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A FEDERAL PERSPECTIVE ON NO-FAULT INSURANCE LAW

Rep. Bruce F. Vento[†]

Thank you very much Scott, and thank you all for the warm welcome. I am pleased to be here. I understand you've had a good morning and I've noticed from your agenda that you are planning on giving the trial lawyers a clean up position in terms of talking about this issue of a comprehensive or national approach to no-fault insurance policy.

I am not an advocate of this legislation. I am not a cosponsor. You probably noticed from the introduced legislation in the House and Senate. You have the Majority Leader, Dick Armey from Texas and Jim Moran from Virginia. Perhaps there is a list of sponsors on it. In the Senate, McConnell from Kentucky, Moynihan from New York, and Lieberman, from Connecticut, I note were the lead sponsors. I'm not an advocate nor am I a proponent or opponent of what's here. I'm not here to drive the stake through the heart of this no-fault proposal, nor for that matter, to energize it.

I think it is an interesting issue with regards to the policy path we set forth on auto-related injuries and damages, an especially important role when you look at the number of cars and the amount of money that is being spent. Is there a better way to deal with individuals insuring themselves, providing for the type of care and the losses that are attendant to the incident of auto and vehicular traffic?

What I am going to talk about is a little about the congressional schedule. I am going to talk about no-fault insurance, and then finally what the federal role could or should be. In defense of myself, I understand that Professor Davies (always a Professor to me) who had worked long and hard in nurturing no-fault, mentioned my role at the state legislature. I happened to pick up the bill and was working with Senator Davies in 1973-74 and was there

[†] D-MN-4th Cong. Dist. Congressman Vento is serving in his tenth term in the U.S. House of Representatives. He was elected to the Minnesota State Legislature in 1970 and served three terms there.

for the delivery of the Minnesota No-Fault insurance bill. It was interesting sitting in the conference committee and working with Jack and Alex Olson and many others, Tom Newcomb, Bernie Brinkman, Senator Knutson, and many others. It was an interesting experience for me.

The wonder of it all is that you may know I am not an attorney. Usually when I say that in some crowds, I get applause. I didn't expect it in this group. I am not an insurance agent. Nor have I ever been. Frankly, I come out of a teaching background in the Minneapolis Schools many years ago and out of a working, middle income background. In fact, one of my colleagues Mo Udall used to tease that there are two types of Members of Congress, and for that matter probably two types of legislators. Those who don't know and those who don't know that they don't know. So, I think we have to be careful.

With the schedule this year, it is pretty clear that this issue has not got traction nationally. There are a lot of reasons for that. First of all, our schedule is pretty well filled up with a lot of other issues. We have seventy working days left this year. Of course it is an even numbered year, so I don't have to tell you what the main concern and focus is of those of us running for reelection. I think you could probably guess that.

Obviously you've got the ongoing soap opera in Washington which will tend to compete for the news and fill the pages. Of course if that isn't of interest enough—and some of us might be a little bit fatigued with that topic—you also have then the Republican leadership disputes in the House which also makes an interesting matter. Last year, with the Speaker and his ongoing odyssey with the Ethics Committee, and of course then the summer problems in terms of everyone deciding who is going to be the new Republican leader. They are still sorting that out. Today it is a little more explicit. Mr. Paxton has left, but the Chairman of the Appropriations Committee thinks that he ought to be the Speaker when Speaker Gingrich gets promoted to run for President and lead the Republican Party. And of course the Majority Leader, Mr. Army, I'm sure on the basis of just such wonderful ideas as this, sees himself advanced to the Speaker's post to lead this House, lead our nation, and be second in line for President behind Mr. Gingrich. President Gingrich? I don't know. Of course Speaker Gingrich says that he plans on running for Speaker and he certainly isn't running for President at this time. But in any case, you know the

game that goes on there.

