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PUBLIC HEARING

before

ASSEMBLY BANKING AND INSURANCE COMMITTEE

on

State Department of Insurance procedures and practices in reviewing and
approving automobile insurance rate filings, and disseminating
information to the Legislature and the public

(Pursuant to Assembly Resolution 3026)

Held:
May 2, 1983
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Michael F. Adubato, Chairman
Assemblyman Eugene H. Thompson, Vice Chairman
Assemblyman Thomas J. Deverin
Assemblyman John V. Kelly
Assemblyman Louis F. Kosco

ALSO PRESENT:

Spiros J. Caramalis, Senior Research Specialist
Office of Legislative Services
Aide, Assembly Banking and Insurance Committee

New Jersey State Library

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Foreword

I wish to take the opportunity to commend and thank Assemblyman Eugene H. Thompson, Thomas J. Deverin, Louis F. Kosco and John V. Kelly, Jr., for their concern and commitment, as members of the Assembly Banking and Insurance Committee, to bringing to the attention of the people of New Jersey accurate information on the problems of automobile insurance in this State. I also wish to commend and thank Peter Guzzo, the Assembly Democratic party leadership liaison to the Committee and Spiros J. Caramalis, Banking and Insurance Committee staff, for their commitment, efforts and assistance in the work of the Committee. Last but hardly least, I wish to thank, for their assistance at the public hearing, Thomas H. Musick, Division of Legal Services; Sylvia K. Fogal, Division of Legislative Information and Research, and most of all Jeanette Betz, Julia P. Fremon, Vera Grossman, Deborah L. Tondreau, and Mary Jane Zimpleman, the hearing stenographers from the Division of Legislative Information and Research, who recorded and transcribed the public hearing under difficult conditions.

Michael F. Adubato, Chairman
Assembly Banking and Insurance
Committee

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ASSEMBLY RESOLUTION No. 3001
STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1983

By Assemblyman ADUBATO

AN ASSEMBLY RESOLUTION directing the General Assembly Banking and Insurance Committee to investigate certain automobile insurance rate increases and classification changes recently approved by the Commissioner of Insurance pursuant to a rate filing by the Insurance Services Office, and calling on the Insurance Services Office to delay implementation of the approved changes pending final action by the Legislature on this matter.

1 WHEREAS, On January 7, 1983, the Commissioner of Insurance
2 approved an Insurance Services Office rate filing that involves
3 drastic changes in the current classification system and will have
4 a most profound effect on the residents of this State; and

5 WHEREAS, The commissioner's approval was given in such a
6 manner as to deprive the public and the Legislature of any
7 opportunity to react to and comment on the proposed classifica-
8 tion changes; and

9 WHEREAS, The official news release of the Department of Insurance
10 of January 7, 1983, announcing approval of the Insurance
11 Services Office filing, contained not even a suggestion of the
12 classification changes approved by the commissioner; and

13 WHEREAS, In view of the questionable nature of the procedures and
14 the wide reaching impact of the rate and classification changes
15 approved on January 7, as well as the Legislature's recent
16 approval of the classification changes contained in Assembly
17 Bill No. 1696 of 1982, implementation of the Insurance Services

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18 Office's classification changes cannot but be of short duration and
19 would result in substantial, but wholly unnecessary, additional
20 costs to Insurance Services Office companies and their policy-
21 holders in this State; now, therefore,

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey:*

1 1. The Banking and Insurance Committee of the General Assem-
2 bly is directed to conduct an immediate investigation into the pro-
3 cedures of the Department of Insurance in approving, on January
4 7, 1933, rate and classification changes for Insurance Services
5 Office companies, and to determine the impact of these changes on
6 automobile insurance policyholders in this State.

1 2. The General Assembly respectfully requests the Insurance
2 Services Office and member companies to delay implementation of
3 the aforesaid rate and classification changes until the Banking and
4 Insurance Committee has completed its investigation and the
5 Legislature has had an opportunity to act on the matter.

1 3. For the purposes of carrying out the terms of this resolution,
2 the committee shall have all of the powers conferred pursuant to
3 chapter 13 of Title 52 of the Revised Statutes.

1 4. The committee shall be entitled to call to its assistance and
2 avail itself of the services of employees of the State of New Jersey,
3 of any political subdivision of the State, or an agency thereof, as
4 may be required and as may be available for that purpose, and to
5 employ stenographic and clerical assistants and incur traveling and
6 other miscellaneous expenses as may be deemed necessary, in order
7 to perform the duties provided herein, and within the limits of
8 funds appropriated or otherwise made available for that purpose.

1 5. The committee shall report its findings and recommendations
2 to the General Assembly upon the completion of its inquiry, accom-
3 panying same with any legislative bills which it may deem to recom-
4 mend for adoption by the Legislature.

1 6. A duly authenticated copy of this resolution, signed by the
2 Speaker of the General Assembly and attested to by the Clerk,
3 shall be forwarded to the Governor of the State of New Jersey, the
4 Speaker of the General Assembly, the Commissioner of Insurance,
5 the Public Advocate, and the Chief Executive Officer of the In-
6 surance Services Office.

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ASSEMBLY RESOLUTION No. 3026

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1983

By Assemblymen ADUBATO and KOSCO

AN ASSEMBLY RESOLUTION directing the Banking and Insurance Committee of the General Assembly to investigate certain activities of the State Department of Insurance.

1 WHEREAS, Motorists in New Jersey have experienced substantial
2 increases in automobile insurance premiums within the past
3 12 months; and

4 WHEREAS, The State Department of Insurance has on several
5 occasions in recent months issued inaccurate information to the
6 public on automobile insurance; and

7 WHEREAS, The Department of Insurance made no effort to apprise
8 itself, or to inform other officials and residents of this State of
9 changes in the federal medicare law that will result in substantial
10 rate increases for senior citizen motorists in this State; and

11 WHEREAS, The Department of Insurance attempted to cover up
12 information on classification changes for automobile insurance
13 that the department first approved and then retracted; now,
14 therefore,

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey:*

1 1. The Banking and Insurance Committee of the General
2 Assembly is directed to conduct an immediate investigation into
3 State Department of Insurance procedures and practices in review-
4 ing and approving automobile insurance rate filings, and dissemi-
5 nating information to the Legislature and the public.

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendments adopted March 14, 1983.

1 ***[2.** For the purposes of carrying out the terms of this resolu-
 2 tion, the committee shall have all of the powers conferred pur-
 3 suant to chapter 13 of Title 52 of the Revised Statutes.]*

1 ***[3.]** *2.* The committee shall be entitled to call to its assistance
 2 and avail itself of the services of employees of the State of New
 3 Jersey, of any political subdivision of the State, or an agency
 4 thereof, as may be required and as may be available for that
 5 purpose, and to employ stenographic and clerical assistants and
 6 incur traveling and other miscellaneous expenses as may be deemed
 7 necessary, in order to perform the duties provided herein, and
 8 within the limits of funds appropriated or otherwise made avail-
 9 able for that purpose.

1 ***[4.]** *3.* The committee shall report its findings and recom-
 2 mendations to the General Assembly upon the completion of its
 3 inquiry, accompanying same with any legislative bills which it may
 4 deem to recommend for adoption by the Legislature.

1 ***[5.]** *4.* A duly authenticated copy of this resolution, signed
 2 by the Speaker of the General Assembly and attested to by the
 3 Clerk, shall be forwarded to the Governor of the State of New
 4 Jersey, the Commissioner of Insurance, and the Public Advocate.

STATEMENT

This resolution directs the Banking and Insurance Committee of
 the General Assembly to conduct an investigation into State
 Department of Insurance procedures and practices in reviewing
 and approving automobile insurance rate filings and in dissemi-
 nating information to the Legislature and the public.

ASSEMBLYMAN MICHAEL F. ADUBATO (Chairman): Good morning, ladies and gentlemen. We are going to open these public hearings. Will everyone stand and salute the flag? (Everyone stands, salutes the flag, and recites "Pledge of Allegiance.")

We are here today as a result of two resolutions that have passed unanimously, requesting the Banking and Insurance Committee to hold an investigation and an inquiry, if you will, into the Insurance Department of the State of New Jersey as to why and how, over the last twelve months, insurance rates in this State have risen nearly an average of 30%. There are eight specific requests that have been made in these two resolutions. We will deal with all of them.

We are here to serve the people of New Jersey. We are here to deal with the facts on an issue that for years, at best, has been confusing and complex, and we hope to shed some light to the people of our State as to what is really meaningful and what isn't when we talk about automobile insurance. We are here to work together as citizens of New Jersey, not as Democrats or Republicans. In the "call to arms," if you will, by Governor Kean and our Speaker Alan Karcher, we are going to do our best to work with each other to make life a little better when it comes to automobile insurance for the people in the State of New Jersey.

With that, I would like to ask our Speaker, Mr. Karcher, who is here today-- And I would like to say that the entire Legislature, 80 Assemblymen received a telegram inviting them to this hearing. I am glad to see that the Speaker thought today was important enough to come. Forty Senators, while we are a separate house, also received an invitation. I must tell you that several Senators want to testify, and they will, on Wednesday of this week, in this chamber. It is with that spirit of cooperation that I turn to our first speaker, the Speaker of the House, Assemblyman Karcher.

ASSEMBLY SPEAKER ALAN J. KARCHER: In that same spirit, Michael, I want to indicate to you that it is my personal opinion that there is not an issue that requires or warrants a higher priority than automobile insurance and the problems that our taxpayers and citizens are faced with. I think that I reflect the attitude of the entire membership of the New Jersey Assembly. I think that attitude was also in their concern and was reflected in the adoption of the resolutions by unanimous vote, as you had previously mentioned.

Let me also, by way of preface to some other remarks-- Because it would be inappropriate if I did not take the opportunity to thank my friend, Tom Deverin, for agreeing to the appointment as a member of this Committee. For everyone concerned, Assemblyman Lesniak, as all of us know, is presently involved in a campaign for a Senate vacancy. Of course, Ray serves as the Chairman of the very important Agriculture and Environment Committee, and he asked if he could be relieved of this additional duty. In searching for a replacement, I thought, with all deference to the Chairman, the Vice Chairman, and the other members of this Committee, there is probably no one else in either the Assembly or the Senate who has such a track record, such expertise and experience in this area as Tom Deverin. I think Tom, if he weren't overly modest, would tell us about his relationship with this problem which goes back into the early 1970's. There have been a number of proposals which he has sponsored. He was involved in the original proposal for automobile insurance reform back in the early 1970's, and he brings to this Committee a wealth of knowledge and expertise, and a wealth of concern, which is of primary importance.

I would also mention, to set the stage, and that is really all I wish to do, Mr. Deverin was also in the forefront of our efforts as a Legislature to deal with this problem in the late 1970's and the early

1980's. In fact his bill, which he was a cosponsor of, was passed in this house back in 1980. We would not have the present threshold problem that we have if Tom's Bill had become law at that time.

I don't think anything else needs to be said to prove the credentials or maybe to justify my wisdom in the appointment-- the exercise of my judgment in appointing Tom Deverin to this Committee.

Let me go on to say that I have been extremely troubled, and that trouble is something, once again, that I do not have exclusively, but it is something that is shared by a great number of the members of this body who have spoken to me over the last few weeks. The focus of their trouble, the heart of their trouble, seems to center on the amount of misinformation that has been promulgated-- and I use that term advisedly. It troubles everyone because we do, and I emphasize this as well-- that there should be an attempt, on a bipartisan basis, to solve this problem. I have communicated with the Governor on a number of occasions, pledging my support and cooperation to him and to the President of the Senate, Carmen Orechio. That support and the ultimate conclusion of that good will to not come about in an atmosphere that is literally pervaded with false statements, misleading statements, and misinformation. I was as troubled as you were, Mr. Chairman, by the television appearance and the clips that we have from that television appearance of the Governor a number of weeks ago-- I think a week and a half ago on WOR, in which the information which he discussed at that time in response to some queries from the press who were involved in that particular program, that he should be so grossly mistaken, so totally inaccurate about what the picture is regarding automobile insurance in New Jersey today.

Last Monday, a week ago today, during our leadership conference, I had the opportunity to discuss it personally with the Governor, face-to-face as you and I are discussing it now, and I advised him that those whom he relied upon for his information, particularly for that specific television appearance, were either misleading him as a result of wanting willfully to mislead him or they were just stupid-- one or the other.

In these days of Committee hearings, I hope, if nothing else, and I am sure there will be a great deal more, we'll clear the air. Nothing will benefit the taxpayer and the citizens of New Jersey more, and the motoring public of New Jersey more, than to have accurate information. I said yesterday on CBS, and I say it again to you, "The truth sets you free." The truth on automobile insurance has been twisted, perverted, distorted, and as I say, I would like to think that that has not been done willfully or as a result of total bureaucratic stupidity. I would hope that that has just been an innocent misunderstanding which will be clarified and obviated by your conducting these hearings.

Lastly, let me conclude, Mr. Chairman and members of the Committee, by saying that I, as Speaker, not only congratulate you and appreciate your efforts and your willingness to do this, but more importantly, in exercising my role as Speaker, I guarantee to you, I promise and pledge to you, that the recommendations made by this Committee with regard to automobile insurance will be taken not only under advisement, not only under consideration, but the specific recommendations that you make that are in legislative form will have immediate posting for consideration by this entire body.

In conclusion, let me say that I look forward to it; the members, I think, of the General Assembly, look forward to these hearings, and primarily to the recommendations that will be forthcoming from your Committee. From my point and from my role as Speaker, individually, I pledge to you again, that whatever you recommend with regard to this issue will be promptly posted, promptly discussed, and promptly voted upon in the Assembly.

ASSEMBLYMAN ADUBATO: Mr. Speaker, I want to thank you for taking the time to come before us and to set, certainly, a tone that we all in New Jersey are looking for, and that is, cooperation. I want to compliment you, not only for leading the Democratic party, but for leading the Assembly. In all the legislation that has been passed during the past years that I have been down here, and you were the Speaker, all their initiatives came from the Assembly-- elimination of the JUA, the fraud bill, our medical fee schedule bill is in there-- And I just want to say, it is through your leadership and your confidence that the Assembly has been leading the way under your guidance with automobile insurance reform. That has always been done on a bipartisan basis.

Are there any questions of the Speaker from any member of the Committee? Assemblyman Thompson, before you do that, I would stand corrected myself, and I appreciate the Speaker helping us by introducing Assemblyman Deverin, because certainly, we should have started this meeting with the introduction of the members on the Committee.

I would like to start by introducing Assemblyman Eugene Thompson, who is on my left and who is the Vice Chairman of the Committee; Assemblyman Kelly who is a minority member of the Committee; Assemblyman Kosco, who is the leading minority ranking member. He is on a different time zone sitting here, having just come back from China. He got in last night and we appreciate you coming here, Assemblyman Kosco.

ASSEMBLYMAN KOSCO: Thank you.

ASSEMBLYMAN ADUBATO: I have saved Assemblyman Deverin like a vintage wine for last. Assemblyman Deverin, while it is the first time he is sitting here, Mr. Speaker, as you said, is the only member of this Committee who has had the opportunity to see the transition in automobile insurance in the State of New Jersey take place from the 1970's. He was one of the original members of the study commission, and I was just so delighted when he accepted to take Assemblyman Lesniak's spot, who had served certainly distinguishably himself; but, to have him replaced by Assemblyman Deverin goes beyond our wildest expectations. I appreciate his good Irish stamina for accepting the challenge at this time especially. We're going to hear from Assemblyman Deverin later on, but I would like Assemblyman Thompson to have the floor. Assemblyman Thompson.

ASSEMBLYMAN THOMPSON: Thank you, Mr. Chairman. Mr. Speaker, I saw you on CBS yesterday, and for the record, what I would like for you to do is to give the breakdown that you analyzed on television in reference to the actual percentage a lawyer receives out of the premium.

ASSEMBLYMAN KARCHER: Well, the question arose, Vice Chairman Thompson, because of the comment made by the Governor. The Governor, when he appeared on WOR, not only stated, but restated, and if you did not see that, we have the video tape of that if you would like to see it, so you know whereof I speak. The Governor tried to convey to the public the fact that out of every \$1.00 spent on premiums in New Jersey, somehow attorneys were responsible for 30¢ of that. That is so far-fetched and so inaccurate that it was not only something that disturbed me, but it disturbed any number of other members of this Legislature who spoke to me about it and who had also seen that television show.

When I had my colloquy with the Governor last Monday, it was pointed out to the Governor, and I point it out to you again, that the statistics I see show that the breakdown of the premium dollar-- the actual breakdown of the premium dollar, and I do not have the figures in front of me-- But, I think I am accurate when I say it, that 54¢ out of every dollar goes to collision. That means the repair shops, for the fender-benders, the replaced grills, and etc., etc. I also pointed out to the Governor that the problems with that are manifold and manifest.

I had a situation within my immediate knowledge where a young man of my acquaintance had purchased a car less than a month ago. He had received a discount on it, and he had paid \$800 less than book value. Regrettably, that car was totaled within 48 hours. The insurance company paid him the list price, which meant that he made an \$800 profit on his 48-hour ownership of that car. That is a difficulty, but I only say that as an aside. The categorical facts as I know them are that 54¢ out of every dollar paid by New Jerseyans goes to collision. It has nothing to do with the judicial process, other than perhaps internally the insurance companies with subrogation, which I don't think is necessary to get into, 54¢ on the dollar goes there.

Twenty cents on the dollar goes for first-party coverage, first-party insurance, so-called PIP. That goes to the doctors, the hospitals, etc., etc., and the medical technicians who render medical service. I would indicate that the statistics also show that back in 1973, when no-fault was originally passed, that part of the premium dollar amounted to three to four cents. So, that has risen from three cents to four cents over the course of the last twelve years to now where it is 20¢ on the dollar.

In 1973, liability amounted to somewhere between 34¢ and 36¢ on the premium dollar. The trend there has been the opposite way; the actual amount of percentage paid on liability has declined since 1973 to the point where it is now 26¢ on a dollar, down from 34¢ or 35¢ in 1973. That is the only segment of the premium dollar that is subject to Superior Court litigation for the most part. It is that area upon which attorneys have some role in representing the legitimate rights of those who are injured.

The statistics, as well, show that based upon settlements and trials held to a jury verdict, that the average attorney's compensation, out of that 26¢ on the premium dollar, is again, about 25¢. So, it is 25¢ on 26¢, or 25% of 26¢, which comes down to about 6¢ overall. Rather than being what the Governor would have us believe, if we are to take his comments on WOR as face value-- rather, he had overstated that by 500%, and he had told the public that an attorney's percentage of the premium dollar was 500% more than what it actually is. In actuality, attorneys' percentages of what that is, is substantially less probably than the public relations budget and the advertising budget of the insurance companies. Attorneys cost the insurance premium payer far less than the public relations and advertising do in executive salaries, for instance.

What I indicated to the Governor, I indicate to you. You can refine out of existence, eliminate out of existence, attorneys from the entire process, and the most savings you would get is 5% or 6% or 7%, which would be eaten up by inflation within the next year or so. That would leave attorneys out of the process; it would leave victims of accidents without representation. Of course, I lastly indicated to the Governor, as maybe you saw yesterday, I don't think the Governor wants that either. The Governor has a soft-tissue injury, which I don't think he thinks is too minor. There is a tendency and a penchant almost to write off, to sort of wave off, soft-tissue injuries as if they did not count in this world. The Governor suffers from a soft-tissue injury. It was this problem which kept him in the hospital, and it now keeps him in constant pain. I would think that if he had received that in a trauma, he, like anyone else who received that kind of disability would want to seek redress in the courts.

ASSEMBLYMAN ADUBATO: I appreciate that response, Mr. Speaker, but may I try, if I may-- Would I be correct in saying that on New Jersey Report, which is the show you are talking about, I believe on WOR T.V., which was the initial show airing-- it is a UHF station from New Jersey, which took

place a week ago Saturday. I believe that was the original airing, and I believe it has been aired twice also on tape since then. The Governor was given information by whomever, when he made the comment that 30% of all premium goes directly toward legal expenses. Is that a fair statement?

ASSEMBLYMAN KARCHER: That is what he said.

ASSEMBLYMAN ADUBATO: By the way, my daughter happened to tape that show, as she usually does, so that is how I heard it. I didn't see the original show.

Is it a fair statement that what you are saying is, that the total BI, bodily injury portion, makes up 26% of the premium?

ASSEMBLYMAN KARCHER: Yes, the total percentage of the premium dollar is paid for liability coverage, which obviously also covers a range of other expenses--

ASSEMBLYMAN ADUBATO: Right. If I may finish, from that 26%, which is the figure that is accurate according to the documentation I have from the industry sources, then from that 26%, what we're saying is that the legal fees, where some people said it was the full employment act of lawyers-- The legal fees are actually about 6¢ to 7¢.

ASSEMBLYMAN KARCHER: That is correct.

ASSEMBLYMAN ADUBATO: And not 30¢.

ASSEMBLYMAN KARCHER: That is correct.

ASSEMBLYMAN ADUBATO: I just wanted to make that clear. So, the Governor was given inaccurate data, that is obvious.

ASSEMBLYMAN KARCHER: I think the Governor understands it now, and he was rather apologetic about the misinformation he had received from those who were advising him.

ASSEMBLYMAN ADUBATO: Quite frankly, you and I having had the opportunity to work with Governor Kean for many, many years, know he is a man of high integrity and character. He certainly cannot be held responsible for some people around him who are either inept or just misrepresenting facts.

ASSEMBLYMAN KARCHER: I am certain that the Governor said it with a vast amount of good will. The Governor is a man, as you say, of integrity; he would not conscientiously or purposely mislead anyone. I'm totally satisfied that he was misadvised.

ASSEMBLYMAN ADUBATO: I agree. Are there any other questions? Assemblyman Kosco, do you have any questions of the Speaker?

ASSEMBLYMAN KOSCO: No.

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

ASSEMBLYMAN KELLY: No.

ASSEMBLYMAN ADUBATO: Assemblyman Deverin, would you like to ask any questions?

ASSEMBLYMAN DEVERIN: No.

ASSEMBLYMAN ADUBATO: Mr. Speaker, I would respectfully invite you to join with this Committee and act in the role of ex-officio. I want you to know that if the minority leader, Assemblyman Gallo, shows up today, that we will offer him that same courtesy, to testify and to also join this Committee as ex-officio.

ASSEMBLYMAN KARCHER: Thank you very much.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Speaker. We are not going to read the entire resolution; in fact, there were two resolutions at the outset that we had spoken about that bring us here today. However, for the record, I would like to repeat that the resolutions were sponsored by Assemblymen Adubato and Kosco in a bipartisan effort and were passed unanimously in this house, certainly in a bipartisan effort, and that is why we are here. We are here because the entire Assembly of this State is disturbed. There is no other reason.

I would like to ask Commissioner Murphy, who has been patiently sitting here, if he would please present his statement to the Committee, along with any members of his staff who he would like to have join him.

First of all, as the Commissioner is getting ready, I would like to say that we received from the Commissioner and his office, the complete text as we requested by Friday of last week. He delivered that Friday of last week, and I got it Saturday morning by Express Mail. I want to thank him for meeting the request of the Committee, and I also want to thank the members of his staff for being here. Hopefully, as a result of today's and Wednesday's meeting, New Jersey will move forward based on information that all of us here today, with no exception, want to be as accurate as possible, as factual as possible. I think that by doing that, we establish credibility with the people of New Jersey in letting them know that our efforts are not based on partisanship or political advantage, but that our efforts are based on what is in the best interest of the people.

Excuse me, Commissioner. Do you want to make a statement, Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: It is not really a statement, Mr. Chairman. I just want to elaborate on what the Speaker said. I volunteered for this Committee; I volunteered the same as I did when I went into the Navy in 1941. I am the last member of the Assembly who had served on the No-Fault Commission in 1970, and I am sure, Commissioner, that you know about the No-Fault Commission in 1970.

Maybe if I just recall some of the things that happened. It was a commission formed by the Governor, Governor Cahill at the time. Tom Kean was the Speaker. That Commission had some very distinguished people on it, and I am the only one left. From that commission, we have a Supreme Court Justice, a Federal Superior Court Justice, Gene Raymond, the president of the Arco Oil Company. I am not sure whether it is a tribute to my still being here or their promotion, but that Commission, Mr. Chairman, was formed in those days to straighten out the insurance problems in New Jersey.

What bothers me most and why I wanted to serve on this Committee is that for some unknown reason, the mail we get from the people who are so concerned doesn't say anything about insurance overall. All the mail says is, "Do me a favor. Vote to raise the threshold." As hard as I look at this problem, and I'm sure as hard as you look at the problem, raising the threshold in and by itself is not going to solve the insurance problem in New Jersey.

By the way, the insurance industry-- The original threshold was \$100, then it was \$500. But, the \$500 would have included x-rays, hospitalization, diagnosis, and everything else. They compromised it at \$200. The statistics from those days, and you can read the headlines of those days-- The first year there were \$87 million saved with no-fault insurance. The cutback in court cases was in large percentages.

The problem to me today is not that the threshold is the insurance problem; it is the idea that we never kept it stacked. It stayed at \$200 for the last 13 years, and it should have increased over the years. In those days, we fought for arbitration for minor cases that we could never pass. The insurance chairman, Phil Kaltenbacher, who happens to be the Chairman of the Republican party at the moment, who actually refused to release that part of the no-fault package and the insurance reform package from that part of his Committee.

In 1977, there was another committee which studied and studied and studied for three years. And again, I would ask the Commissioner

(inaudible)1 that the threshold by itself was in and by itself the fault of our insurance problem.

When you are an Assemblyman, you get all kinds of mail, and you get people who come into your office, and when you try to explain the range of the threshold, it isn't going to lower your insurance. Unless someone can guarantee it to me, I don't believe it is going to happen. Raising it to maybe a reasonable level may be the answer, but it seems that people want to know the answers as to why when they have a small accident-- I'll give you an example, ladies and gentlemen. Some lady was drinking her cup of coffee in the lounge while she was having her car washed, and she watched her car roll off the line because the kid forgot to put her brakes on. The car rolled out onto Rahway Avenue in Woodbridge, and someone hit the car. Her insurance went up \$314.00 because of the accident. That is the kind of thing I think people are concerned about.

There must be some way that we can solve this, and I am sure that conversations back and forth, and blaming someone or arguing about it is not going to do it. I think the Chairman's bill is a step in the right direction, and I trust that it goes in the right way.

I don't really know what else there is to do, but I wish we would just stop the rhetoric about the-- and I am not a lawyer, by the way, I want you to know that-- so I am not concerned about what lawyers take and don't take out of the insurance premium. But, I am not a lawyer.

What I am concerned with is that somehow or the other between this Committee, this Assembly, this Senate, and this Governor, and this Commissioner's office, we have to do something to get this problem solved. I wish we would stop saying that if we raise the threshold, all the problems will be solved, because I think everybody who is in this business knows that this isn't true. Certainly everybody in this business who is concerned about insurance knows it is not true.

So Commissioner, I have never met you, and may I ask just one question? I'm not sure that you are the first Commissioner I haven't known. Can you just give me a little bit of your background, so I know what I am talking about before you start your statement?

COMMISSIONER JOSEPH F. MURPHY: Sure.

ASSEMBLYMAN DEVERIN: Okay, thank you.

ASSEMBLYMAN ADUBATO: I didn't realize Assemblyman Deverin's statement was going to be so lengthy. Commissioner, thanks for your patience. I would ask-- it is up to you, if you would like to meet the request of Assemblyman Deverin-- (Malfunction of public address system)

Well, some people say I have an awfully booming voice when I want one. I'll try to make sure that you can hear me with or without the microphone.

Respectfully, Commissioner, I would ask, if we can all bear with these technical difficulties and if you would be kind enough to respond to Assemblyman Deverin's request before your statement. What did you ask again?

ASSEMBLYMAN DEVERIN: The Commissioner's background.

ASSEMBLYMAN ADUBATO: Oh, your background before you became Commissioner. Thank you, sir.

COMMISSIONER MURPHY: I would be very happy to meet his request. I don't know how far to go back, but let's start after World War II.

I served for three years as the Deputy Superintendent of Insurance in New York. After that, I joined the Continental Corporation of the

1. Because of technical problems, some testimony, as the record indicates, was not picked up by the recording system.

Continental Insurance Companies, and I served with them for twenty-five years, starting as counsel, and retiring as Executive Vice President of the general counsel. That was three years ago. I retired at the end of April, 1980.

At that time, not really wanting to retire, I joined the Wall Street law firm of Leboeuf, Lamb, Leiby & Macrae, and served there practicing law in New York until the Governor was kind enough to offer me this job. Is that sufficient?

ASSEMBLYMAN DEVERIN: Thank you very much.

COMMISSIONER MURPHY: If I may now, Mr. Chairman--

ASSEMBLYMAN ADUBATO: Commissioner, with your patience, if I may take this opportunity, if it is okay with you, you were with the New York Insurance Department for three years?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: What years were they, sir?

COMMISSIONER MURPHY: 1952 to 1955.

ASSEMBLYMAN ADUBATO: And, you retired from Continental Insurance Company?

COMMISSIONER MURPHY: It is Continental Corporation; it is an insurer holding company.

ASSEMBLYMAN ADUBATO: Do they do anything with insurance?

COMMISSIONER MURPHY: Yes, they own the Continental Insurance Companies. That is their main business.

ASSEMBLYMAN ADUBATO: Oh, okay. It is insurance?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Is that automobile insurance, sir, all casualty?

COMMISSIONER MURPHY: Property and casualty predominantly, although some life.

ASSEMBLYMAN ADUBATO: In what capacity did you serve, may I ask?

COMMISSIONER MURPHY: As counsel at the beginning.

ASSEMBLYMAN ADUBATO: General counsel?

COMMISSIONER MURPHY: General counsel and ultimately as Executive Vice President.

ASSEMBLYMAN ADUBATO: And that was concluded in 1980, sir?

COMMISSIONER MURPHY: April of 1980.

ASSEMBLYMAN ADUBATO: You retired in April of 1980. How long have you been a resident of New Jersey, Commissioner?

COMMISSIONER MURPHY: Four and one-half years.

ASSEMBLYMAN ADUBATO: You have been a resident of New Jersey for the last four and one-half years.

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: And did you live in New York before that or Connecticut or--

COMMISSIONER MURPHY: New York.

ASSEMBLYMAN ADUBATO: New York.

COMMISSIONER MURPHY: That is right, New York, Larchmont, New York.

ASSEMBLYMAN ADUBATO: All right. So, you have been in New Jersey as a legal resident for four and one-half years.

COMMISSIONER MURPHY: Yes, since November of 1978.

ASSEMBLYMAN ADUBATO: The exact month isn't important; I'm just trying to get-- Because some of the things that we are talking about here, I'm starting to get a better picture of different perceptions, if you will-- honest differences of perception. I appreciate you taking the patience and the time to do this, and I appreciate Assemblyman Deverin asking because I think it helps everyone.

You mentioned Governor Kean asking you to serve as the Insurance Commissioner. How did that come about? Did you seek the position or were you just asked to put in an application? How did that happen?

COMMISSIONER MURPHY: Well, part of both--

ASSEMBLYMAN ADUBATO: If you don't mind telling us.

COMMISSIONER MURPHY: No, I don't mind telling you at all; part of both. I had not been active in any political campaigns in New Jersey. A number of the people who I know in New Jersey, however, who had been active in campaigns, especially in the insurance fraternity, asked me if I would consider myself available to appointment as Commissioner of Insurance, if that appointment were forthcoming.

As you may know, Governor Kean, who at least respects my office, and I think other cabinet positions, retained a management consultant for a headhunter to screen potential applicants, and I was asked if I would talk to this individual, which I did. I went through a screening process there, then a second screening process, and then a visit with the Governor. Then ultimately, I was offered the appointment.

ASSEMBLYMAN ADUBATO: I want to thank you for your patience, and to thank you for sharing that information with us, Commissioner. Thank you very much. I promise you there will be no interruptions during your statement by anyone, including me.

COMMISSIONER MURPHY: All right, thank you, Mr. Chairman.

Mr. Chairman and members of the Committee, Mr. Speaker, in a memorandum dated April 21, 1983, a copy of which is attached and marked as Exhibit A, your Committee requested me and certain members of the Department staff to appear before you on May 2, 1983 and to furnish you with certain data as more fully set out in Exhibit A. Messrs. Cooper, Hooper and Boer are here, and so is Mr. Shumake. I have put in the statement that he was en route from Charleston, but he flew home last night to be present at the meeting today, and he is here.

At the outset, I must note, for the record, that our Department does business in a fishbowl. Our records are public records and are open, at any reasonable time, for public inspection. In short, we have no secrets. In the case of the major automobile rate filings referred to in Exhibit A, and as required by law, the Office of the Public Advocate was furnished copies of the proposals simultaneously with their filing with us, except in the case of the State Farm filing where we furnished the Public Advocate a copy. The Public Advocate intervened in the rate process, as was his right. In addition, I should observe that while our rate law does not-- nor does, so far as I know, the rate law of any other state-- require us to issue press releases about our actions, it has long been our custom to do so with regard to average rate increases. We regard information published by the media, because of press releases or otherwise, as information to the public. Similarly, we regard information furnished to representatives of the public, either elected or appointed, as information to the public.

