

PUBLIC HEARING

before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

SENATE BILLS 124, 692, 693, 1443, 1445, 1514, 1515, 1516,

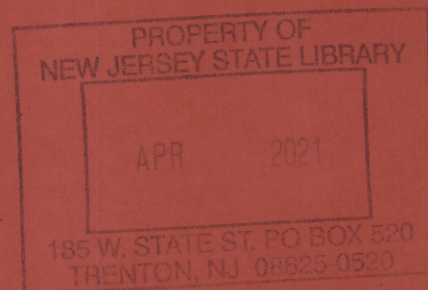
1724, 1971, 2024, 2391, 2408, 2428, 2632, 2637

(Auto Insurance Reform)

June 15, 1988
Room 341
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Lesniak, Chairman
Senator Edward T. O'Connor, Jr.
Senator Gerald Cardinale
Senator Donald T. DiFrancesco



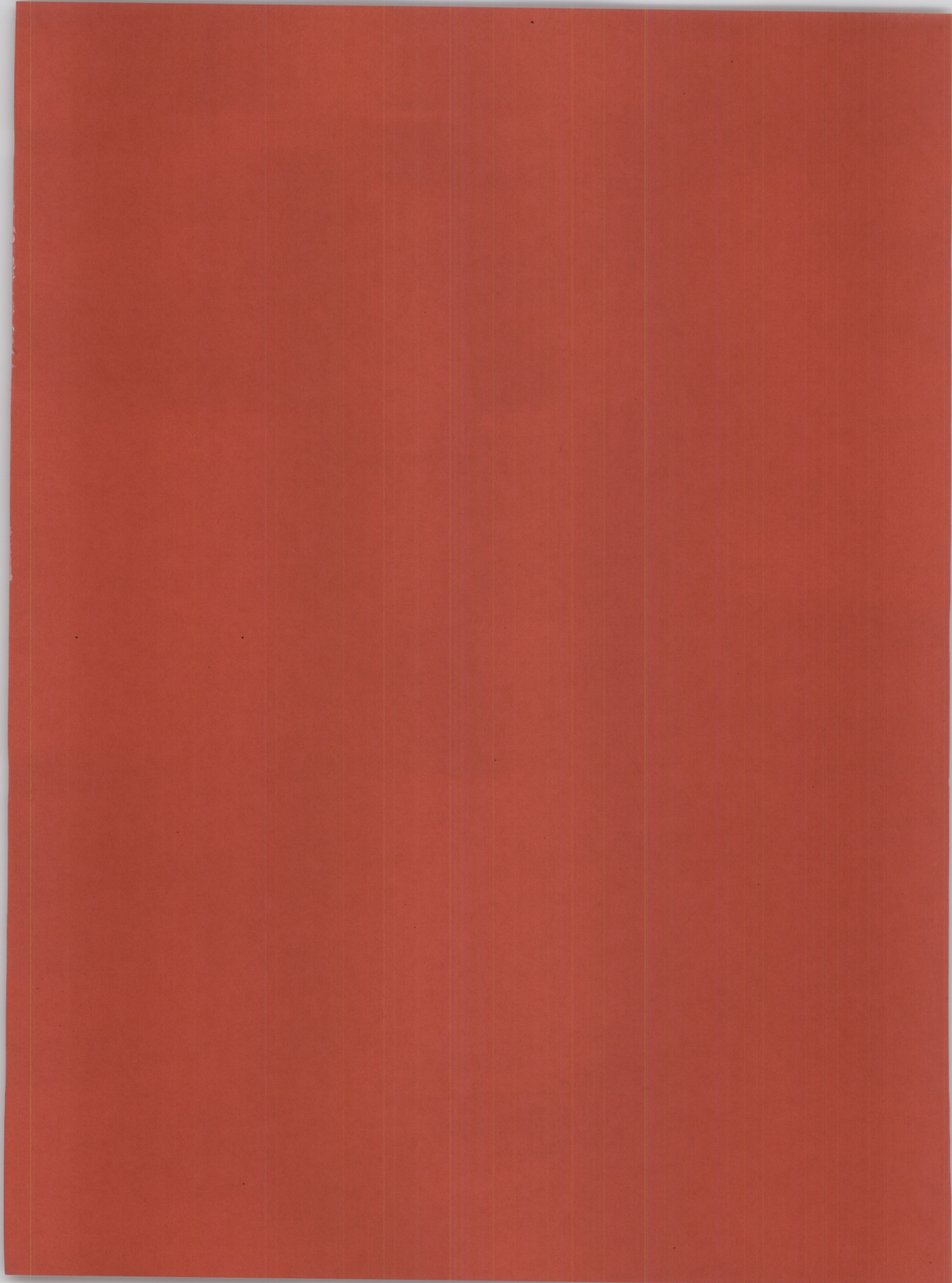
ALSO PRESENT:

Senator Daniel J. Dalton
District 4

Dale Davis
Office of Legislative Services
Aide, Senate Labor, Industry and Professions Committee

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New Jersey State Legislature

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

NO LESNIAK
nan
OPHER J. JACKMAN
Chairman
D T. O'CONNOR, JR.
D CARDINALE
D T. DIFRANCESCO

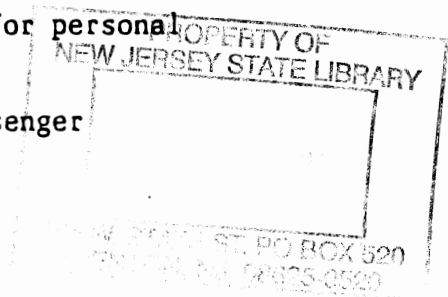
June 6, 1988

NOTICE OF PUBLIC HEARINGS

The Senate Labor, Industry and Professions Committee will hold public hearings on Wednesday, June 15 and Thursday, June 16, 1988, starting at 9:00 A.M. in Room 403 on June 15th and in Room 341 on June 16th, State House Annex, on the following bills:

- S-124 Russo: Enacts new excess profits law for auto insurers.
S-692 Laskin: Repeals the no-fault law and reinstitutes the financial responsibility law.
S-693 Laskin: Establishes the 'Personal Lines Insurance Open Market Rating Act of 1985.'
S-1443 Zane: Revises automobile insurance law to make all coverages except automobile liability insurance optional.
S-1445 Zane: Revises no-fault insurance law, eliminates tort threshold and permits reduced PIP coverage.
S-1514 Dalton: Increases penalties for uninsured motor vehicles.
S-1515 Dalton: Allows arbitration for certain tort claims of \$20,000 or less arising out of automobile accidents.
S-1516 Dalton: Establishes medical fee schedules for personal injury protection coverage.
S-1724 Bassano: Revises law concerning private passenger automobile insurance.

(Continued)



SLI PUBLIC HEARINGS

June 15 and June 16, 1988

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- S-1971 Repeals the no-fault law.
Russo
- S-2024 Establishes optional \$750 monetary tort
Zane threshold or verbal threshold under no-fault
 law, mandates rate reduction, and requires
 \$10,000 medical expense coverage with certain
 options.
- S-2391 Revises method of setting private passenger
Rice automobile insurance rates.
- S-2408 Requires automobile insurers to write good
Hurley drivers.
- S-2428 Establishes auto repair cost schedule for
Codey repairing damaged automobiles.
- S-2632 Provides for a first party system of reparations
Cardinale for automobile accidents.
- S-2637 Revises automobile insurance laws.
Lesniak

Public testimony will be limited to 5 minutes per speaker. Please provide 12 copies of any written testimony to be submitted to the committee.

Anyone wishing to testify should contact Dale Davis, Committee Staff, at (609) 984-0445.

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(NOTE: Due to the large amount of bills discussed, they could not be included in this transcript. Copies can be obtained from the Office of Legislative Services Bill Room.)

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akv: 1-164

SENATOR RAYMOND LESNIAK: The public hearing will come to order. We don't need a quorum since this is a public hearing and it's not going to be a voting meeting today. We will take everyone's testimony until there is no one left to testify. The hearing will be continued tomorrow if there are people here today that we're unable to reach, but they must be here today. However, I do intend to go at least until 9:00 p.m. if we have to, to hear everybody today. We are going to try to limit everyone's testimony other, than the Commissioner, to five minutes, plus questions then after.

Commissioner, will you be available some time later this morning for questions from the Committee members as they arrive, or do you have somewhere else to go?

COMMISSIONER KENNETH D. MERIN: I will be available this morning, Mr. Chairman. If you'd like, I'll just stay here this morning, if that would be a help.

SENATOR LESNIAK: Okay. I would appreciate that. Do you have copies of your testimony?

COMMISSIONER MERIN: I have various handouts. My testimony is not printed. It's going to be--

SENATOR LESNIAK: Okay. Proceed, please.

COMMISSIONER MERIN: Mr. Chairman, I want to thank you for the opportunity to speak this morning. I also want to thank you for the time and the attention that you've paid to this issue over the last year. Our discussions on this have been very long, very serious, and certainly this complex issue has been discussed at a great many meetings. There is perhaps no more vexing issue facing the people of this State than the cost of auto insurance.

I take no comfort from realizing that the cost of auto insurance is growing throughout the country. CBS News had a story on its national show -- the Dan Rather show -- a couple of weeks ago, about an auto insurance rate revolt that's going around out in California. I know from talking with my fellow

commissioners -- who are even now meeting at a National Association of Insurance Commissioners meeting in New York City -- that the rapidly rising cost of auto insurance is a problem in Pennsylvania, in Florida, in California, in Texas, in Massachusetts, and states all across the country. As I said, it give me no comfort to know that there are others in that predicament, but I think we have to realize that this is a problem that is not just confronting the State of New Jersey.

I also think that at the outset it's important for me to note something that I'm sure you realize. I've heard you say this. I've heard the Chairman of the Assembly Insurance Committee say this. I've heard current and former Speakers and Senate Presidents and Governors say this. That is that one of the reasons why New Jersey's rates are always going to be high is because of the density of the population of this State. I will not go through the list of things that we lead the country in in terms of population per square mile, in terms of the number of cars per square mile, and the number of roads per square mile in the State.

All of that means that many of the things that we discuss here today, no matter how they are resolved, no matter which Legislature addresses it, no matter which Governor suggests what program, no matter what we do, the rates are always going to be high compared to the other states in this country. That's something that I regret. It's nothing that I take any enjoyment out of, nor does any member of the Legislature, nor does the Governor take pleasure from that fact. But it's something that we have to realize, that we cannot accuse insurance companies, we cannot accuse lawyers, we cannot accuse agents, we cannot develop red herrings that we think are going to lower the cost of auto insurance to the point where we are at or below the national average.

Having said that, however, there are things that we can do to lower the cost of auto insurance. I am going to break those into three separate areas: One has to do with the amount of coverage that is required; one has to do with the profitability of insurance companies; and one has to do with the quality of State regulations. I will proceed to discuss those three areas. I'm sorry. I will also try to address a little bit later the residual market and the impact that has on our rates.

As we discuss coverage, one of the truisms that is inherent in what I'm going to say this morning is that New Jersey either requires, or on a de facto basis has, much greater coverage than most other states in the country. I will be providing you with illustrations and examples which shore up things that we have discussed.

I note Senator Cardinale has come in, and he and I have discussed these matters as well.

There are certain statistics, certain data, which indicates that our coverage is much greater than in other States. As I discuss how to reduce rates, it is implicit that we will be giving up some coverage. But given the demographics of this State, given the population density, given the crowded nature of our roads, there is no way to reduce rates in any kind of serious fashion without giving up coverage; recognizing that many states, if not all states, do not require the vast type of coverage that we have in this State, and have required in this State for a decade and a half now.

When we look at the auto insurance premiums, it's essentially divided into three areas: physical damage, medical coverage, and liability.

One of the recommendations that I believe should be considered very strongly is requiring that the policy form that is issued to the motorist start with a higher deductible than most motorists in the State are currently taking.

The concept of deductibles on physical damage first came to fore in the 1930s. In that decade it was indicated that the average deductible ought to be the equivalent of about four weeks salary. At that time the average salary was around twelve-and-a-half to thirteen dollars a week, and the \$50 deductible became popular. Measured by the same yardstick, most New Jerseyans ought to take deductibles of between \$500 and \$1000. That's a rather shocking statistic in view of the fact that for collision 67% of the people in this State take a \$200 deductible, and almost 18% take a \$100 deductible.

If one looks at comprehensive coverage, we find even more startling numbers. Twenty eight percent of the people in this State have a zero deductible. Forty-five percent of the people in this State have a \$50 deductible, the same size deductible that was recommended in the 1930's. Twenty-two percent of the people have a \$100 deductible.

If people want to buy extremely low deductibles, they should. That's their own business. However, I think it is very very difficult for the average consumer to compete with an insurance agent, to have that agent convince the consumer that that person ought to raise his or her deductible. I'm not pointing fingers at insurance agents and saying that they're doing something that is anti consumer. I think there have been decades and decades and decades of experience of people buying low deductibles.

The virtue of raising the low deductible is seen in the cost savings that would accrue to the policyholder. The advantage in savings in raising the deductible is seen in less fraud that would occur and in fewer claims that would be processed. As fewer claims are processed, there is less paperwork. As there is less paperwork, there are fewer employees that need to process the paperwork. As all that occurs, the expenses for the people of the State will decline.

So one of the areas that I would suggest very strongly that we look at is the physical damage deductible. Not barring or prohibiting someone from taking a lower deductible, but setting the deductible level at \$500, so that if the person wants to buy a lower deductible that individual can see just what the cost is. I would point out that the average person in this State submits a collision deductible once every 11 years, and a comprehensive deductible once every 14 years.

When I am asked by people, "Why are my rates so high? I've never had an accident. I've been driving for 20 or 30 or 40 years." I ask what size deductibles they're taking, and they tell me they're taking \$50 or \$100 deductibles, I try to point out how much money they could have saved over that period of time. That even if they do have one accident, the amount of money they're going to have to reach into their own pocketbook for is nothing compared to the savings they would have received over a prolonged period.

There's another area that I think is very important, and that is medical coverage. In 1973, New Jersey began requiring unlimited medical coverage. We required that that be purchased as part of the auto insurance policy, rather than through health coverage. Regardless of whether the medical coverage is required through health policy, or through the auto insurance policy, the unlimited type of coverage that we have in this State is met by only one other state, and that is Michigan. Even in Michigan there are options which allow people to make their health insurance primary, and thereby reduce their auto related medical costs, to a much greater degree than our options allow us to do in this State.

We have a survey that I will pass out to you -- if I can get it brought up here (confers with member of his staff) -- which looks at all the states that provide first party medical benefits. Of the 50 states there are 24 -- only 24 -- that provide first party medical benefits. It means that 26

states provide no first party medical benefits. So when people say, "Why is it more expensive here than in all the other states?" in 26 of them people are not paying for medical benefits. If you look at the other 24 states that do require first party medical payments, in seven of those states, PIP -- personal injury protection or medical coverage -- is optional. It is not required. It is not mandated. It is optional.

We then look at the other 17 states, 15 besides Michigan and New Jersey. We find that the average amount of coverage that is provided in those states ranges from 2000 in Massachusetts, 2000 in Virginia, 1000 in some states, 3000, 5000, 50,000 in Colorado, 20,000 in Minnesota, 1000 in South Carolina. There is, on balance, a very very limited amount of medical payments required in 17 states. I will pause while this is brought up to the podium. (copy of survey is distributed to the Committee)

It makes sense, I think, to point out that the 50 states are diverse. They are unlike each other in many respects. New Jersey has a much higher accident frequency ratio than does other states. That's one of the reasons why we went to the system we have in the first place. But the flip side of that coin is that the costs are going to be more extreme. The system that was adopted in 1973 provided a tremendous amount of medical coverage. The problem is that the cost of that coverage is much much more expensive than the people in this State have indicated that they wanted to pay.

Why, and how, should we modify PIP? Now, there have been a great many suggestions made, a great many good suggestions. I think that the answer to that question depends on what your objective is. The easiest thing to reduce rates tremendously would be to eliminate all of PIP; to eliminate basic PIP and to eliminate the catastrophic fund. That will save people on average, ultimately, once the current claims in the system are paid up, \$135 based on today's rates. That's

simple. I can tell you that to the dollar what the savings will be. If we decide we want to retain a portion of medical coverage, then the savings will be less. And obviously the less you retain, the more your savings will be. The more you retain, the less your savings will be.

So it really comes down to a public policy issue of what is your objective? If your objective is total medical coverage, then you don't want to change the current system. If your objective is to reduce auto insurance costs as much as possible, then you want to eliminate PIP and the catastrophic fund. I have thought long and hard about this issue, as I know the two of you have, Senators Lesniak and Cardinale. I've spoken with you on many occasions about this. I'm aware that there are 120 legislators and probably 120 opinions on what to do about this very complex subject.

It's a difficult situation for me to arrive at a decision on. It is my opinion that because so many people in New Jersey have health coverage -- I think 89.5% of the people in this State do have some sort of health coverage, based on New Jersey Department of Health statistics -- that we have to look at the unlimited system. We say to ourselves that 90% of all claims fall under the \$10,000 level. We recognize that the vast majority of people have health care coverage. We recognize that 26 states provide no first party medical benefits; that in most of the states that do provide first party coverage it's either optional or of an insignificant size. Then it makes sense to say to the consumers of this States, "Make a choice. If you have health coverage, if it's comprehensive health coverage, then don't buy medical coverage. Don't duplicate coverage. If you don't have health coverage, or if your health coverage is of such a limited variety, then you have the option to buy PIP, to buy that medical coverage." So you're not spending money twice for the same type of thing. Remember that the average person submits a

PIP bill -- a medical bill -- in this State, I believe, once every 28 years. It's not a common occurrence.

I also recognize that there are a great many serious injuries in this State caused on the roads. Again, that's what compelled us to go to the no-fault system, first party medical payment system, that we have back in the early 1970s. It seems to me that knowing that some 450 or 500 people a year will suffer catastrophic accidents -- quadraplegic, paraplegic, brain stem injuries, severe multiple fractures -- that will run into costs of over \$75,000 a year. It seems to me that understanding that, that recognizing that, recognizing the disastrous impact that kind of injury could have on the finances of the family, and recognizing that because the State of New Jersey has been very generous in recognizing the need to provide coverage for uncompensated care-- We have to recognize that those costs will be borne by someone, either by the families that will be struck by the disaster, or perhaps by the State in some form of institutionalized care in a State facility.

It seems to me that the fairest thing to do and the best thing to do, is to consider something akin to the current coverage that we have. And perhaps by removing it from the 100 or so companies that sell car insurance in this State; and centralizing the catastrophic fund with a third party administrator whose specialty is health care, who would be able to help in the rehabilitation of people much like in serious injuries, particularly in workers' compensation. There is a system of rehabilitation. We would be doing the people of this State a great service.

Now when you boil all that down, what does that mean? That means that there are people who will save a great deal of money because they will not buy medical coverage as an option. It also means that we are going to be shifting costs to the health care system. That means that people who pay for their

health care as individuals will have their rates go up. It means that corporations and businesses that pay health insurance will have their costs go up.

Why would we shift costs from one side to the other side? We come back to the basic question. Why are auto rates in this States as expensive as they are? One reason is demographics. We can't change our population. We don't want to. But we have to look at the way the coverage is broken down in other states, and in most states -- as I indicated, 26 states -- the individuals, the citizens, the drivers, the policyholders, are not forced to bear the burden of first party medical coverage. Someone else pays for it. In the 24 states that do provide it, seven of those states are optional. And of the total of the 24 states that provide first party medical coverage, some provide as little as \$1000 worth of coverage. Which means that individuals and businesses in other states are paying for that coverage right now. Now, is that going to have an impact on the rates paid by a commercial insurer, by a corporation?

SENATOR LESNIAK: Excuse me, Commissioner. Could we have it quiet in the room, please? (responding to audience members talking) Thank you.

COMMISSIONER MERIN: Thank you, Mr. Chairman. The answer is yes. Their rates will go up. The rates should go up by less than the cost of auto insurance health coverage, medical coverage right now, for several reasons:

First of all, most plans have certain types of managed care through HMOs, or certain deductibles and co-payments, built into their coverage. This not only means that some individuals will have to bear the first portion or a small portion of the payment, but it also means that some people will opt not to visit physicians for certain types of complaints. The physicians will tell you people should see them when they have any complaint. That it's in the best interest of public

health to have injuries treated quickly and effectively. But why do we single out auto insurance? Why do we single out auto injuries for special treatment over all other types of injuries?

If the commercial world, the business world, picks up this coverage, my belief is that there would be less fraud; because right now we have over a hundred companies that are selling car insurance. Many of them are not specialists in health insurance. If an employer is paying the bills, the employer is going to be able to coordinate the claims made by people for car accidents with other claims submitted by the individual, to make sure the individual is not submitting two claims. In other words, they will be better able to monitor fraudulization. For the employers who will complain that their costs are going to go up, that's absolutely true, and they have a right to complain. But remember, in other states they are paying that bill right now, and remember that a portion of that, not all but certainly a portion of that, may be taken by the employer as a tax deduction.

That will mean that the Federal government will assist in making payments for accidents, just like they do in every other state. It means that for Medicare and Medicaid, senior citizens will utilize some of their Medicare endowment, and the State will be asked to pick up a small portion of that in Medicaid payments. There is no doubt about the fact that we are shifting costs. We are not making them disappear. We are shifting costs. We are shifting them back to the way they are in most other states. So that when people ask why are the rates what they are in New Jersey? We will be able to explain that we are no longer requiring, mandating by law, that people have to buy something that is not required in most other states.

Now, I've discussed physical damage and medical cover ge. I'm about to enter probably the most singular political issue that's confronted our State for the last 15 years. I know that Commissioner Dewling of the Department of

Environmental Protection has just announced his resignation. I'm sure that there are some people over in DEP and Health and other departments that feel that they have some fairly heavy duty issues going on. But from my perspective, from where I sit, the verbal threshold is an issue that has confronted us for 15 years.

I am perhaps the worst person to talk to you about that verbal threshold because I've been so intricately involved in it for approximately three years now. I've been Insurance Commissioner for about three years. To me the logic of a verbal threshold is so clear, that I cannot understand why it has not been adopted.

I know that the auto insurance rates in New Jersey and in our neighboring State of Pennsylvania, are both very high. We've had two governors in New Jersey in the last 15 years, Governor Byrne, and Governor Kean of course. Pennsylvania during that same period has had two governors, Governor Thornburgh, and the current governor, Governor Casey. Both states, adjoining states, both with very high auto insurance rates. Both states having two governors, one Republican and one Democrat in each state. In both states, for all that period of time, four governors have supported the verbal threshold. And various legislatures controlled by various parties at various times, have rejected the verbal threshold.

One of the states -- and perhaps the only state -- that has a worse auto insurance problem than New Jersey on balance, is the State of Massachusetts. They have auto insurance reform, and calls for auto insurance reform, about as often as we do in this State. I know that their Governor, Governor Dukakis, has recently endorsed a package pending in that legislature, which would call for a verbal threshold.

There is no substitute for a verbal threshold. It is my opinion that whoever is sitting at this table in coming years, if we do not enact one, will be sitting here saying the

same thing that I am saying now. It is my opinion that so long as we have the large number of lawsuits, small lawsuits, there will be a utilization of whatever medical coverage is available. The liability rates will continue to climb. And if there is medical coverage, that will constantly continue to grow. So I believe very very strongly, for a lot of reasons, in a verbal threshold.

Now, the concept of a split threshold was introduced in this state in 1983, and the people of this state were given two options, a \$200 threshold and a \$1500 threshold -- which because of a CPI escalator is now approximately \$1950.

The savings on a split threshold are harder to predict than it is for one threshold. We originally expected that the split threshold, higher threshold, would save around 35% on BI liability. It turns out on a balance that it's really worth about 25% of the BI liability. So it's harder for me to sit here and predict to you what the savings will be on a split threshold. But I can say this, that if you all -- and by you all I mean both parties in both houses -- cannot agree on a verbal threshold, then you may want to consider a split threshold; a split threshold that would give people the option of taking that verbal threshold to save the money that we expect a verbal can save.

I encourage you to pass a verbal threshold. I encourage you for all the reasons that I have recently explained. The logic is there. I have presented this Committee, I believe about a year ago, with information. I am prepared to present the data, and the details, and the numbers, and the projections, and the endorsements, for that threshold. But if the Legislature cannot pass that threshold -- a singular threshold, unitary threshold -- then the verbal threshold as an option would at least give the people the opportunity to save some money on that score.

There are two other areas that I want to discuss with you. One is regarding State regulations and profitability of insurance companies, and then the last area would be the residual market. Profitability and regulation are two subjects that, again, I have wrestled with for a number of years.

One of the things that I applaud the actions of this Legislature and your two preceding Legislatures for is the amount of attention and largess that you have realized on the Department of Insurance. Our budget has doubled since 1984. We have begun, and are well on our way towards, computerizing our Department. We have hired a great many competent people that the Department lacked for a great many decades. We are increasingly in a better position to do all those things that the citizens of this State have a right to expect from the Department of Insurance.

You may be aware that we recently released a survey of homeowners insurance rates, which indicates that there is a tremendous degree of competition in this State, which also indicates that people can save money if they shop around for homeowners insurance. We have recently put out a complaint ratio trying to explain how companies handle auto complaints made by consumers, and we are moving vigorously to get those companies with poor records to improve their claims handling ability. We will soon be coming out with a profitability report on auto insurance in this State -- line by line, company by company -- to indicate just which companies are losing money and which companies are making money. That should be available later this summer. All of the money that you have been spending on the Department is starting to come back in to pay dividends; to let the consumers of this State understand and realize that the Department is there, that it can work for them and protect them. So I wanted to thank you again for all the funding that you have given to our Department.

The profitability of insurance companies is something that we have addressed. The Legislature passed, and the Governor signed, in 1983 an Excess Profits Law. As you know, it is my opinion that that Excess Profits Law -- which was modeled after the Florida Excess Profits Law -- was well intended. It has resulted in a savings for the people of this State that have their dividends paid by companies that I'm convinced never would have paid dividends if not for the presence of that law. There have been excess profits returned to people. So the law worked, but it has to be tightened, because there are companies that made more money than I feel they reasonably should have, but there is a gap between what the excess profits law covered and what they made. So one of the bills that I discussed with you is something that would toughen up the excess profits law. We certainly support that.

Now let me turn my attention to the residual market. In 1983, one of the complaints that we had was that the residual market, the assigned risk plan, was not operating. People we assigned to companies that they had never heard of. The complaints that we received about some of those companies were particularly severe. People did not want to be insured by Podunk Mutual, whoever that is. They couldn't get their calls answered. They couldn't get their claims answered. There is a great deal of concern by consumers. I think that in no state in the country are consumers ever totally happy with the degree of response of companies to auto insurance claims, but we have revised the system to the point right now where in the residual market most of the companies handling auto insurance are doing a very good job in that residual market. Their complaint ratio is at, or lower than, the statewide average. So that aspect has been improved. We have achieved our goal.

One of the other reasons why we moved to a JUA was for the ease and convenience of the producer, of the agent, in terms of trying to deal with the claimant, and trying to

intercede on the claimant's behalf with the companies. So that also has worked.

One of the major reasons why we went to a JUA concept was to try to get a control on the expense cost in the system. There are two types of cost. There are loss costs -- and some of the items I've just discussed would go towards allowing us to lower premiums by reducing coverage and thereby lowering loss costs -- but there are expense costs, and those are the costs of adjusting the claims of all the costs that are not on the loss side. We have been successful in the JUA in terms of controlling those expense costs. The amount of dollars in the JUA that goes to expenses is lower now than we were spending up until 1984 to have a hundred and some odd companies handle those claims for us. That part of the effort on the JUA side has been successful.

But one of the things that has been clear for some time is that the actual losses in the JUA are not being met by the premiums coming into the JUA. The way we are keeping the JUA afloat right now is through a surcharge called a Residual Market Equalization Charge. It's paid by everybody in this state to support the residual market. It's a flat amount of money. It was felt in 1983 that because 40% of the people were in the residual market, most of them were good drivers, it was unfair to ask them to pay more money to support the residual market. It was felt that the best thing to do was to level off a flat fee and to have the consumers of the State share in the cost of that residual market. And indeed, that is what has happened. The problem is that in 1983, '84, '85, into '86, the projections of the losses of the JUA on an annual basis were numbers that were relatively small in total dollar terms, \$250 million and \$350 million a year. With a \$3 billion base, that's less than 10%, or approximately 10%.

One of the difficulties in pricing an insurance product is that it generally takes three or four years before claims mature and we know the full cost of those claims. It now appears that the losses which the industry had predicted, and the losses on which we have based all of our assumptions were not running in the 250 to 350 range, but were running more in the \$600 million range. We had expected to save money through savings on the expense side, and as I indicated before, we have. We have saved a couple hundred million dollars a year. But clearly that amount of money was not enough to offset the higher claims cost that the JUA is experiencing.

There are a couple of things that we can do to handle the losses on the residual market side. One option, which is not one that I prefer, is to do nothing. The JUA is set up so that we can charge people residual market equalization charges. And those flat fees can grow and grow and grow into the hundreds of dollars. I think the expectation is that we could have a RMEC of as high as \$500 in four or five years. That assumes that everything is static; that there are no rate increases; that the whole world is going to stand still; and therefore I think that's an unrealistic number. But nevertheless that is one projecture.

Another option, and one that I prefer, is to have a law passed that would give me the authority to order the companies to write people in this State in the voluntary market. There are a lot of good drivers in the residual market. There is no reason why those people should not be written in the voluntary market, and in my opinion, there is no reason why we should not order the companies to do what I just indicated.

What that is going to mean is that eventually, not right away but eventually, voluntary rates will rise as the bad or the more high risk experience in the JUA moves into the voluntary market. We will get back to the same level of rate

increases on a regular basis felt by individuals in other states. But I think that that is much preferable to running a continual deficit; a deficit of ever increasing magnitude. The deficit that is there right now does not have to be paid off tomorrow, does not have to be paid off next year, does not have to be paid off in the next decade. The important thing to do is turn the JUA around and make sure it's self-supporting, and the best way to begin doing that is to get people out of the JUA and gradually have the voluntary market rates rise.

