The original documents are located in Box 18, folder "No-Fault Insurance" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

Allstate

Fwd/No Fault Ins

Allstate Plaza
Northbrook, Illinois 60062
312 291-5000

Archie R. Boe
Chairman of the Board

August 27, 1974

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Allstate Insurance Company, long an advocate of meaningful reform of our automobile insurance system at the state level, strongly recommends your opposition to National No-Fault Automobile Insurance which is now under consideration by the United States House of Representatives. We believe opposition to this bill to be in the best interests of the consumer, the motoring public, and the Federal government's need to exercise fiscal responsibility during this intense inflationary period.

Senate Bill 354, the technical basis for the House's consideration, would impose a rigid, irreversible and possibly unworkable, Federal program on the states in an area in which too little is known. It would reject the advice of the prestigious National Association of Insurance Commissioners and the recommendations of the United States Department of Transportation's two-year study on No-Fault.

This legislation would disrupt arbitrarily long-established relationships between the departments of state government. It disregards the significant differences in population, problems and philosophical makeup that exist within our separate states.

This bill dismisses the very obvious fact that the problems in the current automobile insurance system do not exist in the same nature and to the same extent in each of the states. Rather, it presumes that all of the states have problems identical to each other, an allegation at variance with fact.

Much has been said about the states' unwillingness to respond to the problems in their reparations system and that this unwillingness is cause and reason enough for Federal action. This is simply not the case. To date twenty-four states have affirmatively

responded to their own particular problems by designing No-Fault legislation which their legislators determined were in the best interest of their citizens.

S. 354 will, according to our actuaries, result in a substantial increase in cost to the motoring public. The comprehensive study attached reflects the premium increases the public would have to absorb if S. 354 were to become law.

Adding to government spending is a provision in S. 354 which authorizes the Federal government to provide Federal grants to the states for the purpose of financing the substantial cost of implementing and administering the Federal law. This measure which gives the Federal government regulatory power over the states will add to the cost of running our Federal government.

Allstate intends to continue in its efforts to work for meaningful state No-Fault laws since only through state action can the public be best served, state government continue its prudent administration of insurance, and stabilization of insurance costs be achieved.

We have enclosed some attachments for study by your staff and if they need additional information, they should feel free to write or phone.

With my best wishes for the success of your Presidency, I am

Sincerely,

A. R. BOE

ARB:d
Attachment

NAII NEWS National Association of Independent Insurers
2600 RIVER ROAD, DES PLAINES, ILL. 60018 • VESTAL LEMMON, PRESIDENT • CHARLES J. LORENZ, VICE PRESIDENT, PUBLIC RELATIONS • 297-7800

FOR RELEASE A.M. JULY 12, 1974

WASHINGTON, D. C., July 12 -- Bodily injury auto insurance rates for most motorists in a sampling of 10 states would go up about 20 per cent if a bill already passed by the Senate and now pending in the House of Representatives is enacted, the nation's largest insurance trade association warned today.

Testifying before the House Finance and Commerce Subcommittee, Arthur C. Mertz, executive vice president of the National Association of Independent Insurers, presented the results of what he described as the most meaningful "real-world" actuarial study of S. 354, the Hart-Magnuson no-fault bill.

The study was conducted for the NAII by actuarial experts of Allstate Insurance Co., the largest stock auto insurance company in the U. S.

Ten states were studied and drivers divided into two categories: (A) those carrying average limits of bodily injury coverage, plus uninsured motorist coverage; and (B) those carrying the same coverage as A, plus an average amount of medical payments coverage or the no-fault coverages available if the state had a no-fault law.

The increases for motorists were as follows:

- more -

	Category A	Category B
California	+37%	+12%
Georgia	+51%	+26%
Illinois	+24%	+ 2%
Kentucky	+16%	+ 2%
Nebraska	+85%	+53%
New Jersey	+18%	+18%
North Carolina	+43%	+20%
Ohio	+38%	+20%
Pennsylvania	+33%	+15%
Texas	+87%	+24%

An earlier actuarial study of the Hart-Magnuson bill by the firm of Milliman and Robertson, Inc. claimed that enactment of the measure would cut premiums in all states from 3 to 28 per cent. The study was relied on heavily by proponents to promote the passage of the bill in the Senate on May 1.

But the new NAII-Allstate study now throws new light on the subject.

"Because of deficiencies and errors in major assumptions on which the M & R report is bottomed," Mertz said, "we have concluded that the glowing average state-by-state premium savings projected by that report for S. 354 (and which presumably will or may be projected for HR-10 and other pending federal no-fault bills by the application of similar assumptions) simply are not credible and will not materialize."

Mertz said the Milliman and Robertson report contained several major errors, which resulted in its overstatement of anticipated rate reductions. Among them:

-- In states that have no-fault laws of their own, the projected rates under the Hart-Magnuson bill were not compared to existing rates, but to rates that had been in effect before the state adopted no-fault. For example, this produced a hypothetical rate reduction of 19% in the average premium for Florida, whereas using real-world figures the federal bill would increase that premium at least 5% to 10%.

-- Milliman and Robertson arbitrarily assumed that half of every state's uninsured motorists would buy insurance, and thus more money would be coming in to pay for no-fault. This assumption does not square with actual past experience, Mertz said. Furthermore, he pointed out, no allowance was made for the abnormal losses these irresponsible car-owners usually create.

-- When comparing the cost of tort liability systems to the proposed Hart-Magnuson system, Milliman and Robertson overstated the cost of the liability system by including the cost of medical payments coverage. Medical payments coverage is a form of no-fault coverage under which victims receive medical compensation from their own company regardless of who caused the accidents.

-- Milliman and Robertson's average cost figures for each state "represent a lumping of private passenger vehicles with commercial vehicles, with no attempt to show separately the cost impact of S. 354 on each class of vehicle owners. This makes M & R's costing job incomplete if not meaningless from the individual consumer's standpoint," Mertz said.

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Even they agree with us this is anti-small business.
See page 3-4.

BEFORE THE
HOUSE SUBCOMMITTEE ON COMMERCE
AND FINANCE

HEARINGS ON NO-FAULT LEGISLATION
H.R. 10; H.R. 13714

STATEMENT OF WILLIAM G. RUSSELL
PRESIDENT OF THE NATIONAL ASSOCIATION OF
CASUALTY & SURETY AGENTS

JULY 12, 1974

Mr. Chairman and Members of the Subcommittee, my name is William G. Russell, President of the National Association of Casualty and Surety Agents. I am also President of Corroon and Black, Russell, Inc. of Washington, D.C., an insurance brokerage firm.

Our association's membership is comprised of most of the larger independent fire and casualty insurance agents and brokers in the United States. Our members' annual volume of business is over two billion dollars in premiums with ensuing insurance coverage of over 400 billion dollars. NACSA members serve a great many of the nation's commercial, industrial and institutional clients and write much of the workmen's compensation and public liability insurance coverage in the United States.

