
Commission Meeting

of

RECREATIONAL SPORTS AND LEISURE ACTIVITIES LIABILITY STUDY COMMISSION

"Testimony from Michael D. Larkin."

LOCATION: State House
Room L-109
Trenton, New Jersey

DATE: April 26, 1995
10:30 a.m.

MEMBERS OF COMMISSION PRESENT:

Alexander J. Drago, Esq., Chairman
Senator Robert W. Singer
Roy Gillian
Kenneth G. Andres, Esq.
Melvin S. Narol, Esq.
Anthony T. DiSimone



ALSO PRESENT:

Craig B. Bleifer, Esq.
Secretary to the Commission

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ALEXANDER J. DRAGO, (Chairman): Okay, it's quarter to, and I don't think we should be holding ourselves up much longer than that. Whoever is here, I want to thank you for coming today.

We have a non-Commission member guest here today. If you could just introduce yourself, so we all know who you are. **V A L E R I E H A R T Z E L L:** (from audience) Certainly. Hi, I'm Valerie Hartzell. I'm a staff member with the Association of Trial Lawyers.

MR. DRAGO: Okay.

Mike Larkin is here today to testify. He's a representative of TIG Insurance. We had discussed his testimony, or his coming today to give testimony, the last time. Mr. Larkin is here today.

Before we get into his testimony, I apologize that we were not able to circulate the minutes earlier than this morning. So if we could-- I don't know if you've had a chance to look at the minutes or not, but I would like to get that out of the way before we go into the testimony. Has everybody had a chance to look at it?

MR. GILLIAN: I move we accept them.

MR. DRAGO: Is there a second?

MR. DiSIMONE: I second.

MR. DRAGO: Does anybody have any revisions to the minutes? (no response) All in favor of approving the minutes, as is, please signify by saying aye. (affirmative response) Opposed. (no response) Abstentions. (no response) The minutes are approved unanimously.

Are there any issues which we could discuss in a very short amount of time, that any of the members would like to bring up before we get into Mr. Larkin's testimony? When he is done testifying, obviously, we will be able to stay and discuss anything else at length, whatever length you want. I want to

see if there is any issue you want addressed before he testifies.

MR. NAROL: Just one thing. I think Mr. Andres wrote a letter last month about the same issue I'm raising now; that is, there appears to be legislation being introduced and being moved to some extent, dealing with the subject matter of this Commission's purview. I was wondering if there was a letter that could be sent by this Commission to the legislative leaders saying to them that, perhaps, they could hold in abeyance those pieces of legislation, to give this Commission a chance to look at them and deal with the issues that relate to that legislation.

MR. DRAGO: There are a number of pieces-- I think there are a number which deal with product liability, which, I guess, would have no relevance to what we are doing here. The cap on punitive, I think that's across the board, is that--

MR. NAROL: I'm looking at A-2644, March 13, 1995. There was another one or two dealing with-- Let's see, Senate Bill No. 1223 and Assembly Bill No. 927 dealing with the equine industry. Those two particularly, but I think there are others, as well.

MR. DRAGO: I think, if there are bills which have specific applications or generally would relate to the areas where we are inquiring into, then perhaps we could make contact via a letter, as you suggested. I know that some of the proposed bills really have no application to what we are doing. If someone wants to provide myself and the other members with a list of those bills that they feel we should look at, and perhaps should be held in abeyance, perhaps we could write the letter. But there are so many bills out there now, I think we should generate a list of what they are. If you have them with you, then after Mr. Larkin testifies, we could even--

MR. NAROL: I'm sure I don't have them all. I'm just looking at the March 13 one I mentioned, which deals with

limiting liability of swimming pool parks, playgrounds, skate parks, public recreation facilities, etc. That's within our purview, obviously.

MR. DRAGO: Clearly. I would like the letter that we send to be specifically referencing those bills which we think they should stop working on, rather than a general letter making them decide which ones they are, and then, they would never really look at it anyway.

MR. NAROL: If I can ask the fellow sitting next to me, Mr. Andres and I, to work together. We'll come up with a list, maybe through the State Bar Association and through the Trial Lawyers Association, and provide that to the Chair.

MR. ANDRES: No problem.

MR. DRAGO: That's fine.

Mr. Gillian.

MR. GILLIAN: Let me just throw out here-- I mean, this is what, the third meeting?

MR. DiSIMONE: The fourth.

MR. GILLIAN: Fourth meeting. You know, there are people here who I still have not met. What's the feeling of the whole Commission, you know, where are we going? Do you think it's going anyplace?

MR. DRAGO: You mean members who have not attended meetings?

MR. GILLIAN: Yes.

MR. DRAGO: Every member has attended once, I think.

MR. GILLIAN: I haven't met him, yet. (indicating Senator Adler)

MR. DRAGO: Senator Adler? He sent a representative, I think, the last couple of meetings, so I would consider that to be in somewhat attendance, we'll say.

MR. GILLIAN: Has Assemblyman Dalton been here? I don't recall him.

MR. DRAGO: I don't recall.

I understand. You seem obviously frustrated by that, and I voiced that frustration in the first few letters I sent out asking people to come to the meetings.

MR. GILLIAN: Yes.

MR. DRAGO: Regardless of attendance, at the end of our hearings, it's the Chair's position that we will be submitting recommendations to the State Legislature for them to act on, whether these people show up or not. At the end, once we have recommendations we're making, I'm sure they will be in attendance or will make their ideas known. They'll be worked into the process or not at that time period, depending on what the Commission's wishes are. We will make recommendations -- what we're going to do, what we're charged to do -- whether we get 100 percent attendance or not.

MR. GILLIAN: That's a positive attitude.

MR. DRAGO: So we'll get to Mr. Larkin. Mr. Larkin is here at the end of the table. I think he'll start with a brief presentation as to who he is, his background, his company, and some thoughts he has about the issues that we have to address. Then after he's done, obviously, whatever questions or comments you have, you could address to him.

Hopefully, there will be more questions and comments necessary than his presentation because, I think he wants to give you the information you want to get, rather than him guessing at it in his prefatory remarks.

Mr. Larkin.

M I C H A E L D. L A R K I N: First, thanks for having me. Glad to be here.

Secondly, I apologize for the sunglasses. United Airlines has one of my bags, and my regular glasses are in there. I hope to pick them up when I get home. No disrespect intended to anybody. There is a regular person back here, but I just don't see very well without these glasses.

I have 23 years in the insurance business, all of it on the company side, and virtually all of it in the underwriting function.

I'm not trying to patronize anybody, but what I do is, I decide whether or not the company wants to accept the risk -- that's ultimately the decision that I am responsible for -- and if so, under what terms and conditions.

I have approximately 20 years in specialty insurance, from excess casualty and umbrella insurance to products recalled, to newspaper errors and omissions, to motion picture insurance -- cast insurance, props, sets, wardrobes -- pretty exotic stuff. Most of the last 10 years have been in the sport/leisure insurance. My employer, TIG Insurance, has a strategic partnership with a specialized producer, K&K Insurance out of Fort Wayne. Hereinafter when I say we, it will probably be a reference to that partnership of K&K and TIG. They are an MGA for TIG. For those of you who don't know what an MGA is, it's an agency who has been granted, specifically by the company, authority to do some of the functions that are typically reserved for the company.

What our partnership seeks to do, just as a matter of what our business is, is to insure risk in the spectator liability area, where the major exposure is injury to the ticket buyer from an insurance standpoint. We seek to insure participants at risk such as skiing, winter sports, bowling, amusement parks, etc., where you spend some discretionary income to enjoy some type of leisure activity.

In addition to liability insurance protecting our insured, who might be the promoter, the sponsor, the land owner, etc., we also offer workers' compensation, participant accident coverage of property, and auto insurance for insureds in these areas.

Now, participant accident coverage, what that coverage is -- and I'll touch on this a little more later on -- it's the

equivalent of premises med pay. If the participant is injured-- Very often our insured has bought a policy, a no-fault policy -- it's not a liability policy, it's a medical policy -- that will pay for his injuries arising out of the insured activities.

