. NYSTROM: (46th)

Thank you Mr. Speaker, briefly what this would do is set the fee that the attorney would earn from the settlement based in the net settlement a portion that would not be deducted from the cost for medical care and such that an individual as a victim might incur. A \$100,000 item, if its \$10,000 in medical fees in other words the attorneys' fee would be predicated on \$90,000 a \$10,000 amount for medical fees would not be subject to a portion to be taken by the attorney. move adoption.

SPEAKER STOLBERG:

Will you remark on House Amendment Schedule "C".

REP. NYSTROM: (46th)

Thank you Mr. Speaker.

SPEAKER STOLBERG:

If in your debate you could further sort of explain, I wasn't sure that I followed the summarization, that I think other members may have had difficulty too.

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REP. NYSTROM: (46th)

Thank you Mr. Speaker. Basically what I am trying to do is what this Bill is supposed to do, and that's make the victim whole. It is not to raise attorney fees under any portion. The thing that I object strongly to is that I believe in Senate Amendment "A", the area that the attorney fees are being raised is coming from that increase in the settlement that we are going to allow to make that victim whole. They are going to get a little bit more of that settlement.

Last year we set up a system that that wouldn't happen. We are going back to that system and I believe based on my recollection that in the Judiciary Committee we were told we were not going to do that. You know what happen in the Senate floor, they put it in anyway. I think that's wrong, if we are going to restore the victim let's restore the victim. We can do that without increasing attorney fees and that's why I call this Amendment. I feel very strongly about it and I would ask that when the vote be taken it be taken by roll.

SPEAKER STOLBERG:

Request is for roll call vote, all those in favor

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of taking a vote by roll, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

Adequate numbers arrived at, the vote will be taken by roll. Will you remark further, if not, will members please be seated.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I rise to oppose the Amendment. We have a Bill that is complete and whole ready to go to the Governor so that we finally can get on with establishing a good system. An absolutely good system for recovering civil damages in this state. We no longer need any more changes after today, but let me say what did happen in the Judiciary Committee contrary to the statements that were made on the floor here.

We made it very clear the current law says the award which has been interpreted to be the gross award before

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deduction for collateral sources and other deductions so that under the current law, the gross award of say \$90,000, if there was a third recovery the attorneys' fee would be \$30,000. Under the proposal in the file copy before you, if the award were \$90,000 and \$30,000 in collateral sources, then the attorneys' fee would be under \$60,000 not under \$90,000 as is under the law that was passed last year. That is what we say in the Judiciary Committee so the proposal before us does reflect what we said would occur.

There had been no changes in the percentages no changes in the differentials, in fact for most cases we reduced the threshold by insuring that all collateral sources are deducted from the net recovery before the fees allowed to be imposed. In all honesty and truthfulness in some cases there maybe a few times when the rate goes up, but that is the rarity, and this proposal is unfair. I mean we know we have lawyer bashing and battering in this place, those of us who have that profession sort of put with it. Both being politician and being a lawyer is a difficult thing out there in the street some time, but let me say to you that in fact the intent and the file copy from last year's Bill as we

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understood it. I don't mean it was intended that way. I'm saying the way it was written, the way a number of people interpreted it, we effectively reduced the fee. The proposal before us is an attempt to reduce it some more in certain other cases. Now, what Mr. Nystrom is saying is let's make this akin to a collection case, uh, someone owes you \$1,000 note and there is no provision in it for attorney's fees, then in fact you are never able to pay your attorney for collecting the note for you because that was owed you. I think that's what he's trying to get to you. Because obviously you're not whole. It costs some money to collect that.

I think this very narrow area you're talking about, we have reflected the intent of the Judiciary Committee in the file copy and the senate amendment. I think it's appropriate, and I hope you will reject this amendment.

SPEAKER STOLBERG:

Will all members please be seated. Staff and guests to the Well of the House. Will you remark further?

Representative Nystrom.

REP. NYSTROM: ((46th))

Thank you Mr. Speaker. I appreciate the words of

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the Chairman of the Judiciary Committee. I don't consider myself a lawyer basher. I'm a former schoolteacher, I can't do anything to attorneys under any form. I don't appreciate that statement. I want to restore the victim. I'm a supporter of victim's rights. I think everybody knows that in this Chamber. I don't think if we're going to restore the victim's award that they should have to pay a higher portion to their attorney than they now do under present law as it was adopted last year.

If we're going to restore them, let's fully restore them to the highest potential that we can do. This amendment simply asks us to do that, that's all. It doesn't harm anyone. It's not going to put anyone out of business. Simply says restore the victim. Don't take that portion of the settlement that was attributable to medical bills or other costs for the state and have a portion of that deducted as a fee. That's all it says. It ways restore the victim. I think that's what we've been trying to say, at least on your side of the aisle promoting this bill today. Let's restore them.

You've got a chance to do it a little bit more. I think we should move and adopt the amendment. Thank you.

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SPEAKER STOLBERG:

Will you remark further on the amendment, the Chair should point out that it is our intention to complete an intended Go List this evening that includes about eight other items. That could be done by 6 o'clock or it could take a little longer. If we all work at it, we could be out of here early for dinner. Representative Metsopoulos.

REP. METSOPOULOS: (132nd)

A question through you to Representative Tulisano.

SPEAKER STOLBERG:

Please frame your question.

REP. METSOPOULOS: (132nd)

Representative Tulisano. If this amendment passes, would it also restrict the amount that an insurance company can spend on their legal defense?

REP. TULISANO: (29th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

There is nothing that allows that to happen.

SPEAKER STOLBERG:

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Representative Metsopoulos.

REP. METSOPOULOS: (132nd)

Through you, Mr. Speaker, then what we are basically doing then is restricting the amount that, let's say one that is an aggrieved party can actually spend on their defense but in actuality then the insurance companies have a runaway expense account on attorney fees. Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, that is one way to describe what is going on here, there are no controls on defense costs but certainly the cost of collection will be taken away. It's like saying you don't get paid for the work you do I guess.

REP. METSOPOULOS: (132nd)

Thank you Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further? Representative Prague.

REP. PRAGUE: (8th)

Mr. Speaker, I wasn't going to speak on this bill

because certainly there's been a long debate on it. But after listening to Representative Nystrom, I feel compelled to stand up and say that he's not the only one in this Chamber whose a supporter of victim's rights. There are plenty of people in this Chamber who support victim's rights and certainly Representative Tulisano is one of the most outspoken advocate of victim's rights.

Those people who supported Tort Reform last year were not supporters of victim's rights. And I would like to add that what we're dealing with today does nothing with the issue of pain and suffering, does nothing with the issue of the collateral source where somebody might buy an insurance policy for himself. This is a very small step in the right direction to help victims and that's what this bill should be all about, and that's what our concern should be all about.

I urge this Chamber to reject that amendment to vote for this legislation and show the people that we are concerned with victims. We're not concerned with lawyers fees, we're not concerned with insurance companies. We ought to be concerned with those victims and the bill that we're going to have before us after the amendment

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will help do that. Thank you.

SPEAKER STOLBERG:

Will all members please be seated. Will staff and guests come to the Well of the House. Representative Jaekle.

REP. JAEKLE: (122nd)

Thank you Mr. Speaker. I want to explain the amendment just a little further because we're getting some discussion on it, on the bill, what was done, and whose supporting what. We had a long discussion through the amendments of the joint and several liability section of the bill. And Representative Tulisano gave an example at one point that showed under the old law somebody might get a \$32,000 recovery, but under the changes that are being made in the bill as amended, that might become a \$38,000 recovery.

To put it as simply as I can, the amendment that Representative Nystrom has offered says that that one-third that the attorney gets is one-third of the \$32,000, even though with the amended bill the victim now gets \$38,000. I just want to make that clear because that's the way, I know it's complex, you've got to mesh every-

thing in there. The attorney's fee will be determined by the amount of the judgment. That's about what the amendment says. Remember those orphan shares? Well, now for economic damages. We heard it, the lost wages, the medicals. You get to go into court, not another trial. You tried to collect .. you go into court, you say I couldn't get from one of those defendants my economic damages, and the court says okay, well here's the solvent defendant, we're going to take the \$10,000 you couldn't get. This defendant has got to pay it, defendant you pay it, here's the \$10,000 victim.

But you know what happens? Another third for the attorney of that \$10,000. Oh..that's what Representative Nystrom's saying. And I'm a lawyer, I'm not sure I'm committing some sort of sin by even explaining it that way, but that's really what the amendment does. The one third attorney's contingency fee basically will be determined by the amount of the judgment. You know the defendant adds 50% and all of that. And that's going to be what's recoverable. And it comes out to \$32,000 because of the orphan share. Oh, I see Representative Tulisano saying I'm wrong, because of the way this is defined.

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The attorney's fees will be determined by damages awarded and received, but the amendment says that damages awarded and received shall not include any amount received pursuant to, and the section of the bill that the amendment goes into is, "the reapportioned economic damages." That's the way this works, so I appreciate the support for the bill for somebody saying, old law somebody gets \$32,000, now we're going to make it \$38,000, well it's \$38,000 less that extra third difference:

Representative Nystrom is saying, you want to help victims, fine, you're going to reapportion those orphan shares to any defendant you can find. Fine, we can make that policy decision. It's just going to be for the economic damages. Somebody quote those out of pocket expenses of the victim. But out of those what otherwise might be lost, reimbursed, out of pocket expenses comes the attorneys third. What should be a fairly simple procedure if you think about it.

The attorney has done a good job for you, he's gotten the trial. You get your \$100,000 judgment. You collect \$50,000 or it let's say. The attorney gets a third of the 50 because that's all that was received. And you tried to

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get that other 50 and you couldn't do it. And you go to court and say, I couldn't get my other 50. It's all economic damages. And what the judge says is, "you're right, you solvent defendant pay the other 50." And the attorney that might have been paid a year earlier when recovery was obtained, says "give me my third of that 50. I must have done a good job for you a year ago."

Now, maybe that's fair. It is ultimately a third of the total amount of money that the victim receives. That's all it is, that is true. It's not an increase of the third, but now it's another policy decision. Is this extra amount we're giving to the victims for out of pocket expenses that's coming at the expense of another defendant who only paid his share,

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he's picking up somebody else's share. Does the attorney also get a third of that? That's the question. Vote yes for the amendment, you want that extra money going to the victim without being reduced by a third for attorney's fees. Vote no on the amendment and say, the attorney earned his money, it's only a third of the total recovery, the extra money we're getting to the victim with this reformed reformed is one-third attorney, two-thirds victim. You can go either way. But I do think everybody should know that's really what this vote decides.

How much of this extra that goes to the victim goes to the attorney. Thank you.

SPEAKER STOLBERG:

Will you remark further? Will you remark further on House C? If not, Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, for I think the second time, and the last time, just to make it clear that under the formal law, the law that is currently in existence before we, hopefully, pass this bill unamendmended; it has been interpreted to say that the third attorney's fee was

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on the gross award, whether or not it was collected. And effectively, the victim may very well owe to their attorney an amount of money on sums they never collect.

We in the Judiciary Committee and we in this House, think that would be unfair. I think that's absolutely clear. And so, let's not compare the file copy with the amendment, let's compare the file copy with what is. And despite all the rhetoric affect that we have insured that no victim will have to pay on sums of money they have not collected. Representative Nystrom and Representative Jaeckle are correct. There will be, in those cases when more money is collected, a little bit more for the person who worked for that individual for the work they have done. I'm not denying that.

And that just comes out because of the figures. It's because we made no changes in those other areas. But in truth and very clearly, that we have insured that no payments will be made unless money is actually recovered. The current law doesn't do that.

So effectively we have reduced attorney's fees in those areas. I hope you will vote on the bill; reject the amendment. Thank you Mr. Speaker.

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SPEAKER STOLBERG:

Members, please be seated. Staff and guests to the well of the House, we are about to vote on House Amendment Schedule C. Will you remark further? Will you remark further? Machine will be opened.

CLERK:

The House of Representatives is now voted by role.

Members return to the Chamber please. The House of Representatives is currently voted by role call. Will members kindly return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted and is your vote properly recorded. If all the members have voted, the machine will be locked. Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

House Amendment "C" to Senate Bill #1015:

Total Number Voting.....136
 Necessary for Adoption.....69
 Those Voting Aye.....45
 Those Voting Nye.....91
 Absent and not Voting.....15

SPEAKER STOLBERG:

The amendment is defeated.

The following is House Amendment Schedule "C":

Delete subsection (c) of Section 1 in its entirety and substitute the following in lieu thereof:

"(c) FOR THE PURPOSES OF THIS SECTION, "DAMAGES AWARDED AND RECEIVED" MEANS IN A CIVIL ACTION IN WHICH FINAL JUDGMENT IS ENTERED, THAT AMOUNT OF THE JUDGMENT OR AMENDED JUDGMENT ENTERED BY THE COURT THAT IS RECEIVED BY THE CLAIMANT, EXCEPT THAT "DAMAGES AWARDED AND RECEIVED" SHALL NOT INCLUDE ANY AMOUNT RECEIVED PURSUANT TO SUBDIVISION (3) OF SUBSECTION (g) OF SECTION 52-572h, AS AMENDED BY SECTION 3 OF THIS ACT: "SETTLEMENT AMOUNT RECEIVED" MEANS IN A CLAIM OR CIVIL ACTION IN WHICH NO FINAL JUDGMENT IS ENTERED, THE AMOUNT RECEIVED BY THE CLAIMANT PURSUANT TO A SETTLEMENT AGREEMENT; AND "FEE" SHALL NOT INCLUDE DISBURSEMENTS OR COSTS INCURRED IN CONNECTION WITH THE PROSECUTION OF SETTLEMENT OF THE CLAIM OR CIVIL ACTION, OTHER THAN ORDINARY OFFICE OVERHEAD AND EXPENSE."

SPEAKER STOLBERG:

Will you remark further on the Bill?

REP. WOLLENBERG: (21st)

Mr. Speaker.

SPEAKER STOLBERG:

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Representative Wollenberg.

REP. WOLLENBERG (21st)

Thank you Mr. Speaker. I'll be brief, Mr. Speaker. I sat through this last year until 4 a.m. and I sat through much of the Summer and early Fall on a task force with people from insurance companies and citizens and others on this very topic we're talking about today.

And it's been discussed plenty, I don't need to go into it, but I just want to say two or three things. Number one, it's been alluded to here that last year we did some things because we were in crisis in insurance in the State of Connecticut and we're not hearing about the crisis very much this year.

Could it be possibly that we weren't in quite as much of a crisis as we were led to believe. I think perhaps that's the fact. We were not in as much of a crisis. What we did last year, and I ask the question of the President of the Aetna and other people, if we do this, will it affect the availability of insurance? The answer was no. Will it affect the cost of insurance. The answer was no. We did a great deal last year, though in Joint and Several. We swept away years and

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years of development of the law in Joint and Several liability, in one fell swoop . This year, we're putting back a very, very minor part of it. It's not going to cost a dime more or less. It's a small chink though, in the armour of the insurance companies that we set them up with last year.

And they're crying out there because they think this chink might succeed. It's only a small, small part but it does help a little bit.

We're heard about the deep pocket. We're heard a little hyperbole here. We're heard a little ridicule about lawyers. Well, I guess that's where you back off to when you're losing on the facts. Because the facts here today, don't justify anything but passing this.

Emotions and the ridicule of attorneys and other things, that may get to you. But it's not the fact. The fact is this isn't an awful lot, but it is something for the people we took so much away from last year.

Economic damages basically paid for by the Health Insurance companies. Not alot out of the pocket of the Casualty people. Not alot at all. During our task force this Summer, and into the Fall, we continually

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asked the insurance companies to give us the facts on Joint and Several. When cases were settled as most of the cases are, they indicated time and again they didn't have those figures. Well if they don't have those figures, how do they know it's going to hurt them so much. They don't.

They have never given us the figures on how much the deep pocket is hurt, if you will, when there's a settlement. They tell us they do know and they can tell when there are jury verdicts, because they determine that in weighing whether or not they should try the cases. But that's a small portion of the dollars that go out of the casualty companies for payment of these awards. A small amount.

Ladies and Gentlement, there wasn't an insurance crisis. They made some bad investments. There is none now. What we're doing will not have any effect on the cost or availability of insurance, just as what we did last year had no effect. And they admitted that. Their top people admitted it. Not the propaganda you get in the mail. They'd lead you to believe that the world is crumbling down around your ears because of this.

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Not true. As much of that propaganda is not true. I urge you to vote for this and let's get it on the Governor's desk; have it signed. Thank you.

SPEAKER STOLBERG:

Will you remark further? If not, will members please be seated. Will staff and guests come to the Well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by role.

Members report to the Chamber please. The House of Representatives is currently voting by role, will Members please report to the Chamber.

SPEAKER STOLBERG:

Have all the Members voted and is your vote properly recorded? If all the Members have voted, and your votes are properly recorded, the machine will be locked and the Clerk will take a tally. Will Clerk please announce the tally.

CLERK:

Senate Bill #1015 as amended by Senate "A" in concurrence:

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Total Number Voting.....137
Necessary for Passage.....69
Those voting Yes.....100
Those voting Nay.....37
Those absent and not Voting.....14

SPEAKER STOLBERG:

The Bill is passed. It is our intention to try to take up the following items: Calendar 524, Calendar 541, Calendar 560, Calendar 562, Calendar 564, Calendar 568, and perhaps Calendars 574 and 575. Clerk, please continue with the call of the calendar 524.

CLERK:

Please turn to page 8, Calendar 524, Substitute for House Bill 7586, AN ACT CONCERNING SEXUAL ASSAULT IN THE FIRST DEGREE, Favorable report on the Committee and Judiciary.

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Tulisano.

Tort Reform

PA 87-227

Senate Bill 1015

AN ACT CONCERNING THE ENHANCEMENT OF THE RIGHTS OF VICTIMS OF CIVIL WRONGS

House	5647-5772	(58p)
Senate	1931-1977	(47p)
Judiciary	402-411, 471-477, 510-520, 540-542, 545- 548, 549, 553- 554, 573-575, 655-661, 682- 683, 713-716, 719-723	(126p)
Total		231p.

Includes subject index

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dk **1931**

THE CLERK:

Returning to page 1, Cal. No. 302, Substitute for Senate Bill No. 1015, File 448. An Act Concerning Enhancement of the Rights of Victims of Civil Wrongs. Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President, I would move the Committee's Joint Favorable Report and adoption of the bill.

