

CHAIRPERSON: Senator Gary Winfield

SENATORS: Bergstein, Kissel,
Bizzarro, Champagne,
Flexer, Haskell, Lesser,
McCrorry,

REPRESENTATIVES: Stafstrom, Blumenthal,
Rebimbas, Carpino,
Concepcion, Conley,
Cummings, Currey, Dillon,
DiMassa, Dubitsky,
Fishbein, Fox, Godfrey,
Harding, Hill, Horn,
Luxenberg, McGorty,
Miller, O'Dea, O'Neil,
Palm, Porter, Riley,
Smith, Walker, Young

SENATOR WINFIELD (10TH): I would like to begin by reading the safety instructions. In the interest of safety I would ask that you note the location of and access to the exits in this hearing room. The two doors through which you entered the room are the emergency exits and are marked with exit signs. In an emergency, the two doors behind the Legislators can also be used. In the event of an emergency please walk quickly to the nearest exit. After exiting the room go to your left and exit the building by the main entrance or follow the exit signs to one of the other exits. Please quickly exit the building and follow any instructions from the Capital Police. Do not delay and do not return unless and until you are advised that it is safe to

do so. In the event of a lockdown announcement please remain in the Hearing Room, stay away from the exit doors and seek concealment behind desks and chairs until an "All Clear" announcement is heard. Thank you.

So we will now find ourselves on the Agenda.

(COMMITTEE MEETING COMMENCED)

SENATOR WINFIELD (10TH): Recess. [Gavel] 'Morning again. At this time I would like to convene the Public Hearing of the Judiciary Committee. It was recessed. And then we are going to stand in recess for the Public Hearing and reconvene the Committee Meeting. Further discussion?

(COMMITTEE MEETING RECONVENED AGAIN AT 1913)

(PUBLIC HEARING RECONVENED AT 55:13)

SENATOR WINFIELD (10TH): [GAVEL] I would like to reconvene the Public Hearing portion of today's events. We have several people signed up. We will begin with Judge Beverly Streit-Kefalas, there you are. Good Morning.

JUDGE STREIT-KEFALAS: Good morning. I am Judge Beverly Streit-Kefalas, Probate Court Administrator for the State of Connecticut. Thank you Senator Winfield, Representative Stafstrom, Senator Kissel and Representative Rebimbas and Committee Members

for giving me the opportunity to testify this morning regarding Thank you for the opportunity to testify regarding House Bill 5050. I must say it is difficult to testify this morning on what really after the discussion just held, seems somewhat trivial but I do appreciate the opportunity.

House Bill 5050 is a Bill that had been presented in past legislative sessions. The Office of the Probate Court Administrator supports the concept set forth in Sections 1 and 2 of the Bill to address title problems that arise when a purchase of real estate discovers there are unreleased estate tax liens and/or probate lines associated with the deceased prior owner.

I offered in my written testimony that was previously submitted some limited technical corrections in Section 1 as to affidavit evidence set forth in the affidavits to clarify and simplify the procedure with the goal of issuing the releases of such liens in an expeditious manner as possible. Specifically the language proposed for Subdivision (d)2 appears to conflate the knowledge of the petitioning property owners with knowledge of their attorney and the language regarding a heir who is "Unable to cooperate" may raise evidentiary challenges when the essential determination is simply that the heirs have failed or refused to complete the estate tax return. Revising the language as I have proposed in my written testimony may remedy these issues and I note that the Connecticut Bar Association in my discussion with it are supportive of these changes.

I also offer in my written testimony a revision as to the method of proof of payment of the proposed administrative fee to the Department of Revenue Services to ensure that the burden of providing that proof is not on the Department but rather is on the petitioner and as with my previous comments, I believe such revision will assist in ensuring this proposed mechanism is not overly cumbersome on the petitioner and property owners.

My office takes no position on Sections 3 through 43 of the Bill. Thank you for this opportunity.

SENATOR WINFIELD (10TH): Thank you Judge. Are there any questions or comments from Members of the Committee? Representative Stafstrom.

REP. STAFSTROM (129TH): Thank you, Mr. Chair and I guess I should say welcome Judge. I think this is your first time before us in this capacity. We certainly look forward to working with you on many of the Probate issues that come before us and I just want to thank you for your detailed written submission and willingness to work Bar Association on fine tuning the language for this proposal.

JUDGE STREIT-KEFALAS: Thank you for your welcome and I appreciate the opportunity to work with them.

SENATOR WINFIELD (10TH): Are there any other questions or comments. If not, thank you very much.

JUDGE STREIT-KEFALAS: Thank you very much.

SENATOR WINFIELD (10TH): Okay, next we will hear from Jim Pickett. Mr. Pickett will be followed by Paul Slager. Excuse me, excuse me, if you would hit your button so that you can be heard. Thank you.

JIM PICKETT: Okay, I'll start again. Good Morning, Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas and other Members of the Judiciary Committee. I am James Pickett and I here in my capacity as a board member of the Connecticut Defense Lawyers Association. We are an organization of over 200 civil defense lawyers in Connecticut and I am here to testify in support of House Bill 5053.

The Bill really came about as a response to 2016, Connecticut Supreme Court case called in *Marciano v. Jiminez* which construed the Connecticut General Statute Section 52- 255a, our Collateral Source Statute, and construed it in a way that created a result where there is really a windfall to plaintiffs on damages that were really never incurred. The law as currently drafted *Marciano* held that the entity paying the medical bills, if they have a lien on the case then there is no post-verdict collateral source reduction at all for defendants.

So, for example in a case involving a Medicare lien or a self-funded ERISA plan, and there is \$100,000

dollars in medical bills charged and awarded, the jury gets those full sticker price of the medical bills as part of the case in chief but the doctors have only accepted \$30,000 dollars as full payment and are in fact prohibited from balance billing for that other \$70,000 dollars this Marciano Court said well the defendants cannot get a post-verdict collateral source reduction for those \$70,000 dollars of damages that were never even really damaged. So the Bill we have before the Committee changes that so that those right-offs or adjustments in cases involving liens end up being a collateral source reduction after the fact. So the defendants do not pay a dime less than the full amount of the medical bills that were in fact incurred in the case.

So there may be, I know there is opposition to the Bill and, you know, there is an economic interest there. The Marciano Decision certainly increases the value of cases because defendants don't have that opportunity to say well it's not really \$100,000 dollars in damages it's only \$30,000 dollars and in fact the doctors cannot charge for anything over that. So thank you for listening to me.

SENATOR WINFIELD (10TH): Thank you. Comments, questions from Members of the Committee?
Representative Fishbein.

REP. FISHBEIN (90TH): Thank you, Mr. Chairman.
Good Morning, sir. I, you know, this is an area

that I used to practice in so I have some knowledge in this area but just so that I'm clear and, you know, perhaps for the public and the Members of the Committee the difference between the two, the \$100,000 dollars being the total but we are talking about 70 or 30, the fact that only certain amount of those bills was paid never comes before the jury, that is something that happens after, after the trial. Is that clear?

JIM PICKETT: Yeah, that is correct and in fact, there is another Statute that comes into play here, Section 52-174 which was Amended a few years ago to in response to a situation that had come up amongst the Superior Court decisions where some Superior Courts were saying that okay, we're going to look at that phantom damages for lack of a better word, that \$70,000 dollars that was never had to be paid, we going to look at that up front and so we're only let the \$30,000 dollars go to the jury and then 51-174 was amended to say the full sticker price of the medicals goes before the jury leading everyone to believe that the \$70,000 dollars would be dealt with a post-verdict hearing which was the attempt in the Marciano case but the Supreme Court said, no if you look at that, the actual language of the statute it says there is only collateral source reductions in cases that don't involve liens. So, you know, a good percentage of personal injury cases involve liens because the payor of the medical bills is Medicare of a self-funded ERISA plan which have valid or, you know, federal statutory liens so they kind of left the defendants stuck. So you have 52-174 amended to say the full sticker price goes

before the jury and then Marciano comes along and the defendants are out of luck in the post-verdict hearing.

REP. FISHBEIN (90TH): And you specifically address cases that have liens but it is my understanding that a Letter of Protection sent by counsel to a treater is that held at the same, the same fashion as a case that has a lien?

JIM PICKETT: No, I don't think it is. Yeah, it's, this only deals with cases involving liens and the collateral source Statute for lack of a better word, you know, you have medical payors that have liens, Medicare, ERISA plans and then you have call it regular health insurance. The collateral source statutory structure works in that situation so that if it is regular health insurance, there is a post-verdict collateral source hearing but it really only comes into play in relatively larger cases because the claimant will get an offset for health insurance premiums. But Letters of Protection I don't think have a bearing at all. So, you know, a plaintiff could choose not to go through health insurance and go through a Letter of Protection and that would not be affected by this proposed Bill.

REP. FISHBEIN (90TH): Okay, thank you. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Thank you. Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair. A couple of questions. So really one question, I guess would be so there is no dispute that the medical provider has a right to charge these rates, they are the bills, correct?

JIM PICKETT: There is no dispute that they can, I suppose a medical provider could bill anything they want really.

REP. BLUMENTHAL (147TH): And so I guess what is happening is that in essence someone has negotiated whether it is, some payor has negotiated these bills down, correct?

JIM PICKETT: Yes.

REP. BLUMENTHAL (147TH): I guess the question would be why should it be the defendant, the wrongdoer who should get the benefit of that negotiation reduction? If anything shouldn't the provider be able on the other end if we're gonna do something like this, be able to actually receive the full compensation for their services if they have a right to charge and they did charge?

JIM PICKETT: Will I think having the provider get the full sticker price of their charges would be a disaster. I think if you look at any medical practice the way, I mean it's not a true, it's not a true market, right with how medical bills are charged. You know you go into a doctor's office; they don't have a list like you have when you go to

a car repair shop about what their hourly rate is, how much they charge for different services. People go in to get medical treatment right and then they get their bill and they say, oh the doctor charged me \$1,000 dollars, insurance paid \$400 dollars and there was a write-off of \$500 dollars and I have a co-pay of \$100 dollars. So, you know, I think you have to look at it with your example about, your question about maybe we should have the doctors get paid more. I mean that would totally upset the economics of how things work in compensating doctors. The reality is that we have a statutory scheme called Medicare. Medicare has, you know, a certain schedule. Doctors can chose to provide for Medicare patients or not and they take that schedule and within the Federal Statutory scheme there is an anti-balance billing statute that doctors cannot bill for it and in fact we have, there is also an anti-balance billing Statute in Connecticut, I can't remember the cite of it, I think it is somewhere in the 20s but it says that if a doctor has an agreement with a health insurance company or whoever is paying their bill to take less than full amount of what they charge, they cannot balance bill the plaintiff for it so the reality is that the sticker price for the lack of a better word for medical services is, you know, I don't think anybody pays the sticker price.

REP. BLUMENTHAL (147TH): And wouldn't the jury know that?

JIM PICKETT: No, they wouldn't. They wouldn't, in fact if your look at 52-174 which was amended a

couple of years ago, maybe a few years ago, pretty recent it says the full amount of the bills go to the jury and the fact that the doctor accepted a lesser amount, you know, whether it be out of his good graces, which is probably pretty rare but more often because of the agreement he has with the health insurance company and agrees to be a provider in their network that can't come to the jury.

REP. BLUMENTHAL (147TH): Right, but jurors bring their daily life-experience to the jury and they all receive healthcare right, so wouldn't they have seen bills and understood that their insurance companies are not paying the full sticker price and aren't they free to evaluate the evidence to reject or accept evidence as they see fit?

JIM PICKETT: Well, you know, the jurors are going to be instructed to decide the case on the evidence that is presented to them and the example that I gave the evidence that is presented to them is \$100,000 dollars of medical expenses incurred by the plaintiff, that's it. There is no other evidence before them and they are instructed to award that amount if they find that it is connected to the subject accident.

REP. BLUMENTHAL (147TH): I appreciate your answers and I guess I just make one comment which is that we've heard from a number of witnesses each year, I've only been here this is only my second year, but we hear about the Marciano Decision and I think it is not really a fair characterization of our

collateral sources set-off rules to say that it was the Marciano Decision that somehow out of the blue made this situation what it is. I think Tort Reform I and II in both of those processes this issue was heavily negotiated and, you know, if we want to reopen that negotiation that will bring a lot of other things into the discussion but I don't think it is fair to say that the decision came out of nowhere or that it is not reflected in Statute that was so heavily negotiated in those processes. Thank you very much for your testimony.

