Speech by
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During the last several months, I have made many speeches throughout North Carolina. I have gone to the people and tried to explain what we are doing in the office of the Attorney General, what philosophy we are following and what goals we are aiming at.

This is an enjoyable task for me because I like people and enjoy visiting about the State. But more important, perhaps, is the fact that I believe public officials have an affirmative duty to let the voters know what is going on in government at all levels.

The aims of a democratic government are frustrated, I think, if we pretend to give people the right to vote and choose elected officials but at the same time so obscure the workings of government that they cannot make informed and intelligent decisions. We mock the people if we say on the one hand, "Let me know what you are thinking, I want to represent you and your interests", and at the same time fail to inform the people from day to day about the direction of the ship of state and to explain the charts and maps which are being used to direct its course. My purpose here today is in keeping with this philosophy.

I know that many of you in the insurance industry have followed with interest the activities of our office which relate to your industry. I have talked with many of you from time to time since I have been in office and many of you have been kind enough to share with us your comments and experiences. We have benefited tremendously from your interest and shall continue to call upon you.

However, I have not had a chance to talk personally with most of you - so I welcomed this opportunity to speak to a gathering composed primarily of persons in the insurance industry, to share with you some of my thoughts and concerns and to invite your continued cooperation and assistance in resolving the problems which now confront the insurance industry in North Carolina and the insurance buying public.

As insurance men, I am sure you are acutely aware of the widespread discontent with the automobile liability insurance system. The discontent is not a local problem. Indeed, many states already have been prompted to innovate new systems of automobile liability insurance rating: i.e., Indiana, New York, Georgia, Florida, Deleware, New Hampshire, Vermont, all have turned away from prior-approval type laws.

But North Carolina has made no substantial change in its automobile liability insurance rate laws since 1945, when a Study Commission, appointed by Governor Broughton, revised the law.

That revision, of course, was brought about by the SOUTHEASTERN UNDERWRITER'S case and the subsequent passage of the McCarran Act by the United States Congress.

The prior-approval law which North Carolina adopted in 1945 may have been appropriate for that day and time but we have good reason to believe that it is no longer appropriate for today's market and today's situation. In the last General Assembly, the Governor, in recognition of our outmoded system and in keeping with his pledge to the people, requested members of the Legislature to set up a Study Commission on automobile liability insurance. The General Assembly responded and a Commission has been diligently at work delving into the problems. I am scheduled to meet with the Commission on June 12.

The people of this State are extremely concerned about automobile liability insurance and North Carolina's own peculiar brand of regulation. We in North Carolina are noted for our independence and our belief in the free enterprise system. Yet the people have only to read the newspapers or turn on the television or visit a friend or relative in Virginia or South Carolina to discover that we in North Carolina have the least competitive automobile liability insurance rates in the Nation - not in the South, not east of the Mississippi, but in the entire United States.

The people are asking every day, every where I go, "What has happened to free enterprise and the insurance industry", and frankly, I have no reasonable answer for them. Instead I keep remembering a statement made in late 1961 in a report of the Judiciary Committee of the United States Senate, relating to insurance legislation enacted in North Carolina during that year.

"North Carolina has taken the ultimate step in completely rejecting competition in automobile liability insurance", the Committee report reads. "A recently enacted law supplements the mandatory rate bureau requirement by providing that ... no deviations will be permitted. Thus all insurers writing automobile liability insurance in North Carolina will be forced to sell insurance at the same rate. ... In defending this absolute monopoly, the proponents make token gesture toward competition by suggesting that insurers are free to remit portions of the premium at a later date by means of dividend payments", the report says.

The Committee in 1961 pointed out quite vividly what we know is still a fact about automobile liability insurance regulation in North Carolina nine years later. The difference now is that the people of North Carolina also know this and that they are rebelling against the system.

I urge you in the industry to listen to the voices of the people, your customers, and to consider the statement made

recently by the president of one of the largest insurance companies doing business in our State. He said, (and I quote), "In all we do, customer service and customer attitudes are of key importance to us ... not because of any customer movement ... but because customer needs and tastes determine our market. And matching our abilities to the market determines our success. This means changing and innovating and this is what must be done."

Now, I have never been one to try to conform to what others are doing for the mere sake of doing so. As a matter of fact, if I have established a reputation for anything, I suppose it is for my nonconformity. However, I am reminded of the story about the lady who went to a parade to see her son march.

"Look," she said, with great pride, "everybody's out of step except my Johnny."

In this instance, I do not believe that "everybody is out of step except my Johnny". I wonder if North Carolina is out of step as far as insurance regulation is concerned.

I know this - unless consumer complaints are heard and unless industry and State government alike respond to them, we can look for the Federal Government to step in and assume an active role in the regulation of insurance, a function which traditionally has been the role of State government since the passage of the McCarren Act.

