Legislative History for Connecticut Act

HB 6596 PA 98 1997

Senate - 1634, 1785-1786 (3)

HOUSE: 1995-2004 (10)

JUDICIARY: 714, 715, 720, (721-722), 729, 740-741, 761, 764, 767, 768, 774-775, 777-778, 781-782, 786-787, 808, 809, 866-868, 889, 892, 893, 915-917 (31)

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1997

VOL. 40
PART 5
1434-1795

Without objection, so ordered.

SEN. JEPSEN:

Calendar 361 is marked Go.

Calendar 362, HB6651 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 363 is PR.

Calendar 364, Substitute for HB6658 I move to the Committee on Judiciary.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 20, Calendar 365, HB6887 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 366, Substitute for HB6596 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 367, Substitute for HB6744 I move to the

Calendar 366, Substitute for HB6596.

Calendar 367, Substitute for HB6744.

Calendar 21, Calendar 371, Substitute HB5598.

Calendar 372, Substitute for SB213.

Calendar 372, Substitute for SB537.

Calendar 374, Substitute for SB655.

Calendar Page 22, Calendar 376, SB1307.

Calendar Page 27, correction, Calendar Page 26, Calendar 119, Substitute for SB1140.

Calendar Page 27, Calendar 131, SB608.

Calendar Page 29, Calendar 176, Substitute for SB1092.

Calendar 31, Calendar 231, Substitute for HB6915.

Calendar 32, Calendar 241, Substitute for HB6745.

Calendar 112, Substitute for SB619.

Madam President, that completes the Second Consent Calendar.

THE CHAIR:

That is the Consent Calendar. Is there any objection to any item? Senator Fleming.

SEN. FLEMING:

Yes, thank you, Madam President. On Calendar Page 14, I would like to ask that Calendar item 306 be removed from the Consent Calendar.

THE CHAIR:

That item is removed from the Consent Calendar. I'd remind members again we're voting on the Second Consent Calendar. The machine will be opened.

If all members have voted, the machine will be locked. The Clerk please take a tally. The Clerk please announce the tally.

THE CLERK:

Adoption of the Second Consent Calendar. Total number voting, 36; necessary for adoption 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted. Would the Clerk please call the item that was taken off the Consent Calendar, Calendar 306. And announce a roll call vote, please.

THE CLERK:

Calendar Page 14, Calendar 306, SB83 An Act Concerning Withdrawal of Towns from Regional School Districts and Dissolution of Regional School Districts. Favorable Report of the Committee on Education as amended by Senate Amendment Schedules "A" and "B".

THE CHAIR:

The Clerk please announce a roll call vote. The machine will be opened.

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CONNECTICUT
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HOUSE

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machine will be open.

CLERK:

The House of Representatives is voting by roll call, members to the chamber. The House is voting by roll call, members to the chamber please.

DEPUTY SPEAKER HYSLOP:

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

CLERK:

Senate Bill 619 as amended by Senate "A" and House Amendment Schedule "A."

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk please call Calendar 168.

CLERK:

On page eight, Calendar 168, substitute for HB6596. AN ACT CONCERNING UNITY OF INTEREST.

Favorable report of the Committee on Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Question is on acceptance and passage, will you remark?

REP. LAWLOR: (99th)

Thank you Mr. Speaker. It's my intention to offer an amendment at this time which will strike everything after the enacting clause Mr. Speaker, the Clerk has LCO 6394, I'd ask that the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO 6394 designated House Amendment "A," the Representative has asked leave to summarize.

CLERK:

LCO 6394 House "A" offered by Representatives Lawlor and Farr.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. This amendment has five sections. The four substantive sections essentially resolve a number of issues which have created a good deal of attention before the Judiciary Commission this session. Section one in essence prohibits insurance companies from directly contacting persons who have or who intend to file a claim against one of their insured. And in a written communication or an oral statement to advise against the need or to discourage the retention of an attorney. This is so because there were some instances where unsuspecting persons were essentially talked out of hiring an attorney to represent their rights.

This allows complaints to be made directly to the Insurance Commissioner, and allows the Insurance Commissioner to impose sanctions already allowed under Title 38a of the General Statutes including but not limited to civil penalties. This section would be effective January 1, 1998. The second section, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sauer for what reason did you rise?

REP. SAUER: (36th)

I just said I would really like to hear what's

being said and I can't.

DEPUTY SPEAKER HYSLOP:

The Chamber please come to order. The noise level is rising. I would ask that if you have conversations you would take them out into the hall, that we might be able to conclude today's business. Get your hearing aid Howard. Proceed Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Sections two and three establish penalties essentially for delayed or late payments of, in cases where the defendant has already agreed to settle a case or to pay a case. Section two involves situations where there has been a verdict or a judgement rendered by the court.

If the payment is delayed, there would be a 10% interest assessed on that late payment. That would kick in--like if the payment is delayed beyond 20 days beyond which the judgement is final, or 90 days from the date of the verdict, which ever is earlier--there would be an exception of course if the plaintiff, the person to whom the money is owed, actually initiates some type of post judgement motion and thereby delays the date of the judgement.

Section three applies to late payments after a voluntary settlement has been agreed to by the

plaintiff and the defendant. And this language requires an interest penalty of 12% if the payment is not received 30 days after all of the withdrawal and release documents are forwarded to and received by the defendant.

If there is such a delay, it allows the plaintiff, the person to whom the money is owed, to ask the court to enter a judgement in the case. Keeping in mind this hasn't actually gone to trial to allow a judgement to be entered which is something that has been agreed to by the defendant and accumulate the 12% interest following that period of time. And there are very specific procedures set out in the language of the bill which governs the process by which that information is communicated from the plaintiff to the defendant and then back again and an opportunity for a hearing before the court under those circumstances.

In section four, this language attempts to resolve a dilemma which appeared following a March 13th, 1996 state Supreme Court decision in Westchester Fire Insurance Company versus Allstate Insurance Company dealing with the very complex issue of subrogation on underinsured motorist claims.

Basically what this language would allow is the prompt settlement of a case as it relates to the person

who has relatively low insurance. Most of us have insurance coverage for ourselves in case we are involved in a motor vehicle accident by a person who has low insurance coverage. We have underinsurance coverage which would kick in after that. Following the decision in Westchester Fire, cases could not be settled, because the at fault defendant couldn't be let out of the case because of the subrogation rights that the underinsured motorist insurer had against the motorist who was at fault essentially. So this would eliminate that, eliminate the right of subrogation against the owner or operator of the underinsured motor vehicle in order to facilitate a prompt settlement of that part of the claim.

This portion would be effective March 13th, 1996, which is the date of the supreme court decision. Mr. Speaker, this language has been agreed to by representatives of the insurance industry and the Bar Association and the plaintiff's attorneys, this is a result of extensive negotiations. I think everyone acted in good faith.

And I think we're very fortunate to have this widespread resolution of these various concerns. Mr. Speaker, I would urge adoption of the amendment.

DEPUTY SPEAKER HYSLOP:

Questions on adoption of House "A" will you remark? Representative Cafero.

