PUBLIC HEARING

before

ASSEMBLY INSURANCE COMMITTEE

on

INSURANCE PROBLEMS BEING EXPERIENCED BY PUBLIC ENTITIES

February 25, 1986
Vineland City Hall
Vineland, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Ralph A. Loveys, Chairman
Assemblyman Gerald Zecker
Assemblyman John Rafferty

ALSO PRESENT:

Assemblyman Paul DiGaetano
District 36
New Jersey State Assembly

Laurine Purola
Office of Legislative Services
Aide, Assembly Insurance Committee

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ASSEMBLYMAN RALPH A. LOVEYS (Chairman): Good morning, Mayor.

MAYOR PATRICK RICHARD FIORILLI: (Mayor Fiorilli, speaking from audience without microphone is indiscernible.)

ASSEMBLYMAN CHINNIZI: Yes, good morning, Mayor and thank you. There were three meetings set up by the Chairman -- and the Insurance Committee -- in the State of New Jersey: One in Parsippany, one in Freehold -- which is considered South Jersey for Parsippany -- and one in Vineland, which is really South Jersey. And, I'm not trying to minimize the importance of Freehold.

But, it's really a pleasure for me to introduce, first of all, the Chairman of the Committee, Ralph Loveys, who hails from Florham Park -- and Ralph is the Chairman and will conduct the meeting; Gerry Zecker, who hails from Clifton, New Jersey, a member of the Committee; Paul DiGaetano, who hails from Passiac in New Jersey; and, Jack Rafferty, who is the Mayor of Hamilton Township and hails from that area.

We have two -- one who is the attorney for the Committee, Carol Ann Short, who is in the back, at the moment, with the white suit, and the Committee aide, who is Laurine Purola. And welcome, gentlemen, and this is Vineland, New Jersey -- for those of you who have never been here. Thank you.

ASSEMBLYMAN LOVEYS: Thank you, Joe.

ASSEMBLYMAN RAFFERTY: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes, Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: That's Hamilton Township, Mercer County.

ASSEMBLYMAN LOVEYS: Joe, thank you.

Ladies and gentlemen, thank you for inviting us to Vineland. I want to welcome you to the second of three public hearings which this Committee will hold on the subject of municipal liability insurance.

Good morning, Mr. Muziani. Nice to have you here.

As most of you know, the problems of municipalities and other public bodies in securing affordable insurance coverage have grown more severe during the past several months. This is not a new problem, as most of you know. There were similar problems in 1968 and 1977. In both cases the crises passed and no legislative solution appeared to be necessary.

The present crisis, however, seems to be somewhat different. There are fundamental problems within the insurance industry itself. Heavy losses have caused premiums to be raised sharply. A number of reinsurers have either left the market, or substantially limited -- they have limited their writings.

Uncertainties about the possible effects upon municipalities of litigation relating to pollution liability have caused insurers to be wary of writing insurance for public bodies because of the potentially immense potential to loss.

Some of the industries' problems may have been caused by, or at least aggravated by, the commercial deregulation. We do not know this to be the case, but it is one of the aspects of the problems which we intend to examine.

Our purpose in being here today is to learn from you what the problems are, and discuss them with you.

On the basis of these discussions, we will formulate legislation which we hope will effectively deal with the problem. It is a complex issue, and we will be asking and hoping that you will bring forward some of the solutions that we're looking for. We seek your cooperation in sharing your views so that the legislation which emerges will be something that we all can support, as well as something which will contribute to solving the problem which so many of you have faced, and have facing you, in this particular area.

So, once again, we say thank you for coming today.

Thank you for welcoming us here. And, with that, I would like to call on the people who will be testifying. And I know that Mr. -- Assemblyman Joseph Chinnizi has a busy schedule today. So, Joe, if you'd like to be first, we'll call on you at this time.

ASSEMBLYMAN JOSEPH CHINNIZI: Thank you very much, Mr. Chairman. And, needless to say that we, here in the First District and in South Jersey, have as many problems to a smaller percentage than you do in the urban North Jersey.

Assemblyman Muziani, Senator Hurley, and myself, represent 21 separate cities, towns, and municipalities in the First District, and we have heard virtually from just about every town and city in our district who have the same problem of insurance problems dealing with liability insurance for municipalities. Not that I'm not telling you anything new, but I want it as a matter of record, that the insurance companies who are insuring the municipalities throughout the State have reduced the amount of coverage that the municipality can be insured for and quadrupled, or more, the premium for the lesser amount. So, what we're doing is paying more for insurance for municipal liability and we're getting a lot less coverage.

You know, there's a good reason for that. There's no question about it. First of all, Mr. Chairman and members of the Committee, I feel that we have, sooner or later, got to bite the bullet insofar as legislation is concerned to control the extent of the liability exposure for a municipality. It's got to be done sooner or later, there's no question about it.

It seems to me that not only can an individual who was injured in a municipality sue a person, but he can sue a person and a municipality and, believe it or not, collect both. If a person is insured for $20,000 liability and the city for $200,000 for that particular case, it's possible for that person who was injured to get -- collect both amounts, the 20 and the $200,000 -- absolutely wrong. There's no way that this should be permitted, and we must enact legislation to deal with it.

Another area which I feel we must take and rotate-- I'm sure after you -- the Committee -- will analyze the testimony, that we have got the limit of exposure to a municipality for gross negligence. We can't just sue a municipality for anything. If we feel, of if the courts feel, that there was gross negligence involved in this particular case where an injury occurred, then a municipality should be held liable for the proper amount.

At the present time, any little thing -- any little thing that happens to an individual in a city, or a town, or in a municipality, they can sue for staggering amounts. And for some reason, the courts have decided to go ahead and grant the awards. Now, this is pretty cute and not too bad for the person who is collecting the award. But, let's not forget that the amounts of grants that are given to litigants who sue a city, or a municipality, determines the premium that you have to pay for your insurance coverage. So, it may be fine for one, or two, or ten, or twenty people, but two or three -- or maybe two, three million people have to pick up the tab, and the tab is not easy to pay.

What do I talk about "gross negligence"? In gross negligence, we feel that if a yield sign, or a stop sign, were hit by an automobile and torn down this week, and an accident happened in-between, this cannot be declared gross negligence by anybody. It's got to be a lesser degree of negligence. Now, if that sign went down today and July 1st the sign has not been replaced, then I would say that should have been replaced, "Mr. Municipality, you are charged with gross negligence." I feel that that's very, very important.

I also feel that a monetary tax -- and this has to be done by legislation -- tax must be placed on the existing gross negligence, if there is such a thing happened. We just can't let the thing run wild as we're doing it today. If we do that, then there's no way that we, as people representing municipalities and cities, large or small, can help in any way to reduce auto -- or, liability insurance premiums. We have the same problem with auto insurance.

I think that industry and commerce in the State have the identical problem, and we'll have to deal with that at a later date. But at this point in time, today, we're dealing with liability insurance for municipalities. Am I correct, Mr. Chairman?

ASSEMBLYMAN LOVEYS: That's correct.

ASSEMBLYMAN CHINNIZI: Okay. Now, when you have joint and several liability, whether it be an individual or a municipality, it has to be determined what percentage of negligence is involved in a case of a municipality, or in the case of an individual. In this case, as I explained a little earlier, you can sue both and collect both -- absolutely unfair. And if you want to pinpoint a reason for why liability insurance premiums are so staggering high and why insurance companies do not even want to even insure municipalities, then you'll have to take that into consideration very heavily.

I know that we're going to have to, Mr. Chairman, and I'm prepared to bite the bullet, as are you and the rest of the Committee. We must enact legislation that's going to try to rectify some of the problems that I've just delineated. I feel that you can't do it without legislation, and I'm sure that we're going to get a tremendous amount of opposition in certain areas where we try to do that. But, in order to save a municipality--

Do you know what bothers me most of all? What bothers me is that if an insurance company fails to insure Town A, Town A says, "Well, the heck with them. I can't get insurance anyhow; we're not going to insure ourselves," and they go without any coverage at all.

Look at the exposure that they imposed upon that municipality only because an insurance company refuses to insure them. This is a very dangerous practice. This is happening not only in one municipality in our State, I'd venture to say it's happening in hundreds of municipalities in our State, where the insurance companies fail to extend to them insurance, and they say, "Well, okay, we'll self-insure." Well, that's fine, but don't you dare have a very serious accident where you can bankrupt a municipality, because it can happen very easily.

Mr. Chairman, I think I've said enough, and I'm sure the people out here who are out to speak on liability insurance for municipalities will have far more, and better, input than I have, and I thank you so much for coming here to Vineland and representing the entire South Jersey area, and we are quite extensive, Mr. Chairman -- South Jersey I mean. Thank you very much.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Chinnizi. I appreciate you and your kind words today.

Assemblyman Muziani, would -- Guy, would you like to say a few words?

A S S E M B L Y M A N G U Y M U Z I A N I: Yeah, if I may. Joe covered the subject pretty good.

Mr. Chairman, members of the Committee, first of all I, again, wish to -- as Joe did -- thank you very much for recognizing the fact that South Jersey doesn't stop in Trenton, and that you ventured down another two hours of driving and came down and visited Cumberland County, and we appreciate that very much, very much. And I know that the officials here will express that sentiment as well.

This business of insurance, of course, is a very complex subject, we all know that, and there are many aspects of it in all phases of it that have to be addressed. And the public liability problems are probably similar to the problems that we've had with the product liability, with the medical malpractice insurance, and other aspects of the problem that I feel your Committee is going to take the time to evaluate and possibly come up with some solutions and some legislation that would be meaningful.

As I understand it, there are only probably 15, or less, companies in the State of New Jersey that are presently insuring public liability insurance, and that is sad, really, because it does present a problem to many of these municipalities, and I speak as a former Mayor of the city that recalls, back in '78 and '79, we had difficulties when we realized that the cost of insurance was escalating to a point where it was in some way -- it presented a problem for our budget. We realized, and, of course, we had to adhere to the five percent cap. And to incur the added expenses that we were expected to, meant that we had to cut services in other areas in order meet the requirements of the five percent cap. So, that was another problem

So, we ventured into a program of self insurance -- not completely. We did realize that might be something that could be used as a vehicle to try to stem some of these added costs that we were dealing with. And that did prove to be somewhat successful, and I think it's still going on in the City of Vineland.

I would venture to say that there are probably those that -- in the big cities -- that have probably even considered going 100% with that concept. So most of these, I think, will have a little more difficulty trying to do it that way.

The point is that the -- ah, problems you're going to have to face up to is the fact that legislation that has been introduced in the past, that doesn't seem to be going too fast, anywhere, dealing with what Joe had talked about -- and that is, a possible cap on the increase that the municipalities are experiencing.

One bill that I recall calls for a cap on any expenses that are incurred over and above the previous -- over 10%. That might be something that might be considered. We did that when the fuel costs started escalating. We've adopted a cap on that, as far as the municipality is concerned, and I think that should be considered also for purposes of the municipalities' endeavoring to meet their requirements for their budgets, to have, possibly, the amount of moneys that exceed the previous year by 10% -- ah, excluded from the cap limitation.

