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**HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA**

**\* \* \* \* \***

**House Bill 1190**

**\* \* \* \* \***

**House Judiciary Subcommittee on Courts**

**Main Capitol Building  
Room 8-E-A, East Wing  
Harrisburg, Pennsylvania**

**Thursday December 4, 1997 - 9:30 a.m.**

**--oOo--**

**BEFORE:**

**Honorable Daniel C. Clark, Majority Chairperson**

**IN ATTENDANCE:**

**Honorable Thomas Caltagirone  
Honorable Kathy Manderino  
Honorable Stephen Maitland**

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*1997-124*

1 **ALSO PRESENT:**

2

3 **Karen Dalton**  
4 **Majority Counsel**

5 **Judy Sedesse**  
6 **Majority Administrative Assistant**

7 **John Ryan**  
8 **Minority Counsel**

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## C O N T E N T S

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## WITNESSES

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Honorable Stephen R. Maitland  
91st Legislative District

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Independent Insurance Agents of PA  
John M. Ulrich, Jr., Legislative Chair  
Vince Phillips  
Vice-president for Government Affairs

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Campbell & White  
Robert E. Campbell, Esquire  
Thomas R. Campbell, Esquire

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John R. Doubman, Esquire  
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Michael Morrill, Executive Director  
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Lauren V. Townsend, Executive Director  
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1           **CHAIRPERSON CLARK:** Good morning. I'd  
2 like to welcome everyone this morning to the  
3 Judiciary Committee Subcommittee on Courts hearing  
4 on House Bill 1190. I believe the first thing  
5 we'll do is have the members present introduce  
6 themselves.

7           I'm Representative Daniel Clark. I'm the  
8 Chairman of the Subcommittee on Courts of the  
9 Judiciary Committee, and I'll let the members  
10 introduce themselves from my right.

11           **REPRESENTATIVE MAITLAND:** I'm Steve  
12 Maitland from Gettysburg, Adams County, the prime  
13 sponsor of the bill and a subcommittee  
14 member -- no, I'm not on the Subcommittee of  
15 Courts. I'm a Judiciary Committee member.

16           **CHAIRPERSON CLARK:** If you want to be on  
17 the subcommittee, you certainly may.

18           **REPRESENTATIVE CALTAGIRONE:** Tom  
19 Caltagirone, Berks County.

20           **CHAIRPERSON CLARK:** And we have our  
21 counsel, Karen Dalton.

22           **MR. RYAN:** And Minority Counsel, John  
23 Ryan.

24           **CHAIRPERSON CLARK:** John. I think what  
25 we'll do initially is get some comments from

1 Representative Maitland and then we'll call the  
2 first individual to present testimony before the  
3 committee.

4 REPRESENTATIVE MAITLAND: I'd just like to  
5 say that I thank the Chairman and the Subcommittee  
6 for holding this hearing today on House Bill 1190,  
7 which would amend what we call the Sudden Emergency  
8 Statute.

9 This is a response to a problem that was  
10 brought to me by an attorney in Gettysburg, my  
11 district, Tom Campbell -- or Bob Campbell and his  
12 partner Tom, who will testify before us a little  
13 later today on the specifics of that instance.

14 And I know that this bill requires some  
15 fine tuning. It's not certainly in its final form  
16 as it's before you today. But I look forward to  
17 all the testimony from the experts in this area  
18 today, and I hope that you're supportive of the  
19 legislation and can offer some comments on how we  
20 can improve it. Thanks again for being here.

21 CHAIRPERSON CLARK: Thank you,  
22 Representative Maitland. And the first individual  
23 to present testimony will be John M. Ulrich,  
24 Junior. He's the Legislative Chair of the  
25 Independent Insurance Agents of Pennsylvania.

1 Mr. Ulrich.

2 MR. ULRICH: Thank you. I have  
3 Mr. Phillips with me who, who's the lobbyist to the  
4 Independent Agents. He would like the opportunity  
5 to introduce me, although I've promised the  
6 transcriber that that's about as much as he'll say  
7 because he talks too fast, she pointed out.

8 CHAIRPERSON CLARK: You go right ahead,  
9 Mr. Phillips.

10 MR. PHILLIPS: Mr. Chairman, thank you  
11 very much for the opportunity. The transcriber did  
12 put me on notice that if I spoke too quickly bad  
13 things were going to happen in terms of the  
14 accuracy of the record maintained.

15 So in keeping with the tradition of  
16 brevity, it gives me great pleasure to, first of  
17 all, thank you again for giving us the opportunity  
18 of testifying.

19 For the record, I am Vince Phillips, the  
20 Vice-president for Government Affairs for the  
21 Independent Insurance Agents of Pennsylvania. And  
22 with me is Jack Ulrich, the principle of Collins  
23 Wagner Agency in York, Pennsylvania, who is also  
24 our legislative chairman. Jack.

25 MR. ULRICH: Thank you. Good morning. As

1 Vince indicated, my name is Jack Ulrich and I am a  
2 principle in the Collens-Wagner Agency in York,  
3 Pennsylvania. Actually, I'm in Stan Saylor's  
4 district; so that's the 94th district in  
5 Springettsbury Township and my office and home are  
6 in that district.

7 I serve in a volunteer capacity as  
8 legislative chair of the Big-I, which is a trade  
9 association representing about a thousand  
10 property/casualty agencies in Pennsylvania.

11 I've been an agent for 37 years and worked  
12 for an insurance company before that. Currently, I  
13 have approximately 6,000 customers concentrated in  
14 the south central Pennsylvania area.

15 I'm testifying in opposition to the House  
16 Bill 1190, Printer's Numbers 1611. As I understand  
17 it, this Bill was introduced because of a tragic  
18 situation involving a pedestrian hit by a car whose  
19 driver lost control due to some sort of medical  
20 emergency.

21 The expenses purportedly were not covered  
22 by either the driver's insurance company or the  
23 family's auto insurance policy. As I was told,  
24 this bill would have made her family's insurance  
25 company pay if it had been enacted prior to the

1 accident.

2 I must tell you that in my experience I've  
3 never seen anything like this happen. The first  
4 question is, Pay for what? The issue needs to be  
5 clearly explained because current law already  
6 addresses the payment of medical claims.

7 Act 6 of 1990 set forth a priority list  
8 showing how medical expenses are covered. This is  
9 found in Section 1713 under Source of Benefits; and  
10 I quote, As a general rule, except as provided in  
11 Section 1714, a person who suffers injury arising  
12 out of the maintenance or use of a motor vehicle  
13 shall recover first party benefits against  
14 applicable insurance coverage in the following  
15 order of priority:

16 First for a named insured, the policy on  
17 which he is the name insured or she; two, for an  
18 insured, the policy covering the insured; three,  
19 for the occupants of an insured motor vehicle, the  
20 policy on that motor vehicle; and four, for a  
21 person who is not the occupant of a motor vehicle,  
22 the policy on any motor vehicle involved in an  
23 accident responds.

24 Subsection (b) goes on to say, The insurer  
25 against whom a claim is asserted first under the



1 priorities set above shall pay the claim. The  
2 insurer then can go after the other insurer.

3 Section 1714 says that an uninsured  
4 vehicle owner or an owner/occupant of a  
5 recreational vehicle is not eligible to receive  
6 first party benefits.

7 Given the clarity of the statute, it  
8 appears that the medical expenses of the  
9 unfortunate pedestrian are covered by statute. In  
10 preparing for the testimony, this interpretation of  
11 Section 1713 was presented to numerous agents who  
12 sell insurance personal lines as well as company  
13 claims people. All agree that the medical expenses  
14 are covered by Act 6.

15 What then is not covered becomes the  
16 operative question once the medical expenses are no  
17 longer an issue. The answer in House Bill 1190 is  
18 found in the elusive word, "damages," which will be  
19 determined by a quote/unquote trier of fact.

20 In addition, it should be recognized that  
21 despite this individual case there does not appear  
22 to be a situation which has repeated itself.

23 If this is a fluke, a single albeit  
24 unfortunate incident, do we really need a new law?  
25 After all, medical bills were paid and the judicial

1 system as well as the insurer's ability to go after  
2 other insurers functions now.

3 To me, laws should be designed with  
4 general application, not to cover every single  
5 eventuality. If laws addressed everything relating  
6 to liability, the result would be an additional  
7 wing of the Capitol to handle the volume of  
8 legislation.

9 House Bill 1190 appears designed to handle  
10 one person's case, but not, to me, the general  
11 need. The result will be to drive up insurance  
12 costs because the bill requires the coverage on  
13 every auto policy.

14 It appears that House Bill 1190 will  
15 invite new litigation, something the General  
16 Assembly tried to prevent with the passage of Act  
17 6.

18 In 1990, major auto reform, Act 6, was  
19 passed to reduce spiraling costs of auto insurance  
20 in Pennsylvania. It has done well. In preparing  
21 for today's testimony, I've read testimony from the  
22 Insurance Department, the companies, and others.  
23 They all say the laws work.

24 Where there used to be a shortage of  
25 companies, now there are many choices. Price can

1 still be a problem in some areas for many, but that  
2 is something the House of Representatives'  
3 Uninsured Motorist Task Force is tackling.

4 Act 6 gave consumers choice of full or  
5 limited tort as a further way to reduce auto  
6 insurance costs and premiums. Medical costs were  
7 addressed as well. By and large, Act 6 has worked.  
8 It has survived the test of time, and consumers are  
9 benefiting.

10 House Bill 1190 would effectively reopen  
11 Act 6. I don't know how many of you serve on the  
12 Insurance Committee or lived through the debates on  
13 auto insurance back in 1989 or '90; but as I  
14 recall, it was not a pleasant time.

15 As I've stated before, Act 6 is working.  
16 There would have to be an almost spectacular need  
17 to warrant opening that Pandora's Box once again.  
18 This bill provides an open invitation to drive auto  
19 costs up again. I think we have too much  
20 litigation as it is with auto insurance.

21 What drives up the cost of insurance is  
22 that people like to sue each other a great deal.  
23 And with apologies to the attorneys who are sitting  
24 in the room who practice personal injury law, I  
25 think House Bill 1190 would be an open invitation

1 for much more action.

2 Some examples: On page 1, line 13, it  
3 states, "The trier of fact shall make a specific  
4 finding of the amount of damage incurred by the  
5 plaintiff."

6 Since I'm not an attorney, I assume that a  
7 trier of fact is a courtroom where both sides have  
8 attorneys, witnesses are called, there very well  
9 may be a jury that would be involved; or if it is  
10 more like a hearing, before a judge possibly with a  
11 jury trial later.

12 The extent of time in this phase might  
13 also be a cost driver for auto premiums depending  
14 on how involved the process is with delays or  
15 whatever. Some damages are not defined or limited  
16 in the bill. They could be whatever the trier of  
17 fact decides.

18 Repairs is one candidate for that label.  
19 But even something that's straightforward opens up  
20 a legal vista of contention between the insured and  
21 company.

22 I know the Insurance Committee has been  
23 unsuccessfully wrestling with auto shop choice, the  
24 use of original versus after-market parts, for the  
25 entire year under House Bill 1250.

1           And so what else might be included is  
2 damages? Do damages include pain and suffering?  
3 If so, to what degree? Does House Bill 1190  
4 supersede limited tort options that would otherwise  
5 apply in an auto accident? If so, then this bill's  
6 carving out new and fertile ground for litigation.

7           On page 1, line 16, it states, A sudden  
8 perilous or life-threatening situation or the onset  
9 of a sudden physical impairment or illness which an  
10 individual could not avoid or foresee. This sounds  
11 like a stroke or a similar situation, but the  
12 courts will decide it.

13           Ultimately, who will decide in the court  
14 of law what the sudden emergency is? Was it  
15 avoidable or foreseeable? If the driver felt chest  
16 pains or had the sweats all day prior to the sudden  
17 emergency, was the condition or the stroke  
18 foreseeable?

19           If the person had the early warning signs  
20 of a debilitating emergency, should he or she have  
21 had someone drive them to a doctor or even to the  
22 emergency room instead of just themselves driving  
23 and getting in an accident where an innocent  
24 bystander is hurt?