REP. CAFERO: (142nd)

Mr. Speaker, a question through you to Representative Lawlor.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor prepare yourself for a question, proceed.

REP. CAFERO: (142nd)

Mr. Speaker, to Representative Lawlor. Representative Lawlor, with regard to section one of the bill and specifically with regard to allow written communication. For purposes of legislative intent, to answer the rhetorical question, do I need an attorney or other advocate to settle my claim? Would the following be allowable under the bill as written?

You are already protected under Connecticut's unfair insurance practices act, we--meaning the insurance company--is committed to working with you every step of the way in settling your claim promptly and fairly. Whether you hire an attorney or not is your decision. Most people hire an attorney because they think insurance companies will take advantage of them, that's not our practice. It is our practice to earn your trust and make fair, prompt settlement

offers. We encourage you to try to settle your claim with us. If you're dissatisfied with our offer or cannot get us to hear your side you can still hire an attorney. Through you Mr. Speaker, to Representative Lawlor, would that be acceptable language under section one of the bill?

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you. Yes, that would be acceptable language. I would point out that we have discussed that prior to today's debate, other people have looked at it, clearly that would not constitute advice against the need for or, neither would the discourage the retention of an attorney. That would be acceptable language.

I'd also point out that under section one, the insurance company may, the insurance commissioner may approve specific written communications ahead of time and if the insurance commissioner had approved such a communication it would not in any way be a violation of this language, through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Cafero.

REP. CAFERO: (142nd)

Thank you Mr. Speaker. Mr. Speaker, with that explanation and the fact that Representative Lawlor represented that this is a bill that had been worked on by all interested parties for several weeks, I would also urge my colleagues to adopt the bill. Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House "A"? Will you remark further on House "A"? If not we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed? The ayes have it, House "A" is adopted, will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests to the well of the House, the machine will be open.

CLERK:

The House of Representatives is voting by roll call, members to the chamber. The House is voting by roll call, members to the chamber please.

DEPUTY SPEAKER HYSLOP:

Have all members voted? If all members have voted please check the machine to be sure your vote is properly recorded. The machine will be locked. The

Clerk will take the tally. The Clerk will announce the tally.

CLERK:

House Bill 6596 as amended by House "A."

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	145
Those voting Nay	1
Those absent and not voting	5

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk please call Calendar 147.

CLERK:

On page twenty-five, Calendar 147, substitute for HB6571. AN ACT CONCERNING VICTIM SERVICES. Favorable report of the Committee on Finance.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Questions on acceptance and passage, will you remark further?

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STANDING
COMMITTEE
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1997

this place, do not take too much pride in words and to offer the committee the opportunity, I think, to craft the correct language. I believe that domicile was chosen with a purpose, the purpose you indicate. However, I think that in reflection, the word, "residence with the parent" is probably more to the point because what we are trying to get after is the circumstance where that individual is in place, is dependent, is not somewhere else, and is, indeed, being cared for and taken care of by that parent.

REP. O'NEILL: Thank you.

SEN. WILLIAMS: Other questions? Thank you very much, Senator Sullivan.

SEN. SULLIVAN: Thank you, Mr. Chairman.

SEN. WILLIAMS: The next speaker is Judge Pellegrino to be followed by Deborah Fuller and Kris Ragaglia.

JUDGE PELLEGRINO: Good morning, Mr. Chairman, members of the committee. I am here at the invitation of Representative Lawlor and his office has sent me various bills that I will comment on. But before I begin, -- did the clock start now? Has the clock started?

SB 951
SB 1009

I would like to have one of your timers for court because I think that's terrific. Three minutes and you are out. That was super!

The first bill that Representative Lawlor sent to me is the ACT CONCERNING UNITY OF INTEREST, HB6596. That there will be a presumption that there is a unity of interest where the same attorney represents two parties. I think that's a good bill. I certainly would support that bill.

The next bill that I was sent was HB6597, AN ACT REQUIRING THE PAYMENT OF INTEREST FROM THE DATE OF VERDICT OR JUDGMENT IN NEGLIGENCE MATTERS. There maybe a time lag between the date of verdict and when that becomes a final judgment and it seems to me that this bill seeks to get interest from the earlier of the two and I certainly would support

that.

The time lag may arise out of a collateral source hearing or motions, various other motions. So, I think that's a good bill and I certainly would support that.

The next bill that was sent to me was SB951, AN ACT CONCERNING THE MANDATORY DISCLOSURE OF INSURANCE POLICIES. And this act seeks to have the carriers disclose their coverage early on. I think that might help to resolve cases and anything to help resolve cases, I certainly would support. So I would support that bill, as well.

And finally, SB1009, AN ACT REQUIRING THE PAYMENT OF INTEREST FROM THE DATE THE CAUSE OF ACTION AROSE or date of injury. I am told that this bill is seeking to impose interest back to the date of injury at 10% not 12%, as stated in the bill. And I am told that there was no intention to overlap this with other interest that may arise as a result of a filing of an offer of judgment.

So that I would support this bill provided that it isn't 24% total. So that this -- it would go back to the date of injury, to the date the action was commenced. And that there would be no overlapping. I mean, I would not support 24%. I do think that's --(timer bell) that's the bell. And I would like to have one of those bells.

SEN. WILLIAMS: Did you have anything further? That was four bells in three minutes which has got to be a record for a member of the bench, especially. But was there - - you did very well.

Questions? Representative Farr.

REP. FARR: Yes. Unless you had another bill you were going to touch on, I did have questions on these. Okay.

The payment of interest back to the time of the SB 1009 injury bothers me a little because -- in a typical negligence case, the damages are not incurred at the time of the injury. So if you get injured and

JUDGE PELLEGRINO: Senator.

SEN. UPSON: How are you?

JUDGE PELLEGRINO: Fine. Thank you, Senator.

SEN. UPSON: Are you here to testify on all -- just the --

JUDGE PELLEGRINO: No. I --

SEN. UPSON: Just disclosure and interest? Those are the only two?

JUDGE PELLEGRINO: HB6596, the unity of interest bill.

SEN. UPSON: Those three?

JUDGE PELLEGRINO: Yes. HB6599.

SEN. UPSON: I don't have that one. What's that one?

JUDGE PELLEGRINO: And SB951, disclosure of policy that I was talking about --

SEN. UPSON: Okay.

JUDGE PELLEGRINO: -- with Representative Farr.

SEN. UPSON: Judge, you are running in Waterbury, the -- what do we call it -- not the advance -- trying to settle cases. What's the --

JUDGE PELLEGRINO: Case flow.

SEN. UPSON: Case flow. That was the new name a long time ago. And how fast are things moving?

JUDGE PELLEGRINO: In terms of settlement?

SEN. UPSON: Uh-uhm.

JUDGE PELLEGRINO: Slowly.

SEN. UPSON: Why? By the way, this is not rehearsed. We haven't talked about this before. Why is that?