Our association has been actively interested in no-fault auto insurance legislation since advent of the no-fault concept in the late 1960's.

In May 1971, the NACSA Board of Directors adopted a resolution endorsing the basic concept of no-fault auto insurance expressing the view that the states should assume responsibility for enactment of an effective no-fault automobile accident reparations system. In May 1974, this position was reaffirmed by the NACSA Board of Directors.

We recognize that there is considerable pressure in Congress and throughout the country for national standards on no-fault legislation and in many ways "it is an idea whose time has come".

Although some of our members would still prefer voluntary action at the state level, we now believe that our association must lend its active support to federal legislation designed to establish uniform standards for no-fault auto insurance, the insurance continuing to be regulated and supervised by the individual states, and not the federal government.

After careful review of the various bills that have been introduced in Congress, we strongly endorse H.R. 13714, introduced by Rep. Stuckey on March 25, 1974, as the most sensible and reasonable approach to the problem.

This bill would preserve for the states their traditional role as insurance regulators, while affording each state the oppotunity to enjoy the advantages inherent in the no-fault system of auto reparations. The standards in the bill cover only the primary or minimum requirements for a system that will operate uniformly across the country to assure that every victim of an auto accident anywhere in the United States receives an acceptable degree of treatment and compensation. All other aspects of auto insurance are left to individual state discretion. For example, there is no standard as to whether residual liability should or should not be compulsory; in fact, financial responsibility limits are left to the states. There is no set standard as to whether vehicular damage and other property damage should or should not be included within the no-fault system. The states will also have the power to set reasonable limits for reimbursement for replacement services loss and compensation for survivor's loss.

H.R. 13714 would also give auto insurance companies primary responsibility for payments to victims. We strongly endorse making auto insurance primary, but we do not agree with the provision in the bill making medicare primary to no-fault auto insurance. The taxpayer should not be forced into a subsidizing of auto claims in this way. The bill provides that each state must require coordination of health insurance benefits paid by employers with auto insurance benefits so that any savings resulting from duplicate coverage would be passed on to the individual employee either through direct payment or substitute benefits.

We feel auto insurance should be made the primary source of payment to victims for the following reasons:

1. Permitting health carriers to pay the first party benefits results in wasteful duplication of claims handling and duplication in money expended for administration of claims which will be an inflationary factor in the economy.

2. Non-drivers participating in group health plans are forced to subsidize by their premiums those in the plan who are drivers if health insurance were made primary. Since less than one-half of the population drives, eliminating this subsidy would result in health insurance cost savings to those who do not drive.

3. If auto insurance is primary, health benefit programs would be fully available for non-auto accident related loss. Since most health benefit programs limit the total amount of benefits, it is now possible to use up health benefits for auto accident expenses and to be left without recourse for out-of-pocket medical expenses resulting from other accidents and illnesses.

4. Members of the motoring public would have no option or choice in deciding whether to have their automobile insurance cover them for all their losses should health insurance be made primary.

5. Coverages under health insurance may lapse or terminate or be insufficient resulting in the auto accident victim being without compensation.

6. The health carrier does not have the capacity to conduct expeditious investigations and apply the necessary controls needed for efficient administration of accident insurance benefits.

7. Auto insurance coverage should not be split into two or more parts. It does not make good economic sense to parcel out coverage for each element of auto accident loss among several different sources of insurance benefits.

8. If health insurance is made primary, the affluent driver with many fringe benefits would pay proportinately less for his auto insurance than an individual with few, if any, fringe benefits.

We note in Section 206 (a) (5) (B) of H.R. 13714 that a tort remedy can be pursued by any person if the accident results in more than six continous months of total disability.

We would recommend that the six months period be reduced to 90 days since it would not have an appreciable affect on premium levels but would allow a severely injured person who did not suffer permanent injury to seek redress for pain and suffering and other losses under the tort laws in his state.

In Section 201 (e) of H.R. 13714, we note that the alternative state no-fault plan shall become applicable following the completion of the first general session of the state legislature which commences after enactment of the bill.

We would recommend that this provision be changed to allow the states a greater period of time in which to implement the far-reaching requirements of this legislation. We feel a period of three or four years would be adequate and would give the states ample opportunity to study all of the ramifications as to those matters over which they have discretion.

Although we support the principles embodied in H.R. 13714, we are concerned over the possible anti-competitive effects that may result from adoption of this legislation. A competitive marketplace is the backbone of the American economy. In the automobile insurance industry, small and medium sized insurance companies are an important source of competition. Smaller companies, which confine their operations to a limited number of states, comprise approximately one-half of this industry.

On the other hand, the greatly simplified rating system under no-fault will easily lend itself to greater use of mass computer processes. This uniform no-fault auto insurance system throughout the country will lend itself to various mass-merchandising techniques, and will almost certainly result in the establishment of many large group auto insurance programs. These group auto insurance plans will logically be underwritten by the giant auto insurance companies, operating in all 50 states. Smaller auto insurance companies, operating in a limited number of states, will not be in a position to compete effectively with the larger insurers in underwriting these auto insurance groups.

It appears that the large auto insurance companies operating country-wide could easily adjust to these new marketing conditions, and indeed could simplify their operations by marketing a mandatory, uniform policy throughout the country. Reinsurance would pose no problem to them because of the huge financial reserves at their disposal in their country-wide spread of risk.

According to statistics compiled by the Insurance Information Institute, in 1973 there were 95 property/casualty insurance companies domociled in California, 41 in Georgia, 162 in Texas, 55 in North Carolina, 227 in Pennsylvania, 81 in Nebraska, 269 in Illinois and 35 in Kentucky. In just these 8 states, a total of $5.5 billion in auto liability and physical damage insurance premiums were written in the year 1972, the most recent full year for which statistics are available.

Our reason for bringing these facts to your attention, hopefully for serious consideration by this Subcommittee, is this. We support the principals incorporated in H.R. 13714 because we believe too many states will not get the job done voluntarily. Despite our support of this legislation however, we also predict that passage of a national no-fault minimum standards bill will inevitably have the effects of drastically reducing the number of automobile insurance companies presently operating in this country. We believe it is not unreasonable to predict that 50% of the insurance companies in the U.S. presently writing automobile insurance will not be in business in 10 years under a national no-fault system.

The trend toward concentration into fewer and larger auto insurance companies that might result from enactment of this legislation and the resulting premium tax revenue losses to many states should be carefully considered by the Subcommittee in its deliberations.