JIM PICKETT: Thank you.

SENATOR WINFIELD (10TH): Questions or comments from members of the Committee? Seeing none, thank you very much for your testimony.

JIM PICKETT: Thank you, very much.

SENATOR WINFIELD (10TH): We will hear next from Paul Slager, followed by Jim Daugherty.

PAUL SLAGER: Good Morning. Thank you Senator Winfield, Representative Stafstrom and other members of the Committee. Just let me introduce myself, is the light on, it appears to be on to me?

SENATOR WINFIELD (10TH): You're good to go.

PAUL SLAGER: I don't want to shout at you if it's not. My name is Paul Slager. I am here today

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testifying on behalf of the Connecticut Trial Lawyers Association and in my capacity as the President of the CTLA and we represent, we have over 1,300 members who represent people in Connecticut Courts largely in personal injury cases and this is an issue of some importance to our members. And I speak today in strong opposition to the proposed Bill 5053 which you just heard from my respected colleague on.

And if I may start, I would like to start where Representative Blumenthal ended because that is what I wanted to talk about today which is this Bill, this proposed Bill 5053 really seeks to change or turn upside down Collateral Source Law as it exists in Connecticut. The *Marciano v. Jimenez* decision which you heard much about in which there were some questions about really just interpreted the plain language of a very heavily negotiated piece of legislation that was a result of prolonged, protracted discussion by this General Assembly. It was not a revolutionary decision, it simply said that that statute says what we all think it says. So there is nothing revolutionary or new about *Marciano* and I think that is a very important point because as Representative Blumenthal pointed out if we are going to reopen the discussion this law, this law which is 52-225a that people want to reopen now with House Bill 5053 actually was a huge setback for plaintiffs in this state.

Before that Bill was passed there was no right, there was no subrogation right at all, no collateral source right at all regardless of subrogation

rights. It was a big setback so if we're gonna, and this all changed in 1986 with Tort Reform I which is when this legislation was, came to be. It should be noted that legislation was the subject of much push and pull and that push and pull involved not just this issue but a whole host of other issues and I agree with what Representative Blumenthal said which is if we're gonna reopen that, I mean our position would be this, that there should be zero collateral source set-offs, under any circumstances and that this was a very costly measure for people who are injured in Connecticut. So without reopening everything to pull this one little piece of hay out of a very large convoluted complex haystack is really a very unfair way to revisit legislation such as this. So that is the first point I want to make.

I also want to say that that if you look at the, just the equities of this, and Marciano did visit the equities of this. What the equities of his law as interpreted by Marciano essentially states that the person who, if I may just finish my sentence, and tell me no, if you wish, but the people who procure insurance either by buying it or by earning it are the ones who benefit under the current legislation as opposed to the tortfeasor and I think that is a very important principle and just generally good policy. I am happy to answer any questions.

SENATOR WINFIELD (10TH): Representative Fishbein.

REP. FISHBEIN (90TH): Thank you, Mr. Chairman.

Morning, sir. If you could just bring me through this story matter goes to the personal injury case, matter goes to trial. The plaintiff, the injured person is awarded \$100,000 dollars for their damages, their physical damages. There was \$50,000 dollars of medical expenses and \$20,000 was paid by health insurance through and ERISA plan and there is a lien. How does the collateral source work given that scenario?

PAUL SLAGER: So as long as there is a subrogation right and I believe the hypothetical scenario you just described there would be a subrogation right by that health insurer if it is an ERISA funded plan. As long as there is a subrogation right pursuant to the statute and in Marciano which interpreted the statute, there would be no collateral source reduction under that scenario.

REP. FISHBEIN (90TH): Okay and assuming that there is no subrogation right and the medical bills were \$50,000 dollars and the medical insurance had paid \$20,000 how would the collateral source work.

PAUL SLAGER: Then there would be collateral source.

REP. FISHBEIN (90TH): And what is the computation, who gets \$20,000 dollars, does somebody get \$50,000?

PAUL SLAGER: So under the scenario you just outlined where there is no subrogation right there would be a setoff, there would be a hearing after the verdict, after the judgement is entered and

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there would be a setoff for that amount. The idea again, the policy behind that is again if someone has procured insurance they should be the beneficiary of having procured it as opposed to the tortfeasor whose the wrongdoer, who's caused the injury.

REP. FISHBEIN (90TH): So the setoff, you have to have something to setoff so \$50,000 dollars in medical expenses, \$20,000 dollars paid by the health insurance what is the setoff? What is setoff against what? How does that work?

PAUL SLAGER: So under your scenario there is a \$50,000 dollar award for economic, for medical bills?

REP. FISHBEIN (90TH): Yes.

PAUL SLAGER: And \$20,000 dollars of that was actually paid?

REP. FISHBEIN (90TH): Yes.

PAUL SLAGER: So under that scenario then the defendant who the verdict was charged against would get a credit for the amount paid.

REP. FISHBEIN (90TH): What happens to the \$30,000 dollar difference.

PAUL SLAGER: The \$30,000 dollars, they would get a

credit for that \$30,000 dollars.

REP. FISHBEIN (90TH): Who could get a credit for the \$30,000 dollars.

PAUL SLAGER: The defendant, the tortfeasor.

REP. FISHBEIN (90TH): Okay, but there was \$20,000 paid.

PAUL SLAGER: Correct.

REP. FISHBEIN (90TH): Okay and they are getting a credit against the what was awarded?

PAUL SLAGER: So what happens in practice is there would then be a hearing after the trial where the judge would reduce the verdict by that amount.

REP. FISHBEIN (90TH): Okay and that's the present case?

PAUL SLAGER: The present case.

REP. FISHBEIN (90TH): Yes based upon the Marciano decision.

PAUL SLAGER: You mean the current state of the law?

REP. FISHBEIN (90TH): Yes.

PAUL SLAGER: Yes, correct.

REP. FISHBEIN (90TH): Okay and that is the process that you are advocating to keep?

PAUL SLAGER: Yes, I am advocating to maintain status quo on this.

REP. FISHBEIN (90TH): Okay and if you could just, you heard the speaker before you, the testimony, how would that scenario work under what they are advocating for?

PAUL SLAGER: What they are advocating for, that same process would also take place if there were subrogation rights, that is the difference. So the attempt here, the attempt that is being made here now is to not give the benefit of someone who has procured insurance. In other words when you have subrogation rights that means that you have prepared insurance under this and they would like to take that away.

REP. FISHBEIN (90TH): Okay, all right. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Thank you, Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair. So just on the point related to the benefits of insurance and the policy benefits, so if you don't

have insurance are you often charged the sticker price for your medical bills?

PAUL SLAGER: Well, it's interesting because you asked the question or perhaps it was the last speaker, or the last person to testify, who said no one pays the full amount of the medical bills. The truth is and it is an unfortunate truth within our society the people who pay the full freight on medical bills are the uninsured and the people who don't have that sort of leverage to negotiate. So in a situation that you're asking about you do pay the full medical bills so people who don't have insurance, who don't have insurance coverage for a particular procedure pay what the doctors charge. And I find it interesting that the entire argument made by proponents for House Bill 5053 rests on the suggestion that doctors and other healthcare providers somehow fraudulently escalate the cost of healthcare, I think it is an offensive suggestion and I hope it is not true.

REP. BLUMENTHAL (147TH): Thank you.

SENATOR WINFIELD (10TH): Thank you. Other questions from other members, comments? If not thank you very much.

PAUL SLAGER: Thank you very much, appreciate it.

SENATOR WINFIELD (10TH): Next is Jim Dougherty followed by Lou Luba.

JIM DOUGHERTY: Good Morning, my name is Jim

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Dougherty and I am an attorney that primarily practices in the area of Estate Planning and Estate Administration and I am here today on behalf of the Estate & Probate Section of the Connecticut Bar Association to support this Bill 5050 which is substantially similar to the Bill 941 that was passed unanimously out of this Committee in the past session. So thank you to the Committee for taking up this important Bill again this session.

In regards to potential technical corrections to the Bill, I just want to associate myself with the comments made by the Office of the Probate Court administrator as she mentioned it has been a pleasure working with her on this and we have agreed upon draft language which we will submit to the Committee.

What I hope to do with my testimony is explain what the problem is. This is a very technical Bill but addresses a common problem and it gives a practical solution to it. To understand the problem you have to understand the liens for Estate Taxes and Probate Court fees and there are three distinctions about this lien from other liens that make it a problem.

First when people hear estate tax they think high net worth individuals. The Estate Tax lien applies to all estates no matter how big or how small.

Second, usually liens are triggered by a debt being owed, that is not the case with this lien. It is not a debt it is just simply the death of an individual that makes this thing come into effect.

And third, both the estate tax lien and the Probate Court fee lien is a silent lien. No actions needed; nothing is put on land records so it often does get missed. A common scenario where it does get missed is when you have a property owned by spouses and it passes by right of survivorship where these liens could be on the property and cause title issues. The problem is under current statute, this is only one way to clear the lien, to file an Estate Tax Return and file in the Probate Court. The lien could only come to light decades after the death of the decedent, long after records that could be needed to file these returns are gone. This means it could be actually impossible under current law to clear these liens or if they can be cleared it can be extraordinarily costly and again it applies to all estates large and small.

So this Bill provides a solution and as I pointed out in my written testimony as did the Office of Probate Court Administrator this doesn't provide a work around or alternative to the current way of properly filing any estate tax return and Probate Court Fees. It only applies to estates that the decedent has been dead for over ten years and where the information is not available and there is no tax liability. There is also perfect alignment here to the interest of the State to make sure it is paid as well as individual trying to get proper title because there will be an Administrative fee \$200 dollars paid to the Department of Revenue Services as well as insuring Probate Court fee that has otherwise gone unpaid for years will actually be settled up. So what this legislation does is it

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makes something that is currently impossible, possible, reduces costs greatly to be able to clear these liens. This section is also supportive of Section 4 of this Bill which clears automatically all succession liens. The succession tax has been repealed as of 2018, it is no longer enforceable even for those that did owe it but there is no mechanism to clear it, so we support those. I am happy to take any questions.

SENATOR WINFIELD (10TH): Thank you. Questions, comments from Members of the Committee?

SENATOR BIZZARRO (6TH): Thank you, Mr. Chairman and thank you very much for your testimony. Just some general commentary as a real estate practitioner I think I offered these comments last year too. This is a very real problem that occurs. We come across these situations a lot more than real estate practitioners would like and we're put in an awkward position, some of the things you mentioned about not being able to track down information which will allow us to clear the liens and also I've been in situations before where I will have to file something on behalf of somebody that I knew nothing about, so it's a real difficult position. And it typically will come up when somebody is trying to buy a home and this lien is discovered during the course of the title search process and it's, if you are a first time home buyer the last thing you want to hear is, you know, when you've already gone to *Bed, Bath and Beyond* and you've got a million things being delivered the last thing you want to hear is we can't close for a couple of months cause we've

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got a Probate lien and we've got to find somebody who, you know, passed away several decades ago. So I think it is a very good Bill and I would urge support for it.

SENATOR WINFIELD (10TH): Thank you. Representative Smith.

REP. SMITH (108TH): Thank you, Mr. Chairman. Good morning and I would echo the comments of my good friend the Senator who just testified. This is a routine problem so for those on the Committee that don't practice real estate you should be aware of this. This is an important Bill for those who do practice real estate. Trying to find the value of assets of somebody who died 40-50 years ago just to clear title to an estate is nearly impossible. I myself have been working on this very issue on an estate for the past 2 years because it's not only the one person who died but there are several people who died in the chain and we have to get releases from all of them. If you could just go through the mechanics of how that would clear this up because it has delayed a sale for two years right now and I'm still going through the Probate Court. Now, we're almost there, we're getting there. There is a procedure to do it, it's honestly, you know, you're guessing on what values were and what that particular decedent had back in 1972. So if you could explain the Bill in more detail how it actually clears title, what needs to be done to clear title?

