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**PUBLIC HEARING**  
before  
**THE ASSEMBLY INSURANCE COMMITTEE**  
on  
**Verbal Threshold in No-Fault Insurance**

January 22, 1986  
Cherry Hill Municipal Building  
Cherry Hill, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

- Assemblyman Ralph A. Loveys, Chairman
- Assemblyman Gerald Zecker, Vice Chairman
- Assemblyman Karl Weidel
- Assemblyman John K. Rafferty
- Assemblyman John V. Kelly

*New Jersey State Library*

**ALSO PRESENT:**

- Laurine Purola
- Office of Legislative Services
- Aide, Assembly Insurance Committee

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**ASSEMBLYMAN RALPH A. LOVEYS (Chairman):** Ladies and gentlemen, can we get started? I would like to welcome everyone here today. This is our third public meeting regarding the verbal threshold.

May I introduce some of the members of the Committee: Assemblyman Karl Weidel; Assemblyman Jack Kelly; Assemblyman Rafferty will be here; Laurine Purola of the staff; and Assemblyman Gerry Zecker. Mr. Deverin and Mr. Aduvato will not be with us this afternoon.

I would like to welcome you to the last of three public hearings, which the Assembly Insurance Committee is holding on the subject of adopting the verbal threshold as part of New Jersey's No-Fault Law. The Committee has spent two very productive sessions in Newark and in Toms River hearing the views of witnesses on both sides of the question. This is a complex subject, but it is of the greatest importance to the citizens of the State.

This is why we are here today. We want to hear your views, and we want you to know that we will give the most careful consideration to your testimony.

New Jersey's No-Fault Law has been in effect for 13 years, and the cost savings which were expected to result have not materialized to the extent which some had hoped. The law has given us many benefits: prompt payment of accident victims; medical bills; the payment of wage loss benefits; and the replacement services benefits. In short, accident victims in New Jersey are made whole without regard to fault.

Even more important, the present no-fault system compensates victims who have sustained catastrophic injuries. This takes the burden and cost of these injuries out of the regular health insurance system, which is already overtaxed.

We are here today to explore the question of adopting a verbal threshold in place of the present dollar threshold as a means of cutting costs. The concept of the verbal threshold is based on the idea that people who receive full medical benefits, wage loss benefits, and other benefits from their own insurers when they are injured should

only be permitted to sue for damages for pain and suffering when they are injured.

When no-fault was adopted in New Jersey, one of the arguments used in favor of it was that it would remove unnecessary litigation from the overtaxed court system. While the number of automobile negligent cases in the courts dropped initially, the court caseload has steadily increased since 1973. This year, for the first time, the percentage of automobile negligent cases has exceeded the pre-no-fault level.

Before no-fault, 53% of all civil cases were automobile negligence cases. This past year, 61% of the civil cases were no-fault cases. Clearly, as a means of cutting down costly litigation, the no-fault is a failure, and this Committee intends to address itself to the question of making no-fault work in New Jersey. This is why we are here today. We want the State to have an insurance system which is fair and which provides sufficient benefits to protect people against economic loss when they are injured.

I would ask if any one of you who will be testifying today-- If you have an extra copy of your testimony, we would appreciate it. We have, I believe, 18 people who asked to testify. Now, if we measure our time accordingly, I think what we must do in this instance is limit the testimony of each person to 10 minutes. That'll bring us to five o'clock, without the question and answer period, if you will, from some of the Committee members. I would ask the Committee -- unless it is absolutely a new subject -- that maybe we refrain from too many overburdening questions for the matter of time. So, if you will, those will will be testifying will have 10 minutes. What I would like to do, too, is probably try to group some of these people, so maybe if there are some questions, we can do it in a series of groupings.

I was asked by Mr. Harry R. Riske, the Councilman from the Town of Woodbury -- because he has time problems -- that he be the first to testify, and at this time, I will call the Honorable Harry R. Riske to testify.

**COUNCILMAN HARRY R. RISKE:** Thank you, Mayor, very much, sir. I just wanted to go on record, not only as a councilman, but as a citizen, and

express a sincere urging of the Committee to adopt the verbal threshold. I think right now the cost of insurance for a two-car family probably averages about \$100 a month just to cover the total insurance package. And if there is a way to cut some of these costs, I think it is with the verbal threshold. And it is something whose time has finally come. I think it should have come much sooner, but it is something whose time has finally come now, especially with the percentages the Chairman has just presented.

I can think of cases that I am familiar with, with people who have been in accidents where costs -- medical costs -- have arisen as a result of not real serious injury. But, because of the \$200 threshold that now exists, you don't really have to be seriously injured.

So, I want to express an urging to the Committee that they consider this; that they get it out of the Assembly; get it to the Senate; get it to the Governor; and get it passed. It is something that has to be done.

That is all I have to say, sir.

ASSEMBLYMAN LOVEYS: Harry, thank you very much for that testimony.

COUNCILMAN RISKE: Okay, thank you.

ASSEMBLYMAN LOVEYS: We appreciate it. What I'm going to attempt to do is put these people in who I know are not long-winded, so with that in order, I will next call Assemblyman Dennis Riley.

ASSEMBLYMAN DENNIS L. RILEY: Thank you, Mr. Chairman. You know I'm not long-winded. That is very helpful.

ASSEMBLYMAN LOVEYS: How are you, Dennis?

ASSEMBLYMAN RILEY: First, Mr. Chairman, members of the Committee, welcome to South Jersey.

Chairman Loveys, members of the Committee: Today I am here testifying in a-- Obviously, I am a colleague, but I am here in a different role as well. I am a member of the-- I am a trial attorney, and I am a member of what is called the Defense Bar. I represent mainly insurance companies. In that regard, my testimony can be taken--

I believe the establishment of your Committee on Insurance, as an area of law to be studied, in and of itself, is one that has been long needed. No problem area today is more prevalent than that of insurance, whether dealing with liquor liability -- as I believe Karl has been doing for a while -- medical malpractice, legal malpractice -- as our rates have now risen, quadrupled this year -- product liability as some of us have been working on for quite a few years, or the most obvious -- automobile insurance. However, I would hope that before any pronouncements are made by your Committee, you would make sure they are done on a studied basis, not on a political rush to judgment.

All acknowledge our auto insurance costs are too high. Please, let us this time analyze why and provide a real solution to the problem. Too often we, as elected officials, react, rather than acting upon an informed studied position. Too often, we do what is politically expedient, not what is correct based upon the empirical data available to us.

As one of the few legislators who openly opposed the most recent, and I use the word "reform" loosely -- I put in quotes in my typed version -- I hope to not be appearing at a committee two years hence, and again having to say to my colleagues, just as I am saying today, "We have fiddled around in the past; let us not fiddle around in the future." Let us stop the shenanigans. Let us give the people of our great State meaningful automobile insurance reform.

Today I appear as the only defense trial attorney in the New Jersey Legislature. I have been in the insurance field for 20 years. I have been a credit investigator. For those who may not know it, that means retail credit -- when I was in college. I was a field adjuster, and I have been an underwriter, and I have now been a practicing member of the bar for the last 13 years. I would hope that my experience has given me some degree of expertise, and that based upon same, my testimony can be given credence upon that basis, not as an Assemblyman, but as a practitioner in the insurance field.

Although I respect all of you -- most of you I know, obviously, personally -- as elected leaders of our State, I suspect you would object if we drastically altered your field without the proper

study, whatever that field of expertise or your business may be. I hope we do not adopt the knee-jerk reaction -- that I, quite frankly, heard last week -- when the Governor placed the blame for our present insurance problems on the greed of the trial bar. While there may be some degree of truth in the statement, it is a generality. I believe it was based more on the fact that attorneys are not favored in the public opinion polls than on the statistics available on the issue at hand. Politicians, doctors, insurance agents, and the companies all share the blame.

First, as someone who had to work for everything he ever got -- who made his way through college by cleaning toilets and being a janitor -- I resent anyone -- a man who may be well-intentioned, but who inherited utility companies or anything else -- from now setting himself up as an expert in a field with which he is singularly unprepared and uneducated. For the Governor to now come down from the proverbial mountain to issue his edicts in this field, I believe, is ludicrous. I believe people in the insurance field may be a better source. They deal in the area.

Similarly, while I personally respect my former colleague, Hazel Gluck -- I have known Hazel for many years -- I, again, do not believe her brief tenure as Insurance Commissioner has made her the ultimate authority. Quite frankly, I resent an attack on my profession, and would note for you -- as I'm sure you know -- throughout history, the totalitarianists of history have always made the legal profession, and most particularly the trial bar, their first whipping boy. The reasons then, and I believe now, are obvious. If you cut off some of the educated and cut off some of the mouthpieces, others will follow. I hope we, the Legislature, do not do this in a Pied Piper fashion.

As for the issue at hand -- the problem with our no-fault system and the issue of the verbal threshold -- I am sure you will hear of the success of Nevada and the initial success of Pennsylvania in abolishing no-fault versus the Florida debacle from other speakers. Therefore, I will attempt to show you where I believe the real problem lies in no-fault, and then make suggestions to you upon which we can

base, for it is your shoulder that this monumental task of repairing the system has been placed.

The major problem I see with today's system was increased when the Governor and us in the Legislature adopted the 1964 changes. We have made malingering a profession. We have rewarded those who have exaggerated their alleged injuries, rather than attempt to have injuries resolved. We have made survival impossible for any casualty insurance company writing automobile coverage, as we have given dishonest and immoral plaintiffs, physicians, and yes, attorneys, the key to the pot at the end of the rainbow.

We have made heat treatments, diathermy, physical therapy, and manipulations the cornerstone of a system of theft and deceit. We have stabbed the carriers with unsubstantiated PIP payments for subjective injuries, while multiplying the supposed medical specials upon which, in reality, all cases are settled. This double-edged sword of PIP is killing the insurance premium payers of New Jersey.

Two years ago I introduced a bill, which I have not pre-filed due to the cursory nature with which it was previously avoided. What this bill stated was that a major problem could be resolved in an all too simplistic method. If we continue to use the criteria of a monetary threshold, let us use a rational basis for same. Let the only items that qualify, no matter what the minimum may be, consist of surgery qualified physicians -- not faith healers -- therapists, chiropractors, or to an extent, even general practitioners.

If these other treatments are needed, so be it. Let them qualify for payment under PIP to make sure that everyone who needs care and chooses to pay for same, receive same. But, let us not give an incentive to run up bills to increase medical specials. In my years of practice, every conversation I have ever had with a plaintiff attorney started with the words, quote, "The specials in this case are 'blank'." Unquote.

Similarly in almost every case I have seen with a soft tissue injury, the major treating surgery-qualified physician has been a minuscule portion of the bills. The heat treatment, therapy, manipulations, and the like have made up the lion's share of the PIP payments. Again, the carriers are paying on both sides.

I have seen \$10,000 alleged from faith healers. I have seen so-called manipulations to entire families, even children, something which as I'm you know, would be a contradiction in terms on their undeveloped skeletal system. I have seen a manipulation that was done to a person with a femoral rod extending one-half inch above the femur where a manipulation was done on that person. If these were not done solely for greed -- and not only of the attorneys -- I would eat those bills myself. And yet, everyone had to be paid by PIP. If a doctor makes an error in his treatment and it stemmed from an automobile accident, we still are forced to pay. I don't think that most people know that. Let us cut them off at the source. Let's cut off people that are cheats. Let's make sure that the bills are honest and that we pay everything straightforward.

Let us not fall into the blind abyss of a rhetorical solution, such as the verbal threshold. Face it -- this makes every single case a case where there is a jury question. That does not decrease cases at bar, but increases.

My brother is a practicing member of the Defense Bar in Ft. Lauderdale. My father has been in the insurance business for 40 years and has spent the last 10 in Ft. Lauderdale. My other two brothers are both insurance adjusters in Florida. They all agree where they have dealt with the verbal for the last six years that it is a cruel hoax on the insurance-paying public.

Furthermore, in addition to a real reform of the monetary threshold, which today, I believe is a license to mistreat -- or at the very least to over-treat -- I would ask you to consider the following possibilities:

- 1) The history of our courts is that a verbal threshold would face a tenuous -- at best -- constitutional future. Presuming same, please do not build up again the hopes of our citizens when such hopes may be foundlessly based.

You could also consider a new course based upon the one successful portion of the recent reforms -- that is, the arbitration system. Here in Camden County, yesterday I went to the computers with several of the judges and several of the other people trying to get the

numbers. Only 155 out of the 1443 cases ever requested a trial de novo. A 90.7% success ratio in the first full year is fantastic. Build on it. Do not destroy it.

The arbitration system is working because you force the parties to sit down and get together, not in the confines of a trial, but in the confines of a short, quick procedure -- not in the confines of all the evidence having to go in under the normal rules, but into a short synopsis. Not where you have to bring in the experts and bring in the doctors at tremendous costs. The average doctor coming in to testify will charge us approximately \$750 for one part of the day. We can eliminate any of that that we can by arbitration. Give it a chance. Improve it. Do not destroy it. Do not destroy something that has just started to work.

Regarding the arbitration system, I would also make the following specific recommendations, no matter what the dollar threshold, presuming same is maintained, even if it is zero:

Allow six months for the settlement of a case after the physician releases the plaintiff or the condition has been shown to be medically stabilized. We could have a system where filing a summons could toll the statute of limitations. This would allow the carriers this period to negotiate and adjust the case. This would allow a system to be built upon rather than to be destroyed -- to start afresh.

If during that time period the case is not resolved, and the tremendous cost saving that would be necessary if it was resolved -- effected -- the case could then be litigated under the following criteria:

- 1) If the plaintiff chooses the option -- an option -- of under-insured coverage, he can choose a jury trial. The rationale being very simple: He has chosen a very specific option and paid for a very specific option to protect himself and his family from those that are under-insured or uninsured.

- 2) All cases where the defendant has coverage of \$100,000 or less would go mandatorily into the arbitration system -- obviously, a substantial increase in the present system.

- 3) All cases where the jury demands, or the demand exceeds \$100,000 would go into the jury system.

4) For a higher amount, the plaintiff could waive the jury system and allow themselves to go into the arbitration system.

5) PIP particulars become options. You get what you pay for. If you do not have useless funeral expenses-- You do not get useless essential services. You would get only what you need. Many people today are still paying two and three times for coverage they do not need.

This system may seem too logical and too easy. Its simplicity, I believe, is the solution. If our citizens understand the system, it will work. We have not allowed a system to stay in place long enough for any of us to understand it, much less for the residents of the State to understand it. My proposed system is understandable. It is an improvement on the present system, not a political hoodwinking of our citizens. It also goes -- from a practitioner's standpoint -- to the core of where the massive expenditures are. You could easily, I'm sure with the proper tables and the proper input into your Committee, mandate a reduction in insurance premiums.

Thank you, Chairman Loveys and the members of the Committee.

ASSEMBLYMAN LOVEYS: Dennis, thank you. Do we have a copy of your testimony?

ASSEMBLYMAN RILEY: Yes.

ASSEMBLYMAN LOVEYS: We do. Anybody have any questions for Dennis? (no response)

ASSEMBLYMAN RILEY: Thank you very much, Ralph.

ASSEMBLYMAN LOVEYS: Thank you, Assemblyman. I would like to call on Mr. Joseph O'Neill, ATLA.

**JOSEPH O'NEILL:** Mr. Chairman, members of the Committee, as you know, my name is Joe O'Neill. I have law offices in Vineland in Cumberland County. I come originally from Bloomfield up in Essex County, and I've tried cases in most of the counties of the State.

I am a member of ATLA, as the Chairman has indicated. I should say, however, that income derived from automobile accident cases is not a major portion of the fees that my firm earns. We do a lot of product liability and medical malpractice work. I should say also that I do defense work for three carriers, so I have interests on both sides.

I noted with interest the testimony of Assemblyman Riley in terms of the workability of the arbitration system. I can tell you, if I may, that in my home County of Cumberland, that over 92% of those cases on the trial list that are arbitrated are settled. So, the list in Cumberland County has been almost decimated. The trial list has almost been decimated by this procedure of arbitration.

I can tell you that my experience has been the same as that of Assemblyman Riley's. So, I would think that perhaps you good people might look at that in terms of factoring that into whichever legislation you eventually decide would be best for the citizens of the State.

Now, last Friday, a representative of the State Farm Insurance Company apparently indicated -- from the tape I listened to of his testimony -- that if the verbal threshold were enacted, there would be a savings of less than 10% of the cost of the average person's auto insurance premium. Of course, you have heard this so many times as I've listened to the tapes of the various witnesses who have testified. I think there is a real substantial question as to whether-- If we can expect that kind of reduction in rates, it is worth it to give up the right to sue.

Frankly, having defended for insurance companies, as well as made claims against them, I can echo the experience of Assemblyman Riley. There are fraudulent claims; there are padded bills. But, I'll tell you something else. There is a great majority of people who, in the litigation system, have real ailments -- people who are seriously injured and who, because of the liability system, really deserve to be compensated.

You know, you hear about these big jury verdicts. They are the ones that get the attention. You don't hear about the fact that in most months in the past year in New Jersey, the verdicts from juries have been for the defense. You hear about these multi-million-dollar verdicts. Well, they are not the rule in New Jersey.

In my experience, just last week I defended a case for the Deptford Mall, which is a big shopping mall in this area. The people going into the case said the case ought to be settled. It was tried to

be settled, but it just wouldn't work out. The dollars weren't right; the case had to be tried. It was a slip-and-fall case. The verdict was for the defense, and that is not at all an unusual case.

When you have 51% of the jury verdicts coming for the defense, I don't think -- I really don't think -- that we have a system where people, just because they are hurt, are automatically compensated. I really think that there are some people who receive some serious injuries and aren't faking them. I say that even when I'm on the defense side. If they are real claims, these people really have the right to be compensated for a period of time maybe when they can't do things that they're used to doing.

Say, for example, a person who hit the dashboard or hit the windshield, and they've got headaches. Now, you can't see a headache. You can't identify it, and you don't know if the person is telling the truth or not. But, if you've ever had a headache -- and which of us hasn't? -- you just don't feel like doing anything. You don't want to watch television; you don't want to go out; you don't want to talk to people. You can't put your finger on it, but you just don't feel well.

Now, question: If someone drives a car negligently and causes this -- more than an inconvenience to somebody -- is it right that the injured person, through no fault of his or her own, has to suffer? What about a person who receives a much more serious injury, say a couple of broken legs or a broken back or something? I don't know. And you gentlemen will know what is in your minds as you consider the verbal threshold, because I think for all of the testimony and the research you have heard and done, you know a lot more about this concept than I do. But, I'm just wondering if, in your concept of the verbal threshold, would people with injuries such as a broken back, or a couple of broken legs, or broken ribs, which would heal, should be compensated for maybe being out of the mainstream of their lives for six months or eight months or ten months? I do know. I don't know what the intent of the drafters of the legislation -- Assemblyman Weidel -- would respond in that respect.

It would seem to me, trying to look at it objectively, that people like that who didn't cause their own injuries should receive

some compensation, only because they didn't put themselves in that position. Should they be restricted to merely having their bills paid? I don't know, but I would think not.

Now, I don't want to just redundantly go over the testimony that has been presented to you people here. I would like to very briefly pick out a couple of things I think are somewhat important that perhaps maybe you would consider.

