

Leave of Absence

Tuesday, November 05, 1996

SENATE

Tuesday, November 05, 1996

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence from today's sitting to Sen. Prof. Kenneth Ramchand. I have also granted leave of absence to Sen. Danny Montano for the period November 5 to November 24, 1996.

PAPERS LAID

1. The report of the Auditor General on the accounts of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1993. [*The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*]
2. Report of the Auditor General on the accounts of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1994. [*Hon. B. Kuei Tung*]

SELECT COMMITTEE REPORTS

Presentation

Ombudsman Report (Seventeenth)

Sen. Philip Hamel-Smith: Mr. President, I beg to present the report of the Joint Select Committee of Parliament appointed to consider and report on the 17th Annual Report of the Ombudsman of the Republic of Trinidad and Tobago and the functions and duties of the Ombudsman and to make recommendations for a more effective machinery for the office of the Ombudsman so that Part II of Chap. 6 of the Constitution of the Republic of Trinidad and Tobago can be given effect.

Integrity Legislation—Green Paper

Sen. Deborah Moore-Miggins: Mr. President, I wish to present the report of the Joint Select Committee of Parliament appointed to consider the Green Paper on Integrity Legislation to receive and consider the comments of members of the public on the said Paper and to submit its recommendations to Parliament thereon.

Constitutional and Legislative Arrangements for Tobago

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. President, I wish to present the report of the Joint Select Committee appointed to consider and report on the Report of the Constitutional and Legislative Arrangements for Tobago.

Sen. Prof. John Spence: Mr. President, may I under Standing Orders 24 (1), move a Motion with regard to this report?

Leave granted.

JOINT SELECT COMMITTEE—TOBAGO

(EXTENSION OF TIME)

Sen. Prof. John Spence: Mr. President, I beg to move,

Whereas, on September 20, 1996 the House of Representatives resolved that a Joint Select Committee be appointed to consider and report on the committee appointed to review the Constitutional and Legislative arrangements for Tobago;

And Whereas on September 24 the Senate agreed to a similar resolution;

And whereas the committee in my view did not complete its deliberations;

Be it resolved that this Senate agree to the reconstitution of this Joint Select Committee and request that it presents a final report to Parliament by November 12, 1996.

As the resolution indicates, the Joint Select Committee met on many occasions as indicated in its main report. Unfortunately, when the committee met on the last day a quorum was not achieved and, therefore, the committee could not complete its deliberations.

In my opinion, there were some very important matters which were left outstanding on that occasion. It is my intention to move that a request be made to the House of Representatives and the Senate that the time for the committee to report be extended until November 12, 1996.

I certainly think that this matter is of such supreme importance to the future and, certainly, to the people of Trinidad and Tobago. Since a number of matters were raised which indicated the care with which one needs to frame the legislation, it was my hope that we would have consulted with other persons, including the Tobago House of Assembly, during the course of our deliberations, but certainly with certain legal entities who would have been able to help us with the decisions

that we had to make. The issues of Schedules V and VI which we did not have time to address are extremely critical to the way in which we proceed with this legislation.

Thank you very much, Mr. President.

Secoded by Sen. D. Mahabir-Wyatt.

Question proposed.

1.40 p.m.

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. President, this committee comprising six Members of the House of Representatives and six Senators met on five occasions since the committee was formed. The original deadline which was set was postponed by a request in the Senate on October 8, 1996, that the deadline be allowed to continue beyond October 15, 1996, and a final report be submitted to Parliament by November 5, 1996. With this in mind the committee sought to meet this deadline and to proceed with the work of addressing this report.

Copies of the report were made available to the public at various locations throughout Trinidad and Tobago, and notices were published in the daily newspapers and the *Tobago News* requesting the public to submit comments on the report by October 18, 1996. Comments, suggestions and remarks were received from 16 persons and groups including suggestions from the Clerk of the Tobago House of Assembly and the Secretary of the Tobago House of Assembly.

During our discussions the committee engaged in a thorough clause by clause examination of the draft Bill and referred extensively to the comments made by the public. From the outset there was consensus that Tobago's interest should be represented in the Senate as of right, and the Tobago House of Assembly should be entrenched in the Constitution of the Republic of Trinidad and Tobago. The committee sought to determine the exact prescription for ensuring the establishment of such arrangement and it was subject to comprehensive deliberations. On Monday, November 4, 1996, the committee had reached an advanced stage of work on the Bill and it was satisfied that the majority of clauses to be addressed had been addressed. There was sufficient agreement for us to proceed with the report to meet the deadline of today.

It is my view that sufficient work had been done on the draft to allow it to be accepted and debated in both Houses during which time any clarification or

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additional material can be addressed. As it stands, the intention was to meet the deadline which came as a result of one extension. I am satisfied that the committee has done what it had set out to do. I submit that the report be accepted in its present form.

Thank you.

Sen. Orville London: Mr. President, I find the comments of Sen. Theodore quite disturbing. This Joint Select Committee was given a mandate which has not been completed. Whether the focus should be on the deadline or the completion of the mandate is something on which there should be no debate. We have been given a job. We have not completed it. Consequently, we have not carried out the dictates of the Senate. It is very frightening that in a matter which is of such import to the people of Tobago and Trinidad to hear a Member of the Senate say that we have done enough. Regardless of what is undone, let us see that the job is done. That, to me is totally unacceptable.

May I also indicate that among the more contentious issues raised during those deliberations was the fact that many of us felt that the Tobago House of Assembly must be consulted. In effect, one of the outstanding matters is whether that should or should not happen. I am convinced that we would be doing a great disservice to the people of Tobago, if after 20 years of deliberations, we allow this matter to be dealt with in this way because we did not want to have one additional week of deliberations.

Consequently, I state my wholehearted support for Sen. Spence's motion and would be very embarrassed if this Senate makes a decision not to complete the report.

Thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, I rise to support Sen. Spence's Motion and to add to what he and Sen. London have said. Apart from the request to meet the Tobago House of Assembly, there was a motion which should have been taken at 11.30 a.m. at the final sitting of the committee but because of the lack of a quorum, the meeting could not have been convened officially, and that had to be dropped. In addition, we have had written comments from the public on the Schedules to be dealt with. If we are going to leave it to be dealt with in the Senate and the Lower House, then we are saying that these should have a voice here to raise the concerns which they have raised in their written comments.

I totally agree with Sen. Spence's Motion to extend the life of the committee and ask for the final report by November 12, 1996.

Thank you.

Sen. Rev. Daniel Teelucksingh: Mr. President, I rise to support the Motion by Sen. Spence. I find it rather unfortunate that at the last meeting of our Joint Select Committee concerning constitutional and legislative arrangements for Tobago there was no quorum. Something has to be wrong with us and our interest in this.

I have been enquiring about the people who attended. Maybe someone else would brief us on that. Some weeks ago I spoke at length about the importance of the Joint Select Committee and the use of committees in the parliamentary process. At this level we have been irresponsible. What other word can we use? If at this level we have been irresponsible, then we should not be too hasty in adopting the report as we have it listed on the Order Paper.

1.50 p.m.

I believe that the work of the Joint Select Committee should be completed before we move on to the next stage of tabling this report. It is very unfortunate, I think, that such responsible persons, who have been carefully selected by both Houses in a very important matter like this, should be absent from their last meeting when, as a Member of the Committee, the proposer of the resolution is saying some very important matter is more outstanding. Because of that, I strongly support the resolution of Sen. Prof. Spence.

Thank you, Sir.

Sen. Diana Mahabir-Wyatt: Mr. President, I was not on this Joint Select Committee, but I am a great respecter of the system of Parliament which sets up Joint Select Committees to examine issues which are going to be legislated upon in this House. There can be very few issues that have come before any Joint Select Committee that have been more important than the Report on the Constitutional and Legislative Arrangements for Tobago. This is integral to the entire structure of the country. That we can have an argument that meeting five times—albeit one time without a quorum—and that this is therefore sufficient, simply because comments were received in writing from various persons, does seem to me to be somewhat premature.

The fact that the Clerk of the Tobago House of Assembly and the Secretary of the Tobago House of Assembly sent in comments does not mean that the Tobago

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House of Assembly was consulted. These persons presumably sent in comments as individuals, which they have a right to do. Just as a matter of courtesy, it would seem to me that the system of democracy demands that the Tobago House of Assembly be given a chance to present its views before the report of the Joint Select Committee comes to this House.

The last thing I would like to see this honourable Senate charged with, Mr. President is lack of courtesy. We are not a chamber that is known for its lack of consideration or courtesy and I would hate to think that something as small as a delay of ten days would cause these charges to be laid against us. I realize that we are not allowed to speak on the report itself, but simply on the Motion before us, but given the serious nature of the things I discussed including those areas which are going to be solely in the responsibility of Tobago and those which would be federal responsibility of Trinidad, I think the request that has been made by Sen. Prof. Spence is eminently reasonable and I would like to support it.

Thank you, Mr. President.

Sen. Prof. John Spence: Mr. President, without wanting to stray too much from the resolution, I make this one point which is particularly relevant. When we were charged with this responsibility, among the resolutions was that the Joint Select Committee had power to send for persons, papers and records and receive the comments of the public. We have certainly received comments from the public but in my opinion, there would have been persons who could have helped the committee whom we were unable to send for because of lack of time. It was certainly my intention at the last meeting to suggest that we send for certain persons whom I think were critical to our deliberations and it is this, particularly, that causes me to be concerned about the way in which we have treated the committee. If we look at the original report we will see that serious reservations were indicated by Justice Guya Persaud and I certainly was one Member of the committee who would very much like to have the opportunity to discuss with him some of those reservations that he recorded.

Those basically are my problems with the way we are proceeding. The decisions that we take in connection with the matter of Tobago will not be something we will be easily able to reverse and I certainly hope that we would not rush into it without some further opportunity to do some things that we were unable to do.

Thank you very much, Mr. President.

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Motion made, That the Senate agree that the Joint Select Committee be reconvened and present a final report to Parliament by November 12, 1996.

Question put.

The Senate divided: Ayes 11 Noes 14

AYES

London, O.

Jagmohan, M.

Mannette, Miss E.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Teelucksingh, Rev. D.

Daly, M.

St. Cyr, Dr. E.

Mc Kenzie, Dr. E.

Kenny, Prof. J.

Marshal, P.

NOES

Mark, Hon. W.

Kuei Tung, Hon. B.

Theodore, Brig. Hon. J.

Baksh, Hon. S.

Phillips, Dr. Hon. D.

Gangar, Hon. F.

Cuffy-Dowlat, Mrs. C.

Tota Maharaj, Mrs. V.

Hamel-Smith, P.

John, Hon. S.

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Gray-Burke, Rev. B.

Moore, N.

Baksh, N.

Gabriel, A.

Mrs. D. Moore-Miggins abstained.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, procedurally, I would like to refer the Senate to resumption of debate on Bill No. 1 under Government Business before Motions on the Supplemental Order Paper.

Agreed to.

2.00 p.m.

MOTOR VEHICLES INSURANCE (THIRD-PARTY RISKS) (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [November 01, 1996]:

That the Bill be now read a second time.

Question again proposed.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, when the debate was adjourned on the last occasion, I was in the process of going through the clauses of the Bill in order to explain them to the honourable Senate and I would, therefore, like to bring Senators back in that perspective. I stated that the Bill amended the definition of “motor vehicles” to include any trailer that may be attached to any vehicle operated or propelled by any form of engine, motor or mechanical power. This was to remove any doubt that the requirement for compulsory insurance by the Motor Vehicles Insurance (Third-Party Risks) Bill extended to such a trailer.

For example, if under the present circumstances a collision occurs between a vehicle without fault on its part, and a trailer which is being hauled by a truck where no part of the truck hauling the trailer is involved, it is open at present for the insurer of the truck to attempt to deny liability on the basis that it is the insurer

of the truck only. If the trailer, in such a case, is not covered by insurance, as arguably it need not at present be, the vehicle owner is not protected by the Act as it now stands.

The definition of “public road” has been expanded and I read that definition to the Senate. That definition would now even cover instances, for example, where motor vehicles such as forklifts are used on the compound of a private business where the public or customers have access to it.

This is part and parcel and in keeping with an attempt to eliminate gaps in the statutory requirement for comprehensive motor insurance protection of potential victims of motor vehicular accidents. I had reached the point where I dealt with the definition of trailer. I had explained that to the Senate and I do not think I need to go into that any further.

