

WJ
10
A939
1989b

--CORRECTED COPY--

(This corrected edition reflects testimony previously omitted from the printed record)

PUBLIC HEARING

before

JUA AD HOC COMMITTEE

To receive testimony and to inquire into the management and operation of the New Jersey Automobile Full Insurance Underwriting Association

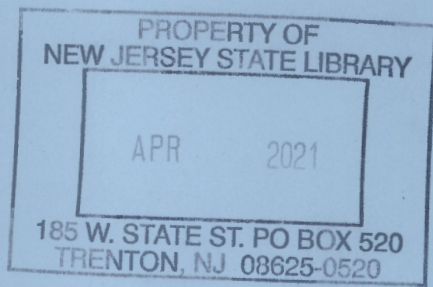
March 28, 1989
Room 403
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman Gerald Zecker, Co-chairman
- Assemblyman Michael F. Aduato, Co-chairman
- Assemblyman Jack Collins
- Assemblyman William "Pat" Schuber
- Assemblyman Anthony J. "Skip" Cimino
- Assemblyman John D. Villapiano

ALSO PRESENT:

- Thomas K. Musick
- Office of Legislative Services
- Aide, Assembly JUA Ad Hoc Committee

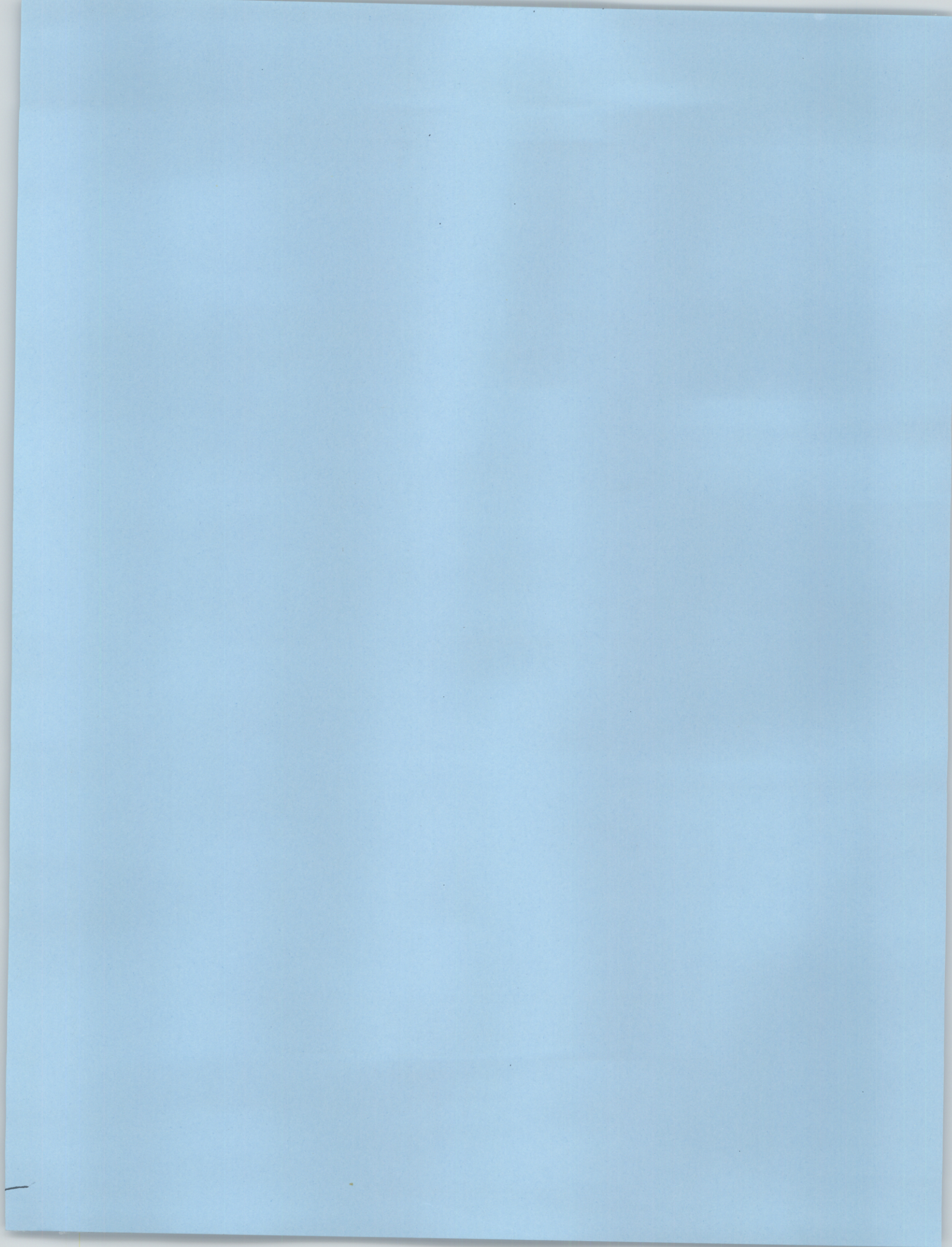


* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

--CORRECTED COPY--

6



LEGISLATIVE SERVICES
COMMISSION
SENATOR
JOHN F. RUSSO
Chairman
ASSEMBLYMAN
ROBERT E. LITTELL
Vice-Chairman

SENATE
LEONARD T. CONNORS, JR.
JOHN H. DORSEY
MATTHEW FELDMAN
S. THOMAS GAGLIANO
JAMES R. HURLEY
CARMEN A. ORECHIO
LAURENCE S. WEISS
GENERAL ASSEMBLY
BYRON M. BAER
JOHN O. BENNETT
WILLIE B. BROWN
JOHN PAUL DOYLE
CHUCK HARDWICK
WALTER J. KAVANAUGH
DENNIS L. RILEY



New Jersey State Legislature
OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE ANNEX, CN 068
TRENTON, NEW JERSEY 08625

J U A A D H O C C O M M I T T E E

March 16, 1989

CORRECTED

NOTICE OF PUBLIC HEARING

CO-CHAIRMEN
Honorable Gerald Zecker
Honorable Michael F. Adubato

MEMBERS
Honorable Jack Collins
Honorable William P. Schuber
Honorable Anthony J. "Skip" Cimino
Honorable John D. Villapiano

COMMITTEE AIDE
Thomas K. Musick
(609) 984-0445

The JUA Ad Hoc Committee will hold a public hearing on **Tuesday, March 28, 1989** at **10:00 A.M.** in **Room 403, State House Annex** to receive testimony and to inquire into the management and operation of the New Jersey Automobile Full Insurance Underwriting Association, whether it has functioned in accordance with the intent of the original legislation, whether that law and all other relevant laws have been properly implemented, and any appropriate legislative remedies therefor, pursuant to its charge by the New Jersey General Assembly.

Please provide 12 copies of any written testimony to be submitted to the committee.

Anyone wishing to testify or needing further information should contact Thomas K. Musick, Committee Staff, at (609) 984-0445.

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Joseph F. Murphy Former Commissioner New Jersey Department of Insurance, and American Centennial Insurance Co. | 33 |
| William Gibson, Vice President Continental Insurance Company First Chairman of JUA Board of Directors | 34 |
| Willard Young, III Young and Perry Insurance Former Chairman of JUA Board of Directors | 48 |
| Kenneth D. Merin Commissioner New Jersey Department of Insurance | 51 |
| Jasper J. Jackson Deputy Commissioner, and Former Acting Commissioner New Jersey Department of Insurance | 52 |
| Hazel Frank Gluck Former Commissioner New Jersey Department of Insurance, and Commissioner New Jersey Department of Transportation | 56 |
| Glenn R. Paulsen Director Division of Motor Vehicles New Jersey Department of Law and Public Safety | 83 |
| Verice M. Mason Assistant Commissioner Legislative and Regulatory Affairs New Jersey Department of Insurance | 90 |

TABLE OF CONTENTS (continued):

| | <u>Page</u> |
|---|-------------|
| APPENDIX: | |
| Office of Legislative Services Legislative Counsel Legal Opinion addressed to Assemblyman Michael F. Adubato | 1x |
| Assorted charts used by Assemblyman Michael F. Adubato | 9x |

* * * * *

dcj: 1-62
mjz: 63-136

ASSEMBLYMAN MICHAEL F. ADUBATO (Co-chairman): Good morning. Can you hear me out there on these mikes?

MEMBERS OF AUDIENCE: Yes.

ASSEMBLYMAN ADUBATO: Thank you. Good morning ladies and gentlemen and thank you for being here this morning. I would ask you if you're able to do it in those very tight conditions out there to rise with us and join with us in a Pledge of Allegiance to our flag. (audience and Committee members recite Pledge of Allegiance to the flag) Thank you.

Mr. Musick is here? (referring to Aide) Mr. Musick, would you please call the role.

MR. MUSICK: Assemblyman Villapiano?

ASSEMBLYMAN VILLAPIANO: Here.

MR. MUSICK: Assemblyman Schuber?

ASSEMBLYMAN SCHUBER: Here.

MR. MUSICK: Assemblyman Collins?

ASSEMBLYMAN COLLINS: Here.

MR. MUSICK: Assemblyman Cimino?

ASSEMBLYMAN CIMINO: Here.

MR. MUSICK: Co-chairman Zecker?

ASSEMBLYMAN ZECKER: Here.

MR. MUSICK: Co-chairman Adubato?

ASSEMBLYMAN ADUBATO: Here. A very brief outline of how we are going to conduct this joint hearing. I apologize for not starting promptly at 10. What time do you have there Mr. Zecker? It's 10:30, so in legislative time, I guess, we're bad, but we're not that bad.

The morning session will be a session that will deal with a presentment. In the afternoon, after a short break we will return and we will question our witnesses who were kind enough to be here today.

At this time, I apologize to former Commissioner Murphy who I see is here. Commissioner. Commissioner, I'd invite you to please join us up here. Are there any other

witnesses here today? Is Mr. Merin here? Commissioner Gluck? Deputy Commissioner Jackson? Are they in the room? (no response)

Just for information's sake we did, when the witnesses called and asked if it were okay, because some things came up in their schedule, if they were permitted not to be here in the morning, and Co-chairman Assemblyman Zecker and myself said it was fine, it was quite all right. But every member did say they would be here so I want you to know that everyone was more than cooperative.

At this time I would like to turn over the Chair to our Co-chairman Assemblyman Gerry Zecker.

ASSEMBLYMAN GERALD ZECKER (Co-chairman): Thank you. I would like to start off by saying thank you to all who have come today. I believe I am speaking for my Co-chairman Assemblyman Mike Aduvato and the rest of the Committee members when I say that it is very important that the public has the opportunity to review the results of this meeting. For that reason, the Committee would like the record to show that this is a public hearing for the public good. Anyone who wishes to record today's proceedings may do so.

Permission has been granted to film today's proceedings. We would like the cooperation of all in attendance to keep the front area clear to avoid obstructing the cameras.

Further, the Committee asks that no side conferences be held in the meeting room. We ask that the press refrain from conducting interviews during these proceedings. We also ask that movement in the room be kept to a minimum so as not to disturb these proceedings.

On behalf of the entire Committee, I would like to thank all of the witnesses present today for taking of their valuable time in order to be available at today's hearing.

The Committee feels it is worth noting that the witnesses that will be testifying today will be doing so voluntarily. It was not necessary for this Committee to issue any subpoenas as of this date.

I think it is important to touch on the genesis of this Committee. Former Assemblyman Ralph Loveys, the Chairman of the Assembly Insurance Committee, consulted with the Assembly Republican leadership to form a Committee to examine the problems of the Joint Underwriters Association. Mr. Loveys then asked Assemblyman Michael Aduato to serve as a Co-chairman.

Assemblyman Aduato consulted with Assembly Minority Leader Willie Brown. With the permission of the Assembly Minority leadership and the wholehearted support of Assemblyman Aduato, a truly bipartisan Committee was formed on September 29, 1988.

At that time the charge of this Committee was made clear. It was to examine the implementation of Public Law 1983, Chapter 65, commonly known as the Joint Underwriters Association, or JUA.

On October 21, 1988 an Assembly resolution was passed granting this Committee subpoena power. This Committee then requested documents relative to the implementation and operation of the Joint Underwriters Association. Specifically, requests were made to the Department of Insurance, Division of Motor Vehicles, Joint Underwriters Association Board, Department of Transportation, State Lottery Commission, Department of Law and Public Safety, Department of State, and the Governor's Office. The dates of these requests and the dates of receipt of this information are a matter of record in the Committee hearing.

As a result of numerous Committee requests and delay of responses to those requests, it was necessary to extend the 90-day reporting period of this Committee from December 28,

1988 to March 28, 1989. This was accomplished by resolution of the New Jersey State Assembly in December of 1988.

Mr. Loveys left the Assembly in January of this year, and I was asked by Speaker Chuck Hardwick to assume the Chair of the Insurance Committee. In addition, I was asked to fill the vacant Co-chair on this Committee. No member of the Committee that sits before you has asked for it to be created, yet, all of us realize the magnitude of the issue we have been charged with investigating.

I would like to compliment my fellow members for making themselves available to serve on this Committee. Any member who agreed to serve, full well realized that he would be placing himself in the middle of what can best be described as a controversial public issue. We have reviewed thousands of pages of documents detailing information that the Legislature never had access to before.

The documents that have been presented to this Committee will become part of the record of this hearing. Review of these documents has disclosed a disturbing scenario of facts that will be the basis of today's hearing. The voluminous information derived from this material made it clear to the Committee that an ongoing review of the JUA operations will most likely be necessary.

Due to time constraints generated by the desire of these members to report no later than March 28, 1989, Co-chairman Aduvato and I have agreed that any additional information pertinent to the operations of the JUA can and will be addressed by the Assembly Insurance Committee that I chair and which Assemblyman Aduvato serves as a member.

At this point, I would like to say a few words about my Co-chairman. Assemblyman Aduvato and I have worked together on this Committee for many hours. He has been a tremendous help to me with this investigation. Not only has he given me the benefit of his efforts for the four months prior to my

appointment, but he has given me a tremendous insight into the legislative history of the auto insurance issue. It is important to note that I took office in January of 1984, the same month that the JUA bill became functional. I had no input into the JUA bill whatsoever. Assemblyman Adubato showed me just how much of a bipartisan effort it was to get the JUA bill passed and signed. That such a sweeping reform bill was passed unanimously, is a tribute to him as a legislator.

Assemblyman Adubato and I have taken different routes over the years, but we have arrived at the same conclusion today. The JUA is not a Democrat versus Republican issue, as some would have you believe. It is the story of a breakdown of the governmental process. It is the failure of the administration to properly implement the law. Billion dollar deficits and millions of cars in the JUA are not the result of a tragically flawed bill, but are the result of some questionable decisions made by the Department of Insurance, the JUA Board of Directors, and the administration of the State of New Jersey. There is no question that my Co-chairman and I know what happened. We feel it is important that the people of the State know why.

Today, this Committee will focus its attention on four areas specifically related to the Joint Underwriters Association. These areas are:

- * the Plan of Operation,
- * the Oversight Commission,
- * Depopulation,
- * Income and liability.

These four areas are closely related, and at the heart of the problem the JUA is experiencing. The Plan of Operation is the blueprint for implementing the law. The Oversight Commission was to have acted as a watchdog, ensuring that all went properly. The Plan of Operation was to have included a plan for depopulation. The magnitude of the JUA problems is

directly related to the size of the Association. Income and liability trends are indicators of how the JUA functioned over the years.

There are many aspects of this complex issue that can be examined by this Committee, but we will concentrate on these points. Again, it is the belief of this Committee that the proper forum for considering any other issues raised today is the Assembly Insurance Committee.

The first area to be discussed is the Plan of Operation. The JUA bill provided a great deal of power to the administration. The bill's intent was to establish a system designed to eliminate the inequities that were inherent in the assigned risk plan.

Assembly Bill No. 1696 became Chapter 65, Laws of 1983. A copy of this law has been distributed to the witnesses and reference will be made throughout the day's hearings to specific sections of that law.

On page 245, section 18, which begins at the bottom of the page, the proposed Plan of Operation is discussed. For the purposes of brevity, and rather than read the section verbatim, we will try to clarify the specific intent of this section. This section provided that the JUA Board would submit a proposed Plan of Operation to the Commissioner of Insurance for his approval. This section also mandated that the JUA would maintain adequate reserves to allow for the payment of insurance claims that were incurred but would be paid in the future. To simplify and emphasize the importance of this point, we must understand that each and every working day, numerous accident claims are reported to all insurance companies doing business in the State of New Jersey. It is their obligation to estimate the amount of exposure that could be derived from a particular claim, and to set aside sufficient monies to recognize the companies' responsibility for ultimate payment. In most instances, an automobile accident involving

bodily injury will be kept open as a claim for two, three and maybe more years. All fiscally prudent companies realize that it is their responsibility to constantly evaluate the dollar amount exposure to that claim and raise the reserves for eventual payment that are better realized as more information concerning the claim is obtained.

Any individual with even the most basic understanding of insurance understands that it is imperative to set aside monies for future claims to be paid. This section of the law did not go into any lengthy detail since anyone should have safely assumed that any prudent insurance operation would provide sound reserves.

The original Plan of Operation that was certified on July 19, 1983 provided for what was assumed to be fiscally sound reserves. At the end of the first year of operation, the JUA Board advised the Department of Insurance that additional income would be necessary to keep the Association solvent. The JUA Board reasoned that incoming premiums were not sufficient to satisfy claims to be paid, and claims reported and yet to be paid.

In correspondence dated December 19, 1984 from the JUA Board to the Department of Insurance, reference was made to the report of Tillinghast, Nelson and Warren, Incorporated, Consultants and Actuaries. That report on page four stated that, as of December 31, 1984, the JUA would have a deficit of about \$180 million. Further, the report stated that if no RMEC were charged in 1985, the deficit would raise to about \$380 million by December 31, 1985. It further warned that if current 1984 conditions remained the same beyond 1985, the JUA could be expected to lose all of its invested assets in 1989. At that point it would still have liabilities of over \$1.5 billion. If the JUA stopped writing business after 1985, it would run out of cash in 1987.

On May 24, 1985, the Commissioner of Insurance amended the Association's Plan of Operation instituting a cash flow accounting process. The amendment stated that, "actuarially sound reserves," was to be defined as, "reserves calculated on an ultimate settlement basis, not a present value basis, which are required to assist in calculating the prospective cash flow used to determine if a RMEC is necessary." It is important to note that this action by the Department of Insurance all but eliminated current reserves for future claims. In June 27, 1985 Tillinghast Consultants and Actuarial reported to the JUA, which was forwarded to the Department of Insurance. This Committee makes reference to the findings which show that Association positive cash flow and assets totaled \$430 million, and liabilities totaled \$978 million. Projected liabilities for the end of 1986 totaled more than \$1.6 billion.

At this point, we would like to emphasize that projections at this early stage of Association operations were seemingly disregarded. Again, I would like to reiterate that the law that was passed by the Legislature stated, section 18 provided for the establishment of reserves in the Association. The Department of Insurance eliminated this provision by amendment from the Plan of Operation.

Section 18 further states that the Plan of Operation shall establish compensation to servicing carriers.

The JUA law stated that the Association was to contract with private insurance companies to write insurance for the State-run pool. The purpose of contracting with insurance companies was to avoid the State creating an entirely new bureaucracy to write and service insurance policies. Any company that was interested in becoming a JUA servicing carrier submitted a bid proposal to the JUA Board.

In the most simplistic terms, the JUA contracted with existing insurance companies in the State of New Jersey to

handle all of the functions of an insurance company without any possibility of incurring losses. They, in effect, were subcontractors of the JUA.

These insurance companies were paid a fee for those services. The amounts agreed to by the JUA and the Department of Insurance was 11.5% for liability coverages and 11.6% for physical damage. The important thing to note is that the incentive was to write more premium dollars in the JUA, as it meant more fees that could be paid to the insurance companies.

In addition to the administrative fees that were paid to the servicing insurance companies, they also received payments for processing JUA claims. Every time a claim was paid under a JUA policy, the insurance company would get 16.5% of a liability claim and 12.6% of a physical damage claim.

It doesn't take a brilliant person to realize that the incentive given under this system was not to take a \$10,000 claim and reduce it to a \$5000 claim, but to take a \$10,000 claim and keep it at \$10,000. Again, we would like to emphasize that a reverse incentive was created since the servicing insurance company had nothing to lose since the claim payment was not coming out of that company's profits.

What was happening was each and every month, the JUA was going further and further into debt. The sad part of this whole scenario was that while the insurance companies were predicting that the JUA was heading for financial ruin, they were feeding upon it by taking an exorbitant cut of each and every JUA premium dollar paid. A review of every document submitted to this Committee shows a blatant disregard for accountability. The servicing carriers, from inception, were not being physically audited by the JUA. They were given a free reign to pay out what they perceived to be the State insurance company's dollars.

The next area we would like to address is that of the statute called upon the JUA Board to include a Plan of

..
Depopulation in their Plan of Operation. Keep in mind that this Plan of Depopulation was intended and should have been included in the original Plan of Operation. What this means is that before the first insurance policy was sold by the JUA, the Legislature wanted a plan to take drivers out of the JUA and place them in the voluntary market.

It is interesting to note that the JUA's Depopulation Committee and the Department of Insurance had been meeting for five years working on a Plan of Depopulation, and did not succeed in accomplishing their assignment. In the November 22, 1983 RMEC filing, reference is made that the JUA Board of Directors felt in their judgement that the JUA population could be reduced by one-third without a Plan of Depopulation.

Unfortunately, nothing meaningful happened to depopulate the JUA from January of 1984 to January of 1989. The JUA grew from over one million insureds to over two million insureds in five years.

It must be noted that it took an act of the New Jersey Legislature to initiate a depopulation program, which began in January of 1989.

It was clearly the intent of the Legislature and the administration that the JUA was created with the purpose of insuring no more than 20% of the drivers in the State of New Jersey. The Legislature clearly stated that incentives were to be provided by the JUA Board to depopulate the Association. Instead, the reverse was created. Incentives were provided in the Plan of Operation to make the JUA a profitable dumping ground for as many insureds as could be rounded up. The truly unfortunate fact is that the majority of the public and the majority of the Legislature did not even know to what extent they were being fleeced. The State of New Jersey was quickly come to realize that it has on its hands a raped \$3 billion insurance operation at the expense of over two million JUA insureds and two million voluntary market insureds.

One would wonder how could a Legislature comprised of forty Senators and eighty Assemblymen not anticipate that any piece of legislation it creates might need correction, might need review, might need change, might need oversight? The fact is, that the Legislature did realize that problems could arise in the implementation of Chapter 65, Laws of 1983. As responsible individuals, the sponsors of the JUA legislation included provisions for the creation of a study commission. I refer to page 257, Chapter 65, Laws of 1983. Section 35 states that a study commission will be created, comprised of fourteen members, eight of whom shall be appointed by the Governor, three of whom shall be appointed by the Speaker of the General Assembly, and three of whom shall be appointed by the President of the Senate.

It further goes on to state that this study commission shall be established not later than twelve months following the operative date of this Act. In addition, the statute states that the study commission shall complete its final report not later than three years after the operative date of this Act. For the record, the operative date of this Act was February 10, 1983.

This was not a complicated section of the legislation. It was plain and simple language that called for the appointment of a commission to review the operations of the JUA. The commission was to report back to the Governor and Legislature, who created the JUA. The one-year period for the creation of this study commission was February 10, 1984. Again, it should be apparent to everyone that the wisdom of this section was to anticipate that problems could arise. A responsible Legislature wanted to be made aware of any potential problems so that it might correct them.

Prime sponsor Michael Adubato -- Assemblyman Michael Adubato has stated on more than one occasion that the specific intent of this study commission was to provide the

administration with an effective tool to closely monitor the operations of the JUA from its inception. It was for this reason that the law provided the Governor with eight of the fourteen appointments to the commission. Again, this commission was to submit a final report to the Legislature and to the Governor by February 10, 1986. It is unfortunate that this commission was never created in accordance with the law. Some would argue that the effective date of the Act was January 1, 1984, the day that the JUA went into operation, and that the study commission was to have been appointed no later than January 1, 1985. In any case, the final appointments were made on January 13, 1987, twelve days after the commission was to have expired. It is also worth noting that predictions of the JUA deficit in January of 1987 were approaching \$2 billion.

I don't know if I speak for the entire Committee, but I truly believe that this Ad Hoc -- had this Ad Hoc Committee -- would not even be meeting today had that portion of the JUA law been implemented in a timely and effective manner.

The final phase of today's hearings will address JUA income and liability. The JUA's income was based on four primary components:

- * premium dollars,
- * merit rating plan,
- * investment income,
- * and the RMEC.

It is important to understand the way that the statute structured the income. JUA rates were based on ISO rates so that all good drivers in the JUA were paying the same rate they would be paying in the voluntary market. The merit rating plan was a surcharge placed on drivers with Motor Vehicle points. The surcharge was paid by both the voluntary market and the JUA drivers. It was provided in the statute that the merit rating system would make up the difference of JUA rates, based on ISO, and assigned risk rates. The statute gave the Department of

Insurance Commissioner and the Department of Motor Vehicles Director the authority to set the dollar amounts to ensure that the merit rating system would keep the JUA fiscally sound. The RMEC was only to be used as a last resort. Unfortunately, tragically, the DMV collection of the Merit Rating System was not close to what the administration projected. The problems that plagued the DMV are a matter of record in every newspaper article printed that clearly indicated the shortfalls of the DMV. The total collection rate since the Merit Rating System has been implemented, is barely over 50%. It is estimated that over \$200 million due to the JUA remains uncollected. As a result of this failure, the JUA Board was forced to rely on RMECs to make-up for this and other shortfalls.

In 1985, the Department of Insurance changed the proceedings for calculating a RMEC. As previously mentioned, the change was called cash flow accounting. This stated that the JUA was to no longer calculate its fiscal needs on the basis of its total liability which set aside reserves for future claims to be paid. It was only to consider what its annual cash needs would be. This method eliminated the need for a RMEC in 1985 and 1986, but it started the JUA debt mounting. Most people knowledgeable in the area of insurance operations said that this was the beginning of the end for the JUA. Today, very few people would disagree with this statement, as we are now confronted with an estimated \$3 billion deficit in the JUA.

Some estimates show that 15% to 20% of all JUA claims are fraudulent. If we assume that there is a \$3 billion deficit, that would translate into as much as over \$600 million in fraudulent claims pending. Based on over \$5 billion in paid claims to date, the JUA may have paid out as much as \$1 billion in fraudulent claims. The JUA set up an Audit Committee, but that committee apparently did not find anything significant in the JUA claims files.

The Merit Rating System was hamstrung, the RMEC process was hamstrung, and the auditors found no major fraud. All administrative actions that caused the tremendous debt to accrue in the JUA. Yet, the administration readily blames the Legislature.

In summation, the documents that have been submitted to this Committee reveal a tragic scenario of errors. This Legislature is saddled with the responsibility of addressing a tangled web of fiscal chaos that has left many wondering if any solution is possible. It is the hope of this Committee that today's hearings will provide the Legislature with the insight that will be needed to rectify this nightmare.

At this time, I would like to turn over the Chairmanship of this Committee to Assemblyman Michael Aduato.

ASSEMBLYMAN ADUBATO: Thank you, Assemblyman Zecker. Assemblyman Zecker speaks for itself in the highest tradition of this Legislature. It's an honor to sit here and serve with Chairman Zecker. And I know I'm speaking for the entire membership on this Committee.

A wise person once said that unless we know our history, we are doomed to repeat our same mistakes, over and over again. That is why it is important to know the history of the New Jersey auto insurance system. In 1967, 1968, and 1969 auto insurance rates in New Jersey were stable. There were no rate increases in those three years. But in 1970 auto insurance rates in New Jersey went up 26% in that one year. Yet in 1970 auto insurance was not compulsory in our State. A person paid \$50 extra to register their car in lieu of buying insurance. That was a penalty. In 1972 New Jersey passed a no-fault auto insurance system. Governor Kean was the Speaker of the Assembly, Mr. Raymond Bateman was the President of the Senate and Mr. William Cahill was the Governor in the State of New Jersey. That law was implemented on January 1, 1973. The law said that a person must buy auto insurance. It also said:

1) If you are injured in an auto accident and the other person is at fault, you can't sue for pain and suffering unless you accumulate more than \$200 in doctors' bills.

2) If you are injured in an auto accident, all your medical bills will be paid, even if you caused the accident.

3) If you want the privilege of owning and driving a car in New Jersey, you must buy medical coverage, uninsured motorist insurance and \$15,000 liability if you are sued by one person and \$30,000 liability insurance in you are sued by two or more persons.

From January 1, 1973 up until January 1, 1984 there were no changes of any significance in the New Jersey auto insurance system. Today we are not here to discuss the no-fault system, but we must know its history.

Today we are here to present to the people of New Jersey what happened from 1982 up and through 1986, in the New Jersey auto insurance system.

We are here to discuss the failure of the executive branch of government to implement the JUA law as it was written by the Legislature and signed into law by the Governor.

We are here to discuss how the auto insurance companies in New Jersey took advantage of this executive failure to properly implement the law in both the voluntary and the JUA markets.

We are here to discuss how the people of New Jersey have been victimized; victimized by overcharges, mismanagement, deception, and the possibility, if not the probability, of fraudulent acts by the servicing carriers and the voluntary market insurance companies.

I would begin by displaying some charts to show that it is not necessary for anyone to take Greek in order to understand what happened.

On this first chart what we see here -- and I apologize for those cameras-- This is the New Jersey auto insurance system; the market, the very last day that the assigned risk existed. That's December 31, 1983. This circle

represents the entire market as well as the make up of each and every individual company writing business in the State of New Jersey. Sixty percent of the market was voluntary and **1.4% (sic) of the market was the assigned risk. That profit and loss at the end of the day was made up of both markets. Both books of business made up profit and loss.

That same day that assigned risk market existed, with 85% of those people living in the suburbs and rural New Jersey. And those people with a clean driving record, the same as their next door neighbor, in the same town, driving the same car, insured by the same company with the same class, they pay 30% more for collision and comprehensive coverage than the voluntary market.

They paid a surcharge of another 65% more for liability coverage and 35% more for collision coverage in case of only six Motor Vehicle points over a three-year period.