We thank you for this opportunity to appear and present our views on this important legislation.

for NO Fault
Insurance

STATEMENT OF
ARTHUR C. MERTZ, EXECUTIVE VICE PRESIDENT
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
BEFORE THE COMMERCE AND FINANCE SUBCOMMITTEE
INTERSTATE AND FOREIGN COMMERCE COMMITTEE
JULY 12, 1974
IN RE: H.R. 10, H.R. 1400, H.R. 1680,
H.R. 2162, H.R. 13714 and S. 354

We appreciate the opportunity to testify concerning the several automobile no-fault measures pending before this Committee. The basic position of our Association and its member companies on this issue can be summarized as follows: (1) We favor constructive reform of the existing automobile accident reparation systems. (2) We believe such reform can and should be accomplished by the states, with ample opportunity for reasonable experimentation, and (3) we are opposed to Congressional imposition upon the states of a federally-conceived no-fault system either directly or by promulgation of mandatory standards for state action.

NAII is a voluntary national trade association of over 600 insurers.* Our organization provides a representative cross-section of the casualty and fire insurance business in America. Our members range in size from the smallest one-state companies to the very largest national writers; they are comprised of both stock and non-stock corporations; they reflect all forms of merchandising -- independent agency, exclusive agency, and direct writers; and they include insurers which serve a general market and those which specialize in serving particular consumer groups such as farmers, teachers, government employees, military personnel and truckers.

*405 members and 204 statistical subscribers.

The independent companies have a well-deserved reputation as the most competitive and progressive segment of the fire-casualty insurance business. They have originated most of the many policy coverage innovations and improvements in the past 25 years. Our companies have long continued to expand the voluntary market availability of automobile insurance at a rate faster than the rate of increase in new vehicle registrations. And their aggressive price competition has saved the insuring public many billions of dollars in premiums in the past several decades.

The total automobile accident problem of which today's subject is one part has long been a matter of study and action by NAII and its companies. Our Association's comprehensive testimony and accompanying data presented in the 1969 investigation by the Congress into the subject of auto damages and repair costs constituted an opening salvo from the insurance sector in the battle for better bumpers and saner auto design. That testimony, together with the excellent crash films presented by IIHS, of which we are a major supporter, helped usher in an era in which our industry has given strong support to the efforts of government to promote the design of vehicles that are not only safer but more damage-resistant. NAII and its companies have continued to make important contributions to this cause through research and data production.

I mention this point to demonstrate that while we have been giving a great deal of attention to the question of how to improve the systems for financially compensating the victims of auto accidents, we have by no means been neglecting the root problems of how to prevent accidents in the first place, and how to reduce injuries and vehicle damage in those accidents that do occur. Those problems, we believe, continue to merit top priority consideration.

Basic Issues Presented by No-Fault Legislation

It has often been observed that it is much easier to point out shortcomings in existing institutions than it is to fashion new institutions in their place which will be more universally acceptable. Fashioning a new and improved reparations system is a most difficult task because it involves the re-ordering of a complex bundle of deeply-rooted rights, responsibilities and public policy considerations. It is difficult because any and every such proposed new system, in order to give the public some substantial new or additional benefits, must likewise take something away if costs are to remain in balance.

This question of what and how much to give and to take away, and exactly which categories of consumers and accident victims are to do the receiving and which are to suffer the taking away, constitutes a major source of uncertainty and disagreement surrounding the whole no-fault subject.

At one end of the spectrum are persons and groups who believe that the existing fault-based system has really very little wrong with it, and requires only minor improvements - - procedural reforms to speed up the negotiation and adjudication process, and perhaps the required offering of a minimum amount of add-on no-fault benefits - - but with no significant restrictions upon existing rights of recovery in tort.

At the other end of the spectrum are those who propose total or near-total abolition of the concept of personal accountability in tort and the right of recovery of general damages, and substitution of unlimited or very high limit no-fault benefits. The no-fault bills pending before your Committee at the time of preparation of our statement reflect essentially this point of view in slightly varying forms.

It is obvious that markedly different value judgments are used in arriving at these two diametrically opposite positions. Those who propose only minor adjustments in the present reparation system assert that the principles of accountability for negligence and right of recovery by innocent parties of all elements of damage are of such value as to justify the cost and time factors attached to them. If no-fault benefits are desired, they should be offered on an additive basis, according to this point of view.

Those at the other end of the spectrum view determinations of who is at fault in auto accidents to be not worth the time and cost involved. And, they believe that the desirability of providing guaranteed economic loss payments for everyone, the negligent included, outweighs the desirability of preserving for each innocent accident victim the right of recovery for all elements of his damage against a negligent party.

A third school of thought, to which our Association belongs, stands about midway between these two extremes. It calls for modifications of the fault-based auto accident reparations system which will:

- Assure timely payment to all injured parties of no-fault benefits covering basic economic losses;
- Balance loss costs by (1) requiring offsetting of such no-fault benefit payments against a tort recovery, and (2) restricting the right of recovery of general damages to the more serious injury cases;
- Provide that all losses of significant size shall be borne by the party at fault or his insurer, any necessary loss-shifting to be generally accomplished by inter-company arbitration;

- Recognize motor vehicle insurance as the primary source of compensation for motoring accidents.

We believe there are many advantages to such a middle-of-the-road approach: It greatly expedites the claim payment processes and increases the overall cost efficiency of the present system by compensating basic economic losses a no-fault basis. It preserves tort recovery of excess economic losses, plus general damage in the more serious cases. It assures that motoring will pay its way by keeping auto insurance as the primary compensation source. And, by retaining the fault concept,it preserves personal accountability and assures that the greatest proportionate share of the auto accident premium burden will remain on the shoulders of those who cause most of the accidents and losses.

State versus Federal Management of the Auto Accident Reparations Problem

As just noted, any attempt at restructuring existing liability-oriented reparation systems requires the weighing of many public policy considerations and the application of many value judgments. We believe very much in the merits of the middle-road no-fault program just described, but are well aware that in the view of some lawmakers such a program does not go far enough in the direction of total no-fault, while for others it may go too far.

This brings into issue the pivotal question of state versus federal management of the auto accident reparations problem - - to us one of the paramount issues at stake here. The nub of the question is: Which level of government shall shape the future auto accident reparation systems of the several states? Should each state legislature continue to exercise its long-standing prerogative of defining the responsibilities, rights and remedies of motorists and motoring victims, or should the federal government preempt that prerogative and substitute

one monolithic national system of basic rules and standards - - a system which drastically overturns the existing laws (and in some cases, constitutional guarantees) of those states? Putting it in another way, shall the Congress seek to substitute its value judgment on the complex, controversial issues of public policy here involved for the value judgments of 50 state legislatures?

How one answers that question will probably depend largely on how one views the concept of Federalism and the importance of separation of powers between the two levels of government in this country. Justice Black has described Federalism as:

> "***a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." (1)

Whenever Congress considers a proposal to preempt a function which has historically been performed exclusively by the states, as is the case here, two basic questions arise: first, whether it may constitutionally take such a step and if so in what manner, and second, constitutionality aside, whether such a step is warranted and justified from a public policy standpoint.