So if you play amateur baseball, if you play Babe Ruth Baseball, I compare that Babe Ruth Baseball, as an association, has a rather large medical policy purchased for the sole purpose of paying the medical bills for those children who are unfortunate enough to get injured during Babe Ruth Baseball activities.

We are probably the largest insurer in this marketplace, with an estimated 15 percent to 20 percent of the business. The reason I can't be a little more specific is because everybody defines sport/leisure and entertainment a little differently.

To put that in some context: State Farm is the largest underwriter of commercial package insurance, and they have less than 5 percent of the market. In insurance context, we're a very big player in the sport/leisure insurance area. We'll approach \$200 million in direct written premium in 1995, with perhaps 3 percent or 4 percent of that in New Jersey.

The purpose of my visit, as I see it, is to share some facts that I have, offer some opinions that I have, but, maybe most importantly, it is to help in any way I can.

A couple of observations: Through 1990 to 1993, we averaged between \$90 million and \$100 million in liability premium. For that term, we'll average about \$20 million a year in legal costs, the cost necessary to defend claims, claims of any nature. I mean, many of them are very valid claims that need to be managed, some of them are arguable, but, in addition to that, there is the cost. It can be estimated, but it can be measured in settled claims where it's believed economically smarter to settle a claim for an amount smaller than you're likely to spend defending a claim.

We believe it's the reason we're in business, that there is a value to insurance and that the value to insurance extends to society and beyond just the insured. If you're an injured party, you're probably much better off -- in view of the fair claims practices and things like that -- dealing with an insurance company adjustor who is familiar with how these things are handled and with the financial stability of the insurance company than you are dealing directly with the insured, where it's almost for certain going to turn out to be an adversarial situation.

We looked at the claims practices, the financial security -- both to the claimants and to the insured -- and also, insurance -- a lot of people don't know this, or they don't think about it everyday -- provides a lot of loss control engineering. We do so at our own cost, and ideally, everyone benefits from it. The public benefits from things, in general, just running a little safer, and we benefit, because, in general, our loses are a little bit less.

Speaking about the K&K, TIG partnership, we've got about eight people who are full-time employees. A couple of them specialize in amusement park, ski lift, you know, the various technical, mechanical inspections. We've got people who specialize in race track inspections. All these people are hired at our cost.

We also have a full-time Ph.D. on staff. He's a Doctor of Mathematics. He does computer analysis on many of our insureds to see what the causes of loss are, perhaps by location, perhaps by amusement ride, etc. So that we work with the insured to help minimize or eliminate the problems.

In the sport/leisure area there are two issues of insurance: availability and affordability. The availability might be of coverage or it might be of coverage to sufficient limits.

If you ran a shoe store and you wanted to go to the trouble to do it, you could probably get a thousand companies that are listed in the A.M. Best's Guide to give you a quote. There would be no value to do it. They are all going to be within a certain band, but there is a wide-open marketplace.

For many areas of the sport/leisure insurance industry, there are only a few viable markets that are around. I think that 95 percent of the motor sports in this country are insured by two carriers. We're one; John Naughton is the other. I mean, there are always a few people that get involved. They don't stay. They don't stick around, and they are not necessarily experts at what they do. Their customers get left without insurance from time to time, as they jump out of the marketplace.

Because of the fact that there are relatively few players, I think it's important to keep those of us that are in it interested. While I go to bed at night wishing John Naughton would go out of business, I really hope he doesn't go out of business, because, you know, we need some competition in business. They provide a lot, like we feel we do, but there is an issue from time to time for our insureds, where either they cannot find insurance or they cannot afford insurance.

We looked, for instance, at the roller skating business. We don't do much in the roller skating business. We find that the rates that we develop for that business are often approaching the receipts. In other words, we tell the guy we want 85 percent of your receipts for your insurance costs, and, of course, no business can function that way.

As a result of that we did a little informal survey, not scientific in nature at all, but we found that there are an awful lot of roller skating rinks that operate in the United States without insurance. While my job, as a protector of the shareholders and stuff, is not to knowingly get into losing

propositions, I don't feel good about the fact that we have all these businesses operating without insurance, either.

I was recently reading an article-- I'll try not to be anecdotal today, but it occurred at a ski lift. There was a judgment rendered against the facility operator, and he doesn't have insurance. Someone was seriously injured. There is about a \$2 million judgment against the lift operator. They do not have insurance. Whether he will be able to pay or not, I do not know. For the sake of the injured person, I hope so.

But the availability and affordability issues are, I think, much more critical in the sport/leisure business. There just aren't a lot of experts in that business. Another thing not to lose sight of is, a lot of our insureds, given the nature of their business, they buy a lot of limits.

Maybe the average car dealer buys \$5 million in limits or so. Places like Great Adventure, Meadowlands, and so forth -- we have large concentrations, public gatherings with thousands of people -- they have to buy a lot of insurance. We commonly provide limits up to \$26 million. Of course, we don't keep all those limits ourselves; we go out and buy reinsurance. The reinsurance is just like the direct markets in that there are only a few of them. So if we burn our reinsurers and cause them to withdraw from the sport/leisure industry, it will almost for sure have an impact on our competitors, because, to a great extent, they're using the same reinsurers that we are.

The issue of ensuring some type of market continuity, I think, is in the general public interest.

As an underwriter and speaking for most of our clients, we would hope that injuries resulting from activities inherent to the sport or the game would not be allowed to foster litigation. If our insureds are negligent, if they cause something to happen, they should certainly be held accountable for it.

But the fact is that when you play sports, for instance, sometimes people run into each other and an injury results. It doesn't necessarily constitute negligence, unless there is some demonstrable issue regarding the promoter, the sponsor, the landowner, or whatever. We don't believe that these should be allowed to be litigated. They are tremendously expensive and a drain on people in this industry.

If the race car promoter sends the people out on the track knowing that the track has oil and sand spilled all over it or something, he should certainly be held accountable for that. But the fact that people are going to crash their cars when they race doesn't necessarily constitute negligence.

Being anecdotal when I said I wouldn't: We're involved in a rather expensive case right now. Amateur basketball, two people jump up getting a rebound, one lands on the other's foot, and, unfortunately, really mangled his ankle -- torn ligaments. The guy has had several surgeries. He's likely to have several more, but it's unlikely, in my opinion, that there's negligence on anyone's part.

I think there are two issues there. One is our insured is being sued, and he has to defend himself. Whether he'll be successful in his defense is problematic, because you do have an innocent looking kid, who, through no fault of his own, is rather seriously injured. He'll probably have, to some extent, a crippling injury for the rest of his life.

But the other thing is, we offer and we have available to all of our insureds first party medical coverage, where, if the plaintiff's attorney was willing to settle for having us pay all the guy's medical bills, we wouldn't have an issue here. We'd gladly do that. We have that coverage available.

But it's the pain and suffering issues, the loss of future income. He's just a 15-year-old kid, but I'm pretty sure he's destined to be an NBA star, or something. I don't mean to make light of this but-- We end up getting beyond the medical

costs with most of these claims. I'm not sure if it serves the public interest in a lot of these cases.

We'd like to see, not a broad-based immunity -- I don't think it serves the public to say that amusement park operators should be held immune to injuries suffered by the patrons -- but if the injury is a bump or bruise from riding a roller coaster, I think most people realize that that's why you ride the roller coaster. Now, on the other hand, if the roller coaster gets hit from behind from another car, or if it falls off the track, or if the lap bar is defective, certainly the ride operator should be held accountable for that.

A slip, a fall, a sprain, while they're not desired outcomes, they're sometimes the outcomes of these activities. If those injuries are the result of activities within the scope of those contemplated, we just feel that litigation should be discouraged.

We're not trying to underwrite on behalf of our insureds unreasonably unsafe activities or negligence of our insureds, but some results are, in large part, unavoidable. They are not necessarily predictable on a one-by-one basis, but if there's 200,000 kids in Little League this year, there's going to be a certain amount of broken legs, sprained ankles, kids getting hit with the ball, and stuff. It doesn't necessarily constitute negligence. It constitutes baseball.