THE CHAIR:

The Clerk has an amendment. Clerk, please call the amendment.

THE CLERK:

L.C.O. No. 7107, designated Senate Amendment Schedule "A", offered by Senator Avallone of the 11th District.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President. I move the amendment, ask that the reading be waived, and ask permission for leave to summarize?

THE CHAIR:

Without objection, you may proceed.

SENATOR AVALLONE:

Thank you. Mr. President, effective October 1st, 1986, a bill

that was entitled Tort Reform became effective in the State of Connecticut. After a very short time, it was determined by all parties concerned, that is the Law Revision Commission in the State of Connecticut, an objective body; judges of the Superior Court; members of the Trial Bar, both on the plaintiff's side and on the defense side; and I would not hesitate to add members of the Insurance industry; came to the same determination - that that bill was technically flawed. That those technical amendments... excuse me. Those technical flaws made the bill absolutely unworkable. Not by intention or design, clearly. But that the rapidity with which that bill was placed together for whatever reason, there were serious drafting flaws. This bill needed to be worked with. The Judiciary Committee has worked with it for many, many months now, and has, with the cooperation of all of the parties that I've just mentioned, made a number of technical changes which I will go through. There are also what I consider to be two sections of the bill wherein there are substantive changes.

Let me go through the substantive changes with you first. I will then take you through the technical changes. And then we can get into some further debate if necessary. The substantive changes are first. There is a section of the bill that deals with periodic payments or structured settlements... excuse me, structured verdicts. A structured payment schedule or periodic payment schedule says that, or said, in last year's bill, that if all of the medical bills from

the date of injury to the date judgment is rendered, and all of the loss of earnings, during that period, are paid. And there is a sum over and above two-hundred thousand dollars of the figure I just mentioned. Then that figure, over and above the two-hundred thousand dollars, should be paid to the plaintiff or the victim, over a period of time, as opposed to a lump sum. The Committee, after looking at that, felt that there is certainly nothing wrong with structured payments or periodic payments. In fact, most large cases dealing in potentially large awards are settled by means of a structured settlement, because no one in this day and age wishes to or chooses to place such large sums of money on the table at one time. However, the flaw in the bill, the inequity in the bill, made it mandatory that a victim accept a structured payment. Now what is wrong with that? What it really does is place an unfair advantage on the side of the defendant. And it is also against the public policy. It is good public policy, I think all parties will agree, for cases to be settled, for actions to be settled prior to reaching trial. By making a structured payment mandatory, and giving the advantage to the defendant, you are saying "O.K., you have a risk of a very large award if you go to a jury. And the risk is that you will pay that in a lump sum." A very expensive procedure. But now we take that incentive to settle away by saying "You're not going to have to pay that lump sum all at once, even though a jury of one's peers say that that victim is entitled to it." You're going to say, for example,

in a poker game, I look you in the eye and I say "I bet you a thousand dollars I have a better hand than you." And you say, "Boy, that's a lot of money." And you think about it and you think about it, and you plunk the thousand dollars down on the table. And you turn your cards over and you won. So I reach in my pocket and I take out five hundred dollars and I say "I'm going to give you the rest over the next fifty weeks at ten dollars a week." And then I run out and I buy an annuity that only costs me two hundred dollars. To pay that amount over time. So what have I done? I've bet a thousand dollars, but I've only had to pay out seven hundred. The likelihood is I'm going to bet a lot more hands, because I'm going to have that much more money. That creates an unfair advantage to the defendant. Now, in discussions, people suggested very truly, that structured settlements are good. And why should the victim care how much it costs to give him the same or better benefit? I, and the members of the Judiciary Committee, agree one hundred percent. We were told that the Internal Revenue does not look favorably upon the money earned, the interest earned on a lump sum payment after a judgment is rendered. A jury comes out and issues a verdict. A judge, accepting that verdict, makes it a judgment. If a structured settlement were entered into by the agreement of the parties after a judgment, there would be serious income tax consequences. Potentially to the victim. So we said, "Let's try and meld these two ideas. Let's say that in all cases over two hundred thousand dollars,

because you don't want to even consider a structure until you reach that kind of number or larger, let's meld those two things. Let's not let the judgment enter on the verdict for a period of sixty days." Uncle Sam is satisfied if in that sixty day period the parties agree to enter into a structured settlement, then those income tax potential nightmares go away. The Insurance industry or the defendant pays less and perhaps the victim gets more over time. And we take advantage of the Internal Revenue Code, instead of having it be a penalty. This portion of the bill, although there was some disagreement on it, because after the sixty day period, the benefit goes to the victim. That is, the victim can decide if it wants a lump sum payment. Some people wanted that sixty day period to end with a structured payment. The Judiciary Committee felt overwhelmingly that that was not the appropriate answer. And of all of the things that were in disagreement, I would say that this... the level of disagreement over this particular substantive change was not very high. Because the sixty day window allows representatives, intelligent people, to suggest to the victim that you don't want that lump sum payment because you may be better off with a structured settlement. And it works out to everybody's advantage. The kind of compromise that I like. And I hope that you will accept it.

The other part of the bill that is substantively changed, and it is one's opinion whether that is great or large or substantial or not, was resolved in a way that I think this whole bill should

have been talked about last year. And we tried to focus, some of us, on what was important. And that is, public policy. Because some people again will disagree, and reasonable men, I assume, can disagree, that tort reform has no real substantive effect on the availability and affordability of insurance. And I don't intend to get into that debate with you. Let us just suggest that reasonable men and women can disagree. But what is true is that a great deal of public policy is at stake. A very important issue is at stake here. Again, reasonable men and women can disagree. After much debate, and cajoling, and much leadership from some people other than myself, a compromise was reached. Not one that was accepted by all parties. But the compromise said that anytime there is a civil case, there are two kinds of damages. There is non-economic damages. And for lack of a better term, that is really the value of pain and suffering in a case. Not quantifiable, easily. The other types of damages are economic damages. More easily quantifiable. Medical expenses. Loss of earning capacity. Loss of wages. And we made that distinction. And we said, and this bill says, that in a case where a victim is injured as a result of a civil wrong, not a criminal action, but a civil wrong, that we're going to look at those two kinds of damages differently. We are going to say that if there is an insolvent party, so long as there is a solvent party who participated in a negligent act which resulted in damages to an individual, those economic damages, and only those economic damages, are

going to be paid in full. Now, the non-economic damages. There was a formula last year that said that a solvent defendant would pay his or her own share of the amount of money due to the victim. And then there would be a second bite, so to speak, of the orphan share. That is, that share that is uncollectible. And that remains essentially the same. And I say essentially, because when one works out all the numbers, what happens is you have a gross award. If the victim contributed to his or her own damage, that percentage of liability is multiplied times the gross award, which includes non-economic and economic damages, the gross, and that is deducted from the amount of money that the victim is entitled to. There are other deductions for what we call collateral sources. That is, if you went out and bought protection for yourself, a health care policy. And you received five thousand dollars of medical treatment as a result of the injuries you sustained in this accident. You should not receive a double dip. You should not get that from the person who caused you the injury and the insurer, the provider, from whom you purchased that protection. And so those things are deducted from the amount of money that the victim is entitled to. And when you work out the formulas, and they are a little bit complicated, but when you work them out, you find that the victim is not compensated twice. You find that what we have done here essentially, is one very simple and important thing. We have made a statement of public policy that that victim's economic damages will be paid to him or

her in full after the appropriate deductions. That's what the bill does.

Is it substantially different from the 1986 act? I leave that to your definition of substantial. Did it meet my definition of substantial when I started to work on this bill as an individual Senator and as Chairman of the Judiciary Committee? I would say no. I think it's important to state, and I don't want to dwell on what this bill does not do, but I know that there has been... have been a number of attempts to misconstrue some things the Judiciary Committee has been doing in the last three months. And it can clearly be stated that the doctrine of joint and several liability has not been restored in the State of Connecticut, as a result of this amendment. And I can't make the statement any clearer than that.

Let me get into other, with your permission, Mr. President, should I finish the entire bill?

THE CHAIR:

It's all right with me. With no objections, you may proceed.

SENATOR AVALLONE:

O.K. There are other sections that change, and they are technical changes. They may make minor substantive changes. And I think it was agreed that those technical changes, if in fact they made minor substantive changes, would be made in favor of the claimant. And I think that's an accurate representation. But there is nothing

hidden in here. There is nothing coming from around the corner that gives the victim something other than I have suggested to you and represented to you today. There are other changes, though, in the bill. Excuse me. There is a section dealing with dramshop legislation. There was some language that was placed in there regarding a rebuttable presumption last year. For the life of me, I can not tell you why it was put in there. I take that back. I know why it was put in there, to solve a particular problem, but I would suggest to you that all parties concerned acknowledged that the language doesn't solve the problem it was attempting to reach. The Law Revision Commission has given an extensive legal summary of why. I don't want to bore you with it. But it is a matter of record. In talks with various members of the Insurance industry, they didn't propose it last year, or suggested to me they didn't propose it last year. Didn't know why the language was in there. It doesn't solve what some people perceive as a problem. So we merely eliminated it. Again, nothing tricky.

Municipal liability has not changed from last year. The file copy had originally eliminated that section, only because there were some other things that some of the municipalities felt they wanted instead of that. And in lieu of that. That decision was changed, and therefore we put last year's section right back in. No changes.

There is a change in the collateral source section of the bill, but again, this was by agreement. It was found that settlements,

when a party agrees before trial, that it will take a certain amount of money and release the other party from all exposure, that is the settlement. And it was found in last year's bill that that could be determined to be a collateral source, and thereby deductible from the judgment. All parties agreed that was a double shot at the victim. It wasn't fair. It has been eliminated.

There is one other change in the collateral source bill, which I'll clarify, I hope, forever. The idea of whether collateral sources that are paid or payable, are deductible. I believe that, and I feel it's clear, that that language meant paid, and not payable. We have put language in the bill this year that makes certain that it is a deduction for collateral sources paid, up to the time of a verdict and judgment, and no farther. And it does not mean payable.

There is a section in the bill, one of the very first line or two, that talks about property damage. We just want to make sure and clarify that it's property damage arising out of one of the actions covered in the bill.

There is a section on non-profit directors' and officers' liability. There was some question last year as to whether or not someone who was not acting in the capacity of a director or an officer for a non-profit, merely driving one's car to and from the meeting, acts negligently, strikes and injures somebody, whether that immunity would cover that person under those circumstances. We all agreed that that wasn't fair. It wasn't what was intended.

And so we put in language that clarified that the non-profit director and officer is immune only while performing his or her decision-making or policy-making capacity.

In the structure section, we continue some language that was in last year's bill to make sure in event the parties agree, that there should be a structure after verdict of the amount that the victim is protected by means of securing the amounts used or made available for that structure.

If I may, have one moment, Mr. President?

THE CHAIR:

The Senate will stand at ease.

SENATOR AVALLONE:

I believe that covers all of the sections of the bill.

THE CHAIR:

Thank you. Further remarks on the bill? On the amendment and the bill, because apparently, all of the provisions have been talked about. Senator Upson.

SENATOR UPSON:

Yes, thank you Mr. President. If I may ask Senator Avallone some questions?

THE CHAIR:

You may proceed.

SENATOR UPSON:

And I hope he doesn't mind standing for a little while. These

are reverse roles, Mr. President. If I may, specifically on page 7, and this is talking about the structured settlements, economic vs. non-economic. My first question to Senator Avallone on specifically line 212 of the amended bill, do economic damages mean future economic damages? Through you, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

The answer is yes.

SENATOR UPSON:

All right. That's my first question. Also, moving on the same section, later on. Specifically on page 9...

SENATOR AVALLONE:

May I clarify for a second? It also means past economic damages. It's not limited to future.

SENATOR UPSON:

If I may move on, Mr. President, to page 9, G. If we may run through a scenario for everyone's benefit, including mine, I'd appreciate it. First of all, I have one question on line 289½. The exclusion of the word 'party' and the changing to 'defendant's proportional share'. If I could just have an explanation, through you, Mr. President, to Senator Avallone.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

I believe that eliminates the placing back in of the plaintiff's share.

SENATOR UPSON:

For the formula which we'll discuss?

SENATOR AVALLONE:

Correct.

SENATOR UPSON:

If we may, for the benefit of the Circle, talk about a negligent free plaintiff. And run through the different formulas. All right? And the first scenario, there's no negligence on the part of the plaintiff. Defendant 1 has forty percent negligence. Defendant 2 is sixty percent negligent. And is insolvent. And the economic loss is a hundred-thousand dollars. And the non-economic loss is a hundred-thousand dollars. Which will never be the case, but anyway. And the collateral source is ten thousand dollars. In other words, Blue Cross or Blue Shield or whatever major medical paid. So my first question, if I may, through you, Mr. President to Senator Avallone, under the economic loss, assuming Defendant 2 is insolvent, how much would the Defendant 1 be liable for? With a ten thousand collateral source coming off the top?

SENATOR AVALLONE:

Senator, I think it would be helpful if we looked at the definition of recoverable economic damages. And I'm looking for that

site. On page... excuse me. In line 220, you'll see that recoverable economic damages means the economic damages reduced by the claimant's... excuse me. Reduced by any applicable findings, including but not limited to settle-ups, credits, comparative negligence, additur and remittitur, and any reduction provided by section 52-225a, as amended by section 4 of this act, which is the collateral source. And I believe that that's the confusion. Items mentioned to me outside of the debate, when you find that the recoverable economic damages have already been reduced by the things that I just set forth, they are already in statute, and the collateral source, which is the section I referred to, you will find that the formula, as complicated as it is, works. Not to the disadvantage of the defendant.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Yes, through you, Mr. President. So under... am I led to believe then that under my scenario of plaintiff, no negligence; Defendant 1 with forty percent negligence; Defendant 2 with sixty but insolvent; and there's ten percent collateral source, under economic damages, Defendant 1 would then be responsible, after reducing the ten thousand for collateral source, ninety thousand dollars?

SENATOR AVALLONE:

Correct.

SENATOR UPSON:

Correct. Using the same fact situation, now moving to non-economic.

SENATOR AVALLONE:

Yes.

SENATOR UPSON:

Through you, Mr. President, excuse me. Through you. What... and again, Defendant 1, forty percent negligent; Defendant 2, sixty percent, insolvent. The Defendant 1... there'd be no collateral source deducted to my understanding. Is that correct?

SENATOR AVALLONE:

That is correct. Collateral sources are only deductible from economic.

SENATOR UPSON:

And Defendant 1 would be responsible for forty percent of the hypothetical hundred-thousand dollars damages for non-economic?

SENATOR AVALLONE:

That's correct.

SENATOR UPSON:

All right. What percentage would D. 1, Defendant 1, be responsible for the D. 2's sixty percent, who's insolvent?

SENATOR AVALLONE:

Forgive me, Mr. President.

THE CHAIR:

The Senate will stand at ease.

SENATOR AVALLONE:

He's responsible for forty percent of the orphan share.

SENATOR UPSON:

So that... Mr. President, through you. That would be forty percent of sixty percent, is that correct?

SENATOR AVALLONE:

Of sixty percent, that's correct.

SENATOR UPSON:

All right.

SENATOR AVALLONE:

Of sixty percent, that's right.

SENATOR UPSON:

All right. And so the total that D. 1 would be responsible for would be forty thousand plus what amount? Out of a hundred thousand?

SENATOR AVALLONE:

Some twenty-four thousand. Sixty-four thousand dollars total.

SENATOR UPSON:

That's what we got in our Caucus. Thank you very much. Now, if we may move to one more fact situation? It was hard to understand.

SENATOR AVALLONE:

O.K. I'm glad I came to the same conclusion you did, Senator.

SENATOR UPSON:

If I may now. On another fact situation. Another fact situation.

SENATOR AVALLONE:

Yes.

SENATOR UPSON:

All right. Plaintiff is twenty percent negligent. D. 1 is thirty percent negligent, and D. 2 is fifty percent negligent, and insolvent. I appreciate your tolerance.

SENATOR AVALLONE:

I hope it works just as well this time.

SENATOR UPSON:

Again, the same economic, a hundred thousand dollars. Non-economic, a hundred thousand dollars. And let's also assume there's ten thousand dollars for collateral sources. What percentage, and remember D. 2 is insolvent, what percentage would D. 1, who's thirty percent negligent, pay of the economic damages?

SENATOR AVALLONE:

O.K. I think if we run through the formula, the first thing we would do is take twenty percent of both away. So under the non-economic, if you would deduct twenty thousand dollars, which is twenty percent of a hundred thousand dollars.

SENATOR UPSON:

Correct.

SENATOR AVALLONE:

And under the economic, if you would deduct twenty thousand dollars. All right?

SENATOR UPSON:

All right. Under the economic, then, what is D. 1's share?

SENATOR AVALLONE:

Now there is... all right, hold on. So you said eighty thousand dollars under each. Now I believe we have to deduct the collateral source from the economic. You would reduce the economic damages by the... by not the ten thousand collateral source, but eight thousand. That is, you have to... twenty percent of the ten thousand is not deductible, because that's the plaintiff's share. The victim's own share. You've already taken twenty percent off the top. Now you want to take, in essence, eighty percent. A hundred percent less twenty percent. Eighty percent. So you would deduct another eight thousand dollars on the non-economic side. Which would leave seventy-two thousand dollars, gross, available to the victim, if everybody were solvent. And eighty thousand on the non-economic side.

SENATOR UPSON:

And then, under my fact situation, through you, Mr. President, D. 1, being thirty percent negligent and D. 2, being fifty percent negligent and insolvent. For economic, what would D. 1 be responsible for?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

D. 1 is responsible for the whole thing.

SENATOR UPSON:

And that would be... through you, Mr. President. That's...

SENATOR AVALLONE:

That would be seventy-two thousand dollars.

SENATOR UPSON:

I yield to Senator Robertson, Mr. President.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Only so that we don't have to go over it again, Mr. President,
if you'd allow.

SENATOR AVALLONE:

Sure.

SENATOR ROBERTSON:

So in other words, Senator Avallone, what you're saying is that
you're taking the twenty percent gross off the top because of the
plaintiff's negligence.

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

And specifically, in the economic area, you have then taken eighty percent of the collateral source off.

SENATOR AVALLONE:

Correct.

SENATOR ROBERTSON:

With the assumption that you've already taken twenty in the... and D. 1 generally would be responsible for thirty percent of seventy-two thousand, which is about twenty-two thousand dollars in round numbers.

