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**PUBLIC HEARING**

before

**SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE**

on

**SENATE BILL 2594**

(This bill embodies the recommendations of the  
Senate Special Committee on Automobile Insurance Reform)

**SENATE RESOLUTION 61**

(This resolution establishes a commission to study the  
operation of the mandatory motor vehicle liability insurance  
law and the feasibility of eliminating mandatory liability insurance)

October 6, 1986  
Room 334  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

- Senator Raymond Lesniak, Chairman
- Senator Christopher J. Jackman, Vice Chairman
- Senator Edward T. O'Connor, Jr.
- Senator Gerald Cardinale
- Senator Donald T. DiFrancesco

**ALSO PRESENT:**

- Dale C. Davis, Jr.
- Office of Legislative Services
- Aide, Senate Labor, Industry  
and Professions Committee

*New Jersey State Library*

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



## New Jersey State Legislature

### SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

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

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*Vice-Chairman*  
EDWARD T. O'CONNOR, JR.  
BERNARD CARDINALE  
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### NOTICE OF PUBLIC HEARING

September 29, 1986

The Senate Labor, Industry and Professions Committee will hold a public hearing on Monday, October 6, 1986, at 10:00 A.M., in Room 334, State House Annex, on the following bills:

S-2594 <u>Dalton</u>	Contains the automobile insurance reforms recommended by the Senate Special Committee on Automobile Insurance Reform.
SR-61 <u>Laskin</u>	Establishes a commission to study mandatory liability insurance.

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



STATE OF NEW JERSEY

INTRODUCED OCTOBER 2, 1986

By Senators DALTON, ZANE, ORECHIO and LYNCH

Referred to Committee on Labor, Industry and Professions

AN ACT concerning private passenger automobile insurance.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 Section 2 of P. L. 1977, c. 310 (C. 39:6-73.1) is amended to  
2 read as follows:

3 2. In the event medical expense benefits paid by an insurer,  
4 in accordance with section 4 **[a.]** of P. L. 1972, c. 70 (C. 39:6A-4),  
5 are in excess of \$75,000.00 on account of personal injury to any  
6 one person in any one accident, the Unsatisfied Claim and Judg-  
7 ment Fund shall assume such excess and reimburse the insurer  
8 therefor in accordance with rules and regulations promulgated  
9 by the commissioner: provided, however, that this provision is  
10 not intended to broaden the coverage available to accidents in-  
11 volving uninsured or hit-and-run automobiles, to provide extra-  
12 territorial coverage, or to pay excess medical expenses.

1 2. Section 7 of P. L. 1972, c. 198 (C. 39:6-86.1) is amended to  
2 read as follows:

3 7. When any person qualified to receive payments under the  
4 provisions of the "Unsatisfied Claim and Judgment Fund Law"  
5 P. L. 1952, c. 174 (C. 39:6-61 et seq.) suffers bodily injury or death  
6 through being struck, as a pedestrian, as defined in section 2 of  
7 P. L. 1972, c. 70 (C. 39:6A-2), by a motor vehicle, including an  
8 automobile as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2),  
9 by the commissioner; provided, however, that this provision is  
10 out of an accident while occupying, entering into, alighting from,  
11 or using an automobile, registered or principally garaged in this

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.**

**Matter printed in italics thus is new matter.**

12 State for which personal injury protection benefits under the "New  
13 Jersey Automobile Reparation Reform Act," P. L. 1972, c. 70  
14 (C. 39:6A-1 et seq.), or section 19 of [this 1983 amendatory and  
15 supplementary act] P. L. 1983, c. 362 (C. 17:28-1.3), would be  
16 payable to such person if personal injury protection coverage  
17 were in force and the damages resulting from such accident or  
18 death are not satisfied due to the personal injury protection  
19 coverage not being in effect with respect to such accident, then  
20 in such event the Unsatisfied Claim and Judgment Fund shall  
21 provide[. under the following conditions, the following benefits:

22 a. Medical expense benefits. Payment of all reasonable medical  
23 expenses incurred as a result of personal injury sustained in a  
24 motor vehicle accident. In the event of death, payment shall be  
25 made to the estate of the decedent.

26 b. Income continuation benefits. The payment of the loss of  
27 income of an income producer as a result of bodily injury dis-  
28 ability, subject to a maximum weekly payment of \$100.00. Such  
29 sums shall be payable during the life of the injured person and  
30 shall be subject to an amount or limit of \$5,200.00, on account of  
31 injury to any one person in any one accident, except that in no  
32 case shall income continuation benefits exceed the net income  
33 normally earned during the period in which the benefits are  
34 payable.

35 c. Essential services benefits. Payment of essential services  
36 benefits to an injured person shall be made in reimbursement of  
37 necessary and reasonable expenses incurred for such substitute  
38 essential services ordinarily performed by the injured person for  
39 himself, his family and members of the family residing in the  
40 household, subject to an amount or limit of \$12.00 per day. Such  
41 benefits shall be payable during the life of the injured person and  
42 shall be subject to an amount or limit of \$4,380.00, on account of  
43 injury to any one person in any one accident.

44 d. Death benefits. In the event of the death of an income  
45 producer as a result of injuries sustained in an accident entitling  
46 such person to benefits under section 7 of this act, the maximum  
47 amount of benefits which could have been paid to the income  
48 producer, but for his death, under section 7b. shall be paid to  
49 the surviving spouse, or in the event there is no surviving spouse,  
50 then to the surviving children, and in the event there are no  
51 surviving spouse or surviving children, then to the estate of the  
52 income producer.

53 In the event of the death of one performing essential services as

54 a result of injuries sustained in an accident entitling such person to  
 55 benefits under section 7c. of this act, the maximum amount of  
 56 benefits which could have been paid such person, under section 7c.,  
 57 shall be paid to the person incurring the expense of providing such  
 58 essential services.

59 e. Funeral expenses benefits. All reasonable funeral, burial and  
 60 cremation expenses, subject to a maximum benefit of \$1,000.00,  
 61 on account of the death to any one person in any one accident shall  
 62 be payable to decedent's estate] *medical expense benefits in an*  
 63 *amount not exceeding \$10,000.00 per person per accident.*

64 Provided, however, that no benefits shall be paid under this sec-  
 65 tion unless the person applying for benefits has demonstrated that  
 66 he is not disqualified by reason of the provisions of subsection  
 67 (a), (c), (d) or (l) of section 10 of P. L. 1952, c. 174 (C. 39:6-70),  
 68 or any other provision of law.

1 3. (New section) a. Notwithstanding the provisions of section  
 2 3 of P. L. 1972, c. 70 (C. 39:6A-3), a licensed insurance carrier  
 3 may refuse to renew, in accordance with subsections b. and c. of  
 4 this section, a policy of insurance that provides coverage required  
 5 to be maintained pursuant to P. L. 1972, c. 70 (C. 39:6A-1 et seq.).

6 b. An insurer may issue notices of intention not to renew an  
 7 automobile insurance policy in an amount not to exceed 2%  
 8 of the total number of automobile insurance policies of the  
 9 insurer, rounded to the nearest whole number, which are in force  
 10 at the end of the previous calendar year in each of the insurer's  
 11 rating territories in use in this State.

12 c. For every two newly insured automobiles which an insurer  
 13 voluntarily writes in each territory, the insurer shall be permitted  
 14 to refuse to renew one additional automobile in that territory in  
 15 excess of the 2% limitation established by subsection b.  
 16 of this section, subject to a fair and nondiscriminatory formula  
 17 developed by rule or regulation of the commissioner.

18 d. The provisions of this section shall not apply to any can-  
 19 cellation made pursuant to paragraph (A) of section 2 of P. L.  
 20 1968, c. 58 (C. 17:29C-7).

1 4. Section 4 of P. L. 1972, c. 70 (C. 39:6A-4) is amended to read  
 2 as follows:

3 4. Personal injury protection coverage, regardless of fault.

4 a. Every automobile liability insurance policy insuring an auto-  
 5 mobile as defined in this act against loss resulting from liability  
 6 imposed by law for bodily injury, death and property damage  
 7 sustained by any person arising out of ownership, operation, main-

8 tenance or use of an automobile shall provide personal injury  
9 protection coverage, as defined hereinbelow, under provisions  
10 approved by the Commissioner of Insurance, for the payment of  
11 benefits without regard to negligence, liability or fault of any  
12 kind, to the named insured and members of his family residing in  
13 his household who sustained bodily injury as a result of an acci-  
14 dent while occupying, entering into, alighting from or using an  
15 automobile, or as a pedestrian, being struck by an automobile or  
16 by an object propelled by or from an automobile, to other persons  
17 sustaining bodily injury while occupying, entering into, alighting  
18 from or using the automobile of the named insured, with the per-  
19 mission of the named insured, and to pedestrians, sustaining bodily  
20 injury caused by the named insured's automobile or struck by an  
21 object propelled by or from such automobile.

22 **["Personal injury protection coverage" means and includes:**

23 a. Medical expense benefits. Payment of all reasonable medical  
24 expenses incurred as a result of personal injury sustained in an  
25 automobile accident. In the event of death, payments shall be made  
26 to the estate of the decedent. In the event benefits paid by an  
27 insurer pursuant to this subsection are in excess of \$75,000.00 on  
28 account of personal injury to any one person in any one accident,  
29 such excess shall be paid by the insurer in consultation with the  
30 Unsatisfied Claim and Judgment Fund Board and shall be reim-  
31 bursable to the insurer from the Unsatisfied Claim and Judgment  
32 Fund pursuant to section 2 of P. L. 1977, c. 310 (C. 39:6-73.1).

33 b. Income continuation benefits. The payment of the loss of  
34 income of an income producer as a result of bodily injury disability,  
35 subject to a maximum weekly payment of \$100.00. Such sum shall  
36 be payable during the life of the injured person and shall be sub-  
37 ject to an amount or limit of \$5,200.00, on account of injury to any  
38 one person in any one accident, except that in no case shall income  
39 continuation benefits exceed the net income normally earned dur-  
40 ing the period in which the benefits are payable.

41 c. Essential services benefits. Payment of essential services  
42 benefits to an injured person shall be made in reimbursement of  
43 necessary and reasonable expenses incurred for such substitute  
44 essential services ordinarily performed by the injured person for  
45 himself, his family and members of the family residing in the  
46 household, subject to an amount or limit of \$12.00 per day. Such  
47 benefits shall be payable during the life of the injured person and  
48 shall be subject to an amount or limit of \$4,380.00, on account of  
49 injury to any one person in any one accident.

50 d. Death benefits. In the event of the death of an income pro-  
51 ducer as a result of injuries sustained in an accident entitling  
52 such person to benefits under section 4 of this act, the maximum  
53 amount of benefits which could have been paid to the income pro-  
54 ducer, but for his death, under section 4 b. shall be paid to the  
55 surviving spouse, or in the event there is no surviving spouse,  
56 then to the surviving children, and in the event there are no sur-  
57 viving spouse or surviving children, then to the estate of the  
58 income producer.

59 In the event of the death of one performing essential services as  
60 a result of injuries sustained in an accident entitling such person  
61 to benefits under section 4 c. of this act, the maximum amount of  
62 benefits which could have been paid such person, under section 4 c.,  
63 shall be paid to the person incurring the expense of providing  
64 such essential services.

65 e. Funeral expenses benefits. All reasonable funeral, burial and  
66 cremation expenses, subject to a maximum benefit of \$1,000.00, on  
67 account of the death to any one person in any one accident shall  
68 be payable to decedent's estate.

69 Benefits payable under this section shall:

70 (1) Be subject to any deductibles or exclusions elected by the  
71 policyholder pursuant to section 13 of P. L. 1983, c. 362 (C.  
72 39:6-4.3);

73 (2) Not be assignable, except to a provider of service benefits  
74 under this section, nor subject to levy, execution, attachment or  
75 other process for satisfaction of debts.】

76 b. *One of the following personal injury protection coverage bene-*  
77 *fit options shall be elected by any named insured required to*  
78 *maintain personal injury protection coverage pursuant to sub-*  
79 *section a. of this section:*

80 (1) *Payment of medical expenses in an amount not to exceed*  
81 *\$10,000.00 per person per accident. In the event of death, payments*  
82 *shall be made to the estate of the decedent; or*

83 (2) *Payment of all reasonable medical expenses incurred as*  
84 *a result of personal injury sustained in an automobile accident.*  
85 *In the event of death, payments shall be made to the estate of the*  
86 *decedent. In the event benefits paid by an insurer pursuant to*  
87 *this paragraph are in excess of \$75,000.00 on account of personal*  
88 *injury to any one person in any one accident, the excess shall be*  
89 *paid by the insurer in consultation with the Unsatisfied Claim and*  
90 *Judgment Fund Board and shall be reimbursable to the insurer*  
91 *from the Unsatisfied Claim and Judgment Fund pursuant to sec-*  
92 *tion 2 of P. L. 1977, c. 310 (C. 39:6-73.1).*

93 c. Election of a personal injury protection benefit option pur-  
94 suant to this section shall be in writing by the named insured on  
95 a form approved by the Commissioner of Insurance. The personal  
96 injury protection benefit option elected shall apply to the named  
97 insured and any immediate family member residing in the named  
98 insured's household. "Immediate family member" means the  
99 spouse of the named insured and any child of the named insured  
100 or spouse residing in the named insured's household, who is not  
101 a named insured under another automobile insurance policy.

102 If the named insured fails to elect, in writing, either of the per-  
103 sonal injury protection benefits offered pursuant to this section,  
104 the named insured shall be deemed to elect the option of subpara-  
105 graph (1) of subsection b. of this section. No new policy of insur-  
106 ance shall be issued by an insurer on or after the effective date of  
107 this act unless the named insured has elected one of the options  
108 provided for in this section.

109 The personal protection benefit option elected by a named in-  
110 sured shall continue in force as to subsequent renewal or replace-  
111 ment policies until the insurer or its authorized representative  
112 receives a properly executed form electing the other personal  
113 injury protection benefit option.

114 The personal injury protection benefit option elected by the  
115 named insured shall apply to all automobiles owned by the named  
116 insured and to any immediate family member who is not a named  
117 insured under another automobile insurance policy, except that  
118 in the case where more than one policy is applicable to the named  
119 insured or immediate family member, and the policies have dif-  
120 ferent personal injury protection benefit options, the personal in-  
121 jury protection benefit option elected by the injured named insured  
122 shall apply, or in the case of an immediate family member who is  
123 not a named insured and is injured in an accident involving an auto-  
124 mobile to which a policy issued to a named insured in the house-  
125 hold of the injured immediate family member applies, the personal  
126 injury protection benefit option elected by that named insured  
127 shall apply. Notice of the personal injury protection benefit op-  
128 tions available shall be given in accordance with section 17 of  
129 P. L. 1983, c. 362 (C. 39:6A-23).

1 5. (New section) The commissioner shall, within 90 days of the  
2 enactment of this 1986 amendatory and supplementary act, prom-  
3 ulgate medical fee schedules on a regional basis for the reimburse-  
4 ment of health care providers providing services or equipment  
5 for medical expense benefits for which payment is required to

6 be made under the personal injury protection coverage provided  
7 for in section 4 of P. L. 1972, c. 70 (C. 39:6A-4). The fee schedules  
8 shall incorporate the reasonable and prevailing fees of 90% of  
9 the practitioners within the region. If, in the case of specialist  
10 providers, there are fewer than 50 within any region, the fee  
11 schedule shall incorporate the reasonable and prevailing fees of  
12 the specialist providers on a Statewide basis.

1 6. Section 13 of P. L. 1983, c. 362 (C. 39:6A-4.3) is amended  
2 to read as follows:

3 13. Personal injury protection coverage deductibles, exclusions  
4 and setoffs. With respect to personal injury protection coverage  
6 provided on an automobile in accordance with section 4 of P. L.  
7 1972, c. 70 (C. 39:6A-4), the automobile insurer shall, at appro-  
8 priately reduced premiums, provide [the following], as a cov-  
9 erage [options:] option.

10 [a. Medical] medical expense benefit deductibles in amounts of  
11 \$500.00, \$1,000.00 and \$2,500.00 for any one accident[:].

12 [b. The option to exclude all benefits offered under subsec-  
13 tions b., c., d., and e. of section 4:

14 c. A setoff option entitling an automobile insurer paying medical  
15 expense benefits under section 4 to reimbursement from, and a lien  
16 on, any recovery for noneconomic loss by an injured party pursuant  
17 to an arbitration award, judicial judgment or voluntary settlement  
18 for the amount of the medical expense benefits paid, not to exceed  
19 20% of the amount of the award, judgment or settlement, including  
20 recoveries under uninsured and underinsured motorist coverage,  
21 except that if, at the time of the award, judgment or settlement,  
22 the amount of medical expense benefits does not exceed 20% but  
23 additional expense benefits of an indeterminate amount are antici-  
24 pated, the amount of the setoff shall be 20% of the award, judg-  
25 ment or settlement, with the difference between the value of the  
26 20% and the amount of medical expense benefits previously paid  
27 to be placed in an interest bearing trust account for use to in-  
28 demnify the insurer paying the medical expense benefits, as the  
29 benefits are paid. Attorney's contingent fees shall be computed  
30 on the amount of the award, judgment or settlement, less the  
31 amount of the setoff, which setoff shall be, if the medical expense  
32 benefit claim of the injured person, as of the date of the award,  
33 judgment or settlement is made, is: (1) closed, the amount of  
34 medical expense benefits paid, not to exceed 20% of the award,  
35 judgment or settlement, or (2) open, 20% of the award, judg-  
36 ment or settlement. Under a contingent fee arrangement, the

37 attorney shall also be entitled to reimbursement out of the amount  
38 of the setoff for costs actually incurred in the institution and  
39 prosecution of the claim or action, which amount shall in no in-  
40 stance exceed 10% of the amount of the setoff, in a manner to be  
41 prescribed by the Supreme Court. Nothing in this subsection shall  
42 be construed to prohibit an attorney representing the injured  
43 party from recovering from the insurer providing personal in-  
44 jury protection benefits the reasonable cost of any legal services  
45 rendered to that insurer primarily in conjunction with the setoff  
46 reimbursement.]

47 A deductible[, exclusion or setoff] elected by the named insured  
48 in accordance with this section shall apply only to the named in-  
49 sured and any resident relative in the named insured's house-  
50 hold who is not named insured under another automobile insur-  
51 ance policy, and not to any other person eligible for personal  
52 injury protection benefits required to be provided in accordance  
53 with section 4.

54 **[In the case of a medical expense benefit deductible, the] *The***  
55 ***medical expense benefit*** deductible elected by the named insured  
56 shall be satisfied for any one accident, whether the medical expense  
57 benefits are paid or provided, in the amount of the deductible,  
58 to the named insured or to one or more resident relatives in the  
59 named insured's household who are not named insureds under  
60 another insurance policy, or to any combination thereof.

61 No insurer or health provider providing benefits to an insured  
62 who has elected a deductible pursuant to **[subsection a. of]** this  
63 section shall have a right of subrogation for the amount of benefits  
64 paid pursuant to a deductible elected thereunder.

65 **[Where a trust account has been established in accordance with**  
66 **subsection c. of this section, any remaining principal and all ac-**  
67 **crued interest in the trust account at the time the final payment of**  
68 **medical expense benefits is made shall be paid to the party to whom**  
69 **the award, judgment or settlement was made, or to his estate.]**

70 The Commissioner of Insurance shall adopt rules and regula-  
71 tions to effectuate the purposes of this section.

1 7. Section 8 of P. L. 1972, c. 70 (C. 39:6A-8) is amended to  
2 read as follows:

3 8. Tort exemption: limitation on the right to noneconomic loss.

4 One of the following two tort options shall be elected, in accor-  
5 dance with section 14.1 of P. L. 1988, c. 362 (C. 39:6A-8.1), by  
6 any named insured required to maintain personal injury protec-  
7 tion coverage pursuant to section 4 of P. L. 1972, c. 70 (C.  
8 39:6A-4):

9 a. Every owner, registrant, operator or occupant of an auto-  
10 mobile to which section 4, personal injury protection coverage,  
11 regardless of fault, applies, and every person or organization  
12 legally responsible for his acts or omissions, is hereby exempted  
13 from tort liability for noneconomic loss to a person who is subject  
14 to this subsection and who is either a person who is required to  
15 maintain the coverage mandated by this act, or is a person who  
16 has a right to receive benefits under section 4 of this act as a result  
17 of bodily injury, arising out of the ownership, operation, main-  
18 tenance or use of such automobile in this State, if the bodily  
19 injury is confined solely to the soft tissue of the body and the  
20 medical expenses incurred or to be incurred by such injured person  
21 or the equivalent value thereof for the reasonable and necessary  
22 treatment of such bodily injury is less than ~~[\$200.00]~~ \$500.00, ex-  
23 clusive of hospital expenses, X-rays and other diagnostic medical  
24 expenses. There shall be no exemption from tort liability if the  
25 injured party has sustained death, permanent disability, perma-  
26 nent significant disfigurement, permanent loss of any bodily func-  
27 tion or loss of a body member in whole or in part, regardless of  
28 the right of any person to receive benefits under section 4 of this  
29 act. Bodily injury confined solely to the soft tissue, for the pur-  
30 pose of this section, means injury in the form of sprains, strains,  
31 contusions, lacerations, bruises, hematomas, cuts, abrasions,  
32 scrapes, scratches, and tears confined to the muscles, tendons,  
33 ligaments, cartilage, nerves, fibers, veins, arteries and skin of the  
34 human body; or

35 b. As an alternative to the basic tort option specified in sub-  
36 section a. of this section, every owner, registrant, operator, or  
37 occupant of an automobile to which section 4 of P. L. 1972, c. 70 (C.  
38 39:6A-4) applies, and every person or organization legally respon-  
39 sible for his acts or omissions, is hereby exempted from tort lia-  
40 bility for noneconomic loss to a person who is subject to this sub-  
41 section and who is either a person who is required to maintain the  
42 coverage mandated by P. L. 1972, c. 70 (C. 39:6A-1 et seq.) or is  
43 a person who has a right to receive benefits under section 4 of that  
44 act (C. 39:6A-4), as a result of bodily injury, arising out of the  
45 ownership, operation, maintenance or use of such automobile in  
46 this State, if ~~the~~ medical expenses incurred or to be incurred by  
47 that injured person, or the equivalent value thereof, for the reason-  
48 able and necessary treatment of the bodily injury, is less than  
49 \$1,500.00, which amount shall be adjusted annually on January 1  
50 of each year following the operative date of this act by the Com-

51 missioner of Insurance to reflect increases or decreases in the na-  
 52 tional Consumer Price Index for the professional services com-  
 53 ponent of medical care services, all urban consumers, U. S. city  
 54 average, and which amount shall be exclusive of hospital expenses,  
 55 X-rays and other diagnostic medical expenses. The adjusted rate  
 56 shall apply to any claim for noneconomic loss arising from any  
 57 automobile accident occurring on or after the adjustment date.  
 58 There shall be no exemption from tort liability if the injured party  
 59 has sustained death, permanent disability, permanent significant  
 60 disfigurement, permanent loss of any bodily function or loss of a  
 61 body member in whole or in part, regardless of the right of any  
 62 person to receive benefits under section 4 of P. L. 1972, c. 70  
 63 (C. 39:6A-4)] *that person has sustained personal injury which*  
 64 *results in death, serious impairment of body function or perma-*  
 65 *nent serious disfigurement.*

66 The tort option provisions of subsection a. of this section shall  
 67 also apply to the right to recover for noneconomic loss of any  
 68 person eligible for benefits pursuant to section 4 of P. L. 1972, c. 70  
 69 (C. 39:6A-4) but who is not required to maintain personal injury  
 70 protection coverage and is not an immediate family member, as  
 71 defined in section 14.1 of P. L. 1983, c. 362 (C. 39:6A-8.1), under  
 72 an automobile insurance policy.