JIM DOUGHERTY: Absolutely and the experience that

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you've both shared is a common one that attorneys throughout the State are experiencing and have been experiencing for a while. Cause right now as you said, you have to do some detective work, you have to try to dig up old records from somebody that chances are unrelated to you who died decades ago to find what the value of their property was and it is not just the real property you need to know what was in their bank account when they died, did they own a car, what was the value of that at that time. It really is putting somebody in an impossible situation and remember when you file tax returns and submit things to the Probate Court the person signing is signing under penalty of perjury. So they are having to represent information that at best, even with good detective work and high legal fees, their guessing. What this new mechanism provides is, it will be a petition to the Probate Court, an affidavit has to be submitted to support that the requirements of this proposed legislation are met. That is that the person has been deceased for more than ten years, that lien that they are trying to clear that there have been no Probate proceedings, that they didn't use probate resources previously and trying to get around it. No tax return was filed, that no taxes have been assessed so making sure that the interest of the State that are intended to be protected by the lien are in fact protected by the lien. They will then report the assets that they do know of but importantly they will be reporting the value of the real estate and at that point the Probate Court will be in a position to charge a fee and it will be the petitioner. It is not the decedent, the one who ultimately owed it, their estate or the heirs will

be paying it, it is the petitioner just trying to get clear title. Paying that fee including interest charges as well as a \$200 dollar Administrative Fee to the Department of Revenue Service so they can confirm that no taxes were owed.

So the affidavit is solely the target of the petitioner proving that the interest of the State is protected, this this is not in some way facilitating the ability to avoid proper Probate and tax filings along the way and at that point the Probate Court will be in a position to issue the Release of Lien and that can be filed on land records and clear title. And just add one comment the experiences that you've addressed, I mean I've seen these things firsthand; I've clerked in the Probate Courts myself. I am a fourth generation Trust and Estates Attorney back in my hometown of Greenwich and even though my family has been practicing law for 90 years we are clearing title for transfers and deaths that happened before we were even practicing. That's how far back these go. So this really does provide a useful practical solution to a problem that anyone who has practiced real estate law comes across because at some point real estate was owned by somebody who died and these liens came into effect.

REP. SMITH (108TH): Well thank you for the response and just to clarify a little bit. So if someone died ten years ago and obviously they held some real estate in their name at one time, is it the responsibility of the petitioner to also find out if there were other assets besides the real estate or just list the value of the real estate

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whatever year it was?

JIM DOUGHERTY: Realistically it is going to be targeted to just the value of the real estate because that is what they will be able to find. But they are still required to do the due diligence to see if they can obtain the record because it may be possible to do so. So for example you have a married couple, one dies, property transfers to the surviving spouse and they die, say 15 years later, the records may be available to go ahead and properly file because it is the same family, maybe in today's day and age proper, we are not relying on just paper files that could be found but chances are it is going to be the real estate and also it applies to multiple parts of the real estate. So if someone died owning two pieces of property in the State they would be able to go through all at once and get these cleared.

REP. SMITH (108TH): And after due diligence if they are unable to find the other assets or any other assets, they just sign an affidavit to that effect?

JIM DOUGHERTY: Correct. They still have the responsibility to do due diligence that I can tell you a lot of times when you can track down the heirs which could be the children or the grandchildren of that deceased person who caused this title issue they have no interest in assisting, right. At that point they have got what they were going to get from their parent's estate, they have no interest in getting involved with this, so it still requires the

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level of due diligence on the part of the petitioner. This is really meant, when it is impossible or cost prohibitive to clear title providing that alternate means.

REP. SMITH (108TH): If I am a petitioner, you know, I get called and say it's an attorney who represents somebody and I file a petition on behalf of the client or the client files the petition and I'm doing the paper work and we reach out to the heirs and beneficiaries, we track 'em down, they say just what you said, listen you know it's a vacant lot, we're not interested, we now live in Las Vegas, you've heard the story. So the petitioner then just has to sign the affidavit that they reached out to them and was unable to find a value or find any other assets and that would be enough to clear title?

JIM DOUGHERTY: Correct. One of the nice things about the Statute especially after it undergoes my technical revisions is the Statute spells out exactly what the affidavit needs to attest to which is good for both petitioner as well as the Probate Judge and the court that needs to consider it. It would be very easy to go down the list and make sure that this estate is in fact eligible for this procedure and not simply looking for an alternative means to do what they should properly, what that estate should have properly done.

REP. SMITH (108TH): Just one last question, Mr. Chairman, the interest that you referenced in your testimony so the interest is on what?

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JIM DOUGHERTY: Sorry, the interest on?

REP. SMITH (108TH): That's my question. So you said there would be interest charge going to the State, you know, someone died in 1970 and they never filed the estate, I guess there is a certain fee that may be due, is that the value of the real estate if the State was exempt, is there still interest? I'm just trying to get to what you're talking about.

JIM DOUGHERTY: Sure, so it would not be related to the estate or succession tax because any estate that owed it would be ineligible for this procedure, it would be for the probate fees that would have been owed. Connecticut is a unique State in the way our Probate fee operates that it applies to probate and non-probate property so even real estate that passes out by the probate process is subject to the Probate Court fee and interest would be owed on that and the interest is set out in Statute.

REP. SMITH (108TH): All right, thank you for your testimony and again in encourage the Committee to hopefully move this Bill along when it gets to us for a vote, it's a real issue for the real estate practitioners. Thank you.

SENATOR WINFIELD (10TH): Thank you. Others? Seeing none, thank you very much for joining us. Before Lou Luba comes up I see that we have been joined by Representative Klarides, if you are ready to testify we'd be happy to have you. Good Morning.

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REP. KLARIDES (114TH): Good Morning. Thank you Chairman Stafstrom, Chairman Winfield, Ranking Members Rebimbas and Kissel, thank you for getting me in on this Bill. This is Bill 5056: An Act Concerning the Unlawful Dissemination of Intimate Images. You've seen this before, so it's nothing new. You were very kind to get this out of Committee last year as you know how important of an issue this was and I know the Senate took it up and passed it. But for whatever reason the House didn't and hopefully that will change this year.

It is an identical Bill to the one that you passed last year out of here and very simply what it does it increases the penalty for nonconsensual dissemination of intimate images to one or more persons by an interactive computer system or telecommunications service or information service from a class A misdemeanor to a class D felony and we have come to know this very often as "revenge porn."

I was supposed to be testifying today with a constituent who reached out to me to this issue. This woman was dating somebody for a while and this person whom she was dating subsequently took pictures of her. This person has subsequently been charged with voyeurism and dissemination of nonconsensual images. Some were consensual, some weren't but there was certainly voyeurism involved in this also. She ended up not testifying because as you can imagine this is a very traumatic experience that somebody went through but she wanted

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people to understand the experiences she had and why she believes, number one the penalty should be greater than it is now but also, number 2 she had experiences with law enforcement that weren't really aware that dissemination was a crime.

You know, in these situations unfortunately the action happens to you. You often times are not aware it has happened to you until these pictures show up someplace. So that is a traumatic event in the first place. Then you have to go to the police and then you have to show them and that is a traumatic event and then after a bit it goes to trial and then those pictures have to be shown and everywhere along the way, with the victim advocate, with court personnel, with other people that you see. These images have to continuously have to be shown and then your family sees them, and your loved ones see them and then your coworkers see them so this has caused a lot of emotional distress as you can imagine for a lot of people.

I was very proud many years ago when I first got elected to have been part of an initiative that passed one of the first voyeurism bills in the United States of America and at the time it was a big argument in this Committee as to whether we needed that or not which was interesting because times change so quickly that within a year after we passed the Bill and at the time I wanted it to be an Class A misdemeanor and then a D felony for dissemination because we all realize the dissemination is really the issue cause that's when it becomes real to you when other people know about

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it. And this isn't 1970 anymore when you are going to take the picture and where are you going to put it, *The Hartford Current*? You know, you're not, we didn't have the avenues to put these pictures out and disseminate them and now within a split second and the click of a button these pictures can go all over the world and everybody can see them.

So within the year that we passed that voyeurism bill we came back and there were so many arrests in this State and charges of this voyeurism statute that I brought it back to this Committee the next year, so less than a year after, and I know Senator Kessel remembers this, it passed in a split second because it became so real when you realized it could be your wife, or your daughter, or your niece, or your friend or your cousin and we saw them in the news day after day. So I think it is just as important in this situation for there to be clarity with law enforcement officials and show that this really is a serious crime and it is effecting people in that way. I mean if somebody goes to a police department and they're told there is nothing we can do about the dissemination in this day and age there is a problem. So I am asking you to consider this again. I thank you for doing it last year. I am hoping we can do it again this year. And I will just give you one last statistic.

In 2019 the Cyber Civil Rights Initiative group said 1 in 10 people are potential victims of this nonconsensual dissemination because as we all know kids in high school and younger are doing this kind of thing every day. They are sending pictures, they

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are sending texts, they are doing all sorts of things that we all know in our ripe old ages that you shouldn't do but they are doing it and those pictures are being sent on and every time you send something you never know where it is going. And I think we as policymakers have to make sure that we take this in our hands and show by making policy and by making law that this is as serious as it is. Thank you.

SENATOR WINFIELD (10TH): Thank you. Senator Kissel.

SENATOR KISSEL (7TH): Thank you very much, Mr. Chair. Madam Minority Leader, I appreciate your testimony. I do recall things move so fast and I notice that this year this Bill is a House Bill so hopefully the House will take it up and then ship it up to us since we passed it last year I'm sure it will just sail right through. So it's a really good measure, it's timely and as you indicated this is more and more prevalent with the advances in technology and young people they just don't get it that something that they just are fooling around can come back to haunt them years down the road and really ruin their lives and it's most extreme. I recall last year that there's some people that actually if they are caught up in the law enforcement process state's attorneys have indicated that some of these people felt so upset that they were contemplating suicide because this is just so damaging to a person's self-image and self-worth so I really appreciate your testimony. Thank you.

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SENATOR WINFIELD (10TH): Thank you. Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman and good morning, Minority Leader. Just want to take the opportunity to obviously thank you for allowing your constituent to have a voice up here. I think that is so important as Representatives that we certainly listen to them but are able to articulate their situations and concerns in order obviously for the Committee to deliberate regarding the proposals that are before us. I just wanted to thank you for them.

SENATOR WINFIELD (10TH): Thank you. Representative Smith.

REP. SMITH (108TH): Thank you, Mr. Chairman and good morning. Was interesting, you testifying about this Bill today cause, you know, first thing I do when I get up in the morning is read the paper and one of the articles in today's *Danbury News Times* was Newtown man arrested for sending his ex's explicit photos and videos to many, many people. So when you started testifying on the Bill, I mean like wait a minute we have a Bill already but now I realize that you are looking for a stricter penalty, I can see why. So it has become prevalent obviously. I do recall one of the concerns I had initially when this Bill came up, it was mainly about the younger folks in high school who do it not thinking, you know, I'm just gonna send this out and, you know, he or she will learn from this and, you know, that will teach him or her and then all of

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a sudden they are looking at a criminal record. What I understand we have juvenile proceedings and there are programs available for those youngsters who follow this law. So, I think it is serious. It can be as Senator Kissel indicated so damaging to a person's reputation, image, self-confidence to have somebody actually send. You just think about a person if something were to happen to, you know, any one of us, if that were to happen to us how we would feel. So I can't imagine it but I am sure it is devastating so I appreciate you coming to testify and bringing this to light again and hopefully we can get it over the finish line this time.

REP. KLARIDES (114TH): Thank you, Representative and I'll just add that there's so many different fact patterns that this could fall into. Just this one in particular was a consensual adult relationship. They had been dating for a while and at one point she loaned her boyfriend some money and a substantial amount of money and then when he wasn't paying it back she was, they would have conversations about when do you think you will pay this back and at a certain point he started threatening her with the pictures to show her son, to show her family, you know, and then disseminate these pictures and at this point these pictures have been disseminated at least 30 times just in this circumstance. So I mean there's so many different, there is such a range of circumstances that can happen but fortunately in this day and age of technology when we are so lucky that we can sit there at our computers and iPads and just not lug along the Statue books all over the place and hit a

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few buttons, there is a downside to it too and we know that your every thought and your every vision and every idea you have its public but it is, things can be made up in a second and things that you don't know about and certain haven't consented to be all over for the world to see.

SENATOR WINFIELD (10TH): Thank you. Comments, questions from others? Seeing none, thank you very much for bringing this before us again.

REP. KLARIDES (114TH): Thank you.

SENATOR WINFIELD (10TH): Next we will hear from Lou Luba.

LOU LUBA: Good Morning, Mr. Chair, Members of the Judiciary Committee. It is an honor and privilege to be before you here again and it is quite an honor to be following the Minority Leader and her support of the Raised Bill 5056. I am here on behalf of the Division of Criminal Justice and the Chief State's Attorney speaking on behalf of the Division in asking a favorable report on Raised Bill 5056.