The issue of the constitutional limitations on major forms of proposed Congressional no-fault legislation has been dealt with quite comprehensively in the majority and minority reports of the Senate Judiciary Committee.

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(1) Younger v. Harris (1971) 401 U.S. 37, 44

It is also the subject of additional testimony by expert witnesses in the current hearings before your Committee. I therefore will not touch on it except to urge that this Committee give careful consideration and due weight to the testimony of all qualified witnesses on this issue, and not follow the example of the majority of the Senate Judiciary Committee who appear to have based their entire premise for constitutionality of S-354 on the opinion of one witness, while ignoring the contrary opinions of a host of other learned witnesses.

The constitutional issue aside, the basic question here is whether, as a matter of public policy, there are compelling enough reasons for Congress to override the judgments of 50 state legislatures in determining what basic rules and concepts shall hereafter govern the responsibilities, rights and remedies of their citizens when involved in motor vehicle accidents. In our view, there is no justification for such a move.

There can be no serious quarrel with federal action in situations where a serious problem affecting interstate commerce arises which, by its very nature, is beyond the reach and the capacity of the individual states to deal with. The problem of auto accident reparations reform is definitely not in that category; it is clearly within the reach and capacity of the individual states to resolve. Some 22 of them have already taken definitive action regarding the problem in a manner they believe serves the interests of their citizens, and the other 28 are giving the subject careful study and consideration.

A case for federal no-fault would, therefore, have to be based on other grounds. Several have been asserted, and I will comment briefly on the principal ones.

The Contention that National Uniformity in Reparation Systems is Needed

One contention encountered repeatedly is that federal no-fault or federally-dictated state no-fault standards are needed because basic countrywide uniformity in the reparation of auto accident losses is essential. Uniformity is desirable, according to the purpose clauses of several of the bills pending before this Committee, in order to avoid "the confusion, complexity, uncertainty and chaos" that would allegedly be engendered by a "multiplicity of non-complementary state systems." (2)

This same argument is advanced each time a proposal is introduced calling for the handing over of another state-exercised function to the federal government. If it were given full sway, we would soon no longer have a carefully balanced multi-level system of national and local government functions, as contemplated under our Constitution, but a system where every aspect of the daily lives of our citizens is controlled and directed out of Washington.

A certain amount of state-by-state individuality is and always has been a familiar characteristic of our way of government, and has been one of the sources of strength of our Federalist system. Reasonable variety and experimentation in approach is necessary and desirable. It is especially appropriate where, as here, there are new and untried concepts to be tested, and where, as

(2) See subsection 102(a)(9) of H. R. 13714 and the same numbered provision of S-354; see also Section 2 of H. R. 2162.

here, controversial issues are presented on which there is no easy, universally accepted answer.

In the above-quoted purpose clauses and elsewhere, it has been suggested that basic countrywide uniformity of reparation systems is needed to avoid confusion, uncertainty and chaos, as well as to eliminate possible burdens on interstate commerce. As best as we can tell, these contentions center mainly around a concern for the motorist engaged in interstate travel into a jurisdiction whose laws differ or may differ from those of his home state.

This problem is not a new one, of course. There have always been some differences among the various states on such matters as:

- The basic laws and rules governing liability and rights of recovery (contributory versus comparative negligence systems, presence or absence of guest laws, varying wrongful death limits, etc.)
- Whether or not auto insurance is compulsory, the minimum statutory limits of liability insurance coverage under such compulsory laws or under the financial responsibility laws, and variations in the procedures governing accidents under those laws.
- Whether or not special funds or statutory coverages exist to protect against the uninsured motorist hazard.

These differences have not, to our knowledge, produced chaos, irresolvable uncertainties, or significant burdens on interstate commerce. This is largely because the automobile insurance industry has responded by providing in their policies for coverage in accordance with the tort laws and financial responsibility or compulsory laws of all states where the insured may travel.

Similarly, with the advent of state no-fault laws, the insurance companies have been rapidly expending and extending their coverage to voluntarily satisfy the requirements of the laws in all states into which their policyholders travel. Both our industry, the state insurance departments and the state legislative committees are watchful for any possible coverage gaps or areas of vulnerability to interstate travelers which might arise under the new no-fault laws, and through the sum total of our and their efforts the problem has been rendered a de minimus one.

Accordingly we do not believe that immediate, countrywide uniformity in auto accident reparation laws is necessary to prevent chaos and undue burdens on interstate commerce. What is important is the fact that the state reparation systems and attendant insurance coverages now possess and will continue to possess compatibility for purposes of interstate travel. Out of state-by-state experimentation will, in due course, come increased uniformity -- a sound degree of uniformity based on experience. This is exactly what was contemplated by the Department of Transportation in its March 1971 Report, which made the following recommendation:

> "To explain further the kind of a system that we believe the States should now strive toward, it may be useful to describe what its ultimate configuration might look like following a suitable period of experimentation and testing. It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform.

"This system, as we see it now, should be based on universal, compulsory first-party insurance for all motor vehicle owners covering all economic losses above voluntarily accepted deductibles up to reasonably high limits. Insurers should be free to offer additional insurance coverage above these limits. Victims should retain their present right to sue in tort for specified intangible losses, but the right should be restricted to the truly serious cases. Victims should not be able to sue in tort for economic losses compensated by their own insurers or voluntarily accepted as a deductible. The system should be implemented in stages at the State level. The private insurance industry should service the system, which should continue to be regulated by the several States." (Emphasis supplied)

Time Frame for Action by the States

A second major line of argument for immediate federal action on no-fault asserts that the states have not moved fast enough. Corollary to this argument is the suggestion that most of the states cannot be depended upon to take timely, meaningful action because they are too much subject to the influence of special interest groups such as the plaintiff bar. In the latter connection, the Majority Report of the Senate Judiciary Committee goes so far as to charge, in discussing variations among existing state no-fault laws, that

> "The variations among the State laws to date reflect primarily the power of the organized personal injury bar in the various State legislatures, and bear little relation to conditions and needs in those States."[3]

We were surprised and dismayed to witness such a sweeping and unfair indictment of the entire institution of state government issue from members of a committee of this Congress. The net import of this and kindred allegations is that if state legislators do not move with lightning speed to embrace the exact concepts certain lawmakers in Washington espouse, it means that those state lawmakers must be under the thumb of "special interest" groups and must be placing those interests above the welfare of their constituents.

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3. Report No. 93-757, 93d Congress, 2d Session, March 27, 1974, p. 27.

The plaintiff bar may be surprised to hear that someone thinks their lobbying is so effective. Having crossed swords with them on many occasions, though, I can testify that although they may be highly visible and vocal, neither they nor any other so-called "special interest group"[4] has the power and influence over state legislatures ascribed to them by the Majority Report of the Senate Judiciary Committee.