In addition, I also remember that whenever there was going to be a possible great loss sustained, the insurance companies, realizing that they were going to be involved in the possibility of a situation, where they "seeked" out -- sought out, I should say -- assistance from others. So, they had this coinsurance concept that has been adopted here. And, as I read it, and as I understand it, I think there's something left to be desired in that regard because that also has presented a problem as far as added costs.

And you alluded to the subject to deregulation. As I understand, of course, 1982, the Legislature in its wisdom -- and I'm not sure whether it was in its wisdom or not -- decided to deregulate the insurance, that is the public liability insurance aspect of the, ah, industry's problem with insurance, and which meant that the Insurance Commissioner had no more authority as concerning the approval of rate increases. Now that did not preclude the Insurance Commissioner from taking time out to investigate the increases and to take exception if that occurred.

But I think that with the multitude of responsibilities of that Commissioner, without having any direct responsibility or authority, I don't know that that was really paid too much attention to. Maybe that should be given some thought. I don't know whether or not the deregulation was a good thing or not. I don't really know, but I'm assuming that your Commission -- your Committee -- will be looking at that very closely.

So, in conclusion, gentlemen, I wish to say this: That we here, of course, are trying to -- and anywhere else in the entire State of New Jersey -- trying to find some answers to the insurance problems. And we've got those problems, whether it be municipalities, or whether it be us as individuals, or those in business. Insurance is a problem in this State. It's become a problem. It's become very costly -- very costly. And it going to, of course, require a lot of attention.

So, you've got a yeoman's job ahead of you -- there's no question about that -- and a very difficult one. But, certainly, I know that you're going to get the cooperation of the municipal officials in trying to give you some input. And, certainly, as Legislators, we'll be supportive of any consideration on your part, as far as legislation is concerned, that might mean a relief for the future and some way of trying to rectify this problem that seems to be something that we're all experiencing.

And I thank you again for allowing me this opportunity. And, I thank you, certainly, for coming down to Vineland.

ASSEMBLYMAN LOVEYS: I thank you very much.

At this time, I would like to call on Mr. John Armstrong, County Counsel of Atlantic County. Mr. Armstrong, did you ever testify before this Committee? You look kind of familiar. Did you ever testify before this Committee before?

J O H N   A R M S T R O N G: Ah, no. Fantastically, there are a lot of people who say that I look familiar. Ah, but I've never testified before this Committee. (laughter)

UNIDENTIFIED MEMBER OF COMMITTEE: There's a bartender in Atlantic City, Ralph, that looks a lot like you.

MR. ARMSTRONG: But I've testified -- I've spoken informally to the members of the Committee.

ASSEMBLYMAN LOVEYS: That's it. I thought I recognized you. Mr. Armstrong, would you mind coming forward and sitting down here? It may be made a little more comfortable for you.

MR. ARMSTRONG: Ah, Mr. Chairman, if you don't mind, I prefer to stand here.

ASSEMBLYMAN LOVEYS: Excuse me, Mr.Armstrong, I must ask you to come and sit down because you won't be recorded otherwise.

MR. ARMSTRONG: I see. As a lawyer, lawyers tend to want to stand, and I don't know whether that's traditional respect for the body, or just because it facilitates retreat, depending upon the response of the audience.

ASSEMBLYMAN LOVEYS: I would much prefer to see you sitting today then, sir.

ASSEMBLYMAN RAFFERTY: I knew this guy was trouble, Mr. Chairman. (laughter)

MR. ARMSTRONG: That's how my brethren at the bar think of me.

Good morning, Mr. Chairman, members of the Committee. My name is John Armstrong. I am an attorney at law of the State of New Jersey, and I'm employed as Counsel to Atlantic County. In that capacity, I oversee the operation of Atlantic County's Department of Law.

Atlantic County is partially self-insured against liability claims. Presently, we are directly responsible for individual claims, to a maximum of $150,000, and for all claims, annually, to a total aggregate of $800,000. Atlantic County has insurance coverage for claims exceeding these limits. Our premiums for that coverage tripled this year; however, in today's insurance market, we are grateful to have insurance coverage at all.

I know that you are very much aware of the impact of this tight insurance market on counties and municipalities throughout the State. The statistics have been well publicized. The problem has been defined. Now we need to identify possible solutions.

As Atlantic County Counsel, I am not disposed to lobby on behalf of the insurance industry. Nevertheless, my experience in defending claims on behalf of Atlantic County has convinced me that insurance reform must be accompanied by reforms in our laws governing governmental liability if we are going to have any chance of maintaining existing insurance coverages for local governments, at rates which do not cripple our budgets.

A number of proposals have been advanced for reform of governmental liability law. Each of them deserves your serious consideration. I am sure that you will receive testimony from the insurance industry, the legal profession, and other narrow interests. Each of them has a legitimate role in the process of reform, and each has a voice in the public debate. I am concerned, however, that the taxpayers' pleas may be drowned out by the resulting clamor.

Insurance companies must be allowed to earn a reasonable profit, and lawyers should advance their clients' legitimate claims. Nevertheless, there are aspects of liability law today which place government in the role of insurer of last resort in circumstances where there is even a minute degree of possible governmental liability. The system has come to demand this from government. However, we have only recently tabulated the cost to the taxpayer.

Senator Gormley and Assemblyman Zimmer have jointly introduced legislation directed toward modifying one aspect of governmental liability law.

Under present statutes, public entities may be held jointly and severally liable for their negligence, along with other responsible parties. That raises a legal term of art and, as with all legalese, it tends to discourage inquiry from the public. Put simply, joint and several liability works in this fashion:

An injured party sues a public entity and various private parties. A jury will determine the comparative liability of all parties, including the plaintiff, assessing a percentage of liability for each. As long as the plaintiff is not found more negligent than those parties sued, any defendant found even one percent negligent is responsible to satisfy the entire amount of the jury's verdict, and then seek contribution from those other defendants found to be liable to the extent of the percentage assessed by the jury against each of them.

At first glance, it might seem appropriate to have various defendants anti-up the funds to satisfy a verdict, and then look to each other for reimbursement. However, it can work out very unfairly for a financially responsible defendant, especially for a public entity with the ability to tax in order to satisfy its obligations.

I brought along a few charts to demonstrate how the joint and several provision can work to the detriment of the governmental defendant. Bob Grist, our Insurance Manager, is over at the board there, ah, and let me just take a moment to go through, with you, a typical scenario.

You have a claim against a public entity, ah, that results in a verdict of $1 million. Ah, obviously not the typical claim, but a -- a claim which, ah, in this, ah, litigious environment today, with the capacity for physical harm that we have in our society today, is not an outlandish possibility.

The jury comes in, and under our comparative negligence loss, they must make a determination of degree of negligence. Under the scenario that I present, the first defendant, perhaps, is a -- ah, a driver of the motor vehicle, found to be 35% negligent in this case. That defendant has the typical auto liability policy with coverage for individual claims at a maximum of $15,000.

The second defendant is, again, perhaps a motor vehicle operator who is also found to be 35% negligent, and also has the minimum coverage of $15,000.

The third defendant-- Just by way of example, we'll say it's Atlantic County, and Atlantic County is found, because of some condition in the roadway that's, ah, that's found to be, ah, that's determined to be negligent -- ah, a condition that's palpably unreasonable, that the jury comes in with a determination that Atlantic County is somewhat negligent, and assigns 2%.

The plaintiff has also contributed to his, or her, negligence, and the jury determines that the plaintiff is 28% negligent.

As you can see, the total available insurance -- apart from the public entity -- is $30,000.

Bob, would you turn that page? (speaking to Mr. Grist)

This is what happens. Bob, you're going to want to shift over to the other side, and don't catch your cuff in the clip.

There's a deduction under our comparative negligence statute from the award because of the plaintiff's negligence. Now that computes out to $280,000, which means that the net payment to be received by the plaintiff is $720,000. And this is where it comes from:

The first defendant puts in $15,000. The second defendant puts in $15,000, for a total of 30. And there's $690,000 left.

Now, under the Joint and Several Statute, that $690,000 will be paid by Atlantic County, ah, because under the joint and several rule, ah, the plaintiff is entitled to go against any of the defendants for the full satisfaction of the verdict, and then the, ah, "deep pockets" defendant has the dubious opportunity, and the dubious right, to go against the additional defendants for contribution.

Now you can see in this case, even though there's been a finding that the public entity is two percent liable, the public entity pays 69% of the total judgment, and because of the 28% deduction -- because of the plaintiff's own negligence -- pays 95.8% of the actual amount paid to the plaintiff.

Now that is somewhat extreme because of the amount of the verdict. But that scenario is played out in every case in which we have a claim against a public entity that also includes other private defendants.

Thanks, Bob.

As you see in this instance, government was found to be two percent negligent for a claim resulting in a million dollar verdict. Although the other defendants were collectively 70% liable, the amount paid by the government in this case was $690,000. Now, it's small satisfaction to the government that is can look to the defendant's personal assets for reimbursement. In that case, both defendants would likely file for bankruptcy, thereby discharging this claim.

Personally, I can recount numerous claims which my office has handled in which we have settled claims, which we would have otherwise defended except for the potential effect of joint and several liability. Inevitably, the potential impact of this provision has encouraged the filing of a certain number of specious claims against public entities.

Suits that are based upon fragile theories of liability, driven only by the chance that a jury will assign even a finding of one percent negligence to a governmental defendant. If that happens, the plaintiff recovers all of its damages from the least responsible party, and all of us pay the tab. We simply cannot afford to have government bear the financial burden of other parties. It is more equitable to assist successful claimants through other measures, including possible increases in the minimum coverage for motor vehicle liability insurance, or expansion of the scope of the unsatisfied claim and judgment fund.

I strongly endorse the proposed Gormley-Zimmer amendment to the New Jersey Tort Claims Act. I ask you to endorse this proposal to eliminate joint and several liability for government in New Jersey as a first major step toward reform of our liability system.

Mr. Chairman, I'd like to thank you for your attention. If there are any questions of yourself or the board members, I'd be happy to answer them.

ASSEMBLYMAN LOVEYS: Thank you, Mr. Armstrong. Mr. Zecker?

ASSEMBLYMAN ZECKER: Mr. Armstrong, from some of the testimony that we've heard so far, the fact that your premiums has tripled, in some instances is a bargain. We've heard them going up as high as five, seven, and ten times.

Did Atlantic County have any instances of a severe type claim against it during the past year that might have caused its premium to triple?

MR. ARMSTRONG: We have not had an unusual experience. With a county of our size, last year we did have a self-insured retention of $100,000. On an average, with our activities and our exposures, ah, we can expect to have -- ah, I would say, on the average, two claims that exceed our self-insured retention, and--

ASSEMBLYMAN ZECKER: That's the 150.

MR. ARMSTRONG: Now it's 150. Formerly, it was 100. And, we have had no unusual experiences. Our carrier has indicated to us that -- that our exposures, or our experience, is much better than average. In fact, the, ah -- the underwriter, ah-- Our insurance underwriter was down reviewing our claims about two months ago, and I was happy to receive compliments from the underwriter, indicating that -- that, ah, our administrator and our office are handling claims and are managing our risks in a -- in a way that's well above the industry, ah, norm.

