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Public Hearing on Assembly Committee
Substitute for Senate Bill No. 204 - re exemption
of religious, charitable and hospital organiza-
tions from negligence liability.

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F I R S T P U B L I C H E A R I N G

Before

ASSEMBLY JUDICIARY COMMITTEE,

on

Assembly Committee Substitute for
Senate Bill No. 204 - re exemption of
religious, charitable and hospital organizations
from negligence liability.

Held:

July 17, 1958
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman David I. Stepacoff (Chairman)

Assemblyman Thomas F. Connery, Jr.

Assemblyman Alan Kraut

Assemblyman Irwin LeWine

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ASSEMBLYMAN DAVID I. STEPACOFF (THE CHAIRMAN): Gentlemen, this public hearing will come to order now. For the enlightenment of some of you gentlemen who might want to know what this is about, you will recall that in the September Term of the New Jersey Supreme Court (1957) Term, there were three monumental decisions handed down by the court in the cases of Benton vs. The Y.M.C.A., Collopy vs. Newark, and Dalton vs. St. Lukes. The purport of these decisions was to eliminate the immunity which had existed up to the time of the decisions in these cases in so far as the law of New Jersey was concerned in cases pertaining to charitable institutions and eleemosynary institutions and non-profit organizations, such as churches, etc.

S-204 was a Senate Bill passed in the Senate which would have had the effect of overruling the wiping out of immunity as dictated by the decisions of the Supreme Court. When S-204 came over to the General Assembly, the Assembly felt that it was perhaps too drastic to effect the change from the decision of the court, and we substituted a bill in the place and stead of S-204 which would permit suits against hospitals, whether they pertained to beneficiaries or strangers, up to the sum of \$10,000.

I won't go into the reasoning of the court in these three decisions. I presume you gentlemen know what the law was before the decisions and what the law was after the decisions, and what the Assembly Committee Substitute for S-204 provides. The only case of liability fixed by the Committee Substitute is in the case of hospital institutions, and in those cases no one can recover more than \$10,000, as defined by the provisions of that bill.

The question of immunity pertaining to churches and welfare

bodies has in effect been done away with, even though the Supreme Court has said that there shall no longer be any immunity in the cases of churches and these welfare organizations. Now, the purpose of this hearing is to determine the wisdom of the course of the Legislature to find out what the policy of the State should be and we have asked the various people here to signify their opposition or favor of the particular bill under consideration. We invite your views, we want to have a full hearing, cogent hearing, plenary hearing, we don't want to deny anybody any thought they may wish to express in reference to the problem.

We will follow the procedure calling the names in the order in which the names appear on the list that was signed by the various people here. I take it that the stenographer has the names of the committee members?

All right, we'll start with the first witness who desires immunity, I believe, for all of the organizations under consideration, and I would ask each witness to take this particular seat here, speak to the microphone, which is live, and to express his full views and after he gives his statement the committee members will question him as they see fit.

The first witness will be Mr. John J. Rafferty, Executive Secretary of the New Jersey Catholic Conference.

MR. IRWIN LEWINE: Mr. Chairman, while Mr. Rafferty is getting ready, I would suggest that you introduce the members of the committee to make them known to the people who will testify.

THE CHAIRMAN: Yes. On my immediate left is Mr. Thomas Connery, Gloucester, Mr. Irwin Lewine of Essex County, on my right is Alan Kraut of Hudson County. My name is Stepacoff of Middlesex County. Mr. Rafferty.

MR. JOHN J. RAFFERTY: Mr. Chairman, and gentlemen of the Committee, for the purpose of the record, you are well aware of my representation in the matter, but for the purpose of the record, my name is John J. Rafferty; I am a lawyer practicing in New Brunswick. My appearance this morning, however, is not so much in the role of the lawyer as it is in my capacity as Executive Secretary of the New Jersey Catholic Conference. The New Jersey Catholic Conference is composed of a group of men especially selected by the Bishops of the State, the Roman Catholic Bishops of the State, to consider matters as they may affect the church in the civil aspect, and to approach our consideration of these matters not so much in the interest of the church particularly, but insofar as these matters may apply to the common good of all of the people of the State. The basic assumption is that what is good for the people of the State is good for the church. Contra, what is not good for the people of the State is not good for the church.

Now this Conference represents the Archdiocese of Newark, the Diocese of Trenton, the Diocese of Paterson and the Diocese of Camden, thereby encompassing the entire State of New Jersey. I speak this morning for every Catholic institution in the State of New Jersey, the church, school, hospital, orphanage or other organizations, having as its purpose the amelioration of the difficulty of the poor, the halt and the blind. I speak for total immunity to these organizations from suits arising out of the negligence of the agents, servants or employees of any of these organizations. I speak for Senate 204 as it was introduced by Senator Farley in the Senate. And so that the members of the

Committee may not assume that I have been in agreement with the bill as amended in the House. I wish to remind the Committee that the day the bill was released from committee, Mr. Stepacoff, the Chairman, stated to me not, of course, by way of ultimatum, but stated to me that the only way the bill could be released from committee would be if the several modifications, which were contained in the House draft revision, were there.

Of course, we were very anxious to get the best that we could, because already suits were being filed against these charitable corporations. We knew as Mr. Stepacoff had stated, this hearing would be held this morning for a general exploration of the subject; therefore, we took the best we could get pending this hearing, and of course, in the hope that at this hearing the exploration would be sufficiently deep so that we may convince the members of this House Committee that the principle of total and absolute immunity to charitable institutions is good law.

Implicit in the opening remarks of your Chairman this morning is a repetition of the statement which he made to me while the bill was in the House Committee, that we ought not too promptly override the Supreme Court, if indeed we are going to override it at all. I pointed out that the Legislature is a separate and distinct branch of government from the judiciary. The Legislature has its obligations and the Supreme Court, or as a matter of fact, the judicial system, has its obligations. That as a practical matter the Supreme Court would have no hesitancy in overriding an act of this Legislature, if within the judgment of the Supreme Court, the act of the Legislature was unconstitutional or invalid for other

reasons. Now, I desire at the outset, to bring to the attention of the Committee, what the Supreme Court really said on this point. Mr. Justice Jacobs, who wrote the opinion for the majority of the Court, pointed out in his opinion, which rightly understood, it seems to me means this.

MR. CHAIRMAN: Are you referring to the Collopy case, Mr. Rafferty?

MR. RAFFERTY: Yes. I am referring to the case, yes, thank you, sir, of Collopy against the Newark Eye and Ear Infirmary. Mr. Justice Jacobs said that what the Supreme Court was doing was correcting the law as it had developed over the years from an erroneous concept which had arisen earlier and which the Court should follow. In other words, the various courts had followed what was error and the opinion of the majority in the Collopy case very properly they, believing that to be true, avoided the error, and wrote the opinion which we have before us.

Now, as to the particular point, Mr. Justice Jacobs said this,

"There is no doubt that within constitutional limits the Legislature may at any time, if it so chooses explicitly fix the State's policy as to the immunity of charitable institutions from tort responsibilities but the Legislature has not done so. It has broadly empowered non-profit corporations to sue 'and be sued' "

citing the statute. Now, I would like to point out there that Mr. Justice Jacobs has no feeling about ways and when the Legislature should adopt legislation having the effect of overriding the opinion of the Supreme Court in the Collopy case because he expressly said the Legislature may at any time, not a year from now or ten years from now, but now, if the Legislature so wishes.

THE CHAIRMAN: Now, Mr. Rafferty, at that point, while you indicate he has no feeling about the right of the Legislature to overrule the Supreme Court, as you properly point out, the Legislature in this instance, would have the right to express the policy of the State. But do you say that he would agree with the policy of the Legislature if we were to overrule the Court's decision, the basic reason?

MR. RAFFERTY: Well, of course, my argument this morning is that you should overrule the decision of the Court.

THE CHAIRMAN: That's your argument, but do you say that Justice Jacobs would agree with your argument that the Legislature should overrule the decision of the Court?

MR. RAFFERTY: Well, I shall show that while Justice Jacobs dealt with the law, the opinion, is, as usual, a very, very fine opinion because Justice Jacobs is a very, very fine lawyer and in my experience a very, very good Judge, but the bulk of his reasoning in the Collopy opinion is pure dictum. When he departs from the law and enters into dictum he is expressing his subjective attitudes and he is bringing into the opinion to support his conclusions matters which to him are purely subjective; now Justice Jacobs points out that the charitable corporation has the opportunity to insure against these liabilities and that is the gist of his reasoning. If these corporations could not insure, Justice Jacobs may have an entirely different point of view. But the burden of his argument is these corporations can insure against this liability and therefore, they should be liable, which I submit is a non sequitor and which I shall attempt to demonstrate to this committee.

THE CHAIRMAN: I would like to clarify the record, Mr. Rafferty, in that regard now. Justice Jacobs may, as you indicate, be in error about the fact that insurance may be had for these organizations but do you maintain that Justice Jacobs' opinion is based purely on dictum?

MR. RAFFERTY: I say his reasoning is dictum. The opinion, as I understand it, is a corrective opinion. The opinion states that the early English cases were mistaken in their application. The first mistake was made by the Courts of Massachusetts, who followed the English cases and they followed it on an erroneous legal ground. This error has persisted and now the Supreme Court of New Jersey is overruling those cases which were based upon the erroneous premise upon which the English cases were constructed. That, as I understand it, is the opinion in the Collopy case.

MR. CHAIRMAN: Mr. Rafferty, I would agree with you that insofar as that portion of your testimony is concerned, you are absolutely correct. Now, the next thing I think we've got to decide is what is the basis of Justice Jacobs' opinion in granting immunity? Isn't that what we really have to find out?

MR. RAFFERTY: Well, Justice Jacobs' opinion does not grant immunity.

THE CHAIRMAN: I mean do away with immunity.

MR. RAFFERTY: Justice Jacobs' opinion, on the premises which I have already suggested, said that these charitable corporations do not have immunity and as a matter of fact, because of the early error in the English decisions they never really had immunity, that the only immunity which they have enjoyed is that immunity which flows from an erroneous decision of the English Courts back several hundred

years ago.

MR. CONNERY: Then insurance doesn't really enter into the ultimate resolve or conclusion reached by Justice Jacobs in this opinion; in other words, what he was doing in his opinion was setting forth in logical and legal reason why the early English decisions should no longer be followed in the United States because they were repudiated in England within a very short period of time after they first came down.

MR. RAFFERTY: That is correct, no question about that.

THE CHAIRMAN: But Mr. Rafferty -

MR. RAFFERTY: That's what I've been trying to say.

THE CHAIRMAN: But he did advance reasons for doing away with the immunity, did he not?

MR. RAFFERTY: His principal reason was that these corporations can insure against liability.

THE CHAIRMAN: Aside from the characterizing as to the relative value of the reasons, what were the other reasons he advanced that we should do away with immunity, as you read the case.

MR. RAFFERTY: As I understand the case, of course, he approaches it from the basic principle where there is fault there should be redress. That, as I understand it, is a policy that we all agree with.

THE CHAIRMAN: Wouldn't you say that even in a larger factor, in his consideration of the case, as I read it, he concludes that we must be just before we are generous.

MR. RAFFERTY: Well, that--

THE CHAIRMAN: And therefore, when an individual is injured in one of these charitable organizations, rather than that person to bear the entire brunt of the negligence of the organization, he feels that

It is not fair to saddle the individual with the entire cost of the negligence of the institution, and therefore, he says we should not have any immunity with reference to that person. It is better for the entire community or the organization to bear the liability rather than saddle that individual, and therefore, he concludes it is more proper to be just than generous with that man's right. Is that what he said in his opinion?

MR. RAFFERTY: Well, I suppose that can be drawn from what he said. That is the very heart, sir - Yes, I think Justice Jacobs has used the phrase "just before generous".

THE CHAIRMAN: Then I would say that would be the core of his thinking, wouldn't you?

MR. RAFFERTY: Well, I'd say it is a part of the whole opinion, but I say also - I reiterate - that if Mr. Justice Jacobs believed that these charitable corporations could not insure against these liabilities, he may have come to a different conclusion.

THE CHAIRMAN: You may very well be right.

MR. RAFFERTY: I think that is fairly deducible from what he said, because he expressly said that the corporations can insure against these liabilities. Now, that brings us to the very heart of my presentation. It is true that the maxim is generally accepted, that we must be just before we can be generous but, like all maxims, it is a generality and is subject to its exceptions. It is true that persons who are injured should, as a general proposition, be reimbursed by those whose fault caused the injury. That again is another general statement, subject to exceptions.

It is also true that the right or the good of the individual must yield, must be subordinated to the common good of all of the people and it is this exception that I plan to urge before you in this presentation.

Basic to our argument that there should be total immunity is that underlying principle, basic to the argument which I propose to make, is the underlying principle that the good of the individual must, in a proper situation, yield to the common good of all of the people. Now, I wish to present to the court the considerations upon which these charitable corporations are organized. These charitable organizations are all voluntary organizations. Voluntary as it is understood in the law. A group of citizens consider that it is necessary within a particular community, that a hospital should be made available to people who become ill, or who become injured. People in a community determine that a school, a parochial school, if you will, should be constructed and made available to residents of the community who desire to participate in the program of that school. People conclude that there should be some facility to care for the injured and the infirm not presently provided and so they organize a facility for that purpose, an Old Men's Home, as it is commonly called.

Orphanages are so constructed, churches are so brought into existence. All of these are done voluntarily, without any compulsion upon these people, except the compulsion of charity. Now, when I use the word "charity", I want you to understand that I am using it in the sense of love, love of your fellow man, because of what your fellow man is, and what he represents; love of your fellow man because of his very great personal dignity, which must be shared and

catered to. Now, throughout the State there are innumerable of these charitable corporations catering to every need of the populace. These organizations have gathered together many, many millions of dollars in order that they may afford to the general public, not to particular portions of the public, not to special groups of the public but to the public generally, as the phrase is, if we are going to resort to phrases, without reference to race, creed or color. These organizations make available to all of the people, whomever they may be, the fruits of their charitable endeavor. These organizations perform a function, which if it were not performed by these charitable organizations, out of the very necessity of the situation, would have to be performed by the State.

If there were no St. Peters Hospital, if there were no Perth Amboy Hospital, if there were no Middlesex Hospital, if there were no St. Barnabas Hospital and so on down through the whole category of names of hospitals, the State of New Jersey would be obliged to furnish these hospitals out of its duty to the citizens. These hospitals would be state institutions, paid for by the State, all of the expenses thereof would be borne by the State. To the contrary, these hospitals which are organized and operated under the voluntary system that I have just indicated to you, raise their own funds.

THE CHAIRMAN: Mr. Rafferty, at that point, would you mind clarifying for the committee, please, your concept as to these charitable organizations, particularly hospitals, and what in your opinion makes it a charitable institution as distinguished from a public institution.

MR. RAFFERTY: Yes, I will deal with the whole subject. I take it I am not being pressed for time.

THE CHAIRMAN: No, no, not at all, but do you mind if we -

MR. RAFFERTY: I intend to deal with the whole subject.

THE CHAIRMAN: Yes, of course, but I would like to clear up, if you can, at any time in your discourse.

MR. RAFFERTY: I certainly will clear it up. Instead of the State being required to furnish the cost of maintenance of these institutions, they are done by the charitable corporation and the very proof, the unassailable proof, that the public at large favors this kind of charitable activity is that the public voluntarily supports and maintains these institutions. Nobody compels John Jones to contribute a hundred dollars to a hospital or to a church. He does it because of that very impulse of charity that I referred to not long ago. As a particular illustration, in the City of New Brunswick only two years ago, it became necessary to improve and expand the facilities of the two general hospitals in that city. A committee was formed, of which I was a participant, and this committee went out to the people of the area served by that hospital and the people of that area contributed three million dollars to the improvement, to the repair and to the expansion of these hospital facilities. This money was voluntarily contributed. These voluntary contributions are a public endorsement of the charitable endeavor.

The Chairman of this Committee knows in his own City of Perth Amboy, the people of that hospital area, served by the Perth Amboy General Hospital, poured in millions of dollars to the expansion and to the improvement of that hospital. And so we can go through the State, town by town, institution by institution, and show that all the moneys for these institutions come from the

people at large, with this single exception: Under our state law, Boards of Freeholders of the counties have the right, they are not bound to do it, they have the right, within the limitations of the statute, to make contributions to hospitals, charitable hospitals, for services rendered by these charitable hospitals to indigent patients. There is a recognition by the State of these charitable hospitals and of their desirability and of their need. This Legislature, the Legislatures of past years, have enacted laws permitting Boards of Freeholders, within their discretion and within the limitations of the statute, to make contributions to these hospitals for indigent patients, but the truth is, because of the limitations of the statute, and because of the general demand of the public for public services, and because of the desire of the Boards of Freeholders to keep down the county tax rate, and to spend only that which is necessary to be spent, that which I may say they are obliged to spend, the money appropriated by Boards of Freeholders in any county in this state for this purpose, does not meet the bare costs of the care of indigent patients. For instance, the per-day care of an indigent patient in a hospital in this state may average \$22.00. Mr. Harold Johnson has the figures better than I and he can give you the precise figure, but I say the average is \$22.00, yet the moneys paid by the Boards of Freeholders are much less than one-half of that. My recollection is that in St. Peters Hospital in New Brunswick, last year it was something about nine dollars and some cents.

So, therefore, the Boards of Freeholders do not carry the hospital for services to indigent patients. True, they make a contribution, true their contribution is gladly accepted, but it is not a contribution of the whole cost. Now that area between the

nine dollars and the twenty-two dollars is strictly charity. You have asked me, Mr. Stepacoff, to point out where the charity is. Here is an instance -

THE CHAIRMAN: I didn't ask you that. That wasn't my point, Mr. Rafferty. My point was that there are some institutions, hospitals if you will, which are truly not charitable, you will agree with me on that, I'm sure. What I am trying to do, is that I am trying to clarify -

MR. RAFFERTY: Now wait now. I can't, I don't want to say that I agree with you, I don't know of any voluntary hospital, I am not speaking now of hospitals which are business corporations operated for profit.

THE CHAIRMAN: Well, that's what I'm talking about.

MR. RAFFERTY: I'm talking about the voluntary hospital.

THE CHAIRMAN: Where do you draw the line, and how do you draw the line, that's what I'm trying to find out.

MR. RAFFERTY: As between those two types of hospitals?

THE CHAIRMEN: Yes.

MR. RAFFERTY: Well, the hospital which is not a charitable hospital is a business corporation. The same as the Pennsylvania Railroad.

THE CHAIRMAN: Well, aren't all hospitals in business for some profit?

MR. RAFFERTY: No. When you say profit now, let's understand each other, the voluntary hospital may perchance make a profit, but it does not inure, as the statute says, to the benefit of any individual.

THE CHAIRMAN: I understand that.

MR. RAFFERTY: Whereas, on the other hand, a business corporation which is a hospital makes a profit which inures to the benefit of the stockholders. Now, it seems to me that distinction is obvious, Mr. Stepacoff, and ought not to be argued.

ASSEMBLYMAN KRAUT: May I interrupt to ask you - isn't the difference between a charitable institution and a non-charitable one, where a person can secure free treatments? These institutions that you mention, the charitable institutions in your county, do they charge for treatments and hospitalization?

MR. RAFFERTY: They charge for treatment where the patient can pay, but whether the patient can pay or not isn't the criterion as to whether the patient shall be admitted.

THE CHAIRMAN: Mr. Rafferty, that may be with certain hospitals in your city. I am not gainsaying the fact, and incidently, when we are asking these questions we are not seeking to argue with you, we are trying to shed some light and -

MR. RAFFERTY: I appreciate that.

THE CHAIRMAN: We haven't expressed any opinion on the ultimate legislation intended, but you will agree with me, I am sure, we must find out what the facts are.

MR. RAFFERTY: No question about that.

THE CHAIRMAN: When you say there are institutions which do not charge, you have in mind some institutions in your town, I presume.

MR. RAFFERTY: I have in mind the Catholic institutions of the State. When it comes to institutions which are of other faiths, or when it comes to institutions like the Perth Amboy General Hospital

which is nonsectarian entirely, Mr. Johnston is the Executive Secretary of the New Jersey Hospital Association, and I am sure, he can answer the question directly.