73 The tort option provisions of subsection b. of this section shall  
 74 also apply to any person subject to section 14 of P. L. 1985, c. 520  
 75 (C. 39:6A-4.5).

76 The tort option provisions of subsection b. of this section shall  
 77 remain inoperative until July 1, [1984] 1987, and shall apply to  
 78 accidents occurring on or after that date.

79 If any provision of subsection b. of this section shall be deemed  
 80 to be unconstitutional, the provisions of the entire subsection shall  
 81 be deemed null and void, and without further effect, but the deci-  
 82 sion of the court shall not affect the validity of any other provision  
 83 of this act.

1 8. Section 14.1 of P. L. 1983, c. 362 (C. 39:6A-8.1) is amended  
 2 to read as follows:

3 14.1 Election of tort option. a. Election of a tort option pur-  
 4 suant to section 8 of P. L. 1972, c. 70 (C. 39:6A-8) shall be in  
 5 writing by the named insured on a form approved by the Com-  
 6 missioner of Insurance. The tort option elected shall apply to the  
 7 named insured and any immediate family member residing in the  
 8 named insured's household. "Immediate family member" means  
 9 the spouse of the named insured and any child of the named in-

10 sured or spouse residing in the named insured's household, who  
11 is not a named insured under another automobile insurance policy.

12 b. If the named insured fails to elect, in writing, any of the tort  
13 options offered pursuant to section 8 of P. L. 1972, c. 70 (C.  
14 39:6A-8), the named insured shall be deemed to elect the tort  
15 option of subsection a. of that section 8. No new automobile policy  
16 issued on or after July 1, **[1984] 1987**, in this State shall be issued  
17 by an insurer unless the named insured has elected one of the tort  
18 options provided in section 8.

19 c. The tort option elected by a named insured shall continue in  
20 force as to subsequent renewal or replacement policies until the  
21 insurer or its authorized representative receives a properly ex-  
22 ecuted form electing the other tort option.

23 d. The tort option elected by the named insured shall apply to  
24 all automobiles owned by the named insured and to any immediate  
25 family member who is not a named insured under another auto-  
26 mobile insurance policy, except that in the case where more than  
27 one policy is applicable to the named insured or immediate family  
28 member, and the policies have different tort options, the tort option  
29 elected by the injured named insured shall apply or, in the case  
30 of an immediate family member who is not a named insured and  
31 is injured in an accident involving an automobile to which a policy  
32 issued to a named insured in the household of the injured imme-  
33 diate family member applies, the tort option elected by that named  
34 insured shall apply.

35 In the case of automobile insurance policies in force on July 1,  
36 **[1984] 1987**, notice of the tort options available pursuant to the  
37 aforesaid section 8 shall be given in accordance with section 17 of  
38 **[this 1983 amendatory and supplementary act] P. L. 1983, c. 362**  
39 **(C. 39:6A-23)**.

1 9. Section 10 of P. L. 1972, c. 70 (C. 39:6A-10) is amended to  
2 read as follows:

3 10. Additional personal injury protection coverage. Insurers  
4 shall make available to the named insured covered under section 4,  
5 and, at his option, to resident relatives in the household of the  
6 named insured, **[suitable additional]** first party coverage for in-  
7 come continuation benefits, essential services benefits, death bene-  
8 fits and funeral expense benefits~~].~~ but the income continuation  
9 and essential services benefits shall cease upon the death of the  
10 claimant, and shall not operate to increase the amount of any  
11 death benefits payable under section 4 and such additional first  
12 party coverage shall be payable only to the extent that the claimant

13 establishes that the amount of loss sustained exceeds the coverage  
14 specified in section 4. The additional coverage shall be offered  
15 by the insurer at least annually on a form prescribed by the Com-  
16 missioner of Insurance, which shall be attached to or accompany  
17 all applications, initial policies and renewal policies or renewal  
18 notices. Income continuation in excess of that provided for in  
19 section 4 must be provided as an option by insurers for disabilities,  
20 as long as the disability persists, up to an income level of \$35,000.00  
21 per year, provided that a. the excess between \$5,200.00 and the  
22 amount of coverage contracted for shall be written on the basis  
23 of 75% of said difference, and b. regardless of the duration of  
24 the disability, the benefits payable shall not exceed the total maxi-  
25 mum amount of income continuation benefits contracted for. Death  
26 benefits provided pursuant to this section shall be payable without  
27 regard to the period of time elapsing between the date of the acci-  
28 dent and the date of death, if death occurs within two years of  
29 the accident and results from bodily injury from that accident  
30 to which coverage under this section applies. The Commissioner  
31 of Insurance is hereby authorized and empowered to establish,  
32 by rule or regulation, the amounts and terms of income continua-  
33 tion insurance to be provided pursuant to this section] as follows:

34 *a. Income continuation benefits. The payment of the loss of in-*  
35 *come of an income producer as a result of bodily injury disability,*  
36 *in an amount not less than \$100.00 per week, for any one person*  
37 *in any one accident, and not more than an income level established*  
38 *by the commissioner by regulation, which shall be not less than*  
39 *\$35,000.00 per year. The benefit shall be payable as long as the*  
40 *disability exists, except that, regardless of the duration of the*  
41 *disability, the benefits payable shall not exceed the total maximum*  
42 *income continuation benefit contracted for, nor shall the benefits*  
43 *payable exceed the net income normally earned during the period*  
44 *in which the benefits are payable. Coverage in amounts in excess*  
45 *of \$5,200.00 per year shall be written on the basis of 75% of the*  
46 *differential between \$5,200.00 and the coverage written. Income*  
47 *continuation benefits shall cease upon the death of the claimant,*  
48 *and shall not operate to increase the amount of any death benefits*  
49 *payable under subsection c. of this section.*

50 *b. Essential services benefits. Payment of essential services*  
51 *benefits to an injured person shall be made in reimbursement of*  
52 *necessary and reasonable expenses incurred for the substitute*  
53 *essential services ordinarily performed by the injured person for*  
54 *himself his, family and members of the family residing in the*

55 household, subject to an amount or limit of \$12.00 per day. The  
56 benefits shall be payable during the life of the injured person and  
57 shall be subject to limits established by the commissioner by regu-  
58 lation, on account of injury to any one person in any one accident.  
59 In the event of the death of one performing essential services as  
60 a result of injuries sustained in an accident entitling the person  
61 to benefits under this subsection, the maximum amount of benefits  
62 which could have been paid to that person under this subsection  
63 shall be paid to the person incurring the expense of providing the  
64 essential services.

65 c. Death benefits. In the event of the death of an income producer  
66 as a result of injuries sustained in an accident which entitles the  
67 person to collect benefits under section 4 of P. L. 1972, c. 70 (C.  
68 39:6A-4), the maximum amount of benefits which could have been  
69 paid to the income producer, but for his death, under subsection a.  
70 of this section shall be paid to the surviving spouse or surviving  
71 children, or in the event there is no surviving spouse or surviving  
72 children, then to the estate of the income producer. Death benefits  
73 provided pursuant to this subsection shall be payable without re-  
74 gard to the period of time elapsing between the date of the accident  
75 and the date of death if death occurs within two years of the acci-  
76 dent and results from bodily injury from that accident to which  
77 coverage under this subsection applies.

78 d. Funeral expense benefits. All reasonable funeral, burial and  
79 cremation expenses, subject to a schedule of maximum benefits  
80 established by the commissioner by regulation, on account of the  
81 death to any one person in any one accident shall be payable to  
82 the decedent's estate.

83 Benefits payable under subsections a. and b. of this section shall  
84 cease upon the death of the claimant, and shall not operate to  
85 increase the amount of any death benefits payable under subsec-  
86 tion c. of this section. Benefit options provided for under this sec-  
87 tion shall be offered by insurers at least annually on a form pre-  
88 scribed by the commissioner, which shall be attached to or ac-  
89 company all applications for coverage, initial policies and renewal  
90 policies or renewal notices. Benefits payable pursuant to this sec-  
91 tion or section 4 of P. L. 1972, c. 70 (C. 39:6A-4) shall not be as-  
92 signable, except to a provider of service benefits under this section,  
93 nor subject to levy, execution, attachment or other process for  
94 satisfaction of debts.

1 10. Section 2 of P. L. 1983, c. 358 (C. 39:6A-25) is amended to  
2 read as follows:

3 2. a. Any cause of action filed in the Superior Court after the  
 4 operative date of this act, for the recovery of noneconomic loss, as  
 5 defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), or the re-  
 6 covery of uncompensated economic loss, other than for damages to  
 7 property, arising out of the operation, ownership, maintenance or  
 8 use of an automobile, as defined in that section 2, shall be sub-  
 9 mitted, except as hereinafter provided, to arbitration by the  
 10 assignment judge of the court in which the action is filed, if the  
 11 court determines that the amount in controversy is ~~[\$15,000.00]~~  
 12 \$20,000.00 or less, exclusive of interest and costs; provided that  
 13 if the action is for recovery for both noneconomic and economic  
 14 loss, the controversy shall be submitted to arbitration if the court  
 15 determines that the amount in controversy for noneconomic loss  
 16 is ~~[\$15,000.00]~~ \$20,000.00 or less, exclusive of interest and costs.

17 b. Notwithstanding that the amount in controversy of an action  
 18 for noneconomic loss is in excess of ~~[\$15,000.00]~~ \$20,000.00, the  
 19 court may refer the matter to arbitration, if all of the parties to  
 20 the action consent in writing to arbitration and the court deter-  
 21 mines that the controversy does not involve novel legal or unduly  
 22 complex factual issues.

23 No cause of action determined by the court to be, upon proper  
 24 motion of any party to the controversy, frivolous, insubstantial or  
 25 without actionable cause shall be submitted to arbitration.

26 The provisions of this section shall not apply to any controversy  
 27 on which an arbitration decision was rendered prior to the filing  
 28 of the action.

29 The provisions of this section shall apply to any cause of action,  
 30 subject to this section, filed prior to the operative date of this  
 31 1986 amendatory and supplementary act, if a pretrial conference  
 32 has not been concluded thereon.

1 11. Section 7 of P. L. 1983, c. 358 (C. 39:6A-30) is amended to  
 2 read as follows:

3 7. Notwithstanding that a controversy was submitted pursuant  
 4 to subsection a. of section 2 of ~~[this act]~~ P. L. 1983, c. 358 (C.  
 5 39:6A-25), the arbitration award for noneconomic loss may ex-  
 6 ceed ~~[\$15,000.00]~~ \$20,000.00. The arbitration decision shall be in  
 7 writing, and shall set forth the issues in controversy, and the  
 8 arbitrators' findings and conclusions of law and fact.

1 12. Section 2 of P. L. 1972, c. 197 (C. 39:6B-2) is amended to  
 2 read as follows:

3 2. Any owner, or registrant of a motor vehicle registered or  
 4 principally garaged in this State who operates or causes to be

5 operated a motor vehicle upon any public road or highway in this  
 6 State without motor vehicle liability insurance coverage required  
 7 by this act, and any operator who operates or causes a motor  
 8 vehicle to be operated and who knows or should know from the  
 9 attendant circumstances that the motor vehicle is without motor  
 10 vehicle liability insurance coverage required by this act shall be  
 11 subject, for the first offense, to a fine of [not less than \$100.00 nor  
 12 more than] \$300.00 and a period of community service to be deter-  
 13 mined by the court, or imprisonment for a term of not less than  
 14 30 days nor more than three months or both, in the discretion of  
 15 the municipal judge, and shall forthwith forfeit his right to operate  
 16 a motor vehicle over the highways of this State for a period of  
 17 [six months] one year from the date of conviction. Upon subse-  
 18 quent conviction, he shall be subject to a fine of [not less than  
 19 \$250.00 nor more than] \$500.00 and [may] shall be subject to  
 20 imprisonment for a term of not less than three months nor more  
 21 than six months in the discretion of the municipal judge [and  
 22 shall be ordered by the court to perform community service for  
 23 a period of 30 days, which shall be of such form and on such terms  
 24 as the court shall deem appropriate under the circumstances], and  
 25 shall forfeit his right to operate a motor vehicle for a period of  
 26 two years from the date of his conviction, and, after the expira-  
 27 tion of said period, he may make application to the Director of  
 28 the Division of Motor Vehicles for a license to operate a motor  
 29 vehicle, which application may be granted at the discretion of the  
 30 director. The director's discretion shall be based upon an assess-  
 31 ment of the likelihood that the individual will operate or cause a  
 32 motor vehicle to be operated in the future without the insurance  
 33 coverage required by this act. A complaint for violation of this act  
 34 may be made to a municipal court at any time within six months  
 35 after the date of the alleged offense. \$100.00 of every fine collected  
 36 pursuant to this section shall be remitted by the court to the New  
 37 Jersey Automobile Full Insurance Underwriting Association  
 38 created by section 16 of P. L. 1963, c. 65 (C. 17:30E-4).

1 13. Section 1 of P. L. 1970, c. 217 (C. 17:22-6.14a) is amended  
 2 to read as follows:

3 1. In the event that a policy is canceled by the insurer, either at  
 4 its own behest or at the behest of the agent or broker of record,  
 5 the unearned premium, including the unearned commission shall  
 6 be returned to the policyholder. In the event that a policy of  
 7 [automobile] insurance covering motor vehicles other than those  
 8 required to be insured pursuant to P. L. 1972, c. 70 (C. 39:6A-1

9 *et seq.*) issued by the automobile insurance plan established pur-  
10 suant to P. L. 1970, c. 215 (C. 17:29D-1) or any successor thereto,  
11 is cancelled by reason of nonpayment of premium to the insurer  
12 issuing the policy or nonpayment of an installment payment due  
13 pursuant to an insurance premium finance agreement, the broker  
14 of record for that policy may retain the full annual commission  
15 due thereon and, if a premium finance agreement is not involved,  
16 the effective date of cancellation of the policy shall be no earlier  
17 than 10 days prior to the last full day for which the premium  
18 paid by the insured, net of the broker's full annual commission,  
19 would pay for coverage on a pro rata basis in accordance with rules  
20 established by the commissioner. Contracts between insurance  
21 companies and agents for the appointment of the agent as the  
22 representative of the company shall set forth the rate of commis-  
23 sion to be paid to the agent for each class of insurance within the  
24 scope of such appointment written on all risks or operations in this  
25 State except:

26 (a) Reinsurance.

27 (b) Life insurance.

28 (c) Annuities.

29 (d) Accident and health insurance.

30 (e) Title insurance.

31 (f) Mortgage guaranty insurance.

32 (g) Hospital service, medical service, or dental service corpora-  
33 tions, investment companies, mutual benefit associations, or fra-  
34 ternal beneficiary associations.

35 Said rates of commission shall continue in force and effect unless  
36 changed by mutual written consent or until termination of said  
37 contract as hereinafter provided. Failure to achieve such mutual  
38 consent shall require that the agent's contract be terminated as  
39 hereinbelow provided. The rate of commissions being paid on each  
40 class of insurance on the date of enactment hereof shall be deemed  
41 to be pursuant to the existing contract between agent and company.

42 Termination of any such contract for any reason other than one  
43 excluded herein shall become effective after not less than 90 days'  
44 notice in writing given by the company to the agent and the Com-  
45 missioner of Insurance. No new business nor increases in liability  
46 on renewal or in force business shall be written by the agent for  
47 the company after notice of termination without written approval  
48 of the company. However, during the term of the agency contract,  
49 including the said 90-day period, the company shall not refuse to  
50 renew such business from the agent as would be in accordance with

51 said company's current underwriting standards. The company  
52 shall during a period of nine months from the effective date of such  
53 termination, provided the former agent has not been replaced as  
54 the broker of record by the insured, and upon request in writing  
55 of the terminated agent, renew all contracts of insurance for such  
56 agent for said company as may be in accordance with said  
57 company's then current underwriting standards and pay to the  
58 terminated agent a commission in accordance with the previous  
59 agency contract of the terminated agent. Said commission can  
60 be paid only to the holder of a New Jersey broker's license. In  
61 the event any risk shall not meet the then current underwriting  
62 standards of said company, that company may decline its renewal,  
63 provided that the company shall give the terminated agent and the  
64 insured not less than 60 days' notice of its intention not to renew  
65 said contract of insurance.

66 The agency termination provisions of this act shall not apply to  
67 those contracts in which the agent is paid on a salary basis without  
68 commission or where he agrees to represent exclusively one com-  
69 pany or to the termination of an agent's contract for insolvency,  
70 abandonment, gross and willful misconduct, or failure to pay over  
71 to the company moneys due to the company after his receipt of a  
72 written demand therefor, or after revocation of the agent's license  
73 by the Commissioner of Insurance, and in any such case the com-  
74 pany shall upon request of the insured, provided he meets the then  
75 current underwriting standards of the company, renew any con-  
76 tract of insurance formerly processed by the terminated agent  
77 through an active agent, or directly pursuant to such rules and  
78 regulations as may be promulgated by the Commissioner of  
79 Insurance.

80 The Commissioner of Insurance, on the written complaint of  
81 any person stating that there has been a violation of this act,  
82 or when he deems it necessary without a complaint, may inquire  
83 and otherwise investigate to determine whether there has been  
84 any violation of this act.

85 All existing contracts between agent and company in effect in  
86 the State of New Jersey on the effective date of this act are  
87 subject to all provisions of this act.

88 The Commissioner of Insurance may, if he determines that a  
89 company is in unsatisfactory financial condition, exclude such  
90 company from the provisions of this act.

91 Whenever under this act it is required that the company shall  
92 renew a contract of insurance, the renewal shall be for a time

93 period equal to one additional term of the term specified in the  
94 original contract, but in no event to be less than [1] one year.

1 14. Section 19 of P. L. 1983, c. 362 (C. 17:28-1.3) is amended  
2 to read as follows:

3 19. Every liability insurance policy issued in this State on a  
4 motor vehicle, exclusive of an automobile as defined in section 2 of  
5 P. L. 1972, c. 70 (C. 39:6A-2), but including a motorcycle, or on a  
6 motorized bicycle, insuring against loss resulting from liability  
7 imposed by law for bodily injury, death, and property damage  
8 sustained by any person arising out of the ownership, operation,  
9 maintenance, or use of a motor vehicle or motorized bicycle shall  
10 provide personal injury protection coverage benefits, in accordance  
11 with *paragraph (1) of subsection b. of section 4 of P. L. 1972, c. 70*  
12 (C. 39:6A-4), to pedestrians who sustain bodily injury in the State  
13 caused by the named insured's motor vehicle or motorized bicycle  
14 or by being struck by an object propelled by or from the motor  
15 vehicle or motorized bicycle.

1 15. Section 18 of P.L. 1985, c. 520 (C. 17:28-1.4) is amended  
2 to read as follows:

3 18. Any insurer authorized to transact or transacting automobile  
4 or motor vehicle insurance business in this State, or controlling or  
5 controlled by, or under common control by, or with, an insurer  
6 authorized to transact or transacting insurance business in this  
7 State, which sells a policy providing automobile or motor vehicle  
8 liability insurance coverage, or any similar coverage, in any other  
9 state or in any province of Canada, shall include in each policy,  
10 coverage to satisfy at least the *liability insurance requirements*  
11 of section 1 of P. L. 1972, c. 197 (C. 39:6B-1) or section 3 of  
12 P. L. 1972, c. 70 (C. 39:6A-2), the uninsured motorist insurance  
13 requirements of subsection a. of section 2 of P. L. 1968, c. 355  
14 (C. 17:28-1.1), and personal injury protection benefits coverage  
15 pursuant to *paragraph (1) of subsection b. of section 4 of P. L.*  
16 *1972, c. 70 (C. 39:6A-4) or of section 19 of P. L. 1983, c. 362*  
17 (C. 17:28-1.3), whenever the automobile or motor vehicle insured  
18 under the policy is used or operated in this State.

19 Any liability insurance policy subject to this section shall be  
20 construed as providing the coverage required herein, and any  
21 named insured, and any immediate family member as defined in  
22 section 14.1 of P. L. 1983, c. 362 (C. 39:6A-8.1), under that policy,  
23 shall be subject to the tort option specified in subsection b. of  
24 section 8 of P. L. 1972, c. 70 (C. 39:6A-8).

25 Each insurer authorized to transact or transacting automobile

26 or motor vehicle insurance business in this State and subject to the  
27 provisions of this section, shall, within 30 days of the effective date  
28 of this amendatory and supplementary act, file and maintain with  
29 the Department of Insurance written certification of compliance  
30 with the provisions of this section.

31 "Automobile" means an automobile as defined in section 2 of  
32 P. L. 1972, c. 70 (C. 39:6A-2).

1 16. Section 14 of P. L. 1944, c. 27 (C. 17:29A-14) is amended  
2 to read as follows:

3 14. a. With regard to all property and casualty lines, a filer may,  
4 from time to time, alter, supplement, or amend its rates, rating  
5 systems, or any part thereof, by filing with the commissioner copies  
6 of such alterations, supplements, or amendments, together with a  
7 statement of the reason or reasons for such alteration, supplement,  
8 or amendment, in a manner and with such information as may be  
9 required by the commissioner. If such alteration, supplement, or  
10 amendment shall have the effect of increasing or decreasing rates,  
11 the commissioner shall determine whether the rates as altered  
12 thereby are reasonable, adequate, and not unfairly discriminatory.  
13 If the commissioner shall determine that the rates as so altered are  
14 not unreasonably high, or inadequate, or unfairly discriminatory,  
15 he shall make an order approving them. If he shall find that the  
16 rates as altered are unreasonable, inadequate, or unfairly discrim-  
17 inatory, he shall issue an order disapproving such alteration, sup-  
18 plement or amendment.

19 b. (Deleted by amendment, P. L. 1984, c. 1.)

20 c. If an insurer or rating organization files a proposed altera-  
21 tion, supplement or amendment to its rating system, or any part  
22 thereof, which would result in a change in rates, the commissioner  
23 may, or upon the request of the filer or *upon the request of the*  
24 *Public Advocate in those matters within the jurisdiction of the*  
25 *Office of the Public Advocate, Division of Rate Counsel, pursuant*  
26 *to section 19 of P. L. 1974, c. 27 (C. 52:27E-18), shall, certify*  
27 *the matter for a hearing. The hearing shall, at the commissioner's*  
28 *discretion, be conducted by himself or by the Office of Administra-*  
29 *tive Law, created by P. L. 1978, c. 67 (C. 52:14F-1 et seq.), as a*  
30 *contested case. The following requirements shall apply to the*  
31 *hearing:*

32 (1) The hearing shall commence within 30 days of the date of  
33 the request or decision that a hearing is to be held. The hearing  
34 shall be held on consecutive working days, except that the commis-  
35 sioner may, for good cause, waive the consecutive working day

36 requirement. If the hearing is conducted by an administrative law  
37 judge, the administrative law judge shall submit his findings and  
38 recommendations to the commissioner within 30 days of the close  
39 of the hearing. The commissioner may, for good cause, extend the  
40 time within which the administrative law judge shall submit his  
41 findings and recommendations by not more than 30 days. A deci-  
42 sion shall be rendered by the commissioner not later than 60 days,  
43 or, if he has granted a 30 day extension, not later than 90 days,  
44 from the close of the hearing. A filing shall be deemed to be ap-  
45 proved unless rejected or modified by the commissioner within the  
46 time period provided herein.

47 (2) The commissioner, or the Director of the Office of Admin-  
48 istrative Law, as appropriate, shall notify all interested parties,  
49 including the Public Advocate on behalf of insurance consumers,  
50 of the date set for commencement of the hearing, on the date of  
51 the filing of the request for a hearing, or within 10 days of the  
52 decision that a hearing is to be held.

53 (3) The insurer or rating organization making a filing on which  
54 a hearing is held shall bear the costs of the hearing.