The Insurance Brokers Association representative testified -- from the notes I took from the recorded testimony -- that consumers are being misled. I don't really think they are being misled. I think they just don't know. They don't know what this insurance law is all about. You know, a lot of people get their forms in to renew their policies, and they don't read what's available to them. Maybe that's one of the reasons that people do not take the options that are available to them. It seems that that representative testified that they didn't think -- the insurance brokers -- that the amount of savings was worth taking those options. Maybe that's true also.

I think the factors that are important, however, are these: For those states that have had the opportunity to go through a verbal threshold -- and I heard Assemblyman Aduvato say that we really have a verbal threshold state-- I guess that is a question of semantics. I don't know what the answer is as to that. But, I do know one thing, and that is, for the state that has the law that has been identified here as A-1, Michigan has not really had a good experience from what I've read with this type of law. If the premium rate increases over a period of seven years' experience to the tune of 108.2%, that doesn't sound to me like a good experience -- one that our people in this State would enjoy.

We do know that in New York and Florida, they haven't had that type of increase, and I think the stats show the reason is that there is not unlimited medical benefits like we have in New Jersey, and as they have in Michigan. We know that New York has a \$50,000 cap, and in Florida there is a \$10,000 cap. It seems to me from the testimony I've heard -- even from the Allstate representative, Mr Pike -- that the main reason for the increase, together with the rising costs of

automobile repairs, the main reason for cost of rising insurance premium rates is the tremendous -- tremendous -- medical benefits program. I think Mr. Pike characterized that the Cadillac of medical benefits programs. I think he also indicated that Allstate would be in favor of non-compulsory insurance. Does that indicate that the only reason that those who were in favor of the threshold -- I'm talking about knowledgeable people -- are so in favor because it is too darned expensive. Then, I think if that is so, we've got to decide, are there other ways whereby people who retain their right to be compensated for their pain, their suffering, the disability, their inconvenience, and still be able to afford the coverage that they need -- that we all need?

In case, God forbid, we are the victims of an auto accident, I would think most respectfully, gentlemen, that the concept of arbitration is working. If the experience that I've had in Cumberland, and Assemblyman Riley has had in his county, prevails throughout the State, it might be worth factoring that into whichever legislation you finally decide is best for the people of the State of New Jersey.

Thank you very much for giving me your time.

ASSEMBLYMAN LOVEYS: Thank you, Mr. O'Neill. Any questions from any member?

ASSEMBLYMAN KELLY: I've got one question.

ASSEMBLYMAN LOVEYS: Mr. Kelly.

ASSEMBLYMAN KELLY: In Michigan you said it went up 108%.

MR. O'NEILL: Yes, sir.

ASSEMBLYMAN KELLY: What is the annual premium in Michigan?

MR. O'NEILL: I don't know the answer to that, Assemblyman Kelly. I think it's included in the-- I don't really-- I'm sure you won't give me the time to look through this volume, which is entitled "No-Fault, the Record, Promise and Performance -- Myth Versus Reality," which is offered by Professors Webb and Lilly, both of whom are Professors of Insurance at colleges in the south -- one of whom is an actuary. I think that information is in here. I didn't pull it out, but I think if you have that available to you -- if you don't I can provide you with a copy -- the answer would be there.

ASSEMBLYMAN KELLY: I'll look for it. Okay.

ASSEMBLYMAN WEIDEL: Mr. Loveys, may I ask--

ASSEMBLYMAN LOVEYS: Mr. Weidel?

ASSEMBLYMAN WEIDEL: Sir, I don't mean to-- But, that Webb and-Lilly report, who was that-- Who paid for that report?

MR. O'NEILL: The Pennsylvania Trial Lawyers Association.

ASSEMBLYMAN WEIDEL: Thank you. Now, the Department of Transportation in their latest report that Congressman Florio released says, "Since the institution of no-fault in Michigan, the overall change in injury insurance costs as a result of no-fault is minus 17%. In New Jersey, the overall change in injury insurance costs as a result of no-fault is a plus 65%."

So, what we have here is figures that are substantiated by the Department of Transportation in a very comprehensive study, which shows that Michigan has decreased, and ours has gone up something dramatically.

MR. O'NEILL: May I respond to that, Assemblyman?

ASSEMBLYMAN WEIDEL: Yes.

MR. O'NEILL: Yes, there are various factors that I think are salient in assessing what you've just said. Number one, I think it's true that in this State there is a much denser population than there is in Michigan. Therefore, we have a lot more cars per square mile on the road, and we can't expect-- I think experience would show that we have a lot more auto accidents per capita than they do in the State of Michigan. I think that is a factor -- a demographic factor -- that is important in assessing those statistics.

ASSEMBLYMAN WEIDEL: I thank you, but if somebody wants to use it the other way, they'll say that Michigan is the same as New Jersey. You know, you can use those figures any way you want.

The fact is that Michigan has reduced its premium, and New Jersey's has gone up. Do you have any feeling where it will go if we don't do something? If we've increased 65% since no-fault, where will we be in 15 years or 10 years?

MR. O'NEILL: You know something? I agree with you. I think we ought to do something. What my question is, is, what should we do? Should we take away the right to sue to lower the cost of being

protected, or is there some way that we can possibly combine those two factors to give people low-cost -- not low-cost; you get what you pay for pretty much, I think -- but a lower cost insurance package, hopefully retaining as many of the benefits as we can. Perhaps by our reducing or putting a cap on the medical benefits program, and still giving those people who are entitled to recover-- Those people didn't do anything wrong, or just sitting perhaps in a parking space and got nailed. Give those people who had a real injury the right to recover, because if they're out of commission for a period of time -- I'm not talking about a week or two-- I've represented people who have been out of commission for a year or two, and more. Give them the right to be compensated to some extent for their injuries, their pain, their suffering, their inconvenience.

I'll tell you something. You know, if you are sick -- I just tell you parenthetically, I climbed out of a sick bed today to come down here -- if you're sick, you don't enjoy life. Money can't buy good health. You can take anybody that received a serious injury, and you ask them, no matter how much money they got, "Was it enough to pay them for the injury that they received -- for the pain, the suffering, the disability?" Wouldn't they rather not have the money and retain their good health? I wonder if there is anybody who would disagree with that. Anybody who has been sick or injured to any extent, I think, would agree that there is not enough money to pay for good health. You'd rather have that than any amount of money, no matter how generous -- how overly generous -- a jury might be.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Mr. O'Neill, you've been alluding to this in attempting to answer Mr. Weidel, but I've asked this question of other attorneys, so I think it's only fair that I ask you the same and ask for your reply. If our automobile insurance premiums are too high and you are opposed to establishing a verbal threshold, to reduce the amount of litigation in our system, what suggestions do you have to reduce our premiums, and what benefits would you reduce or eliminate?

MR. O'NEILL: I think there are a couple of basic concepts that should be considered. Number one, I think that if the concept of

arbitration can be made mandatory so that everybody involved in a claim arising out of an automobile accident is going to have to go through that, we are going to de-clog our courts. We are going to make for faster solutions for people are really injured. I think that is an important factor.

Secondly, I think another concept that should be considered is the abolishment of no-fault. I'm not advocating that. What I'm saying is that maybe-- Maybe the Study Commission that was referred to by Assemblyman Adubato, I think last Friday -- that was enacted-- I think there was a law providing for in '83-- The Commission was supposed to report at the end of this year. If such a Commission could be founded and made workable and studied the situation, perhaps they would be able to give us a realistic report saying what specifically is wrong with the system, and what, on the basis of their experience and their studies, could be made to change it. Maybe they would be able to give us a plan that would be -- maybe not pleasing to everybody -- fair to everybody. By everybody, I mean the citizens of the State. I don't mean the insurance companies; I don't mean the trial lawyers. I mean the people like you and I who drive on our roads, who are entitled to be compensated if someone else causes them injury.

I would think, in short, that we really ought to look at whether we should abolish the no-fault system, one. Two, I think if the conclusion is arrived at whereby the no-fault system should stay, I think that there should be a consideration for a cap on the medical benefits program. I think, in view of our experience, we would find that there would be a much lower -- a much lower -- rate because of that very high experience we've had in terms of the rising costs of medical coverage.

In terms of the rising costs of property damage repairs, I don't really have the expertise to suggest to you how we could handle that. Maybe there should be some sort of an inspection station. Maybe there should be approved auto repair businesses -- people that can be trusted not to pad an auto repair deal -- that are monitored, that would repair only those damages that were caused by the accident, and for a fair price. That is a possibility.

ASSEMBLYMAN LOVEYS: Thank you, Mr. O'Neill.

ASSEMBLYMAN WEIDEL: I'd like to ask Mr. O'Neill one more question, Mr. Chairman. Mr. O'Neill, when the reforms of 1983 were in effect, did you support them -- the \$1500 and the \$200 threshold?

MR. O'NEILL: I supported the presentation of those options for people to consider. I personally did not opt for a then \$1500 threshold because knowing that it would increase -- and now it is \$1700 -- I felt that the only way, if I were hurt, that I could reach that if I were not seriously injured would be to do something that would be wrong, which would be to pad a bill. I think that is improper.

I think that the \$200 threshold is not realistic. I really don't know that any threshold is a realistic way of handling this, because the reports show that whether it is a \$200 threshold or a \$1700 threshold as we have here, whether it is a \$4500 threshold like we have in Hawaii, or another kind of threshold, it will be met by certain unprincipled people.

I think the question comes down again to this: How can we provide a medical health care package that is adequate to protect our citizens who are unfortunate enough to be involved in an auto accident, while at the same time making such coverage -- first-party and second-party coverage -- affordable? Again, maybe no-fault is not the way to go. If it is the way to go, maybe there ought to be a cap.

Assemblyman Riley pointed out earlier the experience in Nevada and Pennsylvania. I don't know that we have enough experience in Pennsylvania to say, "That's really working." It has been in existence too short a period of time. Of course, Nevada appears to be working with no-fault any more. But I would like to see a study commission examine what the experiences have been of those states that have had verbal thresholds -- those states that have abolished no-fault -- and find out what is the best thing for the people of our State, and then let's go with it.

ASSEMBLYMAN WEIDEL: That's what we're trying to do. Now, did the American Association of Trial Lawyers come up with a plan? We've had no-fault since 1973. You tacitly approved of the 1500 and the 200; you took away somebody's right to sue whether they had 200 or 1500. If you selected the 1500, you took away their right to sue.

The District Court in Washington, DC said the change in the economic -- I mean, monetary -- threshold is unconstitutional because you're buying the right to sue. That's exactly what the Court said, but they said the verbal threshold is constitutional. And, every attorney that comes here-- Mr. Karcher said, "Well, you know, Mr. Weidel." Is it constitutional in all these states to have a verbal threshold. The people of your profession, sitting on the bench-- Tell the people of that state that under our State Constitution, it is constitutional.

You argue a philosophy. You're not arguing a constitutional ground. You're saying all along that it is constitutional, but you're telling us that we shouldn't have a verbal threshold. Those states that have it have good experience with it. We're looking for a solution. The trial lawyers haven't come up with a solution. They're here now in 1986 telling us what we can't do. Why don't you tell us what we could do?

MR. O'NEILL: I think that is a good pointed. I'll tell you what. I'll take back to the organization -- and I'll take it as a challenge--

ASSEMBLYMAN WEIDEL: No.

MR. O'NEILL: A good question, a real good question, and see if we can come up with some legislation that might be attractive and fair to the people of our State. I do. I think it is a real good question.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Mr. O'Neill, we want to--

ASSEMBLYMAN ZECKER: Can I ask one question?

ASSEMBLYMAN LOVEYS: Oh, sure, sure, Mr. Zecker. Go ahead, sir.

ASSEMBLYMAN ZECKER: They usually allow you to ask questions in alphabetical order. I'm always at the end. (laughter) Mr. O'Neill, you represent the New Jersey Affiliate Association of Trial Lawyers of America?

MR. O'NEILL: Yes, sir.

ASSEMBLYMAN ZECKER: Do you have a group that sort of controls your own organization? Do you have a study group that watches your attorneys to weed out the unscrupulous ones -- you know, the ones we hear a lot about? Do you know which ones I'm talking about? The ones that we call, you know, mill attorneys. They are attorneys who work with a bunch of doctors, usually a rotating group of doctors. You find-- And I've worked with an insurance company up until this month for 22 years in insurance claims. I've probably handled 1000 claims a year. I think if any attorney in the audience handled the amount of claims that I did, they wouldn't be here today. They'd be retired in Acapulco, because, quite frankly, if I got the 33% on the settlements, I'd probably be worth about \$3 billion today.

So, I have seen and lived with a lot of fraud that I knew was going on, but that I couldn't prove, because insurance companies can only go so far before the person starts threatening his civil rights, and the insurance companies back off. I think we all know as insurance companies and as attorneys, the best file is a closed file. So, you get the compromise coming in.

Do you have a group that monitors your own attorneys?

MR. O'NEILL: There is the Office of Attorney Ethics in Trenton, which is operated by the Administrative Office of the Courts, which does, in fact, monitor the workings -- the operations, if you will -- of the attorneys. I can tell you--

ASSEMBLYMAN ZECKER: Are you familiar with that organization?

MR. O'NEILL: Yes, sir, I am.

ASSEMBLYMAN ZECKER: How many fraudulent attorneys have they exposed over, let's say, the last two years in the State of New Jersey?

MR. O'NEILL: I don't know the answer to that, but I can get it for you if you like.

ASSEMBLYMAN ZECKER: All right, but your organization -- ATLA of New Jersey -- you don't monitor your own attorneys.

MR. O'NEILL: The Association of Trial Lawyers is a group of trial lawyers that does not encompass all the trial lawyers in the State of New Jersey. The Supreme Court of our State has decided to monitor all the trial lawyers, and it would be, I think, improper -- an

improper attempt -- if a group such as ours or any other group would attempt to do something that the Supreme Court has taken on its own to do.

By the way, I can tell you something. I was arguing in the Supreme Court not too long ago, and the case before mine was a case involving an attorney who had been disbarred several years ago for taking some clients' money. I was very interested in listening to the attorney who was representing this lawyer explain why he did these things. In fact, I checked on the decision when it came down some time later, and I found they did not re-admit him to the bar.

I think the strictures in New Jersey caused by the Supreme Court and monitored by them are, I think -- from what I understand -- the strictest in the nation. And, you know that they can't weed out all of the people who act improperly.

You know, I had a case in my office just about two months ago--

ASSEMBLYMAN ZECKER: Could I-- I have other questions.

MR. O'NEILL: Sure.

ASSEMBLYMAN ZECKER: And I know you're answering a lot of questions, but they're not the ones I'm answering -- that I'm asking.

UNIDENTIFIED PERSON FROM AUDIENCE: I don't know why you're asking that question. I may be out of order, but I thought--

ASSEMBLYMAN LOVEYS: You are out of order, sir.

UNIDENTIFIED PERSON FROM AUDIENCE: I thought this was supposed to be about--

ASSEMBLYMAN LOVEYS: Sir, you're out of order.

UNIDENTIFIED PERSON FROM AUDIENCE: No-fault insurance. Why are the trial attorneys being attacked by Mr. Zecker--?

ASSEMBLYMAN LOVEYS: Sir, sir, you're out of order.

UNIDENTIFIED PERSON FROM AUDIENCE: --who is obviously an insurance industry man?

ASSEMBLYMAN LOVEYS: Sit down. Sit down, please, or leave the room.

UNIDENTIFIED PERSON FROM AUDIENCE: I won't leave the room. I think it is disgusting--

ASSEMBLYMAN LOVEYS: Well, then sit down or I'll have you out of the room.

UNIDENTIFIED PERSON FROM AUDIENCE: (continuing) --what Mr. Zecker is doing.

ASSEMBLYMAN LOVEYS: And I don't want to hear you again explode like this.

UNIDENTIFIED PERSON FROM AUDIENCE: I'm fed up-- Well, I think--

ASSEMBLYMAN LOVEYS: If you have something to say, sir, we will call you in due time.

UNIDENTIFIED PERSON FROM AUDIENCE: Well, I think then--

ASSEMBLYMAN LOVEYS: You'll have anything-- You can say-- Just like everybody else here, you'll have your time to speak.

UNIDENTIFIED PERSON FROM AUDIENCE: (continues to speak -- everyone talking at same time, and transcriber unable to hear)

ASSEMBLYMAN LOVEYS: Sir, I'm going to ask the police to take you out of this room if you keep it.

UNIDENTIFIED PERSON FROM AUDIENCE: I'll be quiet for a while. (laughter)

ASSEMBLYMAN LOVEYS: You'll be quiet, period.

UNIDENTIFIED PERSON FROM AUDIENCE: I may enjoy being locked up, sir. If this is what is supposed to be an open hearing--

ASSEMBLYMAN ZECKER: Mr. O'Neill, I would like to say that I feel very comfortable with you because you seem like a very nice, honest man that is telling the truth.

MR. O'NEILL: I feel comfortable too, sir. I really do.

ASSEMBLYMAN ZECKER: Yes. I don't think I'm striking at anything that you and I-- You see, you represented yourself as a person who has been a plaintiffs' attorney and a defense attorney, so you've seen both sides.

I represented myself as an Assemblyman, who after 22 years of working for State Farm Insurance Company, has resigned from that company to avoid myself being in a position of conflict on this Committee. I think there are many people in government who should also resign from their positions because they are in potential conflict. I

don't feel I'm in conflict, so do you understand why I resigned from State Farm?

MR. O'NEILL: I don't think you are either. I certainly do. I have no problem with your position at all.

ASSEMBLYMAN ZECKER: I resigned so that I could sit here and perhaps help an insurance situation in Jersey, and I resent what that gentleman just said.

ASSEMBLYMAN KELLY: He's a lawyer.

ASSEMBLYMAN ZECKER: I've got a feeling he might be a lawyer.

UNIDENTIFIED PERSON FROM AUDIENCE: I'm a very good one too, enough to know what you're doing.

ASSEMBLYMAN ZECKER: You know what I don't understand? How does the insurance industry -- and it has been attacked today -- how do they handle a situation where-- I think you know, if a person has soft tissue injury or injuries in the area of \$200 to \$300, what would the average settlement be on a simple soft tissue injury of \$200 to \$300 in med bills?

MR. O'NEILL: Okay. I want you to know that--

ASSEMBLYMAN ZECKER: If you use the five-time multiple, it would probably be 1000 or 1500, right?

MR. O'NEILL: I wouldn't. Can I respond because I think it is only fair? If you were to give me some more information: For example, what is the liability? If the liability is weak--

ASSEMBLYMAN ZECKER: Rear-enders. All of them will be rear-enders.

MR. O'NEILL: Okay.

ASSEMBLYMAN ZECKER: Number one rear ends number two.

MR. O'NEILL: Okay. What would the injury sustain?

ASSEMBLYMAN ZECKER: Soft tissue. Whiplash.

MR. O'NEILL: Where about? Neck? Cervical strain?

ASSEMBLYMAN ZECKER: Call it what you want -- neck, cervical strain, anything.

MR. O'NEILL: Okay. Well, I think there is a difference because, for example, if you have-- I don't mean to-- I'm not trying to nitpick here. Okay? I just want to get the facts. You've asked me for my opinion.