And what does the voluntary market have at 60%? Their next door neighbor, they pay 30% less for collision and comprehensive with the same record. And they pay no surcharges in case of six Motor Vehicle points.

On January 1, 1984 the very first day of the transitional change and the rollover from the old assigned risk to the voluntary market, you split that circle under the original chart and what you see is a division. You see 1.4 million cars that went into the JUA and you have 2.1 million cars in the voluntary market. And now when a person in the assigned risk was rolled over into the JUA, he paid the same premium as his next door neighbor for both collision and comprehensive. And if he got six Motor Vehicle points it was no longer a punitive thing, only to those people in the assigned risk. Everybody with a license, whether you had insurance or not, paid \$100 a year, each year, for three years instead of in the old assigned risk.

** (1.4% was a mistatement; actual percentage was 40%)

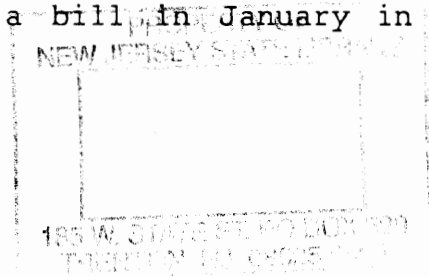
And I-- Yes, I do talk a lot about Newark and I'm proud of it, because the people in Newark got screwed the most. And those good people in Newark with a good driving record, with only six Motor Vehicle points. They went up \$1000 a year each year for three years. And a person in Bordentown with 10 points went up nothing. And that was wrong.

What happens is when we divide those circles, is now profit and loss and the voluntary market stands on its own. It is no longer responsible for any of the claims, any of the expenses of those 40% that are in the assigned risk. The JUA by statute is supposed to be nonprofit, non loss entity.

January 1, 1989 the New Jersey auto insurance market is a disaster. As Assemblyman Zecker has already stated in his opening, the failure to depopulate is obvious. On January 1, 1989 the old assigned risk that began with 1.4 million cars now has 2.1 million. The same as the voluntary market.

You see that big "but" on that chart? But if the laws were obeyed, if the executive branch of government had implemented the JUA law as written, this would be the New Jersey auto insurance market on January 1, 1989. And you would have 3.9 million cars in the voluntary market. You'd have 300,000 in the JUA. The people would have no subsidies of \$222 per car. The insurance industry wouldn't have gotten fat. We would not be saddled with a \$3 billion deficit. And the public interest would have been served.

But that's not what happened, is it? This is the way the JUA grew; what happened compared to what should have happened. On January 1, 1984 you look at that chart. In the first year you had 1.4 million. Two things must be remembered. On December 14, 1983 Mr. William Gibson who was the first Chairman of the JUA testified before a special committee that eventually passed legislation to return almost \$165 million that was given to the voluntary market in a compliance filing and we passed a bill in January in '84 to take that money back.



But two things are important. Mr. William Gibson testified in his first RMEC filing -- the first RMEC filing was not in '85, it was in 1983 before the JUA ever wrote one policy -- and in that data Mr. William Gibson said that, "We, the Board of Directors expect to depopulate the JUA the first year by as much as one-third." That's in writing and it's documented. And remember the date, December 14, 1983.

What happened was instead of the JUA depopulating one-third as Mr. Gibson said it would and going down to 938,000 it went up 1,610,000 the very first year and nobody did anything about it. Of course Mike Aduato cursed and yelled and went into tirades and screamed and shouted but no one listened. Most of the media thought it was a big joke. That was the inside story in the press corps; the madman Aduato. But no one listened.

And so, that JUA that was the cow to be milked by the industry. In free enterprise instead of, "A horse that draws the wagon," in the words of Winston Churchill, the industry continued to milk, and milk, and milk the people in New Jersey and laugh all the way to the bank.

That JUA grew, and grew to where on January 1, 1989 it had 2.1 million cars instead of 300,000 cars. A 700% error. Not even an actuary can justify that.

I apologize for yelling, but I do not apologize for my indignation.

One of the legitimate problems the administration had in my opinion was a lack of continuity. I served with many, many honest people through the years in government. I've served with very courageous people. You saw my Co-chairman here today that I put in that category.

Some of the people that serve in the executive branch of government, I served with in the Legislature -- as Assembly people. One of them was a person who I always believed, and still believe showed courage, guts, and integrity. That person

became a Commissioner, but before she did, she had the guts and the integrity to vote for the JUA bill before the Kean administration, even though the media out there distorted the truth, and said it was only going to help the people in Newark and hurt the people in that district -- that Tenth Legislative District. But when that Assemblyperson called me and said in her way, "Mike, I'm voting for that bill," I respected that. And that was Commissioner Gluck and I want to say that for the record.

One of the legitimate problems that happened in this administration that you can see, as opposed to the former administration was that under Governor Byrne you had one Insurance Commissioner for eight years -- his entire two terms. And goodness knows Jimmy Sheeran -- Commissioner Sheeran -- had an awful lot of problems even though he was there eight years.

So it's not longevity alone. The point is that anybody that sits in that seat and is charged with that responsibility is like a lightweight fighter in good condition going up against super heavyweight, the industry. And I am guilty like everyone else is in the Legislature of not understanding how difficult that job is no matter who's in there. And put that on the record.

But these people changed. I will forget Mr. Foley -- and God bless him that's not fair to even have his name on that chart. We should begin with Commissioner Murphy's tenure on February 10 and go down to where to Mr. Merin -- Commissioner Merin is there for two changes. Also, Mr. Jackson may not be fair to put on that chart because he was only there for several months. But nevertheless, you can see how the changeover didn't help, especially when you recall our Co-chairman's comments.

The JUA bill-- It's funny about this bill because our three children were in grade school the first time I introduced

this bill. Two of them are married, the other one's graduated college, and I hope I'm pretty soon to be a grandfather. But that is the chronological order as you see before you on that chart. The so-called JUA bill was first introduced in 1979 and it was two bills, A-3049 and A-3050. What happened was-- And that was under the Byrne administration. What happened was Jimmy Sheeran, who was the Commissioner, and I disagreed with the Byrne administration even though I respected that Governor like I respect Tom Kean -- always have. I've also disagreed with Tom Kean on some things.

The fact of the matter is that that legislation passed when Brendan Byrne was the Governor. It passed twice in the Assembly when he was the Governor. And when it passed in the Senate the first time he vetoed the bill because Mike Aduato would not sponsor the Michigan verbal threshold. And there were six bills in the hopper but I said then and I'll say it now, that the so-called Michigan verbal threshold has always been a red herring, has never dealt with the issue we're talking about, and because the media in every editorial for years, and years, and years said, "That's the thing to do--" politicians who like to get elected, do what the editorials tell them. I don't see too many editorials any more saying that the Michigan verbal threshold is the answer to anything. Thank God.

The issue is that that legislation passed and it passed in the bipartisan spirit of this Committee. There were 28 sponsors on that bill, 16 were Republican, 12 were Democrats. And the reason why there are only 12 Democrats, quite frankly, is because I didn't take the time to go out and get the rest.

That only shows that that legislation passed in a truly bipartisan effort and it passed and was introduced on June 29 at a press conference after four-and-a-half months of negotiation with the Kean administration, before the bill was

even introduced. And it was introduced with the cooperation, as you can see, of the Minority Leader who is now a Congressman -- Dean Gallo -- Congressman Gallo and the Speaker, Mr. Karcher. That is the litany of the JUA. Those charts are more revealing and get to the point, and especially that graph. I hope I can see that in the paper tomorrow. That graph tells the story.

And I must say to you I've been very unkind to the media because I respect it so much. Because I know it's the most important thing in a free society. Yes, it's more important than the Assembly, and it's more important than the Governor. And I must say that ever since January 22 when an article appeared in The New York Times, of all places, God bless them, the media has been terrific. All of the media has been more than fair and very accurate and for what it's worth, I, as one individual, you've restored my faith. And I know it sounds corny, but that's it; you've restored my faith. And I want to thank the media for taking the time and I especially want to thank, right now, a young man named Michael Wald who went through an awful lot of hardship but never gave up, never gave up, never gave up. The people thank you, Mr. Wald.

I would like to ask -- because we talk about depopulation-- I would like to ask two of our co-members here, Assemblyman Villapiano and Assemblyman Cimino to share with you a communication that we received yesterday that goes to the very heart of the failure not only of this administration to implement the law, but of the deception of the industry, and their tactics in avoiding implementing the law. And this communication speaks for itself.

With your permission Assemblyman Zecker I'll turn the Chair over to our two members.

ASSEMBLYMAN CIMINO: Thank you, Assemblyman Aduvato. The following is a letter from Harold Covey, the Vice President and Chief Administrative Officer of State Farm Insurance, the

former Chairman of the Depopulation Committee of the JUA. The letter was addressed on March 23 to Thomas Musick of the JUA Ad Hoc Committee, Office of Legislative Services.

"Dear Mr. Musick: I am most grateful to the Ad Hoc Committee and Co-chairmen Aduato and Zecker's acceptance of my written response to the various questions posed in your letter of March 22, 1989 in lieu of my appearance on March 28, 1989. I would renew again my willingness to appear before the Ad Hoc JUA Committee at a mutually agreeable date."

Question 1: "At whose suggestion and under what authority was the Depopulation Committee of the Board of Directors of the New Jersey Automobile Full Insurance Underwriting Association organized?"

ASSEMBLYMAN VILLAPIANO: Answer: "The Depopulation Committee of the Board of Directors was authorized by the Board on December 3, 1984 at the request of the New Jersey Insurance Department. The Department had, in a letter of November 21, 1984 requested the Board to establish a depopulation program."

ASSEMBLYMAN CIMINO: Question 2: "Given the fact that section 26 of Public Law 1983, Chapter 65 directed that a depopulation plan be included in the Plan of Operation, and the original Plan of Operation included a provision which required the adoption of such a plan prior to the issuance of any policies by the JUA, why did the Committee undertake this responsibility and continue its operations well after the JUA had begun its operations, including the issuance of policies?"

ASSEMBLYMAN VILLAPIANO: Answer: "The Depopulation Committee undertook its responsibility at the direction of the JUA Board as previously referenced. The Committee recognized its responsibility as being an ongoing charge. While it is my understanding that a depopulation plan would be included in the Plan of Operation, that New Jersey JUA as a requirement of the enabling law, neither the Department nor counsel had advised the Board or the Depopulation Committee that approval or

adoption of the depopulation plan was a precondition to the issuance of policies by the JUA. In practice the Committee had the assignment of developing a multifaceted depopulation program accommodating diverse concerns and interest, but recognizing at the same time that the overall program it recommended had to work. The subject matter was sufficiently complex that my work on the Depopulation Committee continued actively from its inception in December of 1984 thru July of 1986 when I left the Committee because of other State Farm responsibilities."

ASSEMBLYMAN CIMINO: Question 3: "Was there any recognition on the part of the Depopulation Committee or the JUA Board of Directors generally that it was operating without a depopulation plan in violation of the law and its own Plan of Operation?"

ASSEMBLYMAN VILLAPIANO: Answer: "There was recognition by the Depopulation Committee and the JUA Board of the need to propose a Depopulation Program as an addition to the JUA Plan of Operation; our charge as an Advisory Committee to the Board of Directors who in turn would submit our recommendations to the Insurance Department for discussion, recommendation, and approval."

ASSEMBLYMAN CIMINO: Question 4: "Did the Department of Insurance participate in any way in the Committee's development of a depopulation plan?"

ASSEMBLYMAN VILLAPIANO: Answer: "The Department of Insurance did actively participate in the development of a depopulation plan."

ASSEMBLYMAN CIMINO: Question 5: "If so, what was the nature and the extent of that participation?"

ASSEMBLYMAN VILLAPIANO: Answer: "The Insurance Department proposed in November of 1984 that the JUA Board establish a depopulation plan. Between the time the Depopulation Committee was established in December of 1984 and

when I left the Committee at the end of July 1986, the Department and the Depopulation Committee had many formal meetings together, exchanged correspondence, and engaged in numerous telephone conversations. The Department was invited to attend and did send representatives to the regular Depopulation Committee meetings as well as the JUA Board of Directors meetings. Both the Depopulation Committee and the Department proposed various Depopulation Plans. Specifically the Department made Depopulation Proposals on April 1985, July 1985, and April 1986. The Depopulation Committee made proposals on May of 1985, October of 1985, May of 1986, and July of 1986. Beyond July 1986 I cannot respond as I was no longer a member of the Depopulation Committee because of other State Farm responsibilities."

ASSEMBLYMAN CIMINO: Question 6: "Was such a plan ever devised?"

ASSEMBLYMAN VILLAPIANO: Answer: "A number of Depopulation Plans were devised and proposed, but were never approved as amendments to the JUA's Plan of Operation."

ASSEMBLYMAN CIMINO: Question 7: "If so, was it ever implemented?"

ASSEMBLYMAN VILLAPIANO: Answer: "No, the Plan of Depopulation in the JUA was never implemented."

ASSEMBLYMAN CIMINO: Question 8: "If it was not implemented, what prevented its implementation?"

ASSEMBLYMAN VILLAPIANO: Answer: "The Plan of Operation was not implemented because the referenced depopulation proposals were never approved or disapproved by the Insurance Department as an amendment to the JUA Plan of Operation."

ASSEMBLYMAN CIMINO: That concludes Mr. Covey's response, Mr. Adubato.

ASSEMBLYMAN ADUBATO: Thank you, Assemblymen. I would now turn the Chair over to our Co-chairman again, Assemblyman Zecker.

ASSEMBLYMAN ZECKER: Thank you. I will now call upon any of the other members of the Committee for any comments. I'll start with Assemblyman Schuber.

ASSEMBLYMAN SCHUBER: Thank you, Mr. Co-chairman. Mr. Zecker and Mr. Adubato, and fellow members of the Committee and members of the audience. This Committee's work today is of very much statewide importance to all the citizens of our State, and I wholeheartedly look forward to the testimony that will be elicited from the various important witnesses that will take place this afternoon.

As I sat at home looking through the papers and the records that have -- the voluminous, I might add -- papers and records that have been brought forth to this Committee in its deliberations, and as I listened today to the statements of the two Co-chairs, I was trying to bring some order in my own mind to the chaos that I have read about in the various memos, minutes, letters, and statements of various parties to the JUA tragedy; and truly, it is a tragedy.

And I was trying to bring about -- as I try to do in so many things -- try to bring about some literary allusion to this, or some literary metaphor. And I first had thought about Shakespeare and thought about whether this would be a "Comedy of Errors," but the problem is it doesn't fit, because it's not a comedy. And then truly if you look at a great deal of the correspondence here and the paperwork you start to think about "1984." And you think about Newspeak, and we start to think about RMECs and what that means to the public at large.

Depopulation: What does that mean to the public? Merit rating? ISO? Many things to the uninitiated as to what that means. But in the end I think the proper literary allusion here is more a Greek tragedy. And I've heard the word Greek used today. I've heard the word tragedy, but not together, but it truly is.

And if from your college experience you know what a Greek tragedy is. It consists of a protagonist, an antagonist, and a Greek chorus. The protagonist is out there with a noble purpose, debating its pros and its cons. The antagonist is out there trying to bring about the downfall of the protagonist. And the Greek chorus is like a group of nags out there. They know what's going on, they know the truth, they're nagging away, but they can't seem to do anything about stopping the tragedy that's about to take place.

Now how does that have any bearing on what we're doing today? Well it is a tragedy, folks. We start with the protagonist, the Insurance Commissioners. They take a noble purpose which is the JUA law, which was surely a noble purpose; to establish a successor to the assigned risk pool which had not obviously worked. And we have the antagonists -- the antagonist, the industry. The industry which in the end probably made the best out of this whole deal monetarily. And we have the Greek chorus out there, folks. We have the chorus. And who are they? Well, they're the various experts that come through in the testimony that you'll probably hear today and the documents who are out there saying, "Oh, there are some things we've got to do here. They must be implemented." Whether it be the study commission, be the RMECs at appropriate times, whether it be a proper accounting procedure, or it be sound reserves. But in the end as in a Greek tragedy, all was ignored.

But there's a difference between this tragedy and normal tragedy. That is, the protagonists didn't meet the tragic end, but rather the motoring public of New Jersey met with a tragic jolt with a series of surcharges which have set up a firestorm of criticism of the insurance industry and the way we conduct insurance in this State, which still reverberates to this day.

Therefore our tragedy does not become what we would traditionally have learned as "Antigone" or "Oedipus," or rather it becomes the "Tale of the Golden Fleecing" and the only people who got fleeced here -- as I think the Chairman has indicated -- were the motorists.

So therefore, we are here gathered today to find out in the end -- which the Greeks were unable to determine -- how this happened? How can we remedy it? How can we bring some order out of this chaotic situation and stabilize the insurance industry? The public expects us to do so. They can expect no less. And therefore, I look forward to the testimony today. Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you. Assemblyman Collins?

ASSEMBLYMAN COLLINS: Thank you, Mr. Chairman. Just as all of the speakers who have addressed their fellow Committee members today and those in the audience, I too see the great trauma that we are responding to through this JUA legislation, the JUA implementation. But as we all know most importantly, what effect that the JUA has had on the motoring public which extends off into the public of the State of New Jersey.

I've said from my first days here in the Legislature where auto insurance has always been the topic of discussion, that the insidious aspect of the auto insurance problem is not directly related to the amount of money that individuals are paying and are suffering. But more so, the government is suffering because people using auto insurance as the vehicle, are losing faith in their government. And if we lose faith in our government, whatever the reason is that we lose this faith, we really suffer as a society.

We've come here today to talk about a piece of legislation that was put into effect before I came to this great body. And as Assemblyman Aduvato referred to Santayana and history to repeat itself, that's what we don't want to

happen. But as one Assemblyman who brings with him his philosophy of life when he comes to Trenton, I'm concerned with where we are today looking about what has happened, who did what to whom? Is it the administration's fault? Was the bill flawed from the beginning? All of these issues that we must deal with because we don't want to continue to make mistakes. But also, the main reason for me becoming a member of this Committee was to be able to find out what did happen -- be able to look at those who made mistakes, not to castigate them but to learn from their mistakes and hopefully allow me and so many other members of our body to be able to put together a future for automobile insurance here in the State of New Jersey.

This legislation that was sponsored by many people; committed, confirmed people, people who believed what they were doing was right. You can see it in the testimony, particularly of the prime sponsor, Assemblyman Adubato. Assemblyman Adubato, at times in his remarks brought comments forth that looked like he was looking at himself in a negative fashion because some have said that in the past, some have written that.

But I don't think there's anyone who has ever dealt with Assemblyman Adubato who can respond to the question, "Does that man believe?" in a negative fashion. And he is the tip of a group of people -- tip of an iceberg, so to speak -- of people who really believed, and then after they put that belief into effect, depended on others.

It does appear in my reading that some others have fallen by the wayside; not without good intention, but for whatever reason in this complex and involved system. And here we come today to look into that. I look forward as Assemblyman Schuber stated and I'm sure the rest of my colleagues feel will be the important information that we will gain from those people who took legislation, legislation passed unanimously, legislation that, as with all legislation, in retrospect may

have been able to be better. But it was there. It was put into effect and it seems that there have been errors from that point on.

Whatever they were, we hope we will learn by them. But-- As I think everybody in this room, particularly New Jersey residents in this room, hope that from that we're going to be able to make some changes. We're going to be able to do better. We're going to be able to put forth from this Committee information that our colleagues who are not here will be able to glean materials that will enable us to straighten out this auto insurance mess here in New Jersey.

Of all of the information that I've heard, the one particular concept that lights my light, so to speak, is the whole idea of fraud in the JUA in this case; the potential that if there is a \$3 billion deficit, that there could be as much as \$600 million in fraudulent claims pending.

And it's not just the JUA. It's in the voluntary market. It's in the hearts and souls of so many people who are out there looking for the way to make a buck. Not just those people in the insurance industry who I'm sure will be castigated in many quarters. Or the lawyers, or the doctors, or the auto repairers, or the Indian chiefs, or whomever it may be. But all of the people who in their souls are looking to commit fraud on their fellow-man.

If we have paid over \$5 billion in claims through the JUA, a billion dollars in fraud. The JUA is a concept. It's one that we're still working on. But fraud is not a concept, ladies and gentlemen. Fraud is there and we must defeat it in the JUA and the voluntary market and every aspect of our life.

And what we hope we will hear today, or at least what I hope I will hear is what's going on, where we've been, and where we're going to go. To me, if those things come about, this will be the most outstanding Committee I've ever had the pleasure to serve on. Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you. Assemblyman Cimino.

ASSEMBLYMAN CIMINO: Thank you, Assemblyman Zecker. Assemblyman Zecker to you and to Assemblyman Aduato, let me add my voice of thanks for a yeoman's task with the voluminous material and in collating things for the other members of this Committee. What you both have done is outstanding for all the balance of us. Let me also say, ladies and gentlemen, that I am honored to serve on this Committee as a freshman legislator. There has been, in my opinion, in my short course of time in the New Jersey Legislature no single issue that has evoked a greater public outcry than the issue of auto insurance in this State for the people of this State.

And I understand my dear and esteemed colleague Jack Collins' concern and trepidation with regard to the JUA statute. But let me state unequivocally, it is my firm conviction that the JUA statute was not flawed. In fact, it was a very, very good piece of legislation. That's why it received bipartisan support within the houses of the Legislature and was signed by the Governor of this State.

But additionally, I am a policymaker. And that's my responsibility. And that's the responsibility of the 80 members of the General Assembly and the 40 members of the New Jersey Senate. And as a policymaker I am concerned that the policy that was developed by the Governor of this State, in conjunction, in bipartisan fashion with the New Jersey Legislature, was not properly implemented.

To that end, I want to see the proper implementation of this law. I am convinced that's why we are here today. In my opinion, this is a sad day for New Jersey. It's not one for joy; it's not one for elation; but a sad day because we are charged with the responsibility to ensure that all 7.5 million New Jerseyans have a better quality of life. And I believe that that is our purpose in being here today. We need to get

on with the business of the people of this State and correct the problems that exist. Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you. Assemblyman Villapiano.

ASSEMBLYMAN VILLAPIANO: Thank you, Mr. Chairman. As an elected representative of the people of the State of New Jersey, no issue has induced more discussion, more misinformation, more emotion, and more disgust than the automobile insurance issue. The mandate was clear therefore, that when I was sent to Trenton, and as their legislator it was my job to try and right the wrongs and cure the ills. So when asked to serve on this special bipartisan Ad Hoc Committee, I was intrigued and flattered to spend time understanding the issue. I am appreciative to you, Mr. Chairman, Assemblyman Zecker, for accepting my appointment. And I am also very appreciative to Co-chair Aduvato for accepting my appointment and spending a few hours -- no a few days; no a few weeks -- in preparation in trying to get a clearer sense of the issue of auto insurance in the State of New Jersey.

In order to rectify the problem, to thrust forward a new approach that ultimately will work in the favor of the residents of the State of New Jersey, it is important to understand just what went wrong. This, in my estimation, is not a witch hunt; to assess guilt for guilt's sake is not my cause. I have to agree with Assemblyman Collins. We must learn from our mistakes. There are many questions in my mind that must be addressed.

Estimations by the assigned risk rating plan indicated that the JUA could have been reduced by 33% in the first year. What we see is an increase of 15%, a swing of 48% in one year. It should have been recognized.

There are reasons why an integral part of the rating system and the funding source and the revenue source from the Division of Motor Vehicle was never realized. There are

reasons why an oversight commission was never appointed to keep a system of checks and balances. In my estimation this adds up to a system that was approved by the Legislature, signed into law by the Governor, charged with the mammoth responsibility of implementing a law that would provide equity in the automobile insurance market in the State of New Jersey. What we got was an organization that lacked continuity, had no oversight, and in my estimation was managed in a haphazard way. And thus, to reuse a phrase, became a dumping ground for the insurance companies trying to rid themselves of all but the least risky drivers.

If the law had been obeyed and implemented correctly, this hearing would not have been necessary today and the people of the State of New Jersey would not be paying \$222 per car a year in subsidies. I look forward to the questioning. I look forward to the answers. But more importantly, I look forward to the solutions to ultimately make the system of insurance, automobile insurance in the State of New Jersey work properly. Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you. If there are no further comments I'll call for a 45 minute recess in order to have lunch. This Committee will reconvene promptly at 12:30. Thank you.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN ZECKER: May I have your attention? Thank you. Mr. Adubato? I would like to note that we have Commissioner Ken Merin, former Insurance Commissioner and current DOT Commissioner, Hazel Frank Gluck, in attendance, Deputy Commissioner Jasper Jackson and former Commissioner Joseph Murphy, seated at the dais. We thank you for your attendance at this afternoon's session.

I regret that some of you could not make it this morning. However, we went basically into our statements of our discussion of the JUA, and at this time we're in the questioning stages and I will be taking over the first phase of questioning. Assemblyman Aduato will be taking over the second phase of questioning. And the remaining Committee members will be taking over-- I'm sorry, Mr. Aduato. I will be taking over the initial phase of questioning, the remaining Assembly members will be taking over for approximately a one-hour period, and then Assemblyman Aduato will ask concluding questions. I'll begin with my questions.

Mr. Murphy, former Deputy -- Former Department of Insurance Commissioner. How many years did you serve in the insurance industry becoming Insurance Commissioner?

J O S E P H F. M U R P H Y: Is this alive now? Can you hear? (referring to mike)

ASSEMBLYMAN ZECKER: Yes.

MR. MURPHY: I entered the insurance business in 1938, so I've been in the insurance business a long time before I retired in 1980.

ASSEMBLYMAN ZECKER: Thank you. Do you feel that it was prudent industry practice to maintain claim reserves for the JUA?

MR. MURPHY: I guess the answer to that is, yes, that's the normal practice that the original bill called for.

ASSEMBLYMAN ZECKER: Yes. Why would you feel that it was prudent?

MR. MURPHY: Well, much for the same reasons that you ascribed this morning. What you want to do is to make sure that claims are covered; make sure that your financial statement properly reflects your liability.

ASSEMBLYMAN ZECKER: My next questions-- I wanted to address Mr. William Gibson and Mr. Willard Young but we have only one seat available. I don't know how that would best be--

MR. MURPHY: Well, I'll surrender mine to them.
(laughter)

ASSEMBLYMAN ZECKER: Pardon? Mr. Murphy, I'm sorry but I will have a few more questions. What I did want to do was first address Mr. William Gibson, former JUA Board Chairman.

W I L L I A M G I B S O N: Over here?

ASSEMBLYMAN ZECKER: Yes, please. Mr. Gibson, how many years did you serve in the insurance industry before coming to the JUA?

MR. GIBSON: I've been working in the insurance industry since approximately 1959. Two years of that as the Assistant Director of the Illinois Department of Insurance and most, less than 10 years with Continental Insurance.

ASSEMBLYMAN ZECKER: Thank you. Do you feel it was prudent industry practice to maintain claim reserves in the JUA?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Why?

MR. GIBSON: Because that's the way you price the cost of the insurance today rather than on a delayed basis. That's the way you put money up so you can get investment income from the money that you got to fund those liabilities, that way you actually don't have to collect quite as much in the long run because it's earning for you while you're waiting to pay it out.

ASSEMBLYMAN ZECKER: Thank you. Mr. Gibson, could you explain to the Committee how the JUA servicing carriers in their first year set up reserves? Did they have reserves in operation during the first year?

MR. GIBSON: They did and still do set up reserves for claims. The same way that insurance always does.

ASSEMBLYMAN ZECKER: So, from its inception, from the first year of your operation, January of 1984, at year-end there were reserves that had been set up. Is that correct?

MR. GIBSON: Yes, they had been established on the books in the amounts that were anticipated to be needed to pay the claims.

ASSEMBLYMAN ZECKER: Okay. Now do you know what those approximate reserves were at year-end in 1984? I wouldn't hold you to an exact dollar amount, but throughout the testimony references made to various records that you probably were very much subjected to from the inception of the JUA.

MR. GIBSON: I have to-- I don't know how much the liability reserves were at the end of '84? I do know that when you added up the liabilities and the reserves we didn't have as much assets as we had set up in reserves. In other words, we had a deficit of -- what was the first year deficit? -- about \$180 million, or something of that nature.

ASSEMBLYMAN ZECKER: So when they said \$180 million in deficit at the end of the first year, that included amounts that had been set aside for reserves for claims that were anticipated to be paid.

MR. GIBSON: Right. That's the difference between what you had and what you felt you needed.

ASSEMBLYMAN ZECKER: But I'm handicapped because I was going to go back to Mr. Murphy. Mr. Murphy, do you agree with all of the comments that Mr. Gibson has stated so far?

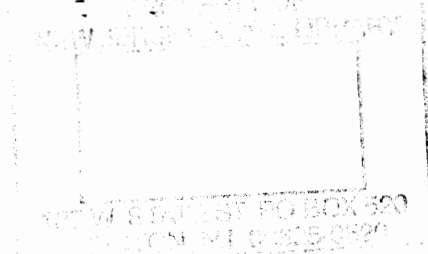
MR. MURPHY: Yes.

ASSEMBLYMAN ZECKER: Do you disagree with anything?

MR. MURPHY: No.

ASSEMBLYMAN ZECKER: Mr. Gibson, did the JUA servicing insurance companies set aside any reserves for claims to be paid at the end of 1984? In other words, when they went into year '85, did they continue into a reserve setup?

MR. GIBSON: Well, Mr. Zecker, it's a continuing process. Every day when you get a claim reported you have means of setting up a reserve for that claim. And as when you close a claim you take down the reserve on that claim so that at any given time you always have a substantial number of claims that are open with reserves established, and you periodically review those numbers if you think new information



shows that they should be higher or lower. So that it really is an everyday process in handling claims that you set up the reserves for the claims.

ASSEMBLYMAN ZECKER: Reference was made in 1985 that the JUA went on a cash flow basis. Correct?

MR. GIBSON: That's correct.

ASSEMBLYMAN ZECKER: What exactly was the genesis of that? How did that come about?

MR. GIBSON: Well, the Insurance Department felt that was the appropriate interpretation of the statute. The Association had prepared financial statements and filed for a residual market equalization charge based on typical insurance statutory accounting which included the calculation of reserves for claims that were not yet paid. It was the Insurance Department's belief that the only residual market equalization charge necessary would be that which would be necessary to actually pay the cash that would be needed for the following year. We disagreed. But the highest court in New Jersey upheld the Insurance Commissioner's authority to set that rule. We took her to court. We sued her all the way. We lost.