55 (4) The commissioner may promulgate rules and regulations  
56 (a) to establish standards for the submission of proposed filings,  
57 amendments, additions, deletions and alterations to the rating  
58 system of filers, which may include forms to be submitted by each  
59 filer; and (b) making such other provisions as he deems necessary  
60 for effective implementation of this act.

61 d. (Deleted by amendment, P. L. 1984, c. 1.)

62 e. In order to meet, as closely as possible, the deadlines in section  
63 17 of P. L. 1983, c. 362 (C. 39:6A-23) for provision of notice of  
64 available optional automobile insurance coverages pursuant to  
65 section 13 of P. L. 1983, c. 362 (C. 39:6A-4.3) and section 8 of P. L.  
66 1972, c. 70 (C. 39:6A-8), and to implement these coverages, the  
67 commissioner may require the use of rates, fixed by him in advance  
68 of any hearing, for deductible, exclusion, setoff and tort limitation  
69 options, on an interim basis, subject to a hearing and to a provision  
70 for subsequent adjustment of the rates, by means of a debit, credit  
71 or refund retroactive to the effective date of the interim rates. The  
72 public hearing on initial rates applicable to the coverages avail-  
73 able under section 13 of P. L. 1983, c. 362 (C. 39:6A-4.3) and  
74 section 8 of P. L. 1972, c. 70 (C. 39:6A-8) shall not be limited by  
75 the provisions of subsection c. of this section governing change-  
76 in previously approved rates or rating systems.

1 17. Section 6 of P. L. 1983, c. 65 (C. 17:29A-35) is amended  
2 to read as follows:

3 6. a. A merit rating accident surcharge system for private pas-  
4 senger automobiles may be used both in the voluntary market  
5 and by the New Jersey Automobile Full Insurance Underwriting  
6 Association created pursuant to section 16 of P. L. 1983, c. 65  
7 (C. 17:30E-4). No surcharges for damage to any property shall be  
8 imposed on or after the operative date of this act, unless there is  
9 an accident within a three year period immediately preceding the  
10 effective date of coverage which results in payment by the insurer  
11 of at least a \$300.00 property damage claim involving an at fault  
12 accident or any payment by the insurer of a bodily injury claim  
13 arising out of a collision of a private passenger automobile with  
14 a pedestrian. All moneys collected under this subsection shall be  
15 retained by the insurer assessing the surcharge. Accident sur-  
16 charges shall be imposed for a three year period and shall, for  
17 each filer, be uniform on a Statewide basis without regard to  
18 classification or territory.

19 b. There is created a New Jersey Merit Rating Plan which shall  
20 apply to all drivers and shall include, but not be limited to the  
21 following provisions:

22 (1) (a) Plan surcharges shall be levied, beginning on or after  
23 January 1, 1984, by the Division of Motor Vehicles on any driver  
24 who has accumulated, within the immediately preceding three year  
25 period, beginning on or after February 10, 1983, six or more  
26 motor vehicle points as provided in Title 39 of the Revised  
27 Statutes, exclusive of any points for convictions for which sur-  
28 charges are levied under paragraph (2) of this subsection; except  
29 that the allowance for a reduction of points in Title 39 of the  
30 Revised Statutes shall not apply for the purpose of determining  
31 surcharges under this paragraph. Surcharges shall be levied for  
32 each year in which the driver possesses six or more points. Sur-  
33 charges assessed pursuant to this paragraph shall be not less than  
34 \$100.00 for six points, and not less than \$25.00 for each addi-  
35 tional point. The commissioner may increase the amount of sur-  
36 charges as he deems necessary to effectuate the purposes of sub-  
37 section d. of this section and P. L. 1983, c. 65 (C. 17:29A-33 et al.),  
38 and may, pursuant to regulation, permit the deferral of all or  
39 part of any surcharges authorized by this subsection until the  
40 end of the policy term of an automobile insurance policy with an  
41 effective date prior to January 1, 1984, upon presentation of  
42 appropriate evidence that an insured has already paid an equiva-  
43 lent surcharge arising from the same motor vehicle violation or  
44 conviction.

45 (b) (Deleted by amendment, P. L. 1984, c. 1.)

46 (2) Plan surcharges shall be levied for convictions (a) under  
47 R. S. 39:4-50 for violations occurring on or after February 10,  
48 1983, and (b) under section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a),  
49 or for offenses committed in other jurisdictions of a substantially  
50 similar nature to those under R. S. 39:4-50 or section 2 of P. L.  
51 1981, c. 512 (C. 39:4-50.4a), for violations occurring on or after  
52 January 26, 1984. Surcharges under this paragraph shall be levied  
53 annually for a three year period, and shall be not less than  
54 \$1,000.00 per year for each of the first two convictions, and not less  
55 than \$1,500.00 per year for the third conviction occurring within a  
56 three year period. If a driver is convicted under both R. S. 39:4-50  
57 and section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a) for offenses  
58 arising out of the same incident, the driver shall be assessed only  
59 one surcharge for the two offenses. The commissioner may increase  
60 the amount of surcharges as he deems necessary to effectuate the  
61 purposes of subsection d. of this section and P. L. 1983, c. 65 (C.  
62 17:29A-33 et al.), and may, pursuant to regulation, permit the  
63 deferral of all or any part of these surcharges as provided in  
64 paragraph (1) (a) of this subsection.

65 If, upon written notification from the Division of Motor Vehicles,  
66 mailed to the last address of record with the division, a driver fails  
67 to pay a surcharge levied under this subsection, the license of the  
68 driver shall be suspended forthwith until the surcharge is paid to  
69 the Division of Motor Vehicles; except that upon satisfactory  
70 showing of indigency, the Division of Motor Vehicles may autho-  
71 rize payment of the surcharge on an installment basis over a  
72 period not to exceed 10 months.

73 For the purposes of this subparagraph, "indigency" shall be  
74 defined in rules and regulations promulgated by the Director of  
75 the Division of Motor Vehicles.

76 ~~All moneys collectible under this subsection shall be billed and~~  
77 ~~collected by the Division of Motor Vehicles. Of the moneys col-~~  
78 ~~lected 10%, or the actual cost of administering the collection of~~  
79 ~~the surcharges whichever is less, [80% shall be remitted to the~~  
80 ~~New Jersey Automobile Full Insurance Underwriting Associa-~~  
81 ~~tion, and 20%] shall be retained[, for administrative expenses,]~~  
82 by the Division of Motor Vehicles and turned over to the State  
83 Treasury for deposit in a special account to be used by the Di-  
84 vision of Motor Vehicles, as may be necessary, to modernize  
85 its operations and improve its effectiveness and efficiency in order  
86 to discharge its statutory obligations *and the remainder shall be*

87 remitted to the New Jersey Automobile Full Insurance Under-  
88 writing Association. Any moneys in the special account at the  
89 end of a fiscal year shall be transferred to the General Fund  
90 for use for general State purposes. Moneys shall be appropriated  
91 annually to the special account.

92 (3) In addition to any other authority provided in P. L. 1983,  
93 c. 65 (C. 17:29A-33 et al.), the commissioner, after consultation  
94 with the Director of the Division of Motor Vehicles, is specifically  
95 authorized (a) to increase the dollar amount of the surcharges  
96 for motor vehicle violations or convictions, (b) to impose, in accor-  
97 dance with paragraph (1) (a) of this subsection, surcharges for  
98 motor vehicle violations or convictions for which motor vehicle  
99 points are not assessed under Title 39 of the Revised Statutes, or  
100 (c) to reduce the number of points for which surcharges may be  
101 assessed below the level provided in paragraph (1) (a) of this  
102 subsection, except that the dollar amount of all surcharges levied  
103 under the New Jersey Merit Rating Plan shall be uniform on a  
104 Statewide basis for each filer, without regard to classification or  
105 territory. Surcharges adopted by the commissioner on or after  
106 January 1, 1984 for motor vehicle violations or convictions for  
107 which motor vehicle points are not assessable under Title 39 of  
108 the Revised Statutes shall not be retroactively applied but shall  
109 take effect on the date of the New Jersey Register in which notice  
110 of adoption appears or the effective date set forth in that notice,  
111 whichever is later.

112 c. No motor vehicle violation surcharges shall be levied on an  
113 automobile insurance policy issued or renewed on or after Jan-  
114 uary 1, 1984, except in accordance with the New Jersey Merit  
115 Rating Plan, and all surcharges levied thereunder shall be  
116 assessed, collected and distributed in accordance with subsection b.  
117 of this section.

118 d. The dollar amount of all motor vehicle conviction surcharges  
119 shall be at least equivalent to the differential between the rates  
120 charged to insureds as promulgated by the rating bureau which  
121 files rates for the greatest number of insurers in the voluntary  
122 private passenger automobile insurance market in this State and  
123 the Supplement 1 rates in use as of December 31, 1982 by the  
124 automobile insurance plan established pursuant to P. L. 1970, c. 215  
125 (C. 17:29D-1), and the amount collectible under the motor vehicle  
126 conviction surcharge system in use by the automobile insurance  
127 plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1 et seq.)  
128 prior to the implementation of this act; except that in the first year

129 of operation of the New Jersey Automobile Full Insurance Under-  
 130 writing Association, the dollar amount of all motor vehicle sur-  
 131 charges shall be sufficient to eliminate the need for imposition of a  
 132 residual market equalization charge authorized under section 20 of  
 133 P. L. 1983, c. 65 (C. 17:30E-8).

134 e. The Commissioner of Insurance and the Director of the Divi-  
 135 sion of Motor Vehicles, as may be appropriate, shall adopt any  
 136 rules and regulations necessary or appropriate to effectuate the  
 137 purposes of this section.

1 18. (New section) a. All rate filings submitted with regard to  
 2 automobile insurance required to be maintained by the provisions  
 3 of P. L. 1972, c. 70 (C. 39:6A-1 et seq.) shall be in a format as  
 4 prescribed by rule or regulation of the commissioner. The format  
 5 shall require the reporting of data which the commissioner deems  
 6 necessary to make a determination pursuant to the provisions of  
 7 section 4 of P. L. 1944, c. 27 (C. 17:29A-4).

8 b. The commissioner shall adopt the format required by sub-  
 9 section a. of this section within 180 days of the effective date of  
 10 this 1986 amendatory and supplementary act.

1 19. (New section) a. That portion of the cost of any excess  
 2 medical expense claims paid by the Unsatisfied Claim and Judg-  
 3 ment Fund pursuant to the provisions of section 2 of P. L. 1977,  
 4 c. 310 (C. 39:5-73.1) which is attributable to accidents reimburs-  
 5 able under policies issued prior to the effective date of this act  
 6 shall be apportioned among all insureds electing personal injury  
 7 protection coverage under either paragraph (1) or (2) of sub-  
 8 section b. of section 4 of P. L. 1972, c. 70 (C. 39:6A-4), in ac-  
 9 cordance with rules and regulations promulgated by the Commis-  
 10 sioner of Insurance.

11 b. That portion of the cost of any excess medical expense claims  
 12 paid by the Unsatisfied Claim and Judgment Fund which is at-  
 13 tributable to accidents reimbursable pursuant to paragraph (2)  
 14 of subsection b. of section 4 of P. L. 1972, c. 70 (C. 39:6A-4)  
 15 after the effective date of this act shall be apportioned among  
 16 insureds electing personal injury protection coverage under para-  
 17 graph (2) of subsection b. of section 4 of P. L. 1972, c. 70 (C.  
 18 39:6A-4).

1 20. (New section) a. Every rating system for private pas-  
 2 senger automobile comprehensive insurance coverage shall pro-  
 3 vide an appropriate reduction in premium, which shall in any  
 4 case be not less than 5%, and which shall be based on the insurer's  
 5 or rating bureau's actuarial experience, for anti-theft devices  
 6 which are approved as eligible by the Commissioner of Insurance  
 7 by regulation.

8 b. No later than 180 days after the effective date of this act  
9 every insurer writing private passenger automobile insurance in  
10 this State shall file the rate reduction required by subsection a.  
11 of this section with the commissioner. Upon the approval of the  
12 commissioner, the reduction shall be applied to every new policy  
13 or renewal policy of private passenger automobile insurance  
14 issued in this State.

1 21. (New section) a. Every rating system for private passenger  
2 automobile insurance shall contain an appropriate reduction for  
3 personal injury protection coverage, bodily injury liability cov-  
4 erage, property damage coverage, and physical damage coverage  
5 for the successful completion, by the named insured or the prin-  
6 cipal operator of the insured automobile, if other than the named  
7 insured, of a motor vehicle defensive driving course which is  
8 approved by the Director of the Division of Motor Vehicles. The  
9 reduction in premium charges shall be an amount justified by the  
10 insurer's or the rating bureau's actuarial experience, and shall be  
11 available to the insured for a three-year period beginning with  
12 the next succeeding policy period after the date of completion of  
13 an approved motor vehicle defensive driving course.

14 b. The provisions of this section shall not apply to driver train-  
15 ing courses offered by driving schools pursuant to P. L. 1951,  
16 c. 216 (C. 39:12-1 et seq.), or public, parochial or private school  
17 driving education courses, or to a Division of Motor Vehicles  
18 Driver Improvement Program required pursuant to P. L. 1969,  
19 c. 261 (C. 39:5-30.2 et seq.).

1 22. Section 23 of P. L. 1983, c. 65 (C. 17:30E-11) is amended  
2 to read as follows:

3 23. The producer shall receive commissions on association busi-  
4 ness in accordance with a schedule of commissions promulgated  
5 in the plan of operation. The schedule of commissions so promul-  
6 gated shall be designed to serve and reconcile the following ob-  
7 jectives: a. to encourage equal treatment of policyholders in the  
8 association and the voluntary market; b. to minimize disincen-  
9 tives to the placement of applicants in the voluntary market;  
10 c. to stimulate marketing efforts in underserved areas; d. to  
11 provide reasonable compensation for services performed by pro-  
12 ducers; e. to provide protection to the producer of record without  
13 a voluntary market company, upon the offer of voluntary market  
14 coverage to an association insured; f. to provide for an equitable  
15 rate of commission for producers during a transition period, as  
16 the term of such period is determined by the board. No rate of

17 commission shall be less than that provided pursuant to the auto-  
 18 mobile insurance plan established pursuant to P. L. 1970, c. 215  
 19 (C. 17:29D-1), as payable as of December 31, 1981.

20 *In the event that a policy issued by the association is cancelled*  
 21 *by reason of nonpayment of premium or nonpayment of an install-*  
 22 *ment payment due pursuant to an insurance premium finance*  
 23 *agreement, the unearned commission shall be retained by the asso-*  
 24 *ciation and the effective cancellation date of the policy shall be no*  
 25 *earlier than 10 days prior to the last full day for which the pre-*  
 26 *mium paid by the insured, net of the producer's full annual com-*  
 27 *mission, would pay for coverage on a pro rata basis.*

1 23. Section 25 of P. L. 1983, c. 65 (C. 17:30E-13) is amended  
 2 to read as follows:

3 25. *a.* The rates used by the association shall be the same as  
 4 those used by the rating bureau which files rates for the greatest  
 5 number of insurers transacting private passenger automobile in-  
 6 surance in the voluntary market in this State, *except as provided*  
 7 *in subsection b. of this section.*

8 *b.* *No later than 60 days after the effective date of this 1986*  
 9 *amendatory and supplementary act the board shall establish and*  
 10 *shall submit to the commissioner for his approval, base rates which*  
 11 *are higher than those provided for in subsection a. of this section,*  
 12 *which shall be applied to policies covering any automobile insured*  
 13 *by the association with a named insured or principal operator who,*  
 14 *in the three years preceding the policy year to which the rate is to*  
 15 *be applicable, has accumulated (1) three chargeable accidents;*  
 16 *or (2) two chargeable accidents and moving violations for which*  
 17 *the owner or operator has received nine points; or (3) one charge-*  
 18 *able accident and moving violations for which the owner or oper-*  
 19 *ator has received 12 points.*

1 24. Section 19 of P. L. 1974, c. 27 (C. 52:27E-18) is amended  
 2 to read as follows:

3 19. Division of Rate Counsel: jurisdiction. *a.* The Division of  
 4 Rate Counsel shall represent and protect the public interest as  
 5 defined in section 31 of **[this act]** P. L. 1974, c. 27 (C. 52:27E-30),  
 6 in proceedings before and appeals from any State department,  
 7 commission, authority, council, agency or board charged with the  
 8 regulation or control of any business, industry or utility regarding  
 9 a requirement that the business, industry or utility provide a ser-  
 10 vice or regarding the fixing of a rate, toll, fare or charge for a  
 11 product or service. The Division of Rate Counsel may initiate  
 12 **[any such]** *these* proceedings when the director determines that

13 a discontinuance or change in required service or a rate, toll,  
14 fare or charge for a product or service is in the public interest.

15 *b. Notwithstanding the provisions of subsection a. of this sec-*  
16 *tion, the Division of Rate Counsel shall be prohibited from inter-*  
17 *vening in any proceeding involving a motor vehicle insurance rate*  
18 *filing which results in an overall rate decrease for the filer; or in*  
19 *a motor vehicle insurance rate filing which contains a rate increase*  
20 *which results in rates being restored up to the level which had been*  
21 *previously approved by the commissioner within 18 months of the*  
22 *making of the filing.*

1 25. (New section) Every insurer writing private passenger  
2 automobile insurance in this State, including the New Jersey Auto-  
3 mobile Full Insurance Underwriting Association created pursuant  
4 to section 16 of P. L. 1983, c. 65 (C. 17:30E-4), shall, upon the  
5 cancellation of any automobile insurance policy required to be  
6 maintained pursuant to the provisions of P. L. 1972, c. 70 (C.  
7 39:6A-1 et seq.), send to the Division of Motor Vehicles, on a form  
8 prescribed by the division, a notice of the cancellation, together  
9 with the license plate and registration numbers of the vehicle or  
10 vehicles insured by the policy. The division shall then notify the  
11 person whose policy was cancelled that he shall be subject to a  
12 fine of \$300.00 and suspension of his driver's license if proof of  
13 insurance is not filed with the division within 30 days of the noti-  
14 fication. 80% of any fine collected pursuant to this section shall  
15 be forwarded to the New Jersey Automobile Full Insurance Un-  
16 derwriting Association and 20% shall be retained by the division  
17 to defray its expenses.

1 26. This act shall take effect immediately and shall remain in-  
2 operative until July 1, 1987.

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#### STATEMENT

This bill embodies the recommendations of the Senate Special Committee on Automobile Insurance Reform. Under the provisions of the bill, the mandatory personal injury protection benefits would consist of a \$10,000.00 medical expense benefit. Additional benefits, such as wage loss benefits and essential services benefits, would be optional, as would unlimited medical benefits.

The bill provides for a tort threshold of \$500.00, in place of the present \$200.00 basic threshold amount, and a verbal threshold would be provided as an optional threshold. The present higher dollar threshold option would be eliminated.

The bill provides for a medical fee schedule for physicians, which would be established by the Commissioner of Insurance on a regional basis.

The bill prohibits the Public Advocate from intervening in any rate filing which results in an overall rate decrease, as well as any rate filing which results in rates being restored to a level which had been previously approved within an 18-month period of the filing.

The bill modifies the present law which regulates nonrenewal of policies to permit limited nonrenewal.

The bill reduces the amount of the merit rating surcharges which are permitted to be retained by the Division of Motor Vehicles. The bill also increases the penalties for the failure to maintain insurance coverage. Producers' commissions on JUA business would be required to be fully earned.

In addition, the bill would increase the number of automobile cases which are to be arbitrated by requiring arbitration for all cases of \$20,000.00 or less. Insurers would be required to provide discounts on comprehensive coverages for anti-theft devices and would be required to give discounts for insureds who take defensive driving courses.

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#### INSURANCE—AUTOMOBILE

Amends the no-fault law in accordance with Senate Special Committee on Automobile Insurance Reform report.

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**SENATE RESOLUTION No. 61**  
**STATE OF NEW JERSEY**

INTRODUCED OCTOBER 2, 1986

By Senators LASKIN, CONNORS, EWING, McNAMARA, DORSEY,  
DALTON, JACKMAN and ORECHIO

Referred to Committee on Labor, Industry and Professions

A SENATE RESOLUTION establishing a commission to study manda-  
tory motor vehicle liability insurance.

1 WHEREAS, The New Jersey Legislature adopted mandatory auto-  
2 mobile liability insurance in 1972 as part of the establishment  
3 of the no-fault system; and

4 WHEREAS, In the years since the adoption of no-fault, there have  
5 been ever-increasing numbers of uninsured drivers in the State  
6 as the cost of insurance increases; and

7 WHEREAS, As a result of the automobile insurance risk classifica-  
8 tion system presently in use in the State, the drivers who pay  
9 the highest insurance premiums are frequently those with the  
10 fewest assets to protect and, therefore, the least in need of  
11 liability coverage; and

12 WHEREAS, Because certain other states have seen fit to abolish  
13 mandatory liability insurance, it would seem necessary for the  
14 Legislature to reexamine the operation of the mandatory liability  
15 system in this State; now, therefore,

1 BE IT RESOLVED *by the Senate of the State of New Jersey:*

2 1. There is created a commission to study the feasibility of elimin-  
3 ating mandatory motor vehicle liability insurance in New Jersey,  
4 which shall consist of five members to be appointed by the President  
5 of the Senate as follows: two members of the Senate, of different  
6 political parties, who shall serve during the two-year legislative  
7 session during which they are appointed; one attorney, one re-

8 presentative of the insurance industry; and one public member.  
 9 Vacancies in the membership shall be filled in the same manner as  
 10 the original appointment.

1 2. It shall be the duty of the commission to study the operation  
 2 of the present mandatory liability insurance requirement for motor  
 3 vehicles in this State, and to study the feasibility, and the effect,  
 4 of eliminating that requirement.

1 3. The commission shall organize as soon as possible after the  
 2 appointment of its members and shall elect a chairman and a vice  
 3 chairman from among its members. The chairman shall appoint  
 4 a secretary who need not be a member of the commission.

1 4. The commission shall be entitled to call to its assistance and  
 2 avail itself of the services of employees of any State, county or  
 3 municipal department, board, bureau, commission or agency as  
 4 it may require and as may be available to it for its purposes. The  
 5 commission shall further be entitled to employ counsel and stenog-  
 6 graphic and clerical assistants and to incur traveling and other  
 7 miscellaneous expenses as it may deem necessary in order to per-  
 8 form its duties, and as may be within the limits of funds appro-  
 9 priated or otherwise made available to it for its purposes.

1 5. The commission shall report its findings, conclusions and re-  
 2 commendations to the Governor and the New Jersey State Senate  
 3 as soon as practicable, but no later than one year following the  
 4 enactment of this resolution.

1 6. The commission shall have all of the powers provided by  
 2 chapter 13 of Title 52 of the Revised Statutes.

1 7. This resolution shall take effect immediately and shall expire  
 2 one year after enactment.

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#### STATEMENT

This resolution establishes a commission to study the operation  
 of the mandatory motor vehicle liability insurance law and the  
 feasibility of eliminating mandatory liability insurance.

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#### INSURANCE—PROPERTY AND CASUALTY

Establishes commission to study mandatory motor vehicle liability  
 insurance.

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**SENATOR RAYMOND LESNIAK:** May I have your attention, please? We are going to start the public hearing. We don't have a quorum of the Committee as of yet, but since we won't be voting on any particular bills today, that won't be necessary. This hearing will go today until 12:30. At that time, a decision will be made as to whether we will reconvene after two o'clock this afternoon.

If there is testimony that is going to be cumulative in nature, we will accept your written testimony and will ask you please to summarize your remarks, because I believe, as I see the proposed witness list, that many of you will be voicing the same concerns or views with regard to the Special Committee's report and the legislation that has been introduced pursuant to it.