THE CHAIRMAN: Well, let's take, then - Do you know, for example, if we take that case, because you mention it, do you know whether they accept any free patients?

MR. RAFFERTY: My experience has been - and it has been unvarying, I have never seen an exception; I might say I have been interested in hospitals for a great many years and my experience has been that there is no charitable hospital which has refused admittance of a patient needing hospitalization, on the basis of the ability of the patient to pay. I have had a great deal of experience and I know of no instance of any charitable hospital refusing to accept a patient needing hospitalization on the sole ground that that patient was not able to pay the bill.

THE CHAIRMAN: Is it not true, though, Mr. Rafferty, that those hospitals that you are now talking about permit the entry of those people who cannot afford to pay, only if there is room available for that individual?

MR. RAFFERTY: Well, of course, that would seem to be self answering. If there is no room available, then of course - I mean, a quart jar can only hold a quart of water.

THE CHAIRMAN: Yes. Let me ask you -

MR. RAFFERTY: You can't put another drop in it.

THE CHAIRMAN: But -

MR. RAFFERTY: But let me finish the answer. I also know from experience that hospitals are doubling their rooms, hospitals are putting people in corridors, hospitals are putting people in the base-

ments in order to accommodate the needs, but like every other thing physical, when it finally reaches its ultimate capacity to hold, it just can't hold any more.

THE CHAIRMAN: Again, for the point of clarifying what a charitable hospital may be, suppose some of these purely profitable hospitals accommodated some people who could not afford to pay, would you then classify these hospitals as charitable hospitals?

MR. RAFFERTY: Well, that seems to me, Mr. Stepacoff, really to be a contradiction, because -

THE CHAIRMAN: That's not answering the question. I am not saying that -

MR. RAFFERTY: Yes. Now, I am trying to answer you fairly. It seems to me to be a contradiction because a hospital organized for the making of profit for its stockholders is not organized for charity. A hospital, on the other hand, which is organized not for the purpose of making profit for stockholders, of course, it has no stockholders, is a charitable corporation. Now, perchance, a profit-making hospital might out of the goodness of heart of the manager of that hospital, admit an individual here and there, without expense, that does not make them a charitable institution.

THE CHAIRMAN: Is it beyond the peradventure of reasoning to feel that there may be some, and I am not charging that there are, but there may be some that are called purely charitable hospitals who are making large profits and who are trying to get in under the category of a charitable hospital by admitting some of these patients free?

MR. RAFFERTY: You are speaking now of a group who are opera-

ting a hospital as a charitable hospital by way of circumventing the law so that they will not be obliged to pay taxes and that sort of thing?

THE CHAIRMAN: Yes.

MR. RAFFERTY: That is a matter, sir, which does not enter into our discussion, may I say respectfully, because if that is true, and I believe in some instances there have been attempts to circumvent the law in that respect, but that is a matter, sir, for the Attorney-General of the State. I might say also it is a matter that is often considered by the Hospital Licensing Board, of which I have the honor of being a member since its creation. Governor Driscoll appointed me a member of that Board upon its organization in 1947 and succeeding Governors have reappointed me to that Board as a representative of the public and I might say, out of that experience, that now and then it has been suggested that a group of physicians are operating a hospital actually for their private benefit, but they organize under the non-profit law in order to avoid the payment of tax. Now, if that can be substantiated, it is the duty of the Attorney-General to set aside the Certificate of Incorporation under which that hospital operates and compel it to meet its obligations.

THE CHAIRMAN: Mr. Rafferty, again in that connection, with your long experience, do you know of any cases in which the Attorney-General has acted to do that?

MR. RAFFERTY: I do not know of any cases, sir, but that does not destroy the law.

THE CHAIRMAN: No. I am not saying it destroys the law, but

I mean do you know whether any action has been initiated? Whether they have won or lost, is beside the point. Has any action been taken to determine -

MR. RAFFERTY: I know of no such action.

THE CHAIRMAN: You may proceed.

MR. RAFFERTY: However, that does not destroy the principle for which I argue.

THE CHAIRMAN: I understand.

MR. RAFFERTY: In my own home I may admit people out of pure charity and may refuse them admission. If I admit them it doesn't make me a charitable person under the concept of law.

THE CHAIRMAN: I'd say you would be a charitable person, but that's all right. I understand what you are saying.

MR. RAFFERTY: Now, I argue; thank you, sir; I argue that therefore these voluntary corporations perform a service to the people of the state for the common good of all of the people of the state, regardless of race, creed, color or any other matter that may be suggested. They operate upon the principle that he who needs hospitalization shall have that hospitalization, and whether he can pay for it or not is not the criterion of his admission to the hospital. Now, in addition to that, the State has recognized the propriety and has encouraged these voluntary organizations by granting tax exemption to these organizations. Tax exemption, as you gentlemen know, is based upon the theory of quid pro quo, a giving of something for something, and so therefore, this tax exemption is based upon the principle that these hospitals and these charitable institutions furnish something to the State, which justifies the

State in affording the tax exemption. Now, there again we have a public recognition of these voluntary organizations, and I am not talking exclusively about hospitals, it gets into the hospital feature pretty particularly, but I am talking of all charitable corporations. Again, the Federal Government recognizes the desirability of having these charitable corporations because the Federal Government over the years has made available to the charitable corporations millions upon millions of dollars for the construction, for the improvement of hospitals and their facilities.

In the very situation in New Brunswick that I spoke of, the people of the area contributed three million dollars, but a million and a half dollars, or more, was made available for that work by the government of the United States of America, under its hospital and survey construction act.

And so, therefore, without going ad infinitum into these matters, I point out these several actions of the State, be it local or federal, in recognition of the desirability of these institutions. Now we say to you, Mr. Chairman and gentlemen of the Committee, that the recognition which I have given you affords the grounds for the exemption of these charitable hospitals from liability in tort, liability for the negligence of its servants or agents, because the principle is the same, the principle is the same, the people make their contributions to these hospitals and charitable institutions, not to provide a fund to pay for jury verdicts; the State gives tax exemption, not to provide money to pay jury verdicts; the Federal Government makes this money available, not to provide a fund indirectly or otherwise, for the payment of jury verdicts; this money

is made available under what some call "the trust theory," very broadly expressed, that it shall be utilized for the purpose of construction and improvement, repairs, and the advance of the facilities of these hospitals.

THE CHAIRMAN: Didn't the Supreme Court point that out in Justice Jacobs' opinion when he said that Scott, under the theory of trust, said that that is one of the reasons advanced for the immunity?

MR. RAFFERTY: It has always been a reason. But I am not arguing the trust theory or any other theory. These things limit when there should be no limit. I am arguing about the broad basis of service to the people; I am arguing on the basis of the common good of all of the people; I am arguing that if these facilities were not available, the common good would suffer.

THE CHAIRMAN: In that connection, how do you justify the fact that an individual who was hurt in that charitable institution should suffer without any remedy for the negligence of that institution when he's gotten no gain? He is being forced to contribute the amount of his damages toward this trust fund that we are talking about, isn't he?

MR. RAFFERTY: Well, that's what the courts have said - -

THE CHAIRMAN: I mean, that is the basis of -

MR. RAFFERTY: -- that it is the contribution to the charity against his will.

THE CHAIRMAN: Right.

MR. RAFFERTY: That's what the courts have said.

THE CHAIRMAN: Now I want to know what your argument is against that?

MR. RAFFERTY: That, of course, is based upon, that is part and parcel of my whole argument, that the right of the individual,-- I'll restate it, we admit a wrong has been done to the individual, but under the circumstances that I have outlined, the right of the individual must be subordinated to the common good.

THE CHAIRMAN: But actually what you are doing, you are being generous with this man's damages, with what he is entitled to, you are not just, you are generous with him.

MR. RAFFERTY: I shall demonstrate to you before I conclude, that we are just.

THE CHAIRMAN: I would like to hear that.

MR. RAFFERTY: You will hear it.

MR. CONNERY: Mr. Rafferty, could I just ask one question; that is, what you are arguing now is generally contrary to the trend throughout the country, is that not so, and that in a number of states - I can name them, and you probably have the list - Arizona, Alaska, California, Colorado, Delaware, Florida, Iowa, Kansas, Minnesota, New Hampshire, New York, North Dakota, Oklahoma, Puerto Rico, Utah, Vermont, Washington, that in all those jurisdictions in recent years, they have abolished this immunity doctrine, is that not so?

MR. RAFFERTY: Your Honor, may I ask you this, and I don't mean to be impertinent. The list which you have just read off was supplied to you by an organization commonly called NACCA?

MR. CONNERY: The list that I just read off, Mr. Rafferty, was taken from a list contained in Prosser on Tort -

MR. RAFFERTY: Yes. All right, sir.

MR. CONNERY: -- which I understand is an outstanding text-book and it is frequently quoted in jurisdictions in states throughout the country on Tort Law. It was not taken from NACCA.

MR. RAFFERTY: All right. Prosser is a recognized authority and I certainly do not here dispute Prosser. I shall come to that. I have the answer, I hope, to that. I know that these jurisdictions have abolished the immunity in whole or in part, and I will refer to it.

THE CHAIRMAN: Mr. Rafferty, isn't it also true that the Supreme Court pointed out in the Collopy case that there are 20 jurisdictions that have done away with complete immunity?

MR. RAFFERTY: True. We recognize that.

THE CHAIRMAN: In furtherance of Mr. Connery's question.

MR. RAFFERTY: We recognize that, but we say at this point that because 20 people do something which may be wrong is no reason why the 21st person should commit the same error. As a matter of fact, the very gist of Justice Jacobs' opinion is that all of these courts in the past in the various states have been wrong, and we're not going to be wrong. I can apply that same reasoning to the suggestion that Mr. Connery made. I'll go directly to the answer: You must bear in mind, gentlemen, that this withdrawal of immunity in these various states that you have mentioned is of comparatively recent origin. It dates back not more than five or six years. A velocity has swept the nation; that is to say, those who happen to be the judges of the courts have taken hold of it. Whether we are going to reap a whirlwind from it is something that cannot be determined in the short space of time of our experience.

But my argument this morning is to demonstrate to you gentlemen that the whirlwind which we will reap is going to be the destruction of the charitable institution.

THE CHAIRMAN: Now, Mr. Rafferty, this may be premature and if you want to continue on in your own way, you have the liberty to do so. If you prefer not answering at this point, fine, but I would like to ask you this. The basis of your argument seems to be that since Justice Jacobs has indicated that insurance could be gotten for these institutions, and because you say they cannot be gotten, therefore, the gist of his decision, the basis for his decision falls. Now, I ask you this, if insurance could in fact be gotten for these charitable institutions for reasonable premiums, would you then be in favor of eliminating the immunity?

MR. RAFFERTY: The answer is, as a great President of the United States once said, that is an "iffy" question, and I shall demonstrate that the insurance cannot be had, and I shall demonstrate also that if the insurance could be; when I say cannot be had, I mean there are insurance companies who will refuse to insure. There is no guarantee that we can get this insurance and I will say, too, that if the insurance is available, as I shall indicate, the cost is so prohibitive as to actually force these hospitals out of existence, and I say, too, Mr. Chairman, as I shall demonstrate in a case in our own state, that the insurance is prohibitive in cost, that an insurance company which I shall identify has refused to carry insurance on a charitable corporation, and that the charitable corporation on a judgment obtained against it was obliged to pay out of an \$18,500.00 settlement, was obliged to pay \$8500.00 out of the charity funds over and

above the \$10,000.00 made available by the insurance company.

THE CHAIRMAN: At this point it might be appropriate to ask, since you have had a great deal of experience both as a member of the Legislature and a member of the Court of Errors and Appeals, the highest court of the State, in your judgment, do you feel that the State can compel an insurance company to carry the type of insurance involved here?

MR. RAFFERTY: I do not.

THE CHAIRMAN: You don't think they can?

MR. RAFFERTY: No sir. You cannot compel a free agent to enter into a contract against his will.

THE CHAIRMAN: We are compelling insurance companies to carry people who are ordinarily not insurable risks, aren't we?

MR. RAFFERTY: Under the Motor Vehicle Law, you are compelling insurance companies to make contributions to a fund -

THE CHAIRMAN: Right.

MR. RAFFERTY: And that fund is limited as to liability. The limit was extended this year by the Legislature.

THE CHAIRMAN: But we are assigning to certain specified companies these particular risks, are we not?

MR. RAFFERTY: That's right.

THE CHAIRMAN: Why can't we do it in the cases of these hospitals?

MR. RAFFERTY: Well, the first answer is that no insurance company has disputed the constitutionality of that statute. They have accepted it as a practical disposition of a very practical problem.

THE CHAIRMAN: Is there any indication they would do less here, in your opinion?

MR. RAFFERTY: Pardon me?

THE CHAIRMAN: Is there any indication that they would do less here than accept that proposition?

MR. RAFFERTY: Well, I can't answer that, and I have to deal with possibilities and I have to deal with the situation as I see it. What theoretically the Legislature may do to compel private insurance corporations to do something that that private insurance company does not wish to do, is another question which is entirely outside the scope of this discussion. As a matter of fact, I have a view that if the Legislature compelled an insurance company to make a contribution to this very fund you are talking about, I think there is a very serious constitutional question involved there, the taking of private property for a public purpose, that's what they are doing. Compulsory insurance, limited, true, but they are compelling private property to contribute to a state fund, and I greatly fear that there is a real constitutional question involved there, which nobody has raised for reasons best known to themselves.

THE CHAIRMAN: All right, continue on, Mr. Rafferty.

MR. RAFFERTY: Now, assuming insurance is available, the first thing that happens, as I shall indicate, is that the cost of this insurance increases tremendously on the rate basis; that is the first ill effect. The second ill effect is that the policies which these companies now carry, and I shall explain to you that they do carry insurance. I think it has been very unjust for anyone to suppose that these charities are just sitting by, not being just. I shall

demonstrate that they have been just and will continue to be just. But if they are made susceptible to suit by everybody, for any fancied wrong, it is necessary as has been done in the State of California, to jump the liability from ten to fifty thousand dollars, to five hundred thousand to a million dollars, and with the increase in coverage, multiplied by the increased rate, it must be obvious that the burden imposed on the hospital is such as to be outside of their ability to handle. It just can't be done, and so, therefore, assume a very unfortunate situation, we have to assume possibilities, — assume situations where despite the coverage at this very great cost, multiple suits are instituted, and the insurance is exhausted, then the burden of paying the over plus falls upon the institution, and I confidently predict to you gentlemen, that the result will be to bankrupt the institutions and destroy the institution. They will not be able to carry the burden that you would impose upon them if you take away from them their immunity.

Now, the fact is, however, adverting to the Chairman's suggestion about being just before you are generous —

THE CHAIRMAN: It's not my suggestion. I'm asking the question as to the reasoning of the Court.

MR. RAFFERTY: I understand that. You will understand, Mr. Stepacoff, when I say your suggestion, I mean you made the statement that the Court said so.

THE CHAIRMAN: Well, I mean, —

MR. RAFFERTY: We understand that, I'm sure.

THE CHAIRMAN: We don't want to create any false impression that I've made an opinion, one way or the other on the subject.

MR. RAFFERTY: All right. These charitable corporations are just, as well as generous. So, therefore, the phrase, the idiom, the axiom, or whatever you wish to call it, that you must be just before you are generous, we show the exception, we are both just and generous, because insurance is provided in every case that I know of; provided in limited amount, it is true, but it is provided, and let me give the experience on that. For the diocese of Trenton, which is composed of eight counties, I give you this history, and this refers to all charitable institutions, not merely to charitable Catholic hospitals. For '52-'53, nineteen claims were presented, people who said they were injured; twelve of these claims were paid. That's rather a good percentage, I think. You gentlemen who are practicing lawyers know that that is a good percentage of adjustments, twelve claims were paid, none outstanding. For the period 1953-1954, twenty-five claims were made, nine were paid, none outstanding. 1954-1955, forty-nine claims were made, twenty-three were paid, three still outstanding. 1955-1956, forty-four claims were made, eleven were paid, seven still outstanding; 1956-1957, seventeen claims were made, six were paid, five still outstanding. 1957-1958, thirty claims were made, four of them have already been paid, with fifteen outstanding. That is the record in one diocese.

MR. CONNERY: Now, one thing that strikes me there, Mr. Rafferty; That is this; Over a period of many, many years apparently, very few claims have ever been made against these institutions, would that indicate to you then that insurance rates would probably not be greatly increased because of the small number of claims that are

made.

MR. RAFFERTY: I'll demonstrate that they will be increased.

MR. CONNERY: These persons who have received injuries.

MR. RAFFERTY: I will demonstrate that the rates will be increased.

THE CHAIRMAN: Now, assuming that the rates will be increased, Mr. Rafferty, with your demonstration, will it indicate that if the immunity is eliminated, do you think the charity will pay out claims as they have been in the proportion that you have indicated, when the claims come in in greater number?

MR. RAFFERTY: The charity has not paid out these claims, except in one instance, that I shall indicate. Their insurance company paid it. The charity provided the insurance.

THE CHAIRMAN: Then let me ask you this. Would you mind telling us, for the edification of the Committee, the type of insurance that is available today. I think it is very important, Mr. Rafferty, -

MR. RAFFERTY: When you say today, you mean after the Supreme Court decision.

THE CHAIRMAN: Well, either after or before. Now, you say in these cases where the charitable organizations have paid out these claims, I don't know whether they paid it out themselves or the insurance companies paid it.

MR. RAFFERTY: I have said that they insured against these things, and they were able to insure in a limited amount because of the non-liability of the corporation.

THE CHAIRMAN: Can you give us any idea as to how much cover-

age they could get, what the rates were, and I think that is apropos to the question here -

MR. RAFFERTY: I shall come to that, sir, I shall come to that. I point out that under the maxim of just before generous, that we are both just and generous. We are providing insurance coverage, which we were not obliged to provide.

THE CHAIRMAN: In these cases which you mention, in which settlements were made, were all the funds paid out to the claimants, funds of the insurance carrier or partly contributed by the charitable institution?

MR. RAFFERTY: They were paid, except in one instance, which I shall refer to, out of the funds of the insurance carrier.

THE CHAIRMAN: So that the extent of the generosity which you refer to, is the amount of premium they pay for that purpose.

MR. RAFFERTY: The generosity is that we provided it, we made it available.

THE CHAIRMAN: Mr. Rafferty, it is true then that the generosity you have in mind is the premiums that they pay for that very purpose, isn't that so?

MR. RAFFERTY: That is not generosity, that is the justice. We paid this money for premiums, which we were not obliged to pay.

THE CHAIRMAN: But that is just and to that extent you feel they have made their contribution to justice, isn't that so?

MR. RAFFERTY: I shall indicate in a moment, Mr. Stepacoff, that we have provided what justice demands and in a case where the insurance did not cover, we have paid.

THE CHAIRMAN: I'm not gainsaying the fact, I am not saying they weren't just, but I am asking you, for my information, the

justice that you say they have engaged in, in order to cope with this problem, is the paying out of premiums for this very purpose. Isn't that true?

MR. RAFFERTY: That's right, within a limited coverage.

THE CHAIRMAN: Yes, I understand.

MR. RAFFERTY: Within a limited coverage and upon rates which are no longer tenable. Now, the Diocese of Paterson, for the year just closed, 1957, seventy-eight claims were made against the various charitable organizations of that Diocese, seventy-eight claims.

THE CHAIRMAN: Do you know whether these claims were made by strangers or beneficiaries?

MR. RAFFERTY: Made by both. Strangers and beneficiaries.

THE CHAIRMAN: Do you know what proportion were beneficiaries and what were strangers?

MR. RAFFERTY: I don't know that. That they slipped on ice, fell in the parish hall, fell during recess, fell off a ladder, fell on the sidewalk, in front of the convent, fell in an auditorium, spilled coffee on herself, now whether they are beneficiaries or strangers, I don't know. But for the last fiscal year for the Diocese of Paterson, seventy-eight claims were made and payments amounting to \$3354.94 were made to these claimants, and for those cases which are not yet adjusted, the insurance companies have set up a reserve against those claims of \$18,575.00.

THE CHAIRMAN: You said seventy-seven claims?

MR. RAFFERTY: Seventy-eight claims.

THE CHAIRMAN: Seventy-eight claims were settled and \$3300.00

paid out on account of them?

MR. RAFFERTY: On account of those which were settled.