I had also indicated to the Senate that this Bill was going to increase the penalties. Just for emphasis, Mr. President, in section 3(2) of the Act one would see that if one drove a motor vehicle in contravention of that section, that is to say, without the necessary insurance, under the present law, a person is liable to a fine of \$500.00 and to imprisonment of six months. This Bill is changing that to a fine of \$5,000.00 and to imprisonment for two years. One sees also that the person is liable to be disqualified for holding or obtaining a motor vehicle for a period of 12 months and this Bill is increasing that to three years instead of 12 months.

Clause 5 of the Bill is also an innovation, if I may say so, in that it now compels the insurance to include coverage for emergency treatment. Mr. President, emergency treatment is defined in the new clause 5(1)(10) which says:

“For the purposes of this section, a reference to ‘emergency treatment’ means medical or surgical treatment or examination administered by a registered medical practitioner, immediately after the accident to an injured person as a result of bodily injury, (including fatal injury) caused by or arising out of the use of a motor vehicle on a public road.”

Mr. President, persons may be injured at the scene of the accident and the insurance would, in effect, include the coverage for that medical treatment. The purpose for that really is whether there is liability or not and this sum for medical treatment—as mentioned in the Bill, I will come to it later—is \$1,000.

Clause 5(a) of the Bill repeals subsection (1)(b) and substitutes a new section. One would see that in that new section—if I might use the expression, in the initial Bill without the amendment—it had some omissions. I quote:

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“insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of any death or bodily injury including emergency treatment...”

There is some renumbering of the sections but I would like to inform Senators what the subsequent clauses do. If one looks at section 4(2)(b) there was the situation where, under the Act, the minimum required coverage under a policy insurance for a motor vehicle did not, and I quote:

“except in the case of a motor vehicle in which passengers are being carried for hire or reward or...in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the...”

The Bill proposes to delete this exception as this has given rise to much litigation as to whether there was coverage or not. I would give one example of a situation where a passenger in a private vehicle steps out of the vehicle which begins to pull off before he has completely alighted, causing the passenger to be thrown to the ground and being seriously injured. That is arguable under the present law whether there is any coverage, since there does not seem to be any requirement for compulsory insurance to cover such a case. Under this new law, in cases of persons alighting to and from a private vehicle, if there is injury, there would, in effect, be coverage by the insurance policy.

Section 4(2)(d) of the Act in respect of the \$25.00 for excess has been deleted. What I consider to be major reform has been the amendment of 4(2)(e) where it says:

“liability in respect of any sum in excess of two hundred thousand dollars arising out of any one claim by any one person.”

2.10 p.m.

Under the existing law the maximum amount which the insurance company had to pay in respect of a claim for personal injury was \$200,000 plus the interest and the cost. This sum has been increased from \$200,000 in any one claim to \$1 million. So that the insurance company would be liable to a maximum of \$1 million. Mr. President, in respect of property damage, the amount has gone to \$500,000 in respect of any one claim. That has become necessary because of the increased value of motor vehicles, and any series of claims with respect to property

damage which has gone to \$1 million. A series of claims in respect of personal injury matters has gone to \$2 million instead of \$1 million.

Mr. President, the purpose of increasing these amounts is to provide greater protection for the victims of insurance, and, may I mention that the new clause 5(1) requires that there be some protection for the insured in that the policy of insurance together with a certified copy of the proposal form upon which the policy was issued shall be delivered by the insurer to the insured before the expiration of a period of one week from the date of the issue of the certificate of insurance under that subsection.

The purpose of that is to enable at the time when the person effects the insurance, within a short time thereafter to get his policy of insurance together with the proposal form. The assistance that would give to the insured is for him to be able to read the insurance policy and have a copy of the proposal form in his possession, so that in the event the insurance company is trying to avoid liability, saying that he mentioned certain things in the proposal form, he himself would have a copy in order to be able to propound his case, as it were.

Mr. President, in respect of clause 5 which deals with the amendment of section 5(3), one would see that section 5(3) is being repealed and replaced with a new section which says, "property carried out in a motor vehicle or licensed trailer for hire or reward."

The purpose of this clause is to remove from the ambit of compulsory insurance coverage the necessity to ensure goods being transported for hire or reward. Nothing would prevent a party interested in such goods from arranging with his insurers separate insurance cover for such goods. The purpose of the Act is primarily to protect third-parties who are not necessarily in a position to protect themselves from the negligent operators of motor vehicles. Having regard to the purpose of the legislation we believe that the insurance coverage does not have to cover for the value of those goods and there can be separate coverage for that.

Mr. President, in the Bill, under the renumbering, clause 5(f) before and 5(g) say:

"Notwithstanding anything in any written law, rule of law or common law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licensed

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trailer with the consent of the person insured specified in the policy in respect of any liability which the policy purports to cover in the case of those persons.”

The purpose of this clause is to prevent some insurance companies from taking the point that the person who is driving the vehicle did not have the consent of the insured and therefore is making it very difficult, if not impossible, for that point to be taken in order to ensure that the victim gets coverage. Therefore, in my view it expands the range of persons required to be indemnified under third-party insurance coverage.

It will mean that not just persons specified in the policy shall be indemnified as is now the case, but persons who are driving or using the vehicle with the consent of the person insured specified in the policy. Normally what could have happened was that some insurance companies could have said that the driver’s name is not mentioned in the policy, although the driver was driving with the consent or with the permission of the insured, points used to be taken that since he was not a specified driver in the policy there was not coverage for it, and this is an attempt to remedy that kind of situation.

Mr. President, clause 6 of the Bill deals with respect to vehicles licensed to ply for hire which says:

“For the purposes of this Act owner of a motor vehicle licensed to ply for hire and insured under this Act is deemed to be the employer of any person driving the said motor vehicle at the time of an accident as a result of which a person has suffered death, bodily injury or damage to property”.

In the initial Bill that has been changed, there were some criticisms as to how that clause was drafted and it was redrafted in order to give effect to what was intended, that is to say that if someone is driving a vehicle for hire, to cover in most cases the maxi-taxi situation, that the person who is driving is deemed to be the employee of the owner of the vehicle; except in situations where it could be shown that the vehicle was the subject of a larceny.

It is in that context that the amendment now reads that:

“notwithstanding any other law the owner of a motor vehicle licensed to ply for hire and insured under this Act is deemed to be the employer of any person driving the motor vehicle at the time of an accident as a result of which a person has suffered death, bodily injury or damage to property, unless it is shown that at the time of the accident the vehicle was the subject of larceny.”

2.20 p.m.

Mr. President, I do not know if I need mention it, but there have been many accidents on the roads involving maxi-taxis and a point has arisen that when the time came for payment by some insurance companies, the point was taken that the vehicle was owned by a particular individual, Mr. "A", but the vehicle was being driven by Mr. "B", who was really an independent contractor, because he had an arrangement with the owner and therefore the owner was not liable under the policy. So, when the victims got their judgments in court and the time came for enforcement of those judgments, the insurance company, on advice they would receive, would obviously take the point that there was no relationship of servant/agent or employer/employee; and this was done in an attempt to try to remedy that situation.

Mr. President, clause 7 of the Bill is a consequential amendment, if I may say so, but it is more than consequential, since we are beefing-up the Act; it increases the security and I do not think that I need to read it because the contents are self-explanatory.

Clause 10 of the Bill tries to give a discretion to have a matter done in which the plaintiff can bring proceedings against the insurance company, the owner and the tortfeasor in one action. Mr. President, there are safeguards in the Bill and at the present time, as I mentioned, a party suffering loss, damage or bodily injury resulting from an accident involving a motor vehicle must bring an action against the owner and/or driver of the vehicle causing such injury. It is only upon the determination of that action and securing of a judgment that an injured party can have recourse to the insurer of the owner/driver of the vehicle to have the judgment satisfied. Since this involves two sets of legal proceedings, it also involves two sets of torts, not to mention two sets of delays, in order to get a final decision in these matters.

As the law stands now, Mr. President, there is really no relationship between the injured party and the insurer of the owner/driver of the vehicle responsible; and therefore we cannot, under the present law, sue the insurance company, even though the owner/driver, the insured, may not have any assets to satisfy that judgment. This provision would seek to permit the joinder of the insurance company, at the inception of the proceedings, subject obviously to the discretion of the court.

Clause 10(8) also would give the court the power to award interests on a different basis than they award now. In addition, the insurance company can, in

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effect, not pay the judgment for several years, but in the meantime the insurance company would be able, not only to utilize the funds that they would have paid, but the insurance company could even have invested that money at a higher rate of interest than 6 per cent.

Possibly what happened is that, from an economic point of view, some insurance companies may have decided that it was better to take the gamble because they would not have much to lose, since the most they would have to pay is 6 per cent; but if they invest that money they would get more than 6 per cent. What this clause attempts to do is give the court the discretion to award a higher rate of interest which, in the opinion of the court, "shall be the mean between lending and borrowing rates then prevailing in lending institutions in Trinidad and Tobago...".

Mr. President, I should mention also the maximum amounts which the insurance company is made liable for and increases which we have made under this Bill. It is mentioned in the Bill, as amended in the House, that the Minister may by Order vary any of the amounts mentioned in the Act, but that would be subject to an affirmative resolution of both Houses of Parliament.

Mr. President, may I say, therefore, that when one looks at this Bill one sees that in summary, the major matters which the Bill redresses are to allow a plaintiff to join the insurance company with which the offending driver/owner has third party insurance in the same action as the co-defendant. It also says that the owner of a vehicle licensed to ply for hire is deemed to be the employer of the driver of the vehicle.

The Bill increases the maximum amounts of insurance coverage for which the insurance company would be liable and the victim would be assured, at least, of getting those amounts from the insurance company, plus the interests and costs. It increases the penalties for driving or permitting the use of uninsured motor vehicles on the road; it extends the definition of "public road" and extends the definition of "motor vehicle" to include a trailer.

It provides relief for emergency medical treatment and it also increases the amount that is payable for medical treatment at an institution. The sum used to be \$120. In section 4(6) of the Act, that has been increased to \$750. It provides also for emergency medical treatment coverage, where a motor vehicular accident occurs, and the insurance policy would have to cover the amount for that medical treatment, and there is a limit placed in the Bill. Mr. President, it also gives the

court the discretion to award a higher rate of interest than 6 per cent, thereby giving added protection to the victims of motor vehicular accidents.

Mr. President, this is all part and parcel of the attempt by this administration to look at some of the laws which have been on the statute books and have not been really looked at and reformed for some time. In this area of the protection of victims of motor vehicular accidents, this administration decided to look at it and, as I mentioned, there was some work in existence, which had been done, mostly, by the Law Commission and there was a Bill ready since 1994, so we decided that this was an area of law which needed reform.

2.30 p.m.

However, I want to confess that there are other areas of the insurance industry which need reform; and are being looked at. This Government is very mindful of the other areas which need reform.

May I mention also, Mr. President, that these reforms really would deal with some protection to victims of motor vehicular accidents against drivers or owners who are covered by insurance policies, but there would be other persons—and there are other persons—who would not be covered by insurance policies and who would, in effect, cause damage on the roads.

It is in that context that this administration is considering having a similar kind of scheme as obtains in the United Kingdom and other parts of the Commonwealth whereby there would be a motor insurance bureau which would consist of representatives of insurance companies, and the function of the bureau would really be where there is a claim, the motor insurance bureau would pay the claim and then it would recover the money from the insurance companies. With that set up which has been introduced in the United Kingdom, there has been a great reduction in the litigation in respect of motor vehicular accidents and there has been a massive redressing of the problem in respect of motor insurance claims, damages and injuries which are done to victims.

The office of the Attorney General has been having discussion on this matter. There was the intention by the last administration to set up such a fund and to have the administration of such a fund, and there was actually drafted a motor accident fund bill in the office of the Attorney General but nothing has happened with the bill, so that in the discussions with the insurance industry, we are in the process now of trying to see whether reforms can be directed along those lines.

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Mr. President, I would like to commend this Bill to this honourable Chamber and may I mention that when the Bill as originally drafted was initially introduced, it was the kind of bill which was not easy to formulate or draft. Having been drafted, we decided we would have consultation with all the important players and may I mention that the Bill as presented to this Chamber, is as a result of not only consultation, but having consultation again, and although there may have been some differences of opinion in some areas, I can safely say that generally the Bill has been accepted by the insurance industry.

