

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA  
HOUSE TOURISM & RECREATIONAL DEVELOPMENT COMMITTEE  
COMMITTEE HEARING

IN RE: PUBLIC HEARING ON HOUSE BILL 1908  
LANDOWNER LIABILITY

PATTON VOLUNTEER FIRE COMPANY  
410 MAGEE AVENUE  
PATTON, PA 16668

APRIL 30, 2008, 9:00 A.M.

BEFORE:  
HONORABLE GARY HALUSKA, CHAIRMAN

ALSO PRESENT:  
REPRESENTATIVE PAUL COSTA  
REPRESENTATIVE FRANK DERMODY  
REPRESENTATIVE MARK LONGIETTI  
REPRESENTATIVE DAN MOUL  
REPRESENTATIVE JOHN E. PALLONE  
REPRESENTATIVE CHRIS SAINATO  
REPRESENTATIVE CURTIS G. SONNEY

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## I N D E X

1		
2		
3	<u>TESTIFIERS:</u>	<u>PAGE</u>
4	Cliff Reiders, Esq.	3
5	Attorney for Pennsylvania Association for Justice	
6	Gary Moore	31
7	Legislative Liaison, PA Fish & Boat Commission	
8	Blain Puller	35
9	Forest Manager for Kane Hardwoods	
10	John Bell, Esq.	43
11	Pennsylvania Farm Bureau	
12	Fred Brown	55
13	Motorcycle Industry Council	
14	PA Off-Highway Vehicle Association	
15	PA State Snowmobile Association &	
16	Specialty Vehicle Institute of America	
17	<u>PUBLIC COMMENTS</u>	<u>PAGE</u>
18	Dick Lepley	69
19	Robert Kirchner	71
20		
21		
22		
23		
24		
25		

1 CHAIRMAN HALUSKA: Okay, we'll call the meeting to  
2 order. Basically we're here to discuss House Bill 1908,  
3 changes to the Recreation Act and we have some people to  
4 testify. I guess I am not going to make a whole lot of  
5 remarks, I think we're going to let the people testify and  
6 then we'll do some questions and answers probably for the  
7 members.

8 And first up, we have Cliff Rieders, attorney for the  
9 Pennsylvania Association for Justice testifying on behalf  
10 of the PTLA. Okay Cliff. Do you need the lights dimmed?

11 MR. RIEDERS: A little bit, if we can turn off some  
12 of them I guess, as long as nobody falls asleep.

13 CHAIRMAN HALUSKA: Too early to do that. Okay.

14 MR. RIEDERS: My name is Cliff Rieders, and usually  
15 when I speak around the state I say that I'm from a county  
16 with more deer than people, but in this county it would be  
17 probably twice the number of deer than people. But  
18 appreciate being here, thank you very much.

19 I want to talk about this bill which is near and dear  
20 to my own heart. The bill was passed, initially the bill  
21 that we're dealing with here, the Recreational Use of Land  
22 Act was passed in 1966 based on model legislation produced  
23 by the Counsel of State Governments, passed by the way with  
24 very little debate, very little argument and almost  
25 unchanged from the counsel model that was passed I believe

1 in 33 other states and now one form or another had been  
2 adopted in 46 states, virtually unchanged or not changed  
3 much.

4 The original purpose, before we go into this proposed  
5 change I think it is really important to understand what  
6 the original purpose was of the act and why it was passed.  
7 The RULWA, which has been known under a number of different  
8 titles, but the Recreational Use of Land and Water Act  
9 applies to open land that remains mostly in a natural  
10 state. And I'm by the way paraphrasing the legislative  
11 history on the cases, so I'm plagiarizing the language  
12 there. Open land that remains mostly in a natural state  
13 where it's difficult to supervise or inspect, whether that  
14 property is located in rural, suburban or urban areas.

15 The key was that it was difficult to supervise or  
16 inspect, which is why you wanted to grant immunity. It  
17 held that the RULWA, immunity applied to natural pond, for  
18 example, inside a city park because that was considered to  
19 be mostly in a natural state, not easily to be inspected.

20 The RULWA immunity applied to defendant's landfill  
21 property and it even applied to an area where an abandoned  
22 trestle was located inside a 9.6 mile swath of unimproved  
23 land and that was found to be immune.

24 Just so you understand the current immunity, that it  
25 is a strong bill, has clearly and consistently been applied

1 as it's written to virtually every situation where you  
2 would want it to, that is where a pond, a landfill, and the  
3 landfill had a gate across it, which wound up injuring  
4 somebody on a motorcycle or motor scooter and the Court  
5 said no, there's immunity there because it's connected to  
6 the land and it's part of the, is part of the land. So  
7 those, just to give you an example of 3 things where they  
8 found the immunity applied clearly applies under the  
9 current law.

10 Next one, the RULWA does not apply to public  
11 recreational areas that are highly developed. And there's  
12 a reason for that, we'll see that in a minute. The RULWA  
13 immunity does not apply to water frontage which was highly  
14 developed urban and no longer in its natural state. We'll  
15 talk about that in a minute, the prime example of that  
16 being Penns Landing. The RULWA protection did not apply to  
17 a city playground, basketball court complex. The RULWA  
18 protection does not apply to a seminary's indoor swimming  
19 pool, and the RULWA protection does not apply to a fenced  
20 in borough playground. So those are examples where it  
21 would not apply. Those are not undeveloped areas that are  
22 not subject to inspection.

23 The, lets talk about a specific case that is really  
24 one of the leading cases in the field and gives a very good  
25 history of what the act is about, what it's intended to

1 provide and not provide for and why we have it to begin  
2 with. The act, the immunity in the act, and that's what  
3 we're talking about when we say the act, the immunity in  
4 the act is not to be applied to an indoor swimming pool  
5 where there was a lack of adult supervision and a 7th grade  
6 boy with poor swimming skills drowned when he was  
7 unobserved. The facts are very strong here. The boy was  
8 designated as somebody who should not be swimming, the  
9 adult who brought the children in there had been told not  
10 to bring these kids into the pool, it was unsupervised,  
11 wasn't the proper hours, it was a place capable of  
12 supervision and control and that's what was important about  
13 it.

14 The application of the act, said the Court, that  
15 outdoor activities on unimproved land is the only  
16 protection that should be afforded since otherwise  
17 supervision is possible and reasonable.

18 Now we'll go to the next one and talk about what this  
19 act does, 1908. It expands immunity from recreational to  
20 acts of omission, acts of omission by landowners. Now this  
21 is in contradiction to acts of commission. This is really  
22 what I will like to call a lawyer's feast, when you start  
23 to argue about what an act of omission is versus an act of  
24 commission you could take a year law school course on what  
25 the difference is and this very change alone will create a

1 tremendous amount of litigiousness, because what does it  
2 mean?

3 Acts of omission by land owners, or, and it gets  
4 worse in terms of understanding what it says, acts or acts  
5 of omission by recreational users. What does that mean?  
6 Does that mean conduct, positive conduct or acts of  
7 omission, what is an act as opposed to an act of omission?  
8 What does that mean? From a point of view of legislative  
9 writing, and I started my career, by the way, writing  
10 legislation for Marc Hager, who was the first legislator I  
11 worked for in 1975 when he was President Pro Tem of the  
12 senate, I wouldn't have been allowed to write a sentence  
13 like that. I don't know what it means. And I will tell  
14 you right now I challenge anybody to tell me what an act is  
15 unless that happens to mean a positive act.

16 So the immunity would be expanded not only to acts of  
17 omission by land owners but also, and of course, this is  
18 the expansion, it also would protect the user. So it's not  
19 only protecting the land owner which was the initial intent  
20 of the act, and which I don't think anybody has any dispute  
21 with here, and other people are testifying on behalf of  
22 land owner interests, primarily, because we want to  
23 encourage unimproved land to be used in Pennsylvania. But  
24 it would also expand it to the acts or failure to act I  
25 suppose is what that means, by recreational users.

1           The amendments would reverse the last 20 years of law  
2 by amending land to include improved or unimproved  
3 conditions, even those that are man-made. Again, an  
4 important change, because we have always understood in the  
5 law that conditions that are man-made can be controlled in  
6 some way, could be supervised, could be warned about, as  
7 opposed to those which are unimproved.

8           I walk every Sunday on my inlaws' farm, 200 acre farm  
9 up in Cogan Station with my dog. I don't expect that he is  
10 going to inspect every hole that I could fall into. And he  
11 invites hunters up there and everybody else, people ride  
12 their snowmobiles up there, he doesn't mind who uses it, as  
13 long as they don't run across his corn, and nobody would  
14 expect him to do that. But if he's going to build  
15 something there, build something for the use of somebody  
16 now this becomes kind of a business, whether he charges or  
17 not, people do expect that to be inspected. It completely  
18 changes the nature and focus of the law, even where it is  
19 plausible and reasonable for supervision and care to be  
20 taken to prevent the harm.

21           Section 1, consequences: And I want, in talking  
22 about this consequence, I tried to find a fireworks that  
23 would actually explode in here and I really couldn't do it.  
24 But one of the things that this would permit is that an  
25 owner who allows people to camp and build bonfires on his



1 property despite knowing of dry, windy conditions has no  
2 duty to anyone. There's a breathtaking expansion in this  
3 law that would grant immunity even if the harm caused by  
4 the owner or the user occurs off the land. And there is  
5 absolutely no limit to where that harm might occur in this  
6 act.

7 I'll tell you a little story from my own wasted  
8 youth. When I was probably 13 or 14 years old I really got  
9 into building and launching model rockets. And we used to  
10 buy the rockets, you could buy little engines from Estes  
11 Corporation in Texas, and my dad, who was in the land  
12 development business, would take me out to Parsippany, New  
13 Jersey, to a several hundred acre tract where I could  
14 launch these things while he was doing his thing.

15 And sure enough, one day after I launched this rocket  
16 that disappeared into the heavens about 8 police cars pull  
17 up with sirens blasting. Turns out that one of these  
18 rockets landed near somebody's house. Well, as you can  
19 imagine, that was the last time I was allowed to launch  
20 those rockets there.

21 But I was thinking about that incident when I read  
22 this legislation. Because here somebody could launch a  
23 rocket, a recreational user, and you can be sure today  
24 these things are a lot better than when I was a kid, and  
25 theoretically, the technology exists that this thing could

1 land in Philadelphia and burn down a house and there would  
2 be immunity to the landowner. There's absolutely no  
3 question.

4 I have asked other people to read it and tell me, is  
5 there any reason why that immunity would not apply the way  
6 this act is written? And I have shown it to people on all  
7 sides of the fence and everybody agrees with me that  
8 immunity would be granted in that situation. I think  
9 that's probably reason enough to say this act is not ready,  
10 these changes are not ready for prime time.

11 REPRESENTATIVE PALLONE: Is that beyond the scope of  
12 like a Paulsgraf?

13 CLIFF RIEDERS: Well way beyond, would it be beyond?  
14 I suppose that you could argue that there should be no  
15 liability there anyway, even without this act --

16 REPRESENTATIVE PALLONE: Right.

17 CLIFF RIEDERS: Because it's not foreseeable. But I  
18 think, but what you are doing here is you are granting  
19 outright immunity, you don't even get to that. This act  
20 would grant immunity to that person who is letting that be  
21 launched.

22 Supposing it doesn't go to Philadelphia, supposing it  
23 goes to the next town, supposing it lands in Williamsport  
24 or Altoona or Tyrone where it might be foreseeable. There  
25 is an immunity, period, end of story. That could only be

1 overcome by willful intentional conduct and we'll deal with  
2 that language in a minute. So I mean, there's no question  
3 about it that virtually anything that happens on the land  
4 by the user or the owner that injures or burns down other  
5 peoples' property, impairs other peoples' property would be  
6 granted immunity. And I defy anybody to tell me the sense  
7 in that change. That was the only thing I said I was going  
8 to pound the table about. I was driving down here, I said  
9 to Tom, I got to pound the table about something. This is  
10 an easy one to pound the table about.

11 What if an owner allows, and you can come up with a  
12 million examples, knows 4th of July party is on his land,  
13 knowing every year that parties ignite illegal fireworks,  
14 knows they do it, realizes they do it, and people are  
15 injured off the land?

16 A school builds a 20 by 20 open park to the public  
17 with slides, monkey bars, et cetera. That person, the  
18 person who builds that, who supervises it or creates it  
19 would have no more obligation than a land owner who allows  
20 hunters to use parts of his 200 acre woodland property.  
21 You are treating all these people alike.