If you're telling me there is a cervical strain as opposed to a sprain, which is a minor dislocation, I think that's an important medical factor to know because the value of the case would increase if there was a sprain as opposed to a strain. Okay? One. Two, are we talking about a working person or a non-working person?

ASSEMBLYMAN ZECKER: Let's talk about all working people.

MR. O'NEILL: Okay, so that person has been deprived of the right to work for how long, sir?

ASSEMBLYMAN ZECKER: Two weeks.

MR. O'NEILL: Okay. Now, how old is this person?

ASSEMBLYMAN ZECKER: Thirty.

MR. O'NEILL: Okay. What kind of job-- Is it male or female?

ASSEMBLYMAN ZECKER: Male.

MR. O'NEILL: What kind of job do we have, sir?

ASSEMBLYMAN ZECKER: No attorney has ever asked me all of these questions. (laughter)

MR. O'NEILL: Well, I think-- You know, if an attorney does his job right, he ought to ask those questions. Shouldn't he?

ASSEMBLYMAN ZECKER: Okay, but my point-- You're a very honest attorney. That is why I feel very comfortable with you.

MR. O'NEILL: I hope so. You know, I think we're being straight with each other.

ASSEMBLYMAN ZECKER: You know what the thing is? It is the encouragement. I think we both agree that the person does have a way of treating-- The \$200 or \$300 treatment isn't worth as much as the \$2000 or \$3000 treatment, generally.

MR. O'NEILL: You're right.

ASSEMBLYMAN ZECKER: Okay. Now, the thing is, we have a system right now in Jersey. We have a very good medical pay with PIP. I remember 20 years ago when you had the \$500 or \$1000 medical, it was amazing how many times the medical pay stopped when you hit the 500.

MR. O'NEILL: Absolutely.

ASSEMBLYMAN ZECKER: When we went into the no-fault system with unlimited pay, the encouragement was there. Number one, a person

could take six months off from work at 500 a week if he had the right kind of coverage. He could get paid five days a week for six months and build up his medical specials.

MR. O'NEILL: If they were that kind of people, right, and that kind of lawyer handling that case.

ASSEMBLYMAN ZECKER: Well-- And these are the kind-- I think what happened when we came in with this Cadillac package of benefits, what you have is, you have the abusers, and there is that tendency to abuse.

MR. O'NEILL: Absolutely.

ASSEMBLYMAN ZECKER: Now, am I convinced that a verbal threshold is the right way to go? Contrary to what that gentleman may see, I'm the fellow who had to go out to a lot of houses over the years and see a lot of things that when I walked out, quite frankly, I cried. A lot of sad cases.

I'm concerned, just as many other people are, that if we bring in a verbal threshold, are we trying to correct the problem with perhaps the wrong solution? I do have that concern, but I think you got to understand what the concerns of many people in the public are.

You know, I don't know if you got a hold of that Allstate survey.

MR. O'NEILL: Which one, sir?

ASSEMBLYMAN ZECKER: Or, if you heard about it anyhow. Allstate did a survey -- we -- some of us on the Committee -- have had an opportunity to read it, where many of the people who were surveyed -- they say something like 80% of the general public -- were looking towards a verbal threshold. That is how a bill like this comes about.

I think-- Whether they understood what a verbal threshold was is another question. But, the fact of the matter is, I think everyone sees that insurance is going up and up and up. We, on this Committee, realize that with a verbal threshold on the insurance dollar, we're probably only addressing about 30 cents of that problem, right?

MR. O'NEILL: Good point, right.

ASSEMBLYMAN ZECKER: Twenty-four, twenty-eight, or thirty cents of it, right?

MR. O'NEILL: Good point, yes.

ASSEMBLYMAN ZECKER: Maybe 50-55 cents is property damage -- cars, emergency road service, comprehensive. That is 50 or 55% of that dollar, and there are administrative costs, right?

MR. O'NEILL: Surely.

ASSEMBLYMAN ZECKER: So, even if we were fortunate enough to even wipe out -- which is not going to happen -- that 30 cents, we'd only be saving 30% of the average premium pay, right?

MR. O'NEILL: Yes.

ASSEMBLYMAN ZECKER: So, I think anyone on this Committee knows that if everything went well, we're still not going to be dropping insurance rates. The person that is paying \$1000-- If we succeeded in saving 50% of the 30 cents we're dealing with, it would only go down 15 cents.

MR. O'NEILL: Then at the most, you stabilize it.

ASSEMBLYMAN ZECKER: Or, on \$1000 policy -- \$150.

MR. O'NEILL: So, you'd stabilize it at best probably.

ASSEMBLYMAN ZECKER: And, if by the time it came into effect, perhaps inflation might come in, and two or three years down the road--

MR. O'NEILL: We're back here again.

ASSEMBLYMAN ZECKER: Exactly.

MR. O'NEILL: Okay. So, I think Assemblyman Weidel has a good point. I think we've got to do something. The question is, is the verbal threshold what we ought to do? Of course, that is going to be your decision. I'm just offering some suggestions, and you've got some real good ones of your own, obviously.

ASSEMBLYMAN ZECKER: I realize -- what I've asked a few times, and I only had one person jump up; that was today -- that what we want to look at is the insurance dollar. This Committee is just the beginning of looking at a portion of that insurance dollar spent. Right now, we are looking at 30 cents of that dollar.

MR. O'NEILL: Can I just--

ASSEMBLYMAN ZECKER: Correct?

MR. O'NEILL: Yes, sir, right.

ASSEMBLYMAN ZECKER: That is right, right?

MR. O'NEILL: Sure.

ASSEMBLYMAN ZECKER: Okay.

MR. O'NEILL: I just would like to say, I appreciate Assemblyman Weidel's open mind about this. I think he has demonstrated that today. I came here expecting people to have open minds, and by the questions, I've experienced that. I don't have any problem like some other people do with any pre-set conditions of the mind in favor of the verbal threshold. I think that you gentlemen do have open minds, and you're willing to explore other possibilities than the verbal threshold. That is all we can ask.

ASSEMBLYMAN ZECKER: A lot of people are coming up and repeating a lot that is a bad proposal. Okay. And what we're looking, maybe more today, is, if you don't think it is a bad proposal, what are your solutions to help reduce that 30 cents?

MR. O'NEILL: Good point. I will take that back to the organization from you and Assemblyman Weidel and from the Committee as a whole, and see if we can do something about that. I think it is a darned good suggestion.

ASSEMBLYMAN ZECKER: And I don't think I'm attacking attorneys.

MR. O'NEILL: I don't think--

ASSEMBLYMAN ZECKER: I will attack--

MR. O'NEILL: I feel comfortable with you, as you said you did with me. I really do.

ASSEMBLYMAN ZECKER: I will attack that portion of the attorneys that are mill attorneys -- that do have a pattern. That troubles me. It really troubles me.

MR. O'NEILL: I'll join you.

ASSEMBLYMAN ZECKER: And I feel that that is one area that should be addressed. I just don't know how to address it.

MR. O'NEILL: I think the way to--

ASSEMBLYMAN ZECKER: Because you can't have the attorneys solve their own problems.

MR. O'NEILL: Well, you can have the Supreme Court solve those problems because they are not practicing attorneys. So, they don't have that same interest as would a watchdog committee of

practicing lawyers. I think that is why New Jersey is respected in terms of how it monitors the improper, unethical, illegal activities of those practitioners that we have.

ASSEMBLYMAN ZECKER: But, sometimes I think the Supreme Court is too busy with a dozen other things, and they look upon insurance as one of their low priorities.

MR. O'NEILL: I can't speak for them. I don't know one way or the other, frankly.

ASSEMBLYMAN LOVEYS: Thank you very much, Mr. O'Neill.

MR. O'NEILL: Thank you, sir.

ASSEMBLYMAN LOVEYS: I'd like to call on Mr. Frank Gater, Professional Insurance Agents Association.

**FRANCIS P. GATER:** Thank you, Assemblyman Loveys. Laurine has copies of my testimony, I think, for the Committee. Excuse my nasal problem; I've got a bit of a head cold.

On behalf of the 1300 member agencies of the Professional Insurance Agents of New Jersey and their 8000 employees throughout the State, I would like to testify today in strong support of a mandatory verbal threshold for our State's no-fault insurance policies. Our Association also supports the implementation of a medical fee schedule.

We respectfully request that the Legislature take immediate action in this issue. The time for change is now, after many years of debate and controversy. Governor Kean indicated his support of these changes in his State of the State address last week. During his remarks, he called for the prompt enactment of a verbal threshold, and a medical fee schedule, and he indicated that he will oppose any attempt to repeal the no-fault law. PIANJ commends the Governor for this strong stance.

The time is long overdue to institute changes in our no-fault system which will significantly reduce the costs of auto insurance premiums for New Jersey drivers. When no-fault insurance was enacted in 1972, our lawmakers chose not to follow U.S. Department of Transportation guidelines which called for the presence of an exclusively verbal or high medical expense dollar threshold. The 1972 no-fault package incorporated an extremely generous benefits package and a low tort threshold of \$200.

In 1983, the Legislature enacted a complicated no-fault reform package designed to reduce auto insurance rates and limit future increases. But the Legislature chose not to establish a verbal tort threshold at that time. Instead, lawmakers implemented a two-tier tort threshold system, in which auto insurance consumers could elect a \$1500 threshold -- which has since increased to \$1700 -- or maintain the existing \$200 tort threshold. Further, a much-needed medical fee schedule was not included in the reform package. Such a schedule would effectively limit the cost of medical expense payments under auto insurance policies.

Since the 1983 reform package was instituted, it has become increasingly clear that additional changes are needed. Only 16 percent of New Jersey's auto insurance policyholders have chosen any of the options available to them, according to the Insurance Department. Indeed, Department records indicate that a full 87 percent of insured drivers have chosen to retain the \$200 threshold and the easier chance to sue in case of an accident. The average premium decrease for selecting the \$1700 threshold is only \$33.

The majority of New Jersey citizens believe the verbal threshold should be enacted. In a 1985 Gallup poll of policyholders on behalf of the Allstate Insurance Company, 83 percent showed strong support for the enactment of a verbal threshold as an effective means of reducing lawsuits. In addition, the most recent U.S. Department of Transportation report on no-fault systems states that New Jersey has the worst no-fault system in the country. The report further supports the existence of an exclusively verbal threshold to create a balanced, cost-effective no-fault system.

To quote a November 21, 1985 editorial in The Newark Star-Ledger, "Without general reform of no-fault, New Jersey will continue to be saddled with the lamentable distinction of having the nation's highest insurance rates." Obviously, that is not a trait New Jersey lawmakers can afford to perpetuate.

In conclusion, PIANJ believes that lawmakers should take immediate action to resolve the costly problems of New Jersey's insuring public. We strongly support the enactment of an exclusively verbal tort threshold and a medical fee schedule.

Thank you for the opportunity to be here today, and if I can answer any questions, I'll be glad to.

ASSEMBLYMAN LOVEYS: Thank you, Frank. I have one question. It has been alleged that some agents and brokers have become subject to suits themselves for advising clients, if you will, to take a higher threshold. Do you--

MR. GATER: That's true. In my office right now, I have a young lady who came in, signed for the higher threshold -- I thought she understood what she was signing for -- has now had an accident, and she's threatening to sue me for misinforming her because, as she now says, had she known that she couldn't collect with the \$1500 threshold, or the \$1700 threshold, she wouldn't have taken the \$33 premium savings. She would rather have had the opportunity to sue and "make three or four thousand dollars," in her words. Now, she hasn't filed the action, but those kinds of things are starting to happen right now. And that's one that has just happened in my own office, and where that will end up, I don't really know. But she signed the proper forms and so forth-- It's misunderstood.

The other problem I see is that, in my area -- I'm from Medford, New Jersey -- we have a lot of senior citizens coming in. And we advise not only the threshold differences, but also the medical deductible. There's an awful lot of confusion, and people come in and they just don't know what to do, so they decide not to do anything. That's the reason the current system is not working. The idea of change to the policyholder, with the option, is not confusing them too much.

ASSEMBLYMAN LOVEYS: Thank you Mr. Gater? Anyone have a question? Thank you, sir.

At this time, I'd like to call on Cornelia Haines of the American Automobile Association.

**CORNELIA HAINES:** Mr. Chairman, members of the Assembly Insurance Committee. My name is Cornelia Haines, and I am the State Chairman of the AAA Public Affairs Council. You'll have to excuse me, I have a cold, too.

The Public Affairs Council of the AAA Automobile Clubs of New Jersey is a statewide organization comprised of all six AAA affiliated auto clubs operating in the State of New Jersey. We have a combined membership of more than 800,000 motorists. I want to thank you for the opportunity to appear here today to offer our views about the needs for auto insurance reform in the State of New Jersey.

For more than a decade, auto insurance reform has stayed on the top of the list of priorities for our members and legislators alike. So, we wholeheartedly applaud your efforts here today and welcome the opportunity to work with this Committee to help devise a better, less confusing and less costly auto insurance program to serve the needs of all New Jersey motorists. I would be remiss, however, if I didn't acknowledge the fact that, over the past decade, the Legislature has made significant strides towards improving the auto insurance system. We have come a long way since the days when rising auto insurance rates, a \$200 threshold, and an assigned risk plan filled to overflowing, threatened to bring the system to its knees. But now, as a result of auto insurance reform measures enacted by the Legislature in 1983, motorists have the option to reduce the cost of their coverage by as much as 25%. This ambitious, if somewhat confusing, program allows policyholders to pick and choose from a menu of coverage options in order to come up with the coverage that is just right for them.

The 1983 reforms have fulfilled, at least in part, the promises made by public officials to bring much needed rate relief to New Jersey's long-suffering motorists. However, it is important to note that rate reductions have been achieved only as a result of corresponding reductions in coverage.

I think it is fair to say that at the time the last reform package was signed into law, there was a general agreement among public officials and the motoring community that more could, and still should, be done to affect more fundamental changes in the system. Now is the time -- at the beginning of the 202nd Session of the Legislature -- to begin to follow through and complete the job that was started in 1983.

In our view, the single more promising reform measure on the table for discussion at this point is the replacement of the current financial thresholds with a verbal threshold. Under this type of system, now in use in Michigan, motorists would be required to demonstrate that they have suffered serious damages before they could sue for pain and suffering. This system would help reduce the number of frivolous lawsuits and, eventually we hope, auto insurance premiums would also come down. The Legislature has been unwilling, in the past, to limit an injured party's right to sue by imposing a verbal threshold, although it is now evident that this is a necessary reform.

Again, we look forward to the opportunity to work with this Committee as you review this and other reform options. We hope that you will call on the Triple-A as a spokesperson for the motoring public as you proceed with the difficult and politically sensitive task ahead.

Thank you.

ASSEMBLYMAN LOVEYS: Thank you very much, Ms. Haines. Any questions? Do you want a copy of that? (addressing Committee Aide)

May I call on Nick Alexander, from the Senior Citizens Association?

**NICK ALEXANDER:** Thank you for allowing me to speak. My name is Nick Alexander, I'm the Chairman of the Southern Region of the New Jersey Federation of Senior Citizens, and our concern, naturally, is the ability of our senior population to be able to purchase insurance.

Of course we've had a long history of reform action being taken both by Governor Byrne-- As a result of the reform action, the insurance policy increased by 70%. Then, Governor Kean took over the reins and he promised us reform, and we ended up with a bureaucracy called the State Fraud Division. Although we already had a State Fraud Division within the State, this charade cost the taxpayers or insurance purchasers a sum of over \$570,000 to administer. Now, in plain language, that's a half a million dollars.

Now, I believe many of these reforms that have taken place, the priority wasn't always the reduction of insurance rates. I certainly hope that we are sitting here, and the efforts to reduce the rates-- Now, we are in favor of the low verbal threshold.

Thank you for allowing me to talk.

ASSEMBLYMAN LOVEYS: Thank you very much, sir.

MR. ALEXANDER: Thank you.

ASSEMBLYMAN LOVEYS: Selma Greenberg, private citizen? Is Selma here? Selma Greenberg? Probably stepped out. Eleanor Brown? Mr. Kirschner-- Phil?

**PHILIP KIRSCHNER:** Thank you, Mr. Chairman. I'm Philip Kirschner, representing the New Jersey State Bar Association.

The State Bar Association does oppose the verbal threshold, for a number of what we think are cogent reasons. The first one of which -- that you have heard some testimony about -- is that we do not believe that the verbal threshold saves a significant amount of money or will provide significant rate reduction, in return or in trade for eliminating many seriously injured people's right to hold a negligent driver accountable for causing those injuries. We know that through our experience, both with the options in New Jersey with the higher dollar threshold and the savings that were promised there, and what was ultimately wrought in savings. We heard the proponents argue savings of up to \$100; it came to \$33. We know that there had been calls for savings when no-fault was originally proposed. Those were never brought into being. Similarly, you heard testimony at the last public hearing, and again this morning, that the amount of savings generated by the verbal threshold would be roughly at the same or below what is available now under the current option system. If someone would take a \$1700 threshold, it would be no greater.

Assemblyman Hendrickson mentioned 30%, State Farm mentioned 33%, of the BI premium-- You can get 35% of the BI premium today if you select a \$1700 threshold. We do not believe that imposing a verbal threshold, and generating savings of less than what's available under the current system, is appropriate, and certainly not an appropriate tradeoff for eliminating some very, very substantial rights, not for people who have suffered minor injuries, but for people who have suffered serious injuries, and we'll get into that later-- I'll go into a little bit more detail in that.

Plus, I would like to point out, that that was probably a maximum projection by the industry. I think it was questionable

whether we will even see projections or savings of that amount, given the previous track record on what savings were projected.

The second point I would like to bring out is that the experience in other states that have the verbal -- the three that have it -- are not positive. They certainly are not positive in our neighboring state and our most demographically alike state of New York, which has the third highest premiums in the country and a system of benefits far less generous than we have. They have a \$50,000 limit on PIP; we have unlimited PIP. And the only reason that their rates are not even higher than they were, is that when verbal was enacted there was mandated rate reduction at that time. If there were not even mandated rate reduction, I'm confident that New York's rates would be number one.

Florida probably is the worst of both worlds. Florida probably has the worst system in the country, in that they have-- Not only do they have a verbal threshold and take away the rights of citizens to sue for serious injury, but on the other aspect, in terms of a trade-off, they limit PIP benefits to \$10,000, with a \$2,000 deductible for those that opt it. So, there, the citizens lose on both ends. They lose on the PIP side and they lose on the side of the verbal threshold.

In terms of Michigan, there are a couple of other aspects that have to be pointed out. Rates in Michigan didn't go down; the rates in Michigan have doubled in the seven-year period. The talk of savings is more a talk of rates stabilizing or trailing inflation, which the industry itself has conceded, on many, many occasions, as opposed to absolute dollar savings. Now, whether that is, indeed, worth the trade-off of eliminating seriously injured people from holding the driver accountable, we think is very, very questionable.

Also in Michigan, you are able to make PIP your secondary carrier, your health coverage -- your Blue Cross, your Blue Shield, Medicare, Medicaid -- your primary source of reimbursement of medical expenses. If you choose that, you get an automatic 40% reduction in your PIP premium.