Turning now to your specific requests and dealing with them in the order in which are listed in your letter, Mr. Chairman, the first subject is rate increases. Attached and entitled B-1 is a chart--

ASSEMBLYMAN ADUBATO: Excuse me, Commissioner, I apologize. The only reason I am interrupting you is, the recorder is ready to be turned over. I don't want to miss a word, so if you would be patient-- I said I wouldn't interrupt you, but that is the only reason why I will interrupt anyone; to make sure that we get everything documented. So, I apologize.

While they are turning the tape, Assemblyman Kelly asked if he could interrupt, and I told him, "No." Neither can any other Assemblyman here interrupt, but for the recording and for the official documentation, we must.

I apologize. Please continue, Commissioner.

COMMISSIONER MURPHY: Turning to the first item in your letter, the rate increases, I say, "Attached and entitled Exhibit B-1 is a chart showing in summary form, private passenger auto rate increases by filers writing more than 1% of the market during the last 12 months." With your lead, Mr. Chairman, I am going to ask, on the advanced copies which were given to you last Friday, that on the first line thereof in respect to AIPSO, a number is shown of 26.1%. In reading this document over the weekend, I note that to be somewhat misleading, and clarity suffered because of brevity here. That number should more properly be 5.4%, and I ask you to change it to 5.4%.

ASSEMBLYMAN ADUBATO: Excuse me, Commissioner, with that request I must interrupt, and say that this Committee will alter and will change any statement that has been given to us prior to testimony. However, the original text and the original form, as was submitted, will be retained as public record. All changes, alterations, and corrections will be noted as being changes in the original text which was submitted, so we can get a balance of changes that were made. But, the original text will remain exactly as it is, but the public hearing will indicate which changes were made at the request of either anyone testifying or anyone on this side of the table who says something that will alter a change. I think that in the spirit of fair play and getting out accurate information, that is what we are about. I appreciate you bringing that up, because anywhere at all-- I appreciate you doing such a massive job, and I want you to know that at any time during this hearing, you or any member of your staff who wants to advise you that maybe something should be changed, we will be happy to change, add, correct, delete, or whatever. I thank you for pointing that out to us.

COMMISSIONER MURPHY: Thank you, Mr. Chairman. That procedure is agreeable to me.

ASSEMBLYMAN ADUBATO: Commissioner, I apologize. What we are talking about, I believe, Commissioner, and Assemblyman Kosco asked a question, we're talking about the column all the way over to the right on Exhibit B-1.

COMMISSIONER MURPHY: That is right.

ASSEMBLYMAN ADUBATO: (continuing) Where it shows a 26.1% increase, the Commissioner is saying that should read--

COMMISSIONER MURPHY: 5.4% increase with an asterisk brought down to the bottom of the page. The asterisk should state "see Exhibit B-2 (a)."

ASSEMBLYMAN ADUBATO: Exhibit B-2--

COMMISSIONER MURPHY: B-2 (a). That is the opinion and decision which explains it.

Continuing on with the statement, we attach Exhibits B-2 (a) through B-2 (s), and these are opinions, decisions, and correspondence, and where applicable, press releases in rate matters described in Exhibit B-1. Except in the State Farm matter and in the AIPSO Administrative Law proceeding, the Public Advocate did not demand a hearing before the rate approval was granted.

Two, financial reporting: Attached are Exhibits C-1, 2, 3, 4, and 52, being my decisions on certain motions made by the Public Advocate. No appeal was taken from these decisions and, as yet, the motions have not been renewed. Here, again, Mr. Chairman, I should point out, that after this was prepared and sometime last Friday afternoon, the Public Advocate called

2. These and other cited exhibits were not discussed in the course of the hearing, and are, therefore, not included in the Appendices; the exhibits are available for public review.

my office, I am so advised, and has suggested that his office and our office meet to go forward on renewing some of these motions. We haven't had an opportunity to do that, but such a request has been made, which will be honored by me.

In addition, our Department, over the last several months, has been studying the financial disclosure and reconciliation regulations promulgated by the States of Florida and New York. We also have been looking at the excess profit statutes of those states, although we recognize that these ordinarily are handmaidens of open competition laws. We will be prepared in the reasonably near future to make recommendations as to how New Jersey should proceed down both or either of these avenues, being mindful of our current practice, which has been in effect for 10 years of following the so-called "Clifford" formula with respect to the inclusion of investment income in rate-making.

The next item is the State Farm decision. My decision of April 4, 1983, a copy of which is attached and entitled Exhibit B-2 (r), outlines the positions of the Advocate and our Department.

Number four, cost reduction: In my AIPSO Opinion and Decision of April 4, 1983, which is Exhibit B-2 (a), modifying the Administrative Law Judge Decision, I stated, "In considering rate recommendations of the magnitude involved herein, I am entirely aware of my obligation under the rating laws to provide that rates be adequate. On the other hand, I am completely conscious of the problem of affordability raised by the application of the calculated increases, especially when they come so soon after other recent increases in our private passenger rates.

"Affordability is not one of the criteria of our rating laws, yet the Department is fully cognizant of the harsh effect the cost of automobile insurance is having on our citizens. I take notice of current legislative efforts to contain the cost of our overly expensive automobile reparations system, particularly A-1747 (Gallo), and S-3059 (Saxton), which would increase the no-fault threshold and establish a medical fee schedule, and A-1719 (Gallo), which would establish an Insurance Fraud Unit within the Department of Insurance. It is not unreasonable to conclude that the passage of such legislation would produce substantial savings in our current reparations system.

"Of its nature, rate-making is prospective. Rates are made today on past experience and should be projected so as to reasonably incorporate developments likely to occur during the immediate future.

"Accordingly," and I am reading here from my decision, "Accordingly, I hereby approve, for use by all insurers in both the voluntary and involuntary markets, the flat charges per car set out below for policies effective on and after June 1, 1983, provided, however, that any cost savings, as appropriately determined by me in a subsequent proceeding, likely to result from the enactment of the above cited, or similar legislation, will be calculated as soon as practicable upon enactment, thereby reducing or eliminating the capitation charges imposed under this decision."

Any specific determination must await an evaluation or judgment of potential savings of enacted legislation. I have no magic formula, but believe that with the support of actuarial projections and informed judgment, an estimate of cost savings can be arrived at. At this point, I submit that the savings under the cost-containment legislation recommended by the Administration are self-evident.

Number five, press release of January 7, 1983: Our Department, on January 7, 1983, approved an ISO rate increase averaging 7% statewide and including certain classification changes. That filing was subsequently withdrawn by ISO at the specific request of your Chairman because of his

objection to the classification changes. The substituted filing, which did not include classification changes, was approved by me on January 19, 1983. There is attached:

(A) Entitled Exhibit D-1, a copy of the pertinent part of the ISO rate proposal dealing with classification changes filed with the Department on May 19, 1982, which resulted in the January 7, 1983 approval. Copies of this filing were: (1) simultaneously furnished to the Public Advocate by the filer, and (2) at his specific request, handed to the Chairman of this Committee in June of 1982 in the Senate Chamber here in the State House. In addition, a summary of the classification changes proposed by the filer and portraying dollar changes in selected territories was given to your Chairman on December 13, 1982 by representatives of ISO during a meeting with him. A copy of such summary is attached as Exhibit D-2. Our file does not note any objections to the proposed classification changes from either the Public Advocate or your Chairman prior to my action of January 7, 1983.

(B) Attached and entitled D-3 is a copy of a news story dated November 21, 1982, appearing in the Newark Star Ledger, describing the ISO filing and the proposed classification changes.

Exhibit D-4 is a copy of this Department's press release, dated January 7, 1983, announcing the approval of the filing and focusing on its statewide average cost impact. Also attached and entitled Exhibit D-5 is a copy of a news story appearing in the January 8, 1983 issue of the Newark Star Ledger, reporting on the rate and classification changes.

Finally there is Exhibit D-6, a copy of a Department press release respecting the substituted filing, which elicited minor press interest.

The next item is Medicare and PIP, Personal Injury Protection. There is attached Exhibit E-1. Exhibit E-1 is a summary of the activity of our Department respecting the impact of proposed Federal Medicare regulations on the auto insurance costs of our senior citizens. Attached to that exhibit are copies of (1) our letter to our State's Washington office dated January 8, 1982; (2) my letter to the Federal Administrator of Health and Human Services dated July 16, 1982, and (3) a copy of a brief prepared by Colonial Penn Insurance Company furnished to our Washington office by us in October, 1982.

And now to bring this matter up to date, since the preparation of Exhibit E-1, there have been these developments:

(1) At the spring meeting of the National Association of Insurance Commissioners in Baltimore, Maryland on March 30, 1983, at my request, the Executive Committee reaffirmed its June, 1982 resolution in opposition to the proposed regulation and directed that such resolution be sent to the new Secretary of Health and Human Services, Margaret Heckler.

(2) A final regulation making Medicare subordinate to PIP was published in the Federal Register on April 5, 1983 with an effective date of June 6, 1983.

There have been several meetings of representatives of our Department, our Attorney General, and the New York Insurance Department, and the New York Attorney General, in respect to legal action to stay and to invalidate the regulation. We have been advised by our Attorney General that such an action has substantial merit. It should be noted that legal action such as that now contemplated could not have been taken by us until a final regulation was published and, as noted, that took place on April 5, 1983.

On Thursday, April 28, 1983, Governor Kean announced that he had directed the Attorney General to file suit in Federal court to stay the effect of and invalidate the Health and Human Services regulation. A copy of that press release is attached to our papers.

Now, over the last few months, we have been exploring--

ASSEMBLYMAN ADUBATO: Excuse me, sir, just for the record, you say "copy of press release attached," and it says in here, "Exhibit E-1 dated April 28, 1983,"--

COMMISSIONER MURPHY: 1983.

ASSEMBLYMAN ADUBATO: I'm sorry, I didn't hear you say that. I just want to put it in the record.

COMMISSIONER MURPHY: Yes, I probably slurred over that, Mr. Chairman. I shouldn't have.

ASSEMBLYMAN ADUBATO: That is okay, sir, I just want to put it in the record. Thank you.

COMMISSIONER MURPHY: Finally, I did want to note that over the last few months, we have been exploring possible amendments to our PIP law, which may continue Medicare as primary for our senior citizens. We, of course, hope to have the cooperation of your Committee in this endeavor.

Seven, the so-called Hooper statement: In response to press inquiries about the effect of the capping provisions of A-1696, our Press Officer, Mr. Hooper, dealt with the average, not minimum, increases on uncapped cars. No reference was made to good or bad drivers; the reference was to the effect on cars in uncapped territories. His \$6.00 estimate was based on calculations developed by our Actuarial Department. A copy of such calculations is attached as Exhibit F.

Eight, the Fraud Bureau: The attribution recited in Exhibit A is not correct. I have said that there have been industry studies which estimate that as much as 15% to 20% of the insurance dollar is lost to fraud. I have no precise knowledge of how much fraud there is in New Jersey, or how much could be rooted out by our Division of Fraud.

The Florida Insurance Department confirms the statement that 15% to 20% of insurance claims are fraudulent. This is based on their operation of an Insurance Fraud Division founded in April of 1977. That Fraud Bureau recently achieved its 500th conviction for insurance fraud in that state since the inception of their bureau. They consider their bureau to have been a successful endeavor and, while they do not have statistics to measure the impact on rates, they feel that it has been effective.

Ninth is other matters. (A) A-1696: On August 13, 1982, I wrote to the Chairman of your Committee about possible amendments to A-1696. No response was received to my letter, although a few of the points considered therein were dealt with in subsequent legislation, but yet a number of items remain for consideration. (B) Proposed future legislation: While I presently have no specific recommendations beyond legislation already introduced and mentioned above, I am mindful that we may wish to consider the possible repeal of compulsory liability insurance and the curtailment of PIP benefits, particularly if satisfactory cost-containment results are not otherwise attainable. You will recall, Governor Kean in his campaign, suggested the possible repeal of compulsory in connection with the reform of the auto reparations system.

Finally, and perhaps most importantly, in response to the next to the last paragraph of Exhibit A, I must record my hope that your investigation is not permitted in any way to divert your Committee's attention from the prompt consideration and, hopefully, the passage of auto reparations cost-containment legislation, such as 1747, which has been pending before your Committee since July 8, 1982. Reducing the cost of our New Jersey automobile reparations system is the only real way, immediately at hand, to stabilize or reduce auto rates for all New Jersey drivers.

I thank you for your attention and courtesy.

ASSEMBLYMAN ADUBATO: Commissioner, I want to thank you for your patience and your data and information as you see things from your eyes. We

certainly respect your point of view. Assemblymen, I have quite a few questions to ask of the Commissioner. We are not on any time schedule. We are here to move along with the Governor's and the Speaker's statement that we work together to try and solve this problem. We're going to stay here as long as necessary today, and also Wednesday, and then we will take it from there. We're hoping to conclude by Wednesday, which is our desire. This is the first phase of these public hearings, we anticipate, if necessary, to have two other public hearings. One will take place in Newark in the near future in the Council Chambers, where arrangements have already been made, and one to take place in the senior citizens' location in Ocean County.

May I ask this photographer here to please identify himself? I would appreciate it.

MR. ROSENBERG: Hank Rosenberg.

ASSEMBLYMAN ADUBATO: Thank you. Did you take our good friend's place-- Mr. Sisto?

MR. ROSENBERG: Yes.

ASSEMBLYMAN ADUBATO: How is he doing?

MR. ROSENBERG: Very good.

ASSEMBLYMAN ADUBATO: Thank you. I am glad to see that The Star Ledger thinks that what we do here is newsworthy. They certainly have covered the insurance issue as well as, if not better than, any publication in this State. Even when they disagree with us, they are very good.

Since I have quite a bit to ask, Assemblyman Kelly said that he may want to ask something. I will defer to Assemblyman Kelly if he would like to make a statement, or if he would like to ask a question.

ASSEMBLYMAN KELLY: I just want to ask a few questions.

ASSEMBLYMAN ADUBATO: Go right ahead, Assemblyman Kelly.

ASSEMBLYMAN KELLY: I want to ask you a question first. On page four of this statement--

ASSEMBLYMAN ADUBATO: Who are you asking the question of, me?

ASSEMBLYMAN KELLY: Oh, I'm going to ask you, because it says that you did something. I just want to ask you if it is true.

ASSEMBLYMAN ADUBATO: Sure, go right ahead.

ASSEMBLYMAN KELLY: It says, "The filing was subsequently withdrawn by ISO--

ASSEMBLYMAN ADUBATO: Excuse me, sir, on page four of the statement, there is section 5--

ASSEMBLYMAN KELLY: Section 5, right.

ASSEMBLYMAN ADUBATO: All right. Now, what are we referring to?

ASSEMBLYMAN KELLY: It says that "The filing was subsequently withdraw by ISO at the specific request of your Chairman because of his objection to the classification changes." Is that true?

ASSEMBLYMAN ADUBATO: Yes, sir, that is true.

ASSEMBLYMAN KELLY: Oh. Mr. Murphy, may I ask you a question?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN KELLY: You submitted a schedule with that, I believe, D-1 or D-2?

COMMISSIONER MURPHY: D-2, yes. That is a summary, which was prepared by ISO, as I recall, of the effect in selected territories of the classification changes.

ASSEMBLYMAN KELLY: Well, my mother lives in Jersey City, and I have some friends who live in Newark. I'm just curious. It seems to me that you have changes in costs there. It says, "Senior citizens are number 3," I believe.

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN KELLY: In Newark, it says "The cost would be \$1041 under the present rate or the rate before the change is made." Then you have \$1114 with no class change, and \$1006 with a class change. Which is in effect right now?

COMMISSIONER MURPHY: Well, the second one.

ASSEMBLYMAN KELLY: The second one?

COMMISSIONER MURPHY: Yes, because ISO withdrew the classification changes, and so the second category is in effect. It is 7% with no class plan change.

ASSEMBLYMAN KELLY: Wouldn't it be better with the class change. I'm just saying, wouldn't it have been better?

COMMISSIONER MURPHY: Well, from a dollar standpoint, the numbers speak for themselves. There would have been a saving to the senior citizen in Newark according to this chart with the classification change. The cost would have gone from \$1041 down to \$1006, whereas without the class change, as it says, the charge is \$1114.

ASSEMBLYMAN KELLY: In other words, as a result of the class change, it is costing them more.

COMMISSIONER MURPHY: The class change would have resulted in a saving, as I outlined, to the senior citizen.

ASSEMBLYMAN KELLY: Okay, you've answered my question. They are paying more now.

COMMISSIONER MURPHY: They are paying the second category, yes.

ASSEMBLYMAN KELLY: Right, okay. Thank you very much. That was my only question.

ASSEMBLYMAN ADUBATO: Are there any other questions?

ASSEMBLYMAN KELLY: Not right now.

ASSEMBLYMAN ADUBATO: We will go into that in great length after your information, and I hope at that time, when we go into this at great length that you will have a little more information as to what affected what. I'm concerned, as you are, and I thank you for bringing that point out. It is very important.

ASSEMBLYMAN DEVERIN: Mr. Chairman, may I ask a question?

ASSEMBLYMAN ADUBATO: Yes, sir. Assemblyman Deverin, go right ahead.

ASSEMBLYMAN DEVERIN: Mr. Commissioner, I read with interest your recommendations on page 3, and I know you left your crystal ball home, so you really can't answer this question. A-1747 by Gallo, S-3059 by Saxton, and A-1719 by Gallo: I'm sure it is only a coincidence that they are all Republican sponsored bills, but there is a bill, Mr. Commissioner, that I wonder if you have taken a look at--

ASSEMBLYMAN ADUBATO: I'm sorry, I didn't hear that, Assemblyman Deverin. I'm standing right next to--

ASSEMBLYMAN DEVERIN: A-1747, S-3059, and A-1719 talk about medical fees and so forth. They are all Republican sponsored bills.

ASSEMBLYMAN ADUBATO: They are all Republican bills.

ASSEMBLYMAN DEVERIN: Yes.

ASSEMBLYMAN ADUBATO: Oh, I didn't hear that. Okay, thank you.

ASSEMBLYMAN DEVERIN: I'm sure it is only a coincidence.

ASSEMBLYMAN ADUBATO: Absolutely.

ASSEMBLYMAN DEVERIN: There is a bill, A-1695, Commissioner, that cleans up the language in the no-fault bill. It has an increase in the threshold with a percentage of the cost of living involved, it has a medical fee schedule, but primarily, it has control of property damage, which no one seems to want to address at these hearings. I never hear anything from your office about it. Control of property damage--I wonder if you have taken a look at A-1695, and if you have any opinion on it.

COMMISSIONER MURPHY: Well, I can't speak to it right now. I would, however, be happy to take a look at it and give you a report on it. I do think that your point on property damage is well taken, because I think as the Speaker brought out this morning, a good deal of our premium dollar goes to either first-party or third-party property damage. I hope the Fraud Bureau will be helpful in that, and I hope some legislation that we have in various stages in the Legislature relating to auto theft and salvaged titles and the like could be helpful in some cost savings there.

ASSEMBLYMAN DEVERIN: None of these bills that we are talking about here address the property damage, and that is a hell of a cost of insurance.

COMMISSIONER MURPHY: Well, you know, it certainly is, and there is no--

ASSEMBLYMAN DEVERIN: It is a lot more than the bodily injury cost of insurance.

COMMISSIONER MURPHY: Well, actually, depending upon what you want to make of the mix, whether you put collision insurance in or not, which, as you know, is an expense to cover--

ASSEMBLYMAN DEVERIN: I was hoping you would address it in your statement.

COMMISSIONER MURPHY: I would like to address it, and I would like to comment on it now, if I may.

ASSEMBLYMAN DEVERIN: Excuse me, I was hoping you would address whether compulsory property damage is something we really need in New Jersey--property damage that I do to someone else.

COMMISSIONER MURPHY: I did mention that in my remarks as to whether or not we should reexamine the whole issue of the necessity of continuing compulsory automobile insurance, and I would include not only BI, but PD, as well.

Again, the point you make is a good one, and it is one that has concerned me, and it has concerned many others about the property damage aspect. It is a hard thing to get hold of. Sometimes I've even thought of the possible licensing of repair shops, but it is a formidable job. It is just a difficult thing. Really, the motor vehicle manufacturers probably should have a hand in the design of motor vehicles so as to make them more easily repairable and the like. As you know, on these new cars that they've brought out, you can make a total out of those cars with what should otherwise be a repairable accident. It is an important area, and I don't mean for a moment to dismiss it or not to say it is important, Mr. Deverin.

ASSEMBLYMAN DEVERIN: We would appreciate your taking it on, because if you are going to be able to control medical fees through insurance policies, there should be no reason why we can't control property damage costs for repairs through the legislation. If I remember this bill rightly, there is a control of that through the auto shops and so forth.

COMMISSIONER MURPHY: I'll refresh myself on that, Mr. Deverin.

ASSEMBLYMAN DEVERIN: Okay, thank you. Thank you, Mr. Chairman.

ASSEMBLYMAN ADUBATO: Assembly Thompson, do you have a question?

ASSEMBLYMAN THOMPSON: Thank you, Mr. Chairman. Mr. Commissioner, my question is a procedure question. In New Jersey you have a Public Advocate, and you also have administrative judges. On page 2, you mention that "In my AIPSO Opinion and Decision of April 4, 1983, Exhibit B-2 (a), modifying the Administrative Law Judge's Decision..." As I understand, there is an issue pending on the Governor's desk as to whether or not the Administrative Law Judge's decision should be final and that, in that process, whether or not there is going to be any modifying appellate review that will go to the Superior Court Appellate Division, and if warranted to the Supreme Court on constitutional issues. It seems to me that you have one

major problem here. Who do you rely on, the Public Advocate? Do you have the power to overrule an Administrative Law Judge if you are not satisfied with his decision?

COMMISSIONER MURPHY: It is my understanding that--and I am subject to the Attorney General seated next to me-- but, it is my understanding today that I have, or any agency head, has the right to accept, reject, or modify an opinion of an Administrative Law Judge. What I did in the matter you just referred to is, I modified the opinion. Now, if you don't act within a certain period of time, which I believe is 45 days, or whatever the time period is, the opinion becomes absolute, final.

At this stage under the law, the agency head has an opportunity to do as I said-- reject, modify or approve the decision.

ASSEMBLYMAN THOMPSON: I would like to ask you this just to follow up on that question. For the purposes of continuity, supposedly, if the majority of Administrative Judges are attorneys, wouldn't it better if their decisions were final, and it would be appealed through the Appellate Division of Superior Court?

COMMISSIONER MURPHY: I really hadn't thought about that too much. I noticed something in the paper this morning, as perhaps you did, which caused me to think about that. For what it is worth, and off the top of my head, Mr. Thompson, it seems to me that if the responsibility for decisions within a certain area is given to an agency or department head, then he should be the one who would make the final decision. I would think that would be so, although I would be happy to reexamine it, in view of other evidence. I, frankly, had never grappled with it before.

ASSEMBLYMAN THOMPSON: I appreciate your remarks, but I think one of the reasons that New Jersey did away with the departmental hearing officers was for the same reason; the department was ending up reviewing itself. Therefore, you could have easily gotten some opinions that were modified, and we were back in the Catch-22-type situation.

COMMISSIONER MURPHY: I see your point. One of the problems from an administrative point of view, without going into it too much, is it is my understanding in New Jersey that the only person who can sit on a rate hearing, a formal rate hearing, is the Commissioner. You can get bogged down if you get too many of those, so in this case, this was a rather complex issue. In fact, the decision was 97 pages; I sent it out to have it screened initially by the Administrative Law Judge, and she did a very thorough job in arriving at her decision. I modified her decision later, but not radically.

ASSEMBLYMAN THOMPSON: Thank you.

ASSEMBLYMAN ADUBATO: Assemblyman Kosco, do you have a question?

ASSEMBLYMAN KOSCO: Yes, I'd like to ask a question. I wasn't privileged to see these television shows that you were talking about when certain information was given out. Unfortunately, the program didn't quite make Peking, China. I'm concerned about the information or the wrong information or the misinformation that was brought up earlier by the Speaker, and I would appreciate if you would address that issue to us and explain to us, maybe the bookkeeping procedures that take place to show how percentages are received.

COMMISSIONER MURPHY: I don't know that I can cast much light on the subject. I did not hear the program referred to, and so I don't know what the Governor said, nor did the Governor talk to me about what he was going to say. I can't be of much help in that direction.

ASSEMBLYMAN ADUBATO: Can I try to be helpful in that direction? Wednesday morning we will play the tape of that portion of the show on the audio end, and then maybe we can help each other, if that is okay with you.

COMMISSIONER MURPHY: Okay.

ASSEMBLYMAN ADUBATO: Okay. Are there any other questions at this time? By the way, I want all the members of the Committee to know that at any point in time, if they would just get my attention, they can interrupt me or anybody else who is talking, if they have a pertinent question, and I'll decide that. I'll do my best to allow all of the members of the Committee to interrupt from here on out at any time to ask any question, so we understand the ground rules.

Commissioner, I would like to start by dealing with Item 6, if that is okay; they are the Medicare/PIP changes.

COMMISSIONER MURPHY: They are on page 5.

ASSEMBLYMAN ADUBATO: Yes, sir, page 5. For the record, in your statement you say, "There is attached Exhibit E-1. Exhibit E-1 is a summary of the activity of our Department respecting the impact of proposed Federal Medicare regulations on the auto insurance costs of our senior citizens. Attached to Exhibit E-1 are copies of: our letter to our State's Washington office, dated July 8, 1982; my--my letter to the Federal Administrator of Health and Human Services, dated July 16, 1982; a copy of a brief prepared by Colonial Penn Insurance Company furnished to our Washington office by us in October of 1982. To bring this matter up to date since the preparation of Exhibit E-1, there have been these developments:" I will not read the developments if we agree are that other things have happened-- Well, I'll read it. "At the spring meeting of the National Association of Insurance Commissioners in Baltimore, Maryland, on March 30, 1983, at my request, the Executive Committee reaffirmed its June 1982 Resolution in opposition to the proposed regulation and directed that such Resolution be sent to the new Secretary of Health and Human Services, Margaret Heckler. Two, a final regulation making Medicare subordinate to PIP was published in the Federal Register on April 5, 1983 with an effective date of June 6, 1983. There have been several meetings of representatives of our Department, our Attorney General, and the New York Insurance Department, and the New York Attorney General, in respect to legal action to stay and to invalidate the regulation. We have been advised by our Attorney General that such an action has substantial merit."

I will cut through some of that and say that "Governor Kean on Thursday, April 28, 1983 announced"-- I'll repeat that date-- "On April 28, 1983, Governor Kean announced that he has directed the Attorney General to file suit in Federal court to stay the effect of and invalidate the Health and Human Services regulation. A copy of the press release is attached to Exhibit E-1, dated April 28, 1983."

Commissioner, for the record, I hold Exhibit E-1 in my hand. Exhibit E-1 has a title that says "Proposed Federal Regulation Concerning Medicare Benefits and No-Fault Automobile Insurance." Am I to assume that since you submitted this, that this document has been prepared by your staff and yourself?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: May we have your permission to so label it as coming from the Insurance Commissioner and his staff?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: We will please note that E-1 is an official comment that will go in its entirety in the public hearing as recorded as documentation of what happened with Medicare. Are there any objections to that by any member of the Committee? Hearing none, it is so moved.

COMMISSIONER MURPHY: Mr. Chairman, if I may note this, in the last paragraph, on page 2 of that memorandum, we record the vote as we understand it was made. This information was given to us by our Washington office.

ASSEMBLYMAN ADUBATO: I'm glad you brought that up, because I certainly am going to bring it up, among other things that are in this exhibit. And you, again-- I'm not saying you want to change anything, but if you do decide to change any comments, any dates, or any facts, we will be gracious, and we understand human frailty on all our parts. If any of us makes any errors that are, in my opinion, just honest errors, if there are any-- I'm not saying there are-- that I am sure that we are reasonable people. But, for the record, this will stand as is, and any corrections you wish to make, Commissioner, once we go through this, you'll certainly be allowed to make them.

I will begin. We'll start exactly where you, for some reason, have decided to question something in your statement, I think. Is there any chance that the credibility of that statement is wrong?

COMMISSIONER MURPHY: Are you referring now to the last paragraph?

ASSEMBLYMAN ADUBATO: Yes, sir. Did you check this out before you printed it and distributed it as an official document?

COMMISSIONER MURPHY: This information was given to my staff by our Washington office.

ASSEMBLYMAN ADUBATO: Well, I'll repeat it again, sir, for clarity. Before you made this part of the public record, which it is now, did you or any member of your staff at any time check the Congressional Record to see if it was accurate?

COMMISSIONER MURPHY: We did not. We accepted the statement of our Washington office.

ASSEMBLYMAN ADUBATO: All right. I don't know if people heard that. Can you hear this?

You accepted the Washington office documentation. You and the members of your staff did not check the Congressional Record.

COMMISSIONER MURPHY: We did not.

ASSEMBLYMAN ADUBATO: Well, I did, and I would like to share that information with you; and, I checked the Congressional Record months ago-- months ago. But, for those people who do not have the benefit of this copy, I am directing staff now to have printed up in its entirety-- right now, as we're talking, 30 copies to be distributed to any person who is interested in seeing it. I direct staff to do that immediately.

Going through this, sir, I am going to read it for the public record. This is now an official document from the Insurance Commissioner of this State.

This is entitled "Proposed Federal Regulation Concerning Medicare Benefits and No-Fault Automobile Insurance," and it reads as follows:

"In early June, 1982, this Department (under present management) first became aware that the Health Care Financing Administration has proposed a regulation to implement that portion of Section 953 of the Omnibus Reconciliation Act of 1980, which would exclude Medicare payments where payment can easily be expected to be made under an automobile or liability insurance policy or under No-Fault insurance. This proposed regulation was first published in the Federal Register on May 17, 1982."

I am now going to go away from the official document and deal with the first paragraph. It is a statement, assumed by you, Commissioner, that your Department became aware of these changes in early June of 1982. I want these statements to go out to the public. Any member of the media who want them-- And I also want these statements, the 120 of them, given immediately to every Senator, every Assemblyman, and to the Governor as soon as possible.

If this is correct, sir, you state that in June 1982 you first became aware of this regulation. Is that a fair statement?

COMMISSIONER MURPHY: That is what it says.

ASSEMBLYMAN ADUBATO: Thank you, I just wanted to make sure I was reading it right. From June 1982 until today-- Today is May 2-- So, from June 1982 until May 2, 1983, would you be kind enough to show one word of this change and impact on over 300,000 senior citizens of this State that you had made to the public, the people of New Jersey.

COMMISSIONER MURPHY: Well, all I can say is that Exhibit E-1 speaks for itself. It outlines the activities of our Department.

ASSEMBLYMAN ADUBATO: I realize that, sir, and what I am asking you is, have you ever issued a press release, telling the people of this State about the change of benefits and how they are going to be affected?

COMMISSIONER MURPHY: I have not issued a press release on that.

ASSEMBLYMAN ADUBATO: You have never issued a press release. Have you ever had--

COMMISSIONER MURPHY: But--

ASSEMBLYMAN ADUBATO: Forgive me, sir. Have you ever given an interview since you have been the Commissioner? I know that is ridiculous; you've given many interviews. But, in addition to all the press releases that you have issued, and I have a copy of every one, with the good cooperation of your office, in any interview that you have even given since you became the Commissioner of this State, have you ever mentioned the impact of these changes on the people of the State of New Jersey?

COMMISSIONER MURPHY: I have not given an interview on that subject, nor have I issued press releases. But, if I may, Mr. Chairman--

ASSEMBLYMAN ADUBATO: All right. I'm sorry, go right ahead.

COMMISSIONER MURPHY: I think you will note, as you have, in Exhibit E-1, we have discussed this matter with legislative representatives of senior citizens, namely the American Association of Retired People.

ASSEMBLYMAN ADUBATO: I'm going to get to that, sir. I am going to be totally fair. If you want, I'll listen.

COMMISSIONER MURPHY: We had no press release on it.

ASSEMBLYMAN ADUBATO: There was no press release.

COMMISSIONER MURPHY: And, our activity is outlined in this statement.

ASSEMBLYMAN ADUBATO: And, there has been no statement in any interview that you have given. Sir, our records indicate that from May 17, 1982 until July 16, 1982, which was the 60 days for public comment,-- Do you agree with those time frames?

COMMISSIONER MURPHY: They are what they are; they're a matter of record. We responded within the time frame.

ASSEMBLYMAN ADUBATO: Yes, sir, I realize that you sent a letter on July 16, the last day. I have that, sir. I've also spoken to people in the Secretary's office.