ASSEMBLYMAN ZECKER: Do you use Rasmussen? (phonetic spelling) Does Atlantic County use Rasmussen?

MR. ARMSTRONG: We use Rasmussen, and Mead Insurance is our, ah, carrier.

ASSEMBLYMAN ZECKER: Was your aggregate $800,000 last year, or is that your new aggregate for this year?

MR. ARMSTRONG: That's our new aggregate. Our aggregate last year, Bob, was, what?

MR. GRIST: Three hundred and seventy-five thousand.

ASSEMBLYMAN ZECKER: Did Atlantic County break the aggregate? Did it go over the aggregate in claims paid?

MR. ARMSTRONG: We did not break -- we've broken the aggregate for one year. Is that 1980, Bob?

MR. GRIST: Nineteen Eighty two.

MR. ARMSTRONG: Eighty two.

ASSEMBLYMAN ZECKER: So, during the past five years, you've broken the aggregate only in one year?

MR. ARMSTRONG: That's right.

ASSEMBLYMAN ZECKER: Do you ask-- Who is your-- I don't know, can I ask that? Sure I can ask it; it's a matter of public record, right?

MR. ARMSTRONG: Sure.

ASSEMBLYMAN ZECKER: Who is your carrier?

MR. ARMSTRONG: The carrier is Fleischman, right? Mead Insurance--

MR. GRIST: The underwriter (indiscernible) company is Mead-Reed (phonetic spelling) Insurance Company, and that's the general agency which is (indiscernible) Fleischman organization.

ASSEMBLYMAN ZECKER: Did they give you a reason why your premiums are being tripled, and why you're being asked to really self-insure for a bigger portion of it? Did they give you specific reasons? Does Atlantic County have any dump site exposure? Is there anything unusual that they might not have known about last year that they now know about? Did they give you any reasons?

MR. ARMSTRONG: Just, ah, general market conditions. Atlantic County, as with the other 20 counties, has, you know, significant solid waste problems. Ah, we've also experienced this year some, ah, reduction in our coverage. One of the reductions which is common throughout the State is the elimination of environmental coverage.

ASSEMBLYMAN ZECKER: But the main reason is general market conditions. That's that broad-based--

MR. ARMSTRONG: Absolutely.

ASSEMBLYMAN ZECKER: Never pointing to your, ah, Atlantic County with any specific problem?

MR. ARMSTRONG: No, sir.

ASSEMBLYMAN ZECKER: Just the potential problems?

MR. ARMSTRONG: Correct.

ASSEMBLYMAN ZECKER: What was the premium, and what will the tripling effect have on, ah -- you know, on your budget?

MR. ARMSTRONG: Bob, you have that specific information.

ASSEMBLYMAN ZECKER: Roughly, to the nearest hundred thousand or million.

MR. GRIST: The 1984 ball park figure is $120 thousand, total. Nineteen eighty five round figures of $365 thousand -- that includes administration and premium costs. There's something in those figures relative to the payment of claims within our retention costs.

ASSEMBLYMAN LOVEYS: Mr. Armstrong, would you repeat that so we make sure it's recorded.

MR. ARMSTRONG: Bob, why don't you come up here, if you would, quickly.

MR. ARMSTRONG: If you want to rephrase the question, Gerry, or--

ASSEMBLYMAN ZECKER: Ah, I'm going to -- I'm going to ask it a different way. What is your max exposure -- $4 million, $5 million? What does your policy provide for?

MR. GRIST: Ah, may I--

ASSEMBLYMAN ZECKER: Above the $800 thousand?

MR. GRIST: All right, above the-- Let me explain this to you. I am going to speak in terms of specific insurance, which is an occurrence basis, first. We retain, on any specific claim, $150 thousand.

ASSEMBLYMAN ZECKER: That's in the testimony.

MR. GRIST: All right. On top of that, we purchase $400 thousand, and on top of that we have-- Ah, pardon me, we purchase $800 thousand. On top of that we have $850 thousand. On top of that we have $4 million.

ASSEMBLYMAN ZECKER: Four million?

MR. GRIST: Yes, sir.

ASSEMBLYMAN ZECKER: And that was the same in the '84-'85--

MR. GRIST: Now, on the aggregate-- No, sir. On the aggregate policy, we retain the first $800 thousand, and we purchase $1 million on top of the aggregate. Prior to that, in preceding years, we had $10 million specific insurance.

So, as John stated, we not only have had coverages reduced, we also have had our limits of liability cut from $10 million in previous years, down to $5 million.

ASSEMBLYMAN ZECKER: What was your-- During, let's say, the past five years, what was your largest single claim?

MR. GRIST: The largest single claim was six hundred and some thousand dollars.

ASSEMBLYMAN ZECKER: In the State of New Jersey, do you have any idea how many claims in excess of $250 thousand were paid by--

MR. GRIST: There's a study being made at the present time by-- And I'm not sure of his title, he's assistant, or deputy commissioner. And it's being made, ah, at the present-- And he is, ah, going to all of the municipalities, counties, and, I believe, school boards, requesting that information. I have some of the--

ASSEMBLYMAN ZECKER: I just get the impression that you feel that it's that, ah, exposure threat that is forcing you to almost settle cases, as you said, that are defendable--

MR. ARMSTRONG: That's right.

ASSEMBLYMAN ZECKER: --because of the exposure factor, and the best file is a closed and paid file.

MR. ARMSTRONG: That's right.

ASSEMBLYMAN ZECKER: Thank you, Mr. Chairman.

ASSEMBLYMAN LOVEYS: Mr. Rafferty, do you have any questions?

ASSEMBLYMAN RAFFERTY: No, sir.

ASSEMBLYMAN LOVEYS: Mr. Armstrong, maybe this is, ah, not a fair question to ask of you, but with your vast experience I'm wondering-- Some of your local municipalities around the Vineland area, if you will -- are you aware, or do they, in your estimation, have what are called responsible risk management programs?

MR. ARMSTRONG: I, ah-- I'm not speaking about the, ah, Cumberland County area. I can speak about the Atlantic County area, and I would say that it's (indiscernible) at best, and I think that even if you speak with municipal officials they would agree with you, there is no, ah-- Within Atlantic County, ah, I'm really happy to say that we have recognized, because the-- We are aware of the expenses -- ah, that risk management is a key factor. Ah, we have a -- we have a risk management committee which is made up of middle-level county personnel who evaluate incident reports, ah, that are presented to them for the purpose of recommending corrective action. Ah, that corrective action is take to our County Administrator who sees that, ah, those steps are implemented. If not, then there's disciplinary action that is considered with regard to supervisory personnel.

Ah, I don't think you see any of that at the municipal level. It's rare, especially in the smaller municipalities.

ASSEMBLYMAN LOVEYS: So then, it might be advisable, and probably a good idea, to set up some kind of an educational program for some of the smaller municipalities on this very subject?

MR. ARMSTRONG: I think it's critical.

MR. GRIST: May I just make a statement here, sir?

ASSEMBLYMAN LOVEYS: Yes.

MR. GRIST: The County Executive in Atlantic County, Richard Squires, (phonetic spelling) has appointed an ad hoc committee which I serve on. Ah, at the present time we are -- again, as you are -- making a study. We are going to hold some type of insurance fair -- forum -- for the municipalities, and we are going to try to help them in the area of risk management.

ASSEMBLYMAN LOVEYS: Very good.

Ah, Mr. Armstrong, you mentioned too in the earlier part of your testimony that we would, in fact, be listening to all different types of parties in testimonies before this Committee, and you indicated that you were sure there would be insurance companies as well. I am suggesting to you that we had one hearing in Freehold where we did not hear from an insurance company. We, ah-- Nobody on the list today is representing an insurance company, to the best of my knowledge. And I'm not so sure about our next hearing this Friday In Parsippany-Troy Hills.

But, I am going to suggest to you -- because I know you are interested -- and all of you who are gathered here today, that there will be a resolution shortly in the New Jersey Assembly, indicating that this Committee can go further in the area of business liability problems. And we're going to have subpoena rights, and we're going to hear from the insurance companies, and we're going to find out what's happening in the municipal level, and what's happening out in the business world. We're not going to stop short of this. So--

MR. ARMSTRONG: I really surprised to hear that there hasn't been any cooperation today.

ASSEMBLYMAN LOVEYS: Ah, I don't-- I'm not-- I didn't use that word, but to this point we have not heard from the insurance companies. But I want you and the others to know that we will be hearing from them.

Any other questions that you might have of Mr. Armstrong? (no response) Thank you very much for your testimony.

MR. ARMSTRONG: Thank you. I appreciate your time.

Mr. Chairman, I have additional copies of my testimony which I can present to your staff.

ASSEMBLYMAN LOVEYS: Thank you.

At this time may I call -- I hope I'm pronouncing your name right, sir -- Robert Cocchi? Did I say that correctly, sir? (At which time witness pronounces name for Chairman Loveys) Okay, Mr. Cocchi.

ROBERT COCCHI: Mr. Chairman, I'm fine here, if you don't mind.

ASSEMBLYMAN LOVEYS: But, we'd like to hear it, sir, if you don't mind. We're recording this testimony today.

MR. COCCHI: Mr. Chairman, members of the Committee, thank you for coming to visit with us. I wanted to say at the outset that perhaps we're more fortunate than Atlantic County's experience with the increases that occurred this year. Our increase, overall -- all liability -- was 57%; however, that doesn't make us any less interested in solving the municipal liability problem. Any increase is something we want to look into.

We feel here in Vineland that we have had an excellent record, and are looking now into the formation of municipal assistance plans, which we know are in the works for the State, and also for tort reform in the way of either capping liability verdicts, ah, or awards, that will be to the benefit of, ah, of municipalities. We understand that such a bill is presently being drafted, and it is something that we look forward to reviewing.

Other than that, I have nothing more to add, or to suggest to the Committee, other than that we are constantly watch-- helping -- looking for help to solve our municipal problems.

ASSEMBLYMAN LOVEYS: Ah, maybe I have one question, Mr. Cocchi. Could you tell us maybe something about the claims frequency of some of your clients, or what their experiences have been?

MR. COCCHI: I would-- Ah, municipal?

ASSEMBLYMAN LOVEYS: Or any of your clients; I'm just curious.

MR. COCCHI: Well, some of my -- some of my-- Any of my clients?

ASSEMBLYMAN LOVEYS: Yes, some of the claims frequency.

MR. COCCHI: Public entities?

ASSEMBLYMAN LOVEYS: Yeah. Public entities, yeah.

MR. COCCHI: Oh, well the only one I deal with is the City of Vineland, as a public entity. Our loss record has been excellent in that regard.

ASSEMBLYMAN LOVEYS: Any other questions for Mr. Cocchi? Mr. Zecker?

ASSEMBLYMAN ZECKER: Use of the premium only went up 57%. Ah, what is--

MR. COCCHI: I said -- I didn't say only, I said 57%.

ASSEMBLYMAN ZECKER: Well-- (laughter) But in relation to the kind of numbers that I guess you have been hearing, 57% seems to be a bargain in this State. Ah, that was for the City of Vineland, approximately 65,000 population?

MR. COCCHI: Fifty-five.