(HB6596) (SB951)

JUDGE PELLEGRINO: Well, there are a number of reasons. I think what you are driving at, Senator is are defendants anxious to move cases.

SEN. UPSON: Are they?

JUDGE PELLEGRINO: No. In my mind.

SEN. UPSON: And in a way we have the same problem in Workers' Compensation that there is no clout and it is interesting -- there is no clout with the Commissioner. We have these informal conferences -- no clout to move things on. Is that happening in your area?

JUDGE PELLEGRINO: Yes.

SEN. UPSON: What's the average backlog in Waterbury for a jury trial?

JUDGE PELLEGRINO: It's about two years. Three years.

SEN. UPSON: Alright. And yet case flow gets a case what, three months into it?

JUDGE PELLEGRINO: Yes.

SEN. UPSON: Six months? Four months?

JUDGE PELLEGRINO: Yes.

SEN. UPSON: But there is really no reason to move a case though?

JUDGE PELLEGRINO: Well, the problem is what teeth do we have to get parties to move cases and hopefully, with the passage of the arbitration fact finding bill, that might be one way of encouraging --

SEN. UPSON: Now you and I have --

JUDGE PELLEGRINO: -- cases to --

SEN. UPSON: -- talked about that one.

JUDGE PELLEGRINO: Yes.

SEN. UPSON: That was the arbitration is what, under $50,000 is it?

JUDGE PELLEGRINO: It's presently under fifteen --

SEN. UPSON: Under fifteen.

JUDGE PELLEGRINO: -- and what we are speaking --

SEN. UPSON: Is that on today too?

JUDGE PELLEGRINO: No. That was on Wednesday, Senator.

SEN. UPSON: Alright.

JUDGE PELLEGRINO: Last Wednesday.

SEN. UPSON: Alright. Go ahead.

JUDGE PELLEGRINO: What we are presently trying to do is to increase that to fifty.

SEN. UPSON: How is the under fifteen? Is that working --

JUDGE PELLEGRINO: Yes.

SEN. UPSON: Forget the amount, but --

JUDGE PELLEGRINO: It's working very well. I testified that we have a fantastic success rate and because of that success rate, we are seeking to up the jurisdictional limit to fifty, hopefully, that might give incentive to motivate people to move their cases and to resolve matters.

SEN. UPSON: Now disclosure of -- you are asking for disclosure of insurance policy limits, correct? SB951

JUDGE PELLEGRINO: No. I'm not --

SEN. UPSON: You are not testifying on that one?

JUDGE PELLEGRINO: I testified as to that.

SEN. UPSON: In favor of that?

there is an intercom system where we can listen to the testimony even though we are not in the room. And also, everything you say is prepared in a verbatim transcript and that's kept with the bill that you are testifying on. So even though people may not actually hear what you say today, when the bill comes up for debate, they will see what you said and look to it for arguments for and against and suggestions for ways to amend the language.

So, what you are saying here today is very important.

First, is Stewart Casper. And Stewart will be followed by Vivian Straub, Bert Polito, Bob Mitchell, and Betsy Gara.

SB 416 SB 951 HB 6597 SB 1009 HB 6596 HB 6595

EW R ASPER: T an you very muc , Representat ve Lawlor, members of the committee. I appreciate the opportunity to be here.

I am President of the Connecticut Trial Lawyers Association and I am here to speak to you today about several bills before you.

I would like to set the stage, however, because there is a crisis in the state, in the state judicial system. There is a jam up. There is a log jam. We have difficulty getting cases resolved and it's not because the judges and the staff and the judicial system aren't working very hard and diligently, there are issues about under-staffing and under-funding and those are things that probably have to be resolved by this committee or addressed by this committee on another day.

There is a more pressing problem. It's been a problem that's been increasing over the last few years and that has to do with the conduct of virtually all of the property and casualty insurance companies handling and attempting with us to resolve claims. I think what we've had and what we've seen over the last few years is a systematic stonewalling of the settlement of cases by failing and refusing to engage in meaningful settlement discussions, low-balling cases, sending attorneys to pre-trials without authority and at a time when

caseload is sort of the last thing that we spend our resources on, sort of you postpone the civil cases because you've got to do the criminal cases first; you have to do the family cases first; you've got to do the housing cases first. So it is the last thing we spend our resources on. I don't see this legislature putting substantially more resources out there to do that and so I think it we are going to deal with these issues we have to find ways to make the system more efficient and I thank you for your suggestions here. I am disappointed that you didn't like the concept of re-examining the question of how we do voir dires. I think that was another resource issue.

STEWART CASPER: Well, Representative Farr, one of the bills here -- I mean, I understand that there were a number of problems and I understand that civil jury sort of takes the back seat. My association is working very hard. I've got members all over the state sitting as special masters cooperating with the judiciary trying to help reduce the backlog with ex erienced law ers sittin and re-tr ing cases.

HB6596

There is a unity of interest bill that is before you today. You addressed the voir dire issue and we do have a disagreement on that because my association and most lawyers who practice in the courts think that that concept of individual voir dire is invaluable, but the unity of interest bill that's on the -- on your calendar for today and I would like to take a couple of moments just to comment on it. The Unity of Interest Rule creates a presumption that lawyers who represent multiple parties -- that there is a unity of interest between those parties. It only makes sense. That will help reduce the backlog.

We are also trying to, through the Unity of Interest Rule, take away the incentive for insurance companies and the defense in cases to use gamesmanship to increase the number of pre-emptory challenges they have by claiming that there is no unity of interest. One way of doing that is the other portion of that bill is to guarantee that as between all plaintiffs and all defendants there is

parity, that there is a level playing field so that if, for some reason, there is a claim that there is not a unity of interest between defendants and they get, let's say, eight challenges instead of the four challenges, that the plaintiff's side will also get eight challenges. At some point along the way, if there is parity, the insurance industry is going to say there is no use in playing this game, trying to get a leg up and take advantage of this situation by arguing there is no unity of interest. Let's all go with four challenges, get the jury selected a whole lot faster. That's the goal behind unity of interest. The Unity of Interest concept comes out of the federal system where jury selection is much quicker because the number of challenges are reduced.

If I may also just comment -- there is a bill on presumption of negligence in rear-end automobile collisions. I think that I have set forth in the materials, the necessity for that type of bill. There is a quirk in the 14-240, following too close statute and I think that when you clean -- if that gets cleaned up, because obviously someone is sitting at a traffic light who gets rear-ended who ends up with a defendant's verdict, there is something wrong with the way that that case happened. We can't undo that case, but I think under those circumstances it's only fair and equitable that the law recognize a presumption or at the very least, an inference should be drawn by the jury that the party initiating that contact was at fault. HB 6595

That really ends the comments I have on these bills. If there is anything else, I would be happy to --

SEN. WILLIAMS: Representative Bernhard.

REP. BERNHARD: Thank you, Mr. Chairman. Mr. Casper, as you know, I do have an active litigation practice and notwithstanding that, I often take issue with or have, at least in our exchanges, issue with some of the positions of the Connecticut Trial Lawyers Association. On the bills that you have addressed today, I do find that I am sympathetic to the SB 1009

does not accept that offer of judgment, becomes liable to the plaintiff for interest from the date the complaint is filed. I believe that is a 12% rate from the date the complaint is filed to the date of payment.