We would just as soon have these well-known and likely outcomes to be recognized and, kind of, go with a stronger assumption of risk doctrine. I don't have it, United Airlines does, but I had a summary of a case in California, where the Supreme Court just upheld an assumption of risk doctrine. I'll get it and mail it back to you, Alex, so you'll have it for the next meeting. But it was very lucid. I liked it. It was very clear reading. The Court talked about how they felt it best served the public interest to recognize -- this particular case had to do with a broken thumb in a touch football game -- that

these things sometimes happen. They don't necessarily constitute negligence.

The greater public good is derived-- They spoke, not at great length, but they touched on the fact that a lot of these things are nonprofit, they are volunteer. It would be awful discouraging to those who might be willing to volunteer some of their time for Little League, YMCA, etc., if they thought they'd be the likely subjects of litigation.

I, myself, have children in swimming, T-Ball, Little League, junior bowling. My wife and I, we play tennis, we bowl, we golf, we do all these things, and I don't necessarily expect to hold someone harmless if they're responsible for us being injured. I also recognize that, you know, sometimes people slip and fall on the approach, through no fault of the proprietor.

One last thing that I wanted to touch on. It's my understanding that waiver and releases are deemed to be against public policy in New Jersey. We use those extensively for a lot of our insureds. I'll break our insureds down into two categories. When we insure an auto race, certainly we don't expect the fans and spectators to sign a waiver and release, but we expect the drivers to. I mean, if you're going to get in a race car and drive, you have to acknowledge that it's dangerous and that you could get hurt.

What the release says is that you won't hold the sponsor of the event negligent, in the case that you are injured in the course of the racing. Now, we assume -- presume, I guess is the better word -- if there is gross negligence on the part of our insured, that waiver will not hold up. But we save a lot of money on defense costs with the motions for summary judgment. When a fully cognizant adult signs a waiver, there's an unfortunate but not unexpected outcome, and we use the waivers rather than going through a costly court process.

I would not advocate that we try to enforce waivers signed by 12-year-old kids or anything like that. We've found them to be very helpful with adults, big cost savings.

Again, not to be anecdotal, we do some motor sports insurance. The portion of the premium that we charge for the participants in New Jersey is 100 percent above our national average. In other words, if you go down to Atco Raceway, the portion of the premium that they pay for participants is surcharged 100 percent over our national average, because of the waiver and release issue.

It's solely predicated on we're going to spend a lot more money defending these. We still expect to win under assumption of risk, if we were going to win anyway, but it gets very expensive in relationship to the small amount of money that Atco has to pay for premiums. Those aren't capital-intensive businesses, and most leisure activities aren't.

MR. DRAGO: Mr. Larkin, one question I would like to ask you before we go much further: One of the specific areas we're charged to look at -- and I'll read it from the bill -- is that we're supposed to, "examine the methods used by the insurance industry to establish insurance rates for recreational sports and leisure activities." Now, I think we all have a sense of how that is done, but if you could give it to us on the record, so we have it on the record exactly how the industry goes about setting rates for activities in these areas, recreational sports and leisure activities?

MR. LARKIN: Okay, and again, not to sound patronizing to those of you who may know this, but it might be new material to some of you. The first thing we do is compile whatever data we have. The more data we have, the more predictable the future becomes. The insurance people that help us are actuaries, you probably know that. We look at data on the most predictable basis and the most predictable bases are the largest groups of it.

So, for example, in motor sports, we'll lump all of our people together -- stocks, drags, super modifieds, flyers -- and we'll come up with some certain indications as to how much premium that book of insurance would need to generate an acceptable result. Then what we'll do is, we'll break it down into subclasses. The smaller you break it down, the less creditable your numbers are and the less predictable they become. Not only do we tend to break them down by classes, but we tend to break them down by locations and territories.

If you were to ask me if we have a creditable rate for sport/leisure business in New Jersey, I think any actuary will tell you, "No it's impossible, they can't, there's not enough." I mean, there might be a few things. Bowling might be one, where there are a lot of bowling alleys in New Jersey, but there probably aren't that many amusement parks, that many race tracks, that many horse tracks, etc. that you would get a creditable result.

So as a result, what we do more often than not is, we take national rates and try to deviate them based on the location that we go into. So in some of the areas we look at the litigation, the cost of living, all the different factors that go into it.

Some areas seem to be relatively low across the board, Iowa, for instance. Others seem to be relatively high across the board, New York, for instance. Then there are others where you get kind of mixed results. California is very, very good to us, with waivers and assumption of risk doctrines. We can count on certain incomes in cases there, and as a result of that, we don't lose as many cases -- and I hate to say lose -- but we don't have as many claims that we pay in California. On the other hand, California is a very expensive state, and in those instances where we do pay claims, they cost more than the average.

The second thing not to lose sight of that impacts our rate making is the availability and the cost of reinsurance. We, as a company, keep \$2 million net, without reinsurance. The reinsurance is a commodity; you have to make it attractive enough to buy. It's an unregulated industry, and it does get factored back into our rate making.

MR. DRAGO: When you talked about your initial description of how you set rates and you said that you use, sort of, a national average and they go by geographic deviations, is one of the deviations that you told us about earlier, meaning the lack of an effective waiver and release docket in New Jersey, that's one of the deviations that makes you double the premium in that motor sport that you were telling us about earlier?

MR. LARKIN: Now understand that it only doubles the premium for that portion of the account that we would assign to the participants. You know, the odds of a person getting hit in the stands and the resultant litigation costs, the claim and stuff, it's probably no different in New Jersey than it is in most states -- it might be a little more expensive. But the way that activity would flow--

But, in most states, if a driver gets injured, he's signed a waiver. The judge will grant a summary judgment, unless there is a demonstrable allegation of, you know, some gross negligence or something on behalf of our insured, something that would cause them to toss out the waiver, which also could be that the waiver was signed under some type of false pretense, or something.

It's not terribly exact on a state-by-state basis. If you ask an actuary -- when we get rates made they usually assign a credibility factor. For something like homeowners, which is extremely predictable, our actuary might say that has a 100 percent credibility factor. On something like our business, it would be much lower. But you understand, when they toss that

credibility factor out there, they might be high or they might be low. So not only are we insuring riskier business, but because of the database it becomes riskier, just because of the small data.

One other comment about the rate making process is the insureds' ability to pay part of the claim. Deductibles and so on have a major impact on rates.

MR. DRAGO: Mr. Gillian.

MR. GILLIAN: This is not against the attorneys here, but do they ever take into account the amount of attorneys per capita in any given area.

MR. LARKIN: Not per se.

MR. GILLIAN: You can't say.

MR. LARKIN: No, it doesn't work out that way, although that may be the--

SENATOR SINGER: They break it down to square inch.

MR. LARKIN: We know, just looking at, like ISO-- Insurance Service Office is the largest statistical gathering body; they provide us with information. We provide raw data to them, they compile it and send it back. It's called Allocated Loss Adjustment Expense. It's the money spent defending a claim that is directly identifiable. In other words, it's not your employed claims adjuster who gets paid by the week and could be working on it. It's when you hire an investigator or an attorney to defend a particular claim. The allocated loss adjustment expense is all over the board, depending on what state you're in, both as a percentage of the overall premium and just in gross dollars.

We have states where this book of business, where our allocated loss adjustment expense is under 10 percent of the premium, and we have states where it's approaching 30 percent, 35 percent. Just to make sure you all know what I'm talking about, 35 percent of the premium goes to attorneys. It doesn't go to insurance companies -- I mean, ultimately -- it doesn't go

to the insurance company, their shareholders. Certainly it doesn't go to an injured claimant. It's not commissioned to an agent. It's not a fee paid for any type of safety engineering, or anything else. It's the cost of litigation.

MR. DiSIMONE: Would you track that to the cost of metropolitan operations versus rural operations? Is that a pretty close track? If you're in Iowa, it's going to cost you a lot less for everything, including legal expenses, than it would in New York, California, or Florida.