I would like to ask you, sir, for accuracy, that it is nowhere recorded outside of the exhibits you show that the people of this State were ever given any public information by your office. What I mean by public is simple-- that from May 16 or May 17, 1982 until July 16, 1983, your office issued 15 press releases-- 15. In every one of those press releases, whether they talked about automobile insurance reform or another issue, did you ever think you had an opportunity to maybe add a sentence or two? Did you think it was important or not important to add a sentence or two about the changes that you admit to knowing about since June of 1982? Do you think that was important?

COMMISSIONER MURPHY: I felt that what our Department did was sufficient under all the circumstances. As outlined in that memorandum, we advised our Washington office of this issue; they were familiar with it. Presumably, they would notify our Congressional delegation. Whether they did or not, I don't know, but I assume they did.

ASSEMBLYMAN ADUBATO: Is there any reason, Commissioner-- Forgive me, is there any reason why you didn't know about this before May 17, when the time for official comment began? Your statement says that you did not know about this until early June of 1982. The time for public comment began on May 17 of 1982. Now, I'm just trying to find out if there is any reason why your office did not know about this before May 17, 1982.

COMMISSIONER MURPHY: Our office does not regularly read the Federal Register.

ASSEMBLYMAN ADUBATO: Your office does not regularly read the Federal Register. Thank you, sir. I'll accept that. In fact, I agree with you.

Sir, how did the Governor find out about these changes? Do you know?

COMMISSIONER MURPHY: I really don't know precisely how he found out about them. I know that in connection with the action he took earlier, really last month, in directing the Attorney General to see it, I had brought it to his attention.

ASSEMBLYMAN ADUBATO: The action he took last week, which was last month, sir? Is that what we are talking about, the April 28 action?

COMMISSIONER MURPHY: Well, I actually brought that to the attention of the Governor's Office and the Attorney General's Office.

ASSEMBLYMAN ADUBATO: When was that, sir? That is what I am trying to find out. When was that, sir?

COMMISSIONER MURPHY: Beginning probably six months ago. I'd have to refresh my notes; I can't answer that specifically.

ASSEMBLYMAN ADUBATO: Well, with something of this magnitude, wouldn't you keep some kind of a written document also? Isn't there any written document that, I would assume-- I mean, I'm just trying to learn, Commissioner. I really want to learn how you communicate with the Governor's Office. Was it verbally or was it in a written memo?

COMMISSIONER MURPHY: I would have to look at my file on that. That was not one of the questions asked in your letter.

ASSEMBLYMAN ADUBATO: I beg to differ, sir.

COMMISSIONER MURPHY: You asked about what our activities were in that.

ASSEMBLYMAN ADUBATO: Yes, sir, that is exactly-- I will be kind enough to read the statement, if you like.

COMMISSIONER MURPHY: No, you asked about our activities.

ASSEMBLYMAN ADUBATO: Okay.

COMMISSIONER MURPHY: And, our activities are as outlined in the exhibit. Discussions with the Governor's Office are routine. I did discuss possible legislative approaches to this problem with Ken Merin. They didn't seem feasible at the time. I think you have to remember also that no definitive action had been taken by us until we actually had a final regulation release, and as soon as that was done, we moved in respect to litigation.

As to the other aspects of it, during the pending stage, as Exhibit 1 shows, our Washington office advised me that there was not much interest or support to a killing of the proposed resolution.

You see, the organization representing the retired people is a national organization, and they were ambivalent about this, according to our contacts with them. Their main--

ASSEMBLYMAN ADUBATO: Forgive me for interrupting you, Commissioner, I don't mean to. I appreciate your response, and I want to you continue, but for clarification, when you say they were ambivalent, are you saying they were not interested in objecting?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: They were not interested.

COMMISSIONER MURPHY: They apparently were not.

ASSEMBLYMAN ADUBATO: All right, and we're talking about AARP, Senior Citizens--

COMMISSIONER MURPHY: American Association of Retired People.

ASSEMBLYMAN ADUBATO: I know who they are; this is for the record. Do you have a letter from them saying they were not interested?

COMMISSIONER MURPHY: No, this is based upon telephone conversations between members of my staff and their staff.

ASSEMBLYMAN ADUBATO: Oh, so there is not written record of any retired person in this State, to the best of my knowledge, telling you or any member of your staff that they were not outraged over the fact that because of these changes that they learned about through a joint press conference that was held by the Committee on Aging and the Banking and Insurance Committee, because our documentation shows that there was the only report that went out to the media on this issue prior to April 28 when the Governor decided to sue, which is great. But, I always thought suing was the last thing we did. But, that is his prerogative.

Up until that time, the people of this State, the 300,000 senior citizens, got their information from other press releases. So, what I am asking you, Commissioner, is who did you speak to? Do you have a name of a person who you spoke to?

COMMISSIONER MURPHY: I didn't make the phone call to the AARP organization.

ASSEMBLYMAN ADUBATO: Oh, I misunderstood you.

COMMISSIONER MURPHY: I said one of my staff did.

ASSEMBLYMAN ADUBATO: Who on your staff made the phone call?

COMMISSIONER MURPHY: I think Morgan Shumake, but I would ask him. He is sitting right behind me; I'll ask him if he did it or not.

ASSEMBLYMAN ADUBATO: I will be happy to talk to Morgan, which I have already done.

Mr. Shumake--

ASSEMBLYMAN ADUBATO: Let the record show--

COMMISSIONER MURPHY: (continuing) affirmed that he is the one who had the discussion, and he is available for you.

ASSEMBLYMAN ADUBATO: Absolutely. Commissioner, I hope we are not upsetting you, believe me. I don't want to upset you. You know, we are all relaxed, and we're here to help.

ASSEMBLYMAN DEVERIN: He looks nice and relaxed, and we're glad you're here. Commissioner, I have just one question. Is that the only senior citizen group your agency talks to when there is a senior citizen problem?

ASSEMBLYMAN ADUBATO: Will you speak a little louder, Assemblyman, please?

ASSEMBLYMAN DEVERIN: Is the AARP the only group you talk to when there is a problem? That is a group who is based in Washington; it is a fine group of people. I'm a member of their spin-off group, AIM, so I know their work. They are really not that connected with the problems of each state individually, and I am concerned that you haven't talked to the Senior Citizens Congress of New Jersey or someone like that who would probably give you a better input into the problem than they would there.

COMMISSIONER MURPHY: I guess you haven't had the opportunity to read this full exhibit, because in there we refer to the fact that we did have conversations with the local group. The point that you make is--

ASSEMBLYMAN ADUBATO: Excuse me, Commissioner, I read it fully several times, and I'll be happy to help the Assemblyman if you don't mind.

COMMISSIONER MURPHY: Okay.

ASSEMBLYMAN ADUBATO: There is no local senior citizens group, in writing, who responded saying that they did not care about the implementation of these changes. If you can show me that, I'll stand corrected.

COMMISSIONER MURPHY: No.

ASSEMBLYMAN ADUBATO: Pardon me, sir?

COMMISSIONER MURPHY: I was looking at these exhibits. Will you restate that?

ASSEMBLYMAN ADUBATO: I said, and I'll be happy to restate everything two or three times-- I said the Assemblyman was correct when he said that no local senior citizens' group which is not part of an industry said one word in writing, pro or con to you, about the implementation of these changes, because I submit to you, they were not aware. I would stand corrected if you could show me anywhere in this exhibit where you got one word, one telephone call, or one letter from one of over 300,000 senior citizens in this State, who are going to receive a drastic rate increase over these changes if they are allowed to go into effect. That was the question. Now, did you say that you do have a letter from them?

COMMISSIONER MURPHY: I didn't say I had a letter at all. I was directing Mr. Deverin's attention to that part of the exhibit which states that in mid-July, 1982, as part of a meeting on unrelated matter, this proposed change was discussed with the New Jersey Chapter of the American Association of Retired Persons through their--

ASSEMBLYMAN DEVERIN: Again, Commissioner, that is a great group, and I am a part of their group. I am part of their AIM, which is Action in Maturity, of which I'm not part of maturity, but just part of the other part of it.

I am concerned that there are so many local New Jersey seniors. There is a Senior Citizens Congress, a Federation of Senior Citizens-- those people would really put a better input into a problem in our own State, rather than the Association of Retired people, whose main concern is nationwide, and would not have the input. They would not have the input to put into your office that the local senior citizens, or statewide senior citizens would.

I'm surprised with this problem that none of us, including your office, has talked to a local, statewide senior citizen group when there are so many of them-- not a chapter from Washington, a local senior citizen group that there are so many of.

COMMISSIONER MURPHY: Mr. Deverin, we confined our discussions both at the national and local levels.

ASSEMBLYMAN ADUBATO: I accept that, sir; that is exactly what happened, and I accept that-- that the people of this State were never informed by your office. The Public Advocate's Office was never informed by your office, not one of the 80 Assemblymen was informed by your office, not one of the 40 Senators was informed by your office, and it is unclear as to whether the Chief Executive Officer of this State was informed or not. I'll accept that as being unclear. Certainly, not one senior citizen in the entire State of New Jersey can be brought here today, Wednesday, or next month to testify that he was made aware and he said he was not interested in fighting against those increases. Now, that is a fact, and you perceive, if I am correct, sir, in that that conduct by you and your office is to be totally acceptable to this Committee and to the people of this State. Is that a fair statement?

COMMISSIONER MURPHY: The latter part of your statement I didn't quite understand. All I can say is --

ASSEMBLYMAN ADUBATO: May I rephrase it, sir?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: Are we saying that your conduct and the people on your staff in not notifying any one of those entities about these changes-- Are you saying that that action is the kind of an action that your Department is expected to do and to make? In other words, you have no regrets about it being handled that way?

COMMISSIONER MURPHY: I feel that our action in this matter was wholly responsive.

ASSEMBLYMAN KOSCO: Mr. Chairman?

ASSEMBLYMAN ADUBATO: Assemblyman Kosco, do you have a question? Go right ahead.

ASSEMBLYMAN KOSCO: Before you mentioned that you had discussed certain actions that you might take with, I believe you said Ken Merin. --

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN KOSCO: And that you did not find any appropriate action to take at that time. Can you give us an idea of some of the things that you discussed and why you felt there was no reason to take any kind of action?

COMMISSIONER MURPHY: One of the problems was, how we could perhaps amend the law so as to escape the impact of this regulation on our senior citizens. There are many problems involved in attempting to avoid the regulation or the impact of the regulation.

One of the ones that perhaps would have gotten us home free would be to have provided PIP protection for our older citizens out of the casino gambling funds.

ASSEMBLYMAN ADUBATO: Excuse me for interrupting you sir, I apologize. I want to give everyone all the leeway necessary to offer legislation to this body, and we are certainly going to consider that later on.

I would respectfully ask the Commissioner and the people who are going to testify, as well as the Assemblymen-- not that you have not asked the proper question-- to please, let's limit this phase. There will be other phases. Limit this phase to how the people of New Jersey, which I accused the Commissioner's office publicly of failing to do in the resolution that both you and I sponsored, that passed unanimously in the Assembly-- Where this entire Legislature accuses you, Commissioner, and your staff, publicly, of not informing the people of this State of the impact of the changes in the new Medicare rates.

ASSEMBLYMAN KOSCO: Well, that is what we were discussing when you said you had spoken to Ken Merin about it.

ASSEMBLYMAN ADUBATO: Oh yes, sir, go right ahead.

ASSEMBLYMAN KOSCO: That is why I'm asking what the procedure--

COMMISSIONER MURPHY: I was about to suggest that one of the alternatives that we had discussed to avoid the impact of the then--

ASSEMBLYMAN KOSCO: No, I'm not talking about that. I'm talking about the way of notifying and making releases to what was happening, and you said that you had discussed that procedure with--

COMMISSIONER MURPHY: No, I discussed with Ken Merin some possible legislative action, which would avoid the impact of this Federal regulation, and they did not prove to be feasible. I'll give you the details of them if you wish.

ASSEMBLYMAN KOSCO: Part of your discussion wasn't to do with communications or informing the general public--

COMMISSIONER MURPHY: No, we didn't deal-- Remember, this is Federal matter, and we have Federal representatives.

ASSEMBLYMAN KOSCO: Which we have a liaison with them, so we could also discuss it with them.

COMMISSIONER MURPHY: Well, presumably, that--

ASSEMBLYMAN KOSCO: (continuing) We could discuss it with our liaison people in Washington.

COMMISSIONER MURPHY: I don't know to what extent there was a last one between Federal and State legislation. I'm not knowledgeable about that, but that might be.

ASSEMBLYMAN KOSCO: We have an office in Washington.

COMMISSIONER MURPHY: I had notified our Washington office completely of it, and they were knowledgeable of it. They advised us, again, as we point out in this exhibit, that there was not much prospect of change.

ASSEMBLYMAN KELLY: What legislation?

ASSEMBLYMAN ADUBATO: Excuse me, I want you to feel free. Assemblyman Kelly, go right ahead.

ASSEMBLYMAN KELLY: What legislation are you talking about? I'm getting a little confused here. What legislation are you talking about?

COMMISSIONER MURPHY: I'm sorry, maybe it is a little confusing.

ASSEMBLYMAN ADUBATO: May I respectfully, Commissioner, try to help?

On December 17, 1980, there was an act passed in Congress called the Omnibus Reconciliation Act. That Act was an \$8.5 billion revenue act. The Act was amended in the Ways and Means Conference Committee, and what I call a sleeper provision was added to that \$8.5 billion appropriation.

That provision said-- and I have the entire record here. If you would like to look at it, feel free to do so. It will certainly go into the record. That Act said that Medicare will no longer be considered as a primary coverage for senior citizens or anybody else who qualifies for Medicare payments-- that auto insurance will be the primary.

I would like to at this time, with your permission, share with the Committee and the public what happened. In New Jersey, when we changed to a no-fault State under Governor Cahill and the good offices of Speaker Thomas Kean, who is now the Governor, in 1973 we created a system, among other things, that provided unlimited medical coverage if you were involved in an automobile accident. From 1973 until 1977, in the State of New Jersey, senior citizens paid a premium for a benefit they could not receive-- for four years.

The insurance industry of this State-- In December of 1977, New York also changed their laws that way. For four years there, senior citizens paid the insurance industry of New York a premium for a benefit they would never receive.

In the State of Pennsylvania, the people have always paid a premium on a benefit they could never receive. Let me explain that. From 1973 until 1977, the full premium for PIP was charged to senior citizens in spite of the fact that Medicare would pick up, as a primary carrier, not their auto insurance premium. As a result of other people, as well as myself and Philip Stern, who was then the actuary in the State of New Jersey, we were successful with others who are sitting in this room from the Public Advocate's office, in getting that changed and having the premium for PIP for senior citizens cut in half. So, from 1977 until now, senior citizens have been paying the right rate for their PIP coverage.

What this Act said was, according to-- I'll jump to the official press release dated Tuesday, April 5, 1983 from the U.S. Department of Health and Human Services, and I would like to read just the first sentence:

"Medicare has been duplicating payments for services covered by automobile liability and employer group health insurance plans long enough," Health and Human Services Secretary, Margaret Heckler said today.

When I spoke to John Cottrell, who is the press person, and explained to him that in New Jersey, since 1977 we have not been duplicating

the costs, he said he was not aware of that, and he didn't think that the Secretary was aware. He asked me to write her a letter. I want you to know that we have sent telegrams to the President of the United States, and to every member of the New York, New Jersey, and Pennsylvania Congressional and Senate delegations, and to the Governors of those states, as well, some time ago. I have the dates here, and I would be happy to share them with you-- notifying them of what was going on. Unfortunately, when the Chairman found out about what was happening in September of 1982, and I admit that I did not know of these changes until September of 1982. My sources in Washington who were interested in the rate reduction for senior citizens mandated by Assembly Bill 1696, they alerted me to the fact that while that legislation mandated a cost reduction for senior citizens, it would be more than wiped out when this Act went into effect, because of the increase in the PIP premium, which was doubled.

As a result of that information, I spoke to every lobbyist in this room representing every company in this State that I could humanly speak to, and not one lobbyist from one company acknowledged knowing about these changes. I spoke to the Vice President of State Farm-- the Regional Vice President of State Farm-- I called him on the phone and asked him if he knew of these changes, and he said he was not aware of any of these changes. I spoke to the Vice Presidents of Prudential and Allstate, and they said that they were not aware of these changes.

So, it is obvious to me that many people were not aware of these changes. When, from a chronological point of view, I stood at that desk in October of 1982, and stood on a point of personal privilege and informed the entire Assembly of what was happening, unfortunately, for some reason, I was unsuccessful in getting any media-- any media, to print one sentence, one phrase about those changes. So, I must admit, they also must have felt that it was not newsworthy, because they certainly didn't tell anybody about that. And, I don't own any newspapers yet.

What happened was, that in my anger, my indignation, at the people of this State not being made aware of these changes, I asked to hold the second press conference I've ever held since I've been in office in a joint meeting with the Committee on Aging, which is headed by Assemblyman Paterniti. At that meeting, and at the reporting of The Star Ledger and other newspapers, for the first time in the State of New Jersey, the people were informed about these changes. I challenge anyone in this room or outside this room to produce one statement, either in any newspaper, any radio show, or any television broadcast, alerting the people of this State to these changes, because I have been unsuccessful in finding them. Now, maybe they just didn't think it was important enough.

This, I must say to you, is dated Wednesday, April 6, 1983, the day after the hearings, I guess. We have other articles here from The Asbury Park Press that go back way before that-- by Ann Brenoff from The Asbury Park Press saying how I have been trying to alert people for several months, and no one seems to think it, is important enough to talk about.

There are quotes in here from different people, including the spokesman for the Insurance Department who, when he found out that I did not learn about these changes until September, said, "My goodness, he's an expert; he should have known about this." Now, whether or not he said it, I don't know, but it is in these statements. And, maybe I should have known about it. I apologize to the seven and one-half million people of this State for not knowing about it. But, I still don't understand how the Insurance Department knowing about it didn't tell anybody.

Mr. Hooper's statements and those statements, I must say, from Nancy Blethen-- I hope I am pronouncing her name right -- from the Insurance

News Service, and I hope she is going to testify. When I asked Ms. Blattin if she was aware, and I think they represent 19 insurance companies, and they are called the Insurance News Service-- When I asked her, she said she knew nothing about it. If she would like to counteract that, or say I'm misquoting, she's has an opportunity to come here and correct me. I'll listen.

I accuse this whole incident of being similar to Watergate in that it was a cover-up. I'm not saying it was done intentionally or with malice; I am not saying that anyone did this with maliciousness. What I am saying, let the record speak, if this is the way we communicate, I think it leaves something to be desired.

The Governor of this State took an action. We can't find out how he found out about this. I'm glad he took the action, because I have been talking to Senator Farley from New York, which you may or may not know, Commissioner-- Senator Farley is a Republican Senator who is the Chairman on Aging. I would like to share with my colleagues and you, Commissioner, before I get into paragraph two what I thought was the responsibility of an elected official in sharing accurate data with the people of New Jersey and the other states.

When I spoke to the people in Pennsylvania, they had no knowledge of these changes-- nobody in Pennsylvania admitted knowing about these changes. The State of New York said they were aware, and in fact, in the Senate they passed a resolution-- in the New York Senate within the time for public comment. Unfortunately, according to the documentation I have here from the good Senator from New York, who said that he could not get the information out because no newspaper in the State of New York covered the story or printed one word of it in the entire State of New York-- according to his words. So, they didn't think it was important either in the State of New York.

Pennsylvania-- not one word to the media by anybody. Here is a copy of a letter from the Eastern Regional Conference of the Council of State Governments, and the Vice Chairman of that Committee is Senator Hugh Farley, the same man from New York-- a good Republican. And, he shows us here a resolution passed by the Council of State Government's Eastern Regional Conference 1982 annual meeting between the week and the days of August 8 and August 11, 1982. Keep in mind, the time for public comment was May 17, 1982 to July 16, 1982. They commented about it for the first time in August of 1982 on a piece of legislation that was passed in December of 1980. This is just for the record; I'm not accusing anybody of anything.

I am not going to deal anymore with the lack of information. If that doesn't speak for itself, I can't add anything to that. But, I am going to continue, and I am going to produce the Congressional Record that I have here officially of the vote on this bill and the implementation.

The Commissioner has submitted in this exhibit, as he pointed out for some reason, that the last paragraph on page 2, because I didn't ask him about the last paragraph, but I'm happy that he pointed it out-- That he got this information from his Washington office. I don't know what kind of money those people make, but I'm sure they are well paid. I am sure the Information Officer of this State-- I think his name is Thomas Hooper-- receives about \$40,000 plus a year for sharing information. The Congressional Record, as reported in this official document to the Committee states, "by way of background, it is interesting to note that in 1980, both New Jersey Senators Bradley and Williams voted "yes" for the Omnibus Bill. That is an accurate statement-- "along with Democratic Congressmen Hughes, Howard, Maguire, Minnish, Gurnini, and Patton." That is not a true statement. "Congressman Rodino was absent. Democratic Congressmen Florio,

Thompson, and Roe voted 'no,' along with Republican Congresswoman Fenwick and Congressmen Forsythe, Hollenbeck," and someone named "Ronaldo", R-O-N-A-L-D-O.

ASSEMBLYMAN DEVERIN: They spelled the Irish name wrong, too. They used an "o" instead of an "e."

ASSEMBLYMAN ADUBATO: Well, they changed John Caboto to Giovanni to Cabot, too, you know, so-- The point is--

ASSEMBLYMAN KOSCO: Guarini is spelled wrong too.

ASSEMBLYMAN ADUBATO: I realize that. Well, it is consistency. Sometimes the Italian/American names are hard to spell. Guarini and Rinaldo are both misspelled, but that is okay.

ASSEMBLYMAN DEVERIN: So is the Irish name, Patten.

ASSEMBLYMAN ADUBATO: Patten is misspelled, too; you're right. That is a heck of a document. This is from the Washington office.

That last comment is untrue. It is a misrepresentation of fact. I am not calling it a lie; I'm saying it is misrepresenting what happened, and this is now official record in this hearing. I will be happy to share with this Committee, if they are interested in knowing the facts-- Are you interested, Assemblyman?

ASSEMBLYMAN THOMPSON: Certainly.

ASSEMBLYMAN ADUBATO: Are you two Assemblymen interested in knowing how the vote really took place?

ASSEMBLYMAN KOSCO: Sure.

ASSEMBLYMAN ADUBATO: Assemblyman Kelly, are you interested?

ASSEMBLYMAN KELLY: I am wide awake.

ASSEMBLYMAN ADUBATO: Thank you. I do not want to waste anybody's time. As I said, the vote in the Senate is accurate, and I would like to read just the last sentence of this paragraph. "It is also of interest that Florida's Claude Pepper, a recognized champion of senior citizens voted yes." I'm sure that is very pertinent to this discussion today, and we appreciate that accurate statement, because we certainly are not going to act political or in any partisan manner.

Let me record, for the record, the vote of the Congressmen in the State of New Jersey on H.R. 7765, the Budget Reconciliation Act. I think that was listed on the floor as 657, and this is the voting record for New Jersey.

As I said, the statement by the Commissioner is accurate as it applies to the two U.S. Senators. They certainly did vote "yes." Let's take the next sentence: "Along with Democratic Congressmen Hughes, Howard, Maguire, Minnish, Gurnini, and Patton,"-- The Commissioner's statement is saying those people voted "yes." Well, let's see. Congressman Hughes-- That is correct. Congressman Hughes voted "yes." Congressman Howard-- That is correct. Congressman Howard voted "yes." Congressman Maguire-- That is correct. Congressman Maguire voted "yes." Congressman Minnish-- Congressman Minnish voted "yes." Now this Congressman spelled G-U-R-N-I-N-I, I think, refers to the good Congressman from Hudson County who is on Ways and Means, our good friend, Congressman Guarini. Congressman Guarini is recorded as voting "yes" by the Commissioner's statement. However, the official record shows that he did not take a position. He did not pair-- I'm sorry to use that phrase for those people who have not had the benefit of knowing what that means. I'll be happy to explain it later. He did not vote; he abstained totally from the vote, so he did not vote "yes." And, Congressman Patten, that great old gentleman, that smiling Irishman, whose name is spelled here P-A-T-T-O-N.

ASSEMBLYMAN DEVERIN: It is "en."

ASSEMBLYMAN ADUBATO: I know it is "en," sir. I'll tell you how the official documentation from the Commissioner's statement reads. That good Congressman voted "no," not "yes," as reported by this document.

Let's go on. Congressman Rodino was absent; that is correct. He was absent.

Democratic Congressmen Florio, Thompson, and Roe voted "no," along with Republican Congresswoman Fenwick and Congressman Forsythe, Hollenbeck and R-O-N-A-L-D-O, Ronaldo.

Now, let's go over that. Congressman Florio-- The statement here is that he voted "no." Congressman Florio voted "yes." Congressman Thompson was absent; he did not vote "no." Congressman Roe did vote "no," along with Congressman Patten. They were the only two New Jersey Congressmen, in spite of this documentation, who voted "no." That is all. However, the statement says, "also voting 'no' were Republican--" By the way, I would like to point out that the Congressional Delegation is broken down into Republican and Democrat, not New Jersey Congressmen or Congresswomen. They are identified as either being Republicans or Democrats, which is fine. There is nothing wrong with that. I am just saying the way they are identified by the Commissioner's statement.

However, Congresswoman, Republican Congresswoman Fenwick did not vote "no." She was absent. Congressman Forsythe, Republican, did not vote "no." He voted "yes." Congressman Hollenbeck, Republican, did not vote "no." He voted "yes." And, Congressman Ronaldo, meaning Rinaldo, did not vote "no." He voted "yes."

And, Claude Pepper, who is described here as the recognized champion of senior citizens, which I accept-- He certainly is. Unfortunately, it is correct, Commissioner. He did vote "yes."

May I ask you, sir, if you would like to make any changes, or if you would like to see the Congressional Record?

COMMISSIONER MURPHY: So far as I'm concerned, if the record is as you stated it, obviously the exhibit should be changed. I think I have to point out to you again that that information, as contained in the exhibit, was furnished to us over the telephone by our Washington office, and I believe it was furnished to Mr. Hooper. Is Mr. Hooper in the room here.

ASSEMBLYMAN ADUBATO: I have no idea. I wouldn't know Mr. Hooper if I tripped over him.

(Assemblyman Adubato directs next question to Mr. Hooper):

Would you like to testify, sir, to that, or do you want to wait, because Mr. Hooper is going to be called?

COMMISSIONER MURPHY: Well, why can't he testify at that time?

ASSEMBLYMAN ADUBATO: Okay, sure, absolutely. I agree, sir. So, we are saying for the record that this information by your Information Officer-- I don't know, what is his official title? Can you help me?

COMMISSIONER MURPHY: Press Officer.

ASSEMBLYMAN ADUBATO: Press Officer.

COMMISSIONER MURPHY: Isn't that your official title, Tom?

THOMAS HOOPER: Public Information Officer.

COMMISSIONER MURPHY: Public Information Officer.

ASSEMBLYMAN ADUBATO: Public Information Officer, how nice. That is delightful; I like that-- Public Information Officer. That is terrific. I'm sure you are doing a great job in sharing public information with the public.

I would like to say, then, from the Public Information Officer, that he gave you a document as you have submitted as official exhibits to support your testimony today, which is your privilege-- I'm not criticizing

how you run your office. I'm only making sure that we understand how it was done-- by a telephone conversation, and you submitted this as an official document to this Legislature as being accurate and factual, because I'm sure he never would have submitted it if he didn't think it was factual, would he, Commissioner?

COMMISSIONER MURPHY: I don't believe so.

ASSEMBLYMAN ADUBATO: Oh, I don't believe he would either; I certainly don't believe he would. It is interesting that my office, and I have one staff person-- one. I do not have a \$6 million budget.

We received in writing through our efforts way before this public hearing was ever conducted, or even being thought of being conducted-- We thought it was important enough to document the official votes, and to have them confirmed. But that was our decision.

First of all, does anyone want to interrupt me? Assemblyman Kosco, do you have anything to say about these points?

ASSEMBLYMAN KOSCO: Just one thing.

ASSEMBLYMAN ADUBATO: Go right ahead.

ASSEMBLYMAN KOSCO: While we were talking about this, I had Ruby make a phone call to Washington, and they verified with that note, again, verbally on the telephone that the votes and the way they are listed here are correct, so--

ASSEMBLYMAN ADUBATO: Oh, really? Oh, terrific. Will you please tell them to send up a copy of the vote? We would appreciate it.

ASSEMBLYMAN KOSCO: Well, that was my next point.

ASSEMBLYMAN ADUBATO: So, the Washington office-- Wait a minute.

ASSEMBLYMAN KOSCO: We've asked them to send up how they verified this, and--

ASSEMBLYMAN ADUBATO: Look, let me say this to you. I can only go by this document. Now, either it is right or it is wrong. If I am wrong, I'll be the first one--

ASSEMBLYMAN KOSCO: I think it is important that we--

ASSEMBLYMAN ADUBATO: I'd be absolutely the first one, because I have here photostats of the vote, and I'd be happy to show you-- In fact, I want staff to copy these immediately-- Now-- That says, "H.R. 7765-487," and that is up here, and here is the vote. You see? That is in the Senate, and in the Congress it says, "581 was the call, H.R. 7765"-- and when we look at the call 581, that correlates to the Budget Reconciliation Act-- Is that 581, Assemblyman?

ASSEMBLYMAN KOSCO: Yes.

ASSEMBLYMAN ADUBATO: Then that would be the vote. Here is New Jersey--

ASSEMBLYMAN KOSCO: I'm asking the Washington office.

ASSEMBLYMAN ADUBATO: Oh, sure, but I just want--All right, we'll wait.

ASSEMBLYMAN KOSCO: Well, we don't have to wait.

ASSEMBLYMAN ADUBATO: No, we're going to wait. Not today-- Wednesday, Thursday, next week.

ASSEMBLYMAN KOSCO: I'll see if they can telex something up to us today.

ASSEMBLYMAN ADUBATO: Good, we'll wait. But, in the meantime, let me show you what this says--581. Florio "yes," Hughes "yes," Howard "yes," Thompson absent, Fenwick absent, Forsythe "yes," Maguire "yes," Roe "no," Hollenbeck "yes," Rodino absent, Minish "yes," Rinaldo "yes," Courter "yes," Guarini absent, and Patten "no."

As far as you know, and as far as this record indicates, is what I said accurate?

ASSEMBLYMAN KOSCO: Absolutely.

ASSEMBLYMAN ADUBATO: Thank you. But, we'll be happy to wait for the Washington office either today, tomorrow or next week.

ASSEMBLYMAN THOMPSON: I just want to make--

ASSEMBLYMAN ADUBATO: Do you have a point to make, sir? Go right ahead.

ASSEMBLYMAN THOMPSON: I'd like to make one comment. I'm not saying that the way the Congressmen and the Senators voted is irrelevant, but I think the issue that we face when we had the June 6 implementation of this particular rate increase-- And I think that the thing that disturbs me is that it has taken this long period of time to even bring it before the Governor's Office and the Attorney General to even institute any type of legal proceedings. I'm interested in whether the Washington office is really communicating with the citizens of New Jersey in the best public interest, and I think it overrides the parties' position in this matter, because this will be devastating. What I see in the comments, in all due respect to the Commissioner, this Exhibit E-1 is basically an argument on both sides of the issue dealing with the supremacy clause and other things dealing with constitutional issues that the Federal courts will have to take up when the Attorney General goes into court. But, I think this is after the horse got out of the barn. This is a nice brief, and we don't know where they are going to go. It was a badly split four-to-three decision in the United States court case that came down in 1971 dealing with some of these issues. So, I think the constant vote one way or the other -- if they voted against the public's interest, or whether they are Democrats or Republicans, that should be brought up.

ASSEMBLYMAN ADUBATO: Excuse me, Assemblyman, for interrupting you. I agree with everything you've said, except I am not here criticizing Congress.

ASSEMBLYMAN THOMPSON: I understand that.

ASSEMBLYMAN ADUBATO: I am here criticizing the credibility on the Department of Insurance's part in sharing accurate information. It has nothing to do with how a Congressman voted, or the fact that Claude Pepper-- I don't know what effect he has in New Jersey, but I think he is a very decent person-- I don't know what effect that had when it was mentioned.

You know, we could also mention, because the list is here-- And, I'm not going to do that. I'm not going to mention all the Republican Senators in the other states who voted for this bill. I don't think that is pertinent to the discussion, so, I'm not going to do that. The only thing I'm going to say is, we are not-- time?

Okay, ladies and gentlemen, we are going to take a break, and I would respectfully ask the Commissioner and his staff, as well as everyone else who is interested in testifying, to bring your names up here, because we are going to sit here for awhile today, and we are going to be here all day Wednesday. I would respectfully ask that we reconvene the Committee by 1:45. Is that convenient for you, Commissioner?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: At 1:45, we will reconvene. We stand adjourned.