As I have said, the most disturbing thing about charges such as that just quoted is their implicit suggestion that those state lawmakers who have not acted instantaneously to revolutionize their auto accident reparation systems to conform to some of the current thinking in Washington are either out of touch with the interests of their constituents, or have callously disregarded or betrayed them.

As one who has testified on numerous occasions both before state and Congressional committees, I have witnessed on the part of state lawmakers as a group every bit as much dedication to duty, and every bit as much insight into and concern for the interests of their constituents, as I know to be possessed by the distinguished members of this Congress.

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4. With the possible exception, in some states, of organized labor.

But, it is said, the states are moving too slowly. In answer we would submit that serious consideration by the states of well over 600 no-fault measures, and definitive action in 22 states to date is not a bad record. This is especially so when one considers that it was little more than three years ago that the DOT Report was presented, that most states have since had only one or two regular sessions, and that the task confronting the states is so difficult -- involving as it does the reordering of an entire bundle of vital, deeply-rooted rights, responsibilities and relationships.

There have been countless instances we could point to where the Congress itself has wrestled for many, many years with problems of no greater complexity than this one, before taking definitive action. And we repeatedly witness instances of sharp disagreement within the Congress as to which of many proposed solutions to a problem best serves the public interest -- including the no-fault problem itself. Why, then, should the state legislatures be criticized and disparaged for taking the time and care they find necessary to shape the solutions to this intricate and controversial issue that they believe best serve the interests of their citizens?

The Cost Issue

A third major leg of the case for federal no-fault legislation rests on the assertion that such legislation -- or at least particular measures which have been "costed" -- will bring about substantial auto insurance premium savings for the average American motorist. The consumer appeal of such an assertion is obviously very powerful, and anyone who stands up to question its soundness may run the risk of suffering the fate that befell bearers of bad tidings in ancient times.

There is, of course, no cost magic in the mere fact that a given no-fault program is imposed or mandated by Congress, rather than voluntarily adopted by a state. When lawmakers in the presently uncommitted states become convinced that a particular form of program will bring significant savings to their constituents, I am confident that they can be counted upon to give due weight to the fact without being forced into action by the Congress.

The basic source of cost projections relied upon by the proponents of federal no-fault is of course the report of the actuarial firm of Milliman and Robertson directed at S-354 as introduced.

First, a word to clear the air on one misconception that could arise from a reading of the Majority Report of the Senate Judiciary Committee. The Majority Report quotes just a few sentences from a ten-page review of the M & R study, prepared by the Inter-Association Actuarial Group, made up of actuaries from the three principal casualty insurance trade associations. That fragmentary quotation in the Senate Judiciary Majority Report could leave the impression that there is substantial agreement by our industry, including NAII, with the M & R projections. Nothing could be further from the truth.

It will be noted from the actuarial Review of November 28, 1973, (which is set forth at pages 930-934 of the printed transcript of hearings before the Senate Judiciary Committee) that although the actuaries did conclude that the model used by M & R was constructed in a "professionally competent manner," that the data sources used were probably the "best available," and that the model provides useful information, this conclusion was accompanied and carefully qualified by 10 typewritten pages of caveats, criticisms and points of disagreement with the M & R Report.

For the reasons I will allude to, we not only concur in the Inter-Association Actuarial Group's caveats and criticisms regarding the Report, but we disagree with some of the most crucial assumptions of the M & R Report. In short, we believe that the Report's conclusions are neither complete, definitive nor accurate enough to form a sound basis for legislative action.

First, the matter of completeness and definitiveness. All the M & R study has produced (and all it was apparently commissioned to produce) is a set of projected changes in aggregate premiums and average premiums by state. The Report tells the individual consumer nothing about what is going to happen to his rates. It does warn him, though, that "average premium change indications will not apply uniformly, but rather will vary considerably by type of vehicle insured", and "The study did not deal with changes in rating classification and territorial relativities, which may be substantial."

How meaningful is it to the individual consumer to be told that the average statewide auto insurance premium for all categories of vehicles (including commercial) and all classes of motorists in all territories will allegedly be reduced X % under a particular no-fault program, even assuming but by no means conceding that such prediction were valid? It is no more meaningful than to tell an $8,000 a year family breadwinner that a proposed federal income-tax reform bill will reduce the average tax bill of all citizens by X % -- because he knows that hidden behind that average figure could be a substantial net increase in his taxes and a net decrease in taxes for people in the higher income brackets. The consumer doesn't care what might happen to some hypothetical average person's taxes or insurance premiums, but what will happen to his taxes or premiums.

At best, the costing job performed by M & R is therefore only half-done. It is unthinkable to us that the Congress would move to revolutionize reparation systems of 50 states in a way which its own acturial advisers warn will produce profound changes in existing rate relativities between major categories and geographical groupings of consumers, without any exploration into the probable scope and nature of those changes. We would respectfully urge the Congress to commission Milliman and Robertson to perform a comprehensive study into that subject area. We are certain that such a study will confirm the predictions of a number of witnesses before the Senate Judiciary Committee[5] that S-354 (and by the same token the other pending federal no-fault bills) would operate to thrust a much heavier proportionate premium burden onto the shoulders of those who contribute the least to the toll of accidents and injuries -- farmers, rural dwellers, and the most responsible, law-abiding categories of private passenger owners and operators in all areas.

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5. Testimony of Bernard Webb, Professor of Actuarial Science and Insurance, Georgia State College, Hearings, p. 924, Calvin Brainard, Professor of Insurance, Rhode Island University, Hearings, p. 1051; Herbert R. Wells, CPCU, CLU, Farmers Insurance Companies, Hearings, p. 423.

For many millions of consumers in these categories the pending federal no-fault bills would spell sizeable rate increases even were one to agree with the statewide average premium reductions projected in the M & R Report, which we do not.

Let me turn, next, to those average indicated premium reductions, which are set forth in Exhibit A-2 (p. 10) of the November 7, 1973, M & R Report.

In that Exhibit, M & R have set forth in columnar form their estimates of percentage changes that would supposedly occur in the average auto insurance personal injury premium payable in each state if a no-fault system of a certain type were adopted. Six columns of figures are shown for each state, each depicting a different variation in the statutory "package" which might be adopted by a state.

The column which has been relied upon most heavily by proponents of S-354 is the column captioned "LT".[6] That symbol of course means "low benefit level, tight threshold provision", which in turn refers to the minimum benefit package (unlimited medical/hospital expenses, $15,000 wage losses, and $5,000 survivors' benefits) and the tight tort threshold limitation which each state would have to adopt to meet the requirements of Title II of S-354 in the form as reported out by the Senate Commerce Committee in August, 1973.