MR. LARKIN: Well, if you're in Iowa, your legal expense will certainly cost less, so will your house, your car, and everything else. But you're less likely to pick up legal expense in Iowa at all than you are in New York and even, I might add, rural New York. Areas track that way. A lot of it might have to do with the statutes. If you've got the strong assumption of risk case law, and that's pretty much what the case is, an attorney would be reluctant to take that or to try it.

On the other hand, where there is nothing clear or where the attorney might feel it's in their favor, we get the-- One of the things that happens to us, and I don't know that it's written anywhere, but we have the definite impression a lot of times that the burden is on us to prove that we're innocent.

Again anecdotal, just to make the example: We had a gymnast warming up. She performed a round-off, a real simple maneuver, and she ruptured her achilles tendon. The way that case is playing out now is that we have to prove that it's more her fault than ours. In all likelihood, it's no one's fault, it just happened. You know, the achilles tendon is like a rubber band, and rubber bands snap from time to time. It's not necessarily anyone's fault. Again, it's not an issue of paying her medical bills. It's an issue of getting sued over it.

MR. DRAGO: Could you give us some of your company's history with regard to water parks and insurability or noninsurability?

MR. LARKIN: Yes, but we don't do water parks anymore. We used to do as many as 80 or 90 a year. We don't do any right now, and with no disrespect intended to water park owners, we can't figure out how to make money on it. We experienced a number of severe losses and, I think in most cases, we should have paid those.

The most common seems to be the type where someone goes down the slide, the park supervisors and so on don't allow enough space. The next person goes down the slide; they hit the person at the bottom. Well, I think there's a visible negligence on the part of the park in that case. While no one likes paying the claims and certainly don't like the people getting injured, to me, it seems to be a subject of insurance.

The main reason we got out of water parks was because 15-year-old boys, barefoot in bathing suits, slip and fall on wet cement at water parks. I'm not particularly surprised by that. What I'm surprised at is how much and how often we had to pay money on that. It's just time after time after time.

MR. GILLIAN: Did you fight them, or did you just pay?

MR. LARKIN: Some of both. Some of both, and it didn't prove to be economically feasible either way.

To kind of put that in context: We've had 65 programs that we offer right now, most of them nationwide, and we've only had one or two that we ever got out of -- just couldn't find some way to make money. Water parks is one of them.

MR. GILLIAN: A few years ago it was amusement parks. Even in New Jersey, it was only a couple companies that could think about placing with, but that's eased up now.

MR. LARKIN: Again, just from personal experience, years ago before it was acquired by Warner Bros. my previous employer was the underwriter for Great Adventure. At that time,

I don't know if they still have it, they had an animal drive through.

MR. GILLIAN: Yes.

MR. DRAGO: Yes.

MR. LARKIN: It seemed like they had signs every 15 feet about rolling your window down. It's absolutely amazing how many claims they had to pay for people who got bit by a giraffe or bit by whatever, or scratched by -- you know, bit by a monkey or whatever, because they opened the windows and fed the animals, and yet we paid an awful lot on those.

MR. DiSIMONE: There has been a large growth of water parks in the State of New Jersey. Who picks up the slack, now that that market has been, sort of, reduced?

MR. LARKIN: Well, we weren't the only market, but--

MR. GILLIAN: It's a price--

MR. LARKIN: We couldn't find a way to do this that was acceptable to our clients. I don't know if you guys are familiar with the term, "non-admitted companies?"

MR. DRAGO: Why don't you describe what it is for us?

MR. LARKIN: What happens is, the various states regulate insurance companies. The insurance companies have to meet certain requirements. They pay a tax to the state on all the premium they write, and one of the things that happens with that tax is -- if an insurance company should become financially insolvent -- the state has a guarantee fund. All the states do. They vary in size and scope, but the states make good when an admitted insurer goes out of business.

Non-admitted insurers come into the state, and many of them are -- I don't mean this to be negative -- tremendously strong financially, and there is no chance that they'll go out of business. They're as strong as the strongest companies, but on a non-admitted basis, there are a lot of lesser companies where their balance sheet isn't quite as good, and the state has no regulatory control over them.

A lot of the residual market, not just in sport/leisure, but a lot of the residual market insurance ends up in the non arenas. They may not be as financially strong. They're not regulated, and basically what the policyholder is left protected with is contract law, as opposed to all the insurance statutes of the state.

MR. DRAGO: The problems with using non-admitted might be, what?

MR. LARKIN: First of all, you don't control them, and you have no say over them whatsoever. If they're not paying their claims or whatever it is, you have to haul them into court and sue them. You can't suspend their license or whatever. It has been done, from time to time, a state will get them thrown out, but it's a long, lengthy process. It usually involves a whole bunch of insureds and claimants who are unprotected. But again, I want to say that there are an awful lot of non-admitted companies that are fine, fine firms.

But the industry is replete with problems caused by shaky companies that come in, it sounds good; the average insurance buying member of the general public-- You know, a company comes in, they hand you a fancy brochure, you know. Everybody just assumes insurance companies have money. We just talked about that fact that, you know, how many companies went bankrupt in Florida during the hurricane. Insurance companies do go out of business, and no public good is served by that.

MR. DRAGO: Any questions, comments?

MR. ANDRES: Mr. Larkin, you indicated to us that K&K and TIG, as a group, are going to do about \$200 million dollars worth of business this year, and to back track, I just want to make sure I understand some of the statistics. In '92-'93, you did about \$90 million worth of business?

MR. LARKIN: I'm sorry, the \$200 million is a reference to all lines of coverage.

MR. ANDRES: Involving sports/leisure and entertainment?

MR. LARKIN: Right. The \$90 million is a reference to liability for sports/leisure and entertainment. The reason I broke those out is because the point I was referring to were the legal costs, and they're virtually all associated with liability. In other words, if you're writing first party property-- If I'm insuring your house and it burns down, almost never is there an attorney involved in that.

MR. ANDRES: But when you say that you're writing \$200 million, you're talking about the entire premium that your company is doing business for the entire sport/leisure and entertainment industry?

MR. LARKIN: Yes.

MR. ANDRES: Out of that, \$20 million of it would be legal, correct?

MR. LARKIN: Yes, it would be about 20 out of 200.

MR. ANDRES: Right, so it's about 10 percent.

MR. LARKIN: Yes.

MR. ANDRES: It's not \$20 million out of the \$90 million. I just want to make sure that there is no misconception to what the statistics are. You folks take in \$200 million, and \$20 million of it goes to legal costs and expenses.

MR. LARKIN: Right. I'm not trying to mislead. In fact, it's funny, because I wrestled with how to say that, and I didn't want to get into a big statistical based discussion. The issue I think-- A couple points I was trying to make is that out of our liability premiums -- because a lot of times we write the liability only, and sometimes you write the other coverages without the liability, and then sometimes we write all of it.

MR. ANDRES: But the profitability in the way you folks do business, you won't break it down on taking in \$90

million and saying we're paying out \$20 million legal. You're really doing it on the basis of taking in \$200 million for the overall industry, correct?

MR. LARKIN: Well, I've got a little statistical exhibit here that shows, under the liability, we're paying out \$20 million in legal costs, but then when you do the roll up, where it totals it all up, it still says we're paying out \$20 million.

MR. ANDRES: Which is, in fact, true.

MR. LARKIN: Yes.

MR. ANDRES: So what we're really talking about, in the industry itself that you are underwriting, about 10 percent of it goes to legal fees and expenses, of course.

Can you give us an idea--

MR. LARKIN: Can I make a comment on that?

MR. ANDRES: Sure.

MR. LARKIN: Again, not to belabor the point, but, you know, we're talking about liability insurance. I didn't want to mislead you, but I just wanted to say that, out of the liability premiums, we've got this problem -- well not a problem, but a number that's this big.

MR. ANDRES: I understand that. But the folks who are engaged in the insurance industry use the whole panoply for making and setting rates, determining their profits, and things of that nature.