THE CHAIRMAN: Out of the seventy-eight. For the seventy-eight.

MR. RAFFERTY: Of those which were settled.

THE CHAIRMAN: An average of about \$50.00 a claim.

MR. RAFFERTY: I don't know that. I don't know how many claims were paid, I know, or I say that for the unsettled claims, there is an insurance company reserve of \$18,575.00.

THE CHAIRMAN: But for those that were settled -

MR. RAFFERTY: I can tell you, I can tell you one person received \$85.00; another person received \$481.90; another person \$550.00; another person \$30.00; another person \$48.00; another person \$500.00; another person \$250.00; another person \$90.00; \$115.00; \$109.00; \$95.67; \$63.50.

THE CHAIRMAN: Now, Mr. Rafferty, so I get it straight, clear, for those seventy-eight cases which were settled, there was a total paid out of \$3300.00 some odd dollars.

MR. RAFFERTY: I didn't say seventy-eight claims were settled, sir. I said seventy-eight claims were made, and of those which were settled, out of the seventy-eight which were settled, the total paid was \$3354.94.

THE CHAIRMAN: Yes. Do you know how many were settled out of the seventy-eight?

MR. RAFFERTY: I can count them for you, if you want to hold on.

MR. CHAIRMAN: Sure.

MR. RAFFERTY: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,

32, 33, 34, 35, 36, 37, 38, 39, 40 were settled.

THE CHAIRMAN: 40?

MR. RAFFERTY: Yes. 40 were settled, for a total of \$3300.00.

THE CHAIRMAN: Now do you know what the nature of the most serious claims were?

MR. RAFFERTY: Well, here is somebody that tore a dress at a bazaar, injury to a voluntary worker, somebody fell on church steps, somebody fell in the school yard.

THE CHAIRMAN: What were the injuries in those cases?

MR. RAFFERTY: They don't show the injuries. Somebody fell at a bingo game. For a person who slipped on the ice, which case has not been settled, there is a company reserve of \$2000.00.

THE CHAIRMAN: They may settle that for a hundred dollars, too, maybe?

MR. RAFFERTY: I don't know, sir. You have had a lot of experience in these matters.

THE CHAIRMAN: As practicing attorneys we know that may be settled for a hundred, may be settled for nothing and may be settled for five thousand.

MR. RAFFERTY: Well, Mr. Chairman, this might be a good time to say what I was going to say in another matter, another aspect rather. You and I and the gentlemen here are practicing lawyers, most of us are trial lawyers. I try cases for both plaintiff and defendant.

THE CHAIRMAN: And very well, too, Mr. Rafferty.

MR. RAFFERTY: Thank you very much, sir. I take what cases

come to me and which I think should either be prosecuted or defended so that I may appear on either side of the case. Within the last few months I tried a case in which I represented an insurance carrier. There was the question of liability. My estimate of the value of the case for settlement purposes was \$2500.00. The lawyer for the plaintiff was a dear friend of mine, whether he was or not wouldn't have made any difference, but he is the sort of a person that I could talk to in the first person. I begged him to take \$2500.00. I said "this is all your case is worth", and I had in mind, too, that I was in front of a jury, that is to say, I made an allowance for what a jury might do. He wanted \$15,000.00. Judge Vogel, the Superior Court Judge, brought us in and tried to make a settlement. I said "Judge, here's what I have, \$2500.00. I can't do any more than that". The Judge suggested that a settlement might be arrived at in some way. Two hours later the jury returned a verdict of "No Cause of Action". Now, you say you know what these will be settled for.

THE CHAIRMAN: I didn't ask you -

MR. RAFFERTY: I tried another case -

THE CHAIRMAN: I didn't say -

MR. RAFFERTY: Now, Mr. Chairman, hear me. I want to talk about these. I tried another case. The question was whether the injured person was an invitee in the automobile of the defendant, or whether she was a licensee. These girls had been to a party together. The question was, did the defendant ask the plaintiff to ride home with her, or did the plaintiff say to the defendant, "Take me on your way home"? On the way home a rear tire blew out. Injuries were suffered by this plaintiff. I tried to settle the

the case, I argued to the jury that there was no liability because she was a licensee and we were only liable for wilful and wanton injury. The case just couldn't be settled. The jury brought in a verdict of \$1300.00. So I tried to avoid this, but you understand in a country town you can't always do it: I was walking past the Court House and two persons who were on that particular jury stopped me. I didn't want to talk to them because they were still doing jury duty and I still had cases to try, but there was no way I could avoid it. This one party said, "How did you like that verdict the other day"? I said, "it was all right". Well, they said, "We wondered what you thought of it because when the verdict was announced, there was no expression on your face, one way or the other". Well, I said, "I'm an experienced trial lawyer, we develop what we call a poker face, I don't show that I'm happy or sad". Well, they said, "We were worried about that, because you should have had a verdict in that case, we all wanted to decide in your favor". Well, I said, "Why didn't you then"? Mind you, this jury is out four hours on this particular question. They told me what every lawyer knows, every trial lawyer; they said, "We believe that she asked to be taken home. We believe that there was no wilful or wanton negligence on the part of this defendant, but we also believed there was insurance and so, therefore, we decided as long as there was insurance, we would pay her her doctor bills, pay her the time she lost from work and give her \$50.00 for pain and suffering".

THE CHAIRMAN: But just because of that case you are not now suggesting that we ought to abolish the jury system?

MR. RAFFERTY: Absolutely not. I will be the staunchest de-

defender of the jury system. I might say that I've won and I've lost, but by and large juries have been good to me.

THE CHAIRMAN: I certainly agree with you.

MR. RAFFERTY: Yes. I have no complaint about the jury system. I merely advert to that because Mr. Stepacoff said, "\$2000.00 is set up, it will be settled for a hundred".

THE CHAIRMAN: I asked, I didn't say so, Mr. Rafferty. But we all know, I think what you are saying now is quite obvious, at least to us, as practicing attorneys, I think that is quite obvious - What you are telling us is really nothing novel. Might I suggest, without intending to cut you short in any way, I think we are going a little far afield, and I think we ought to get right -

MR. RAFFERTY: Well, all right, I'm almost ready to quit. I don't have much more.

MR. KRAUT: May I ask you a question before you do quit?

MR. RAFFERTY: Surely.

MR. KRAUT: You said at the outset that you were entirely in favor of the original bill as submitted by Senator Farley.

MR. RAFFERTY: That's right.

MR. KRAUT: Senate 204.

MR. RAFFERTY: That's right.

MR. KRAUT: Isn't it true, Mr. Rafferty, that you submitted the contents of our committee amended bill, the bill which was passed by this House?

MR. RAFFERTY: Yes.

MR. KRAUT: Isn't it true that you submitted the contents of that?

MR. RAFFERTY: That's right because this Committee did me the very great honor of inviting me into its session, and this Committee indicated to me that it would never pass the Senate bill, and this Committee invited me to propose an amendment, which I did. In other words, I was doing the best I could with what I had. I wanted the Senate bill and couldn't get it, so I took the next best thing.

MR. KRAUT: May I ask you this, in the last question, Are you satisfied with the bill as passed by our House?

MR. RAFFERTY: I'm not. I want total immunity.

THE CHAIRMAN: Mr. Rafferty, let me ask you this: You do acknowledge that, at least the Judiciary Committee of the Assembly, cooperated with you in every way possible.

MR. RAFFERTY: I have no quarrel, sir. I have no quarrel. I will say this though, I will say this, that I had a difficult time with the Judiciary Committee.

THE CHAIRMAN: Well, that's to be expected -

MR. RAFFERTY: Oh no, no. My inference was, inasmuch as you bring it up, Mr. Stepacoff, my inference was that the Judiciary Committee of the House was not in favor of passing the bill. As a matter of fact, one of the committee members said to me, "Don't forget we're plaintiff's lawyers."

THE CHAIRMAN: Yes. Regardless -

MR. RAFFERTY: That is not the approach of a legislator.

THE CHAIRMAN: Now, Mr. Rafferty, let me ask you this, you say you want full immunity.

MR. RAFFERTY: That's right.

THE CHAIRMAN: And you are in favor of S-204, as it stands now? S-204.

MR. RAFFERTY: You mean as amended by the House Committee?

THE CHAIRMAN: Not amended, as passed by -

MR. RAFFERTY: As passed in the Senate, yes, with this retro-active feature.

THE CHAIRMAN: Right, Now then, you know, do you not, that prior to S-204, and prior to the Supreme Court decision -

MR. RAFFERTY: That's right.

THE CHAIRMAN: You knew that in cases where a stranger sued the hospital -

MR. RAFFERTY: Yes, sir.

THE CHAIRMAN: Or the eleemosynary institution, or the charitable institution, you knew that in those cases there was no immunity?

MR. RAFFERTY: That's right.

THE CHAIRMAN: Then you do know that S-204 went further than overruling the Supreme Court's decision. S-204 not only gave immunity to the beneficiaries, to the hospital as against beneficiaries, but also gave immunity to the hospital as against strangers. Now, do you want to change the law as it existed prior to the Supreme Court's decision and have total immunity, complete immunity, insofar as strangers are concerned?

MR. RAFFERTY: Mr. Stepacoff, I thought I made myself very clear. I am arguing for total immunity of the charitable corporation.

MR. CONNERY: And yet, Mr. Rafferty, I guess there are only about ten or twelve states in the entire United States where such a legal philosophy exists and where such institutions do enjoy total immunity,

isn't that so?

MR. RAFFERTY: That may be so and probably is so, but I say to you that does not make it correct. In other words, forty-eight states, now that we have Alaska, may rule one way, I still may be in disagreement with forty-eight states. I am arguing for charitable immunity upon the philosophy that I have already indicated, that they are performing a service to all of the people in the state, which is recognized by the government, as I have indicated, and they should have an immunity, even as the government itself, has an immunity.

ASSEMBLYMAN CONNERY: Judge, what would be the position of the New Jersey Catholic Conference, and the other hospital association, or hospital associations on the Mintz bill, which passed the Assembly in 1955, I believe it was, and which exposed, let us put it that way, the hospital to liability up to the limit of \$10,000.00. Did you take a position at that time?

MR. RAFFERTY: Yes, sir.

ASSEMBLYMAN CONNERY: In favor or against that bill?

MR. RAFFERTY: Yes, sir.

ASSEMBLYMAN CONNERY: And did the hospital association?

MR. RAFFERTY: I cannot speak for the New Jersey Hospital Association. Mr. Johnston is here, he will speak on that. My position was opposed.

ASSEMBLYMAN CONNERY: You were opposed?

MR. RAFFERTY: Yes, sir. I didn't oppose it in the Assembly, because I thought it would never get out of committee. To my surprise, it got out of committee and was passed.

ASSEMBLYMAN CONNERY: I meant by your opposition, did you appear, or was any action taken?

MR. RAFFERTY: No, there were no public hearings or anything.

ASSEMBLYMAN CONNERY: No public hearings.

MR. RAFFERTY: No public hearings.

ASSEMBLYMAN CONNERY: Did you appear before the Committee?

MR. RAFFERTY: I expressed my opposition to the members of the Senate, as much as I expressed my opposition to the members of this House, and this bill by correspondence. And whether my opposition brought it about or not, I cannot say, but I do know the bill did not come out of committee in the Senate. Had I supposed there was a possibility of it coming out of committee in that house, I would have made the same representations to the house, because we were opposed to even that limited liability.

ASSEMBLYMAN CONNERY: I understood generally that many hospitals, many hospital groups, were more or less in favor of that bill at that time because they could foresee that our Appellate Courts would eventually go along with many of the other states in abolishing the immunity doctrine.

MR. RAFFERTY: Mr. Connery, let me point out to you that you touched the very, very center of this thing, and it will demonstrate why I argue for total immunity. If we had agreed to a \$10,000.00 limitation at that time, we would have committed ourselves to tort liability and it would have been a very simple matter for succeeding legislatures to raise the amount of liability as they went from session to session. We are opposed to any tort liability in principle. Now, what we may be obliged to accept as a practical matter, is something else, but I stand here opposed to any imposition of tort liability of a charitable corporation for the

reason I have given.

THE CHAIRMAN: Now, Mr. Rafferty, you have indicated that the charitable institutions which you represent, do in fact carry insurance.

MR. RAFFERTY: That's right.

THE CHAIRMAN: Can you give us any idea of the rates -

MR. RAFFERTY: Yes. I am coming, I have one more reference to make, then I am going to the rates, then I am finished.

THE CHAIRMAN: And the limitations.

MR. RAFFERTY: Well, yes, I think I have the limitations. I have here the Diocese of Camden, their experience, that may answer several of your questions.

THE CHAIRMAN: Do you have anything state-wide, Mr. Rafferty?

MR. RAFFERTY: Pardon me?

THE CHAIRMAN: Do you have anything state wide?

MR. RAFFERTY: No, except that what is true of one diocese may be considered to be generally true of another, but not necessarily true.

THE CHAIRMAN: I thought if you had some compilation for the state, it might help us a little more.

MR. RAFFERTY: No. It might be generally true, but not necessarily true. Now, my information from the Diocese of Camden, you see you gentlemen must understand that when we speak of the Catholic Church we are not speaking of a monolithic structure. Every church, every school, every hospital, every orphanage is a separate religious corporation. Every one is a separate corporation. The Bishop of the Diocese is the President of each corporation, but they are all separate -

THE CHAIRMAN: You are speaking for all the churches, aren't you?

MR. RAFFERTY: All of them. I am speaking for every Catholic institution in the State. Now, at Camden, I'll read from the report:

"At present time each corporation is required, that is, by order of the Bishop"

They are required, not by any law, but by order of the Bishop, who is the administrator, he's the Bishop, he's the Chief Pastor of the Diocese. It is required he carry minimum limits of one hundred to two hundred thousand on public liability insurance. If the properties insured include a gymnasium, the limits are a hundred thousand, three hundred thousand. Now, that may be some answer to your question.

THE CHAIRMAN: No, wait a minute. That isn't germane to our inquiry, is it, Mr. Rafferty.

MR. RAFFERTY: Pardon me?

THE CHAIRMAN: Is that germane to our problem?

MR. RAFFERTY: Well, now you asked me how much insurance they carried.

THE CHAIRMAN: I'm talking now with reference to tort liability. That's what I'm interested in.

MR. RAFFERTY: Well, that's what this is insurance against.

THE CHAIRMAN: Does that pertain to property and personal injury?

MR. RAFFERTY: Surely, that's general liability. As I say, we are just. I sort of rankle at the suggestion that we are not just.

THE CHAIRMAN: Mr. Rafferty, there has been no suggestion, and

I would personally feel -

MR. RAFFERTY: I didn't say it was your suggestion, sir, it came out of the courts. You merely restated it.

THE CHAIRMAN: But except that you said you respected Justice Jacobs' opinion, you thought -

MR. RAFFERTY: I do. I do, but I am now talking about Justice Jacobs' view about insurance which was pure dictum. It was not in the case, it was not considered, it was not argued.

THE CHAIRMAN: All right. Let's go on to the -

MR. RAFFERTY: All right. Now, you may be surprised at this, gentlemen, that every policy issued to cover any charitable corporation, at least in the Camden Diocese, and I'm sure its true everywhere, must carry this clause. I'll read it to you.

"Notwithstanding anything contained in the policy to the contrary it is understood and agreed the Company will not, except with the specific written consent of the insured, set up as a defense against claims for damages and bodily injuries covered by this policy, the existence of any statute or rule of law, whereby the assured by reason of its being a charitable or eleemosynary institution is legally exempt from liability for damages and bodily injuries incurred through negligence."

THE CHAIRMAN: Now, if that had that provision, and there was immunity, what did that provision mean?

MR. RAFFERTY: It means that we had the settlements that I have indicated.

THE CHAIRMAN: Yes. In other words-

MR. RAFFERTY: It means that we have been able to insure within certain limits and settle the claims against us.

ASSEMBLYMAN CONNERY: Mr. Rafferty, it means the insurance company could not raise the defense -

MR. RAFFERTY: Without the consent of the insured.

THE CHAIRMAN: And without the written consent of the -

MR. RAFFERTY: Without the consent of the insured, and the insured is, as I could read here, does not permit the defense to be raised unless the insured believes the claim is unjust, but it affords this to the institution, Mr. Stepacoff, it may seem difficult for you and because of the inadequacy of my presentation.

THE CHAIRMAN: Your presentation has been very copious and full.

MR. RAFFERTY: But it affords this, it gives the charitable institution in pursuit of the virtue of justice, to insure as it believes it should be insured within rates that are reasonable.

THE CHAIRMAN: But, Mr. Rafferty, if there was immunity, do you think any charitable institution would permit that defense to be put in?

MR. RAFFERTY: This was put in while we had immunity.

THE CHAIRMAN: I understand. What effect did that have, what value was that to the person who was going to sue?

MR. RAFFERTY: It has this value, I'll give you an actual case. Suit was brought against the Church of St. Anne at Wildwood. Mr. Connery may even know about it.

THE CHAIRMAN: He may even have represented the plaintiff.

MR. RAFFERTY: May have. The insurance company was permitted by the insured to raise the defense of immunity. Now, I don't know what the facts of the case were, but despite that defense, the jury gave a verdict of \$40,000.00 to the plaintiff.

That verdict was set aside, the case was settled before the second trial for \$18,500.00.

THE CHAIRMAN: Was it not set aside because there was immunity and therefore that clause meant nothing?

MR. RAFFERTY: No, no. It was set aside because it was excessive, as being against the weight of the evidence. That's the reason it was set aside. I have, let me read to you, "the verdict was set aside by the trial judge for the reason that he believed the amount awarded by the jury was excessive", not for immunity at all.

THE CHAIRMAN: Mr. Rafferty, do you know whether that case was a stranger or a beneficiary?

MR. RAFFERTY: I don't know. But evidently immunity did not apply because they received a verdict, and immunity, while it was argued and pleaded, was not pressed.

THE CHAIRMAN: If the case involved a beneficiary, you will admit that the Court would have been justified, it would have to throw the case out completely, regardless of the -

MR. RAFFERTY: We have to assume that this was not a beneficiary.

THE CHAIRMAN: That's right, and therefore, if it had to do with a beneficiary, the clause means nothing.

MR. RAFFERTY: Well, it means this, that if a beneficiary brought a suit, we know that many groundless suits are brought, that as in a number of cases, upon the defense being urged and it being shown it is a charitable corporation and the party is a beneficiary, that is the end of the case.

THE CHAIRMAN: The case will be thrown out, that's right.

MR. RAFFERTY: Now, then, as to the question of the availability of insurance. \$18,500.00 was paid to this plaintiff. The insurance company which wrote that policy was the General Accident Assurance Corporation. The General Accident Assurance Corporation, whom we all know, more or less. After this suit, the report goes on, was brought against the Church of St. Anne at Wildwood, the General Accident Assurance Corporation refused to issue a new policy. Now, Mr. Justice Jacobs said insurance is available, I demonstrate in a practical case that the insurance company withdrew its insurance guarantee.

THE CHAIRMAN: Don't the insurance companies withdraw insurance when they are dissatisfied with a particular individual to whom they have issued insurance in the past, and whom, from experience they have found to be a bad risk?

MR. RAFFERTY: That has no application here. I am sure that it might well be assumed that insurance companies would like very much to carry the business of the Catholic Church Corporations. They are so numerous, they need so much coverage, they would be glad to do it, but the General Accident wouldn't do it.

That company, whichever it is -

THE CHAIRMAN: If they could be compelled, assuming the "iffy" part again, if they could be compelled to accept the coverage, would you be totally opposed to this doctrine established by the Supreme Court?

MR. RAFFERTY: If and when they are compelled to accept the coverage, I will discuss that, but they are not compelled, there is nothing pending in this legislature -

THE CHAIRMAN: Do you care to -

MR. RAFFERTY: - to suggest that they could be compelled.

THE CHAIRMAN: Mr. Rafferty, you know that we have the right, and perhaps duty and obligation of preparing the necessary legislation to cope with any particular situation -

MR. RAFFERTY: That's right.

THE CHAIRMAN: You know that's our duty.

MR. RAFFERTY: That's right.

THE CHAIRMAN: That if we spelled out that duty, if we could make it stick, so to speak, do you care to give any opinion as to whether it -

MR. RAFFERTY: Yes, yes. If you can compel insurance at rates which are reasonable, and I am now going immediately to the rates, you have a different picture. But let's see what happened to the rate structure.

