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# Committee Meeting

of

## JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

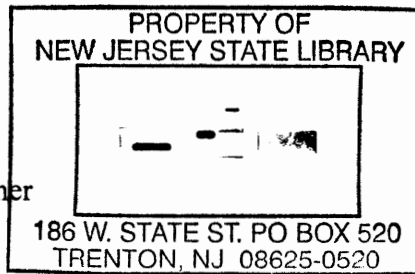
*"Deliberations with regard to automobile insurance reform"*

**LOCATION:** Committee Room 11  
State House Annex  
Trenton, New Jersey

**DATE:** March 23, 1998  
9:30 a.m.

### MEMBERS OF COMMITTEE PRESENT:

Senate President Donald T. DiFrancesco, Co-Chairman  
Assembly Speaker Jack Collins, Co-Chairman  
Senator John O. Bennett  
Senator Gerald Cardinale  
Senator Joseph M. Kyrillos Jr.  
Senator Richard J. Codey  
Senator John H. Adler  
Assemblyman Paul DiGaetano  
Assemblyman E. Scott Garrett  
Assemblywoman Clare M. Farragher  
Assemblyman Joseph V. Doria Jr.  
Assemblyman Joseph Charles Jr.



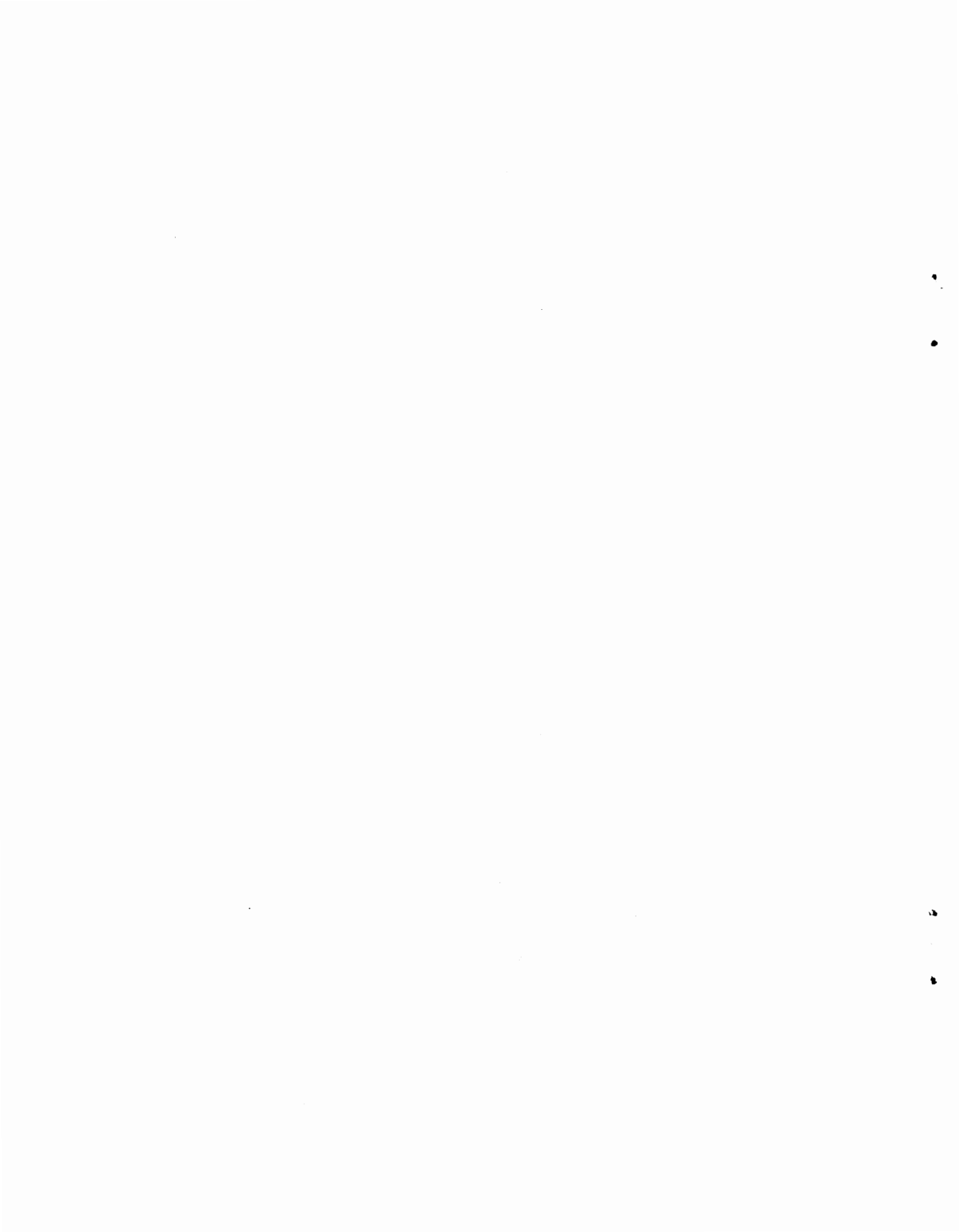
### ALSO PRESENT:

Thomas K. Musick  
*Office of Legislative Services  
Committee Aide*

Laurine Purola  
Jarrod C. Grasso  
*Majority Staff  
Committee Aides*

Thomas J. Hastie  
Tim Clark  
*Democratic Staff  
Committee Aides*

**Meeting Recorded and Transcribed by**  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey





**New Jersey State Legislature**  
**JOINT COMMITTEE ON AUTOMOBILE INSURANCE**  
**REFORM**  
STATE HOUSE ANNEX  
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Co-Chairman  
JACK COLLINS  
Co-Chairman

JOHN O. BENNETT  
GERALD CARDINALE  
JOSEPH M. KYRILLOS  
RICHARD J. CODEY  
JOHN H. ADLER

PAUL DIGAETANO  
E. SCOTT GARRETT  
CLARE M. FARRAGHER  
JOSEPH V. DORIA, JR.  
JOSEPH CHARLES, JR.

**COMMITTEE NOTICE**

TO: MEMBERS OF THE JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM

FROM: SENATOR DONALD T. DIFRANCESCO, CO-CHAIR  
ASSEMBLYMAN JACK COLLINS, CO-CHAIR

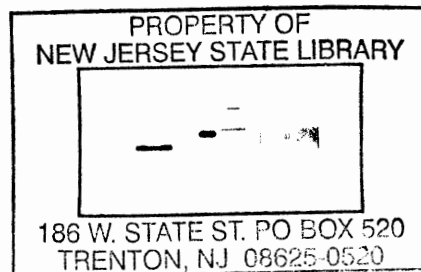
SUBJECT: COMMITTEE MEETING - MARCH 23, 1998

*The public may address comments and questions to Thomas K. Musick, Committee Aide, or make scheduling inquiries to Arlene H. Bezek, secretary, at (609)984-0445.*

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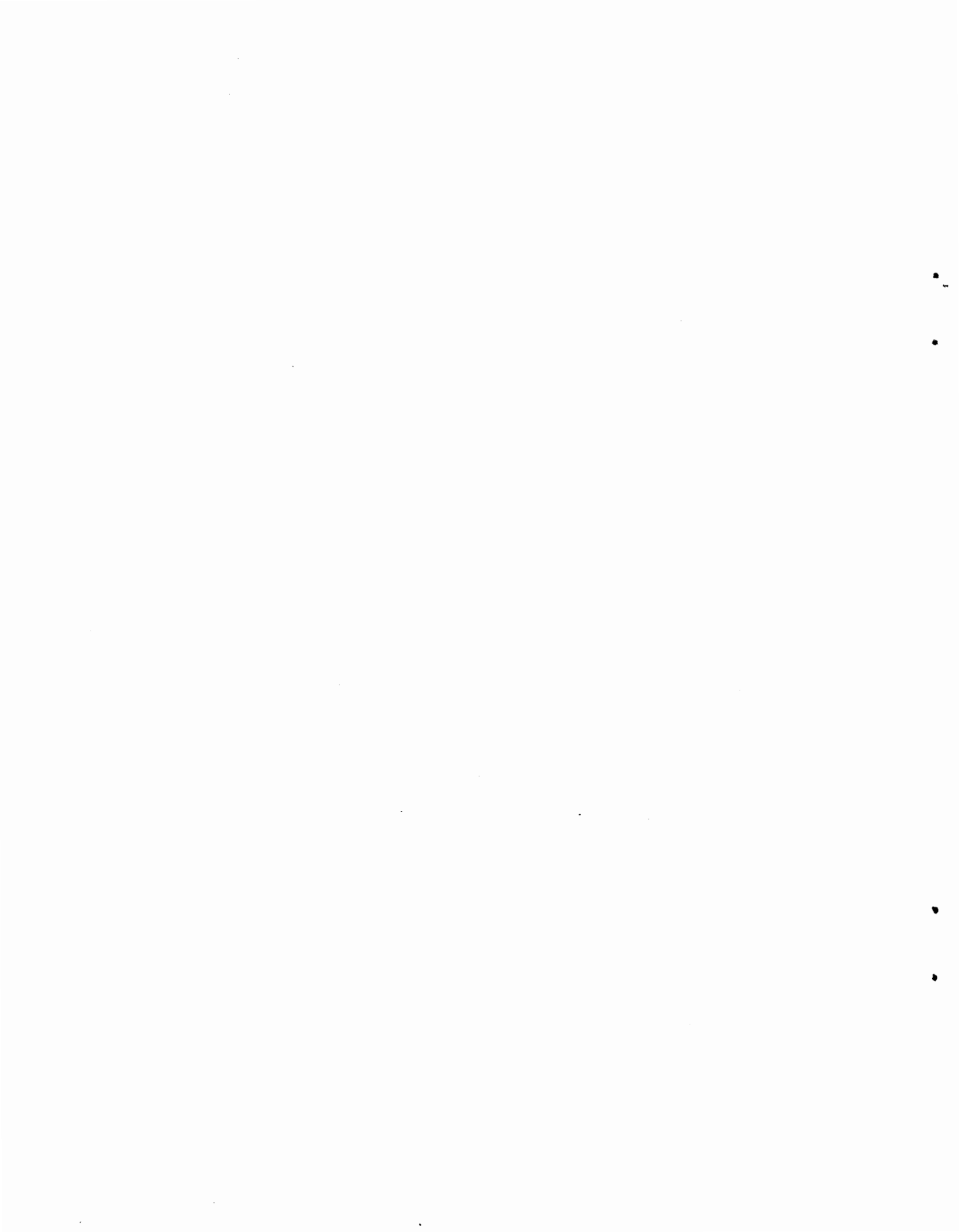
The Joint Committee on Automobile Insurance Reform will meet on Monday, March 23, 1998 at 9:30 A.M. in Committee Room 11, (Fourth Floor, Room 438), State House Annex, Trenton, New Jersey.

The committee will meet to consider legislation instituting automobile insurance reform.



Issued 3/17/98

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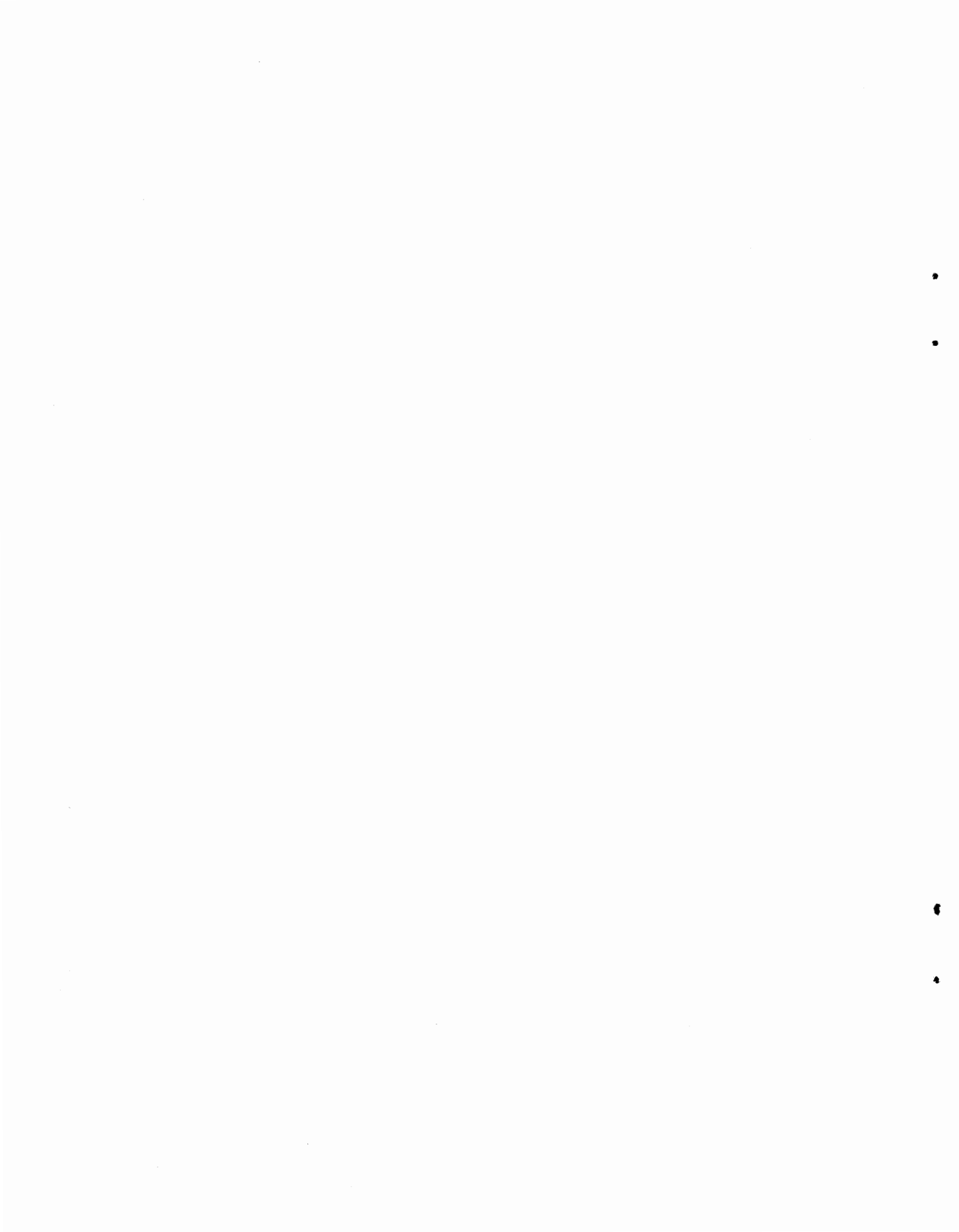
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New Jersey Insurance News Service 1x

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Insurance Companies' Abuses 4x

lmb: 1-84



**SENATE PRESIDENT DONALD T. DiFRANCESCO**

**(Co-Chairman):** Okay, we're going to start now even though everyone is not here, and we're going to start to discuss the basic policy, as it's referred to.

Tom is going to handle this.

**MS. PUROLA (Majority Aide):** Yes.

**PRESIDENT DiFRANCESCO:** You're going to explain to the Committee--

**ASSEMBLY SPEAKER JACK COLLINS (Co-Chairman):** Tom Hastie is it?

**PRESIDENT DiFRANCESCO:** --what the basic policy means.

**SPEAKER COLLINS:** Hey, Tom, when I gave you that pep talk on Friday, I didn't know you were going to take over on Monday.

I talked to him in the hall and now he's ready.

**MR. HASTIE (Minority Aide):** Let me start on the basic policy. Essentially what a basic policy would do is it would allow in a specific type of coverage to be sold that is below the basic statutory minimums required by current law. It would be made up of a lower/reduced PIP limit of somewhere between \$10,000 and \$15,000. It would not include any bodily injury liability coverage, meaning that if someone covered by a minipolicy, or a basic policy, were to hit somebody else, they would not be insured for any liability. Their assets would be at risk. It would have a limited property damage coverage -- materials contemplating \$5000 property damage coverage. And as contemplating the materials, every minipolicy would be sold just with a verbal threshold. So there would be no-- Persons who purchased the minipolicy would not have the option of choosing a zero threshold.

Other mandatory coverages that would not be included in a minipolicy, or basic policy, are: There would be no uninsured or underinsured coverage. There would be no collision or comp; although, those aren't required by law now. It's been suggested from various actuaries that a minipolicy could be sold at around \$350, statewide average: slightly higher, urban areas; slightly lower, suburban areas.

Any questions? (no response)

It's essentially designed to address an affordability issue. As the Committee considered on Thursday, the first option would be do we want to keep insurance mandatory. The consensus seemed to be that mandatory insurance should be kept. If we're going to force people to buy insurance and it's unaffordable to a vast majority of people that creates a public policy issue. This is one way of addressing that issue.

SENATOR BENNETT: I have a question.

PRESIDENT DiFRANCESCO: Senator Bennett.

SENATOR BENNETT: I have a question. On the summary it says that if a basic policy driver injures a person, that person needs to recover from their own uninsured or underinsured motorist coverage. How about if a basic policy person hit someone that also has a basic policy? So you have two basic policy people hitting each other.

SENATOR ADLER: S-O-L.

MR. HASTIE: If either one-- If the person who is negligent has assets, they would be at risk. If the person who was hit has other types of coverage, perhaps, they can recover from that. But if you're leaning just on

your auto insurance policies and there's two basic people involved in an accident, you know--

SENATOR BENNETT: Well, didn't we have some discussions in the PIP area that we thought that by changing the amount of the medical we were going to be creating people that weren't going to be able to have certain-- The reasons that we didn't want to lower it -- the PIP -- was because it was not going to provide for expenses of over a certain amount of money. Are we creating a different category now for people that don't have money, so they don't have to have that higher PIP coverage? I don't-- That's where I'm confused on that.

MR. HASTIE: PIP coverage is first-party coverage. So to the extent that you choose a lower coverage, you're putting your own assets at risk, if you exceed your policy limits. Third-party coverage is your basic liability coverage.

SENATOR BENNETT: Right. There's two different things that we're talking about. I understand that, but I guess we'll deal with one at a time.

PRESIDENT DiFRANCESCO: You mean the philosophy behind this?

SENATOR BENNETT: Yes. That's--

PRESIDENT DiFRANCESCO: Senator Adler wants to speak to that issue.