SENATOR AVALLONE:

Right.

SENATOR ROBERTSON:

And then D. 1 is also now responsible for the insolvency of D. 2.

SENATOR AVALLONE:

He is responsible now for all, after you've made the deductions, all of the economic damages.

SENATOR ROBERTSON:

All right. And my question then is, and please try to follow me. I'm not trying to...

SENATOR AVALLONE:

No, no. I understand.

SENATOR ROBERTSON:

You're taking the plaintiff's negligence off the top, but then the plaintiff does not share in the insolvency as well?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

As you suggest that, as to the economic, you're correct.

SENATOR ROBERTSON:

And is there a... mathematically, one could almost suggest that it would make sense... the plaintiff is sharing in his or her twenty percent negligence of the gross amount.

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

One could create an argument of consistency, that the plaintiff should also have shared in the twenty percent of the uncollectible amount. And I'm assuming that there was a rationale as to why you did not do that?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

If there were... if you work it the other way, Senator, you would wind up... if there were an insolvency... all right. Let me just clear my thoughts for one second. O.K. Let me see if I can

answer you this way. Non-economic damages are treated the same, except that the plaintiff's share of contributory negligence is not allowed to be reapplied to the orphan share in the case of an orphan share. All right. The non-economic damages... you and I were just talking about economic. The non-economic damages are treated the same as last year, except that the claimant's share of contributory negligence is not allowed to be reapplied to the orphan share, in the case of an orphan share. The formula is adjusted to apply all collateral sources to the economic damages, which I've done. Preventing the claimant from benefitting twice from the new application of the allocation of the economic damages. The old treatment of non-economic damages remains the same, to the extent that the defendant pays his or her percentage of negligence. First against the recoverable non-economic damages. And again, to an orphan share, if, in fact, there is one. That's the best way I can explain it.

THE CHAIR:

Further questions? Senator Robertson.

SENATOR ROBERTSON:

Yes, Mr. President. And Senator...

THE CHAIR:

I've allowed this dialogue to take place because I think that probably my constant interruption would probably take too long, but please pay attention to the fact that there is the Chair that must have some order to this, because...

SENATOR ROBERTSON:

Mr. President, we're always aware that there's a Chair. And I sincerely appreciate your liberalness in allowing this sort of question and answer. Tony... Senator Avallone, in due respect, I'm trying to understand in my mind a rationale to a mathematical formula. And unfortunately, I think that you've been compelled to read a response which I don't understand. Understand... maybe I can make my question very, very clear. And being non-mathematical about it. If there were three people responsible, including the plaintiff, twenty, thirty, fifty. One person's share is twenty percent of all the responsibility. Another one's share is thirty percent of all the responsibility. Another one's share is fifty percent of all the responsibility. If one is insolvent, then it seems the other two bodies have a responsibility in sharing of that insolvency. And that seems to be consistent if you were to follow your pattern as to how you're handling the collateral source. And mathematically, a formula should be consistent. And I'm only asking. I'm not saying I agree or disagree. I'm trying to follow the rationale as to that elimination of that consistency at that moment.

SENATOR AVALONE:

It seems to me that when... and the only answer I can give you over and over again, whether it's right or wrong, because it's the way I understand the bill. When you take that plaintiff's share off the top, the twenty percent, and then you apply the formulas to

what's left, the allocation is made in that way. You're not saying that the insolvent share is fifty percent of a hundred thousand. You're saying it's fifty percent, in this case, of something much less than that, because you've made these deductions already. I think your argument would be consistent if I did all the formulas off the gross amount. Then I would have to come back in and plug in exactly what you say. Give that solvent defendant a break... not a break, but apply the formula, again, to bring in the plaintiff's negligence. I believe what you are saying is taken care of by taking the plaintiff's negligence and the collateral source right off the top. So that when you apply the formulas, you're applying the same percentage, but only against a much smaller number.

SENATOR ROBERTSON:

Mr. President?

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

My purpose, and I appreciate you allowing me to accept the yield from Senator... is really not to debate or suggest what's right or wrong. It's just to create an understanding. I now understand. I may not agree with it, but at least I understand it. And I thank you, and I would yield back to Senator Upson.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Thank you Mr. President. If I may plod along on my fact situations, Mr. President? Through you to Senator Avallone. I believe we ended on economic damages, and that was, under my fact situation, of the plaintiff being twenty percent, D. 1 being thirty and D. 2 being fifty and insolvent. That D. 1 was responsible for seventy-two thousand dollars of the economic damages of the plaintiff, after subtracting the plaintiff's negligence and eight thousand, as we said for collateral source. If I may move on now to non-economic. And just...

THE CHAIR:

May I ask a question? Because in your presentation, Senator Avallone...

SENATOR AVALLONE:

Yes.

THE CHAIR:

Would one conclude that you are not disturbing the non-economic loss?

SENATOR AVALLONE:

That's correct.

THE CHAIR:

So that that's already in the law. So that your references that you've made actually is to non-economic... to the economic loss?

SENATOR AVALLONE:

To the economic, that's correct.

THE CHAIR:

The non-economic loss remains the same as in the... as we have in the law now. Is that correct?

SENATOR AVALLONE:

Except that the claimant's... and I... except as I referred my answer to Senator Robertson.

THE CHAIR:

All right. Senator, you may proceed.

SENATOR UPSON:

Well that's what I'm getting at, Mr. President. And that is, now we're on non-economic, and we have the fact situation. No deduction for collateral source under non-economic. What I'm trying to find out is, I guess, D. 1, who's thirty percent negligent, what percentage is he going to... or she going to pay of the non-economic loss? Is that percentage based on the hundred thousand dollars? Or on the eighty thousand dollars? Or a percentage as is now of the fifty thousand dollar insolvent D. 2? That's what I'd like, if I could, for the record?

SENATOR AVALLONE:

He pays...

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

...thirty percent of eighty thousand dollars. And then he pays thirty percent of the orphan's share.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

All right. If I may, Mr. President, have just the calculation for that. If it's possible.

SENATOR AVALLONE:

The thirty percent of the non-economic is twenty-four thousand.

SENATOR UPSON:

Correct.

SENATOR AVALLONE:

Then, if I'm not mistaken, you take fifty percent of the... no, he pays the whole thing.

THE CHAIR:

I always knew that lawyers weren't good mathematicians.

(Laughter.)

SENATOR AVALLONE:

Forgive me for bringing this...

SENATOR UPSON:

Except when our fee is concerned, Mr. President.

SENATOR AVALLONE:

He then pays... I'm sorry, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

It's funny because I was right in the first place. I shouldn't have asked a question.

SENATOR UPSON:

I know that. I think you're right.

SENATOR AVALLONE:

He pays thirty percent of the eighty thousand dollars, then pays thirty percent again, that's the second hit, of the non-economic. And then he's going to be responsible for all of the economic.

SENATOR UPSON:

All right. So the total... so he's... excuse me, Mr. President, through you. So he's... D. 1, solvent, is responsible for thirty percent of the eighty thousand. And then he's also, or she, is responsible for thirty percent of the fifty thousand...

SENATOR AVALLONE:

Of the fifty percent.

SENATOR UPSON:

Of the fifty percent.

SENATOR AVALLONE:

Which would be twelve thousand dollars. Which in my mind is thirty-six thousand dollars plus the seventy-two thousand dollars of economic.

SENATOR UPSON:

All right. Thank you. And if I may move on.

THE CHAIR:

You may proceed. I think you're moving right along, Senator.

SENATOR UPSON:

Thank you. I'm trying to. Now I'm going to yield, if I may, to the distinguished Senator from Cheshire.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Thank you very much, Mr. President. Again, through you, Sir. Senator Avallone, if we could go through that one more time. Because my figures, and even as you were calculating, there were two possibilities in your mind. And I'd like to know which one it is. What I have done is I have taken, on that specific case of a hundred thousand, eighty thousand after the plaintiff's negligence of twenty percent has been deducted, I have then taken thirty percent of the eighty thousand, which is twenty-four thousand.

SENATOR AVALLONE:

Right.

SENATOR ROBERTSON:

I have now suggested that the plaintiff is due eighty thousand, so I have taken that eighty thousand, I have deducted twenty-four thousand, which leaves a balance of fifty-six thousand dollars. And

then I have taken thirty percent of that fifty-six thousand dollars, which yields sixteen thousand, eight hundred. Therefore, Defendant 1 would then be eligible... not eligible, required, to pay forty thousand, eight hundred. And that is a substantial difference. If you're taking thirty percent of fifty percent of the award, there is a difference.

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

Now, the formula reflects that logic? Because even you were confused.

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

And I would like to be certain, at least through legislative intent, if the formula as written is confusing, at least those people who make a living doing it will have a clear record as to where they find how to do this. God forbid they should ask you or me.

THE CHAIR:

I think you mean the plaintiffs as well as the lawyers.

(laughter.)

SENATOR AVALLONE:

I told you this wasn't my plan. But no. You are correct.

SENATOR ROBERTSON:

So in the situation of a hundred thousand dollar non-economic loss...

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

Excuse me for going over this, Mr. President, but I'd like it to be as clear as possible. We deduct the twenty thousand dollars for the plaintiff's negligence, yielding a net award to the plaintiff of eighty thousand dollars. D. 2 is fifty percent negligent, but is insolvent. So therefore, D. 1, who is found to be thirty percent negligent, must contribute, on a voluntary basis, right? Thirty percent of that eighty thousand dollars, which yields twenty-four thousand dollars. And then they must also be responsible for thirty percent of the difference between the eighty thousand and twenty-four thousand, which is fifty-six thousand. Thirty percent of that fifty-six thousand is eighteen thousand... excuse me. Sixteen thousand, eight hundred. Therefore, D. 1 would be responsible for forty thousand, eight hundred dollars.

SENATOR AVALLONE:

I hate to impose this upon the Circle. But when we're going to work this formula for legislative intent, I would rather do it in a room, quietly, where we can both agree. Because there clearly is no intention on my part to deceive. And I know that from Senator

Robertson. So if we're going to work a number for the record, we wought to do it quietly in the confines of some rooms. So if I would suggest we do the other parts of it, and then maybe this can be cleared up in five minutes. And I apologize to my colleagues.

SENATOR ROBERTSON:

Mr. President?

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

If I might yield back to Senator Upson, if he has any other questions about some of the other items?

THE CHAIR:

Senator Upson.

SENATOR UPSON:

If I may, I'd appreciate that, Your Honor. Your Honor I'm going! Mr. President. I was not trying to deceive or confuse. I was trying to... we were trying to find out...

THE CHAIR:

I never use the word 'overrule' or 'sustain'. That should give you a signal. (laughter.)

SENATOR UPSON:

To watch out for the future. All right. Off those economic and non-economic damages, if I may. On the collateral source section. Which is on I believe, page 11. A. Section 4. It states that the

personal injury or wrongful death actions arising out of professional services of a health care provider, doctors or hospitals, occurring on or after October 1st, '85 and prior to October 1st, '86, this act will be effective. I guess my question here, I realize that in 1985 we passed a collateral source act, and I believe this is a technical correction.

SENATOR AVALLONE:

That's correct.

SENATOR UPSON:

Collateral source act as to health care providers. Is the intent to bring that in to this act? Is that the intent?

THE CHAIR:

Senator Avallone.

SENATOR UPSON:

Through you, Mr. President.

SENATOR AVALLONE:

That's correct. Through you, Mr. President, that's correct.

SENATOR UPSON:

I have one... I guess a logical question, through you, Mr. President. If a lawyer does not file... files something after... files something before, then this will... the present law or the law that was in effect from '85 to '86, would govern. And then '86 to the date of this act would govern. Is that correct? Mr. President, through you?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

It is... one of the problems with the prior act, or existing law, was that there was confusion over whether or not the cause of action arose as of the date the injury occurred, or on the date of filing. That was one of the things that created a tremendous amount of trouble implementing this law. This act is making it clear that it is when the accident occurred or the injury was sustained. That triggers this.

SENATOR UPSON:

Through you, Mr. President. But just as to the collateral source rule and nothing else?

SENATOR AVALLONE:

Yes, that's correct.

SENATOR UPSON:

Thank you very much. If I may also talk about section 7 on page 13. 432 on down. The former act included... did not include the word 'error', line 438½. It says "...immune from civil liability for any act or omission..." no, that's stricken out. Now we've added "...resulting from any error or omission made in the exercise or such person's policy or decision-making responsibilities..." You stated that this really was put in to apply to people driving home, or driving during their course... while they're... as a non-profit

director? I believe... to me, this seems to be taking in many more situations than that, and if you could elaborate, I'd appreciate it, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Through you, Mr. President. If I... if you inferred from my statements that that was the only situation, I was wrong. I don't think I said that, but let's make it perfectly clear. I am not trying to carve out, nor are the drafters of this bill, attempting to carve out any one factual set of circumstances. But rather, to limit the immunity to, and the language sets forth, when you are dealing in the exercise of such person's policy or decision-making responsibilities. So I am not carving out the one factual example that I used. But rather in the positive, stating specifically, what the immunity covers.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Yes. And Mr. President, to Senator Avallone. And the effective date of the act as I read it would be October 1st, 1988. Is that correct? Through you, Mr. President.

SENATOR AVALLONE:

Mr. President, no it is not. It is October 1st, 1987.

SENATOR UPSON:

1987. Bad math again.

SENATOR AVALLONE:

I'm listening.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Yes, Mr. President. I really have no other questions. I would like... if we... I don't know if he's going to ask for a recess just to explain that final answer on the non-economic?

THE CHAIR:

Is it appropriate? Did you want to continue, or did you want to have the recess so that those who want to participate in the conference would adjourn to the Caucus room. Is that what you want to do at this time, Senator?

SENATOR AVALLONE:

I would prefer that if the numbers are being worked out, someone whose math is better than mine, obviously, that they do that, and they can resolve that question there. I would just as soon continue.

THE CHAIR:

Proceed.

SENATOR AVALLONE:

With any other sections. And then we can come back to that one

issue.

SENATOR UPSON:

All right. I guess I'll have one final question to Senator Avallone, through you Mr. President. The section for structured settlements, does the sixty day requirement still... is that still incorporated in this... the new amended bill?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Through you, Mr. President, yes.

SENATOR UPSON:

And last question to edify that, does that mean, through you Mr. President, that after a verdict is rendered, there's still a sixty day period before a final judgment is entered? OR before the parties determine whether... the plaintiff determines whether or not he or she wants a lump sum settlement?

SENATOR AVALLONE:

Through you Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

I understand your question. The final judgment will not render until the sixty day period has ended.

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SENATOR UPSON:

All right. And as far as the dramshop act. And this is the last question. In section 11.

SENATOR AVALLONE:

Yes?

SENATOR UPSON:

The section that's been brought back in, section... well, there's no A now. Is that... B was done last year, but A... the A, is that the former... we're reinstating the former statute that existed before we changed it on October 1st of last year?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, that is my understanding, through you, Mr. President.

SENATOR UPSON:

And through you, Mr. President, that's the same amount of insurance? Twenty to fifty? And all the other applicable...

SENATOR AVALLONE:

Through you, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

That is correct.

SENATOR UPSON:

And so my last comment is then that we now, with the passage of this, and I'm going to vote for it, Mr. President. With the passage of this, we'll now have, for a period of time, three standards, three different sets of... should we say laws pertaining to wrongful death actions and personal injury actions? One, that occurred before October 1st, 1986. One, that occurred after October 1st, 1986. And then October 1st, 1987. Thank you very much, Mr. President. And I appreciate Senator Avallone's remarks.

THE CHAIR:

Further remarks? Senator Freedman.

SENATOR FREEDMAN:

Thank you Mr. President. I just want to thank Senator Avallone for such a concise presentation of a very difficult subject. I truly understand what you said. I know it has been a terrible burden dealing with this particular law. And I do plan to support this, and I hope that everyone on this Chamber will support this bill. Just the technical changes alone had to be addressed. And I think the Committee and everybody that was involved in the negotiations should have our respect and our vote.

THE CHAIR:

Further remarks? The Senate will stand at ease to work out the formula and the arithmetic that has been a burden to many people. And that might clarify the issue in time. The Senate will come to

order. Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President. I believe that if Senator Robertson would pose the figures again, we will be able to run through this fairly quickly.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Yes, thank you very much, Mr. President. We have gone through the figures and I would like to state the case and then when Senator Avallone agrees, then I think we would at least be in agreement as to what the formula does on the case that we have presented. Again, very quickly, the case was that it... the plaintiff was twenty percent negligent, D. 1 was thirty percent negligent, and D. 2 was fifty percent negligent. D. 2 is insolvent. How do we determine what D. 1's share is? Initially, the twenty percent was taken off the hundred thousand dollar award, leaving a net of eighty thousand. Initially, and I...

SENATOR AVALLONE:

Senator, I think you were saying there's a hundred thousand non-economic and a hundred thousand economic.

SENATOR ROBERTSON:

Mr. President, through you. I am only dealing with the non-economic because had agreed on the economic earlier. And citing

section 3d, of the amendment, we determine by carefully reading 3d that the fraction for D. 1 is $\frac{3}{8}$ ths, and not $\frac{3}{10}$ ths. And when you multiply $\frac{3}{8}$ ths times the net of eighty thousand, that yields D. 1 with an initial cost of thirty thousand dollars.

SENATOR AVALLONE:

That's correct.

SENATOR ROBERTSON:

And then applying D. 1's percentage back to thirty percent, not $\frac{3}{8}$ ths, but thirty percent. Again interpreting 3d of the amendment, D. 1 would then be responsible for picking up fifteen thousand dollars of the orphan share. Therefore, D. 1's total... I'm trying to think of the proper words. D. 1's total cost would amount to forty-five thousand dollars.

SENATOR AVALLONE:

On the non-economic side, that's correct.

SENATOR ROBERTSON:

On the non-economic side.

SENATOR AVALLONE:

That is correct.

SENATOR ROBERTSON:

Thank you Mr. President, and I appreciate the Chamber's willingness to allow Senator Avallone and I to clarify that point.

THE CHAIR:

All right. Further comments? Roll call is in order. Clerk,

please make an announcement for immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate, will all Senators please return to the Chamber. A roll call has been ordered in the Senate, will all Senators please return to the Chamber.