We haven't heard from the Commissioner's office or the Public Advocate's office as to whether they will be testifying today. I have spoken to Commissioner Merin about this report, and it was my understanding that he would have someone from his Department. I think we can safely categorize his opinions about the report as being positive, and that he has additional recommendations with regard to the JUA that we will be dealing with in the near future.

We will start off with Mike Velotta. Is he here, from Allstate Insurance Company? (negative response) How about William Vowteras, Professional Insurance Agents? (no response) I'm striking out. Okay. Third, Vincent Maressa, Executive Director of the Medical Society of New Jersey? (no response) No one's here. Boy, we are going to go through this list quick.

**FROM AUDIENCE:** I'll get Mike Velotta.

**SENATOR LESNIAK:** We're not waiting, thank you. Joseph O'Donnell, New Jersey State Bar Association.

**J O S E P H O' D O N N E L L:** The New Jersey State Bar Association thanks the Committee for our opportunity to comment on the proposed bill.

First, I would like to tell you that the State Bar Association supports this Committee's recommendation that personal injury protection benefits be mandated in the amount of \$10,000. However, it believes that steps should be taken, also, to establish a catastrophic loss fund. The Association recognizes that providing unlimited PIP benefits is extremely costly and unnecessary for many people. It has been estimated that approximately 85% of the public gets most of its medical expenses paid promptly by health insurance coverage, Medicare, or Medicaid. Unlimited PIP benefits are expensive. They are duplicative coverage. Also, PIP coverage has skyrocketed since the enactment of the original no-fault laws, with its share of the premium dollar risk rising from 5% to 21%.

However, at the same time, we think some provision should be made so that those catastrophically injured who do not have other coverage, can get their medical expenses reimbursed from a catastrophic loss fund, to be financed by an assessment of \$10 or less on every policy written in the State. The catastrophic loss fund would cover their medical expenses, for instance, over \$100,000.

We also believe that some thought should be given to offering motorists choices other than the \$10,000 in coverage, or unlimited coverage. Perhaps coverage of \$50,000 or \$100,000 should also be available for people who want more than the minimum \$10,000 coverage, but need less than unlimited coverage.

On the issue of the threshold, the State Bar Association has long been opposed to the imposition of a verbal threshold. We still believe that the least expensive system is one that limits the no-fault concept. We recognize that an optional verbal threshold is a viable alternative to mandating a verbal threshold, but we question the need for altering the present system. We believe that enactment of a verbal threshold will not result in significant rate reduction in return for eliminating an accident victim's right to hold

accountable a negligent driver. It would be a poor choice for many policyholders to make.

Recent actions by the Commissioner of Insurance calling for many leading insurance companies to rebate premiums because of their excessive or substantial profits, demonstrate that companies are prospering under the current system, and raise some question for the need to revise the current system. The Royal Insurance Company is rebating \$82 in excessive profits to policyholders. The Department of Insurance anticipates that companies such as Allstate, State Farm, and Liberty Mutual will go from having substantial profits this year to excessive profits next year.

It is important to note that these excessive profits do not even include investment income. Why, then, alter the current system under which the companies are prospering and under which there has not been any rate increases in the last three years? In testimony before the Senate Special Committee on Auto Insurance, a Prudential Insurance Company actuary indicated the savings from a verbal threshold would be very small. Similarly, in testimony before the Assembly Insurance Committee, representatives from Allstate and State Farm quoted savings from a verbal threshold no greater than under the current system. The amount of savings would be the same as a motorist could currently get by voluntarily choosing the higher dollar option available.

Right now, if a person voluntarily chooses the \$1700 threshold, he will receive a 35% reduction in the bodily injury portion of the premium. The insurance company representatives testified in the Assembly that under a mandatory verbal threshold, a person would receive the same 35% reduction in the bodily injury portion of the premium. This also raises questions as to the desirability of people choosing a verbal threshold.

If there is to be an optional verbal threshold offered, we believe it should be a fair one. The verbal threshold as presently drawn will almost certainly exclude people who have suffered fractures and many people who suffer permanent injuries from having the right to make a claim against the negligent driver. We believe that any verbal threshold should have additional language added, permitting victims suffering from fractures and injuries resulting in permanent disability or permanent loss of bodily function to also have a right to make a claim against a negligent driver. Broken ribs, concussions, separated shoulders, and the like, are serious injuries in and of themselves, and we should not enact a threshold so severe as to virtually eliminate compensation in these types of actions.

Many people choosing the verbal threshold as is currently the case under the \$1700 threshold will not realize that these types of injuries will not generally be compensated. Fractures are not frivolous or fraudulent injuries, and an injured victim should not be precluded from obtaining fair and reasonable compensation.

Senate Bill 2594 gives people the right of choice by being moderately limited in a suit or severely limited in a suit. It is making it more difficult for those who have moderate injuries to seek compensation, while raising the basic threshold to \$500. Therefore, on the verbal option end of the spectrum, we should strive for fairness in permitting victims to hold a driver accountable for causing fractures and other injuries which can cause a permanent loss of a bodily function.

At this point, the only other comments we have concern raising the limit of arbitration from \$15,000 to \$20,000. The State Bar Association has long been an advocate and in the forefront of alternative dispute resolution. Hundreds of attorneys currently participate in our arbitration programs. We believe, however, that the current arbitration program has

only been in existence a relatively short time and must be evaluated further before it is expanded. I also note here that the Administrative Director of the Courts is undertaking a large program to study the arbitration system in our courts. Therefore, it would be wise to await the evaluation of the current auto arbitration program that is being undertaken. If the study shows that refinements need to be made to the program, it will be expanded.

There are very real problems in dealing with the number of arbitrators that are available. Currently, the number of arbitrators has been stretched to the limit, and there is a problem finding qualified arbitrators to run the program. Expanding the level of arbitration will exacerbate this problem. This issue needs to be addressed before the program is expanded. The Legislature could easily vote to extend arbitration at a later date when we have more evidence of how successful the program has been and what steps are needed to improve it.

I thank you for listening and for taking into consideration the views of the State Bar Association.

SENATOR LESNIAK: Thank you, Mr. O'Donnell. Next to testify will be Mike Velotta from the Allstate Insurance Company.

M I C H A E L V E L O T T A: Mr. Chairman, members of the Committee: My name is Mike Velotta. I am with Allstate Insurance Company from our home office in Northbrook, Illinois. I appreciate the opportunity to share with you Allstate's views on Senate Bill 2594, which is before the Committee this morning.

We are concerned in New Jersey to make automobile insurance a product that is affordable for our customers, available for our customers, and is the best system in New Jersey, such that competition becomes the order of the day in the marketplace, something that is quite a bit different than we view things today in New Jersey.

We applaud Senator Dalton's Committee, the Special Committee on Automobile Insurance. We think they were right on in addressing the major problems that confront the automobile insurance market today. They addressed the cost system, looking at the threshold issues, the issues on the amount of PIP available. They addressed what we think is maybe one of the largest problems in the insurance marketplace today, and that is the fate of the New Jersey Automobile Full Insurance Underwriting Association. They also addressed looking at ways of improving the voluntary market in New Jersey.

I would like to just spend a few minutes commenting upon some of the views that we think are important. In the area of cost containment, the Committee looks at the verbal threshold and increasing the rates to a \$500 threshold, with a verbal optional. Allstate Insurance Company still believes -- as we have in the past, however many years this debate has been going on in New Jersey -- that the most effective way to balance the costs of the no-fault system in New Jersey is to enact a unitary verbal threshold, a strong verbal threshold. It is a way to balance the benefits with the costs of the system. It is an argument that you have all heard and that has been going on. We are still convinced that that is the same way.

I would like to just address the one point, why do we, as an insurance company, care? The former speaker indicated that we are making out all right under the current system. The way things have changed in the marketplace in the last couple of years, that is true. Frankly, we would probably make just as much money under one system as the other, so why do we care? We care because of the cost of the product that we have to deliver to our customers; that is, the insurance consumers in this State. We are the ones who have to send out that bill every month, or every six months, to our policyholders. We are the ones who they get angry with when they see the cost of their insurance.

SENATOR LESNIAK: What is your objection to freedom of choice, the consumers' right to choose what their product should be and what their costs should be?

MR. VELOTTA: Senator, I have absolutely none; absolutely none, if it is an effective way and an informed choice. You have the choice right now of the \$200 threshold or what is now the \$1700 threshold. Right now, the consumers we have have picked somewhere in the range-- Seventeen percent of them have elected to reduce their costs by taking the higher threshold, the \$1700 threshold. Eighty-seven percent have taken the higher threshold.

SENATOR LESNIAK: Eighty-seven percent have retained the lower threshold.

MR. VELOTTA: Yes, the lower threshold.

SENATOR LESNIAK: Eighty-three percent.

MR. VELOTTA: Seventeen and 83, right. I am not a math major, Senator, sorry.

SENATOR LESNIAK: Okay.

MR. VELOTTA: What troubles us about that is, we have commissioned two studies in the last two years by the Gallup Organization to help us, and then the second one with us and State Farm, to try to find out consumer attitudes, what they think about insurance and insurance products. The Star-Ledger Eagleton Poll has come out. Triple A has conducted another poll. What is amazingly consistent among all of those polls when they have asked consumers, "What are effective ways of reducing the costs of the system in New Jersey?" is that 70% to 80% have responded that the way to do it is the verbal threshold. What that says to us is that there is a great problem with the way things are set up right now, with having to make all of the choices. People, when you ask them ways to save costs, 70% -- 65%, 70% -- in all of those polls have responded that the verbal threshold is an effective way. Yet, when they make their own election on their policies, they are choosing the higher threshold. What that says--

SENATOR LESNIAK: I am familiar with those polls as well, and what that tells me is that when the consumer has to make that decision, and when he has the choice of saving "X" amount of dollars or choosing the higher or lower threshold, he has made the decision, in most regards, to have the lower threshold when confronted with specific savings. In the abstract, you're right. Consumers have obviously said that the verbal threshold is preferred. But, when they have to make the decision as it affects their lives, they have made that decision, and that is the more specific decision. Don't you think that that is the more accurate way to ascertain what is in the mind of the individual consumer?

MR. VELOTTA: Senator, I don't. I disagree with that.

SENATOR LESNIAK: Why is that?

MR. VELOTTA: The system right now is so complicated. Each time a person has to choose, there is the verbal threshold choice, there is the option of which PIP benefit level to pick, there is the 20% offset to choose from. There are about-- I have forgotten the number. Looking at the form that the person has to choose from, it is so complicated that I submit, Senator-- What the statistics speak to me is that we have made the system so complicated that people don't understand, and they just go with what they've got. I submit to you--

SENATOR LESNIAK: How long has this system been in place?

MR. VELOTTA: July, 1984. I think that is when it went into effect. That is my recollection, Senator. I think the bills were passed in '83.

SENATOR LESNIAK: And has there been any change in percentage of people choosing different options since its inception?

MR. VELOTTA: Very, very slight. I think our numbers indicate that there has been an extremely small creep up, or change, in our book of business.

SENATOR LESNIAK: So, you don't think that the consumer is intelligent enough or concerned enough about what he is spending to make this choice?

MR. VELOTTA: Senator, I think we have made the system so complicated that we have frustrated their attempts to make educated choices. I mean, that is one of the--

SENATOR LESNIAK: You would replace that with no choice?

MR. VELOTTA: Well, I submit to you, Senator, that there is a way in Senate Bill 2594, on the PIP option. There is an interesting philosophy switch, in that the philosophy -- as I have understood it personally from Senator Dalton-- The philosophy is that we want to present to the consumer the lowest cost package available; that is, we want to make it a \$10,000 PIP benefit. It is going to be medical only. Onto that package then the consumer can add different degrees of coverage, both for the additional services and for higher amounts. The philosophy was to save money by presenting the smallest cost package as being the standard package, and then you table your needs upward.

On the verbal threshold, there is a 180 degree switch. The most expensive piece of the package, that is, the \$500 threshold, is what everybody is required to have. Then if they want to do it, they can save themselves money by going down. I submit that is absolutely inconsistent. If there is to be--

SENATOR LESNIAK: But the Dalton bill doesn't address the other options that are in the current law that have the higher coverage, if you will, to be the standard package.

MR. VELOTTA: Are you talking about the physical damage part of the package?

SENATOR LESNIAK: Yeah, the other options, under the current law.

MR. VELOTTA: That is correct.

SENATOR LESNIAK: So what we ought to do is be consistent one way or the other.

MR. VELOTTA: I wouldn't have any problem with that, Senator. But I submit to you that, again, the most effective way, I think, of cutting down the BI portion of the premium -- and that is really all we are addressing, the threshold -- would be to have a unitary verbal threshold, as in the Assembly bill that is currently pending before the Committee.

SENATOR LESNIAK: Does Allstate have any views on the report other than on the verbal threshold?

MR. VELOTTA: Yes, Senator, we do. We think one of the major cost-containment issues that the bill does address is the limitation on PIP, the recommendation to go to a \$10,000 limitation at some point, and then offer unlimited medical. We agree that there ought to be such a selection. We would suggest that instead of offering the unlimited medical, as Mr. O'Donnell indicated, that maybe some sort of catastrophic pooling at some level -- \$100,000, or whatever level -- might be appropriate, funded from some mechanism other than insurance, such as a catastrophic pool, as is in place now in Pennsylvania.

SENATOR LESNIAK: How is that funded?

MR. VELOTTA: Right now-- Just to explain the system, right now insurance must offer everybody \$10,000 worth of PIP coverage. Between 10,000 and 100,000 companies offer that coverage, or persons can go through their health care, or however they do it. At \$100,000, I think the fee is collected by what would be equivalent to the DMV. It's either five or seven dollars. So, all PIP claims over \$100,000 are funded out of what is called the "CAT Pool" in Pennsylvania. That fund is administered by the state, and is funded through the--

SENATOR LESNIAK: Through the Division of Motor Vehicles? You wouldn't recommend that we do that, would you?

MR. VELOTTA: I make no recommendation, other than there ought to be some State entity to handle that, Senator.

So, we view that provision in the bill as extremely, extremely important, and a point that this Committee ought to seriously consider.

The next major point I would like to address about the bill is the financial condition of the New Jersey Automobile Full Insurance Underwriting Association. Its financial condition is a disaster at the present time. Right now, the State itself is running the fifth or sixth largest insurance provider in the United States. It is also the most insolvent. Right now, as of June, 1986, it has a deficit of \$750 million looking at it. At year-end 1985, the deficit stood at \$597 million, an increase of over \$268 million from 1984. The anticipated deficit at year-end 1989 is \$1.8 billion.

Even looking at it on a cash flow, that is, just matching what is going in and what is coming out, there is a serious problem. In 1986, it will pay out in costs and expenses \$66 million more than it receives in in all of its revenue sources. In 1987, that number goes to \$177 million. By 1990, the amount is \$377 million. Cash, that is, the cash flow balances, becomes negative somewhere in 1988-1989. That is money that it pays its claims and expenses with. It has to come from somewhere because at that point the cash from reserves is gone. So, I think literally -- and this is a figure of speech -- but literally, the house is on fire for the JUA. There is a real problem. We commend Senator Dalton for addressing that problem. I think his report addresses the problem.

Our problem is that the solutions, the suggestions that are in Senate Bill 2594, are akin to putting a Band-Aid on an arterial wound. Something needs to be done; something drastically needs to be done with that. It needs more revenue from some sources, and it needs to cut its costs in order to be

around to pay claims as they start to come due in the 1990s and thereafter.

We would suggest that there are a number of sources. The main revenue sources suggested in the bill are: the more effective collection of surcharges, second tier accidents for the truly bad risks -- that is, somebody with three accidents or equivalent kinds of risks -- increased revenue from fines for failure to maintain insurance, and the fully earned commission portion of unearned premium to go to the JUA.

The kinds of dollars we are talking about, the deficit of the Underwriting Association, are such that those kinds of solutions are simply just not enough. They don't do it. They don't raise the kinds of revenue that need to be raised.

SENATOR LESNIAK: Do you have solutions?

MR. VELOTTA: We would recommend several sources of both increasing revenues and cutting costs. We suggest that some sort of per-vehicle charge over and above the current up to \$70 policy constant that is charged needs to be charged. We just suggest a number, like \$75, start being collected now, because that \$75 can cut down the deficit in the future because it will earn investment income. If you wait until 1990 when all the cash is gone, so that there are no reserves to earn investment income, the amount of money needed per car will be \$200 to match the claims payments and expenses and other sources of income. If you collect \$75 now, it starts earning investment income and cuts down that need at least to a level that is a little bit more consistent.

We suggest a more comprehensive surcharge plan. Right now, the surcharge for accidents doesn't kick in until you get six points. We suggest lowering that. Make the two to three points \$50. Make four to five points \$75. Another source--

SENATOR DiFRANCESCO: Why would you say such a thing?

SENATOR JACKMAN: Where are you going to stop it?

SENATOR DiFRANCESCO: How could you say such a thing?

SENATOR JACKMAN: Holy God Almighty. You guys have to be kidding.

MR. VELOTTA: You need income.

SENATOR DiFRANCESCO: Why do you need it at the expense of someone who makes a mistake for the first time in 25 years?

MR. VELOTTA: Senator, would you prefer the \$200 per car for the absolutely innocent person somewhere down the road?

SENATOR DiFRANCESCO: I don't prefer what you just mentioned, no.

MR. VELOTTA: I understand that, but my point is-- Senator, you know, this is not our thing to run.

SENATOR DiFRANCESCO: I know that.

MR. VELOTTA: We, as board members, have been given the obligation to run it like an insurance company. All I am telling you as an insurance person is that the thing needs more money. If you have some creative suggestions, help us. That is what we want, Senator. We are looking for ways to generate revenue for this thing that will have horrendous cash needs in the future.

SENATOR LESNIAK: Do you think that your servicing carriers can give up some of the revenue they are getting?

MR. VELOTTA: Senator, if we can find out exactly what it costs us, and I am frank to admit that we are not as sophisticated as everybody thinks we are-- If we can find out that level where you break even from being a servicing carrier, and if that level is below what we are currently charging, I think the answer is clearly yes. If the answer is no-- I mean, you know, we are not an eleemosynary organization. We need to at least be reimbursed for the costs we have. We added about 50% to our claims staff and our processing people to order to handle the business when it started getting generated, so we've got to pay for those costs.

SENATOR LESNIAK: Are you keeping your claim figures for JUA separate from your voluntary market?

MR. VELOTTA: Yes, sir.

SENATOR LESNIAK: Are all the servicing carriers doing that, do you know?

MR. VELOTTA: I can't answer that question, Senator. I do not know.

Senator, in answer to your question, the surcharge is just a suggestion; take it or leave it.

SENATOR DiFRANCESCO: Give me other alternatives. Forget that one.

MR. VELOTTA: I am just suggesting that that is a source of revenue.

SENATOR DiFRANCESCO: I know it's a source of revenue. It's also a sore point with the--

MR. VELOTTA: The thing needs money. Senator Lesniak, I'll answer your question; I'm sorry.

SENATOR LESNIAK: The other question I was going to ask is, do you believe the agents ought to receive the same commission for writing a policy initially as for a renewal?

MR. VELOTTA: Senator, I'll answer that by saying, we have built our business in the voluntary market on the concept that we want to compensate our agents more for the new business, because it costs more to acquire it. We pay them 15% commission for new business, and -- you caught me -- I think it's 7% or 7-1/2% on renewal business. I think that is consistent with a lot of other insurance companies. It's for our kind of business. I mean, the agency system is different, and I don't want to speak to that. But, our direct kind of agents-- So, it makes sense in a voluntary market, as a business entity, to do it that way, and I suggest that that same principle could apply to the JUA.

SENATOR LESNIAK: Under the current law, the Commissioner does not have the power to do that, does he?

MR. VELOTTA: That is correct, Senator. I believe the statute says he can't pay less than 11% commission.

SENATOR LESNIAK: Well, less than what they were getting for the assigned risk plan, which was 10%.

MR. VELOTTA: The assigned risk plan was 10%, yes, sir. So, that is in the area of cost. But, let me just finish.

Another way to look at ways to generate revenue is the overall rate level. We would suggest that one thing to look at would be to raise the rate level for the JUA generally. Make it above the voluntary market. This would do two things: One, it would increase the revenue that comes into the JUA. The second thing is, it would create the economic incentive for people to shop and try to find insurance carriers in the voluntary market who will write them. Besides that, it is warranted by the experience.

We know that back a year and a half ago when we started taking what we considered the best -- tried to get some of that best business that was written to the JUA and write that on our voluntary book through our agents, we did that. That business, which was clean -- I mean, absolutely clean-- You gotta remember, 80% of the business in the JUA -- no accidents, violations, surcharges, anything, for the last three years. Even that same business that we write is 22% to 30% more costly to us than the new business we write just in the general voluntary market. The business out of the JUA is business that is more costly to write. It is business that has worse experience, for whatever reasons. We don't know if we can quantify why. It is just a fact. The fact is, it is 20% to 30% more costly than the regular business we write in the voluntary market. It needs to be written at a rate level above the voluntary market.

So, we would suggest that that is another thing, that there can be that--

SENATOR JACKMAN: Even though they don't have any accidents?

MR. VELOTTA: Senator, absolutely, absolutely.

SENATOR JACKMAN: What is the criteria? If they don't have an accident-- I'm a perfect driver. I have everything going for me. Over the last 10 years I have been in the JUA, and then I go into your market and it should be higher? Why? How do you write the voluntary market? How do you separate it? I don't get it. Or, is there collusion, would you think? Would there be a little collusion, just a little bit?

MR. VELOTTA: None.

SENATOR JACKMAN: No. I didn't think there would be.

MR. VELOTTA: None, Senator.

SENATOR JACKMAN: Well, I get a little disturbed when I hear somebody tell me when you are in the JUA and you've never had an accident, had nothing coming down, and yet you have to pay higher than the voluntary market. How do you judge the voluntary market?

MR. VELOTTA: Senator, that creates the economic incentive to find that place in the voluntary market, through your agent--

SENATOR JACKMAN: But you just got done telling me before that you took the best of the JUA, none of them had any accidents, nothing. Why would it cost you 22% more to--

MR. VELOTTA: We don't insure them at 22% higher. They are charged the same rates as our other voluntary business. It costs us more.

SENATOR DiFRANCESCO: Chris, I don't know if you were in the room, but he started out by telling us how much the JUA was in the red. Were you here when he started?

SENATOR JACKMAN: No, I wasn't.

SENATOR DiFRANCESCO: It was some phenomenal amount of money -- \$700 million.

MR. VELOTTA: It's \$750 million at this point. What's \$50 million?

SENATOR DiFRANCESCO: This was one of the ways he was suggesting -- when I stopped him -- to make up the deficit.

SENATOR JACKMAN: Well, you might as well put everybody in the JUA then.

MR. VELOTTA: You've got 50% of them there now, Senator.

SENATOR JACKMAN: Well, put the other 50% in. That way we would have no problem. Then you would be writing no voluntary insurance.

SENATOR LESNIAK: We haven't thought about that.

MR. VELOTTA: Senator, are you going to start funding that out of general revenues?

SENATOR JACKMAN: No, no, I'm just saying, the way you're talking, maybe I-- All I know is, when I go back home, and a guy comes to me and says, "Hey, Jackman, take a look. There's another \$100 increase, and I've still got a perfect record." How do you justify it?

MR. VELOTTA: You don't. Senator--

SENATOR JACKMAN: How do you tell that guy, "I don't know."

MR. VELOTTA: Senator, that was--

SENATOR JACKMAN: The guy would say, "What the hell are you doing down there?"

MR. VELOTTA: Senator, that was exactly my--

SENATOR LESNIAK: Wait, wait, wait. Mike, please. I thought we hadn't had any rate increases for three years, so what is he talking about?