22 Section 2a explains the definition of land, another  
23 breath taking change, way outside the scope of this act to  
24 include both areas, physical objects, improved, unimproved,  
25 large, small, rural, urban everything. Paints with a very

1 broad brush. This would remove the Doctrine of Attractive  
2 Nuisance from Pennsylvania law which is a doctrine that  
3 says that if you invite somebody onto your land, if you  
4 make it attractive for them to come on the land, if you  
5 entice them, if you induce them you have some obligation to  
6 make sure you are not inviting them into a trap. It would  
7 seem that this does away with that.

8 We have examples, all the examples I gave you are  
9 from our actual examples that have happened somewhere or  
10 another. Somebody builds a half pipe for skateboarders,  
11 it's a big deal today, invites skateboarders to use it. 2  
12 years later it's unmaintained now, it collapses, injures a  
13 minor, there would be immunity for that.

14 A landowner ties a rope to a tree beside a river.  
15 Owner knows the rope is coming apart, knows that kids use  
16 it. We know many examples of that. Should there be  
17 immunity to those people invited to use it under that  
18 situation?

19 Lets talk about some other examples and how the law  
20 would be changed by looking at current decisions. Under  
21 Mills vs. Commonwealth, one of the leading cases from our  
22 Supreme Court, the Court was dealing there with a highly  
23 developed inner city waterfront attraction, Penns Landing.  
24 Penns Landing, of course is restaurants, museums, historic  
25 ships and many of the places in there, many of the places

1 in there charge. Now you don't, they don't charge to go  
2 into Penns Landing but they charge to use a lot of the  
3 features within Penns Landing. The Court had previously  
4 stated that Penns Landing was not entitled to immunity. It  
5 was a developed inner city area, it was inspected on a  
6 regular basis, there were police there, there were guards,  
7 they did not have a general immunity from negligence, which  
8 you still have to prove negligence, you still have to prove  
9 causation, your Paulsgraf argument, but there was no basic  
10 grant of immunity. That would clearly be reversed. Penns  
11 Landing would get immunity under this statute. Is that  
12 what you are intending to do?

13 Bashioum vs. County of Westmoreland, what involved a  
14 giant slide 96 feet long. Again, that would be granted  
15 immunity, which it was not when the Court decided it. The  
16 reason was it's a maintained slide, they inspected it 3  
17 times a week, and so the courts said, well that's not the  
18 kind of thing that we grant immunity for, that's not a  
19 rural undeveloped land, that's a physical manmade thing  
20 that's being checked on a regular basis. I think that  
21 would now get immunity under this statute.

22 Walsh vs. City of Philadelphia, another leading case  
23 where they would not grant immunity, this was a developed  
24 inner city area a half a block wide with basketball courts,  
25 bocce courts, benches, completely improved recreational

1 facility and again, they, the Court said no immunity. This  
2 statute would give them immunity. By the way, to contrast  
3 that with a snowmobiler who hits a snow covered tree stump,  
4 there was immunity for that because that happened in the  
5 open woods, trees are not manmade objects.

6 So the statute, the point I am trying to make has  
7 worked the way you want it to work up to this time. It  
8 has, indeed, granted immunity for things like some  
9 snowmobiler who hits a stump in an open woods, on my  
10 in laws' property, for example, but would not grant, has not  
11 granted for developed bocce courts, basketball courts, et  
12 cetera that weren't properly made where somebody was  
13 injured, there was a collapse of some concrete or some  
14 asphalt.

15 So I wanted to contrast Walsh vs. Commonwealth  
16 Department of Environmental Resources to show you how under  
17 the current law it's pretty well working the way most  
18 people want it to and you would be upsetting that balance  
19 by saying no, we are going to grant immunity to that  
20 basketball and bocce court facility as well.

21 Section 2 (3) does add additional activities such as  
22 snowmobiling, ATV riding and motorcycles to explicitly  
23 identified recreational purposes, activities that typically  
24 were not included within those activities that were granted  
25 immunity because they're high mechanized fast moving

1 objects. Probably this is less controversial than other  
2 portions of the act, however.

3       Okay, the free of charge requirement. It expands  
4 immunity, this is what I call, one of the judges I like to  
5 practice before talks about what he likes to call goofy  
6 legislation. This is one of those kind of goofy things.  
7 It expands immunity to cover people who receive  
8 compensation for granting permission or invitation to enter  
9 their land so long as the compensation is in kind  
10 contribution or de minimis. Again, I defy you to tell me  
11 what that means and how many dozens of cases in litigation  
12 it's going to take to figure that out. In kind  
13 contribution in the tax field, for example, IRS uses that  
14 terminology, I was just looking on LexisNexis the other  
15 day, has generated a thousand cases in 10 years to try to  
16 figure out what in kind contribution means in the tax  
17 context.

18       The proposed amendment complicates the definition of  
19 the prior act and may even eliminate it. Now charge would  
20 include in kind contributions or contributions which are de  
21 minimus, which is clearly in conflict with the model act.

22       If we go to the next one, 2 (4) again we ask the  
23 question, what does in kind or de minimis mean? Lets take  
24 this example. Land owner invites local Boy Scout troop to  
25 camp and hike on the land and requires them to keep the

1 land dry, get rid of the bushes, the underbrush. No  
2 liability, regardless of the owners actions or omissions  
3 because they find that that's not really a charge  
4 regardless of what the landowner does. Is that the intent  
5 here?

6 A landowner fences in his land, clears trails, builds  
7 bridges, erects ramps, et cetera, charges \$5 a head. You  
8 tell me, is that de minimis or not? Who's going to decide  
9 if it's de minimis? When is it going to be decided? Is it  
10 going to change? Is it de minimis today, is it not  
11 de minimis today but in 10 years it is de minimis, and who  
12 is going to decide when that diminution comes about? You are  
13 asking for litigation.

14 D. Existing businesses might qualify under this  
15 because businesses charge or certainly benefit by having in  
16 kind contributions. Is it the purpose of this legislation  
17 to benefit money making ventures?

18 Under the amendment land owners could demand services  
19 in exchange for recreational use of their land and be  
20 immunized in a way that no other person seeking to make an  
21 exchange for value enjoys.

22 So to skip down, there's clearly no rationale for  
23 this change that really makes sense except to be able to  
24 provide financial or financial equivalent to somebody.  
25 Clearly that is the intent of this which was not the intent



1 of the model act and not the intent of in trying to get  
2 people to open up lands for free. Big difference.

3 Fees paid. Now I want to tell you something about  
4 the current law to show you that there's not a problem even  
5 currently. Even when a person is paid a fee, currently,  
6 even when a person is paid a fee to rent a camp site and  
7 was injured fishing, the Court ruled the owner was still  
8 immune because the fishing was free to the public. They  
9 didn't charge for the fishing, they charged for the camp  
10 site. So the Court said that did not eviserate, that did  
11 not get rid of the immunity. The immunity still applies,  
12 but the current law makes sense, is easy to understand,  
13 because it wasn't a direct payment for the use of the  
14 recreational.

15 Initial easement fees and license fees are not  
16 considered charges. Livingston involved a resort community  
17 up in the northeast part of the state where one of the  
18 things that came along with buying the house is the right  
19 to use of recreational facility. The Court said, that's  
20 not a charge, that's not what we need. A charge is a  
21 charge. We know what that means in the current law, and  
22 that's not where the person didn't pay a specific charge to  
23 use that lake, to use that pond, you know, that was fee in  
24 connection with the property they had up there.

25 Payment of a fee to play bingo at a picnic does not

1 constitute a charge so as to remove immunity. The fact  
2 that you get to do this activity, the fee involved in  
3 playing bingo was not considered a charge under current  
4 law. Again, my point being, if it's not broken you don't  
5 have to fix it.

6 I hate to see legislation passed, and I am really a  
7 conservative on this, people that have called me from the  
8 Republican caucus, the Democratic caucus can tell you I  
9 always ask the question to everybody, even when I'm called  
10 privately on these bills which I have many, many times. I  
11 always say, what are you trying to accomplish, why do you  
12 need this? What do you need to be done? What are you  
13 trying to do that's not being accomplished by current law?  
14 I always read every bill that way, I have been doing it  
15 since Hager days. And the reason why I am showing you  
16 these cases to show you that today there's not a problem  
17 with the current law; that people are not losing the  
18 immunity because they charge related fees that really are  
19 not directly involved with the recreational use of the  
20 land.

21 Next one. Recreational user is defined to be any  
22 person who enters a land for recreational purposes. Does  
23 not take age into account, by the way.

24 Next one 2(6), very important point here. People  
25 will say well yes, but these immunities can be overcome by

1 showing wilful or malicious conduct. I could only find one  
2 case in my review of all the cases where that ever  
3 happened. And the standard, obviously, is much higher than  
4 gross negligence, it requires deliberate intention and it  
5 is in fact, practically speaking a total immunity. Wilful  
6 or malicious, the original again, looking at what the  
7 current act says, the original act, current act, denies  
8 immunity for wilful or malicious failure to guard or warn.  
9 It's a provision rarely used against private landowners and  
10 municipalities.

11 The current, the proposed change, and I just, the  
12 best thing I could do is I want to read it to you, and  
13 somebody here maybe can tell me what this means. Just  
14 listen to this. This is, we're now covered for wilful or  
15 malicious, this is the only way you can overcome it. Now  
16 here's the change proposed.

17 Wilful or malicious means in reference to an owner of  
18 real property an actual or deliberate intention by the  
19 owner to cause harm or which if not intentional shows an  
20 utter indifference or conscious disregard. It's an  
21 intention which if not intentional, that's what it says.

22 Now again, I defy anybody to tell me what that means.  
23 I've read dozens and dozens and dozens of statutes in 30  
24 years, and there are plenty of other statutes using this  
25 language, you can only overcome an immunity wilful or

1 malicious, I have never seen this language used saying it's  
2 an intention which is not intentional. So you would be,  
3 maybe you are weakening, I don't know, maybe the intent is  
4 to weaken the immunity in the proposed act. I can't tell  
5 you what it means and I don't think anybody else could.

6 I want to skip the next one, we're short on time.

7 I have to talk a little bit about attorney's fees.  
8 I don't know if that's in here or not, I guess it is in  
9 here. I wrote a book on attorneys fees and I looked at 135  
10 statutes that granted attorney's fees in Pennsylvania.  
11 There's not one that has anything like this. Here's what  
12 this does. This awards attorney's fees to a person found  
13 not to be liable. What this means is even if the plaintiff  
14 overcomes all of these immunities and can show intentional  
15 harm they don't get attorney's fees, but if the defendant  
16 wins, which they're usually going to, of course, under this  
17 immunity they get attorney's fees.

18 So it's completely unbalanced. You are giving  
19 attorney's fees to the winner but only when the winner is a  
20 defendant. Now I could see this if this was a true fee  
21 shifting statute which is what they're called by the way,  
22 under a famous US Supreme Court case of Alaska Pipeline,  
23 then of course the winner gets paid attorneys' fees and  
24 costs and you do away with contingent fee agreements or  
25 whatever you want to do away with, which you probably can't

1 do because that's in the province of the Supreme Court  
2 anyway. But a true fee shifting statute, which is what  
3 they're called, says the winner gets their attorney fees.  
4 To say that the winner gets their attorneys' fees only when  
5 it's the defendant, there's nothing like it, nothing I  
6 could find like it and of course, it makes no sense to put  
7 in an immunity statute.

8 Now if you wanted to put it in a statute where you  
9 are creating a right, you are creating a new right where  
10 there was none before, you are going to let people sue for,  
11 I don't know, if there's something new that they weren't  
12 able to sue for before and you want to give the defendant  
13 the right to get their attorneys' fees when they win, I can  
14 see that as making some sense so that people don't get  
15 carried away with this new right to sue, but you have an  
16 immunity statute which makes it almost veritably impossible  
17 to sue or win, and you are going to grant attorneys' fees  
18 to the defendant when they win. Doesn't make any sense.  
19 There's nothing like it anywhere in the legislative  
20 journals that you will find.

21 And I'd be happy to entertain some questions if I can  
22 answer any questions.

23 CHAIRMAN HALUSKA: Any of the members have any  
24 questions for Cliff's testimony?

25 REPRESENTATIVE MOUL: The scenario I'd like to throw

1 out there, let me paint this picture.

2 MR. REIDERS: Okay.

3 REPRESENTATIVE MOUL: Landowner owns several hundred  
4 acres, he allows the guy to go hunting on that several  
5 hundred acres. The guy is not a very good shot, and his  
6 bullet travels extra half mile off the land, hits a woman  
7 sitting in her car. Her attorney says lets sue everyone in  
8 sight. All the landowner did was grant permission for this  
9 hunter to go hunting, obvious to everyone that it's the  
10 hunter who fired his bullet into a safety zone and hurt the  
11 lady, but yet the landowner gets sued, tied into this  
12 lawsuit as well. He must by any legal standard hire an  
13 attorney to represent him in a court of law, even though  
14 it's quite obvious all he did was allow this man to go  
15 hunting on his property. He had no, in most peoples' minds  
16 legal liability, but yet he has to hire an attorney. You  
17 don't feel he should be entitled as the defendant winning  
18 the case as no liability to be reimbursed for his legal  
19 fees?