SENATOR ADLER: I think the fundamental policy question we're looking at with respect to considering a basic policy, as we're calling it, is whether or not we're providing new insurance for people who currently are

not in the insurance system, and if, in fact, we are providing a product that's affordable enough for people that currently are driving uninsured because of costs. That we're actually providing a service to bringing people into the system or providing them with PIP coverage which currently they are not now getting, in particular, if we choose this Option 2 here on the chart and have a catastrophic rider that provides for some more traumatic injuries. And I think what we need is-- You're talking about in a medical context.

But I think the theory is that people right now driving uninsured aren't covered in a third-party context. They can't bring a BI claim anyway. So for the hypothetical you raised of basic policy hitting basic policy, I think the response is that right now it's uninsured hitting uninsured, and with the statute that was enacted back in July neither party could sue the other party for that BI claim now. That we're bringing people into the system and even mandating a verbal threshold for those drivers, we're still covering serious injuries and bringing them in both for PIP purposes and BI purposes medically and legally to help them.

The real question, I think, throughout which is whether, in providing this option for people, we're going to be having people buy in who are currently out of the system or whether we're going to have people buy down who currently have taken the minimum 15/30 policy. And that's a legitimate concern I had, that maybe we would be shutting people out of BI opportunities and particularly, if we have a different PIP here than for the regular policy, whether we shut people out medically in some cases. That's something that, I think, we have to grapple with as a Committee, but I think if we're bringing people in, that's a very positive thing for the system.

SENATOR BENNETT: Well, my first question then is: If we had the PIP benefit to be -- instead of lowered to 15,000, we maintained it in the basic policy at 250, what impact would that have on the premium? Because we've decided that-- I mean, there seems to be an indication that we want to keep it 250; although, we haven't resolved that.

SPEAKER COLLINS: No, we haven't.

SENATOR BENNETT: But there was some discussion -- let's put it that way -- that people felt that some people wanted to keep it at 250. Why do those arguments not stay the same here?

SENATOR ADLER: I'll give you my own personal opinion about that, and Laurine can give a statistical answer. I think if you keep loading things into the basic policy to make sure that it doesn't disadvantage people in terms of the quality, at some point, those marginal increases in price, price some people out of buying the basic policy. And, therefore, we're defeating the purpose of providing this alternative, assuming we're providing just for people who will make the right rational calculation and not purchase lower-quality insurance.

SENATOR BENNETT: Then why do we not argue the same way as the Speaker's position is, that if people have the right to have a basic policy and pay that and choose to go that lesser amount of 15,000, why do we not allow the other people that same choice instead of mandating at 250? That's my only argument as to why are we creating two different categories and not allowing the same choices to both. I don't know the answers. That's why I'm asking the question.

PRESIDENT DiFRANCESCO: But it is a policy design to, as John said, bring people into the system that basically are, I assume, young people or people without assets.

Laurine, did you want to say something?

SENATOR BENNETT: How much was the difference?

MS. PUROLA: The difference here-- This is one company, but premium for 10,000 PIP would be \$70.72 at statewide average. I'm sorry, 72 times 2 -- this is a six-month premium -- so that's 140. As opposed to the \$116 for six months that is the regular PIP premium for the \$250,000. Although remember, you're only paying on the first 75,000. You're not really paying on 250,000.

With respect to anything over \$10,000, whether you put it on a basic policy, or a standard policy, if the limit is 10,000, then anything over that would be in court. So you would have to sue for that.

PRESIDENT DiFRANCESCO: Senator Kyrillos, I guess you have a bill that speaks to the basic policy. Did you want to say something about it?

SENATOR KYRILLOS: Well, a quick question, Mr. President, and I'll just make a quick remark, to follow up on John Bennett's hypothetical, and, Tom, maybe you have the answer to this, or Laurine. If a basic policy person were to hit somebody with a standard policy, their uninsured motorists coverage -- the standard policy person -- would take care of any bodily injury?

MR. HASTIE: Any liability--

SENATOR KYRILLOS: Any liability in its entirety?

MR. HASTIE: Up to their policy limits.

SENATOR KYRILLOS: Theoretically, up to their policy limits. So theoretically, they could go into the other guy, but probably not. Assume they had a--

MR. HASTIE: I mean, you run this risk even now with-- I mean, if someone's buying the legal minimum policy, it's \$15,000 per person per accident. So, I mean, a run-of-the-mill serious injury is going to vastly exceed that now. And the practice has been that you go to the extent possible against the tort-feasor and then against your own first-party UM coverage. Now you're just kind of taking out that first step that they don't have-- You have a tort-feasor without any liability insurance. Presumably, if they're purchasing a basic policy, they don't have very much in assets that they're trying to protect. So you would go directly against your own uninsured motorists coverage up to those limits.

SENATOR KYRILLOS: Mr. President, let me just say that among the items that there's been consensus on--

SENATOR BENNETT: Mr. President.

SENATOR KYRILLOS: --members of this Joint Committee and across party lines, and there's still a lot of outstanding questions to be dealt with. I'm happy to feel that this item is one that we have all kind of come around to -- both Houses, both Majority and Minority members of this Joint Committee -- because it really does make very good common sense to give people who are mandated by law to buy insurance the choice to buy a more basic and, therefore, more affordable insurance policy.

John Adler summed it up very well that the inordinate majority, probably, of people that choose this option are people that are not insured

now. So we've got them in the insurance pie. We're going to have some of their resources where they're going to take stress off of charity care dollars, and society is paying for these people one way or another. And I've forgotten the percentage, Laurine, but it's double digits of people that are not insured right now. What is it?

SENATOR BENNETT: Twelve percent.

SENATOR KYRILLOS: Twelve percent for people who just don't have assets, for college students, for the urban poor, for the unemployed. This is an option that New Jerseyans will thank us for. So knowing that we have all kinds of open-ended questions that we've got to address, I sense, Mr. Speaker, Mr. President, a sense that there is some overarching consensus on this issue, and hopefully, we can deal with it quickly and move on to other things.

PRESIDENT DiFRANCESCO: Majority Leader.

ASSEMBLYMAN DiGAETANO: Thank you, Mr. President. I'm a little unclear on something that was said moments ago, and I believe you said that there was some consensus to keep minimum \$250,000 PIP coverage, which is not a position which I hold--

SENATOR BENNETT: I said it.

ASSEMBLYMAN DiGAETANO: I'm sorry, maybe the other Leader said it. But at any rate, what I'm unclear about is how that fits with this policy. Because unless we're going to restrict the basic policy to certain individuals, which is also a position I don't support, then that becomes minimum legal coverage in the State of New Jersey. And once that becomes minimum legal coverage in the State of New Jersey, then you no longer have

a mandatory 250 PIP. It's mandatory at whatever level the basic policy is. I'd just like that cleared up. Because I happen to support this concept, but I don't want the wrong message to get out to anybody as far as what is consensus to this Committee. So I really would like to have that cleared up now if possible.

PRESIDENT DiFRANCESCO: Well, there are some other differences in the basic policy from the policy that we have in effect today, such as the mandatory verbal threshold and a few other things. They were talking about the bodily injury, the liability aspects of it. It does certainly become the basic policy, but not one that I would anticipate that most people in this room would buy. I bet you most people in this room wouldn't buy this or wouldn't even come close to buying a policy like this, and therefore, would opt for whatever it is we wind up with later, but I didn't put this on the table myself. I would be interested in hearing from everybody on this issue, too.

I noticed that Scott and Gerry came in together. I don't know if they were caucusing together or whether they just figured we'd start at 10:00.  
(laughter)

Who would like to be-- Gerry.

SENATOR CARDINALE: The basic policy. A few years ago I introduced one of these, and I thought that this was a pretty good idea. And I've come around to thinking something different today, and I'll just put that into the mix.

It seems to me that if there are two cars, one of them has \$250,000 worth of liability coverage and the other has none. And one of them hits the other from the rear, a clear case of negligence on one part. Depending on which one is in front, one can recover \$250,000--

PRESIDENT DiFRANCESCO: Well, as a lawyer, I tell you, it is not always clear cut, Gerry.

SENATOR CARDINALE: Well, it's pretty clear cut. Anytime I have been in an accident and a lawyer has asked me, "Were you rear-ended--" So I think that's the case that they look for.

If one of them can recover 250,000 and the other can recover zero from their own insurance, that seems to me like an eminently unfair situation, as between those two individuals. And I realize that there are lots of inequities in our society, but should we build them into the law?

Currently in New Jersey, if someone has no liability insurance, they can't sue, as a result of the bill which we passed last June. What this would do would be to say to somebody who has no liability coverage, "You can have no liability coverage, but you can now come back in and sue." So I think it's violating one of the principles that pretty much we are charged with, and that is, saying if you are going to do something that's going to get you into more lawsuits that's sort of a no-no for this Committee. And I think that this would get us into, at least in that narrow respect, more lawsuits.

So I would suggest that we have some minimum amount of liability coverage and for another reason, as well. When someone has absolutely no liability for what they do to someone else because they are judgement proof and are carrying no coverage, I think it tends to promote irresponsibility. I have no statistics, no data, but it's my sense that that tends to promote irresponsible behavior. And we should have some degree of responsibility even if it's only \$5000 worth of liability coverage. I think there should be some degree of liability coverage even in this basic policy. I don't

know how much that would run up the cost, but I think it would be something that we should maintain.

And those who have indeed no insurance I believe should continue to not be able to sue others, because they're not putting their money into the pot, and I don't think they should be able to take it out of the pot.

PRESIDENT DiFRANCESCO: Scott, do you wish to be heard on this basic policy issue?

ASSEMBLYMAN GARRETT: Just a question for you, maybe on how this works then. Is it the case, first of all, as Gerry suggests that the person who purchases this policy will, contrary to what we did before, get back the right to sue? Am I reading it that way?

PRESIDENT DiFRANCESCO: The way I read it, they have a mandatory lawsuit, a verbal lawsuit threshold.

ASSEMBLYMAN GARRETT: And the language also on the flip side of that, is it the case that--

PRESIDENT DiFRANCESCO: What do you mean by get back the right to sue? I'm not sure what you mean.

ASSEMBLYMAN GARRETT: Well, the point saying that -- under other proposals -- where if you don't have coverage at all, then you're forfeiting the right to sue.

PRESIDENT DiFRANCESCO: Oh, okay, what he referred to, if you have no coverage, you can't sue.

ASSEMBLYMAN GARRETT: Right.

PRESIDENT DiFRANCESCO: Seems fair.

ASSEMBLYMAN GARRETT: If I'm hit by somebody that has this coverage, then the language in here says is that person would need-- I would need to recover from my own UM coverage. Correct?

PRESIDENT DiFRANCESCO: That's what I was told, yes.

ASSEMBLYMAN GARRETT: Why am I not still allowed to file suit against that individual?

PRESIDENT DiFRANCESCO: You can sue them for all the assets they have -- house, a house at the beach, Mercedes, everything they have, boat, sailboat, if they have them.

ASSEMBLYMAN GARRETT: If they have them. Then why does it say then that the basic policy of the driver injures a person, that person--

PRESIDENT DiFRANCESCO: A couple of sheep, they probably have farm animals in some cases. You can attach the produce. (laughter) I don't know. I'm just a member here. Anybody want to deal with these issues that have been raised?

SENATOR CARDINALE: This issue, I think, could be dealt with by something that was brought up previously, and I refer to it as the Kavanaugh Plan.

PRESIDENT DiFRANCESCO: Is that like in Walter Kavanaugh--

SENATOR CARDINALE: In Walter Kavanaugh.

PRESIDENT DiFRANCESCO: --or some other Kavanaugh with a C?

SENATOR CARDINALE: It's Senator Kavanaugh who came up with this idea. I will not steal the idea from him. I'll give him credit for it. And that is, you can only sue for pain and suffering to the extent that you carry

coverage for pain and suffering -- that you limit the upper side of the lawsuit on the basis of how much the person is carrying. And that sort of levels out that playing field, that fairness doctrine that we were talking about.

PRESIDENT DiFRANCESCO: Well, Laurine points out that that's the Governor's proposal.

SENATOR CARDINALE: Is it?

ASSEMBLYMAN DiGAETANO: She got it from Walter.

MS. PUROLA: Not the limitation--

PRESIDENT DiFRANCESCO: That's why Walter introduced it.

MS. PUROLA: --on the right to sue to the extent of the bodily injury, but not being able to sue if you don't buy--

SENATOR CARDINALE: Oh, that was not at all. But I think economic loss -- I think there's a pretty generally recognized principle that for economic loss everybody ought to be able to recover for economic loss just because they're a human being.

But I would-- The Kavanaugh principle is a little different than the Governor's proposal. It is only referring to pain and suffering. And that would have the effect of giving people, if you want to get into the lottery system, that some people refer to our insurance as in certain cases, that you have to at least buy a ticket to be able to participate in the benefits of the system.

PRESIDENT DiFRANCESCO: Well, that's the purpose of the \$350 average cost for this policy is you're buying some ticket. It may not be the best ticket you can buy, but that's what I thought the purpose was.

SENATOR CARDINALE: Well, the ticket doesn't put any money into the bodily injury pool, understand that. So why should these people--

PRESIDENT DiFRANCESCO: Well--

SENATOR CARDINALE: --be in the bodily injury pool if they're putting no money into the bodily injury pool?

PRESIDENT DiFRANCESCO: Because if they're injured by some reckless person, shouldn't they have the same rights that other people have?

SENATOR CARDINALE: Sure.

PRESIDENT DiFRANCESCO: Since they're carrying insurance under a proposal adopted by the Legislature.

SENATOR CARDINALE: If you pass this law, you will.

PRESIDENT DiFRANCESCO: It's not something I thought of, but, I mean, if we now say we're going to offer this basic policy and we'd like you to buy it -- you know, you're uninsured. We'd like you to buy it. They're in the system, and if they're injured permanently, we think they ought to have some rights, too, if we're going to allow rights for everybody.

SENATOR CARDINALE: But the rights could be limited to economic loss. And I think perhaps the difference in what I'm talking about is having the rights, but it is to sue for the economic loss, which they currently don't have.

PRESIDENT DiFRANCESCO: So that you're saying that if we added this \$15,000 liability coverage thing per person and 30,000 per accident to this policy, then you'd be satisfied?

SENATOR CARDINALE: No. What I'm saying is really 5000 minimum. All right. I think if you go back to the 15,000, you're going to lose

the benefit of the lower premium that you're looking for. And I'm offering this as a sort of an in-between step. I don't want to call it a compromise, but as something between the extremes.

PRESIDENT DiFRANCESCO: Five thousand dollars per person?

SENATOR CARDINALE: Five thousand dollar per person liability coverage so that they maintain some aspect of responsibility, but also not the economic but the-- I'm sorry. The noneconomic, yes, aspects of any suits would be limited to the amount that they are liable for, in fact, which is the amount that they're covering.

PRESIDENT DiFRANCESCO: Okay. I'm not sure I follow that, but does that mean when they sue? What does that mean when they sue?

SENATOR CARDINALE: When they sue, they would be able to collect unlimited amounts--

PRESIDENT DiFRANCESCO: For pain and suffering?

SENATOR CARDINALE: --as everyone does for -- not for pain and suffering -- their economic loss, for any wage loss that exceeds PIP, for any other physical damages that are done for which they are not reimbursed in one way or another. If their medical bills exceed the 250,000-- If that's the limit indeed, which we have, but in this policy we're talking about 15. To the extent that you would exceed 15, you would be able to sue for that. But for the intangible or pain and suffering loss, that would be limited to the amount -- in my concept -- in the amount of insurance that one is carrying.

PRESIDENT DiFRANCESCO: Well--

SENATOR CARDINALE: Because that's all that's available to the person who is injured by them.

PRESIDENT DiFRANCESCO: Well, there are two bills that have been introduced. Senator Adler introduced one and Senator Kyrillos introduced one that provide for a basic policy and both provide for basic -- you had to accept a verbal threshold as whatever form, I guess, we pass it.

Senator Adler.

SENATOR ADLER: I'll acknowledge there's a pretty big error in my bill with respect to the basic policy that I didn't contemplate with the catastrophic override.

PRESIDENT DiFRANCESCO: Setting that aside.

SENATOR ADLER: I want to make that clear that that was a mistake in my bill. I don't think that the area that Senator Cardinale was talking about in my bill is mistaken, and I don't think Senator Kyrillos's bill is mistaken. We should keep it the way it is with respect to what was said.

PRESIDENT DiFRANCESCO: Paul, Majority Leader.

ASSEMBLYMAN DiGAETANO: I have a question of our legal minds here -- and I'm not of those -- with respect to the issue that Senator Cardinale is raising now. I'm not sure of the proposal, but here's the question. Would the proposal cover the nondriving members of that family? Here's the question. If an individual had the basic policy and basic limits and their child was riding in my vehicle and someone rear-ended us and injured them very, very severely -- maybe for life -- would they then not be able to bring an action? Is that what the proposal is? Would the action only be for economic losses?

PRESIDENT DiFRANCESCO: No.

ASSEMBLYMAN DiGAETANO: No, I'm asking what the Senator is proposing. I'm unclear on that.

SENATOR CARDINALE: It depends on how you draw it. The way I would draw it would be that that individual would be able to sue for the economic losses that you're mentioning. You're mentioning economic losses--

PRESIDENT DiFRANCESCO: Wait. No, Gerry, he's talking about a passenger in a car. That passenger can sue anybody they can find.

ASSEMBLYMAN DiGAETANO: Well, that's the question I'm asking.

PRESIDENT DiFRANCESCO: Either driver or--

ASSEMBLYMAN DiGAETANO: The reason I raised that question, Mr. President, is because some legal minds raised it with me with respect to our present law for the uninsured motorists. If an individual in that uninsured motorist's family is injured in another vehicle, not in that particular vehicle, the uninsured vehicle, and not with the uninsured motorist driving, there is a legal question as to whether or not an action can be brought by that nondriver who happens to be covered by -- it was a family member of the uninsured motorist. That's why I raised the question.

PRESIDENT DiFRANCESCO: Is it? Is that a legal question? Is that an issue at all that a passenger in a car would have those rights?

ASSEMBLYMAN DiGAETANO: And that's under current law. So now I question--

PRESIDENT DiFRANCESCO: Is that true, though?

SENATOR BENNETT: Yes.

PRESIDENT DiFRANCESCO: Passenger can't sue who?

ASSEMBLYMAN DiGAETANO: Can't sue the at-fault party.