So we have time constraints, we have historical precedents, we have a lack of consensus about the problem and solution. The time constraints get more serious than simply the distractions I raised with regards to the leadership. We have our own problems on our side because we have our Minority Leader, Dick Gephardt running for President. Al Gore is running for President. We have Clinton still trying to stay in office as President. The time constraints get very real. As I said with seventy days, we have the surface transportation bill to pass. We are going to take up campaign finance again next week. Of course there is no agreement on it, so it is going to be a polarized bill. What each of us want in campaign financing is just a distinct advantage over the other party, or over our opponents more precisely.

We have a series of supplemental appropriations. These are appropriations bills that deal with emergencies such as the disasters that have occurred in the East and West Coasts this winter. And finally, the issue of defense appropriation for money to pay for Bosnia.

There are other bills this year we need to deal with. All of these separate appropriations bills, spending bills that must pass, and there are of course a lot of bright ideas floating around that are getting more attention such as reforming the IRS. The Congress has now found individuals in society that are probably less popular than Members of Congress—tax collectors. That goes back to Biblical times. Plus we have some credit union legislation which is very hot. The banking modernization, child care, education—100,000 new teachers—the patient's bill of rights. Some of these issues you have heard about, especially some of those that deal with health insurance issues. The Superfund, the higher education reauthorization, and of course the tobacco settlement. There are a number of political footballs besides campaign reform, including abortion. Of course we are all experts on that particular topic. Constitutional amendments of various sorts. It seems like every month we have had one up, if it's Monday we best have a constitutional amendment to vote on—the flag, school prayer, you know the litany of issues.

So we have our work cut out for us. Congress has not viewed most of the insurance policy as a federal issue. In fact states have jealously guarded that role. It comes under the category as “not my job.” I go to town hall meetings or visit with constituents, and I

don't generally have a lot of issues raised with regard to this matter.

The insurance industry in states has been successful in arguing that the federal government stay out of the insurance field. Their efforts to superimpose new federal regulations has been met with broad, bipartisan opposition. We have a securities head with the SEC, we have a number of federal banking regulators, including the Federal Reserve Board and the Office of Comptroller of the Currency as well as the Federal Deposit Insurance Corporation. When you get into insurance it is almost like there is a vacuum at the federal level, there isn't really any federal entity that takes over that responsibility. Almost all of the annuities and other products are registered at the state level, as are some of the SEC products. But the fact is that there simply isn't any regulatory insurance body at the federal level.

Our activities at the federal level focus on the anti-trust exemption with McCarran Ferguson, the redlining and other issues which deal with discrimination, improper or illegal conduct, or the federal regulators like the OCC. The banks are permitted to deal in a whole host of insurance products. That's about the extent of our role. We do, and have in the past, in the context of more comprehensive health insurances, had to have had an interface between various programs just as auto insurance has an interface with these programs. As we are dealing with no-fault you have an interface with the health of worker's comp, with the auto insurance, with other types of policies in terms of trying to coordinate them both with Medicare and Medicaid, and of course other veterans and health benefits.

Another factor has been the notoriety in recent years that trial lawyers have received at the federal level. By that I mean the attention that they received last session in regards to bills addressing tort reform, limiting damages to \$250,000 in terms of general damages, and of course all economic recovery. There has been the whole debate both at the state and certainly at the federal level over what the portion of the attorney's fees will be in the tobacco settlement. So as you know lawyer's fees have been an issue ever since Dan Quayle. He probably couldn't spell very well, but I think he hit upon a sore point when it came to an issue that is before the public and that is the concept of tort reform.

One of the subjects that we probably ought to be explored is whether the remedies we have in law, how they work, and whether they can be improved. That perhaps is what is being discussed here

today.

There certainly is not consensus on the topic of insurance rates and the limits in coverage, and the types of solutions and remedies that could or should be available in law. State no-fault is considered an important step at the time that it was passed. I think then that State Senator Jack Davies and State Representative Vento and others thought that they had done something good. But the fact is, even with mandated rate reductions and other factors it has evolved. No-fault is certainly not the answer for all questions. A view of current law reflect the diversity of solutions including a hybrid of no-faults. In fact, many states have reversed their positions on no-fault because it has not in fact delivered according to their judgment. The fact that no state law has passed no-fault since 1976, undermines the argument for a national law. So there isn't, in essence, a momentum building up that would imply that we need to try to do something in a standardized way federally.

