

[Chairman: Mr. Schumacher] [5:32 p.m.]

MR. CHAIRMAN: It is now 5:32 -- and a half, I guess. Many of us have other commitments this evening. I would like to begin by welcoming Mr. Denis Horne on behalf of the Maycroft Insurance Company Limited Act, which hopefully will become Bill Pr. 16. With him is Pat Feehan. I understand, Mr. Horne, that you are appearing as a petitioner and as counsel combined and you will be the only one making statements.

MR. HORNE: Yes.

MR. CHAIRMAN: After Mr. Clegg makes his report, we will have you sworn. You will then explain to the committee the need for this Bill and any other background information, followed by committee questions and an opportunity to wind up, if you wish. That's the way we'll proceed. At this time I'll ask Mr. Clegg to give his report.

MR. M. CLEGG: Mr. Chairman, this is my report on Bill Pr. 16, pursuant to Standing Order 99. The Bill is for the incorporation of an insurance company, pursuant to the requirements of the Insurance Act, and follows the form of the model Bill prescribed in appendix C of Standing Orders. The Bill does not ask for any powers which I consider to be unusual, and the Bill follows the form of the model Bill.

The form in which we have the Bill at present has one area which will be changed; that is, the references to the Companies Act will be changed to appropriate references to the Business Corporations Act, as suggested by the Superintendent of Insurance. I hope that will be done before the Bill is printed, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Clegg.

[Mr. Horne was sworn in]

MR. CHAIRMAN: Mr. Horne, we're at your pleasure now.

MR. HORNE: Thank you very much, Mr. Schumacher. I am one of the principal investors in a warranty company which sells warranties on new and used motor vehicles sold throughout

Canada. When this company was set up, I believe there were a total of six investors. We registered in every province and obtained underwriting through the company American Home Insurance in New York through our brokers, Johnson & Higgins. We commenced business in January 1985 and have continued to do business throughout Canada. When I say "throughout Canada," I would say that the majority of the business has been done in the provinces of Alberta, Ontario, and Manitoba, but we also have substantial penetration in the provinces of B.C., Saskatchewan, and Quebec.

Near the latter part of 1985, the Quebec Legislature passed legislation whereby they made statutory requirements for the conduct of the warranty business in the province of Quebec. They gave two alternative approaches to the situation. You could provide an underwritten contract supported by a contract of surety or you could enter into an agreement with the province of Quebec whereby you deposited with them a satisfactory bond in the sum of \$100,000, plus you entered into an agreement whereby you would deposit half of the premium income in a bank account in the province of Quebec.

Nine warranty companies applied for a permit to operate in the province of Quebec. Eight of them chose the method of depositing half of the premium income in the province and supplying the surety bond in the sum of \$100,000. We went to the province of Quebec and said that we had a fully underwritten contract and would they accept our position? They said that we still needed a contract of surety, and we did obtain a contract of surety.

We found a great deal of difficulty, which has increased rather than decreased, with the underwriter. To date in 1986, we have paid seven payments to the underwriter in the sum of well in excess of \$2 million, and they have suffered no losses. But we have found them very difficult to communicate with in changing rates where we see problems, whereas with the province of Quebec, we know there are government reviews and they are most assisting with regard to changing rates. We are anxious to maintain an underwriting for the reason that we are anxious to enter into contracts with manufacturers of motor vehicles. While we do not have any manufacturers yet, we have been led to believe by almost every one of them that

an underwriting is a positive feature which they will substantially look at.

In the circumstances, with the lack of communication that we have had with the underwriters in making necessary market adjustments and their failure to commit to changes and improvements, we came to the conclusion that the only position we could take was to give the underwriter notice that we intended to terminate our underwriting contract, which was done on June 23. This was as a result of numerous negotiations over the 90 days prior to that, which had yielded no positive results.