PRESIDENT DiFRANCESCO: I'm misunderstanding the hypothetical then.

MS. PUROLA: The vehicle is uninsured.

ASSEMBLYMAN DiGAETANO: I'm told under our current law, Mr. President, and again I'm told by the legal minds -- this is not something that I've made up -- that the child of an uninsured motorist who is traveling in another vehicle, not with the uninsured motorist driving, who is injured by yet another motorist with plenty of insurance cannot bring an action against that covered--

PRESIDENT DiFRANCESCO: That can't be right.

ASSEMBLYMAN DiGAETANO: Well, I'm not the legal mind.

PRESIDENT DiFRANCESCO: That can't be right.

ASSEMBLYMAN DiGAETANO: So I'm told that that's under current law. Now I'm asking, under Senator Cardinale's example, is that also the proposal for this particular policy -- this issue?

SENATOR CARDINALE: I believe you were the Assembly sponsor of the bill in question and I was the Senate sponsor of the bill in question, so we have maybe some special responsibility for this.

ASSEMBLYMAN DiGAETANO: It doesn't make it right or wrong, Gerry.

SENATOR CARDINALE: It is my understanding, and I don't know what the courts have done with it since it got out of our place here, but it's my understanding that that child does not derive the right to sue for either pain and suffering or for economic loss from their parents' policy -- that they are an ordinary person. It is only the uninsured driver who has this problem.

Now, I don't know what the practice is that has come about as a result of it, but that was my understanding of what the law we were passing meant. That that child would still have all of the rights in the world with the exception that he couldn't go against his parents' PIP--

ASSEMBLYMAN DiGAETANO: Senator, that was--

SENATOR CARDINALE: --if the parents didn't have PIP.

ASSEMBLYMAN DiGAETANO: --exactly my understanding when I sponsored that piece of legislation together with you. I'm told by legal minds -- many of whom are in the room -- and I saw them all nodding to the contrary not when I raised the issue, but when you did. But they believe that is what our law states. I think we do have a responsibility for that, and that's why I asked you-- That's why I asked the Senate President to clarify your proposal. Because if your proposal is along the same lines that you and I thought our piece of legislation was last June, as to the driver -- that individual who chooses coverage for himself or herself -- then I don't have as much of a problem with it. If it covers members of that driver's family who happen to be on that policy, so to speak, not named as drivers, but also named as drivers, then I have a problem with it. So that's why I asked the President for clarification. But I don't think we're in disagreement, and as a matter of fact, I have some people looking at our law just to make sure that we were not in error last June. It may be necessary to clarify that piece of legislation.

ASSEMBLYMAN GARRETT: I think that was brought up at the hearing. That was portions of the Governor's proposal, and that was brought up at the hearing at the time of the Regulatory Oversight by someone. I forget who actually brought it up from the Department, and, I think, Lisa Randall

confirmed that that was the printout. Maybe it wasn't Lisa that brought it up, but someone from the Department confirmed that that was the intention, as you said, hypothetical, of the Governor's proposal. Your legislation, Gerry, and your legislation, was, as you know, crafted from input from the Governor's office, and that's where that language came from.

ASSEMBLYMAN DiGAETANO: So what was the intent? To prohibit the--

ASSEMBLYMAN GARRETT: For prohibition.

ASSEMBLYMAN DiGAETANO: The entire family.

ASSEMBLYMAN GARRETT: Right.

ASSEMBLYMAN DiGAETANO: You wouldn't mind cosponsoring that clarification with me? Right, Gerry?

SENATOR CARDINALE: I've withheld introducing any comprehensive auto insurance bills pending the outcome of these hearings. I certainly have an outline of a comprehensive bill which I will attempt to interject, as we do, little bits and pieces of what it is that we're going to be doing. And I would hope that we would craft a bill in this Committee that would not necessarily represent Senator Kyrillos's bill or Senator Adler's bill and that those are not necessarily a base from which we are working, but rather the situation. We work from a common ground to resolve the individual problems, as this Committee would want to resolve them, not as any individual who has just introduced a bill. If that's not the case, I'd be very happy to introduce a bill based on the outline that I have -- what I think ought to be done.

SPEAKER COLLINS: Senator Adler.

SENATOR ADLER: Just to respond to that narrow point. I don't think a court, as yet, ruled on the interpretations of the statute because it's so new, but it is likely a court would find that if the logic holds that uninsured family member as well -- family members who don't have their own policies are covered to the extent of the policy of the family member who does have a policy, then if the heads of the household have no policy, have no insurance, then the courts logically say that's the bundle of rights, in this case no rights, that the other members of the household have. And so for Paul's hypothetical, I think the child would be uninsured and would be barred from suit. And that's not the result, I think, that we intend for society, and that's why maybe a basic policy brings people into the system and allows them medical and legal rights that right now they can't afford.

SPEAKER COLLINS: Majority Leader Bennett.

SENATOR BENNETT: Mr. Chairman, I'm still back trying to get this differential and perhaps it can be explained. Just dealing on the PIP, when we talked about the PIP options available, and we basically talked about the 250,000 or the 15,000, my understanding was that the difference in premium differential between those were somewhere between \$35 and \$40. Now, is that correct? But now when we're dealing within a basic policy, the differential between 250,000 and 15,000 PIP coverage is \$70.

MS. PUROLA: It's different by company, but it doesn't make any difference whether it's basic or not.

SENATOR BENNETT: Well, then-- But why are we using different figures for different aspects? It's like we pick what we want when we want to do it.

SENATOR ADLER: We're the Legislature.

SENATOR BENNETT: Well, that's not right, though. I mean, is the PIP savings between 250 and 15-- What is the amount of savings?

MS. PUROLA: There is no single amount. Every carrier files its own rates and every carrier is going to have a different differential.

SENATOR BENNETT: So if we went with the Speaker's proposal on the PIP coverage between 250,000 to 15,000, we could be talking about a \$70 savings per premium?

MS. PUROLA: Depending on the aggregate premium that the person's paying, the percentage difference would probably be similar among companies but not the actual dollar difference.

SENATOR BENNETT: Because I get one printout that says on PIP options that savings is -- on this one (indicating) it says \$26. And then I get another printout on the basic policy for the savings and say that it's \$70. That's where I'm confused, and so--

MS. PUROLA: Just different companies.

SENATOR BENNETT: --whatever company we use maybe we should use the same company across the board. Because, otherwise, how do we-- Do we just pick the company that works best for that proposal?

PRESIDENT DiFRANCESCO: Yes.

ASSEMBLYMAN DiGAETANO: Should we mandate that company statewide? (laughter)

SENATOR BENNETT: I mean, you know, or-- I mean, it's very difficult.

PRESIDENT DiFRANCESCO: You're right. You're right. It is difficult.

SPEAKER COLLINS: That will surely make it competitive, Mr. Leader. We'll see competition then.

Let me just say along this point that since our discussion of the other day and with no definitive numbers, I have had many individuals from insurance companies and from other interested professional organizations say that the numbers that we were using the other day were very, very low.

SENATOR BENNETT: Okay.

SPEAKER COLLINS: But they were the numbers that we were using in that discussion. I think what I would hope to do would be as we are moving through these various areas -- and we haven't taken any votes, we haven't come to any consensus -- that I already asked our staff to work with other staff to find out exactly what you're asking. And it would seem to me that the source of that should be -- and I would like to-- The Co-Chair and I would just casually mention this and we'll talk in detail -- the Department of Insurance should be the authority on this -- these particular numbers. However they get them to us, they should be the authority, and I plan to pursue that for a definitive number, possibly before we come up with the--

SENATOR CODEY: They don't even have actuaries there.

SPEAKER COLLINS: They are the Department of Insurance.

PRESIDENT DiFRANCESCO: See what happens when you merge banking with insurance.

SENATOR BENNETT: Okay. Well, just as long as I know that that's how it is.

PRESIDENT DiFRANCESCO: John, you left the room for a minute, but you're making the point that if we were to go the \$15,000 PIP coverage on the general policy that we mandate, why are we worrying about a basic policy?

SENATOR BENNETT: No. No. I was just trying to find the consistency on the numbers. That was just because when the Speaker-- We argued-- Some of us heard the arguments that the savings on the PIP differential between 250 and 15,000 was such a small amount of dollars that it really was beneficial to the overall consumer to maintain the higher amount of money.

PRESIDENT DiFRANCESCO: Right.

SENATOR BENNETT: But, in fact, the savings under -- when we're now dealing with this discussion is double what that was. So I'm just trying to find out--

PRESIDENT DiFRANCESCO: You're knocking out some other coverages.

SENATOR BENNETT: No. No. Just on the 250 to 15,000 -- just on that portion. That's the only-- It's because they're different companies.

MS. PUROLA: The premium is more from that company.

SENATOR BENNETT: Right. Because the company is different. I understand that. That's the only point. I'm just trying to-- I think we have to use the same numbers across the board.

My concern on this basic policy is the creation of a category that people are going to have a different level of rights, and I think we've been

kicking that around as far as does the family have the right to seek a recovery. How about the kid that's on a bicycle that gets -- and I think that's where the discussion that has been kicked around as to whether or not someone has the right to do a recovery is not necessarily that they're a passenger in another automobile, but that they may be hit by motorists and the kid is on a bicycle or is a pedestrian and the rights that that--

PRESIDENT DiFRANCESCO: You're talking about pain and suffering?

SENATOR BENNETT: Yes.

PRESIDENT DiFRANCESCO: Suing for pain and suffering?

SENATOR BENNETT: Or suing at all if, in fact, their family has no liability insurance under their own policy.

ASSEMBLYMAN GARRETT: Do we have an exact savings on the reduction just in the PIP portion of your policy? It's not on the sheet that I have.

SENATOR BENNETT: Depends on the company.

SPEAKER COLLINS: But, John, where did you come up with the \$70?

SENATOR BENNETT: From Laurine. She just gave it to us.

MS. PUROLA: It's one company.

SPEAKER COLLINS: It's a Senate secret over there -- that Senate secret stuff. Of course, what they don't know is we have one for \$110 on the Assembly.

ASSEMBLYMAN DiGAETANO: Jarrod's number is 110.

MS. PUROLA: It's a company with a more heavily urban business than the one I gave you last time. The percentage difference is about the same.

SPEAKER COLLINS: May I, while there is a moment--

Tom, since we have--

Senator Codey.

SENATOR CODEY: I was just wondering, Jack, if it were possible to move this along the way where we go -- where we know we can agree on certain things like maybe a fraud prosecutor or arbitration.

PRESIDENT DiFRANCESCO: I thought-- I've been trying that for two days.

SPEAKER COLLINS: That fraud prosecutor, let's go back to that.

PRESIDENT DiFRANCESCO: Assemblyman Geist, do you want to serve on this Committee? Nothing to do this morning, huh?

SENATOR CODEY: Where maybe you know there would be agreement. We can make definitive choices and move along and accomplish something and save the hard earned--

SPEAKER COLLINS: You're worried about that deadline aren't you, Senator?

SENATOR CODEY: Yes, I really am.

SPEAKER COLLINS: I've read your quotes.

SENATOR CODEY: I've heard yours, too.

SPEAKER COLLINS: Let me just say before -- and I understand that, Senator -- we respond to that -- if I could just ask for Tom one more time, since we have some new members here--

If you, Tom, would just go over exactly where we started this with the basic policy. Why don't we go with \$15,000 PIP. I think everyone would agree to that at least for the moment. Just explain what the basic policy would do and what this chart says, if you would, Tom.

MR. HASTIE: The basic policy would seek to provide an affordable option for meeting the mandatory insurance requirement. As presented in the materials, and of course, it's up to the Committee, the policy contemplates \$15,000 in PIP, nothing for bodily injury liability, a small \$5000 coverage for property damage liability, no uninsured or underinsured motorist coverage, and a mandatory verbal threshold. So someone who is injured who's driving in a minipolicy could sue if they could pierce the verbal. However, that's reconstituted or changed or not changed by the Committee. If someone is hit by someone with a minipolicy and they wish to seek pain and suffering damages, noneconomic damages, they would likely have to recover against their own policy's uninsured motorist.

SPEAKER COLLINS: But they would have the right to sue the basic policyholder for, as the Senate President said, their beach home, their Mercedes, and everything else.

MR. HASTIE: I would suggest it's likely that someone with a beach home and a Mercedes would not find a basic policy.

SPEAKER COLLINS: Or a tractor.

PRESIDENT DiFRANCESCO: A tractor.

MR. HASTIE: Or a tractor, farm animals, livestock.

SPEAKER COLLINS: Thank you.

SENATOR CODEY: What happens when two basics hit each other?

SPEAKER COLLINS: That answer was already given, and the whisper tells you what Senator Adler had said earlier.

Tom, now, one last question about this. This policy, granted there's a fluctuation, would cost \$350?

MR. HASTIE: That's been the estimate.

SPEAKER COLLINS: That's good.

SENATOR CARDINALE: Can I ask Tom one question, if I may?

SPEAKER COLLINS: Surely.

SENATOR CARDINALE: Have you calculated the potential impact that instituting this and bringing-- Let's say only the 10 percent or 12 percent of the uninsured drivers take it, and let's say not say that others are going to take it. What would be the impact on all of the people, the 78 percent of the people, who now have ordinary insurance in terms of their uninsured or underinsured motorist coverage? Would that in effect be an increase for the rest of the population?

MR. HASTIE: If we're assuming that it's just uninsureds who are purchasing the minipolicy, there should be no change.

SENATOR CARDINALE: Why?

MR. HASTIE: Because--

SENATOR CARDINALE: Now they can bring suit. Today they can't bring suit. Now you're going to give them the opportunity to sue. And if you give them the opportunity to sue, I'm sure that carries a cost. And that cost is going to be somewhat substantial and have to be borne by the uninsured

motorist coverage or underinsured motorist coverage of the others who are presently insured. So that you can't put money into the system without taking money out of the system somewhere else. And what I think you're doing is-- You are giving these people very definite additional rights to sue, which they don't have today if your presumption is that the people who are currently uninsured are going to buy this. They are going to be making recoveries. They are going to be having lawsuits. That is going to impose a cost on the system. They're not paying that cost because they're not required to carry any BI. So they're paying nothing of that cost. Who is going to pay the cost? I would maintain to you that to complete the loop you need to determine how much that is going to cost the others.

Now, I think there is information out there that when similar kinds of measures were passed in other states, it substantially increased the uninsured motorist coverage of those who were already carrying insurance. I think you could extrapolate from those numbers. I don't happen to have them with me. But that's why I think it would be important that they be paying some premium in the bodily injury pool. And there are ways that you could set those pools up so that these people would have a premium which reflected their impact on the system.

MR. HASTIE: A couple of thoughts on that, Senator. First, the question was directed to me was what would it do to the uninsured motorist coverage. As since these people (*a*) do not have uninsured motorist coverage--

SENATOR CARDINALE: For the others.

MR. HASTIE: For the other people, they would-- Assuming that the 12 percent of the population who do not currently have insurance, they

can still be sued if they're operating. They can be sued. They cannot sue. Since you're suing against your own uninsured motorist for these 12 percent under current law and under this scenario, there shouldn't be much change. If there isn't change, in theory, there should be a reduction of uninsured motorist now once we pass the current law. That has not been factored in yet. If it had gone down and this caused it to come back up, you could be making your -- the point would be made, but it hasn't.

SENATOR CARDINALE: You're taking a narrow view of my question. My question is a broader one. The total liability payouts are going to be higher after this passes than before it passes. Because a whole 10-more percent of the population can bring that kind of suit, and they're going to be bringing it against other people. Now, those other people are paying a premium. There is a whole pool of liability.

It just is quite clear to me, if you're going to have more money going out of the system, it's going to result in an increase in premiums for the people who are currently paying premiums, if more money is going out on the bodily injury side. But there is no income on the bodily injury side from this category of people who are taking the basic policy. So that category is putting no money in, more money is going out. Someone else is going to pay that bill. And the someone who pays the bill are the people who are currently insured. So that's an increase in premiums for those who are currently insured, unless you have a bodily injury component of your basic policy where then you can have--

Someone in this basic policy, for instance, just to give you an example, who has 15 accidents in a week -- may have a dramatic impact on the

system, may have 15 lawsuits going, a dramatic impact on the economics. But there is no way that that person can get a surcharge. There is no way that that person can be in a different tier. There is no way that any of the system that we use to control that kind of factor would have any applicability to this individual, because all they're carrying is essentially PIP. They're not carrying coverage against that eventuality.

MR. HASTIE: Two responses to that. I mean, under the system, as we've got it currently structured, there's still points for at-fault accidents and there's still the eligibility requirement. If someone were to get into 15 accidents in a week, they would soon end up in PAIP.

SENATOR CARDINALE: Wait a minute. They're not going to end up in PAIP. You have no bodily injury liability here. They're carrying zero bodily injury liability. You're going to charge them for zero? What's ten times zero?

MR. HASTIE: They would end up in PAIP.

SENATOR CARDINALE: For their PIP coverage?

MR. HASTIE: I mean, the Committee can decide this any way they want. They could say you'll end up in PAIP and you'll forfeit your right to buy a basic policy. You could say a basic policy is for people with clean driving records. You could say a basic policy is a start-up trial project for three or five years to collect data. We've gone-- For the last 26 years, we've have mandatory minimum insurance. The person who's getting into the 15 accidents in a week is now likely buying a basic policy, a minimum limits policy. They're paying \$400 or \$500 into the liability pool. And you're asking what is the effect of taking that \$400 or \$500 out of a pool that's paying \$1.5

billion a year in claims. I don't have the mathematical expertise to answer that exactly, but the other option is we've got 12 percent of the people who aren't buying. Some of them by choice, most it's believed because it's expensive, and they can't afford it.

SENATOR CODEY: What Gerry is saying under the basic we're better off with those people not buying insurance.

Isn't that what you're saying, Gerry?

SENATOR CARDINALE: I'm saying that in terms of if you just isolate--

SENATOR CODEY: In terms of costs in the system.

SENATOR CARDINALE: --bodily injury liability as one component of the system. Now what you're doing is, yes, if you isolate that aspect, the rest of the system is better off if those people don't buy because they can't impose costs on the system. Once they buy without having coverage, they impose costs on the system without putting any money into the pool, and you lose control over them. If you put them in PAIP, so what. PAIP is not going to be able to charge them for something that they're not buying.