I was here last year before the esteemed Legislators and this Committee in support of the Senate Raised Bill 843 which is the exact same language as provided in Bill 5056. I had the privilege of being a prosecutor involved in the main case that is the main impetus between the Bill here, the *State v. Christopher Lamb* that we actually have the attorney here for the victims that will be speaking to the Board, to the Committee here shortly after I finish

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and would just like to state that most of the comments that we would have, have already been provided to the Committee by the written testimony by the Division as well as the research and statistics that we use in support of this Bill.

Again as this Board may remember, as the Committee may remember that the *State v. Christopher Lamb* involved the victimization of 20 young females were victimized for a period of five years that their lives were ruined because of a single act of one defendant who tormented them over a period of five years. As Madam Minority Leader had previously stated that this crime has expanded and now beyond the traditional realm of involving juveniles, and teenagers and young adults into the realm of adults now being victimized that we hear everyday victims, actors, actresses, even legislators who've been victimized as a part of nonconsensual pornography, that's extortion.

There are some important statistics that I like to bring up is that studies have shown that four percent of all internet users within the entire country have fallen to victims of nonconsensual pornography or extortion. More importantly though, when faced with the issue of being charged with a felony offense, more than 50 percent of all offenders who had been interviewed stated had they know that this offense was a felony they would not have committed this offense. There is a lot of concern about out there as how the offenders may be dealt with, with this being a felony offense. The offenders have enough remedies out there. They have

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juvenile court, they have accelerated rehabilitation, they have the pardon process in which they can get their records expunged and keep themselves clean. The victims unfortunately never have that opportunity for as we know childlike child pornography, once those pictures and that information are out there in the internet, it will never be back. You can never reclaim that and these victims are constantly victimized on a day-to-day basis because those pictures are out there and they never know when this, when their pictures will be resurrected again. The crime is devastating and there is no way that you can ever make a victim whole. We are asking that this Committee support this Bill as they did last year. Thank you and I am ready for any questions.

SENATOR WINFIELD (10TH): Thank you. Representative Stafstrom.

REP. STAFSTROM (129TH): Thank you, Mr. Chair and thank you, Attorney Luba for being with us again on this Bill. You know, I guess I'm intrigued by kind of one of the comments you started to make and is in your written statement, not even just specific to this Bill but, you know, every year in this Committee we get scores of Bills that seek to increase this penalty, lower that penalty and you know, it's always kind of our task to kind of look at the full statute book, look and the full penal code and figure out kind of where things should or shouldn't fit in based on that. So you made a comment, I guess 50 percent of offenders say that wouldn't have committed the offense had they known

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it was a felony. Is there, do you have the statistics, do you know is there a distinction between Oh, gee I'm gonna commit that offense because it's only a misdemeanor as opposed to well now it's a felony, I'm not going to commit that offense, whether that statistic or data exists someplace?

LOU LUBA: The answer to that question is in the written testimony I proved to the Committee here that it shows some of the studies that the Cyber Civil Right Initiative has done studies as well as other groups and they have shown that when a differentiation is between a misdemeanor and a felony that about 45 percent of people said, well had I know it was a misdemeanor I wouldn't have committed it as opposed to 50 percent or greater than 50 percent saying that the felony would definitely affect it. So as far as showing that somebody makes that cognitive decision of oh well, because it's a felony I'm not going to commit it, I don't have any studies that could specifically deal with that but it's shown that there is a significant difference that by being a felony greater than 5 percent difference between the misdemeanor and the felony offense people say had they know, that they wouldn't have committed this offense. I think that a lot of that can be brought forth by public service announcements, by going out to the high schools, the people who are most likely, most of the time effected by this and letting them know there is this penalty out there but I think their studies have shown as presented in the written testimony that there is a significant difference.

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REP. STAFSTROM (129TH): Yea, I think, you know, I kind of always struggle with that and I think Minority Leader eluded to this a little bit. Sometimes when we do these bills and they get some public airing or they get, you know, maybe a newspaper report and somebody looks at it and, oh gee, I didn't realize that it was a crime. I just wonder, I think that does have an effect and does have a deterrent effect because, you know, it is out there, it is in the conscious discussion and decision. I always just question or wonder how much a deterrent one class of misdemeanor is or one class of felony is but I guess we will, this Committee has long struggled with that and probably will forever struggle with that question of, at what classification is something a deterrent or not.

LOU LUBA: And just to sort of put it along the same lines, if I may sir, is that when you take a look at some of the other felonies, some of the other crimes that are committed, identity theft, child pornography and I would draw the greatest similarity between this offense and child pornography because again it is a picture, it is an image you can never reclaim that even the lowest level offence for child pornography is a D felony. That you have identity theft is a D felony. There are many other statutes that this draws similarities to that this Committee has deemed appropriate to have as D felonies. And I think that when you take a look at the significant harm that this does to the victim, and again, Attorney Anderson will be able to speak directly because he represents some of the victims in the

Christopher Lamb case as far as how it affects them significantly that I think that when you take a look at the harm caused in relation to the penalty, that a D felony is absolutely, probably the lowest level that I think would be appropriate in a situation like this.

REP. STAFSTROM (129TH): I appreciate you pointing out those analogies. I think, like I said, I think it is always important to look at how we are going to classify a certain crime, kind of where does it fit in in the overall penal code via other offenses that are on the books, so I appreciate you drawing those analogies.

LOU LUBA: Thank you, sir.

SENATOR WINFIELD (10TH): Questions or comments from other members of the Committee? Seeing none, thank you very much. We will next hear from Christopher Anderson followed by Bruce Levin.

CHRISTOPHER ANDERSON: Good Morning. Thank you for allowing me to testify here today to this Committee. My name is Christopher Anderson, I am a lawyer in Norwich, Connecticut. I've been practicing mostly civil law for the last 25 years but I represent four victims of the crime alluded to by State's Attorney Luba. I cannot name those four victims because there a pseudonym orders entered in Civil Court to protect their identities but I thought it would be important for me to come and tell you a little bit about the story, this particular story.

Three women, one man, ages 14 to 19 when all of this began. And what basically happened is Mr. Lamb came up with a scheme to hack into people's iPhones. He came up with a scheme on his own to hack into people's emails, Snap Chat accounts, Twitter accounts, Facebook accounts, bank accounts all from his basement. And in the case of at least one of the women that I represent she had taken pictures of herself that she never sent to anyone. Basically she would go into the bathroom and take a picture of herself so she could see how she looked, never left her phone, never left her computer. Mr. Lamb hacked into her phone, hacked into her computer, obtained those photographs. In one instance it was only nine photographs, some of them partially clothed, some of them completely nude and then he sent them to websites that dark-web websites with child porn on them and as a result of that, these victims would get contacted from people around the world just constantly, constantly. So I looked around this hearing room when we first started this, there were, I don't know, 200 people in here and everybody had a cellphone. Can you imagine your cellphone pinging every second, ding, ding, ding? This is what happened to this.

I will read you about one of the victim's. At the start of the incidents she was actively engaged in my sorority at Western Connecticut State University, holding multiple positions including sitting on the E-Board which was talking about social media and things like that. She was an honor roll student, an avid worker with two jobs, doing well in college. She was contacted by a friend who said, I just saw a

picture of you on the internet. Within weeks, she was inundated with friend requests, it was sent to 3,000 Facebook friends. She was contacted by the State University, brought into the office, and said basically what are you doing, you can't do that. You can't send these pictures around to your professors and things, she said I have no idea what you're doing. She was so humiliated she dropped out of college, in Connecticut, and moved down to Virginia with an aunt. Is that the bell?

SENATOR WINFIELD (10TH): It is, you can wrap up your thought.

CHRISTOPHER ANDERSON: Well my thought is, she moved to Virginia with a relative, she engaged in self-harm, she nearly drank herself to death, she is doing better now but this is just one example and these are people that never intended these images to go anywhere. But he got onto them, he got them and stole them and disseminated them. I am out of time, so I'll take any questions. Thank you.

SENATOR WINFIELD (10TH): Thank you. Questions or comments from members of the Committee? Thank you for taking the time to join us today. Bruce Levin followed by Joy Avalone.

BRUCE LEVIN: Thank you, Mr. Chairman. I am Bruce Levin, Associate City Attorney for the City of Bridgeport.

We understand and appreciate the Committee's desire to address the Supreme Court's decision in *Williams*

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v. Housing Authority which is what this Bill is about. *Williams* expanded the scope of municipal liability for municipal inability to comply with the unfunded state mandate to annually inspect virtually every building in each city for fire code violations except single family and two-family homes. It is as we have documented in other litigation impossible, absolutely impossible to comply with that mandate. It would, for example, cost the City of Bridgeport upwards of \$20 million dollars to hire, house, and maintain the additional 95 additional inspectors necessary to inspect those buildings every year. That would be \$20 million dollars the first year and about \$13 million dollars every year thereafter.

Two statutes interact here, 52-557(n) and 29-305. The statute that we are dealing with as it currently exists imposes liability on a municipality if someone is injured in a fire and the city has not inspected the building for a year or more and the city is deemed to have acted in reckless disregard for health and safety under all the relevant circumstances.

The Supreme Court, in a split decision in the *Williams* case took that phrase "under all relevant circumstances" and used it to expand the scope of municipal liability even further.

The stated purpose of this Bill before you is to clarify the meaning of those words "all the relevant circumstances" in the statute. It does so, however, in a manner that expands municipal liability even further. It accomplishes this by stating that "all

the relevant circumstances' includes a consideration of the balance between the magnitude of the danger on the one hand and the burden of performing an inspection on the other."

Such cases are brought generally brought where there is death or serious personal injury and any plaintiff's attorney worth his salt will be able to argue and will argue at the end of the evidence, "Ladies and gentlemen the court is going to instruct you on the law and it is going to tell you that you are to consider all the relevant circumstances" and the judge is going to tell you further that you that "all the relevant circumstances includes a consideration of the balance, the balance between the magnitude of the danger and the burden of performing an inspection" On the one hand the magnitude of the loss was death or serious injury on the other side, the other side of the ledger there is the burden of performing an inspection a burden that was but a few minutes, a few dollars, virtually no burden at all. The result of this Amendment would be enormous money damages to this City or a large settlement. If I may conclude? And higher taxes and higher tax rates for additional bonding all of which in further imposition of further financial burdens upon our city, diminishing our ability to comply again with the mandatory unfunded mandate of the State. We had an alternative plan that we would like to present when we are given appropriate time to do so.

SENATOR WINFIELD (10TH): Thank you. Representative Stafstrom.

REP. STAFSTROM (129TH): Thank you Judge LeVin. It's I'm sure, you're thrilled to be back before the Judiciary Committee one more time although I guess this time we don't necessarily have to vote on if we like you or don't like you at the end of this process [Laughter] but members can keep that to themselves. But certainly I want to start by thanking you for your service to the State and obviously continued service to our State's largest city and I think I speak for certainly myself and nearly all of my constituents when I say the last thing we want, the last thing we need on the West side of Bridgeport is higher taxes. So I appreciate you being here to fight, not just for Bridgeport's interests on this but that of every major city in the State and really any community in the State that has multifamily housing. I think you eluded to this but I think what really brings us here is a mandate from the State that municipalities inspect certain residences within a certain timeframe. I just want to make sure it is clear on the record what that statute is and what it mandates for those municipalities.

BRUCE LEVIN: It's General Statutes 29-305. It mandates annual inspections, every year, of all housing above three families, I believe and it further allocates to the State Fire Inspector authority to promulgate administrative regulations as I recall to prescribe the, how frequently other uses are inspected hospitals, daycare centers and everything else that stands, almost everything except one and two family houses are subject to a

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period inspection. For that in Bridgeport we have ten inspectors, in addition to deputy inspector, deputy fire marshal and the fire marshal. As I said it would cost millions upon millions to comply with the unfunded mandate. We've documented another litigation that no major city in Connecticut can comply. We had an affidavit from Hartford, from New Haven, from Norwalk and of course Bridgeport that they cannot comply with the mandate, and they don't do the inspections, they cannot do the inspections.

So as a result of that we propose a different scheme altogether that the State, this Committee and perhaps the Public Safety Committee inaugurate a private licensing, private inspection program whereby the State would license private inspectors to inspect certain types of housing and buildings in Connecticut but leave the large bulk of inspections to the fire marshals and to the fire inspectors in the various cities and towns.

REP. STAFSTROM (129TH): So, Judge LeVin before we get to that, so it's annual inspections of every dwelling, of every unit in any dwelling that has three or more units in it. Is that correct?