Those are all things that have to be considered. The other thing we have heard a lot of talk about is, one of the reasons justifying, perhaps, a verbal threshold, or a very, very restrictive threshold, is the magnificent benefits, the unlimited PIP benefits, no-fault benefits, that people get in this State. I think we really have to examine whether it really is that wonderful. In this State -- and this is confirmed -- 85% of the people have first-party health coverage besides PIP. If PIP were to disappear from the face of the earth today, if a person were injured in an automobile accident, they could still go to their own health carrier, get their medical expenses paid, not have to go to court like in the old days, and not have to resort to suing one another. They would get their benefits paid by their own health carrier promptly, without resort to court.

So what PIP is, is basically, for many, many people, duplicative -- and expensive at that -- health coverage that a lot of people neither want nor need. Those who want it or need it, fine, but it really is not a bargain in terms of what it provides, number one, and number two, certainly not a bargain justifying a tremendous, tremendous lessening of the ability of seriously injured victims to go to court.

The next point, and I think it has to be brought out, is to give some flesh and bones to what we mean by a verbal threshold, and what the impact will be on accident victims. I think -- and many of you I know through personal experience -- we have been involved in this verbal threshold battle for so many years, the words themselves have taken on a symbolic meaning perhaps far beyond what the truth is. The verbal threshold does not just eliminate people with minor injuries from suing. Now, it has been presented that anyone who is seriously injured need not worry, they will be able to sue. But I think you have to examine what seriously injured means. Seriously injured, at least according to the cases that come out of Michigan, which the verbal threshold that you are examining is patterned on, have what we think are some very disturbing and shocking results. I mean, some of the cases that have been brought to your attention before were not just brought to you to shock you. They are actual cases. The fact that

ruptured spleens, lacerated livers, broken pelvises, broken legs, broken hips, and broken kneecaps, which are very common in accidents, all those have been excluded under the Michigan law. People have been unable to sue a negligent driver for those types of injuries.

We don't think that those are the kinds of "minor or frivolous injuries" that most people are talking about when they talk about eliminating the right. You know, a sprained ankle is one thing; a broken ankle is a different thing. Those are the kinds of differentiations that have to be made. Under the language of the bill before you, those kinds of injuries would be excluded, as would-- There are many documented cases of people who have suffered lengthy hospitalizations, who have been out of work six months to a year, or children who have been out of school for a year. The courts in Michigan have ruled that if there is no permanent injury, be it after six months or a year, that is just too bad, and that's tough. That has basically been their rulings.

That we don't believe is fair. There has also been talk, and even two of the industry representatives at your last hearing have said, "Well, such and such would be a permanent injury and it would qualify." I tell you, look at the language -- I know it is not the only thing you are looking at in Assemblyman Weidel's bill -- there is no mention of permanent injury there. In fact, the absence of the language of permanent injury would mean, "Well, since a person is healed after six months or a year, we will not permit a person to hold a negligent driver accountable." We don't think that is right. We think somebody who does have a permanent injury, someone who will have that injury or the loss of use of a body function with them for the rest of their life -- that is not a faker; that is not a malingerer. That is a person who deserves some sort of right to call into court the person who hurt them. Remember the people who will be hurt by this bill have done nothing wrong, other than be involved in an auto accident. They haven't done anything wrong. The people who benefit by this are the people -- the guy who runs the stop sign, the drunk driver, the speeder. Those are the people who benefit who get off scot-free because someone doesn't consider a punctured lung or broken rib a serious enough injury.

We just don't think that in basic fairness that is right. When and if you do consider the verbal threshold, we think you ought to consider language that permits these types of people to retain their rights.

The last thing that we want to say is that we do think that the current system ought to be given a chance to work. It is undeniable that since the option system has been in effect, there has not been a rate increase for two and a half years. Since the financial disclosure law has been passed, it will not be fully implemented, and you will not have that data on which to make a judgment on whether the companies are profitable or not, or find out what is going on with the companies, until at least July of '86. There has been no study of the impact of the options. There has been no study of the impact of the JUA on rates. There has been no study or hard statistical data brought to you, indeed, of what the verbal threshold will save. None of that is before you.

We believe that those kinds of things should be looked at before the very, very restricted verbal threshold that you have before you is passed. Sure, people should look at various, various systems, but we ask you not to go to the almost ultimate extreme that the verbal threshold before you really is, and take away people's rights to hold negligent drivers accountable for very, very, very little in savings.

Thank you.

ASSEMBLYMAN LOVEYS: Mr. Zecker, do you have any questions?  
(negative response)

ASSEMBLYMAN WEIDEL: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Mr. Weidel?

ASSEMBLYMAN WEIDEL: Mr. Kirschner, I want to commend you on your dedication and your knowledge of this subject. You are the only one who sat through -- except the members of this Committee -- who sat through a full day of hearing testimony in Newark, who sat through a hearing this morning, and who is here again this afternoon; and, you will probably stay to the end because you want to see what may come up or may be proposed by people.

However, you keep talking about the PIP benefits and the medical coverage that so many people have in this State. Isn't it true that just because someone has a medical policy -- they could have gotten an application in the mail, they could have seen it in "Outdoor Life" or "Sportsman Magazine": "We'll pay all your medical expenses up 'til," and then there are exclusions in that -- that they may tend to buy a policy, and to say to somebody, "Oh, I can take a big deductible on my PIP and save some money"? Then they go to the hospital and they find out they are not covered.

The statistics that you say about people who have basic medical coverage -- all kinds of health policies, all kinds of hospitalization policies -- people are concerned. They know that with their PIP coverage it is from dollar one -- dollar one. You alluded to Blue Cross and Blue Shield. You are aware, aren't you, that Blue Cross and Blue Shield do not cover blood transfusions, but that PIP does? And I am sure you are aware that Blue Cross and Blue Shield cover nothing in the mouth -- teeth that are knocked out in an automobile accident -- but your PIP coverage does.

How can we-- How can the Legislature design a package of coverage for people injured in automobile accidents, and people testify that they shouldn't have that coverage? That is the specific question I'm asking.

MR. KIRSCHNER: I think the point we are trying to make is that certain policies may have limited exclusions, and then they have their \$200 deductibles and their 20% co-pays. But basically -- basically -- group health coverage, employer-provided health coverage, and certainly Medicare and Medicaid, provide virtually the same coverage that PIP does. I mean, when we are talking about a trade-off, we have to examine what we are trading. What we're saying-- I said that PIP coverage is wonderful. It is dollar one coverage, but there is no denying that it is expensive coverage.

ASSEMBLYMAN WEIDEL: Sir, if we didn't cover those expenses under the PIP, and we took the easy way and said, "Collect it from your group carrier; collect it from your individual company," wouldn't the rates consequently, for those carriers, go up for everybody in the

State of New Jersey because they are paying automobile-- Is it true -- you can correct me -- you're going to pay for it; you're not going to get it free? You're not going to get it for nothing; you are either going to pay for it under your PIP, or you are going to pay for it under your group policy, or your individual policy.

MR. KIRSCHNER: That was not the experience prior to no-fault, and we don't suspect it will be the case now. The reason is, when medical expenses from automobile accident victims become part of a much larger group, like Blue Cross-Blue Shield, that is a very, very tiny fraction of all the sickness and accidents and surgeries that Blue Cross-Blue Shield, Medicare, Medicaid pay. You know, the corresponding increase in the amount of people that they will cover is not going to be picked up in the Blue Cross-Blue Shield. If PIP rates go down \$100, they are not going to go up \$100 in Blue Cross and Blue Shield, because it is a very, very small portion of all the sickness and accident and disease that they cover. Most people get sick not because of automobile accidents.

ASSEMBLYMAN WEIDEL: Well, I really-- We're under time constraints here, but that is not what the people who write group insurance say.

MR. KIRSCHNER: I don't think they will tell you it will go up anywhere near what the amount of PIP benefits is.

ASSEMBLYMAN WEIDEL: That is not what an employer, say, RCA or General Motors, that maybe have 60,000 or 70,000 employees, and they are giving them as a benefit -- as a fringe benefit-- That is not what they say. The actuaries for those companies which handle their insurance say, "If you take away the PIP benefits, the fringe benefits to our employees have to go up." We can't argue this. We are not trying-- Please, we are here to talk about the verbal threshold, and attorneys admit -- attorneys admit-- There are some attorneys who-- What did one man use in Newark? He said, "New Jersey no-fault is like hitting the Lottery." I mean, you're waiting. You get all your benefits paid under your PIP, and then you go and sue. How can you tell -- how can we tell exactly what the--

What we are trying to do is to find out whether or not we should enact a verbal threshold. If people are trying to hit a target of \$1700 or \$200, doesn't it correspondingly-- Wouldn't it be possible that the PIP costs would go down because we are not paying out these claims to get to the target, and then go on and pay forever.

MR. KIRSCHNER: The only thing I can say is, the bottom line figure as provided by the carriers themselves--

ASSEMBLYMAN WEIDEL: Yes.

MR. KIRSCHNER: --do not suggest any kind of reduction other than what is available now under--

ASSEMBLYMAN WEIDEL: I'm not asking them to do that. You are a reasonable man, and I think you are an attorney, a member of the bar here in the State. If we are not causing medical bills to be presented to the carriers to make the threshold, in your judgment -- your knowledgeable judgment -- wouldn't you say that the consequence of that would be less PIP claims?

MR. KIRSCHNER: There should be.

ASSEMBLYMAN WEIDEL: Thank you.

MR. KIRSCHNER: But the experience, I don't think, has shown that.

ASSEMBLYMAN WEIDEL: Okay. That's all. Thank you, Phil.

MR. KIRSCHNER: Sure. Thank you.

ASSEMBLYMAN RAFFERTY: Mr. Loveys, I have one brief question.

ASSEMBLYMAN LOVEYS: Surely, go ahead.

ASSEMBLYMAN RAFFERTY: It might have been asked when I was out, I don't know. Mr. Kirschner, you probably heard this question before, but the presentations of previous individuals representing the lawyers -- the attorneys in New Jersey -- mentioned that this verbal threshold, if enacted, will, in fact, jam up the calendar. There will be more suits brought than are presently brought under the monetary threshold. Do you agree with that?

MR. KIRSCHNER: I think what they were alluding to is, when the threshold first comes into being, people will file suit as they normally had been, until the courts come down with an interpretation saying, "Yes, these cases are covered. These cases are not covered."

Okay? Until that weeds itself out, you'll probably get a similar number of cases claimed. That doesn't mean you will get anywhere near the same number of cases being won or eligible for suit, because that certainly is not the experience either in Michigan, Florida, or New York, in terms of what the courts have held is an eligible injury. I think that just means that the cases will be filed so we can find out initially, if it is not specified in the legislation, what qualifies and what doesn't qualify.

ASSEMBLYMAN RAFFERTY: Very good. Thank you, Mr. Kirschner.

MR. KIRSCHNER: Thank you.

ASSEMBLYMAN LOVEYS: Phil, I can't substantiate this here today, but I think you will find that less than 70% of the population of New Jersey have comprehensive health coverage. So I would be greatly concerned with that 30-odd percent that doesn't have it.

You indicated that that would not be the case.

MR. KIRSCHNER: Our figure is 85%. I know that we have some confirmation of that. I will be happy to try to get that to you.

ASSEMBLYMAN LOVEYS: I would like to see that because I heard less than 70%.

MR. KIRSCHNER: That does include Medicare, Medicaid, and group. All of those combined are 85%.

ASSEMBLYMAN LOVEYS: Allright; okay. Any other questions? (negative response) If not, thank you.

MR. KIRSCHNER: Thank you, Mr. Chairman.

ASSEMBLYMAN LOVEYS: At this time I will call on Joseph Tomeo from the New Jersey Automobile Insurance Reform. I believe a Mike McConnell is with Joseph. Is that true? Please come forward. We'll call on you after; we'll let Joseph go first, Mike, and then we will call on you.

JOSEPH A. TOMEU: Assemblyman Loveys, I respectfully want to thank you and your Committee for allowing us the opportunity -- for the first public hearing to take place on this particular important issue in South Jersey. I welcome you to South Jersey, and I hope that what we all have to share with you, and what Mike and I will share with you very specifically, your colleagues will hear in the Senate also. It is extremely critical. I thank you again.

New Jersey AIR, if I may, sir, is a nonprofit organization. It is aligned with no political party. With our aligned organizations, we have over 800,000 citizens in this State. What we are after, very simply, is insurance that's fair, that's equitable, that's workable, and last but not least, affordable.

You have in front of you a list of specifics that our Legislative Committee, chaired by Mike McConnell, has developed. Spending many hundreds of hours, we have researched laws around the states. We have written to many organizations. We have written to the Federal Department of Transportation. And, if I may, I would like to share some of them with you.

Besides a true no-fault system, which we believe A-534, sponsored by Assemblyman Weidel, and A-926, a medical fee schedule board, this would include a descriptive verbal threshold. I would like to get away from the word "verbal" for a second, if I may, and "descriptive" more closely aligns our thinking that you could describe, if you will, what a serious injury is. The connotation of the word-- Sometimes the people-- If you ask 2600 people what verbal means, they might not know. Descriptive is more clearly in our definition. A descriptive threshold would define how serious an injury must be before a lawsuit for noneconomic loss -- pain and suffering -- may be filed. A true no-fault system would guarantee compensation for your medical injuries, lost wages, and any essential services.

Before I go on, and less I forget, I would like to make something perfectly clear. We are not on a witch hunt for lawyers, insurance agents, or doctors. We are simply trying to state, to the best of our ability after two years of research, what we believe is true and will work. We also believe in part of what Senator Laskin states, and that is, a serious catastrophic injury fund, which means simply that the fund would cover the cost of injuries over \$100,000. The insurance companies would cover the first cost of \$100,000 and, according to Senator Laskin, this fund would prevent the insurance companies from using the possibility of unlimited medical coverage to raise insurance costs. The moneys for this fund could come from a \$6 surcharge to be collected with each driver's license.

Another idea we have -- it is not unique; it is being used in Great Britain today, and has been used with great success -- is a "good driver discount." This plan should be fair to both the good drivers as well as the insurance companies. A good driver discount would not only encourage drivers to be more responsible on the highways -- for example, in using the law that is already established, called "buckle up" -- it would also reward the good drivers. We are tired paying for the bad drivers in this State.

We are also after a "plain language" policy, which means simply, you shouldn't need that legal document called an insurance policy. You should need an interpretation from a lawyer to explain to you what it is. Simply stated, it should be in plain language for everybody to know and understand. That would help to simplify many things throughout this great State of New Jersey.

Uninsured motorists: In all fairness, if a motorist is driving without insurance -- therefore not contributing to the insurance system -- then that motorist should not be allowed to sue or collect for any damages. Before a policy can be canceled, insurance companies must receive a receipt from the motorist showing that the auto plates have been turned in, or proof that another policy is in force. On any policy terminated by the insurance company for nonpayment, the police should be notified, and be required to collect the registration and vehicle plates of the vehicle in question. Simply stated, one of the things we are mandated to pay for in the State of New Jersey, besides PIP -- which the average person wouldn't know a PIP from a Big Mac -- and liability insurance, is uninsured motorists. If you look at the bulletin board on the way to the Atlantic City Race Track, note it is up to 46,000 drunk drivers that the State of New Jersey can document and find, and yet we simply can't find, collectively, 600,000 people who have no insurance at all. We think this is an affront to every driver in the State of New Jersey -- 4.6 million of us.

Regarding insurance companies' responsibility, we believe that insurance companies must be required by law to pass on any savings that they obtain through the actions of improved driver accident

performance and/or results of any law or regulation changes, to the policyholders. For example, according to the New Jersey State Police, 21% less fatalities last year than the year before simply because of good driving techniques, the raising of the drinking age, and buckling up. We believe that the citizens -- we are here for the citizens -- should receive the benefits of those tangible results of good driving techniques through the laws passed by you good ladies and gentlemen.

Joint Underwriters Association (JUA): Limit the JUA to only the bad drivers. Why should the good drivers continually support the JUA funded through these 15 or so insurance companies -- or 20 insurance companies -- in the JUA. We continue getting surcharges to help fund the Joint Underwriters Association.

Arbitration: I hesitate to agree with Assemblyman Riley, but what is interesting about arbitration -- binding arbitration -- on any subject, but on this particular subject-- If binding arbitration on anything under \$15,000 is successful, why does it take so long? The average citizen in this State cannot comprehend why it takes so long; that if two counties have successfully used binding arbitration under \$15,000, why don't 21 counties do it? The average citizen can't understand why we have 27 insurance territories. Why can't we have 21 insurance territories? They don't understand why we have 400 insurance companies. I guess free enterprise.

New Jersey motorists, simply stated, are outraged on what we have been paying. We simply believe that according to statistics supplied by many sources, and looking at brief, condensed versions of actuarial resources and tables-- I wouldn't know an actuarial table, by the way, if I fell over it. Congressman Florio requested a comparative study be made by the United States Department of Transportation, Mrs. Elizabeth Dole. This complete study was made available in 1985 to every legislator in the State of New Jersey. It stated -- we tossed around a lot of figures today -- quite conclusively, who pays for what, and how much the 50 states pay. This stated that the average basic auto premium in the State of New Jersey was \$487 in 1983. This is compared to the average premium for the other 16 states having no-fault, \$231. Simply stated, in the State of New York, you pay significantly less.

This congressional report clearly states that New Jersey's no-fault insurance system is an outrage and cries out that true no-fault be introduced for real reform. Its clear and simple findings are that true no-fault is the most effective system to provide benefits and coverage to the motorists of New Jersey.

One of the things we believe with this verbal descriptive threshold, if you will, is, it is not a rhetorical solution. It works. We look at states that are successful. Let's take the State of Michigan. To give you an analogy, in 1978 and 79 -- a very direct analogy -- the same point was made. If you raise the drinking age -- we'll compare Michigan -- every bar in the State of New Jersey is going to go out of business. We're comparing, on a verbal descriptive threshold, the State of Michigan, where significant findings are that it does, indeed, work. It has been demonstrated that it works. Okay?

We are not here to make lawyers whipping boys, nor should I think that anybody else is. We are trying to examine something that has been a horrendous problem in the State of New Jersey; that is, what the citizens pay. For example, you take a young person in this State making \$3.65 an hour. Maybe to a person making \$100,000 or \$200,000 a year, it is not significant, but I submit to you that our kids, our grandkids, making \$3.65 an hour minimum wage in the State of New Jersey, trying to get to work, have to work five and a half weeks take-home pay for the privilege of driving one car in the State of New Jersey for one year. We think that is ludicrous. We think it's a shame that the senior citizens, when they beg and plead and have tried to reach-- This Committee needs to be applauded for what you are doing today, and I sincerely mean that.

One of the things that is very critical to the arguments that I have heard pro and con-- I would like to lift up to you something from the Superior Court in the State of New Jersey. In the Superior Court, where most of the automobile personal injury suits are filed-- This is from the Superior Court. In 1974, there were 15,591 suits filed in the Superior Court in the State of New Jersey. In 1984, there were 27,451 suits filed. While the number of cases increased by 76% in the State of New Jersey, during the same period, the same number of

automobile negligence cases in Michigan declined sharply, which is interesting.

One can conclude from some of the economics underlying, that Michigan's no-fault system is sound and reasonable due primarily to its verbal threshold descriptive, which keeps the system in a state of equilibrium balanced. On the other hand, New Jersey's no-fault is encumbered by a low monetary medical threshold, which causes the system to become unbalanced economically.