THE CHAIRMAN: The rate structure, of course, is dependent upon experience, as against -

MR. RAFFERTY: That's right.

THE CHAIRMAN: Do we have any experience now, by which we can guide ourselves, Mr. Rafferty?

MR. RAFFERTY: I'm telling you the experience we've had is what the insurance companies have done with their premium rates. It is the only experience I have.

THE CHAIRMAN: What have they done with the premium rates?

MR. RAFFERTY: Ohio, in 1953, the basic rate was \$4.00 per bed. Upon the withdrawal of the immunity, the basic rate of the insurance companies went to \$11.50 a bed.

THE CHAIRMAN: Now, Mr. Rafferty, you say upon the withdrawal of the immunity -

MR. RAFFERTY: Upon the immunity being lost.

THE CHAIRMAN: By statute.

MR. RAFFERTY: By statute or court decision. Now, Avalon - that was a court decision.

THE CHAIRMAN: All right. Now, did that rate go into effect immediately or was it tested by experience?

MR. RAFFERTY: Well, now, let's see. Avalon against St. Johns Hospital, 135 Northeastern 2nd, 1956. In the summer of 1956, the Supreme Court of Ohio abolished any special exemption of charities. The liability by ruling in the case of Avalon against St. Johns Hospital. Almost immediately, this is what the record says. "Almost immediately, the major insurance companies instructed their Ohio branches to re-examine all risks affected. Some companies, such as Aetna endorsed contracts in mid-term, raising rates 50% to 100%. Other companies, such as Hartford A. & I. advised they would review each risk at its next expiration." That's the experience.

THE CHAIRMAN: Do you feel that any company is justified in hiking the rates without an experience rating?

MR. RAFFERTY: That, sir, is a matter for, I can't answer that, that's for the Insurance Commissioner of the State. We have an Insurance Commissioner here who governs those things. I might say that in this State, so far as I know, so far as I know there have been no rate increases since the New Jersey Supreme Court decision. I inquired of several of our Catholic Hospitals about that, and it was their view that there has been no rate increase at this time because their terms, the terms of the policies have not yet expired, but they do expect there will be a considerable increase in rates upon the expiration of the policies.

THE CHAIRMAN: Do you know what that will be based upon?

MR. RAFFERTY: Not anymore than the Ohio was based upon. Whether it's an arbitrary thing, they reach out for - what it might be, I don't know.

THE CHAIRMAN: Now, Mr. Rafferty, assuming that it was arbitrary and they just reach out, would you say, would you not admit that the Department of Banking and Insurance would have a control over it?

MR. RAFFERTY: I don't know what our State Department will do about the matter. Suppose the insurance companies come in, and on the basis of their speculations, they convince the Commissioner of Banking and Insurance that they cannot possibly write these policies unless they receive so much money per unit. Is the Commissioner going to compel them to accept some moderate less rate and jeopardize the insurance company?

THE CHAIRMAN: I asked you whether - not what the Commissioner would do, I asked you whether he had control over it?

MR. RAFFERTY: He has control, but I try to be practical. Is the Commissioner of Banking and Insurance going to pay attention to the honest, now, don't misunderstand me, the honest projections of the insurance companies? If they believe that such and such will be the result and substantiate that, is the Commissioner going to say "you cannot increase your rates, I can't help it if it's going to ruin your insurance company".

THE CHAIRMAN: Don't you think that's the time to determine whether the rates will be exorbitant or not?

MR. RAFFERTY: That is true, but I do have the right to tell you what has happened in other states with rates.

ASSEMBLYMAN CONNERY: I think you have, sir, Mr. Rafferty. I was interested, though, in your figures on Ohio and I guess maybe Ohio could be fairly compared to New Jersey, because it is, I guess, partly industrialized and partly rural. I am not quite sure that I really understand the figures that you gave me, but it would seem that if the basic rate is \$4.00 per bed in an extremely large institution, let's say a thousand bed hospital, and that would be a very, very large hospital, it then would cost the hospital apparently \$4,000.00 per year.

MR. RAFFERTY: Per bed.

ASSEMBLYMAN CONNERY: Pardon?

MR. RAFFERTY: Per bed.

ASSEMBLYMAN CONNERY: Per bed?

MR. RAFFERTY: Oh, yes. For each bed.

ASSEMBLYMAN CONNERY: Yes. Wouldn't their total premiums be \$4,000.00?

MR. RAFFERTY: Yes, I see what you mean, yes.

ASSEMBLYMAN CONNERY: In other words, the total premiums that the hospital would pay to insure against liability -

MR. RAFFERTY: Yes, \$4,000.00.

ASSEMBLYMAN CONNERY: For patients, guests, strangers, or whatever it may be.

MR. RAFFERTY: That's right.

ASSEMBLYMAN CONNERY: In a thousand bed hospital before the immunity was abolished, would be \$4,000.00 per year.

MR. RAFFERTY: That's right.

ASSEMBLYMAN CONNERY: Now, after the immunity was abolished, apparently, according to your figures -

MR. RAFFERTY: Two and three-quarters times that.

ASSEMBLYMAN CONNERY: The rate increased to \$11.00, you say, so that again -

MR. RAFFERTY: Two and three-quarters times that.

ASSEMBLYMAN CONNERY: So that the total premiums paid then by a one thousand bed hospital, in a situation like that, would be \$11,000.00.

MR. RAFFERTY: Oddly, eleven thousand -

ASSEMBLYMAN CONNERY: You honestly think that the increase in a one thousand bed hospital from \$4000.00 to \$11,000.00, which is an increase of \$7,000.00, would seriously jeopardize the financial structure of that institution, and lead to bankruptcy of that institution?

MR. RAFFERTY: You must add to that, Mr. Connery, the fact that the institution without the immunity, is compelled to increase its coverage, thereby increasing the insurance costs. As I pointed out, from a hundred and three hundred thousand, it has jumped from five hundred thousand to a million.

ASSEMBLYMAN CONNERY: Yes, but isn't it true that the bulk, the greatest percentage of the premium is based on the basic rate and that any excess is merely surcharge and that you find, as the limits increase, the premium, the actual premium paid, or the surcharge, is very, very small by comparison.

MR. RAFFERTY: Well, I would say this, it does not multiply arithmetically. That, of course, is true. But nevertheless it is an increase. What that increase is, I don't know.

ASSEMBLYMAN CONNERY: But you seriously feel though, that

if this immunity, or at least, if some immunity is not granted to the hospitals, that their operations will be seriously impaired.

MR. RAFFERTY: I do. Very sincerely so.

ASSEMBLYMAN CONNERY: And that their functions and responsibility to the public would be seriously impaired.

MR. RAFFERTY: Seriously impaired, very seriously impaired.

Now, in Kansas, the State of Kansas, the bed rate was \$2.00. With the withdrawal of immunity, it again was increased to \$11.50. Now, where the \$11.50 comes from, I don't know. Then I indicated to the Committee before, when I appeared before them, in California, for instance, it jumped from \$12.00 to \$24.00. I have the figures here just so that the record might be complete. In California \$12.00 to \$24.00; in Washington, the State of Washington, where they were made liable to the paying patient, it jumped from \$7.50 to \$11.00; Kansas I have given you. In Idaho liability to the paying patient, \$4.00 to \$11.50. Ohio, I have given you and New York there is not yet any experience available.

ASSEMBLYMAN CONNERY: I understand that the National Bureau of Casualty Underwriters is expected to establish such rates here in New Jersey within the next sixty to ninety days. Have you heard that?

MR. RAFFERTY: No, I haven't, sir. Now, as the last factor in this, speaking of the Camden Diocese -

THE CHAIRMAN: Mr. Rafferty, before you go into that last factor, do you know of any states which have invoked, done away with immunity, which have reinstated it after they tried it out?

MR. RAFFERTY: Well, I was told yesterday that there was a state which has done it. It was suggested that Connecticut had done it. But I'm not sure of that.

THE CHAIRMAN: Do you know why?

MR. RAFFERTY: I'm not sure it even happened.

THE CHAIRMAN: If it did not happen, don't you think it speaks quite eloquently in favor of doing away with immunity?

MR. RAFFERTY: No, I don't because, as I say, this wave of judicial decisions has only occurred in the last four or five years, and these charitable bodies are notoriously slow in acting to defend themselves. In New Jersey it might be said that the charitable corporations were prompt in defending themselves, and that's the reason it comes to you so quickly. I'll be finished in just a minute.

THE CHAIRMAN: Take your time.

MR. RAFFERTY: Now, in Camden, the Camden Diocese, in the last fiscal year there were sixty-one claims made against all Catholic institutions. 35 of these claims have been paid, six claims are pending. Of the 35 claims paid the total amount paid out on those claims was \$17,111.65. So you see, my dear friends, I don't want to press you too much, but we are just, as well as being generous. We recognize that people who are injured should be paid, and we do pay them, but we want the immunity as a matter of principle because when the bridge is broken in one place it is more easily broken in another place. I tell you that very frankly. Now, the Legislature is the arbiter of public policy, as we have all said. We say that we should not enter into, we are not agreeable, even though Mr.

Stepacoff has tried to pin me down on it, I have made a qualified answer, we are not agreeable to the compulsory insurance problem until we know more about it. Now, the last thing that I want to say is about the attendance at this public hearing. I don't know who is going to speak in favor. I know somebody is sort of neutral; I don't know why any neutralist wants to talk, but I mean that's up to them, of course. But I expected to see this chamber jammed this morning with people clamoring for a continuance of the loss of immunity. During the hearings before your Committee several of you gentlemen referred me to an organization that is called "NACCA". Well, I happen to know as much about NACCA as the gentleman who mentioned to me about it, because my office is a subscriber to their services. We subscribe to their services because we want to get all of the literature we can on the law, and as a matter of fact, a case out of my office established the principle, some years ago, where the master is liable for injury to the servant, even though the master didn't cause the injury, but where the master assumed to bring the servant to a hospital, and negligently didn't complete his act. In other words, having assumed a duty, he was bound to complete the duty and we received a very complimentary letter from NACCA on that, and they asked us for all the data, so that I'm no stranger to NACCA. Now, because we receive material, I received these letters from NACCA, and I feel I have a right to use them, and since I've read these letters I want to tell you that I have an entirely different notion about NACCA than I ever had before. I knew they were dedicated to plaintiffs' lawyers, but never to the point where they would

resort to practices which I think -

THE CHAIRMAN: Do you know of any other plaintiffs' lawyers here besides the people who are in NACCA?

MR. RAFFERTY: I don't know, sir.

THE CHAIRMAN: Don't you think, and I think when you say the failure of persons to appear, that you have in mind, the failure of some lawyers to appear.

MR. RAFFERTY: Well, let me read these letters.

THE CHAIRMAN: Mr. Rafferty, is that who you have in mind, when you say -

MR. RAFFERTY: No, I have in mind the members whom NACCA tried to bring here. Let me read the letters.

THE CHAIRMAN: Yes.

MR. RAFFERTY: This is under June 25, 1958;

"To all members State of New Jersey, -
all NACCA members are urged to attend
and voice their objections to any legis-
lation that will undermine the work of
our Supreme Court and put the state of law
back where it was in the dark ages."

Clearly an appeal to subjective attitudes. They call out that they shall bring to the hearing any horrible examples of people who have been injured and who haven't been paid. "If you have had any cases involving victims of charitable institutions." This inflammatory language, sir, gentlemen of the Committee, certainly doesn't become a lawyers' organization. This is directly purposed to incite people. Imagine, sir, "if you had had any cases involving victims of charitable institutions, be prepared to bring these victims with you to the public hearing." In other words, I expected to see people on stretchers, I

expected to see the halt and the lame and the blind, crutches and everything else here this morning. Nobody showed up. Now, listen to this last thing, "please advise me whether you will be present at the public hearing in Trenton on July 17th, and if so we can meet at 9:30 A. M. outside", an hour before hand, - to organize this group of lawyers they expected to come down here and fill these galleries. The legal profession did not respond to that. Members of NACCA, who are plaintiffs' attorneys did not respond to it. It was apparent they were not responding because on July 9th, NACCA sent out another letter to its members "Please notify me at once as to your attendance if you have not already done so. Give me case reports involving victims of charitable immunities. Your presence is urgently needed". Well, now, I am prouder of the legal profession at this moment, Mr. Stepacoff, and gentlemen of the Committee, than I have ever been proud of the legal profession, because the members of NACCA didn't respond to this inflammatory invitation to come down here and infest this committee with broken bodies, with victims of charitable situations. To me, NACCA, I respectfully submit, and the gentleman who represents them is here, in this chamber this morning - after the effort that was made to assemble a large crowd of people to attend this hearing, which has failed so miserably, I think NACCA ought to do some soul-searching itself.

THE CHAIRMAN: Well, Mr. Rafferty, then whoever it was who wrote this letter, he apparently wrote it to some lawyers - you don't think that lawyers are easily inflamed as to a situation of this type, do you?

MR. RAFFERTY: The answer to that, Mr. Stepacoff, is they are not easily inflamed because they are not here.

THE CHAIRMAN: And isn't it true, too, that lawyers are notoriously negligent, perhaps, in not coming to hearings when they should.

MR. RAFFERTY: I don't think that is so. If it's a matter affecting their own interest, they might not be so prompt as if it were affecting a client's interest.

THE CHAIRMAN: But you know, over the past 25 years, I dare say, I don't think lawyers have attended in a body or in a unit, or in any composite picture, in maybe more than one or two matters pertaining to the public, isn't that true?

ASSEMBLYMAN CONNERY: I don't agree with you, because my recollection is that about a year or two ago, when the Supreme Court imposed a fee limitation on the lawyers in injury cases, accident cases, that the lawyers were pretty well united and very vocal at that time.

THE CHAIRMAN: Well, that had to do with the Supreme Court hearings, you will recall, Mr. Connery.

MR. RAFFERTY: This is true, sir, that the lawyers of this State are not influenced to be herded down here with horrible cases of victims of immunity, charitable organizations, to impress this committee.

THE CHAIRMAN: Well, don't you think, Mr. Rafferty, it is a sad commentary on the status of a lawyer if he has to be herded by any NACCA or any other organization, when he has to deal with a problem which comes to his office every day, and in which he must certainly have some sort of an interest, either pro or con,

I'm not taking either side, but doesn't it show a great deal of apathy on his part, in not attending a public hearing on a matter so vital to the lawyer, as well as the public?

MR. RAFFERTY: It shows this, that the legal profession is satisfied that this immunity should be re-established, else they would be here saying that it would be an injustice to the people if it were not continued.

THE CHAIRMAN: We will consider that inference as you try to portray it.

MR. RAFFERTY: Now, that, gentlemen, is my presentation. I realize I've taken a long time.

THE CHAIRMAN: We welcome your -

MR. RAFFERTY: But I want to impress upon you that I am in dead seriousness about this, and that I reflect the view, faithfully, I hope, of the New Jersey Catholic Conference. We argue that because we perform a service to the common good, which is available to the entire public, and because that service is recognized by the State and Federal Government agencies and organizations, that we thereby have the right to the immunity that we ask for.

THE CHAIRMAN: Thank you very much, Mr. Rafferty. Now, are there any further questions.

ASSEMBLYMAN LEWINE: Just a minute, Mr. Rafferty. Mr. Rafferty, do I gather correctly that your chief concern is that if the immunity doctrine is not preserved that charitable organizations will go out of business?

MR. RAFFERTY: Eventually, yes, not immediately, of course, because

we have four or five years experience here, but let us suppose a calamity occurred. Let us suppose some great calamity occurred that was not covered by insurance. That hospital or that charitable organization would be obliged to go out of business. That may be an extreme case, but eventually the burden is going to be such - we have to add the cost of the insurance to the patient who can pay. The burden is going to be such that the hospital and other people will not - we will just price ourselves out of existence, that's all there is to it.

ASSEMBLYMAN LEWINE: Well, what has been the experience of charitable corporations in states other than New Jersey and let's take particularly the states which you cited - Ohio, Kansas, California, Washington and Idaho. Despite the so-called tremendous raise in rates, have charitable corporations in those states gone bankrupt?

MR. RAFFERTY: No. I thought I referred to that, sir, when I said that it's only in the last five years, at the most, that this loss of immunity has occurred, and hence, the span of time is too short. I am projecting the matter to the future. Charities don't live for the day; charities live forever, and I am projecting the matter to the future, where you are going to reduce the charitable corporation to the private profit making corporation. That's what's going to happen. It will have to be on that basis, and when that occurs, then there is no charitable organization.

ASSEMBLYMAN LEWINE: Do you know what is the longest period of time in any state during which immunity has been granted to a charitable corporation?

MR. RAFFERTY: I think 1953 was the first.

ASSEMBLYMAN LEWINE: In any state in the United States?

MR. RAFFERTY: Yes. That is, total immunity. I mean withdrawal of total immunity. We have, of course, sir, as the Committee has pointed out, in our own state, there has been a partial, only a partial immunity, the doctrine as to liability to strangers, for instance, has persisted over many, many years. I am now talking about complete liability, or loss of total immunity. California, 53; Washington, 53; Kansas 54. I am not trying to imitate the call as at a political convention. Idaho, 56; Ohio, 56; New York, 57. That's the experience on total immunity.

ASSEMBLYMAN CONNERY: I have a few more here, Judge, but again looking at the clock, apparently in Arizona since 1951, in Alaska, 1952, California, 1951. Some of them go back to -

MR. RAFFERTY: Well, so it's a few years, one way or another, and that is not a sufficient experience, but I confidently predict, and this is not my own, but this is the view of men and women who have been in charities all of their lives, men and women who have dedicated or even consecrated themselves to charity, and who are very smart business people. Anybody who has had any experience with the religious in the Catholic Church know that they are dealing with people who are sound, who are objective and who are good business people. It is their view that eventually this will wipe out their opportunity to exist as a charity. That's the only purpose of their life.

ASSEMBLYMAN LEWINE: But up to the date of this hearing, it is a fear and not a fact, is that correct?

MR. RAFFERTY: It's a fear, but like every other fear, it founded on reasonable expectation, reasonable anticipation, and reasonable business judgment.

ASSEMBLYMAN LEWINE: But not experience?

MR. RAFFERTY: I say, sir, there hasn't been any experience, that is, sufficient experience. Now, there hasn't been a sufficient experience, but we want to meet it before the experience shows that the prediction, dire as it is, is true.

THE CHAIRMAN: Are there any further questions? Now, Mr. Rafferty -

MR. RAFFERTY: Thank you very much.

THE CHAIRMAN: Mr. Rafferty, will you answer another question, please. Try to clear up, if you will in my mind, I believe that you indicated that the Bishop, or the head of your organization, has made it a policy to have insurance for all these various organizations.

MR. RAFFERTY: That's right.

THE CHAIRMAN: And he has indicated that they should have a coverage of at least a hundred thousand -

MR. RAFFERTY: That is true I said of the Camden Diocese, but I don't have the figures on the other Diocese.

THE CHAIRMAN: Can you tell me when that policy began?

MR. RAFFERTY: Well, apparently it has been for some time. This doesn't indicate it, but it's been for some time, apparently. I'll see if the report indicates, I don't know. I'll see. Perhaps it'll only take me a second to get it. The only thing the report says "at the present time".

THE CHAIRMAN: You don't have the date of that report here?

MR. RAFFERTY: No. All of this was done in my investigation of this matter. When the party who prepared that report said "at the present time", he is speaking of the status which existed prior to the Supreme Court decision, because as I indicated, the insurance companies have not yet in New Jersey modified their rates.

THE CHAIRMAN: At that time, prior to the decision of the Supreme Court, do you have any idea what the rate was per person?

MR. RAFFERTY: \$4.00 per bed, as I have indicated.

THE CHAIRMAN: In New Jersey.

MR. RAFFERTY: I think so.

THE CHAIRMAN: Under this type of policy?

MR. RAFFERTY: I think so, I couldn't say that definitely, but that seemed to have been the going rate.

THE CHAIRMAN: Yes. And you, of course, would have no way of knowing what the rate would be today by reason of, if we should have a disallowance of immunity.

MR. RAFFERTY: The only thing that I can project to your consideration is the statement that the General Accident Assurance Corporation refused to issue a new policy in the case of St. Anne Church in Wildwood. Now, if the General Accident refuses to issue a new policy, will Aetna refuse, will Hartford refuse?