At the present time, there are underway on the Federal level, two separate investigations of automobile liability insurance. One is being conducted by Senator Hart's Subcommittee on Anti-Trust and Monopoly of the Senate Judiciary Committee; the other by the Department of Transportation. These two investigations are in response to the voice of the insurance-consuming public and, judging from what Senator Hart has said in preliminary statements (calling the rating bureaus "price fixing cartels")[1], State regulation is getting a black eye.

It is my understanding that Senator Hart has recently come forward with some recommendations on the automobile liability insurance system. I have not seen his statement. But my point is that the State of North Carolina should preserve its State's rights instead of again yielding its jurisdiction and soverignty to Federal Regulation.

Insurance is properly a matter of State responsibility, and if we are to preserve that area of State control promised to us by the McCarran Act, we must seriously examine our system without any illusions.

Let's look for a moment at the North Carolina rate making system which is now under such heavy fire from almost every quarter.

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1 Trial Magazine, Nov. 1968

When the Supreme Court handed down the Southeastern Underwriters case, breaking up the price fixing cartel, North Carolina came right along and established a system that I believe to be just as restrictive and just as anti-competitive but with one major distinction - it has State sanction. In the case of ALLSTATE v LANIER, the Fourth Circuit Court of Appeals said that the new monopoly was not illegal for one reason, it was state action and not private action.

We created a statutory rate-making body and required that every company subscribe to it. Every member of the Board of Governors of the Bureau is a representative of the insurance industry except the Commissioner of Insurance who, in my opinion, is the last person who should be a member. This, I remind you, was done by the Legislature - not by the Commissioner.

When the Bureau files for a rate increase on the basis of statistics fed to it by the member companies, it effectively establishes the prices for the entire industry. The prices are fixed just as surely as they were fixed by the old Southeastern Underwriters back in 1944.

Under our system of filing in concert, companies who are doing well and showing a good profit margin receive an increase in spite of the fact that they don't need it. Companies who for some reason need a more substantial increase don't receive it.

There is little incentive for companies who are following poor management techniques to correct them, for their operation will not be subject to individual scrutiny. Companies which are well managed and operating at maximum efficiency and could consequently offer a policy at a lower price, are prevented from doing so. In effect, it seems that in some ways we reward the bad and penalize the good.

Your customers, the insurance consuming public, watch with a feeling of helplessness and inability to affect something which is so much a part of their day-to-day lives. This breeds misunderstanding and ill-feeling for the industry and destroys much credibility and trust with the man on the street.

Our primary effort in the insurance area since taking office has been to try and turn the rate making process into an adversary proceeding so that the voices of the people can be heard and the people assured that their interests are protected. This is important to you as an industry, I believe, because even if the rate increases you ask for are merited, if the people do not believe they are - that they are the product of a fair and impartial hearing - the industry suffers a loss of prestige and credibility.

What I am saying is this: your rates must not only be fair, <u>they must appear fair to the insurance consuming public.</u>

How are the people to believe that the system is fair and above board when the laws of North Carolina require the Commissioner of Insurance, who passes on the rate increases, to chair the Bureau which proposes them? How are the people to believe that their interests are being represented when each time the Commissioner denies a rate increase, the court reverses the decision and requires that an increase be granted because no evidence or insufficient evidence was presented on their behalf which would sustain the Commissioner's refusal to grant it?

If we are candid with ourselves, I think we must admit that we cannot expect them to.

North Carolina's system of prior approval plus no-deviation restrictions has produced this Nation's most tightly regulated insurance rates. Some state regulation is a necessity but I believe that we should do as other states have done. I believe that we should devise a new system where the price of automobile liability insurance to the consumer will be subject to the laws of supply and demand in a freer and more competitive market.

I have talked to many persons in the insurance industry and believe you and the consuming public would welcome a system that puts a premium on free enterprise and efficient corporate operation. An objective analysis of the automobile liability picture will reveal that the interests of the consumer and the

industry are not as far apart as some might imagine. In many ways, the interests are the same.

However, I think those of you in the industry should guard against the tendency which so often is a characteristic of special interests groups to regard their particular regulatory agency as designed to serve them and to view interference with suspicion and criticism.

(NOTE: Editorial, Southern Insurance and comments in INA bulletin.)

A primary principle is that governmental regulatory bodies are established to reconcile group interest, and the public interest.

There are some who say that if we were to open the market by eliminating prior approval of rates, that rates, in turn, would rise to the highest possible level. If this is true, then the entire basis for the free enterprise system is faulty. Absent illegal rate-fixing combinations, there is no reason to believe that the law of supply and demand will not work just as well in the insurance industry as it does in other areas of our economic system.