The plaintiff's obligation in that circumstance is to value the case intelligently and put it a judgment, a value on that case and make that offer of judgment in a range that is reasonable. That's all that is asked.

If the plaintiff brings in a verdict of that amount, or above that amount that was offered, the defendant pays. And I think that's a fair balancing under the current statutes of the obligations of both parties.

I do not think that this Legislature should or this committee should needlessly penalize the rights of defendants, particularly those I represent who are uninsured simply in order to move business through the courts.

Thank you.

REP. LAWLOR: Thank you. Are there questions? If not, thank you very much.

Betsy Gara and Betsy will be followed by Jim Bartolini, Dennis LaGanza, Herb Sheperdson, Paul

SB951 SB1009 HB6597 HB6596

BETSY ARA: oo a ternoon, mem ers o t e commi ee. My name is Betsy Gara. I am Assistant Counsel for CBIA.

I am here today to oppose a number of different bills which we feel with significantly increase the liability and litigation costs in ways that over time will result in higher prices for consumer products, fewer products introduced into the market, reluctance to introduce new treatments and vaccines into the market place, and ultimately higher local property taxes for residents, for businesses, and ultimately, again, fewer jobs

This is, again, in opposite direction of a number of states that are looking to restore fairness to their liability laws. Some states, for example, are looking at limiting the post judgment interest by tying it to the U.S. Treasury Bond rate rather than something that is much higher than those types of rates.

We also HB6596 which tilts the playing field in favor of the plaintiffs in cases where there are multiple defendants. Current law which permits courts to weigh the relative unity of interest to the parties in determining whether to limit pre-emptory challenges or to allow additional challenges assures that the allocation of challenges is not going to result in a packed jury. The discretion given to the trial judge in implementing the law is, and I think it should be extremely broad to meet the requirements of a balance civil justice system.

We feel that these measures collectively will coerce innocent defendants to settle rather than face a possible award plus exorbitant interests, and we therefore urge the committee to reject these measures.

Thank you.

REP. LAWLOR: Thank you. Maybe I missed it, but which one of the bills raises the property tax?

BETSY GARA: I think collectively all of these. When you look at increasing litigation costs and liability costs, you are looking not only at employers and manufacturers, you are also looking at municipalities, non-profits, a host of other entities that will be adversely affected by these bills.

REP. LAWLOR: And would the CBIA have any objection if SB1009 we tied credit card rates to the T-Bill rate?

BETSY GARA: In terms of? I am sorry.

REP. LAWLOR: Maximum credit card interest rate be the same as the T-Bill rate?

REP. BERNHARD: Thank you.

REP. LAWLOR: Further questions? If not, thank you very much.

Next is Jim Bartolini.

JAMES BARTOLINI: Good afternoon, Representatives and Senators. I am Jim Bartolini and I am a trial lawyer.

HB6596
SB1009
HB6597

I share the comment that was made by Representative Bernhard a minute ago when he said, "I can't understand how anyone could be against SB951", the mandatory disclosure requirement. And let me tell you a story about how significant it could be and what happened to me in a particular case a number of years ago.

I represented a young boy who suffered a very significant brain injury in a car accident. When I contacted the claim representative representing the individual who was primarily responsible for the accident -- my boy was a passenger - I was told that the insurance coverage was $250,000 which based upon my assessment of this boy's injury was inadequate to compensate for the loss.

And I explained to his mother that that's where we were, that that was likely going to be the extent of recovery that we were going to be not able to get under the circumstances. Fortunately, fortunately, I did not settle that case and I put it into suit. After I put it into suit and filed formal discovery I found out that it wasn't $250,000. It was $1,250,000. That there was $1 million umbrella over that $250,000 policy.

Now you would say to yourself, well what happened? And I probably could have accepted it a lot easier if the $1 million umbrella policy came from a different carrier in behalf of that defendant, but it didn't. It was the same insurance company that carried the $1 million umbrella.

Yes, the adjuster was embarrassed. Yes, he said, "gee, well all I knew was the line item on the

policy, the underlying policy. I wasn't aware of this $1 million umbrella."

If I had made the disastrous mistake of acting to resolve the claim based on that $250,000 representation, my client would have gotten significantly short changed and unquestionably when it was discovered what the situation was, I would have gotten sued for not having properly protected his rights.

Every time an insurance representative now tells me that they will not disclose what the coverage is, as quickly as I can get that lawsuit out, the lawsuit is filed.

Now, a mention was made and it is an accurate mention, well what happens if you know what the coverage is and you can resolve the claim expeditiously? Doesn't the lawyer in that situation -- isn't than an incentive for the lawyer to give a courtesy to the client? And the answer is 1000% yes. And I have it -- I am in the process of doing exactly that now where because and I required affidavits from the insurance company, from the policy holder, I was able to determine, to my satisfaction, that there was only "x" dollars of coverage and I resolved the claim promptly and I gave a dramatic courtesy to my client that benefitted her tremendously because of that situation.

So to argue that this shouldn't be permitted to give mandatory disclosure, I think, is absolutely ridiculous.

Just very briefly, unity of interest which is HB6596 I am very much in favor of that. I try a lot of jury cases. I was involved in the process of getting the situation where we did have unity of interest. The problem is that it hasn't worked out consistently for parity between the parties. That is, the defendants and the plaintiffs all should be on an equal footing, each having an equal number of challenges. This bill would allow that.

Lastly on these bills relating to interest from SB 1009 HB 6597

JAMES BARTOLINI: Right, exactly. So I mean, yes that is happening, but maybe it is just the pendulum swing and maybe it will swing back again.

Right now things are very tight.

SEN. KISSEL: Which of the bills that you testified in favor of do you feel is most important in trying to (INAUDIBLE - MICROPHONE NOT ON)

JAMES BARTOLINI: That's a tough question. That's a touch question. I think focused strictly on that log jam, I suspect that the act requiring payment of interest from date of cause of action probably will have the greatest concern to the insurance industry saying that every time we don't pay up on a case and we go to verdict, even if it's a low verdict, we are going to have to pay up on interest on it. I think that would be a lot of incentive for them to say, let's settle these cases early on so we don't have this tagging after us for five years. Because if you have 5,000 cases out there and they are all coming into play, at the end of that five year period, that can be a lot of money that they would have to be concerned about. So let's get these cases settled promptly. SB1009

That would be my best guess.

SEN. KISSEL: Thank you.

REP. LAWLOR: Further questions? If not, thank you very much.

JAMES BARTOLINI: Thank you.

REP. LAWLOR: Dennis LaGanza. SB951 SB1009 HB6597 HB6596 HB6595

DENNIS LAGANZA: Good afternoon, Chairman Lawlor, members of the committee.

My name is Dennis LaGanza. I am counsel to the Insurance Association of Connecticut, a trade association representing insurers doing business in the state.