MR. LARKIN: Not exactly. We do not. For instance, our results on workers' comp, whether we're making money or losing money, have no effect on our general liability rates. Our general liability rates, whether they're making or losing money, have no effect on our fire rates. Now where that all comes into play is, this gentleman brings me his park and maybe I evaluate it. I look at his liability insurance. I say, "Boy that's marginal." But I see that he hasn't had a fire loss in years, and his workers' comp is running great. You know, I'll

make a bulk decision there, if I get to look at all of it. Now he might only be shopping the liability.

MR. ANDRES: Understood.

MR. LARKIN: So it could work either way.

MR. ANDRES: If you're writing \$200 million in coverage every year, if we could stick with that number -- I'd appreciate it only because the math is going to be pretty easy. You're doing about 10 percent of that in legal expenses and costs. What eats up the rest of the premium dollar? Ten percent, we're talking about legal fees and expenses. I assume a certain percentage of it goes to operation overhead within the company itself.

MR. LARKIN: I can help you with this. Break it down a little differently. Probably in the neighborhood of 56 percent or 57 percent is indemnity payments. Somebody wrote a check to some claimant. It could be our insured for his building, or it could be the person who slipped and fell at his party.

MR. ANDRES: So that covers everything: the fire loss, the medical loss, the personal injury payments, all of those things, workers' comp.

MR. LARKIN: Well, what happens is if you just ask liability -- which you don't want to, but if you ask liability -- I see that I have a permissible loss ratio of maybe 40 percent, because of the legal expenses. But if you ask on the total book, it's probably about 56 percent or 57 percent. Then I've got another 10 percent for legal fees, so my loss and loss adjustment expense is about 67 percent.

I can't separate the two, and the reason I can't separate the two -- I mean we can do it, but when you think about it, you can't -- is because of the number of claims that you pay, because someone is going to sue you for a \$10,000 claim. The realities are, it's probably cheaper to pay it than

to defend it, because it will cost you more than \$10,000 to defend it a lot of times.

So what mentally may have been a defense cost goes into indemnity payment, because you did write somebody a check.

MR. ANDRES: So you're talking about paying about 67 percent of the premium dollar back out in terms of expenses and expenditures that were made to your insureds and injured people.

MR. LARKIN: About two-thirds of the dollars end up that way.

MR. ANDRES: The other third of the dollars, roughly 33 percent of the premium dollar, go where?

MR. LARKIN: About 4 percent to 4.5 percent goes to taxes, about 8 percent to 10 percent for company overhead.

MR. ANDRES: What does that mean when you say company overhead, you're talking about paying the employees and renting the buildings and that sort of stuff?

MR. LARKIN: Yes.

MR. ANDRES: Okay.

MR. LARKIN: The rest goes to the agents for producing the business -- commission, if you will.

MR. ANDRES: What percentage of it has been your experience, over the last few years, of profitability to the insurance company shareholders?

MR. LARKIN: Oh, we -- actually I think I can quote you something if you want to hang on a second. I can send our combined ratios for just this block of business to Alex for the next meeting.

MR. ANDRES: I'd appreciate that. Can you give me a ballpark estimate?

MR. LARKIN: What I want to know is, are you familiar with the terms policy year, calendar year, and accident year?

MR. ANDRES: Yes.

MR. LARKIN: Okay, which do you want?

MR. ANDRES: I would like to know all three, quite frankly.

MR. LARKIN: Okay.

MR. ANDRES: Can you give me just a layperson understanding?

MR. LARKIN: Yes. I can tell you that in 1990 and 1991, on this business -- my block of business -- we probably ran about 105 -- 105 combined. With the impact of investment income and stuff, we made a little money. We didn't get fabulously wealthy, but we were healthy. People would invest in that business. For '92 and '93, we got our butts kicked. We probably ran closer to 130. We lost a lot of money. You can't get interest rates over 30 percent. We lost a lot of money in '92 and '93. Last year we significantly improved that. It's awful early to guess last year, I mean a lot of those claims haven't come in yet. But our first actuarial picture of last year is, I think, 107.

MR. ANDRES: So you guys reasonably seem to be alive, kicking, and reasonably healthy in the industry that you are working in right now?

MR. GILLIAN: It's the only way you can stay in the business.

MR. LARKIN: I mean, I certainly don't mean to imply that if you guys don't do something, we're going to go out of business, nothing like that.

MR. ANDRES: Thank you. That's, realistically, simply something that I wanted to clear up.

Now you also mentioned something, and it was in response to one of Mr. Drago's questions, that there is a certain instance in New Jersey where you had to, in essence, charge a 100 percent surcharge because there are no waivers. Do you remember that testimony?

MR. LARKIN: We write a certain amount of motor sports business, nationwide. Some of those nationwide risks have

locations in New Jersey or events in New Jersey. This, by the way, is not specific to New Jersey. I mean it is, but New Jersey is not unique. We have several states where we surcharge the PLL rates because of the inadmissibility or the lack of recognition of the waiver and release.

MR. ANDRES: Am I understanding this correctly, sir, that what you are talking about now is the limited instance where folks who are drivers of race cars and things of that nature are not signing this waiver? Is that what you're surcharging 100 percent at?

MR. LARKIN: Yes. That particular thing is 100 percent. Now there are other things that are surcharged to a much lesser extent.

MR. ANDRES: It doesn't go to the participants, who are watching Atco drag racing or anything like that?

MR. LARKIN: For our purposes, a participant is the one who gets behind the wheel. The spectator is just-- The big difference is that the spectator has no assumption that when he buys a ticket to go to Atco that, gee, he might get hurt.

MR. ANDRES: Right.

MR. LARKIN: He's down there to have some fun.

The driver, if it doesn't, it certainly should cross his mind that what he's going to do is very dangerous.

MR. ANDRES: You also discussed waivers as it pertained to youngsters. Did I hear you correctly that you thought that's really not a good idea, waivers for youngsters?

MR. LARKIN: Well, first of all, just from an economic standpoint as an insurance guy, they don't do us much good. Even if I thought I needed to, the last thing I want to do is hire somebody to argue that that 12-year-old knew what he was doing. That doesn't make sense, and I don't think that any public interest is served that way.

Secondly, you get into debates about parents waiving kids' rights. I'm not sure that that's a good idea. Even if

someone says, "Gee, the guy's father signed it." I'm not sure that that's a good idea anyway. What we, as an industry, find ourselves doing with respect to minors is limiting coverage.

MR. GILLIAN: What does that mean?

MR. LARKIN: Well, we write motor sports events -- sanctioning bodies, if you will -- and a lot of them buy \$25 million in limits. We write a go-cart organization. They run sanctioned events. They make sure their drivers wear helmets. They have tracks that are laid out, and they try to make them as safe as they can and so on. But they have participants as young as eight years old. The 8-year-old could get injured just as badly as the 25-year-old, or the adult go-cart driver. But for the minors, the minor participants, we restrict their coverage to maybe a million bucks, maybe half a million bucks, maybe \$25,000, depending on what they are doing.

MR. ANDRES: One of the other things that you mentioned, and I want to make sure that I understand the dichotomy. You talk about something called medical payments coverage. Do you remember that, sir?

MR. LARKIN: Yes.

MR. ANDRES: Now as I understand medical payments coverage, that's something that, for instance, I would have as part of my homeowners policy. If you got hurt at my house, for whatever reason--

MR. LARKIN: For whatever reason, it would pay.

MR. ANDRES: They would pay up to a certain amount.

MR. LARKIN: Typically \$1000 or \$5000, yes.

MR. ANDRES: Your company offers that type of coverage to people who are involved in the sports/leisure and recreation industry?

MR. LARKIN: For participant activities, and again, I'll define those as where there is a reasonable expectation that something could happen to you. You know, you're going to play Babe Ruth Baseball, you're going to drive a race car,

you're going to get on a horse and ride, that type of thing. It's a requirement, if we provide the liability. One of our underwriting requirements is that the insured purchase a no-fault coverage. Now they don't have to buy it from us, but they have to purchase a no-fault coverage that is, in essence, similar to medical payments. It's not quite med pay, but it's similar. In some cases it's broader than med pay.

MR. ANDRES: In the underwriting experience, if a person has that sort of medical payments coverage, is the underwriting experience such that it would reduce the likelihood of a liability claim if there's medical coverage?