Another necessary element is taking a look at the rates paid by people in the JUA. Clearly, the rates were insufficient. If we do not want that ever increasing rate, that ever increasing flat surcharge, then we have to get more money into the JUA. We have come up with accident surcharges, fault surcharges. I think that the only thing we can do at this point to get additional money is to put the JUA on a different rate basis than it is right now. By that I mean gradually increasing the rates in the JUA to a level where they are more self-supporting of the needs of the JUA. I think that it would be unfair to the people, particularly the good drivers in the JUA, to double or triple their rates, which is what we would have to do to make it self-supporting. But I think that a gradual increase in the rates, accompanied by a mandate, a requirement, that companies start writing the voluntary market, is the fairest way to get additional revenues into that residual market.

Now, I think the Chairman indicated he was going to allocate me more than five minutes, and I think I've taken more than five minutes.

SENATOR LESNIAK: I'll give you ten.

COMMISSIONER MERIN: I note that there an awful lot of people that want to talk today, and I'm certain that there are an awful lot of people sitting behind me right now who have their own particular concerns about things that I've said.

When the witnesses parade before you this morning, this afternoon, and Senator Lesniak, hopefully not this evening, they are going to tell you a lot of things. They are going to tell you that you are not lowering rates so much as reducing coverage. And they are absolutely correct. We are going to be reducing coverage just so New Jersey is like all the other states in the country.

They're going to tell you that we can regulate the insurance companies better, and I agree to that. We know that our Department was not what it should have been for many decades, and with your help, we've been improving that Department. We're going to continue to do that. There are certain things that have been proposed that can help regulate the companies, and I want to do that. There are certain things that we can do in a technical regulatory sense to have more flexibility to respond to need for rate increases, and I can support that.

But the fact is that New Jersey is different, and again it goes back to our demographics. If you look at the reason why we went to no-fault in the first place, why we went to the type of system we had, it was because rates were high in the 1960s, and it was because the system was perceived as being unfair in the 1960s. The rates are even higher. The difference between New Jersey and the rest of the country has grown because of the system that we have mandated in this State. I don't believe that it's fair, I don't believe it's equitable, I don't think it's moral, to demand that people pay 10% of their income each year -- or more than that -- for car insurance. I think the rates right now, by the time the next couple of weeks go by, will be approaching \$1000 a car in this State. That's ridiculous. It's just so far beyond the understanding of my fellow insurance commissioners, and beyond the understanding of the laymen, the consumers, that I think we've got to do something to change that around.

I wish that I could sit here and tell you that I could press a button, and it's all in the profitability of insurance companies, and we can take care of that, and it's going to go away. But that's not the case. The case is that we have a very densely populated state. We have a lot of accidents. We have a lot of claims. If we're going to get the rates down, then we're going to have to strip away some of that coverage. It's not a pleasant message, but I think that it's a truthful and an honest message.

Again, I have supporting documents for us. If there is any way that I can assist this Committee, for whatever data you want, whatever information you want, I am more than happy to try and provide that for you. You have a very difficult task in front of you. I want to work with you to try to reduce the rates for the people of this State. Thank you very much, Mr. Chairman.

SENATOR LESNIAK: Thank you, Commissioner. Senator O'Connor?

SENATOR O'CONNOR: No questions.

SENATOR LESNIAK: Senator Cardinale?

SENATOR CARDINALE: Yes. Thank you, Mr. Chairman. First, I'd like to compliment your presentation. I've been in the Legislature I think nine years. This is my ninth year. And each of those years I have dealing with this problem, and I think you have very succinctly stated the nature of the problem.

But just a brief anecdote. In 1850, there was a gentleman who predicted that someday we could go from New York to California in less than one day. He was roundly ridiculed by the people of his day, many of whom said, "Where are you going to get a horse to run that fast?" I mention that because I think that, to some degree, our insurance system is an attempt at maintaining a horse and buggy kind of operation.

I'd like your comment on another system that we might use. Would it not be less expensive for all concerned if we converted our misnamed no-fault system into a true no-fault system, a system which sets reimbursement for specific injuries, for specific medical regimens, for specific physical damages, to a specific schedule of payments; as we do today in workmen's compensation? By such a system we could eliminate lawsuits, and eliminate many inflated settlements and claims. And it occurs to me that there are parts of this world, and even parts of the United States, where the people manage to exist at dramatically different levels of litigation than we live with here in New Jersey today.

And if we added to that something else which is on our agenda, a true file and use rating system, which superimposed on that first set of conditions, would then encourage true competition among insurance companies for what would then become a very desirable business in the State of New Jersey. If we did something as dramatically different as that, would we not be able to provide the residents of the State of New Jersey with something that they are asking us to provide.

I don't get mail saying, "Please keep the no-fault system." I don't get mail saying, "Please preserve the medical benefits." You get a few of those letters, but very little. The letters that I'm getting, and the calls that I'm getting, are, "Do something about the rates." Now, if that's our real obligation, to serve our constituents and doing something about these rates, wouldn't it be a tremendous thing to begin to look at -- instead of fiddling around with one thing or another thing -- a totally, completely different system, and really a system that is what people were perhaps trying to do when they created what they termed "no-fault" and which is not at all a no-fault system. I'd like your comment, Commissioner.

COMMISSIONER MERIN: Senator, let me try to give you specific responses because there are a couple of questions in there.

The first question you asked was about the total deregulation of rates, and what would that--

SENATOR CARDINALE: That's the second question.

COMMISSIONER MERIN: I'm going to try to handle that first, because my second answer I think will be a bit more expansive.

I'm aware that tomorrow there is a hearing on specific bills, and I was prepared to address the bills tomorrow. I have a few handouts today, but I have more handouts for tomorrow. One of the things that I will bring over for members of the Committee -- and I can have provided for you today if you desire -- are copies of an actuarial analysis that we had done on the impact of total deregulation of rates, going on a file and use kind of basis as you just indicated. I believe, and I'm subject to correction on this, I believe the immediate impact would be about an 18% increase.

There are a great many states in this country that go on a deregulated basis. The United States General Accounting Office--

SENATOR LESNIAK: Just a second, Commissioner. If you want to talk, please leave the room. (referring to audience members) Thank you.

COMMISSIONER MERIN: Thank you, Mr. Chairman. The United States GAO did a study a couple of years ago -- as a matter of fact, they did it at the request of a Congressman from this State by the name of Florio. Congressman Florio requested the U.S. GAO take a look at the difference in various methods of state regulation of auto insurance rates, whether it's prior approval, file and use, whatever. The U.S. GAO's document -- which is about yea thick, which I can also provide to you -- came back and told the Congressman that the rates were about the same; that it really didn't matter; that what is important is that the companies feel more comfortable with the deregulated system; and that therefore they view the business

climate -- for want of a better word -- to be better in those states. But in reality, comparing different data from different states, the GAO thought there was no real difference in terms of what the actual rate was.

Massachusetts and New Jersey are the two most highly regulated auto states in the country. If you move from the most highly regulated states to a state of deregulation, there is going to be a significant jump based on the U.S. GAO study. My guess would be that if you're willing to live with that for a year or so, then the rates would be at whatever the appropriate level is. And again, I'm basing that on the document. I will be happy to provide that to you. We can have both of those sent over to you today if you'd like. I will have copies made for the members of the Committee.

In terms of the first question that you asked about the legal regime. I think your question was, if we were to draw up something like a workers' comp schedule for various injuries, would that not save a great deal of money? My response would be, it depends on who's drawing up the list. I'm sure you realize that there are always concerns about the levels of benefits provided under workers' comp. There are always concerns that workers' comp should be paying more for a certain injury, or concerns by employers they should be less for a certain injury. And I think that whoever was holding the pen that was going to draw up that schedule or amend the schedule, that would determine what the savings were going to be. So yes, I think that intellectually you're absolutely right that if you develop that kind of system there is no doubt that it can be extremely effective.

My guess is that it would be as effective as a verbal threshold. Maybe a little bit more. Maybe a little less. Let's use that as a starting point. Assuming that it was as effective as a verbal threshold, then it would save maybe a hundred dollars per policy, on average. It might save a couple

of hundred for one person. It might save \$50 or \$60 for another person. I would support that kind of a program. I know that they exist for certain types of injuries. I'm not sure they exist for auto in this country. But clearly that would have limited effect. I'm not sure that the total savings though would be a lot more than a verbal threshold.

And I think that if you asked the average driver in the State of New Jersey, or the average policyholder, "If we're going to save you \$100, is that enough money? Is that going to reduce the rates to a significant level?" My guess is whether it's just by doing a verbal threshold -- let's say that everybody agreed that we do a verbal and nothing else -- I don't think the consumers would be satisfied with the savings inherent in a verbal alone. I think there are a lot of things that we would have to do.

So the answer to your question, Senator Cardinale, is yes. You've outlined a system to me. If we moved towards that kind of system, yes, the savings would be considerable. My comment would be that whoever was drawing up the benefit structure -- and as you know the workers' comp schedule is very long and complex -- depending on how that is laid out, that would depend on how great the savings would be.

SENATOR CARDINALE: Thank you. Can I ask two--

SENATOR LESNIAK: Unlimited questions for you, Senator Cardinale.

SENATOR CARDINALE: Thank you, Mr. Chairman. I only have a couple more. Isn't it true that in the -- I just want to get this on the table for our discussions -- that in the bodily injury side of payouts, in the payout side on the bodily injury section of the policies, that the payouts to consumers, the payouts to policyholders, are less than 50% of the total payout of that system? Is that correct?

COMMISSIONER MERIN: Senator, I accept that it's about 50%. Roughly 40% of every dollar -- 40 cents on every dollar you pay in goes to administrative and loss-adjustment expenses. There are reserves. There are other components. I would say it's around 50%.

SENATOR CARDINALE: So then if we take the high side of that going to the person who is getting this settlement amount, they're getting 60%. Now, that does not include the plaintiff's legal fees, does it?

COMMISSIONER MERIN: The plaintiff's legal fees would come out of the award, correct.

SENATOR CARDINALE: Would be included in the 60%--

COMMISSIONER MERIN: Correct.

SENATOR CARDINALE: --and therefore, if we figured that at a third -- which they generally are -- then the consumer is getting really 40% of the whole payout, isn't he, on the bodily injury side?

COMMISSIONER MERIN: Correct.

SENATOR CARDINALE: Therefore, if we had a schedule, that schedule could actually include benefits of two and a half times -- maybe less a little administration fee -- and just reach what is currently causing our premium on the bodily injury side to be where it is today. Is that a reasonable analogy?

COMMISSIONER MERIN: That's correct, Senator. One of the virtues of the workers' comp system is that they tend to limit the administrative costs and the legal costs.

SENATOR CARDINALE: Now, there's a point here that I truly do not understand in your testimony. And I have never taken the opportunity to ask you this question before. I'm going to just, you know, fly here at this public hearing.

Everyone is saying that we must depopulate the JUA, and that is the way out of our problems of the fiscal mess that the JUA really is in. But it occurs to me that the first

people who are going to be taken from the JUA into the voluntary market are probably the best drivers. That will leave a pool of, on average, still higher risk drivers within the JUA. So that it seems to me that by itself depopulation would have to increase the shortfall in the JUA. I don't understand why we are so interested in depopulation of the JUA if it's going to result in a shortfall.

Wouldn't we be better off to just at the beginning raise the rates in the JUA to what is appropriate for the pool of people who are currently in the JUA? Because the next single biggest complaint that I get from my constituents is that they are paying for higher risk drivers. There is a perception that the low risk driver, especially with this RMEC, is now subsidizing the policy of those in the JUA who are looked upon as being higher risk drivers.

SENATOR LESNIAK: Commissioner, would you defer to me for one minute please?

COMMISSIONER MERIN: Certainly.

SENATOR LESNIAK: If I may, Senator? If we immediately increase the rates of the JUA, and we all know that there are people -- and maybe a substantial number of drivers -- who shouldn't be in the JUA, who are not high risk drivers. Those people will unfairly bear the brunt of that increase. You're absolutely correct, by the way. Depopulation in and of itself is not going to solve the JUA problem. But if you depopulate so that the truly higher risk drivers are in the JUA, and then decouple the rates at the same time between the JUA and the voluntary market, then you'll achieve the cost savings and reduce the deficit to the JUA.

SENATOR CARDINALE: But that comes from the increase in the rate. It doesn't come from the depopulation.

SENATOR LESNIAK: It's hard to increase the rate when you have people who shouldn't be in there to pay that rate.

SENATOR CARDINALE: Wouldn't the increase in the rate by itself cause the consumer to want to be out of the JUA? Today there is no disadvantage to the consumer who is put in by his broker into the JUA. He pays the same rate as anywhere else, so he has no reason to argue that he should be somewhere else. Isn't that true?

SENATOR LESNIAK: If they can get out. If there's an insurance company to write them.

SENATOR CARDINALE: So what you're coming to, Senator Lesniak, is what I think we all believe, and that is that not any one of the various things that we might have to consider is going to work, that we have to do many things, and that individually they're all really terrible, but that it's a combination of things that we must do.

SENATOR LESNIAK: That's correct.

COMMISSIONER MERIN: Let me try to add one more note. One of the things that insurance companies are generally pretty good at is underwriting a risk, that is trying to determine who is going to have an accident and who is not going to have an accident. The better a company does in its underwriting -- the cleaner its book, the purer its book, so to speak -- the lower the rates can or should be. There is a fine line between who is a good risk and who is not a good risk. For example, in the JUA right now we have most of the high priced cars -- Porsches, Maseratis -- because companies understand that the cost to repair those cars are extreme. Even though the people are good drivers, if there is an accident the costs are going to be very high. It's not just good drivers and bad drivers. But the difference between a high risk and a, so-called, low risk, is not all that clear. There's a great deal of judgment involved.

People have been paying subsidies in New Jersey for a long time. The first subsidy I think was the policy constant, which Commissioner Sheeran developed in 1980 -- '79 or '80 -- which has been continued. It was increased by Commissioner

Murphy, and it was a predecessor to the RMEC. People pay subsidies in most states. In most states it's a relatively low subsidy. In New York, for example, it varies according to territory rather than being a flat fee. For example, if you live in Brooklyn, the subsidy is about \$90 per car. So subsidies are nothing new or unique.

But the policy constant and the RMEC right now are paid into the JUA. If you have 50% of the people in the voluntary market, and 50% of the people in the JUA, then you have a gradual diminution of people in the residual market into the voluntary market. The people over here are still setting the policy constant and the RMEC over on this side, so there is more pure premium to support fewer and fewer people. That is the reason why you will not cause the reverse kind of situation of what we want.

Now, one of the programs that I favor greatly is something that Michigan has, and it's something that I would suggest that we ultimately adopt in this State. That is something that would say that if a person has had no claims, no traffic violations, no accidents, if they're pure for a certain number of years -- three years, four years, five years -- then they should be written into the voluntary market, and in fact they could not be refused in the voluntary market, regardless of where they live. But given the predicament that our residual market has right now, that kind of situation would result in that severe dysfunction that you were just talking about. Therefore, I agree with what Senator Lesniak said, and I agree with what you just said, Senator, that we have to be careful, that we need to monitor the way people come out, but all of the actuaries that I've spoken to are firm in their belief that we need to get depopulation going if we are going to avoid the continual growing deficit. One action, raising the rates without depopulating, is not going to do the job; or visa versa.

SENATOR CARDINALE: A final point I'd like to address with respect to your statement. I believe it was early spring or maybe late winter when you first broached this idea of the shift from auto to health carriers. Between then and now -- and that has some advantages which I think we all understand -- but between then and now it has become apparent that the major health carriers in New Jersey are experiencing under their current burden a very significant fiscal problem. I keep reading that those rates are going to have to be dramatically increased. Would you care to comment-- Has that made any change in your determination that that is a direction that we really ought to pursue? Has that modified your thinking at all?

COMMISSIONER MERIN: Absolutely not. The flat truth is that health care costs are going up all over the country. New Jersey is competitive with other states. And again, thanks to the money that you've given us in our budget we've hired a lot of very capable, competent people. We're now starting to research and analyze and get costs from companies as to what they charge in different states. Clearly there are differences in demographics. New Jersey has many more senior citizens than do most states, which would mean that on average our rates are higher.

But the fact that rates are going up has nothing to do, I think, with the issue at hand. Why do New Jerseyans pay more money than people in adjoining states, surrounding states, or in the United States? The answer, in large measure, is because 26 states require no medical coverage. Remember what I said at the beginning. If the objective is to provide the public health high road, to provide all that medical care so that people have direct coverage, then we're doing the right thing. We shouldn't change the system. If the objective is to reduce costs as far as possible, then we ought to provide no first party medical benefits. If on the other hand we try to balance the equities, then there are a whole variety of things

that could be done. We would keep the first level. We could go to deductibles and co-payments. We could do any number of things. And I am more than happy to try to price for you whatever particular program any legislator might have.

It's my belief, though, that in most states health coverage does apply to auto accidents. In most states -- and again I see no reason why we should be different -- for auto accidents there are co-payments, there are deductibles, there are limits. Why are we different from every other state? Again, logically it does not follow that if you slip and fall on a sidewalk you're covered one way, but if you suffer the same injury in an auto accident -- the same small injury -- you don't have a deductible. You don't have a co-payment. There's no managed care. Even the workers' comp system manages their care. They try to rehabilitate people. They try to move them along more quickly and get them back on their feet and get them back to work. We don't do that. The PIP system that we instituted in this State in the early 1970s went so far on the public health side -- that is, taking care of people -- that we totally neglected the cost side.

This is absolutely nothing to do with the issue at hand, but I can tell you point blank that I am very disappointed that for the last few decades the Department of Insurance has played as little role as it has in the health care area. You know, we've all been so dominated by auto insurance. It's uppermost in your minds. I can guarantee you that every Commissioner of Insurance for 20 years has felt the pressure of trying to do something about auto insurance rates. We have neglected for many decades in our Department the attention we should have paid towards health care costs.

We've changed that. I now have three actuaries, life health actuaries, in my Department. I've got a staff that I will put up against any department in the country when it comes to the life health side. And I think you'll be seeing things

coming out of our Department in the next year that will impact on health care cost levels, to the extent that the insurance system can be held accountable for those costs. We can't do anything about the cost of pharmaceuticals or the doctors or the hospital fees, but there are things that we should have done. We haven't done it because our Department was so minimally staffed, minimally funded, and focused on auto insurance.

And to the extent that we could solve the auto insurance problem, it's going to pay dividends because it will allow our Department to become more active in a host of other areas that are all very important to the people of this State. To the businesses of this State I think that we can do more to reduce commercial liability rates. To the people of the State that are paying homeowners, we can do things in that area. We have had a one issue Department of Insurance for a long time, and I am doing my best to change that. I think we've made strides. You've seen some results already. You're going to see more results as the summer and the next year go by.

I'm sorry, Senator. It's a long answer to your question, but I get carried away sometimes.

SENATOR CARDINALE: Thank you.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: I'm sorry. Can I ask a couple of questions?

SENATOR LESNIAK: It's your turn.

SENATOR DiFRANCESCO: Commissioner, I wanted to ask you a couple of questions about the JUA problem. As you know, we're all getting a lot of mail on the insurance rates. I think, I'm not positive, but I think, triggered by two things. One is your decision to impose the surcharge, the other is the Allstate appeal to their policyholders to send letters saying, "Reduce rates. Get rid of the verbal threshold--" or, "Bring in the verbal threshold." In any event, you mentioned just a

few minutes ago that there's a policy constant. Is that a statutory item? Is that something that was imposed by law through a bill that was passed?

COMMISSIONER MERIN: That was imposed, I believe, in '79 or maybe it was imposed in early '80, by Commissioner Sheeran. Commissioner Sheeran felt that there was so many good drivers in the residual market at that point -- I think the residual market back then was in the low 30 percentile area, mid 30s -- that it was unfair to ask the good drivers in the residual market to pay rates that were as high as the actuarial projections were to call for. So Commissioner Sheeran instituted a policy constant, which was a flat fee based on coverage. I'm sorry. (confers with staff member) Yeah. It's based on the coverage which is paid by motorists, and that fee was around \$44, I believe, in '80.

Commissioner Murphy in 1982 or '83, raised that surcharge to around \$70. It was done under the rate making authority of the Commissioner. That policy constant remains at that level, and the only surcharge that we've had since then has been the residual market equalization charge, which was done pursuant to law. That was, as you know, Don--

SENATOR DiFRANCESCO: Which law? What law?

COMMISSIONER MERIN: A-1696. It was passed in 1983. There were two major auto insurance reform bills passed in 1983. One went to the way the residual market delivers service. The other one basically gave people the option of selecting various deductibles, co-payments, and higher liability limitation. Both of those were passed in '83.

SENATOR DiFRANCESCO: So you have, by law, the authority to impose this RMEC -- as you referred to it -- as many times as you feel it's important to do so?

COMMISSIONER MERIN: I have a statutory obligation to make sure the JUA does not run out of money, and I can do that.

SENATOR DiFRANCESCO: Okay. Let me get to the JUA now. You said before that it's been clear for some time that the JUA had problems. How long?

COMMISSIONER MERIN: The first concern was voiced at about the time the law was signed. There were no definite figures available. As recently as 1986 -- late '86 -- the projections were for deficits that we had in the neighborhood of \$250 million to \$350 million a year. The current severity was discovered much later. When I testified before the Senate Judiciary Committee, when I came back the second time as Insurance Commissioner, I indicated that I had grave concerns about the JUA, and that I foresaw these types of problems. The actual numbers as to the severity were first laid on my desk in the last few months.

SENATOR DiFRANCESCO: Now, you indicate that you have the ability to impose these surcharges pursuant to law. Then you also indicate that you don't have the ability to order companies to write policies in the voluntary market.

COMMISSIONER MERIN: Correct.

SENATOR DiFRANCESCO: If it's been clear for some time that we've had a problem, why haven't you asked us to make this change in the law?

COMMISSIONER MERIN: Two responses. Change the law in terms of depopulating?

SENATOR DiFRANCESCO: Your ability to control what goes on in the JUA, which I guess you're saying you don't have as much control over the JUA as you have over the general population. At least as a layman that's the way I see it.

COMMISSIONER MERIN: The first time I made that request was in January of this year. The primary reason why we did not demand this right before was that the savings on the expense side that we have been achieving were expected to make up the deficit on the JUA side. In other words, the savings we've achieved over the last two years in the JUA on expenses

run into the couple hundred millions of dollars. That was projected to be the annual deficit of the JUA. Since we did achieve those savings, and since that was projected to be the deficit, even though the deficit had run up to, say, a billion dollars, the additional revenues that would have plowed in would have allowed us to stabilize the JUA. The problem is that within the last six months the projections have turned out to be much worse than anyone anticipated.

Property casualty insurance is basically a seven-year cycle. It takes seven years for the claims to mature and run off. At the time that the JUA came into effect, there were projections made as to what the costs would be. No one knew what the costs would actually be, what the pure losses would be. Through 1984, '85, '86, and '87, the projections remained constant. It was only this year that the projections showed an actual cash outlay far far far greater than anyone had anticipated prior to that date. As a matter of fact, the fact that the JUA is in for a second RMEC right now -- a second surcharge -- is because the actuaries who made the projections for the JUA for the January filing have come back and said that their filing in January was in error. That the evidence that they have uncovered since January has indicated that that loss experience is much greater than they had anticipated.

So, again, the answer to your question is in the last six months.

SENATOR DiFRANCESCO: The other thing I wanted to mention -- even though it's really a repetitive question because Senator Cardinale mentioned it -- and that has to do with the philosophy with regard to the surcharge on all policies, as opposed to policies within the JUA. Of course most people would say -- as you know because they write to you too -- "Why do we force them to pay for someone else?" And regardless of-- I know that Senator Cardinale believes, and I tend to agree with him even though I'm not well versed in this

area, that if you were to apply that surcharge only to people in the JUA, the pressure that would bring would cause changes to occur. I really believe that. I think he believes that too. I know that you're saying that that would not happen.

But from the perspective of the person who pays the premium, who has negotiated a premium with his insurance agent or company, to have a surcharge placed on him because we say that something we created several years ago must be bailed out, and at the same time to have the media here and have you say that we don't have to pay this deficit for a decade-- We really don't have to worry about paying this deficit off for a decade, but you do have to worry about, I assume, creating more of a deficit for some reason. It still doesn't make sense to me, regardless of your explanation, that you don't just surcharge the people in this JUA. I mean, that seems to make a lot of sense to all of us, except for you, I have to tell you.

SENATOR LESNIAK: Well, except for those of us who are in the JUA like me.

SENATOR DiFRANCESCO: I'm going to be asking the questions. Let him give the answers.

SENATOR LESNIAK: Not if you're going to represent it that it makes sense to all of us. It doesn't make sense to me.

SENATOR DiFRANCESCO: Well, you could say that when I'm finished. Right? You gave me the right to ask questions.

SENATOR LESNIAK: Not if you're going to represent that I feel someday that--

SENATOR DiFRANCESCO: I didn't say-- Except for Senator Lesniak, Senator O'Connor, and Senator Dalton. (laughter) I can tell you in our party, in our conference (laughter) we feel very strongly that way.

COMMISSIONER MERIN: Senator, may I respond to that?

SENATOR LESNIAK: Yes, you may, Commissioner.

COMMISSIONER MERIN: Subsidies are a fact of life in insurance. It's something that I had no knowledge of four years ago when I first got involved in insurance, but people pay subsidies. In Massachusetts, the average subsidy per driver is around \$125 or \$135 per car. In Brooklyn, it's \$90 per car. In some states where the subsidy is very low, it's a couple of dollars. People pay subsidies for commercial insurance. They pay subsidies for homeowners insurance. This is a fact of life in the insurance system in the United States today. The difference with the New Jersey system is that they are listed and people know what they are. They're not hidden within the policy. And I can give you a list, Senator, if you'd like of some of the subsidies that are paid in some of the other states in this country. I'd be happy to do that.

The second point that I would make is this, the difference between a good driver and a bad driver -- a high risk driver and a low risk driver -- is a very difficult one to make. There has been a lot of concern in this State about people being overcharged. I think implicit in your first question was, why did we not do something over the first couple of years of the existence of the JUA to raise the rates, or to come in with a surcharge earlier, or something like that? There has been a siege mentality in this State for 20 or 30 years about auto insurance.

The law under which I and other insurance commissioners operate says that the rates and its charges have to be fair. They have to high enough to make sure that a company does not go bankrupt, but it can't be more than necessary to achieve a reasonable profit. It's a very very tough line to draw. In addition, as you know, the Public Advocate intervenes in rate cases. New Jersey is one of the few, if not the only state, in which rate proceedings are adversarial in nature. In my opinion, the decisions that were made based upon the numbers that were at hand over the last 15

or 20 years by the various commissioners, were all made based on the same kind of rating law. The difficulty with the JUA system is that the losses turned out to be far greater than we anticipated.

If we flip the coin a little bit and we look at what would have happened if we did not have a JUA, we would have a voluntary market with an assigned risk plan. We would have continued rate increases over the last five years, running somewhere in the 10% to 15% area, which is what other states went up during that time period. The rates that people will be paying for their own insurance right now would be somewhere between \$1200 and \$1500 per car. We have not done that. Rates have been stable for a great many years.

There is a deficit, and ultimately those claims will have to be made. The point that I was trying to make, Senator, was this. If we do nothing now, then that deficit is going to grow and grow and grow. We will keep even on a cash flow basis, but the deficit will grow. We have to keep the deficit from growing, which means raising the rates and depopulating the JUA.

SENATOR DiFRANCESCO: Can you raise the rates now? Can you order that the rates be raised in the JUA?

COMMISSIONER MERIN: I cannot raise the JUA rates unless I raise the voluntary market rates, because A-1696 -- the legislation that was passed in 1983 -- ties the JUA with--

SENATOR DiFRANCESCO: Did Senator Lesniak sponsor that? No don't take that-- (laughter)

SENATOR LESNIAK: No, as a matter of fact Senator Lesniak didn't. Senator Lesniak sponsored the JUA bill that allowed the Commissioner to save \$200 million in expenses of the JUA.

Commissioner, I want to make a statement for Senator DiFrancesco. Senator, I live in the city of Elizabeth. I haven't had a ticket--

SENATOR DiFRANCESCO: Wait a minute, Ray--

SENATOR LESNIAK: No, not wait a minute. I want to respond to that. I haven't had a--

SENATOR DiFRANCESCO: Respond to what?

SENATOR LESNIAK: I want to respond to your question.

SENATOR DiFRANCESCO: My question was specifically dealing with his ability to deal with the JUA.

SENATOR LESNIAK: Fine, I'll respond to anything. I'm going to make a statement. I haven't had a ticket in 15 years, Senator. I haven't had a claim. I'm in Elizabeth, and just as everybody else who lives in Elizabeth, we're in the JUA. I'm sure Senator O'Connor living in the city of Jersey City can probably say the same, maybe for 95% of the people. You have a Mercedes?

SENATOR O'CONNOR: I'm in the voluntary market.

SENATOR LESNIAK: Okay. You must know somebody. (laughter) The point is, there are many people in my position, my constituents, who are in the JUA who don't belong in the JUA.

SENATOR DiFRANCESCO: Senator, we all know that.

SENATOR CARDINALE: Senator, may I address that?

SENATOR DiFRANCESCO: Wait. I know that.

SENATOR LESNIAK: I didn't know that. I didn't know that you did.

SENATOR DiFRANCESCO: Because you've told me that in the past, and I've heard statements by numerous people--

SENATOR LESNIAK: You still want to surcharge me.

SENATOR DiFRANCESCO: Ray, I've heard everybody say that 80% of the people in JUA are good drivers, and of course it's hard to define a good driver, but I know that. That really wasn't my point. I don't want to necessarily hurt you just because we want to help other people. Obviously I represent people in the JUA also. But it seems to me that there has to be some logic to what the Commissioner is doing. He believes that that is a correct way to do things, because

what he's saying to me today is that we subsidize in a lot of areas, and we do a lot of different things to subsidize in the insurance area, and therefore this is not that unusual, and this is a further subsidy. That's what his answer is to me. But my original thought was -- as professed to me by many people who aren't in the JUA -- it doesn't make sense. They could see supporting their system. They could subsidize the voluntary market system, but they're not in JUA, therefore, why should they subsidize bad drivers, because they've been told that people in JUA are bad drivers? I realize that that's not true, but try to get that to people.