20 MR. REIDERS: Well that's not what happened in that  
21 case. There is 1 case, 1 case in the history of this act  
22 where that occurred in the Allentown area, I'm familiar  
23 with that case, I've checked into it, okay?

24 REPRESENTATIVE MOUL: I thought you might be.

25 MR. REIDERS: And so I'm very familiar with that

1 case, and what happened, that case was resolved between the  
2 parties. Now do know how it was resolved?

3 REPRESENTATIVE MOUL: No I don't.

4 MR. RIEDERS: Okay, it was resolved in a way that  
5 the landowner acknowledged that he knew there should be  
6 some restrictions on the hunting, and certainly the man  
7 should not be using a high powered rifle which was what  
8 occurred. I mean, I could tell you, my father-in-law would  
9 not let me take a high powered rifle to the edge of his 200  
10 acres and start shooting deer, you know, he wouldn't even  
11 let me take my dog up to the edge of his property, he  
12 didn't want him chasing deer on other peoples' property  
13 because the dog will get shot, which as you know, is  
14 permitted in Pennsylvania.

15 So that case went nowhere. Nobody paid anything, and  
16 there's no other case like it. I don't think you pass a  
17 piece of legislation like this which is as broad as it is,  
18 because there may be a problem that could conceivably  
19 happen in the future.

20 If that were really a problem, I mean, I have crafted  
21 language for people on this committee which would address  
22 the specific problem of a hunter where the landowner and  
23 the hunter were following the required safety laws. As you  
24 know, a person can't pull the trigger without knowing where  
25 the bullet is going, without seeing what they're shooting

1 at, okay, and it would be a violation in Pennsylvania of  
2 the criminal laws to do that, and this hunter went to the  
3 edge of the property and shot a high powered rifle and had  
4 no idea what his target was, he's going to be liable  
5 criminally and he is going to be liable in tort and he  
6 should be. The landowner is not going to be liable if he  
7 has no reason to know under current law, and there is  
8 absolutely no recorded case where any landowner got hit or  
9 got hammered for anything like that.

10 We do know of cases, however, where, extremely  
11 egregious where land owners knew of very serious problems  
12 on their land and knew of many people getting hurt,  
13 plaintiff won, and they didn't get their attorneys' fees.

14 So you are creating a, like I said before, a novel  
15 remedy, one that does not exist in any area of the law for  
16 a possible scenario that has not yet occurred, and I don't  
17 think the legislature wants to get into the business of  
18 doing that or you would be forever passing laws that would  
19 infringe on all kinds of peoples' rights.

20 And don't forget that lady sitting in a car, that  
21 pregnant woman sitting in the car in Lehigh County also has  
22 some rights. She has a right not to have a bullet go  
23 through her car from a high powered rifle when the hunter  
24 should have seen the car there, you know, if he was looking  
25 where he discharged the weapon.



1           So you know, again, you are using an atom bomb to  
2           kill a gnat, and I don't think ultimately that's in the  
3           interest of the legislature or the people.

4           REPRESENTATIVE MOUL: I think one of the things that  
5           you have overlooked in your response is that the general  
6           air that's around us all today is oh God, I don't want  
7           people hunting on my land for fear I will get sued God  
8           forbid something happened, my fault, their fault, anybody's  
9           fault, because attorneys, they sue everything in sight to  
10          see what they can wring out, no offense intended, of  
11          course.

12          MR. RIEDERS: That's okay, you can offend me any  
13          time. If it were true I would take the offense; but the  
14          truth is that the number of lawsuits in this state  
15          dramatically declined in every category. We were just  
16          talking about it before we started the hearing, about  
17          judges in counties were looking around for work to do. So  
18          the general amount of litigation has declined dramatically  
19          in the last 20 years and continues to decline for many,  
20          many reasons that are beyond the purview of this committee  
21          that we could talk about, but there has been an overall  
22          decline.

23          But lets talk about the landowner because I'm  
24          concerned about those people. My mother was raised on a  
25          farm, my inlaws own a farm, and I'm from farming area, I

1 know exactly what you are talking about. And I don't know  
2 anybody who prohibits people from hunting on their land. I  
3 don't know anybody. I can tell you my inlaws don't  
4 prohibit anybody from hunting on their land and don't know  
5 anybody, don't know any landowner, any landowner who ever  
6 got sued for letting somebody hunt on their land. Now  
7 maybe you know of such cases. I couldn't find them. And  
8 if you can give me those cases or those citations I will  
9 look them up and if I'm wrong I'll be happy to admit it.  
10 But I'm not aware of that ever happening.

11 I am aware of hunters who have discharged weapons who  
12 are drunk, are not looking at what they were doing or who  
13 didn't identify what they were shooting at, I am aware of  
14 them getting sued, in fact, I've handled such claims, but  
15 not land owners.

16 REPRESENTATIVE MOUL: Well lets not even be hunting  
17 specific. Lets talk anything, even ATV riding, such as we  
18 did yesterday.

19 MR. RIEDERS: Okay, that's protected under the  
20 current act, we have a case on that. You hit a stump that  
21 should have been cut down, that landowner is protected.

22 REPRESENTATIVE MOUL: But the general air is no, I  
23 don't want any accidents happening on my property because  
24 if you get in an accident I'm going to get sued, too.

25 MR. RIEDERS: Well all you are saying is somebody

1 could think they can get sued even when they can't. I  
2 mean, if you want to eliminate the legal system so you can  
3 eliminate people fearing that they might ever get sued.

4 But you know, there's another thing that's important  
5 to recognize, and that is a sense of responsibility. It is  
6 true that people may be more careful because of a fear of  
7 being sued even if it's a non-existent fear. Lets take the  
8 tree stump example. You are riding, you hit a tree stump,  
9 you could not have sued the landowner for that, but the  
10 fact that he might fear that maybe made him more careful.  
11 And it is true that people think about it when they drive  
12 or when they do things in life that maybe they should be  
13 careful because they want to be responsible.

14 So the tort system, I'll have to agree with you, does  
15 have within it a design for safety that people should be  
16 careful so that they're not held responsible.

17 REPRESENTATIVE MOUL: Correct. But that being said,  
18 the attorney that would represent the plaintiff knowingly  
19 knows that this legislation exists that automatically  
20 protects that landowner that goes ahead and sues him  
21 anyway, includes him in the lawsuit, the attorney knowing  
22 that he is protected includes him in anyhow, so he now has  
23 to hire an attorney, even though the law is already  
24 existing, to protect his rights, okay, shouldn't he be  
25 reimbursed for that?

1 MR. RIEDERS: He can be. There's 5 different  
2 statutes, laws, and rules in Pennsylvania to punish  
3 frivolous lawsuits. We have it by statute, the Dragonetti  
4 Act in Pennsylvania, and I've handled such claims against  
5 other lawyers, by the way, and collected. And there is, we  
6 have Pennsylvania Rules of Court that have very strong  
7 rules enforcing frivolous claims that should not have been  
8 brought. There's in the Pennsylvania Judicial Code,  
9 section 42 of the code, there's, I've looked into this  
10 because I have gotten this question from legislators  
11 considering legislation to punish frivolous lawsuits and I  
12 remember coming up with 5 specific laws, statutes or  
13 regulations to prevent that and they are strongly enforced  
14 today, very strongly enforced. I have seen it happen and I  
15 certainly know many personal examples. I know of many more  
16 personal examples where lawyers had to pay fees or fines  
17 for frivolous conduct than anybody ever getting sued  
18 because of a tree stump on their land. That I have never  
19 heard of.

20 REPRESENTATIVE SONNEY: But under the current  
21 legislation if that landowner cuts a trail through the  
22 woods for his own ATV and now says to his neighbors, yes,  
23 you are free to use that trail now that's improved, that's  
24 an improvement that he made, now all of a sudden he can be  
25 sued, correct?

1 MR. RIEDERS: I don't think so.

2 REPRESENTATIVE SONNEY: It's not a natural stump that  
3 they're hitting, you know, somebody rode too fast on the  
4 trail, didn't make the curve and ran into a tree.

5 MR. RIEDERS: No, because the current law does  
6 protect trails, and there's no question that, in fact I  
7 believe the case I was telling you about where the person  
8 hit a stump and they found no liability was on a trail.  
9 And of course, throughout the state these trails exist.  
10 There are old logging trails, some of them are newly cut  
11 ATV trails, some of them are just hiking trails, but no,  
12 somebody who gets hurt on a trail because it was cut by a  
13 landowner, that does not get the right of immunity under  
14 the current law, that immunity still exists.

15 LARRY OLSAVSKY: I have a question. Does that  
16 include natural problems like a wind storm comes through  
17 and blows a tree down across a so-called trail and somebody  
18 rides in there at night and hits that tree?

19 MR. RIEDERS: Clearly immunity under the current law,  
20 clearly immunity. It's undeveloped open land. In fact,  
21 again, there are examples of that. There are specific  
22 examples. A tree fell over, some people were canoeing or  
23 kayaking in a lake, a tree fell over and actually killed a  
24 couple people. No liability, there was immunity for that.  
25 There are a number of tree falling examples out there where

1 there is immunity.

2 And listen, there's an argument to be made, I can  
3 give you the other argument too, that the current immunity  
4 is too strong. There are certainly people out there who  
5 feel that way, people in Philadelphia who come out to these  
6 rural areas and think that it should be like a garden and  
7 everything should be paved over and you know, they think  
8 this immunity is much too strong. I've heard that argument  
9 made.

10 CHAIRMAN HALUSKA: Just to follow-up on that last  
11 question, basically now if that person was to charge a fee  
12 the whole thing would change then.

13 MR. RIEDERS: Correct. Depends now, it depends, if  
14 they charge a fee for the use of that land for that  
15 specific activity --

16 CHAIRMAN HALUSKA: Right.

17 MR. RIEDERS: If they charge a fee and they say,  
18 okay, you want to snowmobile down this trail you're going  
19 to have to pay me \$5, \$10, \$25, that immunity would  
20 disappear although you still have to prove negligence, by  
21 the way, and knowledge of the tree falling, but if you  
22 bought a lets say a campsite, you are staying in a campsite  
23 and part of the fee for the campsite was to be able to use  
24 the trail you would still, you landowner would still have  
25 the immunity, okay? So it's well tailored, it's well

1 balanced. That's why 46 states have adopted the model act.

2 CHAIRMAN HALUSKA: Okay. Any other members have any  
3 questions for Cliff. Okay, we'll move on to --

4 MR. RIEDERS: I hope I answered your questions.

5 CHAIRMAN HALUSKA: We'll move on to Gary Moore,  
6 Legislative Liaison, Fish and Boat Commission.

7 MR. MOORE: Good morning members of the Tours and  
8 Recreational Development Committee of the Pennsylvania  
9 House of Representatives. My name is Gary Moore and I'm  
10 the Legislative Liaison for the Pennsylvania Fish and Boat  
11 Commission. I am here on behalf of Dr. Douglas Austen, the  
12 agency's executive director, to present testimony in  
13 support of House Bill 1908. Dr. Austen is unable to be  
14 with us due to a longstanding prior commitment.

15 The mission of the Pennsylvania Fish and Boat  
16 Commission, an independent administrative agency of the  
17 Commonwealth of Pennsylvania is to protect, conserve and  
18 enhance the Commonwealth's aquatic resources and provide  
19 fishing and boating opportunities. Specifically, the  
20 legislative charge includes the promotion of sport fishing,  
21 fisheries management, recreational boating and boating  
22 safety. Agency funding is highly dependent upon the sale  
23 of fishing licenses and permits, boat registrations and  
24 titles. A separate fish fund and a separate boat fund are  
25 maintained and managed by this commission. Yesterday, the

1 Pennsylvania Fish and Boat Commission testified at a  
2 hearing before the house finance committee regarding House  
3 Bill 1676. Should this bill pass the general assembly and  
4 be signed into law by the governor, the Fish and Boat  
5 Commission for the first time in history would for the  
6 first time in history receive an annual allotment of moneys  
7 from the general fund.

8 The economic impact of fishing and boating to the  
9 Commonwealth of Pennsylvania is 2 billion dollars annually.  
10 Fishing related activities support more than 14,600 jobs.  
11 These very popular outdoor recreational activities are a  
12 significant part of the state's heritage and economy.