MR. LARKIN: Absolutely.

MR. ANDRES: That medical payments coverage that folks can buy, that's cheaper than liability coverage in the normal instance?

MR. LARKIN: Yes, for two reasons.

MR. ANDRES: Exposure is limited.

MR. LARKIN: Exposure is limited. There's no litigation, but you don't get involved with pain and suffering, lose of future income. In other words, it's just what the doctor charged you to set that leg or whatever.

MR. ANDRES: That medical-payment-type coverage really has nothing to do with whether or not the participant was negligent or careless, or the park owner was negligent or careless.

MR. LARKIN: It is a no-fault, first party coverage.

MR. ANDRES: Under what we were discussing called the liability aspect of the coverage, legally it's been the underwriting experience that requires proof of fault in order to proceed to a judgment, correct?

MR. LARKIN: That's true, but as the guy who sits there and pays out the claims, you know, we look at some of these and say, "Where is the negligence on behalf of our insured?" These people who slip at the water park, you know,

someone slipped on wet concrete, they were barefoot, they fell and got injured. Well, if that happened in the rest room at Yankee Stadium, well, the floor shouldn't be wet there, and so on. Wet concrete is a given circumstance at a water park.

SENATOR SINGER: A couple of things: First of all, you're stating about the 12-year-old and how you really can't waiver liability, but isn't there assumed risk, also, with the 12-year-old that goes on the roller coaster, that if they do something they're not supposed to do, they are responsible for their own actions?

MR. LARKIN: First of all, I'm not speaking as an insurance company representative: this is just my opinion here. I have a hard time holding a 12-year-old responsible on an assumption of risk. They don't know that much, they think they do that--

SENATOR SINGER: Is there not some age, is it 15?

MR. LARKIN: Well, I think it's a doctrine of common sense, if there is such a thing.

SENATOR SINGER: No. I'm coming back to the point. It's a very specific point. The ride operator says, "Do not leave the ride until it comes to a full stop." They have signs; they tell you; they strap you in. You decide to open up that strap and get out before it ends and break a leg. If you're 12, 14, or 16, isn't there some responsibility on that person from the insurance company's aspect? I don't want to hear your opinion. That doesn't help me. Your insurance company's aspect, don't you think there's some risk to the participant in that?

MR. LARKIN: If the person getting off the roller coaster is 18, I say, absolutely. If he's 7, I say, absolutely not.

SENATOR SINGER: So you're telling me, then, that a minor obviously shouldn't be on any rides?

MR. LARKIN: No. What I'm telling you is that I would think that the ride operators would be held accountable to a much higher degree for inviting minors onto that ride, than for inviting adults on.

SENATOR SINGER: So, in other words, you're talking from an insurance aspect, no one under 18 has any responsibility to follow any directions.

MR. LARKIN: I don't know where you draw the line. Let's take a-- You have kiddie rides at your park?

MR. GILLIAN: Yes.

SENATOR SINGER: Excuse me, we're not talking about-- That sounds like a lawyer, you want to mix apples and doughnuts. I mean we're not talking about the 4-year-old that's on the kiddie ride. We're talking about the 12-year-old or 14-year-old teenager who now comes to your park, by themselves -- because they are old enough by their parents' permission to be there by themselves -- that now come onto a ride and decide, voluntarily, that they are going to disobey what they're told to do. You feel that because they are 12, 14, or 15, as an industry person, that there is absolutely no responsibility on them to do that.

MR. LARKIN: No, I don't feel that. I feel that it's a whole lot tougher to defend a case against a--

SENATOR SINGER: I'm not asking you.

MR. LARKIN: No, I don't feel that way. I think they should be responsible.

SENATOR SINGER: That's number one.

Number two, in your breakdowns you're going to send us, can you let us know how many claims you paid because it was cheaper to pay them than to have an attorney?

MR. LARKIN: No, I can't. I don't think any company keeps such records.

SENATOR SINGER: But it is a large percentage.

MR. LARKIN: It's immeasurable. It falls into two categories. One where it is cheaper to pay it than it is to

defend it, and the other is where you think it's worth 25, but you'll settle it for 35, so you don't have to sue. It kind of falls--

SENATOR SINGER: Lastly, do you have an average of what the attorneys charge your company per hour? What is the average fee for a case?

MR. LARKIN: I'll try and get that.

SENATOR SINGER: Could you get that for us?

MR. LARKIN: If I was in the claims department, I could probably quote that.

SENATOR SINGER: I'm just curious what the cost is. Maybe if you could break it down to specifically what New Jersey attorneys charge. In other words, I'm curious to find out is the average cost in New Jersey higher for attorneys? Because then we can go back to the bar and find out what their overhead is, and what their profit margin is. I want to know that.

MR. LARKIN: We may be able to do that, because as a company we're making a concentrated effort to lower our ALAE expenses, our loss adjustment expense. We've set up an attorney panel now, where we try to go through certain attorneys in return for them guaranteeing us the rate. Maybe we'll try to get all of our liability cases through five attorneys, unless it requires a certain type of specialized expertise or something. In return for that, they agree to do it for \$125 instead of \$150.

SENATOR SINGER: I'm also curious in the cases, about how many times the insurance company, because of the law firm, has to change attorneys? In my experience with that, I have found the insurance company, because the attorney handling the case leaves or goes to another firm, they change attorneys maybe two or three times, which has to add to the end result. It always happens. I have to tell you that cases drag on for a number of years because of that.

MR. LARKIN: Okay. I'll see if I can get that number. I know it happens, but I couldn't tell you if it's 1 percent of the cases where we change attorneys or 10 percent. I have no feel for that.

SENATOR SINGER: Just out of curiosity, maybe just for New Jersey. Thank you.

MR. DRAGO: Just to clear up one thing: My recollection of your earlier testimony was that, insofar as that issue of the 12-year-old, your testimony was that you didn't believe that it would be appropriate to require 12-year-olds to sign written releases and written waivers. I think that was the discussion we were having--

MR. LARKIN: Right.

MR. DRAGO: --in the motor sport context or wherever. To clear up what you just testified, is it true that, I guess, somewhere between the age of 7, as a number, and the age of 18, you believe that there is an age somewhere in there where you can be assumed to have taken on some responsibility on your own, but as someone from the insurance industry you don't know what that number is?

MR. LARKIN: I think it would also vary. I think if the parks, for instance, because we're using them as an example-- If you go to the parks, a lot of times they have age limits and size limits.

MR. GILLIAN: Height restrictions.

MR. LARKIN: I think those are indicative of perhaps, who could reasonably be expected to act in a responsible fashion on that ride. Maybe if the kid is too small or too young, maybe the big exposure is they get too scared and try to jump off. Maybe the ride isn't designed for someone who isn't at least four feet tall, or whatever.

If the park lets someone on who doesn't meet that restriction or that qualification, they should probably be held accountable for it. But, by and large, if a 15-year-old runs

out into traffic, you know, he should know not to run out into traffic. It's problematic whether the driver would be held responsible for that. I don't think it's too much different that a 15-year-old should know that you don't stand up on a moving roller coaster.

MR. DISIMONE: I believe your testimony was that your company does approximately 4 percent of its business in New Jersey.

MR. LARKIN: Just for the sport/leisure.

MR. DiSIMONE: Yes. It's probably -- you may or may not know the answer to this question. If you had to guess or ballpark how many participants there were in this market in New Jersey on a regular basis, would it be 25, would it be 50 companies, would it be several hundred?

MR. LARKIN: For these types of insurance?

MR. DiSIMONE: Yes.

MR. LARKIN: I think as a general rule it would be closer to five.

MR. DiSIMONE: Five companies?

MR. LARKIN: My company has an exclusive relationship with K&K. We tend to do all of our sport/leisure business with each other. What I might suggest to get you a little bit better feedback, call an independent agent or a surplus lines broker -- they do these market surveys and stuff -- and ask them how many markets there are in New Jersey for auto racing, fairgrounds policies.

MR. GILLIAN: They have to be okayed by the State, too, to practice in the State of New Jersey.