SENATOR LESNIAK: It's not easy.

SENATOR CARDINALE: Senator, may I add something to what Senator DiFrancesco has said? There are two points here that are important. I think, less we make the mistakes that we made in the past -- and I think we can all admit that we have made mistakes on insurance in the past, at least the result isn't great-- One, you are the example that I was trying to make. There is no incentive for you to want to get out of the JUA as long as the rate in the JUA or outside the JUA is the same, and we made that mistake. That's our error.

SENATOR LESNIAK: But even if I wanted to I couldn't, because no one would write it.

SENATOR CARDINALE: Well maybe that's what we'd change if we put in a file and use system, and then they would have to write you in a certain category.

Secondly, when we were discussing that five years ago, the question came up, "Why do we not want to charge people according to their risk?" And what I'm concerned about in all of these discussions about the depopulation of the JUA and changing those rates is the answer that was given at that time, that it would cost so much for the high risk driver to obtain insurance that the high risk driver would not buy insurance unless they were mandated to, and even if they were mandated to

many would probably violate the law. Even at the present rates some do, but many more would violate the law and would be driving without insurance. Now, in the course of these discussions, I hope that we can find out the answer to what's going to happen if we in fact follow the scenario we seem to be following of depopulation of the JUA, leaving a pool of very high risk drivers. How far is that rate going to be above what the voluntary market is going to be, and what is the secondary impact going to have, less we begin to fall into the same kind of traps we fell into five years ago? I think we should try to avoid those.

SENATOR LESNIAK: Senator O'Connor?

SENATOR O'CONNOR: Mr. Chairman, I think I will withhold my comments. They are directed to Senator Cardinale's concept of the workers' compensation.

SENATOR LESNIAK: Okay. Thanks, Senator O'Connor. Senator Dalton?

SENATOR O'CONNOR: We'll be doing that tomorrow? We'll talk about this tomorrow.

SENATOR LESNIAK: Anytime you wish, Senator O'Connor. Senator Dalton?

SENATOR DALTON: Commissioner, I wanted to go over with you the whole issue of medical payments as it relates to auto insurance. If you break down the premium, and you break down the coverages, the way you break it down -- correct me if I'm wrong -- is liability, you have your PIP, and you have your physical damage -- comp and collision -- the three major components of the premium. The BI and PD is obviously affected by the threshold that you pick, whether it be a monetary threshold or a verbal threshold. The physical damage is impacted upon by the deductibles that you choose. And I should say, something more nebulous, how we regulate auto body shops. That's obviously a factor.

So if you raise the deductibles on the physical damage, try to do your best, try to give you the mechanism to regulate auto body shops well and effectively, we do something with the threshold, that leaves PIP. And I noticed by Senator Lesniak's list of speakers this morning, a lot of people in the medical profession want to speak here today. Having been someone who sponsored one of the first bills to eliminate or adjust PIP significantly, I know what we're going to hear. Let me ask you this. The issue of PIP is something that most people don't know about, at least-- I'm an agent. Most people don't know they have first dollar medical coverage. If in fact you raise that PIP from first dollar to a catastrophic injury fund of \$75,000 and over, what I want to know is what impact that will have on the consumers as far as savings? Secondly, I want to know what percentage of medical injuries that \$75,000 would address?

COMMISSIONER MERIN: The answer to the first question, Senator, is found out on the handout I just passed out. I presume you got a copy. We list by territory-- In Senator O'Connor's area the savings would be \$109. In your territory -- which I am presuming to be Camden suburban and Camden County balance -- the savings would vary between \$91 and \$125. In Senator DiFrancesco's area, the savings would be -- if I could find Union--

SENATOR DiFRANCESCO: Plainfield.

COMMISSIONER MERIN: Are you listed in Plainfield territory?

SENATOR DiFRANCESCO: I guess.

COMMISSIONER MERIN: The savings would be--

SENATOR DiFRANCESCO: Short Hills, no, Plainfield.

COMMISSIONER MERIN: That Senator is the lowest rated territory in the State. Your savings would be about \$80. In the northern Bergen area that Senator Cardinale represents, the savings would be \$103. The Chairman's savings would be, in that territory, \$96.

SENATOR DALTON: Okay. The second part of the question is, if you go up to a \$75,000--

COMMISSIONER MERIN: Excuse me, Senator. That's per car. So if the average person is one and a half cars, it's 130 to 140 on average.

SENATOR DALTON: I'm making an assumption here. I think what we're going to hear this morning is that we are, by going up to a \$75,000 catastrophic injury fund we are putting people at risk. Okay? How do you respond to that?

COMMISSIONER MERIN: I would respond that those people who would tell you that are absolutely, 100% correct. The more accurate way to phrase it though is that we're putting people on the same basis as they are in the vast majority of other states. New Jersey decided to do things differently in 1973. I was not here then, and my guess is that most of the members of this Committee were not in the Legislature in 1973. I've read the hearings, and I've seen a lot of correspondence, and it's my belief that the people that voted for that law did so for the best motives. And I have no fault with that. But the experience has shown that the cost is incredibly expensive; That it is important that people receive medical care.

If that medical care is made affordable through a traditional health policy, my guess is that rates will go up for the payers -- whether that's individuals or corporations -- by anywhere from three to five percent. That's about what they went down when no-fault came on board. That's what they should go up. Clearly the dollars are larger than they were in 1973, but the percentages will not vary all that much. That means that if you are experienced rated, if you pay based on your accident utilization, the rates may go up or down based on your experience at a higher level than three to five percent. It means that if you are paying through Aetna, Prudential, the Blues, or one of the other groups, it means the rates will probably go up by about that much money. If you are a member

of an HMO or another managed care facility, it's hard to predict what the rate increase or what the cost of the HMO will be. But it should certainly be no more than three to five percent, and probably less.

SENATOR DALTON: That's the overall perspective. Let's get into some detail now. There are people in this State who do not have third party health care coverage. What impact is going up to a \$75,000 CAT fund going to have on them?

COMMISSIONER MERIN: It means that those people that have no health care coverage, presuming those people have automobiles and do have medical coverage, and make all their payments, and have all that coverage right now, may be in several different positions. On the one hand, they may be covered under the insurance of someone who hits them. They may be covered through Medicaid or Medicare, but presuming that's a third party payer let's recognize that. They may be cared for through the uncompensated care system. If the Legislature so desires, there could be a system set up to handle those people who do not have cars, do not drive, and can't be handled in any of these other ways.

But again, there are two polar extremities that we're trying to deal with. One is the public health issue. Clearly from a public health perspective, the maximum first dollar coverage is in the best interest of the people in this State. From a cost perspective on the auto insurance premium, zero coverage will save the most money. The more coverage that is mandated or required or available, the higher utilization, the more the costs will be. As I said at the beginning of my discussion, it's not an easy decision to reach because I think all parties in this have very good reasons for taking the respective positions that they do.

From my position, getting the same mail that you get, people are asking me why are rates as high as they are. I'm giving them the reasons about demographics, but the one major

difference in this State is unlimited PIP. And if you look at the charts I handed out, 26 states have no first party coverage. Of the other 24, seven have optional coverage and most of that is very low. Of the other 17 I think there's one or two at \$50,000, a couple at \$10,000, one at \$25,000, and most of the others cover 1000, 2000, a few thousand dollars, and most of those have built-in deductibles and co-payments.

SENATOR DALTON: How many people have third party health care coverage in this State today?

COMMISSIONER MERIN: Eighty-nine point five percent of the people have some type of coverage. And the people that will appear after me will tell you that that varies a great deal. Some of the coverage is minimal, and that is absolutely true; just like all the other 49 states.

SENATOR DALTON: So what we're talking about is the 10.5% of the people who don't have third party health care coverage. What do they come under? Start talking percentages on that 10.5%

COMMISSIONER MERIN: Of the 10.5%, it's our estimate by our -- this is based on conversations with people in the Department of Health -- of that 10.5%, a portion do not want health insurance. In other words, they could purchase something if they wanted to. Some cannot afford health insurance coverage. The breakdown depends on what you define affordability at. But my guess is that it's slightly more than half would be unaffordable, and slightly under half would be they choose not to purchase coverage.

SENATOR DALTON: Okay. And under the affordability, do you know how much is going to be picked up by Medicaid and Medicare?

COMMISSIONER MERIN: I believe we're talking about people who are not under Medicare or Medicaid right now.

SENATOR DALTON: Oh, okay.

COMMISSIONER MERIN: The other thing I would point out Senator, and this is important to realize, it may be -- I have no way of knowing this but it may be -- that many of those people right now do not own cars, and therefore do not have PIP to begin with. So that's got to be factored into the equation.

SENATOR DALTON: In your mind, is \$75,000 a good amount to set a catastrophic injury fund at, and why?

COMMISSIONER MERIN: Currently, insurance carriers provide coverage up to \$75,000, based on a law enacted in 1978. Any losses over \$75,000 are reinsured through a pool. If we take a look at the \$75,000 number we could project about 500 injuries a year will exceed that level. And that number is growing each year because of inflation in the cost of medical care, and also because of advances in medical science. We're able to save more people, keep them alive, than we were 15 years ago.

In my opinion, \$75,000 is a reasonable number, if our objective is to limit costs as much as possible. We could raise it to a quarter of a million or a million, and have one or two or six people a year covered. We could just as easily lower it to \$50,000 or \$25,000 or \$10,000, but then we're getting into much higher rates. It's really a judgment call. The judgment could be just as correctly exercised at 25 or 50. In my discussions with you, Senator, as well as with Senator Cardinale and Senator Lesniak, I've been using the \$75,000 number because that's where the line is drawn at the present time. But if the Legislature desires to reduce that or raise it, then there would be an increased savings or less of a savings.

SENATOR DALTON: In other words, it's a trade-off. Mr. Chairman, thank you very much.

SENATOR LESNIAK: Thank you. Just one last point, Commissioner. With regard to the proposal contained at least in my legislation to eliminate PIP, that's to eliminate

mandatory PIP. Therefore, the people who do have it now on a mandatory basis who don't have other health coverage, would retain the option to keep that. Isn't that correct?

COMMISSIONER MERIN: As I read your bill currently, Senator, that's correct.

SENATOR LESNIAK: Any other questions from the Committee members? (no response) Thank you, Commissioner. We'd like to adjourn for 15 minutes.

(RECESS)

AFTER RECESS:

SENATOR LESNIAK: Everyone please take your seats. Could you please end the conversations. Senator Rice? Is Senator Rice here? (affirmative response) You're still here, okay. Good afternoon, Senator.

SENATOR RONALD L. RICE: Good afternoon.

SENATOR LESNIAK: It's now afternoon.

SENATOR RICE: Well I'm glad to know it's getting to be so late. Maybe I could get into bed on time for a change.

Let me thank the Committee for allowing me to be at this hearing. I just want to say that my comments will be brief and they will be somewhat general, although my concern as it relates to this whole insurance bit, is really one of the bills I have on insurance, S-2391. I want to discuss the bill in general. I'll try to relate it to what all I heard this morning, and tell you why this bill has been introduced. Hopefully the Committee tomorrow, without my presence, will see fit to pass it, and fit it into the structure of things.

My gut feeling, in talking with my constituency and being down here, with the letters that are going out-- And I say letters, not speaking of the many letters that are going by Allstate, because they're sending a lot of letters out, so

that's plural. The plural I'm using is that-- For those who don't know it, there are two letters going out under signatures. One is going out by Allstate, and one is going out by Governor Kean.

Now, the other night I had the opportunity to go into my district at a meeting relating to crime. There were about 30 people there. The minimum age was probably 48. The oldest age there was probably about 63. People have been in the area a long time. After we finished discussing the community problems relating to crime, I was getting ready to leave and one of the elderly people stopped me and said that, "I was told by one of your constituency to make sure you get this letter to discuss it tonight." When I opened the letter, it was a letter from Governor Kean in reference to a mandatory verbal threshold. I explained to the people that mandatory verbal threshold, in my estimation, as related to them and people in this State, is not the way to go. But I told them I was aware that a lot of letters were being generated.

Now, several things became obvious at that meeting. Number one, the language of the letter was not clear to folks, and the term "verbal threshold" was not even defined, and no one knew what it was. What was clear in the letter was that the insurance rates are high and this is the way to cure it. So the people related verbal threshold -- mandated verbal threshold -- with curing the insurance problem. Because they believe in me, and after I defined and told them what it meant, they thought that that it was ludicrous.

I just want to indicate on that letter the thing that caught my eye was that the letter was typed up. At the bottom there was a P.S. written out and signed "T.K." Tom Kean. It said that, "By the way, my two twins just purchased new cars and I certainly don't want them paying these high rates." I told my constituency, who know me and know my son very well, that if you recall my son grew up with the Governor's twins

Reed and the other, and he too has a brand new car. And if I had to make a decision on insurance, whether to keep it the way it is today or go to the mandatory verbal threshold, that because I'm concerned about his health and welfare, and the economics of my family, that I would stay with what we have today, primarily because I'm not a multimillionaire like the Governor, so I cannot afford to limit the coverage on my son by doing the mandatory verbal threshold.

So 2391 is a bill that is trying to create awareness for number one, and let the people know, and make those of us here in government, start to rethink what we are doing.

My gut feeling is that we're going to pass the threshold bill, one way or the other, soon, because of the pressures being mounted and lobbied for. But I would hope that the bill would include some concerns that we have, because, once again, verbal threshold is not the real issue of insurance in New Jersey. The issue happens to be: Number one, territorial rights and locations, which have been arbitrarily defined and picked. Someone just pulled them out of the air. There's no true definition. We have 44 territories, I believe, now. My opinion is that we need no more than five, maybe three.

My concern is reclassification. I don't believe it's been done since 1979. We talk about youthful drivers, older people. We talk about male versus female. I think the assumption is that a female doesn't drive as far and long as males. We need to pay attention to that, in particular with the job market today, single heads of households, and the advancement and liberation in the civil rights and human rights movement. So we need to look at reclassification, something that I think the Commissioner should be mandated to do.

Also, I'm concerned about the caps. It seems to me that I heard mention -- and I haven't looked at it, and I don't know if the figure was right, but I thought I heard the Commissioner say that in the territory in which Livingston is

situated, that there could possibly be a savings of about \$80. But then I also heard him say that in Elizabeth -- which is a much higher rated district, a territory -- there may be savings of 109% (sic). But that indicated to me, without looking at the numbers, that across-the-board we're looking at parity and equity from a percentage point of view, but not from a ratio point of view. If Livingston, for example, is one of the lowest paying insurance territories in the State, and Elizabeth is one of the highest, then the \$80 savings there is good for the people that are there, but it's not really helping the \$109 in terms of parity and equity, Elizabeth. I'm giving the economics of that location. So this bill incorporates those things as a mandate, and requests that the Commissioner look at these things, review them, and report back to us in six months.

There are other bills that I have in that are not being presented at this hearing, and probably won't receive consideration in either the Assembly package or the Senate package. But I'm hoping it's something that we can start paying attention to and make a real issue. Because my gut feeling is that perhaps, rather than pass any kind of legislation at all, perhaps individuals like myself who see things differently, should maybe move to try to get a referendum on insurance. Give people real information and let them vote the options. We're not going to do that, so hopefully these things will be considered.

Also, I just want to encourage the Senate and the Assembly that in the package we don't eliminate the PIP. I've been discussing with -- and I'm not an insurance authority, but I talk to a lot of people in the network. My understanding -- if I'm wrong maybe my colleague, or the Chairman, or someone could correct me -- we really cannot purchase PIP. We can purchase coverage, but not PIP.

SENATOR LESNIAK: No.

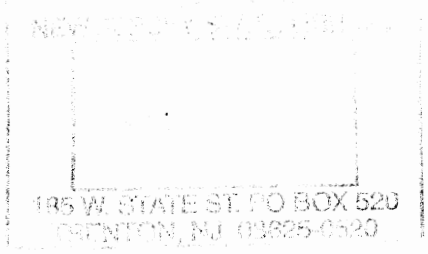
SENATOR RICE: Yes?

SENATOR LESNIAK: I'm sorry, Senator, for interrupting you, but the proposal before us that "eliminates PIP" only eliminates the mandatory nature of PIP. The motorist would still be able to buy PIP coverage under their insurance policy.

SENATOR RICE: Okay. Once again, just trying to be brief-- There's so many things I want to say. I really think that this insurance business is a gimmick. And it's not a gimmick based on individuals here or myself, I think it's really based on State government in general, for whatever reasons. I also know that, regardless of what we do, we're telling the public that we're going to save them dollars in insurance. I think what we should really tell them is that, "We're not going to save you too much money. We're just going to shift where you pay your dollars. And expect another increase." So really your insurance is going up, because there is no doubt in my mind that there is going to be another increase in the RMEC very soon.

But we're going to have to look at something, not because we're saving people any money, I think that we've been placed in a position not to objectively look and act. We've been placed in a position by State government -- and that's all of us involved, including the big insurance companies -- to react to a situation politically, and that's what is going to happen. My gut feeling is that we're going to have to vote on something very soon, and I will vote, as much as I hate to.

I do not want to cause the brokers any more loss in commissions, because you see if the volunteer market is not in a position, those of us -- and I'm like Senator Lesniak from a high rate district, but I'm a good driver, and I'm paying twice. See, I'm paying twice for the losses, twice for the expenses, being in the JUA. And the difference is that, Allstate, or State Farm, or the big providers, are not in my territory. And the only way I can get insurance is to go to a local broker who will give me personal attention. We're losing



those brokers because we're cutting back on commissions. They're losing staff. We're losing the personal attention. It seems to me that we should mandate, not so much -- and maybe we should do that too -- what Mr. Merin said about giving him authority where he can compel Allstate and others to take the good drivers in. We definitely should compel them to have an agent or broker in every territory, because the data that they accumulate-- If myself or Senator Lesniak, or one of the others here today, could walk directly in and get insurance, it would be a lot different than the JUA; data that they claim they don't have good data on.

I think the thin line that Mr. Merin talked about -- how do you determine a good driver from a bad driver -- I don't think that's really so difficult to do in the volunteer market where you can go directly in. I think the difficulty comes, when you talk about a good driver versus a bad driver, is when we're all placed in that same group known as JUA. It's no different than good people hanging out on the corner with flopheds, and a few of them are committing crime, and we have to stereotype.

So once again, thank you very much. And I would hope that tomorrow 2391 will come out of Committee and will be incorporated in somebody's insurance package, in order to receive a vote in the affirmative from me; and that there is a clarification on PIP; and we do better sometime soon. This is not going to be fixed. I expect to be here, like many of you, 12 years, 20 years, losing my hair and getting gray, and someplace down the line I'm going to put some amendments in to change whatever we do soon anyway. Thank you very much.

SENATOR LESNIAK: Senator, I've been already been here 12 years. That's almost enough.

SENATOR RICE: You're looking good though, Senator. You know what I mean? (laughter)

SENATOR LESNIAK: Any questions? (no response) Thank you, Senator Rice. We now will hear from Assemblyman Duch.

A S S E M B L Y M A N T H O M A S J. D U C H: Mr. Chairman, and members of the Committee, I come before you today to address you as a new Assemblyman, as someone who has served in the State Legislature for six months, and who has experience the wrath and impatience of his constituents regarding this most important issue, insurance reform, which is so necessary and so required throughout the State of New Jersey. The public is crying out for reform, and also for protection of the consumer. There is a need -- a clear need -- for all of us to work together to resolve this dilemma.

I would like to commend those who have proposed legislation to deal with this everyday problem in the lives of our citizens. I appear today specifically to address the proposal of Senator Lesniak, S-2637. I am proud to be the sponsor of that bill in the State Assembly, bearing bill number A-3410. I believe that this is a well-thought-out, well drafted, consumer oriented type of bill. And it is a bill that seeks to meet four distinct and crucial needs:

1) The reduction of mandated costs. It opens up options to consumers. It allows the public to make their own determinations, and to determine savings that they may wish to take advantage of.

2) Regulatory reform to eliminate excessive rates and excess profits. It includes an insurance data tracking system to force the industry to open its books to our Commissioner. It also includes the breakup of the insurance services office rate filing ability. It forces rates which will actually reflect an insurer's book of business and company efficiencies. It requires the Commissioner to review all of the territories, and to report to the Governor and to the Legislature, on the soundness or the unsoundness of the present system of 27 different rating territories.

3) It also calls for reform of the Joint Underwriting Association to achieve depopulation, experience rating, and deficit reduction. And finally,

4) It includes the enhanced consumer education and protection. It provides for a buyers' guide and a coverage selection form. It gives the consumers the opportunity to eliminate unnecessary expenditures, or to duplicate coverages.

I believe that is a reasonable, and somewhat comprehensive bill, that I would urge the Committee to consider. I believe that it is a consumer oriented response to the needs of our citizens.

And I say to the Committee that we still need a couple of other things. I say this only as a new Assemblyman, and someone who is learning the insurance industry, and what insurance reform really should include.

I say to you that we also need restitution for overcharges. And at the present time, in the State Assembly, Assemblyman Michael Aduvato is drafting up a bill with restitution for overcharges. I would ask that when that bill arrives here, that it would receive the favorable consideration of this Committee.

There's also talk on our side in the State Assembly, of the repeal of anti rebate and anti group laws. Another item which I would ask this Committee to favorably consider.

There's one further proposal which has already passed your house. That is the Senator Lynch bill increasing arbitration limits to \$20,000, and including property damage arbitration. That I believe is another sound policy which deserves the endorsement of the State Assembly. Therefore, I have introduced that bill as Assembly Bill 3409 in the State Assembly. I hope that we will be able to move that bill through the State Assembly.

Finally, I implore you to jointly -- a two house solution-- A bipartisan, two house solution must be achieved. And if it necessary, as we had done for the Clean Ocean Package, there was a joint meeting of the Assembly Environment Committee and the Senate Environmental Committee. That joint

meeting went a long way towards coming up with an ocean package that we would agree with. If that's necessary, I would urge this Committee to consider a possible joint session of the Senate and Assembly Insurance Committees to agree on a solution for the benefit of all the people of the State of New Jersey.

SENATOR LESNIAK: Assemblyman, for your information, I offered that opportunity to Assemblyman Loveys and he declined.

ASSEMBLYMAN DUCH: He declined it?

SENATOR LESNIAK: That is correct. Any questions from the Committee?

ASSEMBLYMAN DUCH: Okay. I will raise that issue with the Democratic Minority.

SENATOR LESNIAK: Well, I think you ought to raise it with Assemblyman Loveys.

ASSEMBLYMAN DUCH: I'll raise the issue. Thank you. I appreciate that.

SENATOR LESNIAK: Any questions from the Committee? (no response) No? Thank you, Assemblyman.

ASSEMBLYMAN DUCH: Thank you, Senator. Thank you.

SENATOR LESNIAK: Dr. Lamazow from MEDICAL?

D R. S T E V E N M. L A M A Z O W: Am I the first one within the five minute time limit, now?

SENATOR LESNIAK: Yes. Right here. I press this button, a hole opens up in front of you. (laughter)

DR. LAMAZOW: All right. I'm not into speed reading, so I'm not going to read my entire testimony. But I do want to talk about PIP.

First of all, you all know why rates are high. The Insurance Commissioner told you so, and I have no reason to dispute that.

I don't buy his argument thought that because every other state does it one way we have to do it that way also. For many reasons, we have the best system of health care for automobile accident victims in the United States, and I don't

really see much of a reason to scrap it at this point. I'll summarize parts of my testimony.

I am most vigorously opposed to the current legislation proposing elimination of PIP. It is a fallacy that most people have alternative forms of insurance to cover auto trauma at present. No one is paying a double premium, and no one is collecting double benefits, as has been alleged.

New Jersey has the most comprehensive and least expensive package of benefits of any other state, costing on the average \$131 per car. The number I got was \$81. The Commissioner now says more like \$95 per car if PIP was eliminated. That's 22 cents per day per car. Elimination of this 22 cents per day would bring about a four to five percent across-the-board increase in Blue Cross rates, as well as other provider rates.

Now, what does basic Blue Cross cover? Basic Blue Cross, if someone has it, incorporates a \$200 deductible, a 20% co-payment up to \$1000, does not pay physicians' bill, and does not pay for any therapy. It strictly pays for inpatient coverage for auto accident victims. It doesn't pay for ambulance service to the emergency room. It doesn't pay for emergency room physicians. So, it's a very very poor package of benefits.

This would further magnify all the consequences for unions, employers, and individuals, already brought to light by the proposed recent increase in Blue Cross/Blue Shield. By one estimate, it would cost the public sector alone over \$50 million annually in additional benefits. It would paralyze the State's trauma center system. I spoke to people at University Hospital. They make over 100,000 runs annually of ambulances to scrape people off the streets, essentially, after automobile accidents. Most of these would not be compensated any more if PIP was eliminated.

It would necessitate, most likely, an overall increase in hospital rates, and leave the public with high deductibles and co-payments and markedly reduce the quality of health care to ~~fall~~ ~~accident~~ ~~victims~~. As the Commissioner states, the elimination of PIP is not a savings at all but rather a shift of costs. This shift will eventually result in an increased cost of everyone's general health care, and also the liability portion of the automobile insurance premium.

One issue that I always have to face, as a representative of providers of health care to auto accident victims, is that of abuse and fraud. No one hears more about alleged abuse of the system than I do. And no one more wishes to eliminate it. It's just the small percentage of abusers in the system that give the great majority who are ethical and reasonable treaters, a very tainted image. We seek the opportunity to work with the Legislature on the entire spectrum of health care providers in a concentrated effort to detect and eliminate abuse within the system.

Eliminating PIP benefits is not the solution to any alleged abuse within the system, any more than it is a real saving. In fact, without the regulations and fee schedule which has been built into the system by the companies presently administering it, abuse would be considerably more widespread.

If some cost saving is necessitated within the PIP portion of the premium -- and I wholly understand the pressure upon the Legislature by the public and the press -- there should be at very least a minimum mandatory benefit, enough to cover the large majority of medical bills and a provision for catastrophic injury. The gap between these coverages would be taken up by alternative forms of health coverage, or the liability portion of the premium -- should the person be the one who was injured in the accident and not be at fault.

If you really want to reduce rates, then reduce the number of accidents with stricter enforcement of speed limits and seat belt laws, and higher penalties for drunk driving; and reduce thefts by rewarding anti-theft devices and mandatory prison terms for auto thieves. Newark, as you are aware, has the highest automobile theft rate in the United States.

To summarize, I would prefer to keep the present system because it works. If you try to purchase PIP coverage in other states -- for instance, in Maryland, in downtown Baltimore, a good driver pays \$450 annually for \$2500 worth of PIP benefits. In New York City, in Brooklyn, they pay about \$185 for \$50,000 worth of benefits. We pay \$131 for unlimited PIP benefits.

So, I feel that most of the proposals brought forth in the current legislation are relatively reasonable, particularly in light of the current environment; with the glaring exception of the elimination of PIP. I would personally urge the Committee to amend S-2637, by removing the proposed elimination of PIP from the bill; filing a separate bill to address the need for adjustments in the current law; and to hold separate hearings on that new bill.

Senators, we are talking about the health and the well-being of all New Jersey residents. This is a far more serious matter than saving 22 cents a day. I urge you to separate PIP from this bill, and provide the residents of our State with some level of mandatory health care coverage.

I wish you only the greatest success in legislating a package of benefits which are fair and equitable for all New Jersey citizens. Thank you.

SENATOR LESNIAK: Thank you, Doctor. Any questions from the Committee? (no response) Thank you, Doctor.

DR. LAMAZOW: Thank you.

SENATOR LESNIAK: Morris Brown or Karen Kotvas, I have on my list here that Senator Davis made up? (laughter) Both?

K A R E N K O T V A S: But we're still under the five minutes. - Don't worry.

M O R R I S B R O W N, M E S Q.: Senator, I requested Karen Kotvas make the statement.

SENATOR LESNIAK: Okay. Do we have a copy of the statement, please?

MR. BROWN: If there are any questions, we'd be happy to answer them. (statement is handed out to Committee)

SENATOR LESNIAK: Looks like about four and a half minutes.

MS. KOTVAS: Thank you. Thank you for allowing us to come here. Thank you for allowing us to testify. We want to compliment the Commissioner on a very thorough presentation.

We would like to comment on three priorities that we feel must be addressed. Insurance is a social question, and it's public policy, and a lot of questions have been raised about what should and should not be done. But we feel that before you do anything, three things ought to be addressed before anything is done.

Assemblyman Duch touched on one of those, which is restitution of overcharges. There have been overcharges, and I've included in my presentation to you a letter from the Deputy Public Advocate to the Insurance Commissioner, detailing some of the overcharges in the JUA, which range from hundreds of millions of dollars on upwards. The letter also mentions that the money doesn't get transferred immediately. It takes three and a half months. So there is some profit making on the float with interest. This letter is included here for you so that you could address some of these overcharges.

The Deputy Public Advocate also says that there would have been no need for a RMEC, for a surcharge, for people to be paying extra money if the overcharges hadn't occurred. These are things that should be addressed. This is the core of the system. Before we start changing the leaves, and shifting

costs to different areas, perhaps we should be addressing the very heart of the system. Restitution is absolutely primary.

The second thing is depopulation of the JUA. We've spoken about it earlier here. We really feel that the good drivers must be taken out. They are in there unfairly. If companies are making extra money on administrative fees in the JUA, it's unfair to the people who are good drivers and who are in there.

I've included in my statement to you what Michigan does. And that is a list of what makes a clean risk. Michigan mandates that people can buy coverage from the insurance company that they choose, and that companies must write a clean risk. What a clean risk is can be defined in any number of ways. I've included seven ways that Michigan defines it, including no more than six points within the last three years. There are a number of other categories.

In New Jersey, an insurer should not be allowed to refuse a clean risk, and that's what we have in the JUA right now. So that is the second thing, and that is that we feel that consumers should definitely be allowed to choose the company of their choice. They should be out of the JUA if they are a clean risk. And I do believe that Senator Lesniak's bill addresses what is also done in Michigan, and the state provides prices of comparable coverage with each company, so you know where to pick and choose.