(Lunch break)

ASSEMBLYMAN ADUBATO: I would like to expedite as much as humanly possible to go through Exhibit E-1, and just say that the letter dated July 8, 1982, which was sent to the Washington office concerning the proposed Federal regulations, meaning the Medicare changes, is sent by Morgan Shumake, and I don't doubt it was sent-- However, there is no signature here. There is no photostat of a signature here.

The letter of July 16 sent by Commissioner Murphy relating to the same issue, the Medicare changes-- There is no signature here on this letter.

ASSEMBLYMAN KOSCO: These are copies.

ASSEMBLYMAN ADUBATO: Yes, they are copies. The letter sent by Colonial Penn, which is a life insurance company, auto insurance company-- I don't know if it is life-- auto-- But, the letter they sent has a signature here, and a photostat of that signature. We do not have the responses from anyone. For the official documentation, there is not one written response to our knowledge of any senior citizens' group or anybody else in government pertaining to this issue. That is a matter of fact to the best of our knowledge and ability.

I'm sorry, yes, sir.

ASSEMBLYMAN KOSCO: While you are talking about responses, Mr. Chairman, I'd like to ask a question of the Commissioner, if I may. When this resolution that was passed, sponsored by Assemblyman Adubato himself, was written, and Mike showed you the resolution and (inaudible) identified that he wrote the cosponsor (inaudible) on the condition that I speak to the Insurance Department first and get their response. I had asked one of our aides to contact your office to send someone down here because we were in session. We waited about an hour or better and no one did respond and come down and discuss it with me, and at that point, I cosponsored the resolution, and of course, we passed it.

My question is, while we are talking about responses, is there any reason why this lack of response did take place?

COMMISSIONER MURPHY: Not that I know of. I'm not familiar with the request. When was it made?

ASSEMBLYMAN KOSCO: The day that the resolution was passed.

COMMISSIONER MURPHY: Do you know who they spoke to?

ASSEMBLYMAN KOSCO: I don't know who-- Helen, the girl who used to be one of our liaisons had contacted your office, and I had attempted twice to make phone calls up there to get someone down here to discuss it with me.

COMMISSIONER MURPHY: Well, I can't understand that-- Really, I obviously have no excuse for that kind of a lack of response. I was not familiar with it, and if I can find out, I'll give you a report on it. Excuse me a minute.

Excuse me, I'm talking to Mr. Morgan Shumake who handles legislation for us.

ASSEMBLYMAN ADUBATO: I'm sorry, Mr. Shumake, do you want to come up to the mike.

MORGAN SHUMAKE: I would just like to say, Mr. Assemblyman, I was present, in this building, the day that resolution was passed. I never received your message. It was part of my job to be here, and I was here that day.

ASSEMBLYMAN KOSCO: So once again, we have a communications problem.

COMMISSIONER MURPHY: Presumably.

MR. SHUMAKE: I was available, but I didn't know you were looking for me.

ASSEMBLYMAN ADUBATO: I don't know if we were able to pick those conversations up, but the response is-- Correct me if I am wrong.

The question from Assemblyman Kosco is recorded properly, I assume. I mean the question. The response was that the Commissioner was not aware of the request in spite of the fact that twice the aide called the Insurance Commissioner's office, but he did not get word of that request, and the person who was assigned to the Legislature, Mr. Shumake, said that he was on the floor at the time that resolution was passed, but he was not aware--

MR. SHUMAKE: I was in the rear of the Chamber.

ASSEMBLYMAN ADUBATO: Oh, I'm sorry, he was in the rear of the Chamber. In the house, sir?

MR. SHUMAKE: Yes.

ASSEMBLYMAN ADUBATO: Oh, so you were on the floor-- in the rear of the Chamber on the floor.

MR. SHUMAKE: I'm not allowed on the floor while you are in session, Mr. Chairman.

ASSEMBLYMAN ADUBATO: You were outside in the hallway?

MR. SHUMAKE: Yes.

ASSEMBLYMAN ADUBATO: Oh, so you weren't inside the room.

MR. SHUMAKE: No, sir.

ASSEMBLYMAN ADUBATO: Oh, okay. Mr. Shumake was standing somewhere outside those doors when the request went into the Insurance Department, and he was not aware of it. I guess that is it; I have nothing more to say on it.

I would like to, just for the record, although it is redundant, I know, to say that as a result of people not knowing, the Assembly, under the leadership of the Speaker, the Chairman of Banking and Insurance, and the Chairman of the Committee on Aging, issued the first published reports to the people of New Jersey, alerting them of what was happening with the Medicare changes. I think that is a fair statement. If someone would like to challenge that, I would be happy to listen.

Commissioner, go ahead.

COMMISSIONER MURPHY: I'm not going to challenge that, but I have an additional piece of information which I would like to share with you at this point-- something I did not know about. It is of interest and I think it has bearing.

During the luncheon break, Mr. Shumake who had--

ASSEMBLYMAN ADUBATO: I'm sorry, sir, they can't hear you.

COMMISSIONER MURPHY: I said that at the luncheon break, Mr. Shumake, who had heard the testimony this morning, thought that perhaps that somebody in our Consumer Relations Unit in the Insurance Department may know something about the problem we discussed-- the knowledge of the senior citizens of the resolution or the proposed resolution. And so, we made an inquiry, and this is what we found out. We have a girl in the back of the room, a young lady who conducts these activities. Her name is Phyllis Sabino, and she goes around the State talking to groups of senior citizens, chiefly on life, accident, health and Medicare problems. She has furnished me, and I have in my hand here, a list of meetings she attended all throughout the State, and she has asterisked the meetings where this subject of the interplay of Medicare and PIP came up and was fully discussed by these people. I will submit a copy of this to you, Mr. Chairman, so you can see the activity that this young lady had. She is here in the Chamber if you care to talk to her.

ASSEMBLYMAN DEVERIN: Do you have the dates of those meetings?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Excuse me, Assemblyman, excuse me, I think that is very important. Commissioner, I would appreciate it if you would have copies made for the Committee so we can have the documentation. Let's give the young lady until Wednesday.

COMMISSIONER MURPHY: Fine.

ASSEMBLYMAN ADUBATO: We are certainly going to inquire about it, and with all this activity, it only compounds the dilemma into why no one ever wrote about it. I'm glad to hear that there was an activity that you were not aware of, and I was not aware of, and I would ask now that the young lady in question produce any and all documentation-- where she spoke and what

she said on any written documentation, as well as any responses from any of the seniors-- pro, con or indifferent. I'm sure it is important that we get this documented.

ASSEMBLYMAN DEVERIN: Mr. Chairman?

ASSEMBLYMAN ADUBATO: I'm sorry.

ASSEMBLYMAN DEVERIN: I would be very interested in the dates when she spoke.

ASSEMBLYMAN ADUBATO: Do you have the dates?

COMMISSIONER MURPHY: No.

ASSEMBLYMAN ADUBATO: No, I don't think that is important, Commissioner.

ASSEMBLYMAN DEVERIN: When we get the paper.

ASSEMBLYMAN ADUBATO: Yes, I think it is important that when she has it documented, and we give her a couple of days to come in, I'm sure being that this activity already took place, it is not difficult for her to go through her files and produce written documentation as to these events.³ I think that is a fair request.

ASSEMBLYMAN KELLY: May I ask a question?

ASSEMBLYMAN ADUBATO: Sure, go ahead.

ASSEMBLYMAN KELLY: I want to get something straight. This Omnibus Bill was passed in 1980, and it takes them two years to come up with regulations?

ASSEMBLYMAN ADUBATO: That is true.

ASSEMBLYMAN KELLY: Is that really true? I mean, that is what I am reading here. It doesn't make sense to me.

COMMISSIONER MURPHY: That is what happened.

ASSEMBLYMAN KELLY: Well, it is very interesting-- really.

ASSEMBLYMAN KELLY: That is fast by their system.

ASSEMBLYMAN ADUBATO: The interesting thing, Assemblyman, is that the Omnibus Bill-- and I'll say it-- was passed by a Democratic administration under President Carter. It had bipartisan support, so it is not a question of Democratic, Republican--

ASSEMBLYMAN KELLY: No, I'm not--

ASSEMBLYMAN ADUBATO: No, I'm saying that, because others have alluded to parties in talking about votes. I did not do that-- for the record. But, for the record, I want people to know that this injustice began under a Democratic administration, it was covered up by a Republican administration, and it is being implemented by a Republican administration. So, they are in the same debt, as far as I'm concerned. I hope that is not an overstatement.

ASSEMBLYMAN KELLY: My point is, I don't understand why it takes two years for regulations to be promulgated. I don't understand that. Is this going to be resolved before June?

COMMISSIONER MURPHY: Actually, the status that we are in now is that the final regulation has been adopted and published in the Federal Register to take effect, as I recall, on June 6, unless legal action is successful in delaying it.

ASSEMBLYMAN KELLY: It means that we are going to give about 300,000 senior citizens heart failure, I would think, with this.

ASSEMBLYMAN ADUBATO: Let me interrupt. I want to move on. I appreciate the-- we can go on with this tonight. We'll be happy to come back, but you can answer the question. I'm sorry, Commissioner.

3. As of the date the hearing transcript was sent to the printer (May 23, 1983), the Committee had not received any documentation from the Department of Insurance.

COMMISSIONER MURPHY: That is all right. I was wondering if it would help if we clarify the record in respect to that vote, so that-- During the luncheon period, information was received from Washington-- I have it here. It is excerpts from the Congressional Record, which show that the vote on this legislation in each house was the way it was presented in my exhibit-- the information given to us by our Washington office. The bill was different in each house, and then it went to a Conference Committee. The Conference Committee adopted a compromise bill, and the vote on the Conference Committee bill is as you stated. The point is made that there was no difference in the House or the Senate bill in respect to the provisions being implemented under this regulation.

It was the opinion of our Washington office that the vote as they presented it to us was correct. I suppose it can be argued that it is the Conference vote which is correct. In either event, that is the reason for the difference between us on the vote count.

ASSEMBLYMAN KOSCO: There is just one more point I would like to make on that.

ASSEMBLYMAN ADUBATO: I would like to respond to that. If you are going to respond to it, fine, but I want to respond to that before we lose it.

Commissioner, we have the official printed copy of the Congressional Record here. I would be happy to share it with you-- not only a photostat, but the entire Congressional Record. Certainly, what you are saying is accurate as it relates to the September vote, not the December vote. Your official statement, and I'm not blaming you for anything-- Your official statement by the people who advise you is that this was the vote in 1980, as it says here, for the Omnibus Bill, which means the bill in its final form became law-- the December bill. That is your statement in this exhibit.

What I said was, the statement is not accurate, and it misrepresents the vote on the implementation of the Omnibus Bill-- Which it does.

I am not blaming you for repeating what was told to you. The only thing I am interested in is getting to the accurate data of who voted for the Omnibus Bill, and who did not vote for the Omnibus Bill? I would like to share with the Committee and the public that I don't think anywhere in our resolution, or anywhere in any communications with you, sir, and your office, did we ask you for the vote. Of course, you are free to give it, but I want to make it clear that we did not ask you or anybody else to give us the vote. We were talking about discussing the issue, and in discussing the issue, you have presented, sir, this exhibit. You relate to the Republicans and Democrats, including Claude Pepper, who voted for this bill. So, it is not the Committee who was a prime mover in discussing the vote on the bill. It was your exhibit and your statement, and we felt compelled that once you submitted this as an exhibit that we received on Saturday morning-- Of course, I reviewed the vote on the Omnibus bill. I admit that-- That this jumped off the page at me, because I knew what the actual votes were.

I have nothing more to say, except that your statement in this exhibit gives a vote on the final bill, and it is not correct. That is my statement. I'm sorry, do you want to say something?

ASSEMBLYMAN KELLY: I want to ask one question.

ASSEMBLYMAN ADUBATO: I'm sorry, go ahead.

ASSEMBLYMAN KELLY: I want to get one thing straight in my mind. Do we have until June of this year to change what might take place with the senior citizens?

COMMISSIONER MURPHY: The final regulation becomes effective, according to the terms as I understand them, in June. That is next month-- June 6, 1983.

ASSEMBLYMAN KELLY: And between now and then, our Congressmen can do something about changing this?

COMMISSIONER MURPHY: I think it is impractical to think that Congress would change it that short period of time. What we are attempting to do is to enjoin or stay the effective date of the regulation, and ultimately invalidate it.

ASSEMBLYMAN DEVERIN: Have any other states joined this action?

COMMISSIONER MURPHY: No, but they have indicated that they may well--

ASSEMBLYMAN ADUBATO: I may help you with that. New York told me that they were bringing suit the day after the regulations were published, which I believe was the fifth of April. New York told me that. Now, whether they did it or not, I don't know. I asked, and I'll say it publicly-- I asked other legislative counsel in this State to bring suit, and they refused to do it. They said that based on the contention of the statute, and I have it here, in their opinion, and the Congressional Record, that no suit, in their opinion-- I'm not an attorney-- that we could not win the suit, based on their opinion, and I already have that here. I'll be happy to share that with you, Commissioner, or anybody else who wants to see it. But, in spite of that, I commend the Governor in bringing the tort action.

I would like to say, before I turn this over to Assemblyman Deverin, that it is not necessary when these regulations are implemented, that the senior citizens' rates are going to double. That is up to the Commissioner, whether or not they double. It has nothing to do with the Federal regulations.

I would also like to submit at this time, because I think it is the opportune time to point out to those present, including the Commissioner and members of the industry, who ripped off senior citizens in this State for four years by charging them a premium for a benefit they couldn't receive-- And, when I challenged the industry on that, Commissioner, they said to me that they made an honest mistake. And I accept that. And, I asked them to make an honest correction, and so far, in men of good will, they have not responded.

I want you to know, Commissioner, that we are looking into a class action suit against the companies in New Jersey for charging senior citizens, for four years, an unjust premium for a benefit they couldn't receive. I would hope that you would take it in your consideration, assuming that the Governor's action does not stop these regulations from going into effect-- that you would take into consideration the events that have taken place prior to you coming to New Jersey, and that you would consider, and maybe ask the companies to swallow a little heart, because I don't think we ought to take revenue from the taxpayers of this State from casinos and bail out the insurance companies. I think the companies have an obligation to correct their honest mistake for charging the senior citizens of this State for four years, a premium they couldn't get a benefit on. I would hope that the members of this Committee would join at the proper time with that, and I certainly would like to discuss that with you.

But, if the Commissioner decides to implement, as some people from the industry-- By the way, I want you to know that Nancy Blethen is here, and she is free to testify on Wednesday, is quoted as saying-- I don't know if it is true or not-- that "if and when these things are ever implemented, it is no big deal." And, I am paraphrasing-- "That the seniors are really not losing anything." That, in essence, was her statement, including, I believe,

a representative from Allstate. I forget his name, who made a similar comment. I have those newspaper articles here, and if they decide to testify, I'll be glad to question them on that to defend that, if they think there is any defending necessary. But so far, they have not asked to testify, and they don't have to. They don't have to, but they are certainly welcome.

I would just like to say to you, Assemblyman, because I know you are concerned about the rates of senior citizens, as you pointed out before with the ISO thing, that as a direct result of this charade to go on without anyone in the State knowing about it who counts, and they are the people who have to pay for it, the cheapest increase-- the smallest increase is \$58.00-- the smallest increase to every senior citizen. And those are the people in the lowest rated territories that will go up \$58.00. That is the projection I have, and I'll be glad to discuss it.

The highest increase is going to happen again to those bad drivers in Newark, whether they have accidents or not. They are only going to go up \$114.00.

I submit that that is important, and I submit that the State of Tennessee which was projected as the lowest cost of auto insurance by the Best Report, which showed New Jersey as the highest-- As a direct result of the implementation of these regulations, Tennessee, along with seventeen other states which do not have compulsory insurance of any kind-- PIP or liability-- that the senior citizens who are driving in those states legally and who are involved in an accident, will still be covered by Medicare, and our tax dollars are going to pay for it. So, in addition to the people of New Jersey receiving an increase, because we don't have a duplicate coverage-- we have eliminated that. You know, Heckler's letter is wrong. We don't have that duplication, but we are also going to be forced to subsidize those 18 states-- minimum of 18 states-- there are more, because the congressional ruling states that there has to be a reasonableness of recovery before

Medicare is primary. And, they do not consider financial responsibility as reasonable recovery, which means that those states-- those 32 states that have compulsory liability, are lumped with those states which have financial responsibility, are together. We have yet to find out, and maybe, Commissioner, your office can help us-- We have not yet been able to find out what states have financial responsibility and not mandated liability or PIP coverage, because we don't know. I admit it, but at least 18 states are going to be subsidized by the people of New Jersey, by the people of New York. And, by the way, New York, because they only have a maximum of \$50,000 under PIP, only reduced their rates in December of 1977 40%, not 100% as we did. We cut them in half, or 50%, of you will. They reduced 40%.

So, it would be obvious to assume, and I could be wrong, that in the State of New York which has compulsory PIP of \$50,000-- They reduced their rates 40%.

In the State of New Jersey where we have unlimited medical coverage-- we can go to \$10 million and beyond-- we reduced our rates 50%. So according to that data, the differential between the state that has \$50,000 of PIP coverage and the state that has unlimited coverage, is 10%. Now, that is only an observation of facts. I just want to share that with everyone today, when we talk about reducing PIP as an answer to cost containment. I just thought I would throw that in.

I apologize for going into facts.

ASSEMBLYMAN DEVERIN: Mr. Chairman?

ASSEMBLYMAN ADUBATO: Yes, Assemblyman?

ASSEMBLYMAN DEVERIN: I just want to ask the Commissioner again, more for a personal point of information-- Are there other states-- Federal regulations have been postponed a thousand times. The OFFCC does it all the time, EEO does it all the time, the Department of Labor-- Are there any other states joining with us in this lawsuit, and that was the question I asked-- to get the regulations postponed, or stopped?

COMMISSIONER MURPHY: I can't answer that specifically, except to say that representatives of our Department and the Attorney General's office have conferred with New York. Whether or not there will be joint action, I think, is a matter of legal strategy, which is being explored.

ASSEMBLYMAN DEVERIN: Okay, because these figures are frightening. I am sure they are frightening to you, as well as they are to me. Thank you.

ASSEMBLYMAN ADUBATO: Moving right along, I would like to move on to-- And, by the way, I want you to know that anyone is free to contact this Committee at any time with any information or data, and if anyone wants to testify Wednesday, we'll certainly stay here as long as necessary right through the night. We are not leaving here Wednesday until every single person who wishes to testify testifies. We will stay here as long as necessary, so tell your friends to come and join us.

Now, let's go on. We are going to, with the Committee's permission, deal with Item 7.

Item 7, for those who do not have the benefit of reading this, as reported by the Commissioner in his statement, is entitled "Hooper's Statement."

"In response to press inquiries about the effect of the capping provisions of A-1696, our Press Officer, Mr. Hooper, dealt with the average, not minimum increases, on uncapped cars." No reference was made to good or bad drivers. The reference was to the effect on cars in uncapped territories. "His \$6.00 estimate was based on calculations developed by our Actuarial Department, a copy of such calculations is attached as Exhibit F." That is the Commissioner's response to that inquiry on A-1696.

In order to get a picture of A-1696, I think, first, we ought to know what it did, and what it does. Otherwise, we are going to be here for a long time, although we still may be here for awhile.

A-1696, for the record, is a bill that was sponsored by me, originally as Assembly Bill A-3050, 51, 55, or something like that, and it then became Assembly Bill A-3455, and then became Assembly Bill A-1760-- By the way, before it became A-1696, the Assembly bill passed 69 to 4 in this house, and 30 to 5 in the Senate on two different occasions, and was vetoed by the former Governor for his own reasons, which it doesn't serve any purpose to get into. Assembly Bill A-1696, in dealing with the documentation, again, in the exhibits-- I would like to have them, before I go any further-- In Exhibit F-- Now, when we talk about Exhibit F, that is the calculation, but we are going to talk about Section 7 and Section 9 at the same time.

Section 9 says "Other Matters." These are the matters that we left open for the Commissioner to feel free to discuss. These were not matters that the Committee invited.

But certainly, without restriction, we wanted the Commissioner to bring out anything he so desired. This is the thing, among other things, that the Commissioner has asked to respond. He says, "Other Matters, A-1696: On August 13, 1982, I wrote to the Chairman of your Committee about possible amendments to A-1696. No response was received to my letter, and although a few of the points considered therein were dealt with. In subsequent legislation, a number of items remain for consideration.

"(B) Proposed Future Legislation: While presently I have no specific recommendations beyond legislation already introduced and mentioned above, I am mindful that we may wish to consider the possible repeal of compulsory liability insurance and the curtailment of PIP benefits, particularly if satisfactory cost containment results are not otherwise attainable. You will recall Governor Kean, in his campaign, suggested the possible repeal of compulsory in connection with the reform of the auto reparation system. Finally, and perhaps most importantly," in response to next to the last paragraph of Exhibit A, "I must record my hope that your investigation is not permitted in any way to divert your Committee's attention from the prompt consideration and, hopefully, the passage of auto reparations cost containment legislation such as A-1747, which has been pending before your Committee since July 8, 1982. Reducing the cost of your New Jersey automobile reparations system is the only way immediately at hand to stabilize or reduce auto rates for all New Jersey drivers."

We are going to deal with Sections 7 and 9, and we'll go back and forth so everybody can get a conceptual view. Commissioner, it is obvious from the press reports that I've looked at, that you don't hesitate to mention in your press reports legislation that you support. Is that a fair statement?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: It is also a fair statement to say that even in the course of your interviews that you have mentioned specific legislation that you support.

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: It is a fair statement.

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Commissioner, do you support Assembly Bill 1696?

COMMISSIONER MURPHY: Yes, it was a bipartisan bill. The Administration endorsed it, so I would support it.

ASSEMBLYMAN ADUBATO: When did you decide to support that, sir? Do you recall?

ASSEMBLYMAN ADUBATO: You never heard that from anyone in the industry? No one ever told you in the industry that the Governor was against our JUA bill in his official position?

COMMISSIONER MURPHY: No.

ASSEMBLYMAN ADUBATO: I believe that naturally, but no one in the industry ever said that Governor Kean had said, when he was running for Governor-- And, I have the quote here, and I have the official document. In fact, it came from the Insurance News Service that printed the total article. Nancy Blethen was good enough to mail me a copy when I called her. I think that is her name; maybe I am mispronouncing it. If I am, I apologize. But when I called the Insurance News Service and Nancy Blethen, because the Insurance News Service had printed an article during the gubernatorial campaign saying that Governor Kean-- And I was the only legislator mentioned by name. I was so proud of that. But, of course, they misspelled my name too. It is not Smith, but that is okay. That is not important.

What is important is, is that the Insurance News Service carried the story in which Governor Kean said that he would never sign the Adubato JUA Bill into law because it would cause massive rate increases for senior citizens and reduce the rates of the urban drivers and the teenage drivers." That is more or less a quote, a paraphrase of what he said. I'll be happy to share it with you; I'll even give to you, in fact. But, that is what he said in his official position when running for Governor based on the information that was given him.

When you became Commissioner, it was in the second month of the new Administration, I believe. Was it February-- the early part of February?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: The number item on the Democratic platform for things to be done was the JUA Bill. Were you aware-- You weren't aware of that, I'm sure. How would you be? As sponsor of that bill, knowing that every member of the Governor's Cabinet who had served in the Legislature had voted for that bill, in spite of the fact that the Governor said he would not sign it, including the Governor's Counsel, Cary Edwards, and every other Republican in the Cabinet voted for that bill, in spite of the fact that Governor Kean said that he wouldn't sign it. Based on information that was given to him by some industry types who did not represent the bill accurately to him, he made that decision. And, the thing I'm trying to get at is, that you had no knowledge of this at all, and I accept that-- coming here, right? That is a fair statement.

The media prints most of the things you say. I mean, they may change things or-- Let me ask you this: Do you think that you have been accurately reported for the most part by the media?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Generally, yes. I think that is a good observation. Generally, they are pretty accurate. So, if you had made any comment about A-1696 in an interview, do you think it would have appeared as something that should be done or might be done-- if you said it is something that should be done?

COMMISSIONER MURPHY: I can't answer that question.

ASSEMBLYMAN ADUBATO: Well, have you ever said it is something that should be done? Have you ever, in the media, in any press release from the Insurance Department, mentioned the fact that Assembly Bill 1696 should be signed into law?

COMMISSIONER MURPHY: I don't recall if I ever said it in those specific terms. I don't recall that.

ASSEMBLYMAN ADUBATO: Have you ever said that Dean Gallo's \$1500 threshold should be signed into law?

COMMISSIONER MURPHY: Yes, I have.

ASSEMBLYMAN ADUBATO: How many occasions, do you know?

COMMISSIONER MURPHY: Many occasions.

ASSEMBLYMAN ADUBATO: Many, many occasions.

COMMISSIONER MURPHY: Many occasions.

ASSEMBLYMAN ADUBATO: Many. How about the Fraud Bill? How many times did you say that should be signed into law? Many, many occasions?

COMMISSIONER MURPHY: Several.

ASSEMBLYMAN ADUBATO: Several?

COMMISSIONER MURPHY: Many, sure, whenever I have an opportunity to, I do.

ASSEMBLYMAN ADUBATO: I would say so, because I have them all here. In almost every press release in the not too distant future, you have been mentioning them, no matter what bill you are talking about-- sooner or later we get to the position of signing Dean Gallo's \$1500 threshold, the Fraud Bill, and the Medical Fee Schedule. I think that is a fair statement.

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: And, that is because you support these bills.

COMMISSIONER MURPHY: That is right.

ASSEMBLYMAN ADUBATO: But, you also supported A-1696, but you never mentioned it to the best of your knowledge in any press release.

COMMISSIONER MURPHY: It was hardly necessary for me to do so, in view of it being a bipartisan bill. It didn't really require my support. It passed unanimously, I believe, in both houses, did it not?

ASSEMBLYMAN ADUBATO: So, then you agreed. Did you agree with the provisions in A-1696, or did you attempt to change them?

COMMISSIONER MURPHY: I have attempted to amend the bill to make it a better bill, and that is included in the material I sent to you back in August of 1982. I was attempting to make the bill a more workable bill. I didn't bring that correspondence with me today.

ASSEMBLYMAN ADUBATO: Well, let me tell you what it is. You had in your letter what you called primary considerations. You made a list of primary considerations. Let me tell you what you said. One, as a primary consideration, you wanted to eliminate-- Under primary considerations, you suggested that we eliminate the leveling of taxes. That was one of your primary considerations.

COMMISSIONER MURPHY: Flattening of taxes?

ASSEMBLYMAN ADUBATO: Yes, sir.

COMMISSIONER MURPHY: Yes, sir.

ASSEMBLYMAN ADUBATO: You were against that. You said--

COMMISSIONER MURPHY: I wasn't against it, I--

ASSEMBLYMAN ADUBATO: I'm sorry, go ahead.

COMMISSIONER MURPHY: I was not necessarily against it. It didn't occur to me how it was to be accomplished. I thought it was a technically difficult, if not impossible, thing to do. That was the question I raised. I am at somewhat of a disadvantage, not having the letter before me.

ASSEMBLYMAN ADUBATO: I will not, because I think it is fair that you get a copy of that, because I don't have a copy here.

COMMISSIONER MURPHY: I don't have a copy with me.

ASSEMBLYMAN ADUBATO: I'm giving it to you from memory. I may have a copy in my bag, but I don't think I want to turn around and get it yet. We'll just wait.

COMMISSIONER MURPHY: Well, we can have it on Wednesday.

ASSEMBLYMAN ADUBATO: Absolutely, but I'll continue to the best of my recollection for the record. And, I'll stand corrected if I'm wrong on Wednesday.

Two, you were against a one tier in the JUA. Is that a fair statement? You did not want the JUA to be a one tier.

COMMISSIONER MURPHY: As a matter of philosophy, I thought we should have more than a single tier in dealing with this. However, the bill provides for a single tier. It's law, and I'll enforce it.

ASSEMBLYMAN ADUBATO: Commissioner, I will, in all fairness to everyone, I will get off this, and we'll wait--

COMMISSIONER MURPHY: We'll get the letter.

ASSEMBLYMAN ADUBATO: (continuing) -- to Wednesday. I have the letter.

COMMISSIONER MURPHY: Well, I have it too.

ASSEMBLYMAN ADUBATO: I'll respectfully wait until we both have it, and we can discuss it intelligently, because certainly, my memory is suspect too. But, I think it is a fair statement for the record to say that, to the best of my knowledge, you have never put out a press release endorsing Assembly Bill 1696.

COMMISSIONER MURPHY: On the other hand, I think it should be fair to note that it was never necessary for me to do so.

ASSEMBLYMAN ADUBATO: I'm not saying it was or it wasn't. To the best of my knowledge, there is only one mention in all the press releases that you've issued since you have been in office, and there is one phrase in one of those press releases where you mentioned the bill at all-- in all of your press releases since you've been here-- just one phrase at one time where you mentioned the bill.

I'm going through this for a very good reason. On September 30, 1982, in a story in the Philadelphia Inquirer, you are quoted in this story, and I will not go through the quotes of other people and lobbyists-- "State Insurance Commissioner, Joseph Murphy said, there are some things within the JUA, the Joint Underwriting Association approach which are probably helpful. I don't want to indicate that it has no value in and of itself. It does, of course. It will be a convenience to producers and agents, and to the extent it is helpful to them, to an extent it is helpful to their clients, the insurance public. But, it won't reduce rates, and it won't reduce assigned risk pool in and of itself."

Later on in the article, it says, "The reason you supported Adubato's bill is that in legislation, which you recognize is the art of compromise, you want to get as many people together on as many things as you can. Some people, especially some legislators, very much want this bill. What we are trying to do is to put together something that everybody can support. There is no harm in the bill, and in some ways, it is a step forward," Murphy said. Is that a fair observation of your quotes?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Thank you.

COMMISSIONER MURPHY: Could I add one more point here?

ASSEMBLYMAN ADUBATO: Go ahead.

COMMISSIONER MURPHY: Mr. Shumake handed me a note to remind me that he represented me and the Department and testified for the bill before your Committee, and a written statement was read.

ASSEMBLYMAN ADUBATO: That is very interesting, and I'm sure if Mr. Shumake said it, he did it. I don't remember, but I would accept Mr. Shumake's comments. But, I certainly don't remember them, and I admit that.

COMMISSIONER MURPHY: Well, Mr. Shumake volunteered to submit on Wednesday a copy of the statement he made before your Committee.

ASSEMBLYMAN ADUBATO: That is terrific. So, there is a statement on the bill.

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Oh, that is wonderful.

COMMISSIONER MURPHY: In favor of the bill on behalf of the Department.

ASSEMBLYMAN ADUBATO: Oh, that is wonderful, but I don't want to lose your attitude on the bill. I don't want to lose your art of compromise in something that you said is not harmful, and in some ways, does some good. That is the same bill that the Governor of this State, when he supported it, said it was the most dramatic thing to happen in the State of New Jersey over the past decade, in spite of the fact that it doesn't address all of the problems. He said in his press conference that it was one of the most meaningful packages ever passed in this State, but certainly, you and the Governor have a right to disagree.

I would refer quickly to that kind of climate and the fact that not in one interview in the media did anyone talk about this bill from your Department, with the exception of-- I'll accept Morgan's comment. Morgan has been very helpful to the Committee, and I want to put that on the record. Morgan knows that I am not too quick to compliment, but he deserves it. He has been very helpful.

Up until February 6 of 1983, from July 1982 until February 6, four days before the bill was signed, the Governor made the announcement that he was going to sign the bill on February 10 at a press conference that he called. Up until that time, the Insurance Department of this State, through its Public Information Officer, or anybody else, I did not see anything in the media about the bill coming from the office specifically, except those

things we have already stated, and we will talk about the things we already mentioned. But, four days before the bill was signed into law, Ann Brenoff, staff reporter from The Asbury Park Press, had an article in that newspaper. This article was picked up throughout the State by other media, and was repeated over and over and over again. What the article deals with is the JUA Bill, and the impact-- and I will-- She makes a litany of things here, but I would like to concentrate on this. "There is little disagreement that New Jersey's Automobile Insurance Program is in need of major reform. The State labors under what has been described as the country's worst no-fault insurance law, and New Jersey motorists pay premiums now that are higher than anyone else's. Will those things change as a result of the law the Governor is about to sign? Not likely, is the general conclusion. In fact, the best estimate of what this bill will do to motorists' premiums comes from the State Insurance Department." This is four days before the Governor signed the bill.

"Thomas Hooper, spokesman for the Insurance Department, said, 'The average insured driver will pay \$6 more during the first year, 1984. This is a result of a cap provision contained in the law, which limits that portion of the premium charges which are based on residence under existing law,' and so forth and so on. And, he talks about the cap provisions in there.