THE CHAIR:

The first order is the adoption of Amendment Schedule "A", L.C.O. No. 7107. Am I correct, Senator Avallone? Motion is to adopt Amendment Schedule "A", L.C.O. No. 7107. The machine is open, please record your vote. Has everyone voted? The machine is closed, Clerk please tally the vote.

Result of the vote: 33 yea, 1 nay. The amendment is adopted.
We're now on the bill, as amended by Schedule "A", L.C.O. No. 7107.

SENATOR AVALLONE:

I think that enough has been said to explain this bill, Mr. President. And I would move a vote, unless there is any other...

THE CHAIR:

Clerk, please make an announcement for an immediate roll call.
Senator Robertson, you wish to be recognized?

SENATOR ROBERTSON:

Yes, just very, very briefly, Mr. President. Of course, we're all aware that this is a reaction or a clarification or some perceive it as a correction to what was done last year. I think it's a change that should not have been necessary this year because it should have

been done last year. Thank you.

THE CHAIR:

Senator Larson.

SENATOR LARSON:

Thank you Mr. President. Mr. President, I would rise to compliment the Chairman of the Judiciary Committee for the fine job that he did in both bringing out the bill and seeing this bill work its way through the General Assembly. I think it's entirely appropriate that during Victim's Rights Week we have a bill before us that seeks to protect victims. Throughout this process, and I assure all of you in the Circle that there has been many opportunities on the part of the Chairman and other interested parties to get differing interest groups, primarily the Insurance industry and the Trial Bar, to reach an agreement. The thing that I find most compelling about this bill before us is that it is a bill neither for the Insurance industry or the Trial Bar, but a bill for victims. The basic tenets and commitments that have been adhered to are producing a technically correct bill that has come before us. A bill that looks out for victims. That tries and has an effort that's geared towards settlement. And also has predictability within the confines of the bill. It's an important step. It was one that was reached, and I want to commend again the attorneys in our Caucus who put this bill together. Because this bill was put together after the parties could not reach agreement. I commend those attorneys and the Chairman of

the Committee for a fine job that's done. And a bill that I think will go a long way towards protecting victims in the State. Thank you.

THE CHAIR:

Further remarks? Senator Robertson, followed by Senator O'Leary.

SENATOR ROBERTSON:

Thank you very much. I do have to stand up as a member of the Minority Party and put a slightly different hat on. There was a great deal of criticism last year of the Majority at that point as to major amendments very late before the issue was voted upon. And if I may, in a very calm way, suggest that this is the exact same thing that there was a great deal of criticism laid upon us last year.

THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

Thank you Mr. President. I think the remarks by Senator Robertson are well taken. It is obvious that sometimes it can't be avoided. That something comes in this late, and I think you were very patient. Your Caucus very understanding. And we're very grateful for that. Also, I think that we should point out for the record that there are people in this State and in this Chamber, in this Chamber in particular, for... who worked so hard and diligently on a subject such as this. And in no way can we compensate them monetarily. And I refer speci-

fically to our two attorneys, Kevin Brown and Mark Taylor, who have worked consistently into all hours of the night to help craft this bill. I should also note that there have been people who, some of whom are employed in the Insurance industry, some are self-employed attorneys, who regardless of their position on the bill, have attempted to make the bill a better bill and to make it technically correct. And I think that's very gracious and generous on their part. And I think that should be noted. That when you attempt to craft a piece of legislation, to have the cooperation of people who are not even sure whether they support it or not, but are nevertheless willing to lend their time and expertise to help make it as good as you can make it, I think they should be complimented and their work should be noted. This bill is typical of many that come before this legislature. And that is the contribution that citizens from without the Chamber make to this process.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President, I had not intended to speak, but in that we are handing out kudos. I want to apologize to the members of the Chamber for not being thoroughly prepared with an appropriate example that should have been on your desks. And I apologize for that. But I believe that the record has set it straight. And I want to thank Senator Robertson and Senator Upson for assisting me in doing that.

Because what we do want is a clean bill. We do want something that people will be able to enforce and work with in our Judicial system. I want to thank the leadership. I've learned a lot as a State Senator in the last three months, and as Chairman of the Judiciary Committee. About the Majority and the Minority Party and about my fellow Senators. There were those who said it could not be done. This is not Senator Avallone's victory. This is a lot of people's victory. This bill says a lot, but it goes far beyond the merits of this particular piece of legislation. Anyone who thought that this body could register thirty-five green lights on Tort reform on January 4th of this year, could have made a substantial amount of money. Because the odds were fairly long. My leadership gave the Judiciary Committee the opportunity to have its head. Perhaps, to have its will. And the issue was debated and it was challenged and some people in this Assembly... not myself, but many people, dared to be a little different. Dared to stand up and say something has to change. And they sent a message. And I'll tell you, I'm proud to be a State Senator today. And I'm proud for 36... 35 green lights. Not for Tort reform, but for the process that we hold so dear in this Chamber. I thank you.

THE CHAIR:

Clerk, please make an announcement for immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate, will all

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Senators please return to the Chamber. 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 Cal. No. 302, Substitute for Senate Bill No. 1015, File No. 448, as amended by Senate Schedule "A", L.C.O. No. 7107. The machine is open, please record your vote. (There is applause at the vote.) Has everyone voted? The machine is closed, Clerk please tally the votes.

Result of the vote: 34 yea, 0 nay. The bill is adopted. May we have order please? There is further business. Senator DiBella.

SENATOR DIBELLA:

Thank you Mr. President. I was absent from the Chamber on Cal. No. 416, and I would ask to vote in the affirmative.

THE CHAIR:

The record will so note.

SENATOR DIBELLA:

I'd also like to announce that on May 6th at 9:30 a.m., there'll be a Finance, Revenue and Bonding meeting.

THE CHAIR:

Further announcements? Senator O'Leary.

SENATOR O'LEARY:

Thank you Mr. President. It's our intention to come in next week on Wednesday at 1:00 with a Caucus at 11:00... Democratic Caucus

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REPRESENTATIVE BUTTERLY: (continued)

this doctrine can be reinstated and we will still have a strong insurance system in this state, but very importantly and most importantly, we will protect the rights of the victim.

So, I thank you for your time this afternoon.

SENATOR AVALLONE: Are there any questions from the Members of the Committee? Thank you, Representative Butterly. Are there any other Legislators? or Representatives of State Agencies? Very good.

REPRESENTATIVE TULISANO: Alan Hayes?

ALAN HAYES: Good afternoon, Mr. Chairman.

SENATOR AVALLONE: I want you to use the microphone,bring it closer to you so that

ALAN HAYES: I am suffering from a little bit of laryngitis, so please bear with me. This afternoon, I would like to speak to the issues with regard to Proposed Bill 1015, an act concerning the enhancement of the rights of victims of civil wrongs. One year ago this month, I came before this Committee and presented testimony regarding the then-proposed tort reform act, which has since become Public Act 8638. My position at that time was one of opposition.

My position was not based on a full and complete knowledge of the workings of the Connecticut Civil Law. It was not based on the fact that I understood the complex nature of the inner-workings of the checks and balances of the Judicial System. It was based on one very simple fact that I now have before me every day of my life. I know what it is to be the father of a victim. I know what it is to walk down the halls of the trauma centers; I know what it is to be present when the final

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ALAN HAYES: (continued)

truth is given to a family in a reality that a life has been changed forever is made known to them. I know what it means when somebody comes up to you and avoids looking in your eye, and says: I am sorry; we have done everything that we can possibly do, but there isn't any hope.

Because sometimes, I was the person who was saying those words. Knowing this, knowing what families have gone through and will go through, knowing what it really is to be a victim of not only an event that you don't have any control over, but also the nightmare of attempting to put your life back together again. Knowing this and living proof this, I could not stand by and say or do nothing while I witnessed what little rights the civil victim had at that time be cast aside.

It was very difficult for me as a victim to open up old scars. It was very difficult for me to open up closed passages of my life in an effort to bring some humanity and to bring some compassion into the argument that raged back and forth. All I ever attempted to do was to say that there are people that make up these numbers. There is flesh and blood in back of these arguments. These are human beings. These are families, and there, but for the grace of God, go you and your family.

With the passage of Public Act 86338, the victim and the families of the victims became a victim a second time around. The full right of recovery was lost, limitations were places on what could be paid in an attempt to recover just compensation. Structured settlements came into being, settlements that could not be altered to adjust the changes of everyday life, and to the changes of the medical condition of the victim or of the condition of the family.

Apparently, somebody was listening. Somewhere a little voice of reason was heard, because here

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ALAN HAYES: (continued)

we are again. Only now, you as a Committee have the opportunity to permit Raised Committee Bill 1015 out onto the floors of the House and the Senate where these rights can be given back to the people of our State. You have the ability to bring compassion and reason back into our civil justice system. And you have the one element that every victim, that every victim's family, that everyone who in mid-heartbeat has had their life turned inside out so desperately cries out for: you can correct a wrong that has been done.

You have the ability to turn back time and demonstrate to the people of this state that the family does count, that the person is important and that human life is just not a number. I ask that you submit a favorable report on the Bill and that it be sent to both Chambers of the Legislature where it can be given a fair and open opportunity to be passed and signed into law.

Thank you.

SENATOR AVALLONE: Are there any questions? If not, thank you very much.

REPRESENTATIVE TULISANO: Judith Hersey?

JUDITH HERSEY: Good afternoon and you will have to bear SB 1015 with my throat too, but anyway: I am delighted to have an opportunity once again to be able to address the issue of tort reform.

It was about a year ago that I first came to the State Capitol and the first thing that I said was that I was there to represent your humanitarian conscience. Everytime that I have an opportunity to think back on that saying, I realize that that really was just a portent of things to come. That's really all the victims

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JUDITH HERSEY: (continued)

here are really trying to do today. As a parent of a trauma victim, the incorporator and President of the Trauma Victims' Support Group of Connecticut, and as a very concerned citizen, I would like to say that I feel impelled to be here. The networking that I have done with victims throughout the state since that day, a year ago, has given me more strength to come back and make you realize that there is a group that you have to recognize here.

Alan mentioned the word "nightmare", and every time that you ever see any articles in the paper, somewhere in that article about victims, you are going to hear the word "nightmare." Since I saw what a 40,000 pound bus did to my son's body, I have to concur with that term, and I think that that is what makes those of us who are victims come here, because what we want you to do is to understand that you have to recognize us as a group.

Recently, I attended a conference that was dealing with how to set up crisis teams in school systems and a speaker mentioned something. She said that there was an Oriental symbol for crisis; and that it was two symbols actually put together and one of them was for danger and the other was for opportunity. I think that those of us who have been victims are learning from the dangers that we have seen, but we are daring to take the opportunity to draw on that experience to make sure that the future victims have the road a little easier to walk.

Also, the business of determining: who is a victim? Or what kind of victim? Whether it is a civil victim or whether it is a criminal victim, I feel overlooks some important facts. I would like to ask anyone in this room if they walked into an emergency room or a trauma room or a hospital

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JUDITH HERSEY: (continued)

room or a rehab center or even a cemetery, if you would be able to tell me the difference between a civil and a criminal victim. I doubt it, because the pain and the suffering that that person has to endure and the people who care about that person is all the same.

I really feel that victims deserve some concern and assistance and legislation that enhances their rights and provides services that they desperately need. All of us realize that we have to recognize whether we are innocent or not, that things have happened to us that we have no control over, and that is why we are victims. But I think it is very difficult for us to accept the fact that, in the case of civil victims, the passage of the Tort Reform Law actually diminished our rights, and that is something that we are trying to grapple with.

The current law has made victims twice: first, by the perpetrator and then by the system. The passage of the the Tort Reform Act threw the balance of right and wrong off center, as far as I am concerned, and as far as a lot of the other victims too. With the elimination of the joint and several doctrine which would have provided that the victim be fully compensated, the balance was off. With the implementation of structured settlements which would spread payments out over, sometimes as much as 10 years, with no ability to go in and reopen it if something happens, and we all know that when people have massive injuries, there is no way again to predict what those injuries are going to do and how quickly they can change even the life expectancy of a victim.

Throughout the debate of Tort Reform last year, all of us as victims tried to have all sides considered. Those of us who were present when the Tort Reform Debate was going on realize that this law which was an act at that point that was

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JUDITH HERSEY: (continued)

being considered, seriously restricted the legal rights of a civil victim to fair and just compensation. We asked that we have some input in it, and our requests, which we felt were reasonable, were not always accomodated.

In situations where any of us undertake some new task and we have very little experience in it, I think that most of us are willing to go to someone we feel has an expertise. Since each of us who has been a victim has become an expert in being a victim, I think that the...that we are not tapping into a valuable source...resource, if we are not going to consider all sides of this issue.

I would like to say that I feel we should see the danger in not assuring that precious rights which are the only means that civil victims ...no, I guess all victims, have to a reasonable legal recovery are improved. I want to ask you to take this opportunity to make a statement about who and what is important in a humanitaian society, and recognize our responsibility to work together considering all sides before we abandon the growing numbers of victims in our State.

Yesterday, I was driving along on a highway, and I happened to see a billboard and all it said on it was: "Just say no." And I think that everyone in this room knows exactly what that means. It is talking about people whose lives have been changed by drugs, but I kind of think that there is an irony in it, because at least people like that have a choice about whether they use drugs. Victims do not have any choice; the situations that make them victims usually happen in seconds, and forever alter their lives and the lives of everyone who cares about them.

So, today, I ask you, in your capacity as Legislators as well as concerned humane members of

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JUDITH HERSEY: (contained)

society to join with me and just say yes: yes to the more reasonable and humane approach to tort reform offered by Raised Committee bill 1015, which is entitled: "An Act Concerning the Enhancement of the Rights of Victims of Civil Wrongs," which would allow civil victims to be fairly and adequately compensated.....yes to the fact that there is an innocent group that deserves our assistance and protection as they go about the difficult task of putting back the pieces of their lives as a result of tragegy....yes to allowing those of us who have been through it to be able to help you in any way that we can in order to ensure that the victim's rights are preserved.....

And more importantly, yes to making it a committmentno, I guess I really mean a priority to set in place targeted legislation which will ease the burden for those who, through no fault of their own, already have more than they can bear.

Thank you.

SENATOR AVALLONE: Thank you very much. Any questions?
No...thank you.

REPRESENTATIVE TULISANO: Paul Garland?

PAUL GARLAND: Thank you, Mr. Chairman. It is a pleasure to be here. It is a difficult topic. It is not easy for any of us who were victims to talk about it, and we much appreciate the chance to do so. I am from Fairfield County. I am a practising attorney; I am a victim of crime. I am the father of Bonnie Garland, who was murdered in 1977, while she was a student at Yale University. I have been through the criminal justice system and I through the civil justice system, and those of us who are victims desperately need your help.

We are the people who have been wronged by the

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PAUL GARLAND: (continued)

intentional acts of others. We are the people who are alienated from those of you who are civilians. We are angry, crushed, . . . people attempting to go on with our lives to the best of our ability. When we turn to the various parts of our total societal network with some changes that, thanks to you the Chairman and the Committee, are making a difference in in Connecticut.

By in large, we find that we have no standing; we are the forgotten people and we have no rights. Those of us who are victims of crime, who recover enough to seek civil remedies against the people who wronged us, should not really in good conscience be asked to face yet another burden. It is hard enough to find an attorney to represent our interests. The idea that a victim has civil rights is new in this society; it is difficult to find an attorney that is skilled in the matters that interest us, and really in the area that we are addressing today, it seems to me that we should not be asked to face the additional burdens that the tort law reform might present to us.

We should not be asked to go through the joint and several agony of trying to identify who we have rights against. Many of us are poor; many of us cannot afford counsel. Many of us did not have counsel, and it is my few that we should be entitled to get recovery from those that we can reach without heroic effort. I also hope that in your consideration of this general area, you will keep us in mind as a category of human beings. There are a lot of us out here, perhaps now approaching a majority of the populace of Connecticut has been effected by violent crime in one way or another.

So, please keep us in mind, and please, for example, in your consideration of Tort Reform, please remember that we should not be charged with contributory negligence because we were the objects of deliberate crimes . . . that we really ought to

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PAUL GARLAND : (continued)

have the right to go after anyone that we can find that is legally responsible and should not be saddled with the joint and several versions. We shouldn't be asked to get involved in this dispute between powerful interests, one of whom is the insurance industry and the other of whom seems to be my colleagues at the Bar. We are the new people on the block here.

We didn't create whatever crisis or non-crisis exists in this area. We are not the litigants. We are the forgotten people of this society. Please do not forget us; please keep us in mind as you address legislation in this area.

Also, please keep in mind that, if you consider, in your wisdom the question of contingency legal fees then, please do not address that in terms of victims of crime, because we desperately need counsel in this time, and please do not take away from us our right for punitive damages. Punitive damages in the case of crime, I think, is a self-evident right that we are entitled to. Please do not take it away from us.

As my fellow victims have perhaps said before, and I would like to repeat, those of us who are in the victims movement including the Connecticut Victim's Round Table and the Connecticut League of Victims are available as resource people to you people in the General Assembly, those of us who survived at all are highly motivated and very anxious to make a change for the better of all of us. We are not lobby; we are just suffering human beings.

Thank you.

SENATOR AVALONE: Any questions? Senator Upson?

SENATOR UPSON: I just have one. Sir, do you want to... is it 1015 that you are promoting today or....

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PAUL GARLAND: Yes, it is, just that. I hope that what I said perhaps out of order on other issues will be taken into account as well.

SENATOR UPSON: Thank you.

REPRESENTATIVE TULISANO: David Bingham?

DAVID BINGHAM: Mr. Chairman and Members of the Committee, my name is David Bingham. I am an obstetrician from Norwich, Connecticut and I represent CONN TORTS which is an organization of over 600 physicans within the state who are fed up with the malpractice as it exists and feel that there must be some change to make the system more fair.

Last year, we came before you with a group of reforms many of which were passed by the State Legislature. First of all, I want to say that these have made a significant effect upon us. First of all, in the area of availability of insurance. I happen to be an obstetrician; I am in a high rick specialty and the re-insurance market for that had dried up. There was a real possibility that we would not have been insured this year. Without insurance, most of us could not do business.

Because of the passage of the law, with the changes that you have in the current law, we were able to get re-insurance and we are still inable to provide these services.