Your other idea is not a bad one. Take and say this can only be bought by someone who has a clean driving record, and that once you have an at-fault accident or you impose some cost in the system that you lose the right to buy the basic policy. And then you go back to having either no insurance or buying a standard policy where you do have control, then, over driving record.

SENATOR CODEY: What percentage of the people who don't have insurance, don't have it because of various reasons? They have a lot of

accidents, and so forth, and so on. But it's a give-and-take of that pool of people that don't buy insurance. I don't know the answer unless somebody wants to speak to someone from the insurance companies.

SPEAKER COLLINS: Anyone else want to-- Let me say with regard to, following under Senator Codey, is there anyone here who is opposed to the concept of a basic policy? Or is there anyone here who's for the basic policy, such as myself or one? So I think there's a consensus there. What we should do is-- We have a question raised by Senator Cardinale with regard to the cost of the system which no one seems to know.

Laurine, did you--

PRESIDENT DiFRANCESCO: Laurine wanted to make a point on another issue that Paul DiGaetano raised.

MS. PUROLA: Well, also about that-- I think that since the law about the uninsured motorist was just enacted in June and since the BI is tort, it takes a long time to develop those lawsuits. I wouldn't suspect that the premium's been changed as a result of that June law, as yet.

SENATOR CARDINALE: No, I don't think it's been changed yet.

MS. PUROLA: So there wouldn't be a-- With respect to the question that Tom Musick brought us, Assemblyman DiGaetano's question about the uninsured driver and his child, I do not intend to give a legal opinion here, but the law is pretty clear. It says that this applies to any person who is required, but fails, to maintain medical expense benefits coverage. If the law intended to extend to resident relatives in the household, it would say that, because we say that everywhere where we do intend tort to extend to resident relatives in the household. So I think that the sanctions-- The inability to sue

for pain and suffering extends only to the person who is required, but fails, to maintain coverage.

ASSEMBLYMAN DiGAETANO: I think the same thing. I just want to make sure that everybody in the State of New Jersey thinks that way.

SPEAKER COLLINS: Senator Codey.

SENATOR CODEY: Jack, I was just wondering if we could speak to some representative of an insurance company in regards to Gerry's question that whether or not it adds to the cost of the system.

SPEAKER COLLINS: Well, I prefer to do that--

SENATOR CODEY: Privately.

SPEAKER COLLINS: --privately or publicly privately, but not now. We have no testimony. This is this concept of a work session. Looks like we have some work to do in that area.

It looks like there is agreement. I think we've reached the second point. The one thing that we've agreed on is that we're going to have mandatory insurance. And the second point that we've agreed to is that we're very interested in a basic policy and will work that out shortly.

ASSEMBLYMAN DORIA: The specifics of what have to be dealt with.

SPEAKER COLLINS: Okay.

ASSEMBLYMAN CHARLES: Yet to be finally defined. Is that correct?

PRESIDENT DiFRANCESCO: Yes.

SPEAKER COLLINS: Right.

ASSEMBLYMAN CHARLES: I have some concerns about there not being a BI component. As far as to the concept of a basic policy is something that I think I could agree to for the time being.

ASSEMBLYMAN DORIA: And let me just say I have the same concern about the bodily injury that everybody else--

PRESIDENT DiFRANCESCO: As Gerry has?

ASSEMBLYMAN DORIA: Yes.

PRESIDENT DiFRANCESCO: Are you referring to Gerry's point?

ASSEMBLYMAN CHARLES: Well, no, my point-- That is one basis. The other basis, too, is that I just have a different view or philosophy about insurance than the strict one. One is to protect the insured's assets. The other is also to provide some available basis for recovery for an innocent victim, that innocent victim without a BI that has to resort to that innocent victim's own UM provision in his policy. So he's paying in a situation where he or she is an innocent victim, and I just have to work that out in my own mind as to whether or not that deficiency is outweighed by the other considerations that we're involved with.

PRESIDENT DiFRANCESCO: Okay. We're going to, with the permission of the Committee, we'd like to go over the actual language in the fraud prosecution area so we can try to hone in on whether or not we want to do this.

We're going to move on to the fraud section as it's referred to -- version two.

SENATOR CODEY: Are you talking about this? (indicating)

MS. PUROLA: No.

SENATOR CODEY: No.

MS. PUROLA: This is--

PRESIDENT DiFRANCESCO: Everybody have this? (indicating)

You guys all have this?

MS. PUROLA: There's nothing here, obviously, locked in stone, but these were some of the things that had been mentioned in the course of staff meetings, I guess, after having talked to the members. Some of the issues which arise would be where the fraud prosecutor would go. In this particular draft, it's in, but not of, the Department of Law and Public Safety. It could be either way, or it could be in the Department of Insurance.

You can see the qualifications that are here, prosecutorial experience. If you think there's anything that needs to be added to that, we can do so. And the establishment of standards of performance. In this draft, it's done by the Governor because the prosecutor doesn't report to the Attorney General. But again, you can decide what you want to do about that. The Division of Insurance Fraud would be transferred over, maybe not physically, but at least it would work in conjunction with the Office of Fraud Prosecutor, and it would become the investigatory section.

The prosecutor would designate a section which would communicate with other State Departments because some of them have fraud activities, Medicaid, etc. And also, there was a feeling that they needed to establish some sort of a formal liaison with their county prosecutor's office.

SENATOR CODEY: Is it in, but not of, that--

MS. PUROLA: Yes, that's how I have it.

PRESIDENT DiFRANCESCO: That's the way it is worded right here.

SENATOR CODEY: Okay. You have it in Law and Public Safety, right?

MS. PUROLA: Yes. In, but not of. There's 2 million--

PRESIDENT DiFRANCESCO: Okay. Everyone have a chance to read through this? Would you like me to read it out loud? Do you want me to read sections of it? Do you want to talk about it?

MS. PUROLA: Basically this simply sets forth the duties that the fraud prosecutor has. He would have attorneys actually working under him, as well as the present Division of Insurance Fraud Investigation in the Department of Insurance. There is an attempt in here to have various people establish standards of performance for the conduct of the office so that presumably that their operations could be measured against whether they meet those standards or not. Most of this is in the way of simply consolidating all of the fraud activities into one office.

PRESIDENT DiFRANCESCO: This is not to suggest that there aren't people investigating fraud now. We know they are vigorously investigating fraud in both the Insurance Department and the Attorney General's Office.

Assemblyman.

ASSEMBLYMAN GARRETT: Is there a reason why -- I know we discussed this a little bit at the last hearing -- we are looking at placing it back at the Law and Public Safety and not over at the DOI, in but not of?

SENATOR CODEY: It is because they wouldn't be able to follow through with the prosecution at the Department of Insurance.

ASSEMBLYMAN GARRETT: And then, Senator, part of the answer to that would be to, as was suggested last time, to turn this over -- I know that John's concerned -- to the responsibility more on the local level, but with a coordination process within the Department of Insurance to allow this to be handled by those who know the experience best. I just know that from personal experience and also from the testimony that we've heard repeatedly from the industry that the track record has not been a favorable one so far from the Department of Law and Public Safety. And I don't know--

SENATOR CODEY: It's not over there. I mean, the fraud that's paid for by the companies, it's located within the Department of Insurance, and they've done nothing basically.

ASSEMBLYMAN GARRETT: Then they turn it over to the AG's Office for prosecution, and there it sits.

SENATOR CODEY: And they do nothing because there's also no criminal statutes that exist to go after them correctly. And they make bad decisions as well vis-à-vis *V and K* I think it was.

ASSEMBLYMAN GARRETT: And we would hope that we wouldn't want them to continue making bad decisions so maybe--

SENATOR CODEY: So we want one person to focus on him or her, and it's their responsibility.

PRESIDENT DiFRANCESCO: Assuming for the-- Setting aside the question of the insurance fraud prosecutor, a single individual, and talking about the local thing, the county prosecutor, wouldn't it make sense that the

Attorney General who works with the county prosecutors now on a regular basis anyway have that within that Department? That it would be within Law and Public Safety because they already do have a relationship with county prosecutors. So I agree with you that there ought to be some localized effort here.

MS. PUROLA: Section 6 does deal with that, liaison with, and that certainly can be elaborated on with local government. There would be an office within the office to do that.

ASSEMBLYMAN GARRETT: Is there anything under the current law then that precluded the AG in the past up to now from coordinating his efforts from the local prosecutors?

PRESIDENT DiFRANCESCO: Probably not.

ASSEMBLYMAN GARRETT: Have we heard any testimony whatsoever that the AG has ever done that?

MS. PUROLA: No. But this-- The AG would not-- This person would not be reporting to the AG. This is in, but not of.

PRESIDENT DiFRANCESCO: Like the way that this is worded, of course, it's separate.

SENATOR ADLER: Mr. Chairman.

SENATOR CODEY: Independent counsel, I think we can relate to that.

SENATOR ADLER: It's also the case that nothing in the current law precludes the county prosecutor's office from pursuing criminal fraud in an auto insurance context, and they're not doing it. So the suggestion is somehow

to start doing it is belie their reality in that way, just the way you're suggesting, putting it in the Department of Law and Public Safety.

ASSEMBLYMAN GARRETT: I don't know if that's true. I mean--

SENATOR ADLER: Which part?

ASSEMBLYMAN GARRETT: Well, the procedure now is for a carrier-- A carrier is under the obligation when they suspect fraud-- Correct me if I'm wrong, I think the carrier's obligation is to report that to the Department, and then the Department's obligation, I believe, correct me if I'm wrong, is to report that over to the AG's Office. I do not believe that a carrier has an obligation currently to turn that report over to the local prosecutor. I may be wrong in that.

SENATOR ADLER: But the county prosecutors have an obligation to find and prosecute crime--

ASSEMBLYMAN GARRETT: Right.

SENATOR ADLER: --in their county. And they have that obligation, and they're not doing it right now.

ASSEMBLYMAN GARRETT: But in other words, the system in place is a system that sends all the information over here to the State level. The county prosecutor is not directed. It's not in a position-- They're not being supplied with the information at this point, so I think it would be pretty hard for any county prosecutor to take it upon themselves to initiate it. And that's what we could do with legislation is say that we're now going to be providing you with that information. And it can be done, again, in a coordinated manner. I appreciate your concern that you said last time we

don't want all these different things going on and not any coordination. And you don't want some counties not doing it at all and other counties doing better jobs. That's why you should have a coordinated effort on the State level. But I would again think that the best expertise where the emphasis should be is on the local level.

PRESIDENT DiFRANCESCO: Anyone else?

SENATOR CARDINALE: Mr. President. I would disagree, I think, a little bit with Scott. We don't usually disagree, but I would disagree on this one. The county prosecutor has got a lot of things on his plate. The Attorney General's got a lot of things on their plate. And they have to prioritize whether they're going to go after drug dealers, whether they're going to go after people who are doing car jacking, what exactly is their emphasis going to be for any given point in time.

We have a continual problem of fraud and particularly in auto insurance. And by giving them a specific task and making them totally responsible and totally accountable and giving them the tools to work with, we can expect some results. And I think it is much better done this way than any other way.

ASSEMBLYMAN DORIA: Mr. Chairman. I would just agree with Senator Cardinale. I think that, obviously, the problem that has existed in the past is a lack of coordination and, also, just that no one has been the responsible party. This creates responsibility and also encourages the ability to coordinate. And I think the county prosecutor should be involved in the process, but they are so busy with the day-to-day responsibilities that they have that they will not pay attention to these issues, as it relates to the fraud

problems, because there are other pressing issues, many times criminal prosecutions, criminal actions that have to be dealt with. Having this created the way that it is being proposed, I think what you allow is some kind of No. 1 priority being given to fraud prosecution and at the same time encouraging the county prosecutors to participate with the fraud prosecutor.

I think what's happened in the past is the whole issue of insurance fraud has been shuffled to the side. It's never been a priority. It's never been a very visible issue, and it was secondary to all of the other major problems that the Attorney General's Office or the county prosecutors were dealing with. So I think we need to create the visibility and to emphasize the importance of insurance fraud prosecution, and we need to do this through this type of mechanism. A lot of time visibility and credibility are very important in guaranteeing that something happens. And I think that's very important in this legislation, very important.

ASSEMBLYMAN GARRETT: So can you explain to me then how this differs, though, from what we have now, because the deputy AGs that I speak to are not handling the murder cases and the car-jacking cases and what have you. The AGs that I've spoken to that have been referred to some of these cases from the insurance companies, from the DOI, their principal conduct is to deal with these issues. So you can say in a sense that we already have a system where the Department of Law and Safety has a -- I don't know whether they call it a division or a section, or what have you, that deals with this issue. They're already responsible for doing it. And I asked the question before, don't they have the ability to coordinate with the county prosecutors, and they already have that ability. So they have everything at their disposal

right now. If they wanted to, they could set up the rural databases and what have you. So they have everything at their disposal, as far as the law is concerned, right now to do this. They have just seen fit to not carry it out. And so I question why should we be turning it back to the same Department that has the ability to do it but just doesn't do it.

SENATOR CARDINALE: Is that directed to me? I can give you an answer that, I think, at least makes some kind of sense to me. Nobody knows who they are. There is no real accountability. The person to whom they report has many other things on his plate. This would be a highly visible agency. They have complained and we need to address that; otherwise, we'll not have accomplished-- Your fear might be realized. We need to give them better tools.

Today's newspaper or yesterday's newspaper had a big headline in my area that a very few law firms are the problem. Okay. You've got to give them the tools to go after those very few kingpin-type operators, the kingpin-type doctors who are the problem. If you don't do that, if you don't give them the tools to go after those individuals, maybe they'll accomplish something but not very much. So I think it's a rounded approach, but making it a focus so that when we say why is not-- And when somebody comes to a hearing and says, "Why is not this fraud being actively rooted out?" When insurance companies tell us, and I'm sure they've told you, I know they've told me, "We get tired of reporting it to the Department because it seems to go in a rotating file and nothing happens even when there are major cases." That won't be able to happen here because there would be some accountability. It's the only task that they've got.

SPEAKER COLLINS: Mr. President, if I may -- and I see that Assemblyman Charles wants to speak and Assemblyman DiGaetano -- let me just make a statement and really sort of ask a rhetorical question, but I will gladly have the answer given if it's not rhetorical. When we talked about this the other day, and all along, I've felt that this should be in the Department of Insurance. I think that the Department of Insurance should be working to deal with insurance issues -- which we know it's Banking also -- but to me this was where it should be. There are many on this Committee who feel it should be other places and others have suggested that to me. I still felt -- still feel, I guess -- that it should be in the Department of Insurance, but I'm willing to follow the logical sequence, if what I'm going to say now makes sense, and this is the rhetorical part.

First off, we just the other day when we got these numbers, that fraud itself, on the chart we got the other day, the savings would be \$160 to \$175 a premium is attributed to fraud. Now let's just say it's \$130. Well, that's a 13 percent saving right there. And we've heard others say it's as much as 20 percent in testimony, and so on. Fraud is the issue. I do it a little tongue in cheek when I keep saying, "Well, we're all going to bash fraud, and we're going to do this, and so on, because it's one of those easy things to beat up on." But obviously, everyone is in agreement that it's a great deal of an expense. Thirteen percent on my little number. If we go 160, it's 16 percent, whatever it would be.

Fraud is important. I agree with Senator Cardinale who a while ago said that the Department should be doing more things, undercover, etc., etc. Let's go all the way on this. If the fraud prosecutor is in the Department

of Insurance, I think it all fits together. If on the other hand, it goes to the Law and Public Safety because that's where prosecution is, and so on, understanding what Assemblyman Garrett said, hopefully, this new intensity will improve. But why I think I can get there is if we bring in the county prosecutors in some way, one of the ways, I believe, is that possibly, as they do in some other areas, some of the money that is found in these prosecutions could go to them to keep their interest to allow them to do some other things. Some people who are familiar with county prosecutors think this is a good way to go to get them involved, grassroots move, and so on. Then, if we're going to do that, then we almost have to be in the Attorney General's Office.

My question would be what would the fraud prosecutor -- what powers would this person have to bring in the prosecutors and all of the other people who would be involved? But if we're going to put them together, then I can see Law and Public Safety. But I still think Insurance has some real credibility.

SENATOR CODEY: Jack.

SPEAKER COLLINS: Sure, anybody.

SENATOR CODEY: Yes, I think what Laurine said before to us was correct, that when you put it in Law and Public Safety, the prosecution aspect right now is viewed civilly. Okay. That's our problem.

SPEAKER COLLINS: Yes.

SENATOR CODEY: It's not viewed criminally. These people are not going after them criminally. The other thing is in my county auto insurance fraud is not going to be No. 1 on a priority list. We have too many other things to worry about. Let's centralize it with a prosecutor, backed with

criminal statutes in Law and Public Safety, and send the message we're going to go after you criminally.

PRESIDENT DiFRANCESCO: Senator Adler, then Paul DiGaetano.

SENATOR ADLER: I agree with everything Senator Codey just said, but I very much support the Speaker's notion of having some of the money that we're going to dedicate to the prosecution effort set aside for those counties that want to have additional efforts. And there should be some sort of reimbursement mechanism for them to encourage a sort of aggressive approach that Assemblyman Garrett has proposed to have the counties energized in the same topic while having the Attorney General's Office with a special prosecutor going after these people.

PRESIDENT DiFRANCESCO: Well, I guess that mechanism still is in place -- that forfeiture mechanism that county prosecutors have with limitations. I understand how they can expend the money and assume that's still in place. There were no limitations in past years, but I guess we did pass a bill putting some restrictions on how you couldn't have a wild party or something like that or how they spend the money. So you're right, what you're driving at makes sense. I know the Speaker raised it. There ought to be some coordination that way, too, between county and State.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes, I think I've read through the summary that Laurine or Tom handed out. I think there is a provision proposed for that coordination between the fraud prosecutor and the county

prosecutors. There's also some incentives in here of repayment to county prosecutors -- what efforts that they might make to deal with this issue.

But my question, having looked through the whole proposal here -- I have a question about what difference is it besides from the symbolism of it. The symbolism of it being in the AG's Office which stands for criminal prosecution, something serious, you're going to jail if you mess around, as opposed to the Department of Insurance with civil penalties, other kinds of sanctions that may have less of a disincentive. Apart from those differences, I don't see anything proposed in here that gives any particular substance to the advantages to placing it in the Law and Public Safety as opposed to Insurance. There's no proposal within the language here that talks about what's available to the fraud prosecutor in Law and Public Safety. What can the fraud prosecutor do vis-à-vis the AG in making his efforts or her efforts more serious and more comprehensive.