We believe that you should be treated well, your car should be repaired, your body should be repaired, and this ridiculously ludicrous low-monetary threshold of \$200, simply giving somebody the ability to take it up to the cost of the CPI index of \$1600, now \$1700, will not solve the problem. The Legislature, in its inimitable style-- What they did, very simply, was encourage the greedy in our society to get even. And who pays-- Who are the insurance companies but every citizen in the State of New Jersey? We're not just talking about the cars in that parking lot, ladies and gentlemen; we're talking about 565 municipalities, 611 school boards, that yellow highway going down there, every police car, every traffic vehicle, every sweeper, every everything. We pay for it all. Simply stated, if the laws can be changed-- Insurance companies are making blanket connotations of municipalities that we have to pay for. That is simply wrong through insurance, okay? Simply because one township like Pennsville, in one day, went up \$25,000-- "We dropped you here. The next time we are going to come around, you want to be reinsured." And everybody has felt the crunch, simple because we may initiate a lawsuit.

We believe in cutting, reducing, and containing the ability of the person to get even in this State. We believe that one way to do that will be the verbal descriptive threshold.

Senator Zane made a statement that I will respectfully disagree with. He said, "Drivers will be losers with a verbal threshold." I respectfully disagree with the Honorable Senator's contention. I respectfully disagree with part of what Mrs. Hazel Gluck, who is a very gracious lady, has stated, that it will not immediately lower premiums. We're here after 13 years. Again, I

applaud this Committee. We're here after 13 years of trying to resolve a horrendous problem, and all we did-- We, I said we; I just included myself in the Legislature. What the Legislature has done is give the people the ability to have less insurance. We talk about options and deductibles. I mentioned the Big Mac and the PIP. Eighty percent of the people don't know what to take. We asked insurance agents and some lawyers -- you know, I have friends who are lawyers and insurance agents -- and they were confused and fraught with anxiety from the A. M. Best Company. Insurance has gone up 367%, according to the A. M. Best, statisticians from the insurance companies. They are not figments of my imagination. But do you know something that we are resident experts on? Forgive me for being excited. We are resident experts on what we pay for insurance. We pay for it all. All we're saying is, we're tired of paying for it all.

We sent out a survey. A nice lady in the back of the room, Mrs. Mae McConnell, initiated a survey along with Mike McConnell. They went out to 21 counties, over 1,000 respondents. They came back. Ninety-five percent of the people in the State of New Jersey -- try getting 95% of the people to agree with anything -- said that we need a change. They believe sincerely that we need a change. They believe there should be cost containments in the legal profession, as we deal with the legal profession. I'm talking about with insurance now. They believe there need to be cost containments in the medical profession; there need to be cost containments all the way around. We're asking for help, and who do we turn to but the State Legislature. We need your help; we need it now.

Out of that survey came an addended survey sponsored-- A lot of the questions that came out of that were from the Gallup Organization. Simply stated and in conclusion, I would like to lift up to you that the citizens in this State elect 120 legislators. I believe that by and large the legislators are honest men and women. I believe their integrity is beyond reproach. What they simply must be reminded of is that the people are tired. We're tired of being -- pardon my phraseology -- the whipping boy. We're tired of being misused and abused. We believe that we are looking for significant

savings. We would like to see the savings now, not two years after a study is made.

The lady who holds the important position of Insurance Commissioner -- Mrs. Hazel Gluck -- has an enormous responsibility on her shoulders. We are having direct input with her Committee, and I respectfully request that this Committee listen to what the citizens are saying, and not the special interests in the State of New Jersey.

Thank you very much, Assemblyman.

ASSEMBLYMAN LOVEYS: Mr. Tomeo, thank you. Does anyone have any questions for Mr. Tomeo?

ASSEMBLYMAN WEIDEL: I want to thank Mr. Tomeo for taking time off from work to come here. He's been in the Legislature. He's contributed his own time. He works in Delaware, and it is out of his pocket. He is not getting paid by anybody to come here. He is speaking from his heart and he's speaking from the reaction that he has had from the people of this State in their effort. He has given us an agenda here. He has gone through the whole insurance problem. He realizes that we are talking about the verbal threshold right now, but what he has said is true. What he has said has to be addressed. This Committee will attempt, through these next two years, to address all of these problems. I want to thank you.

MR. TOMELO: Thank you, Assemblyman.

ASSEMBLYMAN LOVEYS: Mr. Tomeo, thank you. Mr. Mike McConnell? Mike, if you will.

**MICHAEL McCONNELL:** (first few words of statement lost) to the State, received back about 448 of them; they're all on file, and I compiled some statistics from those surveys. The results were sent to the legislators late last year -- I brought them along to bring them to your attention again. Some of the statistics I'm going to bring to your attention is, 97% of the people who brought surveys back thought their premiums were not reasonable, which is not surprising; 25% of the people who returned their surveys selected the higher dollar threshold. We feel this shows the people are willing to limit their right to sue to lower their insurance costs. Over 98% of the people who send in their policies want their policies written in plain

language. Almost 98% of the people want a good driver discount. Almost 30% of the people want a true no-fault with a verbal threshold, and 43% of the people who sent in their surveys are undecided, adding comments to the effect that, "We don't know, whatever you think is best", and, "the insurance system, as we have it now doesn't work, and something has to be done."

So we feel there is a lot of confusion, and a lot of concern about the cost of automobile insurance. And I hope maybe that these surveys will let you see a little bit broader viewpoint of what the people in New Jersey think.

If anybody wants to see the original surveys and the comments, they're available for your review. Thank you.

ASSEMBLYMAN LOVEYS: Thank you, Mike. I appreciate you taking your time to be here, too. Is Jeffrey Kale with us today? Jeffrey?

**JEFFREY KALE:** Good afternoon, ladies and gentlemen. I come here today as an attorney who practices both in New Jersey and in Pennsylvania. I practice in Cherry Hill and in Philadelphia. I am a member of both Plaintiff's Bar and Defense Bar, handling cases both for the insurance industry and for plaintiffs, so I hope to present an objective viewpoint here for you today.

I think the intent of the legislation that is before you today is clearly misdirected. I think the problem really lies with the current law. But what I mean by this, I think the public has been clearly misinformed and not educated as to what they are presented with as far as the options that we now have under the current law.

If I may specify what I am speaking about here, I'd like to look at the PIP coverage that we have now, and I will get to the threshold in my latter discussion.

When you are looking at medical expense benefits -- deductibles -- you've got 500, 1000, 2500. I have clients coming in to me after the fact an accident has occurred, they have no idea what kind of coverage they have. I think the intent of this deductible coverage was if there was an overlap in coverage -- as we've mentioned already -- where an employer has provided health protection, they can go to

that health protection, up to that deductible and then seek the rest through their automobile insurance coverage.

I think what has happened in many cases is that the public has never been informed as to what the true intent of what these deductibles were, and they jumped on the bandwagon thinking they were saving considerable amounts of dollars when they may have been saving \$50, and in the end, not having any health insurance. They are stuck with bills of \$2500 and over and above that the insurance company picking them up. I think the public is not getting the proper flavor both from the insurance industry, from attorneys, and from agents in what proper coverage they should have when they sign up for a policy.

I think this area is also emphasized when you look at income continuation benefits. You look at the basic coverage in New Jersey of \$100 a week or \$5200 maximum a year. I have clients who will come in to me earning \$700 a week, \$1000 a week. They have \$100 income continuation benefits. They can look at that, they can look at the disability through the State of \$180/\$189 a week. They are devastated if they are out of work six months to a year. They have no idea, when they sign up for that policy, what they are getting. They have no idea where they are coming from, and it's not until after the fact, and they've been in a serious accident -- whether it's soft tissue, whether it's a permanent injury, whether it's a fracture, whatever it is -- if they're out of work for five months to a year, they have no idea, and their family is devastated because they're receiving compensation of approximately \$200 a week-- \$300 a week, when they are normally earning \$700 to \$1000 a week.

I think these examples are significant examples of how the public has been misinformed, not educated as to what options they really have. I think the fault lies with the insurance industry, I think it lies with the attorneys and with insurance agents, and I think with the Legislature itself in not really educating the public as to what their options are.

When you look at the threshold option that is now before us-- Actually the present laws we now see, the \$200 threshold versus what is now the \$1700 threshold. It's been termed a freedom of choice kind

of thing under the act. I think the real savings, and I've experienced this in Pennsylvania where they did away with the threshold of \$750 because, as a lot of people have determined today, it's been a target for attorneys to go after, for litigants to go after, for clients to go after-- I think the target is one that's where the problem really lies. When you have a target, no matter how high you set it, people are going to shoot for it. Pennsylvania, for one example, has done away with that target, and they have minimized the cap on medical expenses. I think the insurance industry -- from the dealings I've had with adjusters and with executives in the insurance industry -- have seen a significant effect in the reduction of cases coming along, and also a reduction of medical expenses based on the doing away with a target for people to go after as far as bringing a lawsuit.

I think the problem that I see, at least with the legislation you now have for the verbal threshold-- I think the language is clear, obviously, as to injuries where there's death, permanent disability, permanent disfigurement, and loss of a body member in whole or in part. But I think the real problem with the legislation lies in, "What is the permanent loss of a bodily function?" I've seen numerous cases that I've litigated, both in State court, in Federal court, in Pennsylvania and New Jersey, the problem you have-- What does it mean? How do you define it?

This kind of language is used in tort immunity act legislation where you're protecting political subdivisions: counties, states, municipalities, from lawsuits. It's the same kind of legislation, and I've had many cases against the City of Philadelphia, counties here-- No one knows how to define it. The case law never clearly defines what is a permanent loss of a bodily function. And I think what you're going to have here is a considerable amount of case law that is burdening the courts because you're going to have lawsuits being filed; because there's never going to be a clear definition. I've seen cases in Philadelphia where the solicitors' office there will pretty much settle these cases because they don't want to take the chances of going to court and a jury coming back and in their mind saying, "This is a permanent loss of bodily function." I

think you've got real problems there, and I think legislation of this nature as far as a permanent loss of a bodily function is not clear, and I don't think even legislation could actually define what a permanent loss of a bodily function is, based upon my prior experience with case law that I've seen and the case decisions that I've seen.

As far as a recommendation that may save money, as you are attempting to do here, I think that the freedom of choice kind of philosophy that was used in the prior act or the act that we are now under existence with, may be a better thing. Although I've tried to pinpoint on the target thing possibly eliminating that, I think you still have to give the consumer or the insurer a freedom of choice. In those words, what I am saying is possibly issued, leave the \$1700 threshold with the inflation taking on each year, and also offer a verbal threshold. I think your jump from, you know, an option or a right to sue to no right to sue, as I see it under the definition of a permanent loss of bodily function, leaves a person with a loss of rights in my own estimation.

I've heard comments today that it's constitutional, but I seriously question whether the taking away of rights to sue is constitutional.

In closing, I think the Legislature is losing sight of what the real purpose of the legislation should be as far as cost savings. From the people that come into my office, they are clearly misinformed, uneducated, and have no idea what they are getting as far as coverage. No idea whatsoever. I would say 90% of the cases, public does not have any idea -- I have the most educated people to the average blue-collar person -- has no idea what kind of coverage they are receiving, nor what kind of benefits they will get if they are involved in an accident. It takes me considerable amount of time when a client comes into my office to explain to them, and it's a darned shame that it's after the fact that I'm explaining to them, rather than when they are initiating a policy with a broker or whomever they are seeking a policy with.

I don't think the problem here is really cost savings, I think it's a question of, really, of educating the public as to what

kind of coverages are available, what alternatives there are-- And from that assessment they should go and make a determination on these educated thoughts as to where they should pursue coverage. I don't think, from my experience, that the public thinks they are getting ripped-off as far as insurance coverage. Obviously, we're paying high rates, but if people know they are getting certain coverage for certain particular premium payments, I think they will feel more justified rather than sitting at a cloud and having no idea why they are paying high premiums and what kind of benefits they are receiving ultimately if they are involved in an accident.

I think further efforts should be made both by the trial bar, both by the insurance industry, and all the other respective interests that have come here today to really educate the public. And I think that is the real problem that we are faced with, and I would give any helping hand or voice in achieving that goal. I thank you for your valuable time and attention.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Kale. One area, if I may, I believe and I think you know this, do you not, that you can sue for economic loss now whether you have the \$200 to \$1700 or if we have a verbal.

MR. KALE: That is correct.

ASSEMBLYMAN LOVEYS: Then you cited the case of the individual who would be paid \$100 a week when they were generating \$700 a week; they could, in fact, sue for that \$700 and be granted that award.

MR. KALE: Okay, the problem I see there, sir, is with this: I have numerous clients who come to me with that situation and they are devastated because the case will take a year, two years until it comes through the system. What is this family supposed to do for those two years when they are economically, probably, on the verges of bankruptcy, because most people-- The average person lives from paycheck to paycheck to meet their bills and expenses. If you had to go two years living on 25% of what your normal income would be, I think your family would be devastated too in any kind of circumstance like that. And when you have a court system that is obviously laden with

the load of cases they are, I think that's a severe problem that they don't have the proper benefits initially to at least alleviate the problem that they are going to have for at least a year or two until the case finally does come to court.

ASSEMBLYMAN LOVEYS: Anyone else have any questions?

ASSEMBLYMAN WEIDEL: Mr. Chairman? Mr. Kale, your testimony-- Just this last statement-- You're not -- definitely not -- in favor of doing away with no-fault then, are you?

MR. KALE: I think, from my experience with the Pennsylvania law which was recently -- well it was enacted in October of '84-- I think from my experience in talking to both sides of the fence here, I think they have found an extremely more beneficial package, because what they have done is I think there have been trade-offs on both sides. The trial lawyers, I think-- Let's face it, you've got two competing interests here. You've got the trial lawyers and you've got the insurance industry.

I think the trade-offs in the Pennsylvania legislation were both beneficial to both parties. Obviously, I think, in the end it was beneficial to consumers too, because I think the consumers were more educated from the legislation there than they are in New Jersey. When you do away with that target threshold, the people do not have a target. Obviously, suits are still going to come about, but I think when you limit the medical costs to an insurance company, I think that's where the real cost is, from at least my experience in talking to insurance companies. They're always trying to cut off those expenses because medical costs these days are just spiraling, and if you limit it-- In Pennsylvania they limit it to 10,000 under basic coverage, and anything over that you have to pay additional premiums for. I think that has significantly reduced the considerable cost the insurance companies had in Pennsylvania.

ASSEMBLYMAN WEIDEL: But your clients in Pennsylvania have to wait one, two, three years to get their cases heard. What do they do to support their families? Under no-fault with the PIP you get lost wages; you can get your medical expenses paid. Now you're saying two different things, I think.

MR. KALE: No. The Pennsylvania legislation actually went back to the common law. What it's done is, to me it's still a no-fault type system, although you still get your medical expenses, PIP expenses up to 10,000--

ASSEMBLYMAN WEIDEL: Up to 10,000.

MR. KALE: --for medical benefits. You still get your income continuation -- it's not much different -- except they've just done away with the target, or the threshold number. In Pennsylvania it was 750. They've done away with that and they've just given some trade-offs as far as-- In New Jersey, obviously, you've got the sky as far as medical expenses. Pennsylvania now has 10,000, and that's where I'd say 75/80% of the insured in Pennsylvania have that coverage. So that insurance companies aren't being hit with, you know, considerable medical bills unless the insured has premiums covering over and above that. And in fact, the State has a cap fund in Pennsylvania where five dollars is contributed each year so that once 100,000 in medical expenses is reached, the State picks up from the cap fund where each driver contributes five dollars a year so that there is a fund-- So that in other words, the insured only has to have coverage up to 100,000. After that the State picks up and that is held through a fund by the State.

ASSEMBLYMAN WEIDEL: Sir, did you say that the premiums in Pennsylvania have decreased since they made these--

MR. KALE: I do not have knowledge as to the statistics. I really do not.

ASSEMBLYMAN WEIDEL: My information is that the bodily injury premiums have gone up one third already.

MR. KALE: I have no information as to that, but the experience I have had in talking to adjusters and executives in insurance companies, I think they found far better results in the payout of medical expenses. I think that was the primary concern in Pennsylvania is that they were getting killed with doctors' bills, medical expenses just being padded upon pad-- You know, just out of the sky here. And I think that was their main target. I think it's the same thing here in New Jersey; I don't see it any different. I really don't.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Mr. Weidel, and at the same type of thinking, you know, I've been told -- and I don't know if this is true, but we're going to find out--

ASSEMBLYMAN WEIDEL: Yes.

ASSEMBLYMAN LOVEYS: --that there are people in both New York and Pennsylvania falsifying their addresses so that they can buy automobile insurance in the State of New Jersey.

ASSEMBLYMAN WEIDEL: Jersey, yes.

MR. KALE: I see, I see-- I've heard more cases happening where they go to Delaware, because it's even cheaper in Delaware.

ASSEMBLYMAN LOVEYS: Mr. Kale, thank you.

ASSEMBLYMAN RAFFERTY: I have just one brief comment to Mr. Kale. In your initial remarks, counselor, you mentioned about the public not being educated as to what they're receiving. And I've been an elected local official for over 15 years, and one of the problems that we have because our community is growing so, is on the sale of a house. It's always when the people move in, they come to us, the elected officials, and say, "Well, I didn't know that." And we put out brochures; we have television shows; we put ads in papers; but it gets down to the real estate agent and the attorney. And again, you know, after the fact, after the house is all fouled up and they didn't know what was happening, you know, we can't do anything about that. I think the possibility, again, of policing one's own industry and making sure that these people are aware of it-- Because it is part of the obligations one has when an insurance policy is sold to make these people aware, and I know it's difficult because no one really cares at that time. They want to get it over with, and it's only when they're hit with it do they-- But the Legislature here-- And I think after something like this is passed, we can publicize it all we want, but it just goes in one ear and out the other until the catastrophe happens.

MR. KALE: Well I think what you should do is actually ask people from the insurance industry and people from the Trial Lawyers Associations all over the State to actively get involved in communities -- hold seminars, whatever, to actually inform people. I

think people would be interested if you actually reach out to the communities, rather than-- I mean I see these pamphlets come out from Hazel Gluck-- I don't think they're beneficial because the people are not-- These are foreign terms to the average person and they don't understand unless you actually sit down and give it to them in simple terms.

ASSEMBLYMAN WEIDEL: I'd like to ask Mr. Kale a question before he leaves. And I'm going to be very-- You seem to be a very honest, young, progressive attorney. If a client came into you before he or she bought a policy, and asked you to spend an hour with them going over all the options, what would your fee be?

MR. KALE: I would not charge -- I do not charge any fee.

ASSEMBLYMAN WEIDEL: Boy.

MR. KALE: No, no.

ASSEMBLYMAN WEIDEL: Okay, thank you.

ASSEMBLYMAN RAFFERTY: Will you drop your card up here, Mr. Kale?

ASSEMBLYMAN LOVEYS: Thank you, Mr. Kale.

ASSEMBLYMAN WEIDEL: Thank you, Mr. Kale.

ASSEMBLYMAN LOVEYS: Is a Philip Ciprietti in please? Philip Ciprietti? Steven Dick?