THE CHAIRMAN: Now, wait a minute. Now, if they did issue a policy, would you know any facts to give this committee, as far as rates are concerned?

MR. RAFFERTY: Well, we won't ask that company for a policy, because we have insured with another company.

THE CHAIRMAN: Well, what is the rate with the other company?

MR. RAFFERTY: The going rate. As I say, there hasn't been any change in rates.

THE CHAIRMAN: There has been no change. That's what we want to know. That's all, sir.

MR. RAFFERTY: I don't imply by that, that there won't be any change.

THE CHAIRMAN: We understand that. There would be no point in being here, would there?

All right, gentlemen, it is ten minutes to one, and even the Assembly Committee members have reason to eat. We'll adjourn until two o'clock.

(R E C E S S)

AFTERNOON SESSION

THE CHAIRMAN: We will continue with the hearing.

Now, we are going to call out of turn, and not follow the general procedure, two members of the insurance industry who may give us some rates and figures. I'll let them choose between themselves as to who is going to be first.

MR. MACHMAN: May we both sit together, sir?

THE CHAIRMAN: If it will help you and each other, surely. That's when an expert needs an expert.

What is your full name, sir?

NORMAN MACHMAN: My name is Norman Machman. I represent the National Bureau of Casualty Underwriters.

THE CHAIRMAN: How do you spell your last name?

MR. MACHMAN: M-a-c-h-m-a-n. I represent the National Bureau of Casualty Underwriters, a voluntary association of stock casualty insurers. We represent approximately 200 companies in this State - 200 stock companies of this State.

CLYDE H. GRAVES: My name is Clyde H. Graves, Actuary, Mutual Insurance Rating Bureau. Our organization represents approximately about 16 companies writing in the State of New Jersey. Each Bureau is a licensed rating organization for mutual companies in this State.

THE CHAIRMAN: Now, is this going to be a separate presentation, a joint presentation, or just what?

MR. GRAVES: Well, in that connection, the Chairman of the Committee wrote to the Commissioner. He indicates that this problem that your Committee is faced with does have an insurance bearing and asked if there might be some representation

of insurance companies to appear before your Committee. We are here to answer whatever questions your Committee may have as to the insurance rates in connection with this problem that you have before you. We are not appearing for the bill or against the bill. We are simply here to answer any questions that you may have in connection with the insurance aspects of the problem.

THE CHAIRMAN: That would apparently explain Judge Rafferty's thought about anybody who has an opinion should have it either one way or the other.

MR. GRAVES: That is correct.

THE CHAIRMAN: You are in a position to just give us the aspects of the insurance industry, is that right?

MR. GRAVES: Yes, that is correct.

THE CHAIRMAN: Yes. And from what was said by Judge Rafferty on direct examination, it would certainly appear that the problem does entail, as we felt it did, an insurance aspect. Would you agree with that, sir?

MR. GRAVES: Very definitely, yes.

THE CHAIRMAN: All right. Now, which of you gentlemen desires to testify first?

MR. BACHMAN: It doesn't really make any difference, Mr. Chairman. If you would address your questions, either one of us will handle that which we think we can best answer for you.

THE CHAIRMAN: Well, the only difficulty about that is that we have a record here and each witness has his name on the record and gives his testimony and it wouldn't be very feasible

to have two people responding at the same time, so to speak.

MR. MACHMAN: I'll take the first.

THE CHAIRMAN: All right, sir, Mr. Machman.

Now, in your National Bureau of Casualty Underwriters, just what is the function of your organization?

MR. MACHMAN: Essentially a rate-making body for stock casualty insurance.

THE CHAIRMAN: Yes. Now, does that entail the rate making for hospitals and charitable institutions as well?

MR. MACHMAN: Yes, it does.

THE CHAIRMAN: Will you tell me for what organizations you do the ratings? I don't mean the insurance companies, but what are the subjects that you embrace under your ratings? Give us a list of them, if you will.

MR. MACHMAN: I am not quite sure I understand the question.

THE CHAIRMAN: Your company fixes the ratings, ascertains the ratings, now you rate hospitals, I take it?

MR. MACHMAN: We rate - we develop rates for various kinds of general liability insurance, casualty insurance, liability insurance.

THE CHAIRMAN: Yes.

MR. MACHMAN: Amongst which would be insurance for hospitals, yes sir.

THE CHAIRMAN: What other bodies do you embrace besides hospitals?

MR. MACHMAN: Well, as being pertinent and germane to your inquiry -

THE CHAIRMAN: Yes.

MR. MACHMAN: Any eleemosynary, charitable institution along those lines.

THE CHAIRMAN: That's what I want to know. You do cover all forms of eleemosynary institutions?

MR. MACHMAN: Yes, sir, we do.

THE CHAIRMAN: Now, can you tell us what is the standard policy obtained by the ordinary eleemosynary institution?

MR. MACHMAN: The standard insurance policy, is that what you mean?

THE CHAIRMAN: Yes.

MR. MACHMAN: Well, it takes two forms. Talking about hospitals, which lends itself to a more accurate description, perhaps a better understandable description - hospitals would need two broad kinds of insurance. One would be professional liability insurance, which, as the name implies, protects them against acts of professional negligence; malpractice, if you will--

THE CHAIRMAN: Does that cover nurses as well as doctors?

MR. MACHMAN: We are talking about a policy which insures a hospital, and if a hospital wished to insure the doctors and nurses under that policy, it could be so extended, yes, sir.

THE CHAIRMAN: And you would call that the professional aspect of the policy?

MR. MACHMAN: Yes, we would.

THE CHAIRMAN: Now, what is the other type that you embrace?

MR. MACHMAN: I am seeking a proper word that might describe it. It's everything beyond that. It's the "stranger" policy, you might say. It covers the individual, for example, who comes to the hospital to visit a patient. But let me put it this way: The professional liability policy essentially is the beneficiary policy. It protects against torts of beneficiaries.

The O.L. & T. policy for hospitals, that's the other category, protects for liability claims beyond that to the stranger.

THE CHAIRMAN: Yes.

MR. MACHMAN: I'm trying to make a division for you, which would follow the testimony that has been given heretofore, and which we understand you are interested in.

THE CHAIRMAN: I think that would be very helpful, Mr. Machman, because you see, as of the moment, the Committee is confronted with the problem of the stranger as to the hospital and the beneficiaries as to the hospital. So, therefore, I think it would be very good if you could help us with the rating of those two particular classes.

MR. MACHMAN: I think we can do that if you will confine yourself immediately, anyway, to hospitals.

THE CHAIRMAN: All right, sir. Suppose we do that.

ASSEMBLYMAN CONNERY: I'd like to ask one question at this point, Mr. Stepacoff. You don't list or classify the persons who are entitled to recover under these policies, so that when you mention a policy would cover injury or accident to a stranger, that isn't spelled out in the policy, is it?

MR. MACHMAN: That comes about solely by reason of the insuring clause and the exclusion; in other words, the scope of the policy results in this artificial distinction I have been making for you. It develops that way.

ASSEMBLYMAN CONNERY: But there is nothing written into the policy that says "This policy shall only apply to injury or accident suffered by a stranger on the premises". It doesn't

read that way, does it? - the policy provision?

MR. MACHMAN: No, it does not, but it does say that you don't cover under this O.L. & T. policy, which is just what you are referring to. It does say that you don't cover under that policy what you cover under the professional liability policy.

ASSEMBLYMAN CONNERY: Yes, but the point I am making is, there is no distinction in the policy for coverage as between a beneficiary or a patient in the hospital and a stranger.

MR. MACHMAN: Not by name, sir.

THE CHAIRMAN: But your policies do provide that what you do cover in that policy shall not include certain other people?

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: And, therefore, you do have these two classifications?

MR. MACHMAN: Two types of insurance, yes.

THE CHAIRMAN: So, actually, in answer to Mr. Connery's question, your policies do, in fact, have two separate types of classifications; isn't that true?

MR. MACHMAN: We'll try that one again. Confining ourselves to hospitals, there is one policy - the professional liability policy - which protects against professional negligence - negligence which stems from professional acts.

THE CHAIRMAN: Let me interpose there, if you will, Mr. Machman - Does that professional liability run to both beneficiaries and strangers?

MR. MACHMAN: It would, sir, if it is encompassed by the language of the policy. I don't mean to be devious here; I'm just trying to explain.

THE CHAIRMAN: No, I'm sure you don't.

MR. MACHMAN: If you think it would be helpful, I could read our insuring clause to you.

ASSEMBLY CONNERY: I was wondering if, perhaps, for the record, we could have a copy.

THE CHAIRMAN: I think for the edification of all of us, it might be wise to read it.

MR. MACHMAN: We define our scope of coverage in the Hospital Professional Liability Manual. I think we can start with that.

THE CHAIRMAN: Excuse me, but I would suggest that you lift the microphone a little bit higher. Some people back there can't quite hear you.

MR. MACHMAN: It would certainly be a lot more comfortable for me, too.

THE CHAIRMAN: We would all like to have the benefit of your testimony.

MR. MACHMAN: Our policy would say this, literally:

"Payment on behalf of the insured of all sums which the insured shall become legally obligated to pay as damages because of injury, including death, sustained by any person arising out of malpractice, error or mistake - (a) in rendering or failing to render to such person, or to the person inflicting the injury, medical, surgical, dental or nursing treatment, including the furnishing of food or beverages in connection therewith, or (b) in furnishing or dispensing drugs or medical, dental or surgical supplies or appliances, if the injury occurs after the insured has relinquished possession thereof to others, or (c) in handling or performing autopsies

on deceased human bodies. We have a second paragraph which says--

ASSEMBLYMAN CONNCERY: Shall we stop at the first one?

MR. MACHMAN: All right.

ASSEMBLYMAN CONNCERY: Now, under the particular provisions that you have just read, that policy simply insures the institution for professional negligence; it does not insure the individual, does it?

MR. MACHMAN: No, it does not. It is a matter of rating also. It can be extended to insure--

ASSEMBLYMAN CONNCERY: It could be extended to insure the individual, but normally I guess it does not; is that correct?

MR. MACHMAN: Generally speaking, I guess that is so.

THE CHAIRMAN: Do you want the rate at this point?

ASSEMBLYMAN CONNCERY: Yes. I was wondering if you could do this, at Mr. Stepacoff's suggestion, Mr. Machman: Could you give us the basic rate, as it applies to hospitals, for that particular type of coverage limited to the institution, without the extender to the individual doctors, nurses, employees, etc.

MR. MACHMAN: In the State of New Jersey?

ASSEMBLYMAN CONNCERY: Yes, sir.

MR. MACHMAN: I should preface anything I may say with respect to rates by the statement that we have several classifications of risks, and the rates which I shall give you, in response to your question, is the more common classification of risks, which would be what we call "Hospital N O C," or the general type of hospital - hospitals not otherwise classified,

or the general type of hospital, which I think is the -

THE CHAIRMAN: I am going to ask you to speak a little louder, the gentlemen back there don't hear, and I think everybody should hear.

MR. MACHMAN: I'm sorry.

THE CHAIRMAN: Just pull up your chair right in front there.

MR. MACHMAN: I've never experienced this before.

ASSEMBLYMAN CONNERY: Mr. Machman, is this true, also, in connection with what you have just said - that rates might be higher in a particular area, in other words, in metropolitan areas, would the rates, hospital rates, insurance rates for hospitals be higher, we'll say, than in a hospital located in a rural area? Or doesn't that make any difference?

MR. MACHMAN: Insofar as the State of New Jersey is concerned, and insofar as the kind of insurance that we are talking about now, it makes no difference.

ASSEMBLYMAN CONNERY: I understand, though, that in New York State that just as automobile rates may fluctuate or vary in different areas, that for example, in New York City, the rates, and I'm speaking of hospital rates now, are higher than those in upstate New York cities.

MR. MACHMAN: We do divide the State of New York into two territories, one being greater New York, New York City, as you have described it, and New York remainder, and it is very likely, I haven't checked them here, but I do have them, it is very likely that the New York City rates are higher.

ASSEMBLYMAN CONNERY: That could be due, I guess, to several causes. One cause might be that in, we'll say, the New York area,

or the metropolitan area, the verdict range might be higher than in other areas of the State?

MR. MACHMAN: It sounds like a good reason, sir.

THE CHAIRMAN: But that doesn't apply to New Jersey, in any event. New Jersey has a state wide rate?

MR. MACHMAN: No, it would not apply.

THE CHAIRMAN: All right, now you talked about the hospital professional liability policy, and you read to us the provisions pertaining to malpractice, dispensing of drugs, and so forth, insofar as they pertain to the hospital itself, the liability -

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: You were about to read us another clause, I take it.

MR. MACHMAN: Yes. It just completes the insuring clause. We say that coverage applies only to injury, including death, sustained by any person arising out of malpractice, error or mistake, committed during the policy period.

THE CHAIRMAN: During the policy period?

MR. MACHMAN: Yes, this malpractice must occur during the policy period.

THE CHAIRMAN: Now, give us, if you will, please, the limits of liability, and the rates pertaining to that type of policy.

MR. MACHMAN: The basic limits of liability - the least amount of coverage that can be purchased is \$5,000 per claim and \$15,000 aggregate. Now, sir, do I have to define "aggregate"?

THE CHAIRMAN: Yes.

MR. MACHMAN: I was just going to say -

THE CHAIRMAN: Well, will you tell us what the aggregate feature of it is - how many people does it embrace?

MR. MACHMAN: It embraces any number of people, but it doesn't embrace anything beyond \$15,000.00.

THE CHAIRMAN: Yes.

MR. MACHMAN: The cumulative amount, in other words, say -

THE CHAIRMAN: So it's \$5,000, the maximum liability for one individual?

MR. MACHMAN: One claim, that is right.

THE CHAIRMAN: And \$15,000 for innumerable claims?

MR. MACHMAN: That's right.

THE CHAIRMAN: So the total liability is \$15,000?

MR. MACHMAN: That's the basic limit, yes, sir.

THE CHAIRMAN: Basic claims arising out of the same accident?

MR. MACHMAN: No, no. \$15,000 could be any number of claims, any number of accidents. That's the aggregate amount of money that the company would be required to pay out under their policy, regardless of the number of claims or accidents.

THE CHAIRMAN: In other words, if two people were injured on one day, and they had a total liability of let's say, \$15,000, and let's say that happened today, and tomorrow somebody else was injured and they had a \$5,000 claim, the person receiving the injury tomorrow would not be covered under that policy, is that correct?

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: Does that clarify it to you, Mr. Connery?

ASSEMBLYMAN CONNERY: It confuses me, I mean to this extent, that that certainly varies an awful lot then, from the

automobile casualty policy.

MR. MACHMAN: Yes, it does. The aggregate limit comes into play rather infrequently. Few lines of liability insurance have it.

THE CHAIRMAN: In other words, in an automobile case, if an accident happened today and you had a total liability of \$15,000 today, the policy holder would be covered today. Now, tomorrow, if he had another accident in which one or more persons were involved, let's say to a total of another \$15,000, he would still be covered for another accident tomorrow.

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: And that's the differentiation between a hospital policy and an automobile policy in so far as this aspect is concerned.

MR. MACHMAN: There is one other difference, and the reason for it is quite obvious. In hospitals, it is not beyond the realm of understanding to appreciate the fact that you might have a catastrophic exposure in a hospital and, before the company could adequately protect themselves, they would be affording a tremendous amount of protection, which they don't want to do at the rates they are charging.

THE CHAIRMAN: Suppose you had a catastrophic situation where there was an upheaval of automobiles in a town for some reason.

MR. MACHMAN: Well, you always have the accident--

THE CHAIRMAN: These people are very much interested in your testimony, Mr. Machman. I wish you would speak a little louder

if you can.

MR. MACHMAN: Well, I don't think the situations are parallel, sir.

THE CHAIRMAN: You don't think they are parallel?

MR. MACHMAN: No, sir.

THE CHAIRMAN: Well, that's academic anyway, Mr. Machman.

MR. MACHMAN: It's a matter of justice.

ASSEMBLYMAN CONNERY: Just to be sure - do I understand, then, that the total limit under a five and fifteen policy issued to a hospital - the total limit the insurance company would be required to pay in any given policy year would be \$15,000?

MR. MACHAN: If it were not reinstated. It is always possible for the hospital to reinstate that limit.

ASSEMBLYMAN CONNERY: Let's say they exhausted their \$15,000 coverage, or we'll say that claims had been paid to the extent of \$15,000, then their insurance terminates and they have no further insurance, no further coverage?

MR. MACHMAN: The premium that they have paid contemplates a \$15,000 aggregate limit, yes, sir.

THE CHAIRMAN: And upon the payment of that, there is a termination of liability?

MR. MACHMAN: There would be a termination until the limit is reinstated, or a greater limit is purchased.

THE CHAIRMAN: So the point then is that, in order to have a greater limit or to cover more people, so to speak, you have got to pay for more per capita injury?

MR. MACHMAN: Well, I think we're talking really academically at the moment, because I don't think that any hospital would purchase five-fifteen limits. It just doesn't

make any sense to me.

THE CHAIRMAN: What would you say is the average type of policy taken out by the average hospital, if there is such a policy?

MR. MACHAM: I have no idea. But, certainly, if you didn't have the question of immunity involved, it seems to me that one of the factors that might be considered are the assets of the hospital - what could they be responsible for. I have no idea what they purchase though.

THE CHAIRMAN: Well, is the amount of insurance that you issue dependent upon the hospital's assets?

MR. MACHAM: It is dependent upon what the hospital wishes to buy.

THE CHAIRMAN: So it doesn't depend upon its assets?

MR. MACHMAN: It seems to me it should influence them in how much insurance they should purchase.

ASSEMBLY CONNERY: Let's use Judge Rafferty's figures. He said, I think, that in the Camden diocese they carried a hundred and two hundred thousand down there. Could you give us the basic rate on that coverage?

MR. MACHMAN: That a hundred-two hundred limit, sir?

ASSEMBLYMAN CONNERY: Yes, I think so. Excuse me, I'm corrected. It was one hundred and three hundred limits.

MR. MACHMAN: The basis of determining the premium for hospital professional liability insurance is two-fold. Mr. Rafferty mentioned the bed basis of rating, which is one aspect of it. The second aspect of it is out-patient visits. We attempt to measure the exposure in connection with out-patient visits in a way different from that which we

do in measuring the permanent guest hazard, so to speak.

THE CHAIRMAN: Now, in this one hundred-three hundred thousand limitation, you take into consideration the bed patient aspect as well as the out-patient aspect; is that the idea?

MR. MACHMAN: Yes, we do.

THE CHAIRMAN: And then you fix your rates; is that the idea?

MR. MACHMAN: We have two rates. Our first rate of the one hundred-three hundred limit, the per bed rate, would be eight dollars-- would you want it in round figures? Would that be satisfactory?

THE CHAIRMAN: Yes, I think so.

MR. MACHMAN: Well, say nine dollars.

THE CHAIRMAN: About nine dollars?

MR. MACHMAN: Nine dollars per bed. That is an annual rate and it is applied to the total number of occupied beds, broken down to a per-diem basis.

In other words, you would calculate the total number of occupied beds for the period of coverage - three hundred and sixty-five days - and you would divide that by three hundred and sixty five and come up with an average figure, and multiply that by this nine-dollar rate that I speak of.

THE CHAIRMAN: Yes.

MR. MACHMAN: Is that clear?

THE CHAIRMAN: That fixes the rate per bed, for the bed patient, per bed?

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: For 100 - 300,000 liability.

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: Now, give us the out-patient rate.

MR. MACHMAN: The out-patient visit rate for those same limits would be eighty-eight cents per hundred out-patient visits.

THE CHAIRMAN: One hundred what?

MR. MACHMAN: Out-patient visits.

THE CHAIRMAN: All right.

MR. MACHMAN: Now, we define out-patient visits as being the total number of visits made during the policy period by patients who do not receive bed and board service. We do that in order to avoid any overlapping of premium charge.

THE CHAIRMAN: Yes. I think that is quite clear. Now, that's the basic rate -

MR. MACHMAN: No, that's for 100-300,000 limits.

THE CHAIRMAN: Those are the rates for 100-300,000?

MR. MACHMAN: That's basic for 100-300,000, yes sir.