I guess what I'm suggesting is that we maybe need to spell out a little bit more what the relationship can or some of the authorities can be between the fraud prosecutor and the Department of Law and Public Safety. Because we're within-- We're not-- We're of the Department of Law and Public-- In, but not of -- is that the proposal?

PRESIDENT DiFRANCESCO: Right now.

MS. PUROLA: Right now \$2 million a year from the insurance industry goes to the Department of Law and Public Safety, but to our knowledge is no specific section of attorneys there that would be dedicated to that effort. And basically, what you would be doing here is gathering those.

ASSEMBLYMAN CHARLES: Substantively, my question is this. Substantively, what difference does it make whether you place this fraud prosecutor in Insurance or Law and Public Safety apart from the symbolism of it?

PRESIDENT DiFRANCESCO: Well, I guess everybody might have a different opinion. My feeling is--

ASSEMBLYMAN CHARLES: I'm asking the question. Substantively, what difference does it make?

PRESIDENT DiFRANCESCO: Yes, I was just going to say my own personal feelings are that symbolism does mean something here. That it does mean something that the Attorney General's Office symbolically does-- If you get a call from the Attorney General as opposed to the Commissioner of Insurance, I think that you'll hesitate a lot more when you get it from the Attorney General. So I think symbolism is a factor.

ASSEMBLYMAN CHARLES: I think it's important, also. If that's the case, and I agree with that, is there something-- I guess my question is, is there something we need to be thinking about in terms of going beyond that? Was that enough that we are now telling everybody it's serious because it's in Law and Public Safety, as opposed to Insurance? Is there some greater power that we can give to this fraud prosecutor within the parameters of the law that we're putting out? Because there is nothing in here that makes a substantive difference, whether you're talking about the AG or the fraud prosecutor. Because this thing does not give the fraud prosecutor the right to call upon the county prosecutors, as the AG does, nor does it say what the

relationship is going to be, or can be, between the fraud prosecutor and the AG. It doesn't even say what the AG's role is in this thing.

PRESIDENT DiFRANCESCO: Right. And that is an issue that we haven't come to. There is a school of thought that there shouldn't be a fraud prosecutor. There ought to be a division within that Department that we should focus on. So some people argue that why would you create another fraud prosecutor, why wouldn't the Attorney General just have this focused as one of his divisions.

ASSEMBLYMAN CHARLES: I agree with the notion of a fraud prosecutor. I mean, I'm not disputing that. I'm just talking about how do we really empower that prosecutor so that he or she can be as effective as we want him or her to be so that we can save this \$150. And I don't see in what we're talking about here, yet, anything that's going to, in a substantive sense, make a difference whether it's in Insurance or Law and Public Safety.

MS. PUROLA: I can certainly make that more explicit.

ASSEMBLYMAN CHARLES: Yes, because what's going to be the give-and-take -- maybe somebody can help answer my question and relieve my concerns. You tell me what the give-and-take is going to be on the day-to-day basis between the fraud prosecutor and the AG.

PRESIDENT DiFRANCESCO: We can come back to that.

Paul, did you want to make a point on something?

ASSEMBLYMAN DiGAETANO: Actually, I wanted to touch on something that Assemblyman Charles just raised and so did our Committee Aide. Mr. President, I have a question as to whether or not there is any difference in funding between this version within the Department of Law and

Public Safety or any of the other options here for this reason. The 2 million that Laurine just mentioned that gets paid by the insurance companies to the criminal justice, the Law and Public Safety, it would seem to me that that money is then already available if the prosecutor is placed in the Department of Law and Public Safety. My question is, if we take any other option, are we going to take that 2 million from the Department of Law and Public Safety and turn it over to the Fraud Division in the Department of Insurance? And does that not, in and of itself, raise some other issues? Obviously, there are personnel-- Whether or not they're performing the insurance fraud investigation, there are personnel being paid with that 2 million. And if we take it to another Department, would those individuals then be moved, or is there an additional appropriation going to be required if we go to another Department, which is not the Department of Law and Public Safety?

MS. PUROLA: They're both actually paid from the same source. I can get you a copy of this. The Attorney General actually bills-- The insurance industry pays for this. And this is, by the way, not only property and casualty, but also like accounts. So it's the whole market. They bill for this. They also fund the Division of Fraud in the Department of Insurance. So what you're really talking about here is -- the money is coming basically from the same source. It's where you want it. You're consolidating it, that's all.

ASSEMBLYMAN DiGAETANO: I understand that. But my question was, if we place this in a Department other than Law and Public Safety and we wish to use those same funds, do we then not have to designate that by law and take those funds from the Department of Law and Public

Safety and allocate them to other, if we don't put it in the Department of Law and Public Safety?

MS. PUROLA: This isn't actually statutory. I think it's an arrangement; although, obviously, the Department of Law and Public Safety is carrying out its duties with respect to fraud otherwise. So this is not a statutory arrangement.

PRESIDENT DiFRANCESCO: Well, to avoid duplication, I would think-- To avoid a duplication of effort, you would have to, by law, move those moneys around.

Joe Doria, were you on the list here?

ASSEMBLYMAN DORIA: No.

PRESIDENT DiFRANCESCO: So we are going to change this language a little bit based on the input that Laurine's received, work on the language, and be back with a third version.

MS. PUROLA: There's one other suggestion that we have received, and I think I incorporated it in a directive maybe some of you have. One insurance company suggested that we look at what Massachusetts is doing. This draft provides for a database -- the maintenance of a database. But Massachusetts has gone a step further, and they require information to be reported by all carriers on a standard form, and that material is fed into the database and that can be used -- accessed by the county prosecutors and local law enforcement authorities.

ASSEMBLYMAN DORIA: I think that Laurine just hit on an important point, and that is the need for coordination. One of the biggest problems I think we have right now in the whole area of fraud prevention is the

lack of data that's available because of the lack of coordination between the Department of Insurance and the Department of Law and Public Safety, the Attorney's Office, and also the State Police. One of the issues when we talk about uninsured motorists -- this ties in maybe not so much to fraud, but yet is an important part of where we guarantee some savings also, hopefully, prevent some of the problems, and that is that the database and the use of computers in the Department of Insurance is at this point minimal as it relates to uninsured motorists and also, as it relates to some of the problems of fraud with insurance companies. We need some place in this bill, and I don't think we've really have paid much attention to it, a section in this bill dealing with coordination of information and access and availability of data through databases and the use of technology. So I think that that should be something that really is emphasized in the final draft of this piece of legislation.

PRESIDENT DiFRANCESCO: Point well made.

Anyone further on fraud? (no response)

Okay. We're going to hand out a version of the dispute resolution mechanism.

ASSEMBLYMAN DORIA: Mr. Chairman, maybe-- Can we say that we have a general consensus on this fraud section?

PRESIDENT DiFRANCESCO: Oh, I'm sorry.

Do we have a general consensus that it should be in the Attorney General's Office? Let's start that one.

Dick and John, I guess, spoke on that issue already about it being in the Attorney General's Office. I think you both indicated your support for that.

Joe, I don't know where you are with that.

John is not here.

Jack gave us his opinion.

SPEAKER COLLINS: Well, I can see I'm going to be on the losing side again. I just can't win anything.

SENATOR KYRILLOS: Jack, where do you want it?

SPEAKER COLLINS: Well, I had said Insurance, but if we're going to go the whole route, the prosecutors at the county level-- But then we're going to have to come up with a correct wording, and I think that's something that we can do in the next few days. I'll go along with it.

SENATOR KYRILLOS: I think it should go in the Speaker's Office.

SPEAKER COLLINS: We'd be something then, I'll tell you this.

SENATOR KYRILLOS: Because I know you'll be tough about it.

SPEAKER COLLINS: You're dang-nab right.

PRESIDENT DiFRANCESCO: What did you say you want to do to those people?

Okay. Dispute resolution mechanism, as it's referred to. Does everybody have that in front of them?

MS. PUROLA: While this has not been discussed in any great detail, it was discussed a little bit the other day. This draft consolidates a dispute -- a nonmedical dispute resolution mechanism and in certain cases a medical review of disputed claims. If you can look on the front page, Page 1, the Commissioner would appoint a dispute resolution organization. In the existing law, which is very perfunctory actually, the AAA is actually named.

The Commissioner would have to establish standards of performance for the organization and, also, standards for the people who would be doing the dispute resolution. This provides that they would be full-time, paid on a per case basis. That's how New York's is paid. Both medical disputes and other disputes having to do with personal injury protection would be decided.

If you look on Page 2, I'd like you to look and see what you think of this list of things that -- when something goes to dispute resolution, the person who is conducting this is charged with including, but not limited to, interpreting the insurance contract, that is, whether something would be covered or excluded in the contract; whether the treatment is in accordance with the provisions of the no-fault law; whether the service is eligible for compensation; whether the provider is eligible for compensation; whether the disputed medical treatment was actually performed; whether diagnostic tests performed in connection with the treatment are recognized diagnostic tests; whether consultations by other health-care providers are necessary or appropriate; disputes involving adherence to fee schedules; and whether the treatment performed is reasonable and necessary. It's not limited to that. There's nothing in here that would preclude them from looking at medical necessity in certain cases.

Now, if there is dispute governing diagnosis, medical necessity of a treatment, if the injury is causally related to the insured event, or whether the protocols were appropriate, this draft provides that any party, which would be the arbitrator, basically, or the plaintiff or the insurer, could ask that it be referred to a medical review organization. The draft is similar to that in Senators Adler and Kyrillos's bills.

PRESIDENT DiFRANCESCO: No. He's shaking his head no, so don't say that.

MS. PUROLA: No, I mean the peer review organization is the medical review organization in that it's-- What I was going to say is, it is a--

SENATOR KYRILLOS: John doesn't want it to be like his, so say it's not like his.

MS. PUROLA: It's not related to any-- It cannot be related to an insurer. It has to be handed out at random.

SENATOR KYRILLOS: It's very different in many ways from yours, Senator Adler.

SENATOR ADLER: Well, what are the differences and we can go through it.

MS. PUROLA: Well, there are differences here -- no but-- I was talking about that one little-- It has to be a disinterested third party is all I'm saying. And these organizations -- these medical review organizations would be certified by the Commissioner.

On Page 4 you will see some of the things that the medical portion of the review, if there is one, would include a review as to whether the treatment being given for the injury is medically necessary; if it's in accordance with medically recognized standard protocols and professional standards; if it's consistent with the symptoms or diagnosis of the injury; and if it's related to the injury sustained. This does provide for and obviously-- I just put this in here, you can have it any way you want. The original peer review bills provided for right of appeal to a second peer review panel, and I did put that

in here as well, so that there is a reconsideration. It would go back then to the arbitrator. And that's it.

PRESIDENT DiFRANCESCO: Okay. Discussion.

Assemblyman DiGaetano.

ASSEMBLYMAN DiGAETANO: I have a couple of questions. I don't know if they're discussion, Mr. Chair, if I may. I'm just reading this very, very quickly, obviously, as we all are, but do I understand that this is a two-step or more process in that we have an alternate dispute resolution group that hears this matter and, if necessary, then refers medical review to some other organization called a medical review organization.

MS. PUROLA: Right. Right. It wouldn't have to go there, because--

ASSEMBLYMAN DiGAETANO: Pardon me.

MS. PUROLA: It would not have to go to the second step. It would go, in other words, to the arbitration procedure first.

ASSEMBLYMAN DiGAETANO: Well, as I understand, the case is first heard by some dispute resolution professional or professionals, and then if they determine there is a need for medical review, it shall be referred to a medical review organization.

PRESIDENT DiFRANCESCO: Well, either party can--

ASSEMBLYMAN DiGAETANO: Pardon me.

MS. PUROLA: Any party.

PRESIDENT DiFRANCESCO: According to this, it says shall on Page 3 in the middle of the page, Section D, "Shall, at the request of either

party to the dispute, refer the matter to a medical review organization for determination.”

ASSEMBLYMAN DiGAETANO: I understand that. What I am trying to get at is, is the case first heard by whatever proceeding, and then the arbitrator--

MS. PUROLA: It's basically an arbitration.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN DiGAETANO: Okay. Now, do I correctly understand that the first step -- whatever we're calling it--

What are we calling it, Laurine?

MS. PUROLA: We are calling it dispute resolution process.

ASSEMBLYMAN DiGAETANO: Okay. The first step in the dispute resolution process is not a peer review, but the second is a peer review. Is that correct? So the first would be heard by--

MS. PUROLA: The first one is arbitration, the second is peer review.

ASSEMBLYMAN DiGAETANO: Okay. And if you were challenging the treatment, let's say, I believe the most common peer review cases that were brought are the cases that were in need of peer review, that were subject of discussion some months ago and in our testimony, appeared to have been overwhelmingly, if not solely, medical. So under this model would you first go to the arbitrator and then go to peer review?

MS. PUROLA: Yes. There's no provision to go directly to peer review at all.

ASSEMBLYMAN DiGAETANO: Except that any of the parties could request--

MS. PUROLA: After the arbitration.

ASSEMBLYMAN DiGAETANO: --the medical.

Pardon me.

MS. PUROLA: After the arbitration.

ASSEMBLYMAN DiGAETANO: Would this model constitute a second hearing which is separate and apart in the medical review from the arbitration but yet has the ability to overrule the arbitrator?

MS. PUROLA: Yes. This is drafted and this is certainly not left in stone. I used the language from the peer review laws saying that the medical -- the determination, the decision about medical necessity would be determinate to -- on the part of the medical review organization. I just took that from the existed drafts.

ASSEMBLYMAN DiGAETANO: Is either of these, the arbitration or the peer review, reviewable by a court of law by appellate division?

MS. PUROLA: Yes.

ASSEMBLYMAN DiGAETANO: There was much discussion in the June proceedings and then privately thereafter, although we didn't hear about it in this testimony, this round of testimony, about a provision known as presumption of correctness that was proposed in the original peer review language. Is that included in this?

One of the reasons that I understand the insurers were not solid on different peer review language-- And in June, I proposed a peer review. I offered a peer review language that did not include presumption and

correctness. They don't believe that that would do much for the process and, in fact, would simply delay the adjudication. It seems to me that adding this additional step further delays the adjudication in that there's some second panel that you could appeal this to, because after it's been through two panels and then the court after that, Mr. Chair.

In addition, I'd like to know if any of this takes into account the issue I raised, either the last meeting or the one before, that with respect to whether or not there is any amount payable by the insurer, if the decision is that there is not, is then that bill declared null and void. I raised that simply because on behalf of an insured if there was a case that was brought through arbitration and then peer review, a peer review or medical review whatever you want to call it, decided that the treatment was inappropriate, a test was inappropriate, etc., the insurance company would not be obligated to pay. But is there anything in this proposal that would then say that no one is obligated to pay because the decision was made that the treatment and/or test was inappropriate?

MS. PUROLA: I did not address that. The original-- The law now with respect to arbitration has nothing about the result in who pays. The peer review bills were very, very detailed in that regard, and so I didn't do anything, obviously. It can do anything that you want it.

ASSEMBLYMAN DiGAETANO: One last question for the moment, Mr. Chair, if I may, Mr. President, with respect to this particular proposal on peer review.

Laurine, the presumption of correctness language is not in. Is that right?

MS. PUROLA: No. From a June draft, no.

ASSEMBLYMAN DiGAETANO: The issue was raised in June--

MS. PUROLA: No. There isn't any--

ASSEMBLYMAN DiGAETANO: --and the language that there is no-- The medical review nor the arbitration is-- Neither is presumed to be correct?

MS. PUROLA: No. No. It is not-- No.

ASSEMBLYMAN DiGAETANO: And the party that requests the arbitration pays for it? Is that correct?

MS. PUROLA: Yes.

PRESIDENT DiFRANCESCO: Thank you.

SPEAKER COLLINS: Senator Adler.

SENATOR ADLER: Thank you. I think with respect that I think we may be putting the cart before the horse to some extent. The concept of medical cost containment is embodied in parts in this language here, and I think Laurine mentioned at one point and skipped over in describing Category 9 from Page 2. This goes over to Page 3. I think we're thinking about instituting some sort of medical protocols. And I think the goal of having medical protocols is to clarify what medical providers should be doing and should not be doing in a way that will reduce the number of arbitrations. I think the Assembly Majority Leader makes some very valid points about giving the carriers additional abilities to defer payment of valid medical services with additional mechanisms like a peer review mechanism on top of the cut-off at ending arbitration.

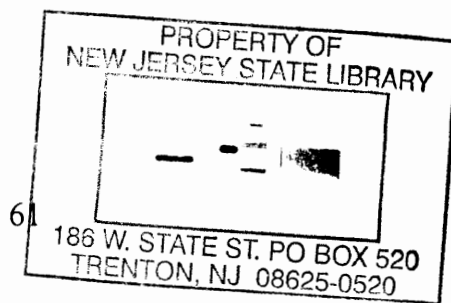
So I have a couple of concerns. One of my concerns is the percentage of claims that carriers would be able to automatically refer to peer review in order to defer payment even on valid claims. Particularly in light of the fact that if you're following protocols, eventually the arbitrators in the peer review panel are going to say, "You follow protocol, of course, you have to be reimbursed." So maybe one way to get at what Paul's raising is to have some sort of interest component so that medical providers get interest on unpaid fees so that they are treated fairly and aren't disadvantaged by the long time delay the carriers could use through the peer review process to slow things down. I think we all should have some sort of cap that we can put into this mechanism.

PRESIDENT DiFRANCESCO: Do you want to pay the doctors interest on their medical bills?

SENATOR ADLER: Well, right now, it sounds like the carriers are holding the money, and the longer they hold the money they're getting interest on it, because they're investing in this boom stock market that's generated the profits that Gerry talks about all the time.

PRESIDENT DiFRANCESCO: Huge.

SENATOR ADLER: Why should the carriers be the ones benefiting from holding the money and deferring payment? There's a value to the time of money. Let the providers get that money through interest. I think that's a fair way to balance the system in a way that doesn't disadvantage the medical providers with this extra mechanism we're talking about which could be troubling.