25           What other scenarios invite endless

1 litigation? An epileptic seizure. How is it  
2 concluded the driver took or did not take the  
3 proper dose of his medicine? How soon after the  
4 accident must he be tested?

5 A diabetic who goes into insulin shock or  
6 someone taking insulin who needs a stronger dose?  
7 Someone who has an undiagnosed condition such as a  
8 brain tumor which caused a blackout.

9 Another interesting complication is the  
10 issue of confidentiality of patient records.  
11 Without full access to records approved by both  
12 plaintiff and defendant, how would the extent of  
13 sudden emergency be determined?

14 In conclusion, House Bill 1190 creates a  
15 new class of liability. With it, the limited tort  
16 option contained within Act 6 becomes meaningless  
17 unless, of course, proponents are trying to  
18 legislate a special exception for limit tort.

19 If that is the case, the General Assembly  
20 should be wary of micromanaging legal situations  
21 that the court system is capable of sorting out.  
22 This looks like a cottage industry for personal  
23 injury lawyers and expert witnesses.

24 Even though it has not been shown that  
25 there is a quantified need for this legislation, it

1 looks to me that it may be a case of if you build  
2 it, they will come.

3 Understand, I'm not antilawyer. Attorneys  
4 provide a vital service to people who need an  
5 advocate. Still, I believe overutilization of our  
6 legal system had driven up auto insurance costs to  
7 begin with.

8 High auto insurance rates hurt not only  
9 consumers, they hurt my ability to meet my clients'  
10 insurance needs because I can no longer offer  
11 reasonably-priced products.

12 As I told you before, I make my living out  
13 of being able to present choices to consumers  
14 because not all companies or auto policies are the  
15 same. Providing choice of insurers is what we as  
16 independent agents do.

17 Opening up a whole new area of litigation  
18 may cause a constriction in the market that is now  
19 available. So please don't pass well-meaning  
20 legislation designed to meet a limited situation  
21 and end up hurting everyone. Thank you again for  
22 allowing me to appear here and testify before you.

23 CHAIRPERSON CLARK: We thank you, and  
24 Representative Maitland has a few questions for  
25 you. Before we get his questions, why, I'd like to

1 welcome Representative Manderino from Philadelphia  
2 who just came into the room and is with us today.  
3 Representative Maitland.

4 REPRESENTATIVE MAITLAND: Thank you,  
5 Mr. Ulrich, for your testimony. I would like to  
6 point out that this case arose when a automobile  
7 driver had a sudden emergency and struck a  
8 motorcyclist, not a pedestrian.

9 And normally in that case if a driver of a  
10 car had a sudden medical emergency and hit another  
11 car, the driver with the emergency would not be  
12 negligent or liable but the car that he hits own  
13 insurance would cover the occupants of the vehicle;  
14 is that correct?

15 MR. ULRICH: That's correct.

16 REPRESENTATIVE MAITLAND: Okay. But  
17 because motorcyclists don't get first party medical  
18 benefits on their insurance, then they are left out  
19 in the cold.

20 If they're injured by a driver in a sudden  
21 emergency, the driver of the vehicle is not  
22 responsible and, therefore, their insurance company  
23 is not responsible. But yet they don't have their  
24 own medical insurance to fall back on; is that  
25 correct?



1           MR. ULRICH: Well, I would say that's a  
2 rare incident because most motorcyclists who buy  
3 insurance, one of the primary things they want to  
4 purchase is medical pay; and it's part of a package  
5 that's offered to them as Section 1, Section 2  
6 would be the material damage reflecting value of  
7 the cycle.

8           But, you know, that's an option. But I've  
9 never sold one or seen any in our office ever sold  
10 without the medical pay in it. So I don't know  
11 what happened in this particular case.

12           REPRESENTATIVE MAITLAND: Yeah, this is a  
13 relatively rare instance that I'm trying to cover.  
14 There may only be three or four cases in the  
15 Commonwealth in a year, maybe not even that many.  
16 That's all the questions I have for now.

17           I'd like to hear -- I'm not an attorney  
18 either or on the Insurance Committee; so I'm  
19 feeling my way through this issue and I'd like  
20 maybe to have the right to come back after a few  
21 other questions.

22           CHAIRPERSON CLARK: Sure.

23           MR. PHILLIPS: Mr. Chairman, may I also  
24 comment?

25           CHAIRPERSON CLARK: Sure.

1           MR. PHILLIPS: Even if this is designed to  
2 be a targeted situation, involved a motorcyclist  
3 versus a pedestrian, the way the bill is drafted,  
4 it appears to have more of a universal scope that  
5 as my reading of the bill suggested it would cover  
6 all automobile policies rather than just trying to  
7 get at the core of maybe what you're aiming, which  
8 is some type of a motorcycle-specific situation.

9           CHAIRPERSON CLARK: Well, my understanding  
10 is that because of the Sudden Emergency Doctrine  
11 someone is not able to recover for damages other  
12 than medical.

13           So my understanding of the situation,  
14 whether it be a motorcyclist or a pedestrian, No.  
15 1, you can get insurance for the medical part; but  
16 if no one is held liable, then there is no area  
17 where damages -- there's no one from whom damages  
18 can be paid for the motorcyclist's broken leg or  
19 the pedestrian's broken leg or loss of life or  
20 whatever.

21           So you could equate that with an uninsured  
22 situation where you go after your own insurance  
23 policy or an underinsured situation where you go  
24 after your own insurance policy. And those are  
25 both optional limits, I think. They're required to

1 be carried, but the limits are optional.

2 And maybe a third option on an insurance  
3 policy might be that you could purchase, you know,  
4 sudden emergency liability that would be similar to  
5 uninsured/underinsured and sudden emergency riders.  
6 Does that -- does that seem possible or plausible?

7 MR. ULRICH: Well, it's probably unlikely;  
8 but because the uninsured or underinsured optional  
9 limits pretty well cover that area, if we're saying  
10 then in that example you gave that the party had no  
11 other way to go, I've seen many, many cases where  
12 under uninsured motorists in Pennsylvania that  
13 that's brought the benefits back to the insured.

14 We still have stacking in Pennsylvania,  
15 which is another subject for another hearing, I  
16 guess.

17 CHAIRPERSON CLARK: Well, that's optional  
18 also.

19 MR. ULRICH: That's right. That's an  
20 option also. So if someone has three or four cars,  
21 it's not uncommon -- we've seen them in our office  
22 to have \$2 million in coverage under the uninsured  
23 and underinsured when you stack three or four cars  
24 together at a half a million limit, which dovetails  
25 with their bodily injury limit.

1           So, you know, you could arguably say,  
2 well, there are a lot of folks out there that buy  
3 35,000. Here again, if they stack that, it's a  
4 hundred thousand. So there is availability of  
5 recovery under those areas as an option. So I  
6 don't know how to interject another such a thing as  
7 you're suggesting.

8           CHAIRPERSON CLARK: Then if there's no  
9 liability for an accident where their Sudden  
10 Emergency Doctrine comes up, that individual can  
11 still recover under the uninsured or underinsured  
12 portion of their own insurance policy?

13          MR. ULRICH: That's been my experience,  
14 yes. We have others in the room that --

15          CHAIRPERSON CLARK: Yeah, I was going to  
16 say --

17          MR. ULRICH: I would appeal to John with  
18 the Federation. I'm not an attorney. He's a  
19 counsel --

20          CHAIRPERSON CLARK: Right.

21          MR. ULRICH: -- so he could bring to  
22 you -- I'm just telling you in my experience and in  
23 my experience in the area in which I operate is not  
24 that different than Representative Maitland's.

25                 We're just a little bit east of him. So

1 we're in a rural -- what's supposed to be  
2 quote/unquote the most profitable area for auto  
3 insurance, I guess, in Pennsylvania as opposed to  
4 your colleagues in Philadelphia or in the east,  
5 which is a little bit difficult.

6 CHAIRPERSON CLARK: I'm interested as we  
7 go on to resolve that because in those cases,  
8 you're not dealing with an uninsured motorist. You  
9 have a motorist that is insured, just not deemed to  
10 be liable; and that person also is an underinsured  
11 because they do have insurance.

12 So that's some of the thoughts that went  
13 through my mind as I looked through this. Are  
14 there any other questions for this gentlemen?

15 MR. RYAN: If you litigate that and a  
16 driver is found not to be liable in a particular  
17 situation, they don't have recourse to their own  
18 insurance company for underinsured because  
19 underinsured only takes effect when you've reached  
20 the policy limits of another operator.

21 MR. ULRICH: Well, you have an uninsured  
22 situation, don't you?

23 MR. RYAN: No. You have the insured  
24 situation where the other party's found not liable.  
25 Your own insurance company is not obligated to pay

1 anything because the other party was, in fact,  
2 insured.

3 And the fact that you recovered nothing  
4 against their policy does not mean that your person  
5 on the other side was underinsured. They may have  
6 had adequate insurance for your damages because  
7 your damages from their liability standpoint is  
8 zero.

9 CHAIRPERSON CLARK: Yeah, I think that's  
10 what we talked about earlier trying to get an  
11 answer to that before the --

12 MR. ULRICH: Well, I appeal to the counsel  
13 that's in the room. I wouldn't want to touch that.  
14 I wouldn't even want to mention the cases that I've  
15 seen where there's been some recoveries. If that's  
16 wrong, then those people got some deserved  
17 recoveries; and that's fine.

18 CHAIRPERSON CLARK: Representative  
19 Manderino.

20 REPRESENTATIVE MANDERINO: Thank you. I  
21 will leave the legal questions for later too. But  
22 one thing that you said that I'm just not familiar  
23 with dealt with what is mandatory versus optional  
24 and the difference between buying an auto insurance  
25 policy and buying a motorcycle policy.

1           With an automobile policy, it is mandatory  
2 to buy -- what is it? -- at least 15,000 or 35,000  
3 first party benefits -- 15,000?

4           MR. ULRICH: True.

5           REPRESENTATIVE MANDERINO: And that is  
6 not -- there's no mandatory level for motorcycles?  
7 It's all optional?

8           MR. ULRICH: Motorcycles would also have a  
9 minimum limit of 15/35 offered to them for  
10 insurance. They can't buy less than that.

11           REPRESENTATIVE MANDERINO: Okay. So where  
12 was -- maybe I misheard. I thought you alluded to  
13 a difference between a person buying automobile  
14 insurance and a person buying motorcycle insurance  
15 that led me to the conclusion that the motorcyclist  
16 was opting out of some sort of coverage and that's  
17 why he was less protected than an automobile.  
18 Maybe I misunderstood.

19           MR. ULRICH: Apparently in the  
20 example -- and I don't know the details; probably  
21 they'll come out later. But it appears that  
22 whoever this motorcyclist was or whoever purchased  
23 that coverage did not buy medical payments.

24           And what I'm saying is the medical  
25 payments is offered as a package by companies that

1 insure motorcycles to go along with Section 1,  
2 which is liability and medical. I've never seen a  
3 case where a motorcyclist hasn't bought medical, in  
4 my experience.

5 REPRESENTATIVE MANDERINO: But are you  
6 allowed under the law to not buy it? Or you're  
7 sure?

8 MR. ULRICH: I'm not sure of that. I'd  
9 have to yield to -- I've never seen it in our  
10 office. We've never done it, so I don't believe  
11 any of our companies would allow it.

12 REPRESENTATIVE MANDERINO: Okay. Thank  
13 you.

14 MR. ULRICH: You're welcome.

15 CHAIRPERSON CLARK: All right. We thank  
16 both of you very much for your testimony and  
17 welcome you to stay around the rest of the morning  
18 for the other people to testify in other  
19 discussions.

20 MR. ULRICH: Thank you.

21 CHAIRPERSON CLARK: The next individual to  
22 provide testimony will be Robert E. Campbell,  
23 Esquire, and/or Thomas R. Campbell, Esquire, of  
24 Campbell and White.

25 MR. R. CAMPBELL: Good morning.



1                   CHAIRPERSON CLARK: Good morning. I  
2 believe you gentlemen were the attorneys that  
3 Representative Maitland talked about earlier who  
4 brought this situation to his attention, and maybe  
5 you can help us with some of the legal questions of  
6 what you encountered along the way.