MR. DiSIMONE: I know from year-to-year there are different players in and out and so forth. Do you believe it's fairly spread between those five, six companies? Is there any one great big guy, and the rest just picking up little pieces here and there?

MR. LARKIN: We're probably as close as anybody to the big guy. What happens is that we offer a broad range of products. K&K has been at this for 40 years. We've had a dedicated unit on this for 10 years now. We compete with, essentially, John Naughton and not too many other people on the motor sports business. On the professional sports business, we compete with AIG and Cigna. On the fairgrounds business, we compete with the CNA Insurance Company.

So there are not a lot of competitors in each area, but we've got different ones. So that would explain why I say there are only five companies, and yet we only have 20 percent of the market, yet I try to justify us being the largest. You know, we have a slightly different competitor everywhere we go.

MR. ANDRES: Mr. Larkin, if I may. I'm sorry I didn't touch on one area of where you testified about it previously. Obviously there are differences between Iowa and New Jersey when you're talking about population density and things like that. Is that one of the factors that affects insurance premiums?

MR. LARKIN: I'm sure it affects some premiums. But if we rate a park or an event, if the rating base is attendance and we need-- We do these studies where we relate attendance to the number of claims. So maybe in one state we're getting three claims out of every thousand attendees, and in another state we're getting six claims out of every thousand people who come through the turnstile.

Is that relative to population? I don't think so. I mean, certainly, if you put 100,000 people through the gate, you're going to have more claims than if you put 10,000.

MR. ANDRES: Thank you, sir.

MR. DRAGO: Mr. Narol.

MR. NAROL: Mr. Larkin, do you believe there should be some changes in the way the law is in New Jersey in the sports and leisure industry as you see it?

MR. LARKIN: I would like to see some, but I differentiate that, between, I think there should be some. There are things that could profit us as a business, and when I say profit, help us. Not necessarily make more money, but maybe make things more predictable, maybe make this coverage a little more affordable. You guys have to decide whether it's in the greater public interest for some of these doctrines of assumption of risk. I think it is. Again, I'm not advocating any broad-based immunities or anything, but as a society there is a lot of cost spent with relatively little product coming out of some of these things.

MR. NAROL: Now, you said earlier that participant waiver statements in New Jersey don't work.

MR. LARKIN: They are deemed to be against public policy.

MR. NAROL: For everybody?

MR. LARKIN: As far as I know.

MR. NAROL: For children?

MR. LARKIN: Well, certainly for children.

MR. NAROL: For adults?

MR. LARKIN: Yes.

MR. NAROL: Can you tell us what source you refer to for that?

MR. LARKIN: Actually, that came from our claims department.

MR. NAROL: I think you're wrong, respectfully, on that issue, because for adults in this State, participant waiver statements are legal, provided they meet the requirements of the law.

MR. LARKIN: It's interesting-- Because United Airlines has my notes I wish I could refer to them-- We go through a process every year where we work with our attorneys to make sure our waivers meet the requirements. Part of it is in red, part of it is in black, and there are certain elements that

are required to be an effective waiver. In most cases we're relying on that waiver, should it be signed under legitimate circumstances, that that waiver will get us a summary judgment, absent negligence beyond ordinary negligence. I'll have to check why it is, and again, I'll provide this document as well, but our claims department does not believe that the waivers are of any benefit to us in New Jersey. I don't know if that's a case law--

MR. NAROL: When you have a participant waiver statement in the states that are strong for participant waiver statements, I'm assuming that, as you say, that then either eliminates the filing of lawsuits or allows summary judgments to be granted early in the case.

MR. LARKIN: Much more the latter.

MR. NAROL: So if, in fact, they were valid in New Jersey as in other states, you would think the same would be true here?

MR. LARKIN: Yes. Understand, the waivers apply to a small specific portion. We'd like to see them, but that's a macrocosm of--

MR. NAROL: In your testimony, you talk about participant's liability. In your policies, do you cover participant versus participant injuries?

MR. LARKIN: Yes and no. How's that for an answer? Let me explain. If you are the owner of a baseball team and one of your players slugs the player on the opposing team and you get sued, we will protect you. If you are the player who did the slugging, we probably won't.

MR. NAROL: How is that person covered then, by insurance?

MR. LARKIN: He's probably not.

SENATOR SINGER: His homeowner's.

MR. LARKIN: Well, his homeowner's may say this was a deliberate, intended act, and it's not covered. He's probably not.

MR. DRAGO: He may get a defense, but he might not get indemnification.

MR. LARKIN: He's got a better chance of getting defense.

MR. DRAGO: Thank you.

MR. GILLIAN: I have one other question. You mentioned your company does have inspections that go out and look at -- let's talk about the amusement end -- where you inspect that facility to see if it is worth insuring. The State of New Jersey has a department, you know. It used to have 18 inspectors; I think they're down to six now.

I think that when the new administration came through, they went through that department to see if it was a needed department and whether it should be kept. I don't know whether that will ever be asked of us or not, but do you feel your inspection department is capable enough to insure these rides in a proper way to compete with what the State provides?

MR. LARKIN: First of all, we don't want to compete. If we could help them or add to it--

MR. GILLIAN: Maybe that was a bad word, I don't know.

MR. LARKIN: The head of our amusement ride, our senior person there, used to run his own business. He was a partner in a business called Coulter-Hoffman. Their sole business was to provide safety inspections to amusement parks. He was in that business. Rather than keep paying him on an hourly basis, we hired him.

The difference between a lot of the states and our operation is that the states go out and they make the mechanical inspections of the rides. We do the whole park, you know. We do the fun house, the parking lots, and all that.

MR. GILLIAN: Right.

MR. LARKIN: In addition to that, we sometimes go once a year, but for a lot of our parks, we're out there three or four times a year.

MR. GILLIAN: I just went through this with our State inspectors. They gave a load test on my coaster. Everything ran right, but then as he looked around, he wasn't happy with some of the supports and everything. He shut me down, told me I had to have an engineer come in and do some work. So, therefore, right now, I can't operate my coaster. But again, the person that does my inspection for Naughton, I think, has a lot more knowledge than the actual inspector for the State. But it's one of those things that I can't do anything about it. The reasons that he used to cause me this problem -- which I've already spent maybe \$6000 just in the last week to try and satisfy this -- you know, leaves somebody to be a little upset at times, to put it mildly.

MR. LARKIN: First of all, there is a difference between the State inspector and our inspector, as far as what they are going to tell you. As a matter of prudence, all we can tell you is that if you do certain things, you'll be insurable.

MR. GILLIAN: Right.

MR. LARKIN: We never tell you anymore that you'll be safe, can't do that.

MR. GILLIAN: We know that. I mean you can load test a ride one day, and a week later something could happen to it.

MR. LARKIN: It almost sounds like you want us to send someone out to argue with the State inspector or something.

MR. GILLIAN: I'm not asking that. I'm saying somewhere along the line, maybe as they keep trying to cut down the size of government, maybe this department will be one of those on the line.

MR. LARKIN: Okay.

MR. GILLIAN: This could happen.

MR. LARKIN: All right. Two things: First of all, K&K has, from time to time, hired these folks out just on a cost-based thing. We don't insure that client for whatever reason, their choice, our choice, whatever. But they want our loss control people to come out and make recommendations, and they pay for it. They have done that in the past. Whether they would do that as a subcontractor, you know, if the State called up and said, "Boy, we've really got a crush here. Could you guys help us out by doing these three parks?" I'm sure they would be happy to consider it. I don't want to speak for them, but I imagine they would.

MR. GILLIAN: It's just nowadays, you know, the whole industry is so safety conscious, you know, because just one bad--

MR. LARKIN: Don't make that sound like a complaint.
(laughter)

MR. GILLIAN: I know, I know it's good.

SENATOR SINGER: I'd just like to say one thing to you, as somebody who has been involved in inspections. Two inspectors can come through the same park, and both will come up with different things.

MR. GILLIAN: Absolutely.

SENATOR SINGER: Please understand that his inspector can come, your insurance can go through the whole thing and not notice that, and the State inspector can come and notice something that the other one missed.