**STEVEN DICK:** Good afternoon, members of the Assembly. I'd like to introduce myself. My name is Steven Dick, I'm a resident of Voorhees Township, I'm an attorney, I practice with an office in Voorhees, and I also have an office in Philadelphia, so I'm very similar to Mr. Kale who just was before me.

At the outset I'd like to state my opposition to the proposed verbal threshold. I don't practice defense work, I practice plaintiff's work. I have a general practice of law but the insurance work that I do is representing plaintiffs -- injured people -- and that is people that are injured in automobile accidents, slip and fall cases, medical malpractice, products liability. I believe the proposed bill is an anti-consumer oriented bill.

The figures that I've heard, both in the press and in the media, for an initial savings on a premium are \$80, and I think that if

the public is aware of just what they would be giving up for \$80 a year, I think that they would not be willing to do that. I think that the risk involved is not worth the \$80 savings. And on a personal note I'd like to let the panel know that approximately seven weeks ago I was involved in an automobile accident myself in which I was absolutely innocent and blameless of anything. I was stopped for traffic conditions, I saw it coming, I was hit from the rear, and pushed into the car in front of me. And my car sustained damage-- My new car sustained damage of just under \$7000.

ASSEMBLYMAN WEIDEL: The bumper was bent, huh?

MR. DICK: A little bit more than the bumper, sir, the whole frame. But, fortunately for myself, I haven't had -- I haven't been plagued-- I mean, I've been able to go to work every day. I haven't missed any days from work, but there have been days when I sat there with a headache when I couldn't do anything. And true I've had headaches in the past before this, but nothing of the severity of this. I've gone to the doctor's just two or three times for treatment. But, what I believe is that under the current proposals, the type of claim that I would be making against the party that hit me would not be permitted. And by the way, I should point out that my accident occurred in Pennsylvania, so I'd be covered anyway.

But, I think that from a consumer standpoint, giving up that right to bring a claim for an \$80 savings just isn't worth it. I just don't think it's worth it. I know for my own self, I would not give it up. And I brought a copy of my own insurance policy which if anybody would like to see it, they certainly can see it.

I just moved to Voorhees Township three weeks ago. I moved from one county to another. I was living in Burlington County, in Evesham Township, and I moved a matter of no more than five miles from one home to the other. And I moved, I thought into a much nicer neighborhood. Not that where I was living was not. But the increase in my premium in moving from Burlington County to Camden County has caused an increase of approximately from \$1550 a year for the two cars up to more than \$2100 per year. And it has no-- There's been no change in my driving. The accident that I mentioned was not my fault.

In fact, my company's not even making -- they're not making -- any payments aside from the PIP aspect for me, and I did have a passenger in my car who was not insured -- had no coverage -- so she'll be making a claim through my coverage. But the point that I am trying to make is that I am truly, and my passenger who was with me are truly innocent victims here, and I would not be willing to give up that right.

And I think that one of the things that troubles me, when you talk about rates, and you talk about premiums, is I moved from one county to another -- you can't even distinguish between one community from the other, realistically -- and I get hit with a premium increase which amounts to more than one third. I think when you see something like that, I think there's something drastically wrong with the insurance system.

Going back to the verbal threshold, I'd like to echo some of the sentiments that were made earlier. I believe that with the enactment of a verbal threshold, there would be an actual increase in litigation because if there is even the slightest ambiguity in the verbal threshold, this would require the court's interpretation and the court's intervention. And it's going to clog up the courts even more than they are. If an insurance company in a case that they otherwise would settle has any problem with it, they are going to say to the attorney, "Put the case in suit and let's let it sit there for two or three years until the court determines whether or not your client has made the verbal threshold or not."

And who is actually going to suffer in that instance? It's only going to be the people who were injured. I think what's going to happen is you're going to see people who will not be able to be represented, because they won't be able to get the representation under the current system of the contingent arrangement because of the questionable recovery.

I'd also like to address the issue that always seems to come up here when you talk about increased litigation. I have read studies that when these figures are spoken about -- the increase in litigation -- the figures that they relied on are United States District Court cases, and these cases are very misleading, because in the last several

years, the United States Government has sought to terminate Social Security benefits. And those people who have lost their benefits have then gone back into court -- in the U.S. District Courts -- to seek to recover those Social Security benefits that had been terminated.

These figures are all lumped in together when you look at the figures for the numbers of increased litigation. It's very very misleading because the studies actually show that when you look at population, the increase in litigation is really in direct proportion to the increases in population.

I'd also like to address the issue that always seems to be mentioned here when you talk about these areas of the huge and excessive jury awards. I think Mr. O'Neil mentioned it earlier, and that is that you only read about the large jury verdicts. You never see the defense verdicts written up in the papers. Or I should say it's very, very rare that you do. The public has this misconception that every case that goes to court, the plaintiff walks out with a million dollars. And that's an absolute fallacy. It's very very rare that those big verdicts come down. And the people that are complaining most about these big verdicts usually are the insurance companies, and let's, you know, let's be honest with ourselves with them. They're represented at the trials when these big verdicts come down; they've got the best paid defense lawyers around; they sit there; they're well represented; and then after the verdict comes down they complain about it.

I think that the jury system is an excellent system. I think the arbitration system that's been implemented throughout the State since the new act took effect in 1984-- I think that's a good system. There are certain changes that I think that could be made in it, but for the most part I think the civil litigation system, both in the two states that I practice in, is excellent.

And I also would like to agree with Mr. Kale's comment that with the threshold as it is -- a monetary threshold -- it is a shooting target. And in Pennsylvania the target has been eliminated, and many cases that normally would not-- People would have sought to obtain that threshold-- They have not reached that threshold. They have

nothing to shoot for; they go, they get the treatment that they think is necessary, and then they're fine. And if they have \$200 or \$300 in medical bills, the claim is submitted on that.

And that leads me to another area that I think everybody has a misconception about, and that is, that the attorneys -- the trial lawyers -- do not get rich off of these \$200 and \$300 cases. There's-- I mean, certainly the greater majority of the income is on a larger type case, and you just don't make that much money off these small cases.

I would like the Assembly, in considering the proposals, to really take a hard look at the insurance industry and some of the things that they've been saying. It surprises me how the insurance industry consistently obtains the sympathy of the press and of the media. You look around and every time you pick up the paper you see the insurance industry complaining about increased costs, and increased premiums, and increased verdicts, and so forth. And I just wonder whether or not the insurance industry is partly to blame for some of these ills that they say exist.

I certainly am no expert on the industry itself, but I do know that a great percentage of insurance industry's income is derived from its investments. And in the last year -- year-and-a-half -- the interest rates have really dropped. And this has caused a direct proportionate loss in insurance industry's revenues, which they had invested years ago at the much higher rates which were set during the higher rates of inflation.

So therefore, they were deriving much greater profits when the interest rates were much higher. Now that the rates are lower, they don't have the profits from those investments, and I really wonder whether or not the risk management factor in terms of claims is that big of a factor in their purported losses. And I really question whether or not they do have these losses. I think before any dramatic change in any insurance system is brought about, I think that the insurance companies should be forced to open up their books and really let people see just what their losses are. And I know that that's to

take effect in July, but I really question whether or not we're going to get a true picture from there. I think they really need to open up their books and let everybody see whether or not the risk factor is as great as they say it is.

I think this is only the first step in the industry's efforts to take away and to chip away at the rights of the little guy. If you first enact a verbal threshold, what's next? Will there be a cap on personal injury recoveries to somebody who's seriously injured as a result of an automobile accident? There's a proposal to do that in medical malpractice cases, and again you're shifting the burden off of the insurance company onto the little person who, for all intents and purposes, is blameless.

The insurance industry wants to limit the rights of people who were injured as a result of dram shop violations where a bar could serve someone who's visibly intoxicated and that person could go out and injure somebody-- and then the insurance companies and the taverns would like to limit those liabilities. Again, you shift the blame, you shift the risk onto the backs of the little person, and ultimately if that person can't bear that burden, he becomes a ward of the state, or of someone else who is going to have to shoulder that burden. I don't think it's fair. I think that the consumer pays so much money every year in insurance premiums, and I think that in addition to being entitled to receive the protection -- I mean, you're buying liability coverage, and you're buying coverage for your automobiles or your property if it may become damaged-- You also want to know that you have the right to have the access to get into the courts.

My experience with both New Jersey and Pennsylvania would lead me to make the recommendation that the threshold be scrapped entirely. I think that you do have that moving target, and I think that as long as you do have that moving target, realistically and honestly, people are going to shoot for that. I also would limit the PIP benefits with some kind of optional coverage there to extend it, similar to the law that Pennsylvania has.

Basically, what I'm advocating is go back to the old system. It's ironic to me that -- although I wasn't a resident of New Jersey

when the original no-fault act was enacted-- But from what I know of it, the insurance industry was at the forefront of leading the changes for no-fault. And they called that the panacea, and now come back every several years and say that the very system that they created, that's the system that they want to overhaul. And I think that rather than take away the rights of individuals, I think, let's hold the insurance companies more accountable for their actions.

I thank you.

ASSEMBLYMAN LOVEYS: Any questions for Mr. Dick? Thank you, sir. Mr. Louis A. Veronica?

**LOUIS A. VERONICA:** Thank you. I really didn't come here prepared to speak, and I really echo many of the comments that Mr. Dick has just set forth to the Committee.

I am an attorney. I am a citizen of the State of New Jersey. I have three automobiles. I think my insurance premiums are close to \$3000 for the automobiles--

ASSEMBLYMAN WEIDEL: Are they all Cadillacs?

MR. VERONICA: No, they are not.

ASSEMBLYMAN WEIDEL: Oh.

MR. VERONICA: Candidly, my newest car is an '84. I have a '77, and I have a '69. That doesn't necessarily mean I can't afford a new one.

Candidly, I am on both sides of the bar. I do plaintiff's work and I do defense work for an insurance company. I oppose the verbal threshold, because I feel that you are misdirecting your attack. You are attacking the victim. I don't care if you offer me a 25% rate reduction in my personal insurance. If that were offered as a reduction in exchange for my right to sue were I injured, I would not take that option. I've been practicing law about 16 years. I've had the unfortunate experience of seeing and dealing on a daily basis with people who have been injured in automobile accidents. I don't doubt or disagree that there are some abuses within the system. But I suggest to you that the abuses are on both sides. I think the insurance company creates abuses which result in cost inefficiencies on their administering the handling of claims.

As an example -- as I'm sitting back there I'm trying to think of what I'm going to say -- today, one of my lawyers was in depositions for four hours. That was a relatively simple case. The victim was rear-ended; it was a three car crash. The victim was insured by Allstate, the second car was insured by Allstate, and the striking vehicle was insured by Allstate. No one would think that that is a relatively simple case to resolve. The victim sustained about \$4000 in medical bills. Three thousand was dental -- fractured teeth and things of that nature -- for which Allstate paid the PIP benefits; reluctantly, but paid. In fact, I had to spend a lot of time trying to get them to pay. They went to a doctor who's name will not be mentioned who they use all the time whose reports basically come out and say, "I don't think this is related," and then X-rays were given, etc., etc., and I may go into that a little bit. In any event, there are three attorneys today spending three hours at a cost probably between 1500 and \$2000 because Allstate's paying their lawyers to go there and fight this case, which I'm sure, when it comes up on the trial list, they will pay.

Now, these cost inefficiencies result in the citizens of this State paying higher insurance premiums. And what are we doing about that? How are we addressing that? You propose, or you are studying a proposal, that says, "give up the right to sue." No-fault came in as a panacea. You will get immediate payment of your first-party benefits; if you're injured you don't have to wait to get payment on your bills, and guess what, we'll pay you for so long as you require reasonable and necessary treatment. What's the first thing that the insurance companies do? One, they question the amount of the doctors' bills that are being submitted, because of the nature of the treatment, and they immediately -- and certain carriers are now, within the first 30 days, setting the injured victim up for a defense medical exam. Now they object to paying a treating doctor \$40 per visit, or \$20 per visit, whatever number it may be at the time. But they will send their own insured -- to whom they have an obligation to pay these first-party benefits -- to a doctor, and the doctors are well known. It's always the same doctors. They pay this doctor anywhere between \$150 to \$225

to conduct a five-minute examination, because I've gone many times myself, and I've been there. And I always bring my watch, because I want to know how much time this doctor has spent to then issue a report which is almost off a computer -- a word processor -- because they read pretty much the same, to say that, "I feel the person has a soft tissue injury which has been resolved, and no further treatment is necessary."

As a result of which, a letter emanates to the insured and to myself and to the doctor saying, "We will not honor any further bills for treatment expense." They're willing to pay \$225 to cut off the benefit, which the Legislature said we were giving to these people.

What happens next? Well then, if the person comes in and needs to be treated at some point in time, there's bills that aren't paid. I suggest that we study the amount of litigation against the insurance companies for their failure to honor their obligation to honor these first-party benefits. My experience has been they make me file a suit, and when it comes up for trial, after they've expended the money to defend the thing, they pay the benefit anyway. In return for my willingness not to ask for a fee. "We'll pay the medical bills, Mr. Veronica, but we're not going to pay your fee." And until recently, I always did that. But I'm not Santa Claus neither. I don't want to work for anything.

Let's take it a little further. There was a young lady -- a client of mine -- who was going to come here today, who couldn't, but she had called me because she had settled her claim long ago. And she had asked me when she settled the claim, if she continued to have problems, could she continue to get treatment? Well she had been a victim of having the benefits terminated prior to my settling her suit, and I said, "Look, if you need the treatment, they're going to have to pay." Now, she has no incentive to treat. She's not going to treat for nothing. Her case is gone. So, she's been treated. Has the insurance carrier paid the bill? No. They won't pay the bill. What's going to happen in this case? Sooner or later I'm going to have to initiate some litigation to get these bills paid.

Now this is ludicrousness. This is craziness. Our citizens are being sold a bill of goods by this hooting and hollering about how

lawyers are doing this, that, and the other thing, and I suggest to you that the insurance companies are partially to blame themselves for their failure to do that which they obligate themselves to do. The exchange which is being proposed is an unfair exchange.

What the people who should be here today testifying are the people who have been victims of automobile accidents. I've been a victim a couple of times, never had a case I could claim, but by this proposed legislation-- I broke a leg one time. I was out of work for about six weeks, I guess it was, but I struggled in for another four with a cast on. My wife had to lift me out of the tub; I had a lot of inconvenience. I had difficulty doing many bodily functions because I was in a cast. You propose to take away my right, when I am an innocent victim of such conduct, to recover something for that? For the inconvenience to my family; for the inconvenience to my children. Giving up my right to play ball with my kids.

The right to sue has been with us since the common law for so long it's just an unfair exchange, and I don't think that that is the answer. I think the answer lies in some limitation on the actual medical payment benefit. I do think we have the Cadillac. And I think the Cadillac has been good for some people. Some people sustained very tragic injuries which required tremendous amounts of expense. But I think there can be some limitation provided. I don't think you should take away the right to receive these benefits totally. You can interlock or co-mingle the benefits. The first-party benefit is okay, but I still think you have to provide for the catastrophic injury somehow, either by interlocking it with other coverage, or providing exclusions from the automobile carrier if there is other coverage which would pick up benefits after say, \$10,000 -- \$25,000.

This thing can be-- It's risk spreading. The greater you spread the risk the less burdensome it is on the individual. Just let me see what else I got.

We have some-- I mentioned these things with the insurance companies-- New Jersey enacted the Fair Claims Settlement Practices Act. The thing's been totally ineffective. I've had occasion on at least five to eight times to write in connection with what I thought

were unfair claims settlement practices by various insurance companies. They do nothing. They do not investigate them. And I think that there's cost containments to be made just by effectively monitoring how insurance companies handle claims.

The thing that makes many people go to a lawyer in the first instance is they've been treated unfairly by the insurance company. They can't understand why a bill's not being paid after 30 days. There's nothing being done about that. In fact, we get no incentive to make the insurance company pay. The 10% penalty or interest, whatever that was-- That's totally ineffective. It hasn't worked yet, in my experience, since we've had the no-fault.

As far as do the citizens in the State of New Jersey want this type of legislation? I think that you can provide all kinds of surveys. If you ask me, "Do I want to save money," my answer is going to be yes. Everybody wants to save money. The question is at what cost? In the last, oh, 1983-84 legislation, it appears, from what I understand, 13 to 15% of the people of this State opted to save their fifty bucks. And of those who did that, who have had occasion of coming into my office after being involved in an automobile accident, my experience has been that they've been damned angry because they didn't understand. I recently had one that I recall who had chest injuries -- no fractures or anything of that nature -- but he couldn't breathe, and he had been that way for a couple of weeks. And he couldn't understand -- he came to me because he couldn't understand -- why he was being treated the way he was with the insurance company. And when I explained to him that I could do nothing for him other than to get them to pay his bills, and he'd been out of work a few weeks and he only had the basic PIP minimum, he was a little annoyed by that. And I think that those things have to be addressed. I don't think our citizens want it, because I don't think when you gave it to them last time they opted to buy.

Mr. Zecker's-- Well, Mr. Zecker made a comment, and because I'm an attorney and I get offended by the fact that I'm subject to a lot of adverse remarks and criticism-- I kind of take pride in what I do. I've got occasion to give people a lot of money who have been

tragically hurt, and I feel that I improve the quality of their life. I take it very seriously. I am in my office at eight o'clock in the morning, and very often go home ten, eleven o'clock at night. Not for an extra buck, but to do an extra better job, in order to get an injured victim what I think will help him live with whatever injuries may have been. I don't suggest that everyone is like I am, I think I'm a little crazy myself.

But you mentioned, Mr. Zecker, about the-- what's the trial attorneys and what do the lawyers do to police themselves? You were with the State Bar for 22 years. One of the things-- I sit on a number of committees. I'm the President-elect of the Camden County Bar Association. How do we find out the attorney who are those small few who are abusing the system, and who are creating the things of which you are aware? Claims adjusters see the names; they know who does what. What do they do with that information? I have no way of seeing who is repeatedly making the same types of claims with the same types of doctors. Would we be interested? Yes, we would.

I take pride in my profession. I want to be respected for myself as an individual, I want to be respected for what I do. I do not appreciate being the subject of those types of criticisms that-- "You're an ambulance chaser," etc., etc., etc.

Last thing, because I've probably talked more than I should, I think that insurance companies are saying, "Boy, we're losing money, we're losing money." My information indicates that the insurance companies never lost money in the whole industry until last year. Actual lost money-- counting investment income and things like that. Wall Street seems pretty high on insurance companies. Lawyers get all kinds of solicitations to buy this, that, and the other thing, and all the solicitations I'm getting today say, "Buy insurance companies. Buy CIGNA; buy OMNI Group." Why? Why? Is it such a great investment that I should be out there buying it? Does Wall Street know something that you don't know and I don't know? I think the answer is there. If they're such great buys, to buy and invest in insurance companies, what's the crisis? Is it a formulated or a false crisis?

Thank you for your time. I appreciate it.

ASSEMBLYMAN LOVEYS: Mr. Veronica, I read with interest recently that in 1984 the voluntary companies in the voluntary market made a profit of some \$56 million. Would you believe that they made that amount of profit?

MR. VERONICA: Fifty-six million?

ASSEMBLYMAN LOVEYS: Fifty-six million.

MR. VERONICA: You know, I just read something -- I wish I could tell you where -- but I read a figure that in '83, I guess it was, it was \$5.6 billion.