Secondly, there has been a change in the terms of the cost....the cost has leveled off or slightly increased. We had been seeing the 25-50% per year increase in our premiums. We think the changes saved about 15-18% in the rapid rise, so that we now expect with the current changes that we will still see a rise. We will see a rise in the exorbitant fees that we pay: I pay \$50,000 a year. We will continue to see a rise, unless and until there is some change in thesome kind of cap on non-economic damages. But essentially, without that cap, we will continue to see a rise but it has decreased substantially from the 25-50%

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JOHN BLAIR: (continued)

their anticipation of improved results. We have sent you several times and we have again for the record today a list of those actions. These are not imaginary actions; these are real actions taken by many Connecticut insurers, many out-of-state insurers as a result of the passage of Tort Reform. These real action represent real savings for actual Connecticut consumers businesses and municipalities.

The State Legislature had recognized a critical need to restore fairness, efficiency and predictability to the civil justice system. This has, and will continue to translate into more insurance companies being more willing to write business in this State and if that happens, Connecticut businesses and consumers will be the beneficiaries.

Now, I would like to turn this over to Steve.

STEVEN MIDDLEBROOK: Senator Avallone, Representative Tulisano, Members of the Judiciary Committee, I am Steven Middlebrook. I am Vice President and General Council with Aetna Life and Casualty and I appear before you today in that capacity and on behalf of the Insurance Association of Connecticut.

We urge the Committee to reject the following bills which will repeal or seriously compromise Public Act 86-338, known as the Tort Reform Law, specifically: Raised Committee Bills: 1015, 5057, 5059, 5060, 7270, and 7432.

Last year, I appeared before this Committee on two occasions to discuss what we were then calling the Law Suit Crisis and the issue of tort reform. On both occasions, I urged this Committee to address this State's tort liability law in a way that would modify what I felt would be some of its more troublesome provisions. For example, those provisions that allow an unlimited liability to be imposed on only partially responsible defendant and those

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STEVEN MIDDLEBROOK: (continued)

provisions that permitted double-dipping or double recovery of compensation for the same loss from two different sources.

Those changes were also reflected in the recommendations of the Governor's Task Force on Insurance Costs , an availability on which I serve, and those changes were ultimately reflected at least in part in the tort reform law which became last fall. Now, as I understand it, all of those changes in the law and others are up for review, and are at risk of repeal.

Let me just say that from my perspective as a Member of the Insurance Industry, our industry is clearly part of a civil justice system that hasn't worked very well for a number of years. Over the last decade at least, we could say that there have been good times and bad times in the liability insurance business, but at no time have we ever been fully satisfied that we are participating in a civil justice system that really works and is cost-effective and is consistently fair and that is reasonably predictable.

Nor can I believe that anyone else who participates regularly in this system is really happy about it either. And, yes, it can be defended, and defended very eloquently in terms of its underlying principles. This country does need a system that assures an avenue of relief when people become injured through the misdeeds or the negligent omissions of others, quite clearly it does. Most of us can agree that such a system must also provide at least some measure of restitution to the extent that cash dollars can ever do that. We can also agree that there must be enough pressure in the system to encourage us to be careful in our daily activities particularly where our behaviour could adversely affect other people.

Where we have gotten into trouble, I think,

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STEVEN MIDDLEBROOK: (continued)

particularly over the last few years, is in the additional expectations we have developed about our liability system and in the huge costs that we are incurring that make it preform to multiple standards.

Most of these new expectations are relatively new expectations, have arisen through the operation our judicial rather than our legislative system. They represent a sum total of what many judges have said and what many individual fact situations about what the system should do. Through that kind of a process, new precedents are set, old precedents are modified or discarded and our laws and our legal system are continually changed. All with very little or no public debate and with littel or no discussion about the consequence to the rest of society.

The policy in this area in short in my judgement is really the job of the elected Legislature, as this Legislature demonstrated very clearly when it acted with regard to last year's Tort Reform Bill. Now, we have heard the repeated charges that the problems in our civil justice system have been manufactured by the insurance industry and foisted upon an unwilling and gullible public. But when we talk about the price of liability insurance, we are really only talking about a surrogate for the underlying claims that insurance companies must pay on behalf of their policy-holders.

It is understandably difficult, indeed it is almost impossible to construct an insurance mechanism that is capable of attaching a fair price for protecting those of us who from time to time become exposed as defendents ...it could be any one of us...under our tort liability system. Actuaries and underwriters today trying to determine the exposure of their insureds for tomorrow can derive very little comfort in relying on yesterday's law.

STEVEN MIDDLEBROOK: (continued)

When you are faced with the inexactness of such a process, they tend to do what any of us might tend to do under the same circumstances: they either walk away from the risk if it is too difficult to quantify or else they develop a very high price structure to protect their companies from the vast unknown before them. As a result, some insurance coverages, particularly in the commercial liability areas that are most effected by unpredictability become unaffordable or unavailable.

Perhaps the most telling evidence that tort reform is needed to try and meet. solve cure or fix this liability problem is that many self-insured individuals and organizations, self-insured individuals and organizations: doctors, drug manufacturer's and municipalities....are among those who have lobbied the hardest for tort reform. They recognize that it is not the insurance mechanism by itself, but rather the inexorable upward trend in liability costs that is the main cause of the problem.

Now apart form the increasing uncertainty as to settlement and damages exposures that I have just talked about, there is also the increasing cost of just running the system. Since I testified to this effect last year, new data have emerged that make this point no longer intestable. Recent studies have found that for every dollar delivey bond system to those who are injured, for every dollar delivered by the system to those who are injured, another whole dollar must be consumed by the system itself. Legal fees, administrative costs, the value of time expended by plaintiffs and by defendents in pursuing their respective rights. Those are not the old asbestos figures: these are fairly new figures that apply to all tort litigation except that tried in Small Claims Courts.

So, we have, I would argue, a system that carries too much on its shoulders producing unpredictable

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STEVEN MIDDLEBROOK: (continued)

results and in turn extremely conservative underwriting. We also have a system that simply costs more than anyone would argue that it simply should. As insurers, we can't feel very good about participating in a system that costs us as much to deliver a liability settlement as the settlement itself.

We don't feel right about denying needed coverage to doctors, to midwives, to pharmaceutical companies, to vaccine makers, to others to provide good and valuable services to all of us, but are subject to the risk of unpredictability of high jury awards or of unpredictable claims that even we with our vast size and risk spreading capacity simply cannot afford to insure.

There are also new data confirming that an overwhelming majority of Americans support changes in our civil justice system, quite similar to those adopted by this General Assembly last year. This, despite their overwhelming due...talking about the American people...their overwhelming view that the system in the abstract can deliver reasonable compensation and despite a majority view that major changes in the system are not necessary, ...despite those finding. In a recent Lou Harris poll, which was sponsored by my company, a 71 to 26 % margin favored ending the joint and several liability doctrine, which encourages pursuit of the deep-pocket with little regard for relative responsibility....something that you did in a large degree in 1986 under the Tort Reform Bill.

That same poll, by a 67 to 29% margin indicated that the American people support the repeal of the collateral sources rule which allows injured people who already have been compensated to be paid again for the same losses through the tort system. You did some of that, too, in 1986.

Even the American Bar Association is now moved at least incrementally to address some of the

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STEVEN MIDDLEBROOK: (continued)

concerns posed by our civil system. Its Action Committee to Improve the Tort Liability System on which I served recently managed some encouraging recommendations that were accepted by the ABA's House of Delegates...the principal government mechanism of the ABA, just a few weeks ago. Included in those recommendation which were approved, was a recognition of the doctrine of joint and several liability can result in deep-pocket defendents bearing "a substantially disproportion of share of" the damages and therefore it ought to be changed. And you did in 1986.

Finally, as has been suggested by some that the tort reform law adopted in 1986 is so flawed that it ought to be repealed or that it's already effective date should somehow be extended or postponed until next year. I don't buy those arguments, but I will leave it to Ralph Elliot to explain why they are wrong. We don't deny, and I don't deny, that there are flaws in the bill....technical flaws in the bill, and we will be glad to submit suggestions for technical corrections if that would be welcomed by this Committee, if that can be done within the boundaries of this Legislative session.

Those are my formal remarks. Mr. Chairman, and for the record, I am submitting the following documents: the Lou Harris poll that I referred to earlier called "Public Attitudes Towards the Civil Justice System and Towards Law Reform" and then three letters written by Aetna management, one on June 6, really a press release regarding our response to Tort Reform, then on July 17, a press release announcing our auto insurance freeze....our auto insurance rate freeze...in response to the tort reform law, and then on October 31, a letter to Commissioner Gilles regarding our responses to Tort Reform Law. Finally, I would like to introduce a letter dated November 26 from Aetna Life and Casaulty to again

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STEVE MIDDLEBROOK: (continued)

Commissioner Gilles announcing the 1.7 million dollar savings for Connecticut commercial liability insurance brought about by the law that you enacted last year.

Thank you.

SENATOR AVALLONE: Excuse me, Steve. Did you want to have the entire panel speak before you had any questions asked? Ok, that is fine.

RALPH ELLIOT: Senator Avallone, Representative Tulisano, my name is Ralph Elliot. I have just been retained by the Insurance Association of Connecticut since the adoption of the Tort Reform Act 86-338 to review that statute with a view to determining the legal issues embraced in it, any ambiguities there may be in it and its amenability to amendment. I am not here today to talk about the policy behind the act. I am not here to talk about the details of the act and the advise that I have as to what amendments might clarify or might not....obviously, because I would have to go first to my client, as the lawyers on this Committee know and then from the clients to you.

I am here to say three principal brief things in response to some concerns that I have heard and read about the law. First of all, the law that this Legislature adopted as contrasted to some of the bills that were before this Legislature last year, in my opinion, is clearly constitutional.

Secondly, the intent of the Legislature, what they intended to do, the principles and the principle that changes in the law that they intended to enact are clear from the statute.

Third, this Legislation by men and women of good will such as comprise the 187 members of this General Assembly is capable of intelligent

SEN AVALONE: (continued)

eration to those people.

TOM GODDARD: Mr. Chairman, members of the committee, my SB1015 name is Tom Goddard, I'm the President of the Goddard Public Affairs Corporation, a public policy research organization, and in the former direct of the Alliance for Consumer Rights.

I will make my testimony brief, I've provided written testimony to your staff over here that has graphs and all sorts of more interesting things than I'll ever be able to get into today. What I would like to briefly talk about is to back up, there's been a lot of discussion as to whether Tort Reform is working or not. Now let me back up and look at first at the causes of how we got to this situation, that we're currently in. Or certainly have been in the last two years. We heard a lot of testimony and hearings just like this over the last two or three years. The insurance industry was suffering and passing on its cost and therefore making insurance consumer suffer, because of a runaway litigation system. Let me look first at the, is the industry suffering? I think we've heard enough today to know that that's not true. Let me be specific as to why it's not true or to what extent it is not true. Last year the insurance industry, property casualty insurance industry, had a net increase in its net worth or surplus in the lingo of the industry, of unbelievable proportions, they went from a surplus of 69 billion dollars, to an excess of 91 billion dollars, 69 to 91, that is somewhere around a 35% increase in net worth in one year. Stock holders don't believe that the insurance industry is in trouble, or has ever been in trouble. In one of the graphs I provided in my testimony demonstrates that this is a long term and short term confidence that stock holders have had in the insurance industry. One of the things that we've heard over the last couple of years is that the concern that the insurance industry will not be able to attract capital, if it doesn't make enough money. Certainly that has not been a problem, over the last 20 years, property casualty insurance stock prices have out paced the Dow Jones Industrial average by a factor of five. And that continues to be true even in this boom stock market and supposedly bust time for insurance companies. Then why do we have this

TOM GODDARD: (continued)

problem in 82, 83, 84 and particularly 85. Why did insurance premiums in the property casualty industry go up from 118 billion two years ago, to 170 some odd billion last year, in other words a 50% increase, a thousand dollars for every average family of four in two years. Well the reason is as many of you are aware, is that the industry simply did not keep up with increasing costs and in fact in many cases, and in many lines, actually lowered their prices in the times when investment interest, investment income return was very high, in an effort to grab market share, they competed each other into the ground, and threw all actuarial analysis aside and simply priced at whatever the market would bare and knowing that the difference would be made up by their investments.

Then when interest rates dropped and the bad risks that they took, like the MGM fire after the fire. Started to come due, and they started having to raise rates to make up the bulk of this venomena. And they raised rates very very sharply as I've said. To what extent is there an impact, a relationship between the Tort System, what's going on in the Tort System and what's going on in the insurance industry. Let's look first at the, there are two basic components of what we're looking at in the Tort System. Are people suing more often and when juries award verdicts or insurance companies settle cases, are the settlements going up rapidly. Let me establish first a bottom line. One would expect I would assume, that insurance costs will go up as rapidly enough to keep up with the cost of compensating victims of personal injury. I choose the cost of health care. It seems to me a good middle ground, while on the one hand the cost of traumatic health care goes up much more sharply than the cost of health care. Generally there are certain non-medical care components to the cost of compensating victims, like lost wages. So I chose the middle ground of the cost of health care as a baseline. When you use that baseline per capata the insurance losses in this state have not gone up at all in the last 10 years. Per capata, constant dollar health care, insurance losses have not gone up. And that's straight from the insurance industry data source the AM Best Company. So there losses are not out pacing the cost

TOM GODDARD: (continued)

of health care, the cost there underlying cost of compensating victims of carelessness. How about frequency, are people suing each other more often? Well dozens of studies have been done nationally and I'm sure no other within the state that indicate that the cost, the frequency of litigation is not going up in the Tort area. Certain, small components of the Tort area it's going up, for example we've got Asbestos litigation that we didn't have 10 years 15 years ago. We had an increase in frequency in day care litigation, as we as a society became aware of public new problems that we were not previously aware of, but if you look at the whole system, the frequency has not gone up in an outrageous rate. In Connecticut, that rate has been just about 2% per year. Which given this rise in such complex and multi plative situations like asbestosis, that is not too surprising and that is a national trend, in fact the national Senate for State Courts reported last April that the number of total civil law suits in this country had actually declined from 81 to 84. And there are dozens of studies like that and not only are we not suing each other more frequently, we don't sue each other particularly frequently when you compare us to other Western Democracy. Perhaps the most comprehensive study of Tort Litigation that is ever been was funded by the Federal Government and done through the University of Wisconsin, and the results of that, one of the reports that spun out of that research indicates that were right in the middle in terms of Western Democracy, in terms of frequency of litigation, civil litigation.

How about the total cost. Is it too expensive generally. Forget whether it's going up or down sharply, is it just plain too expensive. Absolutely not, it is, let's take a look at the whole Tort System. Whole Tort System is about 2% of our gross national product. The medical malpractice system, the medical malpractice premiums cost last year, according to the general accounting office, somewhere under 4 billion dollars. That is less than 1% of the total health care dollar. In other words for every dollar you spend as a citizen on health care, you spend about a penny to assure yourself of insurance coverage just in case the health care system breaks down and injures you through care-

TOM GODDARD: (continued)

lessness. Does Tort Reform help. That's a particularly contraversial question in this state, because you all have passed it and because there has been much (inaudible) to the fact that some insurance companies have said yes we're coming back into this state when we wer'nt here before, because of restrictions on jury rights in this state. And we're doing that in other states. I'm from Arizona where the Governor last year vetoed every bit of Tort Reform that was passed out of Legislature, and I can tell you what's happening in that state too, I serve on the liability study commission in that state and the data and the anecdotal evidence from Arizona is that the market is softening, in fact a couple of weeks ago, three weeks ago in the New York Times, there was a very extensive series of articles about how the market is softening. The market is not softening because of Tort Reform in 10, 12, 15, 35 states. The market is softening because they charge, they increase premiums by 35 billion dollars in one year. Capital is flowing, capital and premium dollars are flowing into the insurance industry.

In fact as Senator Avallone said, suggested earlier the competition is starting all back over again, their starting to compete visiously for premium dollars, again and some according to the New York Times article, some are concerned that the price wars of the late 70's early 80's may be just about to start again. Therefore what I would suggest that the extent that you do have a softer market here in Connecticut, it is simply a national trend that has nothing to do with whether you have this law or that, it has to do with general softening of this market. I would also suggest that this body look closely at the consiquences of limiting the juries power to compensate victims and to deter future careless conduct. Not just from the technical point, as to the joint and several hypotheticals, which are certainly important to look at. But in terms of generally when you start reducing the cost of careless behavior, it follows that you make it, particularly for an unfeeling corporation, you make it more likely that that careless behavior is going to happen as it becomes less likely to cost financial hardship on that company. This will lead, in my mind, disasterous results, particularly if you reduce the condobility severely.

TOM GODDARD: (continued)

Disasterous particularity in area of product liability, environmental pollution, toxic cleanup. What can be done? We heard Rep. Wollenberg talking earlier about insurance reform, what needs to be done? We need more information. I can tell you that my best guess is that the insurance companies do not have on computer and easily retrievable accounts, joint several liability cases, and what percentage they impact there settlements and verdicts. And they do not in fact even have in any recordable way that they require report to you a sense of what their losses in day care centers are opposed to other lines of insurance. Now certainly the insurance services office collects some of that data. But it's not reported to you unless you force them to report it to you. And I would suggest that a more orderly insurance, set of insurance disclosure laws would benefit this state, this body and the insurance regulatory department immensely. Just more information makes it just better for all of us in terms of dealing with this issue.

Beyond that though, I would suggest that something is wrong with pricing. If we were just about to go into another price war again. And if it has nothing to do, or little to do with the legal system, it seems to me it would behoove this body to look at ways to restrict that kind of destructive, self destructive, uncontrolled price boom, price bust behavior by the insurance industry, and certainly this is a state by state consideration and you might want to look at prior approval again. You might want to look what has been past in New York, which is flex rating to keep increases and decreases in premiums within a certain band or whatever, but I would certainly say it, this issue deserves revisiting. Certainly the Risk Retention Act, that the President signed last fall which allows greater number of organization, an types of companies to self, and non-profit organizations, to self insure in large pools, certainly is a valuable response and a valued response, and there are things that this state can do to further implement that act. National Association of Insurance Commissioners has drafted, and in fact within a few days after the President signed the Bill drafted a proposed model statute for states to fully implement the

TOM GODDARD: (continued)

Bill the President signed last fall on risk pre-tension. And certainly cooling seems to be one of the factors that's drawing the insurance companies back into these markets that they previously left. So that's a valuable thing to do. In terms of one of the real problems with the insurance system right now, and that is spiraling defence costs. The ISO says, in fact, that for every dollar that the insurance industry pays out in general liability insurance, 42 cents goes to pay for the insurance companies defense costs, and that's far higher than it was 5, 10, 15 years ago.