THE CHAIRMAN: Now, so that we understand also another basis; If during that year the insurance company had to pay out more than \$300,000, at the point where they paid the \$300,000, that would terminate the liability of the insurance company at that point?

MR. MACHMAN: At that point, yes, sir.

THE CHAIRMAN: Is that so?

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: And then it would have to be up to the insurance company and the hospital to get together to determine whether to reinstate the policy.

MR. MACHMAN: It's a matter of negotiation, yes, sir.

THE CHAIRMAN: And the policy automatically terminates upon the payment of the maximum amount that you are required to pay.

MR. MACHMAN: Yes, it does.

THE CHAIRMAN: Is that an automatic termination?

MR. MACHMAN: It comes about because there is no more money to be paid out on the policy, yes sir.

THE CHAIRMAN: Yes. Now, if it has to be reinstated, is there any factor there that causes a rise in the bed rate other than the norms that you have indicated -- are the prevailing norms?

MR. MACHMAN: The standards are the same.

THE CHAIRMAN: The standards are the same?

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: And no liability is inflicted upon the hospital because of the additional liability?

MR. MACHMAN: No, sir. Not from a rating standpoint.

THE CHAIRMAN: We are now talking about the limits of liability and the rates of liability. -- In the State of New Jersey?

MR. MACHMAN: We are indeed, sir.

THE CHAIRMAN: And is this the same rate that prevailed prior to the Supreme Court's decision?

MR. MACHMAN: This is the rate which is in effect at the present time and is the rate that applied prior to the Callopy case, yes, sir.

THE CHAIRMAN: Yes. So that with the advent of these decisions as of the moment and regardless of the reason, there has been no change in the basic rate structure, has there?

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: Now, do you anticipate an increase in the rates as a result of these decisions?

MR. MACHMAN: We do, indeed, sir.

THE CHAIRMAN: And can you give us any estimate as to what these rate increases might be? Or is that the \$64,000 question?

MR. MACHMAN: Yes. It's a question of how far we go in answering. We do have the matter under consideration, and I have no hesitancy in telling you that, as I understand the situation, the reason our companies have not taken any action up to this moment has been because we were interested in knowing what the Legislature was going to do. We did not want to be in the position, for example, of increasing the rates only to have to determine what we could do later if the Legislature decided to reinstate the immunity status.

THE CHAIRMAN: Let me ask you this, Mr. Machman: Of your 200 stock companies that you control or that you represent--

MR. MACHMAN: That we represent.

THE CHAIRMAN: -- do you know of any one company that has maintained the policy of increasing the rates immediately?

MR. MACHMAN: No, sir, I do not.

THE CHAIRMAN: No one has jumped the rates as established

by your company?

MR. MACHMAN: So far as companies represented by the National Bureau are concerned, our constitution is such that they would be unable to do that, sir.

THE CHAIRMAN: So the National Bureau members have not raised the rates at all?

MR. MACHMAN: I would like to say the National Bureau members and subscribers just to keep the record straight.

THE CHAIRMAN: Your Bureau members and subscribers.

ASSEMBLYMAN CONNERY: Could it be done without the approval of the Department of Banking and Insurance?

MR. MACHMAN: No, it cannot, sir.

ASSEMBLYMAN CONNERY: Then it would have to be approved by the Department?

MR. MACHMAN: It would have to be approved by the Department.

THE CHAIRMAN: Now, do you know if any of your members have refused to write policies because of the decision of the Supreme Court?

MR. MACHMAN: I do not, sir. That's not to say that they may not be refusing. I just don't have any knowledge of the situation.

THE CHAIRMAN: You don't have any knowledge?

MR. MACHMAN: No, sir.

THE CHAIRMAN: Do you think you would be in a position to know if there had been any decisions to cancel this type of insurance?

MR. MACHMAN: If there had been any decision to cancel this

kind of insurance?

THE CHAIRMAN: Yes.

MR. MACHMAN: The first intimation I had of that was a statement that was made by Mr. Rafferty this morning.

THE CHAIRMAN: Yes. But would you be in a position to know if any of these companies had stopped writing this type of insurance?

MR. MACHMAN: Yes, I think we would.

THE CHAIRMAN: You think you would.

MR. MACHMAN: I think as a matter of common knowledge, in the insurance business we would know it.

THE CHAIRMAN: It would seem that way to me.

MR. MACHMAN: Yes.

THE CHAIRMAN: So, would you then say to your knowledge, you don't know of a single company of your 200 that are members of your Bureau, who have refused to write policies because of the Supreme Court decisions and new rulings?

MR. MACHMAN: Unreservedly, I can reply "Yes" to that, sir.

THE CHAIRMAN: Unreservedly you say "Yes".

MR. MACHMAN: I don't know of any such company.

THE CHAIRMAN: And now, Mr. Connery has asked you whether or not the rate changes that are to be effected by you would have to be submitted to the Department of Banking and Insurance, and you indicated "Yes".

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: Now, upon what would your rate changes depend?

MR. MACHMAN: We are talking about hospitals?

THE CHAIRMAN: At the moment.

MR. MACHMAN: Personal liability against the hospitals.

THE CHAIRMAN: Yes.

MR. MACHMAN: Two considerations would have to be evaluated, one, judgment, which is an extremely strong factor in determining what the new rate should be. I think it is quite obvious that if the rates had been predicated upon a pre-existing status which no longer exists, and that pre-existing status is that hospitals have enjoyed immunity for injuries to beneficiaries and that status has changed, I think that it is evident to anybody, whether he be in the insurance business or a lawyer, or anybody else, that something must be done with the rates, an upward adjustment of the rates. Hence, we would have to exercise, one, this factor of judgment. Perhaps it is only one factor, because in exercising this judgment factor, we would take into consideration what the situation is in other states. For example, Ohio; how we have treated the situation in other states. We can draw our parallels from that kind of a situation.

THE CHAIRMAN: Well, that would be in case you had no experience with New Jersey.

MR. MACHMAN: Obviously, we have had no experience with New Jersey on the new basis.

THE CHAIRMAN: I see. And, therefore, you have to go to another state.

MR. MACHMAN: We would have to draw certain parallels, yes, sir.

THE CHAIRMAN: But after the experience period has run

out, and you have some experience, would you then have to depend purely upon the rate experience in New Jersey?

MR. MACHMAN: Rates would be predicated upon the experience of the State, just as soon as that was developed, sir.

THE CHAIRMAN: And then you would not draw upon the other sister states for any experience?

MR. MACHMAN: No, we would not.

THE CHAIRMAN: In negligence, generally speaking, is that right?

MR. MACHMAN: Generally speaking -

THE CHAIRMAN: Is that right?

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: Well, you say the judgment factor would be one factor, what other factors would go into the increase of rates?

MR. MACHMAN: Well, I said there would be two factors, and then I changed my statement by saying that probably there's only one factor, and that is the judgment factor, which would be influenced by the situation in like states.

THE CHAIRMAN: Would the fact that there was a great number of suits instituted, per se, cause an increase of the rates?

MR. MACHMAN: No sir, it would not, not immediately, no.

THE CHAIRMAN: When you say not immediately, would it in the future?

MR. MACHMAN: Well, we get back to the original question, and that is, as soon as we develop a sufficient volume of experience to develop rates on the basis of that experience, well, certainly the number of claims, the number of the amount of

losses that have been sustained by the companies, would be an important factor in the development of the rates thereafter.

THE CHAIRMAN: Would the quantum of damages sought in any particular suit, not the amount of the judgment, but just in the demand and complaint, would that be a factor in determining the rates?

MR. MACHMAN: Absolutely not, sir.

THE CHAIRMAN: So, when people start suits for a hundred thousand dollars or a quarter million dollars, in and of itself, that means nothing to the company unless there has been a precipitated judgment upon which you can predicate a rate?

MR. MACHMAN: The rate would be based upon the incurred losses.

THE CHAIRMAN: Yes, the incurred losses -

MR. MACHMAN: That might involve an estimate of what the incurred loss should be.

THE CHAIRMAN: And that would be as far as your reserves are concerned. In other words, the amount sued for in various suits that are filed have nothing to do with the establishment of your rates, it's your loss experience, how much you actually pay out, not what is demanded of you.

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: Now, this \$9.00 per bed that you talk about, on your hundred - three hundred thousand liability, insofar as hospitals are concerned, that was the rate fixed with immunity in the case of beneficiaries?

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: Now, does that \$9.00 represent the amount of moneys, the rate that was fixed for the amount of moneys paid out on the judgments for strangers only?

MR. MACHMAN: I'm not quite sure I understand your question, but -

THE CHAIRMAN: What I mean is this, Mr. Machman, you see, as I understood the law, and I believe we all do, that prior to the advent of the Supreme Court decisions, a beneficiary could not sue in replevin as against a hospital. That's true, isn't it?

MR. MACHMAN: Yes, that is right, yes.

THE CHAIRMAN: Only a stranger could sue?

MR. MACHMAN: Yes. I pause just a little because I didn't know that the law in the State of New Jersey was that clear that one could say categorically that a person was a beneficiary or a person was a stranger. I simply wish to make that point.

THE CHAIRMAN: Well, except this - back in 1925, in the Dionato case, with the advent of that decision, the Courts almost uniformly held in New Jersey that a beneficiary could not sue a hospital, and then the cases developed, and there were certain cases in which there were exceptions to that rule, so that if a doctor, for example, came into a hospital, let's say to visit a friend of his, and he wasn't there in a professional capacity, and he was hurt by reason of the negligence of the hospital, in failing to have proper steps, let's say, or something of that sort, even though he may have been a member of the staff, they said he then was a stranger.

MR. MACHMAN: I see.

THE CHAIRMAN: So, with the various decisions that came down, the Court decided certain exceptions to the beneficiary rule. Now, it was only in the case of these so-called strangers that you were paying out judgments for and upon which this

rate was fixed, isn't that so?

MR. MACHMAN: No, I wouldn't say that, sir.

THE CHAIRMAN: All right. Tell us what other factors came into play with the fixing of the rates.

MR. MACHMAN: In view of the members here, I indicated at the beginning of my statement, that the scope of coverage under a hospital professional liability policy was such that in the main it would have application only to beneficiaries. It would be the most unusual kind of a case, it seems to me, and in my personal opinion, that would be brought by a stranger, as you have just referred to the stranger, which would be embraced by the insuring provision of our policies which I read to you a short while ago.

THE CHAIRMAN: Will you repeat that statement about the beneficiaries in the main -

MR. MACHMAN: Well, the coverage we give under the hospital professional liability policy, you will remember, is because of injury, including death, sustained by any person, arising out of malpractice, error or mistake, in rendering or failing to render to such person or to the person inflicting the injury, medical, surgical, dental or nursing treatment. It seems to me, by reason of the language used, that as far as this investigation is concerned, we have pretty well tied this policy up to beneficiary coverage.

THE CHAIRMAN: And the professional treatment there, of necessity, would have to be to a beneficiary, and therefore, the liability would really only be between those people, and not

a stranger.

MR. MACHMAN: I wish to emphasize the fact that that is not exclusively so, but in the main it is.

THE CHAIRMAN: In the main. All right. Now, what other coverages did you have besides that situation, as far as the malpractice and so forth, what other coverage did you have in that policy, insofar as strangers and beneficiaries, other than those under treatment were concerned? I'm talking about liability cases now, people who fell out of bed, and cases of that sort, due to the negligence of the hospital.

MR. MACHMAN: A person who falls out of bed, it seems to me, would be a patient, and I would think that the allegation there would be improper care, and therefore, the professional liability policy would embrace that kind of a situation, also.

THE CHAIRMAN: You take that under the malpractice part?

MR. MACHMAN: Yes, I think we would.

THE CHAIRMAN: You would? Are there any other sources of your policy, other than the ones you read, that might embrace the stranger case?

MR. MACHMAN: Yes. Is that what you have in mind?

THE CHAIRMAN: Yes.

MR. MACHMAN: Well, I do think - I'll answer your question - I do think that we might furnish protection under a hospital professional liability policy for this kind of a situation, which I offer by way of example and not as any limitation on the scope of coverage.

THE CHAIRMAN: A little louder, please.

MR. MACHMAN: I offer by way of example, and not as any limitation upon the scope of your inquiry. Supposing you, Mr. Stepacoff, visited a friend of yours in the hospital and when you hit the

hospital, you had a severe headache, and you turned to him and said "Mr. Jones, do you have anything here that might help my headache?" And he says to you "Why, sure, just take that pill over there, that's what they give me for my headache" and you took such a pill and perhaps the nurse concurred in that situation, and you became seriously ill, and because you felt that (1) the pill should not have been left lying around, and secondly, because the nurse should not have concurred in your taking the pill, you sue for the injury. It seems to me that our scope of coverage would embrace that kind of a situation.

THE CHAIRMAN: Yes. Well -

MR. MACHMAN: And you would be a stranger.

THE CHAIRMAN: That line of problem arose in New York State, as you know, and that's when they had all this trouble about whether the defendant was in the administrative field, or the medical field, and that always gave rise to some pretty absurd situations, as you know.

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: All right. But that isn't what I'm trying to find out here. What I would like to know is this - where a stranger comes to the hospital, falls on a set of stairs which is poorly kept, in a negligent condition. Under what clause of your policy, does he find himself?

MR. MACHMAN: He does not find coverage under the hospital professional liability policy. He finds coverage under this O.L. & T. liability policy, which I spoke of.

THE CHAIRMAN: And does that type of coverage also cover

the case where a fellow is hit by a driver for the hospital who is driving an ambulance and hits a stranger on the street?

MR. MACHMAN: Well, I think, Mr. Stepacoff, your example may be a little unfortunate, because that involves automobile liability insurance, and we are not talking about that. What it would embrace is the falling on the sidewalk, on the stairs, or some such thing.

THE CHAIRMAN: Well, if a member of a squad of the hospital is driving an automobile and hits a pedestrian, that does not come under any of these types of insurance, but has to do purely with automobile policies?

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: All right. I think we are simmering down to a pretty fine point now. We'll get everybody into this act.

ASSEMBLYMAN CONNERY: The rates, though, that you quoted, Mr. Machman, only had to do with the professional liability coverage. We haven't gotten to the established rates under your O.L. & T. coverage, have we?

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: Now, is there anything else that you can think of that might be of help to the Committee in so far as the hospital professional liability policy is concerned?

MR. MACHMAN: Well, so far as the scope of coverage is concerned, what I have read to you is the insuring clause. Now, I did not mean to imply by that that in any situation you fell within that scope of coverage that the policy applied. There are certain exclusions that apply under the policy.

THE CHAIRMAN: Yes. Well, we are just taking the broad aspect here. We can't possibly deal with every detail of cases

involved.

MR. MACHMAN: I can think of nothing else, sir.

THE CHAIRMAN: Yes.

ASSEMBLYMAN CONNERY: I would think we should have the premiums on the O.L. & T. coverage with one hundred and three hundred thousand limits, and also whether you would anticipate that with this immunity removed, that there would be any increase in those rates.

THE CHAIRMAN: Suppose we get down to that now. On your O.L. & T. policies, what is the usual clause that you have there? That is the basis of our problem.

MR. MACHMAN: I wonder if I can answer that question, just to simplify the situation, by saying that we would cover, under the O.L. & T. policy, generally speaking, whatever we do not cover under the professional liability policy. I wonder if that would be satisfactory?

THE CHAIRMAN: I think so, if you feel it covers -

MR. MACHMAN: Well, I say it that way because we don't cover automobiles under that policy, we don't cover Workmen's Compensation or anything like that, but there are lines of insurance that I think you and other people are familiar with.

THE CHAIRMAN: I think that is generally understood. Now, what does O.L. & T. in itself mean?

MR. MACHMAN: Owners, Landlords and Tenants Liability Insurance. It's just a name for a large area of insurance.

THE CHAIRMAN: Yes. Now, what are the - now let's assume a hundred thousand - three hundred thousand liability policy,

and what is the rate there?

MR. MACHMAN: That I'm afraid, is going to be a little difficult; it will take a little time to work out because, so far as O.L. & T. liability insurance is concerned, we divide New Jersey into several territories. The volume of experience is such as respects O.L. & T. liability insurance that a more particularized approach to the development of rates is possible. It is not possible in the hospital professional liability insurance because, obviously, that's a limited kind of insurance and having application to a single classification of risks, whereas O.L. & T. liability insurance has application to a various and considerable number of risks and, hence, we break down our State of New Jersey into several territories.

THE CHAIRMAN: All right. Do you know of any instances where any of your 200 companies have refused to write any O.L. & T. policies since the Supreme Court decisions?

MR. MACHMAN: Absolutely not, sir.

THE CHAIRMAN: Has the rate - whatever the rate will be and as you establish the rates in these cases - changed since the rendering of these decisions?

MR. MACHMAN: It has not, sir.

THE CHAIRMAN: All right. Now then, we would like to have the rates, if you will -

ASSEMBLYMAN CONNERY: Do you anticipate that the rates will be changed and will increase as the result of these Supreme Court decisions, in the O.L. & T. coverage?

MR. MACHMAN: Well, expressing my personal opinion, I do not think they will change, so far as the O.L. & T. insurance is concerned. My reason for making that statement is because, as I look upon it, the O. L. & T. liability insurance,

so far as hospitals are concerned, is a kind of coverage, having particular application to strangers, and as such, there would be no change.

ASSEMBLYMAN CONNERY: Well, a patient in a hospital can slip on a soapy floor just as quickly as a stranger, isn't that so?

MR. MACHMAN: What would the reason be, sir, lack of care?

ASSEMBLYMAN CONNERY: Yes, if the janitor negligently mops down the corridor, if a patient in leaving the hospital, trips over a defective nosing on the steps, and since the patients represent probably the greater number of persons who occupy and use the hospital, wouldn't you anticipate there would be more claims by patients under the O.L. & T. features?

MR. MACHMAN: No. I think there would be more claims, yes, but I think that most claims by patients, if not all claims by patients, would be covered under the hospital professional liability policy, on the grounds that the hospital should have exercised more care in their handling of this patient, in permitting him to be ambulatory, or some such thing as that.

ASSEMBLYMAN CONNERY: But there would a rise, wouldn't you think, in claims, not distinguishing between just claims or claims that are without merit. Isn't it a fact that more people, patients, etc., are going to have causes of action for general acts of negligence aside from the professional negligence?

MR. MACHMAN: I think that is an interesting point. If you are suggesting that if the rule of immunity is abrogated, that will result in more claims of all kinds being brought against

hospitals, that is a good possibility, and we could agree with that and we would have to evaluate that, yes, sir.

THE CHAIRMAN: Well, what you are saying is that the rate will be reflected in the professional policy rather than in the O.L. & T.

MR. MACHMAN: What I am saying is that if a change is indicated, it is indicated more properly for hospital professional liability insurance.

THE CHAIRMAN: That's where all these cases that Mr. Connery has in mind, apparently, will fall, in accordance with your estimate.

MR. MACHMAN: The case that we term a beneficiary case, yes.

THE CHAIRMAN: So that if the floor is not properly mopped and somebody slips, you don't say that the hospital will escape liability, except that you say the rate will be guided by the hospital professional aspect rather than the O.L. & T. policy?

MR. MACHMAN: Yes, I think I would say that.

ASSEMBLYMAN CONNERY: You mention the out-patients - that wasn't entirely clear to me - that it was eighty-eight cents per hundred out-patient visits. Now, you cover those, of course, the out-patients, under the broad provisions of your policy against injury and accident?

MR. MACHMAN: Yes, we do.

ASSEMBLYMAN CONNERY: And would you anticipate that there would be an increase there in that rate?

MR. MACHMAN: Yes, I would.

ASSEMBLYMAN CONNERY: Do I understand also that it is

expected that within 60 to 90 days your new rate schedule will be submitted to the Department of Banking and Insurance?

MR. MACHMAN: We expect to take early action, yes, sir.

THE CHAIRMAN: Do you think that the reasonable course that this Committee should pursue on these bills would be to find out what the position is on these rates after you have once submitted them to the Commissioner? Don't you think that would be the wise course to guide our actions?

MR. MACHMAN: I don't like to give you any advice, Mr. Stepacoff, but it does seem to me that that would be a very desirable thing to do.

THE CHAIRMAN: That would be a reasonable course to follow, would it not?

MR. MACHMAN: It would seem so to me.