I want to make some general points and them I am

going to touch upon some bills specifically here.

We have heard a lot of testimony here today that there is a log jam in the courts and that there is a delay in the system. And this is all being laid at the feet of the insurance industry. There is no mention of the fact that the judicial limit -- resources are limited nor does it take into consideration of plaintiffs dragging their feet, plaintiffs making ridiculous settlement demands that insurers are forced to respond to and then litigate cases.

What these bills seek to do is eliminate any parity that we currently have in our civil justice system. any pre-supposition of parity whatsoever. And parity is an important point here and I am going to stress this throughout my testimony because I think that this is something the committee needs to evaluate when they look at the bills.

Where is the fairness and where is the parity? And I am going to make one other general point right now and this -- there has been some testimony here that insurers stonewall cases and they do it, in effect, to take advantage of the float, the time value of money for a period of five years.

Let me tell you something that the cost of defending a case and of carrying a case, far exceeds any amount of float in a case. That notion just has no validity whatsoever.

And I want to talk about five specific bills. The first one I am going to speak to is SB951 which is the mandatory disclosure of insurance policy limits.

What this bill will do, it will set an artificial ceiling for plaintiffs' settlement demands and particularly we have concerns with respect to cases that involve the potential for under insured motorists, insurance, and high policy cases because what is going to happen is no longer will the value of cases drive settlement demands.

Policy limits will be dispositive. And to

plaintiff. What this does is put defendants in the position of financing plaintiffs' appeals and motions for post-trial judgment -- excuse me, post-trial motions. There is no incentives for plaintiffs to come in and not file appeals. Just the opposite. A plaintiff can come in, file an appeal, and then if it comes back, we have had to finance the entire process.

The unity of interest statutes. These were just amended in 1993. Right now a judge has discretion as to whether or not he will limit or add challenges among individual plaintiffs or defendants. And I think it's important to understand the concept of unity of interest when you evaluate this bill because what pre-emptory challenges are designed to do are to allow individual defendants to protect themselves against suspected hostility or prejudice. HB6596

What this bill automatically does is remove those very important rights and it would automatically lump all defendants -- let's say you had three defendants and I will give you the example of a property owner, the property manager and the tenant and they may very well be all represented by the same attorney. It lumps them all together and limits them to four challenges. And that attorney may have very different reasons for exercising pre-emptory challenges for each one of the particular defendants.

The next thing is, there is a second part to this bill that really hasn't been talked about today and it's almost a super majority provision is what this is. Because what it would do is mandate -- let's say you have four defendants and each has -- let's take the case of two defendants and each has four challenges. One plaintiff automatically -- it elevates -- it gives the plaintiff eight challenges. Now what that does is it puts an individual party to a lawsuit in the position to dominate the jury selection because, as you know, individual defendants may have very different interests as opposed to another, but this would automatically elevate that particular party to a lawsuit to be in a position to control the jury

selection process.

Finally, the presumption of negligence in automobile cases. I'm not quite sure why we have to be in a position to shift the burden of proof from plaintiffs to defendants in negligence cases. I believe there is going to be some testimony that follows me and I have talked to several of my member companies where they win rear-enders and what this does is it forces us to prove our cases, whereas that has traditionally been the plaintiff's burden in our civil justice system and I think also when you look at this bill, you need to evaluate it in the context of a rear-end collision that involves multiple motor vehicles. Because this bill, as stated, no matter what happened -- let's say you had three cars following the lead vehicle, every single one of those drivers would be presumed to be negligent, irrespective of their conduct. HB6595

I would be happy to take any questions.

REP. LAWLOR: Senator Kissel.

SEN. KISSEL: I would grant you the fact that probably seven out of eight insurers that I have dealt with in the State of Connecticut are reasonable, that they don't try to stonewall and that they do go through the formalities and I will even grant you that many of the bills that we have before us do tilt the playing field to the advantage of the plaintiff's bar and that doesn't get to the ultimate decision as to whether that's appropriate or not appropriate.

But really when we talk about SB951 and you say this is a unilateral disclosure of the insurance industry, it is going to drive up the value of cases, and that what in the world do we expect of claimants? Well let me tell you what we expect of claimants, okay? We expect of claimants an itemization of the medical specials, the lost wages, the temporary disability, the permanent disability, the pain and suffering, all the i's have got to be dotted, all the t's have got to be crossed because your industry has the money and our clients want the money. We are not in a positive

$17,000 and the other guy thinks it is worth $20,000, you know -- I mean, if that's where it is, $17,000 or $20,000 how much more is it worth over the $20,000 unless the people are really looking at apples and oranges and they really feel the value is one thing or another. In my personal experience when you get that close, usually $18,000 would settle that kind of case because there's not that much of a difference unless the plaintiff's counsel and the adjuster are just that far apart. And if they are that far apart, let's find out if there is $20,000 in coverage and put that stupid thing in suit because that's where it is going to end up any how.

But I think that hiding that policy -- I mean, that's essentially what you want for us to institutionalize the process where carriers cannot disclose, they can hide what policy limits are available out there. I don't think that's in the best interest of justice. And that's the ultimate question we have to ask -- what is in the best interest of justice? And I think having all the cards on the table are in the best interest of justice.

Thank you. Thank you, Mr. Chairman.

REP. LAWLOR: Representative Farr.

REP. FARR: Yeah, just a quick question on the unity of HB 6596 interest bill.

I'm not sure I fully understand the impact of the language that's there. It says that there is going to be the same number of challenges for both the plaintiff and the defendant. Now I don't know how that tips the balance one way or the other. I mean, I can think of a typical case where there are three passengers in the car and they are hit. Now the plaintiff lawyers -- and they are hit by one driver in another car, the plaintiffs' lawyers now only have the same number -- they may have three cases that is consolidated. They are going to be more limited now in pre-emptory challenges.

Doesn't this cut both ways?

DENNIS LAGANZA: Well, it certainly does cut both ways, Representative Farr, but you know, our concern is that number one, this system was just amended in 1993 to deal with this issue and I think when you start getting into issues of jury selection and in particular, pre-emptory challenges, you are dealing with very important rights and to automatically establish a presumption on either side that you are going to be limited in the number of challenges you are entitled to exercise, cuts against the grain of what those rights are designed to do and they are designed to protect the individual litigant from suspect hostility or prejudice. (GAP IN TESTIMONY DUE TO TAPE SWITCHING SIDES) the first component of that bill because you can see there are two parts to the bill.

And the second part is not dependent upon representation by a single attorney. It would move across the board so you could have two defendants or two plaintiffs, mind you, that are represented by different attorneys and one party on the other side of the case, and what it automatically does is elevate the number of challenges that that particular party has.

So, it puts them in a position to dominate the jury selection process because -- you know, right now a judge can make a finding that there is a unity of interest among the parties and he can limit the challenges, but this automatically -- the latter part of that bill automatically elevates the status of that singular party and effectively, in the scenario I have given you, double the number of challenges, irrespective of the diversion interest of the parties on the other side.