ASSEMBLYMAN ZECKER: Fifty-five. Ah, how big is their police department, roughly?

MR. COCCHI: I forget offhand. I just completed--

MEMBER OF AUDIENCE: One hundred and fifteen.

MR. COCCHI: One hundred and fifteen. I just completed another liability application for them, for police liability.

ASSEMBLYMAN ZECKER: Ah, what was the previous premium?

MR. COCCHI: For the City of Vineland?

ASSEMBLYMAN ZECKER: Yes, roughly.

MR. COCCHI: On liability premiums, ah (pause) about $700,000.

ASSEMBLYMAN ZECKER: That was your premium?

MR. COCCHI: Uh-huh.

ASSEMBLYMAN ZECKER: Obviously, you're not involved in any type of self-insurance program then?

MR. COCCHI: Yes, we are -- under workmens' compensation.

ASSEMBLYMAN ZECKER: Under workers' comp, but under--

MR. COCCHI: However, the self-insurance program, from the general liability standpoint, is something that we are exploring -- ah, and that is largely contingent upon our obtaining a reinsurance market. Such markets, today, are almost nonexistent, and, ah, that's what-- We're very fortunate that our primary carrier stayed with us under the terms which they did.

ASSEMBLYMAN ZECKER: Your current liability premium with the 57% increase is now $700,000?

MR. COCCHI: No, that's what it was before. That includes -- well, that includes general liability--

ASSEMBLYMAN ZECKER: Oh, includes it.

MR. COCCHI: --automobile liability--

ASSEMBLYMAN ZECKER: Oh, so that's all insurance.

MR. COCCHI: --umbrella liability, all our liability exposures.

ASSEMBLYMAN ZECKER: Oh, all your-- Oh, okay. So, that really doesn't take in the, ah-- That includes your buildings, your fire loss, your--

MR. COCCHI: No, not fire, only liability.

ASSEMBLYMAN ZECKER: Only liability?

MR. COCCHI: Only public liability. For example, the general liability went up 47%, as opposed to a national average of 150%. Our umbrella -- our umbrella went up 280%.

ASSEMBLYMAN ZECKER: How much is your unbrella?

MR. COCCHI: One sixty-eight.

ASSEMBLYMAN ZECKER: No, what is the total amount? How many millions?

MR. COCCHI: Five million.

ASSEMBLYMAN ZECKER: Five million umbrella.

I have no further questions.

ASSEMBLYMAN LOVEYS: Mr. Rafferty, do you have any questions?

ASSEMBLYMAN RAFFERTY: No questions.

ASSEMBLYMAN LOVEYS: Ahm, just one other -- my one question, Mr. Cocchi: Could you give what kinds of claims that you experience here -- I mean the type, where the problem areas might be, specifically?

MR. COCCHI: The problem areas -- ah, our largest claim in recent years involved an explosion, whereby we'd been working underground and caused some damage.

Generally, you get the typical sidewalk-type claims, the intersection type claim, the road sign allegedly missing -- missing or obscured. Ah, many accidents where we're not even involved we're being third-partied in on, and we're being approached on it -- "The leaves obscured it, or some other such thing." That's typical of what we get.

ASSEMBLYMAN LOVEYS: All right. Thank you, sir, very much for your--

MR. COCCHI: Thank you.

ASSEMBLYMAN LOVEYS: --your being here today.

May I call on Michael Rossi, please? Mr. Rossi?

MICHAEL ROSSI: Good morning, Mr. Chairman, ladies and gentlemen of the Committee. My name is Michael Rossi. I am an independent insurance agent and broker in the State of New Jersey, and I also serve on the State of New Jersey Independent Insurance Agents Executive Board.

The purpose of my testimony today is based upon the view of the insurance industry, its problems, its crises, from an agent's and a producer's standpoint, again, as a representative of our industry and also as an independent businessman.

I attempted to put together a brief outline of the problems and the issues that I see relating to the insurance crisis that we are now dealing with. I would like to preface my remarks and state that this is not a problem that is unique to New Jersey, or the City of Atlantic City, or the County of Cumberland, or the City of Vineland. This is a national problem. It is a problem that all states and all different markets are experiencing because of a number of factors.

We do have a number of unique problems in the State of New Jersey, which I will touch upon later on, but I think you are probably aware at this point that most of us in the State of New Jersey are experiencing the same problems that other states and other counties are.

In the beginning of the outline I have listed capacity constraints. Right now, companies have a limited ability -- and I don't say that in defense of them -- but from a financial standpoint they have a limited ability to write the amount of insurance that they previously wrote. Reserves and losses have increased steadily, and Commissioners of Insurance in almost every state are now closely monitoring the financial stability of those insurance markets. We have seen a failure of a number of major insurance carriers over the past couple of years, which does cause great concern to the Departments of Insurance that have to make sure that these companies are financially solvent and able to pay claims for the various different policies they have issued.

The second part is a shrinkage in the supply of the reinsurance in the foreign markets. Most of the domestic insurers do not insure every account that they write a policy for by themselves. What they do is, they layer that off and buy insurance against those individual losses. That is called the reinsurance market. The reinsurance market, within itself, has shrunk capacity, because we're talking about international-wise. Again, this problem is not limited to the domestic companies in New Jersey; this is an international problem. Companies such as Lloyd's of London, General Reinsurance, are no longer offering to write certain lines of coverage when they are not offering the amount of insurance that they offered before, which means that the domestic insurers, companies like The Travelers, The Aetna, The Continental, and so forth, have to absorb more losses on their own. This, coupled with their financial inability to write larger premiums, restricts the amount of insurance that they can offer as a product to the purchasers of insurance.

The third problem, as I see it, is the judicial system. There has been a large reinterpretation of the policy contracts over the years. The courts have definitely had a great impact upon this system. They have either changed, modified, or interpreted the policy language far from its original intent.

Underwriters, when they set up a policy, agree to provide so much coverage for so many dollars and they, to a reasonable degree, through their actuarial studies, can predict what those losses should be and what those costs could run. What has happened, unfortunately, is, the courts have taken that and changed the definition of the contract, not by what the insurers had agreed upon with their insured that they would provide for, but now the courts have said, "You will not only provide this, but you will provide this and this and this." The result has been that the awards in those losses have cost the insurance company many, many untold dollars. As a quick example, I believe it's Liberty Mutual, insured a company in 1948, where they collected $620 in premium. That company happened to use asbestos in the manufacture of a product. To date, I believe Liberty is responsible for something like $24 million in claims related from back in the 1948 time, of which they only took in $620 in premium. But today's society calls on them to pay the $24 million in reserve losses that are related to the asbestos manufacturing.

The Jackson Township decision, which most of you are familiar with-- The no-fault changes that we have seen in New Jersey, where the original intent of the no-fault was one thing, has been expanded upon to include something other than that. The host liquor liability situation in New Jersey, where now a homeowner can be held personally responsible for the acts of someone who consumes alcohol on his premises-- I believe another court decision even extended that further, and said, "Even if he doesn't serve the drink, but if he permits the drinking to occur on his premises, he can still be held accountable."

These are all part of the things that I see where the judicial system has gone far beyond the original intent and the idea of the insurance contract to provide other means of social reimbursement for the injuries or damages that someone else should suffer.

There has also been a lag in the development of losses that was never contemplated by the insurance companies. Claims are coming in that occurred 5, 15, or 30 years ago, that no one had ever envisioned. A company today could be held responsible for a product it manufactured 30-some years ago, but just suddenly is responsible for today. I'll give you another example. I believe the company is called Pacemaker; it's a boat manufacturer. They manufactured a boat in 1960. The boat was sold seven different times and was dealt with by approximately 40-some different boatyards during those 20-some years. The boat was used in a drug smuggling operation, and in that operation a college student was injured. Whether he was aware of the drugs involved, no one knows, but he was injured by the boat cleat that popped up and struck him in the eye, brain damaging him. No one had insurance; certainly not the drug runner, and certainly not anybody connected with the operation, not even the boat owner. But, guess who had insurance? Pacemaker did. Pacemaker paid.

At this time, the Appellate Division had a $16 million judgment lodged against them because they manufactured the boat. There was just no one else who had any insurance to pay for this paraplegic, who was going to be cared for for the rest of his life, through no fault of his own, but someone had to pay the claim.

The next area is punitive damage awards. Although insurance normally does not involve itself with punitive damages because they go against public policy, the judgments are looked to be paid for by the defendant. In some cases, the defendant doesn't have the moneys, and they are now looking towards the insurance industry to pick up the tab for that. That, I personally think, is a grossly unfair and inadequate position to take, because after all, the idea of punitive damages, I believe, is to set a punishment. If you punish the insurance company, you haven't punished the individual who created the situation.

The sixth thing is the increases in what we call "mega-awards," meaning that the sizes of jury awards today are absolutely phenomenal. Most people don't realize when they sit on a jury, or maybe the judge doesn't have the idea, but the financial impact of handing out a million, a five million, or a sixteen million dollar verdict-- Those losses are going to come from someone at some point in time. That means the consumer of insurance. The MGM Grand fire-- No one is saying that there wasn't responsibility there, but we're talking about a $400 million settlement. That's a lot of dollars. We're talking about a $16 million claim, as I mentioned before, with Pacemaker. We're talking about even smaller claims, and I'll just cite one that I think is very amusing.

Again, this is a national problem. A Superior Court in Providence, Rhode Island, ordered the makers of Corning Ware to pay an $804,000 judgment to a man who was blinded in one eye when the lids on the Corning Ware dishes that he was stacking on a counter, fell out of his hand, shattered on a tile floor, and a piece of that shattered glass landed in his eye. I personally believe that is an unbelievable claim to begin with, to make Corning responsible to produce a product that is totally unbreakable in a normal setting. But the fact of the matter is, he is blinded in one eye, and he receives $800,000 for that decision. I find that ludicrous. That man isn't impaired to the point that he can't continue to live.

I have cases of dollar amounts just from newspaper clippings and so forth, where the awards are just astronomical. Again, someone is going to pay. Where those dollars come from are the insurance companies' deep pockets, but they reflect those back into rate increases to both the manufacturer of the product and the consumer of the product.

The rate cutting of companies is the seventh item because, again, the companies certainly participated in their own demise. For many years, when interest rates were high, investments were going well, companies purposely depressed the rates that they should have been charging to maintain an adequate market. As long as the investment income overshadowed the losses, everything continued fine. But ultimately those losses caught up with them, and now they're in a cycle because the insurance industry is very cyclical in nature. They are trying to recover from those losses. The problem is, they are not alone in this. This is happening again on an international market, and it is much more severe than anyone ever predicted. So, they are trying to recover to a certain degree, but at the same time, they are becoming twice as selective because they have diminished capacity themselves to write insurance, and they are also afraid of the judicial climate which they have to live in.

The unpredictability of those losses is unbelievable. As an example, there are creations of landfills in New Jersey now. By State mandate, they have to be regional landfills. There is no market to insure a landfill. I'm talking about new facilities. Many insurance companies are staying on the ones that they have already written, but in many cases new facilities are impossible to insure. So are some towns, though. I believe West Orange is still a town that is running without insurance. I believe the Borough of Clayton -- the last I understand -- is. It's a small little township, but again, it cannot purchase insurance.