ASSEMBLYMAN ZECKER: When you disagreed, was it just something that you personally felt or did you get backup documentation to try to win your case through the Department of Insurance?

MR. GIBSON: Well, of course, we discussed and debated it and I don't think that the Department ever suggested that our numbers were wrong, nor did we ever suggest that their numbers were wrong. It was a question of how you were going to use the numbers and at what point you decided how much you needed as a residual market equalization charge. An insurance company would not be allowed to operate on a cash flow basis. However, the Department took the position that the Association was not an insurance company and that therefore there was no absolute reason why it couldn't do business on a cash flow basis.

The Board of Directors didn't like that decision. As I said, we sued the Commissioner, but we lost.

ASSEMBLYMAN ZECKER: When you were arguing your case did you have an actuarial report on hand?

MR. GIBSON: Yes, we did.

ASSEMBLYMAN ZECKER: Did that actuarial report show any future possibilities -- things that could happen if you went on a cash flow basis?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: And that report was by whom?

MR. GIBSON: I believe at that time it was Tillinghast Nelson Actuarial Firm.

ASSEMBLYMAN ZECKER: Was it a comprehensive report?

MR. GIBSON: I believe it was comprehensive.

ASSEMBLYMAN ZECKER: And what did that report generally say? I'm not going to hold you to specifics.

MR. GIBSON: Well, what that report said was that if you don't fund the reserves in advance, that at a certain point you will go into negative cash flow and eventually you will need a cash flow residual market equalization charge. I might suggest, I don't believe the Insurance Department ever quarreled with that. It's just that they felt that was the way to do it.

ASSEMBLYMAN ZECKER: Did the report indicate what a possible downside would be? Did it make any projections as to what kind of shape the JUA would be in if it went onto a cash flow basis?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: And what were those projections, say for year-end 1985?

MR. GIBSON: Well, as I recall, for year-end 1985 it just kept showing increasing statutory deficits of a mounting amount. Their projection for cash flow need, however, was that we would not need a RMEC at the end of 1985 on a cash flow

basis. And in fact, I don't believe we were able to establish an absolute need for one at the end of '86. But, it was clear that we were going to need it by the end of '87.

ASSEMBLYMAN ZECKER: But did the actuarial report reflect that you would be going into deficit spending?

MR. GIBSON: Oh yes, we file an annual statement every year just like those filed by insurance companies, and it has the liabilities and the assets and it shows the accumulated deficit each year just as every insurance company is required to file the same report with the State. So we filed the numbers regularly as to the accumulated deficit.

ASSEMBLYMAN ZECKER: What did your numbers show, hypothetically, for year '85, or approximately, I should say, for year '85?

MR. GIBSON: Well I think by year-end '85 we were talking somewhere in excess of 300 million, maybe 500 million. I forget just when it reached these various points.

ASSEMBLYMAN ZECKER: Do you recall what the exact number was at year-end?

MR. GIBSON: No, I don't.

ASSEMBLYMAN ZECKER: Do you recall what the projection was for year 1986 in terms of a JUA deficit?

MR. GIBSON: Again, I don't recall exactly. I know we projected a continuing increase in deficit because we had a continuing inadequacy of income. And I think we probably predicted about a billion by year-end of '86.

ASSEMBLYMAN ZECKER: So, you had been forewarned by your own actuaries that by going onto a cash flow system you would have a mounting deficit? Correct?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Now there was a court case, correct?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: I believe this Committee has transcripts of that court proceeding which is voluminous, but basically did this matter actually go to court?

MR. GIBSON: Yes it did. And it was appealed to the highest court in New Jersey.

ASSEMBLYMAN ZECKER: What did the judge rule?

MR. GIBSON: The judge ruled that it was within the statutory discretion of the Insurance Commissioner to adopt that interpretation.

ASSEMBLYMAN ZECKER: Did your counsel make the judge aware as to the deficit situation that was arising in the JUA at that time?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Did the judge address that at any point?

MR. GIBSON: I don't recall that the judge addressed that at any point specifically, but I think the judge accepted the Insurance Department argument which, I believe, was handled by the Attorney General's Office; that it was within the discretion of the Commissioner to determine that it would be better to fund it on a cash flow basis.

I don't believe there was ever any argument about whether there was a deficit mounting. The question was, when do you pay for it? There are government programs, certainly at the Federal level and probably at other State level, where things are done on a cash flow basis. Obviously a business can't do that because you'd go out of business. But the government has means of doing things that a private business can't do.

ASSEMBLYMAN ZECKER: So, Mr. Gibson, at that point it was a foregone conclusion. Every member of the JUA Board realized at that time in 1985 that the JUA was going to be going into a huge deficit spending situation? Correct?

MR. GIBSON: Yes, we did.

ASSEMBLYMAN ZECKER: You mentioned the amount of a billion dollars by 1986 or 1987. Is that correct?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Now, what did the JUA Board do at that particular time to prepare itself for what was the obvious deficit that was going to be created? Is there anything the JUA Board did at that particular time having to accept the court decision? What did you do?

MR. GIBSON: We continued to do our job, to provide insurance, and we calculated the numbers and we calculated the residual market equalization charge in accordance with the formula that the Insurance Commissioner had imposed. Conceptually, we had no-- We had no reason to believe that anybody would allow the Association to not have cash to pay its bills, whether you accumulated cash in advance or paid it later, it was clearly a means to raise the money to meet the obligations of the Association. And so, we had no alternative, having gone to the highest court in New Jersey. We had no alternative but to just proceed under the law as it was interpreted.

ASSEMBLYMAN ZECKER: What benefits could you possibly arrive at for paying later?

MR. GIBSON: A cash flow approach? Well, I suppose one could say that it is approximately, say, \$3 billion that are currently in the hands of the people of the State of New Jersey that would otherwise would have been in the hands of the Association for the last five years. That-- You know, it's a question of when do you take the money from the people who are ultimately going to have to pay? I prefer the prefunded system so I don't want to-- I don't know that I can come up with any strong benefits for the cash flow system, but I could conceptually understand that some people might believe that's a better way to do it.

ASSEMBLYMAN ZECKER: Paying with inflated dollars at some future time?

MR. GIBSON: That's possible.

ASSEMBLYMAN ZECKER: Mr. Gibson, did you recognize the necessity for depopulation of the Association?

MR. GIBSON: We recognized the desirability of depopulation. The word "necessity" would imply you couldn't live without it. I mean, if we put 100% of the people in the Association, it would still work.

ASSEMBLYMAN ZECKER: Did you understand from its inception that the JUA was not intended to be a growth company, or did you have some other opinion?

MR. GIBSON: Well the original--

ASSEMBLYMAN ZECKER: Did you feel from the inception that it was going to be a growth company?

MR. GIBSON: The original legislation as it was passed after considerable deliberation by the Legislature had built into it the potential for depopulation so we-- I personally felt and I think the Board members felt while we were preparing for the first year of operation that the legislation in and of itself had features that would bring about significant depopulation.

ASSEMBLYMAN ZECKER: So you felt, even from its inception, that the depopulation was attainable. Correct?

MR. GIBSON: Yes, I felt that way until December of 1983.

ASSEMBLYMAN ZECKER: What happened in December of 1983?

MR. GIBSON: Assembly Bill 4069 was passed without much deliberation; without a hearing until after the Assembly had already passed it. And it pretty much-- I would say it made depopulation impossible because it took out of the original law the features that were clearly designed to encourage depopulation. Those features included pricing freedom for the insurance companies.

You might ask yourself why were the insurance companies not interested in writing auto insurance in New Jersey from way back -- from back in the '60s? One of the major reasons was the very rigid price control system compounded by the existence of the Public Advocate system and further compounded by a nonrenewal law that didn't give the companies the freedom to walk away from the market if they felt they couldn't make a dollar. Those things all lead to insurance companies being unwilling to write much voluntary business in the State of New Jersey. Only one other state has that problem, Massachusetts.

Now, it's the law, the original bill that created the JUA, specifically addressed some of those concerns by allowing for pricing freedom for the voluntary market. We also had in the voluntary rate level which was required -- the Association was required to use, we also had something called the policy constant which we all knew would give the voluntary market the opportunity to reduce their rates after January 1, 1984, and we could then have a difference between the JUA rate and voluntary market rate so there would be a reason for people to leave the JUA.

ASSEMBLYMAN ZECKER: So what--

MR. GIBSON: Assembly Bill 4069--

ASSEMBLYMAN ZECKER: Am I to understand--

MR. GIBSON: --did away with the pricing freedom and locked the policy constant into the voluntary market rate, required the companies to give it to the Association, and prohibited a residual market equalization charge for the first year. Under those circumstances, that was an entirely different situation than what we had been looking at all year long when we were projecting for the future. So, it was a well-intended piece of legislation, but I don't think anybody did anything -- Insurance Commissioners or Legislature otherwise -- that they didn't feel had good motivation. But

that was a mistake and probably the reason it was a mistake was because it was done quickly, abruptly, after we had filed for the \$90 initial residual market equalization charge and without consideration of what that would do to the marketplace.

It destroyed any possibility of developing a voluntary marketplace. It also made it absolutely unlikely that anybody who was insured by the JUA would even care whether he was in the voluntary market. Why should he bother to go out and try to get insured somewhere else since he could get the same service from 15 of the major companies -- one of the 15 major companies that was doing the servicing? He could pay the same premium. What was his incentive to even try to get insurance elsewhere?

ASSEMBLYMAN ZECKER: Mr. Gibson, is there a reason why this legislation was passed in 1984?

MR. GIBSON: It was passed in reaction to the filing of the initial residual market equalization charge which the statute required the Association to file.

ASSEMBLYMAN ZECKER: Which would have raised insurance rates by approximately how much?

MR. GIBSON: We filed for \$90 a car and that was, again, what our actuary said was what we needed in addition to what we anticipated getting from the other sources of income in 1984. Now the statute required that we file an anticipatory RMEC; specifically said that we should base it on the loss experience of the assigned risk plan. And that's exactly what we did. Now the fact is that this Legislature and the Governor's Office apparently felt that wasn't what they intended.

ASSEMBLYMAN ZECKER: The question started off though with depopulation.

MR. GIBSON: Well, but--

ASSEMBLYMAN ZECKER: And I know--

MR. GIBSON: Well but that's the point. Depopulation is a good idea--

ASSEMBLYMAN ZECKER: Okay but there was a question--

MR. GIBSON: --but you can't accomplish it if you can't accomplish it.

ASSEMBLYMAN ZECKER: Okay, but I wanted to ask you something specifically. In the law it required that the JUA Board set up a Depopulation Committee. Correct?

MR. GIBSON: Yes it did.

ASSEMBLYMAN ZECKER: Was that Committee set up?

MR. GIBSON: Not until late in '84. The reason for that was, first of all, we felt-- Well, you know it's one of these things: You had to be there. The first board meeting was on April 6, 1983. We had to get organized to write policies that could be issued on the first of January, 1984. We knew we were going to have a massive turnover of a million or more policies from assigned risk into this new entity. We had to get every agent and broker assigned to a service carrier. We had to get service carriers. We had to get staffed. We had a lot of work to do.

Quite honestly, I don't think we gave any thought to depopulation during that period when we were so busy with the other things for the precise reason that we thought depopulation would be self-created the way the law was written. So we-- You know, there were probably a number of other loose ends we didn't address in the early days.

ASSEMBLYMAN ZECKER: So, it was a loose end?

MR. GIBSON: It was a loose end.

ASSEMBLYMAN ZECKER: I'll accept that answer.

MR. GIBSON: Quite honestly, we thought it would take care of itself.

ASSEMBLYMAN ZECKER: Okay. Mr. Gibson, I have one last question and then I'll ask you to acquiesce your chair, but you're probably going to be called back by one of the other Assemblymen. And I'm sorry for that.

Mr. Gibson, you were here this morning? Correct?

MR. GIBSON: Yes, I was.

ASSEMBLYMAN ZECKER: You were. In my statement this morning I advised that these insurance companies -- these were the servicing insurance companies -- were paid a fee by the JUA to basically handle the business of the JUA.

MR. GIBSON: Yes they were.

ASSEMBLYMAN ZECKER: The amount agreed to by the JUA and the Department of Insurance was 11.5% for liability coverage and 11.6% for physical damage. In addition to the administrative fees that were paid to the servicing insurance companies, they also received payment for processing JUA claims--

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: --in addition to the servicing fees. Every time a claim was paid under a JUA policy the insurance company would get 16.5% of the liability claim and 12.6% of the physical damage claim. To the Committee, could you explain, you know, exactly what the intent of that mechanism was?

MR. GIBSON: Well, we had to get service providers, and there was no great enthusiasm, by the way, among anybody to be a service provider. And so what we did was we agreed we would pay based on the industry average for those costs. So we took industry figures that were aggregated and published and said, "Well if this is what the voluntary market expense factor is for these features, then this is what we will pay." We had no way of knowing whether that was exactly the right amount. But that was the figures we came up with. They were based on industry averages, the assumption being that the Association-- We didn't want the Association's expense load to be any higher than the voluntary market. And it never occurred to us that we might actually be able to do it for less than the voluntary

market. A year or so later we decided we could. But I think that was a function really of the volume. We didn't anticipate that much volume.

ASSEMBLYMAN ZECKER: Were these averages on a countywide basis or on a statewide basis, these statistics?

MR. GIBSON: We had an Actuarial Committee that developed them. I believe they were based on New Jersey voluntary market expense factors.

ASSEMBLYMAN ZECKER: That would be statewide?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Now that would mean that a person paying, say \$500 for insurance, correct, to the JUA, approximately how much money would go to the servicing insurance carrier? Say they had property damage, liability, comp, collision, you know -- full coverage. And I think back in '84 full coverage was about \$500 to \$550 in the JUA. I've heard a lot of premiums like that in northern New Jersey.

MR. GIBSON: Well, you're talking about 11 point something percent of that. But further, that was the-- They were paid also on a grossed up figure.

ASSEMBLYMAN ZECKER: What does that mean?

MR. GIBSON: Well, since it was clear in the statute that the JUA premium was going to be less than adequate, there were several provisions in the law that specifically recognized that the JUA would collect premium but would also collect some other things in lieu of premium: Department of Motor Vehicle charges, and residual market equalization charge.

Now those three pieces, the premium and the two surcharges, added up to the equivalent of the real premium and so the actuaries figured, well, if you want to apply a percentage, you should apply it to the real premium because that's what the voluntary market experience is developed on. So, in calculating it, while somebody might pay a \$500 premium -- and 11% of that would be \$55 -- if you also figured that

there were, say, another hundred dollars collected from other sources you would actually end up calculating on \$600. That was the way it was designed.

ASSEMBLYMAN ZECKER: As to the claims, the reimbursement, once a JUA insured went with the JUA company servicing carrier, if he got in an accident there -- at the inception, correct -- he was paid by the amount of the claim, right? And that was 16.5% of a liability claim, right?

MR. GIBSON: Yes.

ASSEMBLYMAN ZECKER: Where did those averages--

MR. GIBSON: Well again, that's based on industry averages. You can get out the financial statements of the insurance companies that are filed with the states and you can calculate those kinds of averages. That was a controversial decision that we settled for because we had to get going.

I didn't like it. Most of us didn't like it but we, believe it or not, there was a major division within the industry as to how to define what we call "allocated loss expenses" versus "unallocated loss expenses." And we weren't able to resolve that dispute on time to use a different system. But we immediately put a Committee to work and subsequently we changed to a system in which we did not base it as a percentage of loss, but went to a percentage of premium for the unallocated expense. That's the overhead type and a direct dollar for dollar reimbursement for allocated. That's dollars that you pay out to lawyers to defend cases or specific costs related to a lawsuit. So we did change that in about a year or two, once we were able to resolve the initial problem.

ASSEMBLYMAN ZECKER: Now on these averages-- You said these average-- Were these averages countrywide or just in the State of New Jersey? I asked you if they were countywide, Statewide -- were they country--

MR. GIBSON: They were either Statewide or countrywide. My bias was that if the countrywide number was

lower, we ought to use the countrywide number. If the New Jersey number was lower we should use the New Jersey number.

ASSEMBLYMAN ZECKER: Oh, so whatever number you did pick--

MR. GIBSON: But I honestly didn't-- I didn't participate in the Actuarial Committee meetings but I thought they were just trying to come up with a number that was fair. It was also subject to review each year in case it changed.

ASSEMBLYMAN ZECKER: It sounds to me, Mr. Gibson, like that even you were suspect of these amounts, because a \$5000 collision claim settled -- correct? -- would be approximately 12.6% to handle that, over \$600 for a JUA carrier to handle one \$5000 collision claim. Would that be correct?

MR. GIBSON: Well, that would be correct. But on the other hand if a collision claim was reported and you subsequently discovered they weren't entitled to get anything because the insurance company's investigation showed maybe they didn't have coverage, or maybe there was no car, of some other reason, they would pay zero, and of course their fee would be zero. So we're talking about averages. Obviously, if you settled a case for \$10,000 and got paid 16% of that that would look like a lot of money for that one case. But we're talking about averages and there are a lot of cases where you pay a lot less and many cases where you paid nothing.

It was the best we could do at the time. I don't think it was unreasonable. I think it's worked out to be a fair figure.

ASSEMBLYMAN ZECKER: Thank you, Mr. Gibson. I have no further questions. Again, I believe other members of the Committee will be calling upon you. But I have some other questions of the other Commissioners if you care to stay there. Is Mr. Willard Young in the audience? Mr. Young.

W I L L A R D Y O U N G, I I I: Yes.

ASSEMBLYMAN ZECKER: Could you please step forward? Mr. Young, how many years did you serve in the insurance industry before coming to the JUA?

MR. YOUNG: Excuse me, I'll have to think back.

ASSEMBLYMAN ZECKER: You don't look that old, Mr. Young.

MR. YOUNG: About 15.

ASSEMBLYMAN ZECKER: Fifteen years. Do you feel it was prudent industry practice to maintain claim reserves in the JUA at its inception?

MR. YOUNG: Yes, I do.

ASSEMBLYMAN ZECKER: Mr. Young, rather than repeat the dialogue, you listened to what Mr. Gibson said in his testimony, correct?

MR. YOUNG: I heard part of it.

ASSEMBLYMAN ZECKER: You heard part of it. Well, basically what I asked him is, why was it a good idea to keep reserves? Would you go into an explanation?

MR. YOUNG: Well, I'm not an insurance company person so I have to preface my comments by saying I'm looking at it as an agent. An insurance company should always maintain sufficient money on hand to meet all of its obligations including those claims which have yet to be paid in the future. That includes reserves. Without those reserves there's not enough money to ensure that a person who buys an insurance policy today will have a -- get his or her claims paid whenever they are reported and settled in the future. And that's the purpose of a reserve.

ASSEMBLYMAN ZECKER: Mr. Young, in the time that you served on the JUA did you realize -- did you personally full well realize -- that the JUA was headed for deficit approaching the billion dollar mark?

MR. YOUNG: Well I don't know that I knew the exact amount but I know it was an extremely serious problem and that the deficit could be a very substantial amount of money.

ASSEMBLYMAN ZECKER: Did you have any concerns?

MR. YOUNG: Absolutely.

ASSEMBLYMAN ZECKER: Did you voice those concerns to your fellow Commissioners?

MR. YOUNG: Yes, I did.

ASSEMBLYMAN ZECKER: In your perception, how did the JUA Board-- How did they react to this? Did they do any planning? Did they come up with any alternative proposals as to how they might address what was going to be a billion dollar deficit in really the not too distant future? Was there concern by the Board members?

MR. YOUNG: At the initial time the Board was formed the statute and the Plan of Operation called for adequate reserving. In other words, reserves equal to the future liabilities of the Association. The means for funding that were several and I think Mr. Gibson probably talked about them, they include potential RMECs, surcharges. They also included the Department of Motor Vehicle funding and it was the feeling of many of us in those early years that had the mechanism which existed at the outset been allowed to function as it was designed, then the reserves would have been adequate to meet the problems we have today.

Over the years a number of changes took place which caused those mechanisms to either not function properly or to be changed and that I think was the mistake which has lead us to the point where we are today; where we don't have an adequate mechanism for funding those future reserves.

ASSEMBLYMAN ZECKER: Thank you. I do not have any further questions at this time. I'll let you excuse yourself and I'll go onto the other Commissioners. Thank you.

Current Commissioner Kenneth Merin. Mr. Merin, you're currently Commissioner of the Department of Insurance. Our records indicate that Mr. Joseph Murphy was Commissioner from February 10, 1982 to April 18, 1984, and you were Acting

Commissioner from April 16, 1984 to October 9, 1984 and appointed as Commissioner on October 9, 1984 and served until January 18, 1985 at which time Commissioner Hazel Gluck took over. Is this information correct?

COMMISSIONER KENNETH D. MERIN: The dates sound approximately correct.

ASSEMBLYMAN ZECKER: Approximately correct. Prior to serving as Acting or appointed Commissioner, in what capacity did you serve in the Governor's administration?

COMMISSIONER MERIN: I was Deputy Chief Counsel to the Governor.

ASSEMBLYMAN ZECKER: Prior to working in the Governor's administration, where did you work?

COMMISSIONER MERIN: In Washington, D.C.

ASSEMBLYMAN ZECKER: What did you do in Washington, D.C.?

COMMISSIONER MERIN: I was a lawyer.

ASSEMBLYMAN ZECKER: A lawyer in private practice or a lawyer in a governmental agency?

COMMISSIONER MERIN: No I worked for the United States Congress as an attorney with the Congressional Research Service and then later for a Congressman.

ASSEMBLYMAN ZECKER: Did you have any specific expertise in the field of insurance in Washington?

COMMISSIONER MERIN: No.

ASSEMBLYMAN ZECKER: Did you have any dealings?

COMMISSIONER MERIN: No.

ASSEMBLYMAN ZECKER: No dealings with the insurance industry?

COMMISSIONER MERIN: Correct.

ASSEMBLYMAN ZECKER: From its inception, do you feel that it was prudent industry practice to maintain reserves in the JUA?

COMMISSIONER MERIN: Yes.

ASSEMBLYMAN ZECKER: You do. I'm going to call upon Mr. Jasper Jackson next. Mr. Jackson, the records indicate that you served as Acting Commissioner, for the Department of Insurance from January 18, 1985 to March 11, 1985 as well as May 5, 1986 to May 13, 1986. Is that approximately correct?

DEPUTY COMM. JASPER J. JACKSON: Yes.

ASSEMBLYMAN ZECKER: You currently serve as Deputy Commissioner of Insurance. Is that correct?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ZECKER: How long have you served as the Deputy Commissioner?

DEPUTY COMMISSIONER JACKSON: Since about early January 1985.

ASSEMBLYMAN ZECKER: Prior to becoming Deputy Commissioner where did you work?

DEPUTY COMMISSIONER JACKSON: I worked for the Insurance Department. I was the Director of Legislative and Regulatory Affairs. I was the Director of Legislative and Regulatory Affairs within the Department for approximately seven to eight months before I became Deputy Commissioner.

ASSEMBLYMAN ZECKER: From its inception do you feel that it was prudent industry practice to maintain reserves in the JUA?

DEPUTY COMMISSIONER JACKSON: Yes, I do, but it depends-- To me it depends upon the period of time that you want the reserves to cover. In my mind I thought that it was sufficient for that the JUA only needed to have reserves sufficient to cover its liabilities for a 12- to 15-month period. I did not believe that it was necessary for the JUA to have to maintain reserves, for instance, on liability losses for about a nine- to ten-year period.

In other words, if you were to have an accident-- For all the people who were having accidents today, if a liability claim arises out of those accidents it will take about a nine-

to ten-year period for all of those claims to actually be paid. If the industry was or an actuary was to estimate that all of those claims that arose today that they would ultimately need let's say, \$100 million to pay them off, the question would be would you want them to put the \$100 million up-front today or at some later time? When we looked at the JUA and we thought that since the policyholders here have been made -- the policyholders or the motorists, in the State of New Jersey -- had been made the final guarantors of the financial liability of the JUA and not the insurers, per se, we thought that it would be better for the motorists to hold onto their money until it was actually needed to satisfy claims.

On the other hand, had the JUA been an insurer we would have demanded that all of the money be put on reserve, that the reserves be fully loaded up-front. Why? Because insurers are licensed to do business within the State. Just as they decided to do business in the State, they can decide at any moment to withdraw from the State.

In the event that that should occur, you would want to be sure that an insurance company would have on hand enough monies to satisfy all of its liabilities at the point in time it made the decision to depart. The JUA could not make such a decision. Therefore, it would not make sense for us to fully load the reserves.

ASSEMBLYMAN ZECKER: Then am I to understand that you don't have any particular concern that the current JUA deficit is predicted at 2.5, 2.7, or \$3 billion? That that would just be part of the normal working operation, passing the debt onto the future years?

DEPUTY COMMISSIONER JACKSON: Well, I'd like to change the terminology to some extent. I don't view what's been bandied about as a deficit, as a deficit. I would call it a 2.8, or \$2.9 billion noncurrent liability. A deficit occurs when someone does not have enough money to pay its liabilities

at the time those liabilities are due. Although it is anticipated that the JUA will have to pay out an additional 2.8 to \$2.9 billion over time which is from today about a ten-year period, it does not need that 2.8 to \$2.9 billion today. It will need it over a ten-year span. The funding mechanism that we have established will collect the monies that are needed over that period of time, as it is needed.

ASSEMBLYMAN ZECKER: What kind of financial shape is the JUA in today? Are you paying your bills on a day by day basis? Is there any problems with any shortfalls? Do you ever have any runs at the bank or are your bills paid on a day by day basis with no problem and no holdbacks?

DEPUTY COMMISSIONER JACKSON: They're paid on a day by day basis with no problems and no holdbacks.

ASSEMBLYMAN ZECKER: So if we address this as a future payment schedule then and not call it a deficit, then you feel that the JUA is not in as bad shape as a lot of the people are claiming? Correct?

DEPUTY COMMISSIONER JACKSON: Correct.

COMMISSIONER MERIN: Mr. Chairman, may I?

ASSEMBLYMAN ZECKER: Wait, let me see. Okay, Mr. Merin.

COMMISSIONER MERIN: I'd like to try to elaborate a little bit on the question you asked me earlier. You said, do I think it's necessary that we fund reserves? Of course, it's necessary to fund reserves. The more appropriate question that any regulator is faced with -- any insurance regulator on any line of insurance -- is what is the appropriate level for funding those reserves? To give you a couple of current examples, I am being asked to fund increases for the Blue Cross/Blue Shield Corporation, which is having financial problems. I am asked to review insurance company rate increases that come through with all too recurring frequency.

The responsibility that is given to insurance regulators is to make sure that the fees or the dollars or the premiums that go into the insurance company are in line with needs, no more and no less. When the JUA was formed there was a question as to how much money the JUA really needed. It was and still is, I believe, the opinion of most of the people in this State, and I'm certain was the opinion of most of the people in the Legislature at that point in time, that the insurance companies were money machines that were sort of like Pacman; you give them any money, and--

ASSEMBLYMAN ZECKER: You know, Mr. Merin, you're taking the fun out of this.

COMMISSIONER MERIN: I'm trying to--

ASSEMBLYMAN ZECKER: You're answering the questions before we can ask them.

COMMISSIONER MERIN: Well, I'm trying to answer your question--

ASSEMBLYMAN ZECKER: Mr. Merin, I think the one point is, do you agree then with what Mr. Jasper Jackson says, in that perhaps the public and we in the State Assembly and in the State Senate should not be all that concerned with what has been projected as a 2.5, 2.7, or \$3 billion deficit?

COMMISSIONER MERIN: I don't think that's what Mr. Jackson said. I'm concerned; he's concerned. I think if we weren't concerned, we all wouldn't be here today. The question that was asked though was, "Should the reserves be funded?" The answer to that question is, "Yes." The question, "What is the degree to which they are funded?" For example, the JUA as has been indicated, asked for \$90 the first year. As you know it takes about seven years to run off claims especially the liability side of auto claims.

Based on what we know now, if we were to have fully funded it back then they would not have needed \$90; they would not have needed \$80. They probably would have needed something

in the range of \$70. But that's something that nobody could have known at that point in time because of the seven-year time frame. Also because of the lack of information about the claims that would come in in a residual market of that size, since as you have indicated, there's precious little experience.

ASSEMBLYMAN ZECKER: Thank you. Mr. Merin -- and if I asked you this question already -- did you realize that there was a Depopulation Plan was included in the Plan of Operation?

COMMISSIONER MERIN: Yes.

ASSEMBLYMAN ZECKER: Did you recognize the need for that plan?

COMMISSIONER MERIN: Absolutely.

ASSEMBLYMAN ZECKER: Mrs. Gluck, same question, did you realize that no Depopulation Plan was included in the Plan of Operation?

COMMISSIONER HAZEL FRANK GLUCK: Yes.

ASSEMBLYMAN ZECKER: Did you recognize the need for such a plan?

COMMISSIONER GLUCK: Yes.

ASSEMBLYMAN ZECKER: Thank you. Mr. Covey's letter -- again, Mrs. Gluck -- read this morning stated that a Plan of Depopulation was formulated. Did you ever have an opportunity to review this plan?

COMMISSIONER GLUCK: There were many plans that we submitted to the Department of Transportation (sic) and there was a lot of give-and-take, back and forth. We reviewed many plans. We spent, what I think is an inordinate amount of time trying to depopulate the JUA, to no avail. At one point my patience ran out and I asked the Attorney General's Office whether the Commissioner had the power to order the depopulation, and the answer was, "No." So we were left with the ability at that point in time only to continue the discussions to see if we could get some kind of an agreement

regarding depopulation. Before I left, we hired someone to come onboard, I believe as a consultant, to try and work out a voluntary depopulation plan. Frankly, I think at that point in time when I was there, Mr. Chairman, the industry was not interested in depopulating.

ASSEMBLYMAN ZECKER: Who was the Attorney General who gave you that advise? With all of these dates I get confused sometimes. Just to check the record it was within your term of--

COMMISSIONER GLUCK: Yes, I worked with two gentlemen from the Attorney General's Office, one was John Hayden, the other one was Pat Hughes. Pat Hughes is now a member of the Department. I think he is a special deputy. If I'm not mistaken, it's the Department of Insurance.