7                   MR. R. CAMPBELL: That is correct. And  
8 the first thing that I want to be sure to point out  
9 to all of you is that I am not a high-powered,  
10 personal injury attorney from one of these big law  
11 firms.

12                   We're general practitioners in rural  
13 Gettysburg. We do personal injury and have done so  
14 for years on a -- primarily for our clients within  
15 the county. And Tom having just graduated from  
16 Lake Forest, he has expressed an interest in  
17 specializing in that area.

18                   But I am here today and brought this to  
19 Representative Maitland's attention because of my  
20 concern for clients and because of my concern for  
21 fairness in the insurance industry. And this whole  
22 bill is about fairness.

23                   What we had was, in this particular case,  
24 a gentleman was operating his motorcycle. He had  
25 stopped at a traffic light, and it was in broad

1 daylight. He was struck from the rear by an  
2 automobile.

3 My client was thrown from his motorcycle;  
4 his legs were run over; miraculously, there were no  
5 broken bones; his legs blew up like a balloon if  
6 you tie a rubber band around it -- blew up; there  
7 was serious nerve damage and plenty of soft tissue  
8 injury.

9 I've heard already this morning  
10 discussions about medical bills. Well,  
11 fortunately, he had insurance through work that  
12 paid medical bills. This is not just about medical  
13 bills -- which might appear to be the answer from  
14 the insurance industry, as long as we take care of  
15 medical bills, that's it.

16 This is a situation where a gentleman who  
17 had an active lifestyle -- played racquetball,  
18 hiked, walked, rode motorcycle, et cetera, had a  
19 job where he stood all day -- now was relegated to  
20 the fact that he couldn't do these things.

21 And there was no questions from defense  
22 attorneys, insurance companies, or anyone that  
23 these damages were, in fact, real and were  
24 inflicted.

25 The defendant in this case and his

1 attorney said, Well, he's not negligent; and  
2 therefore, we're not going to make any payments or  
3 any offers to compensate this individual who was  
4 injured.

5 It was true that when the defendant was  
6 taken to the hospital following the accident a  
7 four-centimeter tumor was found on his brain. And  
8 I don't think there was any question that the  
9 doctors indicated that that was what caused him to  
10 have a seizure, black out, and run into the rear of  
11 this gentleman.

12 Now, once that defense of sudden illness  
13 was asserted, the plaintiff had the additional  
14 burden of not only showing that the defendant  
15 caused the accident, which was quite clear, but  
16 that the defendant knew of his conditions or  
17 symptoms and despite that knowledge continued to  
18 drive.

19 Well, now, without access to those  
20 individual's medical records and history, et  
21 cetera, that can be a pretty tough burden. There  
22 was testimony in that case from family members.  
23 Oh, my father drove my son to a ball game in  
24 Washington just the week before; and had we had any  
25 knowledge that this man knew about anything, no way

1 would we have left our son ride with him.

2 So, okay, here we are. We have an injured  
3 person; we're in court; everything looks great that  
4 this was truly a sudden illness.

5 So under the law as it presently stands,  
6 the defendant was not in any way liable for what  
7 are, no questions, serious injuries to my client.  
8 There was no compensation for what were  
9 life-altering injuries.

10 Now, my client did not wish to go through  
11 any type of new trial. And although I filed  
12 initially for an appeal, he directed that he just  
13 was not up to having to go through something else  
14 if it would be reversed.

15 And to be quite honest, based on the state  
16 of the Sudden Emergency Law, it probably wouldn't  
17 have been reversed because the triers of fact, the  
18 jury, concluded that this man did not know prior to  
19 this accident that he had a problem and that there  
20 was a true sudden illness.

21 The whole issue in the case, as I said  
22 before, deals with fairness. For years, I have  
23 paid considerable sums of money to insurance  
24 company for my vehicle, for my four sons, for my  
25 wife.

1           And if I'm driving -- if I leave here  
2           today and one of these gentleman from the insurance  
3           industry is walking down the street and I have a  
4           heart attack and go up over that curb and run over  
5           them, I want them to be compensated.

6           Not just for their medical bills, but if I  
7           truly injure them and alter their life because I  
8           was driving my vehicle and this happened. Why else  
9           do I have insurance?

10           I have insurance to compensate somebody  
11           that I hurt where there's no ifs, ands, or buts.  
12           Now, I am the first one to admit that in our  
13           profession there are a lot of sharks out there who  
14           file suits which have absolutely no merit that  
15           demand millions of dollars in damages where it's  
16           not justified and it causes the insurance companies  
17           to dig in their heels.

18           As a rural attorney, I have also dealt  
19           with a couple of insurance companies, and one in  
20           particular who really gets my dander up, because of  
21           situations where we have been told flat out that an  
22           elderly person with injuries far in excess of  
23           policy limits simply does not have much of a future  
24           in life and, therefore, we're not going to come  
25           close to offering those kind of policy limits.

1           So again, I'm not approaching this from  
2 being high powered, sue, sue, sue. I don't believe  
3 in suing. I've turned down cases -- personal  
4 injury cases where to me appears to be clear  
5 comparative negligence more so than what the client  
6 who's coming to me was responsible.

7           But the whole point is that we need some  
8 law that will protect the truly innocent person.  
9 And I don't care if he's on a motorcycle or if he's  
10 on a bicycle or if he's a child in the center of  
11 Philadelphia whose parents might not even have a  
12 car, might not even own insurance, and he's run  
13 over by someone.

14           Who's going to pay? Who's going to  
15 compensate that person and make -- at least give  
16 him some funds to help sustain him in his life?  
17 The amount of cases in which a Sudden Emergency or  
18 Sudden Illness Doctrine would be raised are very  
19 few in number.

20           Passing a law which will place  
21 responsibility for policy limits just as it would  
22 in a negligent situation will not bankrupt the  
23 insurance industry.

24           It will simply protect those few  
25 unfortunate individuals who are injured within the

1 Commonwealth through no fault of their own and it  
2 will not allow the responsible individuals,  
3 although it be from sudden illness, to escape the  
4 moral duty to compensate for the loss they inflict.

5 When I first contacted Representative  
6 Maitland, it was my thought that the doctrine of  
7 sudden emergency and sudden illness should, by law,  
8 be removed as an affirmative defense in personal  
9 injury actions.

10 It was my original feeling and it probably  
11 still is, despite how the law is presently written  
12 that you're proposing here, that the insurance  
13 company for the operator of the vehicle who causes  
14 the injuries should be primarily responsible for  
15 the damages up to the limits of their policy.

16 And again, the reason that I emphasize the  
17 limits of their policy, why do we have insurance?  
18 To protect other people. But if my damages -- if  
19 I'm injured here and if my damages exceed those  
20 policy limits and it's a true sudden emergency, I  
21 don't wish that the person responsible lose his  
22 house or lose his earnings to compensate me.

23 I just want compensated for what that  
24 person has paid to obtain to protect someone from  
25 injury. And that's why I think that the limits

1 should be the policy liability limits.

2 My only concern in imposing responsibility  
3 on the injured party's insurance carrier, which I  
4 think is sort of how it's presently designed, is,  
5 again, what happens if you're in the city; you run  
6 over someone whose parents don't have insurance?  
7 They're entitled to be compensated.

8 And how can it be? By the person who was  
9 responsible who under our law must carry and  
10 maintain auto insurance. That person I think  
11 primarily is the one that has to be responsible for  
12 this.

13 Now, of course, I'm not a legislator.  
14 I've never in my life been involved in drafting a  
15 law. And although I feel that we need something  
16 like this, I guess it really doesn't matter to me  
17 that much which party has the burden or which party  
18 has to pay that. I think more realistically  
19 though, the party responsible.

20 And I think that if they had a very low  
21 limit of coverage that then perhaps you could get  
22 into the situation of whether the underinsured  
23 issue -- if you happen to have auto insurance of  
24 your own, if the underinsured issue would come into  
25 play.



1 I heard it mentioned that this is only  
2 going to increase litigation. I think that's  
3 nonsense, because the litigation is going to be  
4 there. We had to sue in our case. I mean, how can  
5 you -- a client comes in who's not at fault. How  
6 can you say we're not going to bring an action for  
7 you to try to compensate?

8 We had to try to determine that the  
9 defendant knew that he had dizzy spells before the  
10 accident or that he had blacked out previously. So  
11 it's not going to change litigation. It's just,  
12 unfortunately, the jury concluded that it was a  
13 sudden emergency and, therefore, no compensation.

14 And that's the whole purpose. So I would  
15 hope that -- I'm not saying the bill perhaps in  
16 this form is the way it should finally be drafted;  
17 but I would encourage you to see the need for it.

18 And, unfortunately, I'm not one of these  
19 persons who feels that it's unimportant if just one  
20 or two people a year get hurt, which may be the  
21 attitude of the insurance people. It may be the  
22 attitude of some of your bigger personal injury  
23 lawyers that maybe, again, this is just a very  
24 small item in their whole scheme of things.

25 To us, it's a big item. Not because of

1 any money our firm made or lost, but because  
2 somebody was seriously injured through no fault, no  
3 coverage; and they should be.

4 CHAIRPERSON CLARK: We thank you. Thomas.

5 MR. T. CAMPBELL: Yes, thank you,  
6 Mr. Chairman. I'd like to elaborate on just two  
7 points very briefly, if I could. One is the point  
8 my father was just making with regard to the  
9 litigation. And I concur that there is no way this  
10 bill will actually increase any kind of litigation.

11 You have to remember that the Sudden  
12 Illness Doctrine and the Sudden Emergency Doctrine  
13 that that bill addresses is what's called an  
14 affirmative defense. That means it is raised by a  
15 defendant after litigation has begun as a defense  
16 to claims being made against them.

17 So this isn't going to increase  
18 litigation. In fact, it could have the very  
19 opposite effect; and that is to decrease some  
20 litigation by removing an affirmative defense which  
21 the insurance companies currently have and by  
22 providing compensation for injured parties who are  
23 injured through, again, no fault of their own.

24 So again, I don't want the Committee to be  
25 scared by the insurance companies and their

1       allegations of increased litigation because that  
2       simply is not the case and the way this bill would  
3       work.

4               And the second is to address the issue of  
5       increased costs. Again, this bill would address  
6       three or four people maybe in this Commonwealth  
7       each year that are injured. How can the insurance  
8       companies argue that compensating those three or  
9       four people a year would cause them to inflate the  
10      cost of their insurance to provide this coverage?

11              Because the insurance is about risk  
12      benefit analysis. If the risk is that small that  
13      there are only four people that this bill is aimed  
14      at addressing per year in compensating, how can  
15      they increase their cost for that small of a risk?

16              So, again, don't be intimidated by threats  
17      of increased litigation and increased costs because  
18      it simply is not the case under this law and this  
19      will not result in those burdens on the insurance  
20      industry. Thank you.

21              CHAIRPERSON CLARK: Okay. I thank you.  
22      Now, my question is, If the gentleman on the  
23      motorcycle had had uninsured or underinsured  
24      coverage, could he have recovered from his own  
25      insurance company?

1 MR. R. CAMPBELL: No, not in my opinion  
2 under the uninsured or underinsured because the  
3 defendant had coverage, okay. So, obviously, is  
4 not an uninsured problem.

5 There's not an underinsured problem  
6 because the jury determined that there was no  
7 negligence because of the sudden emergency, so no  
8 recovery; so there was nothing here.

9 Now, in his particular situation -- and  
10 you have to remember this was several years ago.  
11 Maybe some of the status of the law with regard to  
12 motorcycles has changed. But he did not have and  
13 it was not available to him any type of liability  
14 or coverage for damages. And that was the whole  
15 problem.

16 His own employer's insurance actually took  
17 care of his hospital bills. So bottom line is he  
18 received absolutely no compensation from any other  
19 source as a result of this particular incident.

20 CHAIRPERSON CLARK: All right. And then I  
21 see that there's two ways of covering these  
22 situations: No. 1 is to require everyone who  
23 purchases automobile insurances to purchase a rider  
24 that that coverage applies in sudden emergency  
25 situations;.

1                   Or No. 2, make it an option for a person  
2 to buy that coverage on their own insurance policy  
3 in case -- you know, in the event they find  
4 themselves in that situation.