Last but not least, New Jersey has, as I mentioned previously, a unique situation with its regulatory situation. In New Jersey, you cannot cancel or non-renew a policy unless it meets certain restrictions by the Department of Insurance, and, also, that the Department of Insurance may personally grant the insurance carrier to get off that account. While this is a protection in many ways to the insurance-buying public because it will not allow companies to run amuck and just cancel or non-renew every account that they feel may be a problem, it has also thwarted attempts of other companies and other markets willing to write business in New Jersey, their fear being -- coupled with everything else I mentioned -- that once they write a policy for a company, if that company has some adverse loss history, they can't get off of that account because of those rules and regulations.

This is just a summary. I personally feel that New Jerssey has a long way to go, but the prime and main emphasis has to be in the form of tort reform. The insurance carriers that I deal with -- that I personally contact, that I write accounts for -- have told me that they, themselves, would be very hard-pressed to believe that legislation in New Jersey is going to take a meaningful hold because of the various problems they've seen in past years. Even if we were to enact some legislative reform, I personally would see -- would like to see that that has to be settled in the courts before we know whether that legislation is going to stand up. I have seen contracts changed, legislation altered, all from the standpoint that the judicial system seems to have the final say in the matter, even though you can enact legislation to prevent things.

As an example, a tort immunity law exists for municipalities right now, of which there are certain limitations. We have a situation now that has changed that tort immunity law where, I believe it was a patrol car, was chasing a suspected felon. He was escaping on a motorcycle. They tried to block his path. He ran into the patrol car. The claim reserve went from $5,000 originally to $90,000, which is now set aside at a half a million dollars. This is because of a prior court decision that said the immunity that was previously granted to municipalities and government entities, isn't as broad as it originally was. They have watered down that immunity, little by little by little.

I'm trying to think of another example where that works. I think the main emphasis is, this is the fear that most insurance companies have, that they set forth a policy, they agree to provide coverage for an exposure, and all of a sudden that exposure changes, not by its own intent, but because the definition of the judicial system of what that policy should provide coverage for has changed. The result is, they pay larger losses or more losses than originally were comtemplated. They have to compensate for that in terms of rate increases to offset those losses.

I'll stop at this point to see if anyone has any questions.

ASSEMBLYMAN LOVEYS: Assemblyman Zecker?

ASSEMBLYMAN ZECKER: I'm sure I speak on behalf of the entire Committee when I thank you for your presentation. It was well-worded, and I think it just about attacks everybody and everything, so nobody can accuse you of being biased.

You have represented yourself as being on the Executive Board of the New Jersey Independent Insurance Agents. Is that correct?

MR. ROSSI: That is correct.

ASSEMBLYMAN ZECKER: I would imagine that in that capacity you are in contact with many carriers. Is that correct?

MR. ROSSI: That is correct.

ASSEMBLYMAN ZECKER: You have given testimony-- You said you have spoken to insurance companies, you know, who are looking for tort reform. They have advised you, I would imagine, that they are not going to react immediately to any reform. Anything that we did as an Assembly Committee, if it went the whole route, would probably take one, two, or three years for the companies to react. Isn't that true?

MR. ROSSI: In terms of opening the market or reducing the prices?

ASSEMBLYMAN ZECKER: Yes.

MR. ROSSI: Yes, I believe that would probably be true. They would have to see some kind of track record before they could openly come into New Jersey and say, "We want to write business in the State of New Jersey."

ASSEMBLYMAN ZECKER: Generally, Mr. Rossi, do you feel that the insurance companies have lost confidence in really wanting to do business in the State of New Jersey?

MR. ROSSI: My personal belief is yes, I believe so. I believe there are a number of companies that have tried to maintain, or because of their directors, as they say, in their home offices, would like to do more in New Jersey, but are restricted because of company policies or fears that they may be involved in something where they no longer again can afford to do that. They are no longer doing things that they did in New Jersey in prior years.

ASSEMBLYMAN ZECKER: Do you feel that the fact that there have been six turnovers in the Department of Insurance commissionership during the past four years, almost a musical insurance commissioners' game-- Has that had a detrimental effect with the insurance companies' confidence in dealing with our Department of Insurance? Has that been a small factor, medium factor, or major factor in the loss of confidence by carriers?

MR. ROSSI: I believe that has been a major factor. I also sit on the Commissioner's Advisory Council, and one of the things that we had written to the Governor on -- we sort of by-passed her formal approval of it -- was the formation-- It was the Committee's formation of an idea for possibly a long-range planning committee in the Department of Insurance to deal with the problems so that we don't react to crises, but plan to try to avoid them or reduce them in terms of what the insurance market has been in New Jersey for many, many years.

Your point is well taken, that we have had such a changeover of administrators and direction of the Department, and reaction to the company and industry, that it needs some definite restructuring in all levels of government, from the regulatory process, as well as from the judicial and legislative processes. It is going to take some time to put it together, but if we don't start now, New Jersey is going to be -- in my opinion -- left behind as the rest of the industry starts to recover from all the other problems that I related to, in States like Pennsylvania, Delaware, New York, and Maryland. They will be on the road to a recovery, where I think New Jersey will be behind them in that respect.

ASSEMBLYMAN ZECKER: Over the years, we have had many commissions, reports, committees. Do you have any confidence that what we have seen in the past will bear any fruit in the near future?

MR. ROSSI: If the legislation that I have looked at and reviewed, and if the reports of those studies, were to be put into a meaningful form and basically kept that way, I think there is great potential for a turnaround in the insurance climate in the market. I myself, personally, again feel that what happens is, the results of that, or the intent of a bill or a piece of legislation that starts off with all the good and all the knowledge of the sponsor and the industries behind it, gets changed and altered before it becomes a final piece of legislation that anybody really can live with, and then we have to again see what is going to happen with that. Is it going to stay that way for six months, a year, a year and a half? Insurance companies can't, I think, look forward to doing business in New Jersey on the idea that there is no continuity, there is no consistency to both the legislative problems, as well as the court situations.

ASSEMBLYMAN ZECKER: We hear many times that some banks are interested in getting involved in the insurance business. Do you think an encouragement of getting banks involved in the insurance business would open up competition, or would it cause more problems than it might solve?

MR. ROSSI: I think it would probably cause more problems than it would solve. If the banks were willing to come into the industry, my first question to them would be, "Would you insure a municipality, or would you just want to pick and choose?" They would look at it as a very selective process. They would want to write maybe homeowners policies or personal automobile policies because that might be a profitable market. But I don't think they would then be like a major insurance carrier willing to write all types of risk, with all types of exposures, because that would change the profitability structure on them entering the marketplace very greatly. I think they would be very selective.

ASSEMBLYMAN ZECKER: We've heard your testimony, and previous testimony, as to the-- I'm trying to think if it was in your testimony, you know, your Lloyd's of London, etc. Did you testify to that?

MR. ROSSI: Yes, I mentioned Lloyd's of London in my--

ASSEMBLYMAN ZECKER: We hear that it's not only, you know, our coast -- the Northeast coast -- it's the whole United States. They're just ready to drop out of the whole market. Obviously, all we can control is maybe getting New Jersey's Insurance Act back the way it should be. That still wouldn't affect international markets. Why would Lloyd's of London come back and write access coverages in Jersey, when they have just pretty much written off the whole American market? Do you think Jersey can do anything to get these reinsurers to come back and take another look at us?

MR. ROSSI: From my perspective, if the domestic markets that buy the insurance from the reinsurers have a better feel for a situation -- now, again, some of these are subjective and judgment calls -- but if they set up their policies where they know that they have a reasonable degree to make a profit, and they have an exposure where they know what their maximum liabilities could be, they can sell those programs to the major reinsurers.

We're talking about people like the Bar Association, who are looking to form their own insurance company because of the tremendous costs in malpractice insurance. All right? But I am going to predict that the Bar Association is going to have a difficult time buying a reinsurance policy from anybody because, again, of the situation that we have seen. So, reinsurance is not always the answer, because you have to have a workable climate for the reinsurer to be interested in, or the costs become so astronomical it doesn't become economically feasible to go into that. This is true in many of the situations. The malpractice market is-- That is a whole other issue we could get into and spend a whole day on. But I think that if we do start to create a climate that is profitable for the insurance industry-- You have to bear in mind that's a profit-making entity. If they can't see to make a profit-- They have a return that they owe to their stockholders, as well as to their own employees, and they are going to make that company financially sound.

We've seen too many insurance companies go under in the last three or four years, tremendously so. As I said before, the regulators are looking very hard at that because of that situation. There's got to be some kind of a balance.

ASSEMBLYMAN ZECKER: For the purpose of brevity, I'm probably just going to get your business card. I would like to talk with you in the future.

Mr. Chairman, I'll yield. Mr. Rossi, thank you very much.

ASSEMBLYMAN LOVEYS: Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: Yes. Mr. Rossi, you mentioned in your testimony that the insurance companies' involvement in the market when things were good did have a substantial effect on what is presently taking place now.

MR. ROSSI: That is correct.

ASSEMBLYMAN RAFFERTY: Well, I had a discussion with an insurance agent -- a friend of mine back home -- and he was very upset when I mentioned that the investments of the insurance companies in the market, for whatever purposes, and their acting as an insurance company, you know, that these two things intertwined. He told me that they didn't intertwine and that we shouldn't even look at it that way.

It's my understanding from previous testimony, Mr. Rossi, that the insurance companies are making money, but they are just making money in a different area. My question is, if the moneys that are coming in to the insurance companies are moneys from premiums paid by individuals and governments-- If these moneys are used in their investments, then if they're making money on that end of their operation, they should be more than willing to do what they have to do to give reasonable rates to municipalities and to government entities.

MR. ROSSI: To try to address what I believe is the issue -- and it is one that Ralph Nader has been making known on a national level -- insurance companies do make money in other areas. The insurance industry, traditionally, has looked at a twofold operation within the insurance structure. Number one is the adequate profit to make in the insurance portion, where they underwrite a risk, pay for the losses, and have money left over. And then the money that they invest, which is their investment portfolio, has no bearing upon the profitability of the underwriting portfolio.

My personal observation has always been that if the public would feel that rates should be inclusive with investments, then the reverse of that has to be as true in the event that the investments go sour and the public has to pay a higher rate. That isn't something that Mr. Nader says is a no, no. If the insurance companies lose money in their investments, that's not his problem. But if they make money in the investments because the dollars originally came from the insurance portfolio, then we should all be enjoined to have a lower premium, so to speak. You can't have those two roles exist, at least not in my opinion. If you are going to make a profit in the insurance business, it has to be profitable for the company to do that. And if they take those investments -- or those moneys -- and then invest them in other areas and make a profit on their investment portfolio, then the stockholders of that insurance company are entitled to the returns on their money.

We're talking about billions and billions of dollars. The insurance industry probably controls and handles most of the stock purchases and owns shares in just about everything you can imagine. If that would have an effect upon the profitability of the insurance side, I think it could change the whole financial picture of millions of people. That is the way I see it.

ASSEMBLYMAN RAFFERTY: Thank you, Mr. Rossi.