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6. Since that column shows the greatest supposed premium reductions under S-354, we will use it as a basis for discussion of the M & R projections. Our comments will, of course, have equal or greater force if applied to the other columns which predict either smaller indicated premium reductions, or, in many cases, premium increases.

The estimated percentage reductions in personal injury premiums projected there for the various states by M & R are indeed impressive-looking -- until one looks behind them to see exactly what is being compared to what, and to evaluate the basic assumptions the average premium computations are founded upon.

As we do some looking-behind-the-figures, we first note that the future average premium M & R anticipated would ensue in a state under Title II of S-354 was not compared in each instance with the actual average premium currently in effect in that state. Instead, in those many states which already had adopted some form of no-fault statute, M & R compared their anticipated future S-354 average premium with a purely hypothetical figure -- the average personal injury premium that supposedly would be in effect if those states still had their old tort liability systems.

The supposed percentage reductions in premiums shown in that column therefore tell the consumers in those states absolutely nothing about what will happen to existing average personal injury premiums in those states. Even worse, if taken on their face, without benefit of careful understanding and technical interpretation of the footnotes and full text of the Report, those figures could mislead consumers in some states into mistakenly believing S-354 would bring them substantial real-world savings over existing premiums.

Using the State of Florida to illustrate the distortion this can create, we note that the "LT" column of Exhibit A-2 shows an indicated average premium reduction of 19% under S-354 -- computed from a theoretical Florida liability system that again simply doesn't exist. If we compare M & R's predicted future projections of total personal injury premium for Florida under S-354 with the actual existing Florida premium we find that instead of reducing the present average Florida personal injury premium by 19%, S-354 will raise it at least 5% and more likely 10%, using M & R's own basic cost figures.[7]

This highlights the question I posed earlier regarding federal pre-emption of the states' prerogatives to act in accordance with their value judgments of what is best for their citizens. The Florida lawmakers after careful study have adopted a no-fault system which they deem is in the best interests of their constituents. Are they now to be told by the Congress that they must replace that system with Congress' conception of what Florida needs, at a substantial additional average premium cost?

The only rationale we can perceive behind Milliman and Robertson's use of non-existent, hypothetical premium figures for the no-fault states is that they wanted to be able to portray (apparently for theoretical or academic purposes) a comparison between the "proposed no-fault system" and a "tort liability system."[8]

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7. The actual aggregate amount of that increase will be substantially greater after readjustment for the other M & R factors and assumptions with which we disagree, and which are enumerated later in our statement.

8. See Note 1 to Exhibits A-1, A-2 and A-3.

But then they proceeded to take another step which seems to squarely contradict any such rationale or approach. They included within the "tort liability system", for purposes of determining the existing (or previous) average premium in each state, the cost of auto medical payments coverage -- which is pure no-fault coverage whose benefits are in no way contingent on or related to a showing of tort liability. By so including the cost of medical peyments no-fault coverage within "tort liability system costs", M & R again inflated significantly the amount of alleged savings the S-354 brand of no-fault would supposedly produce in each state as compared to "tort liability system costs."

A third major source of our disagreement with the M & R Report rests in the fact that the average cost figures it shows for each state represent a lumping of private passenger vehicles with commercial vehicles, with no attempt to show separately the cost impact of S-354 on each class of vehicle owners. As I have already noted, this makes M & R's costing job incomplete if not meaningless from the individual consumer's standpoint. Worse yet, if private passenger car-owners assume that the projected premium reductions shown for his state in the "LT" column on Exhibit A-3 apply to them, they are being seriously misled, because a significant portion of the existing loss exposure of commercial vehicles will be shifted onto those private passenger car-owners' shoulders.[9]

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9. In an attempt to respond to the above-cited problem, Section 111 of Title I of S-354 passed by the Senate has incorporated in it a provision which would permit the states to grant a right of reimbursement between insurers in certain injury cases involving commercial vehicles. However, it would only apply if and to the extent benefits paid for loss exceed $5,000, which means that a very large portion of present liability exposure of commercial vehicles would still be shifted to private passenger car owners and operators. HR 10 has also attempted to deal with the problem by insertion of provisions permitting development under DOT's control of elaborate formulae for reallocating loss burdens between vehicles of different weights; the provisions are so complex and abstruse as to render their potential impact on cost-shifting virtually impossible of measurement.

The fourth major area where we take issue with the M & R Report relates to a number of the assumptions which underly and crucially affect its cost projections. The assumptions which an actuary builds into a model are what most directly control the projections which come out. While fellow actuaries may agree that an actuary has done a "professionally competent" job of constructing a model, this does not mean they necessarily agree at all with each of the assumptions he puts into that model.

When it comes to making assumptions, no actuary's judgment is better than the facts and experience upon which he bases it. It is our view and that of highly competent actuaries within our Association (professionals whose judgment has been tested and proven in the real world of ratemaking) that a number of the major assumptions made by M & R and listed in their Exhibit D simply do not square with known facts and actual experience.

For one thing, as already pointed out in the testimony by Bernard T. Webb, Professor of Actuarial Science and Insurance, Georgia State University, before the Senate Judiciary Committee,[10] M & R have assumed that wage loss payments under no-fault will be reduced by an average of 15% for the income tax factor. However, as Professor Webb points out, that average reduction would actually be much smaller, because:

> "First, S. 354 clearly states that 15 percent is the maximum reduction for income taxes. Since many persons pay no income tax, or an amount less than 15 percent, it is clear that the average cannot equal the maximum.
> Second. The maximum weekly benefit for income loss under S. 354 would vary from $173 in Alabama to $331 in the District of Columbia. The work loss of many people would exceed this amount, even after deduction of income taxes. Their effective tax rate for these people would be zero.
> Internal Revenue Service figures indicate that the effective tax rate for individuals is 14. 7 percent of adjusted gross income. However, if a maximum of 15 percent is imposed, the average drops to 10. 5 percent of adjusted gross income. It is clear that after allowing for the effects of the relatively low weekly and aggregate income loss limits under S. 354, an assumption of less than 10 percent reduction for income taxes would be more appropriate than the 15 percent assumed by M & R. Again their assumption has the effect of understanding the cost of no-fault coverage in comparison with the tort system."

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10. Hearings, 1/30/74, p. 923

Secondly, we do not agree with the assumptions and computations made by M & R regarding the number of uninsured motorists that will actually be brought into insured status under S. 354, and the loss experience attributable to those uninsured motorists who do become insured.

For every state except those already possessing compulsory liability insurance laws, the M & R study makes a flat (and obviously arbitrary) assumption that 50% of the car-owners presently uninsured will insure and remain insured. A very substantial portion of the predicted premium reductions in column "LT" of M & R's Exhibit A-2 stand or fall on whether that very tenuous assumption proves out.