13 A total of 83,000 miles of rivers and streams are  
14 located within the state. Approximately 3,860 miles of  
15 trout managed streams are located on privately owned  
16 parcels. These would be our special regulation areas and  
17 our approved trout water. This figure represents 75% of  
18 the commission's managed trout program. 75% of the  
19 commission's managed trout program are on private lands.

20 Outdoor recreation has grown by leaps and bounds over  
21 the past 4 decades, both in the number of participants as  
22 well as the types of activities. A prediction made in the  
23 early 1960s indicated that outdoor recreation will triple  
24 by the year 2000. Just 15 years later, in 1977 this  
25 milestone was broken. Today, the demand for quality



1 outdoor experiences far exceeds what the public entities  
2 are able to provide. One solution is the use of private  
3 lands for some outdoor activities.

4 All 50 states have some form of legislation  
5 protecting land owners who hold their lands and waters open  
6 for free public recreational use. Pennsylvania first  
7 enacted the Recreation Use of Land and Water Act on  
8 February 2, 1966. Without a doubt, the anglers and boaters  
9 have been able to enjoy a larger segment of Pennsylvania's  
10 outdoors because of this legislation. Despite the benefits  
11 of the Recreation Use of Land and Water Act, there has been  
12 uncertainty caused by a long line of court cases as to  
13 whether the act's protections apply to improvements such as  
14 boat docks, parking lots, launch ramps and fishing piers.  
15 The uncertain state of the law on what constitutes an  
16 improvement or substantially improved property has raised  
17 legal questions, and the Fish and Boat Commission has  
18 firsthand knowledge that it has discouraged land owners and  
19 sponsors from moving forward with proposed projects for  
20 persons with disabilities.

21 Therefore, the Commission supports House Bill 1908  
22 and its amendments to the act's definition of "land" to  
23 include improvements that facilitate the use of recreation  
24 areas and that accommodate persons with disabilities. The  
25 Commission further supports House Bill 1908's clarification

1 of the act's purpose, it's definitions of "charge",  
2 "recreational user" and "wilful or malicious" and it's  
3 provisions that allow the recovery of attorney fees and  
4 direct legal costs when a landowner is found not to be  
5 liable for an injury to a person or property pursuant to  
6 this act.

7 Landowners who allow free public use of their lands  
8 for recreational purposes need to be afforded a greater  
9 degree of protection from liability in the future. The  
10 Pennsylvania Fish and Boat Commission believes that the  
11 passage of House Bill 1908 will cause great strides to be  
12 made in resolving some longstanding issues and will  
13 encourage landowners to open private lands for recreation.  
14 This legislation is particularly important to the  
15 commission as it expands its Erie improvement program on a  
16 statewide basis to open private lands across the state to  
17 public fishing and boating opportunities.

18 Thank you for this opportunity to deliver testimony  
19 about House Bill 1908 before the House Tourism and  
20 Recreational Development Committee. This concludes my  
21 testimony. At this time I would be happy to address any  
22 questions.

23 CHAIRMAN HALUSKA: Any members have questions for  
24 Gary? Gary, you are focusing basically on access issues,  
25 not the motorized non-motorized part of the legislation?

1           MR. MOORE: No, we are concerned about the curbing  
2 and the boat ramps and the trails and steps and those sort  
3 of things that are at developed recreational sites,  
4 developed access area.

5           CHAIRMAN HALUSKA: Okay. Next testifier, Blaine  
6 Puller, Forest Manager for the Kane Hardwoods.

7           MR. PULLER: I have these copies for you gentlemen to  
8 ponder and share and do what you wish. Thank you.

9           The first thing I'd like to do is to thank the  
10 membership of the Patton Volunteer Fire Department for  
11 providing this facility and having this opportunity to come  
12 down here to present my testimony.

13           My name is Blaine Puller, I'm the Forest Manager with  
14 Collins Pine Company in Kane, Pennsylvania, and I thank you  
15 for the opportunity to present this testimony regarding  
16 landowner liability and the concerns that a private  
17 landowner has. I am the Forest Manager for Collins Pine  
18 Company which is the Kane Hardwood Division, in Kane,  
19 Pennsylvania. We are a member of the Pennsylvania Forest  
20 Products Association, with our General Manager, Connie  
21 Grenz, on the board of this organization.

22           Collins Pine Company is a family owned business and  
23 is currently in the 5th generation of the Collins family.  
24 We are the largest private landowner in Pennsylvania with  
25 127,000 acres, scattered over 7 counties in northern

1 Pennsylvania. The ownership is made up of 186 separate  
2 parcels of land ranging in size from 13 acres to 13,000  
3 acres. Some of our land has been in the family ownership  
4 since 1855. All of the land is open to the public on a  
5 year round basis without charges. It's enrolled in the  
6 Forest Game Cooperator Program of the Game Commission.

7 And the primary reason for us to own this land is to  
8 grow timber on a sustainable basis to supply our sawmill in  
9 Kane. We are not in the development business, the leasing  
10 business or the land sales business. We simply want to  
11 grow our trees and come back to the same area again. We  
12 were the first landowner in Pennsylvania to be certified  
13 under the Forest Stewardship Council's program for forest  
14 management.

15 And on a personal level, I'm a native of McKean  
16 County and have worked on the Collins lands for over 32  
17 years. During this time I have seen a dramatic increase in  
18 the overall recreational use of these lands, and a  
19 corresponding increase in the variety of types of  
20 recreation that is in demand. Hunting, fishing and camping  
21 have always been activities of great interest and regular  
22 use. This continues today, but now there are many other  
23 types of recreational uses, including horseback riding,  
24 cross country skiing, bird watching, geocaching, rock  
25 climbing and even treasure hunting. Generally speaking

1 these are mostly low impact recreational pursuits that have  
2 a generally low associated risk with them.

3 Various forms of motorized recreational uses have  
4 gained even in more popularity. ATVs, snowmobiles and off  
5 road motorcycles are all common forms of recreation that  
6 have grown astronomically in recent years. With motorized  
7 recreation more environmental impact can occur and a  
8 substantial increase in risk also occurs as the likelihood  
9 of injury to the rider is much greater. Since the use of  
10 these machines far outpaces the public trails being  
11 available, the use on private land both legally and  
12 illegally is increasing greatly.

13 Our company policy on recreational use of Collins  
14 Pine has evolved over time and will undoubtedly continue to  
15 change. I have included our current recreational policy  
16 for your review. I firmly believe that these current  
17 recreational policies of our company are more liberal than  
18 those on many types of public lands in Pennsylvania. We  
19 strive to be a good neighbor to the local individuals and  
20 the communities adjoining our land and to the public in  
21 general but we have concerns over safety to anyone that  
22 uses our land and concerns over our exposure to liability  
23 issues.

24 When we are doing timber harvesting there are more  
25 vehicles using our roads. Some of these vehicles are heavy

1 log trucks that cannot stop quickly on blind turns or move  
2 over on soft road edges without rollover danger. There are  
3 logs piled along our roadways, trees falling and tree tops,  
4 regular road maintenance issues along with road  
5 construction. Usually no flagman are present unlike these  
6 activities that might occur on municipal roads.

7 Further complicating safety concerns, are the oil and  
8 gas owners and the well operators that are on our lands.  
9 We own very little of the mineral rights beneath these  
10 lands and there are currently 55 oil and gas companies  
11 working daily on our surface extracting their oil, gas and  
12 minerals. Their equipment consists of large heavy trucks  
13 along with pipelining equipment and other drilling  
14 activities. Even with all this activity of logging and oil  
15 and gas work there are many times and many places where a  
16 recreational user encounters no people and no activity.  
17 When that same recreational user rounds a bend in the road  
18 and suddenly encounters commercial users on our land a  
19 safety problem can result.

20 Liability issues generally occur only after someone  
21 has been hurt or killed. The question of negligence always  
22 surfaces and can be interpreted quite differently by the  
23 injured party than the landowner, the logger or the oil  
24 operator.

25 House Bill 1908 would be a big help in protecting the

1 landowner by better defining recreational user and wilful  
2 or malicious. We also believe it would be appropriate to  
3 recover attorney fees and direct legal costs to the  
4 landowner if found not to be liable for injury to persons  
5 or property under this act. Section 7.1 discourages  
6 frivolous or improper lawsuits outright. Open land or  
7 posted land are choices that a landowner faces. Whenever  
8 liability protection can be enhanced for a landowner  
9 choosing the open policy it can aid greatly for that  
10 landowner in cooperating to allow connector trails across  
11 his land to other public trails.

12 We also get many requests from rural volunteer fire  
13 departments to use our land for fund raising events such as  
14 an ATV ride or snowmobile ride. We try to accommodate  
15 these organizations but again, strengthening liability  
16 protection helps accommodate these requests. House Bill  
17 1908 amends the definition to charge allowing some  
18 financial in kind assistance from recreational user groups  
19 without threatening their status under the act.

20 We also support section 4-3 that extends liability  
21 limits to all recreational activities and expands liability  
22 limits to injury to persons or property regardless of where  
23 they occur. The policy a landowner enacts on their own  
24 land come from many sources. Some landowners will never  
25 allow ATV riding. Some oppose snowmobiles, some oppose doe

1 hunting. While individual landowner policies may be  
2 different, all landowners need more liability protection  
3 and House Bill 1908 is a help in addressing the problem.

4 Thank you for the opportunity to comment, and I'd be  
5 happy to try to answer any questions you might have.

6 CHAIRMAN HALUSKA: Any member have any questions for  
7 Blain?

8 REPRESENTATIVE MOUL: I always seem to have  
9 questions. Have you guys ever been sued frivolously?

10 MR. PULLER: Yes sir. There was a time when we  
11 completed a logging project on a tract of land that was  
12 about 3000 acres. When we completed that job oftentimes we  
13 pull the culverts out of the road because we are not going  
14 to be back there for maybe 50 years or maybe even longer,  
15 so those culverts plug up and the road eventually washes  
16 out. If we pull the culverts and allow a ditch across the  
17 road for storm water to drain it's environmentally correct  
18 and it's also economically correct because you don't have  
19 to keep returning to clean the culvert.

20 In this case, we had pulled the culverts and  
21 installed the ditches where the culvert was, left the pipes  
22 along the road until we get a machine in there to retrieve  
23 all the pipes. There was a whole string of them spaced  
24 anywhere from 300 to 500 feet apart. The access road was  
25 gated at the public highway, at the entrance to the logging



1 road, the gate was locked, the land was enrolled in the  
2 Game Commission's Cooperator Program, and there are road  
3 closed signs on the roads and on the gate. Every one of  
4 our properties has a tremendous amount of trails that we  
5 have already heard about here, logging trails and ATV  
6 trails that are essentially illegal on our property because  
7 we don't grant permission for people to ride.

8 This case involved an adjoining land area of land  
9 where there were a number of hunting camps. And an  
10 individual on the 4th of July was at his camp, rode his  
11 motorcycle by means of a pipeline that accessed our logging  
12 road. Didn't come by the gate, didn't come by the sign,  
13 but he came by pipeline and got on our logging road, went  
14 over the ditches, fell off his motorcycle and hit his head  
15 on one of the culverts that lay along the edge. And he was  
16 injured very badly.

17 We didn't know anything about it, being on the 4th of  
18 July weekend, until about 6 months later when an attorney,  
19 and if you don't mind me using the analogy of Edgar Snyder  
20 type, is the fellow that sent us a letter representing his  
21 client claiming that we were malicious and negligent and  
22 had granted the, his client implied permission to use that  
23 land because we had never contacted him directly telling  
24 him not to go on the property, we had not put a sign up  
25 where he's entering the property, we had not put a notice

1 to him in the mail or on his cabin not to use our property,  
2 and so we were implying permission that he could use our  
3 land with his motorcycle even though it was not permitted  
4 and he was inadvertently hurt because we put these ditches  
5 across the road.

6 There were a considerable amount of costs that our  
7 company incurred in depositions that were taken from our  
8 forestry staff, from the ambulance people that retrieved  
9 the guy, and it went on for a fairly long period of time,  
10 it was settled out of court and we had to pay a significant  
11 sum of money to the individual. It did not go to court and  
12 there was no final jury trial or anything else.

13 REPRESENTATIVE MOUL: So in a sense you would be  
14 better off to gate your land to keep people out just to  
15 avoid frivolous lawsuits that are going to cost you a lot  
16 of money?

17 MR. PULLER: Frivolous lawsuits or any kind of  
18 lawsuit cost you a lot of money. We have a forestry staff  
19 of 10 people to manage 127,000 acres of land. We can't be  
20 on every property, every trail, I mean, at all, that's not  
21 our focus of business.