MR. LARKIN: Absolutely. While I hope that if there is something major, that both would pick it up. I think we'd all sleep better at night if that were true. I'm sure there are cases where that doesn't happen. Then there are a lot of states where the rides are not required to be inspected.

MR. GILLIAN: Oh, I know. New Jersey is one of the toughest.

MR. DRAGO: Anything else for Mr. Larkin? (no response) Whatever requests were made of Mr. Larkin, whatever he can find, I'm sure he will assemble for us. He'll forward it directly to me, and I'll disseminate it to everybody else on the Commission.

MR. LARKIN: As fate would have it, on about May 19th or so, I'm not sure of the exact date, I have to be in Jackson, New Jersey. So if anybody has any further questions or anything, if you want me to come back, I'll be happy to do it.

MR. DRAGO: Okay.

MR. LARKIN: I have business cards if anybody wants one. I'm happy to discuss any of these issues, either on the record or off the record. From an insurance standpoint, we're looking for an element of predictability. If it happens to be cheaper for the public, that's fine too. If we know, for instance, that we're going to have to defend all these cases, that's fine, we'll build it into our prices. It's probably not fine for the people in that business, but eventually it will find its way back to the ticket prices, too.

MR. DRAGO: Okay. Thank you, Mr. Larkin.

MR. LARKIN: Thanks.

MR. DRAGO: We have no witnesses proposed for the next meeting, which historically have been one month apart. I've heard from no one with the names of any proposed witnesses.

There are still some areas that we're supposed to be inquiring into. One area is from the owners and operators of recreational and leisure facilities. I think we're supposed to be taking some testimony from them, their history, their experience. I think that will be one area, and then other areas which people on the Commission feel that we should take testimony.

We've been working under the ground rules that if you propose a name, we'll discuss it, and if we think it fits into the area of what we should be hearing, we'll listen to it. So

we can certainly propose another meeting date, which we've usually been doing before we all leave. So at least those of us who attend know it works in our schedule.

Hopefully, within a week to 10 days of today, if people can get to me with names of proposed witnesses, I will do something via fax or phone with everybody to see if we want to take their testimony.

MR. DiSIMONE: I've talked to a number of people who have great reluctance, surprisingly great reluctance, about testifying.

MR. DRAGO: Industry people?

MR. DiSIMONE: Yes.

MR. DRAGO: Their reluctance is what?

MR. DiSIMONE: Don't want to go on the record, so to speak, because they perceive that-- In the instances, some of the people I spoke to were insurance company people who felt that they would not want to get involved in trying to square, if they would, their position on it or defend their position. They felt that they would have to defend their position. Some law offices, who represent both entities -- both plaintiffs and defendants -- some of them are rather substantial. They would have, I think, given us a good perspective. I don't know if anyone else has had that same experience but, I don't think its from lack of trying.

MR. DRAGO: Right.

MR. DiSIMONE: I think that we're getting reluctancy.

MR. DRAGO: The people that you mentioned, I could see the reluctance. My focus more so was on owners and operators of sports recreational facilities, amusement parks, indoor sports parks, race tracks, anything like that.

If you read the joint resolution which creates the Commission, the second whereas, right, that which forms the basis for us to do the study is, "that fears of civil litigation

may hamper the continued growth and development of these businesses in our State."

I think we should be taking testimony from people who have had the experience, maybe no one's had it, but if they have had the experience that it's more difficult for them to get insurance for them every year -- it's more difficult, it's more costly -- they are going with a riskier company, or whatever. I think that's testimony the Commission should hear.

Again, if no one out there has never had that experience, which I'd be amazed at, but if they haven't, then no one has to come from the that industry. The obvious motivation for our Commission was an amusement park liability bill which was vetoed. I would think that someone, or more than one individual from that industry would want to come and testify about their experience.

MR. DiSIMONE: I'm sure we can get someone. I'm almost certain that I can make just a few phone calls--

MR. DRAGO: I'm not saying you, or even Roy--

MR. DiSIMONE: I'm sure there are some that will come.

MR. DRAGO: If that's an area we should be listening to, then we have an opening next month, and they could easily fit in there.

MR. DiSIMONE: I got a call yesterday from somebody that has an interest.

MR. DRAGO: Anything else that we need to discuss?

MR. ANDRES: I'm sure that we can get something out within the next week or 10 days regarding the actual identities of prospective speakers. We'll get it to you and cc everybody.

MR. DRAGO: Okay.

MR. GILLIAN: You know, the one thing-- I don't know if all of you know, it's not that much, but when we tried to get the bill through before, we met with the Trial Lawyers Association. We tried to do it honestly and come up with a half decent bill. I guess, I think, Ken, you were, kind of, going

after him a little bit to see how much profit the insurance companies make.

We all know that everybody in business is out to make as much money as they can. Some years you have good years and other years bad, so I mean, it's all an average. Like he said, you know, if they have a bad year, you go back, they raise it up, and eventually the people pay, and that finds its way back to admissions and everything else. So it's one endless job.

I think only in my last 30 years, there is only one time in 30 year's time where the insurance was tough to get. We got over that hump and, you know, now, again, I get letters wanting my insurance. As long as I can get the same stuff I had last year at the same price, I'm a happy man. It's just when they come and hit you hard, and it's usually at the last minute he tells you. They don't do anything until they look over your record. That's the numbers. It's all a numbers game.

I don't know where we're going. I see problems here. I'm glad you have a good feeling that something will come out of this. I just have mixed emotions about it.

MR. DRAGO: I think we have to finish what we're charged to do as far as taking testimony and coming to some consensus. I think that since there was some legislation which passed the last time which did have, obviously, the approval of both houses to pass. It had as much approval as you can get from either side of the litigation bar and other interest groups. That the reason it didn't pass was because it was vetoed by the Governor.

I think there were certain provisions in that bill, I think, most notably, the age number with regard to assumed assumption of risk, which might have been problematic. Perhaps it would not be problematic if it came through the same way now, perhaps with a different age it wouldn't be problematic, I don't know. But, clearly, there was some consensus the last time, and it went all the way to the Governor's desk.

So I don't think it's such a herculean task to get something along those lines done this time. Perhaps on a broader scale covering recreational sports as an industry, rather than just the amusement industry. Again, we can't go much further than that, now. I don't see where we're going to have much problem with it.

MR GILLIAN: I think what's happened on a national level with, you know, tort reform and so forth, you can see right on television every night you look at it, now the attorneys are fighting back. I don't know whether this is a good time to even try to do stuff like this.

MR. DRAGO: We have to move ahead. We're not talk radio, so Clinton is not pointing at us, so we're okay for a while.

May 31st is a Wednesday. Is that okay for the people who are here? It's the Wednesday after Memorial Day. I don't know if people are going to be away or won't be back by Wednesday.

MR. ANDRES: May 31 is good for me.

MR. DRAGO: Okay, so May 31st, 10:30 a.m. and we'll circulate the minutes and a letter with regard to the date.

MR. GILLIAN: Do you want anybody from our industry? I mean, you guys know our problems.

MR. DRAGO: The problem is most of these things everybody knows but we have to get it on the record so we have some basis to go forward. If you want to propose somebody, tell us who it is--

MR. GILLIAN: Well, our New Jersey meeting is next week, so I report back, and if anybody wants to, I'll let you know.

MR. DRAGO: Okay.

MR. GILLIAN: If they're along for the ride, I don't know whether they want to do that or not.

MR. DiSIMONE: Off the record, I have--

MR. DRAGO: We're still on record.

MR. DiSIMONE: Well, on the record, I've been contacted by somebody from Morey Organization. Morey Organization owns a number of amusements in New Jersey, one of the larger amusement operators.

MR. GILLIAN: In Wildwood.

MR. DiSIMONE: They've voiced the opinion that they would like to testify.

MR. DRAGO: Put it in writing to me from them and we'll go from there. Then I'll get the letter with regard to the bills and we'll see what we'll do with that, okay? All right, so May 31st, 10:30 a.m. here.

Thank you for coming. We're adjourned.

(MEETING CONCLUDED)

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