We submit that this assumption is much too optimistic, especially as to those many states whose financial responsibility (FR) laws already have brought about relatively high percentages of insured motorists. Experience has demonstrated that changing from an effective FR law to "compulsory insurance" often has only minimal impact on the insured ratio; in fact, in several states the insured ratio actually dropped slightly, according to the best available indicators.

But even were one to accept M & R's sanguine predictions of picking up 50% of the uninsureds under S. 354 in every FR-law state, another deficiency in their cost assumptions appears and is accentuated. Insofar as can be determined, their study completely fails to take into consideration the abnormally bad loss experience that it has been repeatedly demonstrated

will be produced by that hard core of motorists who at present are too irresponsible to carry insurance, but will (according to M & R's predictions) be induced by the compulsory provisions of S. 354 to enter the insured ranks.

Thus, whichever way you go from M & R's assumptions regarding uninsured motorists - - either that 50% of them will or won't all become insured - - it seems inescapable that M & R have substantially understated the full costs of the system S. 354 would create, and thereby substantially overstated the supposed reductions in premiums S. 354 would bring.

Two more serious deficiencies in M & R assumptions bear special note:

. They have failed to make any provision for the familiar propensity of guaranteed, unlimited medical expense and rehabilitation benefits to promote increased utilization or overutilization of health care services and benefits (that propensity being further heightened here where the penalties to be imposed on insurers for taking the time often reasonably needed to probe into questionable claims are so severe as to foreclose many such needed investigations);

. They have failed to give any recognition in their state-by-state costing to the well-known and indisputable fact (profusely documented in the DOT study and in the above-mentioned Review by the Inter-Association Actuarial Group) that the ratio of general damages to special damages (economic losses) in the make-up of the tort personal injury claim payment dollar varies drastically from state to state; instead, they have used consolidated figures from 19 states, an unrealistic approach in our opinion, which has resulted in further badly understating the S. 354 costs and overstating the predicted premium savings in many states.

Because of these and other deficiencies and errors in major assumptions on which the M & R Report is bottomed, we have concluded that the glowing average state-by-state premium savings projected by that Report for S. 354 (and which presumably will or may be projected for HR-10 and other pending federal no-fault bills by the application of similar assumptions) simply are not credible and will not materialize.

What, then, do we believe will happen to premiums under S. 354? To help answer that question before your Committee, the manager of our advisory rating department, Mr. R. L. Jewell, enlisted the aid of the actuarial staff of one of our largest members, Allstate Insurance Company, which has served for several years as Chairman of our Special Subcommittee on No-Fault Costing. I might mention that this company is generally recognized throughout our industry as having one of the most experienced, knowledgeable actuarial research and pricing teams and one of the most exhaustive data banks in the business.

We requested Allstate's actuaries to prepare, for each of the states represented on your Committee, their projections of the indicated changes that will occur in actual premiums currently in effect (not hypothetical premiums under a by-gone system) under the minimum standards provisions of Title II of S. 354 in the form that bill passed the Senate (not the August 1973 version).

This they have done. Their projections show the indicated increases and personal injury premiums[11] for the following 2 categories of policyholders:

(A) The policyholder now carrying average limits of bodily injury coverage, plus uninsured motorist coverage;

(B) The policyholder now carrying the above protection plus an average amount of auto medical payments coverage or no-fault (PIP) coverage.

The percentage changes, in each case an increase, are:

	Policyholder Category A	Policyholder Category B
California	+37%	+12%
Georgia	+51%	+26%
Illinois	+24%	+2%
Kentucky	+16%	+2%
Nebraska	+85%	+53%
New Jersey	+18%	+18%
North Carolina	+43%	+20%
Ohio	+38%	+20%
Pennsylvania	+33%	+15%
Texas	+87%	+24%

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11. Allstate premiums are used, but the impact of S. 354 on bodily injury premiums of other companies should be essentially the same.

It is my understanding that in the development of these projections, adjustment was made for many, but not all, of the errors and deficiencies outlined above with regard to the M & R assumptions and projections.

With me today are several members of the Allstate actuarial and rating staff, who will be glad to answer any questions you may have regarding these figures. They will also be glad on request to furnish a summary of the assumptions used arriving at these figures.

No one -- be it M & R, Allstate or any other repository of acturaial expertise -- can claim that its or their projections are final, conclusive or indisputable. All projections require exercise of informed judgment, and that is where honest differences can arise. We would submit, though, that the projections we have just cited -- in terms of when and how they were constructed, and <u>what</u> is compared to <u>what</u> -- are more meaningful, understandable and closer to real-world reality than the M & R projections. At the very least, we would hope that they would help serve to give the proponents of the various pending federal fault bills some pause about hastily enacting a federal no-fault system or mandating federal no-fault standards upon the states.

The remainder of my Statement will touch briefly on several additional points of great importance to us regarding the federal no-fault issue.

Harsh Consequences for Small Business

We were amazed that the Senate Majority Report gave short shrift to the plight of small businessmen under federal no-fault legislation. It seemed to totally ignore the pleas of fourteen company executives who appeared before the Committee and statements and letters submitted by others.

This is a matter of serious concern to us. We represent many small and medium sized casualty/property insurers -- sound, well managed companies which have operated for years in the best traditions of American small business enterprise, serving the insurance needs of important segments of the motoring public.

We are fearful that the unlimited, open-end exposure mandated country-wide by this bill could seriously jeopardize the ability of many of these small but good companies to grow and furnish competition in the auto insurance market -- perhaps even to remain in the market. This reading comes straight from managements of many such companies who are deeply concerned over the reinsurance costs thrust on them. As small companies they must have the reinsurance regardless of cost. In addition, the reserving for catastrophe claims that will be required by this bill can seriously affect a company's surplus and thus its ability to furnish the needed capacity and growth essential to a free enterprise insurance market.

The inclusion of single car accidents under no-fault puts an unknown factor into the coverage that cannot be compared to previous losses. This, plus other new exposures and the distinct possibility of overutilization of the system make the underwriting of this coverage an unknown quantity which will affect the small businessman far more than the large one.

As we understand it, the policy of Congress has been to favor entry and growth of small entrepreneurs and to disfavor economic concentration within an industry. The effect of federal no-fault legislation would, we believe, be just the opposite.

Primacy of Auto Insurance

The proponents of Federal no-fault with the exception of HR-13714 have provided, in varying forms, that auto insurance will end up as the secondary benefit provider in most instances. It has long been the position of our Association and other segments of the casualty/property insurance business that, whenever the occasion arises for avoidance of duplication between benefit systems, automobile insurance coverage should be designated as the primary source of reparations for economic losses arising out of automobile accidents. This position is well grounded in terms of fundamental public policy as well as upon considerations of practical operational efficiency and simplicity.

Motoring serves important functions in our economy. At the same time, it subjects our society to serious hazards in the form of deaths and injuries, and to problems and burdens including traffic congestion, air and noise pollution, and consumption of natural resources.