You might want to look at what the Governor of Massachusetts just signed this spring, in fact this winter in January, which was a Bill which allows the insurance commissioner to develop regulations which guide insurance companies into methods to reduce defense costs. And then allows the insurance commissioner to put teeth into that by saying if the, if the company does not adopt, does not all ready have, or does not all ready those kinds of measures or similar or equivalent measures, that he can disapprove rates on that basis.

And in medical malpractice, particular problem, the Doctors who self insured for the most part over the last decade more than half the medical malpractice insurance in this country is written by Doctors own companies. The Dr. behaved in the same kind of price cutting in the high interest rate that corporate insurance. It's not out of greed, it's out of keeping their premiums low. It's just, they follow the same market tendencies, insurance premiums for malpractice, you get the same kind of boom bust, pricing cycle that you've got in general liability and automobile liability. Certainly pricing should be more strictly guided at least, in medical malpractice. One of the a couple of the ideas that you might want to look at is in medical malpractice, specifically, is experience rating requiring insurance companies to make Drs. with poor malpractice claim records pay more than good Drs. Some insurance companies, some don't, some do it on a kind of wishy, washy, voluntary basis and puts some teeth into that and make sure that everybody experience rates, so that the good Drs. don't subsidize the bad. And you also should give, in my mind, serious litigation to something called risk category compression.

TOM GODDARD: (continued)

Since 1975 most insurance companies have increased the number of categories they split doctors up into. And also the premium that that disparity that the premium that the lowest risk doctors pay at that those that the high risk doctors has increased. So that you might in a state the lowest risk category paying 4 thousand dollars, and the highest risk category paying 10 times that or 15 times that.

Squeezing that back down, squeezing the disparity between the low risk and the high risk back down will do much to allievate the problems that physicians hit by the malpractice practice, and that's the high risk specialists, the orthopedists who are concerned about delivering babies, and the neurosurgeons, and the other high risk specialists. That will do a great deal, because the average doctor, the mythical average doctor only pays about 4% of gross income for medical malpractice, on the ohter hand the high risk specialists are paying more that 15 or 20 or higher percent of their gross income. And that's just not fair. And it's also causing some very serious social problems in terms of the services delivered by these high risk specialists. And there is, that issue is being looked at across the country and I think it's going , we're going to see a lot of action this year and in the coming years toward that. Because that that will get us out of the problems of having rural the last OBGYN in a rural community leave town because he can't afford to deliver babies anymore.

SEN AVALLONE: We are getting very late and we have a lot of people, and I have not cut off anyone else.

TOM GODDARD: That's my last paragraph

SEN AVALLONE: But if we can start to rap it up

TOM GODDARD: You bet, let me just rap it up in about a minute. The question of unpredictability, I've heard that talked about today by representatives of the insurance industry. I'd like to briefly address that, unpredictability is, in my mind, simply not an issue. The median jury, typical jury break in this country is exactly the same as it was in counts of dollars as it was 25, 26 years ago. And the total

TOM GODDARD: (continued)

costs of the system, as I've indicated earlier, and my written testimony indicates, has simply trapped the cost of health care, in this state and in every state in the union. If I were an insurer and I didn't have to worry about competing with my fellow insurance for the premium dollars, I would simply tell my rate setters to raise their rates by the cost of health care every year. That's simply not reality, but that be, it's that predictable. The question of unpredictability is simply, simply not a valid question. And with that I'll take any questions.

REP. NYSTROM: I find your comments very interesting. You seem to have a very strong grasp of the situation. You mentioned your from Arizona?

TOM GODDARD: I returned there last year from living in New York the previous year, yes.

REP. NYSTROM: Are you here as a private citizen?

TOM GODDARD: I'm here at the request of the Connecticut Trial Lawyers Association.

REP. NYSTROM: Ok thank you, you mentioned day care, and that has been a very important issue for me since I've been in the General Assembly. I sat in Washington in 1985, and I listened to testimony from the insurance industry in regards to why day care was being singled out and put into the high risk groups, before Congressman Millers committee. And that time the Congressman basically after hours of testimony, concluded or basically stated assumption that he felt that one, they didn't have any data to place day care in this area in the high risk. One that they were this siclical thing that occurs when the rates go up, expansion lines takes place after so many years, then they start restricting their lines and then they start talking about not being able to perdict what their costs are going to be to write the particular line. Was a delivered action by the insurance industry and that it not only taken place this time but had taken place in the past. Could you comment on that?

TOM GODDARD: The question of whether it was delivered or not is a sensitive one, it involves some mind reading. I suspect some of have done it for those reasons and some have done it for more honest reasons of perhaps of being afraid of unknown liability. Since they are our only data base, in one study I read in Pennsylvania indicates that insurers don't know enough themselves to write premiums adequately. Particularly in some of the specialty lines, like day care centers. The studies that I have seen done on day care center liability have shown me that day care liability certainly, liability losses have certainly not justified the skyrocketing premiums that they have experienced in 85, and 86. I was, I had a conversation a couple of months ago with the insurance commissioner in Alaska, so you could also pass rather at one of the more stringent versions of restrictions on jury rights last year. I asked him, do you see any impact on the insurance market. He said, well sure the market is softening. I said, well what's that for, he said, well the cycle is turning kind of nonchalantly. And he also said, one thing were doing particularly in the lines like day care centers is we are advising them, we have a very aggressive mutual assistance plan in Alaska, and he said, part of that plan, we are working with insurers, through the insurance department to tell people how to apply for insurance. Very often day care centers were applying for insurance in a hand written note asking an insurance company for insurance, and without any data about their own loss experience, without any photographs of, without any risk analysis. He claims that the day care center problem in Alaska has been solved largely by guiding daycare center operators on terms of risk management. Taking photos and describing their own loss experience, and describing what they do manage risk. And you see on a number of occasions daycare centers who couldn't get it before, getting it simply by polishing their application for insurance.

Whether it's a deliberate act or not, is a question that I can't really tell you, but I can tell you that the market is softening in the state that I'm from and the states across the country for a variety of reasons. Very few that have to do with legal changes, that I can see.

REP. NYSTROM: The unknown is why we spend a lot of time over this issue, because we in Connecticut license and register daycare providers, because we expect quality daycare services for the children in our state. Particularly for the working parents who need that service. It would appear to me that the insurance industry would be best served even to themselves, if they would recognize that quality daycare service is necessary in a State that they do themselves their own good if they do not penalize daycare providers by raising the rates as much as they ave in this State. Forcing them underground, forcing them to go out of business. Thereby increasing the underground daycare system which is in our State, which they say they fear. It seems to me that their shooting themselves in the foot, when it comes to daycare coverage, because their forcing people not to get the policy.

TOM GODDARD: Well, in fact, that's a problem that goes way beyond daycare centers. If you read the Train Publications of the insurance industry, you see that sentiment expressed by insurance industry people talking to each other through their trade publication, saying things like I think we've shot ourselves in the foot, these pools are springing up all over the country and we, in fact I read one industry representative saying I'm not sure we'll ever get that market back; and so I'm not saying it's in their best interest, and they will tell you that their casual underwriting that got them in this price cycle is not in their best interest. But its an unregulated industry that is some respects highly competitive and in other respects not at all competitive. But that in any event, doesn't have a whole lot of self control. And is not guided as they would have you believ, in my mind, strictly by acutary principals. If you read their train publications they will say, God I wish we'd followed our actuaries 5 or 6 years ago, instead of our marketing people. I believe they have shot themselves in the foot, very badly, and they have also shot us in the process as citizens. Thank you.

REP. TULISANO: Rep. Thorpe

REP. THORPE: I've sort of lost track, what bill are you testifying on?

TOM GODDARD: I'm in favor, I would suggest that repealing and starting over would be the best idea. So I'm in favor of repealing last year's act. I think it's ineffective and I think it does some serious damage to the consumers in this State.

REP. THORPE: Which Bill No. in particular are you talking about?

TOM GODDARD: I do not have the Bill, as the man who testified previously I don't have the Bill numbers all sorted out. I think it's 1015, but I'm not quite sure.

REP. THORPE: Have you testified to the insurance company.

TOM GODDARD: I'm sorry, what

REP. THORPE: Are you going to testify to the insurance committee.

TOM GODDARD: I haven't been asked to, if they ask me to I'll come back. Thank you very much for this opportunity.

SEN AVALLONE: I want you to know, I promise to buy all the members of the committee dinner who stayed. It's going to be a cheap night.

JAMES COYNE: Well I won't get into that. Mr. Chairman, members of the committee, thank you very much, I was afraid when you invited me up from Washington, or I was invited along with a few other people, I see up in the audience I see from Washington, you were inviting us up to bring some hot air from Washington, to the cold climes of Connecticut. We didn't bring the cold air. My name is James Coyne, I'm the President of the American Tort Reform Association, and as you can gather from the name of the Association we feel strongly in the need for Tort Reform across the country. When I look at this distinguished panel and of course I'm listening to the testimony, to clear that this committee has a perspective, bias perhaps toward the appeal of the Tort Reform passed last year. There has been some interesting metaforms here today, one of them I think was tying Legislation to umbilical cords, and delivering birth, I remember when I was in congress, I served in congress, I used to, some people referred to me as a mother of Legis-

BARBARA DELBONO: (continued)

I'm asking you please, to repeal that and do it right. And don't leave us with a nightmare of a bill like this one. Thank you, anybody want to ask you anything.

SEN AVALLONE: I only wish I could send your message to a lot of other people.

BARBARA DELBONO: Well, I do too, sir.

SEN AVALLONE: James MacManis, Edward Geeter, Elaine Coleman,

RICHARD GOODMAN: No I'm not Elaine Coleman. Senator Avallone, Representative Tulisano, members of the Judiciary Committee I'm Attorney Richard Goodman, I was signed up orginally then Elaine Coleman signed up for me

SEN AVALLONE: We have to go to the end of the list then.

RICHARD GOODMAN: I'm not the last, I'll make it very brief. I'm here representing the Connecticut Package Store Association. And speaking in opposition to Raised Committee Bill 7270, AN ACT CONCERNING LIABILITY ON THE DRAM SHOP ACT. Which is also section II of Raised Committee Bill 1015 .

The Dram Shop Act changes is not really I don't see as part of the Tort Reform. The Dram Shop itself is a summary apparation under the law it's very difficult for an individual who is injured by someone who is intoxicated to use the liability system without special statutory authority to hold a cellar of alchoholic beverage liable because it's so difficult to prove. So legislature, most legislatures do have laws like this that set up a system which basically A. is to give some money available to an injured party, but also is to hold the sellers of alcohol responsible as they should be for their product. To make sure that intoxicated persons are not served. By doing away with the proximate cause all you have to do is sell someone who is intoxicated and that person goes out and injures someone else and your liable under the Act. The realities are, you can sell someone alcohol liquor and he doesn't have to drink. He could have been intoxicated before hand. He can go in and buy a six pac at a package store and have that six

RICHARD GOODMAN: (continued)

pac unopened and that package store is liable. That's what the law says and I'm not here to change that. I think there's good reasons for it. What the law did last year or what it tried to do last year, and I think it did do last year is to say that if there is a series of purchases that were going to hold the last person liable. Again the law doesn't say someone had to drink it, doesn't have to say that you have to prove quasality. And I don't think that's bad, in fact I think it's good. I think it number one, is what's intended, and that is the 20,000 per person, 50,000 per accident available that insurance is supposed to cover. But more importantly it puts the burden on the package store or the bar, restuarant owner to make sure his house is in order, without adding the extra liability that I think the multiple responsibility does put on. The realities and the most difficult things for my clients, are package store owners, is that if someone comes in at seven o'clock and buys a bottle of liquor and at twelve o'clock has injured someone after going to a bar. Two weeks later someone gets a notice, you don't remember that he was in your store, no less what he looked like and the realities are that an intoxicated person, a person legally intoxicated can easily walk into a package store and buy something and nobody would tell if that person is intoxicated.

You've got a statuatory liability here, there for a purpose, and the purpose is to provide 20,000 or 50,000 and also to shape the industry up, I think this change will keep the industry shaped up, because someone is still liable. It does work, but the fact of the matter is that you've got criminal laws and you've got control laws that also work, and to say everyone in line is liable, whether or not there is any causality particularly, there is any wrong doing, and that you had to even know the person was intoxicated, and it's a very difficult thing, and I would just urge you to take a look at this outside appropriate form, which I have a feeling this committee may very well approve. Because I think the Dram Shop is not part of the Bill, is a very supplified Bill and I thank you.

SEN AVALLONE: Thank you,

MATHEW SHATNER: Thank you, I'm Mathew Shatner from Groton. (HB 5059)
I'm here with Roland Feshette of Norwich, Connecticut. Roland is a former worker at Electric Boat, he's retired now and has asbestosis as a result of his work there. He's asked me to speak on his behalf today. And on behalf of hundreds of asbestos victims from Electric Boat and elsewhere in this State.

In the last year and a half, approximately 85 cases from Electric Boat have been settled through the courts. For approximately a total of five million dollars. These cases are not affected by the joint and several liability that was adopted last year. But the cases of the people who will be coming victims in this year, in next year, and the years following who were Roland's go workers will be affected by joint and several liability. In approximately 25% of their damages will be taken away as a result of the joint and several liability that was adopted. That's about one and a quarter million dollars, just for those 85 cases. The new cases are being filed at an approximate rate of 60 a year. And will continue to do so until the year 2,000.

The defendants that are sued at Electric Boat and elsewhere in Asbestos litigation or other toxic litigation and not deep pockets, we don't try to bring people into the litigation because there is a deep pocket, in fact we just let out Westinghouse Electric Corporation, but I think everyone would acknowledge is a quote, "deep pocket" because there involvement is so minimal as to make it unworthwhile to sue them, as a result of the joint and several liability Act though, we may have to start suing them again because we know now that the other defendants that are in the litigation are going to start hauling in Westinghouse and trotting out there responsibility in trying to magnify it, when Westinghouse isn't there to defend themselves. And we can't defend Westinghouse as well as Westinghouse can defend itself. As a result we are going to have to bring them back in now. that is this so called deep pocket theory which is falacious. Let me give you one more specific, there are other cases not involving Electric Boat in which there are only a couple of defendants. One involves John Manville,

MIKE NOONAN: (continued)

and there is no fairness in the law that was passed last year, and I would ask you at your earliest opportunity to repeal Tort Reform as an act of last year. Thank you very much.

SEN AVALLONE: Thank you, Lawrence Liebman, were you going to testify.

PAUL ALTERMATT: Oh yes, if I may, I've asked to Larry to stop in and stand in for me, because I wasn't sure if I could get here by car. Now with your permission I'd like to make my own remarks on behalf of the Connecticut Bar Association. SB1015

I am Paul Altermatt, President of the Connecticut Bar Association this year. I come from New Milford, which is a little west of here. Sitting here this afternoon has been most interesting to me. I compliment all of you people for your patience. It seemed a little bit like a reunion of the Governors Task Force on Insurance, I saw so many people around testifying in the room throughout the day that had been on that body and I had served on that as well. It reminded me too, as I saw the porches present here this afternoon of the debate that before this very committee back in the early 70's, 72 or so on the new Tort issue that was prevalent at that time, and I was insurance commissioner and a principal of what went on in that. As I listened this afternoon to the co-chairman of the committee that I was on at the Governors Task Force, there was constant reference of this pole that Aetna put out and I happen to have a copy of it with me and I noticed that I think it was Mr. Blair, mentioned the overwhelming majority of people in Connecticut that are for Tort Reform.

If you, I was reading at least the currents report on that as they were talking and according to the Current, the pole found 14% of the Connecticut people wanted a complete overhaul of the system. And if what happened last year was a complete overhaul that doesn't indicate to me that there's overwhelming support for this type of so called reform that we saw. It was also reference the action taken I think by Mr. Middlebrook, the action taken by the House of

PAUL ALTERMATT: (continued)

of Delegates in New Orleans, I was a member of that House. There were very significant proposals acted upon, debated and moved. One of the key proposals was a recommendation that there be a full study of the insurance industry as it relates to the Tort Reparation System. So while many of the topics that you have discussed here this afternoon were acted upon by the House of Delegates of Connecticut Bar Association, they said we also have to have a commission to study this insurance mechanism as it relates to the overhaul reparation system.

I'll make my prepared remarks brief, because there will be copies for those of you that are interested. With regard to the Connecticut Bar Association, we do it is composed of some 9,000 lawyers of our State. 80% of whom are in, including the 80% who are in private practice. Our Bar Association is varied, we have anti-trust lawyers, family law, government law, industry, legal service, private practice, all segments of the industry involved. This diversity within our organization is evident and recognized by the fact that we've got some 23 sections, and I think about 30 committees in different areas of the law. Therefore, because we are general Bar Association representing both plaintiffs and defendants bar, we have played a admittedly limited role in the formation of the Tort Reform Act, Public Act 86338 that was passed last year. The Connecticut Bar Association did take a position in January of 86 that unless the societal benefits of the proposed changes in Tort law far outweighed the certainty secured by the common law approach we were opposed to any hasty changes in this well established body. At this time there is no imperative evidence of the affects of the sweet revision of this enactment. Because, quite simply no cases arising under the new law that became effective only on October 1st if you came to trial, yet it has become apparent the act is in our opinion is unworkable, and that doesn't mean that we didn't try, our civil justice section and subcommittee that worked long and hard to come with language to make some of the provisions more understandable and more workable. But in the time frame that were talking about, it just hasn't materialized. The reporter to the Civil Liability Task Force, Professor Dunlap, the University

PAUL ALTERMATT: (continued)

of Bridgeport has concluded that the Tort Reform Act, I'm sure your aware of this, but he concluded that the Tort Reform Act is so flawed that it should be repealed in its entirety, retroactive to October 1st.