"The results of this will mean that some premiums will go down, such as those in Newark, Camden, and Jersey City, residents who now pay high premiums and who will benefit by the geographical cap of the new law. Some 57,000 car owners of New Jersey's 3.9 million motor pool are expected to see reductions from this provision. But, the money those drivers would have paid in premiums will have to be made up by those who live in the territory which previously enjoyed lower rates because of the area safety record, specifically the suburbs. Just about everybody can expect an 11.5% increase," and so forth and so on.

Now, in fairness to Mr. Hooper, that is another paragraph that sort of slides into that. I don't know if that is relevant to Mr. Hooper's statement. I'll ask him, but the way I read it, I don't know if he said that or he didn't say it. But, on the quote, the effect of this article, where Thomas Hooper, the spokesman for the Insurance Department, said, "The average insured driver will pay \$6 more during the first year." And then it goes on to talk about the capping.

Subsequent stories on this by Ms. Brenoff to legislators in Ocean and Monmouth Counties specifically brought about statements that the Insurance Department says, "The restructuring of rates to give city dwellers a break will mean everyone else will pay an average increase of \$6." This is the follow-up story. This is on February 9 from the follow-up of the February 6 story.

"And people go on to say that they were never told about that-- different Senators. And, if they had known about that that the fact of the impact of this legislation would cause a \$6 rate increase for every average good driver in the State, they never would have voted for the bill."

Commissioner, I'd like to ask you, sir, is it your observation that the implementation of Assembly Bill 1696, as an impact, will cause an average \$6 increase for every other good driver in this State, outside of the cap territories?

COMMISSIONER MURPHY: All I can say is, what our Actuarial Department has provided here, and you have a copy of it-- That is Exhibit F. This exhibit speaks for itself. We have the individual here who put this together, and we'll make--

ASSEMBLYMAN ADUBATO: Commissioner, let me help you. I do not challenge any actuarial data. I accept that as totally accurate.

Let me repeat the question as was reported in the media. "The Insurance Department says, the restructuring of rates to give city dwellers a break will mean everyone else will pay an average increase of \$6." That is what this says; it doesn't talk about capping of-- It doesn't talk about anything. It says, "Everybody else, as result of the implementation of Assembly Bill 1696, will pay \$6." Do you agree with that statement?

COMMISSIONER MURPHY: I don't agree with the statement as stated, I--

ASSEMBLYMAN ADUBATO: Well, if you don't-- Go ahead.

COMMISSIONER MURPHY: Sir, I agree with the statement as I presented it in my statement to you, and let me read that in context.

If you will turn to page 6, item 7, "In response to press inquiries about the effect of the capping provisions of A-1696, our Press Officer, Mr. Hooper, dealt with the average, not minimum, increases on uncapped cars." No reference is made to good or bad drivers. The reference was to the effect on cars in uncapped territories, and the \$6 estimate is supported by this data. That is an average figure; that is not every car.

ASSEMBLYMAN ADUBATO: I am not challenging that data. Again, Commissioner, I think that is very accurate data.

Let me get back to the question. The question, not your answer, was to show documentation that would prove that as a result of the implementation on January 1, 1984, the so-called Adubato bill, Adubato/Gallo bill, or the Gallo/Adubato bill, according to whether you are a Democrat or a Republican, in spite of who the real sponsors are-- Regardless of that, what I am asking you, sir, is on January 1, 1984, as a direct implementation of that bill, is it an accurate statement to say that the Insurance Department says, "The restructuring of rates to give city dwellers a break," meaning the capping, "will mean everyone else will pay an average increase of \$6"?

COMMISSIONER MURPHY: Now you stated the question a little differently. Everybody--

ASSEMBLYMAN ADUBATO: No, I'm only reading what was in the newspaper.

COMMISSIONER MURPHY: I didn't write the newspaper.

ASSEMBLYMAN ADUBATO: Well, they are saying that that was given by Mr. Hooper.

COMMISSIONER MURPHY: I am content to stand on the statement I make in my response. Now, if you would like to talk to Mr. Hooper, talk to him later. I didn't make the comment.

ASSEMBLYMAN ADUBATO: No, I'm only asking what your impression is of the impact. Let me ask it this way.

COMMISSIONER MURPHY: The impression of the impact is as I stated. It is going to differ by territory, by risk, by classification, but according to this actuarial sheet, it will average about \$6 in the uncapped territories.

ASSEMBLYMAN ADUBATO: So, would it be a fair statement to say that when this bill is implemented, that as a total impact of Assembly Bill 1696, that some people will go up \$6, some people will go up less than \$6, some people more than \$6, and only those people in the capped territories will have a decrease. Is that a fair statement?

COMMISSIONER MURPHY: That is generally the thrust of it.

ASSEMBLYMAN ADUBATO: Okay.

COMMISSIONER MURPHY: May I say it another way?

ASSEMBLYMAN ADUBATO: No, I heard what you said.

COMMISSIONER MURPHY: It is a redistribution of the --

ASSEMBLYMAN ADUBATO: I heard what you said, and I'm going to help you. Commissioner, how many people are in the Assigned Risk Program in the State of New Jersey? Do you know?

COMMISSIONER MURPHY: Yes, approximately there is about-- Well, 40% of our market is in there. We're looking at-- I've got the exact figures in my bag.

ASSEMBLYMAN ADUBATO: Approximately.

COMMISSIONER MURPHY: It is about 1.4 million.

ASSEMBLYMAN ADUBATO: How many of those drivers are defined as being good drivers in a sense that they have no chargeable accidents and no points?

COMMISSIONER MURPHY: I think about three quarters of them.

ASSEMBLYMAN ADUBATO: Would you say about a million? Would you accept a million?

COMMISSIONER MURPHY: I would accept that.

ASSEMBLYMAN ADUBATO: How many of those people have collision coverage?

COMMISSIONER MURPHY: I really don't know. I would--

ASSEMBLYMAN ADUBATO: Do any of your actuaries want to help you, if it is okay with you?

COMMISSIONER MURPHY: Well, I don't know whether it is an actuarial problem or not. If anyone would know that--

ASSEMBLYMAN ADUBATO: I know. Does anybody in your Department know?

COMMISSIONER MURPHY: I don't know. Rick? Let's see who we have here. Warren, would you have an opinion? We can produce it; we just don't know.

ASSEMBLYMAN ADUBATO: For the sake of discussion, let's say there are some people in that million who are good drivers and who have collision, maybe one--

COMMISSIONER MURPHY: Oh, undoubtedly there is a number.

ASSEMBLYMAN ADUBATO: Maybe several hundred thousand, maybe 480 thousand, maybe--

COMMISSIONER MURPHY: Well, if you have the numbers, I'll accept them.

ASSEMBLYMAN ADUBATO: I mean, I am just saying, somewhere between one and a million people have collision coverage.

COMMISSIONER MURPHY: Sure, that is right.

ASSEMBLYMAN ADUBATO: Would you accept the fact that 85% of the people in the Assigned Risk reside in suburbia, in rural New Jersey, and less than 15% reside in all of the urban areas of New Jersey put together? Would you accept that fact?

COMMISSIONER MURPHY: Will you state the facts again, please?

ASSEMBLYMAN ADUBATO: 85% of all the drivers in the Assigned Risk Program live in suburban and rural New Jersey, and only 15% live in all of the urban areas-- all of the cities in the State of New Jersey.

COMMISSIONER MURPHY: That may well be right. I would like to check that, but generally the Assigned Risk plan follows the distribution of vehicles throughout the State.

ASSEMBLYMAN ADUBATO: Well, let's find out. You have all of your brain trust here. Is there anyone who would like to offer an opinion, sir, with your permission, if that is an accurate statement? Is there anyone in the Insurance Department? I believe you have your Chief Actuary here, your Public Information Officer, your Assistant Actuary is here, your legal counsel is here. Is there anyone in the Insurance Department who knows if that figure is accurate or not?

COMMISSIONER MURPHY: Mr. Cooper is here. Warren, do you have an idea?

WARREN COOPER: The figure which was given was determined within the policy range. I don't know the exact amount. It could be 15, 17, or 18%

ASSEMBLYMAN ADUBATO: I'm sorry, I can't hear you.

MR. COOPER: I said you are absolutely right. The plan population is weighted heavily in the non-urban territories.

ASSEMBLYMAN ADUBATO: Well, I submit to you that 85% of the plan is the non-urban area. That is a fact. I challenge you to disprove it, Mr. Cooper, or anybody else who would like to-- with data.

Is it also true that when you eliminate the Assigned Risk and you implement A-1696 on January, 1984, that those people in the Assigned Risk who are paying 30% more for collision premium, who have a good driving record, will their premium go down?

COMMISSIONER MURPHY: Well, my recollection of A-1696 is that the ISO rate will be the rate to be used by--

ASSEMBLYMAN ADUBATO: Yes, but aren't those people now paying 30% more than the ISO rate?

COMMISSIONER MURPHY: Some of them are, yes.

ASSEMBLYMAN ADUBATO: No, no, not some of them, sir. I submit all of them.

COMMISSIONER MURPHY: On the physical damage side, I believe it is higher. That is true.

ASSEMBLYMAN ADUBATO: Well, I submit to you that it is 30% higher. Would some of your actuaries like to help me again? Maybe it will help both of us. Mr. Cooper, would you like to respond?

MR. COOPER: Yes, the base territorial rates that apply within the plan are 30 points higher than those that shown for ISO.

ASSEMBLYMAN ADUBATO: Thank you, sir.

MR. COOPER: That is in lieu of a class plan.

ASSEMBLYMAN ADUBATO: Thank you, sir.

MR. COOPER: (Inaudible) a class plan as ISO rates do so on average, they come out the same.

ASSEMBLYMAN ADUBATO: Thank you, sir. It is 30% higher. You know, there is industry jargon, and there is what people pay for their premium. It is 30% higher, isn't that what you said, for the record? Is that your opening statement?

MR. COOPER: I said the base rate.

MR. COOPER: 30% higher.

ASSEMBLYMAN ADUBATO: I've manage to learn that, too, from you. Okay, so they are paying 30% more.

COMMISSIONER MURPHY: No, I think in all fairness, you should hear what he said.

ASSEMBLYMAN ADUBATO: I heard exactly what he said.

ASSEMBLYMAN KELLY: I don't understand what anybody said yet. What are saying?

ASSEMBLYMAN ADUBATO: He is saying that they are paying more for their insurance. Is that a fair statement or not? Are they paying more for collision coverage or not? Yes or no?

MR. COOPER: No.

ASSEMBLYMAN ADUBATO: They're not?

MR. COOPER: On average.

ASSEMBLYMAN ADUBATO: Pardon?

MR. COOPER: On average.

ASSEMBLYMAN ADUBATO: I'm not talking about on average. I'm talking about an individual who is in the Assigned Risk, living in Toms River, Newark, or any other territory. Are you saying to me that his total

dollars for collision and the physical damage are the same as his next-door neighbor who is in the voluntary market?

MR. COOPER: No, the base rates are not the same.

ASSEMBLYMAN ADUBATO: I'm talking about his total premium.

MR. COOPER: It can differ depending upon what classification he is in.

ASSEMBLYMAN ADUBATO: I realize that, and I already know that, and I already know that youthful operators get a break, but the adults don't.

MR. COOPER: That is right, that is why--

ASSEMBLYMAN ADUBATO: Oh, that is right. Yes, I know that. Well, let me say it again. I do know that, and the fact that your half truths deal with the smallest percentage of the market is indicative of avoiding the issue. And, the issue is, that in the Assigned Risk, every adult class pays more for physical damage insurance than those people in the voluntary market. Would you accept that?

MR. COOPER: (Inaudible)

ASSEMBLYMAN ADUBATO: Thank you, sir. Did that answer your question, or no?

ASSEMBLYMAN KELLY: That answers part of it. What about the other parts-- the bad drivers?

ASSEMBLYMAN ADUBATO: Yes, now that is another story. That is another story. The point here is that every adult driver in the Assigned Risk who lives in suburbia and rural New Jersey-- not the cap territories-- is going to receive a rate reduction when the JUA Bill is signed into law. Now, I submit that as a fact. Would you like to disprove that, Mr. Commissioner, or anybody else on your staff?

COMMISSIONER MURPHY: Do you have any comments on that, Warren? I'd rather him handle this.

MR. COOPER: Again--

ASSEMBLYMAN ADUBATO: Mr. Cooper, why don't you come up here? We'll take the time. Come on. Thank you.

MR. COOPER: I would ask Mr. Boer to correct me if any of my details are mistaken. He lives with this on a day-to-day basis much more than I do.

The AIPSO physical damage rates are based upon the ISO, what is called the Alternate Class Plan. That is an Alternate Class Plan, which was devised for a variety of reasons, and it does not use the regular classification rating classes, as there are hundreds of classes. That applies in AIPSO only on the liability cases, so to make up for the imbalance on that, the amount is surcharged in the base rates at 30%. That means that certain people will be paying less than they would if their class plan applied, and others will be paying more. It is simply a different way of achieving the premium.

ASSEMBLYMAN KOSCO: It's a different way of achieving the premium. It is a different way of achieving the total premium as far as the insurance company, but doesn't it-- doesn't the fact of it--isn't it set up so that people who should be paying more are paying more, and the people who should not be paying more should not pay more? In other words, doesn't it benefit the good driver with the good record? And penalizes, rightfully so, the driver with the--

MR. COOPER: No, because if anybody in the plan with a bad record, as such, as defined in the plan,--

ASSEMBLYMAN ADUBATO: Does that mean if they have 6 points, is that a bad record?

MR. COOPER: That means--

ASSEMBLYMAN ADUBATO: And they are surcharged 40% of their base rate, plus, plus?

MR. COOPER: That is right, plus.

ASSEMBLYMAN ADUBATO: But, their next-door neighbor, the 2.1 million or so that are in the voluntary market, insured by the same company, getting 6 motor vehicle points or even 10 motor vehicle points are not surcharged one penny by any company with the exception of Travelers that I know of? There may be more, but I don't know of any more in Travelers.

MR. COOPER: They are subject to the Safe-driver Insurance Plan.

ASSEMBLYMAN ADUBATO: No, let me say that again. I am insured with State Farm-- Allstate-- Prupac, and I am in the voluntary market, and my next-door neighbor goes and is refused insurance and they go into the pool and they get a State Farm policy, or they get a Prupac policy, or an Allstate policy. Under the previous law, the previous system, if I went out and got six motor vehicle points, and I am in the Assigned Risk, and Louie is also insured with State Farm, and he is in the voluntary market, and he gets 6 motor vehicle points on the same day with the same trooper with the same offense, isn't it an accurate statement to say that I, in the residual market, am surcharged 40% of my base rate or not?

MR. COOPER: That is correct.

ASSEMBLYMAN ADUBATO: And, he is not.

MR. COOPER: He is surcharged, but not to the same extent.

ASSEMBLYMAN ADUBATO: How is he surcharged?

MR. COOPER: Through the Safe-Driver Insurance Plan.

ASSEMBLYMAN ADUBATO: How?

MR. COOPER: Because, under these plans, there are surcharges, among all almost all filers in our State, not all-- There are--

ASSEMBLYMAN ADUBATO: Would you tell us the companies that do it? Would you tell us the companies that surcharge 40% of the base rate?

MR. COOPER: No, they do not.

ASSEMBLYMAN ADUBATO: (continuing) for six points? I don't know of any.

MR. COOPER: I did not state that they surcharged 40%. I said they surcharged a lesser amount.

ASSEMBLYMAN ADUBATO: Oh, will you tell us the companies that surcharged a lesser amount?

MR. COOPER: The ISO companies, Traveler's, Aetna--

ASSEMBLYMAN ADUBATO: Traveler's, Aetna, you said. Who else?

MR. COOPER: Oh, I'm sorry, here is-- all right. I'm sorry--

ASSEMBLYMAN ADUBATO: I'm sorry, sir, do you want to make a correction?

MR. COOPER: Yes, I want to clear up a misunderstanding.

ASSEMBLYMAN ADUBATO: Oh, clear up a misunderstanding. Go right ahead.

MR. COOPER: All right. The companies in the voluntary market do not base their Safe Driver Insurance Plan upon points.

ASSEMBLYMAN ADUBATO: Isn't that what I said?

MR. COOPER: Yes, I'm sorry, you and I were--

ASSEMBLYMAN ADUBATO: I accept your apology.

MR. COOPER: We were talking about different things.

ASSEMBLYMAN ADUBATO: No, we're not. We're not talking about different things. You are; I'm not. Go right ahead. I accept your apology.

MR. COOPER: The Safe Driver Insurance Plans are based on accident record and on violations. Now, those give rise to points in some cases, so it is not a one-to-one correspondence.

ASSEMBLYMAN ADUBATO: What does that have to do with what I said?

MR. COOPER: The person with six points will normally--

ASSEMBLYMAN ADUBATO: With no accidents--

MR. COOPER: (continuing) -- will normally have had a violation or an accident that gave him those points--

ASSEMBLYMAN ADUBATO: Oh, really?

MR. COOPER: (continuing) -- And that will give him a surcharge in the--

ASSEMBLYMAN ADUBATO: --voluntary market? Oh, really?

ASSEMBLYMAN KOSCO: In other words, if you just get points, but without an accident, you're not affected.

MR. COOPER: Some companies use only accidents; other companies, and I couldn't tell you which ones, use violations as well.

ASSEMBLYMAN ADUBATO: Get me the motor vehicle list.

ASSEMBLYMAN KOSCO: But, would it be correct to say that most of the companies, the majority of them, use accidents?

MR. COOPER: Yes.

ASSEMBLYMAN KOSCO: (continuing) -- Rather than points, so someone could cause-- Mike could cause me to have an accident, and I would get the increase, but he wouldn't if he got a ticket.

MR. COOPER: If you were at fault, yes.

ASSEMBLYMAN KOSCO: Well, I'm just trying to clarify things, because he is saying--

ASSEMBLYMAN ADUBATO: What I am speaking about has nothing to do with accidents. It may, but it directly has no relationship with accidents. What I am saying is very clear.

Let me try again to communicate. I am suggesting, Mr. Cooper, that in New Jersey under the old system, a good driver in the voluntary market, a good driver in the residual or Assigned Risk market, receives 6 motor vehicle points. If you would like to look on how you can accumulate 6 motor vehicle points without having an accident, I'd be glad to share it with you. This is the motor vehicle point system; it has nothing to do with accidents. It may.

MR. COOPER: That is what I said.

ASSEMBLYMAN ADUBATO: It may, but we're not talking about those points that are accumulated by accidents. We're talking about the points that are accumulated by motor vehicle violations that subsequently become convictions. That is all we are talking about. Is that a fair statement to you, Lou? Do you understand what I'm talking about?

ASSEMBLYMAN KOSCO: Yes.

ASSEMBLYMAN ADUBATO: I'm sorry, Mr. Cooper, I didn't mean to interrupt you. Go right ahead.

MR. COOPER: The ISO plan involves violations as well as--

PERSON FROM AUDIENCE: It involves serious violations such as driving while intoxicated, leaving the scene of an accident; it does not involve things like receiving tickets or disregarding a stop sign.

MR. COOPER: Yes.

ASSEMBLYMAN ADUBATO: Excuse me, Mr. Cooper, I don't mean to-- For those people who don't have the benefit of your expertise and your knowledge, could you please tell us what your position is in the Insurance Department?

MR. COOPER: Yes, I'm Chief Actuary.

ASSEMBLYMAN ADUBATO: The Chief Actuary for the State of New Jersey.

MR. COOPER: For property and liability insurance.

ASSEMBLYMAN ADUBATO: For property and liability. Thank you, sir. All right, then we are talking to the expert. I'll say it again, because certainly I'm not an expert, and neither is anyone else here at this table.

Mr. Cooper, is it a fair statement to say that in the old system, which means prior to Assembly Bill 1696 being signed into law on February 10,

1983, that two people, one in the Assigned Risk, and one in the voluntary market, insured by the same company, with the same car, same territory, and same driving record, both receive 6 motor vehicle points that are not the result of any accident. Is that possible?

MR. COOPER: Yes.

ASSEMBLYMAN ADUBATO: Okay. The individual in the Assigned Risk-- Does he receive an increase in his premiums as a result of those points?

MR. COOPER: Yes.

ASSEMBLYMAN ADUBATO: Does the person in the voluntary market receive an increase as a result of those points?

MR. COOPER: He may.

ASSEMBLYMAN ADUBATO: Tell me how.

MR. COOPER: Because there are charges for serious violations, such as driving while intoxicated, leaving the scene of an accident, and other such things as are in the bureau manual.

ASSEMBLYMAN ADUBATO: All right, Mr. Cooper. I am not going to let you go until you respond to the question, and I'll repeat it again. You make two improper U-turns, and you receive 6 points. They are 3 points each. You fail to stop at a railroad crossing 3 times. They are 2 points each. You are racing on the highway. You receive 5 points, and I'll include that one too-- racing on the highway, 5 points. Improper turn at a traffic control signal-- 3 points. Now, I'll ask you again.

In the accumulation of those points, where no accident occurs, can you tell me if a person in the Assigned Risk is going to go up 40% of his base rate, plus, or not?

MR. COOPER: I think I've admitted that, yes.

ASSEMBLYMAN ADUBATO: Are you saying to me that the people in the voluntary market are also going to go up 40% of their base or not?

MR. COOPER: I'm not sure of the speeding violation that you mentioned. For the others, no, they would not.

ASSEMBLYMAN ADUBATO: Oh, all the other accumulation of 6 points, they would not.

MR. COOPER: Not all.

ASSEMBLYMAN ADUBATO: That I am mentioning, I am saying-- I mean, I have a whole litany that I could mention.

MR. COOPER: I just said, I am not sure about the racing on the highway. I would have to go back and refresh my memory from the bureau manual, and we can submit that to you if that is your desire.

ASSEMBLYMAN ADUBATO: Sure. How about failure to yield the right of way?

MR. COOPER: Again, I do not believe that--

ASSEMBLYMAN ADUBATO: How about speeding up to 14 miles above the limit?

MR. COOPER: Again, I--

ASSEMBLYMAN ADUBATO: How about speeding up to 15 to 29 miles above the limit?

MR. COOPER: Again, I would have to refresh my memory from the bureau manual.

ASSEMBLYMAN ADUBATO: All right. Mr. Cooper, why don't you refresh your memory. I know you are the Chief Actuary, and you are not supposed to know everything, but the basic question is simple, and that question is, people are being charged a lot of money, some people as much as \$535 a year more for three years if they have 6 points. Other people are being charged \$130 a year if they have 6 points, and other people are being charged nothing if they have 10 points under the old system. Do you accept that statement?

MR. COOPER: Yes.

ASSEMBLYMAN ADUBATO: All right. When you eliminate the Assigned Risk, and you implement Assembly Bill 1696, what is the surcharge for 6 points?

MR. COOPER: If the bureau rates rule, as currently in the manual, become applicable to the Joint Underwriting Association policyholders, then the criteria will no longer be in terms of points, but in terms of accidents and violations.

ASSEMBLYMAN ADUBATO: Sir, you're wrong. I don't know how kind I can be; I've just got to tell you you're wrong. You are talking about peaches, and I'm talking about oranges. I made one simple statement. I'm not talking about accidents, first of all. I'm talking about motor vehicle violations. Now, I don't know how else to define that. Maybe you can help me.

If I don't have an accident, and I receive points, is that a motor vehicle violation? Would you accept that as a term?

MR. COOPER: I'm not sure I understood the question.

ASSEMBLYMAN ADUBATO: It is not a question, it is a statement.

MR. COOPER: Well, I'm not sure I understood the statement.

ASSEMBLYMAN ADUBATO: Mr. Cooper, I appreciate you testifying. I don't know if you know what you said, but I don't. Maybe-- Lou, would you like to ask Mr. Cooper how you accumulate 6 motor vehicle points without having an accident? Do you accept that?

MR. COOPER: Oh, there are many ways. Yes, there are many ways you can do that.

ASSEMBLYMAN ADUBATO: Oh, what do you get paid a year? Do you mind telling me?

MR. COOPER: \$46,000.

ASSEMBLYMAN ADUBATO: \$46,000 a year. Thank you. I have nothing to say to you anymore, unless you want to say something.

MR. COOPER: No, I have nothing to say.

ASSEMBLYMAN ADUBATO: All right, thank you. Insurance Commissioner, you have asked your Chief Actuary to testify on your behalf in explaining the point system. I would submit to you, Mr. Commissioner, that your Chief Actuary doesn't know the point system. I would submit to you that your Chief Actuary doesn't know the system based on his response.

The facts are, Mr. Commissioner, that if you are in the voluntary market in this State, and I am going to ask Mr. Cooper to come back Wednesday, if he would be so kind-- We would appreciate it, Mr. Cooper, if you can fit it in your schedule-- That when a person receives 6 motor vehicle points in the Assigned Risk, he is surcharged 40%. Do you know if that is true or not, Mr. Commissioner?

COMMISSIONER MURPHY: No, I don't.

ASSEMBLYMAN ADUBATO: You don't know if it is true.

COMMISSIONER MURPHY: I will accept it as being true for the purposes--

ASSEMBLYMAN ADUBATO: No, wait a minute, I have nothing more to say. If the Chief Actuary of this State and the Insurance Commissioner of this State don't know that if a person in the Assigned Risk, when he accumulates 6 motor vehicle points, as a result of violations and not accidents, that he is surcharged 40% of his base rate, it is incredible. With your permission, can I speak to Rick Boer?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: Because I know Rick Boer knows. Is that okay with you?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: Mr. Boer, will you come up here, please?

RICK BOER: Why not?

ASSEMBLYMAN ADUBATO: Excuse me for asking this, Mr. Boer, I really apologize, but how much do you earn with the Insurance Department?

MR. BOER: \$31,000 or so.

ASSEMBLYMAN ADUBATO: \$31,000. How long have you been with the Insurance Department?

MR. BOER: Since 1971.

ASSEMBLYMAN ADUBATO: Since 1971, and you earn \$31,000. Mr. Cooper has been with the Department less than a year and he earns \$46,000.

ASSEMBLYMAN KOSCO: I don't think that is relevant.

ASSEMBLYMAN ADUBATO: No, I'm just trying to get money in here; I'm trying to find out how much people make.

ASSEMBLYMAN KOSCO: That is not relevant to a hearing, though.

ASSEMBLYMAN ADUBATO: They don't have to answer it. It is very relevant, because we have a value system in our society, and it says you get paid for value. It is very relevant. You know, I reject what you are saying.

Mr. Boer, you have been listening to this conversation. I would ask you to reply to the comments that were made in any way you see fit about how the point system works for motor vehicle violations in the State of New Jersey as it applies to those people in the Assigned Risk and those people not in the Assigned Risk, exclusive of accidents.

MR. BOER: Okay, the Automobile Insurance Plan generally assigns if you accumulate 6 points. That could be two minor moving traffic violations, three minor moving traffic violations, whatever it is. The major voluntary systems do not charge unless you are convicted of something that is generally considered so serious that your license is suspended, or something like that-- like driving while intoxicated or leaving the scene of an accident.

In the Automobile Insurance Plan, the surcharge for accumulation of 6 points, if I recollect it right, is 65% of the base rate for liability, 35% for collision, and nothing for comp.

ASSEMBLYMAN ADUBATO: Mr. Boer, thank you.

MR. BOER: You're welcome.

ASSEMBLYMAN ADUBATO: I have no other questions, sir.

Moving right along, do you have any questions, Assemblyman Kosco, of Mr. Cooper or the Insurance Commissioner?

ASSEMBLYMAN KOSCO: No.

ASSEMBLYMAN ADUBATO: Assemblyman Kelly, do have any questions of Mr. Cooper or the Insurance Commissioner?

ASSEMBLYMAN KELLY: No.

ASSEMBLYMAN ADUBATO: Thank you, gentlemen. Moving right along, when you eliminate the Assigned Risk, and you have 6 points for moving violations, you cannot be charged more than \$100. That is the law, and that is the only way it is going to be implemented.

In A-1696 we also reduced the rates for every profile of the average family in this State, no matter what territory they live in, that being three and one-half people, a youthful operator as a part-time driver-- no matter what territory in the 27 territories they live in, as a direct result of A-1696, they have a rate reduction-- every senior citizen in this State. And I would like to ask you now, Commissioner--There are several provisions in Assembly Bill 1696 that are implemented and effective before January 1, 1984. Would you share with this Committee what those provisions are?

COMMISSIONER MURPHY: Well, there are built-in discounts that are applicable reasonably soon. I can't give you the exact detail on it, but I believe, and I'll call again on my Rating Department, to bring us--

ASSEMBLYMAN ADUBATO: Excuse me, Mr. Commissioner, I apologize. We're changing the tape.

Let's continue. I apologize, gentlemen. May I have your attention please? I'm sorry. You can feel free to confer with anyone.

COMMISSIONER MURPHY: Well, again, I was just conferring with Mr. Boer on that question you asked. I said the increases are being implemented. A number of companies did it last month.

ASSEMBLYMAN ADUBATO: I'm sorry, you lost me. What increases?

COMMISSIONER MURPHY: Decreases, I'm sorry.

ASSEMBLYMAN ADUBATO: Oh, decreases. I thought you said increases. Oh, decreases.

COMMISSIONER MURPHY: Decreases are being implemented currently.

ASSEMBLYMAN ADUBATO: As of what date, sir?

COMMISSIONER MURPHY: I think as of April 11.

ASSEMBLYMAN ADUBATO: What decreases are we talking about?

COMMISSIONER MURPHY: About the at least 5% decrease.

ASSEMBLYMAN ADUBATO: At least 5% decrease for what?

COMMISSIONER MURPHY: For senior citizens.

ASSEMBLYMAN ADUBATO: Oh, for senior citizens.

COMMISSIONER MURPHY: I thought that was your question.

ASSEMBLYMAN ADUBATO: Oh no, I asked the question. I said, what provisions of Assembly Bill 1696 are now in effect in this State by law? That is the question.

COMMISSIONER MURPHY: Well, that section having to do with the mandatory discount for senior citizens is in effect, I believe.

ASSEMBLYMAN ADUBATO: You believe.

COMMISSIONER MURPHY: Again--

ASSEMBLYMAN ADUBATO: Okay, I'll accept that, but has there been any information to the public informing the senior citizens that as a direct result of Assembly Bill 1696, they are to receive a 5% reduction in their premium?

COMMISSIONER MURPHY: No, none other than the general publicity surrounding the enactment of--

ASSEMBLYMAN ADUBATO: No statement from the Department.

COMMISSIONER MURPHY: Not on that point particularly. I haven't reviewed the press releases. I'm not too sure that the--

ASSEMBLYMAN ADUBATO: No press release on that.

COMMISSIONER MURPHY: I'm not too sure--Have you read any--

ASSEMBLYMAN ADUBATO: Well, I am. I read all of your press releases, all of them, since the day you came into office.

COMMISSIONER MURPHY: Well, my recollection was that there was a reference to a discount for senior citizens in describing A-1696, but I--

ASSEMBLYMAN ADUBATO: There isn't in any press release you've ever issued, and I'll stand on that, and you can check it.

COMMISSIONER MURPHY: Well, my recollection was that there was none.

ASSEMBLYMAN ADUBATO: I'm giving you my recollection. I'm saying you haven't done it. But, that is not important. What is important is, that by law, that was supposed to go into effect 60 days after the effective date of A-1696. This bill was signed into law on February 10, 1982, but the effective date was back to January 1, 1983. I said 1982, but I meant to say 1983.

Now 60 days from January 1, 1983 would make it March 1, and as far as I know, it was not done on March 1 by law.

COMMISSIONER MURPHY: It is my information that the effective date of the act is the date it was signed, and not January 1, 1983. At least I was so advised.

ASSEMBLYMAN ADUBATO: May I respectfully-- I disagree with you, not being a lawyer, but I realize how people could take that position. I disagree with you, and the important thing is not whether we agree or disagree, but what the legal people are going to say.

Let's take February 10 as the effective date. What is today's date?

COMMISSIONER MURPHY: May 2.

ASSEMBLYMAN ADUBATO: Is that more than 60 days from February 10?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: When was it implemented?

COMMISSIONER MURPHY: I said in the first part of April, in answer to one of your other questions.

ASSEMBLYMAN ADUBATO: Oh, it was implemented. I wasn't told that because I kept asking the Department, and I was never told it was implemented.

COMMISSIONER MURPHY: Let me verify that with my troops, but I understand that to be the situation.

Yes, ISO's filing is effective April 11. There are other ones as well.

ASSEMBLYMAN ADUBATO: Get counsel. I know what the other provisions are. I want to know if you know.

COMMISSIONER MURPHY: No, no, there are other filings, I said, in addition to ISO's.

ASSEMBLYMAN ADUBATO: I'm sorry. Commissioner, will you respond to a question by Assemblyman Kosco?

COMMISSIONER MURPHY: Could I just-- There is just one thing more.

ASSEMBLYMAN ADUBATO: Yes, go right ahead. Go right ahead.