BRUCE LEVIN: Yes.

REP. STAFSTROM (129TH): So we're not talking just, you know, large public housing complex, we're not talking just large apartment buildings we're talking every three or four family home in every community in the State of Connecticut. Right?

BRUCE LEVIN: That's right.

REP. STAFSTROM (129TH): Okay, and in a city like Bridgeport, you know, our largest city obviously, how many units are we talking about roughly?

BRUCE LEVIN: I don't have my fire chief with me as expected, but I believe it runs, well it certainly runs into the thousands and I believe it approaches 10,000.

REP. STAFSTROM (129TH): Ten thousand, okay. And the city already has, as you said, over 10 inspectors who are trying to perform this task on an annual basis of inspecting, you know, tens of thousands of units.

BRUCE LEVIN: But they do other things as well. They have to do other things. Inspecting is not all they have to do. They have to follow through on code enforcement. You find a code violation, now you're on the road to court. You have to have consultations with the building owner, go back. It's not like you close up that apartment house. Immediately you have conversations, you go back and forth. You may have to go to court and testify. You have responsibilities around the office. You have to do documentation so it's, there are many other things they do.

REP. STAFSTROM (129TH): So if, in order for the City of Bridgeport to comply and I would assume most other major cities larger scale cities, your estimation as Bridgeport would have to hire a nearly an additional 100 inspectors in order to perform

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these tasks?

BRUCE LEVIN: It was calculated out a couple of years ago at 95.

REP. STAFSTROM (129TH): Ninety-five, okay. I guess if you multiply that by most of the towns around Connecticut we can certainly cut into the unemployment rate fairly quickly in the State of Connecticut couldn't we? But as you mentioned at the expense of significantly higher municipal taxes.

BRUCE LEVIN: And it would distract money away from other things, from law enforcement, for doing these inspections and from education, from everything.

REP. STAFSTROM (129TH): And the reason, you know, obviously, the reason this Bill and this conversation is here as opposed to the Planning and Development Committee or the Public Safety Committee or anything else is because on this particular state mandate the consequences of not complying have been shown all the way up to the Connecticut Supreme Court of liability against the municipalities so whereby you had, I'd like you just to address if you could sort of the specific Supreme Court decision and what that held.

BRUCE LEVIN: To go back, prior to tort reform in the mid-1980s suing a fire inspector for not inspecting a building was relatively unheard of not only in Connecticut but elsewhere. The whole program of fire inspections was inaugurated shortly before World War II. In tort reform the statute

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created a loophole for suing fire inspectors and that was where the fire inspector, fire marshal actually know of a fire code violation in a city, in a building, excuse me, or acted in reckless disregard of health and safety under all the relative circumstances. In *Williams* which went up to the Supreme Court on summary judgement. It was never tried either before or after the appeal. The Supreme Court refashioned the issue and used those words "all relative circumstance" to expand greatly the scope of municipal liability so that the jury, the court need not just look at what the fire marshal did with respect to that one unit and not inspecting that one unit, but in all similar units across the city. So if you didn't inspect a lot of these, the jury was more likely to find that the city was reckless. On top of that it refashioned, in my opinion, the entire definition of what recklessness was. Recklessness forever and a day in this State, in this country was essentially the knowingly disregarding a known risk and a high risk. The Supreme Court diminished that substantially opening the cities and towns to great liability especially when they didn't get to a certain category of housing.

Now in *Williams* it was, you had a perfect storm. You had the fire chief who was ignorant of the fact that we had to inspect public housing owned by the Housing Authority which is a very separate entity from the City of Bridgeport and the Supreme Court was particularly upset about that and certain other things. But the problem with *Williams* is that it refashioned, we think, refashioned the law beyond

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what the Legislature every contemplated and opened up very widely the scope of municipal liability.

We'd like the whole subject to be looked at again concentrating on public safety above all, public safety. Yes, looking at conserving municipal resources, but public safety and compensating the victims of these fires and insuring cause I know it's an issue, I dealt with fire marshals throughout the State and insuring that whatever program is put in place does not threaten the livelihood of these public servants who are inspectors right now throughout the State right now. That's why we proposed a private inspection program only for a limited class of housing in Connecticut. That would really increase public safety. This program would be state licensed, it would require probably cooperation by the Public Safety Committee and as I said, limited to only three and four family residences. Cities would continue to inspect everything else and municipal fire inspectors would continue to do their job as they presently are doing it. These private inspectors would be paid for by a fee imposed by the State on owners of multifamily buildings. If you want to be a multifamily building owner, then you have to pay something for it. Allowing cities to shift some of this burden to private inspectors would allow cities to comply with the unfunded State mandate at last and also to reduce our liability exposure. The liability risk would be shifted to property owners, to the inspection services or to their insurers and the cost of inspection could be deducted by multifamily property owners as a business expense. This would

increase the ability of injured persons to be adequately compensated because they wouldn't have to deal with cities governmental immunity with proving recklessness. They simply could prove negligence against the building owner or the inspection service. And this would create a new industry, a private fire code inspectors and a new source of tax revenue for the State of Connecticut in the course of making people safer.

All this I emphasize must be concurrent with maintaining the current level of municipal fire inspectors especially since they'll be additional work to be done in the area of enforcement once these private inspectors find these code violations. Then they are going to have to be prosecuted.

REP. STAFSTROM (129TH): Well thank you, thank you Judge LeVin for laying this all out for us, for walking through sort of the ramifications in a difficult situation that not just Bridgeport but I think most of, certainly any town in Connecticut that has any sort of density to housing whatsoever is facing right now. I, you know, I certainly understand. Unfortunately the *Williams Decision* happens to be one of those cases I think where bad facts made bad law and was a. I certainly don't want to minimize the tragedy that that case came out of, it was an incident that occurred in my District around the corner from my house in fact. You know, horrible, horrible situation and real tragedy and I still remember the day of, but I still think the Supreme Court went too far in its holding as a result. Appreciate you bringing it to us.

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SENATOR WINFIELD (10TH): Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman and good afternoon, Your Honor. Your Honor, I just wanted to comment a little bit on your last statements regarding the privatization. I just caution you and anyone else to just think about some of the unintended consequences as well. I know in your delivery you had talked about the difficulties and rightfully so. I can't believe there is only ten inspectors for a city the size of Bridgeport and to your point, they do a lot of different things. If there is new construction they are out there also inspecting those properties on top of all the paperwork that we expect them to do and showing up at hearings and things of that nature. But when we talk about, you know, privatization and just put it on the property owners those are the same individuals who are your constituents and who are paying taxes in that same city and now we are actually them to pay an additional fee. And then the issue there is you're talking about three family multifamily home versus also much larger buildings that potentially could be much more successful and well-off and it's almost counterintuitive that you are paying into a system opposed to maintaining your property and then that's just gonna fall back on the backs of those renters, it is going to go right back there. So when we talk about affordable housing we are not doing any justice for those individuals because it is an added cost on that property owner.

And then the other thing I have to know is there is

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good property owners that maintain their property and if they are going to be asked to pay more for all of those bad actors, that is also concerning because then those good property owners and those good tenants are gonna have to pay for it. So as good as it may sound like a potential solution I just think we have to think of the cost factors on it, the people that fortunately it is going to burden and it's gonna come back to the renters, so I just wanted to make that point. Thank you, You Honor again for your testimony.

BRUCE LEVIN: Because these costs are not just absorbed by the property owner, these like many taxes they are passed on. My point however is that we need a new solution entirely. This is not working. These properties aren't beings inspected and they are not going to be inspected. We need to have a different system put in place. I have not proposed another Bill, I propose a concept and how that might work out is up to the Legislature. But I hear you, I have an economics background and, you know, long ago I owned some of this real estate and all you do is you pass the cost on if you can and that does not help the situation in the cities either. But, this system that we have now isn't working and we are lucky to have ten inspectors, a deputy fire marshal and a fire marshal doing what they can. That is quite a bit for Bridgeport and for its budget to handle. But if there are any better solutions, we're open to them, but this Bill unfortunately takes us in the wrong direction. This would end up imposing strict liability on the City and that certainly is not the way to go and I think

that is understood.

REP. REBIMBAS (70TH): Thank you, Your Honor for that and I absolutely agree with you regarding the proposal that is before us. It just occurred to me now and I just want to take the opportunity seeing that you're up there, if you have any thoughts on it. I was almost thinking maybe doing a tiered system, a certain number of years that an individual can go without inspection because they have maintained their property so well that they haven't had certain violations for a period of time and then maybe some of those bad actors that are repeat offenders that haven't maintained their property they would be inspected a little bit more frequently. Just some thoughts on that.

BRUCE LEVIN: That is certainly a possibility because you do have good property owners and you have slumlords, let's be honest about it who require, you know, constant parental supervision and the State Fire Marshal by the way has some leeway to enact some of these proposals that you are suggesting but has not done so. So I think it's gonna fall to the General Assembly to really refashion and entire scheme.

REP. REBIMBAS (70TH): Thank you, again.

REP. STAFSTROM (129TH): Thank you, Representative. Representative Smith.

REP. SMITH (108TH): Thank you, Mr. Chairman. Morning, Judge. Good afternoon. I didn't hear you

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testify which Bill; I'm assuming it 5054, is that correct?

BRUCE LEVIN: Yes.

REP. SMITH (108TH): Have you seen the language that is the proposed change to the Bill that is before us this morning?

BRUCE LEVIN: Yes, I have.

REP. SMITH (108TH): I'm reading that language. I'm just, especially you as a judge, me as a lawyer I'm thinking this is just another opportunity for more litigation. Trying to interpret that language and decided that balance of performance, the task versus the burden to the municipality. Is that some language that, can you suggest some other language or is this something that you would be in favor of?

BRUCE LEVIN: Since my last visit here, I've entered the old age, so I didn't hear everything you said, but I think you are asking me about the language in the Raised Bill and how that would, how that would effect city's exposure liability, what this would do. And the new language. Let me back up. The Statute as it currently exists imposes liability on municipalities where they either know of a code violation and don't inspect or they don't inspect and that constitutes reckless disregard for health or safety under all the relevant circumstances. What this Bill does it seeks to define "all the relevant circumstances" and it does that by setting up a balance for the jury. He tells the jury okay,

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for purposes of this law all relevant circumstances includes a consideration of balance, okay, balance were gonna do now. Balance between the magnitude of the danger which in these cases is almost always death or serious personal injury. So you balance that on the one hand against the burden of performing and inspection. Cities lose that balance every time, every time. So this is not the solution. This accomplishes, the only thing this accomplishes is to impose a greater and greater financial burden on the cities because it is going to result in a larger and larger verdict or settlement by the cities. It does nothing to increase public safety, not a thing. So that is why I am asking the Committee to reconsider this Bill, not go down this road but to fashion something that will advance public safety and something that will not further bankrupt the cities and that will also afford injured persons a ready ability to be adequately compensated and maintain the current levels of employment among inspectors and fire marshals who are concerned that if we change the law too dramatically they will be out of work.

REP. SMITH (108TH): Well, Judge, I appreciate your comments and I would agree with you 100 percent that the language that is being proposed under this draft is inadequate. I don't think it will resolve the issue, I think it will just invite more litigation and I think ultimately the cities will lose because as you said the exposure of death or serious injury always go and outweigh the burden of some municipality to get somebody out to the unit to take a look. So I appreciate that. If there are other

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comments or other suggestions we're always looking for ideas and I guess we'll take it up from there. But thank you for testifying.

SENATOR WINFIELD (10TH): Comments, questions from other members? Seeing none, thank you very much. We will next hear from Joy Avallone followed by Dr. Kerr.

JOY AVALLONE: Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas, I am Joy Avallone, Counsel for the Insurance Association of Connecticut (IAC). I want to thank you for the opportunity to come before you and offer testimony and strong support of House Bill 5053.

House Bill 5053, really just seeks to prevent windfall recoveries to plaintiffs that been come to be referred to a phantom damages and really to just ensure that fair compensation is provided to plaintiffs for losses that they've actually suffered.

So the purpose of personal injury law is to fairly compensate a person injured due to the wrongful acts of another for financial losses as well as emotional and physical losses as well. Now, the amount an injured party recovers via settlement or award after a trial is based on two types of damages, economic damages and noneconomic damages.

Now economic damages are awarded based on a quantifiable loss so evidence of medical bills and lost wages are often submitted. Non-economic

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damages are basically all other kinds of damages, such as pain and suffering and emotional distress.