5                   MR. R. CAMPBELL: In your second  
6 situation, there again, it doesn't address the  
7 person who would be injured who has no auto or no  
8 insurance.

9                   CHAIRPERSON CLARK: No. What I'm saying  
10 is he would have the option to purchase that on his  
11 insurance policy.

12                  MR. R. CAMPBELL: But if he doesn't have a  
13 car --

14                  CHAIRPERSON CLARK: Oh, okay. Okay.

15                  MR. R. CAMPBELL: -- he doesn't have  
16 insurance --

17                  CHAIRPERSON CLARK: Okay.

18                  MR. R. CAMPBELL: -- so he doesn't have  
19 that option. And I also, again, like Tom had  
20 pointed out and like I think was admitted  
21 previously, there aren't that many cases in  
22 Pennsylvania. I can't imagine that the insurance  
23 industry would have to assess additional costs to  
24 cover for sudden emergency.

25                  Why doesn't that simply fall -- if you

1 would have it addressed on the party responsible,  
2 why doesn't that simply fall under their liability  
3 coverage on the policy because all you're doing is  
4 taking away the sudden emergency defense and  
5 saying, you injured me; I clearly have sustained  
6 damages that are over and above medical costs; and,  
7 therefore, I should be compensated within that  
8 liability coverage?

9 CHAIRPERSON CLARK: All right. So what  
10 makes the most sense to you: To do away with this  
11 defense or to require that people who purchase  
12 automobile insurance purchase that coverage?

13 MR. R. CAMPBELL: I think to do away with  
14 that as a defense is probably the best procedure.  
15 But, again, like I'm saying, I have no legislative  
16 experience; and my concern is that in some form,  
17 which you gentlemen with your experience and your  
18 counsel would determine, that in some form there is  
19 coverage that's going to protect anyone whether  
20 they have auto coverage or whether they don't have  
21 auto coverage from this type of thing happening.

22 CHAIRPERSON CLARK: I was going to say I'm  
23 not so sure we can do away with that as a defense  
24 but I am pretty sure that we can require coverage  
25 by an automobile insurance --

1 MR. T. CAMPBELL: Mr. Chairman, that  
2 essentially would take care of the situation.  
3 Requiring insurance to cover that situation is in a  
4 manner taking away that defense because there still  
5 would be an ability for an injured party to be  
6 compensated up to those liability limits.

7 And let me point out just briefly what  
8 this Sudden Emergency Doctrine/Sudden Illness  
9 Doctrine --

10 CHAIRPERSON CLARK: I assume that that was  
11 court created --

12 MR. T. CAMPBELL: Yes.

13 CHAIRPERSON CLARK: -- and that's why I'm  
14 saying I don't know if we can do away with that and  
15 not have it overturned by the courts.

16 MR. T. CAMPBELL: Well, Mr. Chairman, it  
17 was created back in the early 1800s as far as I  
18 know. This is an old, common law doctrine. It  
19 isn't created by statute anywhere.

20 It is court created through time over  
21 cases; and it hasn't really been addressed by the  
22 appellate courts since, I believe, the case that  
23 Mr. Maitland cites in his information in support of  
24 the bill. I think it's the Freifield case from  
25 1965. So the courts haven't had an opportunity

1 themselves to overturn it.

2 But to answer your question, to require  
3 coverage under the liability portion of a policy up  
4 to those liability limits would, in essence, take  
5 away that defense because then an injured party is  
6 at least guaranteed of compensation for their  
7 injuries up to that policy limits as opposed to no  
8 compensation whatsoever.

9 CHAIRPERSON CLARK: Representative  
10 Manderino.

11 REPRESENTATIVE MANDERINO: Thank you. I  
12 want to go back to the issue you were just  
13 discussing with Representative Clark. Because if  
14 this is a fairness issue, I think two things strike  
15 me:

16 One is, assuming that I buy the policy  
17 change, okay -- or buy the idea that we should  
18 change public policy, not insurance policies, there  
19 is a difference between -- I mean, I would think  
20 that you would not want to take away the defense by  
21 statute, whether we could do that or not, because  
22 by doing that you open -- in essence, by my sudden  
23 illness, I was innocent too to a certain extent. I  
24 was not acting in a negligent manner.

25 Yet if you take that defense away from me,



1       you can open me up to liability above and beyond my  
2       insurance limits.  If I died and you died in that  
3       wreck, your estate could come against my estate and  
4       leave my family with nothing because your damages  
5       were certainly much more than the levels of my  
6       insurance policy.

7                 So that is, I think, a risk of why you  
8       might not want to do it that way by taking the  
9       defense away.

10                MR. R. CAMPBELL:  I agree with you a  
11       hundred percent.

12                REPRESENTATIVE MANDERINO:  Okay.

13                MR. R. CAMPBELL:  Again, when the question  
14       was asked, I'm just spur of the moment.  But you're  
15       right because what I said before was I don't want  
16       to see a person who has a true sudden illness lose  
17       their house or their belongings because of  
18       something over which they had no control.  So I  
19       think you would be -- you're right.  You're right.

20                REPRESENTATIVE MANDERINO:  Okay.  Then  
21       again going back to the fairness issue -- and I  
22       appreciate very much that you've already  
23       acknowledged that the way 1190 is written now it  
24       would have me, the innocent injured party,  
25       recovering from my own insurer.  But you already

1 queried whether that's the proper place to put it.

2 And in fairness, again, even though I  
3 wasn't negligent because of the sudden illness, it  
4 was still, like you said, my actions even though I  
5 wasn't responsible for them in a conscious way that  
6 caused the damages.

7 So, therefore, doesn't it also still make  
8 sense in terms of the risk and where you place the  
9 burden for the defendant's insurance company to be  
10 the place where recovery, if it makes sense at all,  
11 makes sense?

12 MR. R. CAMPBELL: That's what I would  
13 prefer because like I said, again, if I injure  
14 someone, I'm paying for insurance, morally I feel  
15 that my company should compensate that poor person  
16 that got hurt.

17 REPRESENTATIVE MANDERINO: And then  
18 finally -- I asked the question earlier and I still  
19 don't have a clear picture; but maybe since you  
20 litigated the case you can help me out.

21 What is it that the motorcycle -- the  
22 person insured with only a motorcycle didn't have  
23 in coverage that you and I who drive an automobile  
24 do have in coverage that made this case different?

25 MR. R. CAMPBELL: The only coverage as I

1 recall -- and this is going back a few years -- the  
2 only coverage that the motorcyclist had was  
3 liability if he injured someone because at least at  
4 that time he could not get any types of first party  
5 benefits because he was covering the motorcycle.

6 MR. T. CAMPBELL: And if I may too, I  
7 think the point is more diverse than just that one  
8 instance with the motorcyclist because in that  
9 case, even if first party benefits were available  
10 to him on a motorcycle, it still wouldn't have  
11 addressed the issue.

12 He still wouldn't have been entitled to  
13 underinsured or uninsured coverage nor any other  
14 payment for his injuries other than the medical  
15 expenses.

16 REPRESENTATIVE MANDERINO: Let me try one  
17 other scenario on you that maybe you know because  
18 of your analysis of this issue. I am a pedestrian  
19 who doesn't own an automobile, okay. I don't  
20 drive, so I don't have any kind of coverage and the  
21 same thing happens.

22 I get hit by a automobile driven by a  
23 insured person who had a sudden stroke or blackout  
24 and was not negligent in that instance. Does the  
25 same thing happen to me today that happened to your

1           motorcyclist?

2                   MR. T. CAMPBELL: You would have no  
3           resource and no coverage whatsoever.

4                   REPRESENTATIVE MANDERINO: Okay.

5                   MR. RYAN: Medical too?

6                   MR. T. CAMPBELL: Well, her -- yes, the  
7           medical bills could be compensated for because  
8           there would be an automobile involved in the  
9           accident. And under the Rules of Priority which a  
10          previous speaker testified to, that would, in fact,  
11          apply to cover the medical bills.

12                   But if you lost work, if you were disabled  
13          permanently, those expenses would not be covered at  
14          all.

15                   MR. RYAN: That wouldn't make any  
16          difference under the existing No Fault Law or  
17          previous insurance. That's always been a basic  
18          principle that would be involved in all tort law  
19          even before there were automobiles or insurance  
20          going back to the 1880's.

21                   If you were injured by a person whether it  
22          was an automobile or otherwise, under a sudden  
23          medical emergency, the plaintiff would not  
24          necessarily recover.

25                   So what you're creating here specifically

1 in your asking is to change a whole social policy  
2 that would just apply to automobiles and not just  
3 other general situations.

4 MR. R. CAMPBELL: My comment on that was  
5 that back in those days there was no mandatory  
6 insurance either. Now you have mandatory  
7 insurance.

8 And I just can't understand what the  
9 motive of the insurance companies would be if they  
10 removed the moral issue of, yes, the guy was  
11 totally injured by my driver but I'm going to pull  
12 all technicalities I can not to compensate that  
13 innocent person.

14 MR. RYAN: I think the concept is that you  
15 buy insurance to go in your stead. It's a  
16 protection that you have to protect you from your  
17 personal liability in that particular situation.

18 And in this situation, you're putting the  
19 insurance companies as being more than an insurer  
20 for the person but an insurer for the other people  
21 that are involved; in other words, it expands our  
22 concepts of liability and responsibility.

23 The insurance company really just steps in  
24 your shoes up to the liability coverage that you  
25 have.

1           MR. R. CAMPBELL: Why shouldn't the  
2 insurance company step in my shoes if I'm the  
3 driver? I'm paying the premiums. And what am I  
4 protecting? I'm protecting that somebody out  
5 there's not going to get hurt by me.

6           There's no more obvious case of where I  
7 would feel morally there should be coverage than if  
8 I run over a pedestrian because I had a heart  
9 attack. Why shouldn't what I'm paying for -- what  
10 I'm paying premiums for compensate that poor  
11 fellow?

12          MR. RYAN: The same then perhaps it could  
13 be paid out of your pockets over and above your  
14 limits that you have too.

15          MR. R. CAMPBELL: I think you have to have  
16 a balance there too because, again, this was a  
17 sudden illness; so why should your personal assets  
18 be destroyed and taken because of that sudden  
19 illness?

20          And I think it's a happy medium. I mean,  
21 why do we buy insurance? To protect other people  
22 from injury up to the extent of our policy limits.

23          And that's why I think the policy limit is  
24 the key and why you are correct that we need to  
25 keep the sudden illness in there because if that's

1 found to be the case, then recovery is limited to  
2 policy limits.

3 REPRESENTATIVE MANDERINO: Thank you.

4 CHAIRPERSON CLARK: I guess another  
5 question I would have is whether we could require  
6 someone to purchase insurance and whether an  
7 insurance company would be responsible to make a  
8 payment or a payout that would cover a situation  
9 where the person isn't at fault?

10 You know, you have a contract with an  
11 insurance company to provide you automobile  
12 insurance. The insurance company's responsibility  
13 begins when you are determined to be negligent.  
14 And in that case, you're not determined to be  
15 negligent. Can you still force that scenario on an  
16 insurance company to pay?

17 MR. R. CAMPBELL: Well, and that's why you  
18 need the legislation to, in effect, do away with  
19 the sudden emergency as a defense and say, Look,  
20 you're driving a deadly weapon here. We mandate  
21 insurance coverage on anybody that puts a car on  
22 the road. Why do we do that? To protect someone  
23 from injury.

24 So why can't we do that to protect someone  
25 from injury by the driver of that deadly weapon who

1 happens to have a heart attack? It still should be  
2 an insurable event.

3 CHAIRPERSON CLARK: All right. We can  
4 make it an insurable. Okay. Any additional  
5 questions?

6 (No audible response.)

7 REPRESENTATIVE MANDERINO: Thank you.

8 CHAIRPERSON CLARK: We thank both of you  
9 very much.

10 MR. R. CAMPBELL: Okay. Thank you for  
11 your time.

12 CHAIRPERSON CLARK: You're certainly  
13 welcome to stay and listen to the --

14 MR. R. CAMPBELL: I'd like to listen a  
15 little bit.

16 CHAIRPERSON CLARK: The next gentleman to  
17 testify is John R. Doubman, Esquire. He's the  
18 Secretary and counsel for the Insurance Federation  
19 of Pennsylvania. Good morning.