As a result of that, I made some investigations with regard to other partners and discussed the matter with — in fact, Mr. Stevens of The Churchill Corporation came to me and asked if I thought there was room for the The Churchill Corporation to invest in this company. I must advise this committee that I am also an officer of The Churchill Corporation. I am the secretary of that company, although I had not broached this matter with them. In the discussions we have had, we felt that this was a positive avenue which we should pursue.

I would like to say that it's a business that has been carried on nationally and to date brings substantial sums of money into this province. One of the reasons we would like to incorporate this company is that we would like to retain these sums of money in the province of Alberta. One illustration of the point I would like to make is that recently, in the past several months, I've seen in the papers that the underwriters are very pleased about the improvement in the rates of insurance losses. Last year in Canada the earned insurance premiums stood at the sum of \$177 million. They were most pleased because the losses were only \$188 million, which is a net loss of \$11 million. The thing they never tell you is that in addition to the premium they collect, they charge an administration fee, which in our case is 25 percent. If ours is a common case of underwriting, they are collecting an additional \$44 million. So when they suffer a net loss of \$10 million, they only have \$33 million to apply to administration rather than \$44 million. In the circumstances, we feel that an insurance company can be made very viable in the province of Alberta.

The other thing we like is that if we can deal

with the matter here, we do not have to fly to New York with the company executives, which every time we do is a bill of \$5,000. Never once have we come back with satisfactory, conclusive answers to our problems. That is what has prompted us to discuss the situation with The Churchill Corporation.

Our present plan is that we are going to actively pursue the approach of incorporating an insurance company and raising the capitalization in sufficient amounts to comply with the legislative requirements and also provide a comfort margin for the company to carry on. In all likelihood we will reinsure a portion of this business to further secure our position, but a lot depends on by what degree our proposed group of investors agree to put up money. We of course know that if we do not get this done by the time of the termination of our contract, December 23, we will have to take the alternate approach of carrying on like our competitors, the main ones, who in this province conduct their business by having a trustee collect the insurance premium in a trust account and pay claims from that trust account. We would like to add more security by adding an insurance company, which we feel further protects the buying public.

MR. BRASSARD: Are you finished with your presentation?

MR. HORNE: Yes, I am.

MR. BRASSARD: Is this an insurance company in every aspect as we know an automobile insurance company to be?

MR. HORNE: Yes, it would be a property underwriter. I appreciate the question because there's one thing I forgot to say. Our business in this field is really twofold. In addition to selling warranties on the vehicles, we have a related company which sells sickness and accident insurance to the installment buyer of motor vehicles, if they choose to select it.

Our experience in that field is much different from the warranty field, where there are many claims for defective parts on vehicles. So far, notwithstanding the difficult economic times, the loss experienced on the sickness and accident insurance, which also includes a provision for unemployment, has been very good. It is a facet of the business which

does not to date appear to be nearly as volatile as the warranty market. If we are successful with this branch of the application with regard to the insurance as a property underwriter, I wish to advise that if our present plans come into being, in a year or so we'll also be applying for a life company, because we feel that it is another opportunity to advance a form of business which brings money into this province rather than draining it from this province, bringing it in nationally or from the vast majority of provinces.

We are licensed to do business in the maritimes, but to date we have not got substantial penetration in the maritimes. Our substantial penetration is Alberta, Manitoba, and Ontario, but Quebec seems to be coming on. Not that we have a great deal of business yet, but we are making great strides in comparison to recent markets.

MR. BRASSARD: The point of my question was: is this a collision insurance as we know it? Or it's a repair . . .

MR. HORNE: No, the coverage which we seek to underwrite by way of insurance is not a liability problem. It is purely a contractual matter dealing with defective parts. I believe the Attorney General of the province has a legal opinion that the matter is technically not insurance.

MR. BRASSARD: That's the point of my question.

MR. HORNE: Yes, that's the point of the question. I'm sorry I didn't make that clear. Notwithstanding the point that that may be technically correct -- and we have no desire to refute it -- we still want to ensure that this is a stable operation in which the company can be favourably regarded.

MR. MUSGROVE: Is this an extended warranty?