Now this Bill only impacts awards of economic damages. It will have no impact on awards of non-economic damages at all. It aims only to have economic damages calculated based on actual financial damages in cases where a right of subrogation exists, just as is done currently in cases where no right of subrogation exists. So what it is seeking to prevent is basically a plaintiff receiving an award based on claim losses that are actually losses at all. Awards based on medical bills that no one is responsible for paying which essentially amounts to a windfall recovery for these plaintiffs.

Now, how does this actually play out. So a plaintiff in a personal injury case will see a health care provider for injuries that they have sustained. Providers have different fee agreements with different payers for the same procedure, so negotiated rates with Preferred Provider Organizations, Medicaid, Medicare, workers' comp, etc. So essentially these payers pay a small percentage of what the actual billed amount is and the provider accepts that amount in full satisfaction of the billed amount. Now the provider is able to then write-off the amount that no one is responsible to pay.

So by way of example, if an injured party's private insurance pays \$30,000 dollars to a medical care provider in full satisfaction of a \$100,000 dollars

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in medical bills that were actually billed the balance of \$70,000.00 then becomes a write-off for the provider and no one, including the injured party, has any further financial obligation to pay that amount. So that amount is what we are referring to a phantom damages and that is the amount we're trying to prevent being included in these awards.

Now in a civil action involving a personal injury or wrongful death claim, evidence of the \$100,000 dollars in medical bills is presented at the time of trial and factored into the award of economic damages even though on \$30,000 dollars was actually paid and even though nobody has to pay the remaining \$70,000 dollars. In order to prevent plaintiffs from receiving windfall recoveries and to ensure that awards are based on actual financial loss, Connecticut General Statute §52-225a provides that the economic award be reduced by the "total amount of collateral sources which have been paid for the benefit."

So I know that I'm not the first person to testify on this and some of the testimony is redundant and I appreciated you indulging me on this. If there are questions that I can answer, I am more than happy to do so.

SENATOR WINFIELD (10TH): Thank you. Are there questions, comments? Representative Porter. Fishbein.

REP. FISHBEIN (90TH): Thank you, Mr. Chairman. Nice

to see you again Joy.

JOY AVALLONE: You as well.

REP. FISHBEIN (90TH): I think you got to the crux of where I was going before about this, you know, the difference between the billed amount and the actual amount that was paid. I know that you're on the other side, it's a windfall, it's something that the jury is effected by, you know, if you have \$10,000 dollars in medical bills or you have \$50 dollars in medical bills it's indication of harm and pain and all that stuff. So that full thing should go to the jury, this is the total amount.

JOY AVALLONE: Right, and we agree with that.

REP. FISHBEIN (90TH): But the posttrial activities that has to do with making the plaintiff and whomever paid out money whole should merely be dealt with what was actually paid.

JOY AVALLONE: That's correct and that's what we're seeking to address, well that what House Bill 5053 is seeking to address. And prior to the decision in *Marciano* it is my understanding and speaking with friends who are personal injury attorneys, trial attorney who obviously derive personal benefit from the *Marciano Decision* they said that prior to that decision these cases were really treated the same way. After *Marciano* they drive substantial financial benefit because they are receiving, you know, this highly inflated amount that they never received prior to *Marciano*. That is was basically

an understanding of the Bar that this was the intent of the Legislature and the way that everything was going, it was in practice it fairly compensated an injured persons. So the *Marciano Decision* kind of turned things upside down and has resulted in settlement values increasing because they are leveraging the *Marciano Decision* but also it awards after a trial also being inflated tremendously so we are going to see is also an increase in premiums because of this increased exposure and that's what we are trying to prevent for our members and our customers.

REP. FISHBEIN (90TH): Well I thank you for being clear and clearing up the whole morning up for me [Laughter]. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Thank you. Comments, questions from other members? Seeing none, thank you very much for joining us today. Dr. Kerr followed by Mike Riley.

DR. PHIL KERR: Good afternoon Senators Winfield and Kessel and Representatives Stafstrom and Rebimbas and other distinguished Members of the Judiciary Committee. My name is Dr. Philip Kerr and I am here today representing approximately 1,000 physician in the medical specialty organization of Dermatology, Ophthalmology, Otolaryngology and Urology in support of HB 5053. I am here to offer insight into the complexities of medical insurance billing.

Last year my colleague testified in this important Bill explaining the injustice of economic damages

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based on a fictitious billable face amount rather than the actual paid reimbursement amount. Medical billing is difficult and at times quite confusing and I present here some important fact that this Committee should know.

The amount billed by a physician is not what the physician is actually paid by an insurer. In fact if a physician gets paid only what the insurance company fee schedule allows for any given procedure or service regardless of the amount which is submitted on a bill. Per the provider/insurer contract the physician cannot balance bill a patient for the difference between the billed amount and the actual paid amount. As an example recently I submitted a bill for removal of a skin lesion for \$200 dollars but the amount I was paid was based solely on a fee schedule for that code and for that carrier and in this case I was paid \$100 dollars. The difference of \$100 dollars was written off and will never be collected or charged to the patient. So why are there such discrepancies between the billed amount and the actual reimbursement? Our computer billing systems use one billable amount for each code that we perform for all insurers although in reality there are often hundreds of unique individual insurance plans offered even by a single insurer and each one may reimburse different amounts based on their unique fee schedules. We are then forced to submit a higher billed amount than the expected reimbursement amount because if we submit a bill that is less than the amount that the insurer reimburses we get paid that reduced fee.

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Some would argue that physicians simply bill appropriate fair market fees and not use this inflated rate but that is not feasible. We can't determine a fair market value because that would imply that we are discussing our fees with other physicians and that would be of course a violation of antitrust laws. Reimbursement rates can also change during a contract term and it becomes difficult if not entirely impossible to always keep track of every insurers changes. Thus the common bill rate which is appropriate to cover all billing conditions is the provider's best and only current solution and we always set that at a higher rate than anyone pays so that it will cover all situations. Individual providers have little to no say in fee schedule rates having to simply accept the insurers proposed rate or leave it. So, you know, I hear the sounds, so I'll wrap up. I just want to thank you and hopefully your support of HB 5053.

SENATOR WINFIELD (10TH): Thank you. Comments or question from members of the Committee? Seeing none, thank you very much for joining us today. We will hear from Mike Riley followed by Michael Rigg.

MIKE RILEY: Good afternoon, Mr. Chairman, Members of the Committee, I am Mike Riley from Thomaston, Connecticut. I am a registered lobbyist but I am not here as a lobbyist for anybody but myself at this point, so I am a citizen today and I am here to support your proposal Number 3, House Bill 5051 CONCERNING THE PENALTY FOR COMMERCIAL VEHICLES ON STATEPARKWAYS.

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I retired four years ago after 29 years as President of the Motor Transport Association of Connecticut. I understand truckers and I know that no one in Connecticut in their right mind would take a commercial vehicle on to one of these parkways because immediately every car phone within this vicinity calls the State Police to let them know that the holy land has been violated. The people that go on there from other parts of the country and they are often led there by GPS systems that don't acknowledge the fact that there are some roads that are not accessible to commercial vehicles.

Last year I opposed the Bill here that would have imposed a \$500 dollar fine on anyone operating commercial vehicles on one of the parkways. I thought that was excessive for somebody who really didn't even know they were violating the law. This year's proposal establishes a \$150 dollar fine for the first infraction and then a \$500 dollar fine for any subsequent one. I think that is reasonable and fair. If you get wacked once with a \$150 dollar fine and then go back out on the highway again, you're dumb and you ought to pay a \$500 dollar fine. I know that Senator Blumenthal has proposed federal legislation which would require all of the GPS providers to incorporate into their systems some sort of warning for commercial vehicles that they are about to violate the law if they go on a specific route and that I think makes sense, that's a good idea that ought to be pursued and that's all I have to say. I think that you listened, you heard, you did something good about it and I can

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live with this.

SENATOR WINFIELD (10TH): Thank you. Questions or comments from members of the Committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair and thank you, Mr. Riley for being with us today. I thank you for your testimony. I guess my question would be, I think we all understand why one might be sympathetic with the owner/operator who may not go this way often and finds their way accidentally on to the Merritt or another parkway and I guess, I think we would be less sympathetic to a larger company who has many drivers moving through the area but does not sufficiently train or notify their drivers that they need to avoid driving on Route 15 or a similar parkway. And so I guess what I would ask is would you have any objection to the first-time offense provision essentially applying rather just to the operator but then to the owner of the vehicle if that makes sense?

MIKE RILEY: I don't think that is a good idea. I think that the person that is violating this is the driver. The owners of vehicles may not even be aware who that driver might be from time-to-time. I think most of the large interstate trucking companies make it clear to people that travel to Connecticut that that is verboten and they shouldn't go on it and I do believe a lot of, it is mostly owner operators and people that rent large trucks who don't see the signs or whose GPS directs them on to it. And we talked last year about maybe

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people a lot smarter than I am that could figure out ways to identify vehicles that are above a size and flash or somehow put something that would touch the vehicle in a way that would notify them that they are about to violate the law with potentially large fines. I think sometimes people think they fine the trucking company they are getting something done but really it's the guy who goes out there and drives that vehicle onto the roadway is the one who should get wacked and the next time he comes up this way he will know better.

REP. BLUMENTHAL (147TH): Through you, Mr. Chair with indulgence, I guess one of the concerns we have on this Committee more generally is that it costs a fair bit of money when one of these vehicles does get on the highway and especially when it hits a bridge causing traffic, causing damage to the bridge costs money in terms of the time spent by State Troopers, costs money in terms of repairing the damage and I guess why shouldn't we impose a bit of a stiffer penalty to try to mitigate some of those costs which I understand and, you know, I understand them based on what I learned to be more expensive than the \$500 dollar penalty.

MIKE RILEY: It is my understanding that the trucking company would get dunned for some of that cost. There are insurance policies that are required by law that could be accessed to reimburse the State for that kind of damage and in a case where an owner operator ran into a bridge with somebody else's trailer that trailer owner could be subject to and insurance claim.

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REP. BLUMENTHAL (147TH): Thank you for your testimony.

MIKE RILEY: Thank you.

SENATOR WINFIELD (10TH): Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman. As I sat here and certainly heard the testimony last year in this regard, trying to get to the root of the issue and I think you made an interesting comment when you said a lot of it is renters. The people who are renting these trucks in that regard and if we're trying to prevent it from happening we're not going to get to the renter and they will continue to do the damage, by fining them is not going to make any difference. So it is actually getting the knowledge and information out. So my question is do we have any statistics, all the crashes that have occurred on the bridge, who are the drivers, are they renters, corporations, businesses do you know?

MIKE RILEY: I don't and I would love to know cause I think it would prove that most of it is out-of-state owner operators that just get led into that lane because it looks like the shortest distance between two places. But you could have someone renting a vehicle in California that is headed towards Maine and comes up that way. I don't know how you could get the rental companies all across the country to notify people that they shouldn't go on the Merritt Wilbur Cross Parkway. There are a lot of other no trucks roadways in New York in

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particular. But I think Senator Blumenthal has the right idea, let's get those GPS guys to indicate that no trucks are allowed on specific routes. That's the way to do it.

REP. REBIMBAS (70TH): Absolutely and if I'm not mistaken remembering the testimony from last year, those professional truckers already have that GPS system.

MIKE RILEY: Yeah that was produced in demand from the trucking industry but some of these guys have GPS systems that they take out of their car and, you know, they don't invest in the more sophisticated stuff. So to Representative Blumenthal's point large trucking companies have that kind of GPS thing and it would be interesting to see who is being, who has, who had accidents on that roadway and whether or not they were from large companies. I bet they're not. I would bet they're not.

REP. REBIMBAS (70TH): And something else that occurred to me as I was sitting here is you think of, and I'm not gonna name any specific fast food drive-through but a lot of them have hanging over the lane before you get to the actual delivery of whatever you ordered, device that come out that you will know whether or not your vehicle is too tall to make it under the underpass where you actually get the food delivered. So you'd almost think, to your point earlier, that there's devices and people could come up with this. So if we're really interested in preserving these bridges from accidents and rightfully so because it is very costly, and who

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knows if obviously we can even find the person to fine or if we can even get insurance reimbursement in that regard when to address that maybe something as simple a few feet beforehand as you had indicated some kind of device that literally would flag and flash the individual that obviously they are not going to make it under the bridge and they don't want to damage their own vehicle. I don't know how many people think to themselves as well, let me go through it anyways and damage my vehicle cause it's gonna be costly on me.