ASSEMBLYMAN ZECKER: Thank you. Mr. Murphy, did you recognize the need for a study commission?

MR. MURPHY: I recognized that the law provided for one.

ASSEMBLYMAN ZECKER: We're you ever asked for or did you ever suggest individuals for appointment to the study commission.

MR. MURPHY: No, I did not. Partly because I read operative date to mean the first of the year 1984, so a whole year was available to make such recommendations. I noticed this morning you felt otherwise. But I was laboring under the impression that operative date was the date the law became effective.

ASSEMBLYMAN ZECKER: I alluded to the two dates.

MR. MURPHY: I know you did.

ASSEMBLYMAN ZECKER: So there's arguments on both sides but I alluded to the two dates. Did you know that the commission was not formed during your tenure?

MR. MURPHY: Presumably, I did.

ASSEMBLYMAN ZECKER: Mr. Merin, did you recognize the need for the study commission during your first tour as a Commissioner?

COMMISSIONER MERIN: I know the law called for the study commission to be appointed during my -- during that period of time that I was at the Department.

ASSEMBLYMAN ZECKER: Were you ever asked for or did you ever suggest individuals for appointment to the study commission?

COMMISSIONER MERIN: I did not in 1984.

ASSEMBLYMAN ZECKER: Do you know why the commission was not formed during your tenure?

COMMISSIONER MERIN: My belief-- Is this coming through? My belief is that the commission was not formed primarily, because when I arrived at the Department I had a number of tasks to perform, a number of duties to carry out. Those responsibilities included speaking with the then Joint Appropriations Committee about 30 days after I got to the Department, trying to get legislative support for a much bigger budget for a Department that was woefully understaffed, under equipped, taking care of the various insolvencies that were occurring at the time, trying to monitor the JUA as best as we could; above all trying to explain to a very confused public about the new laws, about the new options that were available. And in the course of trying to explain all of that, trying to explain the reasons for the high rates, the establishment of the study commission just did not hit the top of the list.

ASSEMBLYMAN ZECKER: Thank you. Mrs. Gluck, did you recognize the need for the study commission?

COMMISSIONER GLUCK: Yes, sir.

ASSEMBLYMAN ZECKER: Were you ever asked for or did you ever suggest individuals for appointment to the study commission?

COMMISSIONER GLUCK: Yes, sir.

ASSEMBLYMAN ZECKER: If so, whom?

COMMISSIONER GLUCK: I don't remember, but I know I submitted names.

ASSEMBLYMAN ZECKER: You did submit a name or--

COMMISSIONER GLUCK: No, several names.

ASSEMBLYMAN ZECKER: Several names.

COMMISSIONER GLUCK: And I don't remember who they were.

ASSEMBLYMAN ZECKER: Do you know why the commission was not formed on your tenure?

COMMISSIONER GLUCK: No, I do not.

ASSEMBLYMAN ZECKER: Thank you. I have no further questions at this time and I'll turn over the-- I will turn over questions to any one of the Committee members at this time. I'll start with Mr. Cimino, Mr. Villapiano. Assemblymen.

ASSEMBLYMAN VILLAPIANO: Thank you, Mr. Chairman. I just would like to take a moment to get back to basics, if I could and ask each of the Commissioners-- Commissioner, Mr. Murphy, you served from February 10, 1982 to April 16, 1984, a period a little bit in excess of two years. Can you explain to me why you left the position?

MR. MURPHY: Why I resigned?

ASSEMBLYMAN VILLAPIANO: Yes.

MR. MURPHY: I didn't feel I was accomplishing anything at one point toward the end, and I thought it was time for a new face to come in.

ASSEMBLYMAN VILLAPIANO: Can you elaborate on that?

MR. MURPHY: Well, I set forth my reasons in my letter of resignation which was acknowledged by the Governor.

ASSEMBLYMAN VILLAPIANO: As the Commissioner of Insurance your responsibilities are many. Under accomplishments, do you suggest it might have been automobile?

MR. MURPHY: No, I don't think I accomplished a great deal in the automobile situation.

ASSEMBLYMAN VILLAPIANO: Commissioner Merin, your first term lasted a little more than nine months, from April 16, 1984 to January 10, 1985. I would ask the same question of you, why -- why did you resign your position?

COMMISSIONER MERIN: I had an opportunity to return to the Office of the Governor to work in the area of Policy and Planning. It's an area that's near and dear to my heart, and I took that opportunity when it was extended.

ASSEMBLYMAN VILLAPIANO: Thank you. Commissioner Gluck, once again, a little more than a year -- a year and two months -- was your tenure as the Commissioner of Insurance. Can you give me a reason for leaving that position?

COMMISSIONER GLUCK: I was offered the Commissionership of the Department of Transportation by the Governor.

ASSEMBLYMAN VILLAPIANO: I think my point collectively would be that the continuity in such an important area of State government is -- I think -- is paramount. Thank you very much.

COMMISSIONER MERIN: Mr. Villapiano, can I respond to your--

ASSEMBLYMAN ADUBATO: Excuse me, excuse me, I apologize to the witnesses. Our Co-chairman asked to be excused. I apologize for not notifying the people here. He asked me to take over the Chair. I'd appreciate very much if any witness here would direct any comments through the Chair and in the interim at this point in time if Mr. Villapiano would like to extend to Mr. -- Commissioner Merin an opportunity-- Is that okay with you, Assemblyman?

ASSEMBLYMAN VILLAPIANO: Yes, Mr. Chairman.

ASSEMBLYMAN ADUBATO: Go right ahead, Commissioner.

COMMISSIONER MERIN: Through the Chairman, then. I agree that continuity is very important. The NAIC, National Association of Insurance Commissioners, tells us that the life span of an Insurance Commissioner in the United States is about

a year-and-a-half. It's not a real popular job. There's a board of three Commissioners down in Texas. All three Commissioners have either resigned or been fired. The Governor of Texas has interviewed 60 candidates and cannot get one of them to take the job.

So it is a very, very arduous job and I agree with you: The continuity is nice, but in any kind of a state with insurance problems, Insurance Commissioners tend to leave the scene fairly rapidly.

ASSEMBLYMAN VILLAPIANO: Through you, Mr. Chairman, if I just may continue.

ASSEMBLYMAN ADUBATO: I'll turn the Chair-- Actually, I'm going to turn the Chair over to you as you're questioning. And the only time I will take back that Chair is if someone wants to go on without being asked, then I would ask that you respect the Chair. Go ahead.

ASSEMBLYMAN VILLAPIANO: Thank you. Mr. Murphy, just to continue along the lines for a moment. Property and casualty actuaries are a very important aspect of your job as Commissioner. Can you give me an idea of how many actuaries were employed by the Department of Insurance?

MR. MURPHY: Yes.

ASSEMBLYMAN VILLAPIANO: During your term?

MR. MURPHY: Yes, when I arrived there there was one property and casualty underwriter, as I recall. Mr. Royer, R-O-Y-E-R. Recognizing, as you pointed out, the importance of casualty actuaries in the rate making process, particularly, I spent my first days there searching out one, and as a result, brought aboard Warren Cooper. Mr. Cooper had been in the industry for a number of years. He was a respected actuary, and he functioned in the role of Chief Actuary during the time I was in the Department. They were the only two. Actuaries then and now don't come cheap. And I had the misfortune of

being in a State Department at a time where we were under a budget crunch. And it was a little difficult to get money. But-- So we had two actuaries.

ASSEMBLYMAN VILLAPIANO: Thank you. Commissioner Merin, can I ask the same question of you? Is this a burnout job, also?

COMMISSIONER MERIN: As a matter of fact, it is. There are very few actuaries that want to serve in State Departments of Insurance because most actuaries tend to look-- There are very few. There are only a few thousand actuaries in the world. I think 5000 or 6000. Most actuaries tend to look at things from the industry's perspective. It's my opinion that that perspective is not the perspective that ought to be the perspective of a State regulator. It is very difficult to recruit actuaries, good actuaries who can be paid in the six figure range, and are paid in that range by insurance companies. We now have four actuaries in the Department. That is one of the highest numbers in any state in the country. As a matter of fact, a great many states don't have any actuaries in their Department.

We have recruited one actuary out of the North Carolina Department of Insurance; an actuary with a great reputation among the regulatory community. We've recruited another young actuary out of the private sector from a company down in Philadelphia.

ASSEMBLYMAN VILLAPIANO: That's present. Thank you. Commissioner Jackson, you were there for three months. Was it the same actuary staff under your tenure as under that of Commissioner Merin?

DEPUTY COMMISSIONER JACKSON: Yes, yes. Because I believe we had three when he departed the first time. A young lady by the name of Mary Lou O'Neil--

ASSEMBLYMAN VILLAPIANO: Well that's-- I don't need the name. Commissioner Gluck, basically the same question.

The actuary staff that was working along with you: Same as Commissioner Merin? Different? How many did you have under you?

COMMISSIONER GLUCK: I believe we had three, Assemblyman. And we also, during the course of my tenure, hired a life and health actuary which is not the subject of this today but could be the subject of something tomorrow. We had no life and health actuary at all at the Department for a number of years. And before I left we had, I believe, secured through the OMB process the ability to hire approximately 50 more people within the Department, which included financial people, and actuaries, etc.

ASSEMBLYMAN VILLAPIANO: Mr. Chairman, if I may, I'm done with my questioning at this point, but do we reserve the right to come back and ask another witness, or--

ASSEMBLYMAN ADUBATO: Yes.

ASSEMBLYMAN VILLAPIANO: All right, thank you.

ASSEMBLYMAN ADUBATO: Mr. Villapiano, do you have any questions? I apologize. Assemblyman Cimino, do you have any questions?

ASSEMBLYMAN CIMINO: Thank you, Mr. Chairman. Mr. Murphy, good afternoon. Since the JUA Plan of Operation lacks depopulation procedures, why didn't you exercise your authority during your term as Commissioner of Insurance and "promulgate a Plan of Operation" or "certify amendments to the Plan of Operation, including depopulation procedures," sir?

MR. MURPHY: The need to have a JUA, as we call it, in position as of January 1, 1984, was considered by me, and by the Department generally, as being an overriding concern. This was a primary endeavor that we had; we wanted that done. And it did not occur to us -- or to me -- that the lack of an implemented Plan of Operation should stand in the way of that overriding concern.

ASSEMBLYMAN CIMINO: Thank you. Commissioner Merin? If you would like, I will restate the question, sir.

COMMISSIONER MERIN: Please.

ASSEMBLYMAN CIMINO: Okay. Since the JUA Plan of Operation lacks depopulation procedures, why didn't you exercise your authority during your term as Commissioner of Insurance, and, "promulgate a Plan of Operation, or certify amendments to the Plan of Operation, including depopulation procedures"?

COMMISSIONER MERIN: For several reasons. The first and foremost was that stated by Commissioner Gluck; that there is no capability in the law to mandate depopulation. There is a requirement to mandate, or to develop a plan -- to work with the Board to develop a plan. I explained to you what I was doing during 1984 with the insolvency, the public education, the development of the JUA. I also believe that toward the end of my term, I directed the JUA to establish a depopulation plan, I think I said within 30 days, or a month, or something like that. That was in November -- October or November of '84. We have been engaged in prolonged discussions for several years, all of us, with the industry, and that eventually -- that lack of success eventually led to the mandatory depopulation bill that was passed about five or six months ago now.

ASSEMBLYMAN CIMINO: Thank you, Commissioner. Commissioner Gluck, as well, the same question. If you would like, I will restate it.

COMMISSIONER GLUCK: No, that's okay, Assemblyman, thank you. It was my understanding that the Commissioner of the Department of Insurance did not have -- my understanding from the Attorney General's Office -- the statutory authority to demand depopulation. Believe me, Assemblyman, if I had had that statutory authority, I would have done it. It is just that simple. My lawyers told me that I did not have it. That

is in spite of the liability crisis we were in the middle of at that time, and a lot of other things we were doing. We paid a lot of attention to this, and I was very frustrated and impatient with the fact that I couldn't order the depopulation.

ASSEMBLYMAN CIMINO: Thank you. Commissioner Merin and Commissioner Gluck, both of you have suggested that, in fact, you had been given an opinion by the Attorney General's Office that, in fact, you did not have the power within the statute to order depopulation.

Commissioner Merin, do you agree with Commissioner Gluck's approach?

COMMISSIONER MERIN: Yes.

ASSEMBLYMAN CIMINO: Okay. If that be the case, could I ask, did, at any time, either you or Commissioner Gluck ask for that opinion to be reduced to writing?

COMMISSIONER MERIN: I did not ask for the opinion to be reduced to writing because I was told by the lawyers -- and Commissioner Gluck has indicated the names of the individuals -- that that was the case. Remember, as understaffed, undermanned, underequipped as the Department was, we had two lawyers at that point in time working for the Department in the State AG's Office. With all of the activities going on -- they were busy going to court on different things, fighting different court actions on a whole host of issues-- Since it was such a clear matter, there was no need to reduce it to writing.

ASSEMBLYMAN CIMINO: Commissioner?

COMMISSIONER GLUCK: I never asked, Assemblyman, for it to be reduced to writing; not for any reason other than I just simply never asked. I was told that orally. I was confirmed by the Advocate's Office. But I never asked for it to be reduced to writing.

ASSEMBLYMAN CIMINO: Not to-- Please do not misunderstand me. I do not mean to be combative; that is not

my intention. I am trying to get to-- You have stated that if you would have had the power, you would have, I take it, automatically proceeded to begin to enforce a plan of depopulation, or to ensure that the JUA would be depopulated. Is that correct?

COMMISSIONER GLUCK: That is correct.

ASSEMBLYMAN CIMINO: Okay. If, in fact, we were witnessing, and beginning to see problems at that point -- that period of time -- would it not have been to the benefit of all involved to ensure that that opinion would have been handed down in writing, so that we could have had that on the record?

COMMISSIONER GLUCK: I don't know how to answer that. I mean, I took the advice of the Attorney General's Office without thinking about asking that it be reduced to writing. I'm sure that the Attorney General's Office will confirm it.

COMMISSIONER MERIN: I think I'd certainly concur in that. The purpose of having-- Let me rephrase that: With two Deputy AGs and a host of legal work to do, when something is flat out and clear and there is no question about it, I would rather have those people working on things about which there was a real question or about which immediate and in-court activity would be required. On top of that, clearly the JUA was growing in size. There was-- I haven't gone through the newspapers, but I'm sure a review of the newspapers at that time would show that everybody knew the JUA was growing. I know I spoke about that at the time, and the need to do something about depopulation.

ASSEMBLYMAN CIMINO: I am concerned by the response, only in the sense of the term, that-- In reading the statute, I am wondering why the interpretation would be as such, when one reads subsections 18b, c, d, and section 26, as well as section 32 of the JUA statute, that was passed and signed by this Governor, that was implemented on January 1, 1984.

COMMISSIONER MERIN: Could you repeat the--

ASSEMBLYMAN CIMINO: Do you have a copy of the law in front of you?

COMMISSIONER MERIN: I think this is it, yes.

ASSEMBLYMAN CIMINO: Subsections, under section 18.

COMMISSIONER MERIN: Section 18?

ASSEMBLYMAN CIMINO: Move on to section -- I would say section 26, as well as section 32. That would be on page 254, and thereafter on page 256 of Chapter 65.

COMMISSIONER MERIN: There are two sections that-- I am having some trouble finding them here, but one section you cited, the final section, gives the Commissioner of Insurance the power to carry out that which is included within the context of the legislation. The Commissioner has the power to carry out, through the Plan of Operation, or rules and regulations, that which is contained in the four pages of these documents.

ASSEMBLYMAN CIMINO: Commissioner, can I ask, do we agree that the first paragraph of section 26 -- if I could read it for the record-- "The association shall" -- shall -- "in the Plan of Operation, establish procedures to encourage the voluntary writing of qualified applicants without the utilization of the association. These procedures shall include provisions for appropriate incentives to encourage companies to voluntarily write those applicants who are qualified for insurance by the automobile insurance plan established pursuant to Public Law 1970, Chapter 215."

COMMISSIONER MERIN: You are correct, and I would emphasize the words you have just spoken; that is, "incentives," "encourage," and "voluntary."

ASSEMBLYMAN CIMINO: I have always had an understanding under the law that the word "shall" is -- if I am misinformed by attorneys who have advised me during the course of a little over a decade in government -- that the word "shall" is, in fact, a mandate. Would you not agree?

COMMISSIONER MERIN: I would agree that "shall" is a mandate. That's clear -- "shall encourage."

ASSEMBLYMAN CIMINO: When, in fact, did the Association do this? Do you have any-- Did they do it?

COMMISSIONER MERIN: Did they develop--

ASSEMBLYMAN CIMINO: Did they develop the plan?

COMMISSIONER GLUCK: They fought it every step of the way.

ASSEMBLYMAN CIMINO: I'm sorry, Commissioner?

COMMISSIONER GLUCK: They fought it every step of the way, Assemblyman. There were plans that were developed -- that the Department tried to develop. We couldn't come to an agreement. I think the difficulty here -- and as you know, I am not an attorney-- I think the difficulty here is, the Association shall encourage the voluntary writing. And, they were not about to voluntarily do it.

ASSEMBLYMAN CIMINO: Thank you, Commissioner.

COMMISSIONER GLUCK: And the interpretation that was given to me, was that I did not have the authority to make them do it.

COMMISSIONER MERIN: Assemblyman, if I could follow up on that, through the Chair--

ASSEMBLYMAN CIMINO: Commissioner?

COMMISSIONER MERIN: During that period of time, both while Commissioner Gluck was there, and I guess the initial inquiry was made shortly before I left-- During Commissioner Gluck's tenure, and when I returned, there was a continuing dialogue between the Department and the JUA. There was a continuing effort to try to get the JUA to develop the depopulation plan. The JUA came up with all sorts of reasons as to what it would need to get a depopulation plan going. Essentially, as I recall, their requests for incentives were financial in nature. They wanted more money; they wanted money to offset certain costs. And, given a) the obviously severe

financial condition of the JUA, and given the mandates of the law, which I think were logical, there was no way we could have, on our own, given the JUA extra money -- to give the companies extra money.

ASSEMBLYMAN ADUBATO: Excuse me for interrupting, Assemblyman. Just for the record, if I may-- So what you are saying, Commissioner, in response to that question, is that the servicing carriers, the insurance companies, asked you for more money--

COMMISSIONER MERIN: Yes.

COMMISSIONER GLUCK: Yes, absolutely.

ASSEMBLYMAN ADUBATO: --in order to-- I must say to you -- I apologize for going out of order -- that I have not seen that. I have read every document at least twice. There is nothing in any document from your Department, from day one, that says that. That is for the record. I'm sure they did it, but it is not in any record; it is not in any minutes of the JUA; and it is not in any of your documents that were submitted to me.

So, for the record, I want you to know that that does not appear anywhere. But I do accept what you're saying. I don't doubt what you're saying at all. But I want you to know for the record that it is not there. It would have been helpful, in my opinion, if that were stated in the record, so this Committee, that spent many months going over this, would have been aware of that -- that, you know, it was a holdup. To put it down to its bottom line, that was a holdup.

I apologize for interrupting. Go ahead.

ASSEMBLYMAN CIMINO: Thank you. If I may continue, section 32, on page 256-- If I may read that-- Are you both with me?

COMMISSIONER MERIN: Thirty-two on page 256?

ASSEMBLYMAN CIMINO: That is correct, yes, sir.

COMMISSIONER MERIN: Okay.

ASSEMBLYMAN CIMINO: Okay. "In addition to the general powers conferred upon the commissioner by law and this act, the commissioner shall have the authority to promulgate such regulations as he deems necessary for the effective implementation of this act."

Commissioner Gluck, or Commissioner Merin, how do you interpret that part of the statute?

COMMISSIONER MERIN: The same response applies that I gave you earlier. Any law that gives a Commissioner authority -- that gives a Commissioner the authority to promulgate rules or regulations to carry out the purposes of the legislation, only gives the Commissioner the authority to carry out the purposes of that Act. Clearly, this Act said, "voluntary", "incentives," "encourage." Those are the words contained within the Act.

For example, if a law is passed asking me to reduce auto insurance costs, I would love to mandate by regulation the verbal threshold. I can't do that until such a law passes. It is something I know will work; it is something I would want to do; but I can't do it.

ASSEMBLYMAN CIMINO: Any additional response, Commissioner Gluck?

COMMISSIONER GLUCK: No, I don't. I think that government is often accused of writing rules and regulations that go beyond what an act states, and I was told clearly that we didn't have the authority to do it. If you don't have the authority to do it, you can't write rules and regulations that deal with it. That was made pretty clear.

ASSEMBLYMAN CIMINO: Commissioner, former Commissioner Murphy, Mr. Murphy, we have kind of left you out of this discussion. Do you agree with Commissioner Merin and Commissioner Gluck with regard to their response to that?

MR. MURPHY: I do. I have no reason to disagree with them.

ASSEMBLYMAN CIMINO: And Mr. Jackson, do you as well agree?

DEPUTY COMMISSIONER JACKSON: Yes, I do. I would like to add a few comments, though. I agree with all the Commissioners' interpretation of this -- these particular sections of the law, particularly Commissioner Merin. I think the problem here is that the-- One of the problems is that the Commissioner did have the power to compel depopulation of residual markets prior to the enactment of the JUA legislation. I think one of the problems is that when the JUA legislation was enacted, it defined "qualified applicant" in such a manner, that anyone who could not successfully secure coverage in the voluntary market automatically became qualified for the JUA.

Once you took the JUA law, and you compared it to the prior law, the JUA had to be considered to be a successor organization to the assigned risk plan, and the law had to be interpreted in such a manner that anyone who had a problem securing coverage voluntarily, automatically was entitled to it within the JUA. In section 26, they talk about-- The law speaks to establishing procedures to encourage the voluntary writing of qualified applicants. Commissioner Murphy here had previously testified that in 1983, he did not-- I'll put it this way: Depopulation was not a number one issue on his hit list, because as he understood the law the way it was originally drawn, he thought that depopulation would kind of take care of itself.

In discussions that we had with the insurers in the course of trying to implement the JUA law over time to come up with a voluntary depopulation program that would work, they spoke to all the bars in the law that they saw that would defeat any companies ever voluntarily depopulating. One of them was that they said that-- The first thing they thought made it difficult to depopulate was the repeal of that section

of the law which would have permitted them to take automatic rate increases.

ASSEMBLYMAN ADUBATO: Excuse me for interrupting you, Commissioner; I apologize, but I realize where you're going. In respect to the other people here, and the time constraints, I would appreciate it if you would just respond to the specific questions. I will ask you that question in a few moments, and you will have an opportunity to respond -- the thing you already started to answer. So, respectfully, thank you for your response.

Assemblyman?

DEPUTY COMMISSIONER JACKSON: Oh, okay. I would just like--

ASSEMBLYMAN ADUBATO: Thank you; thank you for your response.

DEPUTY COMMISSIONER JACKSON: But I would just like to say one thing.

ASSEMBLYMAN ADUBATO: I said, "No."

DEPUTY COMMISSIONER JACKSON: Well--

ASSEMBLYMAN ADUBATO: Would you please respect this Chair? I heard your answer loud and clear, Deputy Commissioner. I will give you an opportunity to respond to me later. Thank you.

DEPUTY COMMISSIONER JACKSON: Okay.

ASSEMBLYMAN ADUBATO: Assemblyman?

ASSEMBLYMAN CIMINO: If we could now go back to page 246, and to subsection b, subsection c, and subsection d-- And within subsection b, if I could go down to the sentence that begins, "If the directors," which is essentially one, two, three, four, five, six, seven -- about eight lines from the bottom of the subsection-- (private conversation among witnesses at this point)

ASSEMBLYMAN ADUBATO: Excuse me. Would you please pay attention to the Assemblyman?

COMMISSIONER GLUCK: I'm sorry.

ASSEMBLYMAN ADUBATO: Thank you, Commissioners.

ASSEMBLYMAN CIMINO: "If the directors do not submit a proposed Plan of Operation or if the directors do not submit a new plan which is acceptable to the commissioner, or accept the recommendations of the commissioner within 30 days after the disapproval of a proposed plan, the commissioner shall promulgate a Plan of Operation and certify same to the directors. Any such plan promulgated by the commissioner shall take effect on the date certified by the commissioner."

Subsection c goes on: "The directors of the association may amend the Plan of Operation at any time, subject to the approval by the commissioner."

And finally, subsection d: "The commissioner shall review the Plan of Operation at least once a year, and may propose amendments to the board. If the board does not adopt amendments acceptable to the commissioner within 30 days, the commissioner may certify amendments and their effective date to the board."

Let me ask you again, Commissioner Merin and Commissioner Gluck: Do you still feel that the Commissioner of Insurance under those subdivisions within this specific section did not have the power to implement a Plan of Operation?

COMMISSIONER MERIN: Absolutely.

ASSEMBLYMAN CIMINO: Can you tell me why, in fact, you would have not put in a depopulation plan?

COMMISSIONER MERIN: In order for any depopulation plan to work, the individuals that would be depopulated would have to move from the Association into the voluntary market. The members of the Association are the companies that write insurance in the voluntary market. The overall law gives the Commissioner the authority to establish incentives to encourage voluntary depopulation. It does not give the Commissioner the authority to put something into the plan to mandate

depopulation -- the same answers I have given you on the previous two occasions.

ASSEMBLYMAN CIMINO: Were any incentives put into the plan at all--

COMMISSIONER MERIN: Yes.

ASSEMBLYMAN CIMINO: --to encourage depopulation?

COMMISSIONER MERIN: Yes. At various times, as one looks at the attempt of the Department to review this, there were--

ASSEMBLYMAN CIMINO: Commissioner, you say, "At various times." Could you be specific?

COMMISSIONER MERIN: Shortly after my return to the Department in 1986 -- in the spring of '86 -- under Commissioner Gluck's leadership, the Department was preparing, and I think the actual section of the plan was approved-- (Commissioner Gluck makes an indiscernible comment at this point)

ASSEMBLYMAN CIMINO: Did the servicing carriers accept the incentives plan?

COMMISSIONER MERIN: No.

ASSEMBLYMAN CIMINO: They did not?

COMMISSIONER MERIN: No.

ASSEMBLYMAN CIMINO: Did that not create a discussion between the Department and the servicing carriers as to why, in fact, they would not accept the incentives plan to depopulate?

COMMISSIONER MERIN: Yes, it did.

ASSEMBLYMAN CIMINO: Can you embellish on that? Didn't you, in fact, feel you had a mandate under the statute to, in fact, do that, if, in fact, you put forward incentives?

COMMISSIONER MERIN: I think we responded previously that we didn't have the legal authority to do that. I think-- (some discussion between members of Committee at this point)

ASSEMBLYMAN CIMINO: I'm sorry, Commissioner. Could you repeat that?

ASSEMBLYMAN ADUBATO: No, I'm sorry, Commissioner. Go ahead.

ASSEMBLYMAN CIMINO: I'm sorry.

COMMISSIONER MERIN: I think we have already responded that Deputy Attorneys General had told both of us that we did not have the legal authority to do that. The question then came down to, what were the incentives? And the people that we-- I should only respond for myself. The people that I spoke with at the JUA were interested in financial incentives for depopulation. In other words, giving them, either in the voluntary or residual markets, more money for taking people out. That was something that-- We felt that was something that we -- again, for myself -- that I certainly didn't want, and I thought I was acting in agreement with actions of the Legislature; that is, not providing incentives -- financial incentives -- to take people out.

ASSEMBLYMAN ADUBATO: Excuse me. Are you finished with that question?

ASSEMBLYMAN CIMINO: Yes, I am finished with that question.

ASSEMBLYMAN ADUBATO: Before I move on to Assemblyman Villapiano-- I just can't wait any longer. I was going to wait to sum this up, but I can't afford that.

Number one, we have legal opinion that says, emphatically, that the Insurance Commissioners of the State, under Title 17, have the power to do everything that we just asked you to do. Number two, it is reenforced within the specific bill. I disagree with you, respectfully, Commissioner. Number one, not only did you have a mandate to depopulate-- You worked on this bill with me for five months before it was introduced, and so did Jasper Jackson. Mr. Bill Gibson testified that they were going to depopulate by one-third the first year. You knew that; Mr. Jackson knew it; and so did Mr. Murphy. There were no secrets here. You all

knew what the plan was. You were the Governor's representative at these meetings, and you knew that your job, as the liaison between the Governor and Mr. Murphy, was to make sure that these bills were implemented the way you and myself and the Governor and his staff and Mr. Jackson said they would be implemented, and that did not happen.

At no time did you, Mr. Jackson, Mr. Murphy, or Commissioner Gluck ever say to me, or to any other legislator, to my knowledge, that you thought the bill was flawed, and you needed the power to have it changed, so you could depopulate. Never.

In addition to that, not only do you have the power under Chapter 65, that is supported by the entire section in Title 17 in the Code, it is obvious that when Commissioner Gluck brought suit to actually change the legislation that was in black and white that called for reserves, that the courts upheld her against the anger of the industry, and the industry was right, as far as the law was concerned. The law called for reserves -- period -- and the courts overruled the law, and said based -- and I read that decision--

And I'm totally disappointed here; I really am; I really am, because the courts of New Jersey emphatically said that the Commissioner had the power to do that, and to implement that law any way she saw fit, and her decision was a precedent over the actual statute.

In addition, under the Plan of Operation-- Mr. Murphy, respectfully, did you have an Attorney General's opinion when you were the Commissioner because-- I apologize. I didn't hear if you did or you didn't.

MR. MURPHY: No.

ASSEMBLYMAN ADUBATO: All right. So, you did not have an Attorney General's opinion when you implemented the first Plan of Operation on July 19, 1983?

MR. MURPHY: Not that I recall.

ASSEMBLYMAN ADUBATO: All right. So, it didn't include depopulation--

MR. MURPHY: I said--

ASSEMBLYMAN ADUBATO: --from day one. But you did it on your own--

MR. MURPHY: I said--

ASSEMBLYMAN ADUBATO: --without an Attorney General's opinion? Is that a fair question?

MR. MURPHY: I said that the implementation of a JUA was an overriding concern to me, and I went forward on it, even though the plan itself did not -- I believe -- have a plan of depopulation.