The third thing that must go along with that, if you're going to be able to pick and choose, you ought to be able to pick and choose fairly. That's why we are calling for the abolishment of ISO to fix prices in New Jersey. They set advisory rates. They are followed by hundreds of companies. This penalizes the efficient company, and the inefficient company can hide behind ISO rates. This is absolutely unfair. If you're going to depopulate the JUA, if you're going to allow people to pick and choose their coverage, they should be able

to choose in a competitive marketplace. They should be filing rates separately. We feel this is absolutely urgent.

If these three priorities are addressed -- restitution, depopulation of the JUA, and the breakup of the ISO price fixing cartel -- that would be an incredible first start that would be addressing the heart and the core of the insurance system. That is what we are advocating at this time.

SENATOR LESNIAK: Senators?

SENATOR CARDINALE: Yes, I have just one question if I may? We were--

SENATOR LESNIAK: Excuse me. Senators? (no response) No? No questions?

SENATOR O'CONNOR: Well, no. We were just engaged in conversations.

SENATOR LESNIAK: Okay. I'm sorry. Senator Cardinale?

SENATOR CARDINALE: Thank you, Mr. Chairman. Ms. Kotvas, we were given this graph by the Insurance Commissioner, I believe. That shows us that since the inception of no-fault in New Jersey, which was intended to eliminate suits, the auto negligence suits which have been filed have almost -- not quite, but almost -- doubled on an annual basis. Whereas in Michigan, which somewhat parallels us with a few differences -- they also have a no-fault system -- there has been, oh, about a halving, maybe a little less than half, of the number of suits filed. Now, this covers a period from 1973 to 1985.

In your summary, I find all of the points that you make to be very positive points. But I don't think you have hit on what the Commissioner, and what everyone who is talking about the insurance problem in the State of New Jersey, seem to consider to be one of the more important factors. That somehow, something in our system has generated additional lawsuits, when it is a system which, a) was intended to diminish lawsuits and, b) which in fact has worked somewhere else -- at least in Michigan according to this chart -- to

accomplish that objective. How would you address the problem of diminishing lawsuits, or do you think that it is a benefit to the people of New Jersey that we have additional lawsuits?

MS. KOTVAS: Let's start at the beginning; when I said that it's a matter of public policy and it's a social question. The chart that you showed us definitely said that the lawsuits have gone up in New Jersey and in Michigan it's half as much. What is hasn't said are the injuries. Are the injuries in Michigan still happening? The injuries are still occurring. And I'm saying it's a social question. Do we want to allow people who have lost a fetus or have a fracture, do we want to allow them to sue? I think that that is the question. It's a social question. It's a public policy-- It's not a question of how many injuries are there. I'm sure there are just as many injuries in Michigan as there are in New Jersey when you compare the densities. Don't forget, we are seven times more dense than Michigan. (laughter)

SENATOR LESNIAK: All right. Order, order, order. Come on. Enough of that. Let's have order please.

SENATOR CARDINALE: I kind of suspected that your answer would be that. It occurs to me -- and I'd just like to say it for the purposes of this hearing -- that I don't consider litigation, if anybody has missed up until now, a benefit. Obviously there are some who do, and you're entitled certainly to your opinion. But I don't consider that litigation is a benefit to the people. I don't think it's the way to a better life. But, let's leave it at that. I don't want to prolong it.

MS. KOTVAS: Do we want to talk about arbitration?

SENATOR LESNIAK: Thank you, Senator. Karen, you mentioned three points: Restitution, ISO breakup, and depopulation. The bill that's before this Committee, that I've sponsored, breaks up ISO and does depopulate the JUA. Is that correct?

MS. KOTVAS: I believe it does.

SENATOR LESNIAK: Okay. With regard to--

MS. KOTVAS: What about the companies that are under one percent, does the--

SENATOR LESNIAK: I ask the questions. (laughter) It's like a judge. With regard to restitution and the Deputy Public Advocate. He mentions that -- and I'll quote from his letter with regard to service and carry fees, "Tens if not hundreds of millions of dollars would have been available to offset any needed RMEC, had reasonable service and carrier's fees been established at the inception of the JUA." Now is it tens of millions of dollars or is it hundreds of millions of dollars?

MS. KOTVAS: That's what we should be finding out. Some people have charged that it's a billion.

SENATOR LESNIAK: Okay, but he has no idea. He has no idea. It could be \$11 million or a billion dollars?

MS. KOTVAS: Or a billion, as Assemblyman Adubato said. But shouldn't we be doing something?

SENATOR LESNIAK: I presume the Commissioner is doing that. I would hope that at least they would have the information to know the difference between the tens of millions and hundreds of millions.

MS. KOTVAS: And a billion. It's an incredible amount. It also affected a RMEC.

SENATOR LESNIAK: You think that there is not the information available to the Public Advocate to know the difference between tens of millions and hundreds of millions?

MS. KOTVAS: Well, I wish I knew the resources that the Department has, but I don't.

SENATOR LESNIAK: I mean, has a billion dollars in fees actually even been collected? I don't know.

MS. KOTVAS: I don't know either, but the servicing charges should be readily available somewhere, because it goes from the company to the JUA. It's a very simple transaction.

SENATOR LESNIAK: And readily available to the Deputy Public Advocate who wrote this letter. Right? --

MS. KOTVAS: I would hope so.

SENATOR LESNIAK: Okay.

MR. BROWN: Senator, may I have one minute to perhaps respond to Senator Cardinale.

SENATOR LESNIAK: Sure.

MR. BROWN: We've done it before, and we disagree again. There's another element to what we're discussing, and that is, what is the cost saving? When you discuss reducing the number of lawsuits, the issue is what is the savings going to be? I've looked at -- including your bill -- I read your bill, and I've read Senator Lesniak's bill, and I looked at there may be eight or ten proposals, all of them indicating that that bill is the panacea. You can reduce costs by taking away rights. Once you do that, it's obvious you're going to reduce costs. You could take away the right of every motorist to sue for even the greatest injury, and therefore there would be no cost to insurance.

We probably disagree philosophically -- and that's a very important kind of thing -- in principal. From my point of view, philosophically, someone who is injured by somebody else should obtain compensation for that injury. We talked 15 or 18 years ago about trade-offs. We'd give you no-fault, that is, pay all of your medical and take some of your rights away. That was the trade-off. Now, what we're talking about to solve the problem is taking away rights on both sides; taking away the no-fault right or opportunity, and also on the other side, taking further away the right to make claim for compensation. I think the insurance company has sold to us that idea. I think it's a misrepresentation. It was in 1971, in 1970. It still is. From everything that I know, and I don't know all the statistics, the saving on the threshold side is so small as to not warrant the taking away of a very important principle

or philosophical basis -- which I mentioned -- and that is the right to recover from someone who causes an injury. Thank you.

SENATOR CARDINALE: Mr. Chairman, since I was named here, may I respond to that statement?

SENATOR LESNIAK: Of course you may, Senator.

SENATOR CARDINALE: You see, most of what you say, Mr. Brown, is really unassailable. It's obvious that all of the money which goes into insurance premiums is going somewhere. It isn't being burned. It's going somewhere. The one problem that I have with your theory is that if we say that that money is going to a good purpose, on the bodily injury side-- I think you were here when the Commissioner essentially confirmed, in broad characteristics, an assumption that if we kept the rates the same, and just went into a different system of apportioning the benefits that flow to the actual ratepayer, that we could increase those benefits two-and-a-half times what they are today at the same rates. Conversely, we could knock the rates down on the bodily injury side of the policy -- and I understand that's all that I'm talking about -- very dramatically, probably we could cut those rates in half, at the same level of benefit which flows to the consumer.

Now, we have many proposals before us. And you're right to point out, and many people have pointed out, and some others will, that most of the savings generated in most of the bills, are at the expense of the benefits which are going to actually flow to the payers of those premiums. The one area where we can in fact either maintain or increase those benefits, while we actually cut down on the premium, is in the area that we have been discussing, of elimination of lawsuits. I understand that what was the objective in 1973, and that we have not been able to do it. But I suggest that it is because of the kind of machinery that we set up in 1973. The specifics surrounding the bill that was put in to accomplish that intention have in fact caused an increased number of lawsuits.

I suspect also that the people of Michigan obtain compensation for their real injuries in proportion to the payments that they are making. And every study I've seen confirms that conclusion.

MR. BROWN: Senator, I respectfully, I think, disagree. I haven't seen the statistics. I haven't seen the graph. I know what statisticians and graphmakers do, and before I take those things as gospel, I think I'd like to see the underlying data. I don't think that -- and I'm not sure that the data-- I should say, I'm not sure that the data that went into those statistics, in terms of comparison between Michigan and New Jersey, took into account all of the relevant factors; including the highway system, including the population, including the quality, including a great number of things. I do know, and I have heard, and I do believe, that until someone proves that there is some very great benefit -- and that hasn't been proven to me -- that no rights should be taken away.

What I see in terms of the bill that's presently presented, the options, it's forcing greater cost onto the health care sector, taking away rights that exist, and making it more expensive for people to get the package that we offer here today. There is no question, I don't think--

SENATOR LESNIAK: Can you explain that in detail?

MR. BROWN: I think that I have a complete package with the lowest threshold that I can get, the fullest all medical paid for me and my family. I have two sons. Either one of them or my wife is involved in an accident, all their medical bills will be paid. All their health care, reasonably, and necessary, will be taken care of.

SENATOR LESNIAK: And you can afford that.

MR. BROWN: I can afford it.

SENATOR LESNIAK: Okay. What about the people who can't?

MR. BROWN: Well, we're getting off your question.

SENATOR LESNIAK: --No. We're getting right on the question. What about the people who find that package too expensive?

MR. BROWN: What that question asks is, should the poor person not have complete medical care from injuries arising out of an automobile accident?

SENATOR LESNIAK: No it doesn't. Maybe it asks--

MR. BROWN: What it does presume--

SENATOR LESNIAK: Excuse me. Maybe it asks, shouldn't we force that person's employer to pay for that coverage instead of that person?

MR. BROWN: Maybe--

SENATOR LESNIAK: You can leave the room if you want to talk, ladies and gentlemen. (referring to private conversations among audience members creating a disturbance)

MR. BROWN: There is a proposal to take care of that at the gas pump. And I think in your bill there is a proposal to take care of the catastrophic injury by paying on an automobile registration. Of course there are alternatives, but this alternative I think hurts the poor. I can afford it. But the poor person, with a child who is hurt, on a level of less than \$75,000, whose employer may not be providing that kind of benefit, is going to be hurt. And society, therefore, is going to be detrimentally affected.

SENATOR LESNIAK: My bill gives them the option to keep that coverage. Do you know better than they do?

MR. BROWN: But by your premise, I think that as of right now most people are covered. Maybe you do, Senator, know the statistics of the people that are driving without insurance. As I read your bill, you're mandating coverage, with options of course. So as I see it, most people have that coverage now, except those that are committing a fraud on that system. I don't know how many there are. So, I think it well

to consider who is going to be hurt, and whose ox is going to be gored.

SENATOR LESNIAK: I still don't-- And I really don't want to pursue this much further. But I don't understand by allowing people to make that choice, how we're hurting them; unless we know better than they do. You don't have to answer that.

MR. BROWN: I--

SENATOR LESNIAK: You don't have to answer that. Any other questions? (no response) Okay. Thank you.

MR. BROWN: Thank you.

SENATOR LESNIAK: Ed Gaffney, Sr., New Jersey Consumers and Insurance Brokers Alliance? (no response) Not here? Okay. Dick Anderson, Commerce and Industry Association?

R I C H A R D A N D E R S O N: My name is Richard Anderson. I'm Director of Government Relations for the Commerce and Industry Association of New Jersey, located in Hackensack. Our Association represents approximately 1700 business members in the northern New Jersey region.

I'd like to just address one point this morning. We would generally be in agreement with the testimony that was given by the Commissioner this morning, and which is basically your bill, Senator, 2637, with one exception. That's the exception that the medical expense be transferred from the auto insurance to the health care carriers.

I would agree wholeheartedly with what Senator Cardinale mentioned this morning. It is a major concern, the increase. The dramatic rise in health care benefits nationally, that in itself is a crisis. And here we're saying that we're going to transfer then the auto insurance medical benefits over to the health care. I haven't really seen any specific figures on what that would mean as far as an increase in employee benefit packages, but I would venture to say that would be a very large percentage increase. I've heard as high

as 20% increase in that particular employee health package. I would say that--

SENATOR LESNIAK: Wait a second. I'm sorry. I missed that. What percent?

MR. ANDERSON: I've heard possible as much as a 20% increase.

SENATOR LESNIAK: Where did you hear that from?

MR. ANDERSON: Pardon?

SENATOR LESNIAK: Where-- What's your source?

MR. ANDERSON: Well, I don't have a specific source that I can give you. I have heard that that's a possibility, that it could be as high as--

SENATOR LESNIAK: Okay. If you have a source, then I would be very interested in knowing that.

MR. ANDERSON: I'm sure you would.

SENATOR LESNIAK: I haven't heard anything near that. When we instituted no-fault, Blue Cross and Blue Shield rates went down, I believe, three percent. So I would assume that it would be in the same magnitude when we repeal it.

MR. ANDERSON: Well, I would say this -- and perhaps as you say, Senator, I can do some research and come up with a figure--

SENATOR LESNIAK: That's right. Even less, because we're not including catastrophic injuries because those would be covered. So it would be even less than that.

MR. ANDERSON: Yeah, it would be. I think we'd have to agree though that it would be a substantial increase in health care benefits.

SENATOR LESNIAK: About three percent. Whether that's substantial or not is up to anybody's individual conclusion.

MR. ANDERSON: Well, we feel very strongly that this particular benefit should not be transferred over to the employer. We would request that the Committee give some serious consideration in amending the legislation to take that

particular aspect out of it. We feel that that is a provision that the business community cannot live with.

SENATOR DiFRANCESCO: But the only reason why you're opposed is because you know that many people have group policies, the premiums of which are paid for by employers.

MR. ANDERSON: Yes, sir.

SENATOR DiFRANCESCO: Not because you necessarily disagree with it philosophically. It's a matter of, you perceive it to be, an additional cost to you as an employer if that happens.

MR. ANDERSON: Well that's basically what we're saying.

SENATOR DiFRANCESCO: Okay.

MR. ANDERSON: There would be a substantial cost to an employer. If it's not 20, at least whatever it is, it's going to be substantial. It's going up all the time.

SENATOR LESNIAK: Senator Cardinale, any questions?

SENATOR CARDINALE: Do you think that would affect in some way the job opportunities, which have been pretty good for the people in the State of New Jersey? Do you think there is an effect that goes to that degree of magnitude?

MR. ANDERSON: Well, I do think it's a business climate situation. We've had problems in attracting industry to the State of New Jersey, and I think that this possibly would be just one more negative that would result if we made this kind of transfer. We've had other problems in other areas, and I think this is one that needs to be very carefully looked at. I think it's a very serious move to do that.

SENATOR CARDINALE: In the area of the philosophy of changing that relationship, is there anything else that employers do that impacts on areas that are really not concerned with employment? For instance, homeowners insurance. I mean, everybody owns a home. Is any portion of homeowners coverage commonly paid by employers?

MR. ANDERSON: Not to my knowledge, no.

SENATOR CARDINALE: Is any benefit really that is not in some ways work related paid by employers at the present time?

MR. ANDERSON: Well, there is some movement-- Some companies will pay legal fees, and they're getting into areas like that, if that's what you're getting at.

SENATOR CARDINALE: But I think life insurance is something that tends to, from time to time-- I'm sure it's not a universal policy, but I see that more companies provide life insurance for their employees than previously.

SENATOR LESNIAK: Health care benefits.

SENATOR CARDINALE: Well health care benefits, obviously. Someone's health is related to their job performance, and maybe to the job that they've been doing in most ways. But there is a difference with auto, that those tend to be things that are a sudden experience. There is a difference, and I just thought he should be given an opportunity.

Suppose there were a compromise somewhere reached -- and I'd just like your comment on it, not that I'm suggesting that there will be -- that the first "X" dollars would continue to be covered under PIP, and that there would then be some kind of gap that would be covered by health insurance, and that then we would have the catastrophic fund as we have today. No change, essentially, in the catastrophic fund, maybe some slight administrative changes. Would you oppose that as much as you oppose this, if we also did something else?

MR. ANDERSON: Well, I would say probably generally not. I'd have to see it specifically, obviously. But there might be something that might be compromised on that. There's a possibility of that.

SENATOR CARDINALE: If we also included in that compromised portion a deductible and a co-payment, which would bring it into line with what we have in Blue Cross and Blue Shield in many instances, or with other health policies, would

that even more bring you on board with respect to that particular item? --

MR. ANDERSON: Well, let's take a look specifically at what we're talking about. I think we're open to any suggestions along that line, but we're opposed to just arbitrarily shifting the entire burden.

SENATOR CARDINALE: Okay. Thank you. We'll give you something very specific to look at, Mr. Anderson.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: Dick, although I usually save my questions for Les Kurtz, I want to ask you if-- You do realize that the Commissioner testified that 26 other states do not mandate PIP? So, it's not that radical a proposal.

MR. ANDERSON: Well, I believe it was pointed out by a previous speaker that we don't necessarily have to go along with other states. I'm not so sure we always do that.

SENATOR DiFRANCESCO: Although many times we are told that we should go along with what other states do.

MR. ANDERSON: Yeah, or be ahead of other states.

SENATOR LESNIAK: Thank you, Senator. Thank you, Mr. Anderson.

MR. ANDERSON: Yes. Thank you.

SENATOR LESNIAK: George Sullivan, Travelers Insurance Company? Excuse me. Do you have written testimony? (prepared statements are handed out)

G E O R G E R. S U L L I V A N: Mr. Chairman, members of the Committee, my name is George Sullivan. I'm a Director in the Regulatory and Legal Division of the Travelers Insurance Companies.

Senate Bill 124 is my subject today, and that's all I intend to speak about. We believe this bill increases the administrative burden of the present excess profits law and narrows the excess profit threshold by reducing the point at which profits earned by insurers would be declared excess.

We strenuously oppose the reduction of the earned premium allowance in the excess profits threshold to two-and-a-half percent. Let's look at the practical effect of reducing the threshold from five to two-and-a-half. Travelers' last rate filing was effective on August 23, 1982. The profit provisions in that filing after investment income were as follows:

- Overall liability: -4.01%
- Overall physical damage: +3.03%

The Clifford Determination, which has been used to reflect investment income in auto rate filings for many years in New Jersey operates to reduce the profits factor to, in this case, a deeply negative factor for liability and a moderately positive factor for physical damage.

The proposed excess profits formula allows the addition of the filed profit provision with two-and-a-half percent of earned premium. For the Travelers, therefore, we would find ourselves in the curious position of exceeding the excess profits threshold when our underwriting profit is negative. By operation of the formula, we would add -4.01 percent to the allowable 2.5 percent of earned premium, and thus, at a negative profit of -1.51 percent, we would be considered to have crossed the excess profits threshold. For physical damage, the excess profits threshold would be crossed at +5.53 percent -- which is obtained by adding the filed profit provision of +3.03 percent plus the 2.5 percent earned premium allowance.

One further thought needs to be echoed. This is the maximum we would be allowed in good times. When we are in the trough of the underwriting cycle, neither the present nor the proposed excess profits law would provide any succor whatsoever.

It does not take a mathematician to recognize that under those conditions, the potential for long-term profitability is considerably reduced.

Amending the law so that excess profits be done by company rather than on a group basis will increase the time necessary to prepare and review the reports. Preparing these reports on a group basis is already quite burdensome because of the amount of data involved. The burden is now increased by a multiple of the number of companies within each group.

More importantly, however, is the fact that because the data base is split into many more components, more random fluctuations will now be introduced into the data as the number of companies recording swells.

If the existing excess profits law is amended in any way, we would prefer that it be replaced by the New York procedure. Over two years of study by recognized experts went into the development of the excess profits regulation in New York. New York uses a six-year experience period, a period that coincides with the underwriting cycle in private passenger automobile insurance. In addition, the excess profits test is not done by company group and certainly not by individual company. It is an industry test.

An excess profit in New York occurs when the industry rate of return exceeds the average long-term industry rate of return by a given amount. It is a much more reasonable test than New Jersey's existing law and Senate Bill 124.

Apart from anything else that might be said, the three-year experience period used for determining excess profits, even in the current law, is incorrect. An experience period that recognized the cyclicity of the automobile insurance business should be used. As I mentioned before, the underwriting cycle for auto insurance averages six years. This means that within that six-year period, the business is both profitable and unprofitable.

Senate Bill 124 could be vastly improved by changing the three-year experience period to a six-year period, and by changing the reporting requirement to a group rather than a company basis.

Professor C. Arthur Williams from the College of Business Administration at the University of Minnesota, and recognized as the leading authority on auto insurance profitability legislation, had this to say about an excess profits test of individual insurers over a three-year period. "The annual profit rates of individual insurers, even when averaged over a three-year period, would fluctuate dramatically."

We believe random fluctuations should not be a basis for excess profit refunds. At the very least, the bill could be improved by leaving intact the requirement to report by group rather than by individual company.

The most significant thing that can be said about excess profits in auto insurance is that at no time, by any proper measure, in any jurisdiction, has it ever been determined that auto insurance was an excessively profitable business. Thank you.

SENATOR LESNIAK: Questions from the Committee? (no response) Thank you, Mr. Sullivan. Elmer Matthews from the American Insurance Association?

E L M E R M A T T H E W S, E S Q.: Good afternoon, Mr. Chairman, and member of the Committee. As some of you might know, my name is Elmer Matthews. I'm the New Jersey Counsel for the American Insurance Association. On my left is Phyllis Forsythe, who is also the New Jersey Counsel for the American Insurance Association. It depends on who you speak to at a give time, but we are an equal opportunity organization, obviously.

Commissioner Merin this morning, I think gave a balanced presentation, with much of which we certainly agree. There is one thing -- I have related this to you, Mr. Chairman -- that we do not agree with, and that is the accident and health twist of the main bill which is under consideration here this afternoon.

I submit to you that by eliminating the payment of first party benefits, without regard to fault for the auto insurance system, in effect you have abolished no-fault in New Jersey. The reason you have abolished no-fault is because no-fault is a balance. In return for the limitation of the right to sue, you are to grant first party benefits regardless of fault. When you abolish the mandated first party benefit of any kind, you have destroyed one side of the equation. And the no-fault equation has been rendered meaningless.

Despite the Commissioner's statistics of this morning, and we have seen the no-fault benefit list which he submitted -- and by the way, the first sheet, there are three other states that are optional no-fault benefit states, in addition to the number that he listed -- but despite that schedule that the Commissioner submitted, one statistic is very important. There is no state which has a limitation of the right to sue, which does not have compulsory medical payments and compulsory wage loss payments. That is true no-fault. That is the equation, and that will be destroyed.

SENATOR LESNIAK: I'm sorry. Did you say elimination of the right to sue?

MR. MATTHEWS: There is no state which has a limitation of the right to sue, which doesn't have compulsory medical payments and wage loss payments.

As a practical matter, the substitution of accident and health benefits for mandated PIP benefits as a means of cost savings, is just not that. And that's what the Commissioner indicated this morning. We have all discussed this morning the fact that it is a shifting of the cost to another area. The question is, where does it shift? Initially it shifts to the employer of the individual if the individual's employer does have this type of coverage. If they do not have that type of coverage, or if the people are self-employed or unemployed, it shifts to the health benefit program that they

individually purchase. And if the people who are unemployed, or who are employed, who cannot afford these benefits, I submit to you that it will shift to the accounts receivable files of the medical practitioners and the hospitals; and thereby further drive up the cost of hospital rates.

Realizing that I have a five minute limitation here, Mr. Chairman, I'm going to move on, although there is more that I would like to say on that issue.

I would also like to register some criticism of your proposed CAT fund, which is being funded by a fee which is being placed on registrations, or licenses or what have you. As I understand the CAT fund, PIP will be paid over \$75,000 by the CAT fund, one year after the effective date of the act, and during the first year of the act this PIP will be provided still by the individual carriers through the medium of the UCJF. I would only point out to you the terrible inadequate experience in our neighboring State of Pennsylvania on the administration of the CAT fund as a prime example of where we're going when we fool with another deficit prone type of financing operation. The original fee in Pennsylvania started out under \$10, and now the projected costs are up above \$80 per person, and I have it on good authority that both house of the legislature have passed bills to abolish the CAT fund in that jurisdiction.

The third item I'd like to comment on in your bill is your optional threshold of 750 as opposed to the verbal. Much has been said about the verbal threshold. I still say, and I always will say, that it is the only way to go. More governors have said that, more insurance commissioners have said that, more people have said that, as a solution to the problem than anything else. Obviously that is not the way you want to go. But I have to have a sort of masochistic pleasure out of sitting here in front of you and saying, you know a couple of years down the road, God willing, I'll be able to say to you

again, "I told you so." But what's the sense of talking about it? --We're not going to do it today, but I'd just like to reiterate the fact that that should be done.

SENATOR LESNIAK: We may do it today. You can never tell. (laughter)

MR. MATTHEWS: I would also like to touch on the treatment of the JUA board in your legislation. As you know, many companies have been trying to resign as JUA servicing carriers over the past few years, but the Commissioner has not allowed them to resign for valid reasons that he has, to keep the, so-called, Joint Underwriting Association operating. Under the new bidding procedure, four companies have bid to become servicing carriers. Of the four, apparently one has been disqualified, and a little bird just told us that another is about to be. That would leave two companies, and the computer crowd, to operate the JUA, leaving the JUA bidding scheme about 300,000 policies short. It would appear that if this is the case, that the Commissioner will have to draft, as he did initially when the JUA was founded, additional companies to serve as servicing carriers. I have no grief for anyone who overcharged or overpaid or didn't pay over quickly enough money to the JUA treasury. But I fail to see where that is the basis for the entire indictment of an industry. Especially in those cases where it has been ascertained, most of the time by the companies themselves, and the money has been paid over.

The change in the JUA board itself, though, gives me a little bit of trouble. This is your prerogative. But relegating professional competence to the status of advisory council -- that's what you're doing in your bill, creating a JUA board of private citizens and a couple of advisory councils drifting in orbit around them -- is not my idea of the way to run the fourth largest property casualty company in the nation. But apparently this is the way you choose to go. It would appear to me that it may be the case of the driver

driving the car, and not possibly knowing how to drive. I also would like to touch on the--

SENATOR DiFRANCESCO: Say that again? I missed that one.

MR. MATTHEWS: You're putting drivers behind the wheel who don't know how to drive if you're putting private citizens in as the managing board of the Joint Underwriting Association, and putting people with expertise -- the brokers, the agents, the company people, what have you -- out as an advisory council.

SENATOR DiFRANCESCO: Well one of my colleagues says that right now we have a system where the fox watches the hen house.

MR. MATTHEWS: Well you have to remember that right now the industry is not in the majority on that board, Senator. So if the foxes are guarding the chickens, there are a hell of a lot more chickens than there are foxes, and they're bigger.

SENATOR DiFRANCESCO: Well, I'm on the Judiciary Committee. I see the names of the people who are appointed to the board.

SENATOR LESNIAK: When you say the industry, are you--

SENATOR DiFRANCESCO: They're all industry--
(inaudible)

SENATOR LESNIAK: How many public members are there on the JUA board now?

MR. MATTHEWS: I know that the, so-called, insurance industry is in a minority on the board as of this time. I can't give you the--

SENATOR LESNIAK: Does that include agents and brokers?

MR. MATTHEWS: Yes. I'm pretty sure I'm right on that. In fact, I know I'm right on that.

SENATOR LESNIAK: In any event, there are some management theories that believe that an outside board of directors is preferable to an inside one.

MR. MATTHEWS: As I said, that's your prerogative. But I like to bring it to your attention.

As far as the rates for the JUA are concerned -- I don't know whether I've exceeded my five minutes yet, Senator, but there has been a little bit of interruption I guess.

SENATOR LESNIAK: About 15 minutes ago.

MR. MATTHEWS: Pardon me?

SENATOR LESNIAK: About 15 minutes ago.

MR. MATTHEWS: Did I really? The indication in your bill is that if the population of the JUA is no greater than 40%, the Commissioner may raise rates but not more than 15%, capping the amount that he can raise them. Now, the idea of the depopulation of the JUA is to create an incentive, and the way you're going to create an incentive of course is to uncouple those rates as quickly as possible. I think the sooner you uncouple those rates, the sooner you can inject competition into the marketplace, the sooner you're going to see a valid exercise of the insurance operation in the State of New Jersey; something that you haven't seen for a long time.

You know, it is unfortunate that the Commissioner was never given the authority to uncouple the rates. But as I identified myself before, as a masochistic, I-told-you-so guy, I can remember sitting before this very Committee when Senator Ed O'Connor was the Chairman of it, with Tom Jamieson who then represented State Farm, and pleading with you to amend the JUA bill to at least give the Commissioner the authority -- not mandating it -- at least giving the Commissioner the authority to uncouple the rates. And the original sponsor of the bill refused to go along with that. So I think it's imperative that the JUA rates be uncoupled. I think it's imperative that we do something about the JUA deficit.

But I have run way over my time. I'll be glad to answer any questions that anyone might have.

SENATOR LESNIAK: You just picked out the bad points in the bill, right?

MR. MATTHEWS: Oh, there are many good-- My last paragraph says that there are many good points in the bill, with which we agree.

SENATOR LESNIAK: We'll hold that. I've got enough accolades coming. Senator Dalton has to wait for the Committee members first. Senator Cardinale?

SENATOR CARDINALE: I'll defer to Senator Dalton and speak after him. That's all right.

SENATOR LESNIAK: Oh, magnanimous.

SENATOR DALTON: Thank you very much, Senator Cardinale. I'm thinking about changing my registration after that. It was awfully nice of you. (laughter)

SENATOR LESNIAK: Voter or driver's?