MIKE RILEY: Yeah, there are height limits for commercial vehicle but I think that is a good idea, that's why I said people smarter than me should be able to figure this thing out. I mean, if there was some sort of non-damageable flappable things that would make a sound if a truck hit it that would seem like it work. You would have to put it at the entrance to the entrance, you know, you wouldn't have it on the exits.

REP. REBIMBAS (70TH): Well, good food for thought. Thank you for your testimony. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Representative Miller.

REP. MILLER (145TH): Thank you, Mr. Chair. Hi, Mike how are you?

MIKE RILEY: Representative Miller, good.

REP. MILLER (145TH): Question. Do you know what New

York State does to prevent trucks from going on some of their highways like the Northern and the State and then you have the Garden State Parkway as well in New Jersey?

MIKE RILEY: I don't. Honestly I don't know.

REP. MILLER (145TH): You know, I'm concerned you mention the GPS the guys aren't knowing cause of the GPS and I'm in Stamford so I drive up and down the Merritt and so I'm always asking myself if you're driving, you're a truck driver and you see no other trucks on the road then that's a clue that you shouldn't be on the road and when you, I guess when 15 starts there is quite a few miles before we hit the first bridge so there are exits in between to say hey, let me get off. And so sometimes I think it is a matter of let me see what I can get away with until they get to the bridge and they see that they can't go under the bridge. So I personally don't think that the \$500 is gonna go deep enough, go far enough because a couple of years ago someone died in Stamford as a result of a truck being on the Merritt and so I think that the State really needs to take that serious, need to take the fact that truckers, commercial vehicles are on the Merritt and really do something about it. I don't know if its signage. I've spoken to them about it. I don't know what it is but I don't see that problem in New York like I see it here.

MIKE RILEY: I'm not as familiar with New York as you are, so I really don't know. But there are signs all over the place, "No trucks allowed, no

commercial vehicles" but some people they are following their GPS, they figure that says I can go so I'm gonna go, they don't read the signs.

SENATOR WINFIELD (10TH): Thank you. Comments or question from others? Seeing none, thank you very much for joining us. We will next hear from Mike Riley, wait. I didn't cross him, sorry. Michael Rigg and Nathaniel Clark.

MICHAEL RIGG: Good afternoon, I am here to speak in support of Raised Bill 5053 the Collateral Source Statute. I was asked to speak on behalf of several physician groups. The current law or the Collateral Source Statute was amended in 2012 to fix a loophole that had existed under law. A jury in a personal injury action will award medical expenses based on the bills that are submitted and then after the trial was over with the judge will receive evidence to see what was paid for by health insurance and what was actually written off by healthcare providers and then reduce the amount. So if the bills were paid by health insurance and the total amount of the bill was written off and the total award would be adjusted accordingly.

But a few years ago there was a decision by the Connecticut Supreme Court that exposed a flaw in the current Statute where if there is a provider that has a lien under Federal Law for a small portion of what was actually billed the law doesn't allow the judge to reduce the jury's award by the amount that the patient doesn't have to pay back. And so this Bill would fix that loophole and put in line with

what other states do.

Right now it's sort of irrational. If a plaintiff has private health insurance they are not entitled to recover any of the medical expenses that were paid by his or health insurance but if the plaintiff has a health insurance plan pursuant to Federal Law such as Medicare they get to keep 100 percent of the money. So if the amount was billed was \$1,000 dollar but Medicare really only paid \$100 dollars and the plaintiff isn't required to pay back any of it that means the plaintiff gets a windfall of \$900 dollars. So this would fix the loophole that exists that was attempted to be plugged up back in 2012.

I would just note that the Connecticut Trial Lawyers Association actually has supported that effort back in 2012. I also in my written testimony suggested that we should consider further amendment to allow defendants to present evidence to the jury regarding what the actual cost of future medical expenses would be by permitting either defendants or plaintiffs to introduce what the actual cost is for medical treatment that is paid for by health insurance companies. Thank you.

SENATOR WINFIELD (10TH): Thank you. Comments or question from members of the Committee?
Representative Blumenthal.

REP. BLUMENTHAL (147TH): Good Afternoon, Attorney Rigg. Thanks for being with us today.

MICHAEL RIGG: Thank you.

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REP. BLUMENTHAL (147TH): So in your testimony you were talking about how the jury hears about these bills in full but may not know about what the plaintiff was actually charged. In Rules of Evidence the jury also doesn't hear about who would pay for any judgement if a defendant were actually assessed that judgement as we all know often and in many, many cases the person who actually pays for a judgement is an insurer. So I guess I would ask if we've made the judgement that a jury shouldn't hear that the defendant has a judgement against them won't pay anything. If we've made that judgement on the one hand why isn't that an unfair windfall to the defendant?

MICHAEL RIGG: Because the defendant doesn't get any money. The defendant, if the defendant is held liable by the jury then the defendant personally is obligated to pay it and we have laws in this State that require defendants to have insurance in a number of situations. So if a defendant complies with our insurance requirements and actually purchases the insurance then the insurance company steps in and pays that judgement. That is something that, those laws are not created for the benefit of the defendants, those laws are created for the benefit of the plaintiffs. So it's the plaintiffs who benefit when insurance companies pay those judgements because that insures that the judgements will be paid. But if you're asking me should it be fair for a jury to consider the defendants liability because of how much money the defendant might have in insurance I don't see the relevance of that.

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However I often represent hospitals that are self-insured and I would be thrilled to inform the jury that there isn't a big insurance plan that will be picking up the tab but that it is this small community hospital that is gonna actually have to pay that award. So I would absolutely support a law that allows me to inform the jury about my client's insurance situation.

REP. BLUMENTHAL (147TH): Would you agree that in the current law there is a certain symmetry to that, to not knowing that the defendant if they actually have a judgement against them [mic interference] and that if a plaintiff and as you said there are policy reasons why those people should be insured, you see a certain symmetry to that. On the other side if we have a law that plaintiffs, if they have healthcare insurance which then negotiates down these bills which if they don't have health insurance they will be on the hook for, do you see a certain symmetry to not providing that information to the jury so that in each of those cases the plaintiff and the defendant are incentivized to get insurance?

MICHAEL RIGG: Well I think, I mean I think we're all incentivized to get insurance. I mean it used to be clearly the law in this country but the *Affordable Care Act* was changed so that the penalty was reduced but it is technically the law that everybody in the country is supposed to purchase health insurance, that is the incentive. I know we all, I think, understand that we want to have health insurance for ourselves, not in case somebody injures us in a car accident but you know, to get

regular medical treatment where if we come down with an illness. I don't think that there is an incentive with respect to health insurance that has anything to do with lawsuits. But I don't see the symmetry.

I will tell you in my research I believe Connecticut is unique in the country. Most states allow the jury to be exposed to the evidence regarding as to what the medical bills were and what they ultimately were paid in terms of if they were negotiated down and the jury's decide what the plaintiffs actual out-of-pocket cost was. Connecticut is unique. Connecticut doesn't do it that way. We haven't been doing it that way since the 1980s at least so that what we do in Connecticut is we just put in the bills and then the judge takes care of it after the fact, that was always the original idea and as part of that statutory scheme in the mid-1980s, you know, we change the Common Law regarding what called the *Collateral Source Rule* but we also changed the law that a third party could not recoup money that an injured plaintiff received. It used to be that they could and so that is the change in the Common Law both as to defendants and as the plaintiffs. So as I understood the intent back in 2012 was to just fix that issue so that if the plaintiff really wasn't out-of-pocket, because I mean that is what a jury trial is about, is to make the plaintiff whole, how much money did you have to spend out-of-pocket and so, you know, the person should be made whole. That is the whole point of compensatory damages, both noneconomic damages but definitely economic damages as well. So whatever money the plaintiff had to pay

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plaintiff should be reimbursed and plaintiff is also entitled to reduce that some by what they had to pay in health insurance premiums so they get to off-set that under Connecticut Law, just so that everybody is aware. But the idea was that there shouldn't be a windfall. The way that there is this kind of, you know, it just wasn't considered back in 2012 is that it's generally the rule for plaintiffs except those plaintiffs that have a health insurance plan that is governed by Federal Law because Federal Law is different from Connecticut State Law because the third party who pays the medical bills is allowed to get money from the plaintiff, that's the difference and that's what makes Connecticut kind of unique. So Federal Law trumps State Law and says, the third party payor can recoup money and all I'm saying is that absolutely. The defendant should be responsible for that money that the plaintiff has to pay, you know, their Federal health insurance plan. Yes the defendant should be responsible for that but if that amount of money that the health insurance plan is demanding that it get paid is substantially less than what the jury awards that difference, that windfall just needs to be adjusted the same way it is when the person has just a Connecticut State health insurance policy that is governed by Connecticut Law. I hope I've answered your question. I think I kind of rattle on for a while but I hope that address it.

REP. BLUMENTHAL (147TH): Appreciate your testimony, thank you.

SENATOR WINFIELD (10TH): Thank you. Representative

Fishbein.

REP. FISHBEIN (90TH): Thank you, Mr. Chairman. I think for a policy procedure the issue that Connecticut looked at many years ago was to try and keep the coverage out of it. It's between plaintiff and defendant and what you end up with that information coming before the jury, let's say there is a, you know, significant motor vehicle accident and the coverage is \$250,000 dollars for the tortfeasor, what ends up being argued before the jury is the tortfeasor is not being harmed. You have to get over \$250,000 dollars to actually get to the pocket of the tortfeasor and that should not be our process for a policy standing, it should be the jury believes this is what the damages were and all that other stuff happens afterwards. You know, I guess what I just heard there would be an overture, I guess to balance it, to bring that information about the health insurance to the jury as well, you know, and that would, the jury would issue economic damages of what was actually paid. Wouldn't that be the result?

MICHAEL RIGG: Not if this Bill is passed, no.

REP. FISHBEIN (90TH): Yeah, no but if some other policy decision was made to bring information to the light of the jury you'd want everything to come to the light of the jury as far as coverage.

MICHAEL RIGG: Right, the. Yeah, it could be. You could have a system where, you know, the plaintiff claims medical bills and the defendant says no, no,

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no that's not really the fair market value because what ultimately was paid was not that amount.

REP. FISHBEIN (90TH): And ultimately what would happen is the plaintiff would be harmed in that aspect because certainly, I was a clerk for three years in Trial Court, did many, many personal injury cases and you know juries look at wow, that's a big number on medical bills. You know, there must have been a lot of pain and suffering. But when, you know, under this what I just heard, you know, to bring more information into the jury about what is actually going on here, that is going to significantly impact ultimately the damages. It's gonna be lower for the plaintiff if that was to be the policy change.

MICHAEL RIGG: If there was, yeah, if the jury was exposed to the information about what the, you know, was determined to be, you know, the appropriate amount to actually be paid for the medical services, yes I could see that being to the disadvantage of a plaintiff let's say on the question of noneconomic damages because sometimes, plaintiff's attorneys will frequently tie the amount of economic damages like the amount of the medical bills to argue you should award noneconomic damages in the amount of say, three times what the medical bills, or five times what the medical bills were. So if the jury is aware that the actual amount of the medical services turned out to be less or much less than what was actually billed, you know, that particular argument would be not as effective for plaintiff's attorneys to make that the jury should base their award of

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noneconomic damages on the amount of economic damages. They would likely just have to come up with a different argument.

REP. FISHBEIN (90TH): The coffee a day argument?

MICHAEL RIGG: Yeah. So that is a common argument that I've had a front row seat at so yes, if the law were changed that way to allow the jury to hear about what the actual medical costs or the fair market value of the medical costs as opposed to what the initial bill was that the doctor or the hospital had been asking for but did not ultimately get and only ended up getting 20 percent of what they initially billed. Yeah, I could see that system being less favorable to plaintiffs.

REP. FISHBEIN (90TH): But none the less what we're dealing with here today is stuff that doesn't happen before the jury. They don't know anything about this.

MICHAEL RIGG: They don't get to hear; they don't hear any of this. That's the way it works in Connecticut. The jury doesn't hear any of this and the only thing I pointed out in my written testimony is the Collateral Source Statute only applies to past economic damage, medical bills but that doesn't mean that plaintiff's that's too bad, you don't get to claim what you may incur in the future if you have a need for ongoing medical care and so often the past medical expenses are used, courts have explicitly said this appropriate to use what the past medical expenses were in order to estimate the future

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medical expenses. Well if the past economic expenses are inflated because the jury doesn't hear what the actual fair market value was, they are going to be awarding an inflated number for the future and there is no collateral source reduction for that in the future. I don't get to come back ten years later and say, no, no, no this isn't how much was actually incurred to provide the medical care. So I suggested that, you know, there should be some evidence, some ability for the parties to introduce as to what the fair market value is as opposed to just what the billed amount is.