ASSEMBLYMAN ADUBATO: Mr. Murphy, you concurred in the first RMEC filing with Mr. Gibson, in a public hearing on December 14, 1983, that you agreed and concurred that the plan would depopulate as much as one-third, which was the written document supported by Mr. Gibson and the entire Board of Directors, that are made up of 11 of those 14 people who work in the insurance industry. That was their written testimony. Now, that's a fact.

In addition, Mr. Merin, I would submit to you that you don't have a luxury to interpret, or to make decisions based on your opinion. These decisions are in black and white. Thirty days, it says, under Title 65 -- section 65, in subsection 18. I've got to say this: Your cavalier attitude here disturbs me very much. That when you look at that section, it says in black and white, that the Commissioner of Insurance -- and you and I put this there together -- that the Commissioner of Insurance, 30 days following-- If the Board and the Chair of the Board of Directors of the JUA refuses any amendment that the Commissioner puts in, it automatically becomes the law of the land. There is no court of appeals.

You had every power to do it, and yet did not do it. The Attorney General is wrong. I don't doubt that he said that

to you, but I am disappointed. I don't question motivation. I don't doubt your testimony. But something of this magnitude, especially after the first year, you know, is incredible to me.

Now, people were here in different times, and different time frames. I don't question, again, the courage of you people or the fact that you wanted to do the right thing. The bottom line is that it's obvious what happened, happened. Now, I apologize because, quite frankly, these are two young, bright, freshman Assemblymen who have worked very hard. They weren't here 16 years ago, and they weren't here eight years ago, but I was. And I just couldn't sit here any longer and allow that kind of testimony to take place, with two freshman legislators, because it is my duty, as a senior member here, and the author of this bill, to make sure that we understand the history of this bill, and who put it together. And it was the Governor's Office and Mike Adubato. And we all knew our intentions, and we all knew what we wanted to do, and at no time did this administration ever say to me, "We can't depopulate" -- at no time -- on the record.

I apologize again for that interruption. Continue, Mr. Assemblyman.

ASSEMBLYMAN CIMINO: I have one final question.

ASSEMBLYMAN ADUBATO: Go ahead.

ASSEMBLYMAN CIMINO: One final question to Commissioner Gluck and to Commissioner Merin. You both served this Governor and in this administration in a number of capacities. Let me just ask: Is it the practice of this administration to act on legal advice without written documentation? Is that administration policy?

COMMISSIONER MERIN: I can't respond to administration policy other than the policy that I have pursued. I think the advice I have received from the Attorney General's Office over the years has been--

ASSEMBLYMAN CIMINO: Commissioner Merin, were you at one time in the Governor's Office as a counsel or deputy counsel?

COMMISSIONER MERIN: Yes.

ASSEMBLYMAN CIMINO: Would you have had the Governor of this State act on legal advice without it being written documentation -- substantiation? We're talking about the law of the State of New Jersey.

COMMISSIONER MERIN: Remember that I was working in the legislative office. The Governor's Office -- another wing of the Governor's Office -- responded to those issues that dealt with the types of legal questions you are talking about. Obviously, dealing with legislation, we made recommendations to the Governor in writing. But I did not take part in those decisions that were of, I think, the nature you are talking about.

ASSEMBLYMAN CIMINO: So, are you saying there is written documentation, and that there has been written documentation to substantiate the decisions of this administration? When I say, "this administration," I am using that in the broad sense, not the Governor's Office sitting here, but all of you are members of the administration. Is that accurate?

COMMISSIONER MERIN: Of course, but I can't respond to something that I don't have firsthand knowledge of.

COMMISSIONER GLUCK: I can.

ASSEMBLYMAN ADUBATO: Let Commissioner Gluck respond.

ASSEMBLYMAN CIMINO: Yes.

COMMISSIONER GLUCK: I would like to respond. As you have noted, I have been in many different situations in this administration. I can tell you that there are times when we receive advice of counsel, whether it is New Jersey Transit, the Department of Transportation, the Lottery, that is not written, that is still advice of counsel. We do not always get

written opinions on everything that is asked -- absolutely. No question about it in my mind, Assemblyman. I know for a fact. I have been involved in it.

ASSEMBLYMAN CIMINO: Thank you. Thank you very much. Mr. Chairman, I would like to reserve the right to bring forward other questions at a later time.

ASSEMBLYMAN ADUBATO: Assemblyman Villapiano, do you have any questions?

ASSEMBLYMAN VILLAPIANO: Yes, Mr. Chairman. I would like to pursue, just a moment, another line; everything is related, but another line of questioning. I just would like to state from the statute-- First of all, this for your own edification, is on page 257, section 35, and it reads, verbatim: "Study commission. For purposes of evaluating the implementation and effects of the 'New Jersey Automobile Insurance Reform Act of 1982' (sections 1 through 12 of Public Law 1983," etc.,) "and the 'New Jersey Automobile Full Insurance Availability Act,' there is created a study commission comprised of 14 members--"

I would like to ask Mr. Murphy, what is your opinion of that statute as it relates to the creation of this study commission? Was this study commission necessary to be implemented? Was it necessary to be, under the law, created?

MR. MURPHY: Well, I presume it was. It kind of speaks for itself. The study commission is to be created to review the law. As I think I said earlier, I read, or I understood 12 months following the operative date to be 12 months after December 1, 1984. I understand there are other interpretations, but that was mine, and I am still inclined to that view.

ASSEMBLYMAN VILLAPIANO: Commissioner Merin, would you concur with--

COMMISSIONER MERIN: Yes, I would. It should have been established, and it was not established.

ASSEMBLYMAN VILLAPIANO: Commissioner Jackson, do you agree that this study committee per the law should have been created?

DEPUTY COMMISSIONER JACKSON: Yes, I do.

ASSEMBLYMAN VILLAPIANO: And Commissioner Gluck?

COMMISSIONER GLUCK: Yes. As I said, I submitted names. I don't remember who they were, but--

ASSEMBLYMAN VILLAPIANO: The purposes of this study commission would be to-- As the first Commissioner, Mr. Murphy, the purposes of this commission would have been to-- Could you elaborate on that for a moment?

MR. MURPHY: Well, I assume the purposes of the commission would be that of any overview group: To see if the law was doing the job the Legislature intended it to do, whether it was doing it efficiently, economically, and for the benefit of the public.

ASSEMBLYMAN VILLAPIANO: The JUA law took effect January 1, 1984, or the institution of the JUA, and after one year, the chart indicates very substantially, that what was testified as a 33% reduction in the amount of the insured in the JUA, actually turned into a 15% increase. Who was responsible for identifying that occurrence, Mr. Murphy?

MR. MURPHY: Well, the figures speak for themselves so far as identifying what occurred. Do you mean, what were the reasons for such a development?

ASSEMBLYMAN VILLAPIANO: Well, my point is, after one year of operation, there was a significant happening, which was different than what had been anticipated.

MR. MURPHY: Well, Mr. Gibson addressed that issue briefly before; that the estimate of depopulation was based upon the then existing law, which was subsequently changed, removing some of the incentives for depopulation.

ASSEMBLYMAN VILLAPIANO: Commissioner Merin, could you comment to that occurrence -- the occurrence of the 48% -- and,

if you don't mind, I will use "a 48% swing" -- 33% reduction versus a 15% increase? Can you address that situation?

COMMISSIONER MERIN: Are you asking me why it occurred, or are you asking--

ASSEMBLYMAN VILLAPIANO: No, I am not asking why it occurred. I am asking, who was responsible for identifying that occurrence?

COMMISSIONER MERIN: The fact that it was growing was well-publicized, I think, through every newspaper in the State during the course of the years 1984 through 1989. It has been a matter of common record. I don't think that it can be computed as to come as a surprise to anyone. But clearly, it was growing.

ASSEMBLYMAN VILLAPIANO: Would it be safe to say, then, Commissioner, that there was an adequate amount of data to be analyzed at that point in time to make the deduction that the JUA was, indeed, in trouble?

COMMISSIONER MERIN: What period of time are you talking about?

ASSEMBLYMAN VILLAPIANO: Well, use the first year.

COMMISSIONER MERIN: The next question is to define what is, "In trouble." Financial trouble? I don't think so. In growth, yes; it was growing, rather than depopulating.

ASSEMBLYMAN VILLAPIANO: But I don't know the difference between the two, but let's just look at the difference in the number of cars. What started out to be 1,400,000 cars in the JUA, was supposed to be 938,000 cars after the first year, but in all actuality, was 1.6 million cars.

My point is, very frankly and openly, because I know there are probably other people who want to address the situation: Somebody had to be responsible for identifying what was going on, and why did it wait so long. I mean, who was responsible for this?

COMMISSIONER MERIN: I would respond to that--

ASSEMBLYMAN VILLAPIANO: Yes, please do.

COMMISSIONER MERIN: --as I have previously. It was public knowledge. Clearly, the Insurance Department was responsible; clearly the Board of the JUA was responsible; clearly the oversight committees of the Legislature were responsible; clearly the legislative representatives on the Board of the JUA were responsible. So, everybody had that responsibility.

ASSEMBLYMAN VILLAPIANO: Well, Mr. Chairman, I would like to digress at the moment, and ask if there is another person in the audience-- I know my time is somewhat limited, and I do want to call another person.

ASSEMBLYMAN ADUBATO: Absolutely. That would be fine, if that is okay with our Co-chairman.

ASSEMBLYMAN ZECKER: No problem.

ASSEMBLYMAN ADUBATO: Who would you like to call?

ASSEMBLYMAN VILLAPIANO: Is Director Paulsen of the DMV here?

G L E N N R. P A U L S E N: (speaking from audience) Yes, I am.

ASSEMBLYMAN VILLAPIANO: Would you come forward, sir? (Mr. Paulsen complies) How are you?

MR. PAULSEN: Good. How are you?

ASSEMBLYMAN VILLAPIANO: Good. Director Paulsen, the statement was made earlier about -- and I think it was made two or three times -- about the three legs that are responsible for identifying a revenue source to pay for the JUA. Would you agree with that?

MR. PAULSEN: I didn't hear those statements, but if you're -- did Motor Vehicles have a role and does it have a role in that process, the answer is, "Yes."

ASSEMBLYMAN VILLAPIANO: All right. That is essentially what I was going to ask you. Can you briefly explain your role, as DMV, in helping to fund the JUA?

MR. PAULSEN: I think, simply stated, we are a billing and collection agency for surcharges mandated under the original statute.

ASSEMBLYMAN VILLAPIANO: Surcharges that were implemented, or surcharges that were derived out of what -- from what law, or from what time period?

MR. PAULSEN: Well, I think it was from 1984 on -- the statute is 1984.

ASSEMBLYMAN VILLAPIANO: Those surcharges amount to--

ASSEMBLYMAN ADUBATO: Excuse me for interrupting; again, I apologize. Assemblyman, did you ask the question of when were the surcharges supposed to be collected? When were they--

ASSEMBLYMAN VILLAPIANO: No. It is important to know, in my estimation, if those surcharges came in -- or were developed in 1984.

ASSEMBLYMAN ADUBATO: Well, no, they weren't. You stand corrected. Those surcharges went back to February 10, 1983. When the law was signed, the day that law became -- the bill became law, people were eligible that committed those offenses. In fact, the original law was retroactive. It went back to January 1, 1983, and the courts upheld that decision, even though -- because the Governor didn't sign the bill until February 10 of '83. But the original legislation said the effective date was January 1 of '83. The Attorney General's Office, and others -- in writing this time -- said that you could go back retroactively.

And we changed that. We had it implemented as of -- from February 10 '83. The whole reason was to start building up money and that's why we gave the Department seven and a half million dollars to put in computers. I will stop right there. I apologize. Go ahead, Assemblyman. But the date began on February 10 '83. I realize you were not the Director then. Director Snedeker was there, who did an excellent job.

ASSEMBLYMAN VILLAPIANO: Director Paulsen, there was a certain amount of money in these surcharges that were to be used for revenue in the JUA. Is that correct -- these surcharges were to be used in that respect?

MR. PAULSEN: Eighty percent was to be remitted to the JUA. Yes, sir.

ASSEMBLYMAN VILLAPIANO: And 20% to be--

MR. PAULSEN: Motor Vehicles.

ASSEMBLYMAN VILLAPIANO: Right. For administration or for collection purposes?

MR. PAULSEN: No. I think the specific statutory language -- let me see if I can find -- is, "To be used by the Division of Motor Vehicles as may be necessary to modernize its operations and improve its effectiveness and efficiency, in order to discharge its statutory obligations." I think that is the way it was originally written.

ASSEMBLYMAN ADUBATO: Yes.

ASSEMBLYMAN VILLAPIANO: The collection rate of DMV over this time -- from 1984 to 1988-- How would you assess it?

MR. PAULSEN: The raw data in that regard has been submitted to the Committee, and that raw data shows a collection rate of 56%. That is predicated upon collections to date. One must bear in mind that there will be additional collections for years already billed, as people pay their ongoing installments, and as people decide that they want to get their license restored.

If you have in front of you what I have submitted to the Committee, attached as Exhibit B, and look at the grand total of all violations -- which is the attachment to Exhibit B -- you will see that in '85 and '86 the collection rate is in the range of 66%, and then 60%. That's because we have had experience subsequent to those years, and we anticipate, as indicated in my report, that for '88 that the numbers will increase as time goes by, as people decide to pay those

surcharges. But the raw data shows currently that it is 56%, sir.

ASSEMBLYMAN VILLAPIANO: Let's reduce that to dollars, if we can, Mr. Paulsen. Right now, I am showing -- and this is from your data -- that there is to be received, or set up as a receivable, \$511,766,000, of which has been collected, \$287,281,000, or this 56% rate you are speaking of. That is a significant shortfall.

MR. PAULSEN: It is a significant amount of money that was billed, that has not been collected. That is correct.

ASSEMBLYMAN VILLAPIANO: Well, all of this ties together, and that is why we are all here. This is a quarter of a billion dollars that is outstanding. It's outstanding. Am I--

MR. PAULSEN: It has not been paid. That is correct.

ASSEMBLYMAN VILLAPIANO: It has not been paid. Well, my question would be twofold: Number one, what are we doing to collect this money?

MR. PAULSEN: Do you want me to respond to that before you go to the second part?

ASSEMBLYMAN VILLAPIANO: Yes, please do.

MR. PAULSEN: The remedy -- or the collection remedy, if you will -- provided under the statute, is that of suspension of one's driving privileges. We have, in fact, suspended the driving privileges of those who have not paid the surcharges, and they continue to be suspended privileges in this State until such time as they make payment. That is the remedy -- the exclusive remedy -- that we were given under the legislation.

ASSEMBLYMAN VILLAPIANO: Well, my point is, Mr. Chairman, and I don't wish to prolong this with the Director -- and I appreciate your coming -- is, we have \$250 million that is outstanding. This \$250 million should be, and can be, allocated to the JUA to help it out of its financial woes.

MR. PAULSEN: Assuming it can be collected, yes, sir.

ASSEMBLYMAN VILLAPIANO: Well, that is my point. I don't think we should be assuming that that can be collected.

I think it is incumbent upon us to get it collected.

Thank you, sir.

ASSEMBLYMAN ADUBATO: Thank you, Assemblyman.

Before you leave, Mr. Paulsen, I might as well talk to you now, rather than wait and bring you back up again. When did you become the Director?

MR. PAULSEN: June of 1986.

ASSEMBLYMAN ADUBATO: Were you in that Department before?

MR. PAULSEN: I was spending some time there from, I am going to say, April on.

ASSEMBLYMAN ADUBATO: Of what?

MR. PAULSEN: The same year.

ASSEMBLYMAN ADUBATO: Okay. So, you were not there when the JUA bill passed and became law?

MR. PAULSEN: That is correct.

ASSEMBLYMAN ADUBATO: You were not there when the Department got seven and a half million dollars and took a contract with Price Waterhouse without going out to bid, and put in the wrong system?

MR. PAULSEN: I was not there.

ASSEMBLYMAN ADUBATO: Okay. You were not there when the entire system broke down, and people were getting false bills, and they couldn't issue licenses, and the estimates were, by the experts, that we probably lost about \$80 million in surcharges, because we couldn't surcharge the people? We didn't know who they were any more. So, you weren't there when that happened?

MR. PAULSEN: I was not there when the computer crashed. I have attempted, because I read in the newspaper accounts the last statement you just made--

ASSEMBLYMAN ADUBATO: Right.

MR. PAULSEN: --which is that money was lost as a result of conversion-- And in fact, during that period of time that you mentioned that I was there, before I was actually sworn in--

ASSEMBLYMAN ADUBATO: You're talking about '86?

MR. PAULSEN: In April of '86.

ASSEMBLYMAN ADUBATO: But you're not talking about '85?

MR. PAULSEN: No.

ASSEMBLYMAN ADUBATO: You're not talking about '84? You weren't there.

MR. PAULSEN: No, but what I'm--

ASSEMBLYMAN ADUBATO: You're talking about-- My comments go back to '84, '85. Now, you weren't there, you said.

MR. PAULSEN: I was not there, but I have not been able--

ASSEMBLYMAN ADUBATO: Well, do you want to talk about '84 and '85, that I just spoke about, or do you want to talk about '86?

MR. PAULSEN: I will be happy to talk about '86. I just tried to find where the money was lost that you talked about, and I can't find it.

ASSEMBLYMAN ADUBATO: Sir, I would like to find it, too. I would like to find it, too. I think we would all like to find it. The bottom line is that you were not the Director of Motor Vehicle, when under section 6d and e-- The Insurance Commissioner, Mr. Murphy at that time, and Mr. Snedeker at that time, were charged with making up any shortfall by law. Now, I will not take the time here. As we said before, I know that through the auspices of Assemblyman Gerry Zecker, the Chairman of the Insurance Committee, that this is going to continue -- these questions. And we will be participating, I'm sure, again, through the normal process. As Mr. Zecker said, this isn't over today.

So, I don't expect to touch every base and dot every "i." But I think that the basis of what we are talking about here, is that under the law, and the way the thing was implemented-- You were not there, and I am not holding you accountable for anything, except that now that you are the Director, you are accountable. You are accountable. And I really, you know, because-- I must say to you publicly, though, that I was a little disappointed in the fact that we asked you for information, and you never responded. We asked for information, and you didn't respond in almost 90 days, or more, according to our records. You kept telling our staff that you were going to get it, you were going to get it, you were going to get it, and we didn't get it. And finally, it was after Assemblyman Loveys resigned, you still didn't send us the information, Mr. Zecker became the Chairman, and I approached Assemblyman Zecker, and I said, "Assemblyman, this is the situation. I would suggest you call the Director and tell him that we have subpoena power, and if we don't have those records within 72 hours, we are going to subpoena them."

That is how we got your records. Thank goodness-- You know, we haven't had to subpoena anything here, even though some people have taken executive privilege, and we are going to talk about that in about two seconds. But so far, I must say to you that I was very, very disappointed. I don't ever remember speaking to you before today. I don't remember seeing you before today. And the way you and your Department treated the Legislature is unforgivable to me. I want you to hear it from me publicly.

MR. PAULSEN: I apologize for the late response. I would like to say this, though: Not having been there at the time that the questions-- The questions you had were going to a period earlier than when I was there, and required a search of records throughout that Division, and I didn't know where to start with. My legislative liaison conducted that search and

spent over 80-some hours of her own time, digging as best she could to find that. I wanted to make that search as thorough as I possibly could. I do apologize for the late response. It should have been there earlier, but we were trying to do a thorough job, sir, in addition to other things.

ASSEMBLYMAN ADUBATO: Well, it's better late than never. We will accept your apology.

MR. PAULSEN: Thank you, sir.

ASSEMBLYMAN ADUBATO: Assemblyman, do you have any other questions?

ASSEMBLYMAN VILLAPIANO: No, not of Director Paulsen. I do have one other person I want to hear from today--

ASSEMBLYMAN ADUBATO: Thank you, Director.

ASSEMBLYMAN VILLAPIANO: --if that is all right.

ASSEMBLYMAN ADUBATO: Yes, who would you like to hear from?

ASSEMBLYMAN VILLAPIANO: I would like to have Ms. Verice Mason.

ASSEMBLYMAN ADUBATO: Ms. Verice Mason is here. Would you please join us, Ms. Mason?

ASSEMBLYMAN VILLAPIANO: Hi, Ms. Mason.

A S S T. C O M M. V E R I C E M. M A S O N: How are you?

ASSEMBLYMAN VILLAPIANO: Fine. I would like to just establish for the record your official position, if I may.

ASSISTANT COMMISSIONER MASON: My current position is Assistant Commissioner, Legislative and Regulatory Affairs.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I can't hear.

COMMISSIONER GLUCK: Move the mike closer.

ASSISTANT COMMISSIONER MASON: This one? Can you hear me now? (no response)

ASSEMBLYMAN VILLAPIANO: Ms. Mason, I went along a line of questioning a few moments ago. That line of questioning had to do with the ability of -- well, number one,

why the study commission was not formulated, and number two, who was responsible for recognizing that in the first year of operation the JUA had a 48% swing in what was supposed to happen and what, in actuality, did happen?

Co-chair Zecker asked earlier, in his presentment about the study commission, and were recommendations ever made to the Governor's Office, of which Mr. Murphy, Commissioner Gluck, and Commissioner Merin all responded a certain way. Were you here for those answers?

MS. MASON: I was here for part of it. I went to the ladies' room for one part recently. I apologize.

ASSEMBLYMAN VILLAPIANO: Correct me if I am wrong, Commissioners. My records indicate that, Mr. Murphy, you said that you did not send recommendations on to the Governor's Office, and Commissioner Merin and Commissioner Gluck mentioned that you did send names over to the Governor's office for the appointment on the study commission. I have, Ms. Mason -- and I would like to pass these around for your review -- copies of minutes of two meetings of the New Jersey Automobile Full Insurance Underwriting Association, or the JUA. Those dates are January 21, 1986, and also March 18, 1986.

On the second page of both of those minutes, you will see colored in-- Is everybody with me? Within those minutes, you will see a statement. And, Ms. Mason, I would ask you, is that your -- what will I say? -- terminology? Are they-- Is that accurate -- those two lined out items?

MS. MASON: Well, quite frankly, I can be honest and tell you that I don't remember exactly what was said in March and January of '86. But I do know that Commissioner Gluck had transmitted some names to the Governor's Office at some time, and I have-- If anything at all was said, it probably was said with that in mind.

ASSEMBLYMAN VILLAPIANO: Commissioners, if you would, and Ms. Mason, just bear with me for a moment, because I feel

very strongly that if a problem has been identified, or could be identified one year into operation, or six months into operation, or three months into operation, it should have been identified and rectified. And in my research, I have tried very hard to find out just where the problem had went.

For the record-- I would like to read into the record the minutes from the January 21, 1986 -- the statement that says: "Mr. Khury then asked about the existence of the Governor's study commission that was mentioned at a previous meeting. Ms. Mason said such a commission had been named, and that the Governor's Office would be making an announcement." Would you agree with that in context, if it is not your exact quote?

MS. MASON: I can't agree; I don't know what I said at the time. I can tell you really what I said before, which is, "I know names have been submitted." If I said anything, it was said with that in mind.

ASSEMBLYMAN VILLAPIANO: Okay. I'll follow that up with, two months hence, in March 1986, in these minutes again -- these minutes of the New Jersey Automobile Full Insurance Underwriting Association-- The minutes state, under Insurance Department: "Verice Mason reported on behalf of the Department. She stated that the Department is still waiting action on the appointments to the Board, with word expected next week. The Department will also begin work on appointments for other such terms which have expired. She also indicated that the Department should be notified next week of the appointments to the study commission."

Once again, is that an accurate assessment, or a reasonably accurate assessment of the proceedings?

MS. MASON: I would answer as I answered previously.

ASSEMBLYMAN VILLAPIANO: Where did you get that information? I mean, who would have notified you from the Governor's Office that the commission had been named --

referring back to those minutes? I mean, it seems to me that that states that a commission had been appointed. Where did you get that information?

MS. MASON: To be honest with you, I don't recall. I am not trying to be difficult, I just don't recall.

ASSEMBLYMAN VILLAPIANO: I understand. Now, March of '86 was the last time that I saw this study commission referred to. When no appointments were forthcoming from that point on, did you contact anyone in the Governor's Office to ask them why?

MS. MASON: March of '86? I don't recall. I don't-- Based on my own documentation-- I don't recall by any documentation that I contacted anyone.

ASSEMBLYMAN VILLAPIANO: Thank you, Ms. Mason. I just would like to state for the record, Mr. Chair -- Mr. Chairs -- that I believe the minutes do indicate that an appointment should have been forthcoming. Recommendations had been made by the Commissioners, and this was never done.

I just would thank you for being here today. That's all I have.

ASSEMBLYMAN ADUBATO: I just want to say for the record, it is sad, Ms. Mason, that you can't recall something that important into the record -- in the JUA record. I accept that. But it is sad, because Mr. Khury, who is not here today, several times told me -- and it is in the record; in the minutes -- that he asked you, and he asked other people, about the study commission. And it is in that record; and it is in those minutes that he kept asking about that study commission. He was told by you that it was going to happen right away; that they were working on it. This was right after the Governor's Office called me.

COMMISSIONER GLUCK: Mr. Chairman?

ASSEMBLYMAN ADUBATO: I'm sorry. Go ahead, Commissioner.

COMMISSIONER GLUCK: If I may--

ASSEMBLYMAN ADUBATO: Sure.

COMMISSIONER GLUCK: And it is true, but it would not have been up to Verice Mason to call the Governor's Office. With all due respect, it would have been up to-- Well, the question of the Assemblyman-- It would have been up to the Commissioners to call the Governor's Office, not--

ASSEMBLYMAN ADUBATO: I didn't hear that question.

COMMISSIONER GLUCK: It is true that once we submitted the names, we were under the impression, obviously, that it was going to happen.

ASSEMBLYMAN ADUBATO: Let me clarify. I apologize for being out of the room, but the record shows-- I didn't hear the question. The record shows that Verice Mason, at the JUA Board meeting in January of '86, said: "The Governor made his appointments to the study commission." It says it. It's right in front of you.

COMMISSIONER GLUCK: I understand that. I don't think that that was the case. I think what it was--

ASSEMBLYMAN ADUBATO: Excuse me for interrupting you, Commissioner, but that is what we are talking about. That's what we are talking about. I mean, unless I am missing something-- I don't know what the question was, but that is what the minutes say.

Now, what I'm saying is, that it's right around that same time that I was called. And I really don't want to go into that now, but I will in about a minute-and-a-half. But I apologize for interrupting.

Assemblyman Zecker?

ASSEMBLYMAN ZECKER: May I?

ASSEMBLYMAN ADUBATO: Go ahead; sure.

ASSEMBLYMAN ZECKER: I'll ask my side of the aisle-- Assemblyman Schuber, do you have any--

ASSEMBLYMAN SCHUBER: Mr. Collins, I think, has a question of Mr. Paulsen. I defer to him for this point, for those questions.

ASSEMBLYMAN ZECKER: Assemblyman Collins?

ASSEMBLYMAN COLLINS: Thank you, Assemblyman Zecker. I do have a question or two for Mr. Paulsen, if he is still here.

ASSEMBLYMAN ADUBATO: I apologize. Do you know what happened?

ASSEMBLYMAN COLLINS: What?

ASSEMBLYMAN ADUBATO: I just walked back there. Somebody came up to me, and said do I have any more questions for Mr. Paulsen. I said, "No." I hope he didn't leave.

UNIDENTIFIED SPEAKER FROM AUDIENCE: He left.

ASSEMBLYMAN ADUBATO: I apologize. Because that is probably my fault, then, because they asked me if I had questions, not the Committee, and I said, "No, I don't have any more questions."

ASSEMBLYMAN COLLINS: Okay. That's fine, Assemblyman.

ASSEMBLYMAN ADUBATO: Do you want him called back?

ASSEMBLYMAN COLLINS: No, no. It was just a couple of clarification points, but it was really touched on when Assemblyman Villapiano asked the questions. I would have some questions of Mr. Gibson, though, if I may.

Thank you, Mr. Gibson. In your testimony before Assemblyman Zecker's questions, you made a comment, and I will paraphrase it: There was no great enthusiasm among the service providers to become involved in the JUA when it first took effect.

MR. GIBSON: When it was first created, there was no great enthusiasm among insurance companies to become service providers. That's right.

ASSEMBLYMAN COLLINS: Okay.

MR. GIBSON: My own company was not particularly desirous of being a service carrier. I specifically asked our president to overrule some of the staff, so that we would make ourselves available.

ASSEMBLYMAN COLLINS: Maybe I misunderstood. Are you saying that to become members of the Board, or to insure people through the JUA?

MR. GIBSON: The service carriers are the ones who provide the insurance policies and collect the premiums and pay the claims for the JUA.

ASSEMBLYMAN COLLINS: Exactly.

MR. GIBSON: A member of the Board was an entirely different hat.

ASSEMBLYMAN COLLINS: Okay.

MR. GIBSON: I wear several hats, unfortunately.

ASSEMBLYMAN COLLINS: Right, I understand that. Let me then go back to this question: When you said there was no great enthusiasm among the service providers, you were saying with regard to their insuring drivers in this State through the JUA. Is that what you were saying?

MR. GIBSON: Well, yes. Either as service carriers or, for that matter, in the voluntary market. It was obvious there was no enthusiasm to insure business in the voluntary market. That's why there were so many people in the assigned risk plan, and subsequently the JUA.

ASSEMBLYMAN COLLINS: Since that time, though, with the large increase in the number of drivers in the JUA, there must have become a more enthusiastic response to drivers wanting insurance in the State. Would I not be correct in assuming that?

MR. GIBSON: I'm sorry, I don't understand the question. There has obviously been a growth in the total number of insured vehicles in the State.

ASSEMBLYMAN COLLINS: Okay. Therefore, service carriers, through the JUA, are insuring drivers?

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: My question then is this: If there was this lack of enthusiasm, what changed it? What

turned it around? Why are there now the number two million in the JUA?

MR. GIBSON: I'm sorry.

ASSEMBLYMAN COLLINS: Go ahead.

MR. GIBSON: My point was, the companies were not enthusiastic about taking on the task of being service carriers.

ASSEMBLYMAN COLLINS: Exactly, I understand that.

MR. GIBSON: That had nothing to do with how many people were going to end up insured by the service carriers.

ASSEMBLYMAN COLLINS: Okay. But, they then did become service carriers, did they not?