ASSEMBLYMAN LOVEYS: Mr. Rossi, there are some people who claim that the deregulation of the commercial insurance industry three years ago had a great deal to do with some of the problems we find ourselves in today. Do you want to give us your thoughts on that subject?

MR. ROSSI: Deregulation is basically an open competition situation and just, I think, like in any other industry, it floats based upon the law of supply and demand. If enough insurance companies want to produce a product, and sell a product, the competition will know what the pricing of that product shall be. That's what deregulation in New Jersey created. It created an open market for companies to write business at rates they felt could make a profit. Obviously, if they continue to make a profit, they can keep those rates at a level, or consistent point, where they can sell more policies to make more money.

On the other hand, when you have a regulated kind of climate, then companies are forced to use the rates that are on file, whether or not they are profitable any more. That restricts the competition; it closes or shrinks even more so the availability of a company coming in and writing business.

I feel that if we did not have an open market right now in New Jersey, we would see even less companies writing insurance because they would be forced to write insurance at rates that were no longer adequate for them to make a profit. At least they are offering us a market. Granted, no one likes the amount of the premium increases we're seeing, but at least you have a mechanism by which to buy insurance. Without it, I think we probably would see virtually no companies writing business in New Jersey.

ASSEMBLYMAN LOVEYS: Isn't it true, though, that a good number of these companies just drop their premiums outright just for the almighty dollar, if you will, to get it invested in the high interest market?

MR. ROSSI: It's-- The term is called "cash flow underwriting," and that is exactly--

ASSEMBLYMAN LOVEYS: This could not, in any way, by any means, by any imagination, help the industry.

MR. ROSSI: No, I agree with you. They have created some of their own problems and they have traditionally gone through these cycles, but never to the degree we have seen in the last five years.

I deal with the public; that is my first line. My first responsibility is to represent my insured. I do try to point out to them that if we take some case histories where an insurance premium in 1979 was $40,000, and from '79 through '83-'84 the premium was down to $12,000, they are tremendously happy because the companies have depressed those rates. But now, all of a sudden it's 1984 or '85, and it's up to $30,000 and $40,000 again, and they think that's outrageous. I'm not one to sit in judgment of that situation, but again, if you look at the insurance industry's cycle, those things have occurred, but never to the degree of sharpness in the scale have things happened as we have seen in the last year or so.

So, in some cases, they have benefited by the open competition of the cash flow underwriting, but now it is time to say, "pay the piper," for those four or five years of depressed insurance rates. Now the industry is going to try to make a recovery from that.

ASSEMBLYMAN LOVEYS: Even though the League of Municipalities has not, at this juncture, testified before this Committee, I think they have endorsed -- or at least they are thinking of endorsing -- a program that we have heard about in the excess fund market. Are you aware of this program? Do you have any comments regarding what the League of Municipalities is suggesting we do?

MR. ROSSI: Okay. Again, if I understand the program, and basically it is a form of a pooling concept, pooling is not always an answer, in my opinion, to a problem. All it does is create more people in the pot, which more moneys can be drawn from. The situation of adverse selection-- Again, you'll find that the better and well-managed municipalities, and so forth, may not want to become part of that pot because of the problems that can occur with other towns or cities which already have a known or potential risk experience that would be detrimental to the pool. A pool would have to be made mandatory to a degree, but then again, you're talking about funding millions and millions of dollars because you never know what the potential liability of a claim could render.

In controlled lines of insurance, such as fire insurance or property insurance, you know that you have a physical loss of a building at $2 million, and that is the maximum it is going to cost to replace it. But on the other hand, you coming into a building and getting hurt in the elevator -- the potential loss could be $50 million. You'll never, ever know until you get into a court of law what that judgment will be. And again, was the city responsible or not? Was the entity legally liable for it? I don't think the pooling concept answers those questions. It just creates a funding mechanism to deal with the problem.

ASSEMBLYMAN LOVEYS: I gather you have some serious questions then, if that is the particular route that we should go.

MR. ROSSI: Yes, I do.

ASSEMBLYMAN LOVEYS: Okay. Any other questions for Mr. Rossi? Gerry?

ASSEMBLYMAN ZECKER: Are you a broker for any municipalities that have insurance?

MR. ROSSI: That I participate in? Yes.

ASSEMBLYMAN ZECKER: You do, and you've had past experience in it?

MR. ROSSI: Oh, yes. Exactly so.

SEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN LOVEYS: Mr. Rossi, thank you for your testimony. We appreciate it.

Is Mr. Gerald Eisenstadt with us this morning? (no response) He did say he was going to testify. At this time, then, may I call Mr. Thomas Markowsky, Agent and City Councilman, Margate.

T H O M A S M A R K O W S K Y: Mr. Chairman, members of the Committee: My name is Thomas Markowsky. I am Commissioner of Public Works in Margate City, New Jersey, and I am, by profession, an insurance agent. I am here today to testify to the havoc being brought upon municipalities in New Jersey by the insurance industry through their refusal to provide a marketplace for municipal insurance.

While there are many other professions and businesses which have a similar fate, I speak only towards the lack of availability of insurance, and in the case of availability, the outrageous premiums being charged to municipalities. These premiums have no bearing upon past loss experience, sound underwriting judgment, or accepted rating practices.

We are a small oceanside community without a boardwalk, with no dump sites, without any community-owned service utilities, such as electric or sewerage authorities, and no history of serious claims' problems, and still we are unable to secure sufficient insurance coverages to properly protect us under the current legal atmosphere in New Jersey.

In Margate, our base liability policy, written for a $500,000 limit of liability and including police professional liability and public officials' liability, increased in cost from $65,000 in 1985 to $185,000 in 1986. We previously had an umbrella liability policy with a limit of $4.5 million, for which we paid $22,000 in 1985. The quote for our 1986 renewal, using the same limit, however excluding police professional liability and public officials' liability, which was included in the previous policy, is $242,850, or a 2000% increase.

A review of our loss experience for the past three years indicates that we have never made a claim under our umbrella policy, nor have we ever reached the aggregate total under our base liability policy. We in Margate are more fortuate than some other municipalities, in that we do have some base liability coverage, albeit for less than desired by prudent administration. Were the police professional liability and public officials' liability included in the quotation of $242,850, I would have probably supported its purchase. However, with these important coverages excluded, it did not seem the prudent thing to do.

As a result of this reduced amount of coverage, we have already had one public official submit his letter of resignation based on the fact that he stood legally liable for his public acts and was without proper coverage.

I strongly suspect that this trend in city government will occur more often, with the most capable individuals bowing out of government, rather than personally facing a costly expense in defense of their actions. I recently read where the Police Department of the City of West Orange refused to go out onto the streets except in the case of severest emergency because they had limited or no police professional liability. The ramifications of what could occur because of the unavailability of coverages are most severe and endless.

Why has this happened? What are the circumstances which have brought about the trend of insurance companies declining to provide the required coverages in New Jersey, as well as in some other states? The replies to these questions are basically from all sources -- the law. The law allows municipalities to be sued. There is no longer municipal immunity to protect a municipality. What for years was acceptable in New Jersey is today no longer acceptable. Insurance companies have been made painfully aware that noneconomic awards are unpredictable and limited only to the feelings of a jury. The foreign reinsurance markets to whom tens of millions of dollars of coverage are seeded annually by domestic markets, have closed their doors to risks in the State of New Jersey. This is due in part to regulation, and due in part to the civil justice system, which appears to seek only the deepest of pockets regardless of the degree of responsibility in claims involving governmental entities.

The feeling in the industry is that due in part to the serious losses in general liability insurance, the foreign markets will not return unless there are drastic changes in the civil justice system in New Jersey. I agree that everyone is entitled to his day in court; however, judgments in New Jersey have reached not only the unreasonable, but they border on the unbelievable. We must have some type of tort reform in New Jersey that would not only cap a municipality's liability, but would more closely monitor judgments so that they are not simply windfalls to plaintiffs.

I am well aware that insurance companies are fiar-weather friends; however, I am also painfully aware that there are drawbacks in our system. I feel that serious consideration should be given by the Legislature to tort reform and to the capping of municipal liability. This would still allow an individual to recover for his economic loss, but would keep the costs from escalating beyond reason.

Thank you for this opportunity to express my views.

ASSEMBLYMAN LOVEYS: Any questions, Mr. Zecker?

ASSEMBLYMAN ZECKER: I think it seems to be typical of-- You had a 10-time gain on it, too, with no--

MR. MARKOWSKY: We had a 20-time gain on it.

ASSEMBLYMAN ZECKER: Well, I think it went from $22,000 to $242,000 -- right? -- on the $4.5 million excess, with no claims or anything even close to it.

MR. MARKOWSKY: Not even close to it. I intended to include in my statement the loss runs for the last three years that we had in the City of Margate.

MR. MARKOWSKY: How about five years? Would you be familiar--

MR. MARKOWSKY: Even five years; even five years. There is no history to which these rates equate in the way of loss experience. Having a background in insurance -- I have been in the insurance business for 33 years, with the first 10 with a rate-making body in a rating organization -- good underwriting practices and sound judgment in rating practices were not used in putting together any of the premiums which are evident today where municipalities are involved.

ASSEMBLYMAN ZECKER: It says here (referring to witness' written statement) the Commissioner of Public Works in Margate City, and it says you are a Councilman in Margate.

MR. MARKOWSKY: Well, I am a Commissioner. We have a Commission form of government.

ASSEMBLYMAN ZECKER: Are you a Councilman whose Commission assignment is-- Did the insurance carrier-- Are you on the Insurance Committee in your town?

MR. MARKOWSKY: You could say that, yes, because of my background.

ASSEMBLYMAN ZECKER: Did the company or agent who you dealt with advise you that it was market conditions? Did you have to ask why the increase?

MR. MARKOWSKY: Well, being in the profession, I was aware.

ASSEMBLYMAN ZECKER: Yes.

MR. MARKOWSKY: What we did was seek the four best, most widely known local insurance houses in our area and approach them all with an opportunity to -- I'll use the word "bid" on the insurance, although there is no such word today in the insurance business. They did check the marketplace; there was nothing available. The company which wrote our coverage previously provided the renewal at the price they felt they wanted.

ASSEMBLYMAN ZECKER: Stressing general market conditions caused the increase? That same vague statement?

MR. MARKOWSKY: Exactly. Well, it is absolutely vague. Being aware that there are no insurance companies out there today that are willing to entertain municipalities, taking into consideration that our exposures are limited -- we are a small bedroom community -- had no bearing whatsoever. It seemed to be the going price at that particular time from a carrier who was willing to offer something.

ASSEMBLYMAN ZECKER: But did they give you the justification for why the new premium had to go from $22,000 to over $200,000?

MR. MARKOWSKY: They did not.

ASSEMBLYMAN ZECKER: They didn't justify that premium to you?

MR. MARKOWSKY: They did not; absolutely did not.

ASSEMBLYMAN ZECKER: General market conditions necessitated that increase?

MR. MARKOWSKY: That speaks for it; that exactly speaks for it.

ASSEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN LOVEYS: Mr. Markowsky, could you-- Just off the top of your head, if you could, sir, give us a few of your claims experiences, any particular area, that kind of--

MR. MARKOWSKY: With the City?