Mr. President, I beg to move.

Question proposed.

Sen. Elizabeth Mannette: Mr. President, we on this side of the Senate are pleased to support this piece of legislation as we are always interested in assisting citizens of our country, especially those who may be injured as a result of vehicular accidents. I would like to take this opportunity to express a few concerns with respect to certain provisions of the Bill as well as to make a few general comments about certain other measures that perhaps can be considered by the hon. Attorney General.

My first concern relates to clause 5(f) of the Bill which gives the Minister authority by Order to vary the amounts mentioned in the previous subsections. I note and I welcome the amendment from the House which added that the Minister may revise the amounts by Order subject to affirmative resolution of Parliament. I was quite concerned that the Minister would have been able to amend a piece of legislation which would seem to me to be usurping the role of Parliament. But I still would like to make the point that in varying these amounts, the concern has been expressed by the industry that any effort or any intention to remove the limit on the liability and bring in unlimited liability should be considered seriously. The insurance industry is very concerned that imposing unlimited liability upon them could really hamper the operations, especially with respect to reinsurance matters. But I think with the proviso that the Minister's Order is subject to affirmative resolution of Parliament, we should be able to prevent such unfortunate Orders.

I would like to point out one omission I noted, or perhaps I am not reading this Bill correctly, that deals with clause 7. Clause 7 of the Bill repeals section 7(1)(b) of the Act and in replacing section 7(1)(b), it increases the amount of security that must be provided from \$200,000 to \$300,000. But I noted that section 7(3) of the Act refers to an alternative to the security arrangement and permits a deposit to be

made by the owner of a motor vehicle. The deposit amount in lieu of security has remained at \$200,000 whereas the security has been increased to \$300,000. I am not sure whether that was intentional but perhaps the Attorney General can clarify whether that section should be amended, or whether there is some arrangement that is not clear.

Notwithstanding the benefits of this piece of legislation, Mr. President, it is possible that there may be substantial costs involved in passing this type of Bill. We have heard that the amount of coverage has been increased from \$50,000 to \$200,000 and from \$1 million to \$2 million, and that insurers would no longer be able to claim certain defences with respect to persons driving vehicles and whether or not drivers are the employees of the owners and these would all increase the risks that insurance companies would have to cover. I am wondering if, in his consultations with the industry, the Attorney General received any indication that by passing this piece of legislation, the industry would be required to increase the auto insurance premiums for the citizens of this country. If so, then certainly we would want to alert the public to this possibility. At present, insurance coverage for a vehicle can be up to 10 per cent of the cost of the vehicle and certainly for many persons in the society any increase of such premiums could be quite drastic and unfortunate.

The Attorney General mentioned that his office is considering other aspects of the insurance industry which could be looked at in an effort to decrease vehicular accidents on the road, as well as in an effort to increase compensation to the citizens. I am pleased to hear that as I, myself, had some concerns with respect to other measures that could have been addressed in this legislation, or could be considered in the light of reforming the insurance industry.

One particular concern deals with the enforcement of judgments. It is certainly an improvement to have this type of legislation which allows plaintiffs to call insurance companies as co-defendants, but notwithstanding that, a major problem usually arises when, having received a judgment against an insurance company, a plaintiff or a party is still at the mercy of the insurance company to ensure that that judgment is satisfied. I wondered whether the Attorney General could let us know whether any measures are being considered with respect to enforcing judgments against insurance companies.

2.40 p.m.

We know that the rules of the court will apply, but in fact, a representative from an insurance company mentioned to me that they would like to see some sort

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of 30-day limit imposed on judgment debtors, requiring them to satisfy the judgment within, say, 30 days, and if they fail to do so, permit the judgment creditor to apply to the Supervisor of Insurance to have the judgment satisfied, and then permit the Supervisor of Insurance to have that amount reinstated with him from the insurance company. Seeking to have the judgment satisfied can often be a very tiresome procedure and can involve much runaround causing further havoc to the finances of the injured or the plaintiffs.

The final point I would like to make deals with general measures affecting insurance coverage, especially with respect to vehicular accidents and motor insurance. We noted that the Attorney General mentioned that they are looking into the Motor Insurance Bureau and that is certainly commendable. It was a measure that was considered by the previous administration, and indeed, it is a measure that the industry and the citizens would welcome, because many passengers or members of the public involved in accidents often, to their dismay, find that the guilty party was uninsured and they have no recourse. But a Motor Insurance Bureau, as described and well implemented, would certainly provide some redress for such parties.

In addition, I wonder if the Attorney General could inform us as to other measures to reduce the reckless and indisciplined driving that is so prevalent on our roads. I am particularly thinking about the breathalyzer test and the point system for traffic offences as well as the imposition of traffic wardens. I recall some statements were made about these measures and we would be glad to hear whether or not these things are being considered seriously with respect to reducing the amount of vehicular accidents on the roads.

With those comments, I would like to say again that we support this measure and we welcome this attempt to assist the citizens of our country in receiving adequate compensation for their injuries.

Thank you.

Sen. Diana Mahabir-Wyatt: Mr. President, it is very interesting to note that this particular Bill which is before us is to amend the Motor Vehicles Insurance (Third-Party Risks) Act which was passed in 1951. At that time, as far as I can recall, there were no purely indigenous insurance companies in Trinidad and Tobago. It is a matter of some grave concern to me, and not a little bit of an embarrassment, that since most, if not all of our insurance companies are now local, it is necessary actually to bring a Bill like this before this Parliament in order

to protect persons who have been injured in vehicular accidents, very often involving maxi taxis or ordinary taxis, or vehicles that are for hire. The reason it is necessary is that in very many cases owners of the vehicles have only third party insurance, which this Bill is in relation to, but the insurance companies themselves have made it so difficult for the persons who have been in accidents to collect any kind of insurance. They have to go through very expensive litigation. Very often these are people who are unemployed or who are only marginally employed. Therefore it is absolutely necessary to bring this kind of legislation before this Parliament in order to protect these people.

It is an openly acknowledged fact that there are insurance companies in this country which are specifically there to provide third party insurance to vehicles that are for hire, and everybody accepts that this is just, more or less, a convenient fiction, as in fact, should any accident occur, there is no point in even trying to make a claim because you are not going to be able to get through.

From that point of view, I think that this Bill is late in coming and extremely welcome. I think that the situation as regards people in this country who have been subject to accidents in this way, and the way they have been handled, have been both immoral and unethical. I am glad to see that some sort of statutory provision is going to be made to ensure that people do get some protection. In fact, I only wish that parts of this Bill could be made retroactive, although I know that is not possible. I am not going to ask the hon. Attorney General on this occasion for that, but there have been so many people damaged over such a long period of time.

One of my major concerns has been the number of school children travelling in maxi taxis who have been injured and/or killed over the last five years, going to and from school, not just in maxi taxis, but in various hired vehicles, and the amount of compensation which they have received, in many cases, has been absolutely nil. Where they have been injured bodily, and in some cases crippled, involving considerable expense to their families, they have not been able to get any kind of financial help because the legislation just was not there. For all of these reasons I am very pleased that this Bill has come.

There are a couple other points that I have, and very briefly, just one or two comments that I would like to make about this whole question of accidents and safety, generally. I think, in the definition of "road" which is a very serious definition, meaning "any street, road or open space to which the public has access", one of the problems, it seems to me—and I hope the Attorney General

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will forgive me for bringing this into this particular debate—has to do with the way in which billboards which are designed to attract the attention of the travelling public, now have begun to adorn all our highways, our roads and the open spaces to which the public have access. The advertising agencies in Trinidad and Tobago are very effective and creative and, in fact, their billboards do attract the attention of drivers who are driving along public roads. They, in fact, attract them so much that they distract them from driving and are liable to cause accidents.

I think that perhaps if the hon. Attorney General took a look at that particular aspect of road safety it might be extremely useful. There are countries in this hemisphere and in some jurisdictions—for example, I know that Ontario in Canada has passed such legislation banning billboards from any public road because of the accidents which they are likely to cause when people's attention is distracted.

There are certainly other dangers which I think are too prevalent on our roads and are also giving rise to accidents. One of these has to do with the unlawful siting of vendors' booths—which, in fact, is squatting—by the sides of a road. One that I pass over fairly frequently is the Lady Young Road where an increasing number of vendors' shacks and sheds are mushrooming around the very curvy, hilly road, and anybody takes their lives in their hands if they stop there, but there has been no move to stop this kind of illegality.

2.50 p.m.

I know that while the whole question of squatting is coming up shortly—and we do have a Bill before us—it does occur to me that, as far as I can recall, there are no access roads allowed off Lady Young Road from the Hilton Roundabout up to Morvant, yet at present there are 12 which, as far as I can tell, are all illegal—they all cause traffic hazards since people have private driveways on lands on which they are squatting. They are now paving them and putting on their own curbs. This is one of those squatting laws that the Government seems to turn a blind eye to.

Presumably, when the time comes when we have to invoke the penalties of this particular Bill—I am talking about emergency treatment immediately after an accident as a result of fatal injury because someone has stopped by one of these squatters' sheds—then we will start to take a look at other kinds of legislation related to road safety which should be looked at.

Mr. President, I hope we will be able to do something about this. The Attorney General, in presenting this Bill, said that he believes that where we have legislation

that it is a matter of public policy—I hope I am quoting him correctly—that legislation should not remain in limbo and that either it is enforced or repealed. If we have squatting legislation which is not being enforced, are we going to repeal it? Are we going to take a look at the ancillary legislation which governs those aspects of road safety—Sen. Mannette named some—which I think are also important? One of those, I respectfully suggest, is the legislation governing billboards.

The only other question I would ask of the Attorney General in relation to this legislation is with respect to the proposed amendments to the new clause 5(i) where it states that:

"Notwithstanding any other law, the owner of a motor vehicle licensed to ply for hire..."

unless it is shown that

"...at the time of an accident...the vehicle was the subject of larceny."

What happens if someone steals a vehicle that is licensed to ply for hire and then gets into an accident on the Priority Bus Route and knocks down four school children on their way home from school? Whom can the parents of those school children appeal to for protection in terms of medical costs which do not seem to come under that provision or under the new section 5(i)?

Mr. President, I realize that the passage of this Bill is going to result in a rise in taxi fares for people because the insurance premiums are going to go up. I know that this is a hardship which is going to accrue to everybody in the country, but I think the protection that is going to be offered to persons, who up until now have been totally unprotected, makes that hardship at least somewhat easier to bear because there is an element of natural justice to it.

Thank you, Mr. President.

Sen. Rev. Daniel Teelucksingh: Mr. President, first of all I support the Motor Vehicles Insurance (Third-Party Risks) Bill and compliment the hon. Attorney General and the Government for this very important attempt to correct a long history of injustices perpetrated by certain insurance companies against the motoring and travelling public. I have no difficulty in endorsing the Bill's increase in compensation limits to accident victims for injuries sustained, since we know that insurance companies, particularly the larger ones, are more than financially capable.

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Mr. President, a newspaper report a few days ago included an insurance company as being among the top 10 companies operating in Trinidad and Tobago. Furthermore, it is estimated that insurance companies collect approximately \$150 million from motor vehicle premiums per annum. They certainly know how to generate profits, but with that goes an undeniable responsibility to every client. How faithful have these companies been to their clients is a subject that provokes much anger.

Mr. President, clause 5 of the Bill with its provisions for emergency treatment, is significant and raises a question that cannot be deferred. Since this Bill was discussed in the other place there have been press reports and popular interpretations of the whole question of emergency treatment for accident victims. There is the popular interpretation—and I would ask the hon. Attorney General in his winding up of this debate to address this question—that there are many of us out there who have the impression that insurance companies will pay in advance for emergency treatment of accident victims. I would ask for further clarification on this.

If this is so, how then have people been asking, if they can expect insurance companies to pay in advance for emergency treatment before liability is admitted or established? We will certainly be fooling ourselves because interim payment is wishful thinking unless liability is accepted or established.