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Okay, they have. And, through the process, however it evolved, we have many, many, many drivers in the JUA being serviced by those carriers who didn't have an enthusiastic response to the initiation of the JUA?

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Okay. My question is very simple, then, now that we got to it: What happened? Why are they insuring all of these people now? Why did they start picking up these JUA drivers?

MR. GIBSON: It isn't because they went out knocking on doors trying to get additional business. The service carriers have to insure everybody that is brought to them for insurance. The way it works is that each licensed producer in the State -- agent or broker -- is given a relationship with one of the service carriers. Now, any time any agent or broker has an applicant for insurance that he does not have a voluntary market for, he can place it with his JUA service carrier and, therefore, into the JUA. The service carriers had no sales campaign on, or anything like that.

ASSEMBLYMAN COLLINS: I understand. But by fiat they do, because if they deny them in the voluntary, and then they

are brought -- a person -- into the JUA, they pick them up.
So--

MR. GIBSON: Yes, but the service carriers were only 15 companies; the voluntary market was about 200.

ASSEMBLYMAN COLLINS: How many of the 15 companies are in the voluntary market?

MR. GIBSON: They are all in the voluntary market.

ASSEMBLYMAN COLLINS: Exactly. So, they can deny them in the voluntary -- okay?

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Then they are brought to them. They deny Jack Collins in the voluntary. My broker, my agent, whomever--

MR. GIBSON: Yes?

ASSEMBLYMAN COLLINS: --brings me to that same company in the JUA, and the JUA takes me.

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Exactly. So, enthusiasm may be the wrong word, but over the years, we end up now with a company saying no to the voluntary. And here comes old smiling Jack into the JUA, and they pick me up.

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Okay. Now, my question, then, is: Why? Why would they rather have me in the JUA than in the voluntary?

MR. GIBSON: Well, when an insurance company looks at your application in the voluntary market, they don't ask themselves two questions. They don't ask themselves, where should you go? They only ask, do they want to insure you? If the answer is, "No," the answer is, "No." You might get insured by the next insurance company, or you might go into the JUA. The company that turns you down has no control over what you do next. You might just sell your car, and say, "The hell with it."

ASSEMBLYMAN COLLINS: Exactly, but then I also may end up as a member of their JUA group, so to speak.

MR. GIBSON: Of the JUA, yes.

ASSEMBLYMAN COLLINS: But they do not know that-- There are only really then two choices, right? They would either have me-- If they say no voluntarily, then -- three choices, I guess -- I would either then be picked up by another company in the voluntary market--

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: --sell my car, or end up in the JUA.

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Now, in your expertise, which of those three do you think happens the most when someone is turned down on the voluntary? Does another company pick them up? Do they sell their car? Or, do they end up in the JUA?

MR. GIBSON: As I stated earlier, for many years, virtually all insurance companies have considered New Jersey private passenger automobile insurance an undesirable line of business. That is reflected by the growth of the assigned risk plan, starting in the early '60s. It has nothing to do with the JUA, I might add. I mean, the reason the companies don't write auto insurance in New Jersey, is because they don't perceive that they have an opportunity to make a long-term profit in the private passenger automobile insurance business in New Jersey.

The Legislature recognized that in the original JUA legislation, and built in some incentives for the voluntary market, which were subsequently removed before the law ever took effect. The recent legislation has gone back to that recognition by building in flexible rating into the law, that says to the voluntary market, "Look, please cooperate. Write some business. If it turns out that you need to charge a little more next year, you can do it without going through a

horrendous administrative process and having the Public Advocate spend a lot of your money getting in the way of the Insurance Commissioner."

ASSEMBLYMAN COLLINS: Let me ask a question-- I wouldn't quite call it hypothetical, but I am not asking you to be able to point to every dollar amount in this question. But, we have a situation, as I view it, in the way we have just set this dialogue up between us, that someone is denied in the voluntary by a company and, in my opinion, ends up in the JUA more than they are picked up in another voluntary market or sell their car.

MR. GIBSON: Yes.

ASSEMBLYMAN COLLINS: Okay. Now they are in there. We, we-- At least I accept, and I think most other people do, that many, many, many, many, many people in the JUA right now are not "bad" drivers.

MR. GIBSON: That's correct, they are not bad drivers.

ASSEMBLYMAN COLLINS: Okay. Now, when that driver goes into the JUA and is picked up by one of the 15 who serve in the voluntary market--

MR. GIBSON: Yes?

ASSEMBLYMAN COLLINS: --does the company benefit by having that good driver -- and let's use me as an example-- Jack Collins, who may be determined to be a good driver, can't get it voluntarily, for whatever reason. As you said, they look, they say, "No." I am not selling my car, and no one else picks me up. I go in the JUA. Is the company-- I end up in the JUA. Is the company now better off having me in the JUA as a good driver, or would they have been better off with me in the voluntary market? And better off meaning, how monetarily are they getting a benefit?

MR. GIBSON: Obviously, insurance companies are in business to write insurance.

ASSEMBLYMAN COLLINS: Yes.

MR. GIBSON: We would much rather write insurance on you and your car than to turn you down, because if, in fact, you don't have any accidents, we made a profit on you.

ASSEMBLYMAN COLLINS: Exactly.

MR. GIBSON: Now, we can't do that as a service carrier in the JUA. The profit, if you will, that might come from your one policy, goes into the JUA coffers. The service carrier gets paid a fee for providing the service. That is a relatively small amount of money, whose potential for profit is relatively slight. So, we do not -- we are not in the business to sell our service as a service carrier. We would just as soon not do it, but we recognized that somebody had to.

Now, in every other state in the Union, except Massachusetts and New Jersey, we accept most applicants. You are not a bad driver, but you are not a good risk, and there is a difference. One thousand people who have never had an accident-- Out of that 1000 people, a certain number of them will have accidents next year. We can fort of-- We can pretty much guess at approximately how many will have, and we can guess at approximately how much those accidents will cost. And from those numbers, we can pretty much guess how much premium we need from each of the 1000 to pay for the losses that maybe 100 people have.

Now, if the amount we are allowed to charge is less than that figure, then you are a poor risk to the insurance company, because you might be one of the 100--

ASSEMBLYMAN COLLINS: Even though I am a good driver.

MR. GIBSON: See--

ASSEMBLYMAN ADUBATO: Excuse me for interrupting the dialogue, and I apologize to you, Assemblyman. Our time is limited, and as Assemblyman Zecker, the Chairman, has said, and I respect that-- You know, we are here to try and get specific questions. We appreciate very much the dialogue, but we would ask you to please hold that for the Insurance Committee

hearings, where Mr. Gibson will be asked to attend again, probably one or two times.

But right now, respectfully, respectfully--

ASSEMBLYMAN COLLINS: I was doing more listening there than the questioning anyhow, Assemblyman. Let me ask this question, then: Commissioner Merin indicated in his testimony that the companies would want more dollars to move people out of the JUA and into the voluntary market. I assume, by the final comment you made there, that the reason is that the companies are not doing that well, based on the example you just gave me. Or, do you agree with Commissioner Merin's comment?

MR. GIBSON: Well, Commissioner Merin -- and I hope you will give him a chance to correct me, if he feels I misstate what I am about to say--

ASSEMBLYMAN COLLINS: I will.

MR. GIBSON: We had, as has been explained-- We had a Depopulation Committee chaired by Mr. Covey of State Farm, who was a member of the Board of Directors of the JUA. They met many times with the Department. In trying to come up with a depopulation plan that might work, one idea they came up with was to actually pay, not the service carriers, but the voluntary market carriers, some kind of a bonus, or a reward for writing business that was formerly in the JUA.

But that never went past discussion stage. That was never presented to the Board for a vote. I don't believe it was ever asked of the Insurance Commissioner that he or she, or any of them, promulgate that particular plan. It was one of the plans that was talked about, because the truth is, none of us -- at least no one I knew of -- could even conceive of a depopulation plan that would work under the overall state of the market from '84 until the legislation that you passed in the fall of '88.

ASSEMBLYMAN COLLINS: I have no further questions of Mr. Gibson. But I do see Mr. Paulsen here now, if I could--

ASSEMBLYMAN ADUBATO: Okay.

ASSEMBLYMAN COLLINS: Thank you, Mr. Paulsen. I hope-- I don't know if they caught up with you, but my question is basically a simple one. You have indicated that 80% of the money collected in surcharges goes to the JUA; 20% goes to the DMV. Is that 20% figure-- Is that carrying the expenses of the operation to collect these surcharges, or do you need more than 20%, or do you need less?

MR. PAULSEN: Assemblyman, that is a difficult calculation to make. I can tell you that if I had to estimate the amount of my time that is spent on surcharge-related matters, it is probably in that range, or a little bit more. But making the evaluations across-the-board, a significant percentage, upwards of 40% to 50%, of the phone calls that we receive in our telephone center are related to that. Over half of the hearings we hold at our Deptford Regional Center or the Sears -- the Trenton Regional Center or the Wayne Regional Center are related to surcharge. Those calculations have been made, and I would be happy to submit them. But they can be subjective and can be subject to evaluation.

ASSEMBLYMAN COLLINS: One other question: Do you presently have the capability, through the Division with computers and personnel, to be able to be on top of this? We have a 56% collection rate. Understanding that it is a difficult thing to go out and catch up to people, do you currently have the abilities to do the job -- right now?

MR. PAULSEN: We have-- The job that has been given to us, as I understand it, by the statute, is to bill, and if the bills are not paid, to suspend the driving license, and that we are doing.

ASSEMBLYMAN COLLINS: Okay. Thank you very much.

MR. PAULSEN: Thank you, sir.

ASSEMBLYMAN COLLINS: I have a question of Commissioner Merin: Commissioner, you indicated that you didn't feel, in the original JUA legislation, that you had the mandate to depopulate. Do you now have that mandate?

COMMISSIONER MERIN: A law was passed last fall -- I believe in September or October -- which gave the Department to order depopulation, and depopulation has commenced. I think most producers and companies recognize it's moving ahead rapidly.

ASSEMBLYMAN COLLINS: So, you didn't feel you had it before, is what you're saying -- and we have already heard that testimony, and there has been some disagreement to that. Okay.

One final question, Mr. Chair, of Mr. Jackson: Deputy Commissioner, you indicated that the deficit figure that is always kicked around is one that you disagree with, because it is spread out over a number of years, and so on. In your judgment, if the JUA was to go out of business today -- and you had the power right now to end it -- and I have the power to give you the amount of money needed to end it, what would that figure be, if it is not \$2.8 billion, or whatever else it would be?

DEPUTY COMMISSIONER JACKSON: Somewhere between \$2.5 and \$2.8 billion.

ASSEMBLYMAN COLLINS: Okay. Thank you. Thank you, Mr. Chairman. No more questions.

ASSEMBLYMAN ZECKER: Thank you. Assemblyman Schuber?

ASSEMBLYMAN SCHUBER: Just a couple of brief questions, for the Commissioners basically, both present and former, which is simply this. Many of our-- Many of the questions here have been based on the premise that the JUA is a sound concept. Let me ask you that, since you have been charged with implementation of it. Do you feel the JUA legislation, as it came into being, represents a sound concept for the regulation of insurance in the State of New Jersey? Mr. Murphy, first.

MR. MURPHY: That is a hard question to answer. I was not enthusiastic about the bill when it first came in, but it was part of a bipartisan effort, and I was a team player.

ASSEMBLYMAN SCHUBER: Did you have a problem with it, in your own concept?

MR. MURPHY: Well, I have always had a problem with subsidy, and the bill does involve subsidy, not that subsidy is not widespread in the insurance business, or in our way of life, for that matter of fact. But that, and some other reservations about it-- But that did not cause us to flag in our efforts to implement the law.

ASSEMBLYMAN SCHUBER: That was not the intent of my question, obviously.

MR. MURPHY: I understand.

ASSEMBLYMAN SCHUBER: My question is if you had some concerns about it, from your expertise, as to whether it was sound or not? That is what I am interested in finding out.

MR. MURPHY: Well, I had some reservations about the bill, that's true.

ASSEMBLYMAN SCHUBER: Your reservations were based on the subsidization portion of the--

MR. MURPHY: That was part of it. The other part was, that the absence of any surcharges initially in the JUA was a discouragement toward depopulation. I would have liked to have eliminated all manner of residual pool of automobile, if we could. Instead of that, we seem to have created a larger one.

ASSEMBLYMAN SCHUBER: Let's see, whoever was next in chronological time here. Mr. Merin?

COMMISSIONER MERIN: If you're asking the same question--

ASSEMBLYMAN SCHUBER: The question is the same for all.

COMMISSIONER MERIN: --do I think the JUA was a good idea or a sound mechanism-- There is no one in this room, and no one, I don't think, in the State, who doesn't recognize that

there are problems with the JUA. But in response to that question, I would say that as time goes on, I am convinced that the JUA was not only a good mechanism, but the best mechanism for a State like New Jersey. Clearly, there are problems with our JUA. We know that. The fact is, in the late 1970s and in the early 1980s, there was a great deal of distrust between the people and the Legislature and the government of this State and the insurance industry. One of the virtues of the JUA was that it would give us a much greater overview; a much greater idea of what was really happening in the industry. It would also give us the capability to bring cost efficiencies into the marketplace.

Now, I have learned an awful lot over the last couple of years; I think all of us have. And one of the things that I have learned is that the concern we had about the type of industry that we have, that is, the nature of the auto insurance industry, were true, were valid, were real. It was my assumption, and I think it was stated by various legislators, and I think much editorial comment in the early 1980s, was to the effect that the insurance companies were financial hassles. They processed paper, they brought in money, and not much concern was given about how the product was carried out; how the people were serviced.

It is my belief, based upon the data we have provided, that the cost efficiencies we have brought into place because of the JUA will, in a short period of time, outweigh any problems that have developed in the short term. Let me be more specific: We know that we have reduced the costs of the servicing carriers to below what it is in the voluntary market. We know that we have brought in new servicing carriers now, that are providing services for a very large amount of money less than the voluntary market was provided.

We have spent a lot of time and a lot of money coming up with a system that works. The JUA, at the present point in

time, is doing, in terms of the processing of insurance -- doing for 84 cents on the dollar, what the voluntary market still charges a dollar to accomplish. The costs to the public in this State for car insurance, are very, very high. We know there are some things we cannot change -- the population density, the number of cars on the road. Therefore, it is incumbent on us to try to address that which we can solve; and that is, the nature of the insurance industry itself. We have achieved the majority of our goals.

Clearly, the JUA needs more money, but the efficiency of the JUA is such, at this point in time, that it has validated our effort that we have made jointly over the last six or eight years.

ASSEMBLYMAN SCHUBER: How about you, Commissioner Gluck?

COMMISSIONER GLUCK: Well, what I can add to what Commissioner Merin said is simply this: As a member of the New Jersey Legislature, I was happy to vote for the legislation that created the JUA. It was on the cutting edge. There had been nothing like it in the entire country. Anytime you try something on the cutting edge, you are going to have problems with it. But it was a unique mechanism that was set up, that Assemblyman Adubato obviously was the advocate for, and I think it was the right thing to do. The fact that there were problems with it, you know-- I just think that anybody that thinks you are going to do something like this and not have problems along the way, and not have some difficulties, doesn't understand the process.

I hope that before this meeting is adjourned -- since I am the one who is taking the heat in the papers, and since the Assemblyman, I'm sure through an oversight -- Co-chair Zecker -- did not ask me about prudent reserves, I would like to be able to have an opportunity to address that.

ASSEMBLYMAN SCHUBER: Well, let me ask Mr. Jackson first the same question, then, which is--

COMMISSIONER GLUCK: Okay.

ASSEMBLYMAN SCHUBER: Commissioner Jackson, what is your feeling on that -- the issue of the JUA and its efficacy?

DEPUTY COMMISSIONER JACKSON: I thought it was a sound concept, but, to mirror what Commissioner Gluck just said, I thought it was a unique concept, a novel concept, something that had never been tried before, and that it would have problems that would need to be ironed out. For instance, one of the problems I saw in it was the fact that the companies were supposed to be given incentives to voluntarily depopulate. I felt that that was a good idea, but they should have given the Commissioner backup authority to compel depopulation, or to control the population.

The revenue sources of it were fixed in such a way that if certain things did not happen as envisioned or contemplated, then the Commissioner would have a very limited capability of raising sufficient -- possibly raising sufficient revenues to cover the costs. Then, one other area in which I thought it was weak concerned the central management function of the organization. Here the Legislature took action to create what was essentially, at the time, the fifth or sixth largest insurer in the country. But it was given over to the industry to administer, but the industry had no bottom line liability for it.

So, in my mind, it was expected that the industry was going to run this thing, but what would essentially be one of the largest insurers in the country, but they had no bottom line liability for it. So, on the one hand, I thought it was a great concept, and I thought it was a sound concept, but I thought that it had some problems which ultimately would have to be ironed out.

ASSEMBLYMAN SCHUBER: That issue of the bottom line factor with regard to the industry-- Has that been ironed out, to this day?

DEPUTY COMMISSIONER JACKSON: No. Industry still has no bottom line liability for that market, which is unique across the nation, and which, quite frankly, should have been a significant incentive, in and of itself, for the industry to depopulate.

ASSEMBLYMAN ADUBATO: Thank you. I was waiting for someone to say that. Excuse me for interrupting you, Assemblyman; I apologize. Go right ahead; go right ahead.

ASSEMBLYMAN SCHUBER: I concluded my remarks in my question to Mr. Jackson. I would like to give Commissioner Gluck the courtesy of the question, which I think--

ASSEMBLYMAN ADUBATO: Excuse me. You know, we have no problem with that, except that, you know, we are almost an hour late now. I am willing to give Commissioner Gluck part of my time, if it is okay with you, because I already told her that I would give her the opportunity to answer that. If that is okay with you, Assemblyman, I will give her part of my time -- willingly and happily. Commissioner Gluck?

ASSEMBLYMAN ZECKER: Excuse me, Mr. Adubato?

ASSEMBLYMAN ADUBATO: And Assemblyman Zecker asked me to do it, in fairness to our Co-chairman, because it was an oversight.

COMMISSIONER GLUCK: No, I understand that it was an oversight. No, I do understand that.

ASSEMBLYMAN ZECKER: Assemblyman Adubato, before you begin--

ASSEMBLYMAN ADUBATO: Yes, sir?

ASSEMBLYMAN ZECKER: --and you will be the concluding speaker -- the last to speak -- I did want to say briefly that we have not covered all of the ground we want to cover today. Specifically, one of the areas is fraud. At a future Committee

meeting, we will deal with insurance fraud, as a sole topic -- and possibly other topics. Thank you, Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Thank you, Assemblyman Zecker. Commissioner Gluck, I think the question was phrased: How do you feel about having reserves in the JUA?

COMMISSIONER GLUCK: I appreciate the opportunity to address that, and I know it was an oversight. The question was prudent reserves, and I, too, agree that there should be prudent reserves.

Let me just say that as a sitting Commissioner of the Department of Insurance, when I got the RMEC request, that by one accounting method was \$150, and by another accounting method was \$99, and by the accounting method of the Public Advocate, and the Ralph Nader organization, that was involved with this at the time, was zero, it occurred to me, as it might occur to most reasonable people, that before the Commissioner of the Department of Insurance capitulated to the request, that that person would at least try to seek enough information to find out what the real RMEC should be, if there should be one -- and I am not sure there was even a question as to whether there should be one -- and what the people of this State should pay.

Certainly, as a consumer, I would want someone to do that for me, and I took that as part of my responsibility, and therefore decided that the JUA should go on a cash flow basis. We did not decide it should be on a cash flow basis forever. We began an audit of the servicing carriers, as well as the fact that we began some other things within the Department that they thought were prudent, that we thought, all of us -- I worked on this with the AG's Office, and the Advocate's Office, and the very competent, although small, staff of the Department -- that they felt were prudent steps to be taken, so that when we got to the end of, let's say, a year and the audits were complete, and the other things that we were looking at, we had

come up with a package, and we would come back to the Legislature and go to the Attorney General's Office if, in fact, there was too much money that was given to the servicing carriers, to see if we would get that money returned.

Gentlemen, I think you have to understand that I did not have a crystal ball, and I did not know that I was going to the Department of Transportation. I thought my life was going to be as a regulator of insurance, God help me, and I did not sit there and say, "Well, how can I do this so that it comes out so that it is not quite what we should be doing?" I did this with the staff, with an idea and a concept in mind of helping to resolve the problem; and I wasn't going to shoot from the hip. And I think you would have turned to me at that point in time, and said to me, "Why did you give them \$99 or \$150 when, in fact, you don't know what it is that they really do need?" And I think that would have been a dereliction of my duties.

As a matter of fact, if I may, Mr. Chairman, quote from an article -- a May 24 article -- where it said, "Assemblyman Michael Adubato, D-Essex, Chairman of the Assembly Banking and Insurance Committee, and sponsor of the law creating the JUA, said that the request for a surcharge is absurd. He said he would conduct a legislative investigation into the financial condition of the Association, which provides car insurance for 1.4 million drivers who are unable to buy insurance, to buy the coverage elsewhere. 'They are making too much money, and they charge too much now for car insurance,' said Adubato, 'there are no words to express the absurdity and the arrogance of those people who want to raise the rates, without one iota of proof they are losing money.'"

So, we were in total agreement on that, and I felt very strongly -- and I think it was a responsible position to take as a public official -- that we had to have that proof and, in fact, and indeed, if we got that proof, we would

address it. And I don't think that is an unreasonable position for any Commissioner to have taken. I am proud that I took that position. I think it was the right thing to do.

Now, in hindsight, I think it has been announced that there were in excess of what expenses were anticipated in 1984 on the servicing carriers -- an excess of \$30 million; in 1985, an excess of \$68 million -- and this has been announced before -- and in 1986, an excess of \$90 million, of what we thought expenses were supposed to be, which totals to \$198 million -- the excess, vis-a-vis the servicing carriers.

Now, the Department has taken steps to remedy that. And I might say, it is true, as Mr. Gibson said, that the JUA did come in to try to lower the servicing carrier charges. One came in lower, the other came in with a request to be higher. I granted the lower, and did not grant the higher one. And I have to tell you, that came in at a time when we had determined we were going to begin the audits.

So, I really appreciate the opportunity to have said that. I think we took the right course of action.

ASSEMBLYMAN ADUBATO: Thank you, Commissioner.

I did have some articles I was going to refer to, but for the sake of time, I will not do that. But I certainly said that in that article, Commissioner, and I meant every word of it. The evidence is clear that the JUA servicing carriers were totally overcharging.

I would ask Mr. Gibson to please join us. (Mr. Gibson complies) Mr. Gibson, you referred to Assembly Bill A-4069. Why was that bill passed?

MR. GIBSON: That bill was passed in reaction to the filing by the Board of the initial RMEC request. That is my opinion as to why it was passed.

ASSEMBLYMAN ADUBATO: It was filed-- It was passed, or implemented, or put in by me -- and you're right -- because it was a response; I would differ with reaction. It was a

response to the filing in '83 of the first RMEC in the JUA. Is that what you're saying?

MR. GIBSON: That was my impression, and you have agreed with me.

ASSEMBLYMAN ADUBATO: Is that what you're saying?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: And I agree with you.

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: Let's talk about that a little bit. Number one, in that filing that was done by AIPSO, because you didn't get ISO to do it-- Reading through the minutes, for some reason they want to get paid, and you felt -- you had a discussion. AIPSO did that filing on the RMEC. You do recall that?

MR. GIBSON: That is correct.

ASSEMBLYMAN ADUBATO: Good.

MR. GIBSON: The statute required that it be based on assigned risk experience--

ASSEMBLYMAN ADUBATO: Excuse me.

MR. GIBSON: --and AIPSO had the assigned risk experience.

ASSEMBLYMAN ADUBATO: Excuse me; please excuse me.

MR. GIBSON: You are excused.

ASSEMBLYMAN ADUBATO: Thank you. Even though I don't work for you, I am not going to let you get me today, because I've got you -- finally. Finally, I've got you. And when people say they have no joy today, that's true, but I have a lot of joy talking to you today. I've been waiting for you a long time.

Mr. Gibson, when you were the Chairman of the JUA Board, you submitted a filing with the Board for a RMEC. The original request was \$146. Is that true?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: On the day you appeared-- And that was in November of '83?

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: When I read your filings, and I also read ISO's filings in the voluntary market, and I also read State Farm's filing in the voluntary market, I called a public hearing. The reason why I called that public hearing was, I felt that the Commissioner of Insurance had violated the trust of the people of New Jersey, and was diverting hundreds of millions of dollars into the coffers of the insurance companies, in a compliance filing, if not unethically, maybe illegally.

And at that hearing, you changed the front page of that filing. All of the other data was the same. You paid for an actuarial study. Then you changed that RMEC filing from \$146 to \$90 a car. And you also said, as a Board, in a written statement that changed the filing -- on the front page; that is the only thing you changed-- You said the Board of Directors disagrees with your actuarial study, and you said that you and the Board expect to depopulate the JUA by as much as one-third in the first year. And, if you depopulate the JUA by one-third in the first year, you will only need \$90 a car RMEC from January 1, 1984. That is what you testified to, and that is what you filed to.

MR. GIBSON: Yes.

ASSEMBLYMAN ADUBATO: In addition to that, Mr. Murphy, who also happened to be with Continental -- I know it is a coincidence -- as the chief legal person there when he retired, and that is your company, isn't it?

MR. GIBSON: Yes, it is.

ASSEMBLYMAN ADUBATO: And Mr. Murphy, when he approved the filing of ISO that represented 80% of the companies in the State of New Jersey, as well as State Farm-- Before A-4069 became law, he approved a filing in the voluntary market with them retaining the constant in their revenue source.

Now, for the public, a constant is a word they gave to a subsidy that began in 1980, and it was for \$42 a car for full coverage. In 1983, Commissioner Murphy increased that constant subsidy another \$33 a car, or 75. The reason why there is some misunderstanding about that, the people are paying that \$75 constant, but only 70 of it goes over to subsidizing. The other \$5 goes to the UCJF, but the public is still paying it.

Now, you took that money, Mr. Murphy, and you made a decision. Even though on January 1, 1984, when the JUA replaced the assigned risk, and those companies in the voluntary market would not have those people to insure, you approved their filing as if they were still insuring them. I say here publicly that you probably should have been impeached. That's why you resigned.

MR. MURPHY: Can I respond?

ASSEMBLYMAN ADUBATO: And I was going to impeach you. Yes. Yes.

MR. MURPHY: That is inaccurate. It's inaccurate.

ASSEMBLYMAN ADUBATO: I will listen to you. Go right ahead, respond.

MR. MURPHY: It is true that I regarded the constant as part of the premium in respect to these companies. I regarded it as premium, because it had all the attributes of a premium. The premium tax was paid on it. Commission was paid on it. According to the duck test, if you want to use that, that was premium.

On the other hand, the Attorney General decided otherwise, and I followed the finding of the Attorney General. No money was paid over at all. The Attorney General's opinion was that the constant should be culled out of that and paid to the JUA.

ASSEMBLYMAN ADUBATO: I apologize for interrupting you--

MR. MURPHY: And that, in fact, was done.

ASSEMBLYMAN ADUBATO: --but that is not what happened. You didn't stop it; you held it in abeyance. The bill stopped it. You did not stop it. You held it in abeyance with the Attorney General's opinion. You did not turn it over to the JUA. The law did -- just to correct you for the record.

MR. MURPHY: Well, I don't have the record before me.

ASSEMBLYMAN ADUBATO: Well, I do.

MR. MURPHY: Well, fine.

ASSEMBLYMAN ADUBATO: And I will be glad to talk to you about it anytime you want.

MR. MURPHY: No transfer was made, but that was my opinion at that time, and still my opinion--

ASSEMBLYMAN ADUBATO: Good. Moving on--

MR. MURPHY: --but--

ASSEMBLYMAN ADUBATO: Excuse me, sir.

MR. MURPHY: Sorry.

ASSEMBLYMAN ADUBATO: You did it, and you admit it, and that's fine. So, you approved Allstate, as part of ISO then, and 80% of the companies, of keeping a subsidy that was paid for losses that occurred in the assigned risk market, even though those companies were going to be on a gravy train beginning January 1, 1984, as Mr. Jackson pointed out.

MR. MURPHY: Again, I don't want to prolong this debate--

ASSEMBLYMAN ADUBATO: No, but that's what you did. The Governor of this State, the Legislature of this State-- Governor Kean, in the State of the State Message said what you did was wrong. That is in the State of the State Message. Governor Kean said that money belongs in the JUA.

MR. MURPHY: That is, in fact, where it was paid.

ASSEMBLYMAN ADUBATO: No, because I passed a law to do it. You didn't do it. You gave it to the companies.

MR. MURPHY: Well, in my opinion, I thought it was a premium.

ASSEMBLYMAN ADUBATO: Well, fine, I got your opinion. It's on the record. Now, moving along, we talked about A-4069. And correct me if I am in error, Mr. Gibson. You said the reason why you didn't keep your word, when you testified that you were going to depopulate the JUA by a third in the first year, was because we took out the averaging. Is that correct?

MR. GIBSON: You did the two things. You locked--

ASSEMBLYMAN ADUBATO: In A-4069.

MR. GIBSON: It did two things: It locked in the policy constant as part of the voluntary market rate.

ASSEMBLYMAN ADUBATO: Right.

MR. GIBSON: And, you took out the rate freedom that had been in the initial law--

ASSEMBLYMAN ADUBATO: Right.

MR. GIBSON: --that would have encouraged the voluntary market to feel better about writing auto insurance.

ASSEMBLYMAN ADUBATO: Right. And you were concerned about not having to have adequate rate relief.

MR. GIBSON: That's right. At the time that we made the filing, you hadn't passed 4069.

ASSEMBLYMAN ADUBATO: Mr. Gibson, I heard your answer. Mr. Gibson, isn't it interesting, when Commissioner Gluck came into office-- She came into office when nursing homes were going up 2000%. When the insurance industry -- that has totally lost its credibility in this country-- I hate to even beat up on it, because I don't have to any more; you have been exposed. California was the state you always used to tell me to follow. You know what they're doing to you.

MR. GIBSON: Yes. They are going to create another New Jersey. (laughter)

ASSEMBLYMAN ADUBATO: Well, hopefully, New Jersey will appreciate your snide remarks, your disrespect.