SENATOR DALTON: Voter. One of the things that you talked about was the balance of the system. That's a fundamental flaw, Elmer, that you saw in the Senator's bill. You based on the fact that once you take away benefits, i.e. PIP in this case, then there should be -- and I don't want to misrepresent what you're saying -- that there should be a concurrent shift relative to the threshold to sue. Is that correct? They are the two components, when people talk about balance in the system, that's what they talked about; the relationship between the benefits package and the ability to sue. The benefits package is generous, the ability to sue should be more difficult. That's usually what--

MR. MATTHEWS: I don't think you can refine it that much, Senator. The cases that invoke constitutional law when no-fault first went into effect, established the constitutionality of the program on the basis of that balanced equation; not unlimited medical, but not all states gave unlimited medical, but some mandated first party benefits to correlate with the giving up of the right to sue. That was the so-called, "trade-off" that everybody sort of snickers at now.

SENATOR DALTON: Yeah. And I guess what I'm trying to get at, Elmer, is that you feel this bill throws out of whack that balance. -- I hope you're not indicating that we have a balance right now?

MR. MATTHEWS: Well, in constitutional law we have a balance, because there is something that is traded for the--

SENATOR DALTON: Don't tell me about constitutional law, Elmer. Elmer, tell me about the balance -- okay? -- go into the relationship between benefits and ability to sue. Right now you have unlimited PIP and you have, in many cases, a \$200 threshold. Now that is a system that's out of whack. Okay?

MR. MATTHEWS: Yeah. I'm not saying, Dan, that you have to -- Senator, excuse me. I'm not saying that you have to have unlimited medical on this side of the balance. But if you have on this side of the equation any denial of the right to sue, there has to be some form of mandated first party benefits on this side of the equation that are a reasonable judgment of the Legislature. Okay?

SENATOR DALTON: Well, the distinction that this bill has with what you're saying is not in this bill a reasonable judgment as far as the Legislature, it's a reasonable judgment as far as the consumer; because of the fact that the Lesniak bill sets out a \$75,000 medical catastrophic fund, but with the ability to buy down -- that the consumer makes that determination.

MR. MATTHEWS: Whether that is a reasonable trade-off of the right to sue--

SENATOR DALTON: That's not up to us. That's up to the consumer. That's up to the consumer.

MR. MATTHEWS: I'm afraid it's up to somebody more than that. It's up to the courts.

SENATOR DALTON: Well, the bottom line is that if I'm a consumer, and I want more PIP coverage -- i.e. I want the ability to buy first dollar PIP -- I still have that ability in the Lesniak bill.

MR. MATTHEWS: I don't disagree with you.

SENATOR DALTON: Okay.

MR. MATTHEWS: All I'm saying is that if you deny the right to sue in any matter, there has to be on the other side of the equation some form of mandated first party benefits.

SENATOR DALTON: And all I'm saying is that it's not up to Elmer Matthews, or Dan Dalton, or anybody. It's up to the consumer to make that determination. That's the fundamental principle that I think the Lesniak bill addresses, which I feel very very comfortable with.

SENATOR LESNIAK: I feel more comfortable calling it the Dalton Bill. (laughter)

MR. MATTHEWS: I heard it identified as the Merin Bill.

SENATOR DALTON: If in fact you get 21, Raymond, you can call it the Dalton Bill. (laughter)

SENATOR LESNIAK: Senator Cardinale?

SENATOR CARDINALE: Thank you. On a similar point. If we were to keep a mandatory PIP, would you think it better for us to keep it with some form of deductible, co-payment, perhaps both of those, as opposed to keeping it in a totally unlimited fashion as it is today?

MR. MATTHEWS: Both of them undoubtedly will take cost out of the system. There's no question about that.

SENATOR CARDINALE: Would you see a constitutional problem with that cost?

MR. MATTHEWS: No, I don't see any constitutional problem with that, because that is within the realm of reasonable judgment by this Legislature. If you act arbitrarily, and just take away the right to sue and give them a make believe range of first party benefits, then I think

you're treading on thin constitutional ice. But you can take costs out by co-payments, you can take costs out by deductibles, you can take costs out by capping the PIP at a certain level. I've seen bills that do it 10, 25, 50, 75. And on top of that, you can mandate offer up to a certain point. But you're going to take costs out of the system if you say that a company does not have to offer over "X" hundred thousand dollars. And that was the theory behind the benighted, Unsatisfied Claim and Judgment Fund, another fund that is rolling around out there with a ticking deficit under its belt.

SENATOR CARDINALE: On the same constitutional question -- which I really hadn't thought about until you brought it up here today -- with respect to actual scheduled payments with a total preclusion of the right to sue, similar to workers' comp, would you see in the auto area any kind of constitutional problem with respect to that?

MR. MATTHEWS: The original worker compensation bills involved a trade-off for the right to sue with mandated, no-fault, scheduled benefits. The same constitutional argument would subtend as far as auto insurance is concerned. I'm quite sure.

SENATOR CARDINALE: Thank you.

SENATOR DiFRANCESCO: How come you didn't ask the lawyer that question, Gerry?

SENATOR CARDINALE: Well, isn't Elmer--

SENATOR DiFRANCESCO: Elmer represents--

MR. MATTHEWS: I am first of all a lawyer, Don.

SENATOR DiFRANCESCO: Elmer, isn't there a difference between someone else injuring you and you injuring yourself? I mean, aren't there some differences you can draw between a workman's comp system as it's presently formulated, to--

MR. MATTHEWS: No, the workers' comp program -- and I wasn't alive when that went into effect, although I look that way-- The workers' comp program did away with the negligence

of the fellow servant. Okay? If you worked in a workplace and you were negligent and were injured by your fellow servant, this fellow servant had a defense. This did away with John suing Paul for injury. It also did away with the person who injured themselves. But the person who injures himself, injures himself because he is in this employment situation. He's injured by a machine, or trips down a step, or something like that.

SENATOR DiFRANCESCO: Elmer, all I asked you is, you don't see a distinction between that system and--

MR. MATTHEWS: No. I find it very difficult as a lawyer to answer a question with one word.

SENATOR DiFRANCESCO: I guess representing the American Insurance Association, I guess you would. No other questions.

SENATOR LESNIAK: Any other questions? (no response)
Thank you, Elmer.

MR. MATTHEWS: Thank you.

SENATOR LESNIAK: Thomas Gurrera, Insurance Brokers Association of New Jersey?

T H O M A S G U R R E R A: Mr. Chairman, Committee members, my name is Tom Gurrera. I represent the Insurance Brokers Association of New Jersey, and I am a past president of that organization.

We are very concerned about the possible repeal of no-fault and/or compulsory liability.

Compulsory automobile insurance, as mandated by the existing New Jersey Law, is available and affordable for the very large majority of New Jersey residents.

Due to time constraints. I will read to you excerpts from our statement which is attached to your copy of our testimony.

We have figures here on what is mandated as far as insurance is concerned.

If an insured purchased the mandated coverages with a \$1950 tort threshold, and the cost-saving options, the annual premiums would be as follows--this is for an adult driver by the way:

- In the lowest rated territory in the State, the mandated rate is \$271.

- In the highest rated territory it is \$387.

- In the average rated territory, \$318.

The premiums cited would apply to the majority of automobile owners in this State. Increasing the premiums by approximately 10% would make them apply to approximately 75% to 80% of New Jersey auto owners. We would use the 10% to compensate for the vehicles being driven to and from work.

Insurance is affordable for youthful operators also. A 17-year-old unmarried male who owns or is the principal operator of the auto, and who is classified as an inexperienced operator could purchase the mandated limits and coverages for as little as:

- \$537 in the lowest rated territory;

- \$780 in the highest rated territory;

- and \$644 in the average rated territory;

We broke this down. In the average territory it would be \$1.76 per day.

The addition of comprehensive and collision add substantially to the cost of auto insurance in New Jersey, with the cost of these physical damage coverages accounting for from 55% to 66% of the total policy premium. The repeal of any of the mandated coverages in this State would not affect these optional rates.

The repeal of compulsory insurance will not result in reductions in:

1) The frequency of accidents;

2) The average claims cost per accident;

3) The number of autos stolen or vandalized;

4) Nor again, the physical damage premiums, or the optional higher limits.

No-fault is affordable and a bargain at the price. For the large majority of insureds, including the high rated youthful operator, the premium cost of PIP represents only 14% to 16% of the total policy premium.

PIP premiums, including the policy constant and expense fee, with a \$200 tort threshold and no options, range from:

- \$118 in the lowest rated territory, 32 cents per day;
- to \$173 in the highest rated territory, which is 47 cents a day;
- and \$129 in the average rated territory, which is 35 cents per day.

Then we have outlined some facts here that would tend to make New Jersey the State that would pay higher rates than many other States.

We also would like to clear up the fact that the State of New Jersey does not rank number one in the nation in rates. The A.M. Best ranking system, which is utilized by the newspapers, is misleading. In reality, New Jersey ranks eighth in the voluntary market, and 22nd in the residual market. Our source is a paper which we have received from the Department of Insurance, which is attached.

Now, other reasons for high rates in the State of New Jersey are as follows:

- New Jersey is ranked second in the nation for per capita income. As a result, the sale of luxury vehicles in the nation is down, but in New Jersey sales have been up over four percent, which means that we have more late model, high value vehicles on the roads. This translates into higher premiums to protect these vehicles.

- Another factor when considering our high rates -- or alleged high rates -- is the fact that New Jersey ranks number one in population density.

- Fact two, New Jersey ranks in the top three for traffic volume;

- New Jersey ranks at or near the top in stolen vehicles.

All of these factors, again, will increase -- no matter what we do, or the Legislature does here today -- the auto insurance rates on a yearly basis.

Repeal of no-fault will place additional strains on the already overburdened Blue Cross/Blue Shield, and increase their rates.

Repeal of compulsory coverage in states that have done so has resulted in exorbitant uninsured motorists' rates. The minimum uninsured motorist rate in New Jersey is \$9.00. In our neighboring State of Pennsylvania, which repealed compulsory insurance, the UM rate for minimum coverage ranges from a low of \$79 to in excess of \$400 per car. Pennsylvania is currently in a crisis because of this recent repeal.

Repeal of PIP will be far-reaching. You have all heard about the recent unfortunate accident involving three students. They were football players at the State University. We have all heard that the vast majority of PIP claims are under \$10,000. One of the students had over \$10,000 in medical bills in the first 12 hours after the loss. What would he do if there were no PIP?

SENATOR LESNIAK: Do you want an answer? Is that a rhetorical question, or are you looking for an answer?

MR. GURRERA: You can give me an answer, sure.

SENATOR LESNIAK: Okay. First of all, we heard the Commissioner state that 89.5% of the public has an alternate form of health coverage. So, if they fall in that 89.5% category, that alternate health coverage would pay for that. Secondly, they would be provided for by the Uncompensated Care Fund in the State, or the liability policy of-- That was an automobile accident, was that not?

MR. GURRERA: Yes.

SENATOR LESNIAK: Okay. Or under the liability policy of the at-fault driver.

MR. GURRERA: May I respond to the second point you made?

SENATOR LESNIAK: Oh sure. I was just answering your question.

MR. GURRERA: The Unsatisfied Claim and Judgment Fund, Medicare, Medicaid, all of these other programs that would be utilized if we did not have mandatory PIP in the State of New Jersey, would have to be funded. Our past experience shows that they would have to be funded through tax dollars. And I feel that as a consumer -- forgetting that I'm an insurance agent and broker -- that as a consumer, not only will I pay my own insurance premiums to protect myself and my family and anyone I may injure, but I will also pay to protect the person who opts to drive without all of the coverage. I will, with my tax dollars, subsidize his medical bills, subsidize his possibly going on welfare. To me that is not acceptable.

No-fault is quite simply the finest insurance product ever made to the public.

SENATOR LESNIAK: Wait a second. I'm sorry. What does PIP have to do with welfare?

MR. GURRERA: I beg your pardon?

SENATOR LESNIAK: What does PIP have to do with welfare?

MR. GURRERA: I didn't hear you?

SENATOR LESNIAK: What does PIP have to do with welfare?

MR. GURRERA: What does PIP have to do with welfare?

SENATOR LESNIAK: You said--

MR. GURRERA: I'm located in the urban area, my office, even though I'm in a suburban town now, but we're a few blocks away. If people did not have the no-fault coverage as

they come through our office doors, we know for a fact that they don't have hospitalization. They have no means of taking care of payment for hospitals and doctors when they're injured in an automobile accident. They have no means of supporting themselves if they're out of work. Some of them have marginal jobs. They would have no alternative other than to be subsidized by the State, and the subsidy would come from our tax dollars.

SENATOR LESNIAK: I'm sorry. Did you tie PIP into that somehow?

MR. GURRERA: I beg your pardon?

SENATOR LESNIAK: Did you tie PIP into that somehow?

MR. GURRERA: Did I tie PIP into it?

SENATOR LESNIAK: Yeah, what--

MR. GURRERA: What I'm tying into it is, again, that if we sell them a policy that doesn't have the PIP coverage, doesn't have the \$100 a week loss of wage benefit, that doesn't have the medical benefit, somebody is going to have to pay for these people. They are still going to be alive after the injury. Our concern is that those of us who buy the insurance and pay for it, are going to pay for them anyway.

SENATOR LESNIAK: Okay. The hundred dollars a week, that's for 52 weeks?

MR. GURRERA: Yes, sir. That is not mandatory.

SENATOR LESNIAK: That's not mandatory either?

MR. GURRERA: No. Everybody seems to take it. Very few people have taken that option. I've seen many more people -- maybe 25% of them -- take the optional higher threshold, but they would not give that benefit up. They don't save that much anyway.

SENATOR LESNIAK: And my bill makes that an option as well. You understand that?

MR. GURRERA: Yes. What we're concerned with, Senator, also with the options-- Senator Lesniak, one concern with the options is that the agents, the brokers, we're dealing directly with the consumer, and we know that when you get people in a car dealership and they're purchasing an auto-- This is one of the reasons for the high rates. The fact that you can buy a new car with just a couple of hundred dollars down. People waive options that they badly need -- coverages that they badly need -- just so they can add an AM radio or a cassette player to a vehicle.

In fact, to go a step further with that, I'd like to relate the automobile insurance situation to purchasing a house. This is something that we do on a daily basis. To you it may not seem relative, but-- A person will complain about the cost of insurance. And I had this happen to me the other day. A young lady who is a court stenographer and has a very good income, was talking about the premiums she was paying for a car that cost her in excess of \$20,000. And I said, you know, if people had to buy a car based on the way they purchased a home, they would take a look at the mortgage payments and see if they can afford them before they purchase that house. Correct? You should do the same thing before you purchase a car. Make sure that you can afford to pay for the proper insurance, because what is mandated by our law in this State is affordable. You're talking about less than \$400 per year.

One suggestion we would like to make, as far as the JUA problem is concerned, is that the good drivers in both the voluntary market and the JUA should not subsidize the bad drivers in the State of New Jersey. There should be another tier established for the JUA. We should have one tier that would have the same rate as the voluntary market for those people who are a good drivers and for one reason or another cannot get into the voluntary market. They should be allowed

to pay the same as the voluntary market, because their driving record reflects that. Those who have the bad driving records should be put into a tier that would be self-sustaining. They should pay their own way.

SENATOR LESNIAK: Okay. Thank you. The Commissioner already has that authority, by the way. Senator Cardinale?

SENATOR CARDINALE: I was going to add that, but unfortunately that tier -- and I think you were at the hearing -- is a single tiered system. Only two percent of the drivers are in the upper echelon of that tier. I think what you're probably suggesting is that we have a multi tiered system, and that has been suggested before. It has not been accepted. But perhaps maybe in the future it will be.

MR. GURRERA: Senator, I forgot -- in my hurry to get here today -- three files I wanted to bring with me from my office. I no longer insure these people. I must insure everyone by law who comes into the office, but these three people accumulated in a period of I think less than three years, collectively approximately 25 claims. Twenty-five of them. Shouldn't these people be made to pay their own way? And if they can't afford it, then they should not go out and buy a \$17,000 or \$18,000 car. Drive around in a \$400 car until you clean your record up. We should not be subsidizing these people, and taking away very valuable coverage and benefits from those who are trying to deal with the system in an honorable way.

SENATOR CARDINALE: Back in the original hearings, and the suggestion was made -- which you have just made again today -- that there be no subsidization by good drivers of bad drivers, it was pointed out by the Commissioner -- I forget who the Commissioner was in those years -- it was pointed out that the premium would be so high for the so-called high risk driver, that many people would not have any insurance at all. How would you answer that, since you're making that suggestion today?

MR. GURRERA: How would I answer the fact that the insurance would be so high?

SENATOR CARDINALE: Yes, right now in our tiered system it's 35% more that the worst driver pays than the ordinary driver.

MR. GURRERA: Senator, I think they would have to clean up their act. They would have to be warned in advance. When I see an individual have four or five BI claims in a period of two to three years, there's something wrong. He didn't come to my office in an ambulance. There's a problem. I think if he knew what the penalty was for doing some of these things-- For example, you tell him, "You're not going to be eligible for insurance any longer if you continue this, and have one more claim in the next three year period. It takes you out of the JUA system. You have to go out in the open market. Buy it from Lloyds of London. Get it from wherever you can." But take them out of the system.

SENATOR LESNIAK: Okay. Thank you. Any other questions? (no response) Thank you, Mr. Gurrera.

The Committee will be adjourned until 2:30.

(RECESS)

AFTER RECESS:

SENATOR LESNIAK: Everybody please take your seat. Ed Perrin, Vice President of the New Jersey Hospital Association? I'm sorry, Ed. You got caught in lunch. Is Wes Caldwell still here or did he leave? (no response)

C R A I G B E C K E R: I'm not Ed Perrin, but I am Craig Becker with the New Jersey Hospital Association.

SENATOR LESNIAK: Oh, I'm sorry.

SENATOR DiFRANCESCO: I was wondering if you were going to tell him that. Why did you do that. (laughter)

MR. BECKER: I didn't want to shock anybody. But I am going to be presenting testimony on behalf of the Hospital Association in Mr. Perrin's absence.

Actually, most of the points that we were going to make have already been made.

SENATOR LESNIAK: Excuse me. You're Oliver Bartlett, right?

MR. BECKER: He's still back there. We look a lot alike but other than that--

SENATOR LESNIAK: Could we have copies of your testimony? Do you have written testimony.

MR. BECKER: No.

SENATOR LESNIAK: Okay. That's okay.

MR. BECKER: Frankly, most of the points have already been made, so I just wanted to make two quick points if I can. Obviously our concerns deal with the PIP section of the legislation.

We have two concerns basically. The first is in the uncompensated care area. We understand the way the legislation is written that our hospitals -- at least our acute care facilities -- would continue to be paid for any auto accident victims. However, it would most likely, if they opted out of the PIP section, it would come out of the Uncompensated Care Trust Fund, if they were not covered by their insurers, or if for some reason their employers opted not to offer -- have an exclusion I mean, under this particular program. So we see an increase in the Uncompensated Care Pool, which causes us great concerns because we are already being criticized as is the fund, for being too high. It's around 12% now of our total revenues, and our concern if there was an additional 40 million put in, for each 40 million we're talking about another percent into the Uncompensated Care Trust Fund, which puts a lot of pressure on us. Considering that also this fund is to be sunsetted at the end of this year, it's probably going to add some more fuel to an already hot fire for us.

The second issue with which we have the most concern about is how it affects our rehab hospitals. Our rehab hospitals are reimbursed under a different type payment system than our acute care facilities. It's called the share system. And unfortunately the share system does not recognize any uncompensated care. Patients who would be indigent or would not have insurance coverage, would not be able to be paid -- their problems would not be paid for by the Uncompensated Care Trust Fund. And in fact, probably you would see that these patients would have a very difficult time even getting into rehab facilities. Since, obviously, not the vast majority of your accident victims are the ones who would be involved with a rehab facility, it perhaps may not be that big of a problem. But if Commissioner Merin's comments this morning of about 500 New Jerseyans who have some kind of head injury, trauma injury, who probably would be the ones who would be most likely eligible for rehab facilities, we probably can be looking roughly anywhere from zero to 500 patients a year who could potentially fall under this. It causes us some concerns, Mr. Chairman.

Basically that's it. We do support the other changes, but we have some grave concerns about the PIP end of things.

SENATOR LESNIAK: Thank you. Any questions? (no response) Thank you for your testimony.

Joseph Tomeo, Chairman of the New Jersey Automobile Insurance Reform?

J O S E P H A. T O M E O: Mr. Chairman and distinguished members of your Committee, I appreciate the opportunity to be here today and share with you some ideas and goals of New Jersey Auto Insurance.

I'd like to thank you for giving us the opportunity on behalf of over 900,000 citizens, 260,000 of which have written letters already to the Governor, and our coalition of organizations, to speak today on our goals toward meaningful New Jersey auto insurance reform.

Democracy indeed is on trial today in this great State when citizens must band together to lobby our Legislature to do the job you were elected to do. According- to The Newark Star-Ledger, this Governor and this Legislature has a failed experiment on its hands and is facing a severe crisis of confidence.

For many years, New Jersey motorists have struggled under artificially inflated auto insurance costs. There is an opportunity for all citizens to challenge Governor Kean and the New Jersey Legislature to work together setting politics aside, and write laws to provide residents with fair, affordable insurance.

NJAIR is a grass roots, citizens' lobby, committed to bringing about meaningful reform to New Jersey Automobile Insurance Laws.

With the recent \$73 surcharge, and a possible additional \$106 rate increase proposed, citizens are becoming increasingly alarmed over the inability of the Legislature with their patchwork amendments to contain the cost of automobile insurance.

The end results is that the poorer motorists and the citizens of New Jersey are denied equal protection under the Constitution because they cannot afford the additional charge on top of an already exorbitant premium.

When the JUA was declared a separate legal entity by the Legislature in 1983, it was for high risk drivers who could not get insurance on the open market. Now 51% of all drivers are in the JUA, some of whom have never have never had any points or violations whatsoever. According to Mr. Merin's office, it is because drivers are forced into the residual market due to tight insurance company underwriting practices. Hogwash.

ISO has not received an increase in five years, and not one company out of 200 has declared bankruptcy, and only

two have been declare insolvent because of poor management practices.

The JUA is almost \$2 billion in debt, according to Mr. Merin. According to the Insurance Department, we are forced to bail 12 insurance companies out of the hole that they dug. Now ISO requests an additional 14.7% surcharge from an over-burdened motoring public. We disagree in the strongest possible way.

The goals of NJAIR are listed below in plain language that everyone can know and understand, the way our insurance policies should be written.

Reform no-fault insurance, as has been stated and reiterated. Critics of the present system suggest that we abandon no-fault, but that is not a reasonable solution. In 1985, Congressman James Florio, First District, Democrat of New Jersey, requested an update of the 1977 Federal Department of Transportation study. The study clearly indicated that no-fault is not working because of the way it is structured. In New Jersey, high no-fault benefits are accompanied by modest limits on lawsuits, the study said. However, the DOT study should not be used as ammunition by those who wish to eliminate the no-fault system. The aim of no-fault is to reduce expensive litigation by eliminating the need to first determine who was at fault in an accident and make sure that people are properly paid for their injuries, a la true no-fault. It goes back to what Senator Dalton said about proper balance in the system.

Mandatory verbal threshold will improve our current laws to reduce premiums; limits on the right to sue should the verbal threshold become law. When payouts to accident victims are not balanced by limitations on the right to sue, insurance costs skyrocket. Raising the dollar threshold before you sue is unworkable -- it has been unworkable -- and unacceptable according to the DOT study. The New Jersey State Legislature

should clearly define the language and meanings of important bodily functions or body member -- as was not done in Michigan -- before people that are injured can sue. The Legislature and Governor should require a mandated rate reduction to all drivers.

The Department of Insurance last year completed an exhaustive study involving 2458 actual claims resolved in 1986 throughout the entire State of New Jersey. This was a reliable, systematic sample of cases closed by 20 major automobile insurance companies. The New Jersey Department and five other consultants analyzed those cases and evaluated what would have happened in all the municipalities in New Jersey if the verbal threshold had been in place.

Their unanimous conclusion was the claims payments, and hence premiums, would have been significantly reduced under the verbal threshold. Each consultant made a separate recommendation, but everyone said the bodily injury liability premium should be reduced by one half or one third. What does that mean?

After consolidating those recommendations and projecting the data on a statewide basis, the New Jersey Department of Insurance determined that the people in New Jersey would save \$278 million. According to Ralph Loveys -- Assemblyman Loveys -- I think that averages anywhere from \$75 to \$238 per car.

Next point, mandatory arbitration: It was mentioned in one of the bills -- out of the 90 that is being discussed right now -- that one of the things is all auto accident cases involving less than \$20,000 in damages shall be submitted to arbitration. By eliminating small and relatively modest claims from the courts, we shall reduce the strain on an already overburdened judicial system -- that's not our opinion, that's from the Supreme Court -- that should help promote long-term savings on litigation costs.

Require all uninsured drivers to pay their fair share: There are approximately 500,000 people in this State, 17% to 19% of all drivers, that have no insurance. We're mandated to pay for them. We think that's obscene. A sticker could be displayed on a person's windshield, that if a person lapses his insurance and doesn't pay, then they could send the undersheriff or send to the local police department -- that was Assemblyman Martin Herman's idea, by the way -- send to the local sheriff's department to go pick up their tags. When you pick up your tags, you pay your insurance bill, you get your tags back. It's very simple. It doesn't have to be complicated. They say they can't find them--

SENATOR DiFRANCESCO: You don't take the car. You just take the tags?

MR. TOMEO: Take the tags. Good driver discount: As an incentive to drive safely, the 55 Alive program -- designated around senior citizens' suggestions -- should be available to all drivers in driver education classes. Completion would be followed by a discount on our premiums. Buckling up, with driver education, paid by the insurance companies, would reflect in direct savings in dollars by reducing injuries and loss of lives, according to the New Jersey State Police.

The Medical fee schedule: A fixed schedule of fees paid by insurance companies to physicians and other health care providers under no-fault, would be set up by having a board established in the Department of Insurance. The Board would be made up of physicians, citizens, etc., charged with overseeing medical payments.

Loss of wages: Income continuation is critical to every injured man and woman in this State. The present wages under PIP -- personal injury protection -- of \$100 per week, or \$5200, is simply not realistic, gentlemen. In the State of Michigan it's not-- Mr. Merin's figures were a little bit

inaccurate. He put \$1400. It's actually \$2474, is what they have in their figures in the State of Michigan, what you have there. And it does not reflect in the State of New Jersey cost of living allowances, as does the State of Michigan.

We the people have too long endured an insurance program that does not serve the needs of our citizens. The above package of fair, affordable bills, must be introduced, debated, and signed into law.

In addition, Mr. Chairman, if I may-- Mr. Merin mentioned briefly -- and I didn't know he was going to say this -- about transferring the risk from one place to another. For your edification, facts: As of this month, Mobil Corporation went -- Senator Dalton isn't here but -- in Gibbstown from \$37 premiums for group plans, \$37 to \$97 in one month, before this would even take place. There's a significant thing happening out there with Blue Cross and Blue Shield. I work at duPont. It went from \$27 in November to \$55; a major health care provider. So to transfer the cost from Allstate to Blue Cross -- as some would like it -- there are going to be significant changes.

SENATOR LESNIAK: Any questions from the Committee? (no response) Thank you very much. Joseph O'Donnell, Association of Trial Lawyers?

MR. TOMEIO: We have these names I'd like to present to you, Mr. Chairman.

SENATOR LESNIAK: Please go ahead.

J O S E P H P. O ' D O N N E L L, E S Q.: Mr. Chairman and members of the Committee, I'm here to speak for the Association of Trial Lawyers of America, the New Jersey Chapter.

And I start out by pointing out that on May 8 of this year, The Trentonian -- the local paper -- on its editorial page noted that the Insurance Commissioner, Kenneth Merin, has said that private insurance firms have illegally skimmed \$300,000,000 from the JUA.

To date, there are still companies which have not filed under our Excess Profits Law, and even more companies who have not been completely audited because our State lacks the equipment and staff needed to undertake this size task. Of the insurers who did return their excess profits, none has returned the appropriate amount of interest that was earned on that profit, and no demand has been made for the distribution of that money to the public and the State.

Let's look at what has happened since the high point of the "insurance crisis," a time when many state legislatures passed tort reform packages:

The Attorney Generals of many states have initiated suit against the insurance industry for the fraud it has perpetrated against the public.

The Congress of the United States is presently considering abolishment of the McCarran/Ferguson Act.

State legislatures are reconsidering the tort reform package they passed during that period, and are asking why, after such drastic measures, were insurance premiums not reduced? Thinking at that time that the public would be relieved of the heavy burden of litigation, those legislators decided that the reforms would reduce rates.

In the face of insurance industry's greed and dishonesty, I think it's shocking that the solutions proposed today on the New Jersey dilemma, include abolishing PIP benefits -- and that's what this is, an abolishment of PIP benefits for the poor -- further abrogating the public's right to sue, and creating--

SENATOR LESNIAK: Time out. Time out. Time out.
Abolishing PIP benefits for the poor?

MR. O'DONNELL: That's correct.

SENATOR LESNIAK: The bill makes them optional.

MR. O'DONNELL: I understand that the bill makes them optional.

SENATOR LESNIAK: So how does it abolish the benefit?

MR. O'DONNELL: Well, I think realistically, if we look at the people-- First of all, I think the Commissioner told us that 89.5% of the people in this State have health insurance. I think if you look at that statistic you will find that 89.5% does not include the people in your urban areas such as Trenton, such as Newark, such as Camden; the people Ron Rice came to speak about.

SENATOR LESNIAK: Yes. And what about those people? What will this bill do to those people?

MR. O'DONNELL: Well, those people now have a right -- and I think it's a very substantial right -- when they buy auto insurance to have provided to them a low cost health insurance.

SENATOR LESNIAK: How does this bill take that away from them?

MR. O'DONNELL: This bill takes it away from them in many aspects. First, you're creating a PIP insurance pool out of 11% of the people in this State who happen to be the poorest people in the highest territorial areas of accidents. I don't see conceptually how such an insurance pool can possibly float at any reasonable rate.