Mr. President, it has taken years for cases to be determined and unless this is done I cannot see how I or the public in general, can be convinced that insurance companies will make interim payments pending the outcome of a law suit. I believe we must find a way to make this Bill beneficial and helpful to accident victims and to make it work in their interest. I am interested in this. I am concerned about this. How can we put life into this legislation? How can this legislation work for our people is my concern? I see the need for supporting mechanisms to ensure the effectiveness of this Bill and it is a matter that the Attorney General must address.

It is most important that we hasten the litigation process as we have suffered too long. Even clause 10, with all its good intentions, can be stymied, for an insurance company can be reluctant to honour claims until judgment is pronounced against it. This Bill will not guarantee any sudden change of hearts. It does not guarantee that.

Mr. President, in my opinion I believe that we need a catalyst or an intermediary between the insurance company and all other parties. That seems to

be missing in Trinidad and Tobago. Could this catalyst, the establishment of a special traffic court, be provided to do more for us than the small traffic court at magisterial level—that is at the Magistrates' Court and we all know this.

3.00 p.m.

I think we need a court which will help us point the way to the settlements of claims even as envisaged in clause 10. Why not a special traffic court? There were in Trinidad and Tobago, as at 1995, 215,895 registered vehicles and certainly, this is going to increase by year end. I see the need for such a special traffic court in a society as ours. Furthermore, accidents and related offences contribute to the hopeless traffic jam in the Magistrates' Court, and we know this. We have to go a step further though. There is another problem.

If one remembers the Suresh Matadeen case. He was awarded \$1.5 million in an injury claim but his insurance company danced him around, even through his hunger strike. Some persons have died without their claims being settled by their insurance company. There is need for proper disciplinary measures, penalties maybe, even the threat of closures of insurance companies that fail to settle claims when a court order is made. Is there a time-frame for the settlement of claims? That is important. For too long this industry has been a law unto itself.

I just want to lift a quotation from the *Trinidad Guardian* of August 28, 1996 where an insurance claims recovery consultant is calling for the intervention of the Minister of Finance, Hon. Brian Kuei Tung to regulate and prescribe certain issues for the insurance industry. They have been calling for the intervention of somebody else and looking to the hon. Minister. I quote:

“...it is blatantly obvious that the insurance industry is incapable of regulating itself.

...there is a problem of delayed claim settlement in the motor vehicle insurance industry—a problem which has been going on for 20 years and more. This situation will not be solved unless the insurers forget their selfish attitude and get down in a united effort to solve the problem of non-payment and delayed payment of claims. The situation has passed crisis stage and is now chaotic.”

This brings me to the ‘paper tiger’ in the Twin Towers, the Supervisor of Insurance. We have been asking ourselves all along, what does that office supervise anyhow when all along our people have been suffering so much? Incidentally, to whom is he responsible? Which ministerial department? What is the

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extent of his supervisory powers within the industry? It appears as though this office could be one of the most underutilized offices in the insurance industry.

It is my view that we need to fortify the Supervisor of Insurance, including among his functions, the duties of a sort of insurance ombudsman with authority that even insurance giants must respect. I see him as playing a very important role if, as the hon. Attorney General mentioned of the Motor Insurance Bureau, such a bureau is established in our country.

The legislation before this honourable Senate needs support mechanisms if it has to work and if it is to be helpful to our people. I have listed three of these and just to recap: firstly, the traffic court; secondly, the need for proper instruments to ensure that insurance companies honour obligations to their clients; and thirdly, we need to beef up the office of Supervisor of Insurance to give him greater authority in that industry.

Mr. President, I thank you.

Sen. Philip Marshall: Mr. President, I rise to support this Bill but I wonder whether the hon. Attorney General is, in fact, putting the cart before the horse, or, in terms of this Bill, is he putting the trailer before the power drive.

I have listened to the contributions of previous Senators. If there is a total premium income from insurance companies of \$150 million per year and if there are 216,000 vehicles on the road, a quick calculation would put an average premium income per vehicle far less per insured, because there may be many persons who would be licensed drivers, but who would not own a vehicle. On a vehicle basis, there would be an average premium of \$750.00, yet, in any one single event there is a possibility that a catastrophe in terms of bodily injury can leave an insurance company to make payment of a liability of \$2 million if the owner of that vehicle is not a person of any financial substance. It would occur to me therefore, that for an insurance company to take on and be exposed to these risks would give rise to serious consideration to increasing the level of premiums.

Let us look at one or two situations in this respect. One of the key points of the proposed amendments that the hon. Attorney General communicated to us was that there could have been a perception, and I am not sure whether this relates to bodily injury or just property damage, but if the driver of a vehicle at the time of an accident was not the owner, both the owner and the insurance company could say that he was in charge of that vehicle without their permission and thereby escape the payment of liability.

One of the amendments being proposed is that in any accident it will be deemed that the driver of the vehicle would be acting as the agent of the owner and that the insurance company would therefore be liable to making payments. These payments could be far more significant than just simply property damage. What could happen, is a car, maybe one of those new second-hand cars from Japan, could get out of control, mount a pavement and knock down four persons who are the heads of their households and upon whom those households depend for their income-earning power. Therefore, there could be a situation if you think about it logically, the underwriting pen of the insurance company has been removed because the owner of that vehicle may be a person who was not nominated on that policy of insurance, a person about whom the insurance company had no record of his driving capability or experience and yet, they have to underwrite that liability.

When I asked are we putting the cart before the horse, is it possible that this very considerable and needed legislation is not in fact going to be implemented effectively because of these positions of equity? Should we not in fact, instead of protecting people after they are injured, put in the more significant preventative legislation that would change the behaviour and the driving habits of our citizens? What could be more important than introducing the breathalyzer laws in Trinidad and Tobago? I can tell you we may not have any problems related to racial slurs at various discothèques, if those youths knew they had to be designated drivers and they were not going there to get drunk, maybe the fun of going out would go away.

I believe it is time that we change the behaviour of our drivers on the roads of Trinidad and Tobago by implementing laws in our statute books.

I did a count while standing outside at the corner of Edward and Independence Square South, two weeks ago around lunch time. One hundred and fifty cars went by and 50 of the drivers were wearing seat belts. Our laws are not implemented. I have seen drivers pull up at the side of police vehicles and the driver is drinking a beer and nothing is done about it. Has anybody, in examining this proposed legislation, gone to the insurance companies, gone to ATTIC and said, "have you got a data-base of the conditions that existed at the time of an accident?"

3.10 p.m.

What were the ages of the drivers? Did the accidents take place on unlit roads? Were there potholes? Were the vehicles in good condition? What was the

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experience of the drivers? Were they inebriated? Were the vehicles overloaded? I do agree with the protection of the individuals. One of the proposed amendments is that any passenger in a vehicle should be protected. I am sure you have seen this situation in Trinidad and Tobago whereby people sit in the back trays of commercial goods vehicles. What could be more potentially injurious to someone when one sees a vehicle with 10 or 12 persons sitting in the tray? They do not have a chance in any emergency stop.

I believe that we may see a reaction which is totally opposite to the one that the Attorney General expects. For this reason, those insurance companies that do not pay their claims are those which do not charge the correct level of premium. They do not have to charge the correct level of premium because they never intend to pay their claims. Those that charge a correct level of premium work out the potential risks and the significant costs which I have illustrated, whereby they could expose that third party bodily injury event and have a relatively small premium to pay what could be a significant amount.

How can we insist that companies that offer motor insurance properly fund their catastrophe? I think they have to set aside 40 per cent of their premium income for the motor insurance fund. If they do not pay their claims, as Sen. Teelucksingh said, the paper tiger, the Supervisor of Insurance should be entitled to prevent them from underwriting business. That is the only way we would change behaviour. I can understand people who are destitute; do not have transport and cannot afford proper insurance, but I have heard stories where sometimes people take out a temporary cover note so that when they go to the Licensing Authority, the vehicle would be licensed for a period of about one or three months and at the end of it the insurance is cancelled.

I suggest that when an insured person attempts to cut short his insurance policy year, even if it is a comprehensive cover, by suggesting to his present insurer that he wants to cancel his insurance and thereby he would like a refund, there should be laws in the statute books that the refund would not be paid back to the insurer. The insured should be asked what is the new insurance company with which he intends to insure his vehicle, and that amount of the premium rebate should be passed over to that insurance company. There would not be a situation where people are driving around uninsured.

I have spoken with persons in the industry and their estimate is that possibly between 30 and 40 per cent of the vehicles on the road could be improperly

insured. By that I mean, not insured. As you know, when the previous six per cent premium tax was put in, I believe that the original intention was that one sixth of it be set aside for a motor bureau fund. It is obvious that to protect the victims of accidents where a vehicle is not insured or the driver is uninsured, this emergency safety support fund is absolutely necessary to protect victims of such situations.

To end this contribution, I remind the hon. Attorney General that with quick haste, let us put in the breathalyzer, drink and drive laws and ensure that pedestrians could be prosecuted for jay walking. I have seen situations where the traffic light is green and the school children who you think would be models and examples of behaviour watch you and say, "knock me down", and walk straight across in front of the vehicle. Cars are parked in front of pedestrian crossings. Those of you who have been to England or lived there would know that cars are not parked in front of pedestrian crossings. This means that a pedestrian who may have to pass in front of the car would be blind sided. In Trinidad and Tobago, we do not know the meaning of pedestrian crossings.

There is an article in today's newspaper about not being able to read the number plates of new vehicles. There are dark windows where one cannot tell the occupants of a car. It goes on and on. In the end, I believe that if we do not level the playing field in terms of ensuring that every insurance company is held equitably to pay its claims; set aside the proper funding and if in this proposed measure there are no supporting environmental changes in terms of the Road Traffic Act, passengers and all the supporting systems, this legislation would be another one for the book.

Thank you.

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. President, I join in congratulating the Attorney General for bringing this very important piece of legislation. In doing so, I note the point raised by Sen. Philip Marshall and it is with great concern not only for the safety and integrity of road users, but also the number of violations which continue to take place and the non-observance of normal courtesy associated with driving and our traffic laws.

As Sen. Marshall noted, the problem with number plates and the varying sizes have been occurring for a very long time. May I point out that a range of measures has been initiated by the ministry, having noted the continuous problems associated and, as such, the following measures would be in place shortly:

3.20 p.m.

1. all motor vehicle registration plates would be standardized in compliance with the law;
2. the licensing office would be the sole authority for the sale of motor vehicle registration plates as soon as we introduce the regulation within the law;
3. that the law be amended whereby it would be an offence for any person, business or agency other than the Licensing Authority to make, sell, purchase or in any way have anything to do with number plates;
4. that the engine and chassis numbers of motor vehicles should be embossed on the registration number plate where possible;
5. that the plate be personalized by having the owners purchase and/or emboss family crest or other vanity plates as such.

A full range of measures associated with the Licensing Authority will be taking place but, we would have noted deficiency in our information system and, as the Minister responsible for Transport, I am not proud about the manner in which one has been going about it. However, I have noted with great concern what has been taking place and I assure you that the measures would be instituted to ensure that this practice does not continue.

As part of our ongoing measures in our updating the Licensing Division and ensuring road safety on the roads, the introduction of traffic wardens would come into effect shortly. It would start on a phased pilot basis in Port of Spain and San Fernando with the view of an expanding traffic warden system throughout Trinidad and Tobago.

We have also noted with great concern, unauthorized billboards and as part of our ministry's ongoing measures we have been taking them down, not as fast as we would like to do, but we have started and that exercise continues as we speak.

We realize that unauthorized structures cause much hardship to the travelling public and in addition to that, they are not safe. We are in the process of building lay-bys and one has already started in Chaguanas, there is a second one on the South Trunk Road in San Fernando, and a third in Aranguez would be under construction shortly. We are also considering the introduction of a street trading act which would allow pre-designated streets throughout Trinidad and Tobago to

be used as vending points to encourage nomadic marketing so that vendors will be allowed to ply their trade and this is in recognition of their taking responsibility for themselves and their families by creating their own employment in a very humane manner. The Attorney General has already started to draw up the necessary legislation that would enact such. Our Attorney General continues to give us the tremendous support that we need. [*Desk thumping*]

It is also planned—and it is receiving the attention of the ministry at this time—that in consultation with all the local regional corporations and the Mayors of San Fernando, Port of Spain, Chaguanas, Arima and Point Fortin, and all the Boroughs to establish a centralized marketing point. One of the suggestions is that possibly on the last Sunday in every month to convert one of the major roadways to facilitate a massive market so it will allow persons who manufacture indigenous craft, using indigenous raw materials to come and market their products in a national street fair atmosphere, allowing our people the type of creativity that they have become known for throughout the world.