SENATOR JACKMAN: You gotta be kidding, we had no rate increases.

SENATOR LESNIAK: We have had no automobile insurance rate increases for three years, Chris.

SENATOR JACKMAN: I'll bring it down to you and show you where a guy got a \$100 increase in his--

SENATOR DiFRANCESCO: We haven't had a rate increase for three years?

SENATOR LESNIAK: Isn't that correct?

FROM AUDIENCE: That is incorrect.

SENATOR LESNIAK: That's incorrect.

SENATOR JACKMAN: You better believe it's incorrect.

SENATOR LESNIAK: Who is speaking?

T H O M A S G E R O S O L I N A (speaking from audience): My name is Tom Gerosolina. I am an insurance broker from Economy Brokerage. It is true that we haven't had a dollar amount increase on insurance premiums, but it is not true because when you have your '86 car--

SENATOR LESNIAK: It's true but it's not true?

MR. GEROSOLINA: Yeah. When you have your '86 car, sir--

SENATOR LESNIAK: Yes, yes.

MR. GEROSOLINA: Last year you were paying a certain rate. Now your car is cheaper this year -- okay? -- and you are still paying last year's rate. So, in essence, you are paying the same amount of insurance to cover a less of a risk. So, therefore, your insurance is cheaper.

SENATOR LESNIAK: We have just found out in the discussion how no increase is an increase. (laughter) Nineteen eighty-four has arrived and come and gone. Okay, no more open questions. Mike, are you--

MR. VELOTTA: Senator, that is exactly-- That was the first part of what I was trying to address when you were not in the room -- what we need to do. The other half of the equation is to cut the costs that not only the JUA pays, but everybody else. We suggest there are a number of ways. One of them is the verbal threshold; the other is tort reform. There are some general bills pending on civil justice. Those are the kinds of things, and keeping the expenses of the JUA lower through a number of means.

So, there are two sides to the equation. One is more revenue, and two is to cut the costs.

SENATOR DiFRANCESCO: Mike, could you be more specific about cutting the costs? You mentioned tort reform. You mentioned verbal threshold. Mention a few others.

SENATOR LESNIAK: How about company efficiency? How can we increase competition in the industry to bring down the internal costs of the industry?

MR. VELOTTA: That is the third part of what I would like to address -- it's in the bill -- to create a healthy marketplace in New Jersey. There needs to be-- We think that consumers benefit most from competition; that is, where companies are in the marketplace trying to write business. It becomes price competition; it becomes selection competition. We think that is beneficial to the consumers.

SENATOR LESNIAK: Do you object to non-insurance companies being added as servicing carriers to the JUA to increase competition or efficiency in servicing that business?

MR. VELOTTA: I don't know, Senator. I don't know if we have a position on that. But, I am concerned about that, just from the standpoint obviously--

SENATOR LESNIAK: Have you heard about it?

MR. VELOTTA: I've heard about it, yes, Senator, and I don't know where we really come out on it. I think it is something that ought to be looked at carefully before any kind of a-- It is a major change. No doubt they've got some efficiencies maybe on the policy issuance side, but then again, on the service side, and the claims handling side, you may wind up spending more money in the system because they are not claim managers like insurance companies are. I mean, it's the age-old argument about Blue Cross/Blue Shield being the most efficient. That's true, but they also don't do much in the way of cost containment. So, overall, the system may-- You may get more on the processing side -- more efficiencies on the processing side -- but that may get eaten up more by paying out greater amounts of claim dollars because they don't manage cost containment.

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I don't know. All I am saying is, it is an area that ought to be studied carefully before you go into it. I don't know the answer to that because we haven't really looked at it that much. Then, obviously, we have a self-interest. I don't know if we want another competitor in the situation, but that is beside the point. The real point is what's best for the system and what is best for the consumers in New Jersey.

We think that creating a healthy environment-- The bill does touch on a thing that is very important, and that is underwriting flexibility. It recommends making the underwriting choices more flexible by allowing minor, up to 2% by territory, nonrenewals outside the established criteria. We think that is a healthier initiative of a healthy marketplace. That is where companies can take a chance on writing some business because they know they can get off of it, too, at some point.

So, with that, we think that the bill addresses the major topics that are important in the insurance marketplace today in New Jersey. We encourage you to take this opportunity -- so that we are not back here in a year wrestling with the same problems again -- to do something that is meaningful.

SENATOR LESNIAK: Well, we'll be wrestling with the same problems, but hopefully they will be lesser problems than they are now.

MR. VELOTTA: Senator, we have the opportunity because the issues are before you. Whatever we can do to help fashion, or give input in fashioning it, we certainly stand here to do it because we want to have a healthy insurance marketplace. We want a marketplace where Allstate is out there looking and trying to write business in the State.

SENATOR LESNIAK: One last question. What about mandatory insurance coverage?

MR. VELOTTA: We have never favored a system of mandatory insurance. We don't want to make people try to be

responsible. We found-- Our experience is that passing a law doesn't make people responsible. If they violate--

SENATOR LESNIAK: Does that cut costs as well?

MR. VELOTTA: What, mandatory insurance?

SENATOR LESNIAK: Non-mandatory insurance.

MR. VELOTTA: You pay for it to some degree through uninsured motorists, but to the extent that you are already paying that now.

SENATOR LESNIAK: But, aren't those people who are less likely to buy insurance more likely to incur losses?

MR. VELOTTA: I think that is probably a generalization that is probably accurate, but I don't know if I like it quantified.

SENATOR LESNIAK: Has Allstate had any experience in other states with non-mandatory coverage in terms of cost containment?

MR. VELOTTA: Senator, when you try to start comparing states, it is very, very difficult. I can't honestly say that we have seen anything where I could quantify this, say that costs are less, or that sort of statement.

SENATOR LESNIAK: Any questions?

SENATOR DiFRANCESCO: Yes.

SENATOR LESNIAK: Why did I know you were going to ask a question?

SENATOR DiFRANCESCO: You are getting very perceptive in your old age.

You testified that 88% of the business is clean, but you have 22% higher costs. Can you identify those higher costs coming from the other 20% of your business? I don't think you approached that.

MR. VELOTTA: I'm sorry, I don't understand the question.

SENATOR DiFRANCESCO: You indicated that 80% of the drivers you are insuring have very, very clean records.

MR. VELOTTA: Eighty percent of the JUA business is clean.

SENATOR DiFRANCESCO: Is clean, yet the cost of the JUA business is 22% higher than the voluntary market.

MR. VELOTTA: Let me clarify that. Back after the JUA law became effective, we looked at and had a program to try to find those pieces of business that we insured as JUA, and said, "Would this be the kind of business that we would want to write voluntarily?" The answer came back on some of the business and, you know, we wanted to take the very best out of that. We did write it through our agents. Again, this was just the business that our own agents were generating, not the producers that we contract with. Anyway, we offered them Allstate voluntary policies. In comparing that business that we wrote voluntarily with the business that we normally wrote voluntarily, what we found was that on a comparison basis, the business that came out of the JUA was anywhere between 22% to 28% more costly during that first year period and during the subsequent development history. So, to us it says that-- We don't know how to identify-- We don't know why, we just know that that business we wrote out of there was 22% to 28% more costly as new business compared to our other new business. So, comparing new business to new business-- Generally, new business is more costly than your renewal business. But just comparing new to new, it was 22% to 28% higher -- loss costs.

SENATOR DiFRANCESCO: Thank you. I misunderstood your original remark, and I am glad you clarified it.

SENATOR JACKMAN: That is what I wanted to get at. Do you mean that in your experience, after they got into your program they had an accident?

MR. VELOTTA: As a class, correct. Their costs as a class were 22% to 28% higher than the class of business of just normal--

SENATOR JACKMAN: Then you didn't make a good choice when you made the selection.

MR. VELOTTA: We made the best choice. That is what bothers us. We made the--

SENATOR JACKMAN: Of the 80%--

MR. VELOTTA: No, not 80%.

SENATOR JACKMAN: You said there was 80% in the JUA that was clean.

MR. VELOTTA: Correct, Senator.

SENATOR JACKMAN: Is that right?

MR. VELOTTA: Right. So, they came out of that percent.

SENATOR JACKMAN: And yet, when you write voluntary-- How do you judge voluntary? Tell me the difference between JUA and the voluntary that you picked up. You said the cost factor with the JUA clean -- everybody clean -- was 22% more in accidents -- whatever the costs were, it had to be accidents -- as compared to voluntary.

SENATOR LESNIAK: Are we talking about territories, sex, age -- those types of determinations?

MR. VELOTTA: I don't know--

SENATOR JACKMAN: See, I get screwed up when you tell me voluntary and voluntary. Wasn't that voluntary that you took?

MR. VELOTTA: Sure.

SENATOR LESNIAK: When you say the best, that is the best? Was it because of their age, where they lived?

MR. VELOTTA: Everything. All the criteria that the underwriters judged to be best. I mean, it was a subjective judgment of what is best in insurance. Underwriting, to a degree, you know, when you are looking at business, is subjective. There is no question about that. You know, that is what underwriters get paid for.

SENATOR JACKMAN: Was there a reduction in the cost factor with the JUA and going into voluntary? Is there a difference in rate?

MR. VELOTTA: The difference in rate is that Allstate is-- The rate of the JUA is at the ISO rate level. Allstate has a 4% deviation off of ISO. So, their rates went down by the 4%.

SENATOR JACKMAN: They did go down by the 4%?

MR. VELOTTA: Their rates went down and our costs went up. I mean, that is the equation.

SENATOR JACKMAN: Then, how do we justify? Here is the part that bothers me. Maybe that is where some of the screwup comes in. How do we justify people who are clean and arbitrarily go into the JUA, and yet you have a choice to go around and pick them up and say you are voluntary?

MR. VELOTTA: Senator, you know, that is the age-old question.

SENATOR JACKMAN: It's an age-old question?

MR. VELOTTA: The answer is, any voluntary market, any market that is healthy-- I mean, if you take almost any other state, other than New Jersey, there are a number of carriers. There are carriers that we selected for a particular kind of risk. State Farm selects another risk. There are 500 and -- I don't know what the number is -- property casualty people writing insurance. Everybody selects a slightly different risk. There are substandard writers, substandard from the standpoint that they will write any risk at a price. They've got a price for every risk. New Jersey has never had that. Then the residual market is for truly those people who can't find a home anywhere else. That is the normal kind of marketplace.

So, my answer is that in a healthy marketplace, where competition rules, where people can charge what their costs are, that isn't a problem because there is a company out there

for that person. That is the answer to that question. Now, the mechanics of how do you pick each one-- I can't answer that because every company says, "For our price, we are looking for a certain kind of risk," and there is some subjectivity to it. I don't kid you; there is some.

But, the point is, if you have a competitive market, there is a company out there willing to take it. Again, New Jersey is a different structure than that for historical reasons, and I think the report identified some of the historical problems. But the answer is to have a voluntary market that wants to write those pieces of business. Right now we don't have that in New Jersey. The result is that 50% of the markets in the State--

SENATOR JACKMAN: What is your experience -- your company's experience -- with people who paid their first two months' premium and then quit?

MR. VELOTTA: Senator, I don't know the answer to that. I can't tell you the lapsed--

SENATOR JACKMAN: Well, how would we know-- What would your guess be of the people who are uninsured in the State of New Jersey?

MR. VELOTTA: Senator, I don't have a guess. It has been--

SENATOR JACKMAN: No guess?

MR. VELOTTA: I don't have a guess.

SENATOR LESNIAK: Okay. Thank you, Mr. Velotta. At this time we will call--

SENATOR DiFRANCESCO: I had a question.

SENATOR LESNIAK: Oh.

SENATOR DiFRANCESCO: Just one, Mike. I don't think you mentioned the cap on the mandatory PIP, did you?

MR. VELOTTA: Yes, I did, Senator. I mentioned that that is a system that we would certainly favor. We think that is an important piece.

SENATOR DiFRANCESCO: Sorry.

SENATOR LESNIAK: That's okay. Thank you, Mr. Velotta. I will now call the Chairman of the Special Commission, Senator Dalton, and I will take this opportunity to congratulate Senator Dalton on the Eagles victory yesterday, and Senator DiFrancesco on Penn State, as well.

SENATOR DiFRANCESCO: No show. I'm not the only no-show around; he's a no-show, too.

SENATOR JACKMAN: How about the Jets?

SENATOR DiFRANCESCO: They're lucky.

SENATOR JACKMAN: They don't count that, kid. They just count the score. That's all.

SENATOR LESNIAK: Senator Dalton, as you can see, this is a very serious matter.

SENATOR DANIEL J. DALTON: Thank you very much, Mr. Chairman and members of the Committee.

The comprehensive legislation that you have before you deals with an extremely complex problem. The primary goal, however, is to reduce the cost of automobile insurance. One of the contributing factors to the high cost of automobile insurance in New Jersey is the extremely generous benefit package which is mandated. We forced the consumers to literally purchase a Rolls-Royce package, whether they can afford it or not. There are many people who want this coverage, and they should be able to purchase it. But, not all should be forced.

You know, one of the things that-- If you take a look at the way we sell other forms of insurance, in this State and throughout the country, it is very, very different than the way we have offered automobile insurance. If you want a homeowner's policy, one of the things you do is start with a very basic package covering your structure, your contents, and providing liability. Okay? It is a very basic package. If, in fact, you want a more generous benefit package, you pay for

it. If you want replacement costs on your contents, which you don't get through the basic package, you pay for it. If you want your furs and your jewelry covered, you pay for it. It is an additional expense. The same way with life insurance.

The difference and the major distinction between that and the system we have set up for automobile insurance is that instead of offering the public a very basic package, we have been offering the public a very, very high, generous benefit package on a mandatory basis. The principle that the Special Automobile Insurance Committee worked off of is that we should no longer force people to buy this generous benefit package, that if, in fact, they want to purchase it, they certainly can, and if, in fact, they need it, this generous benefit package is subject to the individual consumers themselves.

So, what we did, therefore, based upon that principle, was recommend changing our present mandated unlimited medical benefits to a basic auto insurance policy containing a \$10,000 medical expense benefit. Now, statistics received from the leading writers -- automobile insurance writers here in the State -- indicate that that \$10,000 threshold will cover 90% of the people involved in automobile accidents. If, in fact, a person wants more than that, he has the option of purchasing unlimited coverage.

After that, then we went to what is the second, perhaps, primary component of why we have such high insurance rates. We recommend changes in our present threshold, eliminating the \$200 threshold and raising it to a \$500 threshold. Additionally, what we say is, if a person wants the option of further savings, then he or she should have the opportunity to purchase a verbal threshold.

Beyond that, the legislation also contains a medical fee schedule. That schedule would require the Commissioner of Insurance to promulgate reimbursement schedules for health care providers on a regional basis. The fee schedule would

incorporate the reasonable prevailing fees of 90% of the practitioners within a defined region. The adoption would provide cost containment with respect to the paying of medical expense benefits on the personal injury coverage.

Many of the proposals contained in this legislation address the growing problem of the Joint Underwriting Association. Now, one of the last things-- I am not going to -- first of all -- tell you what the JUA debt is. Okay? The Special Automobile Insurance Committee did not feel that it had the ability -- we are not actuaries -- to tell the Legislature, in this case, the Senate, exactly what that debt is. But, there is a debt. It is growing every day, and it is significant.

The population of the JUA, as you know, has continued to grow significantly. Half of the State's motorists are insured through this facility. Ironically, present estimates indicate that of the 1.7 million motorists in the JUA, one million have clean records. So what we have attempted to do is provide the encouragement needed for companies to increase their voluntary market business in order to depopulate the JUA. One of the ways we do it is by recommending a change in the present system which would allow insurers to non-renew a limited number of policies each year. Additionally, for each two new automobiles insured, one present risk can be non-renewed. However, mid-term cancellations would continue to be prohibited.

Additional revenues must be provided to the JUA, so what we have done is recommend a two-tier rating system. Drivers with an excess number of chargeable accidents and violations would pay higher base premium rates than those with clean driving records. Other measures included in the legislation would provide additional revenues to the JUA. Some of the ways we would provide additional moneys are: The amount of money kept by the Division of Motor Vehicles for

administrative purposes in collecting surcharges would be reduced to 10% of the surcharge fee, or their actual costs, whichever is less. Fines for failure to maintain insurance would be increased, and a portion of the fine would be remitted to the JUA. Present agents and brokers earning a full commission at the time the policy is written-- It is proposed that in the event that a policy issued by the JUA is cancelled by reason of nonpayment of an installment, the unearned commission will be retained by the Association.

We additionally recommend raising the mandatory arbitration limit from \$15,000 to \$20,000, and we require anti-theft devices-- If you have them, you can be provided discounts. We recommend removing the role of the Public Advocate in rate filings, which would result in a decrease in premiums, but not in every case. In other words, if there is a filing that decreases premiums, we would then remove the Public Advocate from that proceeding.

The complexity of the automobile insurance and the problems that exist in our system do not allow for easy solutions. The difficulties in the automobile insurance market must be dealt with in an orderly manner and over a period of time. Attempts to completely change the system all at once may create more problems than are solved. Senate Bill 2594 is the most comprehensive proposal before the Legislature. While its enactment would have a significant impact on the automobile insurance system, it is only a first step in what must be an ongoing process, and I want to emphasize that to you.

If I may just add some personal remarks, Mr. Chairman, very quickly. The recommendations found in the report that you received were signed off on by all members of the Committee, both Democrats and Republicans, on an unanimous basis. There are some people on that Committee, however, who felt that we should have gone further, that we should have eliminated mandatory liability -- which is an issue I have heard discussed -- and we should have eliminated the no-fault system.

SENATOR LESNIAK: Sounds like Senator Laskin.

SENATOR DALTON: Yeah, well, and Senator Connors. I am not so sure that Senator Laskin is wrong. But, one of the things we weren't sure of was, if, in fact, you do away with mandatory liability, what impact is that going to have on the number of uninsured motorists you have in the State? What impact will that have on the coverage uninsured motorists and its costs? The Committee really grappled with that, and we really were not able to pin down what that impact would be.

For instance, if you go to a non-mandatory state like Florida, one of the things we learned is that in a region such as Miami, the costs of uninsured motorists is about \$145 -- \$140. If you go down to Tallahassee, or up to Tallahassee, the cost is about forty-some dollars. The cost in New Jersey right now-- We pay on the average for uninsured motorists, about \$22. So, it was very difficult for us to say-- With those extremes I have just mentioned, we should recommend eliminating mandatory liability. We felt -- the Committee felt -- that we should continue to take a look at this, and really try to nail down what the impact of eliminating mandatory liability would be. So that is why we didn't go that far in recommending that.

On the issue of doing away with no-fault, there are a couple of public policy determinations that have to be wrestled with. For instance, presently 35% of the people who collect under no-fault -- okay? -- if you eliminated no-fault, they wouldn't have the ability to collect. In other words, these are people who are involved in one-car accidents.

SENATOR LESNIAK: Do you mean medical benefits?

SENATOR DALTON: Yeah, they wouldn't have the ability to collect. So, it's a public policy issue. No-fault is basically saying that we should-- Instead of taking people through the tort system, we should reimburse them for their medical benefits, knowing, of course, that if you eliminated no-fault totally, that 35% of the people who get reimbursed

presently would not have that ability. So, instead of eliminating it, we said, "Let's take it down to \$10,000, make it part of that basic package," which we know would cover 90% of the medical expenses due to automobile accidents in the State.

There really is not a whole lot more we can do at this point. I mean, what we are doing is stripping the system. A gentleman said to me the other day, "You know, the way you are reducing price is by reducing benefits." And I said to myself, "Well, that's correct." There aren't any magic wands. Why should insurance be any different than any other commodity? You know, if you go out to the supermarket and you want to buy 10 apples, and you figure, "Well, I don't have the money for 10 apples; I only have the money for two apples," the way you are going to reduce your price is by lowering the amount you buy.

Well, insurance is no different. There are no magic wands here. What we're saying, though, is that if you want that opportunity, if you want that opportunity to buy up -- to buy the Rolls-Royce of coverage -- then you have that ability in the recommendations we make to you. But (a), the State should not force that on you, and (b), we should set up a system which is a function of costs, the ability to pay, and whether you need it or not.

I should note, Mr. Chairman, and I will end on this, one of the practical asides of all this -- one of the practical problems that we thought about -- is, if you go down to a \$10,000 medical benefit, or you are trying to weigh, you know, going down or not -- weigh whether I should or I shouldn't -- one of the things that you want to know is, what is my personal health care carrier going to pick up in all this? That is one of the reasons, to my mind, and I have heard it from a lot of people, that they haven't opted for some of the options that are presently available, because they said, "There is no way I can seem to get a straight answer from my present health care

carrier" -- whether it is through the job or personally -- "if I get in an accident, what is going to be picked up. So, what I want to do is keep those same unlimited benefits that I presently have."

What we have bills coming along saying for the first time is, "The health care carriers in this State have to tell the consumers in plain language what is going to happen, what is going to be covered, if, in fact, they opt for the \$10,000 basic package." That is something which I think is a very critical component of all this in making sure that it works.

With that, Mr. Chairman, I want to thank you for your time. I want to thank Senator Jackman for the time he spent on the Special Auto Insurance Committee. I think the recommendations that we make are comprehensive. They are the most comprehensive recommendations presently before the Legislature, but they are only a first step. Do they solve the entire JUA problem? No, but they make a first step toward addressing that problem. Do they solve the whole issue of competitiveness and create an environment of competitiveness in the State? They make a good first step towards creating that environment in this State.

So, I think with that, that I will open it up for any questions that you or the other members might have. Thank you very much.

SENATOR LESNIAK: Thank you, Senator, for the long and hard work you have done on the Special Auto Insurance Committee. Its report, and the comprehensiveness of the report, are of great benefit to this Committee.

I just have two questions. With regard to the catastrophic injury, do you have any ideas as to how that should be handled? Did the Committee look at the Pennsylvania system in that regard?

SENATOR DALTON: Are you talking about the fund, or are you talking about just the system, Ray?

SENATOR LESNIAK: I'm talking about if someone has medical expenses over the \$90,000 that would be the maximum amount of coverage-- I'm sorry. Right now, under your proposal, a person can choose \$10,000 or unlimited?

SENATOR DALTON: That is correct.

SENATOR LESNIAK: Okay. Did the Committee look at choosing either \$10,000 or \$90,000, and having the difference between \$90,000 and unlimited picked up by some fund funded by some other source?

SENATOR DALTON: No, the Commission members felt that they didn't want to add another option. They wanted to keep the options down to a minimum.

SENATOR LESNIAK: But that would only be one other option.

SENATOR DALTON: You're right, but it was felt that we didn't want-- The present system provides about the same amount of options as are presently available. We didn't want to increase that. We felt that the \$10,000 -- that lid, that ceiling -- would cover at least 90%. I mean, we have heard people tell us that it covered 97%. We have heard people tell us that it covered 95% and 93%. So, to be on the conservative, safe side, we're saying 90%. We felt that that was a fair way of going. In other words, that \$10,000 ceiling, that base policy-- If that would cover approximately 90%, then we didn't want to go from \$10,000 to \$90,000. Okay? We wanted to just give the two options of \$10,000 and unlimited because-- It was basically a simplicity issue.

SENATOR LESNIAK: The other issue that comes to mind is the number of arbitrators and the ability of the judicial system to handle the increased load caused by changing the figure from \$15,000 to \$20,000. I know there are some counties that arbitrate all cases in any event now. But there will be some difficulty in handling the additional cases to be arbitrated.