ASSEMBLYMAN LOVEYS: In 1983.

MR. VERONICA: Yes.

ASSEMBLYMAN WEIDEL: In automobile insurance?

MR. VERONICA: No, just all property casualty and liability.

ASSEMBLYMAN LOVEYS: So, the report that stated that the automobile insurers in the voluntary market making a profit of \$50 million you would not accept.

MR. VERONICA: I'm not saying I wouldn't accept it. I really don't know, and I hate to comment on something that I don't know.

ASSEMBLYMAN LOVEYS: By the way, if you have the opportunity to testify in the future on this subject matter, the illustrious Alan Karcher, a good friend, indicates that you've had the right to sue for 1500 years. Just so you--

MR. VERONICA: I'll accept that. Thank you.

ASSEMBLYMAN LOVEYS: Thank you very much, Mr. Veronica. Does anyone have any questions? (no response) Thank you, Mr. Veronica. Is Mr. Charles W. Heisler, is it? (correct pronunciation is given) Heisler? I'm sorry, sir.

**CHARLES W. HEISLER:** Let me first identify myself. I am the current President of the Camden County Bar Association. I am an attorney. My practice does not include personal injury litigation, either for the plaintiff or for the defense. Although I am a trial lawyer, I practice in different areas of trial law.

You have raised several questions today that I would like to respond to as a representative of our Association. I think it was indicated early on in these proceedings that notwithstanding the

changes in many of the laws in New Jersey involving insurance, there has been a tremendous increase in the number of claims. What you may be losing sight of is the fact that a great number of these claims are now claims between the insured and the insurer, what I would call first-party claims -- PIP claims -- because insurance companies, as Mr. Veronica noted previously, simply aren't honoring their own commitments and their own policies to their own insured, and forcing their insured, therefore, to bring them. There, is a great segment of the increase in litigation.

Secondly, with regard to the problems of litigation in the court, I am happy to report -- at least from the point of view of Camden County -- that it simply is not a problem. Camden County presently has numerous volunteer programs, and is actively participating in the mandated automobile arbitration program.

I can tell you that about four to five years ago we had a case backlog ranging between 36 to 42 months. That was for any case: personal injury case, contract case, what have you. A time limit now from filing a complaint to first listing for trial is running approximately 12 to 13 months, so the case system -- or the court system -- is not inundated-- it not being overwhelmed by a tremendous influx in claims. In fact, what they have done is, through mandatory arbitration in the automobile area and through volunteer programs staffed by our County Bar and similar programs run in other counties-- We have created a system in which the great majority of disputes today are being arbitrated and resolved in a more amicable fashion.

The question was raised previously as to whether or not there is any self-policing. I think Assemblyman Zecker raised this. I can also report from the point of view of a member of our local District Ethics Committee -- and I have served on that Committee for several years now, and previously served for five years as the Secretary to that Committee -- there is not a profession in the world today that pays more attention to, and is more active in policing its own than the legal profession today. And if you doubt that, the Administrative Office of the Courts, on a quarterly basis, publishes lists of attorneys who have come before our Supreme Court and who have been

disciplined in one form or another, either by way of reprimand, suspension, or disbarment.

The question to the representative of ATLA was a little unfair because ATLA has no right to police attorneys. We are licensed by the Supreme Court of New Jersey. Our right to practice is governed by the Supreme Court of New Jersey, and whether or not we will be permitted to continue to practice in this State will be determined by committees set up by the Supreme Court of New Jersey, and, ultimately, by the Supreme Court itself, because only the Supreme Court can deliver the ultimate discipline of disbarment.

I think what we have today is what people have tried to create: a confrontation between the law and the insurance industry, and in the process, we seem to be losing sight of the consumer. Because that's really what the issue confronting this Committee is all about, and we'd better serve the consumer by tinkering with, massaging with, or drastically changing the current insurance system.

From all of the testimony that I have heard to date, and from references that have been made to the testimony of previous hearings, the only commitment we have from the insurance industry today is that if we adopt a verbal threshold system, we will create, possibly, savings to the consumer -- the insurance consumer in the State of New Jersey -- which are equal to, but more likely less than, the savings that same consumer can effect for themselves today by simply selecting an option that has been available to them under the law as it has existed since 1983. And what is that? We are told again by the insurance industry that somewhere between 15% to 18% of the consumers in New Jersey have said, "Yes, I want to save that amount of money; I will take that option." Eighty-two percent of the insurance consumers of New Jersey have said, "No, I want to preserve a right that I have had for \$1500, or since the Common Law came into effect in New Jersey-- a right to sue someone for injury that they have done to me. And I premiums to give up that right." And I submit that what this Committee is proposing to do -- if it adopts a threshold -- is to turn to the consumer and say, "Well, darn it, we gave you your choice to do it. You won't do it, so now we are going to shove it down your throat. We

are not going to give you the option. We are just going to take away your right to sue." I submit that it is not a proper way to treat the consuming public, the insurance consumers of the State of New Jersey.

If we have the system which gives them the option to save the money, I say leave that in place. You are not bogging down the courts of New Jersey. The courts of New Jersey are getting along very fine, thank you. The courts of New Jersey have responded quite appropriate to the problem of increases in litigation, and, again, I am not going to belabor the point, but we have cut, in Camden County alone, the time from getting to filing of complaint to trial from a high of 42 months, almost 4 to 5 years ago, down to 12 months today.

I say don't tinker with the system. Inform the consumer what his choices are, and if the consumer wants to save the money which this Committee says that they want to save for them, fine; let them make the choice, don't shove it down their throat. Thank you very much.

ASSEMBLYMAN LOVEYS: Are there any questions for Mr. Heisler? (no questions) Thank you, sir.

I think at this time I will call on the Rutgers Casualty Insurance Company. Sir, you will limit your testimony to the verbal threshold?

CHARLES LISBY: Mr. Chairman, members of the Board, we at Rutgers Insurance Company are in favor of a verbal threshold.

ASSEMBLYMAN LOVEYS: Excuse me, sir. Could I have your name, please?

MR. LISBY: Charles Lisby.

ASSEMBLYMAN LOVEYS: Lisby?

MR. LISBY: Yes. I'm sorry.

As I said, we are in favor of a verbal threshold. To go back to some of the testimony given early in reference to the PIP and the soft tissue, we are certainly inundated with outrageous claims and soft tissue. And I don't think anybody here objects to an individual who has a legitimate-- And I certainly believe that there are legitimate soft tissue injuries. However, a great percentage -- I would say 75%, possibly, of the soft tissue injuries that we see come across my desk -- are those with, given respect to the legal profession, who force

some of the clients-- I shouldn't say force, but at least they let these clients know where to go for treatment, and what happens is these bills are just being astronomically built out of proportion.

It means that in this case where if these bills were not astronomical, as a lot of them are, many of these cases could be settled. But, because they are constantly just billed out of sight, and it just seems that we just continue and continue to treat with things like TENS Units, which-- I wouldn't know if anybody can say that it does any good, or doesn't do any good.

I think that-- Also, I think something that is missed-- If somehow, somewhere, that the legal profession and the insurance companies could meet, instead of fighting with one another, and come to some agreements between us and-- It might make better relations for our consumers, to help reduce the premiums in the State.

I worked in Pennsylvania with the Pennsylvania Insurance Department, in the Liquidation Division, and I am convinced that there are many, many companies that have been forced out of business in Pennsylvania due to the PIP aspect because it was unlimited. Of course, that's one of the best things the consumer could ever see.

Earlier in the testimony, a gentleman made reference to other medical coverages, such as Blue Cross and some of the others, picking up the costs. These companies-- I don't know of any company in this country that pays all of the medical bills for anybody. And so it is a myth to think that Blue Cross is going to pay, because they are going to pay a portion of some of these bills and then they are going to be turned back-- These clients are going to be left out there and the next thing you know, they are going to be receiving their collection notices.

So, I think that we do need to do something to help, to possibly put some sort of cap on the PIP benefits. And then there are other aspects that would help, possibly, to reduce the cost to the consumer. There is the uninsured motorist who, unfortunately, causes a great deal of problems in the State, where we have uninsureds who go out and are involved in accidents and the companies are forced to pay the medical bills for that individual who has not seen fit to meet his

obligations to cover insurance, which is unfair to those individuals in the State who purchase the insurance as they should, and should be entitled to collect.

Again, we have the individuals-- The phantom vehicles, which is ridiculous, also helps the cost, and escalate the cost of the insurance. The phantom vehicle-- We have done something with the physical damage but nothing with the bodily injury. There is no absolute necessity to prove that there was a phantom vehicle, as such. All the individual is saying is that he or she ran into a pole and was forced off of the road, or some nature, and they are collecting.

I don't want to take up too much time of the Board. I just feel that you know that Rutgers Insurance is in favor of a verbal threshold. And, again, I think that we as professionals in the insurance business and the legal profession would serve the public better if we could come together rather than constantly bickering and complaining about each other's profession. I thank you.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Lisby. Are there any questions for the gentleman? (no questions) Thank you, sir.

I think we will have one more person -- one other person, I should say, that wanted to testify. I do not have her name. Would it be you, Ma'am? Would you come forward? Let us have your name, and this will be the last testimony of this hearing today. Yes, Ma'am?

**PAT FAGAN:** My name is Pat Fagan, and I am a citizen. Unfortunately, I don't have any statistics or a pre-written speech. I am consumer, and I am one of the victims of one of those accidents.

Three years ago I was hit from the rear. With a verbal threshold, I wouldn't qualify because what I would have is soft tissue damage. It turned me from a very independent person into a very dependent one. My job entailed that I lift heavy trays. It was job that I really enjoyed and liked. I can no longer do that job. My insurance company has refused to pay me PIP because they say I am not treating with a doctor. My treating doctor said there is nothing more he can do for me, so why should I come to him for treatment? So, I am, you know, between the rock and the hard spot.

Now I've sat here and I have listened to the lawyers and I have listened to the people that are for it -- for the verbal threshold -- and I am one that I am telling you, "It's not fair." You can't see my disability, but I have a difficult time opening doors. I can't carry my own groceries. I can't hang clothes anymore. I can't play ball. I can't bowl. But to look at me, I'm fine.

They've also refused to pay for rehabilitative care. I had to go to the State, and the Division of Vocational Rehabilitation sent me to school because I want to go to work, but I can't go back to my job.

That's all I had to say. I wanted you to know what the other side of the coin looks like.

ASSEMBLYMAN LOVEYS: May I say this to you? And, believe me, I am not an attorney, but the way you described your injury, I think under Mr. Weidel's bill, you certainly would have the right to sue.

MS. FAGAN: Sir, I have to disagree with you. (audience reaction) Excuse me, I don't need the group because I've been through it. I'll tell you what happens. My insurance company has sent me to three different doctors. The first doctor didn't give them the answer that they wanted. He apparently said that, yes, I am disabled. They sent me to a second doctor. The second doctor didn't give them the answer that they wanted to hear either. They sent me to a third doctor. Finally, they got the right doctor. He said, "There is nothing wrong with her." So, this would be the same thing I would be up against.

ASSEMBLYMAN LOVEYS: Did you sue?

MS. FAGAN: I am in suit now; yes, I am.

ASSEMBLYMAN LOVEYS: Oh, but there's no recovery at this point?

MS. FAGAN: No. I'm still waiting.

ASSEMBLYMAN LOVEYS: Are there any questions for Ms. Fagan? (no questions) Thank you very much.

MS. FAGAN: Thank you very much.

ASSEMBLYMAN LOVEYS: I would like to thank everyone who attended the hearing today. I thank you for the warm welcome to Cherry Hill. (at which time member of audience speaks)

One other?

**KAREN KOTVAS:** I don't want to interrupt you.

ASSEMBLYMAN LOVEYS: No. Did you want to testify?

MS. KOTVAS: I did want to testify for Mr. Hartman.

ASSEMBLYMAN LOVEYS: Come right ahead.

MS. KOTVAS: I know the hour is late, and I know that we've been over all of this before.

ASSEMBLYMAN LOVEYS: (laughter) You want to say it again. Okay. Please, have a seat.

MS. KOTVAS: Chairman Loveys, thank you. Members of the Committee, Laurine, I know it is 10 minutes to 5:00. I know you have all been through Newark and Toms River, and now we are here. I will not take that much of your time, I promise.

We are here to discuss Assembly Bill No. 1, or what is known as the verbal threshold. Now, proponents of this legislation have testified that the experience in Florida, and New York, and Michigan has saved money. They have shown their facts and their statistics. In my paper I have shown that we have just the reverse statistics, and Mr. Stein, this morning, reiterated them. Mr. Kirschner, this afternoon, also reiterated them.

I will not go into Florida, which, again, went from unlimited medical to a \$10 thousand cap. Also, Florida's rates, right now, are being looked at again. Three major companies have asked for an increase. Again, in New York unlimited, open rating went to rating by approval. And, in Michigan we have conflicting statistics again.

I would like to talk about what Mrs. Gluck proposed, and what a number of other people have proposed in advocating a verbal threshold-- that rates will not go down right away. And I commend this Committee for the actions that they have been doing, and I ask them to please continue until you can find some solid actuarial data that will say that the rates will go down. Because if they don't go down, what is the reason to take away someone, like this woman, who would not be able to sue under Mr. Weidel's bill?

The thing I would like to talk about the most besides Florida, New York, and Michigan, is New Jersey. Now a number of people

have testified that 80% of the people in New Jersey -- according to the Gallup Poll -- want a verbal threshold. It also says that among the more than 8 out of 10 who felt rates were higher in New Jersey, most attributed the situation to what might be called "natural causes," such as population density, 20%; traffic congestion, 16%; more accidents, 15%; higher crime, 3%. Eleven percent singled out no-fault laws; 6% blamed poor drivers; 7% felt that insurance companies were taking advantage of the public; and, 4% felt that there were too many lawsuits.

If 4% of the people feel that there are too many lawsuits, why isn't that reflected in the 80%? Eighty percent should feel that there are too many lawsuits.

Now, what I'd also like to stress, besides all the other states, is our very own special State of New Jersey. New Jersey, even before the enactment of no-fault, has always had extremely high rates, perhaps because of a number of relevant factors, which we all know about. We receive the richest benefits. We are the most densely populated State. We are a corridor State. People are constantly traveling back and forth to get to the areas in Philadelphia and New York.

Everything that we have heard so far hasn't taken into account the experiences that we have had since 1984. Before the reform legislation went into effect, the entire cost of an automobile injury was kept within the automobile insurance system. Before 1984, high and inequitable costs -- administrative costs -- were built into the system. Before 1984, we didn't have a lot of cost-containing reforms that we have now, such as arbitration -- which is working -- such as the strict drunken driver program, such as raising the drinking age, such as highway safety with the seat belts, and the automobile insurance fraud prevention. Our financial disclosure law-- Again, I am not going to reiterate, but I would like to just stress these points.

Chairman Loveys mentioned that the companies, in 1984, for the first time in many years, made a profit. That was a result of the reform legislation. Also, since 1984, people's insurance rates have

not gone up. They have not gone down, but they have not gone up. The peoples' rates who have gone down in New Jersey -- and they have gone down 35% of the bodily injury portion of that premium -- were those who chose the higher dollar threshold option.

The Financial Profits Law, the Excess Profits Law, will be coming into effect, starting in July. So, what I say to you is basically two things:

One, to continue what you are doing. To get the information, so that, two, we don't rush to judgment, and we can study the legislation that already is in place. Let the reforms fall out -- as you might say. We've already seen some very positive results. Perhaps with the rest of these, when they are allowed to take effect after July 1, 1986, there will be even more dramatic reforms.

I close in commending you for looking for that information, and ask you to please continue. Thank you.

ASSEMBLYMAN LOVEYS: Thank you. Are there any questions?  
Mr. Veronica?

MR. VERONICA: Mr. Chairman, as I went down to the telephone, there was one citizen who didn't understand that they had to give their name. I know of at least another one who has been sitting here all afternoon, and did. Perhaps you can hear them.

ASSEMBLYMAN LOVEYS: How many more people would like to be heard? One? Do I see three? You, sir?

MEMBER OF AUDIENCE: Yes.

ASSEMBLYMAN LOVEYS: Okay, we will hear all three of you, but please be as concise as you can. Thank you.

**JOEL GARVER:** I will attempt to be concise. My name is Joel Garver. I am a practicing attorney in this State. I live in New Jersey, and I am also the Associate General Counsel of an insurance company I will not mention.

I personally do not advocate the verbal threshold. I feel that by implementing a verbal threshold, what we will be doing is penalizing victims of accidents. I think, in essence, what we would do is take from one hand and give to the other. I think what we should focus on is penalizing uninsured motorists.

From my personal experience, I was an adjuster with an insurance company and now, as I said, I handle litigation for an insurance company. Let me add, through, that I do have my own practice and I have my own plaintiff work as well, although I have some insight into both sides.

It would seem to me that what is frustrating and what costs carriers money -- and, of course, if we can lower the cost to carriers, hopefully we can pass that on to the citizens of the State; I don't enjoy paying high insurance premiums -- is misrepresentation on insurance applications. If we could focus in on the fraud that is going on in the State-- For example, there are many times where there are residents in a household, where an insurance carrier must pay for their PIP benefits, and they weren't aware that these people lived in the household ahead of the time. If we could focus in on that type of a thing, if we could focus in on uninsured motorists--

I personally have sat in my office, trying to get through to the Division of Motor Vehicles to find out how we can pull the driver's license of a party who was uninsured and involved in an accident, and I am unable to do anything about that at all. If we could focus in on uninsured motorists, not providing benefits for drunk drivers, focus in on the fraud that is going on in the State, we can probably save money for the carriers and pass it on to the residents of the State.

An additional problem that I confronted is a conflict-of-law problem, where we may have a situation where a resident, for example, of Florida may become involved in an accident in New Jersey. And say they are in a vehicle insured in New Jersey, they will collect benefits under a New Jersey policy. Yet, if we reverse the situation and we have a New Jersey resident in Florida, the Florida carrier will not pay for the New Jersey resident. So, the residents of this State are underwriting and paying for insurance for people who live outside the State.

Also, many situations where we have residents of Pennsylvania and New York that are insuring their vehicles in this State, which may have an effect on raising premiums. Also, a situation with phantom vehicles. It seems to me that it's a blank check. The state of the

law at this point in time, there doesn't have to be contact and, therefore, there is an allegation that if somebody drives into a tree, and there is an allegation that a phantom vehicle forced that vehicle off the road, you have to pay the claim; there is no way to dispute it.

So, if we could focus in on these different problems, and you are looking for suggestions, hopefully, to lower the insurance premium, why don't we look towards trying to limit the fraud and, hopefully, we could lower the premiums that way. Thank you.

ASSEMBLYMAN LOVEYS: Thank you, sir.

Come on down. (speaking to member of audience)

**VICKY SANISBERG:** My name is Vicky Sanisberg, and my interest in this is, I am a consumer. I pay \$1300 a year for automobile insurance. I think it is too high, but I don't want to lose my rights to sue. I didn't know too much about this before I came to the hearing, and I have a lot of questions now.