The complete issue of the Motor Vehicles Act is something which is receiving attention at the Ministry of Works and Transport at this time and we will continue to work assiduously with all users—drivers, insurance companies and the Licensing Authority—to ensure that we provide a very safe roadway for all the citizens of Trinidad and Tobago.

Thank you very much.

Sen. Martin Daly: Mr. President, I want to congratulate Sen. Moore-Miggins—I am sorry she is not here—for joining the illustrious band of us who gave abstention a good name. I hope her vote is not going to be taken away from her, because we see certain signs of autocracy in the conduct of Government business such as the fact that everything has to go to a vote now. We no longer talk behind chairs anymore, so I hope that her vote is not going to be taken away, and I hope they are not going to introduce voting by proxy in which case they can mark her proxy form and she need not bother to come to Parliament and exercise her judgment at all.

The reason why I make these somewhat acid remarks, Mr. President, is because I feel like abstaining on this Bill too and I will tell you why. My reasons are very similar to that of Sen. Marshall's. It is just by nature that I am not either as elegant or affable as he is, because I am quite certain, for the reason which he has indicated, we are going to have an astronomical rise in insurance payments and

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more persons dropping out of the respectable insurance system as he has predicted, to buy cosmetic insurance, that is the insurance one carries to the Licensing Office.

I am somewhat amazed with the complacency of all of our governments when I hear them talking about—and I have to be very gentle with Minister Baksh these days, we are the best of friends because he has given me an airport at last. I begged for it for so long and he has taken away the cynical name “Pride” from the cowshed and he is just talking in nice, normal, simplistic terms that I can understand about an airport, so I do not want to be ungrateful.

When I hear the Minister announcing more measures to do with the standardization of licence plates and making the Licensing Authority the sole monopolist for licence plates that is all very well, but it brings us back to the question of enforcement. When I hear the Attorney General talking about the objective of protecting victims of road accidents and so forth, my question is why Trinidad road accidents at all? And that is not an Utopian question because I know that with the same speed with which people have continued to have darkened windows on their cars, although that is against the law, they will break the law concerning standardized licence plates. So why are we saying that these measures are going to make any difference when what we are facing is a plain and simple problem of law enforcement? Sen. Marshall gave certain examples and I want to give some others.

Mr. President, depending on the time of day, only one out of every eleven cars on the Priority Bus Route has a pass displayed. I do not really care if the Priority Bus Route is made into a public road, but what I object to is making taxi drivers pay for a pass when one out of eleven vehicles is not displaying a pass. I ask, where are the policemen or the other persons who are supposed to see about that regulation? I emphasize that is on a good day, because I have done the survey on various days at different times. On the weekend apparently they do not need a pass at all. That is fine, because nobody is using the road, but let us say so and do not pretend that there is a law about it.

I would like to hear the Minister of Works and Transport talk about stones. Stones are very important commodities in life as we all appreciate, whether we speak about them metaphorically or the physical object.

3.30 p.m.

I am speaking about the physical objects. It is absolutely impossible to drive anywhere in the East/West Corridor between Kirpalani Roundabout and Sangre

Grande, without having a hail of stones dropping on the bonnet or the windscreen of one's car. I am sure that there is a law about stones. If there is not, we should have a law. Mr. President, as a result, one has two options: one could stop one's car and allow the dropper of the stones to proceed on his merry way. However the problem with that is, on average—and I drive east nearly every weekend—one would have to stop 15 to 20 times which would result in one's journey being doubled. The alternative is to execute a reckless manoeuvre in order to avoid the dropper of stones.

I am sure that the regulations concerning overloading of vehicles cover this already and that is a huge traffic hazard. I do not know if Sen. Prof. Kenny is going to speak in this debate but he will talk about the diesel fumes so I need not bother about that. I am sure that there is a law about diesel fumes. In fact, I think he read it on the last occasion. As a result, Mr. Minister, why not tell us about more measures? Let us make a long list of measures that will never be observed because absolutely no one is policing the roads of Trinidad and Tobago.

In fact, again because I am neither as elegant nor as affable as Sen. Marshall, I would not talk about the person pulling up alongside the police car drinking the beer, I would talk about the beer being drunk in the police car. That is what I will talk about! Who is policing the roads in Trinidad and Tobago, Mr. President? I would not talk about the breathalyzer—and it is not because I am over-qualified to talk about it; it is because I want to know how we are going to detach drunk driving from our national culture. There is a particular time of year when we are encouraged to get high and "jock our waist". So I do not know how we are going to detach the breathalyzer from the culture, but we will have to talk about that on a different occasion. I say these harsh things to underline the disconnect that I always talk about between what we do in the Parliament and the real world.

We are going to pass a bill that is going to rectify many of the injustices that have been perpetrated by the bad insurance companies, but who is going to pay for it, Mr. President? The good insurance companies and the motoring public are going to pay for it. As usual, in this country, law-abiding citizens are going to pay for the failure of government with a capital "G", not this Government, not the one before nor the one before that. We would have to look through the small end of the telescope to see how long governments here have not enforced the laws. We are now going to face a situation where the law-abiding citizens once more are going to pay the cost for the lawbreakers.

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I wanted to get on the same wave length with many of our leaders for a long time because I know that they misunderstand what we say on the Independent Benches, particularly because it is mis-reported. It is interesting to see our leaders talking again about discipline in the society. This debate is all about indiscipline and it is all about the astronomical cost that is going to be placed on the motoring public as a result of indiscipline which can easily be stopped by making the police do their job, inventing some other kind of police—a highway patrol—or whatever is necessary.

Anyone driving west on the foreshore on an afternoon would know that if there is an orderly line of law-abiding citizens inching their way home between 4.30 and 5.30 p.m., when one gets to the lookout or whatever it is called, those who are at the back of the line drive on the hard shoulder, through the lookout point, until they get to the traffic light and squeeze everybody.

Mr. President, I must be getting older but at least while you sit there you will understand some of the things I talk about. Do you remember “Spy Smasher”, Sir? Where is “Spy Smasher” by that Foreshore just to step out the bush when someone drives on the hard shoulder? I will tell you who “Spy Smasher” is in a little while, do not worry, younger and more—well I could say other things besides affable Senators. This does not cost any money, because the man who is hustling there, whether it is a private citizen or someone driving for hire, if he then has the indignity of having to produce his driving permit or his insurance, depending on “Spy Smasher’s” frame of mind, he would have to wait 15 minutes, half an hour to an hour—he would not do it again. It is as simple as that.

If the vehicle that is overloaded is impounded for three or four days so that it cannot haul load, he would not do it again. We do not need anything fancy. We do not need to have a monopoly in the Licensing Office on licence plates. What has happened with common-sense in government? Here we are going to have a huge cost where we would only be addressing half of the problem. In other words, if this is a piece of good government, which I am sure it is, it is unbalanced because we are not taking the practical steps to reduce road accidents, reduce the amount of money that insurance companies will have to pay out and avoid the astronomical rise in insurance premiums and the reinsurance problems about which Sen. Mannette spoke.

In the reinsurance markets in the world—and there is at least one Senator on the Government’s side who knows much more about this—we really do not enjoy

a world-class name, Mr. President. People are not very anxious to take Trinidad and Tobago's risk on the international market and all of this cost us money in the long run. Therefore, let us not have infomercials about—and this is not about this particular Minister—measures which we know are never going to be enforced.

I am becoming very concerned about these additional vehicles which this Government has provided for the police. Maybe I am just unlucky—this one I may have to explain to you, Mr. President. Do you know what is a youth drive? A youth drive is that you put the seat right back and put the steering wheel right down; you cannot see when you do that; you cannot react when you do that. Have I got it right, Sen. Gabriel? I think you are the youngest Senator here. Is that a youth drive—the seat right back and the steering wheel right down, one cannot react or cannot see anything?

Mr. President, the most recent youth drive I saw was a “tess” in a bebop cap—we cannot call it bebop now, we have to refer to Michael Jordan, although we had caps long before—a stripe jersey, one hand out the window, giving me a youth drive. Do you know it was a police car, Mr. President, and a new one at that? Why are we wasting time to have the Minister of Works and Transport talk about measures when the state of the road is one of complete and absolute abandonment of all government responsibility, with a capital “G”. This problem did not begin with this Government. There is a complete and absolute abandonment of Government responsibility. The roads of this country are not governed. I am not going to repeat what Sen. Marshall said about potholes and so forth, I am just adding to the list.

We have a situation when this Government—and now I am being specific—was in Opposition, every time the Attorney General brought a bill they talked very skilfully about implementation—Sen. Kuei Tung, I am sure remembers that. Well today, I am talking about implementation. All of this is all very well and we can pound the insurance companies and talk about the injustices we have suffered—and I agree that we must rectify those, but we are rectifying them at tremendous cost. One of the other Senators made the point that if insurance premiums go skyrocketing that may have an effect on transport cost. It depends on how many people drop out of the conventional insurance system.

3.40 p.m.

Why is it every policeman and every citizen in this country can tell you that there are stripping grounds and where they are located but we cannot reduce car

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theft? I raise this point because that, too, has an effect on insurance premiums and that, too, represents the lack of governance on the roads. Apparently, everybody knows the location of the stripping grounds, but if the stripping grounds are there, then send the police there. What is the problem? Make them remove the stripping grounds and make it more expensive to do the trade. Why do we accept that there are stripping grounds?

Then I come to my pet peeve of all. Why do we accept that we have to deem the driver the agent of the owner and take all these other measures because people are driving uninsured vehicles? I thought one is supposed to have an insurance certificate at all times and it is subject to inspection. A policeman can ask to see your insurance permit. If we had highway patrols, or if there were policemen on the roads—between catching the stones and trying to see inside the darkened windows—they could be asking people to see their insurance. But now everybody knows, so for what are you going to have insurance? The prospect of your being asked to produce your insurance unless you have an accident is virtually nil because nobody is policing the roads.

In our country everything that is bad here starts small and as a “kicks” thing, and you do not stop it because it is a “kicks” thing. Well, we went through a great deal of trouble to remove music from certain types of vehicles. Mr. President, I assure you, being air-conditioned, being “BMWd” or bullet-proofed, would not prevent you from hearing the proliferation of whistles and sirens that are now being used on motor vehicles in this country instead of horns, and some of those whistles and sirens sound like police. Your first impression is that it is a police vehicle. I am old-fashioned, so when the fellow blows the whistle and it sounds like a siren, I start to get out of the way, but nobody else is getting out of the way. As a matter of fact, the minute I get out of the way, or five cars get out of the way—I found out late in life in Trinidad what an ambulance chaser was—the minute you get out of the way for the ambulance or for the police car to pass, everybody is going in the wake and the current of the ambulance. That is the kind of lawlessness we have on the road.

So that in about three years’ time, I predict we are going to have a great debate, as great as the “boom box” debate that we had about maxi-taxis. We are going to be here sitting very solemnly trying to decide what is a siren; how to define a whistle. Well, you would make an exception for a whistle on a jouvert morning because that is a normal time to blow a whistle.

We are going to have this whole stupid process when we could stop the problem now. If the policemen are on the roads, or there are highway patrols on the roads, every time the fellow blows the whistle or lets off the siren they can pull him aside; take two hours to investigate his documents, they might catch him without insurance at the same time and it is not going to be worth his economic while to break the law. That is my point. If you make it not worth people's economic while to break the law, they will not break it. Particularly if it is a hired vehicle, he cannot afford to stand up on the side of the road while he is being interviewed by a policeman who, if he is worth his salt, would know precisely what to do.

I am going to ask the Government, for heaven's sake, start taking a serious look at what uses those—you promised it and you delivered it. It is rare in politics, but you promised it and you delivered it; you put more vehicles in the hands of the police. Some of them are the same type of car that I drive and it particularly hurts me to see that the car that I happen to like is being abused. So start checking on those vehicles. Do not start worrying about the size of the numbers on the licence plates. Start checking on what is being done with those new police vehicles; how many children they are taking to school; how many youth drive they are getting and how many fêtes they are liming outside. Let us get real about these problems and let us talk about law enforcement.