MR. HORNE: Yes, it is an extended warranty, in addition to the manufacturer's warranty.

MR. CHAIRMAN: I'd like to ask a question or two, Mr. Horne. Do I take it that American Home is presently servicing you but not satisfactorily; therefore you're terminating?

Are no other underwriters readily available, or do you just see the opportunity of doing better?

MR. HORNE: Here's the thing: we have been unable to find other underwriters who were prepared to do it. Many showed a slight degree of interest but never got to finalization. What we have found in our dealings is that there is not a large number of underwriters out there who are prepared to give favourable consideration. In fact, I can say that I know of none. The other fact is that we have examined the situation, and we think that in the circumstance this is a viable opportunity for an underwriter, that it will result in the retention of moneys in the province of Alberta. It is something which advances Alberta as a financial base. We think there is an opportunity to conduct this business in a very proper fashion which will enable the company to be a substantial benefit to the province and a source of financial strength.

MR. CHAIRMAN: What is the name of the warranty company?

MR. HORNE: The name of the warranty company is North American Warranty. It is a federally incorporated company registered in all provinces. The sickness and accident insurance company is North American Sickness and Accident.

MR. CHAIRMAN: So initially the only customer of Maycroft would be North American?

MR. HORNE: Yes, Mr. Schumacher. That's another point I wish to make. That is the prime purpose of this company. Incidentally, when the advertising has been placed in the paper, I have had several calls from local people involved in the insurance business wondering if there were going to be opportunities for them. I've told them that there will likely be opportunities but that they are incidental to the incorporation of this company, that this is being incorporated primarily to underwrite the repair service contracts of North American Warranty.

MR. CHAIRMAN: You made reference in your testimony to The Churchill Corporation. Could you tell us what The Churchill Corporation is and how it relates?

MR. HORNE: The Churchill Corporation is a fairly large corporation really incorporated by a group of Edmonton businessmen.

MR. CHAIRMAN: Is it an Alberta corporation?

MR. HORNE: It is an Alberta corporation. It has substantial real estate holdings, some oil and gas holdings.

MR. CHAIRMAN: Is it related to North American?

MR. HORNE: At this time it has no relation to North American Warranty whatsoever. Where we came into contact was that while I am the secretary of The Churchill Corporation, I am not a member of the executive management committee. I am a major investor in the company — not the major investor by far. They approached me on this. At the time they approached me, I told them about the problems we were having with American Home, and we discussed the possibilities of proceeding with this insurance company. That is why the two other named investors, who are really the president of Churchill, Terry Norman, and the vice president in charge of real estate, Mr. Ernest Stevens, have also participated in this application.

MR. CHAIRMAN: Could you give us a little more information as to who the other petitioners are?

MR. HORNE: Yes. Peter Leveille is the president of North American Warranty, and Mr. Bill Ralston is presently the comptroller of that company.

MR. DOWNEY: This goes back to the Chairman's first question, that there are no other underwriters in the business. If my memory serves me correctly, for a number of years a new vehicle purchaser has been able to purchase extended coverage. I believe it was called IW.

MR. HORNE: Yes, to bring you up to date on that, that is International Warranty. Their underwriter was a company out of Vancouver by the name of Commonwealth Insurance. Commonwealth Insurance terminated their coverage last December, and since that time

that company has been proceeding with no underwriting but simply depositing their insurance premiums in a trust account with, I believe, Royal Trust Company. I think they have obtained Reed Stenhouse to actuarially administer the trust account.

MR. DOWNEY: So you are effectively stepping into that breach, I take it?

MR. HORNE: Yes. When we started out, International Warranty and ourselves, North American Warranty, were really the two major companies in the province of Alberta which had underwriting. There are other companies which don't have complete underwriting as such. They make statements which — I have no personal knowledge to refute, but from what I can glean from talking to the underwriters named, they are not fully underwritten. Since International Warranty has lost its underwriting, it has maintained its business operation without underwriting, and if we can, that is a situation which we would like to avoid. We think it makes our company much more attractive to manufacturers of vehicles — not necessarily domestic — sold throughout the country such as Volkswagen, Mazda, Hyundai, and so forth.