REP. FARR: Okay.

REP. LAWLOR: Further questions? Representative Bernhard.

REP. BERNHARD: Just so ou don't feel entirely beaten up on, I did pick up on one of your points with respect to an offer of judgment. (SB1009)

It's your point and maybe well taken that a

18th.

With regard to the unity of interest. I mean the simple rule is, is there a conflict of interest between the parties or isn't there? If one lawyer can ethically represent three parties then there is a unity of interest. And that should be the way you look at this thing. I think it has been causing problems. It is not uniformly enforced and it's meant to correct what was intended to be, make the process simpler and it arose out of a very extensive -- I think it was a 12 week voir dire up on Danbury, a complicated case. HB6596

So if we are trying to make the voir dire simpler, this is one way to do it.

REP. LAWLOR: Okay. Are there questions? Representative Farr.

REP. FARR: I am just pleased that you brought to the committee's attention that fact that there was a 12 week voir dire somewhere because when people earlier on testified, they said, voir dires are no problem. I mean if voir dire is a day, day and one-half, I mean what's the problem --

WILLIAM SWEENEY: I mean, in the average case, that's probably correct.

REP. FARR: Right.

WILLIAM SWEENEY: That case was a complicated malpractice case in which there were numerous defendants. I think -- I don't want to be quoted exactly, but I think that the defense had over 100 challenges.

REP. FARR: In federal court, how long would it have taken to select that jury?

WILLIAM SWEENEY: Well, they wouldn't have had the challenges.

REP. FARR: That's correct. They would have had a one day selection of that jury panel.

WILLIAM SWEENEY: They wouldn't have had the challenge.

REP. FARR: But let's get back to the question of the failure of the offer of judgment and I don't really understand why you think that doesn't work in this interest proposal would work. I mean, the offer of judgment is 12%. The interest from the date of the offer, the interest is 10%. Why is one effective and not the other? (SB1009)

WILLIAM SWEENEY: Well, I could tell you right now, the OJ is not effective.

REP. FARR: Why is that not effective?

WILLIAM SWEENEY: First of all, it's not used uniformly.

REP. FARR: Well, I understand from a plaintiff's point of view it is not as desirable as an interest because it requires you to put an offer on the table, but why isn't that effective in producing end results?

WILLIAM SWEENEY: Well, first of all, I don't think the defendants take them seriously. The defendants don't respond to them.

REP. FARR: Well, why wouldn't every jury --

WILLIAM SWEENEY: I think it's --

REP. FARR: Why wouldn't every jury trial today result in a potential of an offer of judgment out there that is going to result in the kicking in of 12% interest?

WILLIAM SWEENEY: I am not sure I understand the question.

REP. FARR: Well, why don't -- you say they don't take it seriously, but if you are going to have a trial, and you are subject -- and there is an offer of judgment on the table, aren't you going to take seriously the fact that you are going to have to pay 12% interest?

WILLIAM SWEENEY: I think you ought to ask that -- ask

REP. LAWLOR: Thank you. Are there any questions? If not, thanks very much.

Patti Shea.

PATTI SHEA: Good afternoon, Representative Lawlor, distinguished members of the committee who have remained to the bitter end.
HB 6597 HB 6595 HB 6596
My name is Patti Shea and today I am representing the American Insurance Association. I am here to give testimony in opposition to several bills before you which you have heard about all day.

SB951 requiring disclosure of insurance policy limits prior to initiation of suit. We oppose this for the reasons you have heard already. Basically, we believe that the plaintiff's demand should be based on the actual damages and his theory of liability, not on who are the deep pockets and what the policy limits are.

And I think the biggest part of the problem that I have in this bill is if -- let's assume -- let's take a hypothetical and my son gets injured on the playground today at school. Do I then have the ability to go and ask nearly everyone that I have the potential of suing for their policy limits? The kids on the playground that may have pushed him? The manufacturer of the playground equipment? The teachers who might or should have been in the playground? At what point does it become a requirement for someone to give over their policy limits? I think this is a real concern.

Once a suit is initiated, and all the other discovery is in place, the plaintiff has the ability to get the policy limits and that should be in the course of the litigation.

On SB1009 regarding interest in the amount of 12% from the date the action accrued. You have heard testimony. This is just an unjust penalty on the defendant for going to trial. I mean, it is like adopting the English system of where losers pay costs, but only applying it when the defendant is the loser. It is -- its unfairness is glaring. We

already have an offer of judgment. If plaintiffs are finding that defendants are not settling and it is unreasonable, why are they not making -- why are they not using the offer of judgment statute that is there? I mean, I don't understand the problem, quite frankly. You have an offer of judgment statute which stands at 12% interest, which is very high. It is a penalty.

On the other side, you don't have the same penalty accruing on the defendant's offer of judgment and I think that actually if we want to encourage settlements on both sides, we should take a look at that more closely.

On HB5697 requiring payment from the date of verdict. Again, this is simply a penalty against a defendant without cause and we should be looking at reducing that 12% penalty rather than expanding on it.

HB6597

On HB6595, presumption of negligence in certain motor vehicle accidents. This goes against the fundamental rules of our judicial system or the burden of proof is on the plaintiff to prove his case and often we will see defendants' verdicts are not uncommon, even on rear-end collisions. This is completely unfair. The defendant should not be put in the position of having to prove that he has not done something.

On the unity of interest, HB6596, this would require an equal number of challenges between all plaintiffs and all defendants. All defendants are not the same. They should have their own pre-emptory challenges. When there is a unity of interest agreed, the judge should make that determination and they should have the same number, but not unless there is a unity of interest.

I know I have gone over my time. Just to summarize, I think all of these bills are tipping the scales in favor of the plaintiff and we would urge your rejection.

REP. LAWLOR: Some people would make the analogy to a pendulum instead, but that's another story.

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WRITTEN TESTIMONY CONCERNING:
SB416-ASSUMPTION OF THE RISK
SB951-MANDATORY DISCLOSURE OF INS. POLICY LIMITS
SB1009-PAYMENT OF INT. FROM DATE OF CAUSE OF ACTION
HB6595-PRESUMPTION OF NEGLIGENCE-REAR END ACCIDS.
HB6595-UNITY OF INTEREST HB 6596
HB6597-INTEREST FROM DATE OF VERDICT

JUDICIARY COMMITTEE
FEBRUARY 24, 1997

STEWART M. CASPER
PRESIDENT

96 Oak Street, Hartford, Connecticut 06106-1514 (860) 522-4345 • FAX (860) 522-1027

INTRODUCTION: I am here today to present the position of CTLA on several bills. First, however, I would like to address certain issues which I believe warrant several of the statutory changes which I will advocate today.

As most of you know, for several years the state judicial department has been experiencing a crisis because the demands on the system are greater than it has the capacity to handle despite herculean efforts by the judiciary and staff. The system suffers from inadequate funding, facilities, number of judges and support both in terms of personnel and equipment. I have been practicing law for nearly 19 years and for as long as I can remember the system has been plagued for inordinately long backlogs for most civil cases but in particular for jury cases. In Hartford, New Haven, Bridgeport and Stamford it takes a minimum of 4 and usually closer to 5-6 years to get reached for trial. Some injury cases are tried 8 years after the injuries were sustained. That is not a system of which we can or should be proud.