So we are bringing this huge stick down today on the insurance companies, no doubt justifiable in some areas. Do not worry, Sen. Gabriel, I would not call for a division so you would not have to abstain with me. Do not worry. We are bringing down this huge stick on insurance companies and we walk away from here and I know—especially as there is some anniversary this week so we are going to hear about the good news—we are going to hear about how many bills we have passed. Pass them “nuh”! What difference does it make? The fellow is still going to bounce you on the foreshore when you are going home today. It is still going to happen, so pass it and put it in the infomercial and say, “this has been a wonderful year for the Government because we passed a new Motor Vehicles Insurance (Third-Party Risks) Bill.” If you say, Chapter 48:51, it sounds like you have done something really good, so you can start using it. In fact, if you put it in roman numerals and you put it on the screen, it looks as though the Government is really working, and as soon as you leave home to go somewhere after you see the infomercials, all of these ills of which I have spoken are likely to befall you on the roads.

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You see vehicles on this road that are not roadworthy and should be pulled off the roads instantly. Sometimes the tyres—well they are not so bad now with the recaps and the foreign-used ones which hide the problem—but sometimes you see the rubber flapping; the cars have no lights; there are rust holes where the tail lights are supposed to be. Tail lights are not a decoration, they are an important part of safety. Nobody is policing the roads.

So to pass this Bill, laudable though it is, is not really attacking the fundamental problem. I reject the promise that it is all right to kill and injure people as long as you can make the insurance companies pay. Even in the wackier parts of Trinidad—Trinidad is getting very wacky these days—I cannot say about Tobago; we will see when we get the Tobago legislation. Even in the wackier parts of Trinidad today I do not think money will compensate a human being for the loss of a limb, or for the loss of any of the other faculties of life.

I have spent much time boring everybody with reality, but because of the huge disconnect between this Bill and what really takes place on the roads, we are proceeding on the basis that as long as we make sure the insurance companies pay, it is all right to kill and lick up people. Kill and lick up as many as you like because the insurance companies are going to pay. If that is not cynical, if it is not short-sighted, I really do not know what is.

While I support certain aspects of this Bill, I have no problem with the operational things that the Attorney General is very commendably tidying up, that is to say, making sure the place of the accident is covered, private roads, the type of vehicle, trailers. I do not have a problem with that part of the Bill; I do not have a problem with the interest provisions in the Bill, I think it is long overdue that the insurance companies become a co-defendant along with the defendant. However, if the insurance company is one of those that the paper tiger cannot bite, then making him a co-defendant is not going to make any difference, because even if you get a judgment against him, you could have an insurance company that is just as much of a straw as the defendant. So all of this is just cosmetic, really. It will remedy a few injustices, but much of it is cosmetic. I should not say, all, because that will be unkind to the Attorney General who is doing his best to tidy up all of these laws.

Then we are told, “do not worry, we are going to have a Motor Insurance Bureau”. Who is paying for that? That is going to cost us money. So you say, “all right, we are going to take care of the fact that there are drivers without insurance by having a Motor Insurance Bureau”. I say get the people without insurance off

the roads. Enforce the law! Do not tell me you are going to have a Motor Insurance Bureau and that would take care of the people driving uninsured, because that is a cost. I think the 6 per cent was for the catastrophe fund and not for the Motor Insurance Bureau, but I am not sure. Even if it is a 6 per cent increase or levy on insurance premiums, who is paying for it?

So the law-abiding citizen pays his insurance premium on a proper level and he has to pay 6 per cent to support the next joker on the road who does not have insurance. If that is not Peter paying for Paul—I am sorry, I have a very simplistic view of this Bill—then I do not understand what is. This is an enormous problem which I speak about whenever I get the opportunity and I am going to repeat it: there is a disconnect between what we do in this Parliament and the reality. I really thought about my good Friend, Sen. Brig. Theodore last night, when I saw a policeman lamenting the fact that a police building was being vandalized.

3.50 p.m.

I thought, boy, “*Alice in Wonderland*” is joke! Here am I sitting down, worrying every night about people breaking into my house or ‘tiefing’ my car; and if the police cannot protect a police building, what they leave for me? What am I to do? And there was this earnest young policeman there—do you see why young people become cynical, Mr. President?—in his little beret and so on, very upset that a police building was getting ripped off. Now does that not typify what we are talking about, Mr. President; that we are in a lawless state where reality is eating us alive, but we are passing laws and talking about “getting the bad insurance companies?” Well, I mean, what am I to do? It is really only my Maker and myself that stand between me and physical violence being done to me, or my building being ripped off.

Now, Mr. President, because we accept in such an easy way that there are people driving without insurance, we put in a motor insurance bureau; or people borrow their employer’s car to go on what the lawyers call “a frolic of their own” so we deem the driver the agent of the owner. We are simply condoning these wrongs! We are institutionalizing these wrongs because we are not attacking the wrongs, we are merely making somebody pay for them; and usually it is in the form of “Peter paying for Paul”. We are simply institutionalizing the wrongs. That is the problem. Real government and government of, what is it, “social purpose” and government of implementation would attack these problems and not the people who raise the problems! We raise the problems because we are the victims

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of them and we do not need another attack from the Government because we raise the problems of the ordinary forthright taxpayer. That is what government is about—attacking these real problems.

So, Mr. President, I ask myself: Is it possible—at the risk of offending anyone, because offending anybody does not really bother me, at least, not in this capacity—that some time in the near future I am going to drive from the north-west part of Trinidad to the south-east part of Trinidad, as I frequently do, and that on a typical journey I will not see a police being abused; I will not see the law being broken in full view of policemen? Because every time 10 out of those 11 cars pass on the Priority without the ‘Pass’ displayed, somewhere along the line there is police who presumably—I take it one has to have sight to be a policeman, so they must see it the same way I see it! Am I not going to see a police car being abused? Am I not going to have to pass a car with windows so dark that I cannot see inside any of the windows? Am I going to have stones not fall on me 15 or 20 times in the course of the journey? Am I not going to be suffocated and blinded by diesel fumes? Am I not going to observe, as Sen. Marshall has pointed out, children on the back of pick-ups, loaded or overloaded?

As a matter of fact, last weekend, I got a ‘twofer’. That is something that combines two qualifications in one. It is talked about in the American television industry. That is to say, there was a pick-up which was blinding me with black smoke. The trouble was that the way the breeze was blowing—there was a pretty little girl of about 9 or 10, sitting in the back of the pick-up—I am not sure that child was going to reach home alive, because the fumes from the pick-up were blowing towards the back of the tray and the poor child was asphyxiating there. The father had his hand out, talking to the mother, and the child was asphyxiating in the back.

Now, Mr. President, these are very real problems and we must deal with them. They are not going to be dealt with by “infomercials”, by celebration, and by talking glibly about ‘measures’. That is not going to solve those problems. So I have a real difficulty with this Bill, Mr. President, because what I foresee is not only what Sen. Marshall has foreseen, but I foresee that the cost of insurance is going to become astronomical because we are guaranteeing, by not enforcing the laws, they should assume that these levels of damages are the exception rather than the rule! What is going to happen, if we do not enforce the laws, is that these levels of damages are going to have to be paid out by insurance companies repeatedly, and then we are simply not going to be able to afford the insurance, or

many of us would be driven into the cosmetic insurance markets; and information systems in the Licensing office are not going to save us from that.

This is a question of law enforcement. Really, I was very tempted when the Minister spoke about unauthorized structures. I was sure, fairly soon, he was going to deem Piarco an unauthorized structure, or rather, one unfit for human habitation. When he talked about 'unauthorized structures' I wondered whether he would be briefing the Minister of Agriculture, Land and Marine Resources to go and remove the unauthorized structures. But that is another story which, no doubt, is outside of the purview of this debate.

Mr. President, I am sorry to take so long over this, but these are real problems which would kill and maim people, cost us money, and have severe economic consequences, if these matters are not dealt with. Therefore, Mr. President, I really have a dilemma with this Bill. I see us driving up the cost of motor insurance to the average citizen astronomically, while we are not doing anything on the other side of the ledger to deal with these practical problems which also would have the effect of compensating for the fact that the insurers have a greater liability now compensating by a smaller number of accidents. So that, I have a real dilemma with it, and I will have to consider, carefully, the fine example set by Sen. Moore-Miggins, today, on a matter of lack of consultation.

So I do urge the Government not to get vexed with us. It is really not nice to have stones peppering your windscreen, with your family in the car when you are trying to go to the beach; and have to contemplate the fact that the police cannot protect their own building. So do not get vexed with us. Do not shoot the messenger. Consider these practical problems. They have not been attended to by any government and they have got worse. Do not let us fall into the cliché of saying "we are only a year in office" and "the previous government—" These are problems that have been escalating year, by year, by year! This is not the fault of any one administration. This is why I speak about government with a capital "G".

So the Attorney General has brought a good Bill. It is a well-drafted Bill. Those of us who have been around a long time would know, perhaps, why it is so well-drafted. But it is not making any sense: it is not making economic sense, it is not making common sense; it is not making practical sense, and it is absolutely no comfort to me, when I face these problems on the road, to be told: "Well, previous governments did not address them either." I suppose at some stage, governments, with a capital "G", are going to begin to understand that, apart from all these

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highfalutin things about demographics and 'infomercials' and who puts out the best TV programme, and who communicates with the population best, we are changing governments all the time because people are really not getting any performance.

4.00 p.m.

This is not a personal attack on anybody; it is an attempt to make us, as legislators, as people who have a responsibility for the running of the society, get real. If a date is set for the law to be enforced, then the date must be stuck to and one thing cannot happen with the date out of one ministry and another thing happen with the date out of another ministry. Because if there is a communication expert, let the two ministers communicate, do not send mixed signals to the population about whether the law is going to be enforced or not. It is far better to spend communication skills on getting one's team to pull together so they do not embarrass each other and the women do not get cuffed up in the process, because that, too, is a law enforcement problem. The cuffing up of people, man or woman, in the course of law enforcement, when nobody is clear on the date on which the law is to be enforced, is also a law enforcement problem and if governments are sending out that kind of signal to the population, we would not recover discipline anywhere in the society, let alone on the roads.

Thank you, Mr. President.

Sen. Prof. Julian Kenny: Mr. President, I had not intended to speak in this debate, but having heard Sen. Marshall and having seen the response from the Minister of Works and Transport, I thought I really ought to say a few words.

I have no problem at all in supporting, in fact, congratulating the Attorney General, on this Bill, but I have this very, very deep concern at the measures which are being proposed.

Whereas Sen. Daly has referred to the potholed roads and the stones and so forth, there is something that should be a matter of concern for all of us. In the United Kingdom, the annual death rate from traffic fumes and so forth is supposed to be about 3,000. This is not from traffic accidents. That is, you live in a society in which engines are used, the atmosphere is polluted, people breathe the stuff, and it is predicted that part of the gross mortality for a year is about 3,000 people. The conditions are lung cancer, emphysema, chronic bronchitis leading to cardiac arrest.

If one takes the UK population and one takes our population, assuming that we have the measures in place, the annual MOT on the car where the emissions and so forth are tested, we would be killing, with our industrial society, about 50 citizens a year, just simply for having cars on the road. I am glad that Sen. Daly reminded us that earlier I had spoken about measures that are available under what is called the visible vapour law in the Motor Vehicles and Road Traffic Act, where one is not allowed to operate a vehicle with visible smoke, spark or flame.

Now, Mr. President, we lost a citizen of this country not so long ago and the Minister of Health came into this House and made a statement on it. Glen David, whom we all knew, at least in the image on the screen, died of asthma; the cause of death was cardiac arrest and the statement was made that he went from here to there and so forth. Chronic asthmatics do not die like that. I am sure that Mr. David paid his health surcharge over the years and because of circumstances he was denied this care. Cause of death, cardiac arrest. But no one has come out in public and said what was the proximal cause, because with asthma—and I sincerely hope that nobody in this Chamber is asthmatic—but there are causes to the condition. Sometimes its causes are allergens, sometimes it is particular material like pollen, sometimes internal hormonal effects. There is no doubt also that it can be caused by dust in factories and there is no doubt that particulate material can cause or initiate the asthmatic attack leading to cardiac arrest. So that while it is said he died from cardiac arrest, because care was not available, something actually caused that particular episode. It is tragic and to come into this Chamber to offer condolences, I find it a bit distressing that we can have something dismissed in this way.