ASSEMBLYMAN LOVEYS: Yes.

MR. MARKOWSKY: Ah, as I can recall, for the most part there were some claims. I will reiterate a few. A gentleman had a heart attack on the beach. Our ambulance responded. We have a fine ambulance service. A brand-new ambulance costs $168,000. The ambulance responded, the gentleman was taken to the hospital, and he passed away. The family brought suit that the ambulance did not have the most up-to-date tracheal piece of equipment, and if we did have that, conceivably the gentleman would not have died, although he happened to be in his 70s. He passed away, and the City was sued for $50,000. This was about three years ago. It is under appeal. A youth, body surfing on the beach, surfed up, hit his head on a lifeboat, which was up on the sand -- a claim.

Aside from those two, which are the largest I can think of at this particular point, you have a normal person who steps off a curb walking across the street, and steps in a pothole. They are minor; they are minor. As I say, I can make available a history of our claims for the past four years, which we had produced by the insurance agent of record while shopping for coverages in other marketplaces, which were nonexistent.

ASSEMBLYMAN LOVEYS: Thank you very much for your testimony.

MR. MARKOWSKY: Thank you for hearing me.

ASSEMBLYMAN LOVEYS: Mr. Edward R. O'Neil, I guess from the American Rink Operators. We are basically going to talk about municipal liability insurance, sir, but I assume this is out of the realm of municipal liability, Mr. O'Neil? This is out of the realm of municipal liability, or is this--

E D W A R D R. O ' N E I L : No, I'm the immediate past President of the American Rink Operators.

ASSEMBLYMAN LOVEYS: So, you're not here to talk about municipal liability problems.

MR. O'NEIL: No.

ASSEMBLYMAN LOVEYS: All right. May we just hold it? Is there anybody else here today who would like to give testimony regarding municipal liability problems? (affirmative response from audience) Yes, Bob, did you want to--

AUDIENCE: Yes, I have a statement. (not near microphone; remainder indiscernible)

ASSEMBLYMAN LOVEYS: Why don't you let us have your statement first, and then, Mr. O'Neil, we'll hear you because I think that will be the last one that will testify. Do you want to testify also, sir?

AUDIENCE: May I?

ASSEMBLYMAN LOVEYS: On municipal liability?

AUDIENCE: No, but it is--

ASSEMBLYMAN LOVEYS: Okay. All right. We'll hear you. We'll hear you.

AUDIENCE: I am the municipal. (laughter) I am a taxpayer.

ASSEMBLYMAN LOVEYS: All right. No, we'll gladly hear you. I just want to hear those that want to testify on municipal liability at this point. If you would, Robert?

R O B E R T G R I S T: Okay, do you want me to--

ASSEMBLYMAN LOVEYS: I'd like you to-- Yes, do it, if you would.

MR. GRIST: You have a copy of my statement?

ASSEMBLYMAN LOVEYS: Yes. If you want it for the record, then if you would--

MR. GRIST: My name is Robert Grist, and I come before you as the Chairman of the Association of the New Jersey Governmental Risk and Insurance Managers Association, which really is appropriately named GRIM. On behalf of GRIM, I appreciate the opportunity to present the following comments relative to the current dilemma in municipal liability insurance. Your testimony that you have received from those parties that preceded me has responsibly set forth the problems of the availability of the insurance protection to address the liabilities of government in New Jersey.

The crisis in general liability is only a portion of the current plight of the public entity, as there is either a restricted or no market for professional liability or public officials' liability. Without this, the governmental entity is not protected to respond to the activities needed to protect the taxpayers of New Jersey.

If insurance is available today in New Jersey to the public buyer, it is being issued with reduced coverage, lower limits, and dramatically increased premiums. The calendar year 1986 pretends the possibility of an entirely new general liability policy, which, in many areas, may be even more restrictive than those policies issued in 1985, and at costs that no one is able to predict.

It is apparent that those companies underwriting insurance in New Jersey have taken the position that the legislation in existence, and from the judicial renderings based on these laws, that they are unable to reasonably make an underwriting profit in New Jersey. This has resulted in a situation wherein it appears the only municipal insurance currently being written in the New Jersey is that being written under the force of the Governor's Emergency Order, which has been extended.

In order for the public entity to be able to respond to its obligation, there must be a reasonable source of insurance availability. In my opinion, this availability will only be developed through proper legislative change, which may be in the form of the return of some immunities, a cap on the limit of liability, and relief from the exposure to joint and several liability.

The actions of your Committee may develop an acceptable insurance market in the area of general liability. However, without the proper relief in the other areas of liability -- in particular, public officials -- the public entity in New Jersey will not be able to properly respond to the mandates of government. The current crisis cannot be looked on in a vacuum. It is the public official that makes the decisions how to address the problems of government and is unable to obtain liability protection for their decisions. This means that the public official must make decisions that may risk the full assets of the public entity and their own personal assets, while being compelled to make these decisions in the absence of any insurance coverage.

We must have tort relief which will allow the continuance of responsive government at all levels.

This Association that I head is open to the insurance buyer from any governmental entity. We formed, due to the fact that we really did not have any source of information other than the vested interests, and we have progressed greatly. And, we stand willing to help the Committee with any information or anything that you may wish.

ASSEMBLYMAN LOVEYS: Mr. Grist, I just want to ask you one quick question. Does your Association have any position on the Excess Fund Law that I'm sure you've heard of?

MR. GRIST: Yes. We have been requested to provide information. I have been in continual communication with Mr. Grubb (phonetic spelling). I've asked him to speak at our meeting tomorrow, but I don't know if he is going to be able to attend. We're trying to keep cognizant.

We honestly feel that -- and this is not an official position, but it is a general position -- we feel that we need tort relief. There are a number of concerns that have been passed on to me about the proposed fund. One of those is, it is being mandated, from what I understand, that all governmental entities from the State to the little community will have to join.

I spoke with the lady who is in charge of the Education Association's pool. They are very concerned. They don't want to be in a pool with the Highway Authority, the State of New Jersey, and lower (indiscernible), so to speak. I've communicated these things to Commissioner Grubb in a response to his request for information.

ASSEMBLYMAN LOVEYS: Thank you, sir. Any questions, Gerry or Jack?

ASSEMBLYMAN RAFFERTY: I have no questions.

ASSEMBLYMAN LOVEYS: Does anyone else here wish to testify concerning municipal liability insurance? (no response) All right. Before we hear you, Mr. O'Neil, let me make this statement. We do have one more public hearing which will take place this Friday in Parsippany-Troy Hills. We do have a series of bills that we will be studying. We will be taking the information and the input we are gathering from these public hearings and put it into these bills. Hopefully, we're hoping that the Assembly Insurance Committee and others in the General Assembly in New Jersey will have some bills to introduce within the next two- to three-week period. When they will be heard in Committee and when there will be action from the General Assembly, I don't know at this point. But, I am suggesting that we will see some action. Hopefully, we can help some of the situations that we're presently under.

I thank each and every one of you who testified today in this all important area. With that, Mr. O'Neil, we will listen to some of the problems that I am sure you are having in your operation.

MR. O'NEIL: Yes. In my personal operation, we've put the place up for sale. I am the immediate past President of the American Rink Operators Association, and immediate past President of the regional association of a larger group. We operate in four states: New York, New Jersey, Pennsylvania, and Delaware. Our national group, the RSROA-- We had 2000 rinks right across the country simultaneously cancelled with liability.

Personally, I operated the Vineland Roller Rink for the last 17 years -- right on Delsea Drive. Prior to coming here, I operated a rink in New York City for 21 years. I've been in business for a while, and it's because of this insurance thing, we've got to give up the ghost. We haven't-- Let me put it this way. We haven't raised our rates in Vineland here for nine years for the reason that our families raised all five through college out on their own. We felt we could continue to do what we're doing, and absorbing price increases as they came along. It's gotten to the point now that it means taking retirement capital and putting it into the business for operating.

Case in point-- And, by the way, I have three solutions here. I have written to Congressman Florio, and I received a letter back from him, and a 45-minute phone call from Paul Geoffy (phonetic spelling), his legislative counsel. I am anticipating I might be-- Well, I was asked if I would be available -- I think it's next week or the week after -- to testify in Congress. I think it's in the next two weeks, and I'm immediately available because I'm really retired, though we still have this--

Now, case in point: In the State of New Jersey, we have an attorney firm who are trying to find out what we could do to protect ourselves. Without insurance, it is not available, not even for the building. Our particular building is as fireproof as a building can be, but regardless, it was suggested that we go back through the Assembly. Mr. Chinnici is our Assemblyman. So, that's the reason I came here -- to go on the record here with some numbers.

This particular operation three years ago, through Caroon (phonetic spelling) and Black, we had coverage on the building six hu-- The building alone: $630,750; the liability: $2,500,000; contents: 80 -- actually $100,000 -- it was 80% co-insurance; business interruption: $36,000; signs, crime, etc. The total premium: $6360. Now, this particular year, after they cancelled all of those rinks, including ours -- right, willy-nilly, good or bad -- we've had one lawyer's letter in four years. So, we're considered in our industry a good customer.

But, at any rate, they passed the bill, which Governor Kean signed, that they could not cancel you -- I'm sure you people are all aware of this -- during your policy year, and they had to re-quote you. They re-quoted us all right, but I think that that's where the crack and the flaw was. There was no cap put on the re-quote.

Hear this one: They dropped our coverage on the building -- $630,000, right down to $400,000. They dropped it, in short, $230,750. They took the liability from $2,500,000, and they dropped it to $500,000; contents from $80,000 down to $27,500; business interruption from $36,000 to $24,000, etc. And, the premium: $18,851.88 -- absolutely -- which works out to an approximate increase, I'd say, between 400 and 500% -- take it or leave it.

Now, it just says very nicely through Franklin (phonetic spelling) Holding Company, which certainly is not a fly-by-night outfit: "Dear Sirs: We will be unable to renew the captioned coverage with the present carrier. Other markets have been approached and have declined. Unfortunately, we regret that we might advise you that your coverage will expire on November 28, '85."

Okay. Then we got a phone call saying that, "Okay, we will quote you." But, 500,000 said that the insurance they give me is no insurance. In short, if there is a catastrophic accident, which can happen-- By the way, in my career, I've addressed our national conventions year-in and year-out, and I've always been an advocate of insurance. Good operation, but good insurance.

For instance, some of the people out in the Midwest, they don't have insurance. They never had it, and they don't feel they need it. But, in the meantime, my classic example was, how about the 29-year-old engineer, with four children, who comes into your place, and makes contact with an employee on the floor -- accidentally or otherwise -- hits his head on a pipe, and maybe you have a deceased patron, with four children? Now, you must have catastrophic insurance for that possibility. Okay, so $500,000 certainly would not cover it.

Now, the justification. The State of New Jersey-- We have-- One of our members has, I guess, nine or ten rinks in various states on the East seaboard. In Pennsylvania, his building insurance with the ISO rates: 68 cents per hundred. In New Jersey: $2.63. I don't want to be argumentative, but that seems to be-- Something's out of line here.

Now, I have three things that I have written to Congressman Florio. Would you care for me to read this letter, or just pick those three things out?

ASSEMBLYMAN LOVEYS: Go ahead, sir.