22 Around that land lies hundreds and hundreds of small  
23 communities and neighbors and there are literally thousands  
24 of miles of trails both illegal and legal that people  
25 traverse and go on to our land. We work with snowmobile

1 clubs, and so forth, to allow them to cross on trails but  
2 many other landowners similar to ourselves post their land  
3 or lease their land. And they have taken that route too.  
4 In their opinion it is another layer of insurance to not  
5 having liability suits.

6 REPRESENTATIVE MOUL: I think that goes back to the  
7 air of the day that we live in that I mentioned.

8 MR. PULLER: Exactly.

9 REPRESENTATIVE MOUL: Mr. Rieders was talking about  
10 is because anyone can get sued for anything and again, even  
11 though yours never went to court it wound up costing your  
12 company a considerable amount of money and cheaper to  
13 settle out of court to pay them off, to pay the attorneys  
14 off, than it would be to drag it on.

15 MR. PULLER: That's exactly right.

16 REPRESENTATIVE MOUL: I think point well made. Thank  
17 you.

18 CHAIRMAN HALUSKA: Anybody else? Okay, John Bell,  
19 Pennsylvania Farm Bureau? Sorry John, I jumped over you,  
20 my pen slipped down.

21 MR. BELL: Good morning Mr. Chairman, members of the  
22 committee. I just want to say I appreciated the trip up  
23 here and the wonderful experience of April showers in  
24 Cambria County.

25 CHAIRMAN HALUSKA: Snow flurries. It's not May yet.

1           MR. BELL: I am John Bell and I am governmental  
2           affairs counsel for Pennsylvania Farm Bureau and I am  
3           testifying on Farm Bureau's behalf and on behalf of the  
4           42,000 farm and rural families who comprise our  
5           organization's membership. I want to thank you for the  
6           opportunity to testify today regarding statutory changes to  
7           the Recreational Use of Land and Water Act proposed in  
8           House Bill 1908.

9           At the outset, I do, and Farm Bureau does want to  
10          thank you as legislators for your prompt response last year  
11          in enacting amendments to the Recreational Use Act  
12          contained in House Bill 13. This bill which was passed  
13          unanimously by both chambers of the general assembly was a  
14          statutory response to an unfortunate set of circumstances  
15          and legal outcome which frankly, placed the future of  
16          access of private land for hunting in serious jeopardy.

17          A 2006 court case in Lehigh County held a farmer to  
18          be liable for injuries to an individual off the farm  
19          premises from a stray bullet fired from a hunter whom the  
20          farmer allowed to hunt on the farm. This case received  
21          state wide attention among farming and rural communities.  
22          Landowners throughout the Commonwealth who for years  
23          welcomed hunters to hunt on their property decided as a  
24          result of this case that the risk of legal liability was  
25          just too great to continue to do so. Your response in

1 enacting House Bill 13 helped restore the reasonable  
2 expectations of protection from liability that landowners  
3 who allowed others to hunt on their lands believed they had  
4 prior to the Lehigh County case.

5 House Bill 1908 proposes to make several statutory  
6 changes that are consistent with decisions made by courts  
7 in interpreting the Recreational Use Act and the extent and  
8 limitation protections intended to be provided to  
9 landowners. Our courts have recognized, for example, and  
10 it was mentioned previously, that snowmobiling and motor  
11 bike riding do fall within the scope of the Act's  
12 definition of recreational purposes for which the  
13 protections from liability may apply.

14 Several other changes proposed in House Bill 1908 may  
15 be viewed by some as expanding the scope of landowner  
16 protection to include several, "improvements to land" as  
17 well as land in its natural state. But the improvements  
18 for which the bill proposes to extend protection from  
19 liability are in large part accessories that facilitate the  
20 recreational purposes for which access to land is sought by  
21 the public. The bill's attempt to include boating access  
22 and launch ramps, fishing piers and public access and  
23 parking areas within the scope of land for which protection  
24 from liability may apply is in our view a reasonable  
25 extension of the act's overall policy objectives to

1 encourage landowners to allow others to use their lands for  
2 recreational purposes. Launching a boat or parking a  
3 vehicle are not recreational activities, themselves, but  
4 they do facilitate those recreational uses that the public  
5 truly seeks to perform on public and private land.

6 I would note that the bill's proposed inclusion of  
7 these items in the definition of land does not mean  
8 absolutely that the landowner is absolved of liability for  
9 any injury occurring on these improvements because of the  
10 exceptions to liability protection that the act provides,  
11 but it would raise the level of protection from liability  
12 to landowners for injuries sustained from use of these  
13 improvements above the level of ordinary negligence.

14 One of the areas that House Bill 1908 attempts to  
15 statutory clarify is the act's intended scope of "wilful or  
16 malicious" conduct for which a landowner would not be  
17 protected under the Recreational Use Act. Section 6 of the  
18 act denies the act's protection from liability in  
19 situations where there is, "a wilful or malicious failure  
20 to warn or guard against a dangerous condition, use,  
21 structure, or activity". At a minimum, the terms wilful or  
22 malicious conduct suggest extreme indifference or neglect  
23 by landowners in correcting situations that will likely  
24 cause serious injury to others exposed to the condition.  
25 However, some cases have concluded that the wilful or

1 malicious failure exception may apply in less than extreme  
2 situations where the landowner has reason to know of a  
3 condition on the premises that may cause injury and that  
4 the landowner failed to correct.

5         And might I add in the example that was used earlier  
6 on the tree falling on a trail, certainly at the time the  
7 tree falls the wilful or malicious conduct exception  
8 wouldn't apply at the time the tree falls, but over time as  
9 the landowner may have reason to know of that condition,  
10 may have evaluated the possibilities of persons coming onto  
11 that property and using that property, the bar of  
12 wilfulness and maliciousness at least in some Court's  
13 interpretation gets awful, awful close. And it's certainly  
14 suggests something far less than extreme difference to  
15 consequences.

16         House Bill 1908 would more clearly state the extreme  
17 degree of conduct that the landowner must exude in order to  
18 be denied protection under the act. To be the type of  
19 wilful or malicious conduct for which the act's protection  
20 from liability would not apply, the bill would require that  
21 the landowner intentionally intended to cause harm or  
22 showed utter indifference or conscious disregard for the  
23 safety of others through his or her failure to warn or  
24 guard against the injury causing condition.

25         House Bill 1908 would make one substantive change to

1 the Recreational Use Act that our organization would find  
2 to be particularly positive. When a lawsuit has been  
3 brought against the landowner and the landowner has  
4 successfully asserted the act's protection from liability  
5 in defense of the lawsuit, House Bill 1908 would require  
6 that landowner to be awarded attorneys' fees and legal  
7 costs that the landowner incurred in his or her defense.

8 While the act's statutory protection from legal  
9 liability has provided a significant benefit to landowners  
10 who allow others to use their property for recreational  
11 purposes, it does not absolutely absolve landowners of the  
12 economic burdens in defending attempts by injured parties  
13 and their attorneys who nonetheless, decide to sue the  
14 landowner anyway. Considerable time and effort is made in  
15 litigation brought against the landowner who is legally  
16 protected from liability under the act's general rule to  
17 fit an injured plaintiff into one of the exceptions to  
18 liability protection recognized in the act. Defendant  
19 landowners and their attorneys must take deliberate care in  
20 responding to creative theories advocated in litigation  
21 that the exception to the act's general rule of liability  
22 protection rather than the rule, should apply in the  
23 particular case brought against the landowner. Even though  
24 the landowner may legally win in the predominant majority  
25 of cases farmers and landowners who must defend themselves



1 in Court may still bear significant costs to obtain the  
2 legal result that the act intended.

3 House Bill 1908's proposed provisions to award  
4 attorneys' fees to defendant landowners successfully  
5 asserting the act's protection from liability will  
6 encourage injured plaintiffs and their attorneys to more  
7 carefully evaluate the degree to which the act's bar of  
8 recovery of damages applies to their case and will better  
9 insure that landowners who must bear the cost of legal  
10 process to successfully assert the act's protections will  
11 be made economically whole from their efforts.

12 In sum, Farm Bureau supports the legislative  
13 amendments to the Recreational Use Act in House Bill 1908  
14 and would urge this committee to take action to favorably  
15 report the bill.

16 I thank you again for this opportunity and I will try  
17 to answer any questions you may have.

18 CHAIRMAN HALUSKA: Committee members?

19 REPRESENTATIVE PALLONE: I have one. It's been a  
20 consistent theme between all the testifiers that  
21 reimbursing defense fees in the case of victory, and I have  
22 been both defense counsel and plaintiffs' counsel, because  
23 I'm a licensed lawyer as well. Would any of the testifiers  
24 so far object that counsel fees be awarded to the  
25 plaintiffs in the case of victory? Since we're going to

1 give the defense a verdict and fees, would it be the equal  
2 and opposite fairness to give plaintiffs counsel fees as  
3 well when they are victorious?

4 MR. BELL: Well certainly plaintiffs' counsel have  
5 the ability to obtain attorneys fees where defenses are  
6 frivolously brought, just as defendants have the ability to  
7 obtain attorneys' fees where lawsuits are frivolously  
8 brought.

9 This is a policy decision. You as legislators must  
10 weigh and evaluate to what extent you provide protection to  
11 landowners who encourage, in order to encourage private  
12 land, and I'll speak from the farmer's perspective, to be  
13 used by the public free of charge for recreational  
14 purposes.

15 Landowners, I will tell you firsthand I get calls  
16 constantly from farmers who are fearful of the legal cost  
17 of litigation. They realize this act exists, and certainly  
18 it is a very positive act from a landowner's perspective  
19 but landowners are equally concerned about, well gee, if  
20 this act exists and I'm supposed to be protected, I still  
21 might get sued, and I still might have to bear legal costs  
22 in this lawsuit. Well, yes, that's true. But this act  
23 will ultimately hopefully have you prevail in this lawsuit.  
24 In many situations that's, the act, itself, is good enough  
25 to encourage landowners to open their land. In other

1 situations it's not good enough.

2 Landowners, farmers ask me, well gee, is there  
3 anything that really protects me from being sued and having  
4 to bear the cost? Part of this act is to weigh legal  
5 outcomes for landowners. Landowners are less encouraged  
6 even to open their lands if they're going to have to bear  
7 significant costs in fighting and defending against these  
8 theories that the general rule of protection from liability  
9 doesn't apply.

10 REPRESENTATIVE PALLONE: And more by way of comment  
11 than question, is you know, oftentimes the case, we always  
12 attack the plaintiffs' bar, and we already know that there  
13 are statutory as well as rules of court that protect  
14 against frivolous lawsuits.

15 The flip side of that is, is we always want to  
16 somehow control the plaintiffs' bar but yet we don't look  
17 at the defense bar and say maybe there should be some  
18 penalty on defense when there's liability. But they drag  
19 it out with depositions and interrogatories and site views,  
20 et cetera, et cetera, which drives the cost of the  
21 litigation up on the plaintiff side. Which equally has the  
22 same effect, that it comes to the point as a plaintiffs'  
23 lawyer many plaintiffs' lawyers will say, well we can  
24 litigate this but it's X, Y, Z company who has deeper pockets  
25 than you do or I do and we are going to just drag this out

1 for 2 or 3 years before you see penny 1. There's no  
2 encouragement on the side of defense to say well, there is  
3 liability, we should resolve this quickly and amicably. A  
4 lot of times we drag it out.

5 So I am not opposed to supporting defense fees, but I  
6 still think we have to always look at the equal and  
7 opposite controls either to award plaintiffs' fees as you  
8 would in like a federal 1983 action or something like that  
9 where there's wilful misconduct and things to that effect,  
10 but on the flip side, look at what are we defending, are we  
11 defending liability or are we just dragging it out to defer  
12 the cost into the next quarter or the next fiscal year or  
13 you know, whatever the case may be? And I have  
14 consternation over that.

15 And I am not picking a side either way but I think we  
16 need to be aware of that, that's it's not always, the  
17 plaintiffs' lawyers aren't always the bad guys here, that  
18 sometimes defense counsel is equally bad in prolonging and  
19 protracting the litigation, because they can. And I think  
20 that has an equal opposite bad reaction, so I think we need  
21 to look at that in terms of whether it be in this  
22 legislation or any other legislation that we are trying to  
23 deal with litigation generally, and I offer that as a  
24 thought and would ask those of you supporting that proposal  
25 that we consider that equal and opposite position as well.

1 MR. BELL: Well just keep in mind that we're not  
2 asking through this legislation that defendants who win  
3 every case get their attorneys' fees, this is a specific  
4 act that is specifically intended to further the public  
5 policy objective of encouraging landowners to open their  
6 lands for public recreation. It has created a general rule  
7 that landowners of "natural" conditions should be  
8 protected. And this bill is asking for attorneys' fees for  
9 this particular act to protect this particular class of  
10 landowners to further this particular public policy  
11 objective which was established in 1966.