But why do I use this line? We have two eminent engineers in this Senate and both will, I am sure, agree with me, that one does not attempt to repair fuel injection systems in a back yard, put it in a vice and hammer it and so forth. It is not done in this way. Fuel injection—as we know diesel engines use fuel injection—is something that is very complicated and requires highly trained technicians. What we are seeing in Trinidad today is not only the new foreign-used cars, but we are seeing the sale of second-hand diesel and petrol engines. We are seeing them on sale. They are much cheaper and anywhere one goes today—drive up the Eastern Main Road, Diego Martin, Maracas—one will see old beat up 280Cs and sometimes one has to back up because of the problem of visibility when they are going up a hill because one cannot see. Indeed, on occasions, one will see government vehicles going up the Lady Young Road behind a ministry of works truck where it was impossible to see the on-coming traffic because of this.

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Now, we do have an acute problem here and I insist that we will continue killing people in Trinidad because we do not control traffic emissions and the figure might not be the pro-rated 50 people a year, it might be 100 or 200, and I can assure that the critical areas, along the Eastern Main Road, the Priority Bus Route and the Valley—and the minister has the authority now under the appropriate legislation, I think it is the Motor Vehicles and Road Traffic Act, to get his inspectors who stop me from time to time to ask me for my insurance certificate, to find that that vehicle is defective because it is emitting smoke, spark and flame. It is there to be done. We do not have to wait for anyone else. So in addition to standardizing the licence plates and the other things—measuring the thread—we have to get out there and do something about testing annually all commercial vehicles at least—taxis will be a start—to ensure that they do not, on operation, emit something that is going to be killing people.

Mr. President, I know that we operate under the rule of law and, obviously, one wants to be able to prosecute people if they infringe a law. Visible smoke, flame and spark can be videotaped if need be, but the modern way of doing it is what applies in Europe and in North America where vehicles are tested; they are taken in, run and a standard is used. The standards are there; we do not need to invent them; it is established as a standard; a rule could come to the Parliament under the EMA Act and, thereafter, test the vehicles for standard and if they do not pass the standard, they are not roadworthy and they cannot be put on the road.

4.10 p.m.

It is sad, however, to note that we seem not to be moving along this route, because, as I mentioned before, we borrowed a little over US \$6 million to establish the Environmental Management Authority which is now a year and a half old. We paid 5 per cent of this to one person to set it up and it seems that now the total expenditure amounts almost to about one third of the US \$6 million.

That Act does make its mandate quite clear; it is pollution-control. Yet in that time we have seen no rules coming to Parliament. So what is happening? The only one that we know about in public is the environmentally sensitive species and the environmentally sensitive areas. After all, I mean humans are surely environmentally sensitive. I do not like driving on the roads because I have got to breathe that black stuff and I know what it does to me.

So here we are debating a Bill, which I would support, but at the same time I would like to send a very strong message to the Government, that there is an

Environmental Management Authority and it is possible under the Act for the Minister to give special or general directions to that authority to start doing what it was set up to do. One of the things it is supposed to do is to give us quality air on our highways so that we can minimize the numbers of people who are going to die of emphysema, lung cancer and occasionally, cardiac arrest from asthma.

Thank you, Mr. President.

Sen. Philip Hamel-Smith: Mr. President, I rise to join the chorus of compliments that have been directed to the Attorney General prior to the intervention of Sen. Daly. To me, the debate took an amazing turn at Sen. Daly's intervention, because prior to that we were actually debating the contents of the Bill. With his contribution, however, we have suddenly come on a collision course between all the ills that we are all very familiar with which come with using the public roads of our nation—that go back quite a while, we would admit—and the benefits that obviously the hon. Attorney General was targeting in this piece of legislation that is before us that has come in for commendation and praise.

I simply look at the situation as it is before us now, having had the contributions that have gone before, and ask myself the question: How would this debate be viewed from the point of view of the unsuspecting road-user, the traveller, who, in fact, obviously was intended to be the beneficiary of a number of the amendments that are detailed in the Bill before us?

We also heard Sen. Marshall make the statement that he thought that the Government was putting the cart before the horse. It is a question for debate, whether, in fact, taking care of all the ills of the road, taking care of law enforcement areas that were identified, are, in fact, more important, and therefore would be prevention rather than cure for so many of the accidents that plague our roads today.

However, the reality is that we have a road traffic problem; we have a high incidence of road accidents, giving rise to a whole lot of injured parties that are out there screaming their heads off, trying to use a system to recover compensation that is justly due to them. I think that it would be very foolhardy to spend time trying to deal with the cart and leave the horse unattended. We have a situation where we have a Motor Vehicles Act; we have insurance regulations in place and a number of clearly identifiable problems come before us, so we have no alternative but to see them as important to the system, and therefore, see it as very important along with so many other things, that we correct these deficiencies in the legislation

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and therefore make access to compensation more available to the motoring public that suffer injury on the roads.

The Attorney General has done an excellent job of explaining in a very explicit way the benefits to be derived from the various provisions of the Bill. I do not intend spending time repeating much of what he has said. There was one issue, however, which Sen. Daly dealt with that I thought should be cleared up. His suggestion was that a highway patrol intervening the motoring public and scrutinizing the insurance certificates that they are committed to carry in their vehicle would be one way that could eliminate the need that is now being prescribed in the amended Bill for enlarging the indemnified group. The particular clause that I think he was referring to is 4(7) which basically attempts to expand the range of persons required to be identified under the third party insurance coverage.

The provisions that we have before us propose that not just persons specified in the policy or in the certificate, for that matter—which, of course, would be those people whom the highway patrol would be able to identify if, in fact, the Government were going to act on that suggestion—shall be indemnified as now prevails, but persons driving or using the vehicle with the consent of the person insured as specified in the policy, which, of course, varies from day to day, from time to time and from trip to trip. Therefore we are talking about trying to protect the unsuspecting travelling public against an insurance company being able to get out of its cover on the basis that the person was driving without the consent of the insured.

So the intention there is quite different from the one he was suggesting, which is to have an identifiable class or identified-named persons in the certificate, the breach of which provision could be easily identified with the intervention of the highway patrol. I think it is a completely different story. In fact, I think that this particular amendment, as drafted, goes a long way in providing much awaited relief for persons who have been denied their claim as a result of this shortcoming in the previous legislation.

We have heard the expression, “Peter paying for Paul”. It sounded very good. But I asked myself: Who is Peter and who is Paul? Because if this piece of legislation does not pass through this Senate today and I were a victim tomorrow of one of the injuries that it tries to take care of, I would certainly think that I was going to be Peter in that case and the delinquent car operator was Paul.

Therefore I think it is incumbent on this entire Senate to support this legislation, notwithstanding our general recognition of the whole litany of woes that we have heard here today, about sticks and stones and diesel fumes. I think it is incumbent on us to support this legislation to get the Motor Vehicles Insurance (Third-Party Risks) Act right. It does not mean that it is not also incumbent on the Government to take steps expeditiously—and we have heard some of them identified by Sen. Baksh, but there are a whole lot more, as we know—to, in fact make our roads more safe, better governed and thereby eliminate quite a lot of the insurance claims that would emanate from motor vehicle accidents.

With those few words, I would like to implore hon. Senators to support this Bill for what it is and not for what it is not. If, in fact, the Bill has to be passed with one abstention, so be it .

Thank you, Mr. President.

4.20 p.m.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, the Government is indebted to Senators of the Opposition and Independent Benches for the contributions they have made, but I think that we should all have a common yardstick in life which must be that one must really give to the Government its due when that due deserves to be given. It should not matter what one's feeling or beliefs may be about the Government, or one's love for another side. If there is a piece of legislation which, when one looks at it objectively, regardless of what the problems may be in this Chamber, the Government should be given its due. Even if a government solves all the problems as mentioned by some of the Senators, and in particular Sen. Daly, there would still be need for a piece of legislation like this.

Mr. President, is it that Sen. Daly is saying that if there were no more stones, accidents or drunken drivers on the roads there would not be victims of motor vehicular accidents? Is Sen. Daly saying that if all those problems are solved, when a victim is awarded more than \$200,000 by the courts for his injury there would be no need for an insurance company to have to honour it if he is awarded \$500,000? Is Sen. Daly saying that there would never be need for this legislation if all the problems are solved, because the court must not have the power to award interest higher than 6 per cent when insurance companies use the funds of victims to invest for their insurance companies? Is that not unjust? Is it so difficult to detect injustices at times, yet when a government attempts to redress the injustices it is so

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difficult for one to say that the government has done its duty? Why? [*Desk thumping*]

Mr. President, I am disappointed today that Sen. Daly, an experienced lawyer and parliamentarian as he is, has introduced so much irrelevant matters in a debate like this when the issue before us is really whether this legislation is justified. If it is not justified, then one should say so. One should not just say that there is a problem of drunken drivers and if that problem is solved one would not need this piece of legislation. That cannot be plausible. One should not just say that rates will go up and be very speculative about it without consideration.

Has Sen. Daly discussed this matter with the association of insurance? Has he done any research in order to say that there are criteria for making the opinion that he has formed? With the greatest respect to Sen. Daly, I think that what he has said indicates that he has no objection to the Bill. It is because he could find nothing to oppose in the Bill that he was motivated to talk about all these irrelevant matters. However, I congratulate Sen. Hamel-Smith for stating, in effect, that the debate was going on its proper course before the intervention of Sen. Daly. [*Laughter*]

Mr. President, what is the problem for implementation of this Bill before us? Why would this Bill be difficult to implement? Who has to implement this Bill? The substance of this Bill is that the victim would be able to join the insurance company in one action. Who has to implement that? It is the victim who is injured and has to go to court. The courts would have that discretion in order to permit that to happen. Is the Government responsible, or can it seriously be said that the Government would not be able to see that it is implemented? Why do we have courts? We have courts so a victim will know—according to what is being said on the other side by Sen. Daly, and I think Sen. Marshall also—that he has recourse to file a claim against both parties. Would he not do so and go for two actions instead?

Mr. President, with the greatest respect, I think the time has come for some of us in this Senate to remove our blinkers and look at things more objectively. Let us decide to support a government in a measure that deserves to be supported, and if it does not deserve support, then criticize it and give reasons why it should not be supported. When one looks at Sen. Daly's comments, one would see that he feels that we must get real. Well, let us be real. What is the problem that Sen. Daly has identified? He said there are so many people being killed on the roads; there are

youth drivers, car thefts and squatting and he hopes the Government will do something about that. He went so far as to say that this is cosmetic legislation. Is he really serious?

Sen. Daly: Mr. President, on a point of order, the Attorney General is misleading the Senate. I never said this was cosmetic legislation. What I said was that one could get a cosmetic insurance certificate from certain insurance companies that, when one sues them under this measure it would turn out to be straws as much as the defendant who was suing. I referred to cosmetic insurance certificates. I never said this Bill was cosmetic.

Hon. R. L. Maharaj: Mr. President, with the greatest respect to Sen. Daly, I have a note here and we can subject it to *Hansard*. He said that this is cosmetic legislation.

He also said that this is a "disconnect" to what is happening here and outside. Can this really be described as cosmetic legislation? Or, can this really be said to be a "disconnect" as to what is happening here and outside?

If Sen. Daly does not know, there are many people outside there who when they became victims of motor vehicular accidents their livelihood stopped—children's education is affected; people cannot go to school; wives sometimes are tempted to resort to prostitution—while insurance companies deny people claims and lawyers collect huge sums of money to fight their cases. That is the injustice which occurs outside there. That is to connect. [*Desk thumping*]

Mr. President, this Bill is connected to what is happening outside there and I suggest that Sen. Daly should look at the court records and go to the country districts and villages to see some of the injustices which occur. Some insurance companies know about this injustice. What must a government do? Should it do like the last administration and declare its impotence to deal with it, or should a government pass law for the peace, order and good government of Trinidad and Tobago?

Mr. President: Senators, I believe this might be a good juncture at which we can break for tea. The Senate will resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.10 p.m.: *Sitting resumed.*

Hon. R. L. Maharaj: Mr. President, notwithstanding what I have stated, I think that it will still be correct to say that a government cannot close its eyes to

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the carnage which is occurring on the roads, that question of drunken driving, the violation of the laws and the fact that there seems to be much indiscipline in the society.