Secondly, when a choice is made -- I think this was highlighted by earlier testimony -- as whether to elect the PIP option by a person of limited means, or not, they do not consider at the time of purchase what are the consequences of their failure to elect that option. I think their concern at the time is the immediate cost to them, but I don't think they are immediately aware of the staggering health costs that go with injury. It had been the philosophy initially when we started PIP insurance, because of the high cost of Blue Cross and Blue Shield and the number of people that didn't get it through their jobs and employment, that these people -- who you say are the 11% -- these people would be the beneficiaries of the social engineering, and will have available to them this low cost insurance.

Now, we're at a crossroads where we're saying, well, we're losing sight of this objective, to provide this low cost immediate health care to these people, and we're asking them to further compromise their rights. If this was a good social objective, I think we should try to preserve it for these people. And I think by doing it you will guarantee that poorer people will receive better health care insurance.

You know, studies have been done in the health care area -- in this country and in many other countries -- to show that the quality of health care you get is proportionate to the type of health care policy you have; the physicians you can afford, and medical benefits that you can get.

SENATOR LESNIAK: But you don't want to give that person the option to buy it. Is that basically what you're saying?

MR. O'DONNELL: I want to preserve his right to have that insurance at low cost, as he now does. I think it's a right that's beneficial to him. I think it's a right that is beneficial to the rest of society.

SENATOR LESNIAK: You don't want them to have that option?

MR. O'DONNELL: I think they would elect, when they make that choice, the option they take is the option not to pay for that insurance, but in fact that will be paid for by someone. I want to see them have that benefit.

I think there is, abrogating the right to sue, even in the monetary verbal, something that is inherently wrong with our system. We're struggling with an insurability problem now. We're no longer balancing the right of the consumer against the company. We're asking the public to give up some very very valuable rights in the right to sue, and having low cost health insurance delivered to them.

I think the tact that insurance bills to date have taken has been to restrict and punish the victim for the wrongdoing of the insurance company. Frankly, I don't see any reason why the insurance industry should not continue to overcharge New Jersey motorists as long as its avarice is rewarded. This State should aggressively pursue violations of the excess profits law.

The insurance industry has created havoc in New Jersey for the last 20 years. It has disproportionately monopolized the Legislature's time, and has consumed hundreds of thousands of hours of your time forging a system, not based upon judicial wisdom, or principle, or public need, but on insurance industry policy. Trial lawyers have a responsibility to oppose legislation that would destroy public rights without justification.

Your predecessors in office once believe in a system that compromised the public's right to sue in order to provide low cost medical benefits insurance. That system has not worked. It has not been unsuccessful because of anything that any legislator has done, that any lawyer has done, that any health care provider has done. It has been unsuccessful because it was a system designed to address the special desires of an insurance, the insurance industry, an industry that has grown on disproportionate profits, providing few reasonable consumer services.

The current bills now abandon the objectives of no-fault. It requests further compromises from the public.

We applaud your desire to depopulate the JUA, but at the same time we admonish the unjustified rate increases that would be occasioned by these bills.

We congratulate you on your attempts to curb excess profits, but we feel your measures fall short. We feel the public deserves better regulation of all carriers that write within this State. We see no justification for allowing the

ISO to file on behalf of any group of companies who are writing in New Jersey... We want to see a higher rate of return under the excess profits laws.

In summary, we feel further insurance legislation should be directed toward limiting insurance practice and profit as opposed to public rights. Limiting the public's access to the courts has not achieved fair, reasonable, and affordable insurance rates. It never will. Affordable insurance is a product of a well regulated and honest industry.

Therefore, we ask that in the future, the efforts of the State and the Senate be turned to regulating the offender, the insurance company, and not punishing the victim. We look to this group to see that the surcharges and rate increases that have been directed to the public in the past, be covered and paid by the industry, who has made an unjust profit on our consumer, and in accordance with what appears to be happening, as taking unjustified amounts of money from the JUA.

SENATOR LESNIAK: Thank you for your testimony. There are no questions from the Committee. Wes Caldwell, Alliance of American Insurers?

W E S L E Y S. C A L D W E L L, I I I, E S Q.: Good afternoon, Mr. Chairman, members of the Committee. You see what an optimist I am. My statement begins with, "good morning."

SENATOR LESNIAK: You also spelled my name wrong.

MR. CALDWELL: I know. (laughter) That's the next thing I wanted to mention. It's spelled the same way throughout the statement. We have a new night typist at the firm.

A couple of points. I don't want to repeat things that you're already heard today, or at least to only a minimal degree.

I agree with what George Sullivan of the Travelers said about the excess profits law. If you are going to reduce

the threshold for payment of excess profits, I think it's very imperative that you spread out and cover a full underwriting cycle, because there's nothing in the law that allows companies to recoup when they have underwriting losses in the bad years. So looking at a full cycle I think is the right way to go.

I understand that there's some concern about how to do that, and I would be happy to do some drafting for you. But I think what you would do is phase it in. You would have, say, three years this year, then next year it would expand to four years, and then five years, and then on to six years. But you wouldn't be delaying implementation of your new percentage level.

Another point that George made was keeping the law as a group basis for figuring out the excess profits.

Senator Lesniak, I think in view of what you're trying to do in your bill -- that is, depopulate the JUA -- I think that what has to happen is there has to be a multi-tiered system in New Jersey. Right now what you have in essence is a preferred set of risks in the voluntary market. The 50% that's in the voluntary market now, I believe constitutes risks that have basically been there for many years with those companies, and they've not been able to non renew them, but companies haven't been taking on new business. For you to get risks out of the JUA, and ultimately get to a point where the residual market is at some reasonable level -- whatever that is, 58%, I don't know -- you're going to have to have companies writing, what I would call standard business, and companies writing substandard business.

If you look at other states where there are small residual markets, you will find that often companies within a holding company group will have at least three companies: One is for their preferred book of business, one if for the standard business, and one is for the substandard. For that to happen -- and companies always tend to do that with separately

identified companies, rather than doing all the mix of business in one company. For companies in New Jersey to either form new substandard companies and standard companies, or bring in subs that are not currently licensed in New Jersey, I think the excess profits law is going to have to let them offset the losses they might expect on the substandard or the standard as they wade into that market, with profits they be making on the preferred business.

Moving to your bill, Mr. Chairman. We too are very concerned about the shift of coverage to PIP, and there's a couple of points that I'd like to make that I don't think have been made yet.

I don't see anything in the legislation that would require either employers or health companies to provide this coverage. I think that if it became law, the health companies could, if they wanted -- and some do I think currently -- exclude auto accidents from their policies.

More importantly, even if you tried to mandate that, if you tried to say health policies in New Jersey have to respond to this coverage, what you run up against -- and I know I've mentioned this to you before -- you've got the Federal ERISA law, which preempts self-insured health benefit programs. Because of the rising costs and the crises that the health insurance industry has been experiencing over the last three years, there has been an increasing trend towards self-insurance. Often the employer finds that by self-insuring the risk himself, and hiring an insurer to provide administrative services only, he can reduce the cost of the health insurance program. That trend I think would be further encouraged and maybe even become a stampede if many employers feel they don't want to provide the coverage, and self-insurance becomes a very attractive option.

I guess I also question what we really do if we reduce the PIP portion of the premium from a number of people's policies so that we save whatever the number is -- maybe it's 100; maybe it's 150; depends on what territory you're in -- if we save an individual \$100 or \$150, and yet we now say to him, "You're covered under your health policy, so that you're subject to that policy's \$200 deductible, you're subject to that policy's 75% co-payment," I'm not sure how much good we've done. I understand that Medicare has just recently increased the deductible on hospital coverage to \$580, so that any of the seniors affected by this, where Medicare is their primary carrier and if they don't have supplementary coverage, it's going to cost them \$600 if they walk into a hospital.

I guess what employers may do also if they choose to pick up the coverage, the cost of that is ultimately going to be borne by the worker in some fashion or another; either in the employer's budget for salary increases, or the employer's budget for other kinds of benefits, I don't think the employers are going to willingly provide a new benefit that you've asked them to provide.

The last thing that I question, and I know that the Commissioner tried to deal with it this morning, and I'm not sure I understood it, but-- One of the problems that we're currently facing is a cash flow problem in the JUA. I think if we lop off a significant amount of the premium in those policies, that's going to exacerbate the cash flow problem, I would think.

The other thing I want to talk about in your bill, Mr. Chairman, is the depopulation provision. I think you've got a strong stick in the bill. The stick is that if companies are not willingly taking business out of the JUA, the business will be taken out and assigned among them. New Jersey would become uniquely, I guess, the only state in the nation with a JUA and an assigned risk plan, but nonetheless it could work. But

you've also tried to build incentives into the bill. I think you've tried to do things in the legislation that would make the voluntary market more attractive. One of those things is giving the Commissioner the authority to implement a flex rating program, and the other is giving him authority to increase JUA rate levels over the coming years.

I think in view of the strength of the stick that you've got in the bill, I think the carrots ought to be a little stronger too. There's a lot of "trust me" in this piece of legislation. You're trying to get an industry to depopulate a JUA that's currently 50% of the market. I think there needs to be more than just authority in the Commissioner to do certain things. I think the signal that the industry would need to see is that some things must be done. For example, I would think that you could mandate that a flex rating program be put in place. Give him some flexibility with respect to what the range ought to be, but perhaps mandate that the minimum flexibility range ought to be the annual adjustment in the index we currently use for the tort threshold. That same thing could be used as a mandatory minimum for step wise increases in the JUA rate levels. I think that would give the industry some signal that at least legislatively certain things are going to happen to the voluntary market, rather than they may happen if a Commissioner has the courage to do it in any particular future political environment.

So those are my comments. I'd be happy to answer any questions.

SENATOR LESNIAK: Questions? (no response) Thank you, Wes. Karla Temple, State Farm Insurance Company?

S T A N L E Y V A N N E S S, E S Q.: Mr. Chairman, members of the Committee, obviously I'm not Karla Temple. I have the pleasant duty of introducing Ms. Temple, who is counsel to State Farm. My name is Stanley Van Ness. I work with the Jamieson law firm. That's the same Jamieson that was

so accurate in its predictions a few years ago, I suppose. With that, I turn the presentation over to Ms. Temple.

K A R L A T E M P L E, E S Q.: Thank you. As one of the largest writers of automobile insurance in New Jersey, we do have a very keen interest, along with each of you, in establishing a workable and an affordable voluntary market in this State. We feel that the comprehensive insurance package, which Senator Lesniak has introduced, has obviously had a lot of thought and work put into it, and is well drafted. Although it won't solve all of the problems of auto insurance, for instance, the immediate funding of the JUA, we do think that it takes several important steps in the right direction.

SENATOR LESNIAK: Could you repeat that? You're the first one all day-- (laughter)

MS. TEMPLE: Well, you're probably aren't going to like my next sentence. (laughter)

SENATOR LESNIAK: However, I was waiting. That what it is, "But."

MS. TEMPLE: Although these aren't necessarily the steps that State Farm would be recommending if we were up here giving you our plan, I would like to limit my comments today to constructive ways to improve maybe some of the things that are already in the bill you have proposed.

I think Wes Caldwell stole a little bit of my testimony here, because some of our comments will be along the same lines as his.

Our primary concern with the bill is along the lines of the depopulation proposal. Depopulation of 10% of the total market in one years' time we could all agree is a very ambitious goal. We think that it is a reachable goal, but only if there are appropriate rate differentials between the ISO rate, or the voluntary market rate, and the JUA rate. Specifically, we think it's impossible for the industry to ever meet this depopulation goal in the first year without any rate

deferential built into the law at all. We would like to suggest that you put in an immediate rate differential in the neighborhood of 10%, and give us the opportunity to get the depopulation plan ~~at least~~ off of its feet, and see if we can meet that 10% goal by January, 1, 1990.

In addition, as Mr. Caldwell said, we would like to see the Commissioner required to adjust the rates each year as the depopulation goal is met. We think that a meaningful rate differential between the voluntary market rate and the JUA rate is critical to the success of any type of depopulation plan. In theory, if you read the bill, the Commissioner could never put in any type of rate differential at all. Yet, the industry is still required to meet the depopulation goal. That's impossible to do if the price of the two insurances is the same, between the JUA and the voluntary market.

Our second concern with the bill deals with the optional verbal threshold. Again, we feel that a mandatory verbal threshold would do more towards your costs in litigation containment, and reduction of overall costs, than any optional plan can. But whether the verbal threshold is provided as an option or as a mandatory threshold, we feel that the language of that threshold should be as strong and as tight as possible. In order to accomplish this, we would suggest that the word, "permanent" should be inserted in front of the phrase, "serious impairment of body function." Michigan has maintained a no-fault threshold with identical language proposed in Senate Bill 2637. Although that language has worked well for approximately a decade, it recently has been eroded a little bit by a court decision. And we think the Michigan experience in court decision highlights the need for a very concise and strict standard. We would recommend that the Legislature adopt as strict of a verbal threshold as possible in order to achieve the cost in litigation containment goals.

In addition, since the bill provides a choice of thresholds, we would like to see the Legislature do away with AIRE -- or the insurance risk exchange mechanism -- which is currently in the law. Jeffrey O'Connell and Robert H. Joost have proposed a way to do this, which is under a different system than your optional verbal threshold, but basically I think you could work it out by instead of requiring the companies to be exchanging money depending on the percentage that have chosen each type of threshold, you allow a person to have his either underinsured or uninsured motorist coverage cover that differential between thresholds. Obviously you would have to work out some details on that, but the insurance risk exchange program that currently exists really has not worked out, and we don't feel it's a practical solution to the differences between the thresholds.

With respect to the excess profits law, Commissioner Merin said something this morning that I would have to take strong issue with, that is, he said, "Subsidies are a fact of life in insurance." Although they may be a fact of life in New Jersey, I would like to suggest that they certainly aren't across the United States. Subsidies don't exist in most file and use of rate states.

SENATOR LESNIAK: I think what he meant was risk spreading.

MS. TEMPLE: Pardon me?

SENATOR LESNIAK: He probably meant risk spreading, which is another way of saying subsidy.

MS. TEMPLE: That may or may not be, I guess.

SENATOR LESNIAK: Correct.

MS. TEMPLE: But he was pretty strong on that point. I guess from a person who comes from a file and use rate state -- We don't have subsidies in Illinois anywhere. If there are any, they aren't of the magnitude that they are here. And we would like to suggest that it's redundant to have

a prior approval law, such as you have in New Jersey now, including prior approval of expenses on the front end, as suggested in Senate Bill 2637, and then have an excess profits law which requires a refund of any profit after the fact. We feel that the excess profits law in and of itself is an acknowledgment that the prior approval system simply doesn't work. The Department's year plus review of each rate filing is also an acknowledgement that the prior approval system doesn't work. If implemented, we feel like a file and use system would facilitate any depopulation program by allowing a multi tiered rate system, such as Mr. Caldwell also suggested. The flex band, which you provided in Senate Bill 2637, I think could simulate some of the same benefits of a file and use system, if the flex band is wide enough, and again, if it's established by--

SENATOR DiFRANCESCO: If it's what?

MS. TEMPLE: Wide enough.

SENATOR DiFRANCESCO: Wide enough.

SENATOR LESNIAK: Could you repeat that? Senator Cardinale didn't hear it.

SENATOR CARDINALE: I heard it.

SENATOR LESNIAK: Oh. Okay.

MS. TEMPLE: And we'd also like to see the flex band, or range at least, established by statute so it isn't left totally to the discretion of the Commissioner. Commissioner Merin may understand the benefits of it, but commissioners do come and go.

SENATOR LESNIAK: They sure do.

MS. TEMPLE: That's all I have.

SENATOR LESNIAK: Any questions? (no response)
Okay. Thank you very much for your testimony. It was very good.

MS. TEMPLE: Thank you.

SENATOR LESNIAK: Mike Maggioni, Maggiano -- it's handwritten in here, Michael -- Bergen County Bar Association?

M I C H A E L J. M A G G I A N O, E S Q.: Thank you, Mr. Lesniak. Senator I have a paper that I have prepared, and with your permission I'd like to distribute it. (hands out copies of his statement)

SENATOR LESNIAK: This looks like more than five minutes.

MR. MAGGIANO: Mr. Chairman, and members of the Committee, I have no doubt that everything that could and should be said about the insurance crisis has been said today, and I promise you I will do my best to limit what I have to say.

I was unable to be here this morning, and I come here armed with a lack of knowledge as to what went before me and ignorant of what follows. But with your permission, if I could just share a few thoughts with you regarding what I see in my practice, and what my colleagues in Bergen County see in theirs. Hopefully, maybe I will have contributed somewhat to the work this honorable Committee is doing as we try to deal with the insurance crisis.

Mr. Lesniak, if I may address an important issue that I see, and I will leave other aspects to those who follow me.

SENATOR LESNIAK: Let me just respond to something in your statement just to set the record straight. I too was not at all happy with Allstate's advertising campaign. And I want to make sure that is not included in any rate base that the consumer has to pay for. It should come out of shareholders dividends. But, let me assure you that this bill, and all the bills that we've been considering for the last four months -- and we've been meeting with Commissioner Merin regularly on -- have had nothing to do with that advertising campaign. We're trying to do our job and respond to what we feel our constituents' concerns are, and what the right public policy is. Certainly we're not going to be shaken by any letter writing campaign at all. So, I just want to assure you of that. Your statement seems to indicate that we may choose to do otherwise.

MR. MAGGIANO: That was not the point intended. I have spoken with legislators, very frankly, who have told me how they have been bombarded, and they're concerned about whether or not they must follow what their constituents are saying. My point simply, in my letter to you, is that I think your constituents to a great extent have been misled. I have no doubt in my mind that what this honorable Committee does will be indeed what it feels will be best for its constituents, and not what other greater so-called powers in this power struggle -- such as the ISO and so forth -- feel. That is not what I meant, and please don't understand it to be such.

But most respectfully, Senator Lesniak, I think with all the work that our committees have been doing on behalf of the people of this State, we should be following the path less traveled; and that is exploring, what I most respectfully believe to be, an insurance fraud. I know you've heard much about that today. The point being this, what you do here and now is a decision that we and the members of our communities will be left to deal with.

I look into the year 1990 and I see myself, and you, and many attorneys throughout the State, sitting in our respective offices, and those who we represent walking into our offices with what they believe to be claims. I can see myself looking at a gentleman who was hit in the rear by a drunk driver and fractured an arm. And I have to explain to him that once he gets out of the cast after six to eight weeks, and God willing it heals well, he'll get his bills paid, he'll get his out-of-pocket expenses taken care of and his car fixed, but he'll have to live with the pain and suffering that he's left with if he does not have this severe functional impairment. And he may say to me, "But Mike, what about the year or two of pain and suffering I experienced? Don't I have a civil remedy for the drunk that hit me in the rear while I was minding my own business?" Or the mother who brings her daughter to either

your office or my office, or many other attorney's offices throughout the country, and says, "Mike, my little gal here got scalped." And I look at her and say, "she looks pretty good to me now." "Yeah, but a year ago she was in a severe auto accident through no fault of her own, and half her scalp was removed. Thank God for a good plastic surgeon, after three surgical interventions, Sally looks pretty as ever." And I tell her that there is no permanent or significant residual scarring. That she looks fine to me, and just chalk it off to experience.

We are going to be left with the question of what type of an America do we want this to be with regard to exercise of one's right to a jury trial? Now I know, Senator, you've said, "Well, we built in an option. It's not an absolute verbal like some have been asking for. They have a choice. And don't you think, Mike, it's their choice to make?" Well, is their a factual basis that we have to tamper with -- on that fine point, Senator -- we have to tamper with the system we now have; a system of jury trials that we have been following for over 200 years? Must we tamper with it further? Is there a factual basis? Is there any information that has truly come to us, clearly and succinctly, that says, "Ladies and gentlemen, a verbal threshold, or an optional verbal, will reduce significantly insurance rates"? I think the answer, most respectfully, is no; not for what people give up.

SENATOR LESNIAK: I guess that's up to every individual to determine. The Insurance Commissioner did give us a list by territory in terms of what the verbal would save, and it ranges anywhere from \$62 to \$109. I guess each person will have a different opinion as to whether that's significant or not.

MR. IAGGIANO: The point that I wish to make on that is, don't you think -- and this is not rhetorical -- don't you think, Senator, that there is another way to reduce insurance

rates; and that is by doing what we can locally -- and it's not a local issue -- but doing what we can locally to have full insurance reporting, and do what we can with our peers, our legislators from the national level, to do away with McCarran/Ferguson? At the top of my paper you see a quote from The Journal of Commerce, certainly a conservative and well respected paper, which cries out for doing away with this. What I'm saying is this--

SENATOR LESNIAK: You say that wasn't a rhetorical question, so I'll try to answer it.

MR. MAGGIANO: I'm sorry, please go ahead.

SENATOR LESNIAK: To a certain extent we do. We have our anti McCarran/Ferguson provision in my bill because we break up ISO. So, at least that's one step in that direction. We also will be tightening up -- and significantly tightening up -- the excess profits law that currently exists. So we are making our attempts. We may need some help from the Federal government, but we're certainly trying to do that as well, as you suggest.

MR. MAGGIANO: I congratulate you on that. I again thank you on behalf of the people I represent. So then is it really time that we should be talking about a verbal threshold at all? Let's see how well those methods and those procedures work, before we talk about again modifying our civil justice system that, very frankly, has worked rather well for the past 200 years.

I'm prepared to argue with anyone who says that there is a litigation glut. The statistics are very clear that lawsuits in the auto sector are going down in comparison to the population. And we have in the legal field, as you well know, been working well with new systems of dealing with this and not denying anybody from their access to courts through our auto arbitration program; which, reports come out now, that it has really been a smashing success throughout the State.

SENATOR LESNIAK: Yes, it has. I think Senator Cardinale may disagree with you, but I think we could probably debate that forever. You don't want to debate that now do you, Senator?

SENATOR CARDINALE: Well no, no, I do. Very frankly, we've got a graph. Are you disputing the factual basis of that graph that's been handed to us today by the Insurance Commissioner?

SENATOR LESNIAK: Well, I guess we should set the record straight. The graph is a comparison between Michigan and New Jersey.

SENATOR CARDINALE: Yes, but if you just took the New Jersey section of it, it shows that-- You say that they're decreasing, that auto litigation is decreasing. Now, you may be referring to somewhere other than New Jersey.

SENATOR LESNIAK: No, as a percentage of population, I believe the statement was, Senator.

SENATOR CARDINALE: Has our population doubled in New Jersey since 1973?

MR. MAGGIANO: No.

SENATOR CARDINALE: The lawsuits, according to this chart, have.

MR. MAGGIANO: I really have to-- Well, there's--

SENATOR CARDINALE: I mean, this is a factual contention that you're making? This is not a question of opinion. Are you challenging the Commissioner's statistics that he's presenting to us? If you are, I would like to see yours.

MR. MAGGIANO: They're are in my paper.

SENATOR CARDINALE: No. You're making a declaration in your paper. You're not talking about where you're talking about. You don't tell us where they're decreasing. You talk about the Federal government and some Federal agency, giving some general statistics relative to numbers of cars or claim

frequency, but I don't see where you're saying this refers to New Jersey. I don't see you saying this refers to "X" year in New Jersey.

MR. MAGGIANO: May I address that point?

SENATOR CARDINALE: Surely.

MR. MAGGIANO: I understand your point. This is not a complete answer, but this is the best answer I can say. I can't dispute what's in that graph because I don't know the components that went into making up that graph. At this point I can say to you this. I say this with all due respect to Commissioner Merin, and I'm not skirting past the issue. Graphs can be designed to say what we want them to say. But what the national figures show, and they have to be adjusted for what New Jersey is experiencing because of the density of the roadways in our State-- What the national figures seem to indicate to us -- and I don't think New Jersey is much different. As a matter of fact, we had one study that showed jury verdicts in New Jersey are 25% lower as of last year than they were a few years earlier, 25% lower.

But with regard to this argument of a litigation glut: People by and large are bringing their matters to the courthouse, much in the same way as they have done for many many years. And is there anything really wrong with that, from a philosophy standpoint; that people seek regress at the hands of members of their community? I think we must agree that that is a predicate of our Constitution. And I'm not going to wave the flag here today. That's not my purpose. But that really is a foundation of what our jury system is all about. Suddenly there are those who wish to say, all of a sudden in the past two years -- coincidentally with the rise in insurance rates and the problems that the sales practices of the insurance industry have had, and all of that which you've heard so much about -- but coincidentally with all of that all of a sudden we have a litigation crisis. People are going wild, running mad

to the courthouse. I'm at the courthouse regularly. Many of us. We don't see that much of a change, and we don't see jury verdicts going hog wild.

Those people who we go home to at night, who we talk over the back fence with, who we see on a regular basis at work, these are the people who compose our juries. We should not be afraid of them. For 200 years, Senator, we have with our grievances in auto cases, and all types of court cases, have brought our complaints to the courthouse for our neighbors to decide our fate. And for good, bad, or indifference, most people walk away feeling that they got a fair shake.

There are those now who would suggest that we do away with that, and follow what Lloyds of London has been suggesting for years, and that is that we follow a compensation type system. Now I know that is not what Senator Lesniak's bill is proposing, but there is this sense in the wind that that is where we're going, Senator. I most respectfully state now, that two years from now the insurance industry will be arguing, if you pass this bill, that the optional verbal didn't work because the Senators compromised with the lawyers -- and that's the standard banner that has been -- and now we have to go for a verbal. Well the fact of the matter is that we went up the wrong path. There was nothing wrong with the justice system. There is nothing wrong with people exercising their rights in court.

The problem is that we are the victims of a collusive system that we don't have the power to control, and they could come to you with any set of books, and you and I really don't know whether that information is right, wrong, or falls somewhere in between. And I say that with all due respect to you.

SENATOR CARD'NALE: Let me just tell you why I can't believe that scenario. It is absolutely apparent I think to anybody who's got any kind of business sense-- And I'm not an

attorney, but I have been involved in a number of businesses, and I think I know how business people think, and insurance companies are businesses. If it was as you say, insurance companies would be tripping over one another in attempts to attract more automobile insurance business. But that's not what is happening. That's not happening at all. The reason that the JUA has grown so big is that it's almost impossible to buy insurance in the voluntary market. That's been true since before we formed the JUA. It's not brand new. The insurance companies have been trying to reduce the amount of auto insurance business. Now if they were engaged in this great collusion -- and I have no way of knowing that any more than you do -- it would be kind of contrary to the whole sense of why they would have colluded, if having established this great fund of income for themselves they attempted then to divorce themselves from the opportunity to capitalize on that income.

But I'll tell you what I do see. I see that in the State of New Jersey -- and I mean it in no derogatory sense with respect to your profession -- but I see that more and more people are becoming attorneys, in relation to the population in the State of New Jersey. So I think that if there is some area that the human appetite is moving toward, it is moving toward the practice of those who engage in litigation, not the practice of those who engage in issuing automobile insurance policies. And if the public is being disadvantaged by someone--

You know, I have to tell you something. Maybe you guys are just not doing a good job of public relations. Because I get an awful lot of calls, and sometimes, no matter how my office tries to screen the calls I get, people end up calling me at home, and I have to answer directly to constituents -- and sometimes I just do it voluntarily -- on exactly why the automobile insurance-- That's what they say to me. "Why are my premiums going up? Why will the Legislature not do --" whatever it is in their minds they think it is the

Legislature ought to do. And do you know how I get out of those conversations? It's really very simple. I say to them, "Gee, I'm willing to vote for that, but then I'm not an attorney." And they say, "Fine. Now I understand." They assume that all legislators are attorneys. That's probably a problem of public relations. But it doesn't overcome the real fact that we keep saying that these insurance companies, they must report more.

You know, I actually sponsored a bill which became law last year. It requires the insurance companies to do everything in reporting that the Insurance Commissioner asked them to do. They have to give him every last bit of data down to their computer tapes if he asks for it, and we even put in a division within that company to analyze that data. Now how much more reporting are we going to ask from any industry, than that it open up every last little bit of records that it has, and then we even gave the Commissioner the capability of utilizing and analyzing that data? I don't think that's the problem at all.

I think the problem is that we have a lot of confusion about the system, yes; that it is a complex system, yes; that there are many factors which contribute to it, yes; but I think we have too much litigation. And I don't think that that's the right way for people to solve their problems.

The very fact that someone can come to a hearing like this, and make declaratory statements that litigation is going down -- and I'm not in the courtroom, I'm not counting up the cases -- at the same time that the Commissioner is telling us that litigation is going up, it's just indicative to me that we have maybe a great deal of self-serving -- and I don't know whose side it's on. I'm a member of this Committee. I have been doing this for nine years. I don't know who is self-serving in the way of the statements that they're making. But I wish that if you were going to make those statements,

that you would support them with very specific data, which he has attempted to do for us. He's given it to us year by year. He's given it to us in thousands of lawsuits that have been filed in the State of New Jersey. And I think that-that's the kind of way I'd like to see you present your testimony if you're going to do it.

One more thing I want to say to you. I'd like you to point out to us, in what portion of Senator Lesniak's bill -- which is what I think you have been referring to -- where the right of trial by jury is being tampered with? I don't think that he's doing that at all. I think he may be seeking to in some way, in some very small way, limit the number of lawsuits. But in any lawsuit that is going to be had, I believe that he preserves the right to trial by jury. Now, if there's something that I've missed, I'd like you to point that out to me; or else I wish you would get off the kick of talking about trial by jury being attacked in this bill. I don't think that's what this bill does at all.

MR. MAGGIANO: May I respond?

SENATOR CARDINALE: Yes.

MR. MAGGIANO: Senator, thank you. Starting with the limitation of the right to trial by jury, there's verbal threshold provided in the bill. Optional that's understood, but a verbal threshold nevertheless. That does limit jury trials. I most respectfully say to you -- and I understand the purpose that you're trying to reach--

SENATOR CARDINALE: Does that establish trials other than by jury?

MR. MAGGIANO: It limits trial by jury.

SENATOR CARDINALE: It limits the number of suits that can be filed. But does it, in the suits that are tried, say that they will be tried other than by a jury?

MR. MAGGIANO: For the person who can't go to the courthouse because they fall within the statute, what difference does it make? They can't sue.