12 REPRESENTATIVE PALLONE: Which I think is what we all  
13 want to do, is somehow encourage the openness of the land  
14 without penalizing either defendants or plaintiffs and I  
15 think that's a hard balance to meet. Thank you Mr.  
16 Chairman.

17 CHAIRMAN HALUSKA: Any other questions of John?

18 REPRESENTATIVE LONGIETTI: Just 1 real quick comment.  
19 I appreciate your testimony in traveling here today and the  
20 advocacy of the Farm Bureau. I have been an associate  
21 member for about 14 years, I appreciate your stepping into  
22 this issue.

23 One of the things that I struggle with when I look at  
24 this, just to let you know, is take like the fishing pier.  
25 Say you have a fishing pier and it's negligently

1 constructed or placed. And I certainly don't want to  
2 discourage people from opening their lands for recreation,  
3 but somebody comes on, it collapses and they're injured.  
4 My struggle is, why does the injured person bear the brunt  
5 of that? If we absolve liability here, they, you know,  
6 they didn't do anything wrong, they weren't negligent,  
7 there was negligence on the construction of the fishing  
8 pier, they're injured and they don't have any recompense.  
9 That's where I struggle with, you know, broadening this  
10 immunity. I am concerned about that person who doesn't  
11 have recompense. So I just wanted to share that.

12 MR. BELL: And again, I think these issues are issues  
13 that are tough to resolve, you know, they surface in very  
14 real life situations. You know, somebody catches a  
15 splinter on a fishing pier, we're not going to be  
16 discussing that situation. The situation that generally  
17 occurs is where there is serious injury that occurs. And  
18 the issue that you all need to struggle with is to what  
19 extent you encourage landowners to open their lands and I  
20 guess improvements and protect them versus the real life  
21 consequences, the unfortunate consequences that can and  
22 often do occur.

23 In this Lehigh County situation, there was a serious  
24 injury that occurred. But you have to weigh that with the  
25 consequences that could have befallen and you did weigh

1 that in your enactment of House Bill 13 that there are  
2 consequences, and I will say firsthand they would have  
3 likely occurred where landowners, farmers en masse would  
4 have shut their lands out to public recreation. To me, you  
5 know, we can debate the law all we want but practically  
6 speaking these are in my opinion public policy decisions  
7 that you all need to weigh on.

8 CHAIRMAN HALUSKA: Thanks John.

9 MR. BELL: All right, thank you.

10 CHAIRMAN HALUSKA: Next we have Fred Brown. Fred is  
11 wearing 3 hats, Motorcycle Industry Counsel, PA Off-Highway  
12 Vehicle Association and PA Snowmobile Association, so  
13 you've got a lot of talking to do, Fred.

14 MR. BROWN: Actually 4, Mr. Chairman.

15 CHAIRMAN HALUSKA: Oh.

16 MR. BROWN: Thank you Chairman Haluska and members of  
17 the House Tourism and Recreational Development Committee.  
18 My name is Fred Brown, and I am here today on behalf of the  
19 Motorcycle Industry Council, the Pennsylvania Off-Highway  
20 Vehicle Association, the Pennsylvania State Snowmobile  
21 Association, and the Specialty Vehicle Institute of America  
22 and in I guess a broader sense, the owners of the nearly  
23 300,000 registered ATVs and snowmobiles, to ask and urge  
24 the committee's favorable consideration and affirmative  
25 vote on House Bill 1908. In addition to those

1 organizations represented here on this panel, the  
2 Pennsylvania State Association of Boroughs and the  
3 Pennsylvania Township Supervisors Association join in  
4 support of this legislation.

5 House Bill 1908 proposes revisions in Pennsylvania's  
6 Recreational Use of Land and Water Act passed by the  
7 general assembly in 1966. Those changes have been outlined  
8 in testimony offered by counsel and John Bell on behalf of  
9 the Pennsylvania Farm Bureau.

10 The purpose of the act, Act 586 of 1966 is "to  
11 encourage owners of land to make land and water areas  
12 available to the public for recreational purposes by  
13 limiting their liability".

14 While this remains the purpose of the act, the  
15 passage of time, the growth in the number of individuals  
16 seeking outdoor recreational experiences, some not  
17 contemplated prior to the passage of the act, and the ever  
18 increasing concerns of liability, landowners have become  
19 more reluctant to open their land or keep their land open  
20 to the public for fear of being sued.

21 An article entitled, Rural Landowner Liability for  
22 Recreational Injuries: Myths, Perceptions and Realities,  
23 written by Professors Brett Wright, R. A. Kaiser and S.  
24 Nichols for the Journal of Soil and Water Conservation in  
25 2002 stated, "it has long been recognized that access to



1 privately owned rural lands must play a strategic role in  
2 meeting the ever increasing demand for public outdoor  
3 recreation".

4 Their research pointed out that in the Outdoor  
5 Recreation Resources Review Commission in 1962, they  
6 "predicted that the demand for outdoor recreation  
7 opportunities would triple by the year 2000. These demand  
8 projections were reached by 1977, 23 years earlier than  
9 expected, and that is in the (Resources for the Future  
10 1983). A decade later, the President's Commission on  
11 Americans Outdoors in 1987 reiterated the strategic  
12 necessity of increasing access to and use of private lands  
13 as a partial solution satisfying the growing demand for  
14 outdoor recreation. This strategy is still important today  
15 as public agencies with limited resources struggle to keep  
16 pace with outdoor recreation demands."

17 A little over 2 years ago Secretary DeBerardini  
18 indicated that there would be no more substantial increases  
19 in access for snowmobiles or ATVs on state forest land. He  
20 suggested that we, (motorized recreation community) work  
21 with private landowners to secure additional trail access.

22 In that conversation amendments to the Recreational  
23 Use of Land and Water Act were discussed as being a way to  
24 assist landowners and to secure that increased access.  
25 DCNR subsequently reviewed Act 586, and recommended many of

1 the proposed revisions contained in House Bill 1908.

2 The national private land outdoor study conducted in  
3 1987 found that only 25% of private landowners nationally  
4 provide access to the public with 31% of private landowners  
5 in the northern states providing such access. 10 years  
6 later, those numbers have declined by 50%. Liability  
7 concerns and the fear of being sued remains the most  
8 important impediment to private land access and has driven  
9 that decline.

10 The Wright article goes on to indicate that of the 41  
11 cases brought under the act in Pennsylvania since the act's  
12 passage until the time of his research in 2002 that have  
13 gone to appeal, 18 were held against public agencies, 6  
14 were ultimately held against those public agencies. 23  
15 cases were brought against private landowners, with only 4  
16 being sustained against those private landowners.

17 What these numbers demonstrate is what Mr. Bell  
18 pointed out, landowners who successfully defend themselves  
19 "bear significant cost to obtain the legal result that the  
20 act intended". It would be interesting to know how many  
21 of these 19 landowners that "won" their cases still provide  
22 the public benefit intended by the act, not to mention  
23 those landowners who may have had cases dismissed or have  
24 settled cases to avoid long and costly litigation.

25 Since the model act was unveiled more than 43 years

1 ago, all 50 states have adopted some form of the model  
2 recreational use statute. Several states have gone back to  
3 further the intent of their statute to provide landowners,  
4 public and private, reasons to keep their land open and  
5 available for the public. 19 states allow owners the  
6 ability to impose limited fees and charges, including  
7 providing landowners the ability to have property tax  
8 relief on the land use for recreation, and fees for  
9 harvesting firewood and other types of rental fees.

10 Similarly, Maine, California and Colorado provide  
11 landowners the opportunity to recover the cost of their  
12 defense if the Court finds that they were not liable for  
13 the injury or the loss of property to the individuals  
14 bringing the action. And this is as has been stated, one  
15 of the provisions of House Bill 1908.

16 Act 586 has only been amended 2 times in its nearly  
17 43 year history. If the act is to meet and sustain the  
18 purpose for which it was created and if we are to see  
19 privately owned lands play a strategic role in meeting the  
20 increasing demand for public outdoor recreation then the  
21 changes proposed in House Bill 1908 are a good and worthy  
22 step in that direction.

23 At the turn of the millennium there were approximately  
24 60,000 registered ATVs. As of April 23rd, the DCNR data,  
25 there are nearly 170,000 active and 79,000 limited

1 registered ATVs in Pennsylvania.

2 Dealerships are seeing increasing numbers of their  
3 customers taking their recreational dollars to states like  
4 West Virginia, whose Hatfield/McCoy trail system continues  
5 to grow while generating business opportunities for the  
6 mountain state entrepreneurs and millions of dollars in  
7 revenue. Dealers in Pennsylvania are seeing sales declines  
8 with a substantial amount of that loss centered on the lack  
9 of riding opportunities.

10 Motorized recreation has proven to be an  
11 extraordinary economic engine when given the opportunity.  
12 Economic studies conducted by the Lebanon Valley College  
13 for both Pennsylvania State Snowmobile Association as well  
14 as Pennsylvania Off-Highway Vehicle Association have  
15 determined that the economic impact for Pennsylvania  
16 exceeds 1.2 billion dollars.

17 The citizens of Pennsylvania deserve better from DCNR  
18 in terms of access to public lands. By expanding riding  
19 opportunities on state forest land and a stronger land  
20 owner liability statute will help provide the balance  
21 between private and public recreational land use. That  
22 chance and the common sense amendments to Act 586 will help  
23 provide that opportunity.

24 Thank you again for the opportunity to express the  
25 views on behalf of the 4 organizations that I represent.

1 And we support the amendments to Act 586 contained in House  
2 Bill 1908. And I'd be happy to try and respond to any  
3 questions you may have.

4 CHAIRMAN HALUSKA: Thank you. The attorney general's  
5 office wants input. They want to hook up with a phone.  
6 They should have called Angie a long time ago.

7 ANGELA STALNECKER: They said they were going to  
8 submit written testimony which they did not yet.

9 CHAIRMAN HALUSKA: Okay, tell them that we'll take  
10 the written.

11 FROM THE AUDIENCE: Just hook up the  
12 videoconferencing.

13 CHAIRMAN HALUSKA: I just have a couple comments and  
14 obviously, I brought the tourism committee, what part of it  
15 came in, and we went to Rock Run yesterday to ride. And I  
16 understand snowmobiling and the Game Commission as Larry  
17 can testify to, he's one of our game commission officers  
18 here, snowmobiling has no detrimental effect to the  
19 landscape, so the Game Commission is even open to letting  
20 snowmobiles operate on their property. I think the state  
21 should, even the state game lands, state forests,  
22 snowmobiling has no adverse effect.

23 I took the committee out yesterday and we rode Rock  
24 Run. Rock Run is a project that the trails were  
25 engineered, they were professionally built, and the guys

1 can testify what the trails looked like there, and there  
2 was a lot of thought put into those.

3 I am afraid if this bill opens up ATVs and dirt bikes  
4 to just anywhere you are going to have so much degradation  
5 to the property and you are not going to have any rules in  
6 place, you are not going to have any trail management in  
7 place, it's really going to open up Pandora's box to a lot  
8 of environmental issues. The snowmobiles don't have that.  
9 The dirt bikes and the ATVs, they want to dig to China.  
10 That's their thing.

11 We control Rock Run because it's a park. Helmets,  
12 eye protection, long pants, boots, most of the dirt bikers  
13 come with body armor and the things that they need to  
14 protect them. I am afraid if we open, what this bill does  
15 it totally opens it up that you're going to have dirt  
16 bikers, ATVers basically on Blaine's land without any  
17 protection, whatsoever, flying all over the place and  
18 getting themselves in trouble. You can even get into  
19 trouble on these trails which we almost had an incident  
20 yesterday. It's just the nature of the business, I mean to  
21 make the trails exciting and to make them fun they have to  
22 be challenging. And there are some places, depending on  
23 your skill levels that you can get in trouble pretty quick  
24 on some of those trails.

25 So that's 1 piece and there are a lot of good things

1 in the bill that I see that changes could be made to help  
2 protect large landowners, small landowners to operate, but  
3 I think there needs to be some tweaking to get some of  
4 those things done.