20 MR. DOUBMAN: Good morning. My name is  
21 John Doubman, Esquire; and I am Secretary and  
22 counsel to the Insurance Federation. The  
23 Federation is a nonprofit trade association  
24 representing over 200 commercial insurers, and we  
25 have offices in Philadelphia and Harrisburg.



1           Our members include all types of insurers,  
2 including the largest writers of auto insurance in  
3 the Commonwealth; and we represent those members in  
4 Pennsylvania legislative and regulatory matters.

5           Let me start, if I may, by saying I'm  
6 very, very impressed with the discussion that's  
7 gone so far. You are getting into the themes  
8 that are involved in this legislation, and I  
9 think I touch on a number of these.

10           I think I should start by saying that,  
11 unfortunately, we don't meet today as gods who  
12 can do something about all the vicissitudes of  
13 life and the unfortunate things that befall  
14 people. Some people seem to think that makes  
15 insurance companies happy. It doesn't.

16           We would very much like to see victims  
17 redressed properly. And, unfortunately, this  
18 particular situation that gives rise to this  
19 case is an extremely interesting one and has  
20 given rise to conversation with some of my  
21 colleagues very much similar to what has gone  
22 on with the panel here.

23           If this person were a pedestrian who  
24 didn't own an auto, by the way, and had been  
25 clobbered by somebody who had an heart attack in a

1 car, they'd go to the Assigned Claims Plan and they  
2 would get their medical bills paid.

3 They also have some -- I'm not an expert  
4 on the Assigned Claims Plan. I took out the pieces  
5 of the statute. But they also -- they can't get  
6 wage loss, I don't think; but they can get -- there  
7 is some overage. There's \$15,000 or \$20,000 of  
8 coverage. And I'd have to research that further.  
9 I'm sorry I don't know those details.

10 If you are out driving your car and a deer  
11 or a moose hits you, okay, you're in largely the  
12 same situation that this gentleman is in; which is,  
13 a deer doesn't have any insurance, I'll tell you  
14 that.

15 You're going to look to your own policy to  
16 see what first party benefits you have. They're  
17 probably going to pay for the damage to your car;  
18 they'll pay some medical bills up to the extent  
19 that you have -- and maybe you can elect more. I  
20 should know the answer to that too -- and that's  
21 pretty much what your address is.

22 If you've lost the ability to bike or  
23 whatever, our society has judged that that's going  
24 to go unredressed. So while we certainly  
25 understand the misfortune that has befallen this

1 gentleman, his situation is particularly, it seems  
2 to me, colored by the fact that he was a  
3 motorcyclist.

4 Now, my understanding was -- and we just,  
5 of course, went through the whole motorcycle helmet  
6 thing and had to fight that in the Senate because  
7 our esteemed House members saw fit that we should  
8 ride around without helmets. But we won't go over  
9 past history on that.

10 CHAIRPERSON CLARK: I thought the Senate  
11 did that first.

12 MR. DOUBMAN: You got me there. But in  
13 any event, my understanding has been that early on  
14 I don't think that motorcyclists can buy first  
15 party benefits.

16 Now, when they were talking about buying  
17 some medical payments coverage, I wasn't sure  
18 whether the agent was talking about buying --  
19 coverage to other people or coverage for yourself?

20 MR. ULRICH: Medical payments.

21 MR. DOUBMAN: To whom?

22 MR. ULRICH: Themselves.

23 MR. DOUBMAN: You can buy that?

24 MR. ULRICH: And/or their passengers on  
25 the bike.

1           MR. DOUBMAN: I am sorry. I didn't know  
2 that. I thought that we had had a legislative  
3 determination that motorcyclists weren't going to  
4 be able to buy some kind of benefits, and I thought  
5 first party was one of them.

6           And that's because there's a big  
7 difference between going out with air around you  
8 and going 80 miles an hour and going out with a big  
9 vehicle around you.

10           But let me address 1190, if I may, because  
11 this bill, at least in its drafting, is much  
12 broader. It essentially says that where a claimant  
13 can't recover against another driver because the  
14 latter is found non-negligent due to sudden  
15 emergency or sudden illness that the claimant can  
16 recover against his own insurer.

17           Now, insurers are opposed to that. And I  
18 want to take you through briefly the elements of  
19 why. First of all, the bill would require the  
20 trier of the fact, whether it's a court -- or down  
21 in Philadelphia it might be an arbitration  
22 panel -- to find the damages of a claimant when a  
23 defendant has been found not liable.

24           Now, in legal theory at least, the trier  
25 of fact can't find any damage because there isn't

1 any, okay. The plaintiff in the eyes of the law  
2 has suffered -- and my Latin's bad -- *Damnum Absque*  
3 *Injuria*; in other words, "harm without injury"  
4 because the law hasn't given rise to a viable legal  
5 action for whatever harm or damage, physical or  
6 whatever, has come to the claimant.

7 Now, even assuming that you want to vary  
8 that doctrine, it isn't clear what "damage incurred  
9 by the plaintiff" means in the context of this  
10 bill. Does it refer to his medical bills or his  
11 pain and suffering, loss of consortium, or what?

12 In this context, by the way, the logic of  
13 the law coincides with common sense. Because  
14 without the standards based on the precedents in  
15 our legal system which guide the recoveries of  
16 claimants who are the subjects of  
17 legally-recognized harm, we're left without  
18 guidance to what those damages are.

19 And finding damages in the case of a  
20 legally, nonrecognizable harm is just something  
21 that the law does not or cannot do very well. I  
22 don't know what the standards would be.

23 Further, the bill then provides that an  
24 insurer -- and I think I guessed right on this.  
25 Presumably, the claimant's insurer as opposed to

1 the exonerated defendant's insurer will pay these  
2 damages up to the limits of the policy to its  
3 insureds -- in other words, the claimant.

4 Now, while reference to the limits of the  
5 policy is unclear, we presume that the author meant  
6 the third party liability limits. Now, if it were  
7 a reference to first party benefits, the insurer  
8 would be responsible for their payment under our  
9 present system anyway and this bill would be  
10 unnecessary.

11 So that under this interpretation anyway,  
12 the bill says that if a claimant is frustrated by  
13 the Sudden Emergency or Illness Doctrine he can  
14 recover them against his own insurer.

15 Now, that is an expansion of the first  
16 party coverage in Act 6 to a vastly expanded ambit  
17 of damages. Instead of a limited medical benefit  
18 or some wage loss or whatever you have in first  
19 party, the insurer would have to answer for the  
20 full range of, quote, damages to which it would  
21 have previously answered only if its insured had  
22 negligently injured a third party.

23 And even worse, when you think of this  
24 procedurally, these damages are to be determined  
25 against an empty chair with a trier of fact free to

1        assess whatever damages it chooses knowing that  
2        only a deep pocket insurer is there with no  
3        ramifications against a flesh and blood defendant.  
4        You're going to try damages against an empty chair.

5                That whole process contradicts the theory  
6        and structure of present auto liability coverages.  
7        The liability portions of filed and approved auto  
8        policies have since their inception been indemnity  
9        coverages; that is, the insurer undertakes to pay  
10       damages for which its insured is held legally  
11       responsible.

12               Moreover, it undertakes to defend an  
13       insured against such liability. Under this bill,  
14       the policy would be asked to answer where its  
15       insured was not found liable and it's interest in  
16       defending liability findings against its insured  
17       would not even be triggered in the types of cases  
18       envisioned by this bill.

19               In both respects, we believe the bill is  
20       at odds with longstanding practice and theory of.  
21       We think it would result in a significant  
22       retrenchment on auto liability, as has been pointed  
23       out.

24               And our courts have repeatedly stated Act  
25       6 was intended to establish a fair redress for auto

1 accidents but an attempt to minimize them.

2 Let's just take a look in legal theory  
3 about the cases in which we saw this bill was  
4 apparently intended to apply. There are only two  
5 explanations for any damages suffered by the  
6 claimant: (A), he was negligent himself; or (B),  
7 he was harmed by an act of God or random chance for  
8 which, as I understand it, random chance, no one's  
9 answerable.

10 In either event, it would be a reversal of  
11 Pennsylvania's approach to minimizing the costs of  
12 the auto reparations system and insurance premium  
13 levels to decide that a person's insurer should be  
14 made liable up to policy limits as if it were  
15 covering a responsible tort-feasor.

16 I might add that a further drafting  
17 problem is that the instances in which this act  
18 would apply are not as limited as they may appear.

19 The Sudden Emergency Doctrine as I  
20 understand it -- although I haven't thought about  
21 it probably since law school -- were much more  
22 limited than those described in the bill.

23 Traditionally, the sudden peril had to be  
24 so imminent as to leave no time to react. And I  
25 think the peril or harm had to be as a result of



1 the negligence of the opposite party. It wasn't  
2 simply a sudden perilous or life-threatening  
3 situation.

4 Secondly, the doctrine never included  
5 sudden physical impairment or sudden illness. But  
6 in any event, the vagueness of the definition is  
7 almost an invitation in certain situations to  
8 possible collusion between related parties.

9 And further, this bill doesn't restate  
10 these doctrines in the sense of codifying them with  
11 all their nuances as they've been developed in our  
12 law. To the contrary, the bill refers to them in a  
13 generic shorthand with no assurance that they'll be  
14 narrowly construed and applied only in the  
15 instances which are consistent with prior court  
16 decisions in the state.

17 A further problem that we have is that  
18 there's nothing particularly special about the  
19 Sudden Emergency or Sudden Illness Doctrine which  
20 sets them apart from other specific defenses which  
21 can be plead by defendants.

22 Why are claimants who are denied relief  
23 against the defendant because of the Assured Clear  
24 Distance Rule or the Last Clear Chance Doctrine or  
25 even an assumption of risk eligible for this

1 treatment?

2 If they're not now, it's sure that the  
3 trial bar would advocate that they should be. And  
4 that intrusion into uncharted areas of no fault  
5 coverage is bad precedent which we think is at odds  
6 with both the legal theories of civil  
7 responsibility and the current legal rationale for  
8 our auto reparations law.

9 It should be noted that insurers have no  
10 priced auto coverages taking this exposure into  
11 account. I think the vagaries in the bill, as I've  
12 stated, would make that difficult to do in the  
13 first instance.

14 I might add that I think the bill would  
15 have a devastating effect on insurers in another  
16 sense. There are already some difficulties in the  
17 relationships with policyholders in terms of  
18 coverage and litigation; and bad faith, in my view,  
19 has exacerbated that.

20 And I think that provision has the  
21 potential to significantly worsen that by turning  
22 an injured policyholder into an opponent of his  
23 insurer anytime the court holds that he has no  
24 redress against a third party. And that's a very  
25 negative development from our standpoint.

1           So in conclusion, we would believe that in  
2           an effort to provide redress for a limited number  
3           of disappointed claimants in auto cases this bill  
4           threatens to undermine several key principles which  
5           the General Assembly has introduced and adhered to  
6           auto insurance legislation.

7           I think while humanely motivated, the bill  
8           would be a bad precedent for the auto redress  
9           system; and we would urge the Committee to  
10          disapprove the bill.

11          We appreciate very much the chance to  
12          present our views, and I'll be happy to answer any  
13          questions or supply anything further to assist the  
14          Committee in its deliberations.

15          CHAIRPERSON CLARK: Thank you very much.  
16          I think your testimony was headed down the same  
17          path that I was earlier when I said that an  
18          individual who was injured would be covered by his  
19          own insurance policy by buying a rider similar to  
20          uninsured or underinsured.

21          And then we ran into the problem, well,  
22          what if it's a pedestrian that doesn't have  
23          automobile insurance or doesn't reside in the  
24          household, I believe, with automobile insurance?

25          MR. DOUBMAN: And another key distinction

1 too which I think counsel made is, remember, the  
2 uninsured and underinsured still goes back to a  
3 liability finding. That's a key point.

4 CHAIRPERSON CLARK: That's right. But you  
5 still have made a determination before you can go  
6 back against those.

7 MR. DOUBMAN: Right.

8 CHAIRPERSON CLARK: So then we moved onto  
9 the question, Well, we should buy this insurance to  
10 cover someone else I guess out of a moral  
11 obligation because we became suddenly ill or  
12 whatever. And I don't know if your testimony  
13 addressed that or you'd like to comment on that.