MR. GIBSON: Mr. Aduato, I am a citizen of this State, and I am proud to be a citizen of this State, but I want to tell you, I tell the truth when I am on the stand.

ASSEMBLYMAN ADUBATO: You are also out of order. Would you please control yourself? I realize you are being exposed today, and it's hard for you.

MR. GIBSON: It's not hard for me. It is what I'm paid for.

ASSEMBLYMAN ADUBATO: It is very difficult for you to be exposed here, and I understand that. But please don't let me swear you in, because we can still do that. Would you like us to swear you in under oath?

MR. GIBSON: I have no objection to it. I have never objected to being sworn in.

ASSEMBLYMAN ADUBATO: Well then, control yourself, or I will. Please control yourself, or you are going to be sworn in.

MR. GIBSON: I'll make you a deal, you control yourself.

ASSEMBLYMAN ADUBATO: Mr. Gibson, that's your problem. I am in total control.

MR. GIBSON: You don't make deals, do you?

ASSEMBLYMAN ADUBATO: That's your problem. Mr. Gibson, what you did was flagrant. What you did -- and Mr. Murphy was an accomplice -- was set up a system that was inherited by Mr. Merin and Commissioner Gluck. The JUA was already off track. It was off track because you people, in your Plan of Operation, set up that cow in the free enterprise system. And in '83, at that same hearing, on December 14, I accused you of overcharging in administrative costs. Two weeks before the JUA even began, I accused you, and said you should only be charging 7%, not 11-1/2%. According to the Insurance Department's figures -- and I think they're wrong -- they said

that each percentage point is about \$15 million a year in those costs. I say it is closer to \$22 million, but I'll take 20.

That means -- that if it is \$20 million, and I think I'm right -- that from day one -- 1984, '85, '86, '87, and '88 -- you people, just to type a policy in the JUA, milked the people of New Jersey \$450 million, in that one item alone. In 1986, the head of Hanover Insurance Company admitted to the JUA, after I had an editorial board with him at the Asbury Park Press -- that Commissioner Gluck attended-- And I challenged him publicly at that editorial board, and told him that he had become a party to fraud. He had become a party to New Jersey's "Pentagon Caper" of charging \$600 for a hammer that should cost \$12.

And I asked him to go back and check his administrative costs, and let me know how his conscience felt. It wasn't soon after that, that that gentleman -- at the JUA -- asked for the administrative costs to be reduced to 7%. That's in the minutes. And he couldn't get a second from anybody on the Board. That's in the records.

Mr. Gibson, you, as far as I am concerned, are probably one of the biggest reasons why free enterprise is in trouble, because you and Mr. Murphy are accountable for putting the people of this State in that position, more than anybody else, because of your greed and your deceit and your lack of integrity. And if I have my way, it doesn't end here.

So, Mr. Gibson, you can try and quip all you want. I don't see you laughing any more.

When we look at the study commission-- That study commission was there for one purpose, and only one purpose: to aid in implementing the law. That's the purpose. It says it in there. And it was to protect the people of New Jersey from that very action. That's why it was necessary. And that's why I was glad to hear Commissioner Merin not repeat a statement that he was supposed to have said -- and I alluded to -- that

you didn't think the study commission was necessary, and that it shouldn't be implemented for at least three years, because you had nothing to study. That is what they reported. I am not saying it's true; I'm saying that is what they reported.

I didn't even say that today when you were asked. I heard you say you thought the study commission was important and it should have been done. If you want to respond, go right ahead.

COMMISSIONER MERIN: I would be happy to respond. The law said that the study commission should have been established by a date specific. The law was clear. It should have been established. What I also said is, in order to accomplish all that the statute required the study commission to do, time and data would have been necessary.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Merin. And I submit to you that time and data was one year, 12 months, after we were on the run. That is what you failed to recognize. I didn't ask you a question; I'm making a statement. We were on the run. I am not going to change your opinion; you are entitled to it. That speaks for itself. That's one year -- chaos. If you don't think that's chaos, you live with it. I think the people of New Jersey know better.

It's sad because, you know, when you look at this thing, there isn't any way that any of us could face the people of New Jersey, and say to them that this law didn't mandate depopulation. It certainly did. There was nobody -- absolutely nobody -- and I'm talking to you, Mr. Merin, because you're smirking now-- You worked on that bill with me, and you knew what the program was, and you were in the Assembly chambers when Mr. Gibson testified. You were there; I have you on video. You were sitting there. Don't tell me you don't know.

I will also say to you, that if you disagreed with me at any time, you never said it. Not once did you ever say to

me that the bill can't force depopulation -- not once. So if you felt it, you sure kept it a secret. And neither did Mr. Jackson.

Now, when you look at this thing--

DEPUTY COMMISSIONER JACKSON: I beg to differ with you, Assemblyman.

ASSEMBLYMAN ADUBATO: What was that, sir?

DEPUTY COMMISSIONER JACKSON: I beg to differ with you.

ASSEMBLYMAN ADUBATO: I'll listen. What do you have to say?

DEPUTY COMMISSIONER JACKSON: First of all, I was not involved in the creation of this legislation, to correct the record. I came along later.

ASSEMBLYMAN ADUBATO: Excuse me. You were involved in the Public Advocate's Office. I've got letters to that effect that were implemented because of you talking to Joe Rodriguez. You were involved, from day one. In the Public Advocate's Office, not in the Insurance Department, but you were involved.

DEPUTY COMMISSIONER JACKSON: I was involved in commenting on the legislation and what I perceived as flaws in it, and I did that. And I will stand by that. Later on, when I came to the Department, I told-- I never told Mr. Rodriguez, or anyone else, that that bill would result in the depopulation of the residual market, or that--

ASSEMBLYMAN ADUBATO: I didn't say you told him that.

DEPUTY COMMISSIONER JACKSON: --it could be compelled. Later on, when we worked on the legislation together, we worked towards correcting the revenue flaws in the legislation, but we--

ASSEMBLYMAN ADUBATO: Excuse me, you're out of order now.

DEPUTY COMMISSIONER JACKSON: --left in place the portions of the legislation that compelled that depopulation take place voluntarily.

ASSEMBLYMAN ADUBATO: Mr. Jackson, cease.

DEPUTY COMMISSIONER JACKSON: I'm finished.

ASSEMBLYMAN ADUBATO: Cease.

DEPUTY COMMISSIONER JACKSON: Just as-- I am not going to let you, or anyone else, stand there and put--

ASSEMBLYMAN ADUBATO: And say what? Are you going to tell me that you needed the bill changed? That's what I asked you. I said you never said that to me. Now, you're calling me what? What are you saying, that you did?

DEPUTY COMMISSIONER JACKSON: Well, I did tell you that we needed-- You're saying--

ASSEMBLYMAN ADUBATO: Wait, wait, wait, let's--

DEPUTY COMMISSIONER JACKSON: Your statement was-- Your statement was that I never told you the bill needed to be changed to compel depopulation.

ASSEMBLYMAN ADUBATO: No. My statement was, you never said you needed legislation to depopulate. That is what I said, and I stand behind that.

DEPUTY COMMISSIONER JACKSON: Well, I beg to differ with you.

ASSEMBLYMAN ADUBATO: Mr. Jackson-- I insist, Mr. Chairman, that we have a hearing on this, just on this point, as well as, Mr. Gibson, at your earliest convenience, because it is obvious to me that there are some honest differences of opinion here.

The bottom line is that Mr. Jackson never once said a word about changing the bill. And the bottom line is-- Mr. Jackson, could you please share with me-- Being that you were in the Public Advocate's Office, do you recall a letter in February from the Public Advocate, Mr. Rodriguez, to the insurance companies, and to the Commissioner, asking when are they going to return the overcharges that were in the voluntary market? Do you remember anything like that in February of 1984, after A-4069 became law, after we took back the

constant? What was he talking about, the market still being bloated, if we already took back the constant?

DEPUTY COMMISSIONER JACKSON: I recall in 1984, when I was in the Department of the Public Advocate, sending a letter to Commissioner Murphy, asking him, as we undertook the review of the rates that were to be in effect in 1984 -- January 1, 1984 -- that it was necessary to get all the data -- to have the rates currently reviewed, so that all of the assigned risk planned subsidies would be removed from the rates, because as of January 1, 1984, the voluntary market would no longer have liability for the residual market. And therefore--

ASSEMBLYMAN ADUBATO: Oh, so you're saying-- I'm sorry. Go ahead.

DEPUTY COMMISSIONER JACKSON: --any subsidies should have been removed at that point.

ASSEMBLYMAN ADUBATO: So then, you're saying that all of the subsidies should have been turned over to the JUA -- that were in the market for the assigned risk?

DEPUTY COMMISSIONER JACKSON: No, I did not say that.

ASSEMBLYMAN ADUBATO: Oh, okay.

DEPUTY COMMISSIONER JACKSON: I said that any subsidies that existed in the rate should have been removed from the voluntary market rates.

ASSEMBLYMAN ADUBATO: Well, what other subsidies were there, except those that were in for the assigned risk?

DEPUTY COMMISSIONER JACKSON: Well, you would have to go back into the history of how rates were made in New Jersey, commencing around the early '70s, when the assigned risk plan of residual market--

ASSEMBLYMAN ADUBATO: Well, let's go back to 1973. When no-fault was implemented, there was a mandated 15% reduction in BI. There was no rate increase that year. In 1974, it was about 2%. It didn't mean anything. Well, let's talk about the subsidies in your letter, that were never

returned. Let's talk about 1975, 6, 7, 8, and 9. Let's talk about those five years, when the assigned risk kept growing and growing and growing. And it wasn't until-- Were there--

Excuse me. Were there any subsidies in each one of those years for the assigned risk losses?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: There were?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: So, in each year -- '75, '76, '77, '78, and '79 -- there were subsidies in the system for the losses that occurred in the assigned risk portion of the business. Is that a fair statement? Is that clear?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: Good. How much was there in '75?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: How much in '76?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: How much in '77?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: How much in '78?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: How much in '79?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: How much in '80?

DEPUTY COMMISSIONER JACKSON: I don't know.

ASSEMBLYMAN ADUBATO: In the one-year increase, how much in '80?

DEPUTY COMMISSIONER JACKSON: Oh, \$42--

ASSEMBLYMAN ADUBATO: Oh, \$42. Oh, I see. So in 1980, there was an identified dollar amount. Isn't that nice -- \$42. Hey, there you go. So, for the first time in New Jersey, the people are told that they're paying a subsidy. They were never told that before. It never appeared on their policy. And it was melted into the premium. It was hidden.

But in 1980, through the efforts of Commissioner Jimmy Sheeran, and Philip Stern, who was the actuary, they said, "That's not fair." Number one, the subsidies must be told, and they should all be the same for all drivers, and it should be a flat dollar amount. And if you are a good driver, and if you are living in the great City of Newark, you shouldn't have to pay 1000% more to subsidize someone who is having an accident, than a person who lives in Bordentown. And in addition to it being on a flat dollar amount, you have to identify it.

Now, as Mr. Jackson said, this was the subsidy for that one year. It was not the cumulative subsidy in the system. Those other subsidies still existed, but they were still hidden. And I didn't know they were there either, folks, until 1986.

But now, Mr. Jackson, in 1981, '82, there are no increases. Is that correct -- in that subsidy?

DEPUTY COMMISSIONER JACKSON: In which-- In which subsidy?

ASSEMBLYMAN ADUBATO: In the voluntary market subsidies for the assigned risk. Were there any more subsidies after '80, that were put in the system -- additional subsidies?

DEPUTY COMMISSIONER JACKSON: If you mean the policy constant, the answer is, "No." It--

ASSEMBLYMAN ADUBATO: But, wait-- I'm sorry, no?

DEPUTY COMMISSIONER JACKSON: If you mean the policy constant-- Was the policy constant increased in '81, '82? No.

ASSEMBLYMAN ADUBATO: All right.

DEPUTY COMMISSIONER JACKSON: The policy constant was increased in '83.

ASSEMBLYMAN ADUBATO: Were there any other subsidies that increased, that weren't already there?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: Okay. So, in '81 and '82, they went back to the old style again?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: Now, let's make this clear, folks. In 1980, for the first time, that one-year subsidy was identified. In 1981, they didn't tell the people any more, they just did it again the old way. The public didn't have a right to know any more in 1981, like they did in 1980. They went back and eliminated the free flow of information and the public right to know. Certainly, no newspaper would report it. How would they understand it? I certainly-- I am in the Legislature 16 years, and I just understood it in '86.

So now you go '81, '82, you have increased that subsidy, and lo and behold, Commissioner Murphy comes into office, and in 1983, in June, he increases that subsidy, again through the constant. And he does that in June, another \$33. Is that accurate, Mr. Jackson?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: Thank you. And remember, these subsidies are for losses that occur only -- only -- in the assigned risk portion of the business. It has absolutely nothing to do with the voluntary market.

Mr. Jackson, in your estimate, how much was the total subsidy in the system -- in the New Jersey auto insurance system -- only dealing with the constant, each year?

DEPUTY COMMISSIONER JACKSON: At which year?

ASSEMBLYMAN ADUBATO: Oh, 19-- Say the beginning -- at the end of '83, or the middle of '84, when it was there for a year. What was the total impact of a 12-month collection?

DEPUTY COMMISSIONER JACKSON: Somewhere between 260 and 280 million dollars.

ASSEMBLYMAN ADUBATO: Somewhere between 260 and 280 million dollars per year. Is that accurate -- per year?

DEPUTY COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN ADUBATO: Per year -- 260 to 280. I'll accept that. Now what Mr. Gibson testified to, and what Mr.

Murphy did -- and he is entitled to say he thinks he was right; I appreciate that-- But what he did was take the constant subsidy and keep it, and that's the only subsidy. And this is my confession: That is the only subsidy I was aware of -- was the constant. You know, I never worked in all of those years for the insurance industry in the casualty market. And you know, I am only a little old Assemblyman here, one of the 120 legislators, that the industry kicks around, because you have so much resources, and so much money. You have the Chinese philosophy: You outlast all of us. You outlast Commissioners. You outlast legislators. You outlast Governors. But, you are not going to outlast me! I guarantee that, and I don't have to be in the Legislature.

What you've done is take that subsidy and give it to the companies, without having to pay any claims on those exposures. Think about this, folks. Think about what Mr. Jackson said, and think about what Commissioner Gluck said, and what Commissioner Merin said, when they talked about these long-tailed claims. And Commissioner Gluck is absolutely right.

You know, Commissioner Gluck, we have disagreed about some things, but quite frankly, most things we agree with, and that goes for Ken Merin and me -- Commissioner Merin and me. It goes for Commissioner Jackson and me. We can also argue like, you know -- with conviction, but I know we want the same thing. We may not always agree on how to get there, but I know we want to end up in the same place. I can't say that for the industry. That's obvious. It speaks for itself.

So what happened was, that from day one Mr. Gibson said, "Hey, we are not going to do this, because A-4069 passed, and that took away our averaging," and it took away the subsidy for assigned risk that they wanted. But remember, in November, Commissioner Murphy also approved the voluntary market rates, and yet when we took away that 260 or 280 million dollars from the companies in the voluntary market, in 1984, in spite of

that, there were no rate increases in the voluntary market. In 1985, there were no rate increases in the voluntary market. In 1986, there were no rate increases in the voluntary market. In 1987, there were no rate increases in the voluntary market. And at the same time, nursing homes went up 2000%. Why? Why should other casualty insurance go through the roof? In New Jersey -- that's the terrible State Mr. Gibson says we are-- Why should our rates remain level? And he didn't have the averaging, and they never asked for a rate increase.

You see, it wasn't only that they asked -- as Mr. Gibson would have you believe -- they never filed for a rate increase in those years. I don't hear him responding to that?

MR. GIBSON: May I respond? Would you like--

ASSEMBLYMAN ADUBATO: The point is--

MR. GIBSON: Would you like my response, Mr. Adubato?

ASSEMBLYMAN ADUBATO: The point is--

MR. GIBSON: Please don't characterize me as not responding, unless you would like me to respond.

ASSEMBLYMAN ADUBATO: Well, you have been interrupting me before, and I thought you were going to do it again. But you don't have to interrupt me.

MR. GIBSON: I tried to be polite.

ASSEMBLYMAN ADUBATO: Well, good. I appreciate that. If I were in your shoes, I would be very polite.

So what Mr. Gibson did-- What Mr. Gibson did was talk about the fact that they weren't going to depopulate, because we took back those subsidies. And yet I say again, '84, '85, '86, and '87, there were no rate increases. Did we stop lawsuits in New Jersey in those four years? That was what happened, wasn't it? We had a Michigan verbal threshold. That's what did it. Well, of course, we didn't have a Michigan verbal threshold. People were still suing. Now, hey, even though they were still suing, they didn't raise their rates. Well, maybe it was because people stopped driving their cars in

New Jersey, and they didn't have any more claims. Maybe that was the reason. Or, maybe it was because the agents didn't take a commission in those four years. I mean, my goodness, it had to be something. The only other time that happened in the history of the State -- if you remember this morning's session -- was in 1967, 1968, and 1969, before insurance was even compulsory.

That's the only other time that happened, and it happened because their investment income was up there, but in '70, the bottom fell out. And that is what happened in the casualty business, Commissioner, and we all know that today. It was a smoke screen; that even the industry admits it today that they have to come clean, because they don't have any more credibility. They can't blame claims; they have to blame investment income. But, in that same time frame, when the investment income was killing the other casualty business, auto insurance in New Jersey stayed stable, and that was after we got back the constant. But do you know why it stayed stable, and do you know why it didn't go up?

MR. GIBSON: Yes, I do.

ASSEMBLYMAN ADUBATO: Don't you dare.

MR. GIBSON: Would you like me to explain?

ASSEMBLYMAN ADUBATO: Don't you dare.

MR. GIBSON: Would you like me to explain?

ASSEMBLYMAN ADUBATO: Don't you dare. Let me finish my comment, or I am going to swear you in.

MR. GIBSON: Would you like me to explain?

ASSEMBLYMAN ADUBATO: Would you please keep yourself in control?

MR. GIBSON: I hereby swear that everything I say here will be the truth, the whole truth, and nothing but the truth.

ASSEMBLYMAN ADUBATO: Would you please keep yourself in control, Mr. Gibson. Please, for your sake.

MR. GIBSON: I'm sorry. I didn't realize it was a rhetorical question.

ASSEMBLYMAN ADUBATO: Please don't interrupt me, Mr. Gibson -- please, respectfully. When this meeting is over, ask some of my colleagues what I mean when I call you, "respectfully." You'll find it interesting -- respectfully.

The reason why the rates didn't go up in those years -- '84, '85, '86, and '87 -- in the voluntary market, was because all the subsidies that were hidden, we never got back. And when you take those subsidies-- If you go back and take the subsidies that were in there in '80-- Why didn't we go back and take '79's, '78's, '77's, '76's, '75's? Why didn't we take '81's? Why didn't we take '82's? Do you know why we didn't take them? Because we didn't know. But, they knew. They knew, and they raped the people of this State.

And what are we talking about? How much money are we talking about? Are we talking about \$10 million, \$50 million, my God, \$100 million? No, we're not talking about \$100 million, and we are not talking about the JUA overcharges. We are not talking about the \$450 million they raped the people of New Jersey -- that he has such a disdain for. We're not talking about that \$450 million you stole, and we are not talking about the 16-1/2% they overcharged on claims, that you stole. We are not even talking about that money. That only adds up to about \$900 million. That's the JUA. But in the voluntary market, they stole -- they stole -- not by lying, because the insurance company executives don't lie. They just don't tell the truth. They don't lie. My God, they would never do that. I don't accuse any of them of lying. I do accuse them of deceit, but not lying.

And what they took-- Mr. Jackson, would you estimate how much those subsidies cumulatively add up to, if we were to have also taken them back in 1984, when we passed A-4069, that disturbs these people so much? How much? A rough estimate. I

won't hold you to anything. A rough estimate. I only have a rough estimate. Come on, I don't know. I admit to you I don't know. I have a pretty good rough estimate, because all you have to do is take those years-- And we all know the rate increases every year, don't we, Mr. Jackson?

DEPUTY COMMISSIONER JACKSON: I think it would-- It is difficult because of the way the rates were made. The subsidy that you are referring to existed in the liability portion of the rate. And see, without knowing what the assigned risk plan shortfall was after the assigned risk plan rates were tied to the ISO rates, it is kind of difficult to estimate what the actual amount would be. But let's say, a wild guess, that it was something like maybe 10% of whatever the liability rate was in the voluntary market at the time.

ASSEMBLYMAN ADUBATO: What would that be? Cumulative now; we're talking cumulative.

DEPUTY COMMISSIONER JACKSON: But, from what years?

ASSEMBLYMAN ADUBATO: From '75, not counting-- Take the constant out of it, but the cumulative melted, because it was cumulative. That is what people have to understand. You know, some people-- I was told that by industry folks, and I'm sure they made a mistake when they told me that. It was a honest mistake. Do you know why? When I started to suspect this in '86, and I didn't understand it, and I asked about it-- I said, "Wait a minute. Are you telling me the subsidies just began in '86, or they were identified in '86?" I mean in '80; I apologize. And they said, "Oh, no, we always had the subsidies, but they didn't make a bag of beans until '75," because the assigned risk was so small, and because they had no rate increases of any consequence until '75. So, the subsidy years are '75, '76, '77, '78, '79, '81, and '82. So we're talking about seven years of hidden subsidies that we didn't take back, even though the Governor of this State said that all subsidies that were in the residual market -- and he said this,

and I concur with my Governor-- In his State of the State Message, that is what he said. After I exposed it, and it was brought to his attention, the Governor said, "All of those subsidies belong in the JUA," and Tom Kean was right. But Tom Kean didn't know, because Commissioner Merin didn't know, and I didn't know, and I don't know if anybody else knew. But we didn't know.

But would you venture a rough guess, so we can conclude today's meeting and have some people to think and talk about something besides some of the rhetoric?

DEPUTY COMMISSIONER JACKSON: I am not trying to be difficult, Assemblyman, but it is difficult to estimate it because you have to have a feel for the proportion of the liability premium, the way the market was segmented at the time, and it is different from year to year.

ASSEMBLYMAN ADUBATO: Let me take a guess -- a guess, because I don't know. I'm guessing, like I guess on most things, because I'm lucky. I like to read, and I guess that makes me lucky. So, let me guess.

If the constant adds up to 260, to 280-- And I don't mean to be disrespectful, but I disagree with you. I think it is lower than that.

DEPUTY COMMISSIONER JACKSON: 225?

ASSEMBLYMAN ADUBATO: Not to split hairs, but I do think it was lower than that. Okay? The bottom line is that that comes from two years of an increase. On coverages, don't forget, because this is not per car. It is \$42 on full coverage, and it was \$33 on full coverage on the constant. That being in line, let me tell you what my guess is. My guess is that in those seven years, the cumulative effect, beginning on January 1, 1984, that in addition to the \$90 million a year the JUA overcharged -- and that means 11 of the 14 Board of Directors were industry people who voted to rape us-- They put in those charges, not the bill. They said, "We are going to

charge 11%, instead of" -- 11-1/2%, I'm sorry; I lost my head -- "instead of 7." That comes to \$90 million a year. So if you take '74, '75, '76, '77, '78, that is only \$450 million here on that.

Now you take the claims. Forget fraud, because we know fraud is dirty. We know that claims were paid out without investigating them in the JUA. We know that they have an incentive to pay more instead of less. They don't even know how to spell "cost containment." By the way, they can't do that in the voluntary market, so why should they do that in the assigned risk? They have never been interested in cost containment. That is why you always hear people like Mr. Gibson say, "I want to increase the rates." He doesn't say that he wants to reduce the rates. They always want to increase the rates. No cost containment.

So, forget the assigned risk, or forget the JUA, you know, because they didn't have responsibility in that. But when you look at the claims costs of 16-1/2%-- And by the way, when they changed it to 12-1/2 it came out to the same money, didn't it? That was surprising. That was the actual same money. I don't know how they did that, but they did it. They did it. I don't know how 16-1/2 equals 12-1/2, but that is what happened, because 16-1/2 was for every dollar paid out. Twelve and a half percent was for premium.

So, let's just say, for the sake of discussion, that with those claim costs and everything else, it was only \$70 million a year -- that's all. That's only another \$350 million in five years.

So, we're just talking about-- We're not talking about fraud, folks. We are not talking about fraud. We're talking about abuse -- abuse -- the "Pentagon Caper." That is what this is. The JUA Board is guilty of the "Pentagon Caper." So when you look at those two numbers alone, that's only-- My goodness, that's only \$800 million.

Now I said publicly that I believe the insurance industry in this State has overcharged the public \$2 billion from January 1, 1984 until the end of '88. That's only \$800 million. Where's the rest? Where's the rest?

And, there is more here, but I am not going to take time to go-- Let's not fool around with three or four million more. Let's leave it alone. What the heck's three or 400 million, to them?

But let's forget that, and let's talk about those subsidies. I accused the insurance industry in New Jersey of retaining \$250 million more in subsidies that were not included in the constants per year -- per year. So you have to multiply '84, '85, '86, '87, and '88. And I am not too good at math, but if you multiply that, I think you will come out with 1,250,000,000 bucks. Gee, son of a gun, it's two billion, fifty million. I got lucky again! That is what I accuse them of taking, if not illegally, unethically, without morals. That's why the people revolted in California, because this is not a New Jersey problem. This is a national problem. It is a national disgrace.

I get no joy out of this, because I believe in profit, and I believe in free enterprise. But free enterprise was never a license to steal in New Jersey, and it is not a license to steal in California, and it is not a license to steal in Texas. And if these people don't change their ways, we are going to lose free enterprise, and it is on their heads -- on their sarcasm, on their smugness.

And I do feel for the Commissioners, I really do. It is the most difficult, most thankless position in State government. There were some decisions that were made that I honestly disagree with, and there are some decisions that were made, for instance, yours, Commissioner. Because of the timing, people suspected other things. Okay? Because people want to play games and all. And you know, quite frankly, when

I was asked that question, I said, "Hey, I am not going to say that, but you certainly can consider it." And that is the political arena we're in.

But that aside, the truth of the matter is, if I were Commissioner Gluck, I would have done the same thing, for the record -- for the record. The only thing I would have done, Commissioner -- and respectfully, this is an honest disagreement -- was, I would have made sure that if the Attorney General said to me, "You can't depopulate," that we would have kicked butts around here, and we would have made sure it was put in the law.

You know, I don't agree with the Attorney General, but sometimes we disagree and we put things in a law anyway, not to argue. I have been doing that for 16 years. No one has ever asked for that the whole time I have been down here, until the whole thing blew up. So, that is an honest disagreement, and that's fine. Honest people have a right to honestly disagree.

My disagreement with the people in the industry, I am sorry to close by saying to you, is not a disagreement of honest people, because they did not do honest things. Were they legal? That is for other people to decide, not me. Were they deceitful? Yes. Did they bloat the market? Yes. Did they fill their pockets? Yes. Did they milk the cow? Yes.

I don't think we should depend on legality. I think we have to force restitution, and if we don't have the power to do it, we've got to give ourselves the power to do it; not blame them, blame us. New Jersey can never have reform unless we demand restitution, and that's where we should go after today's meeting is over, and talk about that restitution, and how we get it, because that's the only way people are going to learn; that if you steal, and you get caught, you've got to pay back. Then we will absolve you, but not until then. Not until then.

I wish I could close my summation on a brighter, happier note to the people of New Jersey, but I can't, because the reality is that we honestly disagree with the administration. And I honestly believe that in many areas the administration, going back from the starting gate under Joe Murphy, was derailed; that this administration represented the interests of the companies more than the people, and that's obvious. I am sorry to say that, Commissioners, as much as you tried, you did not stop that. You inherited it, but you didn't stop it. That is the sadness. And as was asked today-- You know, what the people like Mr. Gibson, and others, used to say to me, "We're not going to depopulate--" They did say because of the averaging. They did say because we took back the constant. But do you know what else they said? It was a trigger word called "assessment," that Jasper Jackson and I quarreled, because I believe in trust. And I fought Jasper -- Mr. Jackson -- when he was at the Public Advocate's Office. And he said to me, "Assemblyman, don't do this. You've got to assess them." And I said, "No. If they depopulate, if they show integrity, I believe in profit."

I was wrong, because they don't believe in democracy. They don't believe in freedom. They don't believe in fair play. They only believe in green, not red, white, and blue.

This meeting is over.

(HEARING CONCLUDED)

APPENDIX

LEGISLATIVE SERVICES
COMMISSION
SENATOR
JOHN F. RUSSO
Chairman
ASSEMBLYMAN
ROBERT E. LITTELL
Vice-Chairman
SENATE
LEONARD T. CONNORS, JR.
DONALD T. DIFRANCESCO
MATTHEW FELDMAN
S. THOMAS GAGLIANO
JAMES R. HURLEY
CARMEN A. ORECHIO
LAURENCE S. WEISS
GENERAL ASSEMBLY
BYRON M. BAER
JOHN O. BENNETT
WILLIE B. BROWN
JOHN PAUL DOYLE
CHUCK HARDWICK
DENNIS L. RILEY
ANTHONY M. VILLANE, JR.



New Jersey State Legislature
OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625

ALBERT PORRONI
Executive Director
(609) 292-4625

ALBERT PORRONI
Legislative Counsel
(609) 292-4625
LEONARD J. LAWSON
Assistant Legislative Counsel
(609) 292-4625

April 10, 1989

Honorable Michael F. Adubato
341 Roseville Avenue
Newark, New Jersey 07107

Dear Assemblyman Adubato:

You have requested a legal opinion regarding the authority of the Commissioner of Insurance to require the depopulation of the New Jersey Automobile Full Insurance Underwriting Association, more commonly known as the JUA, under the provisions of P.L. 1983, c. 65, the law which created the JUA. You are advised, for the reasons discussed below, that the Commissioner of Insurance, at all times since the inception of the JUA, has possessed the authority to alter or amend its plan of operation in accordance with that law, including the requirement for a plan of depopulation.

Your request was engendered, at least in part, by the assertions of former Commissioner of Insurance Hazel Gluck and current Commissioner of Insurance Kenneth Merin that they did not have such authority to reduce the volume of motorists insured by JUA. These assertions were made at a public hearing held by the Assembly JUA Ad Hoc Committee, of which you were co-chairman, which inquired into the implementation of the law creating the JUA. Both Mr. Merin and Ms. Gluck testified at that hearing that they had been advised by the Attorney General that they did not have such authority. See, for example, The Trentonian, March 29, 1989 at 1,7.