5 And obviously, at Rock Run we have to have a  
6 liability insurance policy. When you come in the door you  
7 sign a waiver, you accept, Bob Bastian and I pushed some  
8 legislation, the inherent risk policy, which the trial  
9 lawyers signed off on, that if you are in a controlled  
10 condition like us, like a golf course or a ski area there's  
11 an inherent risk. You can get hit on the back of the head  
12 with a golf ball, you can ski into a tree, you can wreck  
13 your ATV or your dirt bike, but there's an inherent risk,  
14 but if it's at a ski area it's a controlled situation, if  
15 it's a golf course it's a controlled situation, if it's a  
16 riding park like Rock Run it's a controlled situation. I  
17 think, you know, that's a better way to manage the risk,  
18 but, and I do see some, obviously, some things from the  
19 property owners as far as the snowmobiling and the other  
20 non-motorized recreation, I just have heartburn of turning  
21 dirt bikes and quads loose across this state on private  
22 property and the degradation like, can you imagine, the  
23 people on the panel, the 3 bridges we had on Whiskey Run,  
24 if there were no bridges across that stream what that  
25 stream would like like today? It would be a mud hole.

1           So anybody else, comments for Fred?

2           REPRESENTATIVE PALLONE:   Again, I would offer  
3           comments as well.   I serve as the Chairman of the  
4           Sub-Committee on Recreation, and we know that tourism and  
5           recreation in Pennsylvania is one of the top 3 industries  
6           and economic stimuli that we have.   It's certainly  
7           something we want to encourage.   The experience yesterday  
8           at Rock Run was terrific.   And it's a balancing test for us  
9           to look at protecting private landowners, you know, we  
10          certainly don't want to have anybody subject to frivolous  
11          lawsuits and accidents and things and the like, and we  
12          certainly don't want to discourage our travelers and  
13          residents who want to, ATVs, motorcycles, snowmobiles and  
14          whatever else, we don't want to discourage that as well  
15          because we know that there's enjoyment as well as benefit  
16          from that.   So we are in a position where we have to  
17          balance it.

18          I agree with Gary that the act contains many  
19          provisions that it would probably be very easy to adopt.  
20          There are other provisions, however, that need to be  
21          certainly improved by 1 way or another and I think this  
22          committee as well as some of our other colleagues will look  
23          at that very seriously.

24          CHAIRMAN HALUSKA:   Anybody else?   From the audience?  
25          Wait, okay, Fred first.



1 MR. BROWN: I just wanted to respond to a couple of  
2 your comments as well as Representative Pallone. The  
3 provision that relates to fees that are, is in the  
4 legislation, it may not be as well honed or crafted as  
5 perhaps it could be but the intent behind that as is  
6 evidenced in other states that provide some type of  
7 remuneration or compensation back to the landowner is to  
8 help address, at least from my perspective, some of those  
9 concerns with regard to the amount of impact that it has in  
10 any given area.

11 Through the snowmobile ATV restricted receipts fund  
12 and through chapter 77 of the vehicle code which requires  
13 the registration of snowmobiles and ATVs there are grant  
14 opportunities, funding opportunities that come from the  
15 users, themselves, and through their registration fees to  
16 be able to work with landowners to help build that  
17 infrastructure and to build it in a way that is long  
18 lasting. We fully recognize the impact that ATVs and dirt  
19 bikes which by the way the state and DCNR does not want to  
20 require registration of because then again, they would have  
21 to provide, they believe, the outlets and the riding  
22 opportunities to do that.

23 But there are those opportunities where you can make  
24 connector trails through strategic pieces of land, and  
25 we're fully aware of that and we have provided that grant

1 opportunity for individuals as well as profits, non-profit  
2 entities to help secure that infrastructure and build it in  
3 a way that's going to be long lasting and not as  
4 detrimental an impact as may otherwise be experienced.

5 And to Representative Pallone's question and somewhat  
6 in response to what John Bell had indicated in their  
7 colloquy, it's a policy call. I will be honest with you in  
8 saying that the main statute is very much with respect to  
9 the attorney recovery language, is very much the same as  
10 what is outlined in House Bill 1908.

11 California and Colorado put a slightly different spin  
12 on it. And clearly, there are state laws that in  
13 confrontational situations where the plaintiff as well as  
14 the defendant have the opportunity to recover fees. But  
15 this statute has at its core the concern as again, Attorney  
16 Bell had indicated, the extension of a public purpose  
17 through a private individual's holdings, and the entire  
18 statute, itself, is designed almost with that purpose in  
19 mind is to encourage that private landowner to provide that  
20 public purpose and that public venue. So the statute, in  
21 and of itself, is not geared towards the plaintiff. It is  
22 completely and I would say almost exclusively weighted to  
23 that landowner, certainly, with that.

24 CHAIRMAN HALUSKA: The only problem I have like  
25 Blaine was saying, 137,000 acres, you turn dirt bikes and

1       ATVs loose in there they are going to go wherever they  
2       want, they're going to make their own trails, there's not  
3       going to be any kind of control, and if the property owner  
4       has no assumption of liability and they come on their  
5       property and just willy-nilly go where they want, there's  
6       no control, whatsoever, over it they're going to have more  
7       heartaches probably with the Soil Conservation District and  
8       DEP in the end than they are in with the liability of being  
9       sued.

10               MR. BROWN:    Sadly with only 200, roughly 250 miles of  
11       ATV trails on state property they're out there now, lets be  
12       honest and I think --

13               CHAIRMAN HALUSKA:  I understand that, but DCNR  
14       obviously, could do more.  DCNR could do more in a lot of  
15       venues.  DCNR is probably lagging behind.  I mean the  
16       lodging issue in state parks, I mean, I've been fighting  
17       that for years.  DCNR could do a lot more for the state.  
18       Secretary Oliver, when he was there, he's the guy that  
19       clamped down and put a moratorium on trail building.  
20       Secretary DeBerardini's has at least moved forward a little  
21       bit trying to do projects like Rock Run and other projects  
22       to get the pressure off of the public lands onto these  
23       controlled areas, so.

24               MR. BROWN:    And we do recognize that and are  
25       appreciative.

1 CHAIRMAN HALUSKA: Yes Blaine.

2 MR. PULLER: It's my perception that this bill  
3 addressed only the liability aspect of a private landowner,  
4 and we are correct in assuming and knowing that right now  
5 there are literally thousands of ATVs operating on private  
6 land, some with owner's permission and some without. But  
7 the liability part of things would pertain in either case.

8 The thing that the bill is not addressing and is a  
9 separate side of the coin, if you will, is that of  
10 enforcement and penalties when the current ATV law in  
11 Pennsylvania states that to operate on private land you  
12 need that landowner's permission. Doesn't have anything to  
13 do with liability, just need his permission. The landowner  
14 that does not give that permission this law would not take  
15 that away, it's still illegal to ride there but if, it's my  
16 contention that if there can be a bridge built and a  
17 partnership built with organized rider groups to help have  
18 more places to ride and at the same time have increased  
19 penalties or enforcements on private land it's a win win  
20 situation for everybody.

21 CHAIRMAN HALUSKA: But as Larry will tell you,  
22 enforcement is just about non-existent.

23 MR. PULLER: Exactly. I agree with that.

24 CHAIRMAN HALUSKA: That we just don't have. So it  
25 basically comes down to we pass a law that says you cannot

1 sue somebody unless you have written permission to ride on  
2 their property.

3 In your case, if that person came on to your property  
4 without explicit written permission then they should not be  
5 able to sue that landowner. Maybe it comes down to  
6 something as simple as that, to protect you. Now if you  
7 gave him permission to come on your property then you  
8 assume that risk, that if you did something that injured  
9 him then, and obviously, that's why we have to have  
10 insurance at Rock Run. We have to have a million dollars  
11 worth of coverage at Rock Run.

12 There were a couple people behind you. You have to  
13 give your name.

14 MR. LEPLEY: I am Dick Lepley, I am the NOVAC state  
15 partner, also on the board of the Blue Ribbon Coalition,  
16 and I have been been a motorcycle ATV dealer for 40 years  
17 and a dirt biker for longer than that.

18 And I don't entirely agree with the comments on  
19 degradation. One of the biggest problems now is you're  
20 forcing a growing number of riders to ride illegally. And  
21 it's been proven in other parts of the country, Paiute  
22 Trail being a good example. When riders are given a trail  
23 that meets the challenge and satisfies them they stay on  
24 that trail. And programs like NOVAC offers and BRC have  
25 all the technology out there to do correct trail building.

1 A lot of this is educational, a lot of it is communicating  
2 amongst ourselves to get the job done.

3 I also feel that the largest percentage of riders are  
4 concerned about safety. The industry has done an amazing  
5 job of pressing consent decree issues, age restrictions, et  
6 cetera. Free training is offered on new ATV purchases,  
7 there's an awful lot of information disseminated out there  
8 on riding. And I can tell you that the customers we sell  
9 ATVs and dirt bikes to do not leave that dealership without  
10 safety gear. I am not saying everybody uses it, but I can  
11 tell you my experience riding an ANF, I don't see anybody  
12 not riding without gear, and I think the largest percentage  
13 of ATV riders are a little different animal, too. Now dirt  
14 bikers I think are a little more aggressive and I come from  
15 a competitive dirt bike background and it's just the nature  
16 of that beast that you like to ride them aggressively.  
17 ATVers seems to be more of a family bunch. And most of  
18 them are just out looking for a day in the woods. They're  
19 not aggressive riders, they're not out damaging a lot of  
20 lands. Again, given ample opportunities they'll stay on  
21 those trails and you won't have the degradation because you  
22 have a place to ride.

23 Now there were 21,000 additional ATVs sold in the  
24 state last year, and in spite of the fact that the industry  
25 is down nearly 10% in PA. Those people still don't have a

1 place to ride, and that's the whole issue.

2 CHAIRMAN HALUSKA: Thank you.

3 MR. KIRCHNER: My name is Bob Kirchner. I am the  
4 vice president of the Pennsylvania State Snowmobile  
5 Association. I am also the current, the Chair of the DCNR  
6 Snowmobile ATV Advisory Committee, and just I had a couple  
7 comments I wanted to make in response to Representative  
8 Haluska's comments about opening land.

9 You know, I'm seeing this bill as providing the  
10 opportunity for people to make an informed decision, a  
11 better decision about opening their lands knowing that they  
12 have additional liability protection where they may now not  
13 wish to make that decision I think was as Blaine was  
14 talking about to some degree, concerned about opening that  
15 land, especially if it happened with the farm situation  
16 after the Allentown suit was publicized.

17 We have, so you know, we are currently, being  
18 involved with the DCNR I am well aware of their desire to  
19 use private lands to connect public lands and make a better  
20 snowmobiling riding opportunity. In fact, we're right now  
21 working on a GIS project in Erie county where there is no  
22 public land, we have about 160 mile trail system there all  
23 across Mr. Bell's member's land and township roads and  
24 those types of things.

25 Those are the people who are not attorneys, who do

1 not understand all the ins and outs of the case law, and  
2 the provisions that do protect them and that any language  
3 that we can install in this act that makes it easier for  
4 them to understand what their protections are I think  
5 encourages that mission which DCNR has stated which I think  
6 is good public policy to encourage additional use on  
7 private land. I really think that that's what this bill,  
8 that's what I see the benefit of this bill.

9 The only other thing I'll say is I went to a  
10 Pennsylvania Wilds meeting and one of the first things that  
11 came up after the Allentown situation was, well don't you  
12 think this is going to effect your ability to put these  
13 private trail areas in the wilds? Which again, is a large  
14 state initiative.

15 Last thing I'll say is on the farmers' land and so  
16 on, you know, we are gaining that land because they're good  
17 neighbors, they're friends, they maybe get a turkey dinner,  
18 they maybe get a box of cookies. Whether that's a de  
19 minimis consideration or not, I don't know, but that's  
20 where we are at right now. But as we know, in the 21st  
21 century the handshake agreements and those types of things  
22 are not what they were 30 years ago.

23 I thank the committee for coming down and providing  
24 us the opportunity to comment.

25 CHAIRMAN HALUSKA: Any comments? John? Paul?



1 Cliff, it looks like you are here from 11:30 a.m. to 11  
2 p.m. Will you turn the lights out when you are done? We  
3 are going to be long gone.

4 MR. RIEDERS: I don't think I can add too much to the  
5 presentation I gave to you. And I've listened to what  
6 everybody has to say. Coming from a rural area being an  
7 outdoor person, myself, I'm sympathetic with my family who  
8 are farmers and trying to get out into the woods, but you  
9 don't get more people out in the woods by lifting any sense  
10 of responsibility anywhere in the state, improved or  
11 unimproved, center city Philadelphia or McKean County  
12 whether the harm occurs on or off the land. As I said in  
13 the beginning, you are using a sledge hammer to drive a  
14 small tack.

15 Certainly there are things, I mean listening to the  
16 discussion, the inherent danger bill that I personally  
17 worked on, as Don can tell you, quite aware of what that  
18 was intended to accomplish. And it was a narrow focus that  
19 was easily accomplished.