Sound public policy dictates that to the greatest extent possible those who engage in a fundamentally dangerous or socially burdensome activity should shoulder the full costs of that activity.

It is because of this principle that our society requires the costs of compensating workers injured in industrial accidents, the costs of abating factory-produced air pollution, and the costs of paying for injuries to consumers from defective products to be borne not by the victims or by the public at large but by the self-same enterprises whose activities create the hazards. Similarly, the principle has long been observed in this country that "motoring should pay its own way."

The auto-owner or truck-owner, of course, pays the full, non-subsidized cost of his vehicle upon purchase. Through gasoline taxes he supports the cost of maintenance of the highways he uses. And through the obligations imposed on him by state financial responsibility, no-fault and negligence laws, he is made to shoulder still another significant cost element attached to motoring -- the cost of compensating the losses inflicted in the course of that pursuit.

In this connection, reference should be made to the tremendous, continuing contribution to the cause of vehicle and traffic safety being made by the automobile insurance industry, both through the work of the Insurance Institute for Highway Safety to which we contribute major support, and through the direct activities of our Association, its individual members, and others in our business. Those efforts have played a major role in bringing about significant improvements in vehicle design and crashworthiness and in highway safety. They can be expected to reap even greater benefits for the public in the immediate future, provided our industry's very basis and motivation for injury and loss reduction is not destroyed by having much of its area of operations swallowed up by making other benefit sources primary.

As one additional particular in this regard, it should be noted that Section 205 of the Motor Vehicle Information and Cost Savings Act adopted by this Congress in 1972 gave explicit recognition to the unique and crucial role which automobile insurers can play in gathering vital accident data relating to the crashworthiness (and damageability) of different makes and models of automobiles. As the result of many months of meetings between our industry and the National Highway Traffic Safety Administration, certain of the types of data referred to in that Section are now being supplied to NHTSA, and it is contemplated that additional types of data will be furnished in the future.

As a practical matter, the kinds of vehicle accident information NHTSA needs and is requesting from auto insurers pursuant to this important statute could never be retrieved, developed or supplied by general health-care benefit providers. Were no-fault legislation to be adopted without preserving the primacy of automobile insurance in motor vehicle accident cases, we cannot visualize how the important obligations being shouldered by our industry under the Motor Vehicle Information and Cost Savings Act could continue to be properly and credibly fulfilled.

In conclusion, the principal reasons why we strongly urge recognition of the primacy of automobile insurance in any no-fault legislation are:

- It will avoid needless duplication of benefits.
- It will support the vital safety objectives underlying the Motor Vehicle Information and Cost Savings Act of 1972, and the National Traffic and Motor Vehicle Safety Act of 1966, as well as the many valuable safety programs and efforts engaged in by the automobile insurance business.
- It will be consistent with such existing laws as the Federal Employees Liability Act and Title XIX of the Social Security Act (Medicaid) which provide for set-off or recoupment of benefits where a third party is legally liable.
- It will be consistent with the primacy recommendations made by the Department of Transportation on the completion of its study of the auto accident reparations system.
- It will keep all types and elements of losses arising out of the same automobile accident within one reparations system, thereby promoting efficiency, eliminating confusion, and expediting the entire claim-payment function.

In connection with the last point, we cannot emphasize too strongly the inefficiencies that would result from fragmentation of the various portions of the total losses arising in auto accidents. Shifting that portion of the losses to medical health or disability insurers would not in any way relieve auto insurers of any of their obligations to investigate, verify and pay claims covering all the other elements of loss covered by automobile insurance policies. Those other elements include, of course, a host of possible items such as residual health -- care expenses, survivorship benefits, funeral expenses, rehabilitation expenses, residual bodily injury liability, property damage liability, and collision and comprehensive losses.

States versus Federal Regulation

Each of the no-fault bills before this Committee would generate additional federal intrusion into the regulatory scheme that has, up to now, been the sole responsibility of the states. HR-10 would strip the states of jurisdiction over the whole field of law governing the rights and responsibilities of the public in motor vehicle accidents and move the seat of authority over insurers to Washington. While the other bills pay lip service to the

desirability of retaining state regulation of insurance, the measures themselves make it clear that the federal government would in the last analysis preempt virtually all of the most vital regulatory powers and functions now exercised by the states. As the Honorable Kenneth DeShetler, Director of Insurance of Ohio, stated in testimony before the Senate Judiciary Committee:

> "In short, as S-354 is currently structured, the enactment of this bill would ultimately result in massive federal insurance regulatory involvement under either Title II or Title III. The McCarran Act would be seriously undermined, not on the basis of the merits of such change but rather as a result of circumvention. This, we submit, is neither consistent with the stated purposes of S-354 and its sponsors nor with the interest of the insurance-consuming public."[12]

We submit that this federal takeover is neither necessary or desirable. The states are already responding to the need for reform of the reparations system on the basis of local requirements and preferences. The citizenry has also spoken in a recent survey where the response was overwhelmingly in favor of continued state supervision as opposed to federal regulation.[13] The states have evidenced expertise and ingenuity in regulating insurance and the no-fault issue should not indirectly do what Congress has not seen fit to do directly -- erode away -- another cornerstone of state authority that has served the public responsibly over the years.

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12. Hearings, p. 1192.

13. A survey of Consumer Attitudes in the U.S. Toward Auto and Homeowners Insurance, January, 1974, conducted by Louis Harris and Associates, Inc. and the Wharton School of Business, University of Pennsylvania for the Sentry Insurance Company.

CONCLUSION

For the reasons we have set forth, we respectfully urge the Congress not to adopt any legislation which would either establish a federal automobile accident no-fault system or impose mandatory no-fault standards upon the states. We on our part will continue to work diligently for constructive reform and improvement of the state automobile accident reparations systems in the light of the large and growing body of data on this subject provided by the Department of Transportation study and the exhaustive hearings before both houses of the Congress, together with the invaluable real-world experience being gained under the new and emerging state no-fault statutes.

October 21, 1975

MEMORANDUM FOR: STEVE McCONAHEY

THRU: MAX L. FRIEDERSDORF
VERN LOEN

FROM: CHARLES LEPPERT, JR.

SUBJECT: No Fault Insurance

In checking with the Committee on Interstate and Foreign Commerce, I find that the Subcommittee on Consumer Protection and Finance has concluded hearings on H. R. 9650, the Van Deerlin bill, and the Subcommittee has started mark-up. They expect to continue mark-up next week. The Subcommittee is also chaired by Rep. Van Deerlin.

The Republican members of the Committee feel generally that the matter should be left up to the states and they are doing everything they can to drag it along. Cong. VanDeerlin, Chairman of the Subcommittee, is trying to get something out and probably will continue to push to do it. The Minority members pretty much are of a mind on this one, backing the President.