As if these problems were not bad enough, over the course of the last few years the situation of delay has gotten even worse and the exacerbated problem has nothing to do with judges, facilities or the lack of money. Instead it is a problem widely regarded as having been caused by conduct of virtually all of the property and casualty insurance companies which have systematically stonewalled the settlement of cases by failing and refusing to engage in meaningful settlement discussions, low-balling cases, sending attorneys to pre-trials without authority and with no one at the insurer available with any meaningful authority.

I am not here claiming that insurance companies do not have the right to jury trials just like an injured plaintiff has the right to a jury trial. Clearly there are cases where legitimate disputes warrant trials. However, experience tells us that the vast majority of cases can and should be settled; yet the prevailing conduct of the insurance industry is to string out cases that should be settled. They take advantage of the court delays sitting on the funds often despite reserving the file for an amount which could settle the case.

Attached to these materials are judicial department statistics received last week which reflect the increased number of tort cases in the system. In the 1995-96 fiscal years, tort cases accounted for only 22% of all civil filings including family cases. For fiscal year 95-96 there was a net increase in vehicular torts of 2,447 and a net increase of all other torts of 1,026.[1] Further the average number of vehicular torts disposed of during the last three fiscal years ending 95-96 (9,931) was an 8% reduction of the number of vehicular tort cases disposed as compared to the 92-93 fiscal year. In sum, there are fewer tort cases being disposed and more cases being filed.

Perhaps more telling than statistics are the reactions of lawyers all over the state and in my position I have heard from many. Without exception the complaints are raining in that insurance companies are not settling cases. Not only has this been confirmed by lawyers representing injured people but also by defense lawyers who are speechless in the face of conduct of insurers that is plainly indifferent to the rights of injured people. Recently I asked a defense lawyer why a particular insurance company had not made an offer on a rear-end collision case scheduled for trial next month where the accident occurred in 1990. He told me that the company

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[1] Net figures derived by subtracting the number of cases disposed of from the number of new case filings.

is doing the same thing in most of his cases and there is nothing he can do.

Other evidence of this sort of conduct can be found in an examination of claim files which we periodically get to do in insurance bad faith cases. I have seen clear evidence in some files that insurance companies make low-ball offers on some cases despite reserving the files at higher amounts or receiving input from counsel that the value of the claim was significantly higher.

This problem of stonewalling and low-balling by insurance companies is fostered by several factors including the following:

- Long delays in being reached for trial;
- Incentive to use the money (the "float") as long as possible;
- Financial incentive to delay;
- Insurance companies using in-house counsel to represent the insured creating an inherent conflict of interest between the rights of the insured and the insurance company;
- Hiring private defense counsel at either very low hourly rates or at a flat fee per file thus limiting their cost of defense.

Several of the bills before you today will, if enacted, help reduce the incentive to delay, stonewall and low-ball. I have been told by an experienced insurance adjuster who wished to remain anonymous for obvious reasons, that in all but the most serious auto collisions, an insurance company can and should complete its liability investigation within 2 weeks and should be able to put a value on a file and make a meaningful and fair offer in 30 days following receipt of the supporting medical documentation if the injury is not catastrophic and within 60 days at most if the claim involves a serious or even catastrophic injury. A highly regarded defense lawyer in this state told me that 60 days was enough time for a valuation decision in any case. It does not happen.

Significantly, to the extent that any of the proposals limits the improper conduct described, it will have the salutary effect of limiting the number of lawsuits filed and the need for use of scarce judicial resources.

TESTIMONY
ELIZABETH E. GARA
ASSISTANT COUNSEL
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE
JUDICIARY COMMITTEE
LEGISLATIVE OFFICE BUILDING
FEBRUARY 24, 1997

Good afternoon. My name is Elizabeth (Betsy) Gara, Assistant Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents over 10,000 companies across Connecticut. Our membership includes firms of all sizes and types, however, the vast majority have fewer than 100 employees.

CBIA opposes the following bills which significantly increase liability and litigation costs:

- SB-951 requires individuals and employers to disclose insurance information prior to the commencement of a lawsuit upon a written request;
- SB-1009 requires courts to award 12% interest to a prevailing plaintiff accruing from the date of the injury;
- HB-6597 requires courts to award post-judgment interest in negligence cases from the date of the verdict or judgment, whichever is sooner;
- HB-6596 requires courts to provide plaintiffs and defendants with equal numbers of peremptory challenges, regardless of whether there is a unity of interest.

By fueling increases in liability and litigation costs, these bills will result in higher prices for consumer products and services, fewer products introduced in the marketplace, reluctance to introduce new medical treatments and vaccines, higher local property taxes on residents and businesses and, ultimately, fewer jobs. This is particularly troubling in view of the number of states that have recently reformed their liability laws in an effort to attract businesses to their state. These states have recognized that the cost of defending lawsuits forces some firms to raid budgets originally earmarked for research and

HB-6597 also attempts to penalize defendants who are merely exercising their statutory rights in requesting a court to consider certain motions, such as a motion to set aside a verdict by requiring courts to award post-judgment interest in negligence cases from the date of the verdict rather than the final judgment. This is again in the opposite direction of a number of states that are working to restore fairness to their liability laws. Massachusetts, for example, is considering a proposal to set the judgment interest rate at the prevailing U.S. treasury bond rate. Since the objective of post-judgment interest is to compensate for the loss of the use of funds for the period of time elapsing from the date of the final judgment to the date of satisfaction of the final judgment, not to provide a windfall, the interest rate should reflect the prevailing rate at the time.

CBIA also opposes **HB-6596** which tilts the playing field in favor of the plaintiffs in cases where there are multiple defendants. Current law, which permits the courts to weigh the relative unity of interest of the parties in determining whether to limit peremptory challenges or to allow additional challenges, assures that the allocation of challenges is unlikely to result in a packed jury. The discretion given to the trial judge in implementing the law is and should be extremely broad to meet the requirements of a balanced civil justice system.

Trial lawyers argue that these bills will encourage prompt settlement and they're right - because they've virtually guaranteed that defendants will not only lose in court, they'll lose big. These measures coerce innocent defendants to settle rather than face a possible award plus exorbitant interest. We therefore urge the committee to reject these measures and, instead, address ways of restoring fairness and balance to our civil justice system.

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Testimony in opposition to Raised Senate Bill No. 951 AN ACT CONCERNING THE MANDATORY DISCLOSURE OF INSURANCE POLICY LIMITS PRIOR TO SUIT, Raised Senate Bill No. 1009 AN ACT CONCERNING THE PAYMENT OF INTEREST FROM THE DATE THE CAUSE OF ACTION ACCRUED, Raised House Bill No. 6596 AN ACT CONCERNING UNITY OF INTEREST, and Raised House Bill No. 6597 AN ACT CONCERNING THE PAYMENT OF INTEREST FROM THE DATE OF VERDICT OR JUDGEMENT

Good morning Representative Lawlor, Senator Williams and members of the Judiciary Committee, my name is John Emra, Director of Governmental Affairs for the Greater New Haven Chamber of Commerce. Thank you for the opportunity to submit the following testimony on behalf of the Board of Directors and over 1,200 members of the Greater New Haven Chamber of Commerce.