My husband was in an accident almost two years ago. He has what I guess you are all calling tissue damage -- soft tissue damage, or whatever. He still has pain. He is still seeing a doctor. He went to get a haircut last night. We were going to go out afterwards. We were out for a half hour and had to go home because of his back pain. He had to take medication that is strong enough that he can only take at nighttime because it knocks him out. He teaches school. He stands for four and five hours a day instructing, and he comes home with a backache. I think he should have a right to sue.

He was stopped at a corner, making a turn, and four cars went around him, and the fifth car plowed into him. He had-- It was not his fault at all, and under this -- from what I understand today -- he is going to lose his right to sue.

I want him to be compensated for the things he can't do at home. He can't work around the house and fix it up like we'd like to. He can't play with the kids all the time because of the back pain. We couldn't go out for two hours last night because of the back pain. And, I want you to know how I feel about it.

I would like to save money. Am I allowed to ask a couple of questions about what happened today?

ASSEMBLYMAN LOVEYS: You can ask anything you want. I don't know how many answers you are going to get, Vicky.

ASSEMBLYMAN WEIDEL: There's a lot of lawyers in this room.  
(laughter)

MS. SANISBERG: Okay. With this verbal threshold, how much is this going to reduce the cost of my insurance a year? Do we have any idea?

ASSEMBLYMAN LOVEYS: Where do you live? What territory are you in?

MS. SANISBERG: I live in Camden County.

ASSEMBLYMAN LOVEYS: Can you-- Would you try, Laurine? Would you try this? How many questions do you have to ask her to get to this answer?

MS. PUROLA: Okay.

ASSEMBLYMAN LOVEYS: We'll try.

MS. PUROLA: Could we assume that's it an adult, to make life easier?

MS. SANISBERG: Yes.

MS. PUROLA: An adult male driver in Camden County?

MS. SANISBERG: Yes. Okay.

MS. PUROLA: All right. Right now, a portion of your premium that you are paying for bodily injury, which is pain and suffering-- The basic limits -- all right? -- that's also to make life easier, so you don't have to recompute it, is a \$149, then plus an expense factor, plus a policy constant on top of that. But that doesn't apply to the reduction. It was estimated that if a verbal threshold were adopted in New Jersey -- this is the estimate of one insurance company -- approximately -- that is \$149 worth of the \$200 threshold -- 55% of that premium, that \$149 premium, would come off. That is a reduction of somewhere around \$82 or \$83.

Now, this would have to be recomputed. That is on a \$149 premium. If you had higher limits, those numbers would change.

MS. SANISBERG: Okay. If it was the \$150 off a year-- When I pay \$1300 in insurance, if you're saying we both take it off then, that is \$300 off a year, to me--

FROM AUDIENCE: No, it's not that.

MS. SANISBERG: Oh, it's not. Well, even if it's \$150 off a year, to me that is not worth it, to lose my right to recover something that I think I am due, or my husband is due, because he has lost two years of things that he can't do.

The other thing is, a lot of people said that if people took their options that are available to them through the insurance company, that they could save just as much money on their insurance. When it came time for new insurance, I checked around. I am the kind of consumer who has to go to 10 different stores before they will buy something. I just, you know, I have to know I am getting the right price. I couldn't get a break from one insurance company to another. They are all the same price.

Now I thought, you know, why don't they-- If someone had offered me, "I will give you the exact same coverage as this company for \$200 less," I would go there, and a lot more people would, and they would have a lot more business, and then they can't tell me they are not making money with that volume of business.

Also, if my agent had come to me and said, "You have these options available to you to save you money"-- He didn't. I had no idea what to do. I asked, and, "Well, you can have this, this, and this. Here is the brochure. Read through it." I went to our lawyer and asked him what coverage I should have, because I didn't want to be in the position that maybe I would hit somebody and I could lose things. I had to find out for myself. If the insurance agents had to go and tell people what is available to them when their policies came up for renewal-- I think that should be part of their job. We pay them through our policy which we pay. That is how their salaries are paid. They should have to tell everybody, "You can save money by doing this."

The other thing is, is this verbal threshold being done to save money and to eliminate abuse? Everybody is talking about insurance abuse today. Is that one of the reasons, to eliminate abuse? Is that why we have a verbal threshold?

ASSEMBLYMAN WEIDEL: Yes.

MS. SANISBERG: Yes. To me, that is like you're hurting everybody else who is doing the right thing. To me that reminds me of the criminal courts, where the criminal has rights. We don't want to violate a criminal's rights, but the victim gets slapped in the face. That's what it seems like to me, that you're just-- To get the few people-- I can't believe that the majority of cases are abuse. To get the few people who are abusing it, everybody else has to get hurt.

One more question. One of the gentlemen said there are 400 insurance companies. He was talking about from a survey or something. It seems like a lot of insurance companies, to me, for losing money. I can't believe there are that many companies doing that business if they are losing money and all this stuff. They wouldn't have automobile insurance if they were losing money. (applause)

Now one more thing that the lawyers are not going to applaud, but you wanted ideas on how to save money. I think there is a law in this State that says you must wear a seat belt, and there is another law that says that children must be in a child restraint. Before there was a law I always wore a seat belt. I swear if my husband didn't have his seat belt on when he had the accident, he would have been through the windshield or under the dashboard, and I think he would have had a lot worse injuries. I think if people don't have their seat belts on in an accident, then you could put a cap on what they are able to claim, or then you could tell them, "No, you have to be punished," you know, "You can't claim anything." That is the law. If they don't use it, they are violating their own rights.

That was all I had to say. Thank you. (applause)

ASSEMBLYMAN LOVEYS: I'm not so sure we weren't sandbagged just a trifle there.

MS. SANISBERG: No, I do this with everything. I'm sorry.

ASSEMBLYMAN LOVEYS: Okay. There was one other person who wanted to testify, if you will, sir.

**KEVIN RAFTERY:** My name is Kevin Raftery. I will be very brief. I just want, again, to give you the other side of the story. I have had the unfortunate luck, over the past three years, to be involved in two major accidents, which have drastically changed my life. Again, I have

soft tissue injury. It doesn't show, but it has changed the way that I behave, how I act around the house. It has impacted my relationship with my wife, and yet when I hear that this is the panacea by putting a verbal cap on it where I am not allowed to sue because I have soft tissue injury, I have to ask myself, "Is this exactly what the problem is in the insurance industry today?"

Having been through one settlement, I know what goes on. I know that the insurance company sends me to three different doctors until they get the answer they want to hear. I know that I put \$200, \$250, \$300 out of my pocket for pharmaceuticals until I get reimbursed. I know that I received the dunning notices and the threatening letters from providers of medical care until the insurance company, under the threat of my lawyer, have suit to pay the PIP coverage.

I think there are a lot of other areas that could be investigated on the insurance side of the shop to take care of the waste, fraud, and everything else. I don't think focusing on this one area is the way to go. My latest accident was a head-on on Route 70 at 50 miles per hour. The woman crossed a median and came into me. Thank God I had my seat belt on and I was in a car that is rated very good for protecting passengers. I am lucky to be alive. As a result, I have a soft tissue injury in my upper back, and it looks like I may or may not get a settlement out of this one.

I am personally insulted that the insurance company wants to take the option away from me to pursue and to get some type of recovery for the impact it has had on my life, and the impact it may have on my life down the road -- possible arthritic conditions and everything else. I don't think that is the answer, and I think I am talking for a lot of other people in the same situation I am. I would just like you to take that into consideration when you are looking into all aspects of this bill.

Thank you.

ASSEMBLYMAN LOVEYS: Kevin, thank you. That will conclude the testimony to be heard here today. We want to thank you for

attending, and again thank the people of the Cherry Hill area for inviting us. Thank you so much.

**(HEARING CONCLUDED)**

**APPENDIX**





**NEW JERSEY**

73 Main Street, Woodbridge, NJ 07095-2811 (201) 636-6270

**Testimony on the Verbal Threshold  
Before the Assembly Insurance Committee  
January 22, 1986**

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Good day. My name is Joseph O'Neill, and today I am pleased to continue the testimony of the Association of Trial Lawyers of New Jersey in opposition to the imposition of a verbal threshold for auto insurance.

Last Friday, this committee heard six hours of testimony on New Jersey's current auto insurance system in relation to the enactment of a verbal threshold. Six representatives of the insurance industry testified that the verbal threshold is essential to curing New Jersey's auto insurance problems. Yet, only one speaker, representing State Farm Insurance, was willing to go on record and reveal the average cost savings for consumers if a verbal threshold is enacted. That savings, a mere \$55, is less than 10% of the cost of the average citizen's auto insurance premium.

The legislature is asking the citizens of this state to relinquish their rights to a fair recovery for damages for the illusory promise of a meager reduction in their auto insurance premiums some time in the future.

These people who support a verbal threshold are not doing so because of a philosophical commitment to the concept. They only support a verbal threshold because they

have been mistakenly led to believe that enactment of a verbal threshold will substantially reduce the high cost of auto insurance in New Jersey. What will the citizens of this state do when they begin to understand that they are once again being misled by the insurance industry?

The insurance industry would like to blame the high cost of auto insurance on the tort system. But, clearly that is not the case. In reality, the soaring cost of auto insurance has been caused by: the increasing cost of unlimited medical benefits, the rapidly rising cost of auto repairs, and demographic factors unique to our state.

The enactment of a verbal threshold is the wrong remedy for curing New Jersey's auto insurance problems. Instead, a thorough diagnosis of the problem is warranted. If you agree with the representative from Allstate Insurance that auto insurance in New Jersey is too expensive then you will surely agree that the enactment of a verbal threshold to save less than 10% of premium cost is not the answer.

The question must be asked, who will benefit, and who will lose if a verbal threshold is enacted?

Clearly, the insurance industry will benefit because as Allstate testified, "its defense costs will go down." The negligent driver will also benefit, because the victim will be prevented from gaining recovery for damages caused by

his or her carelessness. But, the consumer will lose because his or her auto insurance rates will not be significantly reduced and he will no longer be able to turn to the courts for redress of his or her pain and suffering.

Only three states have adopted a verbal threshold. In two of those states, New York and Florida, benefits were substantially reduced in order to contain costs. And in Michigan, the only state with a verbal threshold and unlimited medical benefits, the insurance industry continues to press the Legislature to further restrict the verbal threshold. Last Friday, it was obvious that one of the insurance companies is already urging such restrictions in New Jersey.

The Insurance Brokers Association testified that consumers are being misled. We agree. When asked why more people did not take the options offered them under the 1983 auto insurance reform laws, the Brokers testified that the consumers did not think the amount of savings merited taking the options. Are consumers aware that the enactment of the verbal threshold will, at best, enable them to save the same amount of money as if they took the \$1700 option? Even with a verbal threshold, New Jersey is likely to remain first in the cost of auto insurance in this country.

According to the testimony presented last week, it is evident that the enactment of a verbal threshold will not substantially reduce auto insurance premiums. Therefore, this committee should not rush to release a verbal threshold bill, but rather should take the time to thoroughly and carefully review all aspects of auto insurance in New Jersey to determine the best method of reducing auto insurance premiums.

EXECUTIVE DIRECTOR

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LEGAL today called on the Assembly Insurance Committee not to rush to judgment and to release in haste a bill that would take away rights and not cut rates.

"Where is the proof?"

"Where is the statistical and actuarial evidence that a verbal threshold will reduce rates in New Jersey?"

Citing evidence that the reforms sponsored by Assemblyman Michael Adubato have already started to produce cost containment results, LEGAL pointed to the facts that

1. Rates in New Jersey have been stabilized since 1984. There has been no increase.
2. Rates in New Jersey in 1984 went down for those insureds opting for the higher dollar threshold by 35% of the Bodily Injury of their premium.
3. Profits were up in New Jersey in 1984. For the first time in a long time, the industry recorded a profit of \$56 million.

Counteracting the claims of proponents of a verbal threshold who point to Florida, New York and Michigan, LEGAL discounted these allegations and suggested the reasons that premiums went down was not because of the enactment of a verbal threshold but because:

1. In Florida, a cap of \$10,000 was instituted in place of unlimited medical benefits.
2. In New York, open rating was replaced by rating by state approval and a \$50,000 cap was placed on medical benefits.
3. In Michigan, 40% savings result to those insureds who make their own health care coverage primary.

"The New Jersey experience is working with the reforms legislated in 1983. Let's give them a chance to work. They have already demonstrated positive results. Let us not be so imprudent and uncautious that we hurt the policy holder. Cutting rights is just not fair.

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TESTIMONY PRESENTED TO ASSEMBLY

INSURANCE COMMITTEE PUBLIC HEARING

CHERRY HILL, NEW JERSEY

JANUARY 22, 1986

APPEARING :

FRANCIS J. HARTMAN

Chairman Loveys and Members of the Committee, Good Afternoon. My name is Francis Hartman and as a Trustee of LEGAL-Lawyers Encouraging Government and Law, I represent over one thousand attorneys and their clients.

We are here to discuss Assembly Bill #1, or what is known as a "verbal threshold."

Proponents of this legislation have advocated that the enactment of a verbal threshold was responsible for reducing rates for policy holders in the states of Florida, Michigan and New York.

This is not true.

FLORIDA EXPERIENCE Of course, the rates went down in Florida, because at the same time that a verbal threshold was enacted, so were other cost containing measures--such as eliminating unlimited medical benefits and capping them at a maximum of \$10,000 per accident. That is why the rates went down--not because of the enactment of a verbal threshold.

I also would call your attention to our Exhibit Number 1, attached to copies of my testimony which inform us that three of the state's five biggest auto insurers, Allstate, State Farm and United Services Automobile Association, have filed for rate increases. The result is expected to be auto rate hikes ranging up to nearly 13 percent. If the Florida experience is so wonderful, why are the rates rising? The New Jersey experience is better. Our rates have been stabilized for the last 2 and 1/2 years, and for those insureds opting for the higher dollar threshold, their rates have been reduced by 35% of the Bodily Injury portion of their premium. The New Jersey experience has been even better for the companies who made a profit of \$56 million in 1984. (Exhibit Number 2)

NEW YORK EXPERIENCE      Prior to the enactment of a verbal threshold, New York had "open rating." Open rating means that the companies can charge whatever they want. With the enactment of a verbal threshold in New York, also came legislation that provided for rates to be approved by the state. So of course, the rates came down. The companies were not allowed to charge whatever they wanted to anymore. This has nothing to do with a verbal threshold.

New York also has a \$50,000 maximum limit on medical benefits, as opposed to the unlimited medical benefits that we enjoy in New Jersey.

"The New Jersey experience is better. Our rates have been stabilized for the last two and ½ years and the companies made a profit in 1984 for the first time in years! As for New York, Best's ranks them number 3, ranked by 1984 average premium.

MICHIGAN EXPERIENCE      In Michigan, the policy holders are not saving money because a verbal threshold was enacted. The ones who are saving money in Michigan are the ones who opt to make their own health care benefits primary and they are saving 40%. Their health care insurer is primary and pays their bills, not their automobile carrier.

According to a study by Professors Bernard Webb and Claude Lilly, using statistical data that was compiled by the insurance industry from 1975 to 1982, Michigan showed a premium increase of 108%.

The proponents of Assembly Bill A-1, specifically the Commissioner of Insurance, Mrs. Hazel Gluck, and representatives from the insurance industry, have testified before you last week that the enactment of a verbal threshold will save premium dollars--not immediately--but perhaps in 18 months

or two years. In other words, not now. There is absolutely no statistical support for a verbal threshold.

Then why rush to judgement? If a verbal threshold is supposed to save money and cut rates, then perhaps we should mandate that savings into legislation so that the consumers will see a savings--now. If consumers are losing rights that they have had for the last thousand years--rights that they have had longer than the rights to religion, assembly and press--if they are losing their right to be compensated for a wrong done to them--then their rates should be cut--now--not "somewhere down the road from now".

#### NEW JERSEY EXPERIENCE

Let's talk about a very special place--New Jersey. New Jersey drivers have always paid more in premiums, even before the advent of no-fault because of a number of relevant factors:

1. New Jersey insureds receive the richest package of benefits in the country.
2. New Jersey is the most densely populated state with more people and more cars per square mile.
3. New Jersey is a corridor and recreational state.
4. Before 1984, the entire cost of an automobile injury was kept within the automobile insurance system.
5. Before 1984, high and inequitable administrative costs were built into the system.
6. Before 1984 we did not have a number of cost containing reforms, to wit:  
arbitration  
rehabilitation measures for drunken drivers  
highway safety  
automobile insurance fraud prevention
7. Before 1984, there had been no financial disclosure law for the industry.

SINCE 1984, SINCE THE REFORM LEGISLATION OF 1983, SPONSORED BY ASSEMBLYMAN MICHAEL ADUBATO, THINGS ARE MUCH DIFFERENT AND MUCH BETTER IN NEW JERSEY. In fact, no-fault is working better than it has ever worked in comparison to the other no-fault states.

1. Because of the Automobile Insurance Reform Act of 1982, (P.L. 1983, c. 65) sponsored by Assemblyman Adubato, premium rates in 1984, for the first time since the inception of no-fault in 1972, did not increase--they stayed the same. If you have looked at your bills in the last 2 and  $\frac{1}{2}$  years, you will see that rates have been stabilized--they have not risen.
2. Also in New Jersey in 1984, rates have even decreased for those insureds taking the option of a higher dollar threshold. The rates for these people have decreased 35% on the Bodily Injury portion of their premiums.
3. Also in New Jersey in 1984, automobile insurance companies, for the first time in years, recorded a profit of \$56 million dollars in the regular insurance market, according to the latest figures reported by the New Jersey Information Service and the Insurance Information Institute from figures compiled by A.M. Best Co.
4. The Financial Disclosure and Excess Profits Act (P.L. 1983, c. 357) sponsored by Assemblyman Alan Karcher provides for full financial disclosure by insurance companies that appeal to legislators with a cry that they continue to suffer enormous losses, while informing their stockholders of record profits. This act is a key component of cost containment. It mandates that insurance companies must provide certain financial data regarding their revenues and expenses to the Department of Insurance. If the Commissioner determines that there are excess profits, those profits must be and will be

returned to the consumer. The measure is modeled on the Florida disclosure law which resulted in the payment of \$25 million in rebates to consumers during the first year that it was in effect. Under the Disclosure Act, the New Jersey Department of Insurance on July 1, 1986, will begin to review the previous three years of experience and then determine and make known the amount, if any, of excess profits. For the first time in the history of the industry in New Jersey, the companies will not be able to hide their reserves and their profits!

5. The Arbitration Act (P.L. 1983, c. 358) has already resulted in a lessening of court congestion and litigation costs without effecting anyone's rights.

6. Other reforms already in place which address cost containment are:

- . Licensing of Automobile Repair Facilities Act (P.L. 1983, c.36)
- . Fraud Prevention Act (P.L. 1983, c. 320)
- . Automobile Insurance Collision and Comprehensive Coverage Act (P.L. 1983, c. 359) which mandates that insurance companies must offer deductibles of up to \$2,000 in both collision and comprehensive coverage. It permits a further reduction in premiums by policy holders agreement to pay 10 to 20 percent of the collision or comprehensive claims in excess of their deductible (the so called coinsurance option).

These reforms are already in place and have already started to show positive results for cost containment. Let us not be so hasty and rush to judgment without statistical data. If we are going to cut rights, then we should also cut rates. And since rates have been stabilized why rush. Let us wait for sound actuarial data.