Indeed the comparative analysis of the done by the Law Revision Commission, which was requested by the then co-chairs, and ranking members of the committee, I understand, at the close of the last Legislative session has prepared and you have I'm sure available and a scholarly disitation, I think it's scholarly, I read it last night and poured through it and what it said seem to make sense to me. Of the new law, and it reveals in detail the more important profections that you want to address. Professor Dunlap spoke of the implications and affect beyond those seen by the drafters and many of the legislators who voted for his pass, and the last part a quote from his book. He advised the task force that the most serious problem with the act is the large number of apparently unforeseen and unattended interactions among various sections of the act. And between the act in pre-existing Connecticut law. He recommended, and I got a copy of his report here, he recommended to the task force, the immediante repeal of the Public Act 86338. And the creation of a new task force in civil liability to secure the entire question of Tort Reform. And he stated and I'll just quote a part of what I have in my statement, "the bottom line is that it has the potential", and this is a direct quote, " of wrecking havoc in the administration of the State Judicial System, inflicting serious injustices on parties in personal injury litigation, and making it more difficult to affect further much needed Tort Reform in the future." As an alternative he suggested a piece meal repeal, but feels that with the revision only the section on contingent fees, periodic payments, expert witness qualifications and certificates of good faith and medical malpractice act, and some of those could be saved in his opinion. The Bar Association notes, that the Raised Bill Number 1015 THE ENHANCEMENT OF THE RIGHTS OF VICTIMS OF CIVIL LAW. Would repeal the most troubled sections, indeed it would repeal most of the sections, sited by professor Dunlap in the law revision committee. We, therefore, the association, urges, and this was the gist of a

PAUL ALTERMATT: (continued)

resolution passed at our most recent Board of Governors meeting. That if the act cannot be amended in an intelligent way to promote the best interests of the public, then it ought to be repealed retroactively to October 1st. Thank you I'd be happy to try to respond to any questions.

REP. TULISANO: If you could work out with Ralph Elliot, how could you do that. I'm sure you could deal with it.

SEN AVALLONE: Rafe Podulsky.

RAFE PODULSKY: I just have four specific comments I want to make. Rafe Podulsky, Connecticut Legal Services. First of all on, in regards to the women who gave such dramatic testimony on traumatic brain injury. I think the committee should make sure it sees the thing that she did not say, which is in her case if you assume for example that the person who actually attacked her son is perhaps 80% liable, and that the YMCA is perhaps 20% liable, with joint and several liability all that she gets to recover is 20% for the Y, plus 20% of 80% which is another 16, which comes up to 36%. Without regard to structure judgments or caps or anything like that, she is left to absorb out of her own finance the 64% of the cost of the injury. I just want to make sure that everybody sees that that is a problem with joint and several liability.

REP. TULISANO: People want that, did you hear the man say that.

RAFE PODULSKY: People want what. The second comment that I want to make is that it is also important to understand that one of the reasons that is inherently wrong with abolishing joint and several liability, is it incorrectly assumes that negligence of all the parties adds up to 100%. It does not. There are loads of cases in which, in which more than one party is 100% liable, the negligence factor is really 200 or 300 percent and apportioning it produces a responsibility percent which is much lower than their actual responsibility. (HB 5059)

RAFE PODULSKY: The third comment I want to make, deals with Senate Bill 1015, section 7, I just want the committee, I don't know if the committee is going to, will repeal the entirety of last years bill or not. Certainly I would support that. But if it only does a peace meal. I think that it is important that you remove the prohibition of double damages for bringing good faith law suits. That was something that was slipped into the bill last year, that creates a situation in which you can threatened counter suit for twice your litigation costs because someone may or may not prove probable cause. Even though there is no question of good faith litigation. I think it's a terrible policy to leave that in.

SEN AVALLONE: I'm going to interrupt you. I'm going to take away your last two points. Can you develop a system where we can write a Statute that says there is more than 100 percent negligence. That's your homework for tonight.

RAFE PODULSKY: I don't think you can do that.

SEN AVALLONE: I don't think so either,

RAFE PODULSKY: I think what you want is House Bill 5059. Which says you put that joint and several and you do contribution, and I think that solves your problem. Thank you.

REP. TULISANO: Bary Zitser

BARRY ZITSER: My name is Barry Zitser. I'm here as an unpaid spokesperson for the Connecticut Alliance for Insurance Reform. In order to shorten my testimony in favor of repeal of the Tort Reform Legislation adopted last year. I hereby adopt the testimony of Ralph Elliot given before this committee last year. Never was there a greater eloquence in favor of repeal of Tort Reform. I'd also like to answer the question that Senator Avallone posed to a number of insurance companies asking them whether or not they could represent that the Tort Reform Legislation was responsible in any shape or form for the turn around in the insurance industry. I think the best response to that was recently published in an editorial in Business Week, which is pro business so to speak, and titled One Insurance Crisis, and I'll just read a few sentences from there. Quote, "mainly responsible for the

LINDA YOUNG: (continued)

healing. That's all I have to say right now, any questions? Thank you

SEN AVALLONE: Paul Darcey, Gary Fallon, Mark Fairman. I'd just like to say this is the most patient man in the place. He came in at 11:00 o'clock looking for the sign up list, our system doesn't get it out that early.

MARK FAIRMAN: My name is Mark Fairman, I live in Lebanon SB1015 Connecticut, and a member of my family was a victim of the Tort. I cannot express as eloquently as many of the victims that have spoken. There's a few points that I would like to make. Dr. Bingham, speaking about medical malpractice, mentioned that a lot of injuries that happen and recoveries are not as well as expected are not compensated. My understanding, of course, only people who are injured through negligence or wrongdoing should be compensated. Also that it's my understanding that doctors have a standard which all doctors are measured. And that you also have to have a doctor testify for your cause before you can prevail as a plaintiff. I find this weighted very heavily in the defendants favor, and for any plaintiff to prove beyond a doubt that our performance of the evidence to a 12 man jury or a 6 man jury I think that's more than fair enough. There's been many comments made that the jury are out of hand awarding much to much money. These are (inaudible) insurance companies have to pay, and if I have to decide whose going to give me a better value, better judgement, I prefer 12 people who also have to pay insurance premiums, and have to worry about meeting their bills. Therefore, if a jury awards 12 million dollars I'm much inclined to believe what ever the injury was worth 12 million, the insurance that said no where near that. It is also comments made about suffering. I don't know how many of you have really suffered any serious injuries, I hope none of you ever do. But there's no amount of money that anybody can pay if your really hurting to get rid of that pain. And for somebody who through no fault of yours, but through their fault has caused you that intense pain, that's the only thing that you can give them. You can't take the pain away, you can't erase the memory, but you can give them money. And there's no amount, even the millions of dollars when people would pay more than that to get rid of it, so

MARK FAIRMAN: (continued)

as far as the insurance companies come, I heard a lot of testimony, a lot of concern that the insurance companies are facing a lot of liability. The thing is they have they are able to limit that, because it's a contract. They can specify in their contract (inaudible) in some they can't and they don't always have to write, they don't have to underwrite every policy that that's submitted to them. I think Joint Several Liability is an important doctrine and it should stay and should be reinstated in the State of Connecticut. What your doing is your saying people who are wrong have negligently and wrongfully hurt an innocent party are going to have pay that innocent and make them whole as best they can. And if there's anything that I think is fair and perhaps more than fair, people that are wrong should have to decide among themselves after the person that is innocent has been made as whole as they can. So I guess I support Senate Bill 1015 and would like to see you pass it. Thank you very much.

REP. TULISANO: Jim Finley, John Prosten has left testimony, Phil O'connor. Is there anybody else here that's going to be testifying. Any other person, your next.

PHILLIP O'CONNOR: Mr Chairman, committee members, my name is Phillip O'Connor I'm the Legislative Chairman of Connecticut Defense Lawyers Association. I'm not here today to defend the Tort Reform Act that was passed last year. But I think that there are, there is at least one useful provision in which the committee should give serious consideration to retaining. And that is the provision on (inaudible) source. Defense lawyers, just like plaintiff lawyers, believe that interpersons have the right, their Constitutional right to pull in fair compensation for their injuries. And the problem we've been having over the decades preceding the enactment last year of the Tort Reform Act, is that through a common law rule, the Colateral Source Rule. Injured persons have been able to recover something more than full and fair compensation. In the 19th century that provision may have had some rational, the idea back then was that there's no reason why you should give a negligent Tort teaser the benefit of insurance provisions, health insurance provi-

March 9, 1987

MEMORANDUM TO THE JUDICIARY COMMITTEE
on behalf of Connecticut Hospital Association

Re: S.B. 1015, An Act Concerning the Enhancement of the Rights of
Victims of Civil Wrongs

The Connecticut Hospital Association opposes S.B. 1015, which would repeal the tort reform act, Public Act 86-338. CHA strongly feels that the Act should be given a chance to work and that repeal at this time is wholly unwarranted. Malpractice insurance continues to be a major problem for Connecticut hospitals and is a significant contributor to increases in health care costs.

Other opponents of S.B. 1015 will set forth in more detail objections to the repeal of P.A. 86-338. This memorandum deals with one provision of S.B. 1015 which would repeal Section 10 of P.A. 86-338, immunity from liability of directors, officers or trustees of nonprofit organizations.

Section 10 of P.A. 86-338, "An Act Concerning Tort Reform," signed by Governor O'Neill on June 6, 1986, and codified as Section 52-557m of the General Statutes provides that:

Any person who serves as a director, officer or trustee of a nonprofit organization qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1954, as from time to time amended, and who is not compensated for such services on a salary or prorated equivalent basis, shall be immune from civil liability for any act or

omission resulting in damage or injury occurring on or after October 1, 1986, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by the wilful or wanton misconduct of such person.

Although the Tort Reform Act does not change or modify in any substantial manner the standard of behavior expected of a director, trustee, or officer of a tax-exempt corporation under the Non-Stock Corporation Act, of great significance is the fact that it does provide immunity from liability rather than merely the right to indemnification for liability provided under Section 33-454a of the General Statutes.

Because of this Act, it has been anticipated that officers' and directors' liability insurance policies will become more readily available and affordable to nonprofit organizations.

It would be most unfortunate if this salutary provision were repealed. It would harm schools, museums, orchestras, hospitals, theatrical groups and other nonprofit tax-exempt organizations whose directors, trustees and officers donate their time and efforts. Repeal of the Act would have a chilling effect on such individuals and, in turn, would harm their organizations. Therefore, even if the Tort Reform Act were to be repealed, Section 10 should be preserved since it provides great benefit to the people of the State of Connecticut.

John Q. Tilson,
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DATE: March 9, 1987
TO: Members of the General Assembly Judiciary Committee
FROM: Joni E. Barnett, Director
RE: Repeal of Public Act 86-338.

Raised Committee Bill No. 1015 would repeal, among others, the section of the 1986 Tort Reform Bill which provided limited immunity from civil liability for unsalaried directors, officers and trustees of nonprofit organizations. Yale University believes that this provision serves the important purpose of encouraging men and women of accomplishment to serve in unsalaried positions as directors, officers and trustees of nonprofit organizations. The specter of personal liability for good faith actions taken in the scope of their official duties on behalf of such organizations is a real consideration to board members and the organizations which they voluntarily serve. This protection is made all the more necessary by the continuing unavailability (or extremely high cost) of liability insurance for such directors. For these reasons, the University opposes that portion of the Committee Bill which would repeal Section 52-557m of the Connecticut General Statutes.

TESTIMONY BY
JOHN RATHGEBER
EXECUTIVE VICE PRESIDENT
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE
THE JUDICIARY COMMITTEE
MONDAY, MARCH 9, 1987
2:00 p.m.

Good morning. My name is John R. Rathgeber. I am executive vice president for the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 6,300 companies which employ more than 700,000 Connecticut citizens. Our membership includes firms of all sizes and types, however, the vast majority have fewer than 100 employees.

CBIA is opposed to S.B. 1015, concerning the enhancement of the rights of victims of civil wrongs; H.B. 5057, concerning compensation of injured persons; H.B. 5059, restoring joint and several liability; H.B. 7432, adopting the Uniform Comparative Fault Act and any other attempts to repeal last year's Tort Reform Law. Tort Reform has created a fair and balanced civil justice system.

The vast majority of CBIA's members are consumers of casualty liability insurance products. They are the state's manufacturers, retailers, financial and service industries. These companies need insurance coverage if they are going to continue to produce and sell useful products and services, and provide meaningful jobs to thousands of Connecticut citizens.

Connecticut's Tort Reform law attempts to help control the cost and availability of commercial casualty insurance by striking a reasonable balance between legitimate concerns of both plaintiffs and defendants. In so doing, it serves the public's interest of ensuring the availability of important goods and

services. Therefore, we believe that the law's provisions are a fair and reasonable approach to amending the Civil Justice System.

Since its passage, a number of other consumer groups have supported similar legislation. Last August, the delegates to the 1986 White Conference on Small Businesses voted Tort Reform as the top legislative priority for small business.

We believe that the new law has begun to work. For example, Aetna Life & Casualty gave an 8 percent tort-reform credit against indicated rate hikes applying to all general commercial liability coverage in Connecticut. Cigna is reducing commercial rates by 6 percent and increasing availability of coverage for many 'troublesome cases'. Fireman's Fund is re-entering the market for such lines as professional liability, day care centers, liquor liability, municipal liability and other lines. The Hartford Insurance Group has reduced municipal insurance rates and reduced planned automobile rate increases.

Most importantly, we believe that Connecticut's new law improves market competition for insurance. This will have long term benefits for insurance consumers and those in the general public who rely on those companies for important goods and services.

Therefore, we are strongly opposed to H.B. 5059, H.B. 5057, S.B. 1015, and H.B. 7432.

Alan W. Hayes
95 Pepperbush Way
Windsor, Connecticut 06095

Testimony presented before the Judiciary Committee, Public Hearing, March 9, 1987. State Capitol, room E 53/54.

Subject: Raised Committee Bill No. 1015 AN ACT CONCERNING THE ENHANCEMENT OF THE RIGHTS OF VICTIMS OF CIVIL WRONGS.

One year ago this month, I came before this Committee and presented testimony regarding the then proposed Tort Reform Law. My position at that time was one of opposition. My position was not based on a full and complete knowledge of the workings of Connecticut Civil Law It was not based on the fact that I understood the complex nature of the inner workings of checks and balances of the Judicial system. It was based on one very simple fact of life that I now have before me every day of my life. I know what it is to be the father of a victim, I know what it is to walk the hall of the Trauma Center, I know what it is to be present when the final truth is presented to a family and the reality of a life that is changed forever is known. I know what it means when someone comes up to you and avoids looking in your eyes and says that I'm sorry, all that could be done has been done and there is no hope. Because Some times that person was me. Knowing this, knowing what families had gone through, and would go through knowing what it really is to be a victim of not only an event that you as an individual had no control over, but also of the nightmare of attempting to put your life back together again knowing this and living through this, I could not stand by and say or do nothing while I witnessed what little rights the civil victim had be cast aside.

It was very difficult for me as a parent of a victim to open up old scars, to open closed passages of my life in an effort to bring some humanity some compassion into the arguments that raged back and forth. All I ever attempted to do was

to say that there are people that make up all these numbers. There is flesh and blood in back of all these arguments. These are human beings, these are families, there but for the grace of God goes you and your family.

With the passage of P.A. 86-338, the victim and the victims family became victims a second time. The full right of recovery was lost, limitations were placed on what could be paid in the attempt to recover just compensation, structured settlements came into being. Settlements that could not be altered to adjust to the changes of every day life, to changes in the medical condition of the victim, or their families.

But apparently someone was listening, some where a voice of reason was heard, because here we are again. Only now, you as a committee have the opportunity to permit CB-1015 out onto the floors of the House and the Senate where these rights can be given back to the people of this State. You have the ability to bring compassion and reason back into our civil justice system. You have the one element that every victim, every victims family, everyone who in mid heartbeat has had their life turned inside out so desperately cries out for, you can correct a wrong that has been done. You have the ability to turn back time and say to the people of this State that the family does count, that the person is important that human life is not just a number.

I ask that you submit a favorable report on this Bill, and that it be sent to both Chambers of the Legislature where it can be given a fair and open opportunity to be passed and signed into Law.

STATEMENT OF THE CONNECTICUT BAR ASSOCIATION

By

PAUL B. ALTERMATT, President

JUDICIARY COMMITTEE

MARCH 9, 1987

Re: Tort Reform

The Connecticut Bar Association (CBA) represents more than 9,000 lawyers in our State, including at least 80% of those in private practice.

Our members have practices as varied as anti-trust law and family law, and work in government, industry, legal services and private practice. This diversity is recognized by CBA's being organized into 22 sections reflecting different areas of the law.

Because CBA is a general bar association, representing both the plaintiffs' and defendants' bar, we played a limited role in the formulation of the Tort Reform Act, Public Act 86-338.

CBA took the position that unless the societal benefits of the proposed changes in tort law far outweighed the certainty secured by the common law approach, we were opposed to any hasty changes in this well established body of law.

At this time there is no empirical evidence of the effects of this sweeping revision, because no cases arising under the law effective on October 1, 1986 have come to trial. Yet it has become increasingly apparent that the Act is unworkable.

The Reporter to the Civil Liability Task Force, Professor William V. Dunlap of the University of Bridgeport School of Law, has concluded that the Tort Reform Act is so flawed that it should be repealed in its entirety retroactive to October 1, 1986.

Indeed, the comparative analysis of the Act done by the Law Revision Commission, which was requested by the then Co-chairmen and Ranking Members of this Committee at the close of the last legislative session, and which is a scholarly dissection of the new law, reveals in detail the many imperfections in the legislation.

Professor Dunlap said the Act "appears to have been a hastily conceived, hastily drafted measure that has implications and effects beyond those foreseen by the drafters and many of those legislators who voted for its passage." He has advised the Task Force that the most serious problem with the Act is the large number of apparently unforeseen and unintended interactions among various sections of the Act and between the Act and pre-existing Connecticut law.

Professor Dunlap has recommended to the Task Force the immediate repeal of Public Act No. 86-338 and the creation of a new task force on civil liability to study the entire question of tort reform, stating

"Tort reform is critically important, perhaps one of the most important questions facing state legislatures today. Because the issues are so complicated and so closely intertwined with other aspects of the law, allowing a technically flawed Tort Reform Act to remain on the books, even after incorporating many of the amendments urged during the course of the Task Force meetings, has the potential of wreaking havoc in the administration of the state judicial system, inflicting serious injustices on parties to personal injury litigation, and making it more difficult to effect further, much needed tort reform in the future."

As an alternative, he has suggested piecemeal repeal, but feels that with revision, only the sections on contingent fees, periodic payments, expert witness qualifications and certificates of good faith in medical malpractice actions can be saved.

CBA notes that Raised Committee Bill No. 1015, An Act Concerning the Enhancement of the Rights of Victims of Civil Wrongs, would repeal the most troublesome sections cited by Professor Dunlap and the Law Revision Commission.