The Chamber is deeply concerned and strongly opposed to all four of the above referenced bills. In general terms, Connecticut's manufacturers struggle with a number of factors that make doing business in Connecticut prohibitively more expensive than surrounding states. The bills under consideration by your committee today would only make Connecticut an even more expensive state to do business and place the small gains made by Connecticut's economy since the 1991 recession in jeopardy.

Raised Senate Bill No. 951 AN ACT CONCERNING THE MANDATORY DISCLOSURE OF INSURANCE POLICY LIMITS PRIOR TO SUIT

The Chamber is opposed to Senate Bill No. 951. Mandating the disclosure of insurance policy limits prior to suit would encourage parties to file lawsuits against companies with high insurance policy limits and prejudice settlement negotiations in favor of the plaintiff.

Raised Senate Bill No. 1009 AN ACT CONCERNING THE PAYMENT OF INTEREST FROM THE DATE THE CAUSE OF ACTION ACCRUED

The Chamber is opposed to Senate Bill No. 1009 because it unfairly penalizes employers for judicial delays beyond their control by requiring the payment of interest from the date an injury occurred regardless of when a final judgement is determined. Making respondents responsible, through the payment of interest, for factors beyond their control is patently unfair.

Raised House Bill No. 6596 AN ACT CONCERNING UNITY OF INTEREST

The Chamber is opposed to Raised House Bill No. 6596 because it would give an unfair advantage to plaintiffs seeking damages against more than one party by limiting the rights of respondents to make peremptory challenges during the jury selection process. Under current law, the trail judge is given the power to weigh the relative unity of interest of parties in determining whether to limit challenges or to allow additional challenges which assures that the allocation of challenges is unlikely to result in a packed jury. The discretion given to the trial judge is and should be extremely broad to meet the requirements of a balanced judicial system.

Raised House Bill No. 6597 AN ACT CONCERNING THE PAYMENT OF INTEREST FROM THE DATE OF VERDICT OR JUDGEMENT

The Chamber is opposed to Raised House Bill No. 6597 because mandating, rather than allowing courts to award post-judgement interest from the date of a verdict or judgement, whichever is sooner, penalizes employers that are exercising their right to ask the court to consider certain motions. Raised House Bill No. 6597 would have a chilling effect on employers that lose in court but who still wish to pursue legal avenues statutorily open to them.

It is for these reasons that we ask the Committee to reject these bills. Thank you.

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STATEMENT

INSURANCE ASSOCIATION OF CONNECTICUT

HB 6596-An Act to Amend the Unity of Interest Statutes

Judiciary Committee

February 24, 1997

The Insurance Association of Connecticut opposes HB 6596-An Act to Amend the Unity of Interest Statutes.

This bill presumes a unity of interest in any civil jury action where multiple parties are represented by a single attorney. It also mandates an equal number of peremptory challenges between all plaintiffs and defendants. By doing so, it ignores both the purpose of allocating individual peremptory challenges among individual plaintiffs or defendants and the 1993 amendments to the unity of interest statutes.

Peremptory challenges are intended to give a party to a lawsuit a margin of safety against suspected hostility or prejudice. These are rights designed to afford important protections. A presupposition of commonality of interest chills these rights and has the potential for unfair consequences. For example, it would be inherently unfair in the case of a slip and fall to arbitrarily limit a property owner, property manager and tenant to four peremptory challenges merely because they are represented by the same attorney. These defendants rights to protect themselves from suspected hostility or prejudice would be virtually extinguished. Similarly, to

automatically extend an equal number of challenges to all plaintiffs or defendants ignores the individual nature of the challenges and places a single party in the position to dominate jury selection.

Finally, both Connecticut General Statutes sections 51-241 and 51-243 were amended in 1993. These amendments were designed to guard against abuse in the voir dire process and permit a judge upon a proper showing to limit or expand the number of peremptory challenges among plaintiffs or defendants.

For all of the above reasons, the IAC urges this committee to reject HB 6596.

HB6596-AN ACT CONCERNING UNITY OF INTEREST

In 1993 the legislature passed and the governor signed P.A. 93-176 which amended the statutes dealing with jury selection (C.G.S. §§ 51-241 and 51-243) and provided for tailoring the process with the use of the unity of interest rule. The goal of the proponents of that legislation was to preserve the very valuable process of individual voire dire used here in Connecticut as required by our Constitution but to trim that process by limiting the total number of peremptory challenges in a case where parties are viewed as having a unity of interest. The amendment enacted in 1993 left each trial judge with a certain amount of discretion to determine if several plaintiffs or several defendants had a unity of interest such that it would be reasonable to treat them as one party for allocation of peremptory challenges.

The proposed amendment will further fine tune the statutes governing jury selection. The bill was prompted by the Appellate Court decision in Beach v. Regional School District Number 13, 42 Conn.App. 542, cert. denied, 239 Conn. 939 (1996)(copy attached). In Beach, a defective sidewalk case (ice), the plaintiff sued 3 individuals, the school district and the school board. The trial judge allowed the defendants 10 peremptory challenges to the plaintiff's 4 despite the obvious common interests and trial positions of the defendants. To demonstrate the unity of interest among the several defendants the Plaintiff claimed the following:
"(1) Identical allegations of negligence were asserted against the defendants in a one-count complaint; (2) The defendants had the same counsel before and at trial; (3) They filed the same answer to the complaint; (4) They asserted the same special defenses; (5) They were insured by the same insurance carrier under the same policy; (6) The institutional defendants agreed to indemnify the individual defendants from any adverse verdict; and (7) The individual defendants conceded that they had no conflict with each other."

Jury selection should not turn on gamesmanship but should reflect the highest traditions of fairness as the jury will ultimately determine the facts of each case. Implicit in the fact that each of the parties in Beach were represented by the same lawyer is that the parties interests were not adverse. It therefore seems only fair that the law presume that defendants represented by the same lawyer be treated as one for jury selection

Moreover, fairness also dictates that in any case neither side have an unfair advantage over the other in jury selection. To that end, the proposed legislation guarantees a level playing field between the plaintiffs and the defendants by requiring that each have an equal number of peremptory challenges. The jury selection process may have many subtleties but in reality there is not much difference between a juror that may be more favorably disposed for example to an anesthesiologist than to a surgeon, both defendants in a medical malpractice case. By mandating an equal number of challenges, the bill will create a disincentive to parties who seek an unfair tactical advantage by litigating the unity of interest issue with the goal of obtaining extra challenges. The result should be fewer peremptory challenges in many cases involving multiple parties and thus shorter jury selection.