COMMISSIONER MURPHY: Mr. Cooper reminds me that in March, we notified all filers of the effective date under our interpretation of the mandatory discount, and they are filing in compliance with that.

ASSEMBLYMAN ADUBATO: Well, with these latest increases that we have here, any of these increases that go into effect-- For instance, the constant. Does that have anything to do with anything? The June 1 deadline where someone, I think, you said and the Governor said that if we don't pass those three bills, that you are going to strangle the Democratic party. I think that was the quote. And, that if we don't pass those things that-- that if we do, "you'll rescind." That is a quote. In two articles it says "rescind." Another article says, "rescind or reduce the \$33 constant." Does that have any play on the 5% at all?

COMMISSIONER MURPHY: No, this increase, if it goes into effect, will be June 1.

ASSEMBLYMAN ADUBATO: Decrease, sir. Oh, you're talking about the \$33. Go ahead.

COMMISSIONER MURPHY: Yes, if that goes into effect, that would be on June 1.

ASSEMBLYMAN ADUBATO: Okay. I want you to know officially that we are going to contest what you did. Our counsel has said to us on repeated occasions, including the Governor's counsel concurring, that the implementation of this bill, and the effective date of this bill in those provisions is January 1, 1983, retroactive to that date, and I am here and am now officially asking you to recoup for the senior citizens of this State any payments that they made from any filing from January 1-- 60 days from that date. That is an official request that you will get in writing.

ASSEMBLYMAN KOSCO: Mr. Chairman?

ASSEMBLYMAN ADUBATO: Yes?

ASSEMBLYMAN KOSCO: I have a question. When a piece of legislation of any magnitude-- certainly one such as this-- The Governor himself said that this is one of the landmark pieces of legislation that has been passed. Don't you think it would have been the right thing for you to have a meeting with all of your staff and to discuss this bill so that everyone was 100% aware of what was happening and spend some time on it? This house spent many years putting that piece of legislation together. In the three and one-half years that I have been here, we have been dealing with it on a daily basis. The bill finally went through both houses, it finally got signed into law by the Governor of this State, and it was sent over to your Department. From what I gather, your Department wasn't schooled on this piece of legislation that was dramatically changing the insurance process, and giving dates. The date was January.

COMMISSIONER MURPHY: On the contrary, our Department was quite familiar with this bill. We participated to the extent we were permitted in--

ASSEMBLYMAN KOSCO: Yes, but you have a copy of that bill, and--

COMMISSIONER MURPHY: We've had it right along.

ASSEMBLYMAN KOSCO: The date that is taken on right now, I don't seem to think that your Department is totally aware of what that piece of legislation says.

COMMISSIONER MURPHY: We are entirely familiar with what it says. On its effective date, we have been advised that the effective date is the date of the signature of the bill by the Governor. Now, that is the advice that has been given us by Governor's Counsel.

ASSEMBLYMAN KOSCO: The effective date was retroactive as far as the piece of legislation is concerned, and it took quite a bit of discussion in this house when that bill was up.

COMMISSIONER MURPHY: I think that is a legal question, and I'm operating under the advice that I have been furnished. If that is wrong, we'll take steps to cure it.

ASSEMBLYMAN KOSCO: What steps would be taken at this point?

COMMISSIONER MURPHY: Well, I suppose we would have to, to the extent feasible, make the discount for senior citizens that we were talking about applicable at an earlier time-- Make a refund if that is the situation.

ASSEMBLYMAN ADUBATO: Commissioner, dealing with Assembly Bill 1696 in the context of Sections 7 and 9, I would like to ask you if on April 18 of 1982, you were interviewed along with the Governor in two separate interviews. The Governor was interviewed and you were interviewed by the Star-Ledger by the reporter down here who has done most of the reporting on auto insurance-- a fellow by the name of Vince Zarate. You are quoted as saying--

COMMISSIONER MURPHY: Just refresh me-- on the 18th with the Governor?

ASSEMBLYMAN ADUBATO: No, no, separate interviews.

COMMISSIONER MURPHY: Oh, separate interview. I didn't recall that.

ASSEMBLYMAN ADUBATO: But, in the same article. The same article, but separate interviews.

COMMISSIONER MURPHY: Okay.

ASSEMBLYMAN ADUBATO: What the Governor said about A-1696 and those things we were trying to do speak for themselves, and his actions more than prove his desire and the importance that he places on this legislation.

But, that is not the question I want to ask. The question I want to ask is whether or not you recall this as being accurate, the statement

attributed to you. The statement said, "Murphy said he wants to avoid as much as possible public hearings that are time-consuming and create backlogs." Could you share with us in what context that was said, or what kind of public hearings you were referring to? Were you talking about public hearings in the Legislature, like this?

COMMISSIONER MURPHY: I can't really identify that statement. Can you give me a little more, sir?

ASSEMBLYMAN KOSCO: It is underlined over here, placed with an asterisk.

COMMISSIONER MURPHY: Oh, yes, I see what it is now. This question apparently was in connection with the classification hearings, which my predecessor carried on. They were quite extensive, I'm given to understand. They occupied a lot of the Department's time and personnel, and what I was saying there was, I wanted to avoid the necessity of public hearings-- these are administrative hearings, rather than legislative hearings-- so as to see to it that a situation like that did not happen again.

ASSEMBLYMAN ADUBATO: So, you were not talking about public hearings like this.

COMMISSIONER MURPHY: No, they are administrative hearings.

ASSEMBLYMAN ADUBATO: Thank you for clearing that up for the Committee. A-1696, not to belabor this too much, I submit, according to actuaries from some of the major insurance companies that do business in this State, according to the former Chief Actuary in the State of New Jersey, according to a lot of hard work by a lot of people, asking people not only in New Jersey, but in other states, to review the bill to give us their opinion about impact, does not-- does not, as a result of its being implemented, raise the rates of every good driver an average of \$6, as a result of its being implemented. For your Department to come out with that statement--

COMMISSIONER MURPHY: You use the word "good." We didn't say "good" or "bad" drivers.

ASSEMBLYMAN ADUBATO: Well, when I say "good" I mean simply-- "clean," clean driver.

COMMISSIONER MURPHY: Well, we didn't say clean. If you are objecting to the statement we are alleged to have made--

ASSEMBLYMAN ADUBATO: I can only read what it says here.

COMMISSIONER MURPHY: Read my statement.

ASSEMBLYMAN ADUBATO: It is not your statement. It is Mr. Hooper's statement.

COMMISSIONER MURPHY: Well, again, Mr. Hooper can speak for himself. He is here. This is the statement he told me he made.

ASSEMBLYMAN ADUBATO: Does he represent the Insurance Department?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Does he represent you?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: Is he your spokesman?

COMMISSIONER MURPHY: Yes, in the sense that he represents us in public relations, he is.

ASSEMBLYMAN ADUBATO: On the official copies of the official press releases where his name appears and your name appears, and where he is being interviewed, when he speaks, is he speaking as a citizen in the State of New Jersey, or is he speaking as a position of the Insurance Commissioner and his office?

COMMISSIONER MURPHY: In this connection, he is speaking on behalf of the Insurance Department.

ASSEMBLYMAN ADUBATO: Okay, so then it is fair to say that the Insurance Department, four days before the signing of the bill, as a result

of an interview, said-- I'm quoting what was said. I don't know if he said it or not. This is the quote-- And what he said was that-- or what you said or Mr. Hooper said-- Mr. Hooper, did you make that statement?

MR. HOOPER: Will you read it again, Mr. Adubato?

ASSEMBLYMAN ADUBATO: "Thomas Hooper, spokesman for the Insurance Department said, the average insured driver"-- the average insured driver, good, bad, or indifferent, if you will-- Is that better? Good, bad, or indifferent-- "the average insured driver"--

COMMISSIONER MURPHY: Would what?

ASSEMBLYMAN ADUBATO: "will pay \$6 more during the first year."

MR. HOOPER: That is not a fair account of what I said. I said that the capping provisions in the Adubato bill would cause an average \$6 increase in the uncapped territories-- uncapped cars.

ASSEMBLYMAN ADUBATO: I think that is a fair statement. Mr. Hooper, is there any reason why you didn't tell the reporter what would happen with all the other provisions of Assembly Bill 1696?

MR. HOOPER: She didn't ask me.

ASSEMBLYMAN ADUBATO: She didn't ask you? Did you think it was important for you to share the information with her about what the bottom line would be as an implementation of Assembly Bill 1696 as a direct result of all the facets of the bill? Did you ever once in any press release that you have ever submitted, under this Commissioner-- under this Commissioner-- I have some press releases that were submitted under the previous Commissioner by you describing A-1760, which is the same bill. Now, I'll repeat the question.

Under this Administration, and under this Commissioner, did you ever once tell the people of the State of New Jersey, by your actuarial expertise of the people in your office, or by the Governor's statements himself, or by all the committee meetings that we had where Morgan Shumake testified, where we spoke at length about the impacts of A-1696 on the people of this State-- Did you ever once share that impact in that relation with the people of this State?

MR. HOOPER: I don't think anyone knows what the total impact is. There are many dislocations in the rates as a result of that bill.

ASSEMBLYMAN ADUBATO: Well--

MR. HOOPER: The capping is only one.

ASSEMBLYMAN ADUBATO: Let's talk about what we-- What don't you know? Will you come up to the microphone? Is that okay with you, Commissioner? Oh, sure, come up here. Maybe we can help.

Mr. Hooper, I realize that you are the Public Information Officer, but may I respectfully ask you, what actuarial background do you have?

MR. HOOPER: Absolutely none.

ASSEMBLYMAN ADUBATO: You have no actuarial background at all.

MR. HOOPER: No, sir, I don't.

ASSEMBLYMAN ADUBATO: So, you get your information from actuaries in the Department, I guess.

MR. HOOPER: That is true.

ASSEMBLYMAN ADUBATO: Has any actuary in the Department ever analyzed Assembly Bill 1696, or any of the provisions outside of the capping, and issued a statement or a comment or a report about what it may or may not do or could do?

MR. HOOPER: No, not so far as the rates are concerned.

ASSEMBLYMAN ADUBATO: They did not.

MR. HOOPER: Not that I know of, no. At least it has not been told to me.

ASSEMBLYMAN ADUBATO: No further questions. No further questions. Thank you. No further questions. That is all I have to ask. Would you like to respond to that? Go right ahead.

ASSEMBLYMAN KOSCO: Do you have any information available to you of anything positive that would come out of this piece of legislation?

MR. HOOPER: There are a lot of positive things in the bill. I agree with the inequities that are suffered by people in the Assigned Risk Plan. Seventy percent of the 1.4 million are good drivers, and they are subject to the--

ASSEMBLYMAN ADUBATO: Forgive me for interrupting. I apologize. Are you speaking for the Department or for your own opinion, respectfully?

MR. HOOPER: This is my own opinion.

ASSEMBLYMAN ADUBATO: It is not the Department's opinion. This is your opinion. That is all, just for the record.

MR. HOOPER: No, sir. I'm sure the Commissioner shares many of my opinions, but that is my personal opinion, that there are good things in the bill.

ASSEMBLYMAN KOSCO: Don't you think that since you are a public relations person who provides information to the people of this State, that some of those things could have been shared with those people?

MR. HOOPER: I think they will be as they are developed.

ASSEMBLYMAN KOSCO: Well, they are supposed to have developed already.

MR. HOOPER: I don't think they have developed. Nobody knows what the effect of--

ASSEMBLYMAN KOSCO: The specific one we are talking about with senior citizens should have been developed months ago.

MR. HOOPER: What do you mean, the Medicare bit?

ASSEMBLYMAN KOSCO: No, the decrease in--

MR. HOOPER: I think it was. It was in all the papers. Every time you picked up the paper, it said, "60 days from now, the senior citizens are going to get a 5% discount."

ASSEMBLYMAN ADUBATO: Mr. Hooper, when did you issue that comment to the papers?

MR. HOOPER: What comment?

ASSEMBLYMAN ADUBATO: What you just said. Forgive me. You just said that every time you picked up a newspaper-- that is what you just said-- You just said, forgive me-- You just said that everytime you picked up the newspaper, there was a story in there talking about the 60 days. Isn't that the correct analysis of what you said?

MR. HOOPER: Yes.

ASSEMBLYMAN ADUBATO: Where did the papers get that information?

MR. HOOPER: I think they got it from the bill itself.

ASSEMBLYMAN ADUBATO: From the bill itself?

MR. HOOPER: Yes.

ASSEMBLYMAN ADUBATO: What bill?

MR. HOOPER: A-1696.

ASSEMBLYMAN ADUBATO: No, sir, that is not what he is asking you. I apologize. Let me try and rephrase Assemblyman Kosco's question.

Assemblyman Kosco asked you two questions. One dealt with the reduction of the 5% mandated minimum for all senior citizens 60 days after the bill became effective. The other thing he was talking about was the Omnibus Reconciliation Act on the impact of the Medicare changes, and you--

ASSEMBLYMAN KOSCO: I wasn't talking about that. I was talking about--

ASSEMBLYMAN ADUBATO: Oh, I thought--

ASSEMBLYMAN KOSCO: I'm talking about the Assembly bill that the Governor signed, and I asked you if there were any positive things that he said about it, and you said, "many." My question was, why was that not shared with the people of this State, which the press releases, which I would assume is your responsibility?

MR. HOOPER: I think it was. I can show you any kind of clippings which reported the senior citizen discount.

ASSEMBLYMAN ADUBATO: Can you show me one press release that you issued?

MR. HOOPER: Not necessarily from me.

ASSEMBLYMAN ADUBATO: No, from anybody in your Department.

ASSEMBLYMAN KOSCO: I am asking your Department, your responsible--

ASSEMBLYMAN ADUBATO: We're asking you.

MR. HOOPER: I have talked on the telephone many times with reporters who have asked me about various aspects of the bill. Senior citizens have come up; I have mentioned the 5% discount. I have no particular recollection of who or when I spoke, or to whom I spoke, but I have issued no written press release, if that is what you are concerned about.

ASSEMBLYMAN ADUBATO: All right.

ASSEMBLYMAN KOSCO: For any particular reason?

MR. HOOPER: Well, it was already in the public record. To me, it would have been redundant for me to come out and say that the senior citizens are going to get a 5% discount. It was in the public record.

ASSEMBLYMAN ADUBATO: How many times was the \$1500 threshold mentioned in the press in the last ten years? And, how many press releases have you issued, being redundant over and over and over again as projecting that as an official position of the Insurance Department of being the panacea rate reduction? How many times have you issued that press release and been redundant?

MR. HOOPER: How many times must you ask the question? Will you let me answer it? You've answered--

ASSEMBLYMAN ADUBATO: I'm sorry, go right ahead.

MR. HOOPER: I have mentioned it innumerable times in press releases.

ASSEMBLYMAN ADUBATO: You have mentioned it innumerable times. Okay.

MR. HOOPER: Because it is still pending. The senior citizens' discount is a fait accompli, right?

ASSEMBLYMAN ADUBATO: I guess so, if you people implemented it. I don't know if you implemented it yet, but we'll find out in the near future. I hope it is. All right, thank you, sir. I appreciate you coming here.

You know, moving right along, let me just say that Assembly Bill 1696 is a bill that regardless of the misrepresentation of the people in the Insurance Department, will still have the same positive impact for the people of New Jersey. It is just sad-- It is just sad that 15 legislators were attacked. Most of them were Republicans in Monmouth and Ocean Counties, for not knowing-- for not knowing, and they didn't know it because it is not true-- that as a result of A-1696, every driver in their territory was going to go up an average of \$6 per car, and that is a misrepresentation of fact, and the definition of a misrepresentation of fact is a distortion.

ASSEMBLYMAN KOSCO: Good.

ASSEMBLYMAN ADUBATO: Thank you, Louis. It is a distortion. But, we'll go on--We'll go on.

I'm not going to go any further in Assembly Bill 1696; I will let the evidence speak for itself.

I would like to start talking about the \$1500 threshold. By the way, Commissioner, if anyone in your office would like to check the press releases, we have them-- the 15 that were issued from May 17 until July 16 of 1982, which was the time for public comment on the Medicare thing. They are all here, and there isn't one word in any of these press releases informing anybody in this State about those changes. But, I'm glad the Governor reads the Star Ledger and the press releases that the New Jersey Assembly has issued, so he was aware. And, I'm glad that he brought about a law suit. We'll see what happens.

But, talking about the \$1500 threshold--

COMMISSIONER MURPHY: Mr. Chairman, on Wednesday you are going to receive some testimony in connection with what our Consumer Department did here in New Jersey-- This information became available to me today.⁴

ASSEMBLYMAN ADUBATO: Absolutely, do you think the Governor-- Well, wait a minute, I said the Governor-- Do you think the Governor had any of that information?

COMMISSIONER MURPHY: No.

ASSEMBLYMAN ADUBATO: Oh, that is all I was talking about-- the Governor getting the information.

COMMISSIONER MURPHY: I thought you were talking about information known to the senior citizens of our State.

ASSEMBLYMAN ADUBATO: Absolutely.

COMMISSIONER MURPHY: Well, you are going to get some testimony on that Wednesday.

ASSEMBLYMAN ADUBATO: Terrific. I can't wait. Commissioner, we talked about the \$1500 threshold.

Let me first say that we are going to conclude this hearing by five o'clock, and we will reconvene at ten o'clock on Wednesday.

Commissioner, in your statement, one of the things that you say, and I have to look for it in my copy-- I marked it, and I'll ask staff to look for the word where you say that it is not the problem-- I think what you say-- of your Department to deal with the affordability. That is on page 3. "Affordability is not one of the criteria of our rating law, yet the Department is fully cognizant of the harsh effect the cost of automobile insurance is having on our citizens." I can go on.

I would like to share with you, being that you have only been in New Jersey for four and one-half years, and you may not have had the benefit of knowing what has been going on in our State prior to you moving here-- But, rather than do that, you've heard some testimony here, and I'm sure, being with an insurance company for 25 years as Chief Legal Counsel and a Vice President, that you may have had an opportunity to know the New Jersey system. Forgive me if some of the things I say are kindergarten, that you may already be aware of.

New Jersey, in 1972, passed no-fault. I would like you-- One, if you would share with us what you think about that act when it was passed, and what you think we should do in dealing with the \$200 threshold, if anything. And, I would like you to share with us, if you can, if not today, then Wednesday, any documentation as to the impact of whatever you are suggesting we do, because your statement is not reflective of your quotes in the newspapers, unfortunately. The statement that you present today is not the statement that you have been credited with making in the media up until Saturday when I received this. Every statement by you in the media, rightly or wrongly, has quoted you as saying, one, that if we pass the Fraud Bill,

4. See footnote to page 34.

which was Bocchini's bill that was prefiled, and Assemblyman Gallo filed that bill in July of 1982, seven months after the Bocchini bill was introduced. The Fraud Bill that we talk about was the Bocchini bill that was joined together-- You know, Bocchini is a Democrat down here. We have Democrats in this State, and Bocchini-- His name might be a little difficult for you to spell, too. But, Bocchini is an Assemblyman who sits right there behind you, and who introduced the Fraud Bill, prefiled it, and I asked him not to request for it to be moved along, because we wanted to work together in a bipartisan way with the Republican Administration and with Dean Gallo, our distinguished Minority Leader. So, at my request, the Speaker asked him not to ask for the bill to be heard in our Committee. Dean Gallo introduced his bill in July of 1982, and the first request that we had on that bill and on the \$1500 bill, by the way, was in March of 1983.

You have stated in the newspaper, sir, according to this documentation, that we are holding up the bill. In a press release that you've issued, you've blamed the Legislature: "The Legislature"-- I don't know if you are talking about Dean Gallo holding up this bill by not asking for it to be heard. I don't know what you are talking about. All you say is the Legislature.

COMMISSIONER MURPHY: Well, what I am talking about is right here in the statement. Let's read it.

ASSEMBLYMAN ADUBATO: Oh, I'm not going by your statement; I'm going by the press release, and I'm going by the news stories that I would be happy to share with you. I said that your statement today does not resemble anything reported in the press. I'm not saying it is true. I'm saying whatever is reported in the press says you are credited with those statements.

COMMISSIONER MURPHY: We can talk about what is in the press, but what is in this statement is true.

ASSEMBLYMAN ADUBATO: How about your press releases, sir?

COMMISSIONER MURPHY: I'm not familiar with what you are talking about. We can discuss those if you wish.

ASSEMBLYMAN ADUBATO: Sure, we will.

COMMISSIONER MURPHY: Well, right now. What I am saying here is that this legislation, which we are supporting in this statement, has been before your Committee for a considerable time.

ASSEMBLYMAN ADUBATO: What is considerable time?

COMMISSIONER MURPHY: Well, let's try to measure that. I'm turning back here to find-- If you'll forgive me for a moment. In my last paragraph on page 8, I point out that this certain cost containment legislation, such as A-1747-- A-1747 has been pending before your Committee since July 8, 1982, according to my records, and I have no standing in the legislative halls to move legislation. That is something which is uniquely within your power.

ASSEMBLYMAN ADUBATO: How familiar are with the legislative process, Commissioner?

COMMISSIONER MURPHY: I am generally familiar with it.

ASSEMBLYMAN ADUBATO: Do you know how bills are considered in Committee when they are listed and how they are listed?

COMMISSIONER MURPHY: Well, certainly. It is largely within your--

ASSEMBLYMAN ADUBATO: Will you share that with us?

COMMISSIONER MURPHY: Well, it is largely within your discretion, I assume, as Chairman of the Banking and Insurance Committee.

ASSEMBLYMAN ADUBATO: That is true, but do you know how we consider bills? I mean, Assemblyman Kosco is here and others. Can we help you?

COMMISSIONER MURPHY: Well, what I would like is movement more than education.

ASSEMBLYMAN ADUBATO: I think you need both; I think you need education first respectfully, so we can have better dialogue. If I may be so bold, sir, the process is simple.

When a legislator has introduced one of the 7,500 or so bills, there are quite a number of bills in each Committee, and every one is important. Every one of them is important, and so is the process. Every legislator in this house knows, and every Senator across the hall knows, that when they introduce a bill, that bill is not given consideration by any committee, especially ours, until the sponsor makes a formal request in writing. That does not guarantee it is going to be heard at the next meeting. But, until that request is made in writing, that bill doesn't stand a chance ever of being considered. Were you aware of that?

COMMISSIONER MURPHY: Not the specifics of it, no.

ASSEMBLYMAN ADUBATO: Well, is your legislative liaison person aware of that? Does he know the process? Has he ever told you?

Mr. Shumake, are you aware of that or not?

MR. SHUMAKE: I am aware that it must be requested by the sponsor, but I was not aware that it had to be in writing.

ASSEMBLYMAN ADUBATO: Well, at least you know half of it. But, in our Committee, we do request it in writing, and Assemblyman Gallo knows that, and Assemblyman Naples knows that, and Assemblyman Kosco knows that.

You see, Commissioner, you do need education, and I'm going to help you, because I want to be able to communicate with you. We are going to try to the best of our ability to work together.

So, your statement-- would you like to keep it the way it is? I have no problem with that-- that based on knowledge that we are giving you today, and the fact that that bill was in there since July and was not requested until March of this year for consideration-- and, by the way, we've had one request. We have bills in that Committee that have three and four requests that we haven't been able to get to. That bill has been requested once in March.

Now, would you like to keep your statement the way it is? That is okay with me, or would you like to change it?-- That we are delaying the bill.

COMMISSIONER MURPHY: I didn't say you were delaying the bill; I am merely saying the bill has been pending before your Committee--

ASSEMBLYMAN ADUBATO: Well, let's see what you say.

COMMISSIONER MURPHY: It is on page 8. It has been pending before your Committee since July 8, 1982.

ASSEMBLYMAN ADUBATO: Do you want to change that?

COMMISSIONER MURPHY: No.

ASSEMBLYMAN ADUBATO: That is wasn't requested until March of 1983?

COMMISSIONER MURPHY: I'm not familiar with what has been requested or not requested.

ASSEMBLYMAN ADUBATO: I'm telling you that.

COMMISSIONER MURPHY: I'll accept your statement--

ASSEMBLYMAN ADUBATO: Do you want to change your comment?

COMMISSIONER MURPHY: No, I want my statement to remain the same as it is.

ASSEMBLYMAN ADUBATO: Thank you, sir. Thank you, sir. Then the process doesn't mean anything to you, does it?

COMMISSIONER MURPHY: I have no control over the process.

ASSEMBLYMAN ADUBATO: The fact that we can't consider a bill until the sponsor requests it doesn't mean anything to you.

COMMISSIONER MURPHY: I understand what you are saying by way of explanation, that no action has been taken.

ASSEMBLYMAN ADUBATO: I'm not explaining, I'm telling you what the facts are. It is not an explanation.

COMMISSIONER MURPHY: Again, my statement is factually true.

ASSEMBLYMAN ADUBATO: I appreciate your cooperation, Commissioner. Thank you. I won't go any further on that issue. Would you like to say anything about that?

Moving right along, Commissioner, the New Jersey Success Magazine, volume 3, number 6, published February, 1983-- You were interviewed by a young lady by the name of Lisa Guide. In that interview, you are quoted on page 1. Here is the interview as making a statement, and I would like to clarify with you if that is your statement. When I called Ms. Guide, she said, "Yes, the are exactly his words, word for word," but I would like to hear your side of it.

"One of our ideas is to eliminate litigation on small cases," Murphy said. "I propose raising it to \$1500 on the index (The Consumer Price Index) the traditional measure of the cost of living. If the \$200 threshold had been on the index, it would probably up to \$1500 by now anyway."

Do you recall making that statement?

COMMISSIONER MURPHY: I recall making a statement very similar to it.

ASSEMBLYMAN ADUBATO: Would you like see it?

COMMISSIONER MURPHY: No, I don't need it.

ASSEMBLYMAN ADUBATO: Well, I want to show it to you.

COMMISSIONER MURPHY: Well, fine, I understand it from what you read. Let me make this statement.

ASSEMBLYMAN ADUBATO: No, you don't want to see it?

COMMISSIONER MURPHY: No, I don't have to see it. Generally--

ASSEMBLYMAN ADUBATO: Excuse me, sir, please?

COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN ADUBATO: Please be patient. I want Assemblyman Kosco to see that what I am saying is in quotes.

COMMISSIONER MURPHY: Okay.

ASSEMBLYMAN ADUBATO: According to this reporter, every word in that article came from you exactly the way it is printed. That is her statement to me, but I'll listen.

COMMISSIONER MURPHY: Sure, normally, and I can't recall that specific instance. Normally when I discuss the \$1500 threshold, I make it clear that I am dealing with \$1500 indexed as respects the future, but indexed to the medical, hospital, automobile part replacement components of the CPI. That is normally what I say, and I think I probably said it to her, because as you know, there are much more volatile--

ASSEMBLYMAN ADUBATO: I'm sorry, sir, what did you say? I what? I probably what? I apologize for interrupting you.

COMMISSIONER MURPHY: I'll say it again.

ASSEMBLYMAN ADUBATO: You said that I probably know that what?

COMMISSIONER MURPHY: You probably know that the medical hospital part components of the CPI are considerably more volatile than the general cost of living index. For example, today we commonly read in the newspaper of a rate of inflation of 4% or 5%, but yet, when it is broken down by services, you will see that medical, hospital, and auto parts are still bumping up to the 10% part.

Normally, what I said is substantially along the line she talks about. When I speak of an index, I speak of that particular kind of an index. I also said that if the \$200 1973 threshold had been indexed in that manner, it probably would be darned near up to \$1500 today. I haven't translated it out, but it probably would increase based upon those components.

ASSEMBLYMAN ADUBATO: I know what it is, but you're saying that is Consumer Price Index from 1973.

COMMISSIONER MURPHY: The hospital medical--

ASSEMBLYMAN ADUBATO: No, that is not what you said.

COMMISSIONER MURPHY: No, no, she probably did not include my references to the others, because that is normally the way I present that matter.

ASSEMBLYMAN ADUBATO: Sir, I am going to take what you think you said, and I'm going to take what she says you said, and you are both entitled to your opinion. Would you grant me that?

COMMISSIONER MURPHY: Yes.

ASSEMBLYMAN ADUBATO: All right, so then, you agree, I think, that this is incorrect.

COMMISSIONER MURPHY: It is incomplete.

ASSEMBLYMAN ADUBATO: Let me ask you this: When you say it is incomplete, the reporter, from her notes, with her interview with you, says that these are your exact words. I'm only telling you what she says.

COMMISSIONER MURPHY: Fine, she is entitled to her opinion.

ASSEMBLYMAN ADUBATO: Fine.

COMMISSIONER MURPHY: And I tell you that when I use that expression, as I have many times, I carefully incorporate the--

ASSEMBLYMAN ADUBATO: Did you ever read this?

COMMISSIONER MURPHY: I don't think so.

ASSEMBLYMAN ADUBATO: You didn't read it?

COMMISSIONER MURPHY: I don't think so.

ASSEMBLYMAN ADUBATO: I apologize, Commissioner. You didn't read this?

COMMISSIONER MURPHY: I don't think I've read it.

ASSEMBLYMAN ADUBATO: Okay. You know, Commissioner, The Consumer Price Index is about \$4.60 today from 1973. The hospital/medical is about \$5.70-- \$5.50 to \$5.70. What are you talking about-- about the auto parts as it applies to bodily injury? You are losing me. You mentioned bodily injury. What we are talking about, I think, and you're talking about a Consumer Price Index that deals with auto parts. I wish you would help me.

COMMISSIONER MURPHY: You are correct.

ASSEMBLYMAN ADUBATO: Oh, I am correct.

COMMISSIONER MURPHY: You are correct.

ASSEMBLYMAN ADUBATO: Oh, thank you. Well, I'm correct about something today. Hey, one out of twenty isn't bad. That is very good.

Mr. Cooper, would you like to comment on anything, sir, to help us? You have nothing to say? Thank you.

COMMISSIONER MURPHY: Let me make this comment.

ASSEMBLYMAN ADUBATO: Go right ahead.

COMMISSIONER MURPHY: It is the medical and hospital components of the CPI. Delete the reference to auto physical parts.

ASSEMBLYMAN ADUBATO: Oh, so then your definition of physical damage is not pertinent to this discussion.

COMMISSIONER MURPHY: Right.

ASSEMBLYMAN ADUBATO: Thank you. All right, I'll tell you what, I am going to ask, because certainly the most important part of our learning here as a Committee, I think, is going to be centered around what impact there is or isn't with the \$1500 threshold. I want to give us as much of a fresh start as possible.

I also would like to share, but I'm not going to go into it right now, documentation from New York State from 1977, documentation from my good

friend, Senator Farley. I can't resist the temptation; I've got to just give you a one-sentence statement of a study commission in New York to give you all food for thought for Wednesday.

This was by the Senate Research Service, delivered by Senator Farley. "The Auto Insurance Crisis"-- It was issued on May 19, 1977, and I'm going to read just one little short paragraph. That time frame, I think, is important, isn't it, Commissioner, because of the changes that took place in New York as it applies to the threshold, among other things, but, the threshold, primarily?

"The dilemma of affordability and availability has been the subject of intense scrutiny by both the Legislature and the State Insurance Department. Their investigations indicate that while New York's No-Fault Law has accomplished its major objective of providing more of the insurance dollar to victims, more equitably, more swiftly, and more efficiently, it has not been able to contain auto insurance premiums as originally predicted. A number of problems with the present No-Fault Law have been identified. Legislative investigations have also found that contrary to popular belief, the skyrocketing cost of auto insurance is not due primarily to No-Fault. The bulk of the insurance premium is attributable to the cost of physical damage coverages. Cited as contributing to the escalating cost of physical damage insurance were fraudulent claims on stolen cars and damaged autos, inflated auto repair parts and increased frequency of auto theft and vandalism. Legislative investigations also revealed that they rate-making process itself may be responsible for the high cost of auto insurance."

The preceding statement to that deals with the fact, and the next paragraph deals with the fact that that portion of the premium talking about threshold, "will have little or no effect on auto insurance rates for more than a short period of time, and will be overcome by inflation, and it will not reduce the cost of the system in any meaningful way by any amount."

And, I am going to read the entire thing to this body publicly, because I think it is important to note that way back then, good old Senator Farley, you see, a good Republican, makes statements that go beyond here that say that the threshold, in effect, is a smoke screen.

COMMISSIONER MURPHY: The record will show, of course, that they do not agree with us.

ASSEMBLYMAN ADUBATO: Oh, no, I'm not saying who agrees with you. I want to thank you, first of all, and I mean this sincerely-- Commissioner, whether we agree, disagree, whether you are conducting your office the way we think it ought to be conducted-- Everyone is entitled to his opinion, and I want to thank you very much, you and your staff, for spending this time with us. I would appreciate it, Commissioner, and I promise you, I promise you, that if you can get here at ten o'clock on Wednesday, that you and your staff will be out of here at the latest at twelve o'clock-- the latest. If that can be arranged, I would appreciate it.