But, respectfully, I think we've got to talk about the protocols at some point because one of the legitimate concerns is we'll have protocols that ratchet down extended care. And if we have protocols that are presumptively valid, and I think it will be considered valid by the arbitrators, the peer review panel, we're going to have a system out of whack unless we write good protocol. So at some point we have to talk about protocols.

MS. PUROLA: That's in a different draft section that you'll get.

SENATOR ADLER: I think it's so interrelated that if we talk about this in the abstract--

PRESIDENT DiFRANCESCO: Well, let me say this about this issue. This is a document that was just handed out. There was a lot of testimony in this issue. I think that after we discuss it, and you can discuss it in any way that you want, from my view you don't have to deal particularly with this language. I think, through staff, please let your intentions be known, your ideas if it's totally differing -- you would like to propose different. Please be prepared to do so on Thursday. Having said that, I'd like to hear more about this whole process because I think it's up in the air, open for discussion totally.

SPEAKER COLLINS: Mr. President, if I may, before we go to others and before we start down the line-- We have some strong supporters, we have legislation to deal with it. I have yet to hear, I've read in one document, but I have yet to hear, from when this was debated last year to now, is anyone on the Committee willing to give me a dollar savings that we can have under "peer review." I've listened to it. I've talked to leaders of the insurance companies. No one will give me a number. We have numbers for

everything else, fraud, PIP, what-- Does anyone-- Some of the supporters of this, would anyone give me a dollar amount, \$2, \$5, \$20, anyone?

ASSEMBLYMAN DORIA: That's the problem. There is none.

SPEAKER COLLINS: I agree that's the problem, Mr. Leader. Okay, well, then, I'll sit back and listen to the discussion.

SENATOR CODEY: Jack, I don't think any insurance company told you that it wouldn't reduce premiums.

SPEAKER COLLINS: No. No one has said it would not reduce premiums.

SENATOR CODEY: Right. That it would.

SPEAKER COLLINS: I will admit that, but no one has told me what it would be and--

SENATOR CODEY: It's hard to calculate.

SPEAKER COLLINS: See, mine is almost a philosophical problem, Senator, and it's this. Why we're going to have peer review, and I've said it at least once in these hearings, is we're saying that there are bad people out there in the professions. And the two that are honed in on here, the medical profession and the legal profession. But it's the medical profession in this case who says this is what is needed, this, this, this, and this. Now we're going to take that profession where that bad person is and make them the judge of this. How do we know that they won't be bad people on that peer review?

I mean, it sounds good and I read that the editorial, oh, they love this. Of course, they never said how much money it would save either. This is a cost-saving device. Someone tell me what will be saved.

SENATOR CARDINALE: Assemblyman, may I?

SPEAKER COLLINS: Take over, they're all after me. Go ahead.

PRESIDENT DiFRANCESCO: Senator Cardinale and--

Joe, go ahead, make your point. Let Joe speak.

ASSEMBLYMAN DORIA: I just want to go along because it just follows what the Majority Leader said and Senator Adler and I think what the Speaker is saying right now. I think that in our discussions about this whole dispute resolution arbitration, we were trying to come up with a system that would be more simplistic that would in the end result in fairer decisions by doing away with the part-time arbitration panel and by allowing this new dispute resolution system to be one that is much more expedited.

PRESIDENT DiFRANCESCO: And independent.

ASSEMBLYMAN DORIA: And independent.

PRESIDENT DiFRANCESCO: We use that word.

ASSEMBLYMAN DORIA: Right. Independent, number one. Full-time, number two.

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN DORIA: And number three, that would be able to expedite the process and provide some kind of written opinion. One of the other issues that we heard a great deal of testimony on--

PRESIDENT DiFRANCESCO: Right.

ASSEMBLYMAN DORIA: --was the issue of a written opinion. My concern is that what we've done here, at least in this draft, and I understand it is only a draft, is we've now created another step. I don't understand why-- This is my question and maybe someone can answer this.

Why we can't have dispute resolution -- the initial arbitration panel have access to health-care professionals and use them on a consultant basis rather than setting up another step?

PRESIDENT DiFRANCESCO: Well, isn't that basically what this is, though?

ASSEMBLYMAN DORIA: No. What this does is create another step where you can appeal from the arbitration if you would want or to dispute resolution--

PRESIDENT DiFRANCESCO: Oh, you mean--

ASSEMBLYMAN DORIA: --to now a medical board.

PRESIDENT DiFRANCESCO: The medical review organization.

ASSEMBLYMAN DORIA: That's right.

PRESIDENT DiFRANCESCO: You don't like that idea?

ASSEMBLYMAN DORIA: No, but what I'm saying is why do we need another organization, create another bureaucracy? Why can't the professionals just have access to a medical professional and use that access, make the determination themselves based upon information they receive from medical professionals rather than creating this other additional step.

PRESIDENT DiFRANCESCO: Okay.

ASSEMBLYMAN DORIA: And another board that makes a decision-- And we're going to end up, again, I think, legitimately the concerns of Senator Adler, just putting off the decision so long.

PRESIDENT DiFRANCESCO: But we don't want to do that. We can fix that part of it.

ASSEMBLYMAN DORIA: And we'll waste the money. We'll waste the money.

PRESIDENT DiFRANCESCO: No one wants to have delay here, and that can be changed. My view is, as I've said before, I'd like to see another proposal. I'd like to see what an alternative proposal is sometime over the next few days so we can really get to a consensus on a dispute resolution.

ASSEMBLYMAN DORIA: Because the Speaker's correct, nobody and no one that testified, no group, has given us any number. Everything else we have a number.

PRESIDENT DiFRANCESCO: How can you have a number on something like this?

ASSEMBLYMAN DORIA: Well, but this is the problem.

PRESIDENT DiFRANCESCO: How do you put a number on this?

ASSEMBLYMAN DORIA: Well, the question is-- You're right. You can't.

PRESIDENT DiFRANCESCO: I'll put a number on it, but how can you really back it up, you know.

ASSEMBLYMAN DORIA: There's no way of knowing for sure. So why then create another step to the process which increase costs, because it is going to increase costs.

PRESIDENT DiFRANCESCO: No. No. Joe. I said this document-- I just read this today, too. Don't keep honing in on just one particular document. Just talk about--

ASSEMBLYMAN DORIA: Oh, okay.

PRESIDENT DiFRANCESCO: --conceptually. If you want to have one-- If you're concerned about time, you're concerned about who's making a decision, you're concerned about who's doing it -- those are all on the table. How much you can save, who knows? Who knows. I agree with you there. How do you know? How do you know?

ASSEMBLYMAN DORIA: So that what we're saying is I think -- I know that this is not the final document.

PRESIDENT DiFRANCESCO: No, not at all.

ASSEMBLYMAN DORIA: I know we're working on it. I just think my input on this is we should come up with a more expedited system that can have access to medical professionals but doesn't create additional steps and additional time constraints that in the end would be harmful to the process. So if we could do that and use the experts on a consultative basis rather than creating another review panel, we've saved ourselves a lot of trouble and time.

PRESIDENT DiFRANCESCO: Point well made.

Senator.

SENATOR CARDINALE: In the present system, if someone has missed it let me just make it clear here, all of the reports that we've gotten are that most of the cases of disputed treatment are completed treatment by the time the decision of the arbitration panel that is in place today makes its decision. So we're not holding up treatment in most of the cases. There may be some, but in most of the cases we're talking about the past. So that the delay factor is one or another, I don't think-- I agree with you that to the

extent we can get rid of the delay we should. And I agree with you that we should have an expedited system.

I think almost everybody around the table -- and maybe some don't -- I don't know because we haven't discussed it -- sat through the hearings and had to come to the conclusion that the present system is sick. And anybody who could not think that the present system is sick is not a doctor. It is very clear that we need to do something. And it could be done in a lot of ways. It isn't that we have-- There are many logical ways that you could correct the shortcomings of the present system. You enunciated certain principles. I agree with most of them, but I think doctors have to make medical decisions. There is no way around them. I agree with you that you may get bad doctors on these panels, and they would probably tend to approve treatment that shouldn't be done rather than to disapprove treatment even if they believe it shouldn't have been done. I think they'll error on the side of favoring the doctor. But that's going to be a far cry from what you have today where a medical society has, or some society, said Test A should never be used and Test A is paid for under the present system.

We've got to do something, and we've got to put some real teeth in it. And one of the things -- and I haven't had a chance to really read this in detail yet -- is I think it's an obscenity that you can pursue a sort of litigation on a matter that might involve \$200 and have the fees for that litigation amount to thousands. I think we've got to control that. That there has to be some kind of limitation where you have contingent fees that they bare a relation to the amount that's recovered. We've done that in-- The court has done it, I guess, in legal fees with respect to lawsuits, but we control these

particular fees, and I think, we should do something about that so that we don't have a lot of spinning of wheels over minor matters. And that's delay.

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: I wanted to follow up on what Assembly Minority Leader said. I think one way out the dilemma of having carriers refer too many matters to peer review to delay payment would be to just allow the arbitrators to have the power to refer matters to the peer review panel. Not have the parties do it, just have the arbitrators do it.

PRESIDENT DiFRANCESCO: So you mean that part I read before is -- would be neither party.

SENATOR ADLER: Not either party.

PRESIDENT DiFRANCESCO: Right.

SENATOR ADLER: Neither party to refer; instead, the arbitrator refer. And they would ask the medical question to Senator Cardinale who rightly thinks in some cases somebody other than arbitrators should determine. That might be the way to address Minority Leader's--

ASSEMBLYMAN DORIA: And in the end, the arbitrator makes the decision not based upon the recommendation.

SENATOR ADLER: But -- right. But buttressed with that medical information that all treatment may not have otherwise.

PRESIDENT DiFRANCESCO: Assemblyman Garrett, did you want to make a point?

ASSEMBLYMAN GARRETT: Yes. I know we're not just discussing this proposal, but on this proposal if I read it correctly, we're looking at what would become a four-step process actually before the decision is

ultimately made -- arbitration, peer review, peer review re-review, and then eventually to the courts. Correct?

MS. PUROLA: Yes. That's how I drafted it. Obviously, this is just something for you to look at as a basis of discussion, and I only put the second one in because it was under peer review bills.

PRESIDENT DiFRANCESCO: Something for you to tear apart.

ASSEMBLYMAN GARRETT: That's right.

MS. PUROLA: But it would be four.

ASSEMBLYMAN GARRETT: I believe we did have testimony during some hearing, and I don't know where it was, as far as what the cost saving was going to be. And I thought it was approximately 5 percent--

MS. PUROLA: Five.

ASSEMBLYMAN GARRETT: --for cost savings.

MS. PUROLA: From PIP.

ASSEMBLYMAN GARRETT: From PIP line. So there was a number, and I realize that any number is hard to pin down, but that was the estimate that they were looking at. In addition, I also think they testified that the whole peer review goes to two issues: goes to the legitimacy of the medical treatment, whether overtreating, or what have you, in the first instance. In the second instance is to try to combat the general idea of fraud that is out there that you may be striking out your particular excess treatment, but by doing that and having this peer review or any particular peer review system in place, other claims won't be coming down the pike because of it. And those other claims will both be peer review PIP cases, and they'll also be potential BI or

liability cases, as well. So I think it has an overall strategy of trying to combat both of them. One thing that's not--

SENATOR KYRILLOS: Scott, you should repeat that for the Speaker.

SENATOR ADLER: Scott, can we get there with protocols?

ASSEMBLYMAN GARRETT: We can get there. Should I repeat that for the Speaker that there is a real legitimate reason?

PRESIDENT DiFRANCESCO: Yes, repeat it for the Speaker.

SPEAKER COLLINS: I heard that on the tape inside. (referring to remote speakers in conference room) I couldn't recognize the voice, though. It was you?

ASSEMBLYMAN GARRETT: Couple of other points. What's missing in this, this idea -- and something that we haven't discussed yet -- this idea only talks -- and I guess people out there don't know what we're looking at -- about a medical file review or peer review. Correct?

MS. PUROLA: Yes.

ASSEMBLYMAN GARRETT: And I think some of the testimony we heard from some elements was that if we're going to have a true and accurate peer review, there should be a hands-on actual physical examination. Well, it's not a fair examination when it's simply being done as a pay per file review. I know that's more expensive and time consuming, but a physical examination, I think, gives us a more legitimate reason and resolution to it. And so long as you have that physical examination by an independent doctor, then I would support, as I supported previously, the presumption of correctness. Because without the presumption of correctness no matter

whether you're going through this four-step procedure or you're going through what Joe is suggesting, maybe a one-step procedure of just going to the peer review panel initially -- without the presumption of correctness, you're really not giving us anything different than what we have today in the bigger picture of it. Because in the end, it still-- In the end, even if you have the one-step procedure, you still, I presume, would allow that individual to go to court. And when it goes to court, it just starts all over again. And we haven't really changed anything. One other point--

PRESIDENT DiFRANCESCO: Well, Scott, I--

ASSEMBLYMAN GARRETT: You want to touch on that.

PRESIDENT DiFRANCESCO: I'm looking at this for the first time, too, but I view this as totally different than the present system.

ASSEMBLYMAN GARRETT: Well, not as long as-- Well, it certainly makes it more time consuming, complicated if you go through a four-step process.

PRESIDENT DiFRANCESCO: No. I mean, the basic concept is totally different -- isn't it? -- from what we have now.

ASSEMBLYMAN GARRETT: The end result will be the same if you allow the people to go over hurdle over hurdle over hurdle and eventually wind up in court anyway.

PRESIDENT DiFRANCESCO: Well, you're assuming they're all designed for that. I mean, you're just assuming it's all negative.

ASSEMBLYMAN GARRETT: Well, obviously--

PRESIDENT DiFRANCESCO: It's all overutilization. It's all fraud. It's all this. It's all that.

ASSEMBLYMAN GARRETT: No. I would assume, though, that if the person made it over the hurdle and his bill was going to be paid, then he doesn't go to court. If he makes it through the second hurdle and the third hurdle and his bill is being paid along the way, he doesn't go to court. But if he doesn't get his bill paid, there's no-- In my instance, I would say bring the matter ultimately to the final arbiter, which is going to be the courts.

PRESIDENT DiFRANCESCO: Yes. I don't-- You're generalizing, but I don't know if that would happen in every instance. I don't do this work, so I don't know, but I can't imagine that's a generalization that can be made. I don't know enough about it perhaps, but every individual case is a little different than every other. I see this as a totally different system; although, I understand what you're saying about there's too many steps.

ASSEMBLYMAN GARRETT: It's too many steps, and in the end the party who loses along each and every step has no reason not to go to the court to file a determination, which is the courts, to see if he can win there. Because why not, especially, it doesn't say who pays for this system in this particular scenario if the insurance company doesn't lose. If the insurance company loses under this system, the insurance company pays. I'm not sure who pays if the insurance company wins along the way.

The final point -- and Paul just came back -- on this. I'll just address the issue as far as what do we do if the medical bills are struck down along the way. And Paul's suggestion was that perhaps we should have a system where if the medical bills as being not legitimate, then the medical bills don't have to pay. Paul was basing that on the attorney fee procedure, and I guess the doctors have the same sort of procedure. The problem there, and

maybe this can be worked out, and I'd like to see if we can work it out to stick it in there, but the difference in that scenario is that the-- In an attorney fee arrangement procedure, the attorney is a party of interest. He is there in the proceeding or his representative is there proceeding -- justifying what his legal bills were, or if it's a doctor, I guess he sends his legal representative justifying what his legal bills are. So he's a party of interest in that action.

In any peer review or arbitration proceeding, the examining physician is not truly a party of interest. He is merely supplying his medical reports to be reviewed. He's not there in person or does he have his own representative making the case for him. He's not a third party to that action. And then for him to be, as I say, a third party not connected to the case, so to speak, find out that in the end his bill is not going to be paid, I guess he might-- If it was me, I would be a little bit less inclined to treat certain types of PIP cases or make sure that I have sent representatives to it. I think it can be worked out in certain ways, but I do see that as a problem on the part of the medical profession.

Thank you, Mr. Speaker.

SPEAKER COLLINS: Senator Adler.

SENATOR ADLER: On that last point, do we have a breakdown of what percentage of suits or arbitrations are brought by providers and what percentage are brought by patients? Because if it seems to be if there's a way that we can get around that problem by -- when a patient brings a suit, require notification to the provider. And the provider got a right to intervene and to participate in that hearing. But I think Paul's point is so valid. If some panel of legitimate arbitrators had said this isn't a valid bill from an insurance

company perspective that it's a shame that the patient still has to pay that bill -- is still the person responsible. That's wildly unfair for them to have to go to court and then defend a contract claimed against them in theory. You can get them all wrapped up in one PIP arbitration and not have that patient stuck paying a bill that's been declared invalid by some different body.

SENATOR KYRILLOS: Mr. Chairman.

SPEAKER COLLINS: Senator Kyrillos.

SENATOR KYRILLOS: Just a quick question to Laurine. Is this the kind of proposal that was in mind when you prepared your original PIP options, charts, this kind of thing, and the percentage of savings that you attached to it?

MS. PUROLA: This was just designed to be a discussion document for you so you could-- It is similar to what-- Tom did that actually. But I think this is what he was looking at. It's meant to be a-- Oh, yes. I see it.

SENATOR KYRILLOS: The kinds of cost savings that--

MS. PUROLA: Yes.

SENATOR KYRILLOS: --despite the fact that the Speaker never heard of a specific percentage savings talked about during the process. The kinds of testimony that we heard indicated that there was -- could be relatively significant savings to the system and to the policyholder. Is this product the kind of product that will bring about those kind of savings?

MS. PUROLA: Well, I think it's more specific than present law. And to the extent that it is and to the extent that you make other changes in the law which would result in a more precise insurance contract, protocols that

all of that taken together will probably result in less controversy, but I think it-- Probably some savings, yes.

SPEAKER COLLINS: Anyone else want to weigh in here on arbitration, peer review?

SENATOR CARDINALE: I have a simple question.

SPEAKER COLLINS: Senator Cardinale.

SENATOR CARDINALE: In terms of these protocols, on Page 3, there's a reference to protocols established by the Commissioner. I don't know-- That's the first time that protocols was used, and you hadn't referred previously to the fact that the Commissioner was going to establish protocols.

MS. PUROLA: Right. I'm sorry. Because that's in a different section. You talked about PIP the other day, and that's in the PIP section. And what I had-- I guess we'll review that language at another time. I had put in a requirement that the Commissioner, I think, not establish them because that apparently would be very difficult because they change all the time, but at least reference the protocols from the standard-setting organizations that would be used. That's in another section.