As a matter offact, just last week I visited a neighboring state which eliminated prior approval some three years ago and instituted a modified open competition system. Let's look at the result of that state's experience.

Prior to 1967, this state already had a system permitting more competition than our present system. Companies were not required to belong to a rating bureau, but if they did, they could still deviate from the rates filed, either upward or downward. Actually, there were no bureau rate filings after 1963 for after then the rate making process became nothing more than a series of deviations by individual companies.

The people of that state were not satisfied with even these restrictions on competition, so in 1967 the Legislature enacted what I refer to as a "modified open competition system". Prior approval has been abandoned, and membership in a rate making bureau is a matter of choice.

Companies must still file their rates with the Commission prior to putting them into effect. The Commissioner, in turn, is charged with the duty of examining the rates to determine that they are "adequate, not excessive, not discriminatory and in the public interest". In the event that a rate is excessive or inadequate, the Commissioner may suspend the license of the offending insurer after proper notice and hearing.

There were dire predictions in this state, too, that rates would skyrocket under an open competition system. This did not happen. Instead, the state enjoys today one of the lowest rates in the United States. I predict that will continue so long as the forces of the marketplace are allowed to control.

Though I hasten to add that I do not advocate, at this time, the wholesale adoption of this plan in North Carolina, I believe that this kind of state regulation which permits competition to control rates is vastly superior to a system such as ours which effectively eliminates every element of competition. Strong anti-collusion provisions, however, are essential to the effectiveness of the system.

One of the immediate benefits accruing to the insurance consuming public of this state under the modified open-competition plan was an expanded market. This has led to the depopulation of the assigned risk pool. This state, whose size is comparable to that of North Carolina, now has only twenty thousand drivers in its assigned risk pool; we have approximately three hundred thousand in North Carolina.

Rates for the assigned risk are still fixed by the Commissioner of Insurance based upon the experience of the assigned risk group. Policy forms and classifications are still subject to the approval of the Insurance Commissioner.

After almost three years of experience, it appears that the system is working well and has gained public acceptance. One insurance executive just yesterday told me that his company, which operates through agents, has increased its writings in the state by 13%, is now making money, and is competative with all types of companies doing business there.

I would not be so presumptious as to stand before you today and tell you that I have the ultimate plan for North Carolina. I do not. There are some situations peculiar to our State which require special treatment and consideration. We cannot adopt the system employed in another state, however similar it may be to North Carolina, and expect it to be the answer to our problems. This is the reason why I believe so strongly that Federal regulation is not the answer.

We have, for instance, in North Carolina a strict financial responsibility law. We are the only state to have both an unsatisfied judgment act and an act requiring financial responsibility as a prerequisite for registration of a motor vehicle. These factors deserve special attention but their presence does not by any means preclude consideration and adoption in North Carolina of a more competitive automobile liability insurance rate making system.

I am not here today to advocate that we plunge head long into changes which might create chaos and be harmful to both the industry and the insurance consuming public. I note, however, that the National Association of Insurance Commissioners, the official association of state regulators, has, after careful study, endorsed in principle the idea of more competition in automobile liability insurance rates.

I do believe that though North Carolina's rate regulatory system, featuring prior approval by government of every revision in insurance prices, appears to have been appropriate for the cartelized and anti-competitive marketplace of more than twenty-five years ago, it is not the answer today. Certainly, the insurance industry has changed drastically since that time as have means for protecting the public against illegal price fixing. The insurance marketplace has developed both in theory and in reality into one where I believe there can be meaningful competition at the consumer level for rates, services and the placing of insurance while at the same time protecting the consumer from abuse.

In my opinion, companies as well as agents, would benefit from a revitalized automobile insurance liability market which might enable companies to attract the growth capital any viable industry needs and permit government officials to turn their attention to matters other than a meaningless, periodic processing of papers which we must all admit is what compulsory rate filings degenerated into in North Carolina.

The things I have said today are not meant to be in criticism of any man or group or any company. What I am criticising is the retention of a system which no longer serves us well and causes widespread discontent among our people.

I hope that change will come and soon, but as long as the automobile liability rate making system remains structured as it is now in North Carolina - a system devoid of all competition - we will continue to go before the Insurance Commissioner in an adversary role to represent the consuming public.

A recent report of the American Bar Association stated, "The atmosphere of contention, which always is present in an adversary proceeding, is still the hallmark of our way of arriving at justice.

"Two adversaries, approaching the facts from entirely different perspectives and objectives and functioning within the framework of an orderly and established set of rules will uncover more of the truth than would investigators, however industrious and objective, seeking to compose a unified picture of what had occurred."

I believe this quite strongly.