COMMISSIONER MURPHY: Fine. Okay, will do.

ASSEMBLYMAN ADUBATO: Thank you, sir. The meeting is adjourned.

(HEARING RECESSED UNTIL MAY 4, 1983)

APPENDIX I. Department of Insurance Exhibits

Exhibit A	Memorandum from Chairman Adubato to Commissioner Murphy identifying purpose and scope of Assembly Banking and Insurance Committee hearings pursuant to AR 3026 (1983). Chairman's public announcement of Committee hearing schedule.
Unmarked	Commissioner Murphy's statement to Committee
Exhibit B-I	Automobile insurance rate filings approved by Department of Insurance since March 1, 1982.
Exhibit B-2	Department of Insurance approval of per car charge on April 4, 1983.
Exhibit D	Insurance Services Office filing approved by Commissioner on January 7, 1983, and announcement of approval of Insurance Services Office withdrawal of its rate classification plan.
Exhibit E	Account of Department of Insurance initiatives on proposed changes in federal regulations on medicare benefits in relation to automobile liability and no-fault insurance.
Exhibit F	Department of Insurance assessment of rate effect of implementation of P.L. 1983, c. 65 (Assembly, No 1696 (1982)) on uncapped territories.



Exhibit A

RECEIVED

APR 21 1983

DEPT. OF INSURANCE
COMMISSIONER'S OFFICE

HAND DELIVERED
4:24 P.M.

ASSEMBLY BANKING
AND INSURANCE COMMITTEE

CN-042

STATE HOUSE ANNEX, TRENTON, N.J. 08625

TELEPHONE: (609) 984-0445

MICHAEL F. ADUBATO
CHAIRMAN

EUGENE H. THOMPSON
VICE-CHAIRMAN

RAYMOND LESNIAK
JOHN V. KELLY
JOHN F. KOSCO

J. Caramalis, Staff

TO: Commissioner Joseph F. Murphy

FROM: Chairman Michael F. Adubato

SUBJECT: Public hearing to be held on May 2, 1983
by the Assembly Banking and Insurance Committee*,
pursuant to Assembly Resolution 3026 (1983).

DATE: April 21, 1983

The Assembly Banking and Insurance Committee has been directed, pursuant to Assembly Resolution 3026 (1983), sponsored by Assemblymen Adubato and Kosco, and unanimously approved by the General Assembly on March 14, 1983, "to conduct an immediate investigation into State Department of Insurance procedures and practices in reviewing and approving automobile insurance rate filings, and disseminating information to the Legislature and the public." The announcement of the Committee's public hearing schedule is attached.

The Committee has scheduled you and your staff to testify at the May 2nd hearing. The Committee specifically requests the presence of the following staff members at that hearing: W. Morgan Shumake, Warren P. Cooper, Thomas J. Hooper, and Richard Boer. The Committee also requests, pursuant to section 2 of Assembly Resolution 3026, that members of your Department be available to the Committee throughout the course of the Committee's public hearings and deliberations pursuant to the aforesaid resolution.

The Committee further requests that the Department of Insurance be prepared to discuss and document at the May 2nd hearing the following matters:

- (1) Automobile insurance rate increases granted by the Commissioner of Insurance within the last 12 months to Allstate (both as an independent and Insurance Services Officer filer), State Farm, Prudential Property and Casualty, Insurance Services Office filers, and any other independent filer with more than 1% of the New Jersey private passenger automobile insurance market.
- (2) The Commissioner of Insurance's rejection of motions by the Public Advocate requesting the holding of informational hearings on automobile insurers' accounting and financial reporting practices.
- (3) The disagreement between the Department of Insurance and the Department of Public Advocate as to the need for the rate increase for private passenger automobiles granted to State Farm pursuant to Department Filing No. 82-1833.
- (4) The basis for the Commissioner of Insurance's contention that enactment of a \$1500 tort threshold will result in a substantial cost reduction in automobile insurance premiums, including the rescinding of the \$19 to \$33 per car charge approved by the Commissioner of Insurance on April 4, 1983.
- (5) The circumstances surrounding the Department of Insurance's press release of January 7, 1983, announcing a rate increase for Insurance Services Office filers, and the failure of that release or other Department informational bulletins to inform the Legislature and the public of the classification changes approved as part of that filing, as well as of the impact of the approved changes on insurance rates.
- (6) The steps taken by the Department of Insurance to notify the Legislature and the people of New Jersey of the cost impact on senior citizen motorists of the changes in the federal medicare law contained in the "Omnibus Reconciliation Act of 1980."

(7) The circumstances surrounding, and the basis for statements made by, Mr. Thomas J. Hooper that implementation of Assembly Bill 1696 (1982) will result in a minimum increase in automobile insurance rates of \$6 for every good driver in the State.

(8) The basis for the statement attributed to Commissioner of Insurance that creation of a Division of Insurance Fraud Prevention could cut insurance company payments by 15% and lower insurance premiums in the process.

You and your staff may, of course, raise at the Committee hearing any other matter relating to the automobile insurance system in New Jersey. The Committee does, however, request that at least 8 copies of any prepared statement of other written submissions that you may intend to present at the May 2nd hearing, be delivered to Assembly Banking and Insurance Committee staff, Spiros Caramalis, not later than April 29.

In the spirit of Governor Thomas H. Kean's and Speaker Alan J. Karcher's calls that partisan and other differences be laid aside in order that we may best serve the interests of the people of New Jersey, the Assembly Banking and Insurance Committee stands ready to work with you and your department as well as other interested parties in resolving the many problems of automobile insurance in New Jersey.

Should you require any additional information on any of the above matters, you may contact me at any of the following numbers, (201) 482-1075, 482-1079 or 482-4411, or Committee staff at (609) 292-7734.

cc: Governor Thomas H. Kean
Speaker Alan J. Karcher
Assembly Minority Leader Dean A. Gallo
Public Advocate Joseph H. Rodriguez
Assemblyman Eugene H. Thompson
Assemblyman Raymond Lesniak
Assemblyman Louis F. Kosco
Assemblyman John V. Kelly



MICHAEL F. DUBATO
CHAIRMAN

EUGENE H. THOMPSON
VICE-CHAIRMAN

RAYMOND LESNIAK
JOHN V. KELLY
LOUIS F. KOSCO

S.J. Caramalis, Staff

ASSEMBLY BANKING
AND INSURANCE COMMITTEE

CN-042

STATE HOUSE ANNEX, TRENTON, N.J. 08625

TELEPHONE: (609) 984-0445

HAND DELIVERED
4:24 PM
RECEIVED

APR 21 1983

DEPT. OF INSURANCE
COMMISSIONER'S OFFICE

SUBJECT: Announcement of the public hearing schedule
of the Assembly Banking and Insurance Committee
pursuant to Assembly Resolution 3026 (1983)

FROM: Chairman Michael F. Adubato

DATE: April 21, 1983

The Assembly Banking and Insurance Committee will hold a public hearing on Monday, May 2, 1983, beginning at 10:00 a.m., in the General Assembly chamber of the State House, Trenton.

The public hearing is being held pursuant to Assembly Resolution 3026 (1983) sponsored by Assemblymen Adubato and Kosco, and unanimously approved by the General Assembly on March 14, 1983, directing the Banking and Insurance Committee "to conduct an immediate investigation into State Department of Insurance procedures and practices in reviewing an approving automobile insurance rate filings, and disseminating information to the Legislature and the public."

The Banking and Insurance Committee intends to look into the following matters:

(1) automobile insurance rate increases granted by the Department of Insurance within the last 12 months;

(2) the nature and adequacy of current automobile insurers' accounting and financial reporting practices in providing a true picture of the profits and losses of automobile insurers;

(3) the Public Advocate's opposition to the rate increase for private passenger automobiles granted by the Department of Insurance to State Farm on April 4, 1983;

(4) the documentary basis for the contention that an increase in the personal injury protection tort threshold to \$1500 will result in a substantial cost savings in insurance premiums to motorists in New Jersey;

(5) the circumstances surrounding the failure of the Department of Insurance, in its press release of January 7, 1983, to inform the Legislature and the public of classification changes approved for Insurance Services Office filers, and of the impact of such changes on automobile insurance rates;

(6) the steps taken by the Department of Insurance to notify the Legislature and the people of New Jersey of the impact of recent changes in medicare law on the insurance rates of senior citizen motorists in the State;

(7) the circumstances surrounding statements by Department of Insurance personnel as to the impact of Assembly Bill 1696 (1982) on New Jersey motorists;

(8) any other matter relating to the automobile insurance system in New Jersey.

The Banking and Insurance Committee expects to schedule additional hearings, as may be necessary, on the foregoing and other matters relating to the automobile insurance system in New Jersey. The dates, times and places of future hearings will be announced.

Anyone wishing to testify or requiring additional information on the May 2nd hearing should contact Assembly Banking and Insurance Committee staff, Spiros Caramalis, at (609) 292-7734. Persons wishing to testify at that hearing should, if possible, provide Mr. Caramalis prior to the date of the hearing, at least six copies of any prepared statement or other submissions that they intend to present at the hearing.

STATEMENT OF JOSEPH F. MURPHY, COMMISSIONER OF INSURANCE
BEFORE THE ASSEMBLY BANKING AND INSURANCE COMMITTEE

ON MONDAY, MAY 2, 1983

Mr. Chairman and Members of the Committee.

In a memorandum, dated April 21, 1983, a copy of which is attached and marked as Exhibit A, your Committee requested me and certain members of the Department staff to appear before the Committee on May 2, 1983 and to furnish you with certain data as more fully set out in Exhibit A. Messrs. Cooper, Hooper, and Boer are here; Mr. Shumake is en route from Charleston, South Carolina, where he attended a Conference of Insurance Legislators (C.O.I.L.), meeting. Mr. Shumake should be available at your next meeting.

At the outset, I must note for the record that our Department does business in a fishbowl. Our records are public records and are open, at any reasonable time, for public inspection. In short, we have no secrets. In the case of the major automobile rate filings referred to in Exhibit A, and as required by law, the Office of the Public Advocate was furnished copies of the proposals simultaneously with their filing with us, except in the case of the State Farm filing where we furnished the Public Advocate a copy, and the Public Advocate intervened in the review process, as was his right. In addition, I should observe that while our rate law does not (nor does, so far as I know, the rate law of any other state) require us to issue press releases about our actions, it has long been our custom to do so with regard to average rate increases. We regard information published by the media, because of press releases or otherwise, as information to the public. Similarly, we regard information furnished to representatives of the public, either elected or appointed, as information to the public.

Turning now to your specific requests and dealing with them in the order that they are listed in Exhibit A:

(1) RATE INCREASES

Attached, and entitled Exhibit B-1, is a chart showing in summary form private passenger auto rate increases by filers writing more than 1% of

the market during the last 12 months.

Exhibits B-2 (a) thru B-2 (s), are Opinions, Decisions, correspondence and, where applicable, press releases in rate matters described in Exhibit B-1. Except in the State Farm matter and in the AIPSO Administrative Law proceeding, the Public Advocate did not demand a hearing before the rate approval was granted.

(2) FINANCIAL REPORTING

Attached are Exhibits C-1, 2, 3, 4, and 5, being my Decisions on certain Motions made by the Public Advocate. No appeal was taken from these Decisions and, as yet, the Motions have not been renewed. Our Department, over the last several months, has been studying the financial disclosure and reconciliation regulations promulgated by the States of Florida and New York. We also have been looking at the excess profits statutes of those States although we recognize that these ordinarily are handmaidens of open competition laws. We will be prepared in the reasonably near future to make recommendations as to how New Jersey should proceed down both or either of these avenues being mindful of our current practice which has been in effect for 10 years of following the so-called "Clifford" formula with respect to inclusion of investment income in rate-making.

(3) STATE FARM

My Decision of April 4, 1983, a copy of which is attached and entitled Exhibit B-2(r), outlines the positions of the Advocate and the Department.

(4) COST REDUCTION

In my AIPSO Opinion and Decision of April 4, 1983, Exhibit B-2 (a), modifying the Administrative Law Judge Decision, I stated:

"In considering rate recommendations of the magnitude involved herein, I am entirely aware of my obligation under the rating laws to provide

that rates be adequate. On the other hand, I am completely conscious of the problem of affordability raised by the application of the calculated increases, especially when they come so soon after other recent increases in our private passenger rates.

"Affordability is not one of the criteria of our rating law, yet the Department is fully cognizant of the harsh effect the cost of automobile insurance is having on our citizens. I take notice of current legislative efforts to contain the cost of our overly expensive automobile reparations system, particularly A-1747 (Gallo), and S-3059 (Saxton), which would increase the No-Fault threshold and establish a medical fee schedule, and A-1719 (Gallo), which would establish an Insurance Fraud Unit within the Department of Insurance. It is not unreasonable to conclude that the passage of such legislation would produce substantial savings in our current reparations system.

"Of its nature, rate-making is prospective. Rates are made today on past experience and should be projected so as to reasonably incorporate developments likely to occur during the immediate future.

"Accordingly, I hereby approve, for use by all insurers in both the voluntary and involuntary markets, the flat charge(s) per car set out below for policies effective on and after June 1, 1983 provided, however, that any cost savings, as appropriately determined by me in a subsequent proceeding, likely to result from the enactment of the above cited, or similar, legislation, will be calculated as soon as practicable upon enactment thereby reducing or eliminating the capitation charge(s) imposed under this Decision."

Any specific determination must await an evaluation or judgment of potential savings of enacted legislation. I have no magic formula but believe that with the support of actuarial projections and informed

judgment an estimate of cost savings can be arrived at. At this point, I submit that the savings under the cost containment legislation recommended by the administration are self-evident.

(5) PRESS RELEASE OF JANUARY 7, 1983

Our Department, on January 7, 1983, approved an ISO rate increase averaging 7% state-wide and including certain classification changes. That filing was subsequently withdrawn by ISO at the specific request of your Chairman because of his objection to the classification changes. The substituted filing, which did not include classification changes, was approved by me on January 19, 1983.

There is attached:

(A) Entitled Exhibit D-1 -- a copy of the pertinent part of the ISO rate proposal dealing with classification changes filed with the Department on May 19, 1982, which resulted in the January 7, 1983 approval. Copies of this filing were: (1) simultaneously furnished to the Public Advocate by the filer, and (2) at his specific request, handed to the Chairman of this Committee in June of 1982 in the Senate Chambers here in the State House. In addition, a summary of the classification changes proposed by the filer and portraying dollar changes in selected territories was given to your Chairman on December 13, 1982 by representatives of ISO during a meeting with him. A copy of such summary is attached as Exhibit D-2. Our file does not note any objections to the proposed classification changes from either the Public Advocate or your Chairman prior to my action of January 7, 1983.

(B) Entitled D-3 -- a copy of a news story dated November 21, 1982, appearing in the Newark Star Ledger, describing the ISO filing and the proposed classification changes.

(C) Entitled Exhibit D-4 -- a copy of this Department's press release, dated January 7, 1983, announcing approval of the filing and focusing on its state-wide average cost impact.

(D) Entitled Exhibit D-5 -- a copy of a news story appearing in the January 8, 1983 issue of the Newark Star Ledger, reporting the rate and classification changes.

(E) Entitled Exhibit D-6 -- a copy of a Department press release respecting the substituted filing, which elicited minor press interest.

(6) MEDICARE/PIP

There is attached Exhibit E-1. Exhibit E-1 is a summary of the activity of our Department respecting the impact of proposed Federal Medicare regulations on the auto insurance costs of our senior citizens. Attached to Exhibit E-1 are copies of:

- (a) our letter to our State's Washington Office, dated July 8, 1982,
- (b) my letter to the Federal Administrator of Health and Human Services, dated July 16, 1982,
- (c) a copy of a Brief prepared by Colonial Penn Insurance Company furnished to our Washington Office by us in October 1982.

To bring this matter up-to-date since the preparation of Exhibit E-1, there have been these developments:

(1) at the Spring meeting of the National Association of Insurance Commissioners in Baltimore, Maryland, on March 30, 1983, at my request, the Executive Committee reaffirmed its June 1982 Resolution in opposition to the proposed regulation and directed that such Resolution be sent to the new Secretary of Health and Human Services, Margaret Heckler.

(2) a final regulation making Medicare subordinate to PIP was published in the Federal Register on April 5, 1983 with an effective date of June 6, 1983.

(3) There have been several meetings of representatives of our Department, our Attorney General, and the New York Insurance Department, and the New York Attorney General, in respect to legal action to stay and to invalidate the regulation. We have been advised by our Attorney General that such an action has substantial merit.

It should be noted that legal action such as that now contemplated could not have been taken by us until a final regulation was published and, as noted, that publication took place on April 5, 1983.

On Thursday, April 28, 1983, Governor Kean announced that he has directed the Attorney General to file suit in Federal court to stay the effect of and invalidate the Health and Human Services regulation.

(Copy of press release attached to Exhibit E-1, dated April 28, 1983.

(4) over the last few months we have been exploring possible amendments to our PIP law which may continue Medicare as primary for our senior citizens. We hope to have the cooperation of your Committee in this endeavor.

(7) HOOPER STATEMENT

In response to press inquiries about the effect of the capping provisions of A-1696, our Press Officer, Mr. Hooper, dealt with the average, not minimum, increases on uncapped cars. No reference was made to good or bad drivers; the reference was to the effect on cars in uncapped territories. His \$6.00 estimate was based on calculations developed by our Actuarial Department. A copy of such calculations is attached as Exhibit F.

(8) FRAUD BUREAU

The attribution recited in Exhibit A is not correct. I have said that

there have been industry studies which estimate that as much as 15% to 20% of the insurance dollar is lost to fraud. I have no precise knowledge of how much fraud there is in New Jersey, or how much could be rooted out by our Division of Fraud.

The Florida Insurance Department confirms the statement that 15% to 20% of insurance claims are fraudulent. This is based on their operation of an Insurance Fraud Division founded in April of 1977.

The Fraud Bureau recently achieved its 500th conviction for insurance fraud in that State since the inception of their Bureau. They consider their Bureau to have been a successful endeavor and, while they do not have statistics to measure the impact on rates, they feel that they have been effective.

(9) OTHER MATTERS

A. A-1696 -- On August 13, 1982, I wrote to the Chairman of your Committee about possible amendments to A-1696. No response was received to my letter and although a few of the points considered therein were dealt with in subsequent legislation, a number of items remain for consideration.

B. Proposed Future Legislation -- While presently I have no specific recommendations beyond legislation already introduced and mentioned above, I am mindful that we may wish to consider the possible repeal of compulsory liability insurance and the curtailment of PIP benefits particularly if satisfactory cost containment results are not otherwise attainable. You will recall, Governor Kean in his campaign, suggested the possible repeal of compulsory in connection with the reform of the auto reparations system.

Finally, and perhaps most importantly, in response to the next to the last paragraph of Exhibit A, I must record my hope that your investigation

is not permitted in any way to divert your Committee's attention from the prompt consideration and, hopefully, the passage of auto reparations cost containment legislation, (such as 1747), which has been pending before your Committee since July 8, 1982. Reducing the cost of our New Jersey automobile reparations system is the only real way, immediately at hand, to stabilize or reduce auto rates for all New Jersey drivers.

JFM

CC: Governor Thomas H. Kean
Speaker Alan J. Karcher
Assembly Minority Leader Dean A. Gallo
Public Advocate Joseph H. Rodriguez

EXHIBIT B-1

12 50 7 53

<u>ing No.</u>	<u>Company Name</u>	<u>Letter Date</u>	<u>Company Requested</u>	<u>Date PA Rec.</u>	<u>PA Rec.</u>	<u>Date Approved</u>	<u>Overall Effect</u>
900/81-901	AIPSO	5/20/81	+94.6%	12/06/82	+ 6.7%	4/04/83	+26.1%
1366	AIPSO	7/08/82	+15.0%	7/13/82	0.0%	7/09/82	+15.0%
25	AIPSO	1/11/83	+ 7.0%	1/27/83	0.0%	1/28/83	+ 7.0%
991 Step I	ISO	5/19/82	+15.0%	7/07/82	+ 9.8%	7/02/82	+15.0%
991 Step II	ISO	5/19/82	+15.0%	7/07/82	+11.4%	1/07/83	+ 7.0%
29	ISO	1/18/83	0.0%	None	None	1/19/83	0.0%
609	Aetna	6/30/80	+34.7%	8/18/82	+ 7.6%	9/02/82	+25.0%
50	Allstate	1/05/82	+13.1%	2/23/82	Indet.	4/20/82	+13.1%
1658	Allstate	7/12/82	+15.0%	9/22/82	+ 6.2%	10/04/82	+11.0%
Dept. #	Allstate	N/A	+ 7.0%	None	None	1/10/83	+ 7.0%
659	Colonial Penn	4/01/82	+47.3%	9/30/82 & 10/19/82	+35.4%	10/20/82	+32.1%
35	Colonial Penn	1/14/83	+ 0.4%	None	None	1/25/83	+ 0.4%
1495	Keystone	7/22/82	+15.0%	None	None	9/07/82	+15.0%
431/82-1390	Liberty Mutual	5/06/80	+21.5%	None	None	8/02/82	+15.0%
28	Liberty Mutual	1/10/83	+ 7.0%	None	None	2/15/83	+ 7.0%
1677	Motors	8/05/82	+15.0%	12/08/82	+15.0%	12/10/82	+15.0%
105	Prupac	1/18/82	+25.5%	7/01/82	+ 4.0%	7/02/82	+18.5%
1833	State Farm	8/26/82	+15.0%	2/10/82	- 9.8%	4/04/82	+15.0%
967	Travelers	5/11/82	+28.5%	10/15/82	+29.1%	10/15/82	+27.1%

EXHIBIT B-I

<u>ling No.</u>	<u>Company Name</u>	<u>Letter Date</u>	<u>Company Requested</u>	<u>Date PA Rec.</u>	<u>PA Rec.</u>	<u>Date Approved</u>	<u>Overall Effect</u>
-900/81-901	AIPSO	5/20/81	+94.6%	12/06/82	+ 6.7%	4/04/83	+26.1%
-1366	AIPSO	7/08/82	+15.0%	7/13/82	0.0%	7/09/82	+15.0%
-25	AIPSO	1/11/83	+ 7.0%	1/27/83	0.0%	1/28/83	+ 7.0%
-991 Step I	ISO	5/19/82	+15.0%	7/07/82	+ 9.8%	7/02/82	+15.0%
-991 Step II	ISO	5/19/82	+15.0%	7/07/82	+11.4% None	1/07/83	+ 7.0%
-29	ISO	1/18/83	0.0% (withdrawing)	None	None	1/19/83	0.0%
-609	Aetna	6/30/80	+34.7%	8/18/82	+ 7.6%	9/02/82	+25.0%
-50	Allstate	1/05/82	+13.1%	2/23/82	Indet.	4/20/82	+13.1%
-1658	Allstate	7/12/82	+15.0%	9/22/82	+ 6.2%	10/04/82	+11.0%
Dept. #	Allstate	N/A	+ 7.0%	None	None	1/10/83	+ 7.0%
-659	Colonial Penn	4/01/82	+47.3%	9/30/82 & 10/19/82	+35.4%	10/20/82	+32.1%
-35	Colonial Penn	1/14/83	+ 0.4%	None	None	1/25/83	+ 0.4%
-1495	Keystone	7/22/82	+15.0%	None	None	9/07/82	+15.0%
-431/82-1390	Liberty Mutual	5/06/80	+21.5%	None	None	8/02/82	+15.0%
-28	Liberty Mutual	1/10/83	+ 7.0%	None	None	2/15/83	+ 7.0%
-1677	Motors	8/05/82	+15.0%	12/08/82	+15.0%	12/10/82	+15.0%
-105	Prupac	1/18/82	+25.5%	7/01/82	+ 4.0%	7/02/82	+18.5%
-1833	State Farm	8/26/82	+15.0%	2/10/82 ⁸³	- 9.8%	4/04/82 ⁸³	+15.0%
-967	Travelers	5/11/82	+28.5%	10/15/82	+29.1%	10/15/82	+27.1%

* Based on testimony submitted to Committee

** See Exhibit B-2(a)

IN THE MATTER OF:

AUTOMOBILE INSURANCE PLANS SERVICE OFFICE (AIPSO)

AND

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

AND ANDREW J. THOMA

This is an Opinion and Decision reviewing and approving, in part, as modified, the 94-page Initial Decision of Administrative Law Judge Diana C. Sukovich, (ALJ), dated December 16, 1982, and filed with me on that date. Time for my review was duly extended until April 4, 1983.

In addition to AIPSO, State Farm Mutual Automobile Insurance Company and Andrew J. Thoma were petitioners and intervenors in this proceeding. I do not disturb the ALJ findings in respect to them.

AIPSO is a licensed rating organization in the State of New Jersey and, on behalf of its members being the insurers writing private passenger automobile insurances through the Automobile Insurance Plan, (AIP), it has requested substantial rate relief. The ALJ has determined that AIPSO members are entitled to a flat per car increase in respect to both the voluntary market and the involuntary market (AIP) of approximately \$34.00 for the mandatory coverages, (PIP and Bodily Injury and Property Damage), an additional \$14.00 for Comprehensive, or an additional \$14.00 for Comprehensive and Collision coverages combined, and \$10.00 for the mandatory Uninsured Motorists coverage for a total of \$58.00.

As recommended by the ALJ, these flat capitation fees have been trended through March 1, 1983 and I have further modified them downward to reflect: (1) rate increases granted since the date of the ALJ's Decision, and (2) the effect of using combined AIP and voluntary experience for the voluntary risk. The details of these

computations are in the attached Exhibits. For the sake of clarity, the final calculations are stated here on a per car basis.

PIP, BI and PD Liability	\$ 14.00
UM	5.00*
Comprehensive, <u>or</u>	14.00
Comprehensive and Collision	<u>14.00</u>
Total	\$ 33.00

The State-wide impact of these increases is about 5.4% or \$110 million. Thus, the policy constant or capitation charge now rises from its present \$42.00 per car to \$75.00.

At the threshold, I express my initial reservations in respect to the recommendation of a "single tier" rate treatment for both the residual and voluntary markets. Likewise, I have some concern about distributing loss costs on a capitation rather than a traditional classification system. Upon reflection, however, I have decided not to quarrel here with either the single tier or capitation approaches since I must recognize that the single tier concept has long been ingrained in the New Jersey auto residual market operation and that the capitation approach has been in effect in our State for several years. Both of these approaches are incorporated in A-1696 recently signed into law and which becomes fully operational on January 1, 1984.

In considering rate recommendations of the magnitude involved herein, I am entirely aware of my obligation under the rating laws to provide that rates be adequate. On the other hand, I am completely conscious of the problem of affordability raised by the application of the calculated increases, especially when they come so soon after other recent increases in our private passenger rates.

Affordability is not one of the criteria of our rating law, yet the Department is fully cognizant of the harsh effect the cost of automobile insurance is having on our citizens. I take notice of current legislative efforts to contain the cost of our overly expensive automobile reparations system, particularly A-1747 (Galjo), and S-3059 (Saxton), which would increase the No-Fault threshold and establish a medical fee

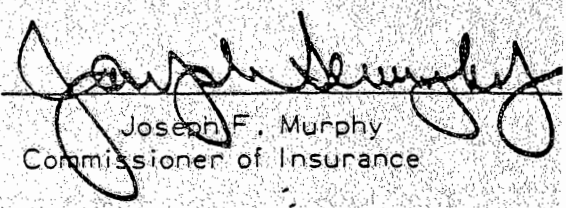
*The A.I.I. recommended an escrow account which I find

schedule, and A-1719 (Gallo), which would establish an Insurance Fraud Unit within the Department of Insurance. It is not unreasonable to conclude that the passage of such legislation would produce substantial savings in our current reparations system.

Of its nature, rate making is prospective. Rates are made today on past experience and should be projected so as to reasonably incorporate developments likely to occur during the immediate future.

Accordingly, I hereby approve, for use by all insurers in both the voluntary and involuntary markets, the flat charge(s) per car set out below for policies effective on and after June 1, 1983 provided, however, that any cost savings, as appropriately determined by me in a subsequent proceeding, likely to result from the enactment of the above cited, or similar, legislation, will be calculated as soon as practicable upon enactment thereby reducing or eliminating the capitation charge(s) imposed under this Decision.

PIP, BI and PD Liability	\$ 14.00
UM	5.00
Comprehensive, <u>or</u>	14.00
Comprehansive and Collision	<u>14.00</u>
Total	\$ 33.00


Joseph F. Murphy
Commissioner of Insurance

Trenton, New Jersey
April 4, 1983

Enclosures

(See Attached Service List of Parties)

STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

Joseph F. Murphy, Commissioner For information contact:



OFFICIAL NEWS RELEASE

Phone: Trenton (609) 292-6499

Thomas J. Hooper

FOR RELEASE IMMEDIATE - April 4, 1983

TRENTON - The failure of the Legislature to enact pending auto insurance cost containment measures has made it necessary to accept the recommendation of an administrative law judge that an additional charge be added to the insurance premium of every insured car to meet mounting losses, State Insurance Commissioner Joseph F. Murphy said today.

However, instead of the \$44 to \$58 per car charge recommended by Administrative Law Judge Diana C. Sukovich after an extended public hearing, Murphy said he would approve only a charge of \$19 per car for those carrying the mandated liability and uninsured motorist coverages and an additional \$14 for those cars with comprehensive and collision coverages, a total of \$33 for those with full coverage.

He added the new charge would be effective June 1 and suggested that prompt legislative action on cost control could lead to a reduction or elimination of the charge.

He said that any cost savings likely to result from enactment of cost control legislation could be quickly calculated in accordance with standard procedures and used to offset the additional charge per car in whole or in part.

At the same time, Murphy also announced his approval of a 15 per cent increase for State Farm Mutual Automobile Insurance Company, the state's second largest auto insurance carrier. It is the first increase for State Farm since August 14, 1981.

Murphy noted that the constantly increasing cost of auto insurance in New Jersey, whose motorists now pay the highest average rates in the country, is a result of New Jersey's overly generous No-Fault law. He said the only way the rates can be brought down is to stem the outflow of insurance payments, particularly in cases where injuries are minor, and through placing a ceiling on medical payments and rooting out fraud.

These goals can be reached, he added, by enactment of the two pending bills, A-1747, which would increase the No-Fault threshold to \$1,500 and establish a schedule of maximum medical benefit payments, and A-1719, which would empower the Department of Insurance to investigate cases of suspected fraud, which is estimated to siphon off as much as 15 per cent of the insurance dollar.

"It is not unreasonable to conclude that the passage of such legislation would produce substantial savings in our reparations system," Murphy said.

The use of a flat additional charge per car, which is referred to as a policy constant, was introduced in November, 1980 as a means of offsetting losses in the New Jersey Automobile Insurance Plan (Assigned Risk). It was set then at \$30 for the liability coverages and \$12 for comprehensive and collision coverages, a total of \$42.

The additional charge approved today will be added to the existing policy constant, which will now range from \$49 for the liability coverages to \$75 per car for full coverage. It is charged to all cars, both voluntary and assigned risk.

Under traditional practice in New Jersey, the Assigned Risk Plan is not permitted its own rating system. Instead, it must use for the liability coverages the rates approved for the state's major rating bureau, the Insurance Services Office, but it is permitted to impose heavy surcharges for motor vehicle violations.

The recommendation for an increase in the policy constant was made by ALJ Sukovich after an extended hearing last year on a petition by the Assigned Risk Plan and State Farm, which sought a determination that the Plan was entitled to a rating system based on its own experience.

The administrative law judge rejected the contention but agreed that the continuing losses in the Assigned Risk Plan required an increase in the policy constant.

Murphy said that he was able to reduce the recommended \$58 charge to a range of \$19 to \$33 by applying as an offset the seven per cent increase approved for most of the companies last January 10 and also taking into account the effect of combining both assigned risk and voluntary experience in determining voluntary rates.

The new charge will yield about an additional \$110 million in premium on a yearly basis.

The State Farm increase will yield an additional \$17 million in annual premium. State Farm insures about 10 per cent of the voluntary market, or 260,000 cars.

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STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

Joseph F. Murphy, Commissioner



Exhibit D-4 OFFICIAL NEWS RELEASE

Phone: Trenton (609) 292-6499

For information contact: Thomas J. Hooper

FOR RELEASE January 7, 1983

TRENTON - State Insurance Commissioner Joseph F. Murphy announced today that Insurance Services Office, (ISO), a rating organization that represents about 200 insurers in New Jersey, has been granted an average 7% increase for private passenger automobile insurance effective January 10, 1983. The member companies of ISO insure about 1,400,000 cars or approximately 70% of the voluntary market in the State. Allstate Insurance Company, a member of ISO, will retain its 4% expense reduction.

ISO had asked for a 30% increase — half of which was approved last July. After consultation with the Department's actuaries and the Public Advocate, and in line with the recommendations of the Advocate's expert, Murphy allowed an increase of only 7%, less than half of the 15% requested. The increase will produce an additional annual premium of approximately \$56,000,000.