MR. DOWNEY: With regard to your sickness and disability coverage for installment purchasers of automobiles, I would imagine that that field is fairly crowded.

MR. HORNE: Yes, it is. It is much more crowded in the province of Alberta than the warranty field. We have had good success because of our roots here in the province, but we also have had good success in many other provinces. We are doing substantial business.

MR. WRIGHT: Mr. Chairman, may I just mention that I have known Mr. Horne for upward of 30 years as a most reliable and trustworthy barrister in this city. But I have a question for him, which is that if the Attorney General, I think he said, has an opinion that technically the writing of these warranties is not insurance, then I wonder if in the business you seek to do through this company, you might not be ultra vires, since it does confine the objects to insurance.

MR. HORNE: Mr. Wright, I appreciate that

point. I have addressed my mind to it slightly. The position that concerns me -- there is no doubt that we have to come face to face with that problem, and it must be resolved. But what I am anxious to do is to get permission for this company to proceed. Of course, we will have that matter clearly dealt with before we proceed. But it is the type of question that -- initially it was thought that this was a matter which was dealt with under the Insurance Act. What raised my mind to it was that I saw our opposition proceeding without underwriting, which was permitted. It seems to be a grey matter, and we want to ensure that we have the right to obtain underwriting, if it is not ultra vires.

MR. CHAIRMAN: Would this be determined by the Superintendent of Insurance? We might pass the Bill, and then you still have the other hurdle of satisfying the Superintendent of Insurance before you're able to do business.

MR. HORNE: Mr. Chairman, I understand from my discussions with, I believe, the Superintendent of Insurance that his instructions to International Warranty are to try and obtain underwriting.

MR. CHAIRMAN: No, what I'm talking about is Maycroft.

MR. HORNE: Yes.

MR. CHAIRMAN: If we pass Maycroft, you still have the hurdle of satisfying the Superintendent of Insurance of various requirements before you can operate.

MR. HORNE: Absolutely.

MR. CHAIRMAN: Is this question of ultra vires not one of those problems with the Superintendent of Insurance?

MR. HORNE: I have come to the conclusion that since the Superintendent of Insurance takes the position that our opposition should endeavour to obtain underwriting, he, notwithstanding whatever legal opinion he has, is of the view that it is in the interests of the buying public that an underwriting is a beneficial feature. Our desire is to ensure that we have a company with the most security for

the buying public, that they will have a greater degree of comfort dealing with us than any other competitor.

MR. WRIGHT: I'm sorry, Mr. Chairman. I'm not quite sure I've got hold of the right end of the stick here. Is it not through this company that you will be doing the underwriting?

MR. HORNE: Yes, it would be this company which would do the underwriting.

MR. WRIGHT: The question is: is this insurance within the meaning of the powers set out here? Could you not play safe by adding the words "engage in the business of entering into contracts of insurance and warranty of all kinds" or something? Would that make a difference?

MR. HORNE: I appreciate the point, and I would certainly be pleased to have that placed in there. I think your point's well taken, and I appreciate it because I think it does add to the situation. As I say, this is the paramount business which we would like to have covered, but we are prepared to do other facets of business if we are in a position to do so.

MR. CHAIRMAN: Would Mr. Clegg have anything to assist us?

MR. M. CLEGG: Mr. Chairman, I have two comments. One relates to the suggestion made by Mr. Wright. There is a model Bill which provides the wording for an insurance company; however, that is in our Standing Orders. There is nothing, as far as I'm aware, in the Insurance Act which limits the wording which we can put in your special Act. It merely says that it must be incorporated by a special Act of the Legislature. So notwithstanding that you've carefully followed the model Bill form, I believe we could safely recommend a different form of wording in your powers section because it would still be within the spirit of the Insurance Act, which is what you have to comply with.