PRESIDENT DiFRANCESCO: What happened?

SENATOR ADLER: We moved the bill.

PRESIDENT DiFRANCESCO: What? Did you do the threshold while I was gone?

Gerry.

SENATOR CARDINALE: Is there any thought-- Does anybody share the thought that I have in *H* when the claimant prevails, the insurance company pays and it also pays the attorney's fees? What about when the

claimant does not prevail? Or what about when the claim is for \$60,000 and what's awarded is 200? Who pays the legal fees? It would seem to me that if a claim is made for  $X$  amount and a lesser amount is achieved to the extent that a lesser amount is achieved, it should be the claimant that picks up that piece of the fees that are involved. There are fees after all involved on both sides.

ASSEMBLYWOMAN FARRAGHER: Well, Senator--

SENATOR CARDINALE: Certainly where zero is awarded, the claimant ought to be making a payment to the insurance company, if we're going to be on a level playing field.

ASSEMBLYWOMAN FARRAGHER: Well, Senator, would the claimant-- The claimant would have legal advice, right? So wouldn't that review by the claimant's attorney weed out those kinds of-- We heard testimony, representatives of ATLA, describing how they review cases based on the verbal, for example. And if I remember correctly, they said that there were cases that they just wouldn't take based on the standards in the verbal today. So wouldn't that process automatically weed out something that's only going to result in a minimal pay out?

SENATOR CARDINALE: But it doesn't.

ASSEMBLYWOMAN FARRAGHER: It doesn't.

SENATOR CARDINALE: You know it doesn't. Because you do get, today, we did have cases brought before us -- I don't remember exact numbers -- where there was a very minimal award of medical claim out of a large demand. But the legal fees exceeded by many times the actual award, and the legal fees were imposed on the insurance company on the basis of a

minimal couple hundred dollars that was awarded in medical fees. So my suggestion would be that there would be some proportion established so that where people bring claims that they have, what you're looking at, the responsibility to take a look at what kind of risk they're taking in bringing these claims and don't bring specious claims. And that, in fact, they do bring specious claims, there would be some downside. Because there is apparently no downside under the present system, and I don't see one here for somebody to bring an exaggerated or totally specious claim.

The case that bothers me the most is the guy who was in Florida and the arbitrator said pay his bill anyway, because we have to take his word for it, even though he was in Florida, he did these treatments. Now I do know that subsequently that guy was prosecuted criminally and suffered, but that ought to be in the arbitration system.

PRESIDENT DiFRANCESCO: Senator Codey, Assemblyman Charles, Paul DiGaetano, any-- Yes, Paul.

ASSEMBLYMAN DiGAETANO: Mr. Chair, this again touches on the issue I raised before as to whether or not the claim -- or I should say the bill that's claimed -- is going to be paid to anyone for this reason. It's pretty clear and I think we can all agree that in the cases where there is fraud and there are arbitrations, or whatever you want to call it, brought that the claimants should run the risk of paying the insurance company, etc. We think they should do a lot more. I think we all agree with that. But the question that this brings to my mind is where there is someone who is injured, where there is someone who has received a number of diagnostic tests and a number of treatments, and the insurance company is claiming that these are, or some

of these tests, are unnecessary tests or invalid tests and some of the treatment is unnecessary. The insurance company then denies the claim. The claimant must bring action and they choose arbitration to get those paid.

In those cases, I doubt if many of these claimants understand what was the basis for some of these tests. I don't think the claimants went in and asked for the tests. So it is the provider that decides in order to diagnose this properly or in order to treat properly and need these tests, and does so. And the same with the treatment. I don't think it's the claimant that decides how many treatments by a therapist or a by a chiropractor or by an M.D. that the claimant is going to receive-- The point being that the insurance company, obviously, has much greater ability to look at the claims, the tests, etc., and decide what is appropriate than the claimant does. And again, much of this could be resolved, I think, if you include the provider. I think if providers--

And it's interesting that medical society has for the past eight or ten months supported peer review, except none of that peer review language, including the proviso that I mentioned earlier, that the bill not be payable by anyone if it's denied in peer review. My point is this, much of this is resolvable if you include the provider in the process. And actually, I tend to differ with my colleague, and we have differed in the past on this issue but-- I tend to differ with my colleague on whether or not the provider should be a party to it, because it would seem to me that if the argument against these arbitrations is that they're being made on an inappropriate or unsound basis, the provider being present to defend his or her provision of services might lend some credibility to those proceedings.

So my point, Mr. Chairman, Mr. President, is that I think some of that may be decided favorably if we include the provider of services of treatment in the process.

PRESIDENT DiFRANCESCO: Senator Cardinale.

SENATOR CARDINALE: I think it's wise to include the provider in terms of the provider having risk, but I think you have to give the provider an option of abandoning the bill but have them risk the legal fees if they go forward with a specious claim. That's kind of what I was driving at. I think you also have to include the attorney, because the attorney most likely has recommended the doctor and is probably, in most of the cases of fraud -- I don't know if you saw some of the articles that have been written recently -- they're working hand and glove with the doctor. And so somewhere you have to get at the lawyer, as well as the doctor, who are pursuing this, essentially, fraud on all the rest of the premium payers in the state.

PRESIDENT DiFRANCESCO: Senator Adler.

SENATOR ADLER: I think we can legitimately get those type of people through the fraud provisions we're talking about without mucking up our dispute resolution mechanism. I think we should try and recognize the fact that the insurance contract is an obligation for insurance companies to provide certain things. And the PIP suits are about enforcing those contract rights with an uneven playing field where the carrier has the money, and that they've already received from policy premium. So I don't think that we want to tilt the playing field in the carrier's favor any further in this context. I think we want to make sure that legitimate PIP claims get arbitrated quickly, expeditiously, maybe throwing in interest to reimburse providers fairly for the

time value of money, but not tilted any further in the carrier position that it already is. They can deny claims. And until somebody enforces that contract right, the carrier wins in this uneven playing field.

SENATOR CARDINALE: Mr. President, I think my remark is being mischaracterized. I am not attempting to tilt it in the favor of the insurance company. I am attempting to tilt it. But it's an attempt to tilt it in favor of all of the people who pay the premiums that you refer to the insurance company having collected. Because it isn't the insurance company that ultimately pays for the fraud or for the overtreatment, it is the public who pays for the fraud and the overtreatment because rates go up and rates are artificially high. And there are a number of professional groups that have-- And anybody who hasn't recognized that after sitting through these hearing has got to be pretty dense. There are a number of professional groups and they all need to be reined in. Yes, there are doctors who are doing this, but there are lawyers who are doing it. And you have to accept some penalty for the lawyers who have been and some detriment for the lawyers who would continue to manage these cases which are cases of fraud.

PRESIDENT DiFRANCESCO: Joe Charles.

ASSEMBLYMAN CHARLES: Mr. Chair, I think-- I reviewed the draft here -- the working draft that we have -- and I agree that what's proposed here can be streamlined. We need to take out some of the steps.

PRESIDENT DiFRANCESCO: Do you think Laurine got that message?

ASSEMBLYMAN CHARLES: She understands. Laurine knew what she was doing. She wanted this response from us. She gave us all the things to think about, and now we're telling us what we think. And that's fine.

I think though that the one concern I do have is one expressed by Majority Leader DiGaetano about what happens to the bills -- the claims that are denied at arbitration. I think one of the things we need to include in anything that we do is provision that the injured -- the person who's being treated, the insured -- does not get stuck with the bill. There has to be some provision there.

Apart from that, I think since we are-- We seem to be just bent on well-- Since we perceive it our mandate to make some kind of change or to make a change, we probably ought to consider some of the things that are proposed in here, and if we narrow it down in terms of what we can agree upon, I think I'll be ready to agree on some alternative dispute resolution.

I have one question though. Under the current system, what happens after the AAA arbitration? What's the right of anybody to get further consideration of the decision?

MS. PUROLA: They can go to court.

ASSEMBLYMAN CHARLES: They go to court under what provision? Do they go to court suing for the PIP bills in a separate superior court action, or is there some appeal under the general arbitration statute that we have in the State of New Jersey?

MS. PUROLA: No. They go-- There's no appeal. The present arbitration statute is merely, maybe not even a whole sentence reference,

saying that dispute shall be forwarded to the American Arbitration Association. There are no procedures or anything in there.

ASSEMBLYMAN CHARLES: I guess my question is this. If you lose in arbitration or if you win it -- somebody loses in arbitration. They're dissatisfied with the result. What's their legal recourse? Do they file a complaint in the superior court somewhere, or do they generally appeal an arbitration result under the general arbitration statute that allows for an appeal?

PRESIDENT DiFRANCESCO: There's none. It's over.

ASSEMBLYMAN CHARLES: It's over.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

ASSEMBLYMAN CHARLES: That's the general arbitration statute you're talking about.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

ASSEMBLYMAN CHARLES: Excuse me, you're talking about-- We have a statute in the State of New Jersey which says that after arbitration you can appeal it under very limited circumstances. That's the statute under which the -- your relief exists now.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

ASSEMBLYMAN CHARLES: Just under that general arbitration statute, okay.

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

ASSEMBLYMAN CHARLES: That answers my question.

PRESIDENT DiFRANCESCO: Okay. We've talked about this issue. It's obviously a very important one, one that, I think, deals with a lot of

proposed change from what exists today. Laurine has listened to a lot of suggestions and will develop several written alternatives.

I don't know if you want to continue today. I was going to stop originally at 12:30. I think on Thursday we need to talk about the verbal threshold. We'll revisit the dispute resolution system. We'll revisit the fraud system, and we will also talk about territorial caps. We need to talk about it. We can't talk about that now. I would have brought that up now except that the Speaker is not here because they have a session today.

SENATOR ADLER: We'll take a straw poll.

PRESIDENT DiFRANCESCO: So 9:30-- We're going to continue this--

Is everybody listening to me?

ASSEMBLYWOMAN FARRAGHER: Yes.

ASSEMBLYMAN DiGAETANO: Everybody is on this side.

PRESIDENT DiFRANCESCO: No. I mean in the audience, so to speak.

On Thursday, we will continue this meeting at 9:30 in the morning in this room -- this Committee Room 11, I guess it is. This room.

Any questions about that?

SENATOR ADLER: Through the afternoon?

PRESIDENT DiFRANCESCO: Well, we're working towards the introduction of a bill on Monday. There are Committee meetings morning and afternoon, so I don't know how we'll juggle that with your Committees, but we'll work it out with you.

All right. Okay. Thank you.

**(MEETING CONCLUDED)**

APPENDIX





## **NEW JERSEY INSURANCE NEWS SERVICE**

820 BEAR TAVERN ROAD • SUITE 303 • EWING, NEW JERSEY 08628-1021  
(609) 882-4400 • FAX: (609) 538-1849

**FOR IMMEDIATE RELEASE**

**CONTACT: John K. Tiene**  
**(609) 538-8707**

### **REDUCING LAWSUITS & BALANCING NO-FAULT: KEY TO REDUCING PREMIUMS**

**Ewing, N.J., March 23, 1998** -- Legislators must balance New Jersey's no-fault auto insurance system by clarifying the state's definition of a serious injury, commonly known as the verbal threshold, if they hope to actually reduce auto insurance premiums says the New Jersey Insurance News Service (NJINS).

"Insurers have paid over \$12 billion for pain and suffering lawsuits in the last eight years," said John K. Tiene, NJINS executive director. "That's double the losses paid for medical claims. If legislators are looking to actually reduce auto insurance premiums, they must deal with the verbal threshold."

The intent of New Jersey's no-fault insurance system, which legislators agreed to maintain last week, is to provide motorists with medical insurance protection by limiting lawsuits and their associated costs. The reality is that our state has a fault/no-fault system providing motorists with substantial no-fault medical benefits (or personal injury protection coverage) and essentially free access to the courts to sue for pain and suffering.

"If legislators properly define what a serious injury is and established sound controls to end excessive medical treatment, then and only then would a mandated reeducation in auto insurance premiums be possible," continued Tiene.

Pain and suffering lawsuits are the highest cost factor of the state's auto insurance system. More than 167,000 "pain & suffering" lawsuits have been filed in just the last three years alone. Insurance companies incur enormous costs defending and settling these lawsuits and the countless additional bodily injury liability claims filed each year.

-- more--

/x

"Cutting auto insurance premiums by fifteen percent means cutting costs by \$690 million a year," commented Tiene. "Even if you used the most generous insurance industry profitability projections, that's twice the industry's total annual profit."

The cost of bodily injury liability claims alone increased 40 percent between 1990 and 1995. Those costs do not include items such as the cost of claim personnel, defense attorney fees and other claim settlement costs. For the same period, the cost of no-fault medical or personal injury protection, claims increased 30 percent.

"For the past two decades our state has mandated that motorists' participate in the most generous auto insurance system in the country," said Tiene. "But we have paid dearly for that privilege. Deficits of more than \$6 billion were accumulated and had to be paid off. Over 20 insurance companies have fled the state and many of the nation's largest insurers won't do business here even if you paid them. It's time for real and actual reform!"

Developing and implementing a cohesive and meaningful auto insurance reform plan is not an easy task. Any change to the smallest detail of any part of a broad set of reforms could alter the potential impact of the entire package.

"The Legislature's goal must be to create a fair, equitable, flexible and balanced auto insurance system that contains costs, combats fraud, provides consumers choice and begins to reignite competition," concluded Tiene.

NJINS recently published a 90-page white paper titled, *Building A Better Auto Insurance System: It Can Be Done*. In the report, NJINS outline a number of effective solutions to confront the problems that have plagued the state's auto insurance system for the last two decades. If the following common-sense measures were enacted, premiums would be reduced.

- Establish a peer review process for medical claims to allow doctors to make judgments on the appropriateness of medical care rather than lawyers.
- Enact a comprehensive medical fee schedule based on the Medicare fee schedule to reduce excessive medical fees.

--more--

2x

- Properly define what a serious injury is.
- Adopt more of the Governor's Task Force on Health Care Fraud recommendations and commit the necessary state resources to a long-term anti-fraud enforcement effort.
- Recognize our state's diversity and allow consumers to purchase lower levels of all coverage's based on what best suits their needs and make certain mandated coverage's optional. So that all drivers would always have the option of purchasing the insurance they need, require insurance companies to make available certain coverage's and coverage limits.
- End the territorial rate subsidies that force most New Jersey drivers to pay more than they should for auto insurance and phase out "take-all-comers" which forces companies to insure anyone regardless of the risk they pose.

###

*The New Jersey Insurance News Service (NJINS) is a nonprofit, insurance research and information organization sponsored by 26 New Jersey licensed property/casualty insurance companies. Collectively, NJINS member companies underwrite 77 percent of automobile insurance policies, more than 65 percent of homeowners insurance policies, 51 percent of the commercial insurance and more than 35 percent of workers compensation policies in New Jersey.*

3x

MARCH 21, 1998

TO: N.J. JOINT COMMITTEE ON AUTOMOBILE INSURANCE REFORM - 1998  
Mr. THOMAS K. MUSICK, committee aide Office of Legislative Services  
SENATE Commerce, Labor & Industry Section  
N.J. State House Annex, Room 270. Trenton, New Jersey 08625

FROM: PIP VICTIMS AGAINST AUTOMOBILE INSURANCE COMPANIES' ABUSES  
P.O. BOX 477, Franklin Lakes, N.J. 07417  
Frank Ostrow, Chairman

SUBJECT I: Fraudulent Medical Billing by Selective Insurance Company's  
owned M.R.S.I. (McPhaden Rehabilitation Services, Inc.).  
VIOLATION of NJSA 39:6A-5, et al. SEE "A" & "B" attached.

INSURER, Selective Ins Co, does by deliberate intention and design does NOT pay treater's bills in a timely manner as required by PIP LAW!  
Selective Ins Co does ostentatiously flaunt in their Volume 1, 1998 house organ (Pages 13 & 14) that MRSI/MSCI contributed \$2 million in net savings (PROFITS) in 1996 and through September 1997 over \$7 million!  
Selective bought MRSI/MCSI on November 14, 1997 and made owners Bill McPhaden and Mike Creghan Selective vice presidents who report to senior vice president, SBUS, Jim Coleman.

How easier for auto insurers to make net profits than by NOT PAYING treater's bills and by ignoring NJ PIP LAWS. Selective's Rich Broome, assistant vice president and director of corporate communications, told Senator Cardinale's and Assemblyman E. Scott Garrett's joint insurance public hearing in Sparta, NJ last spring Selective's NET PROFIT was 12%!

SUBJECT II: INABILITY of the N.J. Department of Banking and Insurance Enforcement and Consumer Protection to enforce compliance of NJ PIP LAWS by Selective Insurance Co. for years!

ONE EXAMPLE: Since January 26, 1998 neither Assistant to Paul DeAngelo, assistant insurance commissioner - Anne Marie Narcini; nor Investigator Charles Arndt (now on illness leave 'til next month); NOR Bob Bensen, supervisor of investigators has been able to obtain from either M.R.S.I. or Selective Ins Co's Claims Manager Gloria-Jeanne Wilson; nor Senior V.P. Jim Coleman; NOR Bill McPhaden vice president (also of MRSI) NOR Dona Furnbach claims rep/adjustor, NOR MRSI's Virginia Berkowski vice president of operations, NOR Cathy Mahon supervisor of auditing NOT EVEN from Selective's Chairman and Chief Executive Officer James W. "Bill" Entringer - obtain a copy of a so-called 'AUDIT' supposedly done by MRSI and sent to Donna Furnbach by MRSI's DONNA HERRMANN. IF such 'audit' even ever did exist is doubtful since the "writing" or "memo to self" indictes simply using a previous doctor's report as 'basis' of the memo.

An attorney has advised that the writing that appears without a business letterhead and has neither a typed name nor signature on the last page has no standing in law. More Selective & MRSI deceit.

Selective's Claims Rep "Trish" Rehe stonewalled the claimant and the NJ Dept. of Insurance for six months telling Anne Marie Narcini that an I.M.E. report/letter of a Dr. Morton Fier did not exist until a FAX from Rehe's supervisor Debbie Anderson to Ms. Narcini QUOTED from Dr. Fier's "letter that had not until the quote", had not existed! That was six month's of Selective's deliberate lying! What penalty does the legislature impose on insurers for lying? NONE! WHY NOT?!!!