The Commissioner again pointed out that New Jersey has one of the most expensive auto reparations systems in the country and that without significant cost containment legislation, particularly in the area of the No-Fault threshold, costs for auto insurance will continue to escalate.

Murphy also took note of the automatic rate adjustment feature of the Joint Underwriting Association Bill, A-1696, which is now on the Governor's desk, as well as the decision of an Administrative Law Judge, which he is now considering and which recommends certain "per car" increases to cover AIP losses. Murphy emphasized that (1) if A-1696 does become law the automatic rate adjustment feature will not become operative during 1983; and (2) ISO has agreed that any rate increase resulting from his approval or modification of the ALJ decision would be reduced by the 7% rate increase approved today. In the latter connection, Murphy pointed out that if the recommendations of the ALJ, which he must act upon in the next few weeks, were adopted without change

there would be additional charges for all filers but these charges to ISO rated insureds would be relatively smaller.

Murphy also noted that the AIP probably would apply for and receive the 7% increase since its rates have been traditionally geared to those of ISO. In passing, it is noted that A-1696 requires that auto-residual market rates be the same as those of ISO.

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Insurance Services OfficeProposed Change in Private Passenger Automobile Insurance Rates

The Insurance Services Office filed for a +15% increase for private passenger automobile insurance rates. This +15% increase represents a cutback of several percentage points from the increase indicated by the statistics collected and analyzed by ISO. The recommendation of the Public Advocate's office calls for a further cutback to only a 7% increase.

These figures tell but half the story, however, for they are averages and pertain to all drivers taken collectively. The filing also contains major changes in the ISO classification plan. A classification plan is the criteria used by insurance companies to determine the rate for a specific driver.

The revised ISO Classification Plan addresses the expressed concern for senior citizens and the highest rated drivers - young drivers in the higher rated city areas. The revisions results in the relative reduction of rates for these classes of insureds based on an analysis of insurance loss statistics.

For example, a typical young driver in Newark today pays \$2260 for an insurance package that includes the mandated liability minimum coverage as well as comprehensive and collision coverages, which are optional. The cost of this package would increase \$158 if a 7% increase were granted without the revised classification plan. With the revised plan, the cost decreases substantially, and the driver pays \$2068 - \$192 less than today, and \$350 less than what is called for without the classification change. The rates for some young drivers in the cities would increase slightly but most would be reduced, some by more than the example cited.

A second effect of this revised classification plan is the lowering of rates for senior citizens. For the same insurance package mentioned, a Newark driver who is over 65 years old today pays \$1041. This cost would increase \$73 with a 7% increase but no classification plan change. With the revised plan, the cost again decreases to \$1006, \$35 less than today, and \$108 less than what is called for without the classification change.

Not everyone's rate can go down, of course. These large decreases, affecting a relatively small percentage of drivers, must be offset by small increases for a larger percentage of drivers. A typical adult operator (aged 20 - 64) in Newark will pay \$52 more and an adult operator in Jersey City will pay \$35 more than if the classification plan were not changed.

Attached is a comparison of rates for selected classes of insureds and geographic locations which demonstrate the effects of the changes.

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ACTUARIAL SERVICES
PROPERTY LIABILITY

New Jersey Rates

The following rates are for 15/30 B.I., \$10,000 P.D., Full P.I.P., 15/30/5 U.M., \$50 Deductible Comprehensive, and \$200 Deductible Collision. Rates include Expense Fees and Policy Constants. Physical Damage rates assume an Age 3 Symbol 7 automobile.

Driver I : Youthful Operator, Unmarried Male, 21 years old, No Good Student Discount, No Penalty Points, Pleasure Use, Principal operator.

Driver II : Adult, Pleasure-Use, No Penalty Points.

Driver III : Senior Citizen, Pleasure Use, No Penalty Points.

	<u>Jersey City</u>	<u>Newark</u>	<u>Hunterdon County, Somerset County, and Warren County</u>
<u>Present Rates</u>			
Driver I	\$1,563	\$2,260	\$1,014
Driver II	815	1,170	566
Driver III	735	1,041	498
<u>+7% With No Class Plan Change</u>			
Driver I	1,672	2,418	1,085
Driver II	872	1,252	606
Driver III	786	1,114	533
<u>+7% with Revised Class Plan</u>			
Driver I	1,431	2,068	1,065
Driver II	907	1,304	607
Driver III	712	1,006	492

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DEC - 6 1982

ACTUARIAL SERVICES
PROPERTY LIABILITY

STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

Joseph F. Murphy, Commissioner for information contact:



Exhibit D-6 OFFICIAL NEWS RELEASES

Phone: Trenton (609) 292-6499

Thomas J. Hooper

FOR RELEASE IMMEDIATE... Jan... 19, 1983.....

TRENTON - State Insurance Commissioner Joseph F. Murphy said today he saw no reason to refuse a request by the Insurance Services Office, a rating bureau for 200 auto insurers, to withdraw changes in the driving classification plan that were to take effect January 10.

Murphy said he has issued an order approving ISO's request and permitting its member companies to continue basing rates on the driver classification plan that had been in effect prior to January 10. The order is retroactive to January 10.

"Either plan is acceptable," Murphy said, "and if ISO prefers to go back to the old plan, there is no reason why it should not be allowed to do so."

The new plan would have compressed the 217 driver classes, which are based on age, sex, marital status, and use of the auto, into 161.

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Proposed Federal Regulation Concerning Medicare
Benefits and No-Fault Automobile Insurance

In early June, 1982, this Department (under present management) first became aware that the Health Care Financing Administration (Federal) has proposed a regulation to implement that portion of Section 953 of the Omnibus Reconciliation Act of 1980 which would exclude Medicare payments where payment can easily be expected to be made under an automobile or liability insurance policy or under No-Fault insurance. This proposed regulation was first published in the Federal Register on May 17, 1982.

The National Association of Insurance Commissioners, in which New Jersey is active, adopted a Resolution at its Summer Annual Meeting in Philadelphia, held June 6 to 11, 1982 in opposition to the proposed regulation of the Health Care Financing Administration which would void State laws and make No-Fault primary over Medicare, stating that the proposed regulation is objectionable for the following reasons:

1. It is contrary to the terms and intent of the Omnibus Reconciliation Act of 1980;
2. It directly increases the cost of automobile insurance to the elderly in No-Fault states without providing any increase in health care benefits;
3. It imposes an unequal burden on the elderly in No-Fault states, who must pay the same Medicare premiums as those in Non-No-Fault states while receiving a reduced level of Medicare benefits;
4. It does nothing to reduce overall insurance costs, but merely shifts the burden of such costs to those who can bear it least; and
5. It requires insurers to assume obligations under current policies for which no premium has been received.

Immediately after preliminary discussions with interested groups, such as the American Insurance Association, American Association of Retired Persons, Colonial Penn Insurance Company, etc., the Commissioner on July 8, 1982 wrote to Ms. Alie Randlett, Director of New Jersey's Washington Office asking to be advised of the present status of this proposed regulation and its prospects of adoption.

On July 16, 1982 Commissioner Murphy wrote to Ms.Carolyn K. Davis, Administrator, Department of Health and Human Services, Baltimore, Maryland, expressing his concern about the serious effect that the proposed regulation would have upon automobile Personal Injury Protection (PIP) insurance rates in this State, particularly, in light of proposed legislation introduced to achieve cost savings in the area of No-Fault coverages. He also expressed this Department's concerns as to the propriety of this regulation in light of the provisions of the McCarran-Ferguson Act.

Discussions were initiated shortly thereafter with the Colonial Penn Insurance Company through their Vice President and General Counsel for Government Affairs. Colonial Penn is the largest writer of automobile insurance for senior citizens in this State, and in 1980 when this Omnibus Act was passed under the Carter Administration was affiliated with the American Association of Retired Persons. Because of their particular interests, Colonial Penn has done the most extensive research on the implications of this regulation which would change the relative position of Medicare v. No-Fault from primary to secondary.

In October, 1982 a carbon copy of a legal Brief, prepared by Colonial Penn Insurance Company regarding the question of McCarran-Ferguson Act application, was forwarded to our Washington Office. On October 26, 1982 a response was received from Howard Shapiro of our Washington Office which stated that "it was clearly the intent of Congress to make Medicare subordinate to automobile liability and No-Fault insurance, regardless of State law. Any remedy, therefore, would have to come from Congress - it is unlikely they would negate a Medicare savings item passed two years ago - or through the courts."

The McCarran-Ferguson Act, which reserves to the states the right to regulate insurance and provides that no Federal law shall be construed to supersede a State law unless the Federal statutes specifically relates to the business of insurance. It seems the general opinion in Washington was that Section 953 of the Reconciliation Act relates to the business of insurance.

In mid-July, 1982, as part of a meeting on an unrelated matter, this proposed change was discussed with the New Jersey Chapter of the American Association of Retired Persons through their Legislative Chairman Russell Heerman and their Assistant State Director Walter Sheldon. They were aware at that time of this pending change.

During recent conversations with Mr. Ron Hagen of the Insurance Legislative Section of the American Association of Retired Persons, it was affirmed that his association did not oppose this Omnibus legislation in 1980. The reasons given were that there were other things in this legislation on the plus side for senior citizens and that overall impact was considered. It was also learned that there is a similar regulation designed to reduce the strain on the Medicare Trust Fund to the extent of approximately \$400 million by allowing persons age 65 to 70 who are employed on a full-time basis to elect health coverages provided by their employer, rather than the benefits of Medicare. He stated that such employees would almost always find employer provide benefits to be advantageous.

By way of background, it is interesting to note that in 1980 both New Jersey Senators Bradley and Williams voted YES for the Omnibus bill, along with Democratic Congressmen Hughes, Howard, McGuire, Minnish, Gurnini and Patton. Congressman Rodino was absent. Democratic Congressmen Florio, Thompson and Roe voted NO, along with Republican Congresswoman Fenwick and Congressmen Forsythe, Hollenbeck and Ronaldo. It is also of interest that Florida's Claude Pepper, a recognized champion of senior citizens, voted YES.

July 8, 1982

Mrs. Alia Randlett
Director of Washington Office
State of New Jersey
444 North Capitol Street, N.W.
Washington, D. C. 20001

Re: Proposed Federal Regulations
concerning Medicare Benefits
and No-Fault Automobile Insurance

Dear Mrs. Randlett:

You are probably aware that the Health Care Financing Administration (HCFA) has proposed a regulation to implement that portion of Section 953 of the Omnibus Reconciliation Act of 1980 (P. L. 96-499) which amended 42 USC 1395y (b) (1) (The Social Security Act) concerning Medicare so as to exclude coverage thereunder where payment could reasonably be expected to be made under an automobile or liability insurance policy or under no-fault insurance.

As drafted, the net effect of the proposed regulations would, in part, make state no-fault benefits primary over Medicare. We find it disturbing that on the basis of P. L. 96-499 and the McCarran-Ferguson Act the Health Care Financing Administration is seeking to void existing state laws which provide that state no-fault benefits are reduced by Medicare benefits and result in premium savings for senior citizens.

We feel that the statutory basis for the HCFA proposed regulations is strained since it appears that the 1980 Act was intended to avoid duplication of payment rather than voiding state laws which made Medicare primary. The net effect of the regulation would be to impose additional costs on elderly drivers without any gain in benefits.

This matter is of considerable concern to us, and we would like to be advised on the present status of this proposed regulation and on its prospects of adoption.

Very truly yours,

W. Morgan Shumake
Executive Director of Insurance

jb

July 16, 1982

Ms.Carolyn K. Davis
Administrator HCFA
Dept. of Health and Human Services
Room 789, East High Rise Building
6325 Security Boulevard
Baltimore, Maryland 21235

Re: Notice of Proposed Rule Making
EPP-164-F (42 CFR Part 405)

Medicare Program; Services Covered Under Automobile
Liability, and Employer Group Health Insurance

Dear Ms. Davis:

I am writing to express our serious concerns with regard to the above indicated proposal. The proposed regulation, if adopted, would have a serious effect upon automobile insurance rates in this State. These rates are exasperatingly high and legislation designed to achieve cost savings has recently been introduced in our State legislature.

We are in the process of developing estimates of costs, which would result from making Medicare benefits secondary to automobile insurance coverages.

I am writing at this time to comply with your July 16, 1982 deadline for receipt of comments. We will provide further comments and more specific information as promptly as possible. This will serve to express our concerns as to the propriety of this regulation in light of provisions of the McCarran-Ferguson Act.

Very truly yours,

Joseph F. Murphy

jb



Colonial Penn Insurance Company

5 Penn Center Plaza / Philadelphia, Pennsylvania 19181

Michael D. Monette
Vice President and Counsel
for Government Affairs
(215) 988-8355

June 29, 1982

Ms.Carolyn K. Davis
Administrator, HCFA
Dept. of Health and Human Services
Room 789, East High Rise Building
6325 Security Boulevard
Baltimore, Maryland 21235

Re: Notice of Proposed Rule Making
BPP-164-P (42CFR Part 405)

Medicare Program; Services Covered Under Automobile,
Liability, and Employer Group Health Insurance

Dear Ms. Davis:

This paper is in answer to the Health Care Financing Administration's (HCFA) request for public comments relating to the captioned proposal which was published in the Federal Register, May 17, 1982.

This company is licensed in all jurisdictions. It specializes in the sale of automobile insurance to the elderly. Although several problems are discussed in this paper, it is primarily the Company's concern for the elderly which prompts its position.

THE ISSUE

The proposed Rule is preceded in the Federal Register by a discussion of the basic issues which begins on page 21103. Only the first issue concerns this paper:

Whether Medicare benefits would be secondary even when the private insurance policy or plan states that its benefits are secondary to Medicare or otherwise excludes or limits its payments to Medicare beneficiaries.

HCFA's interpretation of Section 953 of Public Law 96-499 (H.R. 7765) resolves this issue in the affirmative by presenting five arguments on page 21104 as rationale for its position. In Colonial Penn's opinion, these arguments are faulty. A rebuttal to each is presented in corresponding order. In addition, the issue raises questions regarding Fifth Amendment rights. Direct consumer costs also must be considered before implementing the proposed Rule.

ARGUMENTS AND REBUTTAL

Congressional Intent. House Budget Committee Report No. 96-1167, dated July 21, 1980, is cited as evidence of Congressional intent. The following language is quoted in pertinent part from page 389 of the House Committee's Report:

Under Title XVIII, Medicare will have residual rather than primary liability for the payment of services required by a beneficiary as a result of an injury or illness sustained in an auto accident where payment for the provision of such services can also be made under an automobile insurance policy.

Under present law, Medicare is the primary payor (except where a workmen's compensation program is determined to be responsible for payments for needed medical services) for hospital and medical services received by beneficiaries. This is true even in cases in which a beneficiary's need for services is related to an injury or illness sustained in an auto accident and the services could have been paid for by a private insurance carrier under the terms of an automobile insurance policy. As a result, Medicare has served to relieve private insurers of obligations to pay the costs of medical care in cases where there would otherwise be liability under the private insurance contract.

Rebuttal. The highlighted text of the Report expresses an intent to shift the primary burden of payment from Medicare to automobile insurance "where payment for the provision of such services can also be made under an automobile insurance policy . . . in cases where there would otherwise be liability under the private insurance contract." (Emphasis added.) Admittedly, Congress intended to eliminate duplication. But there is no mention of impairing automobile policies which would not otherwise be liable for duplicate payment of such services. Nor is there any indication of an intent to preempt state laws governing such policies.

This Company has communicated with House and Senate staff members since 1979 relative to this issue. The 96th Congress initially considered tort liability setoff. The following is quoted from page 26 of the Summary of Senate Finance Committee Action on Health Legislation as of June 29, 1979 (CP96-22):

On June 14, 1979, the committee agreed that where the Medicare patient is involved in an accident and his care can be paid for under the insurance policy of the individual who was at fault, Medicare would have residual and not primary liability.

Under this proposal, Medicare would pay the patient's care in the usual manner and then seek to be reimbursed by the private insurance carrier after, and to the extent that, its liability has been determined. The committee also agreed to leave to the discretion of the Secretary the minimum amounts estimated as recoverable, so as to avoid the administrative cost and effort of pursuing minor recoveries. (Emphasis added.)

Subsequently, Congressional focus evolved to the extent that the setoff included all automobile and no-fault liabilities (H.R.7765). But at no time through 1980 was there any indication from the Hill that Congress intended more than the elimination of duplicate benefits. By definition, if private insurance liability (benefits) existed, then duplication also existed. Conversely, if liability did not exist, Medicare benefits would not be duplicated.

The obvious intent was to make Medicare benefits secondary (excess) only in those situations where Medicare benefits would otherwise duplicate private insurance benefits. This would reduce the federal budget without costing the elderly additional, out-of-pocket expense for increased premium. Although duplicate benefits would be eliminated, the elderly would still receive full benefits for disability at no additional expense.

The proposed Rule goes further, however. It would create liabilities which currently do not exist by rewriting private insurance contracts. This would result in premium increases for elderly drivers. Several no-fault states require "personal injury protection" (PIP) benefits to be secondary to Medicare. To the extent that PIP benefits are reduced by the amount Medicare pays, these states require insurers to reduce premiums proportionately. Hence, the proposed Rule would necessarily cause the elderly driver to pay higher auto premiums in these states due to the creation of increased PIP exposure (primary) which did not previously exist. The significance of this increase in premium is discussed infra under "Consumer Impact."

There is no indication from a reading of the statute or the House Budget Committee Report that Congress intended to reform (rewrite) insurance contracts by creating new liabilities. Nor is there any indication of a Congressional intent to burden elderly motorists with the corresponding cost of increased premiums. Consequently, lacking specific Congressional authorization, the proposed Rule violates the McCarran-Ferguson Act.¹

Nonduplication Clauses. HCFA reasons that no impairment of contract or no-fault law can result, because such clauses in a policy or law "typically attempt to create coverage secondary to whatever Medicare coverage may exist. Thus, the language of the policies and laws . . . would be changed accordingly. Here, Section 1862(b) contemplates that Medicare will not pay benefits that are also covered by insurance and therefore contracts the scope of Medicare coverage."

¹ Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

Rebuttal. The proposal does not contract Medicare benefits. Full Medicare benefits will continue to be available to beneficiaries who do not have automobile insurance. HCFA is proposing to withhold Medicare benefits from only those beneficiaries who have automobile insurance by (1) eliminating Medicare benefits to the extent duplication exists, and (2) reforming (rewriting) existing no-fault policies and laws by reversing Medicare/no-fault primacy. As mentioned above, the latter approach requires specific Congressional authority.² That authority does not exist.

Public Policy. "Insurance policies sometimes include provisions intended to make them secondary to any other insurance, or void if other insurance exists. These 'other insurance' clauses are not favored in the law and are construed accordingly. See Appleman, Insurance Law and Practice, Chapter 204 (1979)."

Rebuttal. Although the 1979 edition of Appleman is cited, the current 1981 edition of Appleman should suffice for rebuttal purposes. Chapter 204 (Volume 8A) consists of 172 pages. Numerous forms of so-called "other insurance" clauses are addressed in the treatise, including double insurance, pro rata, excess and escape clauses. By way of historical approach, Appleman briefly notes that early property insurance policies contained a moral hazard safeguard known as the "double insurance clause," which would void the policy if it was later discovered that the insured carried other insurance on the same property. Appleman observes that the courts eventually considered avoidance in toto by way of such clauses to be contrary to public policy. This is not to say, however, that all "other insurance" clauses are contrary to public policy. Indeed, such clauses permeate modern insurance contracts on a multiple-line basis, because they are socially desirable.

Supremacy Clause. "By the same token, a provision in an insurance policy or State law attempting to make coverage secondary to Medicare cannot override a Federal statute establishing the opposite priority. We believe that provisions intended to limit coverage when Medicare is available are ineffective under the amendments to Section 1862(b)."

Rebuttal. There is no question that federal law is sovereign when a conflict between state and federal law exists, because federal law is "the supreme Law of the Land." But this is not the issue. Section 1862(b) does not conflict with, nor was it intended to conflict with, priorities established by state laws. If a conflict was intended, Congress would have specifically stated its intention pursuant to the McCarran-Ferguson Act.³ It is HCFA's proposed application of Section 1862(b) which conflicts with state laws. This in turn raises the McCarran issue.

The McCarran-Ferguson Act. "That Act reserves to the several States the right to regulate the business of insurance and provides that no Federal law shall be construed to invalidate, impair, or supersede any State law for regulating insurance unless the Federal statute specifically relates to the business of insurance (15 U.S.C. 1012). Since the

² Id.

³ Id.

amendments to Section 1862(b) plainly relate to the business of insurance, however, the McCarran-Ferguson Act is in no way contravened." (Emphasis added.)

Rebuttal. The McCarran-Ferguson Act requires more than general language relating to the business of insurance. If this were the only test for preemption, any language relating to the business of insurance would give the various federal agencies unrestricted authority to regulate the entire business of insurance. Obviously, this would frustrate the spirit and intent of McCarran. For this reason, Congress intended a much higher threshold. Section 1012(b) of the McCarran Act expressly states that: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, . . . unless such Act specifically relates to the business of insurance;" (Emphasis added.) Section 1862(b) may specifically require Medicare benefits to be secondary to automobile coverage which provides benefits otherwise duplicating Medicare, but the amended Act does not specifically relate to coverage which does not duplicate Medicare or the preemption of state laws governing such coverage. Hence, the McCarran-Ferguson Act is contravened by the proposed Rule.⁴

FIFTH AMENDMENT

A copy of Richardson v. Belcher⁵ is attached to and incorporated as part of this position paper. One does not have to be a "constitutional lawyer" to realize that this case highlights the vulnerability of Section 953 of the Omnibus Reconciliation Act of 1980 and, consequently, Section 1862 (b) of the Social Security Act. This case concerned the validity of Section 224 of the Social Security Act (42 U.S.C.S. 424a) which reduces Social Security disability benefits by the amount the individual receives under federal or state workers' compensation laws or plans.

Simply stated, Belcher was disabled during the course of his employment. He qualified for Social Security disability and received benefits accordingly. Subsequently, his benefits were reduced by the amount awarded to him by a state workers' compensation fund. Belcher challenged the offset under the Fifth Amendment by bringing an action against the Secretary of HEW, alleging that he was deprived of his property without due process of law.

In a badly split 4-3 decision,⁶ the Court upheld the validity of the offset on the grounds that it was rational for Congress to eliminate duplicate payments, because a worker would otherwise receive more than his take-home pay. The Court took judicial notice of

⁴Id.

⁵404 U.S. 73, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971).

⁶There were no abstainers. President Nixon had not yet appointed Justices Powell and Rehnquist.

the fact that Congress believed over-compensation would reduce the incentive of an individual to return to work, thereby impeding the rehabilitative efforts of state programs.

The dissenting opinions were grounded on the existence of unreasonable and arbitrary discrimination. Justice Marshall states the problem succinctly:

This is not to say that an offset scheme is intrinsically impermissible. Arguably, Congress has an interest in paying greater benefits to people who are relying completely on the federal social security program, and lesser benefits to people who have other sources of disability compensation. But the question here is not whether Congress has the power to prevent 'duplicative' payments that might exceed previous take-home pay and might thereby discourage disabled workers from returning to work. The issue is whether Congress may single out for the purpose of applying the offset only those who are receiving workmen's compensation, and exclude those who are receiving similar supplemental disability compensation from other sources. A concern about excessive combined benefits and 'rehabilitation' does not explain that distinction.

Section 1862 (b) of the Social Security Act also utilizes a discriminating offset scheme to eliminate duplication. Not all sources of private insurance coverage are offset. Significant sources are excluded from the scheme. Would the present Court uphold the offset contemplated by Section 1862 (b), or would it be considered irrational, invidious discrimination contrary to the Fifth Amendment?

This thought process can be taken one step further. The proposed Rule does not stop at eliminating duplication by way of discrimination. It surpasses its enabling legislation by not only discriminating against the elderly who have auto insurance, but also forcing the elderly motorists residing in no-fault states to pay higher premium for additional coverage which was not needed previously. This amounts to double discrimination. A fortiori, the Court would find the offset contemplated by the proposed Rule far more difficult to uphold than the offset scheme in Belcher. If challenged, it would appear that the proposed Rule would fall of its own weight.

CONSUMER IMPACT

Legal arguments aside, the proposal's economic impact on the elderly would be significant. Focusing only on seven of the no-fault states,⁷ this Company would be forced to increase annual premium by approximately \$6,300,000. Furthermore, this Company insures only about 7.7% of the motorists 65 and over in these states. Assuming that the other insurers who represent the remaining 92.3% of the market would require similar premium increases, the total premium increase in these states would exceed \$81,000,000 (\$6,300,000 ÷ .007).

⁷Connecticut, Florida, Michigan, Minnesota, New Jersey, New York, and Pennsylvania.

If the proposed Rule were limited to withholding Medicare benefits in those instances where duplication of benefits would otherwise exist:

- The Rule would be soundly grounded on legislative authority;
- The Rule would not violate the McCarran Act, because state laws would not be preempted;
- The Rule would be less likely to provoke Fifth Amendment challenge; and
- The Rule would not cause the elderly to pay higher auto premium.

Moreover, Medicare expenditures would still be pared significantly for fiscal year 1983 and beyond.

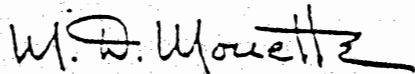
Consequently, we urge HCFA to adopt the following amendment to Section 405.323 (b) of the proposed Rule which is located on page 21108 of the Federal Register:

(b) Automobile medical or no-fault benefits excluded or limited for medicare beneficiaries. Except as specified in paragraph (c) of this section, payment may not be made for services covered under an automobile medical or no-fault insurance policy or plan even though State law or the insurance policy or plan states that its benefits are secondary to Medicare's or otherwise excludes or limits its payments if the injured party is also entitled to Medicare benefits to the extent that payment by the automobile insurer has been made, or can reasonably be expected to be made, with respect to such services.

It is assumed that any corresponding housekeeping changes necessitated by the amendment will be made throughout the Rule.

Thank you for the opportunity to offer these comments.

Respectfully submitted,



Michael D. Monette

" MDM#1/bca/1

cc: COIL Officers and Staff (List Attached)
NAIC Members and Staff (List Attached)

bcc: Jerry Sheehan (AIA)
Bill Suttle (AIA) -

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATELY

CONTACT: CARL GOLDEN

THURSDAY, APRIL 28, 1983

Governor Thomas H. Kean today moved to block a potential \$17.5 million automobile insurance premium increase for New Jersey's senior citizens by directing Attorney General Irwin Kimmelman to file suit overturning federal regulations prohibiting the Medicare program from paying medical costs for injuries sustained in motor vehicle accidents.

"The regulation throws an additional financial burden on senior citizens living in states with no-fault insurance laws by requiring the insurance carrier to pay medical costs, rather than Medicare," Kean said.

The Governor pointed out that since 1977, senior citizens in New Jersey have been charged one-half the premium for personal injury protection under the no-fault system.

"Should the federal regulation remain in place, the half-rate provision would no longer apply and senior citizens would see their rates for this protection double," Kean said.

Unless blocked by the courts, the new regulation would become effective on June 6.

The Governor said he has directed the Attorney General to bring the action in Federal Court and that the litigation has the full support of Insurance Commissioner Joseph Murphy.

"The regulation is patently unfair to senior citizens in the 23 states, including New Jersey, which have no-fault laws," Kean said. "Moreover, New Jersey already has the highest average per car insurance premium in the nation and this regulation, if implemented, will drive that average even higher."

Page Two

Automobile Insurance

Thursday, April 28, 1983

"Many senior citizens are already badly strapped financially and are forced to scrimp to meet auto insurance costs now," Kean said. "For many, any increase will force them to either drop insurance altogether and discontinue driving or continue to drive without insurance coverage at all."

"Neither choice is acceptable and the State should move with dispatch to assure that such a choice is not forced upon our senior citizens," he said.

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Exhibit F

INDUSTRY DATA
NEW JERSEY
PRIVATE PASSENGER AUTOMOBILE
RATE EFFECT ON UNCAPPED TERRITORIES
DOES NOT INCLUDE POLICY & EXPENSE CONSTANTS

<u>Coverages</u>	<u>Revenue Lost</u>	<u>1.35 Cap</u>	
		<u>Exposures Uncapped Territories</u>	<u>Amount Per Exposure</u>
15/30 Residual Bodily Injury	3,073,460	1,722,758	\$1.78
\$5,000 Property Damage	891,214	1,863,761	.48
Personal Injury Protection	1,064,696	1,841,800	.58
			\$2.84 \$3.00 Round
\$50 Ded. Comprehensive	1,776,027	756,765	\$2.35
\$200 Ded. Collision	565,031	623,863	.91
			\$3.26 \$3.00 Round
			\$6.00

Sources: Insurance Services Office compilations of experience
Liability for calendar accident year 1980, submitted
May 28, 1982, Physical Damage calendar year 1980, submitted
May 10, 1982, Experience excludes Special Auto Policy. Liability
& P.I.P. Coverages: Voluntary & Assigned Risk Exposures.
Physical Damage Coverages: Voluntary Exposures.

APPENDIX II. Submissions by Chairman Adubato

Exhibit A

Medicare submissions:

News Tribune article, March 1, 1983.

Star-Ledger article, March 1, 1983.

Asbury Park Press article, April 6, 1983.

New Jersey delegation votes on House
Resolution 7765 (The Omnibus Recon-
ciliation Act of 1980), in Congressional
Quarterly, December 6, 1980.

Official record of House vote on House
Resolution 7765 in Congressional
Record, December 3, 1980.

U.S. Department of Health and Human Services
press release

Exhibit B

Insurance Services Office filing approved
on January 7, 1983:

Star-Ledger article, November 21, 1982.

Star-Ledger article, January 8, 1983.

Insurance Services Office memorandum,
January 18, 1983.

Star-Ledger article, January 19, 1983.



HHS

NEWS

*Special Press release
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requested.*

*Bill Hinkes
% Mr. Gorman
306
from Andy Haze*

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

John Kittrell -- (202) 472-7438

HOME -- (703) 250-5825

Carol Rowan -- (202) 472-7438

HOME -- (301) 652-2540

FOR IMMEDIATE RELEASE

Tuesday, April 5, 1983

"Medicare has been duplicating payments for services covered by automobile, liability and employer group health insurance plans long enough," Health and Human Services Secretary Margaret M. Heckler said today, in announcing that HHS is issuing final rules preventing duplicate Medicare payments for services which are already covered by private automobile or liability insurance policies.

Today's rules will also make Medicare the secondary payor for beneficiaries of Medicare's End Stage Renal Disease program when these individuals are already covered by employer group health plans.

"The new rules will save taxpayers about \$29 million in fiscal year 1983 and \$94 million in fiscal year 1984, without, in any way, reducing beneficiaries' coverage. We also anticipate increased ESRD revenues of \$15 million in 1984 from recoveries of conditional Medicare payments," said Secretary Heckler.

Conditional payments will be made by Medicare in some cases and recovered later from the private insurer--for instance, when payment of insurance benefits is delayed because the claim is contested.

The regulations implement sections of the Omnibus Reconciliation Act of 1980 and the Omnibus Budget Reconciliation Act of 1981.

With some exceptions, Medicare duplication of payments by automobile and liability insurance plans apply to outstanding claims for services required because of accidents that occurred on or after Dec. 5, 1980. The rules on ESRD beneficiaries already covered by employer group health plans are effective for the months after September 1981.

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INSURANCE SERVICES OFFICE

160 WATER STREET NEW YORK, N. Y. 10038

FOR IMMEDIATE RELEASE

Contact: Dave Ostwald
(212) 487-7714

ISO FILES TO WITHDRAW

AUTO RATE-CLASSIFICATION PLAN

TRENTON, N.J., Jan. 18--Insurance Services Office (ISO) today filed to withdraw a rate-classification program for personal-auto insurance that the organization planned to introduce Jan. 10.

ISO said it would withdraw its proposed classification program in response to a request from the Assembly. The Assembly and State Senate have passed Assembly bill 1696, the New Jersey Automobile Insurance Reform Act of 1982 sponsored by Assemblyman Michael Adubato (D-Essex), that provides an alternative means to reduce auto rates for certain citizens of New Jersey.

ISO said it filed with the state Insurance Department to withdraw its classification plan in a spirit of cooperation with state legislators. The legislators asked that no change in the classification plan be made until Assembly bill 1696's provisions become effective.

ISO's withdrawal of its classification plan, if approved by the Commissioner of Insurance, would mean that a 7-percent increase in its personal-auto insurance rates, which became effective Jan. 10, will be applied under ISO's previous classification plan.

any of the corp. ones (17-24 approved)
(MORE)

Jan 1, 1983 / up to Jan 1, 1984
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ny (see)

cancel hearing

classification no
by Holley

Upres construction
corporation