MR. O'NEIL: With the letter? Okay. "Dear Congressman Florio: As a Board member of the American Rink Operators Association, and the owner and operator of the Vineland Roller Rink for the last 17 years, I would call to your attention a problem that threatens the very existence of our industry. It is the lack of proper liability and fire insurance, without which we cannot prudently operate. Our research shows that insurance companies are exempt from antitrust laws." Now, I think that's a high point. I think-- Why are they exempt from our antitrust laws? We are all business people; we have other investments. Every bit of it comes under Fell, Crawford (phonetic spelling), and so forth and so on. But, not the insurance companies. Now, that's improper, in my opinion.

Now, "exempt from antitrust laws, and the cancellation of approximately 2000 rinks across the country occurred almost simultaneously." If you did that in any other business, you'd be hauled into court immediately. But, they get away with it. Let's say there might be reasons for it, but it escapes me.

By the way, I intend to speak-- Three weeks from now in Atlantic City, we're having a convention. Let's see. "The country occurred almost simultaneously, and while New Jersey laws force quotes to be made, rates were doubled and tripled and quadrupled, and coverages reduced from 50 to 75%." I think that's a slap in the face for our Governor and our State. They were forced to give us insurance to sort of break that cartel, and they said, "Fine, we'll give you insurance."

And, look at this. Some insurance. That's no insurance.

Let's see. "Two, for those of us who would set up individual self-insurance funds, we would like enabling legislation to allow escrow funds to be set aside as a normal pre-tax business expense." We can't do that. In short, we cannot get insurance. We choose to be proper citizens or proper business people, and if there is an injury or accident that is our fault, we certainly would like to cover it. Now, that becomes a business expense.

We would like to set up a fund, since we can't pay the insurance company. By the way, if we pay the insurance company, that's a business expense. Now, why can't I can't take-- Last year, it was 14,000 and then 18. Why can't I take $18,000, charge it to the business as a business expense? Why cannot that be done with pre-tax dollars? In short, that's a bit of relief. We positively should have not only less. I think municipalities, every business person operating--

Now, "Number three." This is the thing. I take the position, the insurance company looks like he's the scapegoat. Speaking from a liability point of view, we're all familiar with the liabilities. I have files four inches thick. I read The Wall Street Journal, "Forbes Magazine," The New York Times, whatever. Anything on insurance, I've cut it out for the last, I guess, 12, 14 years. It is sort of my hobby. And, I find that we read about these catastrophic awards. A child out in East Meadows School District -- just last week's papers -- an accomplished gymnast, went in the gym before the particular period was to begin, and she was a whiz-bang. She fell off a trapeze -- whatever it was -- and hurt her back. She's paralyzed. They returned a verdict for $17 million because there wasn't proper supervision. I could give you a lot of horror stories, for instance, why I say $500,000 is not protecting the public.

A particular case: A group came to a rink -- not in our State, in Pennsylvania -- and, they came in a bus. The bus driver drove up the block. Two blocks away-- It was in Philadelphia. Two blocks away. When the group left -- a group of eight children left -- it went along the block, ran into another group of eight or ten boys, and there was a fracas. And, this child was hit on the head and brain-damaged. They returned a verdict of $2.5 million -- not even on the man's property, not in his building. Okay? That's the judicial system. They saw fit to do it.

Now, here's the third point, and this is relief here that I think we would need. To reduce the nuisance claims-- By the way, I speak from my experience in New York City. I write for two trade papers. I wrote one, "Modern Crowd Control." I can almost quote the thing. As I said, with a lawyer, on every other thing-- This was in the Brooklyn area. Claims got to be a weekly and bi-weekly basis.

I could show you files, and you just wouldn't believe them, where I took notes of conversations, etc., etc. You'd be sued for $60,000. They played brinksmanship. This is nuisance suits now. Somebody would fall down. We got sued for accidents that happened in other rinks. I sat in court one time with our attorney, and they were giving a description of the rink where this happened. We had a huge place. It skated 1200 people. We had four poles right down the middle. I listened to the description. I had some legal attorney, although I'm not an attorney-- From way back on school days, I always took notes on a yellow pad. I said, "Hey, this doesn't sound like our place." We found out it wasn't our place. This happened to us twice.

Now, the attorney would say, "Look, we're suing for 100,000." This is the day we're going to court. "Could you give us $1000 until I get a pay day?" Now, it got to be so-- It was routine. Down here, it doesn't happen. You know, this is a different breed of people.

Like I belong to Rotary here, and I made my classification speech. I said, "I wish I had come--" I'm here 17 years. "I wish I had come here 30 years ago." It is a different breed of cat.

But, in the meantime, that's not our situation. We're a city. It's happening in Philadelphia, Chicago, New York -- right across the country.

Here's the thing: To reduce nuisance claims, which unnecessarily run up defense costs and waste court time, we request enabling legislation to permit counter-filing for defense attorney fees and attendant expenses, not only before, but after adjudication, as per case law -- the Fragonetti (phonetic spelling) case in Pennsylvania. In short, Chief Justice Burger -- this was his idea : "In short of your suit, frivolously, you should be able to recover your attorney's expenses and your out-of-pocket expenses." Why can we not have this?

You know, in New Jersey-- That's what I'm talking about. Like our Governor, I think, I think he's a whiz-bang. I'm very impressed with him, except how that thing slipped through where they allowed us-- They told these companies you had to increase-- They had to rewrite the insurance, but they didn't put any cap on it. This is disgraceful. This is insulting. Of course, this is my opinion.

You won't need this. This is a resume that I-- If you have questions--

ASSEMBLYMAN LOVEYS: Mr. O'Neil, let me make a comment.

MR. O'NEIL: I have a little hearing problem.

ASSEMBLYMAN LOVEYS: We understand your problem. There are many-- You're not alone out there. There are many like you in the same circumstance. We do intend to have some hearings again on that particular subject, and we do intend to file some sort of bills to have some sort of reform to help you people. How successful we'll be at this juncture, we don't know, but we are and will be working in that area.

I know you do not want to open your building if you don't have liability insurance. I can understand that.

MR. O'NEIL: We have it up for sale now.

ASSEMBLYMAN LOVEYS: If you did want to call New Jersey FAIR -- it's FAIR -- in Newark-- It's with the Division of Insurance. It's an underwriting association for -- that you won't be able to get liability insurance, but you could get fire and extended coverage, if you wanted to talk to them.

I only suggest that to you in the event that you're not covered now, that's all.

MR. O'NEIL: No, we're not. You know--

ASSEMBLYMAN LOVEYS: Well, maybe you want to have at least some fire or extended--

MR. O'NEIL: --We've tried the local people; we've tried national, and I just-- Of course, something's wrong, but we feel -- the gentleman that's with me is the immediate

Vice-President of the big association, and of course, the insurance company is the one that seems to be getting the blame. But the insurance companies -- I've had many, many meetings with them, where they like to hand-pick a few rinks that have excellent experience, all this sort of business, but I have to speak for the entire organization, not just a handful. We desperately need insurance and we can't get it. This gentleman feels it's the attorneys; they just write a letter. And just case in point: a couple of fellows I went to night college -- night school -- with became attorneys. I used to help them prepare briefs, and this is many, many years ago, but in -- I'll be 69 in November, and you start to look back now. I look back at some of the things -- I was picking up some small, expense money, but in the meantime, we were preparing a brief on a rainy day to send out what they call rainy-days letters. The attorneys know about this -- send out 10 or 12 on a rainy day when there's nothing doing in the office, and try to reactivate some old cases you weren't even gonna put in suit. And in would come the pay day.

But you see, that thing has multiplied now. It's driving everybody out of business. It's the municipalities -- they can't function. Our Police Department here couldn't get fire insurance -- or rather, liability insurance for our police. We finally got it, but -- I don't know what you fellows have to come up with the answer, but I think the economy is going to come to a screeching halt. The people-- It's not fair to operate a business when you haven't got coverage, and yet, to put your capital in and risk your capital, there's no return. You can't sleep at night. I'm fortunate; at this stage, we can get out. But, now who's going to service all of these children, not only here but all across-- What are they going to do for activity? We're complaining about the juvenile crime, etcetera -- keep them busy; the churches and schools are trying to do it. Even the schools -- they've got to have liability insurance. The churches have got to have it. I could give you some chapter and verse on that.

Anyhow, if there are any questions of me--

ASSEMBLYMAN LOVEYS: Thank you for your testimony, sir. Yes, sir? You wanted to testify? Would you come forward, please?

F R A N K   D A T T I L I O: (speaks away from microphone) May I?

ASSEMBLYMAN LOVEYS: Surely. I indicated to you that we would hear you. Could we have your name and address, sir?

MR. DATTILIO: Sure.

ASSEMBLYMAN LOVEYS: Sit right down there, if you would.

MR. DATTILIO: (trips over recording equipment wires) I just did that intentionally, because I wanted to demonstrate something that's happening in (inaudible).

Okay? I could come in here and there's all kinds of exposures to liability. I can trip over that wire. This is a municipality. The municipality does not have money; it gets it from the entrepreneurs -- the guys who create jobs. I'm an entrepreneur. I'm a roller rink operator in the State of New Jersey. I have 25 employees. They pay taxes to the municipality. The municipality takes that money and buys liability insurance. I can come in here and rip the municipality off. I could trip over that; fake it, go to a lawyer, tell a lawyer I want to sue them for $10,000 and here's what's happening. It'll be settled out of court. The defendant's lawyer will be paid-- that's the insurance company. The plaintiff's lawyer will be paid, and the plaintiff.

So, this is what's going on. It's the-- We have 700,000 attorneys in this country. Now, all of these things that I'm uttering was published in the <u>US News and World Report</u>

-- seven and a half pages. And what is happening is that the majority of the legislators are attorneys, and the attorneys make the laws. And, unless those laws are changed, this great and beautiful country -- which I served four and a half years of World War II to defend, in Europe, with a .45 and a machine gun, a Thompson sub-machine gun -- we're going to go down the drain. It's causing inflation. Us, as businessmen, cannot survive. My liability insurance is $95 a day. The local taxes is $82 a day. My energy bill is $82 a day. All of these inflationary prices are caused by attorneys, because everybody's got to carry liability insurance. I have to carry it in the municipality; the whole municipality of Edgewater Park has got to have liability insurance, and about a month ago, when I appeared before the Township of Delran -- which I live in -- my mayor was complaining to me because Route 130 goes through Delran Township, and every time that there's an accident on Route 130, Delran Township gets a lawyer's letter. They're included in the suit. So, the mayor says, "I have to turn that letter over to our solicitor," and the solicitor takes care of the matter in a couple of letters, and he bills the municipality for 200 bucks.

To stem the tide, we're going to have to change the tort laws so that this country can survive. We cannot even compete against foreign markets because of this. It's all inflationary. And that's what I'd like to say: we've got to focus in on where the regime is. The attorneys control this country. And, the wealth of this country is shifting from the entrepreneurs to the lawyers.

I thank you, sir.

ASSEMBLYMAN LOVEYS: Thank you.

Well, we thank everyone for appearing here today. With that, we will close this public hearing.

(HEARING CONCLUDED)