WHY for three years has the leadership of the Assembly and Senate refused to pass the law that makes Auto Insurance Companies subject to New Jersey Consumer FRAUD LAWS? Yet they profess they act in the public's interest? That's a sham! They protect auto insurers' interests!

SUBJECT III: FIND attached CONSUMER COMPLAINT, 03-23-98, FILE#: 96-87850  
RE: Selective Ins Co/MRSI of (3) three legal pages to aid you to understand the wanton and reckless disregard for the PIP STATUTES that the legislature's non-actions have allowed insurers' to inflict both real consequential trauma and harm upon claimants, treaters, suppliers and providers with impunity. Not included are addendum pages sent to the New Jersey Department of Banking and Insurance Enforcement.

SUBJECT IV: The public has serious reservations that "Real Reform" of auto insurance will emerge crafted by politicians since there was a media black out of the federal press conference of March 10th in Washington, D.C. of "The Auto Choice Reform Act" by U.S. Senators McConnell & Lieberman and Congressmen Army and Moran which is simply the governor's idea that failed last year. Now on top of the 'new' TIER with a 5% increase for drivers with no points and 5-year driving record actuating with rates effective in July, why the "March Hare" rush to pass this pseudo "reform" when the commissioner and 150 staff members cannot even produce 1997 Auto Insurance Premium Comparison. And in 1996 of 53 auto insurers there were 813 complaints against them. DID NOT auto insurers create those 16,000 arbitration cases so they could complain about them?  
By adding 20% don't auto insurers avoid investigating fraud?

(6) SIX Pages Attached

PVAAICA 4x

PIP VICTIMS AGAINST AUTO  
INSURANCE CO'S ABUSES  
ALL VOLUNTEERS - RESEARCH, INFORMATION & AUTO ACCIDENT VICTIMS' ADVOCATE  
MAIL ADDRESS: PO BOX 477, FRANKLIN LAKES, NJ 07417  
OFFICE: 10 PRINCE PATH, GARLAND, NJ 07416  
Telephone #: 201 405 1232 FAX: 201 311 6216

ENF 1-4/91

NEW JERSEY DEPARTMENT OF INSURANCE  
CONSUMER COMPLAINTS  
P.O. Box CN329  
TRENTON, NEW JERSEY 08625-0329

03-23-98  
Page 1/3

RE: N.J. DEPT. OF INS. File #: 96-87850

Please Print or Type

Complaint is Against: (Company - ~~Agent~~) TWO A&B

Name FRANK OSTROW	Name A) Selective Ins. Co. of America & B) dba MRSI/MCSI (MRSI#: KK001741)	
Address-Number & Street P.O. BOX 477	Address-Number & Street (Northern N.J. Claims) 40 Wantage Avenue, PO BOX 399 BRANCHVILLE, N.J. 07826	
City State Zip Code FRANKLIN LAKES, N.J. 07417-0477	City AND dba at State Zip Code IBIS Plaza, 3525 Quakerbridge Road HAMILTON, N.J. 08616	Person Insured FRANK OSTROW
Telephone Number Home: 201-405-1637 FAX#: 201-3376276	Policy # F1349936	Claim # 012345634-4-
On Behalf Of: (If same as above, write same) S A M E	Date of Loss (Claim) October 29, 1994	Amount Claimed \$100,000.00 +/-

DETAILS OF COMPLAINT-Include copies of any documents or correspondence that you believe will assist us. Do Not Use Reverse Side of this form; attach additional pages if needed. This form must be signed and dated.

MY COMPLAINT IS that I, Frank Ostrow, as Claimant do attest, affirm and declare that from this, and including all attachments plus Addendum, that are true, PLUS all previous complaints filed and their supporting submissions, PLUS three (3) tape recordings submitted are hereby made a part of this complaint dated March 23, 1998 THAT Selective Insurance Company also dba MRSI/MCSI (McPhaden Rehabilitation Services Inc./Managed Care Services, Inc. Selective's assignees did at its management's direction, through employees, three hired IMES of SIX, its hired writer or a "Peer Review Report" and through its direct ownership since 11-17-97 of MRSI/MCSI and all those employees: all aforementioned, did individually and in concert did conspire and collude repeatedly thereby creating a blatant pattern of deceptive written and spoken words and acts which individually and collectively impacted negatively upon Claimant and Claimant's professional treaters which worked to deprive Claimant and Claimant's treaters/providers of their individual Civil/Constitutional/Human and their Professional Rights and Honor so guaranteed by The Constitution of The United States and The U.S. Bill of Rights through their abusive usage and misuse and misapplication of both the intent and letter of the New Jersey Legislature as they set forth in New Jersey Statutes -PIP LAW- Title 39 and other relevant statutes of N.J. NO FAULT Personal Injury Protection, as well as the Insurer's auto insurance policy contract and the (CONTINUED ON PAGE TWO)

NJSA 17:33A-6 provides that any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

NATURE OF COMPLAINT

Claims  XXXXXX Rate   
Cancellation  Service   
Other (specify) \_\_\_\_\_

TYPE OF POLICY

Auto  Life, Health  
 Home  Group Ins.  
 Commercial  Blue Cross/Shield  
(I.D. # \_\_\_\_\_  
Other (specify) \_\_\_\_\_

I understand that a copy of this form and enclosures may be sent to the party complained against and authorize the release to the N.J. Department of Insurance of any medical records pertinent to this complaint.

Signature FRANK OSTROW Date 3/23/98

WITNESS: *[Signature]* 3/23/98  
This is the first time that this matter has been brought to the Department's attention.

Yes  PART and No  PART

DO NOT WRITE IN THIS BOX

File # \_\_\_\_\_  
Investigator \_\_\_\_\_  
Company \_\_\_\_\_  
Complaint Code \_\_\_\_\_  
DATE: \_\_\_\_\_

ENF 1-4/91

NEW JERSEY DEPARTMENT OF INSURANCE  
CONSUMER COMPLAINTS  
P.O. Box CN329  
TRENTON, NEW JERSEY 08625-0329

03-23-98

Page 2

Re: File #: 96-87850

Please Print or Type

Complaint is Against: (Company ~~and/or~~ Insurer)

Name FRANK OSTROW PO Box 477, Franklin Lakes, NJ 07417	Name Selective Ins Co/MRSI/MCSI 40 Wantage Ave, Branchville, NJ 07826
--------------------------------------------------------------	-----------------------------------------------------------------------------

(CONTINUED FROM PAGE ONE) FAIR business practices of the New Jersey Consumer Fraud provisions, doing this repeatedly over a three year period. These repeated unfair claims practices, which have manifested as Selective Insurance Company's "normal business practice" have worked to deprive Claimant of necessary normal treatment to be administered in an unfettered and reasonable manner by his treaters nexus his accident and did deprive claimant and claimant's treaters of prompt payment as required by PIP LAW, did further deprive the Claimant of monies he was forced to expend over three years for his necessary transportation expenses he incurred in making himself available to obtain and utilize necessary treatment but also to the Insurer's ORDERED and Insurer's PAID FOR ELEVEN (11) IMES (Independent Medical Examinations) which IF Claimant had failed to attend even ONE then Claimant's medical treatments and PIP Benefits would have been terminated! Further Insurer falsely utilized Insurer-OWNED medical billing and auditing company for its alleged "On-Site-Audit Report" then failed to provide "The AUDIT" to both the Claimant and The N.J. Department of Banking and Insurance as required by NJ Statutes 39-17 IF the alleged "AUDIT" was ever done and IF it exists, since it took MRSI/MCSI three months to submit a simple three and one half "ALLEGED REPORT" for that "WRITING" is not done on a letterhead on any of its pages of the alleged auditing company. IF one ever existed and more grossly the "report" bears NO typed NAME of its alleged creator/producer and further there is NOT a signature. The only identification visible is on the last page and it consists of a computer generated initials made by the typist as "DH/pd". To all apparent supposition this alleged "report" bears all the markings of a production of the New York City company "MEDICAL DETERMINATIONS" whose workings were exposed in January 1997 in the New York POST. Medical Determinations, The Post exposed, was composed of 70 people headquartered in New York City and worked for insurance companies in 42 states and Canada. Their business consisted of writing false reports of legitimate Independent Medical Examinations by real doctors, reverse the doctor's handwritten finding notes, have those false reports typed up on a forged letterhead, forge the real doctor's signature and send THAT FALSE IME REPORT to the Automobile and Workmans Comp insurance companies. Thus benefits were denied for patients' real and legitimate injuries - some were totally disabled! Well, this nefarious company vacated their New York City offices, stripped to the bare walls, one day BEFORE a raid by the FBI. The last sentence in The POST's last article about the raid ended with the fact that Medical Determinations had moved all its records to companies they owned, and gave the names of those companies and the towns they were located in, in the Bronx and New Jersey. Selective's fraudulent acts visited upon Claimant and Claimant's treaters were acts of malice, recklessness, wantonness all done with reckless disregard for the truth and all prove a pattern of the Insurer's and of the Insurer's assignee's blatant abuse of Claimant and Claimant's professional treaters that was sustained, as a regular business pattern, for the course of three years and continues even now although Claimant did voluntarily end the treatments in November 1997. These acts by Insurer and Insurer's Assignee have inflicted consequential injury/nexus the accident directly upon Claimant and secondarily to Claimant's treaters through the interaction with the result of the Insurer's acts that affected all of them with the actual harm being done by mental harassment, causing psychological and physical harm and further having effects upon the treaters' professional practices. Insurer must have known, undoubtedly having done these acts over many years to other claimants, that they would force Claimant into arbitration and force Claimant's treaters to sue for Insurer's non-prompt payment of bills plus for the interest due. Arbitration would not have been necessary IF Insurer had only acted honorably. Arbitration and a law suit would not have been necessary IF Insurer had abided by result of previous Court Cases lost by Selective Insurance for itself and for its representation of the industry, to pay the Claimant's medically necessary transportation costs with Mc Rebo writing Claimant, "why did you go to New York City for treatment"? New Jersey PIP LAW allows PIP Claimant-Victim/Patient their choice of treaters!

THEREFORE because Selective Insurance Company/MRSI/MCSI's illegal acts, acts Claimant and the N.J. Department of Banking and Insurance have uncovered and deemed illegal, as well as acts hidden and as yet unexposed, these acts have impacted adversely upon Claimant and Claimant's treaters, which acts have resulted in actually deterring patient/Claimant's recovery by a minimum

(CONTINUED ON PAGE THREE)

NJSA 17:33A-6 provides that any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**PVAACABOX** PIP VICTIMS AGAINST AUTO INSURANCE CO'S ABUSE

ALL VOLUNTEERS - RESEARCH, INFORMATION & AUTO ACCIDENT VICTIM ADVOCATE

MAIL ADDRESS: PO BOX 477, FRANKLIN LAKES, NJ 07417  
10 PENNANT PATH, HAVLIAND, NJ 07414  
OFFICE: 908.781.1111 FAX: 908.781.6226

ENF 1-4/81  
03-23-98  
Page 3

NEW JERSEY DEPARTMENT OF INSURANCE  
CONSUMER COMPLAINTS  
P.O. Box CN329  
TRENTON, NEW JERSEY 08625-0329

Re: File#: 96-87850

Please Print or Type		Complaint is Against: (Company <del>and assignees</del> )	
Name	FRANK OSTROW	Name	Selective Ins Co / MRSI/MCSI
	PO BOX 477, Franklin Lakes, NJ 07417		40 Wantage Ave, Branchville, NJ 07826

(CONTINUED FROM PAGE TWO) of ONE YEAR! Therefore Claimant seeks relief from and including punitive damages against Insurer and Insurer's Assignees for ALL aforementioned grievous and harmful acts which Claimant and Claimant's treaters have suffered at and through the hands of Insurer for abuses, trauma, financial losses as well as the emotional and physical pain and suffering caused and precipitated by the Insurer and Insurer's assignees' knowing, deliberate, willful and perfidious acts all having been perpetrated with malice aforesaid.

~~Claimant does make these complaint/charges based upon his knowledge, and what he has experienced and was subjected to, was so abused, and continues to be abused and suffer resultant trauma, to this very day, by and through Claimant's Insurer, Selective Insurance Company, that also does business as MKSI/MCSI (McPhaden Rehabilitation Services Inc./Managed Care Systems, Inc. of Hamilton, New Jersey) PLUS Selective's Assignees: Dr. Morton Fier, IME; Dr. David J. Gallina, IME; Dr. William Head Jr., Peer Reviewer, who all, under the direction and supervision of Selective's Senior Vice President located in Branchville, New Jersey; JIM COLEMAN, who reports to GREGORY E. MURPHY, Selective president and chief operating officer; who reports to JAMES W. "Bill" ENTRINGER, chairman and chief executive officer.~~

~~It is a gross violation of any reasonable persons' sensibilities and knowledge to allow insurers to utilize doctors who have NO specific education, training nor treating experience to be allowed to act as an (IME) Independent Medical Examiner and comment upon a claimant's diagnosis of which the doctors are totally professionally ignorant thus permitting them, the Insurer, to utilize their PAID ASSIGNEES to defraud Claimant and Claimant's professional treaters, and further permit Insurer's Assignees at MRSI/MCSI: nurses Mayer and Herrmann, who have neither a doctor's degree nor a NJ doctor's license - to collude with Selective's Claims Supervisor Debbie Anderson and Claims Manager Gloria-Jeanne Wilson, to be the triers and deciders of Claimant's true medical facts and permit them to utilize and base their "report" on the falsities contained in Dr. Head's "Peer Review Report", which itself is specious having in their ignorance and incompetence the ability to realistically and medically and independently evaluate Claimant's medical records EXCEPT as hired and paid assignees and employees of the Insurer, Selective Insurance Company, and therefore definitely, to any reasonable person's considered judgement would not be INDEPENDENT but merely self serving.~~

~~Therefore all the aforementioned companies and persons had done all these acts and are therefore guilty of having committed these fraudulent acts. Those acts were committed by the aforementioned and approved by those in Insurer's management and supervisory positions with malicious wantonness and recklessness and done with total disregard for the truth against Claimant and Claimant's professional treaters for the sole purpose of the Insurer's and the Insurer's assignees' immediate and future pecuniary gains and therefore have exercised the most egregious, cunning and clever manipulations with hypocritical élan.~~

(SEE ADDENDUM of PAGES ATTACHED AND MADE A PART HERETO)

N.J.S.A. 17:23A-6 provides that any person who knowingly files a statement of claim containing false information shall be liable for civil penalties...

**PVAACA 7x** PIP VICTIMS AGAINST AUTO INSURANCE CO'S ABUSE!!  
 ALL VOLUNTEERS - RESEARCH INFORMATION & AUTO ACCIDENT VICTIMS' ADVOCATE  
 MAIL ADDRESS: PO BOX 477, FRANKLIN LAKES, NJ 07417  
 OFFICE: 10 PLUMMIT PATH, OAKLAND, NJ 07066

# Selective purchases managed care company



Left to right: Bill McPhaden, Mike Creggan and Jim Coleman

ment to a better way of handling medical claims," he said.

#### What does MCSI/MRSI do?

- MCSI/MRSI's services include:
- ✓ Risk adjustment
  - ✓ Hospital audits
  - ✓ Billing pricing
  - ✓ Loss ratio analysis
  - ✓ Provider networks
  - ✓ Workers' compensation managed care

— Jim and Mike agreed that the first challenge for Selective and MCSI/MRSI is to successfully integrate the two companies. "I'm very encouraged by Selective's active efforts to make us part of the team and to start providing us with the organizational support we need to continue growing," said Mike.

Jim said that "it's our goal to make sure we continue MCSI/MRSI's success and growth by giving them administrative and systems help. They can then focus on continued improvements in their processes and future growth."

#### Making it all work

Selective and MCSI/MRSI have established an integration team of employees from both companies to determine how to bring the two organizations together. The integration team includes: Ginger Brikowski, Claudia Allart, Carol McKenzie, Eileen Gibbons and Mary-Beth Gordon, from MCSI; and Kim Burnett, Jennifer DiBerardino, Moira Kenah and Susie Phillips, from Selective.

Mike notes that the five MCSI/MRSI employees are part of his management team. Rich Broome, director of Corporate Communications, serves as the process leader. The team reports to Mike, who said that "the team isn't involved in our day-to-day operations, but they've already made a big contribution on human resources and communications issues.

"I expect that now the deal is closed they will help us integrate accounting and systems functions and provide support on issues ranging from training and purchasing to a coordinated marketing effort."

On November 14, Selective and Managed Care Systems, Inc. (MCSI)/McPhaden Rehabilitation Services, Inc. (MRSI) completed a deal which made MCSI/MRSI part of Selective. MCSI/MRSI provides a broad range of medical claims handling services to Selective and a number of other companies involved in workers' compensation and auto insurance.

Headquartered in Hamilton, New Jersey and led by Mike Creggan and Bill McPhaden, MCSI/MRSI employs about 170 people and becomes the newest strategic business unit (SBU). It will still be headed by Mike and Bill, who joined the company as vice presidents. They report to Jim Coleman, senior vice president, SBUs.

"MCSI/MRSI is an integral and growing part of our claim handling functions and we see opportunity for significant growth in their business," said Jim. "They'll help us develop products and services, complementing our alternative and fee-for-service efforts, which will help us stay on top of changes in these emerging markets."

Mike commented that Selective was an early believer in MCSI/MRSI's approach to the business. "Selective understood that early intervention and active case management would result not only in cost savings but also better outcomes for the patient. They took a chance on us three years ago when New Jersey certified us as a managed care organization, and this deal

**Selective and MCSI/MRSI have established an integration team, consisting of employees from both companies, to determine how to bring the two organizations together.**



Discussing integration plans. From top left to right: Mary Beth Gordon, Rich Broome, Eileen Gibbons, Kim Bursick, Kim Burnett and Susie Phillips. Bottom left to right: Susie Phillips, Claudia Allart, Ginger Brikowski, and Carol McKenzie. Not pictured: Moira Kenah.

PVAA ICA

10X

PIP VICTIMS AGAINST AUTO INSURANCE CO.'S ABUSE!!

ALL VOLUNTEERS - RESEARCH, INFORMATION & AUTO ACCIDENT VICTIMS - ANYWHERE MAIL: ANTHONY PO BOX 437, PRANSHULI LARER, NJ 07417