SENATOR DALTON: I guess, Mr. Chairman, I would look to you, really, and some of your thoughts about those difficulties. We thought that the more we could get into arbitration, the less cost to the total system. We thought that that was generally a very good thing -- a good goal. But, if there are problems that would be created as a result of it, I certainly would like to hear your recommendations as to--

SENATOR LESNIAK: I believe I have a letter from the Administrative Office of the Courts, which we will have to submit for the record, with regard to that problem.

SENATOR DALTON: Okay.

SENATOR O'CONNOR: Mr. Chairman?

SENATOR LESNIAK: Yes?

SENATOR O'CONNOR: Thank you, Mr. Chairman. I would like to compliment Senator Dalton, too, for the fine work that the Committee did. I'm certain, in listening to you, particularly to your opening remarks about how it was signed off unanimously by the Committee, that there must have been a lot of compromising. My concern, Dan, is in conjunction with the verbal threshold. My question is, how would you feel about an amendment to that, so that persons with fractures would be able to sue, regardless of whether they had chosen a verbal threshold?

SENATOR DALTON: I guess my reaction to that would be that the whole rationale behind the threshold -- the \$500 and the verbal -- was to give people who wanted the ability to save more, that ability. If, in fact, you get into the fracture area, be assured that you are going to save less. In other words, ~~be assured that if you go from an optional verbal -- and you would keep it optional--~~ I think what you are recommending, Senator, is to change the definition of verbal. You would save less money. You would give consumers less of an opportunity to save money by changing that definition. That is why I think I would be opposed to it.

I think right now what we have is, we give the consumers the ability to choose. If they want to save more money, they can go to a verbal threshold. If they don't, they can stay at that \$500. I feel pretty comfortable with the way it is presently -- the recommendations of the report.

SENATOR O'CONNOR: See, what concerns me, Dan, and I know this from personal experience as an attorney with the way the system is now. I have had situations where injured motorists have come into my office to start lawsuits. They find out, to their shock, that they don't have a lawsuit because they chose the upper threshold and their medical expenses haven't come near that, and yet they had an injury about which they felt strongly enough that they wanted to start suit.

I think that someone, even if he has chosen a verbal threshold, who has sustained a fractured collarbone, or a fractured pelvis, or any number of fractures that you can think of, who, you know, discovers to his surprise that he does not now have the right to sue, is going to come knocking at our doors.

SENATOR DALTON: It is really a question of balance, Ed. What we tried to do was provide that balance. We tried to give the consumer the ability, if he or she wanted, to take a \$500 monetary threshold. If they wanted to save more, then they would go with the verbal. If you amend the verbal -- okay? -- you are going to dilute their ability, to a certain extent, to save those dollars -- to save some dollars. That is why I feel very comfortable with the way it is, with that balance we have in the report already.

SENATOR O'CONNOR: Okay. I guess your answer then would be the same with respect to soft tissue injuries, which are, you know, of a serious nature. I wonder whether you gave any consideration to the type of language that New York State has, which says that you have an exception to the verbal

threshold where a person is prevented from engaging in his usual activity for -- I believe it is 90 days out of the 180 days that follow the accident.

SENATOR DALTON: We basically did. Again, we just felt that the balance existed with the present recommendations before you. The whole issue-- The whole matter obviously took up a great deal of our time. Nothing is locked in stone. We don't suppose that we have all the answers, but we felt -- for the same reasons I gave you in answer to the previous question -- that this was the better way to go.

SENATOR O'CONNOR: Do you have, Dan -- and I am not going to belabor this-- Do you have any figures to show how much one would cost versus the other?

SENATOR DALTON: Not in front of me, Ed. I'm sure we can get those figures, though.

SENATOR O'CONNOR: Okay, thanks.

SENATOR DALTON: By the way, those figures-- Every company is going to come at you with different figures. That is why you have to deal with more than one company when you come up with these figures. But, I'm sure we can try to provide you with a cross section of what certain companies feel as to the dollar savings of the present verbal threshold versus what you were talking about.

SENATOR O'CONNOR: What was the figure? I recall reading at the time somewhere in the area -- was it \$53 or something?

SENATOR DALTON: What it is-- It depends, obviously-- Again, the last thing the Committee did, with me as its Chairman, was to start throwing out figures willy-nilly. I mean, one of the problems with what we saw happen in the other house, and some of the things that happened in 1983, was that people took figures out of the air and tried to sell the public on them. We are not going to oversell this thing. It is obviously going to be subject to a lot of

different types of variables as far as the exact dollar figure. I mean, your rating territory, and these types of things come into play there. But, what we are saying is, you would have a savings of 45% of BI, the BI component of liability, if you took the verbal. What that savings would be is dependent, as I said, on a lot of different other factors -- the exact dollar savings.

In the back of our report, you will see how it operates in certain territories -- what sort of dollar savings you get. But, again, I am not going to take a figure out of the air and make it some magic figure, and say, "Everyone is going to save "X" amount of dollars if they take this." There are a number of factors, and it is just not that easy. I wish it were, not it's not that easy.

SENATOR JACKMAN: Thanks, Danny.

SENATOR DALTON: Okay, thank you, Chrisy.

SENATOR JACKMAN: William Vowteras? Am I pronouncing that correctly?

W I L L I A M V O W T E R A S: Yes, you are, Senator. I am testifying on behalf of the Professional Insurance Agents of New Jersey this morning.

Senate Bill 2594 reflects much careful work and study by the Dalton Committee on the auto insurance problems in this State. I want to really commend them. They spent six months, with a lot of meetings, a lot of hearings, and I think they did a very in-depth study on this problem. I would like to commend the whole Committee for that.

The bill contains a number of very constructive proposals which PIANJ wholeheartedly supports. I am just going to run down these quickly.

1. Permitting insurance companies to non-renew 2% of their auto policies, by territory, in any given year, with an additional two for one credit for writing new business;

2. A medical fee schedule for no-fault payments;

3. Re-tailoring the mandatory no-fault package. The changes this bill would make will allow consumers to choose the no-fault benefits they need and want, rather than paying for mandatory coverage they may never use;

4. Stiffer fines and a DMV notification system to deter uninsured motorists. I think this is most important because people who are driving without insurance really add to the costs of the whole system;

5. Discounts for auto theft devices and safe driver courses. I think that goes unsaid. We are very much in favor of that, and think it would help substantially; and,

6. Giving an additional percentage of the motor vehicle violation surcharge to the JUA. Right now, I believe they keep 20%. We would like to see that lowered to 10%.

As lawmakers struggle with the complex issues surrounding auto insurance in New Jersey, perhaps no one group will be entirely satisfied with the results except, we hope, the consumers of the State. The Professional Insurance Agents of New Jersey recognize that all groups will be called upon to make sacrifices in the name of providing solutions. However, we stand in general opposition to the erosion of the insurance producers' fair remuneration for delivering the insurance product, counseling the buyer in the important option selection process, and the many other essential policyholder services provided by our members.

Also, there are two areas where we feel the bill has not gone far enough. One, the provision of an optional verbal tort threshold is a step in the right direction. However, we still recommend eliminating any dollar threshold and making a clean break with our outmoded no-fault approach. The public is ready, government studies recommend it, and the pure verbal threshold is the direction of choice for the State of New Jersey.

Finally, we feel the bill has not gone far enough in permitting higher rates to be charged by the JUA. We recommend that the base rates in the JUA be higher than those of the voluntary market, in addition to the type of bad-driver surcharge rate permitted by this bill. The only way to reverse the growth of the JUA is to permit JUA rates to seek a self-sustaining level -- a level which is higher than that of the voluntary market.

We strongly feel that this two-tier rating system is necessary and is readily apparent from the JUA's fiscal crisis. As you know, most of the JUA funding comes from premiums, and we feel that only an increase in these premiums to self-sustaining levels can reverse the inevitable drift of the JUA toward insolvency.

A second reason for decoupling JUA rates from those of the voluntary market involves policyholder and producer inertia. Without a two-tiered rating system, there is no disincentive for the policyholder to remain in the JUA, and hence no real pressure upon producers, such as ourselves, to seek coverage in the voluntary market. Thus, two-tiered rating would both help create openings in the voluntary market and help drive JUA policyholders and producers to seek such openings. We feel that the two-tiered rating approach would put a lot of pressure on for people to try to get themselves out of the JUA, and would force us to try to find markets for them, which right now we don't feel is happening.

SENATOR JACKMAN: Just stop there for a minute. How do we justify 80% of those people -- going back in retrospect to the discussion we had before -- being put in the JUA arbitrarily, even though they are clean and everything? Who do they seek?

MR. VOWTERAS: Who do they seek?

SENATOR JACKMAN: Yeah.

MR. VOWTERAS: Well, as I just said, I think that if you had a two-tiered rating system where they were paying more money, they would put a lot of pressure on their agents to find them a market, and the agents, in turn, would put a lot more pressure on the companies than they are putting right now, in order to open that market. That is why we are suggesting it. And, it would also help to give more funding to the JUA. Right now, the rate is the same whether you are in the JUA or not. Therefore, there is no pressure to get it out. But, if they have to pay more -- if those clean drivers have to pay more -- then they are going to put some pressure on the agents to find them a home someplace else. That is the way it used to work, and that is the way it should be.

Voluntary business in the State, at present, represents the cream of the motoring crop. This is what the insurance industry refers to as "seasoned," to an extreme degree. While not all JUA insureds are bad drivers, virtually all of the bad drivers are in the JUA due to the extreme immobility of the market stretching back for at least a decade. Two-tiered rates would encourage JUA drivers with clean records to seek alternatives at lower premiums, while helping to open up the voluntary market. That sort of answers your question right there.

SENATOR JACKMAN: But that individual is at the will of you, the agent, and the insurance company. So, in essence, how do I make you do a better job to get me lower insurance when I am a clean driver, and I am still in the JUA?

MR. VOWTERAS: Well, if you are in the JUA, you're a clean driver and you are paying more, you are going to put a lot more pressure on the agent to find you a lower rate, and you will probably go from agent to agent to find it.

SENATOR JACKMAN: I get you, okay.

MR. VOWTERAS: Okay?

SENATOR JACKMAN: Go ahead.

MR. VOWTERAS: That is basically what we were saying.

Other legislative changes could also help avert a JUA bankruptcy. The State should raise the amount levied by the Department of Motor Vehicles based on traffic violations or "points." Right now, they are paying \$100 for six points, plus \$25.00 for each additional point. We say make that more severe; that would help, too.

Also, the current policy constant which is paid by all private passenger car owners should be extended to commercial vehicles. This is a policy constant that is in every base that is paid by every vehicle, and the funds go to the JUA. It helps to offset JUA losses. We really think that should be extended to the commercial sector also.

I would like to thank you for the opportunity to testify today, and I will be happy to answer any questions you may have.

SENATOR JACKMAN: Senator Cardinale?

SENATOR CARDINALE: You supported some cost-containment measures, and you said that they work well in New York State with respect to fee schedules, with respect, I suppose to the \$10,000 limit. Has there been any place that you are aware of where they have used, instead of those kinds of limits-- I think those kinds of limitations are based on the general premise of over-utilization because of ready payment. People who are paying their own fees will look for a practitioner who is charging a lower fee from time to time. People who are paying their own fees will object if there is a service being rendered which they feel-- You know, they will make an evaluation, and sometimes they will choose not to have that service.

But, when someone else is paying the bill, then those control factors are no longer there. Hasn't there been somewhere in this country where they have used a co-pay to restore a portion of that?

MR. VOWTERAS: Do you mean like a major medical?

SENATOR CARDINALE: Sure. And, when you have a co-pay, don't those factors come back into play if the co-pay is a 20% or 25% co-pay? Wouldn't that be a more effective measure, really, than some of these?

MR. VOWTERAS: Perhaps. I am not aware of any state that does do that, but that is a good suggestion. I can't think of any state offhand that has a co-pay, at this point. They usually have a base, then an excess, but I can't think of anybody who has a co-pay.

SENATOR CARDINALE: It is very common in various insurance policies for private medical coverage and private dental coverage. I deal with dental patients all the time, on a regular basis, despite my presence here, which would seem to belie that. Co-pays are very frequent in dental policies. They cause a real decision to be made on the part of the patient as to whether or not to have a particular service done, and whether or not to look for someone who would provide that service at a different fee scale.

For the record, Mr. Chairman, I would prefer to see us entertain some kind of co-payment issue in this bill.

SENATOR LESNIAK: That is an interesting point you raise, Senator Cardinale. I would just like to ask one question. Do you believe that the commission paid for writing renewal business in the JUA ought to be less than the commission paid for the origination of policies?

MR. VOWTERAS: No. I know it was said a little bit earlier that that is the normal thing. It's normal for direct writers; it is not normal for the independent agency system. Our commissions are level from year to year.

SENATOR LESNIAK: Level with regard to when you write renewal work, as opposed to new policies?

MR. VOWTERAS: Yes. It's level new and renewal. With the increasing complexness of even automobile insurance, it has

become necessary for us to, you know, review policies and talk to the customer almost every year -- every year, plus in-between the year, especially now, in the last few years, with the advent of the options to enable you to have a lower premium. I mean, you can spend two hours sitting with a customer just trying to explain the option to them and to find out what their needs are. You know, do they want to save the money or don't they? So, there is a lot of time spent in reviewing coverage and doing work on it. So, yes, we get a level renewal commission for that. Plus, we get no subsistence from our companies. Don't forget, ours is a straight outright commission. There are no subsidies. We are not provided offices or telephones or anything like that. That is really the basis for the lower nonrenewal commission -- I'm sorry -- the lower renewal commission.

SENATOR LESNIAK: Any other questions? (negative response) Thank you. Vincent Maressa, Executive Director of the Medical Society of New Jersey.

V I N C E N T A. M A R E S S A: Thank you, Senator. Members of the Committee, I am Vincent Maressa, Executive Director of the Medical Society of New Jersey.

The Medical Society has a concern about that feature in the bill, and in the Committee proposal, related to the establishment of a medical fee schedule. Our concern is fairly obvious, and that is that we believe a schedule, once enacted, presents a situation where folks constantly whittle away at medical fees, but without any justification having been established.

Our position in regard to this issue goes back to when Commissioner Murphy was the Commissioner of Insurance. He first proposed adoption of a medical fee schedule in New Jersey. Our questions to him at that time were not too complicated at all. We simply said, "How much money has been paid out for physician fees in any given year or, in the

alternative, can you tell us if you removed physician fees from the auto rating formula what it would do to the rates?" Commissioner Murphy couldn't answer it; his actuaries couldn't answer it; and, no other Commissioner since then has answered it.

SENATOR LESNIAK: Let me ask you something from a different perspective. Legal fees in automobile cases are regulated by the courts. Why shouldn't medical fees be as well?

MR. MARESSA: Oh, they are. The medical fees-- For example, in New Jersey, the Legislature here enacted a statute in 1975 which, in effect, says a doctor cannot charge any more for treating a case of potential third-party liability, or Workmen's Comp--

SENATOR LESNIAK: But, what about a specific rate, just as a specific amount is placed on legal fees?

MR. MARESSA: In what regard? I am unaware of legal fees being established as specific amounts.

SENATOR LESNIAK: The courts established a certain percentage of the award on a contingency fee schedule -- a limit on that. What makes medical services any different?

MR. MARESSA: Well because, first of all, there are statutes prohibiting contingent fees in medical instances.

SENATOR LESNIAK: No, no, no, no, no.

MR. MARESSA: Well, I don't think, Senator, you're comparing identical situations. There is plenty of law on the books if any insurance company or any person wants to challenge a doctor's fee. The State Board of Medical Examiners has a rule that says they will consider any question related to an excessive fee.

SENATOR LESNIAK: You would put the burden on the consumer, rather than have a rate apply across the board?

MR. MARESSA: Well, we haven't seen what the rates would be. I don't think we are putting the burden on the consumer. The burden would be on the insurance companies,

which assumptively have all this data which they have refused to bring forward and haven't used. They can file a complaint any time they want. As a practical matter, you and I both know what they do. If they don't like the fee, they don't pay it.

SENATOR LESNIAK: Just one last question from me. Are there any other areas where medical fee schedules with regard to insurance coverage are required by law?

MR. MARESSA: No. Basic health insurance in New Jersey usually pays the prevailing rates in a community. Workmen's Comp pays the prevailing rates in a community. The only fee schedule that we are currently working with in New Jersey is Medicaid, which was established in 1960, and has not been increased since that time.

SENATOR LESNIAK: Senator Cardinale?

SENATOR CARDINALE: With respect to the Medicaid fee schedule, does that, in your opinion, have anything to do with the quality of care that is rendered to the people who receive those benefits?

MR. MARESSA: Well, I think, Senator, that you know the answer to the question. Yes, it has. The State is very concerned about it, and they are trying any number of ways to alter that. But the fact of the matter is that probably under Medicaid, maybe 10% of the doctors in this State provide 80% to 85% of the care to Medicaid patients. Certainly, Medicaid patients are not widely accepted into the mainstream for the simple reason that physicians cannot afford to see them at a rate of \$7.00 to \$9.00 for office visits.

SENATOR CARDINALE: In the case of those practitioners who do practice in Medicaid areas and have a heavy Medicaid practice, have there been any scandals with respect to abuses of that system? Has the fee schedule eliminated abuses, or do you think it may even have promoted some?

MR. MARESSA: No. Fee schedules do not eliminate abuses. If your concern is abuse, the only thing that

eliminates abuse is a good audit and review technique. Obviously, if the amount of payment for a given service is inadequate, those types of people who would be prone to overcharging will simply over-utilize. There is nothing in a fee schedule apparatus to prevent over-utilization.

SENATOR CARDINALE: What would you think of a co-pay provision on auto?

MR. MARESSA: Well, one of the questions we did have was whether or not the current bill provided for an indemnity type coverage which would, in effect, produce a co-pay. Certainly, co-pays have been very effective in terms of limiting the demand for services, or at least controlling it.

SENATOR CARDINALE: In a prior time, there were -- particularly when the JUA bill was before this Committee -- similar kinds of considerations. You alluded to them. We had some testimony at that time, which I think is very useful to the Committee, that if all of the medical fees were zero -- zero, they all worked free-- We were given a number in terms of the total impact on automobile insurance. Do you have any current information with respect to that?

MR. MARESSA: No. I think at that time, as I recall those discussions, you were discussing the PIP portion of the premium, and it was brought out that in terms of health care dollars, physicians' fees are generally 20% of the total health care dollar. So, if you were talking about PIP being a health care dollar, which by the way it is not -- there are some other things in there not related to health care -- then the physicians would be 20% of the 20% or, in effect, 4%, so that if you removed them entirely, the maximum impact was 4%.

SENATOR CARDINALE: That's my recollection.

SENATOR LESNIAK: Just to clarify the record-- The bill calls for fee schedules incorporating the reasonable and prevailing fees of 90% of the practitioners within the region. How does that differ, for instance, from the fee schedules in Blue Cross/Blue Shield?

MR. MARESSA: Well, it probably doesn't. It probably doesn't even differ much from the schedules that the individual no-fault carriers are using today themselves.

SENATOR LESNIAK: Okay, but I just want to clarify this because I previously asked you a question with regard to fee schedules for other types of insurance coverage. Isn't that similar to the way it is handled by Blue Cross and Blue Shield?

MR. MARESSA: Well, yeah. They set acceptable ranges and physicians bill. And they pay within those ranges. If there is any question, they will, you know, attempt to resolve it by discussion. The one difference here is that the Commissioner would be expected, I assume, to set up the apparatus in advance. It is not an insignificant undertaking. There would be as many as 3,000 to 4,000 different procedures that would have to be looked at, and a range of fees established.

SENATOR LESNIAK: I am just trying to establish one thing at this particular time. Is it similar to the system that is in current operation for Blue Cross and Blue Shield, which doesn't exist any more? What do they call it now?

MR. MARESSA: Well, Blue Cross and Blue Shield do exist.

SENATOR LESNIAK: The Health Service Corporation.

MR. MARESSA: A concept of paying at the 90th percentile is similar to the concept that exists in the New Jersey markets now, I guess. The only problem there is, I don't know that the bill says that the Commissioner should review this on a specified basis. In commercial insurance, they are annually adjusted.

SENATOR LESNIAK: Any other questions?

SENATOR CARDINALE: Yes, Senator. You made a comment about attorneys' fees being analogous to this. I don't think that is analogous at all because I think that what is being

suggested here is a dollar amount for a given service. An attorney may provide a very different service.

SENATOR LESNIAK: That is not the bill, Senator, if that is what you're saying.

SENATOR CARDINALE: No, but your comment on it was that it is analogous.

SENATOR LESNIAK: The bill is 90% of the prevailing fees.

SENATOR CARDINALE: What would be analogous is if a dollar amount were placed on each type of accident.

SENATOR LESNIAK: I would absolutely oppose putting a fee schedule like that in place in this State -- on medical fees. I would agree with you on that, and the bill doesn't call for that.

SENATOR DiFRANCESCO: You are concerned about cutting medical fees. I think you started out that way.

MR. MARESSA: Yes.

SENATOR DiFRANCESCO: Which caused me to turn to this page, Section 5 of the bill. Then Senator Lesniak asked you the question about whether or not this is similar to the way the Blues handle it. What is the Blues-- Is it 80% of the usual customer? Is that-- I don't know. That is why I am asking you the question.

MR. MARESSA: Well, I don't know. They hardly ever tell you. Many of them do not tell you what it is they are using. They will pay-- They establish a screen somewhere around 80%, 85%. So, yes, on its face that looks okay, except that you have to go in before the Insurance Commissioner and argue for the adjustment, or whatever, every so often.

SENATOR DiFRANCESCO: And the patient makes up the difference. Is that--

MR. MARESSA: Well, I am not clear in this proposal here whether the fee allowed under no-fault would be maximum reimbursement or simply the maximum liability of the carrier.

SENATOR DiFRANCESCO: Well, that was my question. Ray, do you know the answer to that?

SENATOR LESNIAK: I'm sorry?

SENATOR DiFRANCESCO: If they establish a fee schedule -- because this doesn't read exactly the way-- I am not sure I can read into this paragraph a lot of things. But, if they establish a fee schedule -- they being the Commissioner -- that is not the maximum fee they can charge, is it -- the physician? In other words, if there is a fee schedule, it is a fee schedule for purposes of reimbursement--

SENATOR LESNIAK: That is correct.

SENATOR DiFRANCESCO: (continuing) --not the maximum fee. That is not the intent here.

SENATOR LESNIAK: They would have to get that from the--

SENATOR DiFRANCESCO: From the patient.

SENATOR LESNIAK: From the patient.

SENATOR DiFRANCESCO: The difference. Senator Dutton's intent is that it is strictly a reimbursement, right?

SENATOR LESNIAK: It says, "provide for the reimbursement." That is exactly what it says, yeah.

MR. MARESSA: See, I wasn't clear on that point. It does look as if it is proposing what we traditionally call "indemnity insurance," as opposed to service benefits, where there could not be any potential for a billing for the differential.

SENATOR LESNIAK: Yeah, it looks like they could charge the patient for the difference.

SENATOR DiFRANCESCO: For the difference.

SENATOR LESNIAK: Okay?

SENATOR DiFRANCESCO: Yeah, I wanted to clear that up.

MR. MARESSA: Just in closing, really, there is a regulation of the State Board of Medical Examiners, and if any lawyer, any patient, any carrier feels that a doctor has been

overreaching, they should bring those cases into the State Board. The mechanism is there.

SENATOR LESNIAK: Okay, thank you, Mr. Maressa. To stay on the same subject, we'll hear from Dr. Stephen Lomazow from M.E.D.I.C.A.L. -- or at least the same area. Doctor, I am going to have to ask you to summarize your prepared testimony, if you will, in the interest of time.

S T E V E N L O M A Z O W, M. D.: Yes, sir, I shall. I will have to do it as I go along because I didn't-- Okay. My name is Dr. Steven Lomazow. I am Director of M.E.D.I.C.A.L., More Educated Doctors in Courts and Legislation. M.E.D.I.C.A.L. is dedicated to protecting the right of the people in this State to obtain competent and complete medical care at a reasonable price level.