To understand more completely the substance of your question, as well as the nature of the respective obligations of those charged with implementing the law, it is important to examine the purpose of the subject legislation and the organization of the JUA itself.

The stated purpose of sections 13 through 34 of P.L. 1983, c. 65 (N.J.S.A. 17:30E-1 et seq.),¹ entitled the "New Jersey Automobile Full Insurance Availability Act," was

. . . to assure to the New Jersey insurance consumer full access to automobile insurance through normal market outlets at standard market rates, to encourage the use of available market facilities, [and] to provide automobile insurance for qualified applicants who cannot otherwise obtain such insurance through a full automobile insurance underwriting association
[N.J.S.A. 17:30E-2; emphasis supplied]

The "New Jersey Automobile Reparation Reform Act," N.J.S.A. 39:6A-1 et seq., requires persons driving automobiles to maintain automobile personal injury protection coverage, uninsured motorist coverage and liability insurance coverage. See, also, N.J.S.A. 39:6B-1 et seq. As a result, it has been the public policy of this State that insurance be made available to all persons, regardless of the financial capacity of the insurance market or the driving record or risk factor of any individual driver. To make insurance available to those unable to secure it in the "voluntary market," a "residual market" mechanism of some type has been established by law. Prior to the creation of the JUA in 1983, automobile insurance was provided to persons who could not otherwise obtain it through an assigned risk plan under which persons who could not obtain coverage were assigned to insurance companies in proportion to the marketshare each company wrote in the voluntary market. See, generally, N.J.S.A. 17:29D-1. The JUA was established to provide insurance to persons who could not otherwise obtain coverage while assuring the availability of coverage to all drivers at the same rates, regardless of whether they were in the residual (JUA) or voluntary market.

The JUA was created by N.J.S.A. 17:30E-4 as an unincorporated, nonprofit association. This section also provides that, as a condition of the authority to transact automobile insurance in this State, every insurer licensed to transact

¹Hereinafter, references will be to the allocated (N.J.S.A.) statutory citation. Inasmuch as this opinion is concerned primarily with responsibilities under the law as it existed at the time of the JUA's creation and organization, the original version of the law will be referenced and any amendments pertinent to the discussion will be duly noted. In the case of the immediately following quotation as to the statute's purpose, the phrase "at standard market rates" has since been deleted as part of the revision of the automobile insurance laws accomplished by P.L. 1988, c. 119. See section 18.

automobile insurance in New Jersey is a member of the JUA and is bound by the association's plan of operation. N.J.S.A. 17:30E-5 provides for the governance of the JUA by a Board of Directors comprised of members with a background in insurance law or practices. Previously, the Commissioner of Insurance or a designee was entitled to attend and participate in all meetings of the board without the right to vote, but, after the revisions contained in P.L. 1988, c. 119, he serves as an ex-officio non-voting member, along with the Director of the Division of Motor Vehicles. The JUA functions pursuant to a plan of operation, as adopted and amended by the board.² The plan is subject to the approval and review of the Commissioner of Insurance who may also propose, and if necessary certify the adoption of, his own amendments to the plan. N.J.S.A. 17:30E-6; see discussion infra.

The JUA was clearly established as the residual market mechanism, the "safety net," if you will, for those not otherwise able to obtain the insurance required by law for the operation of an automobile on the roads of this State. The law which created it nonetheless anticipated that it would be the insurer of last resort, and that one of the goals of the JUA would be to reduce the volume of insureds in the residual market by encouraging the writing of insurance in the voluntary market; in other words, to "depopulate" the JUA itself. The law, as originally enacted, required the association to include in its plan of operation, "procedures to encourage the voluntary writing of qualified applicants without the utilization of the association." N.J.S.A. 17:30E-14. Section 12 of Part I of the Operating Principles of the JUA submitted as part of the original plan of operation states that "[p]rior to issuing policies the Association shall adopt a public education program to encourage depopulation. The board is to monitor the program." [emphasis supplied]

It appears from the information submitted in response to the JUA Ad Hoc Committee's requests on this matter, that this is the only provision on depopulation ever adopted by the board. At the meeting of the board of directors of the JUA held on December 3, 1984, Harold Covey was named Chairman of the Depopulation Committee, which was created "due to the Commissioner's request for input from the Association." [emphasis supplied] Reports from Mr. Covey on the development of a program are made in minutes from the meetings of the board throughout 1985

²The plan of operation was initially submitted to and approved by the commissioner in 1983. The documents which comprise the plan include: The Plan of Operation (containing the Articles of the Association and the Operating Principles) as well as the Servicing Carrier Rules of Practice, the Producer Rules of Practice, the Accounting and Statistical Requirements Manual, and the Servicing Carrier Underwriting and Servicing Carrier Audit Guidelines which are incorporated by reference into the plan.

and the first half of 1986. These reports indicate that amendments to the plan of operation regarding a depopulation program were drafted, but materials submitted to the committee do not disclose that they were ever adopted. The draft of a depopulation plan developed by the Depopulation Committee in cooperation with the department is attached to the minutes of the board's meeting of July 29, 1986 as Exhibit B. The minutes from that meeting indicate that the Depopulation Committee would "continue to work toward agreements with the Department of Insurance and further presentation to the Board."

Section 25 of P.L. 1988, c. 119 amended the first sentence of N.J.S.A. 17:30E-14, quoted above, to specifically provide that "the commissioner [of Insurance] shall, in the plan of operation, establish procedures to govern the voluntary writing of applicants and association insureds without the utilization of the association." The amendments further require the commissioner to establish "voluntary market quotas" which shall prescribe, on an incremental basis, the number of voluntary market exposures to be written by JUA member companies beginning on March 1, 1989 and in each of the next four 12 month periods thereafter.

At this point, the commissioner has the statutory authority, indeed the duty, to depopulate the JUA through procedures established in the plan of operation, according to a schedule detailed in the enabling legislation. The question presented here is whether that authority existed under the original version of the law, or any version, prior to the 1988 amendments which made this responsibility so explicit. In our opinion it did.

As previously noted, the plan of operation is subject to the review and approval of the commissioner and he has always possessed the authority to propose, and if necessary, certify the adoption of his own version of the plan. See, generally N.J.S.A. 17:30E-6. With respect to the original plan, subsection b. of N.J.S.A. 17:30E-6 provided that the plan would take effect only upon certification to the board by the commissioner of his approval of the plan. If the commissioner disapproved all or part of the plan, he was to return it to the board with a written statement as to his disapproval and any recommendations. The board had 30 days within which to accept the recommendations or propose a new plan. If the board had failed to submit a plan, or to submit a new plan acceptable to the commissioner or to accept his recommendations within 30 days after the commissioner had once disapproved the plan, the commissioner was authorized to promulgate a plan of operation and certify it to the directors.

The directors may amend the plan at any time subject to the approval of the commissioner (N.J.S.A. 17:30E-6c.) and, under the original version of

the law, the commissioner was required to review the plan "at least once a year and propose amendments to the board." N.J.S.A. 17:30E-6d. This subsection was subsequently amended by section 6 of P.L. 1984, c. 1, effective January 1, 1984, to specifically provide that the commissioner shall

... annually review the plan of operation and, not later than April 1, 1985 and not later than April 1 of each year thereafter, shall approve or amend the plan of operation; and any amendments to the plan adopted by the commissioner pursuant to the annual review shall be binding on the board as of the effective date of the amendments. [emphasis supplied]

The original authority in subsection d. of the commissioner to review the plan at any other time, to propose amendments to the board, and to certify those amendments to the board unless it adopts amendments acceptable to the commissioner within 30 days, was unaffected by the 1984 amendments.

Inasmuch as the commissioner, from the very beginning of the JUA's operation, had the authority to approve and further to propose and certify, if necessary, the plan of operation or any amendments thereto, and, inasmuch as a separate section in the original law specifically required the inclusion in the plan of operation of procedures for the "voluntary writing of qualified applicants without the utilization of the association," it is our opinion that the Commissioner of Insurance, at all times since the inception of the JUA, has possessed the authority to alter or amend its plan of operation to include procedures for the depopulation of the JUA. Reference is made to several of the above quotations, some of which have been highlighted for emphasis, which underscore the notion that the requirement for a plan of depopulation, as well as acknowledgment by those involved that this requirement be included in the plan of operation, existed from the beginning. Moreover, the testimony of both Commissioner Merin and former [Insurance] Commissioner Gluck at the JUA Ad Hoc Committee hearing on March 28 that they had been advised that they did not possess such authority with respect to the depopulation of the JUA appears to be at odds with positions taken by both commissioners previously in written correspondence to the board of directors which was submitted to the committee by the department in response to its requests, as well as their actions, as evidenced by such correspondence.

In a letter dated May 1, 1985, Commissioner Gluck wrote to then-Chairman of the Board William Gibson, confirming their discussion at the April 23 Board of Directors meeting, in which the commissioner provided the board with "a copy of the Department's proposed RMEC [residual market equalization charge] procedures and depopulation plan." [emphasis supplied] The commissioner's acknowledgment of her

Honorable Michael F. Adubato
Page 6
April 10, 1989

authority with respect to the plan of operation, including procedures for depopulation, is apparent:

As discussed, your comments on the RMEC filing procedures are due to the Department within thirty days of the meeting. This is a firm date.

Your comments on the depopulation plan are due within 45 days of the meeting. This due date is more flexible. In the interim, should you need to meet or confer with my staff, they are always available.

Moreover, we are expecting receipt of copies of any and all documents used by the Association in running its operations. We plan to incorporate these documents into the Plan of Operation. This Plan, once review is completed by the Department, will constitute the association's single operating document.

While the discrepancy in due dates is unclear from the correspondence, it is clear that both the RMEC filing procedures and the depopulation procedures were contemplated by the commissioner as part of her statutory responsibility to review and approve the plan of operation. It is furthermore apparent from this letter that, at least in this case, the commissioner had already taken it upon herself to propose the procedures under consideration, pursuant to her authority to do so as discussed above.

While the issue of depopulating the JUA appears to have been secondary to that of the RMEC at the time, Ms. Gluck's reasoning with respect to the RMEC filing procedures in the plan of operation, as stated in her May 24, 1985 letter to Chairman Willard R. Young certifying her proposed RMEC procedure, is equally applicable to the requirement for depopulation procedures:

To begin with, it cannot seriously be questioned that the method of calculating the RMEC must be included in the Plan of Operation. The Act specifically identifies the RMEC as a source of Association income, N.J.S.A. 17:30E-8(a)(4), and mandates that the Plan provide the methods and means for collecting Association funds N.J.S.A. 17:30E-6(a). It is therefore required by law that the RMEC calculation be included in the Plan of Operation.

* * *

April 10, 1989

. . . Accordingly, I certify the RMEC amendments to the Association's Plan of Operation, effective May 24, 1985.

The authority to review all aspects of the board's plan generally, while not specific to depopulation, is also acknowledged by Ms. Gluck in a letter to Mr. Young in October of 1985:

It is my understanding that the issue of the Commissioner's authority to approve producer contract provisions surfaced at your most recent board meeting. Apparently, the Board misunderstands the Commissioner's authority in this regard. Please be advised that the Commissioner must review all documents utilized by the Association, including producer contracts. The Board's authority to issue any documents stems from the Plan of Operation which must be approved by the Commissioner. [emphasis supplied]

Thus, it cannot seriously be argued that, given these several acknowledgments by former Commissioner Gluck of her authority, not only to review and approve amendments to the plan of operation, but to propose, and if necessary, certify, her own amendments, the commissioner did not at all times possess the same authority with respect to depopulation procedures, which were also required by law to be included in the plan of operation. Similarly, Mr. Merin, during his first term as Commissioner of Insurance,³ also recognized his authority in this regard. See for example, his letter of January 14, 1985 to then-General Manager of the JUA Nelson D. Ealey, in which he advised that he disapproved certain amendments proposed by the board regarding servicing carrier eligibility and proposed his own version.

If there were any doubt from a reading of the statutory scheme that such authority existed, then the commissioners' actions in this regard only serve to confirm this conclusion. Interpretation of the agency charged with administration of a program is entitled to great weight. Application of Lodge, 155 N.J. Super. 488, 490 (App. Div. 1978); certif. denied, 76 N.J. 234 (1978). The opinion as to construction of

³Mr. Merin has served the present administration as Commissioner of Insurance for two separate terms. First, from April, 1984 to January, 1985, a portion of that term as acting commissioner, and then again from May, 1986 to the present.

a statute by the administrative agency charged with enforcement of that statute is entitled to great weight and is a substantial factor to be considered in construing the statute, especially where the construction of a new statute by its implementing agency is concerned. New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 575 (1978). Where new and innovative legislation is being put into practice, deference to the administrative agency is particularly appropriate. Newark Firemen's Mut. Benev. Ass'n., Local 4 v. City of Newark, 90 N.J. 44, 55 (1982).

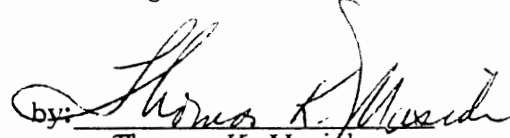
We do not find it to be significant to this analysis, incidentally, that N.J.S.A. 17:30E-14 previously stated that the "association shall, in the plan of operation, establish [depopulation] procedures. . . ." [emphasis supplied] As already discussed, the statutory scheme generally charged the board of directors of the JUA with the responsibility for developing its plan of operation, but gave the same authority to the commissioner, in the alternative. See, for example, N.J.S.A. 17:30E-6, quoted above. The true meaning and intention of legislation must be derived from the whole and not from any single component part. D. Stamato & Co., Inc. v. Vernon Tp., 131 N.J. Super. 151, 155 (App. Div. 1974). "The intention comes from a general view of the whole of the expression rather than from the literal sense of particular terms." Palkoski v. Garcia, 19 N.J. 175, 181 (1955).

Finally, in response to the assertions of both commissioners, our research discloses no written opinion of the Attorney General regarding the issues presented here. The absence of any written advice in this regard is consistent with the testimony of both Ms. Gluck and Mr. Merin. While an Attorney General's interpretation of a statute is entitled to considerable weight, State v. Son, 179 N.J. Super. 549, 554 (App. Div. 1981), it is difficult to undertake an analysis of the rationale for that advice under these circumstances.

You are advised, therefore, for all of the foregoing reasons, that the Commissioner of Insurance, at all times since the inception of the JUA, has possessed the authority to alter or amend its plan of operation in accordance with the law, including the requirement for a plan of depopulation.

Very truly yours,

Albert Porrone
Legislative Counsel

by: 
Thomas K. Musick
Section Chief

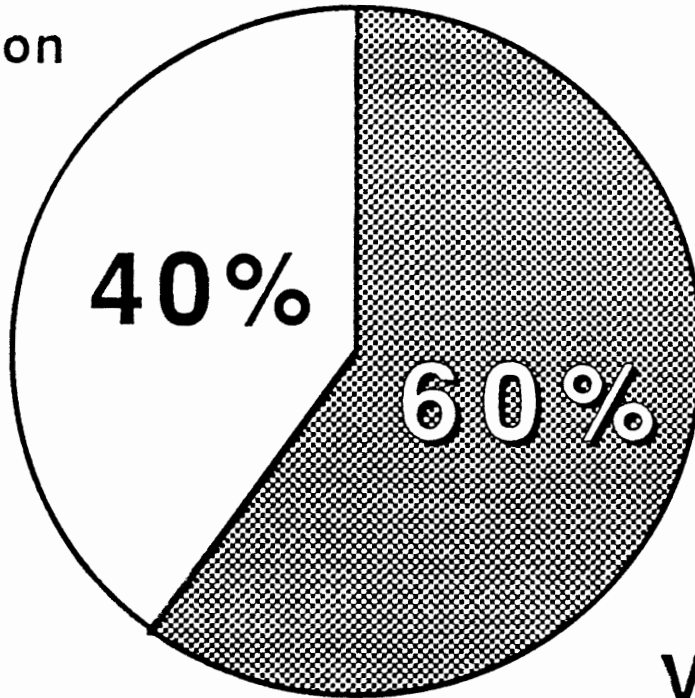
AP:M/rf

New Jersey Auto Insurance Market

- December 31, 1983 -

Assigned Risk

1.4 Million
Cars



Voluntary

2.1 Million
Cars

Source:
M. Adubato
March 28, 1989

-1-

9x

- December 31, 1983 -

Assigned Risk Market

- 85% live in suburbs and rural New Jersey.
- Paid 30% more for collision and comprehensive coverage than Voluntary Market.
- Paid a surcharge of 65% more for liability coverage and 35% more for collision coverage in cases of 6 motor vehicle points.

Voluntary Market

- Paid 30% less for collision and comprehensive coverage than Assigned Risk Market.
- Paid no surcharges in cases of 6 motor vehicle points.

Source:
M. Adubato
March 28, 1989

-1A-

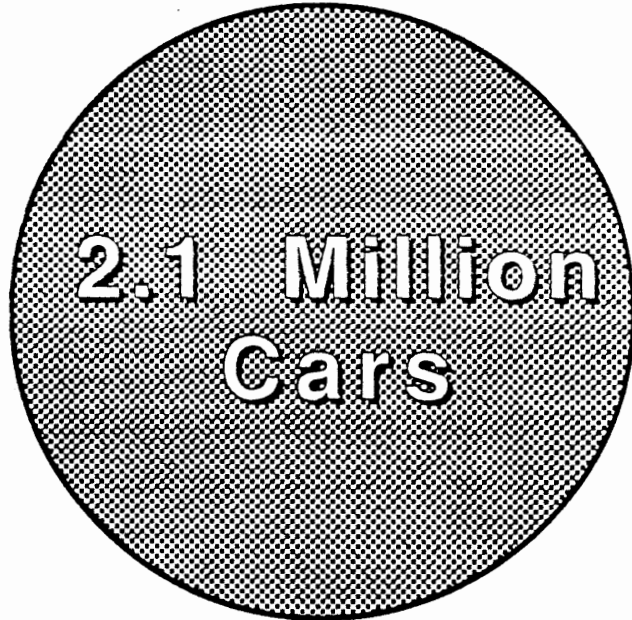
10x

New Jersey Auto Insurance Market

- January 1, 1984 -



JUA



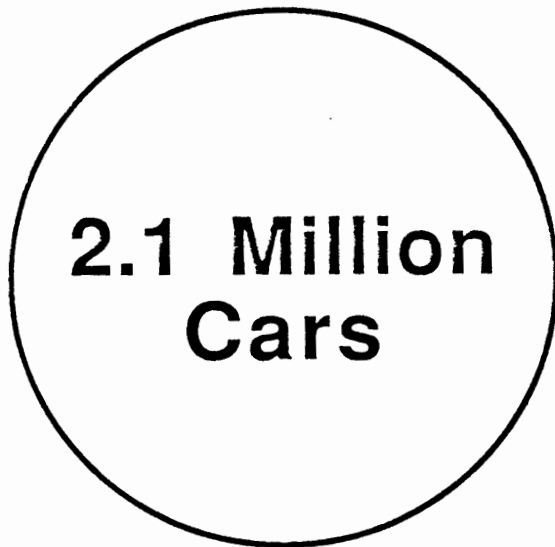
Voluntary

- Same premium for collision and comprehensive coverage.
- Same surcharges for same offenses.

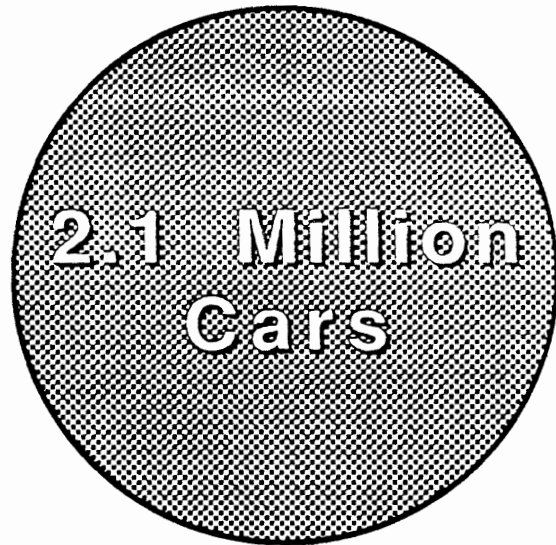
Source:
M. Adubato
March 28, 1989

New Jersey Auto Insurance Market

- January 1, 1989 -



JUA



Voluntary

But...

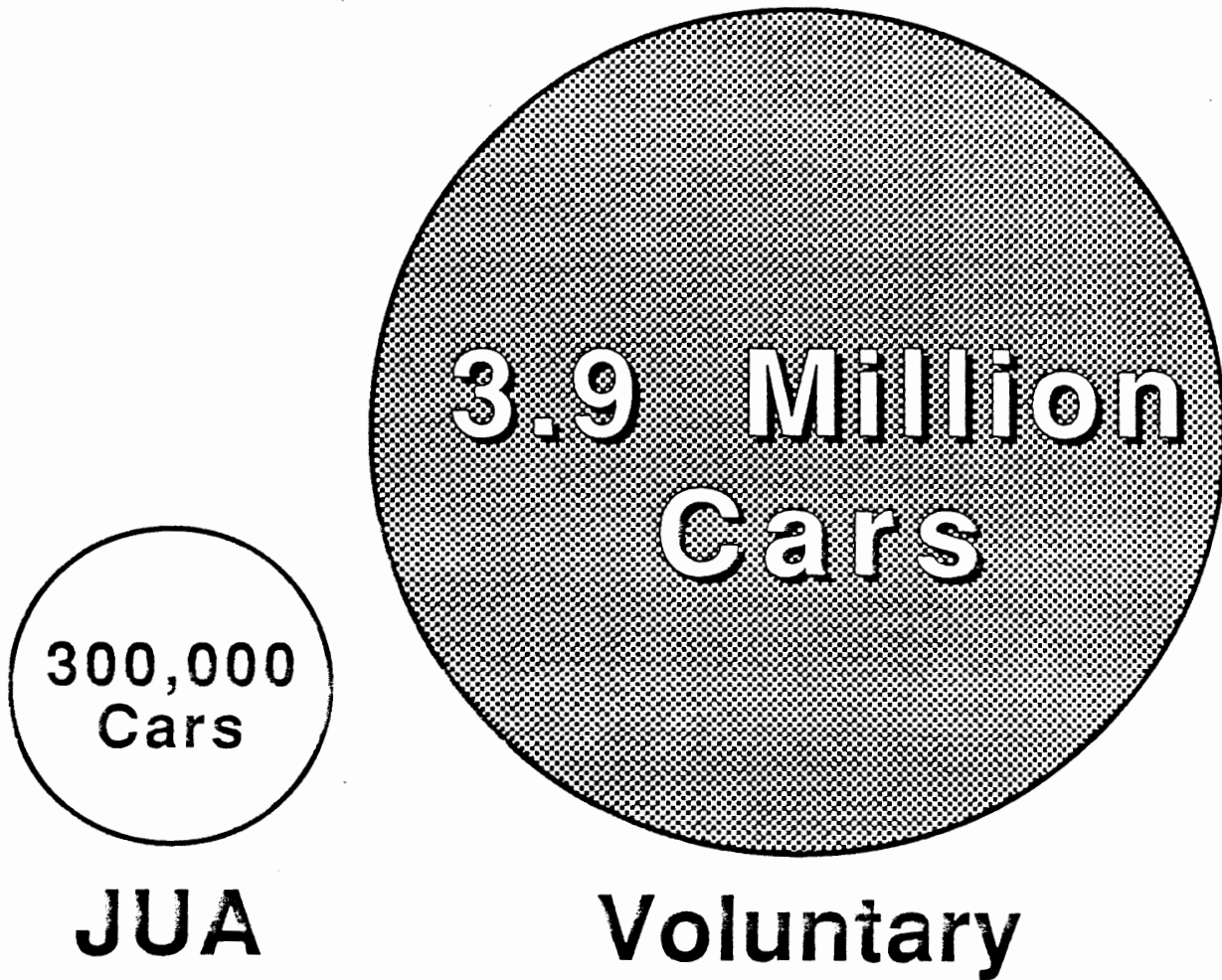
Source:
M. Adubato
March 28, 1989

-3-

12x

If...

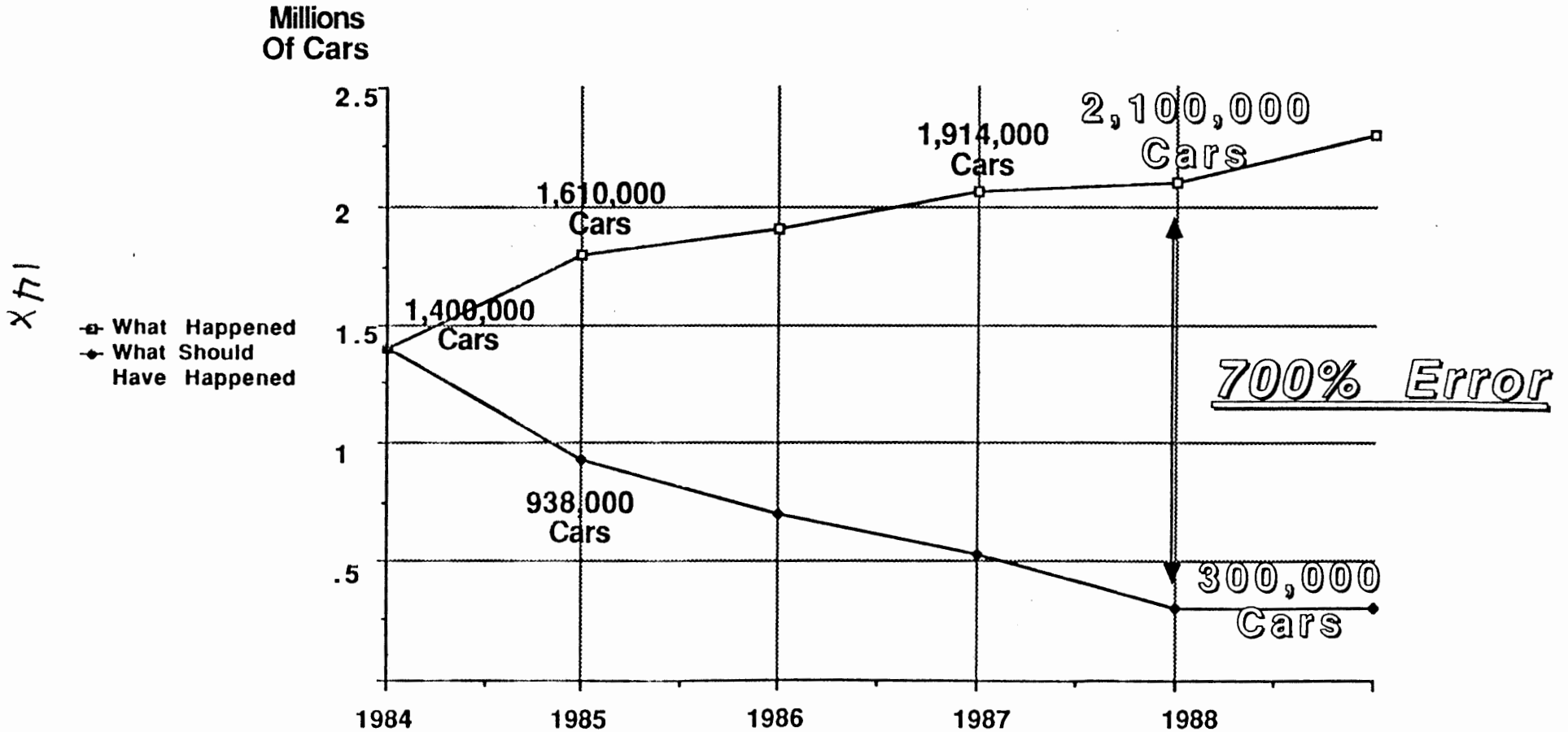
The Executive branch of government had implemented the JUA law as written, this would be the New Jersey Auto Insurance Market on January 1, 1989:



Source:
M. Adubato
March 28, 1989

JUA Growth

What Happened Compared To What Should Have Happened
Had the JUA Law Been Properly Implemented:



Source: .
M. Adubato
March 28, 1989

Commissioners of Insurance
New Jersey Department of Insurance
(Terms of Office)

**Under Governor
Brendan T. Byrne**

(Jan. 15, 1974 - Jan. 19, 1982)

JAMES J. SHEERAN

(Jan. 21, 1974



Jan. 25, 1982)

**Under Governor
Thomas H. Kean**

(Jan. 20, 1982 - Jan. 9, 1990)

JOHN G. FOLEY (Acting)

(Jan. 25, 1982 - Feb. 10, 1982)

JOSEPH F. MURPHY

(Feb. 10, 1982 - Apr. 16, 1984)

KENNETH D. MERIN

(Apr. 16, 1984 - Jan. 10, 1985)

JASPER S. JACKSON (Acting)

(Jan. 10, 1985 - Mar. 11, 1985)

HAZEL FRANK GLUCK

(Mar. 11, 1985 - May 10, 1986)

KENNETH D. MERIN

(May 10, 1986 - Present)

Source:
NJ Department
of Insurance

Aduato JUA Legislative History

A-1696 of 1982 (P.L. 1983, Chapter 65)

Sponsored By: Aduato, D. Gallo, Karcher, Thompson, Kosco, Lesniak, Kelly, Deverin, Markert, Doria, Marsella, VanWagner, Albohn, Gill, Rocco, Fortunato, Charles, Chinnici, Muziani, Myers, Hendrickson, Wolf, Rod, Mazur, Ogden, Garvin, Miller.

**Introduced: July 1, 1982.
Passed in Assembly: 76-0
Passed in Senate: 37-0
Signed by Governor: February 10, 1983**

A-1760 of 1980

**Introduced: May 19, 1980
Passed in Assembly: 69-4**

A-3455 of 1979

**Introduced: June 14, 1979
Passed in Assembly: 46-17
Passed in Senate: 30-5
Filed in State Library (Pocket Veto): February 29, 1980**

A-3049 of 1979

Introduced: January 18, 1979

A-3050 of 1979

Introduced: January 18, 1979

**Source:
M. Aduato
March 28, 1989**