ASSEMBLYMAN CONNERY: Mr. Machman, we have been talking about hospitals all along here and the insurance rates for hospitals. How about churches and other religious organizations and educational organizations that occupy known buildings, where their activities are conducted? Can you enlighten us with respect to those rates?

THE CHAIRMAN: May I suggest there, Mr. Machman, that we first find out the last figure and then we will follow through on this thing, so that we won't have any loose threads.

MR. MACHMAN: That's the advantage of traveling with an actuary. He does all the work, you see. Just to fill in the time a little bit, perhaps I could comment upon the

number of territories where we have the so-called O.L. & T. liability insurance. We have seven territories. The rates vary by territories for most classifications. I'm not sure what the picture might be so far as--

MR. GRAVES: Speaking for the Mutual Bureau here--

ASSEMBLYMAN CONNERY: I think we might interject for the record that Mr. Graves is speaking now.

MR. GRAVES: These particular rates here will be the rates filed by the Mutual Bureau. They will not necessarily be the same as those filed by the National Bureau for O.L. & T. So far as the hospital malpractice is concerned, the rates filed by the Mutual Bureau are identical with those filed by the National Bureau, but for the O.L. & T. the rates will vary slightly, just a few cents as the base rate. I want to clarify that because these might not necessarily be the rates filed--

THE CHAIRMAN: But for all practical purposes, these rates are the rates that should govern both the Mutual and the Casualty?

MR. GRAVES: That's right. There would be only a few cents difference actually in the amount of the rates. The difference there is on our technique of rate making. The Mutual Bureau combines the experience of all of the companies of the Mutual Bureau and of all of the companies of the National Bureau and arrive at a rate based on the combined experience. It is the policy of the National Bureau to base a rate on the experience of their own companies. That accounts for the slight difference that may exist in the rates for O.L. & T. We have the same territorial setup and the same classification, the same policy form.

THE CHAIRMAN: Now, can you give us those figures on the rates on O.L. & T.?

MR. GRAVES: Now, for the basic limits, the rates for the hospital in territory 1, is 55 cents. That's on 100 square feet. Territory 1 is the Jersey City territory, Jersey City and all of Hudson County, and territory 2 is Paterson territory - territory 3 is Newark. These differences come about by differences in the experience and the rates arrived at. It varies from 55 cents variance in territory 1 to 51 cents in territory 2 - 38 cents in territory 3 - 52 cents in territory 4.

THE CHAIRMAN: Who is territory 4, please?

MR. GRAVES: Territory 4 is Perth Amboy and 46 cents -

THE CHAIRMAN: You know I'm from Perth Amboy, and I don't like that high rate. 52 cents is awfully high for us. Wouldn't you say so, Mayor Greiner?

MR. GRAVES: 46 cents in territory 5, which is Atlantic City - 48 cents in territory 6, which is Essex County, and I believe Bloomfield, East Orange, Orange and that section of New Jersey.

THE CHAIRMAN: Essex County other than Newark.

MR. GRAVES: Yes.

THE CHAIRMAN: You have a separate rating for Newark.

MR. GRAVES: Yes.

THE CHAIRMAN: I think you said 38 cents for Newark.

MR. GRAVES: Newark territory is all the area within the limits of the City of Newark.

THE CHAIRMAN: Yes.

MR. GRAVES: And that part of Hudson County west of the

Hackensack River.

THE CHAIRMAN: Yes. Number 6 is Essex County - 48 cents.

MR. GRAVES: Right. And then there is 48 cents in Territory 7, which is the Lakewood territory, Linden, New Brunswick, and all the rest - Camden and the remainder of the State.

THE CHAIRMAN: Now, when you say 55 cents or 51 cents, as the case may be, what do you mean?

MR. GRAVES: In determining or attempting to measure the hazard, it is necessary to get some concrete measurement, the one they use to apply the rate. It is the area of the building which is occupied, which is used as a basis for determining the rates - the number of square feet of the area.

ASSEMBLYMAN CONNERY: Is this 100 square feet, 55 cents?

MR. GRAVES: 55 cents per 100 square feet.

ASSEMBLYMAN CONNERY: And is that the basic rate or for 100-

MR. GRAVES: That is the basic rate.

ASSEMBLYMAN CONNERY: This is the basic rate, 55 cents per 100 square feet.

MR. GRAVES: Yes, 55 cents per 100 square feet.

THE CHAIRMAN: Since we are soaking Perth Amboy so much and, to take an example from Perth Amboy, in order to arrive at the rate that Perth Amboy would have to pay, we take the total number of square feet in the hospital, divide that by a hundred and find out how many units of a hundred are in there and multiply that by the rate.

MR. GRAVES: Yes.

THE CHAIRMAN: Of 52 cents.

THE CHAIRMAN: And that gives you the policy premium?

MR. GRAVES: This is for B.I. - bodily injury only.

ASSEMBLYMAN CONNERY: That would be for what? Five and ten coverage?

MR. GRAVES: Yes, five and ten coverage.

MR. MACHMAN: Now, there is no aggregate on that, Mr. Stepacoff. We have no problem on that. It's five - ten. That's per person - five thousand dollars and ten thousand dollars per accident. With no aggregate limit on O.L. & T. liability insurance.

THE CHAIRMAN: In other words, either a hundred people can come under the ten thousand -

MR. MACHMAN: The only limitation would be on the number of people injured in a single accident.

THE CHAIRMAN: Yes. In other words, the same as in an automobile case.

MR. MACHMAN: Yes, that's right.

THE CHAIRMAN: And are those the only limits you have - five and ten? Or can you get higher limits?

MR. MACHMAN: Oh, yes. They are basic limits. They compare with this 5 - 15 limit on professional liability insurance.

There is one other thing I think should be mentioned and that is that the rates that Dr. Graves gave you are bodily injury liability insurance. There are additional rates for property damage liability insurance.

THE CHAIRMAN: I understand. But you can get as much coverage as you want?

MR. MACHMAN: If you can get the company to sell it to you, sir; yes, sir.

THE CHAIRMAN: Now, if that is the basic rate, how do you arrive at the rates for the increases--

MR. MACHMAN: We have a limit table that is filed in the State of New Jersey, which has been predicated upon experience, and we will give it to you in just a moment, sir.

MR. GRAVES: You will note that we are bureau representatives; we are not agents and, therefore, are probably not as familiar with the use of these manuals as one might be. We just make them up.

MR. MACHMAN: Well, I won't lend myself to that.

ASSEMBLYMAN CONNERY: Does that mean that you can't read your own writing?

MR. GRAVES: The factor to be applied for 100,000 - 300,000 - that was the example you asked about, I believe - is 1.88. So the basic rate that we arrived at, your 52 cents that we had reference to, you multiply that by the factor 1.88; in other words, not quite double, to arrive at the rate which would carry a limit of 100,000 to 300,000.

ASSEMBLYMAN CONNERY: Would the basic rate be doubled to increase the coverage from five and ten to one hundred and three hundred?

MR. GRAVES: A little less than double.

ASSEMBLYMAN CONNERY: A little less than double.

MR. GRAVES: That's right. Factor 1.88.

ASSEMBLYMAN CONNERY: I see.

THE CHAIRMAN: When you say 1.88, you mean \$1.88.

MR. GRAVES: No, we take the rate of 52 cents -

THE CHAIRMAN: Yes.

MR. GRAVES: -- and multiply by the factor 1.88.

THE CHAIRMAN: I see.

MR. MACHMAN: In effect, you are increasing the rate 88 percent. That's what it adds up to. One is unity. You see, you are adding your 55 cents in by multiplying by 1.88.

THE CHAIRMAN: I see. And then that gives you a coverage for a hundred thousand.

MR. GRAVES: One hundred - three hundred.

THE CHAIRMAN: Yes. One hundred - three hundred. Now, can you give us in dollars and cents --

MR. GRAVES: That would be \$1.08 per one hundred square feet of floor area. That would be the rate for one hundred - three hundred thousand.

THE CHAIRMAN: \$1.08?

MR. GRAVES: \$1.08.

THE CHAIRMAN: Per square foot?

MR. GRAVES: Per one hundred square feet.

THE CHAIRMAN: Per one hundred square feet, as against the unit rate of five thousand - how much would that be?

MR. GRAVES: The unit rate there would be fifty-two cents.

THE CHAIRMAN: So that to summarize that, Mr. Graves, a five thousand-ten thousand O.L. & T. policy would be based upon a unit of fifty-two cents, and the one hundred-three hundred thousand policy would be based upon a unit of \$1.08?

MR. GRAVES: That is correct, yes. Now, you will note that we have an elaborate classification system here. I mean,

schools we have put in one classification, hospitals in another classification, camps in another, churches in another classification, and so on. There are rates for each different classification, for each different territory.

THE CHAIRMAN: Yes. We want to get the churches and schools next because that is our problem as I see it.

Now let me ask you one other question with reference to O.L. & T: We are up to 100-300,000. Suppose we wanted 250-500,000, what would the rate per hundred there be?

MR. MACHMAN: We don't have those figures with us, Mr. Stepacoff. Could you select some other group? Would you like 250-250,000, for example?

THE CHAIRMAN: Two hundred fifty - two hundred fifty, or--

MR. MACHMAN: That's 1.90.

THE CHAIRMAN: Do you have 250-300,000?

MR. MACHMAN: Yes, we do.

THE CHAIRMAN: Let me have that.

MR. MACHMAN: 1.93.

THE CHAIRMAN: 1.93 per hundred?

MR. MACHMAN: No, that's the factor to which you apply the rate.

THE CHAIRMAN: Give me the dollar and cents rate.

MR. MACHMAN: That is 1.93 times the rate. That's what it is.

MR. GRAVES: This rate will be \$1.00. I would like to correct the other to 98 cents instead of \$1.08.

THE CHAIRMAN: Instead of \$1.108 you want 98 cents?

MR. GRAVES: That's right.

THE CHAIRMAN: In other words, 52 cents is your basis for 5,000 --

MR. GRAVES: 52 cents is the basis for the 5,000; 98 cents would be for the 100,000 - 300,000; and \$1.00 for the rate of 250,000 - 300,000.

THE CHAIRMAN: Mr. Connery, do you have any further questions on this aspect of the case pertaining to hospitals?

ASSEMBLYMAN CONNERY: No. I did ask the other question in connection with the churches, and I understand that you had inquired about the schools. I wonder if they could give us those classifications?

THE CHAIRMAN: Suppose we start out with the churches. Is that all right with you, Mr. Connery?

ASSEMBLYMAN CONNERY: Yes.

THE CHAIRMAN: Suppose we start with the churches now. Before we get to the figures, Mr. Machman, has there been any instance in which any of your companies have refused to write any policies as a result of the Supreme Court decisions with reference to churches?

MR. MACHMAN: Not to my knowledge, sir.

THE CHAIRMAN: Have they cancelled any policies by reason of the decisions?

MR. MACHMAN: Except what I heard this morning, not to my knowledge. I guess that was hospitals, anyway.

THE CHAIRMAN: Pardon me?

MR. MACHMAN: As I recall it, this morning the point was made that a hospital policy had been cancelled. No, not to my knowledge.

THE CHAIRMAN: Not to your knowledge.

MR. MACHMAN: No, sir.

THE CHAIRMAN: But none of your companies have cancelled them, have they?

MR. MACHMAN: Not to my knowledge, sir.

THE CHAIRMAN: Mr. Rafferty, will you give me the name of that company?

MR. RAFFERTY: My recollection is that it was the Standard Accident Assurance Company.

MR. MACHMAN: General Accident, I think, Mr. Rafferty, sir.

MR. GRAVES: I have this calculation on churches now, if you would like to have that.

MR. RAFFERTY: Thank you very much, Mr. Stepacoff for giving me an opportunity to clear up something that apparently was misunderstood. This is the text of my report from the Diocese of Camden:

"In only two cases has a suit been brought against any parish during the nineteen years that the Chancery Offices handled the insurance. The first suit was brought against Church of St. Anne of Wildwood." - Then the further remark: "However, after the suit brought against the Church of St. Anne, Wildwood, the General Accident Assurance Corporation refused to issue a new policy."

Now, it is apparent from that that this has nothing whatsoever to do with the Supreme Court decision, but was antecedent by some years. We are speaking of the nineteen year period, so therefore, it goes back much prior to the Supreme Court decision.

THE CHAIRMAN: That certainly clears that up, doesn't it, Mr. Rafferty?

MR. RAFFERTY: Now, the next thing that I would like to add, and I neglected to state this, is that the rate in Ohio on outpatients, which has just been referred to by these two gentlemen, based upon a unit of 150 persons or outpatients, was increased in the period mentioned from 40¢ to \$1.15. Now, that is on the unit of 150 outpatients in the State of Ohio.

ASSEMBLYMAN CONNERY: In other words, it just about tripled.

THE CHAIRMAN: Do you know, Mr. Machman, whether or not the companies that are embraced in your Bureau cover any of the churches under the Diocese of New Jersey?

MR. MACHMAN: I do not know, sir.

THE CHAIRMAN: What is the cost for a basic 5,000 policy?

MR. GRAVES: Again taking as an example Territory 4, the base rate there is 46 cents per 100 square foot floor area. For the 100,000-300,000, the rate would be approximately 86 cents.

THE CHAIRMAN: 86 cents, did you say?

MR. GRAVES: 86 cents, yes, for the 100,000-300,000. Now, for the 300,000-300,000 the rate would be 89 cents. That is for territory 4. This is for Class 183 churches. The other referred to hospitals.

MR. CONNERY: 14.6 for 100 square feet --

THE CHAIRMAN: No. 46 cents.

MR. GRAVES: Point 46, 46 cents.

MR. CONNERY: Oh, excuse me.

THE CHAIRMAN: 46 cents for the basic \$5,000 policy. And for one hundred - three hundred thousand it is 86 cents.

MR. GRAVES: Right.

THE CHAIRMAN: For the three hundred - three hundred, 89 cents.

MR. GRAVES: Right. 89 cents.

THE CHAIRMAN: Any further questions on the churches, Mr. Connery?

MR. CONNERY: No.

THE CHAIRMAN: All right. Now, we will go down to schools. Mr. Machman, have your companies, any of them, refused to write policies for the schools?

MR. MACHMAN: Not to my knowledge.

THE CHAIRMAN: Since the advent of the decisions?

MR. MACHMAN: No, sir, not to my knowledge.

THE CHAIRMAN: Do you know of any cases where they have cancelled any existing policies because of the Supreme Court decisions?

MR. MACHMAN: May I ask you a question, sir?

THE CHAIRMAN: If I can answer, I'll try to help you.

MR. MACHMAN: To what extent does the decision and 204 affect the schools? To the same extent that it affects other charitable institutions?

THE CHAIRMAN: The effect of 204, with reference to schools, was to place the law in the same position as it existed prior to the Supreme Court decisions. The Assembly Substitute keeps that situation intact, namely, as it existed prior to the Supreme Court decisions.

MR. MACHMAN: How does the Collopy case affect the situation?

THE CHAIRMAN: Well, the Collopy case would have rendered schools, the organization of the schools, liable.

ASSEMBLYMAN CONNERY: Destroys any immunity that the schools previously enjoyed with respect to accidents and injuries to persons occurring through the negligence of the agents - employees of the schools, etc.

MR. MACHMAN: Are we talking now about schools --

THE CHAIRMAN: We are not talking about public schools. We are talking about schools that are operated by religious and charitable organizations.

MR. MACHMAN: Now would you repeat your question, Mr. Stepacoff, please?

THE CHAIRMAN: Yes. First of all, I want to know whether or not any of your companies have cancelled any policies that they had with charitable schools as a result of the Supreme Court decisions?

MR. MACHMAN: My answer to your question still stands - not to my knowledge.

THE CHAIRMAN: Of course, Mr. Machman, I believe it is reasonable to assume that if the Legislature passes legislation reaffirming the decisions of the Supreme Court, the rate for these charitable schools will increase.

MR. MACHMAN: If the Legislature enacts legislation reaffirming the decision of the Supreme Court?

THE CHAIRMAN: Yes, reaffirming the decision of the Supreme Court.

MR. MACHMAN: Assuming your bill is signed by the Governor; is that your point?

THE CHAIRMAN: Well, no. You see, the bill that we have propounded, and which is presently before the Governor, does not

affect schools - does not effect the imposing of liability on schools, it only effects the imposing of liability on hospitals.

MR. MACHMAN: Yes. You are directing your question to your bill, 204?

THE CHAIRMAN: No, because I feel that the rates that you had before the Supreme Court decision, and the law if passed by the Committee is substituted, won't change because the schools are in the same position they were formerly.

MR. MACHMAN: That's right, sir.

THE CHAIRMAN: But I am asking you whether or not we can anticipate an increase in the rates if the Legislature reaffirms the doctrine of the Supreme Court, with reference to the schools.

MR. MACHMAN: I would hazard the guess that as respects parochial schools an upward adjustment of rates would be indicated, yes.

ASSEMBLYMAN CONNERY: Well, that would be all private schools, wouldn't it? Schools operated by The Friends, by the Jewish Religion?

MR. MACHMAN: Any parochial school.

ASSEMBLYMAN CONNERY: All charitable or religious schools. It wouldn't necessarily solely affect the catholic schools.

MR. MACHMAN: Parochial, I think, embraces something beyond Catholic.

THE CHAIRMAN: I think parochial would be all-embracing.

MR. MACHMAN: I had that in mind, sir.

THE CHAIRMAN: And the amount of the increase cannot be determined by you.

MR. MACHMAN: No, it cannot, sir.

THE CHAIRMAN: And will not be able to be determined by you until you have the experience, unless you draw a parallel from other states.

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: They are the only two ways you can ascertain them?

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: That's the only way that anybody can argue intelligently against an increase or in favor of a decrease -

MR. MACHMAN: We would like to be so characterized, intelligently.

MR. GRAVES: In regard to the particular rate, therefore, for parochial schools, the units of measurement now are different, it is the number of pupils, the rate - the basic coverage is six cents per pupil, point 06.

THE CHAIRMAN: That's a \$5,000.00 policy?

MR. GRAVES: That's for the \$5,000.00 policy. Now, for the 100-300,000 policy, the rate would be eleven cents, and the rate for the 300,000 - 300,000 ---line it off to twelve cents.

THE CHAIRMAN: So, in order to effect an increase of \$200,000 for one individual, it represents just one penny -

MR. GRAVES: It's a little bit over that.

THE CHAIRMAN: It's a penny increase per pupil, is that correct?

MR. GRAVES: Six cents per pupil. If you increase it to \$100,000, it goes to eleven cents, or five cents per pupil.

THE CHAIRMAN: Yes, and from \$100,000 to \$300,000, an increase of \$200,000 liability that would be less than a penny to effect a \$200,000 increase.

MR. GRAVES: That's right.

THE CHAIRMAN: And the only way that rate will be affected

or changed, would be based purely on a basis of experience, as the cases come along.

MR. GRAVES: Well, these factors are determined on the basis of experience. Those factors would not change. What would change would be the basic rate itself if the experience so indicated that the increase is necessary.

THE CHAIRMAN: Yes, the basic rate will be determined by the experience factor.

MR. GRAVES: By the experience, yes, in the particular state and territory.

THE CHAIRMAN: Yes. Now, this might be strictly in the realm of speculation, and if you feel you can't answer, we don't expect you to, but do you anticipate that with this abolition of immunity, do you foresee catastrophic situations with reference to schools?

MR. GRAVES: No. I would say I would see a tendency for the rates to increase in the future, but how fast that will take place, I don't know.

THE CHAIRMAN: Do you think that the rates would be so great that they would be beyond reason?

MR. GRAVES: No.

THE CHAIRMAN: Do you think that the schools will be able to operate as they have in the past?

MR. GRAVES: Certainly.

THE CHAIRMAN: You don't think the amount of change will be so great?

MR. GRAVES: If we have the same type of rates in other states for schools where they do not have immunity - it's hard

to compare one state with another. It's even hard to compare Newark with Perth Amboy because of the difference in experience within each territory. So it is hard to compare one state here with another state in this particular line of insurance because it is so definitely determined by the particular classification, by the territory, and by the experience the company has had.

THE CHAIRMAN: Now, as to the experience that you have had in other states when this immunity was done away with, has there been any closing down of schools because of their doing away with immunity?