14 MR. DOUBMAN: I'm not sure what  
15 legislative proposal grows out of that  
16 consideration.

17 CHAIRPERSON CLARK: As we discussed this,  
18 my question is, Can or why shouldn't I be able to  
19 buy insurance to cover individuals who I may injure  
20 because I have a sudden illness? Is that an  
21 insurable incident? Could I --

22 MR. DOUBMAN: That's a very good question.

23 CHAIRPERSON CLARK: Could we add that to  
24 the insurance policy?

25 MR. DOUBMAN: It's not a casualty coverage

1 in the legal sense. That's what I was trying to  
2 point out. I don't know -- boy, oh, boy. How do  
3 you define, you know, a moral obligation?

4 I suppose there's no obligation preventing  
5 this defendant who hit this unfortunate  
6 motorcyclist from giving them some redress, if he  
7 wants. But our system isn't -- our system of  
8 insurance and our system of auto redress isn't  
9 founded on those principles, if you will.

10 CHAIRPERSON CLARK: Let's try this: I  
11 insure my home because of some unforeseen event.  
12 It may burn down.

13 MR. DOUBMAN: Correct.

14 CHAIRPERSON CLARK: Can I buy insurance  
15 because when I drive on the highway some unforeseen  
16 event may cause me injury: A deer or a moose or a  
17 bear may run out in front of me, someone driving  
18 another vehicle may hit me and through no fault of  
19 their own because of a sudden illness or emergency.  
20 Is that a possibility?

21 MR. DOUBMAN: I think there's two answers  
22 to your question. The first answer is you already  
23 do because you have some first party coverages that  
24 are paid to you regardless of fault.

25 CHAIRPERSON CLARK: Those are only

1       medical.

2               MR. DOUBMAN: No. There's wage -- I was  
3 going to point that out before. There's wage loss  
4 as well. I was thinking there was something else.

5               CHAIRPERSON CLARK: Funeral.

6               MR. DOUBMAN: Not a very happy coverage.  
7 So you already do in that respect. Can you buy  
8 more? I don't know. And by the way, had he  
9 been -- had this gentleman been a vehicle owner,  
10 not a motorcycle owner, he would have had those  
11 first party coverages.

12               From what I understand happened to this  
13 gentleman, by the way, those coverages would have  
14 been woefully inadequate to, you know -- probably  
15 wouldn't even have covered all his medical bills.  
16 It sounded to me like he had enormous medical  
17 bills. But that's what we have built into our  
18 system.

19               Now, you asked whether you can buy it on a  
20 voluntarily basis. I don't know whether that's  
21 available.

22               CHAIRPERSON CLARK: All right. Let's look  
23 at it this way: I'm driving home tonight. I have  
24 three young children. I'm hit by a vehicle with a  
25 fellow who has a heart attack or blacks out.

1 MR. DOUBMAN: Right.

2 CHAIRPERSON CLARK: I'm either seriously  
3 injured or I'm killed. What is my answer to my  
4 family? Is it I should have had life insurance or  
5 is it I should have had more disability insurance?

6 MR. DOUBMAN: Well, I don't know.

7 CHAIRPERSON CLARK: Income disability  
8 insurance or, you know, what --

9 MR. DOUBMAN: That's the right answer.  
10 You should have life insurance to -- the theory of  
11 life insurance is that it makes up for the loss in  
12 an income anyway or in earning capacity for someone  
13 who is deceased. You're right that it would be  
14 prudent for you to carry some life insurance.

15 You won't be able to go against that  
16 person if indeed they fall within these doctrines  
17 of defense. You can't go against them; and your  
18 policy would pay some of your medical expenses,  
19 presumably. I don't know how wage loss works in  
20 that situation. But you're right; you would be  
21 left with those recoveries.

22 CHAIRPERSON CLARK: All right. So if  
23 someone is concerned with that situation, your  
24 suggestion would be -- if someone comes into my  
25 legislative office and says, hey, how do I protect

1 myself against these situations? Your answer would  
2 be, Well, to get life insurance --

3 MR. DOUBMAN: Disability coverage.

4 CHAIRPERSON CLARK: -- or to get more  
5 income disability coverage and -- okay.  
6 Any -- Representative Maitland.

7 REPRESENTATIVE MAITLAND: You said that  
8 the vagueness of the definition is almost an  
9 invitation in certain situations to collusions  
10 between related parties. Could you -- on page 5.

11 Could you give an example of what you were  
12 thinking, an example of what this conclusion could  
13 be?

14 MR. DOUBMAN: Well I think the word  
15 "related" is a bad one. I guess what I had in mind  
16 was, arguably, you have set up a situation -- and I  
17 don't like to think that this would ever been the  
18 norm -- but arguably set up a situation where a  
19 defendant -- a defendant could -- there could be  
20 arrangements made to direct you against your own  
21 insurer because there were higher levels  
22 there -- the situation -- do you understand what I  
23 mean?

24 REPRESENTATIVE MAITLAND: (No audible  
25 response.)



1           MR. DOUBMAN: All right. You have -- if  
2 this law were in effect, you now have an insurer  
3 for the claimant which is standing there with maybe  
4 some very major policy.

5           If you recover against this either  
6 woefully uninsured or the defendant, who really  
7 isn't going to be able to answer the damages, there  
8 could be things go on that -- well, that wouldn't  
9 challenge this defense or whatever.

10           It's not a very happy scenario, but you  
11 would introduce another pool of coverage in the  
12 chain. And I think in some instances there would  
13 be a temptation to make arrangements to tap that  
14 pool. Let me put it that way.

15           That's not a -- that's not a very large  
16 policy consideration, Representative. We could try  
17 to give you -- when we testify, we try to make sure  
18 that you're aware of all the elements that have  
19 entered the thinking of the people that have looked  
20 at it for the industry; and that's what I'm doing  
21 there. I'm not making any allegations or whatever.

22           REPRESENTATIVE MAITLAND: Then at the end  
23 there, pages 6 and the top of page 7, you talk  
24 about this provision has the potential to turn an  
25 injured policyholder into an opponent of his

1 insurer.

2 MR. DOUBMAN: Well, you see what happens  
3 is in your scenario, the claimant has retained an  
4 attorney such as your eminent counsel from  
5 Gettysburg, they go into court, and they're suing  
6 any one of us who is owed a defense by his auto  
7 insurer which has a casualty coverage. So that  
8 insurer supplies counsel for the hearing.

9 Now we all go to the hearing, okay. Now  
10 when your bill at some point -- I don't know  
11 whether it's a jury trial, arbitration, a trial in  
12 front of a judge with no jury, or whatever the  
13 scenario is.

14 At some point during that hearing, if  
15 either of these defenses is asserted and  
16 successfully asserted, you now become adverse to  
17 your own insurance company because, in essence,  
18 you're going to sue them, if you will.

19 They're not there; but you're going to  
20 look to them to recover what might be, as we've  
21 heard here today at least in the one unfortunate  
22 circumstance which gave rise to this draft of the  
23 bill, possibly an enormous amount of damages. I  
24 don't even know they're going to be on the scene,  
25 but I know you're adverse to them.

1           And don't get me wrong. They may -- if  
2 this bill were in effect, they would owe you some  
3 overages; but the amount of those coverages and the  
4 whole thing could get into a very contentious  
5 situation.

6           REPRESENTATIVE MAITLAND: Thank you.

7           CHAIRPERSON CLARK: Representative  
8 Manderino.

9           REPRESENTATIVE MANDERINO: Thank you. I  
10 listened very carefully and followed your  
11 testimony. And we're all learning through the  
12 questioning this morning; so if you don't want to  
13 answer immediately, I would understand.

14           But it seems to me that if we amended this  
15 bill to make the defendant's insurer be the place  
16 that you look for coverages in instance of a Sudden  
17 Emergency Doctrine application and not the  
18 claimant's policy that many of the arguments, the  
19 what ifs, the possible scenarios that you outlined  
20 in your testimony, the cautions that you gave us go  
21 away and it's simply reduced to a policy decision  
22 about whether or not as a matter of public policy  
23 we want to, in essence, impose a strict liability  
24 type of responsibility for sudden emergency  
25 situations.

1                   And you take away the issue of the  
2 defendant being negligent and, therefore, there  
3 being some personal responsibility, some malice,  
4 some bad act on their part and do like you do in  
5 strict liability issues and you can still do a  
6 measure of damages.

7                   I don't know if you want to think about  
8 that before you respond and agree or disagree with  
9 me. I understand a policy decision about whether  
10 we want to do that still has to be made, but it  
11 seems that all the other arguments go away.

12                  MR. DOUBMAN: Well, I think a number of  
13 the concerns I would agree with you. I  
14 don't -- you're right. I'm not prepared to say  
15 that they all go away. But nonetheless, you've now  
16 presented an interesting posture for the courts in  
17 our whole auto reparations system, which is, we're  
18 first going to have to find -- we're going to have  
19 a trial on whether you're legally liable and then  
20 we're going to enter into the world of -- you tell  
21 me what it is -- to find out if you're morally  
22 liable.

23                  And you're going to ask our companies,  
24 presumably, to offer this on either a voluntarily  
25 or maybe even an involuntarily basis. I don't know

1       how you -- I don't know whether -- I'd have to have  
2       an insurance actuary with me. I don't know how you  
3       would be able to write that.

4               Now, I appreciate that arguably anyway  
5       this is not going to be a huge number of instances  
6       across the Commonwealth; but that's like the old  
7       mandated benefits issue. You have one set of  
8       instance, you know, other representatives all have  
9       they're -- I mean, that's a slippery slope as far  
10      as the insurance industry's concerned. An argument  
11      you've heard many times.

12              But it still is a significant departure,  
13      you're right, the policy decision; but the policy  
14      decision is huge. It's a very, very major policy  
15      decision.

16              REPRESENTATIVE MANDERINO: I appreciate  
17      that. Thank you.

18              MR. RYAN: If I might just briefly, the  
19      issues that you talked about being involved in and  
20      Representative Maitland discussed, really aren't  
21      they the same issues currently involved in the  
22      underinsured and uninsured risks as far as the  
23      animosity between yourself and your insurance  
24      company?

25              You're always going to be in a better

1 position if you can fully recover from the other  
2 party their limits. And where your potential  
3 damages exceed their limits, you know -- and I'll  
4 use a quick example:

5 They have a \$15,000 policy, you've got a  
6 million dollars worth of injuries, and you've got a  
7 hundred thousand dollars of underinsured motorist  
8 coverage. You want to be able to get to 115,000 by  
9 getting their 15, your own insurance company's  
10 hundred, which isn't going to completely do it.

11 But I think no matter how you do the  
12 numbers you're still going to have the same basic  
13 animosity under this situation and it really  
14 doesn't add anything more, I think, than to what  
15 probably the insurance industry is finding the  
16 difficulty between themselves and their own  
17 policyholders because of the underinsured and  
18 uninsured situations.

19 I mean, do you really think that does add  
20 anything to the --

21 MR. DOUBMAN: I think that the major  
22 difference is that the uninsured and underinsured  
23 system situation at least rests on a finding of  
24 liability against another party whereas this  
25 doesn't.

1           MR. RYAN: Right. But you're still  
2 looking at a situation where you're talking about  
3 your own policyholders still wanting to have  
4 liability found on the other party's part.

5           MR. DOUBMAN: Yes, that's right.

6           MR. RYAN: I mean, you're not creating a  
7 situation where there will be collusion between the  
8 plaintiff and defendant to avoid liability. The  
9 plaintiff is always going to want the maximum  
10 liability no matter what the situation is.

11 Isn't --

12           MR. DOUBMAN: I see what you're saying.  
13 Well, I'd have to consider that further. You may  
14 be right on that.

15           MR. RYAN: The other situation, as I think  
16 Representative Manderino brought out and I think  
17 also was brought out by counsel from Gettysburg, is  
18 the actual actuarial situations that might be  
19 arisen here could be measured and they'd probably  
20 be fairly minor.