20 I think some of the concerns that are expressed here  
21 could be accomplished, obviously, but not with this bill  
22 which really is not fair and is just much too broad. And I  
23 don't think people realize just how broad it is given what  
24 the current law is.

25 The other point I think is well made, I have been

1 very active in Rails to Trails myself, I think it's an  
2 extremely important work done. There a state can do an  
3 awful lot. This committee and other agencies of the state  
4 can do a lot to make that happen and that's a good thing  
5 for ATVers, people on motor bikes because those trails are  
6 properly prepared and they are properly maintained. They  
7 just take off the rails and get rid of the wood and they're  
8 pretty easily usable. A lot more of that needs to be done,  
9 particularly in my part of the state north of Route 80. So  
10 you know, I urge you to consider that.

11 In terms of some of the cases, it's a lot of this  
12 urban legend myth that goes on out there. This Allentown  
13 case is a case that none of us know anything about that  
14 apparently went nowhere and resulted in no precedent,  
15 whatsoever. It was a Court of Common Pleas where the suit  
16 apparently was initiated. There's no opinion because  
17 Courts of Common Pleas don't make precedent, they write  
18 opinions only for themselves, and we are not even aware of  
19 an opinion from this Court so I don't think we can really  
20 put any stock in that as creating any problem for anyone  
21 else. It got spread around the state pretty well, I'll  
22 admit that, but we don't know what the substance of it was,  
23 and it certainly should not have had any effect.

24 The other thing I thought was interesting from Kane  
25 Hardwoods was sort of the cake and eat it too kind of

1 theory. They're a business, and they want to be able to  
2 charge. The case that they talked about I thought was  
3 particularly interesting because I have practiced law in a  
4 rural area. People do not settle cases in rural areas of  
5 Pennsylvania for money because they're afraid of anything.  
6 Those juries are extremely sympathetic to landowners and  
7 very hostile to people that bring frivolous claims. So I  
8 don't believe that I have ever seen a case in any  
9 conservative or rural area settled for money because  
10 anybody was afraid of going to trial.

11 So when somebody says to me, well I settled the case  
12 for big bucks in Potter County, McKean County, Elk County,  
13 Lycoming County you have to be very skeptical about that.  
14 Those cases get dismissed if they're frivolous and the  
15 lawyers who bring them wind up with fees and fines against  
16 them. So I think there has got to be more to a story than  
17 it was a frivolous case, oh, but by the way, we paid money,  
18 in a conservative area. You know, I am not doubting your  
19 integrity or credibility but you know, I would like to know  
20 more about that, and I am sure there is more to it. So I  
21 think we have to be careful about passing broad sweeping  
22 legislation based on a story, on 1 story, the facts of  
23 which we really don't know.

24 The bottom line is, though, that we do know in more  
25 than 40 years there have been 40 cases brought, 4 of which

1 were successful. That's about 1 case every 10 years. This  
2 is not a problem. The problem is, though, as other  
3 speakers have said, opening up land to public use, making  
4 sure that people are connecting farms, adjoining farms,  
5 have a cooperative way so people can get from 1 farm to the  
6 other.

7 I'm an avid cross country skier, for example. It's  
8 very difficult for me to know when I am actually on  
9 somebody else's property. Some people don't post. They  
10 don't have the money to post, perhaps, and those trails are  
11 not well established in the northern part of the state. If  
12 you look at the northern tier there's really only 2 decent  
13 places to cross country ski - Crystal Lake, which is a  
14 facility only for cross country skiing, and the so-called  
15 Black Forest area. There are sometimes conflicts between  
16 uses of these premises, motor bikes, ATVs, people on  
17 bicycles without motors, people on, cross country skiers.  
18 Coordination between these activities with the help of our  
19 government agencies would do a lot more to get people  
20 out in the woods like other states do than passing a broad  
21 sweeping immunity legislation which throws the baby out  
22 with the wash water. So thanks for listening.

23 CHAIRMAN HALUSKA: Anybody else? Yes?

24 MR. PULLER: I'm very sorry that Mr. Rieders has the  
25 opinion that we want to have our cake and eat it too. He's

1 mi staken that we want to charge people to use our land. We  
2 have never done that since 1855 and we don't intend on  
3 doing it now and it's not our intent to do it in the  
4 future.

5 There are many cross country ski trails across the  
6 northern part of Pennsylvania, the Allegheny National  
7 Forest has miles of them. Our company has ski trails and  
8 we'll provide Mr. Rieders maps or anyone else maps of where  
9 these logging roads and trails go.

10 What we do want to have is an assurance that we have  
11 as much protection of liability as possible. At the same  
12 time, we want to provide as many opportunities as possible.  
13 And I firmly believe that partnerships are the way to move  
14 forward with the user groups of recreational people and the  
15 landowners. If you could marry those things together in  
16 some way I don't believe there's a whole lot of  
17 disagreement here about the intent of the bill, perhaps  
18 there is in the wording of the bill. But the intent I  
19 think is to make partnerships and make things work and make  
20 land available without exposing the landowner to  
21 unnecessary whatever that is, liability. Thank you.

22 CHAIRMAN HALUSKA: Anybody else?

23 MR. KIRCHNER: Could I say one last thing I forgot to  
24 mention, about recovery of legal fees? And that is the  
25 plaintiff in my layman's opinion is a person who is getting

1 a consideration from the landowner by being able to use  
2 that landowners' land. And I think that if we were to tell  
3 that landowner then their reward for opening that land is  
4 the possibility of an additional charge in the event that  
5 something should happen, be it because the fear is about  
6 the frivolous lawsuits, I think that just further  
7 discourages and would really be a poison pill for this  
8 legislation. Many landowners then would be right back in  
9 where they would not be at all encouraged to open their  
10 land because of the chance of additional fees, and I'm not  
11 sure, at one point we discussed even whether those are  
12 covered by insurance or not, let alone the time and all the  
13 other costs that are involved.

14 CHAIRMAN HALUSKA: Since Representative Pallone is  
15 the Sub-Committee Chairman on Recreation I think he should  
16 take the lead in maybe trying to maybe pull some amendments  
17 together.

18 REPRESENTATIVE PALLONE: It works down to being a  
19 balancing test. And, because I have been on both sides of  
20 the aisle, or both sides of the bar, if you want to call it  
21 that, relative to defending and prosecuting both civil and  
22 criminal cases.

23 The issue, though, comes down to is there are  
24 mechanisms in place for frivolous lawsuits. And that's an  
25 issue that occurs. But I can tell you as a plaintiffs'

1 lawyer and most plaintiffs' lawyers will tell you, not  
2 everybody walks in the door you take their case, because  
3 you know that there's an investment of time and in many  
4 cases, funds to even bring the lawsuit. So there's a risk  
5 on the part of the plaintiffs' lawyer to do that.

6 So I want to believe that the legal community in all  
7 due professionalism isn't bringing frivolous lawsuits,  
8 although anybody who lives in a world of reality knows that  
9 there are exceptions to every rule and there are  
10 plaintiffs' lawyers out there that are just bombarding  
11 lawsuits with the hope of getting something back. And  
12 that's unfortunate for the profession. It's the one bad  
13 apple that gives the whole bunch the bad taste.

14 So I'm hoping that the bar association, the bar, both  
15 defense and plaintiffs' bar controls ourselves, and looks  
16 at it from a more reasonable point of view because there's  
17 nothing worse than being sued when you know you didn't do  
18 anything wrong and you have to defend it, you know, and  
19 that happens both in criminal and civil cases. There are a  
20 number of people who are charged with crimes that are  
21 innocent. They still have to defend themselves, and when  
22 they are acquitted they may have spent either tens of  
23 thousands or sometimes hundreds of thousands of dollars to  
24 defend themselves and be innocent, and all they have left  
25 is their tarnished name, so to speak, and that's

1       unfortunate.

2               So hopefully within the bar association we can police  
3       ourselves so that we don't have frivolous lawsuits, and I  
4       want to believe that the lawyers throughout Pennsylvania  
5       and throughout the country aren't just taking up the  
6       court's time because they don't have anything better to do.  
7       Although reality says, there's probably the exception to  
8       that rule. Let's hope that you all, as land owners allowing  
9       people to recreate on your property aren't going to be  
10      subject to that kind of stuff and that happens, and I am  
11      sorry that it does.

12              But just to give you a blatant, well we'll pay  
13      defense counsel when you win, well what about when  
14      plaintiffs' counsel wins? You know, there's a huge  
15      investment in a lot of those cases so, and it's not just  
16      landowner uses, although that's what we're focusing on  
17      today that goes across the board, and I try to balance the  
18      2 of those on both sides, so...

19              CHAIRMAN HALUSKA:   Okay.

20              REPRESENTATIVE MOUL:   I got a question for Mr.  
21      Rieders.   Would posting your land enter at your own risk  
22      absolute liability?

23              MR. RIEDERS:   It would grant considerable protection,  
24      that's why people do it.   It makes the person a trespasser.  
25      If you posted your land --



1           REPRESENTATIVE MOUL: No, not necessarily a  
2 trespasser, enter at your own risk. You have permission to  
3 enter but you are entering at your own risk. You're taking  
4 all liability, is the way I would interpret that sign, not  
5 as in trespassing.

6           MR. RIEDERS: Okay, I don't think that is any change  
7 in the current law, I don't think that kind of sign does  
8 because currently you don't owe anybody the obligation of  
9 inspecting your land, putting this bill aside, even the  
10 current bill, okay, you have no obligation to search out  
11 your land for hidden dangers, you only have the obligation  
12 to make sure that things are corrected that are known  
13 patent problems. So anybody enters anybody's land at their  
14 own risk unless they encounter a danger they could not have  
15 anticipated, okay?

16           So when you put up a sign saying enter at your own  
17 risk really that's all you are saying is that you know, I'm  
18 not going to go searching around for hidden dangers and the  
19 obvious ones you should know about. So I don't think that  
20 kind of signage would do it, but people obviously, can put  
21 no trespassing signs up if they don't want to take a  
22 chance.

23           REPRESENTATIVE MOUL: Which is what we are trying to  
24 avoid by this law.

25           MR. RIEDERS: Right. Well that's why you got the

1 current law which I believe protects them, depends on how  
2 broad you want to be.

3 One example I think will suffice. You have somebody  
4 for example this law, if you had somebody who was able to  
5 prove malicious conduct you would agree with me that if  
6 somebody was intentionally trying to hurt somebody else  
7 they should be able to recover, you would agree with that,  
8 correct?

9 REPRESENTATIVE MOUL: I agree.

10 MR. REIDERS: Okay, that person will not get their  
11 reasonable attorneys fees and costs when they recover under  
12 this bill, because they'll have to pay it out of their  
13 recovery or however else they pay for it. But the person  
14 who defends the lawsuit winds up getting paid should they  
15 win. It's that kind of balance that makes legislation like  
16 this suspicious, for lack of a better word.

17 REPRESENTATIVE MOUL: Yesterday at Rock Run I signed  
18 a release of liability waiver. Does that --

19 MR. REIDERS: Those are good, absolutely. I have  
20 written many for landowners. I have written, in fact, when  
21 my wife decided to go sky diving she had to watch a video  
22 from a lawyer. I thought this was the greatest thing I had  
23 ever seen, release I have ever seen. She said they made  
24 her watch a release read by a lawyer saying you can get  
25 killed if you jump out of this airplane. She decided to do

1 it anyway. But, so yeah, those releases are done for that  
2 purpose, that was an extreme release, but they're done for  
3 that purpose.

4 CHAIRMAN HALUSKA: Our insurance company insisted  
5 that we have that release signed.

6 MR. RIEDERS: They probably wrote it for you.

7 CHAIRMAN HALUSKA: They obviously looked it over and  
8 okayed it.

9 MR. RIEDERS: I have written many of them.

10 REPRESENTATIVE MOUL: But it still doesn't mean they  
11 can't get named in a lawsuit.

12 MR. RIEDERS: Well you know, nothing prevents, we  
13 don't have any system in the United States that says you  
14 are not allowed to sue over something because this is not  
15 China, we do permit people to make claims, but we do have  
16 some pretty strong, now, prohibitions when they do. Like I  
17 say, I know of many specific examples where lawyers or  
18 their clients are penalized for frivolous behavior and I  
19 think, by the way, that ought to be strengthened even  
20 moreso, and people should not be able to bring frivolous  
21 lawsuits, those that are proven to be frivolous and walk  
22 away from it. I'm no advocate of that.

23 REPRESENTATIVE MOUL: Thank you.

24 CHAIRMAN HALUSKA: Okay, thanks everybody.

25 (Hearing concludes at 10:58 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

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Jo Nell Snider  
Registered Professional Reporter  
Notary Public