I appreciate the opportunity provided me today to express the opinion of my members regarding the proposed modifications to the no-fault system in New Jersey. Obviously, my comments focus on the current bill, S-2594.

Before I address the issues contained in the proposed law, I am compelled to make some observations about the insurance industry. My observations are not intended to make the insurance companies totally responsible for problems in no-fault, or any other line of insurance. However, I would be remiss if I did not point out that the insurance industry has been partially responsible for some of the problems that have arisen. It is indeed noteworthy that at one in the same time, acknowledged experts readily agree to three points: New Jersey motorists have the best insurance available anywhere in the country; New Jersey residents pay the highest automobile insurance rates; and, the insurance companies which sell automobile insurance to New Jersey residents are making excessive profits.

Senator Dalton said there is no key here to reduce-- There are only three ways to reduce rates of insurance. The

first is to reduce benefits, as Senator Dalton alluded to. The second way is to reduce the amount of accidents, and the third way is to reduce the amount of insurance company profits. Without dealing with the appropriateness of the insurance industry's operating procedures, it is known that the price of property and casualty insurance products has been a function of investment income. Currently, the insurance industry is enjoying a fantastic recovery from 1984 and 1985, when profits were low. The August 8, 1986 issue of the Property and Casualty Edition of The National Underwriter, an insurance industry trade publication, carried the headline, "First Half Profits Twice as High as Last Year for Many P-C Carriers."

SENATOR LESNIAK: Doctor, doctor, would you please restrict your comments to the report. You know, we've all heard the dialogue with reference to the insurance industry, and whatever.

DR. LOMAZOW: Okay, okay, very good. We agree with Senator Dalton's comment that too much upheaval in the system too rapidly would probably be more detrimental than beneficial. We agree with the \$10,000 limit for no-fault benefits, with qualifications. We agree with the establishment of a catastrophic loss fund, optional benefits for higher levels of medical coverage, optional benefits for essential services, and elimination of the 20% offset.

The first recommendation of the Dalton Committee is that the mandatory personal injury protection benefit for health care be reduced from the current unlimited benefit to a limit of \$10,000. While M.E.D.I.C.A.L. does not feel it is appropriate to reduce the medical benefits of the citizens of this State, we understand the intent of the \$10,000 limit. The premium reduction that should be enjoyed by consumers because of the lower medical coverage, we feel, would be desirable and would serve the needs of the vast majority of the people of the State of New Jersey. It would be unrealistic, however, not to

point out that the use of the \$10,000 limit will produce gaps in coverage. Consumers who are given the opportunity to reduce their coverage often do so.

Since M.E.D.I.C.A.L. feels that the New Jersey residents in each of the 40 legislative districts who select the \$10,000 limit will not have adequate coverage, we recommend that a loss fund be established -- and I believe this has already been discussed. We feel that the loss fund could be funded by either a surcharge on vehicle registration or increased sanctions against drunk drivers. The harsh reality here is that the medically indigent will suffer the most.

In line with its support of the reduction of health care coverage to \$10,000, we agree with the recommendations by the Committee that essential service benefits, wage loss benefits, and death benefits should be optional. The coverage will be available on a voluntary basis for those who have other sources to cover these exposures. We also agree with the elimination of the 20% personal injury offset, and feel that it is not important and has not had a major impact.

There are two recommendations which we oppose. One recommendation focuses on the threshold for suing for noneconomic damages. The change to a verbal threshold, coupled with a reduction in the medical benefits, is of grave concern. It would appear that benefits are being taken away from the citizens of this State in two ways. The verbal threshold, as proposed, would prohibit the citizens of this State from pursuing their legal rights in the event of some types of injuries, and yet their medical benefits would be reduced if they do not purchase coverage above the \$10,000. The concern of the Legislature appears to be to make coverage more affordable, or at least less expensive. Some of the citizens of the State will not be able to afford anything but the basic coverage. The lower benefits, coupled with a verbal threshold, may produce--

SENATOR LESNIAK: Doctor, I wanted you to summarize, rather than read faster.

DR. LOMAZOW: All right. I will summarize, and say that we are against the \$500 monetary threshold for the reason that we feel it would encourage insureds to increase their medical bills and provide additional services to meet the threshold. This would almost ensure that the costs for the \$500 threshold would escalate.

The other thing I want to talk about is the medical fee schedule.

SENATOR LESNIAK: Let's take a look at what you have.

DR. LOMAZOW: Okay, thank you. There was a question previously about the cost of health care. Now, my reference here is a booklet issued by the National Safety Council. It is entitled, "Accident Facts." It was issued in 1984. This information is based on information from the National Center for Health Statistics, State industrial commissions, State traffic authorities, State departments of health, insurance companies and associations, industrial establishments, and other sources. It breaks down the cost of automobile insurance. Basically, the numbers are not important. This is what the dollar is being paid for. (witness uses chart to demonstrate) We can see that 39% of all costs is motor vehicle property damage. Wage loss occurs for 29.1%. Insurance administration occurs for 23.1%, and medical benefits include 8.8% of the entire bill. Medical expenses include doctors' fees, hospital charges, the costs of medicines, and all other medical expenses incurred as a result of accidental injuries.

This does not include damages awarded in excess of direct losses. You can see here that the question is, if you are dealing with a medical fee schedule -- and I believe Senator Cardinale's facts are correct -- 3% to 4% of all of this bill is due to medical practitioners -- all medical practitioners. You are only dealing with about 3% to 4% of the entire bill.

SENATOR DiFRANCESCO: Mr. Chairman, may I ask the doctor a question about this?

SENATOR JACKMAN: Go ahead.

SENATOR LESNIAK: Yes.

SENATOR DiFRANCESCO: What is the reference -- I can't see it.

DR. LOMAZOW: The reference is "Accident Facts," which is the publication of the National Safety Council.

SENATOR DiFRANCESCO: Motor vehicle property damage is 39% of-- Did you say cost of the premium?

SENATOR JACKMAN: Yeah.

SENATOR LESNIAK: Yeah, the cost of the premium.

SENATOR CARDINALE: On a national basis?

DR. LOMAZOW: On a national basis.

SENATOR LESNIAK: Wage loss is 29%?

SENATOR DiFRANCESCO: Wage loss is 29%.

DR. LOMAZOW: These are the numbers of the National Safety Council. This includes the present value of all future earnings lost as well.

SENATOR DiFRANCESCO: Usually it is broken down to-- I'm no expert, but usually it is broken down to property damage, PIP, and--

DR. LOMAZOW: Well, we were interested in trying to discover the true cost of the impact of medical care upon the bill.

SENATOR DiFRANCESCO: How can you have wage loss at 29%?

SENATOR LESNIAK: I am not so sure that that is the correct source because, first of all, we're talking about New Jersey, not nationwide.

SENATOR DiFRANCESCO: Well, let me see it again.

DR. LOMAZOW: Sure.

SENATOR DiFRANCESCO: The PIP coverage constitutes--

SENATOR JACKMAN: You like the colors, I think.

SENATOR DiFRANCESCO: (continuing) --medical expenses and wage loss.

SENATOR LESNIAK: Yes.

DR. LOMAZOW: I broke it down differently. In the traditional way of thinking, PIP costs are about 22% to 23% of the bill, of which we feel that, once again-- The whole bottom line there is that physicians' fees are basically 4%. All medical benefits, including the cost of medicine, physical therapy services, hospital reimbursement -- they all fit within that little less than 9%.

Now, to give you an idea of the small degree of impact that this would have, if you look at the Senator's own estimations, a \$2,500 deductible-- In other words, eliminating \$2,500 in benefits, as proposed at the end of the bill, or summarized in the thing with the blue cover on it -- the Committee recommendations -- would have a total benefit of a \$5.00 savings. That is total elimination of \$2500 in medical benefits -- the first \$2500.

SENATOR DiFRANCESCO: But you're for the \$10,000 cap on the medical payments?

DR. LOMAZOW: We are for the \$10,000 cap for a number of reasons: First of all because 93%, 97%, 98% of the people never achieve that. Those are only the people who have been involved in motor vehicle accidents.

SENATOR DiFRANCESCO: Which means that you don't save a lot of money on the rates, right? Do you know what that would save on the rates -- \$1.00, \$2.00? You mentioned \$4.00.

SENATOR JACKMAN: He just told you \$5.00 on--

DR. LOMAZOW: No, no, no. The number on that is about \$40.00.

SENATOR DiFRANCESCO: Forty dollars with a \$10,000 cap?

DR. LOMAZOW: Exactly. About \$40.00 with a \$10,000 cap on benefits.

SENATOR CARDINALE: But your proposal actually is to add that back in by charging more for the registration, isn't it, and having then the State provide that for the people who are over--

SENATOR LESNIAK: The catastrophic injury fund.

SENATOR CARDINALE: The catastrophic injury fund.

DR. LOMAZOW: The concept of a catastrophic injury fund is not a new one. We are concerned. We see people in our offices. I, like you, see patients on a regular basis. I don't do this regularly. We are concerned that people who--

SENATOR JACKMAN: He has them by appointment.

SENATOR CARDINALE: A lot of time in-between appointments, too.

SENATOR LESNIAK: The fifth Wednesday of every month.

DR. LOMAZOW: We are concerned that people who cannot afford coverage-- Ten thousand dollars is not a lot of money. Someone with a fracture of the femur and a cerebral concussion who comes in to the hospital will have DRG benefits of about \$8,000 to begin with. So, where does the physical therapy come in? Where do the future medical care and benefits come from? We are concerned that there is going to be a gap, but we recognize that the whole purpose of this entire meeting is to reduce the costs of automobile insurance for the citizens of the State of New Jersey.

SENATOR LESNIAK: Doctor, do you have any idea how much that additional cost on registration fees would involve?

DR. LOMAZOW: No. I believe, though-- I can quote Assemblyman Karcher, who said that probably a \$5.00 cost on all registration fees would completely fund the catastrophic loss fund. This is only an indirect quote, but I believe that is what he was talking about.

SENATOR CARDINALE: It's amazing that you could, by just taking it from one pocket instead of the other-- From one pocket, it costs \$40.00; from the other pocket it is only going to cost \$5.00.

SENATOR LESNIAK: No, no. The difference is-- I don't know what the difference is. Okay.

DR. LOMAZOW: The idea of co-payments, you know, that is another situation. I think that is just basically taking it out of one pocket and putting it into another pocket. I mean, if we co-payment the system, it is only a matter of time until-- Blue Cross just applied for an 27% increase in their rates. And in answer to your other question, Blue Cross does not compensate. It depends on what kind of policy the Blue Cross plan has.

SENATOR LESNIAK: But, the consumer does make choices. The choice may be changed if they have to have a co-pay. If I want to go for physical therapy -- additional physical therapy -- for a nagging back pain, if I have to pay \$10.00 or \$15.00 a visit, and have it supplemented by insurance \$10.00 or \$15.00 a visit -- for a visit to a physical therapist, or a chiropractor -- I may make a different choice than if I got it all for free. Isn't that correct?

DR. LOMAZOW: Yes.

SENATOR LESNIAK: The question is whether you should make that choice or not.

DR. LOMAZOW: With respect to Blue Cross, I personally, and many other physicians in this State, are members of the plan, and therefore accept assignment on all of these bills. Now, if a person has very poor Blue Cross -- and there are different stages of Blue Cross coverage all the way up to the Pace program, which is probably the Rolls-Royce of the plan -- we may be forced to accept 20%, 30%, or 40% of your reasonable and customary fee, simply because you are a participator in the Blue Cross program.

SENATOR JACKMAN: In the administrative charges you had there, are lawyers' fees included?

DR. LOMAZOW: Administrative insurance cost is defined as the difference between premiums paid to insurance companies

and claims paid out by them. It is their cost of doing business, and part of the accident cost total.

SENATOR JACKMAN: Where are the lawyer fees in there?

DR. LOMAZOW: This does not even include liability.

SENATOR JACKMAN: If you've got 100%, where do you get the lawyers' fees from?

DR. LOMAZOW: I'm just quoting what this book told me.

SENATOR JACKMAN: Don't go with the book; go with the figures. Everything adds up to 100%.

SENATOR CARDINALE: Chris, Chris, he is not including pain and suffering awards. He is not including that. He is only talking about economic losses.

DR. LOMAZOW: This is exclusive of pain and suffering awards.

SENATOR JACKMAN: Oh, okay. I get a little worried sometimes.

SENATOR CARDINALE: He doesn't have the pain and suffering in there.

SENATOR LESNIAK: Quite frankly, the problem with those statistics is that-- I don't know how many states are like New Jersey and have unlimited medical coverage. Very few.

DR. LOMAZOW: Conceded, it is quite expensive.

SENATOR JACKMAN: It's okay. I would just like to add it. (Senator Jackman borrows chart from witness.)

DR. LOMAZOW: Okay.

SENATOR CARDINALE: Mr. Chairman, may I? He indicated something about co-pay, and I am not sure whether this witness likes the idea of co-pay, or does not like the idea of co-pay. I wonder if we could pursue that a little bit more.

Dr. Lomazow, please tell us what you think of co-pay as a principle for limiting over-utilization and maintaining a patient control on the fees.

DR. LOMAZOW: I am not against that. I think it is a reasonable idea. We want reasonable and affordable care for

the people of the State of New Jersey. If it means that PIP is primary and another company is secondary, or even the other way around, if another company is secondary and PIP is primary, to cover the benefits that their company doesn't pay, we are all for that.

SENATOR LESNIAK: That is not the question.

SENATOR CARDINALE: I think, in a way, he answered it.

SENATOR LESNIAK: Okay. What if the individual has to pay for the first--

DR. LOMAZOW: What we see happening now is-- You say we are going to be able to bill the patient for the extra money. It appears to me that what is going to happen is eventually they are going to pass something forcing us to accept mandatory assignment on this fee schedule, and we would lack control. The end point here is, basically I don't feel that a medical fee schedule, because of the small percentage involved in the total bill, will have any impact whatsoever upon insurance rates. The name of the game here is to lower the amount of insurance costs to the citizens of the State.

SENATOR DiFRANCESCO: I'm confused. What do you mean by mandatory assignment? What does that mean?

DR. LOMAZOW: What does it mean? It means that what they say they are going to pay, you must take.

SENATOR DiFRANCESCO: Okay. We just discussed this before. Now, is that what happens now if you are not in an automobile accident? I have Blue Cross/Blue Shield, or whatever you want to call it today.

DR. LOMAZOW: Yes?

SENATOR DiFRANCESCO: I am not in an automobile accident, but I am hurt.

DR. LOMAZOW: Yes?

SENATOR DiFRANCESCO: And I go to the hospital, I go to a doctor, and all that. What happens now? Must you accept their payments as full payment?

DR. LOMAZOW: The majority of the providers in the State of New Jersey are members of the Blue Cross/Blue Shield program. Hence, they must accept what your insurance pays, and nothing else.

SENATOR DiFRANCESCO: Are we talking about doctors?

DR. LOMAZOW: Doctors, health care providers.

SENATOR LESNIAK: If they are not part of the program, they can't be reimbursed?

DR. LOMAZOW: They can be reimbursed, and then they must bill you for the balance.

SENATOR LESNIAK: So, what is the benefit of being in the program?

DR. LOMAZOW: The benefit of being in the program is simply to be a participating physician, to be listed in the book, and people will come to you because you are in the book, and the company says, "Look, Dr. X is a provider in our program."

SENATOR DiFRANCESCO: You know you are going to get 80% of it for sure. The difference is, though, you still bill the patient the difference. I'm not sure I understand.

DR. LOMAZOW: Not in Blue Cross cases, and not in Medicare.

SENATOR LESNIAK: Not if you are part of the program.

MR. DAVIS: Not if you sign up with the program saying you won't charge--

SENATOR LESNIAK: You have an option to do that. Therefore, I guess this system would work the same way.

DR. LOMAZOW: By law, I cannot-- For instance, if my fee for a visit is \$30.00, and a Medicare patient comes to my office, and Medicare says I can accept \$21.00 of reimbursement if I take the assignment -- and you've heard all the hullabaloo about accepting assignment from Medicare, which about 10% of the physicians in New Jersey did-- If the patient says, "Here's \$30.00," I will say, "I'm sorry, I can't take the

\$30.00. All I can do is take the money from the government, and they are going to pay me \$21.00. So, I can't take your money. I have to take the \$21.00 from the government instead."

SENATOR JACKMAN: Does everybody do that?

DR. LOMAZOW: When asked, they do.

SENATOR JACKMAN: When asked.

DR. LOMAZOW: When asked.

SENATOR DiFRANCESCO: What do you mean, when asked?

DR. LOMAZOW: If a patient comes to my office and says, "Doctor, gee, you know, I don't have a lot of money, and I can't afford your bill. Would you accept assignment in the Medicare?" or the Medicaid or the Blue Cross or the Aetna, or whatever it is they may have, my answer, and the answer of most physicians in the area, is, "Yes, we will accept it."

SENATOR DiFRANCESCO: What if you don't ask?

SENATOR JACKMAN: You would get stuck for the 30 bucks. (laughter) It's as simple as that.

DR. LOMAZOW: Senator, I have a lady in my office who answers those calls. She has been personally instructed by me that if anybody complains about that, we will simply eliminate the charge. My contention is -- and it may sound very Pollyannaish -- I want to make my patients better, not poor.

SENATOR JACKMAN: I'll buy that.

SENATOR DiFRANCESCO: Do you mean that some people pay less than others--

DR. LOMAZOW: Oh, exactly.

SENATOR DiFRANCESCO: --for the same injury or the same treatment -- if they ask ahead of time?

DR. LOMAZOW: What Mr. Maressa was alluding to--

SENATOR DiFRANCESCO: That's a hell of a system.

DR. LOMAZOW: --about Medicaid patients-- I mean, it's just a fact.

SENATOR DiFRANCESCO: Is Mr. Maressa still here?

DR. LOMAZOW: I don't believe so. The simple cost of filling out the paper, when someone comes to my office for a Medicaid visit, exceeds the amount of reimbursement I get for a Medicaid patient -- \$8.40 specifically. So, there is a multi-tiered health care system. People with the best insurance wind up getting better health care. It is an unfortunate reality that people who don't have insurance, people who don't have the amount of benefits they should, are subjected to inferior or no health care whatsoever. That is the fear here with medical fee schedules, and with the verbal threshold in particular, in that people will be excluded from the system and just not have their fair share in the doctor's office, as well as in the courtroom.

SENATOR CARDINALE: How can you say that about the verbal threshold? The verbal threshold has no impact whatsoever on PIP. They are totally separate entities.

DR. LOMAZOW: It impacts upon PIP in two ways. It impacts upon PIP first of all because-- First of all, most patients are not aware of the benefits that they are allowed. Many of them, by seeking-- They know that if they are in an accident and they have the possibility of getting reimbursed for a liability action, then they are made aware of the fact that their medical benefits are paid. Many of them don't know it, and I daresay that a great number don't cash their lost wage benefits and don't cash their other benefits because they simply don't know they exist.

The second way that it impacts upon PIP is, when people are legally represented, they have some sort of hedge against the insurance company's saying, "You're finished." What frequently happens is, the patient who has an injury, such as a soft tissue injury -- let's say he has a lumbosacral or cervical strain injury -- after two or three months he starts building up a bill of treatment. Then, I will get a copy of a letter, almost uniformly, from his insurance company, saying,

"As of so and so date, your benefits are terminated unless you see our doctor." Then he goes to see their doctor, and their doctor says that there is nothing wrong with him.

Now, if a patient doesn't have legal representation, that's it. He's finished. He suffers pain and suffering and he suffers all kinds of other indignities because the insurance company has a head on him. If he has an attorney representing him, the attorney then initiates what is called "a PIP suit," and the attorney will make sure that his medical benefits are paid. Eventually, it will be arbitrated in a court of law whether the medical benefits are justified or not. And, if the court does so find that his actions are legitimate and correct, then, within the limits of the arbitration, the medical bills are paid, or they force the PIP carrier to pay the bills. Otherwise, the bills of people like that will not be paid. They will not be able to get the medical care. A lot of these people can't even afford the medicines.

SENATOR CARDINALE: So what you're saying essentially is, unless there is this hope that they are going to hit a bonanza through an attorney suing for pain and suffering, they are not going to avail themselves of the medical care. So perhaps that bonanza is what is creating -- that hope of a bonanza is what is creating this impact on the entire system. Does that affect their repair bills -- the bills for the repair of the car?

DR. LOMAZOW: No.

SENATOR CARDINALE: Because that seemed to be the biggest portion of the whole--

DR. LOMAZOW: Yes, 57%. The bonanza-- Again, I don't have to review the awards, but I think, if I am right, nationally there were 17 awards over a million dollars -- nationally. The average soft tissue case two years ago in New Jersey-- The average settlement was \$4,500.

SENATOR CARDINALE: You know, I know a lot of people who would consider \$4,500 a bonanza.

SENATOR DiFRANCESCO: Well, it ain't no bonanza surely.

SENATOR O'CONNOR: A lot of people you know?  
(laughter)

SENATOR CARDINALE: Yes, and you know some of them too.

SENATOR LESNIAK: His patients, maybe not his social classes. I am trying to wrap this up.

SENATOR CARDINALE: The point the witness is making, really, is that something has to be out there, some enticement before people are going to use their PIP coverage. This enticement is, you know, obviously not the benefit they receive from the medical care. It is a different benefit.

SENATOR LESNIAK: That is why the monetary threshold should be zero. That would save more money than a \$500 monetary threshold because there would be no target at all for medical treatment.

DR. LOMAZOW: That is our contention entirely.

SENATOR DiFRANCESCO: But, with respect to the PIP benefits, doesn't the doctor really indicate to the patient--

SENATOR CARDINALE: The bill is going in the opposite direction. I'm glad to see that you want to amend it.

SENATOR DiFRANCESCO: (continuing) --that there are unlimited benefits? Don't they become aware after they go to the physician, as opposed to a lawyer?

DR. LOMAZOW: People come to our office with a concern that they can't pay the bill, even though they have paid their insurance. If they have the insurance, we inform them that whatever it takes to get them better, we can utilize. There are tests, for instance the new test, magnetic resonance imaging, which--

SENATOR DiFRANCESCO: Isn't the first question you would ask, "Was this an automobile accident?" as opposed to--

SENATOR LESNIAK: Let me say this, because maybe I have some experience in this myself. There is no doubt that there are some doctors -- medical doctors, osteopaths, and chiropractors -- who are concerned about reaching the monetary threshold on behalf of their patients.

SENATOR DiFRANCESCO: That's not what we are talking about. We're not discussing that point.

SENATOR LESNIAK: Well, we were discussing that overall point.

SENATOR DiFRANCESCO: Let me ask you, based on your experience, because I know you do know a lot more about it, wouldn't you know about your benefits once you had been to the doctor the first time under no-fault, as opposed to falling down a step, in terms of you having unlimited medical benefits? Aren't you going to learn that when you go to your doctor's office if you don't know it already?

SENATOR LESNIAK: With some doctors, yes, and with other doctors, no. I don't know about that, but I do know there are practitioners out there who -- it's a small minority, but nevertheless-- There are a lot of practitioners; therefore, it is a substantial number. There are practitioners out there where getting the patient well isn't the only concern. Meeting the threshold is an additional concern.

DR. LOMAZOW: I recognize that as well, because I represent, in my group, a number of people, and people come up to me and that is the exact argument I get, "You are just associated with people who are looking to do those kinds of things."

SENATOR LESNIAK: And, there are attorneys who refer people in automobile accidents to specific practitioners because of that. It happens. This isn't a perfect world we are dealing with.