I would like to ask another question. I'm a little confused in my mind as to exactly what procedure it is that the Attorney General's opinion relates to when it says that that procedure is not insurance. Is it talking about the business of North American, which is essentially insuring or not insuring repair costs,

or is he talking about the underwriting activities of Maycroft? Because they're two entirely separate operations.

MR. HORNE: I believe it has nothing to do with Maycroft. I believe it related to the fact that the legal opinion regarding this subject matter is that this is a contract to replace a defective part in a motor vehicle and it is not dealing with a liability loss as such. Therefore, they do not feel that it comes under the property underwriter.

MR. M. CLEGG: Mr. Chairman, this is what I thought Mr. Horne said. In that case the only question not determined is whether North American is in the insurance business, which apparently it is thought not to be. But if Maycroft is the underwriter for its liabilities, Maycroft then is perhaps in the insurance business. There is no opinion which says that what Maycroft is going to do is not insurance, as far as I understand what you're saying. It's only what North American is doing which is perhaps not insurance.

MR. HORNE: That's right.

MR. M. CLEGG: So to have a standard Insurance Act would appear to give you an *intra vires* route.

MR. HORNE: That is the position I would like to accede to.

MR. M. CLEGG: So maybe we don't have a problem.

MR. CHAIRMAN: Mr. Wright, did that . . .

MR. WRIGHT: Yes, if what is proposed to do with Maycroft then becomes insurance — because you're ensuring the possible losses of another company — then perhaps we are talking at cross purposes and I did have hold of the wrong end of the stick. I wasn't sure.

MR. HORNE: Fine; it's a point I appreciate your taking because it's a point that certainly crossed my mind. In the event that we run into coverage on a class of motor vehicles which is found to be defective, where the loss from a defective part is much greater than it has been in the past or it is just a really faulty part, we

really want to ensure that such a situation does not severely hamper the financial worth of this company. That's why we want the underwriting.

MR. CHAIRMAN: If I might ask a question, the existing business is extended warranties, so you're dealing with people who purchase an automobile and get this extended warranty.

MR. HORNE: Right.

MR. CHAIRMAN: Your prospective business would be on behalf of the manufacturer to provide a manufacturer's warranty?

MR. HORNE: We want to extend it to that, Mr. Chairman. But what happens as it stands right now, the dealers will sell through contracts of our company an extended warranty which is, say, four years. It's going to be raised to five years and 100,000 or unlimited mileage. That exceeds the manufacturer's warranty. He goes to maybe 50,000 in 36 months on some facets, and other facets he does not cover. Ours is a pretty full coverage on all facets of the parts of the automobile. We do that on new models, and we also do it on late-model used cars.

MR. CHAIRMAN: But this has nothing to do with recalls.

MR. HORNE: No, this has nothing to do with recalls.

MR. CHAIRMAN: Your proposed manufacturer's warranty: could that have any recall implications?

MR. HORNE: Yes, and those proceed our contractual obligations. Ours only comes into force after the manufacturer's warranty has been exhausted or if it covers a part which is not covered by the manufacturer's warranty.

MR. BRASSARD: I would just like to wrap this up in my mind. A great number of dealers have their own repair service contracts and extended warranties.

MR. HORNE: That's right.

MR. BRASSARD: I think by law they must keep on file so much money in trust for so many contracts that are in existence. So really the

assurance to the motoring public is already on most plans by law, is it not?

MR. HORNE: That is true. What we have found is that there are a few exceptional dealers who are capable of maintaining their own repair service contracts, but numerous of them come over to us because they get into problems internal or external, whether it's advice from their accountants that they have a contingent liability that is dangerous to their situations, which must be disclosed to their bank, or whatever. There are substantial portions of them. In fact, to my knowledge very few now are carrying on with their own plans — maybe very long-established dealers, probably three or four in Edmonton and maybe the same number in Calgary, but there are very few that do not use our services or our competitors' services.