It is good to know that many, including distinguished Members of this Senate, think that the Government has the strength and the know-how in just under a year to be able to deal with all of these problems. As has been recognized, these problems have not come overnight, they have accumulated over a period of years. As a matter of fact, it is because there is much indiscipline and lawlessness at almost every level, that the Government has found it possible to spend much time effecting reforms which should have been effected over the years.

As the distinguished Sen. Mahabir-Wyatt mentioned, when one looks at this Motor Vehicles Insurance (Third-Party Risks) Bill, one would see how old it is—1934, and here it is we are in 1996 and we really never looked at it. One would have expected as society changed, as rules changed, as commerce expanded, the whole question of insurance risks developed and there was interaction that there would have been action concentrated, not only at looking at it, but effecting the law reforms.

Sen. Daly mentioned that it is not simple for a Government to say that it has passed so many pieces of legislation, but under our system there is no other way of changing existing laws unless new laws are passed and, therefore, laws are the only way whereby one can, in effect, improve some of the mechanisms in the country. There are things one can do on an administrative basis but when one attempts to do things on an administrative basis, sometimes one may be inhibited by the existing law. It is in this context, for example, that many of the laws that we have passed in this country in the year that we have been in Government—matters such as intellectual property rights, which is a new developing field, we had to deal with the criminal justice system which had to be reformed.

One recognized however, that these reforms by themselves cannot effect what one would expect to be the ideal or even expect short of that, but it can go a long way in trying to solve some of the problems. It is in this context I ask Senators to appreciate and try to consider what the Government is doing. The Government is recognizing that laws by themselves cannot solve all the problems of Trinidad and Tobago. Laws, if passed and if they are not implemented, would even create greater problems in Trinidad and Tobago. We are saying we need this law in order to give the victims of motor vehicular accidents some justice so that as far as the

victims are concerned, it cannot only talk justice but can deliver justice to the victims.

I feel very confident that Sen. Daly would appreciate this and I ask him not to abstain when the vote is taken. Sen. Daly seems to have been very much in practice with the youth drive and I wondered whether he was able to demonstrate the acrobatics of all that because of his practice.

Another point which has been raised by him and which is something one has to deal with is the whole question of car theft. I know that the administration is looking at certain plans to deal with that. Past administrations have been confronted with this problem and have not been able to deal with it. But there are certain plans in place in order to try to come up with measures to deal with that. I wish to give him as well as Independent Senators and other Senators, the assurance that the Government is looking at it and hopes to come up with some measures to make it more difficult for car theft to continue and to blossom in Trinidad and Tobago.

If I may deal with some of the other comments which have been made. Sen. Mahabir-Wyatt raised an important point which had to do with the billboards. From what the Minister of Works and Transport said, it seems the billboards would be a thing of the past. Sen. Mahabir-Wyatt is probably believing that she is getting so many things that she had hoped to get over the years and she is wondering whether all this is real. I assure her that this is real.

The other point that she raised is the kind of situation that we have to confront in order to find a solution. That is, if one's car is stolen and the thief who is driving that car gets into an accident and causes damage, even under this law, the insurance company can avoid liability. The reason for that is that the person who was driving the car was not driving the car with the consent or authority of the owner, he was not the agent of the owner and the insurance policy would insure the owner or his servant and/or agent as it comes within the law, that it cannot insure someone who was not authorized to drive or who was not driving the car with his knowledge and approval. It is in that context that I mentioned that we still have to deal with the problems of uninsured drivers. It is a kind of worst case scenario but it happens and there could be other instances where there are uninsured drivers. It is because of that, to a great extent, I understand that Australia and New Zealand decided that they were going also with the concept of the Motor Insurance Bureau.

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I have been having meetings in my ministry and one of the issues I want to recommend to Cabinet is that the Government goes along that route. What will also happen is that it will ensure that all victims of motor vehicular accidents are compensated and it would then put the onus on the Motor Insurance Bureau to get the moneys from the insurance companies. Also, in Trinidad and Tobago between 35—40 per cent of the cases in the High Court are what are called “running-down cases” in which people file claims for injuries as a result of motor vehicular accidents.

5.20 p.m.

If one can get out of the court system, 40 per cent of the cases would not be there and it would reduce the delays in the administration of justice. A motor insurance bureau needs the cooperation of the insurance companies, but the Government must have the political will and commitment to do it. I am saying something here and I hope that I do not get into trouble for saying it. If the effect of this law would be to get rid of insurance companies which are not good or should not be there, then as far as I am concerned, I have no problem. It would mean that insurance companies that are committed to running efficient and proper businesses in order to give people their dues would be in operation in Trinidad and Tobago.

With that kind of commitment by insurance companies they would understand that they are in business to make money but they are also not in business to deny people their just dues. They would want to get together to ensure that they can continue making their moneys, but in such a way that they do not rob victims of moneys to which they are entitled. When insurance companies rob victims of their moneys, in many cases, it is taking the lives of children and people. It is murder in a sophisticated form.

Sen. Daly: I thank the Attorney General for giving way. Now that we have had tea, would he agree that taking care of some of the ills I have mentioned would assist the reputable insurance companies to continue in business and provide good service?

Hon. R. L. Maharaj: It seems as though Sen. Daly wants me to respond to a matter—which I am unable to—to say whether it would assist the insurance companies. If there is a reduction in accidents and risks, I would assume it would mean that the risk rate would be lower. I think that on the balance of logic it should be so.

I was making the point that we need a new kind of commitment in the insurance industry. Several companies are very good and honour claims. One would not expect a company to honour a claim for \$500,000 if the law puts a limit of \$200,000. It may give an extra \$20,000. One would not expect an insurance company to honour a claim for \$1 million if the law puts a ceiling of \$200,000.

This administration hopes that it would be able to put together a motor insurance bureau so that the victims of motor vehicular accidents would get the justice that they deserve. A point of implementation has been raised. My duty is to say it as it is. I agree with Sen. Teelucksingh and it was re-emphasized by Sen. Daly, that the office of the Supervisor of Insurance needs overhauling. Insurance companies should not be permitted to deny people their entitlements and drive them to go to court to get justice.

This administration has recognized very early in its life that this problem has to be solved. Cabinet has already taken a decision for steps to be taken to reform the office of the Supervisor of Insurance, in order to have measures in place to ensure that insurance companies are not delinquent in paying claims when they should. We do not expect that this legislation would solve all the ills which face motor vehicular accidents. It is a reform measure and an implemental approach we have adopted because we cannot deal with all the problems at once. It is virtually humanly impossible.

I hope that my answer would satisfy Sen. Mahabir-Wyatt for the time being. I know it would not satisfy her to know that there are people who could lose their lives or be injured. The road can be very dark for them. All I can promise is that we shall try to bring a little more sunshine to government so there can be some sunshine in their lives by effecting the laws to deliver justice.

The point made about the breathalyzers has been taken care of by the Minister of Works and Transport. He has also indicated that the Government is going to introduce the points system. There are plans for the traffic warden system.

The point made about a traffic court—with the greatest respect to Sen. Teelucksingh who is not here now—I do not think that in relation to this issue we need traffic courts. There are traffic courts in the Magistrates' Courts. The problem is the claims which have to go to the High Court. I have dealt with the question of the motor insurance bureau. In any event, the administration of justice has been sped up to some extent in the civil area. In the not too distant future we hope to introduce alternative mechanisms for resolving disputes. We hope to have some sort of legislation sanctioned for that on a larger basis.

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In respect of the emergency medical treatment, Sen. Teelucksingh asked how that would be implemented. I thought I had explained it, but perhaps I was not clear. This figure is intended to deal with the sum of \$1,000. It has nothing to do with liability. In other words, whether or not the insurance company accepts liability for the accident, it would be responsible to pay for emergency treatment up to \$1,000 in respect of emergency medical treatment, just as they are supposed to pay \$750.00 allowance for medical treatment.

How would it be enforced? Under the Act, if the insurance company is liable or if the victim has that claim against the insurance company on a statutory basis, a reputable insurance company would not want to go to court for \$1,000. A claim can be made and the company can say that it is not paying, but if it does not pay, it would have to pay. As long as one can produce the fact that there was treatment, one would be able to get the money. The fact that the institution and the doctors would know this is a law and the insurance company would pay, obviously, they would effect medical treatment. There is no way that there can be mechanisms unless there is a state agency to pay the money and then recover it from the insurance company.

5.30 p.m.

Mr. President, if I had not mentioned specifically any of the matters that have been raised—I know that Sen. Marshall raised some of the same points that Sen. Daly raised and Sen. Prof. Kenny also raised some points on the environmental matter which are all good points, but in relation to the Bill itself, I would ask hon. Members to recognize what we are doing here and to give us support in this.

This is not really a Bill for abstention, Mr. President, this is a Bill for the national Parliament to send a signal to all and sundry that the people of Trinidad and Tobago, through the Government of Trinidad and Tobago, are taking a very serious view of the injustice being done to victims of motor vehicular accidents. This is a signal being sent that we recognize, as a nation, that an injustice to one is an injustice to all and that we feel the pangs of injustice suffered by those victims, or which can be suffered by them, and therefore, we are acting as though we are feeling that injustice and we would like to address that.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1.

Question proposed, That clause 1 stand part of the Bill.

Sen. Dr. St. Cyr: Mr. President, is that 1966 I see there in clause 1? Is it correct?

Mr. Maharaj: It is a typographical error. It should be 1996.

Question put and agreed to.

Clause 1, as amended, ordered to stand part of the Bill.

Clauses 2 to 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Sen. Mannette: Mr. Chairman, I had referred to clause 7 in my contribution and the Attorney General did not comment on it. I was concerned that there was no increase in the amount deposited in section 7(3) of the Act—it was increased in section 7(1)(b) to three hundred thousand dollars, but in section 7(3) the deposit that could be made in lieu of the security should also be increased to three hundred thousand dollars.

Miss Dolly: Is this on the list of amendments?

Mr. Chairman: What issue are you making?

Sen. Mannette: Clause 7(1)(b) increases the security that must be made from two hundred thousand dollars to three hundred thousand dollars. In the Act, section 7(3) also refers to two hundred thousand dollars but that was not increased to three hundred thousand dollars and it refers to the same provision that was amended.

Mr. Maharaj: It needs to be amended. Mr. Chairman, would it be all right if I move the amendment to section 7(3) of the Act, clause 7 in the Bill?

Mr. Chairman I beg to amend clause 7 as follows:

“Replace the words “two hundred thousand dollars” with the words “three hundred thousand dollars.”

I am much obliged for pointing that out, Sen. Mannette.

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As a consequence of the amendment to clause 7 to read clause 7(1), a new subclause (2) is inserted and should read:

“Renumber clause 7 as 7(1) and add a new subclause 7(2) to read as follows:

‘(2) Delete the words ‘two hundred thousand dollars’ and substitute with the words ‘three hundred thousand dollars’.’”

Mr. Chairman: Section 7 is amended by adding a new clause 7(2).

“In section 7(3) delete the words ‘two hundred thousand dollars’ and substitute the words, ‘three hundred thousand dollars’.”

There would be a consequential change. Clause 7 is amended by inserting subclause 7(1).

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 and 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Daly: Mr. Chairman, I beg to move that clause 10 be amended by deleting the word, “other” before the word “rate” in clause 10A(8); and insert the word, “higher”. In other words if it is that the interest is meant to either penalize people for delaying tactics or stimulate them to settle, and one has settled on the norm as being the mean between lending and borrowing, while I never like discretion being taken away from the court, I think that, “other rate” would leave the way open for a lesser rate and we should therefore say, “higher rate”.

Mr. Maharaj: Mr. Chairman, I am glad to know that Sen. Daly would like to circumscribe the discretion of the court in that way. I agree with it. Yes, circumscribe to the extent that the court cannot award a lower rate.

Mr. Chairman: Clause 10(8), in the last line delete the word, “other” and substitute the word, “higher”.

Mr. Maharaj: Mr. Chairman, may I point out that there is a typographical error in clause 10(3) which says, “Where the insurer is joined as a co-defendant under this section, or is required...”. This should read, “...and is required”.

Question put and agreed to.

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Clause 10, as amended, ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment; read the third time and passed.

Motion made and question proposed, That the Senate do now adjourn to Wednesday, November 13, 1996, at 1.30 p.m. [Hon. W. Mark]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.48 p.m.