CBA therefore urges that if the Act cannot be amended in an intelligent way to promote the best interests of the public, then it ought to be repealed retroactively.

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March 9, 1987

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Chairman

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DENNIS J. O'BRIEN
Deputy Directors

RAPHAEL L. PODOLSKY
Attorney at Law

TESTIMONY OF RAPHAEL L. PODOLSKY

S.B. 1015. — Repeal of "tort reform" act

Recommended Committee action: REVISE AND ADOPT §7; REPEAL §52-557n

S.B. 1015 would repeal the 1986 "tort reform" act. Restoration of joint and several liability (§8 of the bill) is better accomplished by H.B. 5059, which also creates a right of contribution. However, I particularly urge you to adopt at least two other parts of S.B. 1015:

(1) Good faith lawsuits (Section 7): This little-noticed section of the 1986 act has a potential major adverse impact on all litigation, not just on tort cases. The section, which permits no judicial discretion, requires double damages against a party who brings a lawsuit in good faith if it is subsequently determined to have been brought without "probable cause." It is both unnecessary and undesirable. It is unnecessary because a party is already liable under §52-568 for triple damages if he sues without probable cause and with malicious intent. It is undesirable because lack of probable cause does not mean that a suit is frivolous or malicious. It can result from the failure to give a required notice or the failure to give it on time, the naming of a wrong defendant, the absence of a key witness at trial which makes for a very weak presentation, or numerous other innocent mistakes. In addition, it allows defendants to use the threat of a claim for twice their litigation expenses as a club to force the victim to settle a legitimate claim for an unreasonably low amount. It is not reasonable to treat such good faith errors as if a suit were filed for malicious or harassing purposes. Thus, rather than deter frivolous suits, it can heavily penalize legitimate ones.

(2) Municipal immunity (C.G.S. §52-557n): Section 9 of the bill repeals §52-557n (see copy below), which was adopted last year as §13 of the "tort reform" act. No one fully understood this section last year, and no one fully understands it now. In particular, it remains unclear to what extent it is a codification of existing law and to what extent it is a change (see p. 22-23 of the Law Revision Commission analysis of the act).

Of particular concern is §52-557n(a)(2)(A), which says that a town is not liable for the "criminal conduct, fraud, actual malice or wilful misconduct" of its employees "except as otherwise provided by law." It is impossible to tell whether this does or does not modify C.G.S. §7-465, which requires towns to "pay" when an employee is found liable except for "wilful and wanton" conduct. For example, what is its impact on town liability under state law for police brutality? Or for police misconduct, as in the Tracey Thurman case? Or for injuries caused when a town employee, driving a town car, causes an accident by speeding?

(continued on reverse side....)

C.G.S. §52-557n(b)(8) is also cause for concern, because it immunizes not only the town but the employees themselves from liability for injuries caused by the making of inadequate or negligent housing code or fire safety inspections (unless showing "reckless disregard" for health and safety). Immunization of this sort invites municipal irresponsibility. It would appear, for example, that a municipality would have no liability if its fire marshal carelessly certified code compliance (as long as he did not act recklessly) or even if he deliberately took bribes (because of the criminal and wilful misconduct exceptions). Quite frankly, such results to me seem outrageous and, indeed, bizarre.

As an alternative to outright repeal of §52-557n, the General Assembly should repeal the two particular sections mentioned above, i.e., subdivision (2)(A) of §52-557n(a) and subdivision (8) of §52-557n(b).

Sec. 52-557n. Liability of political subdivision and its employees, officers and agents. (a) (1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties; (B) negligence in the performance of functions from which the political subdivision derives a special corporate profit or pecuniary benefit; and (C) acts of the political subdivision which constitute the creation or participation in the creation of a nuisance; provided, no cause of action shall be maintained for damages resulting from injury to any person or property by means of a defective road or bridge except pursuant to section 13a-149. (2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct; or (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law.

(b) Notwithstanding the provisions of subsection (a) of this section, a political subdivision of the state or any employee, officer or agent acting within the scope of his employment or official duties shall not be liable for damages to person or property resulting from: (1) The condition of natural land or unimproved property; (2) the condition of a reservoir, dam, canal, conduit, drain or similar structure when used by a person in a manner which is not reasonably foreseeable; (3) the temporary condition of a road or bridge which results from weather, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe; (4) the condition of an unpaved road, trail or footpath, the purpose of which is to provide access to a recreational or scenic area, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe; (5) the initiation of a judicial or administrative proceeding, provided that such action is not determined to have been commenced or prosecuted without probable cause or with a malicious intent to vex or trouble, as provided in section 52-568; (6) the act or omission of someone other than an employee, officer or agent of the political subdivision; (7) the issuance, denial, suspension or revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization, when such authority is a discretionary function by law, unless such issuance, denial, suspension or revocation or such failure or refusal constitutes a reckless disregard for health or safety; (8) failure to make an inspection or making an inadequate or negligent inspection of any property, other than property owned or leased by or leased to such political subdivision, to determine whether the property complies with or violates any law or contains a hazard to health or safety, unless the political subdivision had notice of such a violation of law or such a hazard or unless such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances; (9) failure to detect or prevent pollution of the environment, including groundwater, watercourses and wells, by individuals or entities other than the political subdivision.



Connecticut Association of Boards of Education, Inc.
331 Wethersfield Avenue, Hartford, CT 06114 203-522-8201

TESTIMONY
before the Judiciary Committee
of the Connecticut General Assembly

The Connecticut Association of Boards of Education, a not-for-profit association representing local and regional boards of education, opposes SB 1015, An Act Concerning The Enhancement Of The Rights Of Victims Of Civil Wrongs, and H.B. 5059, An Act Restoring Joint And Several Liability And Authorizing An Action For Contribution. These bills would repeal, in whole or in part, the tort reform provisions enacted by the 1986 General Assembly.

CABE urges you to preserve these reforms because they have begun to re-create a climate within which school districts and municipalities are able to obtain affordable insurance in Connecticut. School districts and municipalities have faced exorbitant insurance rate increases, reduction in coverage, cancellation of coverage with minimum notice and difficulty in obtaining liability insurance. Rate increases of 700%, accompanied by 40% to 50% decreases in coverage, were not unusual. The impact has been particularly significant on boards of education, due to the large number of employees for whose actions they are responsible.

The Tort Reform Act contains several elements that can help to assure greater affordability and availability of insurance. Structured payment of large noneconomic damage awards, prorata apportionment of damages among joint tort-feasors, and consideration of payments from collateral sources are all rationale reforms in our civil justice system which do not infringe on the rights of injured parties. Restoring the joint and several liability doctrine places an unfair burden on the "deep pocket" defendant, which is frequently a municipality or board of education.

CABE urges you to retain these provisions to help assure that school districts have necessary insurance coverage and to reduce the extent to which school districts must expend dollars, budgeted for the education of their students, on exorbitant insurance premium payments.

PM/gc
3/9/87

State Capitol

March 9, 1987

STATEMENT OF BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, INC. REGARDING S.B. 1015, "AN ACT CONCERNING THE ENHANCEMENT OF THE RIGHTS OF VICTIMS OF CIVIL WRONGS".

Chairmen Avallone and Tulisano and Members of the Committee:

My name is Wallace I. Lohr of Glastonbury, Connecticut. I am Director of Government Relations for Blue Cross and Blue Shield of Connecticut, Inc., the State's largest health insurer.

S.B. 1015 would repeal "tort reform" as prescribed under P.A. 86-338. Blue Cross and Blue Shield has a keen interest in only one aspect of this bill: that which would repeal the provision concerning the so-called "collateral source rule". We wish to go on record, therefore, not supporting the entire scope of S.B. 1015, but strongly supporting the provision which would return the statutory provisions governing collateral sources to the language which existed prior to the enactment of P.A. 86-338.

Connecticut Public Act 86-338 ("The Act"), effective October 1, 1986, provided for mandatory reduction of awards in personal injury actions by amounts received from collateral sources. Section 4 of the Act provides as follows:

In any civil action accruing on or after the effective date of this Act, whether in tort or in contract, wherein the claimant seeks compensation for personal injury or wrongful death . . . the court shall reduce the amount of the award by the total of all amounts paid to claimant from all collateral sources available to him, . . .

Section 6 of the Act defines "collateral sources" to include payments to an individual by health insurance. The Act provides that there shall be no

reduction for collateral sources ". . .for which a right of subrogation exists . . .". P.A. 86-338, Section 4 . Thus, the claim recovery activity of an insurer with a "right of subrogation" as defined in this provision would not be affected by the Act.

However, the Act further provides as follows:

Unless otherwise provided by law, no insurer or any other party providing collateral source benefits . . . shall be entitled to recover the amount of any such benefit . . . as a result of any action for damages for personal injury or wrongful death.

P.A. 86-338, Section 6. In light of this provision, an insurer's right of subrogation must be "otherwise provided by law" in order to be excluded from the mandatory reduction from awards in personal injury and wrongful death cases. Thus it appears that the clause "otherwise provided by law" applies only to subrogation rights based on statutory authority, such as those existing under Workers Compensation and no-fault insurance. Such an interpretation would not extend protection to the subrogation rights of Blue Cross and Blue Shield of Connecticut, which are based entirely on contract. Assuming this interpretation of the Act is correct, the subrogation rights of Blue Cross and Blue Shield of Connecticut have been effectively eliminated as against awards in personal injury and wrongful death actions accruing on or after October 1, 1986.

While it is difficult to estimate the potential revenue loss resulting from the Act, we project that as much as \$2,000,000 annually will be lost due to the removal of our right of subrogation. We find that this result is contrary to the intent of the Act which we understood to be an effort to reduce the escalating costs of liability insurance. However, this Act has had the effect of shifting the cost to the party which happens to pay first. Thus when Blue Cross and Blue Shield of Connecticut insures a person

for medical expenses and has paid thousands of dollars out under a claim which is being litigated and our insured subsequently receives a jury award, we no longer have the right to recover our monies from that award, even though the claim is rightfully not our liability since it is derived from the negligence of another party.

We respectfully request that the Committee seriously consider our concerns. We fear that if this issue is not addressed and corrected in a timely manner that the lost revenues will be passed on to our customers in the form of higher premiums. We are confident that reducing liability insurance expenses by increasing health insurance expenses was surely not part of the solution to the liability insurance "crisis" which was contemplated by the 1986 General Assembly, and we respectfully ask for relief under any modification to the tort reform legislation which is reported out of the Judiciary Committee in 1987. Please let me know if we can provide any additional information which would assist you in this regard.



The Connecticut State Medical Society

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TESTIMONY OF THE CONNECTICUT STATE MEDICAL SOCIETY RE: HB 1015

Good afternoon, Senator Avallone, Representative Tulisano, members of the Judiciary Committee. My name is Shelley Marcus and I represent the Connecticut State Medical Society. I am here today to address House Bill 1015, An Act Concerning the Enhancement of the Rights of Victims of Civil Wrongs.

The 1986 legislature recognized a pressing need to aid consumers with both the availability and affordability of insurance. As a result, the General Assembly passed Public Act 86-338, An Act Concerning Tort Reform.

Last year, the high cost and lack of availability of insurance had reached crisis proportions. Due to the unanticipated increase in the number of lawsuits filed and in the size of jury awards, insurers have been forced to pay claims out of insufficient reserves. In addition, the determination of negligence has departed greatly from the original rules of tort law.

Courts are continually expanding causes of action, even when they are specifically excluded from coverage in an insurance contract. Juries are increasingly sympathetic to the fact that someone was hurt and should be compensated, regardless of the fact that the defendant was not legally negligent. This trend has made it nearly impossible for insurance carriers to predict future claims and they have responded by raising premiums to a level to cover all possibilities. They have also withdrawn from the markets where the risk is too volatile.

Physicians were the first group to be affected by the insurers responses to the deteriorating civil justice climate. Their malpractice premiums began to rise dramatically during the late 1970's. Initially, premiums were increased by 50% per year and for the past six years have increased by nearly 100% per year. High risk specialists, such as obstetricians or neurosurgeons can pay up to

\$100,000 for their insurance.

Availability of insurance has been severely restricted as well. Only two insurance companies now write new malpractice coverage for Connecticut physicians—the CNA and the Connecticut Medical Insurance Company (CMIC) which was established by the State Medical Society in 1984 to guaranty that insurance coverage would remain available for physicians.

The State Medical Society recently conducted a survey to determine the effects of the malpractice insurance crisis on the practice patterns of physicians. The survey indicates that one-third of Connecticut's physicians have limited or reduced the scope of their practice in an effort to reduce or stabilize their malpractice classification and expense, thereby limiting the availability of health care. The cost of care is affected, as well, because the survey also showed that more than 75% of the state's physicians are practicing defensive medicine in response to the forces of malpractice litigation.

The Connecticut State Medical Society urges this Committee to give tort reform a chance to work before it considers repealing last year's legislation. Although it is not a total panacea, studies based on actual state experience indicate that tort reform can be effective in diminishing the size and frequency of awards, leading to more predictability and a reduction in the increase in premiums.

According to a 1985 Rand Study on the frequency and severity of medical malpractice claims, offsets from awards from collateral sources reduced awards by as much as 50% within two years of becoming effective. A 1985 Rand Study on the resolution of medical malpractice claims showed that a provision for paying awards in periodic installments reduced trial awards by 30% and cut the average out-of-court settlement by 25%.

In California, which enacted reforms similar to that of Connecticut in 1975, the average jury award for malpractice cases in 1984 was significantly

lower than the national average—\$397,000 compared to \$975,000. More importantly, physician's premiums increased 16% on average, while the average national increase was 32%.

The 1986 legislature, after careful consideration, felt that civil justice reform would contribute significantly to making insurance coverage available and affordable. Public Act 86-338 includes changes in the collateral source rule, periodic payment of future damages, qualifications for expert witnesses in medical malpractice cases, and expansion of the sanctions for bringing "frivolous suits." House Bill 1015 would repeal all of these provisions, with the exception of the collateral source offset for health care providers.

While we realize that last year's legislation contains numerous drafting errors, we believe that these flaws can be corrected and that outright repeal is unnecessary. The positive response thus far by insurance and reinsurance companies to Public Act 86-338 shows that tort reform can work.

The Connecticut State Medical Society respectfully requests that last year's reforms be retained so that premiums continue to stabilize and insurance coverage remains available to all of Connecticut's citizens.

TESTIMONY BEFORE THE JUDICIARY
COMMITTEE REGARDING TORT REFORM

JUDE HERSEY
MARCH 9, 1987

Just about one year ago, I appeared before this same Committee to talk to you about Tort Reform legislation being considered. The first thing I said was "I am here today to represent your humanitarian conscience." That is what I have continued to do from that day on and why I am here again today. As the parent of a trauma victim, incorporator and President of the Trauma Victims' Support Group of Connecticut and a concerned citizen, I feel that my networking with other victims as well as my own personal experience impels me to be here.

All victims, when questioned, inevitably get around to describing their situations as a "nightmare". Having seen what a 40,000 lb. bus did to my sons' body leads me to agree with that choice of wording. These tragedies we victims have endured make us understand that anyone who cares for a victim also becomes a victim.

Recently, I attended a conference which dealt with how to set up crisis teams in school systems. The speaker mentioned that the oriental symbol for crisis is made up of two symbols; one for danger, the other for opportunity. There are many of us victims in this state who have chosen to learn from the danger and take the opportunity to draw on our experience with personal catastrophe to try to ensure that the future victims will have a little easier road to walk.

The business of determining who is a victim and even what kind of victim - civil or criminal - overlooks some important facts. If you were to go into a Emergency Room, Trauma Room, hospital room, rehabilitation center or even a cemetery, how many of you could tell which is which? The injuries and handicaps cause the same pain and suffering. All victims deserve the concern and assistance of legislation which enhances their rights and provides the services they so desperately need.

All of us have had to accept the painful fact that innocent as we are, we cannot change that nightmare come true. But most of us find it very difficult to accept that, as in the case of civil victims, the passage of Tort Reform diminished rather than enhanced those rights. This current law has made us victims twice, first by the perpetrator and then by the system. There are many victims in the state who are trying to restore some balance in the civil system. The passage of the Tort Reform Act of 1986 upset that balance with regulation of plaintiff Attorney fees and not those of the defendant...the elimination of Joint and Several, which had provided that the victim should be fully compensated... implementation of structured settlement, spreading out payments for as much as 10 years, with no ability to alter such a structure should condition of the victims change.

Throughout the debate on Tort Reform last year, we victims tried to have all sides considered. However, the present Tort Reform Act removed or seriously restricted the legal rights of civil victims for fair and just compensation. Our requests, we feel, were reasonable.

In situations where any of us begin a task in an area where we have little familiarity, we usually look for guidance from those who are well versed in the knowledge and skills required. That is all we have asked...that you recognize the expertise we have gained from these tragic events which have rendered us as victims. Since each of us has an equal chance of being the next victim, our knowledge is a valuable resource.

Let us see the danger in not ensuring that precious rights which are the only means civil victims...no, ALL victims... have to reasonable, legal recovery are improved. Let us take this opportunity to make a statement about who and what is important in a humanitarian society. Let us recognize our responsibility to work together, considering all sides before we abandon the growing numbers of victims in our state.

Yesterday, as I was driving on a highway, I noticed a billboard which stated the often-used cry in the battle against drugs..."Just say NO." I thought about that and realized that at least people had choices when or if they will use drugs. Victims don't have those choices. Often their tragedy occurs in seconds, forever altering and restricting their lives. Whether with intent or not, the resulting trauma to their bodies, minds and lives is a factor they must contend with, if they are fortunate enough to even survive.

So today, I ask you, in your capacity as legislators, as well as concerned, humane members of society, to join with me and "Just say YES...yes, to the more reasonable and humane approach to Tort Reform offered by the Raised Committee Bill No.1015." "An Act Concerning the Enhancement of the Rights of Victims of Civil Wrongs," which would allow civil victims to be fairly and adequately compensated...yes, to the fact that this innocent group deserves our assistance and protection as they go about the difficult task of trying to put back the pieces of their lives as a result of the tragedies...yes, to allowing those of us, who have had the unfortunate experience of becoming experts in the field of victims needs, help and most importantly, yes, to making it a commitment, not a priority, to set in place positive legislation which will ease the burden for those who, through no fault of their own, already have more than they can bear.

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