MR. BRASSARD: I guess the point of my question is: other than the creditability factor, what will this enable you to do that you're not basically forced to do by law at present?

MR. HORNE: As I understand the present legal situation, we have the alternative to proceed with an underwriting or to proceed in the fashion our competitors do, which is obtaining an actuary to administrate a trust account into which all insurance premiums are paid. The loss is paid from that trust account.

I myself am concerned about such an approach. I like the Quebec situation from the point of view of the buyer, because the Quebec government actually monitors the situation, and if your loss ratios become dangerous, they will tell you that you cannot write any more of that business in the following year until you inject so much money. As I say, it a very recent piece of legislation, so it has had little time for actual performance. I can see that down the road numerous of the competitors in the province of Quebec could not be around in subsequent years, because if their loss ratios are out of order, the Quebec government has the right to say: "We have examined this situation and we have examined the accounts. Unless you place so many dollars on account with us to cover the shortfall, you must retain 85 percent of your premium in the province." If they have high administration costs, they may not be able to function.

MR. CHAIRMAN: Do any members have any further questions? If we don't, I think I at least have a fair understanding, Mr. Horne, of what your problem is. If you'd like to close with a short statement, that's fine, but you're not compelled to if you feel that we've exhausted the . . .

MR. HORNE: The only thing I would like to say in summation, Mr. Chairman is this: we entered this business because we thought it was a viable business. We think we can contribute something in our small degree to Alberta by contributing to the financial strength of Alberta by creating a source of capital. That is our aim. I have lived here all my life to date, and I intend to remain here for the rest of my life. I certainly don't want to be involved in anything I don't think is financially viable or which exposes the buying public to a possible financial burden or involves the government in any embarrassing financial situation. I feel that by doing this we create a product viability which is good for the buying public, which is good for the province, and which is good for ourselves.

MR. CHAIRMAN: I just have one final, if you'll permit me. Are all the incorporators or principals in the proposed company Albertans?

MR. HORNE: With the insurance company that is being proposed there would be two groups of shareholders. We have not decided yet as to what degree, but it would appear that North American Warranty and North American Sickness and Accident, by capital contributions to this company, could conceivably take 100 percent of it, but that is not likely. We will probably take a position of 50 percent, 40 percent, or 30 percent. The shareholders of North American Warranty are all Alberta residents with the exception of two. One is Mr. C. N. Woodward of Woodward Stores, and the other is the former president of Woodward Stores. Those are the only two members outside the province that are presently shareholders.

However, I wish to tell this committee that it is possible that there may be other investors who are outside the province, but they would be minority investors in this company. We are not prepared to let control of this company leave Alberta. One party of which certain officers of the company have evidence of a substantial

interest are the brokers Johnson & Higgins, but I do not wish to make representations that they will be in it. There is a possibility that they will be in, but it is a matter which would have to proceed before their board.

MR. CHAIRMAN: Where are they located?

MR. HORNE: They are an international brokerage firm centred in New York. But they would have a very minor interest in it in the event that they did.

I am interested in obtaining an outside director who I would describe has a "window" into the insurance markets from the point of view of reinsurance or stop-loss insurance, things which this insurance company would seek to utilize to defray the possibility of loss.

MR. CHAIRMAN: What would the initial investment be?

MR. HORNE: Under the present legislation we are obligated to capitalize with an investment of \$1 million. In the discussions we have had, we have talked about the figures of \$1.25 million, \$1.50 million, and \$2 million.

MR. CHAIRMAN: So it would be somewhere between \$1 million and \$2 million.

Thank you very much, Mr. Horne. On behalf of you I would also like to thank the committee members for eating into their evening. A general thanks to everybody concerned, including the people at the table with me.

MR. HORNE: Thanks very much, Mr. Chairman. I appreciate the consideration the committee has given this matter.

MR. CHAIRMAN: Thank you.

Could we have a motion to adjourn, please?  
Mr. Jonson. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Contrary, if any? Carried.

[The committee adjourned at 6:17 p.m.]