21           The number of these incidences from all of  
22 our experiences and yours would indicate that it  
23 might not have a very large policy cost increase  
24 benefit to it, I mean, perhaps a dollar or two.

25           MR. DOUBMAN: I don't agree with that at

1 all. I don't agree with that at all because in my  
2 testimony I've talked about the way some of these  
3 doctrines are referred to. As it is drafted, we're  
4 talking about a general principle; so I think that  
5 it's very, very much a wild card.

6 While I concede your prior point, I would  
7 disagree with that. Not that you may not turn out  
8 to be right, but I'm certainly not prepared to  
9 concede at this point that this is a minor point.

10 MR. RYAN: I'm going off the top of my  
11 head on that too. I wouldn't even press you on  
12 that for a second. The point really is and, I  
13 guess as Representative Manderino said, it's a  
14 slippery slope.

15 This particular doctrine may not be a  
16 large dollar amount to you. It's your real concern  
17 about getting into other areas of strict liability  
18 situations where there would be a very large dollar  
19 amount.

20 MR. DOUBMAN: Moreover, it seems to me  
21 that to a certain extent you've already wrestled  
22 with this public policy to a degree. If you looked  
23 at what they'll pay a poor pedestrian under the  
24 Assigned Claims Plan, that pedestrian may not be  
25 riding their bike and playing handball anymore



1 either.

2 But they're not recovering for pain and  
3 suffering. They're not recovering for the loss of  
4 the pleasures of life. They're not recovering for  
5 loss of consortium or whatever. You all have  
6 tended to make that decision; and that's what our  
7 coverages are based on, okay. We didn't think that  
8 up.

9 I mean, we insure the damages that may  
10 arise from a legal system within a particular  
11 state; and that's what we have now. This would put  
12 this unfortunate motorcyclist in the position to  
13 ask his own company to pay damages which in other  
14 situations that are pretty similar go far beyond  
15 what someone else would be entitled to, not  
16 incidentally that those damages aren't warranted to  
17 help them get on with their life or to support  
18 their kids or whatever other tragic event has  
19 befallen them.

20 But I'm just telling you the way you have  
21 the system set up now it would be a real anomaly.

22 CHAIRPERSON CLARK: Representative  
23 Maitland.

24 REPRESENTATIVE MAITLAND: If I drafted the  
25 bill so that it was the insurance company of the

1 person found not liable due to their sudden  
2 emergency that paid up to that person's liability  
3 limits, don't you believe there would be a moral  
4 obligation there for this person who has paid their  
5 premiums to protect this type of situation short of  
6 the sudden emergency to pay that claim?

7 MR. DOUBMAN: Well, I don't know whether  
8 Sam and Merck would advise me I'm supposed to  
9 answer moral questions or not. I don't know.  
10 That's not our system right now.

11 I don't mean to make light of your  
12 question, Representative Maitland. I just know our  
13 system is not built on that right now, and I don't  
14 know. I think we had some excellent discussion  
15 here today about what happens to the family of the  
16 person who had the heart attack or whatever.

17 I don't know. Is he morally obligated, he  
18 or she? I don't know the answer to that question.  
19 I do not know the answer to that question.

20 CHAIRPERSON CLARK: Okay. When you talked  
21 about the slippery slope, why, you know, then you  
22 get into, well now, we ought to compensate the  
23 family where that deer jumps off the ridge on the  
24 way home.

25 And there you don't have a party who

1       caused an injury that is insured, so you would have  
2       to purchase that yourself under your own automobile  
3       insurance.

4                Would you do that if it's available out in  
5       the market through life insurance and accidental  
6       indemnity, things like that? So I think there's a  
7       number of things that we need to look at, and we  
8       certainly thank you for joining us this morning to  
9       bounce this ball around.

10               I think what we'll do now is we'll take  
11       about a ten-minute break. I didn't forget our  
12       stenographer this morning. Yesterday I did forget  
13       her and about a little after 12 I think she about  
14       almost passed out on us.

15               But we're going to take a ten-minute  
16       break, and then we'll come back with two additional  
17       people to testify regarding this subject.

18               (At which time, a brief break was taken.)

19               CHAIRPERSON CLARK: I might add that we  
20       had asked -- the Insurance Department's acting  
21       commissioner was invited to be present today and  
22       present testimony or to send a designee or provide  
23       written comment on this legislation; and she  
24       declined to do that.

25               Our next individual to testify before the

1 Committee is Michael Morrill, and he is the  
2 Executive Director of the Pennsylvania Consumer  
3 Action Network. Mr. Morrell. Is that correct?

4 MR. MORRILL: Morrill.

5 CHAIRPERSON CLARK: Morrill. All right.

6 MR. MORRILL: Good morning. And let me  
7 first apologize for not having written testimony  
8 before you. I work for a nonprofit organization  
9 that is brand new and is just getting its equipment  
10 together, and we have a lot of donated equipment  
11 and our printer is down. I told Ms. Dalton that we  
12 would get copies of testimony to you in the next  
13 day or two.

14 Good morning. My name is Michael Morrill,  
15 and I'm the Executive Director of the Pennsylvania  
16 Consumer Action Network, also know by its acronym  
17 PECAN.

18 PECAN is a new consumer and environmental  
19 advocacy organization that was started a few months  
20 ago. PECAN has been organized as a nonpartisan,  
21 independent watchdog group; and we're dedicated to  
22 serving the best interests of consumers and have  
23 pledged our independence from outside interests.

24 As an example of our commitment to  
25 remaining independent, for instance, we will list

1 all of our contributors and their contributions on  
2 our web site so that all contributions will be  
3 accessible to the public and you'll know who is  
4 influencing us or who is not influencing us. This  
5 will begin in January and will be updated monthly  
6 so that everybody can have access to it.

7 PECAN's work is going to be focusing on  
8 areas such as utilities, clean government,  
9 renewable energy, healthy workplaces, and  
10 insurance; and it is our interest in insurance  
11 matters that brings us here this morning.

12 House Bill 1190 deals with an issue that  
13 may seem to be not that important at first blush  
14 because in reality the circumstances outlined in  
15 the proposed legislation probably would not concern  
16 more than a handful of Pennsylvanians each year.

17 There will not be many cases when HB  
18 1190's provisions defining sudden emergency would  
19 come into play; but in those few cases, the  
20 importance to all of the parties involved cannot be  
21 overstated.

22 But a caveat is in order, and I believe  
23 it's one that's important because of all of the  
24 testimony that's preceded mine. I believe that  
25 caveat is dealt with though in the bill itself; and

1 that is, the circumstances of sudden emergency need  
2 to be limited, limited as they have been under  
3 Pennsylvania case law.

4 We're not trying to solve all the problems  
5 of the insurance industry today. We're not trying  
6 to solve any other problems that have been raised  
7 this morning. All we're talking about is these  
8 specific instances when we're talking about sudden  
9 emergencies dealing with automobile accidents.

10 As has already been mentioned, the bill  
11 would amend the Judicial Code to add a Section 7703  
12 entitled Specific Findings on Damages. This new  
13 section would require a judge or jury to make a  
14 specific finding of damages for the injured party,  
15 the plaintiff, in motorcycle accidents resulting  
16 from a sudden emergency on the part of the  
17 defendant.

18 Let me provide an example of when this  
19 provision might come into play: A person is  
20 driving in a downtown area of a city. He suddenly  
21 has a heart attack and loses control of his  
22 vehicle. The car careens out of control and  
23 strikes another car resulting in injury and  
24 hospitalization.

25 Under current law, in cases such as this,

1 the driver, the potential defendant, would be held  
2 harmless -- could be held harmless and neither the  
3 defendant or his or her insurance provider would be  
4 liable to be compensated.

5 This is as it should be, I think, to  
6 protect innocent people who happen to be victims of  
7 an illness or other life-threatening situation.  
8 But what happens to the other victim? Who  
9 compensates the person injured by the justifiably  
10 protected driver?

11 The answer is, No one. Under current law  
12 and practice, a person injured in such  
13 circumstances could receive no compensation. The  
14 driver is held to be not liable. The driver's  
15 insurance provider is therefore under no obligation  
16 to compensate.

17 And since there is no provision in  
18 Pennsylvania law requiring insurance providers to  
19 compensate victims in such cases, the plaintiff may  
20 get nothing from his or her own insurance company.  
21 That is not just unfair; it is unjust.

22 HB 1190 codifies the definition of sudden  
23 emergency and makes more clear, we believe, the  
24 circumstances under which this provision may come  
25 into play.

1           It's a common sense bill which protects  
2 both victims in these unfortunate  
3 circumstances -- the driver and the injured party.  
4 It is a consumer-friendly bill which has the full  
5 backing of the Pennsylvania Consumer Action  
6 Network.

7           As I mentioned near the opening of my  
8 remarks, this bill would affect only a small number  
9 of Pennsylvanians each year; but it is precisely  
10 this kind of bill, one that protects the little guy  
11 in unusual circumstances, that normally gets  
12 ignored.

13           PECAN commends Representative Maitland and  
14 all the cosponsors for their efforts to stand  
15 together in a bipartisan fashion to stand up for  
16 that little guy who in a sense represents all  
17 consumers.

18           Now if we could just put the same kind of  
19 effort into overhauling the entire insurance  
20 industry -- I can dream, right? Thank you for your  
21 time.

22           CHAIRPERSON CLARK: We thank you for your  
23 testimony and insight. Are there any questions  
24 of --

25           REPRESENTATIVE CALTAGIRONE: I have a



1 question.

2 CHAIRPERSON CLARK: Representative  
3 Caltagirone.

4 REPRESENTATIVE CALTAGIRONE: The concern  
5 that I have is this: Any time there is a  
6 settlement or a payout in a claim, the insurance  
7 companies certainly have to use their tables of  
8 calculations and premiums in order to cover those  
9 kinds of payouts.

10 As was alluded to earlier in the testimony  
11 today -- and I think you were here for most of the  
12 testimony -- that there are people out there in our  
13 society, as we all know, that will try to take  
14 advantage of situations to claim injury, to claim  
15 this, that, or the other thing.

16 Whether or not it opens the floodgate to  
17 that type of tomfoolery, only time will tell.  
18 However, I think the concern on the part of the  
19 industry, even though it won't be it right now, it  
20 may be a small, small percentage of people that  
21 would be applying for those types of coverages  
22 and/or benefits.

23 How does the insurance industry make up  
24 that additional loss without passing it on to  
25 premium increases? I mean, you know, I can see

1 both sides of this issue. It's a problem that  
2 somehow should be addressed; I have no doubt about  
3 that.

4 On the other hand, when you start to pay  
5 out -- I mean, they're in business for business, to  
6 make a profit, like any business is. And when they  
7 start to pay out, that means we as consumers of  
8 that product have to pick up and pay the extra cost  
9 at some point. How would you want to address that?

10 MR. MORRILL: Well, first of all, I want  
11 to emphasize what I think has been mentioned by a  
12 number of people already this morning; and that is  
13 that we're talking about very rare circumstances.  
14 So we're not talking about lots of new cases being  
15 added.

16 In my preparation for this, I talked with  
17 a few attorneys and asked them, What does this look  
18 like? On the face value, it looked to me like this  
19 was a "no brainer." Protect consumers. These are  
20 people who under normal circumstances should be  
21 covered; made sense for us to have this kind of  
22 protection.

23 But I wanted to find out if there was  
24 another side. So I called up some attorneys and  
25 said, What's the story? How many of these kinds of

1 cases have you seen?

2 I talked to three attorneys. And of all  
3 three, they said that they'd only had a couple of  
4 cases in their average of probably 15 years of the  
5 three people of serving. We're talking about maybe  
6 three or four cases for three attorneys in 15  
7 years. We're not talking about lots of cases.

8 So as far as being an additional cost for  
9 insurance companies, of course, anytime they make a  
10 payout there's going to be more of a cost for them.  
11 But that's their business is trying to weigh their  
12 income, which is our premiums, and their output.  
13 So they're going to always want to lower their  
14 output, of course.

15 I don't think that we're talking about  
16 opening the floodgates because, No. (1), we haven't  
17 had that many cases in the first place; No. (2),  
18 we're talking about something that's going to have  
19 to go before a judicial proceeding, a court case,  
20 where a judge or a jury's going to have to make a  
21 ruling in this.