I think that when we started out with no-fault in this state there were very few bells and whistles on it. In a sense, I think it was as pure as it was going to get. These laws, written some 26 years ago, have picked up a lot of changes, have evolved. I am sure that since I haven't followed this evolution closely, other than pay my premium every six months, I am sure that most of you are more familiar with some of the changes and could comment on whether it needs a major reform or rewriting at this time.

There is the big attraction here of the cost savings for consumers that at least are purported, but I am certain that you have heard a number arguments on whether these savings are more imagined than real—whether there are any assurances. I do not want to go into all of the details about that, I think you have the analysis available to you. Congress will act on the basis, I hope, of facts. I always thought that if everyone had the facts in politics or decision making, you'd make the right decision, but of course as you know other factors do enter into it. I think some of these savings become rather ephemeral in terms of what the impact is on consumers. I am very concerned about any changes that might occur there and I am certain more state legislators are concerned as well.

Even if there are major problems with auto insurance, Members of Congress are not being deluged with constituents asking us to deal with this problem. "I'm from Washington and I want to solve your insurance problems" is not exactly the opening line to win the hearts and minds of voters in 1998. Furthermore, there is a

lot of discussion about the devolution of power from Washington. I always describe myself as sort of an unreconstructed federalist—whatever that means. What I really mean is that I really believe in the power of the federal government to deal with a host of different problems. I think we ought to be active and I think if we look at many of the problems that we face in the environment, social issues, and many others. You can argue pretty strongly not only that we ought to be working in collaboration with the states, but that we have so many responsibilities that are international that it is really only the federal government in the end that can deal with many of these issues from an economic to financial to environmental perspective and certainly in the area of foreign policy as you can well envision. Nevertheless, it is not exactly the tenor of the times in terms of the federal government.

Auto insurance has many places to go. There are lots of problems but moving these to the federal stage is not where Congress is moving this year. I think it is important to begin the discussions about these ideas. I think that Congress is closely divided now between the two parties. That also has made moving issues ahead more difficult. We have to continue to reflect. We look to the states actually as the laboratories that could show us a model.

There are suggestions by some critics of the most recent plans that this is not operating—this particular plan that is envisioned by the bill that is introduced in Congress—in a single state. I am sure there would be some debate about that, but that itself suggests some moment for pause and reflection as to where we are going. I am sure the debate is raised but there is that suggestion, there is no assurances of savings. There is obviously a concern about the cost shifting in regards this issue. I think that if we were in a mode where we were dealing with the health insurance issue on a broader basis, we would also have a better opportunity to begin to interface with the types of changes that are anticipated in a comprehensive settlement. We obviously could do some of this in an incremental basis in terms of refining the relationship between the federal health sponsored programs, or mandated programs as the case may be, and how they interface with worker's compensation, and how they interface with auto and other types of insurance that have a health component. That would be important to do.

I think there is always the suggestion today by the advocates that we are all paying double. But very often I note that in some of the practices and anecdotal experience that I have had with con-

stituents and friends, acquaintances, the hospital is very much aware of what the coverage is under the Minnesota Auto Insurance Plan, the no-fault plan. I can remember an instance where the day that that coverage ended that person was sent out of the hospital. There is the idea that there is duplicative coverage that is not being engaged and therefore would not be reflected in risk models that are used by the insurance industry. The actuarial experiences already reflect that. I think this is certainly not a consistent issue. In fact, many have learned to use that very well.

Let me stop at that point. I remember giving a talk once and the story goes that a member of the audience came up and said that was great, that was absolute superfluous. And today more than ever I feel that way. The person said, when will it be printed, when will it be published. The speaker said, perhaps posthumously. The individual said, well I hope that is soon. Well I hope not too soon. Thank you very much.