SENATOR CARDINALE: No. Would you answer my question?

MR. MAGGIANO: It limits the right to trial by jury.

SENATOR CARDINALE: Okay. Not let's--

MR. MAGGIANO: And I'll give you example after example of how it does it. And I'd be happy to do it. We could sit here all night there's so many examples.

SENATOR LESNIAK: Let's not get into arguments back and forth.

MR. MAGGIANO: If you'd like to, I will. Now, or over dinner, or what have you.

SENATOR LESNIAK: Do it over dinner. (laughter)

MR. MAGGIANO: Okay. Do you want me to respond to all the points that he made? I'd be happy to do it.

SENATOR LESNIAK: No. I think you had ample opportunity to testify. Senator Cardinale had the opportunity to be heard.

MR. MAGGIANO: I'd love to talk about the economics, but it would take a half hour. I'd like to talk about why there's more attorneys, and why we're doing more pro bono work, but that's a collateral issue.

Ladies and gentlemen, let me just say this. The real issue is, what type of an America are we going to have, truly. We are facing a litigation attack, that there's something wrong with people going to the courthouse and exercising their rights, whether it be a small case, a medium sized case, and a big case. And for some reason, the small cases have been attacked as not being cases at all. But to that person who has suffered that injury, to that person who has watched their child go through the pain and suffering, that's a very real claim. And whether 100 people go the courthouse and that family does not, what does it matter to that constituent of yours? It matters a whole heck of a lot. And what I say to you is that there is no factual basis to tell those people, and those who follow, that you don't have a right to claim in your

case. Take the path less traveled and investigate further the insurance industry.

SENATOR CARDINALE: I want just an opportunity to clarify my own position. And I think you can help me do that.

SENATOR LESNIAK: Okay. You can clarify your position. Thank you for your testimony. We'll discontinue the dialogue, and you can make your statement.

SENATOR CARDINALE: Okay. In the State of Michigan, I don't believe the people think that they are living in any different kind of America than the people in New Jersey. What we are proposing is that we have a system somewhat analogous to what is in the State of Michigan. That doesn't mean that we are asking people to live under a Soviet system, a French system, a system from any other kind of country. Michigan, the last time I looked, was still part of America, still under the Constitution of the United States, and the trials that take place there I think are mostly still jury trials.

SENATOR LESNIAK: I'll have the last word on that. We're asking people to live under the Lesniak system. (laughter) Thank you very much for your testimony.

MR. MAGGIANO: Thank you, gentlemen.

SENATOR LESNIAK: Jim Pascuiti, from the Children's Special Hospital?

Morton Downey just called. He wants Senator Cardinale and I to appear on his show tonight. (laughter) Actually, Mike and Senator Cardinale.

J A M E S P A S C U I T I: Good afternoon, Senators. My name is James Pascuiti. I'm an Assistant Administrator of Children's Specialized Hospital, the Rehabilitation Facility. I'm a member of the Advisory Board for the New Jersey Head Injury Foundation. I'm a Trustee of the National Head Injury Foundation. I have served on the statewide health coordinating council, and I am presently Vice President of HSA2 in New Jersey.

My primary focus is to question the provision to change the mechanism of providing medical expenses and other personal injury protection benefits for injuries resulting from automobile accidents by mandating insurance carry medical expense benefit coverage over \$75,000. To give you just a brief overview of--

SENATOR LESNIAK: I'm sorry. Under \$75,000.

MR. PASCUITI: Under \$75,000. I'd just like to give you a brief overview of rehabilitation services. Those are services when referring to our physical therapy, occupational therapy, speech and language pathology, nursing care, psychological, social, and cognitive remediation services. All of these services are provided after an acute care hospitalization care, in a rehabilitation hospital, and are presently covered by the no-fault system of insurance.

With the current New Jersey reimbursement system, to reduce the medical coverage of no-fault insurance it would shift the burden to another payer, because by the time a person comes to a rehabilitation hospital the \$75,000 will be significantly used up. So, therefore it will be shifted to bills like Blue Cross. Blue Cross does not pay for--

SENATOR LESNIAK: I'm sorry. Let me explain, because I think you may be mistaken here. The health care insurance will pay up to \$75,000. After \$75,000 any costs will be assumed by a catastrophic injury fund that's contained in the bill. So we're really talking about costs \$75,000 and below that may be impacted.

MR. PASCUITI: Yes.

SENATOR LESNIAK: Okay.

MR. PASCUITI: The State's present Medicaid system will be responsible, because rehabilitation hospitals, as you well know, do not fall under the share system -- are share hospitals and do not fall under the DRG system, which will be a significant problem because the current reimbursement rate

would really reduce the level of rehabilitation care, or even force hospitals to close their doors because of inadequate reimbursement.

I'd just like to give you an overview of some of the actual costs that are incurred so you would know what we're speaking about. Patient AG -- these are three recently discharged patients from the institution -- admitted in September of '87, stayed until April of '88, 220 days, the cost of service was \$161,000.

SENATOR LESNIAK: I understand, but anything above \$75,000 would be paid for by the catastrophic injury fund established under the bill.

MR. PASCUITI: Would not one have to pay for that additional coverage?

SENATOR LESNIAK: No. I mean, that's covered. That would be paid for when you get your automobile registration. You have that protection.

MR. PASCUITI: I just wanted that clarification. I just want to reiterate a couple of facts. The incidence of head injury in the State of New Jersey is increasing significantly. Technology today has become more sophisticated. It's capable of saving and prolonging lives. The cost of treatment is increasing. And rehabilitation hospitals would be significantly affected if the reimbursement mechanism would prohibit them from receiving adequate coverage. I thank you for your concern.

SENATOR LESNIAK: Okay. Any questions? (no response) Thank you very much for your testimony.

Roger Grimes? (no response) Is Roger Grimes here? (no response) Okay. Gerry Baker of the New Jersey State Bar Association? (witness comes forward and hands out copies of his statement) Can you read this in five minutes?

G E R A L D B A K E R, E S Q.: I'm not going to read it. I'm just going to make some comments. At the outset I think everyone should take note of the high level of the discussion today, both the knowledge of you gentlemen who are sitting on this Committee, and I believe the presentation of the people who have appeared so far today. It has continued to show that we're becoming much more sophisticated in this discussion and debate. Your knowledge is significantly greater than years ago, as is ours. The debate, I think, is being more concentrated on issues as opposed to personalities, and attacks at each other, and industries, and whatever.

SENATOR DiFRANCESCO: Well, we haven't gotten to those people yet. (laughter)

MR. BAKER: Well, I know who is sitting behind me, and I know they'll continue the same high level of the debate as I hope I do. But I think we should all note that. This process has evolved into one that is of a much greater level of communication, and whether we resolve the problem or not, I think everyone who has participated today, and you gentlemen, and the ladies who have been assisting you, all deserve credit for that.

I have testified before, but this is the first time I have testified as a representative of the New Jersey State Bar Association, and I'm proud to do so.

The Bar Association believes that the fundamental reason for the rise in insurance costs in the State of New Jersey are the procedures in the insurance industry, and not the claims of innocent victims of automobile accidents. So our theme here, and the theme that we will follow during the course of the rest of this debate, is insurance reform not tort reform. I'm not going to repeat all of the items dealing with insurance reform that three prior attorneys representing different organizations have mentioned. But I think if each of those items -- some of which, Senator, are addressed by your

bill, and some of which are not -- are followed, you will find a significant reduction in the cost of insurance in the State of New Jersey.

For example, S-124, which will reduce excess profits from five percent down to two and a half percent for those companies with over one percent of the market, will reduce the cost of insurance in the State of New Jersey. We know from history over the last couple of years that the excess profits law has required insurance companies -- including Allstate, who calls it a dividend -- to return money to their policyholders. You must subtract those returns before you come up with your average cost of insurance. So if you take full consideration of what excess profits has done, you will see that it has reduced the cost of insurance in the State of New Jersey, and perhaps that's one of the reasons why there has not been an increase of rates during the four years since the tort reforms of 1984.

If in fact the JUA is depopulated -- and we support the provisions in your bill, Senator, with respect to depopulation -- I think you will find a reduction in the cost of automobile insurance in the State of New Jersey. I think that is affirmative. There seems to be some benefits to the insurance companies if they do depopulate. And the representative from State Farm indicated something along the line that she would like to see some sort of rate advantages if they do depopulate. We wouldn't agree with that, because I think they're obliged to under the law to depopulate, that the JUA should never have taken up 50% of the market to begin with. They should forthwith depopulate without any additional advantages in the way of rate structures.

We agree with the parts of your bill that have talked about breaking up the ISO, with respect to setting of joint rates. We think that is going to show a significant decrease in the cost of insurance in the State of New Jersey.

Commissioner Merin clearly has supported that. The only thing we would disagree with is that it should not be limited to just those companies that rank more than one percent of the market. We think the JUA (sic) should be broken up entirely, not just to expenses, but also to every--

SENATOR LESNIAK: ISO.

MR. BAKER: ISO, did I say JUA? ISO should be broken up entirely. I note that there hasn't been one person here today -- there may be someone sitting behind me ready to shoot an arrow -- but there's not one person who has come here today arguing that breaking up the ISO is something that will damage the insurance market in the State of New Jersey.

Clearly these three things -- depopulation, breaking up of ISO-- The additional thing is putting a little more concentration on automobile repair costs. There is a bill pending -- one of the Senate bills -- to put in a schedule for repairs of automobiles.

SENATOR LESNIAK: Tightening the excess profits law was the third.

MR. BAKER: Excess profits law. Thank you. You know when we try to speed up--

SENATOR LESNIAK: I have to pull these good these things out of here. (laughter)

MR. BAKER: Yes. The excess profits law is the third. You'll notice that I jumped to four and left three open for someone to fill in. The fifth one being some sort of an affirmative proposal -- no one has proposed as of yet -- to decrease the amount of automobile theft in the State of New Jersey; something that will assist our police departments; something to stop the vehicles from moving out of the state after they have been stolen within 24 hours, through Newark Airport.

SENATOR LESNIAK: Are you proposing blockades at the border?

MR. BAKER: Well, I think we have to do something to support the effort of our police departments to stop auto theft, and stop vehicles from being moved out of the state virtually overnight, at great cost to the consumers of the State of New Jersey.

If all of these things are done in the way of insurance reform, I would suggest to you that you're going to knock \$200 a car off the cost of automobile insurance in the State of New Jersey, without touching people's right to sue. That's where I think the concentration has to continue in the future.

As far as people's right to sue, I'll spend just a moment or two of time that I've used up already. I do not believe that the answer to the problem today is further restrictions on the right of people to sue, or limitations on their rights to recover first party benefits. Elmer--

SENATOR LESNIAK: Matthews?

MR. BAKER: --Matthews made a very, I think, intelligent presentation of the balance between first party benefits and limitations of people's right to sue. He talked about it as a constant--

SENATOR LESNIAK: I can't believe that I've been able to propose something that both the insurance industry and the lawyers are against. Perfect. (laughter)

MR. BAKER: To the degree that what you have done is both taken away some of the first party benefits of the public, and in addition made it more difficult for people to sue, to the degree that you have done both of those things, you have suggested to some elements of the insurance industry, to some elements of the bar, that your proposals are incorrect. More important than that, besides destroying the balance, I think you come on very very difficult constitutional grounds. The reason why no-fault law was found to be constitutional in the first place -- Rybeck vs. Rybeck -- was because in limiting

people's rights to sue, which does take away a constitutional right, the court said you can do that because you're giving them a package of benefits, and they offset in their minds the benefits they were receiving against losing their right to sue in small cases. What your bill is doing is attacking both portions of that formula. It certainly will be subject to constitutional attack, but I think is going to be declared to be unconstitutional because it takes too much away. What it takes away is people's rights to sue in cases of serious impairment of body function.

SENATOR LESNIAK: For those people who choose.

MR. BAKER: For those people who choose it. And if they choose it they're not just giving away the fact that maybe in a couple of cases they're going to lose their right to sue. What I want to impress upon everyone is that the definition of serious and permanent body function doesn't just take away the right to sue for five percent of the people involved in accidents, ten percent of the people involved in accidents.

Senator Cardinale, if you look at the Commissioner's chart that you've been waving around, the reason why lawsuits have gone down in the State of Michigan over the last 12 years is because only nine percent of all the people in the State of Michigan who are involved in motor vehicle accidents where they sustained personal injuries, have exercised their right to sue, or have been permitted to sue. The verbal threshold under Michigan's definition -- which is the one that this law includes -- has knocked out 91% of all the litigation in the State of Michigan. You may like that, because I know that you're not in favor of people suing. I'm against it, because I think people who are involved in motor vehicle accidents, who are innocent, are entitled to their right to compensation.

One of the reasons why the chart shows that lawsuits have increased in the State of New Jersey -- and they haven't doubled in 12 years, they've gone from 16,000 to 28,000 the

Commissioner's chart says, okay? -- one of the reasons is because more and more people are exercising their right to file lawsuits and be compensated. Maybe another reason is because over the last few years, with all this discussion of the insurance crisis, insurance companies are not properly settling claims that they should be settling. So they're forcing people to sue. And maybe another reason why these statistics of lawsuits have gone up is because over the last several years we've developed a system that's very effective for resolving automobile negligence cases, and that's arbitration. Statistics show that 50% of all automobile negligence cases that are being filed in the State of New Jersey are being settled through the arbitration process. So if you take the 28,000 cases that were filed in 1985 and divide them in half, what you find out is that only 14,000 of those cases -- less than had ever been filed before -- are going through the court system passed arbitration. We have a very effective system in the State of New Jersey today.

I think more lawyers who settled cases before, are intentionally starting suit earlier in the game, knowing that those cases will be resolved within six to 12 months by arbitration, without taking the time of a court or a jury. We're putting those cases into suit faster, and resolving them quicker, by utilizing arbitration rather than letting the cases sit in our office for two years, trying to settle them for whatever we can, and disposing them that way. So the fact that lawsuits have gone up in the State of New Jersey proves nothing in and of itself.

With respect to Michigan, the nice little chart -- which I never saw before -- from the Commissioner only goes through 1985. As you heard today, in 1985 there was a new decision that came down from the Michigan Supreme Court, which says that-- Previously to 1985 in Michigan, if you had a dispute with respect to whether an injury was permanent or not,

the court said that's a threshold question for the judge to decide. The courts rendered some very vigorous decisions and people were not bringing the suits. In 1985, the court said that that's a question for the jury to determine. When you look at the '86 and the '87 statistics for the number of lawsuits -- which conveniently happened to not be included on this chart, which were prepared two years ago -- you'll find that in '86 and '87 the number of lawsuits in the State of Michigan increased significantly. Absolute numbers I can't deny. They say what they say. But the interpretation of them is very important.

The final thing I would like to say-- You're leaning forward, and I'm not sure if you're ready to jump on me or ask some questions, but I tried to get that in in my five minutes and not your five minutes.

SENATOR CARDINALE: Don't be afraid. Don't be afraid, counselor. I can't jump that far.

SENATOR LESNIAK: You can join with Mike and Gerry at dinner tonight. (laughter)

MR. BAKER: The final thing I would like to say on this line-- Senator Lesniak you continue to stress that, yes, it's optional. People can take it or not. The bottom line is that we have today an alternative tort threshold. It provides for \$1950 worth of medical expenses, not including hospitalization, x-rays, or other diagnostic tests. That means that the average doctor is charging about \$40 a visit. And I'm taking average statewide between orthopedists, chiropractors, and physical therapists. It takes 50 office visits -- 50 office visits -- before someone reaches the \$1950 threshold. If you've chosen the alternative tort threshold option today, and you have gone to the doctor 50 times, I'm willing to take the position that you have probably sustained an injury serious enough to warrant your right to sue. If you're saying to this person, "Well, we're going to take away that index threshold,

that \$1950 monetary threshold, and we're going to require you, that if you want to make the choice, the choice you take is verbal," which means you can only sue for serious impairment of body function, which may knock 90% of the cases out of the system, and all you're going to give them is another \$27 in savings--

SENATOR DiFRANCESCO: Gerry, it's 750 or verbal.

MR. BAKER: Seven fifty or verbal.

SENATOR LESNIAK: It's my bill.

MR. BAKER: But today it's \$200 or \$1950. If you want to go \$750 or \$1950, that's a different story. But going to \$750 or verbal, and saying that you're giving them a fair choice, I don't agree with. What I want to compare is the \$1950 alternative threshold which will save you about \$35, with the verbal threshold which will save you \$62.

SENATOR DiFRANCESCO: It was \$200 in '73.

SENATOR LESNIAK: Wait a minute. The figures are between 62 and 109.

MR. BAKER: And the figures are between 35 and 65, depending upon whose numbers you use.

SENATOR LESNIAK: No, no, no. Depending on what territory you're in.

MR. BAKER: Depending on the territory. So the savings, today you can choose an alternative tort threshold -- and with due respect, I understand your point, but I'm trying to look at the upper end. I have no problem with raising the \$200 threshold. My problem is in Senator Lesniak saying, "You have a free choice. Your free choice is you can pick a lower threshold or a verbal." What I'm saying is, I don't agree with that. The free choice should be between whatever the lower limit you want to establish -- today \$200 -- or I'm willing to accept the \$1950 with cost of living increases. If the alternative tort threshold will save you somewhere between \$35 and \$65, and a verbal threshold will save you another, what would you say, Senator, \$27 to \$35?

SENATOR LESNIAK: No. The upper savings on the verbal is \$109.

MR. BAKER: But what's the upper savings on today's alternative tort threshold? Sixty-five dollars? So you may save--

SENATOR LESNIAK: All right. So the difference between 65 and 109, whatever that is.

MR. BAKER: So you may save \$40 more. And on the lower end you may save \$27 more. What I'm saying is that I think it's illusory when you tell people, "We're giving you a choice of a verbal threshold," when all you're saving is somewhere between \$27 and \$40. And for that saving you give up maybe 90% of your chance to sue. I think that's not the option that you should give to your constituents.

I think that if you want to say we want tort reform, I say we had tort reform in 1984. Twenty percent of the people have chosen that alternative tort option. For those people, their rights to sue are limited in 90% of the cases. I think now we should go on to insurance reform. We attempted tort reform. Let's see what we can do with saving money based upon the practices of the insurance industry. I think what you're going to find is, you're going to pick up \$200 a policy simply by insurance reform, without having to take away people's rights to sue any more. I don't think that's a fair choice to give to them. And by saying, "Well, we're giving you the option," I think that's an unfair option to give to them.

SENATOR LESNIAK: Thank you.

MR. BAKER: I had one technical question that I raised at the end of my statement with the addition of one word into section 12, with respect to essential services benefits. I pointed it out to Paul. It's listed there. I think it creates a confusion where you talk about essential services limits of \$12, and then say the Commissioner of Insurance may set the limits. I think what you wanted to say is the Commissioner may

set such additional limits; because today you have a \$20 a day option if you choose additional PIP. So I think that one word is a technical change of something that is warranted.

SENATOR LESNIAK: Thank you, Gerry. Lester Kurtz from the New Jersey Business and Industry Association? DiFrancesco is ready for you, Lester.

L E S T E R K U R T Z: I've been waiting for him.

SENATOR DiFRANCESCO: Just pulled out the same speech, and just substituted different words, like PIP, in there. (laughter)

MR. KURTZ: I typed it over again. Good afternoon.

SENATOR LESNIAK: No prepared testimony today?

MR. KURTZ: Yes.

SENATOR LESNIAK: We need copies please. (copies are distributed to members of the Committee) Thank you.

MR. KURTZ: I'm here representing the largest statewide trade association in New Jersey, with over 11,000 employers as members. I am appearing before this Committee for the purpose of communicating the concerns of our members on one aspect of S-2637.

Employers in New Jersey object to the provision in this bill that would shift primary responsibility for personal injury protection -- PIP -- and the payment of medical expense benefits from automobile insurance carriers to health insurance carriers. Because employers pay the cost of most employee health insurance programs, they object to this shift in cost.

We know that the Legislature is under a great deal of pressure to come up with a solution to the escalating cost of automobile insurance. We also understand that complaints about the high cost of automobile insurance may be the number one complaint that you hear from your constituents, just as the escalation in health insurance costs is the leading concern that we hear voiced by our membership.

The proposal embodied in S-2637 that would scrap the present method for paying medical costs resulting from automobile accidents, comes at a time when a significant number of New Jersey employers -- especially smaller employers -- are anticipating a large increase in their Blue Cross/Blue Shield costs because of a proposal to experience rate the health insurance premiums of employer groups of two to 49 employees. In addition, employer health insurance premiums are escalating at a very rapid rate due to higher hospital operating costs.

On top of this, employers are anticipating that they may have to absorb another \$100 million each year in the next two years in hospital costs because they subsidize uncompensated care. The hospital cost surcharge -- or add-on -- to pay for uncompensated care may increase from the present 10.9% of premium to 20% in the near future, because of a projected decrease in the Federal government's Medicare contribution. If this proposal that is in S-2637, shifting the medical costs to health insurance carriers-- It could cost an added \$400 million in medical costs to the health insurance carriers, based on 1986 figures.

The health care provision in S-2637 will not reduce costs. They merely shift them to someone else, and that someone else is the employer community. This is certainly no reform.

When addressing the issues involved in the auto insurance reform, we urge that you not increase employer costs for group health insurance, and that you reject the shifting of PIP coverage to health insurance carriers. There a number of additional negative aspects of this proposal that the five minute time limitation does not permit me to address.

But from a positive aspect, our Association urges this Committee to consider a reform of the existing personal injury protection program, that would provide for:

1) A continuation of the unlimited medical coverage program, payable regardless of fault;

2) Establish a medical benefit fee schedule that includes a deductible and a co-payment provision, similar to workers' compensation that Senator Cardinale referred to this morning.

3) Extend a deductible and co-payment provision to all providers, including chiropractors, physical therapists, psychotherapists, and medical equipment suppliers.

Our Association submits that there could be a significant savings in the cost of automobile insurance premiums if the above reforms were adopted as part of an overall reform of the automobile insurance law.

One final comment that this Committee should consider is the report of the 1971 Automobile Study Commission and the 1977 Legislative Study Commission on no-fault insurance. The findings and conclusions of both these reports would seem to support the proposition that medical coverage is best left with the auto carrier.

Thank you for the opportunity to communicate the concerns of employers.

SENATOR LESNIAK: Thank you, Lester. Any questions from the Committee? (no response) Thank you, Lester.

Carlton Levine, New Jersey Citizen Action?

C A R L T O N L E V I N E: Mr. Chairman, other Committee members, my name is Carlton Levine. I'm on the staff of New Jersey Citizen Action. We are a coalition of over 100 labor unions, community organizations, churches, environmental organizations, tenant associations, and senior groups. We also have an individual membership of 65,000 New Jersey residents.

We do not represent lawyers, doctors, insurance agents, chiropractors, or auto body repair shops. We represent the average citizens of New Jersey who are fed up with paying some of the highest insurance rates in the country. Every week

our field and phone canvass staff speaks to over 6000 people. Not surprisingly, the number one issue of concern is the high rate of auto insurance in New Jersey. When we go out and speak with union affiliates, like the NTU, CWA, ILGWU, and IAM, they also tell us how they cannot afford the rates. So do groups like the Gray Panthers, Ironbound Community Center, and numerous churches, synagogues, and environmental groups that are also affiliated with us.

Unfortunately, none of the bills currently being considered adequately addresses the root cause of the problems. That root is the insurance industry that has continuously ripped off the New Jersey consumer, and also has ripped off the Joint Underwriters Association.

Clearly, any bill that will eliminate personal injury protection or modify it, and establish a verbal threshold, is a danger to the health and civil rights of New Jersey motorists. Eliminating PIP will drastically reduce the health care for accident victims. Additionally, the establishment of the verbal threshold will leave most victims without recourse for compensation for pain and suffering due to an accident.

There is certainly a crisis in the cost of auto insurance in New Jersey, but this is best dealt with by holding the crooks -- the insurance companies -- accountable.

New Jersey Citizen Action believes that the crisis has been caused by insurance companies overcharging the JUA for servicing fees, thus leading to the current average \$66 surcharge on all drivers. These overcharges have been documented by the State Public Advocate's office and by Assemblyman Adubato.

SENATOR DiFRANCESCO: Say that again?

MR. LEVINE: The overcharges of the JUA, I'm referring to there.

SENATOR DiFRANCESCO: Is that the father of JUA that you're referring to?

MR. LEVINE: He has documented overcharges of that.

SENATOR LESNIAK: Well, it's between tens of millions of dollars or hundreds of millions of dollars. Somewhere in there. Go ahead. I'm sorry.

MR. LEVINE: Our position is that it's at the higher end of that, because we do know that insurance companies have that tendency.

Secondly, this crisis has been caused by the insurance companies forcing drivers with impeccable records in the JUA, thus forcing a drain on a program that was not designed to handle these drivers.

Lastly, the current crisis in the cost of insurance has been created by the existence of a price fixing cartel known as the Insurance Services Office. Through exemptions in Federal antitrust law, and complicity by the State insurance commission, this group of over 240 insurance companies sets an advisory rate for all car insurance in New Jersey, thus eliminating competition. This results in poorly run insurance companies having no competitive pressures to become more efficient.

New Jersey Citizen Action opposes any bill that creates a verbal threshold or eliminates PIP. We are in favor of a program that requires:

- Restitution by insurance companies who have overcharged the JUA,
- Depopulation of the JUA so that only those high risk drivers whom the program was intended for remain in it,
- And elimination of the ISO, the price fixing cartel, thereby establishing a competitive pricing system for New Jersey insurance purchasers.

SENATOR LESNIAK: Just so we don't confuse your testimony with my bill, you understand my bill doesn't eliminate PIP, it makes it optional?

MR. LEVINE: Right. Yes, but--

SENATOR LESNIAK: Okay, wait a second. You understand that my bill doesn't establish a verbal threshold, it makes it optional?

MR. LEVINE: Right, but unfortunately our experience as canvassers and meeting people at the door--

SENATOR LESNIAK: People don't know what to--

MR. LEVINE: People don't understand things.

SENATOR LESNIAK: They don't know enough.

MR. LEVINE: When we meet people at the door who have gotten the Allstate letter, have gotten the letter from Governor Kean, and all it say is the verbal threshold, "This will reduce our insurance rates," they don't understand what they're talking about. And unfortunately, if you give people a choice like that, they're not going to understand either when they go to their insurance agents and buy their insurance.

SENATOR LESNIAK: And you also understand that my bill does break up ISO, vis-a-vis, filings in the State of New Jersey?

MR. LEVINE: Right. There are some good points to your bill, unfortunately your bill is not the only one that's being considered.

SENATOR LESNIAK: I didn't see any mentioned here. I have to drag them out. Thank you very much.

MR. LEVINE: This was written before we were aware that your bill was going to be the center of this hearing.

SENATOR CARDINALE: Mr. Chairman, may I ask one question?

SENATOR LESNIAK: One question? Yes. Hold on for one question from Senator Cardinale.

SENATOR CARDINALE: You indicated, as many people have, that the high risk driver should pay their own insurance. I haven't asked this question before. Suppose that you ended up with 20% of the existing population of the JUA remaining there, and the premium for bodily injury became \$8000

a year. Would you still hold the same opinion that we should do that, and what would you say to those people?

MR. LEVINE: Our position at this point is not that we believe that the JUA should not be subsidized. Obviously one of the problems we have in this State is uninsured drivers. If we have a bodily injury protection of \$8000 a year, we're just going to increase our number of uninsured drivers. But we do think depopulation of it so that the people that it was designed to handle are the ones that are in it.

SENATOR CARDINALE: But you believe that those people then should continue to be subsidized.

SENATOR LESNIAK: One question you asked for. You wanted to ask another one?

SENATOR CARDINALE: Well, it's the same question.

SENATOR LESNIAK: Oh. Thank you very much. Thank you, Senator Cardinale. Jerry Yesko, Esq.?

By the way, anyone have any complaints about the order in which you are called, blame Senator Davis. He made up the list. (laughter)

J E R O M E L. Y E S K O, E S Q.: Chairman Lesniak and members of the Senate Labor Industries and Professions Committee, the name has changed since my old days, but it's still the basics. Thank you for the opportunity of appearing before you in connection with a number of bills which are presently before you for consideration in connection with the so-called insurance crisis.

At the outset, let me state why I am here and what I can possibly contribute to your deliberations and the erudition that you have already heard over the morning into the afternoon.

I'm an active practicing attorney for more than 40 years, specializing in personal injury actions, representing, for the most part, injured plaintiffs, also representing certain casualty insurance companies over a period of time as well.

I served in the General Assembly back in the 1960s, at which time, among other things, I was Chairman of the Committee of Insurance. The so-called problem at that time had surfaced, or was beginning to surface.

After I was out of office back in the '70s, the tort reform package was enacted. I spoke at that time to members of the Committee that it was my belief that unlimited personal injury protection and without some type of control over physical damage to vehicles -- and now as I see it, the increasing burgeoning of auto thefts -- would be the most detrimental in the long run and cause many problems in insurance ratings. Perhaps we didn't have Mrs. Reagan's crystal ball, or did we at that time.

Addressing myself to the present numerous bills proposed before this body -- Senate -- it is my belief that the most serious consideration should be given to scrapping the entire legislation as it exists, starting from scratch. Along with it, I can not and do not understand why there has been a so-called threshold limitation on litigants, and why there is some belief that increasing this so-called threshold will alleviate ratings to policyholders. There is no proof in my mind, or that has been demonstrable at this time, as I understand, except in the minds of the carriers and perhaps a sinister way of alleviating cases brought before the court.

I do not understand that in this day and age when we are more and more respecting the rights of people to regress their grievances, that we should attempt to turn the clock backwards on those victimized by personal injuries arising from automobile accident cases.

Why is it, I tell myself, that one can sue in a small claims court -- it's now a different name, Superior Court, or something or other -- for small sums of money and have these things properly litigated? Why should the automobile accident victim be singled out and sacrificed on the altar of the vested

interests and others who would seek to alleviate their rights in that fashion?