22 So I think that we have protections of  
23 people having to go before that and facing perjury  
24 cases and fraud cases if they're lying and in  
25 collusion.

1           I don't think we're talking about large  
2 numbers. I don't think, first of all, that our  
3 population has that many people who want to defraud  
4 the public and I think our judicial system is set  
5 up in a way that can protect both the insurance  
6 companies and the consumers in this case.

7           REPRESENTATIVE CALTAGIRONE: One final  
8 closing remark then now. We don't know what the  
9 cost factor would be involved. If it's something  
10 similar to the case that the gentlemen -- the  
11 attorneys here earlier had alluded to, it could be  
12 a substantial amount of money over time with the  
13 amount of injury that would have been done to that  
14 person, the gentleman that had his legs run over,  
15 the loss of work compensation, the other medical  
16 costs associated therewith and whatever else wasn't  
17 covered and when does it begin and when does it  
18 end.

19           So the dollar amount's there, you know. I  
20 don't know if anybody really projected or did some  
21 kind of a look-see at what something like that  
22 might eventually cost.

23           I'm just putting this out there because  
24 we're in discussion stage, we're in discovery  
25 basically to try to find out what the repercussions

1 of something like this might be eventually and  
2 where it might lead us. And I think we need to  
3 have these kinds of discussions and really take a  
4 hard like at it.

5 MR. MORRILL: The bill as written right  
6 now says up to the limits of the policy. So we're  
7 not talking about never-ending payments. We're  
8 talking about limitations that are already written  
9 into the policy of the plaintiff in this case.

10 REPRESENTATIVE CALTAGIRONE: Except that  
11 the prime sponsor had indicated that this is in the  
12 molding stage and there may be a lot of fine tuning  
13 that will be done and might have to be done.

14 Of course, as with any legislation, we  
15 mold it and groom it and sometimes it gets over  
16 massaged; so you never really know where we're  
17 going when we get into some of these areas. And  
18 I've seen some strange things happen over 21 years.

19 MR. MORRILL: And my answer to that would  
20 be even if there are other provisions and it  
21 becomes more expensive, this is not something, as  
22 with any legislation, that's written in stone.

23 If it turns out that it is something that  
24 is devastating for the insurance industry, I'm sure  
25 they'll come back in those succeeding years and ask

1 for something to happen to make things better for  
2 them.

3 I don't think that there's any evidence at  
4 this point though that that is the case. I think  
5 we're talking about rare instances, very small  
6 cases that will be negligible, if any, increases  
7 for the consumer.

8 And for the insurance company, I think  
9 that there are so few cases that they could  
10 probably swallow most of these without any effect  
11 on the consumer.

12 CHAIRPERSON CLARK: Representative  
13 Maitland.

14 REPRESENTATIVE MAITLAND: I just wanted to  
15 say that I agree with everything that you said. I  
16 think that you're right on the mark and spoke  
17 really to the intent of the legislation. And I was  
18 going to comment on Representative Caltagirone's  
19 question to you, but you answered that for me too.

20 MR. MORRILL: We haven't been in  
21 collusion, by the way.

22 REPRESENTATIVE MAITLAND: That's right.  
23 Thank you for your testimony today.

24 MR. MORRILL: Thank you.

25 CHAIRPERSON CLARK: Any further questions?

1 (No audible response.)

2 CHAIRPERSON CLARK: Seeing none, why, we  
3 thank you very much for your insight and your  
4 testimony this morning. Now the next individual is  
5 Lauren Townsend. She's the Executive Director of  
6 the Citizens for Consumer justice. Good morning.

7 MS. TOWNSEND: Good morning. How are you?

8 CHAIRPERSON CLARK: Fine.

9 MS. TOWNSEND: I could just say "ditto"  
10 and get up and walk behind. Good morning. My name  
11 is Lauren Townsend. I'm the Executive Director of  
12 Citizens for Consumer Justice, a statewide,  
13 proconsumer organization which got started rather  
14 recently just like Mike's organization.

15 I'd like to thank Representative Maitland,  
16 Karen Dalton, and the Subcommittee for inviting me  
17 here to speak today at this hearing. And I wanted  
18 to say that before I go into what our stand is on  
19 this piece of legislation, I thought I'd tell you a  
20 little bit more about Citizens for Consumer  
21 Justice.

22 We were begun this past summer, and it was  
23 with the goal of preserving and in some cases  
24 winning back the justice system for consumers.  
25 This includes working on related worker safety and

1 environmental accountability issues, which include  
2 issues like HMO accountability, which is hot in the  
3 news today, and workers' compensation  
4 nonretaliation.

5 CCJ is concerned with the pervasive  
6 publicity and misstatements as well emanating from  
7 some which include telling stories and giving  
8 statistics which don't represent the truth,  
9 ultimately putting the legal justice system in ill  
10 repute.

11 So in an effort to tell the truth about  
12 our courtrooms, past proconsumer legislation, and  
13 combat insurance field anticonsumer campaigns,  
14 Citizens for Consumer Justice is forming a  
15 statewide coalition which includes labor, health,  
16 consumer survivors organizations, seniors, and  
17 more.

18 With the millions of dollars spent by the  
19 insurance industry on anticonsumer measures,  
20 someone or some organization must wage the battle  
21 to protect average citizens; and that's why CCJ was  
22 formed and works with Pennsylvania Consumer Action  
23 Network and why both organizations are here today.

24 First, again, thank you Representative  
25 Maitland and all the cosponsors of this legislation



1 for introducing House Bill 1190. I'm sure that  
2 everyone here is very familiar with the purpose of  
3 the legislation, so let me just talk about scenario  
4 and the crux of the matter.

5 And I've personalized this to hit at home.  
6 I'm safely driving my car down the highway. I'm  
7 near Gettysburg and I'm driving in very close  
8 proximity to Representative Maitland and we're both  
9 driving along very safely in our cars.

10 Suddenly, I become dreadfully ill through  
11 no side effect of any drug nor eating anything to  
12 which I know I am allergic. I have a heart attack  
13 and I die; meanwhile, my car swerves and bashes  
14 into Representative Maitland's.

15 The outcome is that I'm dead and through  
16 no negligence on my part, Representative Maitland  
17 and his car are a disaster. So something has to be  
18 done to make the Representative and his vehicle  
19 healthy and sound.

20 We both have full insurance; but the way  
21 the law is stated now concerning unforeseeable  
22 emergencies or illnesses and compensation is that  
23 because I didn't act negligently and it was a  
24 sudden illness which befell me, my insurance  
25 company isn't bound by our law in Pennsylvania to

1       compensate Representative Maitland for the damage I  
2       and my sudden illness did to his person and his  
3       car.

4               So the translation is, No negligence; no  
5       compensation. Citizens for Consumer Justice  
6       believes that this is unfair to consumers,  
7       particularly given the kind of trust and faith the  
8       insurance industry would like us to have when  
9       they're selling us policies to have their  
10      commitment to be our friend and be the good guy  
11      when things get tough.

12              Cases like this one happen extremely  
13      infrequently, as Mike mentioned in his testimony.  
14      I too talked to a number of attorneys who said that  
15      one person said I haven't seen a case like this in  
16      27 years of practice.

17              Another one said, I actually had one  
18      rather recently; but I've been in practice for over  
19      ten years and I hadn't seen one until this  
20      happened. It happens very seldom; therefore, my  
21      question would be, Why shouldn't insurance  
22      companies treat these very rare auto accidents like  
23      unpredictable acts of God?

24              With all of the profits made from  
25      insurance premiums from consumers who never have

1 anything happen to them at all, one would think  
2 that in such a rare case like the one I outlined  
3 that the insurance industry would be happy to  
4 provide compensation.

5 And in closing, Citizens for Consumer  
6 Justice supports House Bill 1190, a proactive  
7 measure that will help a little in improving the  
8 quality of life and peace of mind of  
9 Pennsylvanians.

10 And CCJ again thanks Representative  
11 Maitland and his cosponsors for their leadership  
12 and initiative. Thank you.

13 CHAIRPERSON CLARK: Thank you. Any  
14 questions? Counsel.

15 MR. RYAN: Not to hold this up, but from a  
16 general philosophical standpoint, do you think that  
17 people should be covered who are in boating  
18 accidents as a result of that?

19 Or if I'm to go out here and stand, let's  
20 say, on the balcony and fall off from a heart  
21 attack and land on you, should you be covered in  
22 that circumstance? Does this only apply to  
23 automobiles and where there's insurance coverage?

24 Or are you talking about from a  
25 philosophical standpoint that there needs to be

1 some type of justice or remedy for anyone anyplace  
2 that is injured in that circumstance?

3 MS. TOWNSEND: Well, I -- the insurance  
4 industry folks who are here could probably tell me  
5 more about policies for people falling on you off  
6 of balconies.

7 MR. RYAN: There isn't one.

8 MS. TOWNSEND: I didn't think there was.  
9 I really this morning was -- I guess I'm speaking  
10 partially philosophically because I do think this  
11 is about fairness and morality as someone mentioned  
12 earlier.

13 This is about automobile accidents. This  
14 is about driving down the highway. This is about  
15 automobile policies. And I didn't give thought to  
16 other -- to boating accidents. Having grown up on  
17 boats all my life, I get very mad at people who  
18 don't know what the right-of-way is myself; but  
19 this is about auto insurance.

20 MR. RYAN: I guess what the auto insurance  
21 gentleman has said -- not necessarily taking a  
22 position here --

23 MS. TOWNSEND: Right.

24 MR. RYAN: -- is, Why are they different  
25 from every other situation that you may come upon?

1 MS. TOWNSEND: Why is this particular  
2 situation --

3 MR. RYAN: Different --

4 MS. TOWNSEND: -- different?

5 MR. RYAN: -- than a boating accident or  
6 any other unforeseen circumstance where a person  
7 might be seriously injured by a sudden medical  
8 emergency?

9 MS. TOWNSEND: I guess you'd have  
10 insurance if you were riding in your boat, but I  
11 guess I haven't frankly thought about boating  
12 accidents. Forgive me. I really -- I  
13 wouldn't -- it's sort of apples and oranges.

14 MR. RYAN: Just take the boating out of  
15 it. Take any accident that doesn't involve a car  
16 or insurance that might result from an injury  
17 because of a sudden emergency.

18 MS. TOWNSEND: Off the top of my head I  
19 would say that it would appear that if an accident  
20 happens where somebody is a victim of somebody  
21 else's action through negligence or not negligence,  
22 that if there was policy, if there was insurance  
23 for this matter that a similar outcome -- I would  
24 have to look at legislation introduced --

25 MR. RYAN: So it only applies to just

1 where there's insurance coverage?

2 MS. TOWNSEND: I'm here to address House  
3 Bill 1190. I really can't talk about boating  
4 accidents and other issues.

5 MR. RYAN: Well, I was just curious  
6 from --

7 MS. TOWNSEND: I appreciate your question  
8 and you're appropriately playing the devil's  
9 advocate and I can't really address that  
10 completely.

11 MR. RYAN: I'm considering addressing an  
12 issue that's very basic and important in the law  
13 concerning liability for nonnegligent situations.  
14 That's a more underlying philosophical question  
15 involved than just the automobile insurance issue  
16 here concerning the public policy standpoint.

17 MS. TOWNSEND: I'd have to get back to you  
18 on that, and I'd be happy to do that.

19 MR. RYAN: Okay.

20 MS. TOWNSEND: Okay. Any other --

21 CHAIRPERSON CLARK: Okay. We thank you  
22 very much for your testimony, and that concludes  
23 the Subcommittee on Courts' hearing for this  
24 morning on House Bill 1190.

25 And once again, I'd like to thank everyone

1       for coming this morning and presenting their views  
2       and testimony and thoughts regarding this bill.

3               And since everyone pretty much has stayed  
4       in the room, why, I believe it has been a  
5       worthwhile hearing and brought out a lot of food  
6       for thought. Thank you very much.


7               (At or about 11:46 a.m., the hearing  
8       was adjourned.)

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## C E R T I F I C A T E

I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.

  
Deirdre J. Meyer, Reporter,  
Notary Public. My commission  
expires August 10, 1998.