DR. LOMAZOW: Well, then, we would be very happy to participate in an increased amount of quality assurance. Once

again, as Mr. Maressa said, nothing is regulated more than medical fees. The State Board of Medical Examiners will sit on top of any physician who charges excessive fees.

I had some conversations with adjusters for the Allstate Insurance Company. I'll make this brief because I know time is important. When a physician charges excessive fees to them-- They have a fee schedule of their own right now. They say, "Well, we are going to pay this amount of money." If someone charges more than that-- If somebody came into my office and I charged \$500 to tap their knee, I would immediately get a call from the insurance company, and the adjuster would say, "We are not going to pay this bill." Then, they would take the bill and refer it to the State Board of Medical Examiners, or the State Medical Society, and I would get all kinds of flack because I did not charge reasonable and customary rates.

This happens all the time. The insurance companies don't pay any more than the prevailing rates. It is not like we're sitting there because we have unlimited medical coverage and writing a blank check. It doesn't work that way.

SENATOR JACKMAN: Could that be possible -- and I am not being facetious when I say this-- You know, if I went to New York -- Park Avenue -- went to a doctor there, and then I went to a guy who lives around the corner from my house, do you think they are both going to charge me the same thing?

DR. LOMAZOW: Absolutely not, because one of them may have higher expenses, one of them may have more expertise, one may practice a specialty which may be more.

SENATOR JACKMAN: Oh, that is what I was trying to find out. It goes by expenses.

DR. LOMAZOW: No, that is why they charge automobile insurance rates per area. That is why they charge medical rates per area. There are four areas designated in this bill.

SENATOR JACKMAN: In other words, if you tap my knee in West New York it would cost me \$10.00, but if you tapped it in Summit, I would have to pay \$15.00.

DR. LOMAZOW: You've got it.

SENATOR DiFRANCESCO: Summit where? Hey, don't get my district in this.

DR. LOMAZOW: Actually, it is not necessarily the more affluent areas. Newark is the highest area. If I tapped your knee in suburban Camden, it would cost you considerably less than if I tapped your knee in the middle of Newark.

SENATOR JACKMAN: It costs you more to get mugged down there, too.

SENATOR DiFRANCESCO: One more question just so that I am clear. You are suggesting that the practical effects of a reimbursement schedule for medical fees becomes a maximum fee schedule. The effects of it are--

DR. LOMAZOW: I don't understand the details of that question.

SENATOR DiFRANCESCO: Well, the bill says that the Commissioner will develop a fee schedule for reimbursement purposes. You know that, right? That's why you brought it up.

DR. LOMAZOW: Yes, absolutely, based on the prevailing rates of 90% of the practitioners within a given area.

SENATOR DiFRANCESCO: You're saying that schedule becomes the maximum fee schedule really, and that is the maximum fee that you would charge.

DR. LOMAZOW: Doctors have very, very bad experience with fee schedules. A number of years ago, Medicare said, "We will do this to you," then "We will do that to you," and now it has been two and a half years and Medicare has still not released their cap on medicals. HMO has come in, and they are giving us new fee schedules. We see 16 different kinds of fee schedules from them. Medicaid has given us a fee schedule, and Blue Cross has given us a fee schedule. All we know is that

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our malpractice rates keep going up. Our expenses keep going up. Our environment to practice medicine becomes considerably less desirable to practice in, and yet we keep seeing these fee schedules. The more fee schedules we see, the more restrictive it becomes to practice medicine.

SENATOR DiFRANCESCO: But with insurance, people go to the doctor's more often. That's basically-- Come on. The other side of that is you make more money, too.

DR. LOMAZOW: That is not the case. For instance, in Medicaid--

SENATOR DiFRANCESCO: I don't want to-- Get back to my question. He's getting mad at me.

DR. LOMAZOW: There is no sense in discussing this. Okay.

SENATOR LESNIAK: Okay. Are there any other questions from the Committee? (negative response)

DR. LOMAZOW: Senators, thank you for your time.

SENATOR LESNIAK: Thank you very much, doctor. Gerald Baker, from the Trial Lawyers.

G E R A L D B A K E R: Thank you, Senator. My name is Gerald Baker. I am speaking to you as a representative of the Association of Trial Lawyers of America, otherwise known as ATLA New Jersey. I don't have a prepared statement today; however, it will be submitted to you.

Our position is in opposition to those portions of the proposed bill that limit the legal rights of persons injured in automobile accidents, most specifically the alternative verbal threshold, the medical expense deductibles -- which have not been mentioned today -- and the additional PIP as an add-on -- which has not been mentioned today.

I will not repeat things which have been said previously. We believe that the proposed legislation does not represent tort reform. Reform is a positive word that implies something for the better. We believe that the bill is

reactionary. It is a response to a manufactured crisis that deprives victims of their legal rights.

Now, we have talked about a lot of things today, bills, statistics, doctors and lawyers, and whatever, but I know none of you forget that behind all of this are human beings, people who are victims -- our clients and your constituents. They are the ones I am concerned about.

SENATOR LESNIAK: We are not really talking today -- I don't believe -- about the commercial insurance crisis. We are talking about the rates of automobile insurance in New Jersey, which have historically been among -- and I say among, not the highest -- among the highest, not the highest, in the nation from year to year to year to year. So, this report, this Committee looked not at the insurance industry as a whole, but the automobile insurance system in the State of New Jersey as compared to other states. Really, it has nothing to do with manufactured prices for past years. Is there anything else?

MR. BAKER: It does have something to do with the fact that behind every accident is a victim. And if you are talking about saving money, you're talking about saving money from somebody. I will suggest, and I will try to address your direction specifically in a moment. The people you are saving the money from, to lower the insurance rates, are people who are injured in accidents. They are victims. They are not represented before you today. They can't afford lobbyists, and they can't afford to have people come down to speak on their behalf as victims.

As an attorney who represents injured people what I am saying is, I do represent these people. They are your constituents; they are my clients. We must remember that as we talk about saving dollars on insurance premiums, there is a trade-off. The trade-off is that behind this, somebody is not getting a recovery. That is the person who is injured. I just want to make sure that we all recognize that.

SENATOR LESNIAK: What is wrong with the consumer being able to make that choice?

MR. BAKER: The question is whether or not the choice is one that is an acceptable choice. There are many things that we do not allow the consumer to choose. There are many products we do not allow the consumer to choose. There are many drugs we do not allow the consumer to consume. The fact that you are giving the consumer the choice of taking a verbal threshold does not mean that all of a sudden it is acceptable because the consumer can choose something that is bad for him or her.

It is my position that a verbal threshold is bad. It is bad whether you give them the choice or whether you make it mandatory. Just because it is an option does not all of a sudden mean that a verbal threshold suddenly becomes acceptable because now the consumer can choose his own cost of a bad alternative. We currently have the best package--

SENATOR LESNIAK: You would equate the verbal threshold with an unsafe product or an unsafe drug?

MR. BAKER: Yes, I would. Today we have the best insurance coverage in the United States. It is expensive, but you must recognize that in trying to save costs, what you are doing is taking away people's benefits. One of the things you are taking away from them is the right to sue.

SENATOR LESNIAK: Wait a second. We are not taking that away. We are giving them the option to choose that themselves. Isn't there a difference there?

MR. BAKER: There certainly is. However, if the option you are giving them is an unacceptable one -- and I'll skip everything else and go right to the reasons why I think it is an unacceptable one -- then you are not doing anything to benefit your constituents. We currently have the best insurance coverage in the United States. We have a good liability system of coverage, with high limits. We have

unlimited medical expense coverage. We have a good lost wage income continuation program. We have essential services and funeral expense benefits. If the only thing you say is, "We want to save money. We are going to take away your benefits," that's fine. That is your philosophy. But if you want to go one step further and take away people's benefits and their rights to recover, I think you have to give them something else in return. You have to save them some money. You have to show them you are going to have a system that is going to work properly.

I don't believe that the verbal threshold accomplishes that. I don't believe that the bill that is being proposed accomplishes that, because there are all kinds of things in it that are not going to benefit the consumer. So, just giving them the choice is not the answer if the choice is not an acceptable one.

SENATOR LESNIAK: You don't think that the consumer will save any money if he chooses the verbal threshold?

MR. BAKER: From all the testimony I have heard today, plus I have read all of the Senate hearings, I was before the Assembly, and I have read every piece of information that was given to the Assembly, I have not seen one piece of hard, acceptable, documented statistic -- anything that would be admissible in a court of law -- to indicate that there would be any saving under a verbal threshold.

SENATOR LESNIAK: Therefore, if the consumer is confronted with the option of having a verbal threshold or a nonverbal threshold, and will not get any savings in return for that, they won't choose it. Isn't that correct?

MR. BAKER: Savings against the current system. Okay? The current system now gives people an alternative of a \$200 threshold or what we have called an index threshold. It started at \$1,500; it is now \$1,700. There is no question that a \$1,700 threshold that is in existence today will save the

consumer some money. It is about \$50.00. Allstate and State Farm testified that that is approximately what the saving is under a \$1,700 threshold.

What I am saying is, a verbal threshold in comparison to the law we have today-- There has been no evidence that a verbal threshold will save the consumer any more money than is currently available to them today. Let's look at the testimony that was before the Assembly. Allstate indicated that a verbal threshold would save about 35% of the BI premium. That calculates out on an average of about \$50.00. State Farm presented letters, and Assemblyman Adubato questioned Mr. VanNess, who I believe is here today, saying that the index threshold would save a policyholder about \$50.00. The way I read it, \$50.00 is the same as \$50.00. An index threshold or a verbal threshold will not accomplish anything.

Before Senator Dalton's Committee, February 10, 1986, Mr. Currie (phonetic spelling), who is an actuary employed by Prudential, testified that there wouldn't be much difference between a verbal threshold and the current indexed threshold. All I am saying to you is, the option that is available to the consumer today is perfectly adequate. Giving them a verbal threshold, whether it is mandatory or optional, is not going to do anything to change the current system that is in existence today in New Jersey. A verbal threshold can do some bad things. That is why I would like to go on and give you a few more reasons why I don't think the verbal threshold is an acceptable alternative.

SENATOR LESNIAK: What bad things are you talking about?

MR. BAKER: Okay. I believe the indexed threshold we have today is adequate to remove minor cases from the court system. I would agree that a \$200 threshold doesn't prevent many people from suing, and your suggestion that zero is no target might make a lot of sense. But the \$1,700 threshold is a different story.

Dr. Lomazow gave you an example of a physician charging \$30.00 for a visit. I don't think it is unreasonable, although fancy doctors may charge you a couple of hundred dollars for their initial evaluation. Most doctors are probably charging between \$25.00 and \$50.00 for a routine office treatment, what you keep going back for, physical therapy or whatever. To hit \$1,700, which is the current threshold, you're talking about 40 or 50 office visits, sitting around the doctor's office in order to get your physical therapy or your other treatment. There are a lot of people who are just not going to do that for the purpose of just making a case. Remember, the \$1,700 threshold which exists today does not include hospitalization, does not include x-rays -- whether taken in the doctor's office or not -- and does not include diagnostic testing, which is where all the big expenses are coming from today. CAT scans and all that fancy stuff are not included in the index threshold. The \$1,700 applies only to doctors' bills for treatment. That is a pretty hefty threshold I would suggest. It is indexed, meaning it is going up every year. It went up 12% in 1985; 6% in 1986. At that rate, it is going to be \$2,400 in 1990, and \$3,000 in the year 1992. I suggest that that is sufficient to take minor injuries out of the legal system.

The definition of verbal threshold, which is in the bill that is before the Committee, says that you cannot sue unless you have sustained an injury that creates a serious impairment of body function. Okay? I would suggest to you that a trauma that is strong enough to break a bone is a serious accident, and that that fracture, in and of itself, is a serious injury. I don't care what the long-term, permanent impairment of body function is. I suggest the fracture should be eliminated from the verbal threshold immediately. A dislocation of a joint-- Did any of you ever suffer a shoulder dislocation when you were playing ball as a kid in high school, football or whatever?

SENATOR DiFRANCESCO: Like Rutgers quarterbacks.

MR. BAKER: That's a terrible injury -- not a fracture. Painful, significant injuries should not be included within a verbal threshold. Lacerations that require a significant number of sutures, whether or not there is a significant disfigurement-- You could cut open the top of your head and be in the hospital and be sewed up. I don't think these people should be prevented from their right to sue. Injuries to internal organs, normally considered to be soft tissues -- kidneys, livers, spleens-- I think those injuries, in and of themselves, should be eliminated from a verbal threshold, and people should have the right to sue.

New York has a provision that if you are disabled from your normal function, whether it is work or your activities around the house, for 90 out of the 180 days immediately after the accident, you can sue whether or not you have sustained a permanent injury because that initial injury was serious enough that they feel it is not a minor injury that should be taken out of the court system.

So, the verbal threshold is no panacea. It takes away people's rights. I don't believe that the definition you drafted is adequate for me to recommend to anyone. I certainly wouldn't do it myself. I wouldn't give up a \$1,700 or \$200 threshold for a verbal threshold. It takes away too many people's rights. The verbal threshold deprives people who are injured in accidents of their right to sue. Who does it protect? It protects the careless driver. It protects the person who caused the injury. For whose benefit? For the benefit of the careless driver's insurance company. The insurance company saves money because they don't have to pay out on claims.

So, you have to understand the process of what a verbal threshold does. Under a verbal threshold you are hoping that a large number of people will be prevented from suing.

So, those people don't get a recovery for pain and suffering. You are really taking money out of their pockets; they are the innocent victims of accidents. Money that should have gone to the victim of an accident under our current system is being saved. Now, where does that money go? Who gets it?

The statute says -- if you read through your statute -- that the operator of an automobile is exempt from tort for noneconomic loss unless the injured person sustains a serious impairment of bodily function. Well, who is the operator of the automobile? That is the tort-feasor, the careless driver, the drunk driver, the guy who runs someone down at an intersection, the person who sideswipes you on the highway. That person is being exempted from suit. Why? Why are we protecting the careless driver? That is what we are doing here. You are giving a secondary gain to the careless driver on the highways of the State of New Jersey.

SENATOR CARDINALE: Excuse me. Mr. Chairman, may I ask a question about that?

SENATOR LESNIAK: Sure.

SENATOR CARDINALE: Isn't that what insurance does?

MR. BAKER: Insurance spreads the risk amongst all the people in the State.

SENATOR CARDINALE: No, no. But doesn't insurance have the effect of exempting that careless driver, that drunk driver, from the consequences of his actions?

MR. BAKER: Insurance exempts him from paying--

SENATOR CARDINALE: If we extend your logic, shouldn't we outlaw insurance?

SENATOR LESNIAK: To the extent of coverage. To the extent of the coverage.

MR. BAKER: Exactly, it is only to the extent of coverage. What you're saying is, the careless driver doesn't have to pay if he is adequately insured. Of course, if he is not adequately insured, he could have a judgment above his policy limits.

SENATOR CARDINALE: Well, then, what would you think of a theory that said you couldn't insure 100%? You can only insure 80% of the damage you have caused.

MR. BAKER: Senator, I am not looking--

SENATOR CARDINALE: That would put the onus directly on people who are careless drivers, drunk drivers, etc. They would still have to pay something.

MR. BAKER: We're not looking at insurance as a punitive measure to make people safer drivers. What we're saying is, between the careless driver and the innocent, injured victim, the innocent victim's rights should be considered first. I see no reason why either a careless driver or the insurance company -- which has been paid premiums to insure that person -- should be exempted from paying damages to anyone who that careless driver hurts.

SENATOR JACKMAN: The alternative to that is bankruptcy.

MR. BAKER: No, the alternative--

SENATOR JACKMAN: Wait.

MR. BAKER: Okay.

SENATOR JACKMAN: If you have insurance and somebody sues for a million dollars, and you don't own a house, you will go into bankruptcy, and that is the end of that one. What the hell do you do with the guy who has the injury? What would you do?

MR. BAKER: That was Senator Cardinale. I wasn't the one who suggested we get rid of insurance. The alternative to not having insurance could be bankruptcy, yes. But we do have insurance today, and we have a system which is now profitable for the insurance companies. It should be continued. We have liability coverage. You can protect yourself.

SENATOR CARDINALE: Mr. Chairman, I can't let that stand on the record. I have not suggested that we outlaw insurance.

SENATOR JACKMAN: I didn't think you did. I was checking with him.

MR. BAKER: But I didn't take that position. I can't answer that. I agree with you 100%. It would be hazardous; it would be stupid to eliminate insurance coverage. The purpose of insurance coverage is to spread the risk. We have a system which I am suggesting to you is working. What this bill does is attempt to save money by stopping the insurance companies from paying out on lawsuits. They are going to save money.

What I am saying is, why should they save money at the expense of the injured party, in order to protect the careless driver? The careless driver is the one who is not being sued because of a verbal threshold.

SENATOR LESNIAK: That is a good point. Anything else?

SENATOR CARDINALE: You are aware that the public is, in every survey, desirous of changes in our insurance laws that would result in lowered costs. Is there, in your view, having gone through all of these things--

SENATOR LESNIAK: But, Gerry, who would say no to the question "Are you in favor of changes in our insurance laws that would result in lower costs of insurance?"

SENATOR CARDINALE: The public is almost demanding of us -- in correspondence, in letters to the editor, in phone calls to our offices -- that we do something to bring down the costs of insurance. They see that as too high.

SENATOR LESNIAK: The point that this is making--

SENATOR CARDINALE: Is there something you see that we could do that would accomplish that public desire?

MR. BAKER: Talk to the public after they have had an accident, and you will find that their point of view is different. When the constituent is home and well and reading newspapers by which he is being influenced, he is easy to talk to about saving on insurance premiums. But, after the person--

SENATOR LESNIAK: Gerry, the answer to your question is no. (laughter)

MR. BAKER: The answer is, talk to those same people after they have had an accident. And I will tell you something else. If these people are deprived of their right to sue, and they come to my office and I say, "Look, we can't represent you because of a verbal threshold"-- I happen to be a constituent of yours; I represent a lot of people in Bergen County. If I tell these people in Bergen County that they can no longer sue because of a verbal threshold, they are not going to be mad only at me, and they are not going to be mad only at the driver who ran them down on the road, and they are not going to be mad only at the legal system. I would suggest that they are going to be mad, also, with the legislators who--

SENATOR LESNIAK: How about the insurance agent? Are they going to be mad at him?

MR. BAKER: Well, maybe their insurance companies also.

SENATOR LESNIAK: No, no. How about the insurance agents? Do you ever turn around and sue the insurance agent?

MR. BAKER: Yes, yes, frequently at this point. But the insurance agents (indiscernible) are limited to one area today. They are limited to the area of uninsured and under-insured motorist coverage because there is coverage available today to protect people -- you and us -- if you are involved in an accident with someone who is uninsured, or who only has a \$15,000 policy. If the agent doesn't advise you of those alternatives, then the agents are being sued. But, that is a whole other issue.

I know you want to go. Let me give you just a comment on four points. A comment only; I will just mention them. Medical expense deductibles have not been mentioned today. I think they are unadvisable. I don't think they make sense. That's Section 6 of your proposed statute providing for the \$500, \$1000, and \$2500 deductibles.

MR. DAVIS: That is the current law.

MR. BAKER: That is the current law, which is being included in Section 6 of the law that is being proposed.

SENATOR LESNIAK: Only because we are not changing that.

MR. BAKER: Well, okay. I'm telling you I can't-- I do not believe that Section 6 of your proposed statute is advisable.

SENATOR LESNIAK: Do you mean Section 6 of the current laws of the State of New Jersey?

MR. BAKER: No, Section 6 of the proposed bill, which refers to medical expense deductibles of \$500, \$1000, and \$2500.

MR. DAVIS: Yeah, that's the current law.

SENATOR LESNIAK: That's existing law.

MR. BAKER: That is the current law?

MR. DAVIS: All I'm saying for the Committee's members' benefit is, that is the current law. It is not being changed by this bill. That section is only being amended because that is the setoffs which are being taken out, and also it is being amended to take out the exclusion part. So it is just really more of a technical amendment.

MR. BAKER: Fine. The medical expense limitation of \$10,000-- As an organization, we cannot support that where there is no catastrophic loss fund or other protection for the seriously injured person. I think it is just the wrong way to go about it. You are taking the people who are the most injured, and saying to them, "You may not get your medical bills paid for."

You have a Section 9 with respect to additional PIP coverage. No one has discussed that. You are making an add-on. I don't agree with that philosophically. I believe that these are important coverages -- income continuation benefits, essential services -- and that they should be included as part of the mandatory personal injury protection package.

SENATOR LESNIAK: Would you equate that part also to unsafe drugs and unsafe products as being the fact that the consumer shouldn't have that choice?

MR. BAKER: No, the consumer should have the choice, but it should be included as a mandatory part of the package. As exists today, they can have the option to not take that coverage. I think it should be flipped around the other way. I would just caution you, if you would look at Sections a. and b. of your Section 9, I don't believe the language is particularly clear as to your allowing the Commissioner to make certain determinations as to limits. I believe your language is mutually exclusive. Under essential services, you talk about a limit of \$12 a day, and then you say the limit should be established by the Commissioner. Today you have a choice of \$12 or \$20, and I don't think the language makes sense the way it is drafted. I think it requires a little more analysis.

Likewise Section a., which talks about income continuation benefits: "Which shall be established at levels by the Commissioner, which shall not be less than \$35,000 a year." I don't have the vaguest idea what that means. I think you are trying to say, "Up to limits of \$35,000 a year."

Auto arbitration-- There is a reason for the \$15,000 limit which exists today. The reason for it is, the basic policy mandatory compulsory insurance in the State of New Jersey is \$15,000. Twenty-five percent of all the drivers in the State of New Jersey have a \$15,000 limit. I suspect that is the reason why the arbitration limit in automobile cases was established at \$15,000. I have not seen one argument, statistic or otherwise, giving me any reason why that limit should be increased to \$20,000. I don't believe there is a rational reason for increasing that limit.

Finally, the medical fee schedule. What I heard today I think is outrageous, the suggestion that if you put a fee schedule in for the purposes of reimbursing doctors and PIP, that those same doctors can go and charge the balance of their bills to their injured patients. I think if you put a fee schedule in that fee schedule should be mandatory on the

doctors. To start saying you are now going to have-- I don't know how many tiers are in the system now--

SENATOR DiFRANCESCO: Well, you think we ought to have a maximum fee schedule.

MR. BAKER: I beg your pardon?

SENATOR DiFRANCESCO: You think we should have a maximum fee schedule.

MR. BAKER: No, I take no position on a fee schedule.

SENATOR DiFRANCESCO: Oh.

MR. BAKER: No position at all on a fee schedule. However, the comment that you are going to allow the doctors to be reimbursed at one level, and then turn around and charge their patients beyond that schedule, I think is outrageous. I think you have to be consistent.

SENATOR DiFRANCESCO: What did I just ask you? Wait, what did I just ask you?

SENATOR LESNIAK: Well, that really basically increases competition, to allow the doctors to advertise, or whatever. You know, "We will not charge you anything more than we get from the insurance company." That adds additional competition into the system.

Thank you, Mr. Baker.

MR. BAKER: Okay, we're down to rush time. Thank you for your attention.

SENATOR LESNIAK: This hearing is adjourned. It will be continued on or before October 16, at which point we will be prepared to vote on the bills before us, and others as they may be introduced.

SENATOR CARDINALE: Mr. Chairman, will we have the transcript of this hearing before we are expected to--

SENATOR LESNIAK: Senator, weren't you here for the complete hearing?

SENATOR CARDINALE: Sometimes, Senator, I think there needs to be a point to recording these hearings. If we are

recording them, are we going to transcribe them?

SENATOR LESNIAK: I am told we will put a rush on the transcript, for your benefit, Senator Cardinale.

(HEARING CONCLUDED)