I might add that regarding arbitration, I have found that in my experience in Bergen County as an arbitrator and as an active participant in the program, that it has been rather successful. I think that that type of thinking should also merit serious consideration. From what I understand from the administrator of the program, the figures are quite successful and the program works quite well. It has subtracted from the calendar many cases. I do not have the exact figures, but I understand in Bergen County where there are thousands, only four or five cases have actually gone to verdict -- after arbitration that is -- if there is an appeal at all from it.

One other thing. Some time ago, a former Commissioner of Insurance, who had an extensive background in insurance litigation, and I sat down to discuss the situation as it existed. We both agreed that carriers are obligated by law to set a reserve for every claim that is made. We further agreed from our experience that almost always the carriers pay under the reserve figure in settlement of judgment. That difference is not readily audited. The carriers, in my opinion, report only the total reserve as a low. That actual difference can not be easily audited because the Department of Insurance does not have the manpower to comb the enormous amount of reserves which they have to look at, and actually have to accept it at face value. They must rely on the carriers. This is where a lot of the red ink, in my opinion, is created.

In conclusion, I recall that during my period of service in the General Assembly, I was solely obligated to act in the interests of the public. That is why I was elected, at least at that time. I did not understand that I should act on behalf of the vested interests, who, and as I think from any standard, failed to demonstrate that then, made for restrictive legislation which would solely benefit them and for which they

wish to sacrifice the injured party to its benefit, despite all the hullabaloo and publicity they have engendered in the media and otherwise.

Thanking you again for permitting me to appear before you, and wishing you luck in the interest of the public in developing proper legislation that will basically be formulated along the lines of some of the remarks that I have made. Respectfully submitted.

SENATOR LESNIAK: Questions? (no response) Thank you very much for your testimony.

Shielah Bowden, New Jersey Head Injury Association?

S H I E L A H L. B O W D E N: Good afternoon, Mr. Chairperson, and Committee. I appreciate you giving me this time to offer some testimony. I am here as both an advocate for persons who have been head injured in automobile accidents, and as a consumer.

I am concerned that as consumers, we purchase automobile insurance because New Jersey law mandates it, but we are not aware of the excellent coverage available to us. It is, in a sense, a form of catastrophic insurance. It is also a concern of mine that many of the statistics published documenting the number of people seriously injured in auto accidents show the numbers to be far lower than they actually are. Even with all that has been recently published by the media, there is a grave ignorance concerning the broad scope of New Jersey automobile insurance. For instance, under several circumstances I've been involved in lately, people had no idea that under certain circumstances it covered pedestrians, people on bicycles, and other vehicular related incidents, except private car to car collisions.

Perhaps a comprehensive study could be done to verify the number and costs of accident victims and present a true picture to the public. The National Head Injury Foundation, based in Massachusetts, has done a study on the occurrence of

traumatic brain injury and has made available the following information:

- There are approximately 700,000 head injuries in the United States every year.

- Half of these -- 350,000 -- head injuries stem from automobile crashes.

- Head injuries are responsible for up to 60% of auto trauma deaths.

- There are between 70,000 and 90,000 head injuries in the United States each year that result in coma or extremely debilitating loss of body function.

- There are 2000 cases of persistent vegetative state in the United States every year caused by head injury.

- Every severe head injury survivor requires between \$4.1 million and \$9 million in care over a lifetime.

- The typical survivor of serious head injury requires between five and ten years of intensive rehabilitation.

- Head injury kills more Americans under the age of 34 than all other causes combined.

I just received today on the telephone some statistics from New Jersey from 1984, the State Department of Transportation: vehicular induced head injuries, 37,877. A San Diego study that year delegated New Jersey's injuries, they broke it down, six per 100,000 for catastrophic head injury, which equals 450; moderate head injury, 14 per 100,000, which equals 1050; and mild, 131 per 100,000, which equals 9825. They came up with a total of 11,325.

Please remember, head injury is for life, even if the survivor makes a significant recovery. These numbers just compound yearly.

While I am advocating for the needs of the head injured population of New Jersey, please remember that many other types of serious injuries occur in automobile related incidents. All of those seriously injured are in great need of

services and New Jersey residents can be proud of the excellent acute care hospitals and of the many rehabilitation facilities available.

I'd also like to point out at this time that many of the head injury survivors are not even serviced in New Jersey, due to a lack of adequate treatment plans available for them here. Many of them are out-of-state.

But health care costs money, and those dollars will have to be paid no matter what the means of funding is. The suggestion that auto accident expenses could be diverted to other sources will only cause those rates to increase or will result in a reduction of services.

I have heard from many victims of head injuries or their family members who were not injured in an auto related incident, and they have all too often been deprived of necessary services because funding was not available. Many of them have private health insurance, group insurance, Medicaid or Medicare and they are hampered by benefit limitations. This does not happen if you are injured in an automobile accident.

Offering options to the public, such as being able to purchase \$10,000 worth of medical coverage, may leave those with the fewest resources inadequately covered and burden our State agencies with a need for funding and services that should be paid for by an automobile owner. Let's keep auto related incidents where they belong, under no-fault coverage.

The proposed Catastrophic Loss Trust Fund is also questionable. The State of Pennsylvania had a no-fault insurance law similar to that in New Jersey and it was repealed under protest. It was replaced by a CAT fund, which has had a disastrous outcome. The rates have not been significantly lowered, services are fragmented, and the fund is having serious financial problems because costs were grossly underestimated. Because it is not feasible as structured, new methods are being sought. I have been alerted to these

problems by contacts in Pennsylvania, many who mourn the loss of their no-fault insurance.

As a representative of the head injured population in New Jersey, and as a consumer, I do not find any of the pending bills totally acceptable and urge reforms that leave the entire personal injury protection intact, and address the threshold and JUA reforms.

I'd like to note that in discussions earlier today on the JUA, I just thought that was for high risk drivers. I did not realize it was for high risk losses also; that when we're subsidizing we're also subsidizing the person who can afford a Maserati or a Ferrari. That kind of took my breath away. I feel that if they can afford to drive the car, they can afford to--

SENATOR DiFRANCESCO: Well, they're paying premiums. I mean, they pay high premiums.

MS. BOWDEN: Yeah. In other words, if we're being hit with subsidies for the JUA--

SENATOR DiFRANCESCO: You mean the surcharge?

MS. BOWDEN: Yes. They were saying that it's not just bad drivers it's--

SENATOR DiFRANCESCO: Yeah, they're paying the surcharge also though.

MS. BOWDEN: It's interesting. It's been a very interesting day.

As insured car owners in New Jersey, none of us is guaranteed an accident free life, catastrophic or otherwise. Please think carefully before supporting a repeal of the entire New Jersey no-fault auto insurance package. The personal injury protection afforded under the existing law cannot easily be replaced.

Another note I'd like to make. Two years ago my son went to school in Virginia. When we went down there he purchased a car, and he was coming home. I had wanted him to

insure in New Jersey because I felt we had superior automobile coverage. I got rates and went through everything, and found out that being that he was going to be a resident of Virginia for the year we couldn't do that. He had to register it and insure it in Virginia. In New Jersey we all know the type of automobile coverage he would have had. In Virginia, for \$39 less, all he would have had was \$50,000 across-the-board insurance. So there isn't that drastic a difference between our coverage. I think in New Jersey it was \$1139 for him to get no-fault coverage. It was a little bit more -- like \$1178 or something -- for him in Virginia for nothing.

In closing I'd like to state that as a consumer I once objected to paying high auto insurance rates. However, in March of 1978, my husband was critically injured in an auto accident and at that time I realized that the coverage I had purchased was priceless. All of his ongoing accident related expenses are still being paid, and the total thus far exceeds \$400,000. This care was well managed by a rehabilitation nurse assigned by the insurance company, and the doctors involved have always been ethical about services. I think it's interesting that at today's cost the figure would be much higher.

Because he was alone and hit a stone pillar when he skidded on the ice, there was no lawsuit involved. So I really don't know what we would have done if there wasn't no-fault. Perhaps those residents of our State who have benefited from this coverage will themselves be heard.

SENATOR LESNIAK: You're presuming that we can't effectively administer a catastrophic injury fund though? That's underlying your testimony.

MS. BOWDEN: Pardon?

SENATOR LESNIAK: The underlying concept in your testimony is that the State of New Jersey cannot effectively administer a catastrophic injury fund.

MS. BOWDEN: I didn't say we couldn't. I just said that we have seen in Pennsylvania a very serious problem.

SENATOR LESNIAK: I know. But if we could competently administer a catastrophic injury fund, then your problem would not occur. Isn't that correct?

MS. BOWDEN: Not at this time, but I think the Association that I represent stands behind the personal injury protection as it is now at this time, and wishes it to remain intact.

SENATOR LESNIAK: Okay. I understand that, but we're not eliminating the type of coverage that you--

MS. BOWDEN: Yeah.

SENATOR LESNIAK: Okay. Thank you. Charles Bernardini, Allstate Insurance Company?

SENATOR DiFRANCESCO: Did you write that letter, Charles?

C H A R L E S R. B E R N A R D I N I, E S Q.: No, I didn't. Thank you, Mr. Chairman. My name is Charles Bernardini, with Allstate Insurance Company, which has New Jersey headquarters in Basking Ridge.

Allstate, first of all, commends Chairman Lesniak and this Committee for the ambitious task you have set before in seeking meaningful reform of the current auto insurance system. We know that the Chairman and members of the Committee have been working long and hard for many months, if not years, to address this situation, and we appreciate and respect those efforts, even though we may differ on certain individual recommendations.

I'd like to offer our suggestions on four principal points which we feel are necessary for inclusion in any meaningful package. Those points involve: reducing expenses in the system in order to lower costs; having drivers in the JUA pay rates commensurate with actuarial indications; providing incentives in the system for private companies to depopulate the JUA; and addressing the JUA deficit.

With respect to reducing costs, we and others have repeatedly recommended to the Governor and to the Insurance Commissioner ways to save costs in the system, and to therefore reduce insurance premiums. We would like to reiterate those at this time. The recommendations include enacting a mandatory verbal threshold; reasonably limiting the medical expense benefits under PIP, as most states do; reducing waste and abuse in outpatient medical expenses through a system of medical fee schedules -- such as New York has -- as well as with co-payments; and eliminating the UCJF pooling of medical expense reimbursement or, alternatively, raising the threshold amount to \$250,000.

Significant depopulation requires that JUA rates be higher than voluntary rates and be based on actuarial indications of the drivers of that association. The longer the current situation exists, wherein JUA rates are the same as voluntary rates, the deeper the deficit will become and the more unlikely it will be that meaningful depopulation will occur.

Senate Bill 2637 calls for a one year wait before the JUA rates rise. We don't think that's a good idea. We think that should begin immediately.

There's been a lot of talk about all of the good drivers in the JUA, and the higher rates they're paying. Our own internal studies indicate that a very small percentage of current JUA policyholders could be written profitably at today's rates. Maybe five percent. We took about 50,000 policies out of the JUA several years ago, and our experience has been that the rates that we're forced to write those at are not adequate.

In order to reduce the size of the JUA, insurers need to perceive that the continued commitment of their assets in New Jersey offers the opportunity over time to make a reasonable return on the capital at risk. In light of those

considerations, we suggest that some changes are necessary in the current rating laws whereby requests for minor rate changes or expense variations are held up for months and years by the Insurance Department and the Public Advocate process. The concept of flex rating, with a specified figure or tied to the consumer price index, makes sense. In addition, we urge that you consider the use of so-called specialty or nonstandard companies, which would write risks involving exotic cars or drivers with multiple violations. Those mechanisms are currently allowed in 44 other states, and would serve as an additional tool to depopulate the JUA.

Some additional incentives which would help the depopulation effort would be allowing an increase in a company's flex rating plan by the same percentage as its depopulation target is exceeded, or receiving an excess profit credit for risks taken out of the JUA or for increasing written exposures.

The point is, when considering the JUA, that insurance companies are in business to write insurance; and would be pleased to do that if they could do it profitably, in a reasonably predictable environment.

Several comments have been made today regarding Michigan's situation, and the fact that companies must write certain drivers; but Michigan also has a file and use rating system where a company can obtain an actuarially correct rate. They also have a verbal threshold.

We would be remiss if we did not mention here the serious nature of the current JUA deficit -- which hasn't been touched on much today -- and urge you, as part of any legislative package, to address that situation. It's unfair to policyholders and not good business for the State, to have a situation where half the State's policyholders are not sure if their claims will be paid if they are in an accident. A number of alternative solutions have been offered to you as ways to

address that deficit, and we would urge your serious consideration of them

Finally, much has been made of the issue of so-called tightening of the excess profits law. It is often cited that Allstate several years ago paid \$19 million in anticipation of having excess profits. What needs to be clarified is that Allstate, for example, over the last ten years writing auto insurance in New Jersey, has had a total negative cash flow both on an underwriting and an investment income basis when you consider the whole ten-year package; despite those two years -- and only two years -- where we made money. The current excess profits law was designed to take care of the eventuality of a rate being more than adequate in a given year, and it has served that purpose. To tighten that law now retroactively raises a constitutional issue in one manner, in addition to the other comments that have been made on it by the other speakers.

And the last comment I would just like to make is with respect to the optional verbal threshold language that's in the bill. It is inadequate already due to that 1986 Michigan Supreme Court case, and therefore the current language, even on an optional basis, needs to be amended to deal with that case. I've given language on that to Mr. Davis.

I thank you again for the opportunity to speak.

SENATOR LESNIAK: Questions from the Committee?

SENATOR DiFRANCESCO: Yes, I have a question.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: You were very comprehensive in raising questions and suggesting that we look at a number of areas in order to address the system. You just mentioned the option. I assume you're referring to the \$750 for the verbal?

MR. BERNARDINI: Yes.

SENATOR DiFRANCESCO: Do you support that?

MR. BERNARDINI: No. Our position is that the only threshold that will be effective will be a mandatory verbal. The problem with the option is-- There are several problems. One, we recognize that this is an attempt to compromise and we respect that. But we think that it will not work because it's very difficult to get people to make choices like that for one thing, and we foresee great administrative problems.

Secondly, right now with the current option that we have, something like 30% of our book takes the higher threshold. So, there are a lot of difficulties in doing that. For one thing, the agents are reluctant to pursue suggesting the higher threshold for fear of getting sued. So, we think it's an administrative difficulty.

SENATOR DiFRANCESCO: You recognize that there are serious problems, obviously, with the JUA. Now, if we were to enact the mandatory verbal threshold -- and this may be an unfair question -- but if we were to enact a mandatory verbal threshold, would that resolve our JUA problems in your opinion, that in and of itself?

MR. BERNARDINI: No, not at all. It would have a long-term beneficial effect on the whole system by removing a lot of waste out of the system, but it won't address the JUA problem.

SENATOR DiFRANCESCO: So, I can tell people that that won't resolve the JUA problem, and won't make--

SENATOR LESNIAK: You could have asked me that question. I would have given you the same answer.

SENATOR DiFRANCESCO: Well, I mean, it's his letter that went to my constituents.

SENATOR LESNIAK: Oh. I was wondering. Good point.

SENATOR DiFRANCESCO: I'm really surprised you're not supporting the option. I thought you would answer "Yes" because of the effect you have had in urging people to write to legislators expressing their desire for a verbal threshold;

people who don't even know what a verbal threshold is, but write a letter because of a letter they received saying, "You ought to have that verbal threshold." I'm shocked that you wouldn't just send out another letter saying, "Okay now opt for that verbal threshold and you're going to save money." I would think that would be an ideal situation for you.

MR. BERNARDINI: Well, I'm not sure what your question is.

SENATOR DiFRANCESCO: I didn't ask you a question. I'm surprised that you're not supporting his option, because what you're referring to, after I asked you that question, was the present system, and that is, if you don't choose anything, you get the lower threshold. Whereas, I believe under the legislation you must pick one.

MR. BERNARDINI: We recognize that it is an attempt to make an improvement.

SENATOR DiFRANCESCO: That's a big change.

MR. BERNARDINI: I'm just saying administratively we see it as a big problem, of getting people to make that choice, and explaining that choice to them. When you're talking about effectively saving money, we just see it as a problem. That's all. I don't know of any other way to answer that.

SENATOR LESNIAK: Isn't that frustrating?

SENATOR DiFRANCESCO: Very. Well, at least he commended you. Some of the other witnesses-- I mean, Les Kurtz didn't even do that. I'm sorry. Go ahead. That's it.

SENATOR CARDINALE: May I?

SENATOR LESNIAK: Senator Cardinale?

SENATOR CARDINALE: I don't know if you are totally aware. You indicated that the agents would sort of steer people into one of the options that would be less likely to result in a suit.

MR. BERNARDINI: We've been told by agents that they are reluctant to suggest the higher threshold under the current

law, because of a threat they perceive of being sued for having encouraged people to give up their rights. That threat has been made by trial lawyer groups.

SENATOR CARDINALE: I understand that that exists now, but in several of the bills there has been an attempt--

SENATOR LESNIAK: What about my bill?

SENATOR CARDINALE: Yes, in Senator Lesniak's bill, the Zane bill, there has been an attempt made in that language to eliminate the possibility of suits against the agents as a result of the selection that has been made by the consumer. Now, are you not satisfied with that language? How specifically do you react to that?

MR. BERNARDINI: Perhaps I am not aware of that language. In 2367 where there's exculpatory language for agents?

SENATOR CARDINALE: Yes.

MR. BERNARDINI: I apologize. I missed that language and I apologize.

SENATOR CARDINALE: Okay. Thank you.

SENATOR DiFRANCESCO: Does that change your mind? (laughter) You're not worried about the agents anyway, are you?

MR. BERNARDINI: Absolutely.

SENATOR LESNIAK: Okay, gentlemen? Thank you Mr. Bernardini.

MR. BERNARDINI: Thank you very much.

SENATOR LESNIAK: Louise Murnane? (no response) No, okay. Barbara Parker? (no response) No. Mitchell Silver? (no response) There's some stalwarts out there. Jean Otersen? What do you mean. There's only one name here? (responding to two witnesses coming up together)

D O N A L D P H I L L I P I: I think it reads the Industrial Union Council, AFL-CIO, doesn't it?

SENATOR LESNIAK: Where's the rest of the Council?

I V E Y W I L L I A M S: One had to leave, and the other two decided to stick around.

MR. PHILLIPI: Good afternoon, Mr. Chairman and members of the Committee. We're speaking on behalf of the Industrial Union Council, AFL-CIO. My name is Don Phillipi, Business Manager for Local 195, the International Federation of Professional Technical Engineers, AFL-CIO, representing some 8000 State workers. With me is Mr. Ivey Williams, representative of the Oil, Chemical and Atomic Workers. We both serve on a Committee of the Industrial Union Council who is looking into auto insurance reform.

First of all I'd like to say that we seriously have looked into your legislation S-2367, and that the memberships of our organizations are opposed to shifting any benefit currently right now under PIP coverage to our health insurance benefits coverage.

SENATOR LESNIAK: Let me try to understand what you're saying. You oppose shifting it from your members to their employers. Is that what you're saying?

MR. PHILLIPI: Absolutely, the health insurance coverage.

SENATOR LESNIAK: You would rather your members pay for it then their employers pay for it. Is that what you're saying?

MR. PHILLIPI: No.

SENATOR LESNIAK: You would rather your members pay for this coverage individually out of their own pockets, rather than their employers pay for it?

MR. PHILLIPI: If they're paying currently in insurance, yes.

SENATOR LESNIAK: Okay. I just wanted to see what you're saying.

MR. PHILLIPI: We want the PIP coverage continued because we feel that what's going to happen if it's shifted to our health insurance, it's going to change a lot of things with regard to our negotiations. First of all, the cost is going to

go up to our employers, who in turn across the table are going to ask for concessions from us in our collective bargaining. We feel that the coverage that we have with the health insurance would be less than what the PIP covers under the auto insurance. For instance, in some plans not every employer pays the full cost of all the health insurance.

SENATOR LESNIAK: Right.

MR. PHILLIPI: Sometimes they only pay for the employee, and the dependents have to pay for their own coverage. You have situations now that we feel--

SENATOR LESNIAK: But now they pay for none of the auto coverage. Now the employers pay for no auto coverage.

MR. PHILLIPI: That's right. The person pays, but they have the coverage of all the benefits. If there is a shift over we feel that there's going to be a less amount of benefits given to the people than we have. There will be a lot of things that are not even covered. In accident cases where we go to have our hospital bills paid for that would be covered under the PIP, would not be covered by our health insurance coverage. Not only that, we'd have all types of new deductibles.

We feel for instance that if an employer now looks at his rating program, say he has a large group of young workers in there, and right now his cost for health insurance might be very low because he has a low amount of young workers. Where if they find out it's going to be switched over where these people are now going to be driving, they're going to take a whole new look at the rating system, which we feel is going to raise the cost of those premiums.

SENATOR LESNIAK: I'm sorry for interrupting, but there's no doubt that the costs will go up approximately three percent. Nobody is hiding that.

MR. PHILLIPI: It will go up three percent, but there's no guarantee that you'd have the same coverage or benefits.

SENATOR LESNIAK: That's correct.

MR. PHILLIPI: We feel it's going to be less. That's one of the main reasons that we're opposing it.

SENATOR LESNIAK: Oh it is going to be less. I don't think any of your health plans have dollar one, unlimited coverage. No doubt.

MR. PHILLIPI: All right. The other that we oppose is the verbal threshold. We feel that our members still want to be entitled to the right to sue for any pain and suffering that they have.

SENATOR LESNIAK: Okay, and you feel that your members aren't entitled to choose that? You don't want to give your members the right to choose what kind of coverage they want on the verbal?

MR. PHILLIPI: No. We're against the verbal threshold.

SENATOR LESNIAK: No, no, no. You're against your members having the right to choose the verbal threshold. Is that correct?

MR. PHILLIPI: That's right.

SENATOR LESNIAK: Okay.

MR. PHILLIPI: Mr. Williams might want to make a few short statements.

MR. WILLIAMS: Really you have said everything already. It's the first time that it seems like business and labor have been speaking on the same issue and have been on the same wavelength.

SENATOR LESNIAK: Well, business, labor, the insurance industry, lawyers, and doctors.

SENATOR CARDINALE: Nobody likes it.

SENATOR LESNIAK: Well we have the insurance industry and lawyers agreeing as well. So, why not?

SENATOR CARDINALE: I takes you to bring them all together like that. (laughter)

SENATOR LESNIAK: Yeah, I brought everybody together.

MR. WILLIAMS: We have plants in this area that have health insurance on the young people in this area that only covers their employees. I know lots of people, by reading different contracts around New Jersey, that we have a lot of people with families. With this type of a shift over it's going to cost the employers more money that's going to be shifted down to us. For instance, we just negotiated a contract for this year. It took all kinds of concessions because of the high rate of insurance that just went up. That's the reason why we are objecting to the shifting of health coverage from the PIP to the employee.

SENATOR LESNIAK: Shifting it from your members' pockets to your employers' pockets?

MR. WILLIAMS: Yes. It's like taking money out of one side of your pocket. You're putting it in one side and taking it out the other.

SENATOR LESNIAK: Well, we're saving your members money but costing their employers money.

MR. WILLIAMS: And it's going to trickle back down to us at the other end.

SENATOR LESNIAK: Less tax dollars, less tax deductions because it's taxable expense.

MR. WILLIAMS: There you are. Anything else you want to say?

MR. PHILLIPI: No, that's all we have.

SENATOR LESNIAK: Okay. Any questions? (no response) Thank you very much, gentlemen.

Roi Ann Morford? See, that's what you get for not signing up earlier, Roi Ann.

MR. DAVIS (Committee Aide): She tried to just send her statement in, so you have to give her credit.

SENATOR LESNIAK: Okay.

R O I A N N M O R F O R D: Thank you, Mr. Davis.

SENATOR LESNIAK: Don't tell me you're against it too?

MS. MORFORD: Mr. Chairman, we would be against any legislation that would mandate the Division of Motor Vehicles to--

SENATOR LESNIAK: Do anything? (Laughter)

MS. MORFORD: --to collect the additional fee for any catastrophic fund. This additional responsibility should not fall within the purview of this agency. These programs are essentially and clearly insurance programs, and as such should be administered by the Department who is statutorily created to regulate such programs. Collection, like every other aspect of this insurance program, is the responsibility of the Department of Insurance.

The insurance crisis has no direct correlation with Motor Vehicle services, and any proposal which overburdens one agency in an attempt to redefine the responsibility of another agency or department should be opposed.

SENATOR LESNIAK: Let me just explain to you why we brought you into this equation, and that is that there are, I guess millions, if not hundreds of thousands-- (laughter)

SENATOR DiFRANCESCO: There you go with the Public Advocate. Wait until I tell Mike Aduato.

SENATOR LESNIAK: (continuing) --of people who are driving automobiles without insurance. The responsible driving public is paying for them, and has to pay additional costs because of them. By collecting this fee on the registration, we know that at least those people who register their cars, even though they don't get insurance, will contribute to the system. So it seemed like a very convenient way to catch them, a la Alan Karcher's gasoline tax.

SENATOR DiFRANCESCO: Well, especially with all their new computers and stuff.

SENATOR LESNIAK: And yeah, we want to test out your new computer system.

SENATOR DiFRANCESCO: Yeah, all those new computers.

MS. MORFORD: I think in my testimony that I submitted for the Committee I've gone into some of the technical problems you would have with the computer in doing that.

SENATOR LESNIAK: Yes. We've also checked this out with Price Waterhouse. They said they could implement this system, no problem. (laughter)

MS. MORFORD: They could implement it, fine. God help us all.

SENATOR LESNIAK: Thank you.

SENATOR DiFRANCESCO: This is the first time that Cary Edwards hasn't wanted to embrace a new program.

SENATOR LESNIAK: Yes. Enrico De Gironimo?

ENRICO DE GIRONIMO: Good afternoon, ladies and gentlemen. My name is Enrico De Gironimo, and I'm employed at the University of Medicine and Dentistry of New Jersey, Center for Cognitive Rehabilitation, a community based acute rehabilitation program located in New Brunswick.

The people I work with are survivors of head injury and their families. This group of people are predominantly survivors of automobile accidents; auto accidents which have left them with permanent and partial permanent physical, cognitive, and emotional disabilities.

I think you've heard some of the demographics of head injuries. I've also included some attachments with some projections of head injuries in New Jersey. So I'm not going to mention those at this time.

The likelihood of you or someone in your family experiencing a head injury is not far-fetched. Yet, would you be able to afford the medical costs which typically range from \$1000 to \$1500 a day for acute care, or \$500 to \$700 for home care or acute rehabilitation, or even the \$300 to \$400 for rehabilitation just to return patients to some former level of function? Will your personal health insurance pay for this? I think not. Not to the degree that the personal injury protection coverage provides at this moment.

SENATOR LESNIAK: Well, over \$75,000 it will.

MR. DE GIRONIMO: That's providing the catastrophic coverage. And again like others, I refer to the Pennsylvania example. I've heard some comments on that.

SENATOR LESNIAK: That was doomed to failure when they funded it at \$5 a person.

MR. DE GIRONIMO: I thought they funded it at \$100.

SENATOR LESNIAK: Five dollars initially.

MR. DE GIRONIMO: Initially?

SENATOR LESNIAK: Five dollars.

MR. DE GIRONIMO: Okay. The quote I had been informed of was \$100 per registration.

SENATOR LESNIAK: They didn't even cover their administrative costs.

MR. DE GIRONIMO: Well, it was a failure needless to say, and I guess that has raised a concern out in the general public.

SENATOR LESNIAK: Sure.

MR. DE GIRONIMO: In this regard I am here because I am concerned about the much talked about and confusing discussion about automobile insurance reform. I really work with a large degree of people in the community who are low income, who really may not be the best and most sophisticated consumers in the world. I myself have problems with insurance in understanding all the threshold options. I wound up changing insurance companies just recently because one insurance company said I did everything wrong, and I took the wrong options. It's very confusing. I think even the most sophisticated consumer will be left vulnerable without appropriate medical coverage, if they are faced with making short-term quick fix choices. I am especially concerned that low income individuals will choose saving a few dollars now and be faced with inadequate medical coverage later.

This is particularly true with head injury survivors where rehabilitation can take one, two, five, ten years I heard earlier, to return to some former level of function. Eliminating, or reducing, or capping medical coverage is short-sighted, particularly as it pertains to the PIP coverage.

Playing with the PIP medical coverage will result in a shift from the private sector to the public sector, with more people winding up on Social Security Disability, Medicaid, and other taxpayer supported programs. I'm particularly concerned about those people who wind up in nursing homes, where typically it's \$50,000, \$60,000, or \$70,000 a year to the Medicaid programs. It is much more cost-effective to treat, rehabilitate, and return people to productive members of society than to pay millions of dollars in long-term care.

With this in mind, I would urge that whatever compromise legislation comes out of these hearings, to maintain the current personal injury protection and the unlimited medical care coverage that goes along with it.

I'm especially concerned when you talk about the health coverage. If you have five or six kids in a car, who has health insurance? Who will have the health insurance? Will the driver be covered with the \$20 cap coverage? I'm just not sure who will have what coverage in this, and I think it's just going to be very confusing.

SENATOR LESNIAK: The same people who would be covered under the current PIP coverage.

MR. DE GIRONIMO: I'm sorry?

SENATOR LESNIAK: The same people who are covered under the current PIP law.

MR. DE GIRONIMO: Okay. Based on my work experience with head injury survivors and their families, I conclude firstly it will cost the taxpayers of New Jersey significant amounts to care for and rehabilitate many under insured victims for whom liability claims are either not available or delayed.

Secondly, I think one way to go is through elimination of small claims through higher deductibles would be a better way to reduce PIP costs to New Jersey motorists.

Thirdly, hospitalization and major medical plans typically do not provide sufficient rehabilitation coverage for accident victims. I also tend to think that health insurance will not cover lost wages and other types of benefits typically covered under PIP.

In closing, I would urge your Committee to look at the experience of auto insurance reform in other states, which obviously you have, so I thank you for your time.

SENATOR LESNIAK: Okay. Any questions? (no response) Thank you very much.

Anyone else? (no response) The public hearing is adjourned. There will be a Committee meeting tomorrow, when we will vote on bills.

(HEARING CONCLUDED)