REP. FISHBEIN (90TH): Interesting. Okay, thank you. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Thank you. Others questions or comments? If not, thank you for joining us.

MICHAEL RIGG: Thank you very much.

SENATOR WINFIELD (10TH): Next we will hear from Nathaniel Clark and Nathaniel will be followed by Lincoln Woodward.

NATHANIEL CLARK: Mr. Chairman, Members of the Judiciary Committee, thank you for having me here today. My name is Nathaniel Clark, I am from Glastonbury, Connecticut. I am here today to testify in support of House Bill 5050. I am here to testify as myself as a citizen of Connecticut and as a concerned taxpayer. As a citizen I support House Bill 5050 for all the testimony that you've heard

here today. It's a good Bill.

The only reason that this bill hasn't passed in previous session, it's up I think almost word-for-word as it came up last session is because the Department of Revenue Services wants to keep alive Section 12-389. This section is the succession tax that creates the position of First Assistant Commissioner and allow the Department of Revenue Services to litigate its own cases if authorized by the Attorney General's Office. Section 5 of this Bill moves the provisions from 12-389 to Section 12-2, although I believe this section could just be repealed entirely as with prejudice because we don't need somebody to administer the succession tax especially after have sunset 15 years ago. I do support Section 5 as it is currently written without substitution or amendment.

My understanding is that both the DRS and the Attorney General's Office want to continue to follow, to continue to allow DRS to litigate its own cases though the recent losses of DRS attorneys in the Connecticut Supreme Court and other cases the Attorney General may want to reconsider this power. If you are interested in reading the shortcomings of the DRS attorneys who litigate the cases you can see the *Sobel Case* the docket number is in the written testimony.

Regarding the position of the First Assistant Commissioner, I can support Section 5 as it is currently written because it makes clear the position is appointed and is subject to the

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Commissioner's discretion. I am not a lawyer but I am an engineer and I can read complex and convoluted work but as written it says as appointed but it is not how it has been interpreted for several decades I believe. I would strongly object to any attempt to, by the currently unappointed Acting Commissioner of the DRS to change this language to protect the individual that current resides in this position. The Acting Commissioner as I was sitting in the audience listening, I'm sorry.

SENATOR WINFIELD (10TH): You can finish that statement.

NATHANIEL CLARK: The acting Commissioner's testimony that he submitted seems to be inaccurate and in its characterization of Section 5. Thank you, I would be happy to answer any questions.

SENATOR WINFIELD (10TH): Thank you. Questions or comments from members of the Committee? I just have one question?

NATHANIEL CLARK: Yes, I believe it is online already.

SENATOR WINFIELD (10TH): Thank you. Anyone else? Thank you for joining us today.

NATHANIEL CLARK: Thank you very much.

SENATOR WINFIELD (10TH): We will hear from Lincoln Woodward. Good Afternoon.

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LINCOLN WOODWARD: Good Afternoon, Chairman. Thank you for taking time to hear from me. Again my name is Lincoln Woodward, I am the Immediate Past President of the Connecticut Trial Lawyers and just wanted to add to what has been testified to regarding raised Bill 5053 regarding the collateral sources.

I don't want to repeat everything that has been said here, but I think what is important to keep in mind is this, nothing *Marciano* did not change anything about the existing law. That decision was a unanimous decision based on the plain language of the Statue and this was part of the behemoth that was tort reform back in the 1980s and this change that took place in the creation of the Collateral Statute was in derogation of the Common Law and the courts had decided that where there is a forgiving or a reduction or forgiving by the medical provider of a medical bill, the balance in the equities of who should get that benefit. Assuming that this is a reasonable medical cost that the benefit should go to the injured party not to the tortfeasor because the process is already taken place that there is a determination that there is a reasonable medical expense that was incurred here and I think what gets lost in a lot of this testimony, there is a loophole, there is a windfall the jury has decided that there is, this Bill if it is for \$10,000 dollars and it is a \$10,000 bill submitted by a medical provider that is a reasonable and necessary medical expense and this all happens after the fact. So if the defendants want to contest that that is not a reasonable bill and from the physician who

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testified today it's as if to say that whatever he charges when he submits a bill is not a reasonable bill. Well the defendants have a right to contest that but there is a limitation to how they can go about it and they cannot say, well you accepted less from Medicaid. You know, if you accept, you know, 50 percent of that from Medicaid you can't attack the bill that way but they could certainly call in another physician to say, yea this amount isn't reasonable and that is not a reasonable expense.

So just to say automatically that, you know, they throw out the term "sticker price" they're not forced to sit back and accept that "sticker price" as part of the case when the jury is making that decision. I just think that is an important decision, distinction here and, you know, that *Marciano* has created this wholesale change, it hasn't changed anything. The Collateral Source statute is still being applied as it always have and a negotiated resolution back in the 80s along with a lot of other mal-reforms was that only those, only health insurers with no right of reimbursement that this Collateral Source calculation would take place. I'm happy to answer any questions of the Committee.

SENATOR WINFIELD (10TH): Thank you. Senator Kissel.

SENATOR KISSEL (7TH): Thank you very much, Mr. Chairman. Attorney Woodward great to see you again. I guess the point that sort of resonates with me is that, you know, I don't want to get caught up in the weeds of like Medicare, you know, insurance, coding

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because one of the things, and I think it was even an individual who was testifying in favor of the Bill indicated that if you assume that the physician's bill is accurate and the injured party has no insurance, isn't it correct that the injured party is on the hook for whatever that bill is? Unless it is the physician him or herself that says I'll reduce it for whatever reason. My guess is that they don't often do that and so what tells me that is the accurate number, the one that we should continue to go by is that take all the insurance and the coding and all of that off the table. If it's just the bill from the provider, physician, therapist, hospital and I have no insurance, but I have a bank account back here they are going to keep sending me letters until they get paid. Would that be accurate?

LINCOLN WOODWARD: That is accurate. I have client's that are in collections on medical bills because they are uninsured and they are being asked to pay the billed amount. There has not been any reduction. There are times the hospitals will take a reduction if you submit your bill and go through a certain program. I know that there's times they will reduce the bills. But, you know, these negotiated reduction are all, the uninsured person does not get any advantage of that or if the hospital chooses not to bill Medicare and to bill the case to the liability insurer in a situation where they chose not to go after the health insurance that is available then in fact they are charging the bill, the whole billed amount.

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SENATOR KISSEL (7TH): Thank you. Great to see you again. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Comments, question from other members? Seeing none, thank you for joining us today.

LINCOLN WOODWARD: Thank you very much.

SENATOR WINFIELD (10TH): That is the last person who signed up on our list. If you are here and you would like to testify on the Bills before us you may proceed. Identify yourself when you sit down, please let us know what Bill you are testifying to and you have your three minutes.

LAWRENCE FLEMMING: Yes, my name is Lawrence Flemming, I testified before. I don't have the House Bill on Antismoking for Youth but I understand under Federal Law, I went under the *RICO Act* knowing that you know that smoking is the number one killer among youth and elderly and whoever, it doesn't matter if you're two legged or not, your committed that it is destined to smoke. So under the *RICO Act* when your governor announced that at 21, at 21 your still dead, the radio says that smoke goes to secondhand, thirdhand so you are addicting the child from the day he is born because the mother might smoke so that child is already addiction. So what happens the State, under the *RICO Act* which I went after the Governor and he said we do not enforce the Federal *RICO* Laws knowing that the fact that a criminal act has been.

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SENATOR WINFIELD (10TH): Sir, if I might interrupt you for a second. So I believe that you are testifying to a Bill that we raised today but it is not before us for Public Hearing.

LAWRENCE FLEMMING: Okay well it's over there. I went after to say secretary for failure to protect me because I went after Blumenthal, Murphy under the RICO Act and they said that they do not recognize the Federal Statute which is supposed to prevent crime and death. As legislators you know pre-knowledge of the chemical that can kill so you have the chemicals in alcohol is the number two killer but you have established that you want more alcohol but the secondhand establishment of narcotics is already imbedded into the child by your TV ad. All your TVs promote alcohol and all your TVs is under the RICO Statute, you're not supposed to make, you know, you're supposed to condemn it. Actually you are supposed to prohibit the death, it's a genocide knowing that you know what's in this chemicals. So as legislators under the RICO Act you have pre-knowledge of this person is gonna die if he does this but you don't recognize the status of your job is to protect and under the Judicial and under the Senate even I went under the U.S. Senate on voting fraud because you are promoting death, you are not promoting health safety. You want them to vaccinate but you are not prohibiting the end, the death, you're promoting death by cigarettes and alcohol and vaping is also a number one killer. There's ads on the TV that already said that they submitted and there are court cases that are pending and they are submitting checks to people who have been vaping.

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So e-cigarettes, at 21 they still die. So the exposure of a narcotic that you know personally you're taking kick-backs from that is how you are getting voted in is under the *RICO Statute* that you do not enforce. Your job is to protect not to destroy life.

SENATOR WINFIELD (10TH): Thank you. Comments or question from members of the Committee? Seeing none, I appreciate you joining us today. Are there any other members of the public that would like to testify before us? When you sit down please state your name and the Bill you're testing on.

ERNESTINE HOLLOWAY: I would say good morning but it's afternoon now. Good Afternoon. My name is Reverend Ernestine Holloway and I have two concerns. I only had one but the little bit I listened to gave me two.

I want to talk a little bit about HB 5050. As I was listening I was like is it fair that somebody pays \$200 dollars to see a doctor and one person pays \$50 dollars. You know, if you did that in the grocery store it would be called price gouging and that would be illegal. So what I don't understand is I think when we start talking about Medicaid and all these other and how much they charge us, it is never the same. So how do we know \$250 dollars is too much versus \$50 dollars that you pay for Medicaid? Is there a scale, is there a sheet that you go by? What happens if you don't have insurance and you're a mom and you go to the doctor and he says \$200 dollars but the lady next to me goes in and she only

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paid \$50 dollars. I think that we need to look at things as practical and logical and I think sometimes the State Reps and Senators, I know you got bogged down with a lot of Bills but you guys got to think rationally about the people. You know, how is this gonna work? Is it going to tax the people where they are gonna lose their home, their cars and I don't think we think of that? The individual instead of collectively.

I just have some issues. I didn't have any issues until I sat down and listened and then I was like "Oh, boy, this is a problem." But I also want to talk about SB 73 because I work in a community and it is interesting and I am going to say it like this. The other day I was on a bus and I watched a young lady who was Caucasian and she was talking to her friend, and she happened to say the "N" word and then I was curious who was she talking to. I looked at her friend and I said, "Oh, she's white." This is interesting, let me listen. So then I asked her when she got off the phone, where do you live and when she told me I laughed. Oh the project, huh? She said yeah. I said you know, it's really inappropriate I said and yeah but the music lets me say this and that and I said they are wrong too and you can tell them, they know who I am, just mention my name and tell them I think they're wrong. So then we decided to discuss the college and what I think people miss is the "N" word becomes dangerous and fearful and more at nighttime and you said why? If I walk down the block in the daytime and somebody say the "N" word I'm gonna look at them and give them a look. At nighttime when you yell it, and you

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walking down the street when you don't live in the neighborhood or you're visiting somebody, there is a fear that comes over you that unless you are a person of color you will never understand.

And so is it free speech, maybe. Will it cause harm? Absolutely. We can't measure the harm of a person when it is verbally and internal. So my advice is I don't have any and this is just a hard thing to look at and I got people that say that this is free speech and I say, yes it is but does it cause harm, cause if I yell fire in a movie theatre and everybody run out and people get trampled on, I'm liable and I'm guilty. So I'm gonna pray that you guys be able to handle this one cause I can't and usually I have answers for everything but this one I don't. So I'm gonna pray that God give you wisdom to handle this and my organization CTRA says well it's free speech, well its free speech until someone gets hurt.

SENATOR WINFIELD (10TH): Thank you for joining us. And thank you for testifying today. Questions or comments from members of the Committee? If not thank you again. Is there anyone else in the audience who would like to testify to the Bills before us? Anyone else? Seeing none, I will call this Public Hearing to a close. Thank you all for joining us.