MR. GRAVES: Not to my knowledge.

THE CHAIRMAN: Has there been a single instance of a school being closed down because the costs were prohibitive?

MR. GRAVES: Not to my knowledge. I might be able to find a state here which does not have the immunity for quite some time and see what the school rate will be and compare them.

THE CHAIRMAN: Can you give us some figures on that?

MR. MACHMAN: Do you want to talk about schools, Mr. Stepacoff?

THE CHAIRMAN: We are talking about schools now.

MR. MACHMAN: Hospitals do lend themselves to a better analysis along those lines.

THE CHAIRMAN: Well, we'll take both. We'll take the schools now.

MR. MACHMAN: Well, if we could get back to professional liability insurance again --

THE CHAIRMAN: On the hospitals?

MR. MACHMAN: On hospitals.

THE CHAIRMAN: Yes. All right, if that's easier for you, let's do that.

MR. MACHMAN: Mr. Rafferty made the statement that in Ohio, as a result of the Avalon case, the per bed rate went from \$4.00 to \$11.50, and the hundred out-patient visits rate went from, I think it was, forty cents to \$1.50. I simply wish to confirm that that actually took place - it took place because of the Avalon decision, which, in effect, abrogated the defense of immunity in the State of Ohio for charitable institutions. I think the case involved was a hospital case, too - I think it was right in point.

THE CHAIRMAN: Do you know whether in Ohio, any of the institutions shut down because of this?

MR. MACHMAN: Not to my knowledge. We have had meetings with the Ohio Hospital Association in the past, and we intimated what would happen if this doctrine of immunity were moderated in any degree, and they were well aware of what would happen when it did take place, and we have heard no repercussions as a result of the rates that we have developed since then.

THE CHAIRMAN: How many years have elapsed since the doing away of the immunity in Ohio?

MR. MACHMAN: I think it's about a year and a half. I don't believe it goes back five years, sir. And the Avalon case - I don't believe that can be -

THE CHAIRMAN: Mr. Rafferty indicates about five years.

MR. MACHMAN: I don't think so - I could be wrong.

THE CHAIRMAN: Will you get that figure for us.

ASSEMBLYMAN CONNERY: But in any event, it does indicate

that the insurance costs, the insurance rates tripled, is that right?

MR. MACHMAN: Practically tripled.

ASSEMBLYMAN CONNERY: They want from \$4.00 to \$11.50 -

MR. MACHMAN: Put it another way, they were increased 150%.

MR. RAFFERTY: Avalon vs. St. John's Hospital, in 1956.

THE CHAIRMAN: Put that as Mr. Rafferty's statement, that Avalon vs. the hospital was in 1956.

MR. RAFFERTY: That is already in my presentation of this morning, as I recollect.

THE CHAIRMAN: All right.

MR. GRAVES: For this same precedent, and this is Graves speaking now, Mutual Bureau, in regard to the classification of schools, parochial, - classification 323, which we discussed, had a rate of .06 in New Jersey. The corresponding classification rate in Ohio is .09, or a 50% increase in the rate.

THE CHAIRMAN: That's for the schools?

MR. MACHMAN: With respect to schools.

MR. GRAVES: This is the actual experience. As a matter of fact, there is one territory, the remainder of the State territory in Ohio, which has a rate of .04, which is less than the rate in New Jersey of .06. So it's pretty difficult to indicate just what is the source of your particular rate level. All we can say, it is based on the experience in the state and territory and ^{changes} for that classification. Records are kept and rate/made when the experience has shown that an increase is necessary.

THE CHAIRMAN: I believe, Mr. Machman, you wanted to go back to

the hospital situation and analyze that? Do you want to analyze it any further?

MR. MACHMAN: Well, I simply wanted to go back to the hospital situation, Mr. Stepacoff, because I think it has been perhaps a little confusing, to you and the people present, to get into an insurance situation of this sort without the necessary background, so to speak, and I thought that the professional liability insurance for hospitals lends itself to a better understanding than perhaps any other classification of risk, and therefore my comments on what happened to the hospital rates for not-for-profit hospitals in Ohio when the doctrine of immunity was abrogated.

THE CHAIRMAN: Is there anything further you want to say in your analysis on that subject?

MR. MACHMAN: No, sir, but I would be very happy to answer any questions you may put to me.

THE CHAIRMAN: Mr. Connery, any questions in that respect.

ASSEMBLYMAN CONNERY: No, I have no further questions.

THE CHAIRMAN: We've covered the churches; we've covered the charitable schools, and we've covered the hospitals. Could you tell me in what category a Y.M.C.A. or Y.M.H.A. or a similar institution would fall?

MR. MACHMAN: I should think that would be in the nature of a charitable institution; wouldn't you, sir?

THE CHAIRMAN: I think I would classify all of these - the three that we have discussed, together with the welfare organizations - as eleemosynary institutions.

MR. MACHMAN: That means the same thing, sir, I believe.

THE CHAIRMAN: Except in fancy legal language.

MR. GRAVES: May I make one point about the rate changes. As a rating bureau, we'll collect the experience of all the companies that we can in the class and territory for New Jersey. The rating committees^{consisting} of the Underwriters of the various companies will go over those figures and arrive at a rate. That rate would be presented to the Commissioner before any change would be made by any company. That rate will be presented before the Commissioner for his consideration. If he approves of the rate change, then the rate would be promulgated and used by all members and subscribers of the company.

THE CHAIRMAN: Mr. Machman -

MR. MACHMAN: Yes, sir.

THE CHAIRMAN: Your companies represent companies who write policies throughout the entire United States?

MR. MACHMAN: That is right, sir.

THE CHAIRMAN: Do you know of any instances in any states where any one of your companies refused to write a policy because of the doing away of immunity?

MR. MACHMAN: I do not, sir.

THE CHAIRMAN: Do you know of any instance where a company has terminated a policy, an insurance policy, because of the inception of this new concept?

MR. MACHMAN: Do you mean by that question, sir, that if a policy were issued on the basis of immunity, and sometime during the policy term, that concept changed, so that no longer was there any immunity, was such a policy cancelled?

THE CHAIRMAN: Yes.

MR. MACHMAN: I do not know whether that actually takes place, but I would assume that that could take place, unless an interim adjustment of rates were made. On the basis of pure logic is the way I am answering your question.

THE CHAIRMAN: Yes. But because of a matter of policy, because of the change of no longer having immunity, in and of itself, is that a sufficient reason?

MR. MACHMAN: It would not be a question of policy, as I understand it, it would be a question of rate adequacy, or inadequacy, as the case might be. Does that answer your question?

THE CHAIRMAN: I believe it does.

ASSEMBLYMAN CONNERY: Your Bureau performs a service for two hundred companies. Do all of those companies write this type of insurance, that is, hospital liability insurance, or is there only a limited number that are interested in writing that type of coverage?

MR. MACHMAN: I'd like to answer that question by saying that all of our companies, I believe, - it's a rare exception, if there is any exception---can write insurance for any kind of the charitable institutions which have been mentioned up to this time. It may well be, however, with respect to hospital professional liability insurance, that a lesser number of companies would be interested in writing that form of insurance than insurance for other types of charitable institutions. That's a specialized line that requires special claim handling, and traditionally not all of our companies have been interested in the writing of that kind of insurance.

ASSEMBLYMAN CONNERY: You don't know with percentage of your companies write hospital insurance?

MR. MACHMAN: I do not.

ASSEMBLYMAN CONNERY: Is the same situation true with respect to your organization, Mr. Graves?

MR. GRAVES: That is correct.

ASSEMBLYMAN CONNERY: You don't know the number of - your Bureau represents sixty companies, or acts for sixty - you don't know -

MR. GRAVES: It would be a much smaller number than that, actually writing the professional hospital - that is a very definite specialized line, and there are only a few of the companies, I would say, that would be writing that particular line.

ASSEMBLYMAN CONNERY: It would only be a few of the sixty companies, that your Bureau represents -

MR. GRAVES: Yes.

ASSEMBLYMAN CONNERY: That writes hospital liability coverage?

MR. GRAVES: That's right. The mutual companies, the members and subscribers of the Mutual Rating Bureau.

ASSEMBLYMAN CONNERY: Thank you.

THE CHAIRMAN: Now, can you give us any reason why there are so few companies that write that type? Is it because they are worried about the rates?

MR. GRAVES: No, they just simply have not specialized in the malpractice field, which is a very definite specialized field. Lots of our companies' specialty is the automobile liability insurance and Workmen's Compensation. Now, a few of the large companies have been interested in Accident and Health Insurance, and the very large companies that have gotten the specialization for writing malpractice have written that line of insurance, but it is very definitely a highly specialized line, and the normal mutual

company member of our organization, would not normally write the hospitals. Now, as far as the O.L. & T. is concerned, and these other lines, they do write them.

THE CHAIRMAN: So it's a matter of coincidence, rather than design on their part, not to write this particular type of insurance?

MR. GRAVES: That is correct.

THE CHAIRMAN: You don't feel that it has any relation to the fact that the rates may be higher, or the potential liability may be so great that it would knock them out of business?

MR. GRAVES: It has nothing to do with the question of immunity or not immunity, nor does it have any question as to whether the rates are, in their judgment, adequate, or not adequate.

THE CHAIRMAN: Anything further, Mr. Connery?

Thank you kindly, gentlemen. You have been of very much assistance to us.

MR. MACHMAN: May we leave now, Mr. Stepacoff?

THE CHAIRMAN: Yes, you may. Incidentally, if any one here would like to have the benefit of the testimony of these gentlemen, if there is any question that you would like to propound to them, if you will indicate that in writing immediately, I'd ask both Mr. Machman and Mr. Graves to stand by for a few minutes, so that all of us would have the benefit of their expert judgment. Will you raise your hand if you have any questions that you want to direct - I see one gentlemen - two. Will you write your question out and bring it up to us, please, and we'll propound it to these gentlemen.

THE CHAIRMAN: We'll address these questions to both of you gentlemen and the one competent to answer will answer if he can. The first question is: How many insurance companies in the United States write the coverage that we discussed today - write that type of policy? How many companies are there?

MR. MACHMAN: Would this be for all charitable institutions, now? Is that what the question refers to?

THE CHAIRMAN: Yes, for all.

MR. MACHMAN: Speaking for the National Bureau, it is possible for all of our companies to write that insurance and the possibility is that they do write that kind of insurance.

THE CHAIRMAN: The question is: How many companies in toto are there in the United States that write similar insurance?

MR. MACHMAN: I do not know.

MR. GRAVES: I wouldn't know.

THE CHAIRMAN: You wouldn't know that. All right. That disposes of that.

MR. JOHNSTON: Would it be of any help if I say that there were 11 companies in 1956 that wrote professional practice for hospitals in New Jersey?

THE CHAIRMAN: I would like to verify that with Mr. Machman.

MR. MACHMAN: I cannot verify it but, certainly, if Mr. Johnston says that is so, that must be so. I mean, he has the figures and that is the nature of his operations and he must know.

THE CHAIRMAN: I'll ask Mr. Johnston, if you will, then.

Mr. Johnston, are those 11 companies that you have reference to members of this body that Mr. Machman represents?

MR. JOHNSTON: Not all of them. As you know, there are other groups of policy companies that do not belong to the Bureau. I expected to bring this out--

THE CHAIRMAN: Well, we'll give you a chance. What I would like to know is what number of these 11, if you know, are represented by companies represented by Mr. Machman.

MR. JOHNSTON: I don't know.

THE CHAIRMAN: You don't know that. Would you know, Mr. Machman?

MR. MACHMAN: Probably the largest writers of professional liability insurance for the hospitals in our Bureau are the Aetna and the U.S.F. and G. So I would assume that probably of the 11 companies that Mr. Johnston refers to, at least 2 of them would be our members.

MR. JOHNSTON: Where Aetna wrote 1, U.S.F. and G. wrote 12. U.S.F. and G. in 1956 was the largest and had more hospitals for malpractice than any other company.

THE CHAIRMAN: Now, with reference to the O.L. and T. policies, do you know?

MR. JOHNSTON: No. More people write O.L. and T. who do not belong to the Bureau than do bureau members.

THE CHAIRMAN: Do you know what percentage of your bureau members write O.L. and T?

MR. MACHMAN: In the State of New Jersey?

THE CHAIRMAN: Yes.

MR. MACHMAN: One hundred per cent of them.

THE CHAIRMAN: Well, there's another question here: Do Catholic schools have different rates from non-Catholic schools?

MR. MACHMAN: No, they do not.

THE CHAIRMAN: Does that answer the question, whoever propounded the question? What is your name, sir?

MR. BARTELL: Bartell.

THE CHAIRMAN: Mr. Bartell has raised the question and your answer is that there is no difference; is that the idea?

MR. MACHMAN: Except that parochial schools are classified differently than public schools, but all parochial schools are classified the same way whether they be Catholic, Protestant, Jewish or any other denomination.

THE CHAIRMAN: All right. That answers that.

The next question here, and it gives the name of the individual who propounded this: What is the professional liability rate in California?

MR. JOHNSTON: The answer is \$24. But I want to hear him say it.

THE CHAIRMAN: All right. He wants to hear you say it.

MR. MACHMAN: Unfortunately, we do not have that information, so we will have to rely on Mr. Johnston's statement.

THE CHAIRMAN: I believe the last question from the assemblage is - and this is addressed to both of you: Wouldn't the prospect of more coverage and greater liability, based on experience, attract more companies into the field?

Who propounded that question?

MR. JOHN TOMASIN: My name is John Tomasin.

MR. MACHMAN: Would you repeat the question, please?

MR. TOMASIN: Wouldn't the prospect of more coverage and greater liability, based on experience, attract more companies into the field?

MR. MACHMAN: I don't know what the question means by more coverage - what is meant by that?

MR. TOMASIN: Wouldn't the prospect that the eleemosynary institutions are all out to get insurance, if they can get it, and get large amounts of coverage, therefore increase the amount of business involved - wouldn't that of necessity, based on experience, tend to attract more of the 100 companies than you have into this specialized field because it is more lucrative?

MR. MACHMAN: It seems to me there are two things that would attract more insurance companies to write this kind of business - the first would be, and the most important, as I see it, great adequacy. That to me, is paramount in attracting insurance companies to the writing of any kind of insurance, as far as that is concerned.

THE CHAIRMAN: Yes, and in a large measure that depends upon the Commissioner of Banking and Insurance.

MR. MACHMAN: Yes, indeed. The second point that is of importance, as mentioned to me by Dr. Graves, is whether or not the company is equipped to handle the specialized field. Claim practices are such ⁱⁿ hospital professional liability insurance that you have to have experienced personnel, claims men, as well as underwriters, to insure that type of risk.

THE CHAIRMAN: All right. By reason of this discussion, are there any further questions evoked in anybody's mind? All right, then I take it that's all, gentlemen, and thank you very, very much. You were very helpful.

Now, we ought to take somebody who is against the immunity;

let's hear from the first witness here, Albert C. Barclay, an attorney of Hightstown, New Jersey.

MR. BARCLAY: Mr. Chairman and members of the Committee, I am Albert Barclay, practicing law in Hightstown. I am not a negligence lawyer, just a plain country lawyer, and I am not a member of the National Association of Claim Adjusters. Why, you may ask, am I here? I guess you might say that I am here to represent the thousands of individuals who would be adversely affected by the adoption of the proposed legislation. As a lawyer, I have followed for many years the doctrine of charitable immunity, always feeling that it was grossly unfair.

When the New Jersey Supreme Court recently discarded the outmoded doctrine of charitable immunity, I felt that a giant step had been made in the right direction. Being impressed by the soundness of the Court's reasons for abolishing immunity, I came here today hoping to hear counter-arguments. Frankly, I have heard nothing that answers the logic of the recent Supreme Court decisions. It has been argued that the good of the individual must yield to the common good of all people, but no facts were given to establish that the proposed legislation was for the common good. In fact, it would tax your imagination to find anything in the proposed bill that would benefit all the people. It has been suggested that immunity should be granted because these organizations are volunteer organizations. Now, as you men know, as attorneys, it is fundamental law that a volunteer is liable for his negligent acts.

If I'm riding along the highway today in my car, and I see some old lady standing in the sun, and I pick her up and

give her a ride, if I am negligent and she is injured, I'm liable, and I can see no reason to put these organizations in a different category - in other words, the individuals are liable. We may be doing a worthy act, but if in doing that worthy act, we are negligent, we're also liable.

It has also been suggested that these organizations should be immune from liability because they have already been granted tax exemption. Now, this is a rather novel theory, whether it's one good turn deserves another, I don't know. Because they have been granted one immunity, as far as taxes are concerned, would certainly be no basis for granting any further immunity in the field of tort liability. I think, other than the field of perhaps foreign aid, I think this doctrine has very little application or acceptance. They seem to work on that theory, as you know there, if you give somebody a million dollars this year, you should give them two next year, but I don't think there is much basis for that argument. I think it has very little, if any, legal validity.

Now, it was also suggested that possibly these so-called charitable organizations might be forced out of existence if they were denied this immunity. Well, I don't see any sense in whipping a dead horse. I think the fact that in twenty states, where they have no immunity, there's no record of any of them going out of business or that they are pulling out of those states. They are still operating in New York, they are operating in California, Ohio and you can name a dozen others, and I think that's a rather questionable argument.

To me, the serious question involved in this whole proposition is this - who should bear the burden of the negligent act of these organizations? Now, this loss has to fall some place, and as I see it, there are three possibilities - either the wrong individual, who can generally ill afford it, the fellow who has been injured, he can take the burden. If he doesn't take it, there is a possibility, that he can't take it, and there is a possibility he may become a public charge. That means a burden on the State. Now, I think with our present status here in the State, I question whether the State should take on any further burdens. And of course, the third possibility, and the one that I feel is where the thing should fall, I think it should be on the person who causes injury, in other words, the negligent party.

I feel that the liability should follow the fault. A comment was made this morning to the fact that there was some surprise because the galleries weren't filled with lawyers and prospective litigants. I think you gentlemen know well enough that most of the people who are going to be affected by this bill have no thought of it today. They are going to be injured tomorrow, or next year, or some other time, and in that connection, I think it is equally significant that only one church, to my knowledge, has appeared here in this connection. Apparently, other churches are not nearly so concerned about this proposed legislation.

I think there is one thing in the bill that might be given some thought, and that is, the limit of liability. Now, the limit of liability, as I see it in there now, seems to be a

limit of ten thousand dollars on any one person, I think that's in case of hospitals, maybe. My thought is that the danger to these organizations isn't from the danger of a small claim, I mean a ten or fifteen thousand dollar claim; I think there is a danger from a catastrophe loss; I mean, assuming that something should happen, the hospital blow up, you would have a thousand people come with ten thousand dollar claims. That would present a problem, but I think that if any liability limitation is placed in the bill, I think it should be on a catastrophe basis - in other words, say, that under no circumstances, should these organizations be liable for more than - you can pick it out - \$250,000 to \$500,000, so that they would know that that would be their top limit. But I think it's very unfair to limit the liability to any other individual, to the \$10,000, and I haven't gone over the bill that carefully. I just wondered in my own mind, for instance, if I'm going down the street, and have an automobile accident, and am rendered unconscious, and somebody takes me to the Mercer Hospital, whether I am a beneficiary, or who I am in that case, where I go in involuntarily, you might say, and unwittingly. That question, of course, we'll probably have to answer, but I think it would be very unfair to limit the liability individual to \$10,000. I think in this day and age, that limit is grossly inadequate.

In closing, I would just like to say that I think the Supreme Court has at long last discarded an out-moded doctrine following the leadership of the many other states, and I think, some of the best legal minds in the country, and I don't think

that the answer is, that because the Legislature has the power that was suggested this morning, that the Supreme Court doesn't hesitate to overrule the Legislature, therefore, the Legislature should overrule the Supreme Court cases. I think that legislation should be based only on good reasoning, and some justification, that was the idea of merely trying to overrule the Court.

I thank you.

THE CHAIRMAN: Mr. Barclay, with reference to your last statement about the conflict between the Legislature and the Court, have you read these decisions?

MR. BARCLAY: Yes, I have.

THE CHAIRMAN: Isn't it true, that the Court doesn't raise any question about the clash of jurisdiction between the judicial and legislative branch?

MR. BARCLAY: I didn't find that question in these cases at all.

THE CHAIRMAN: Do you think there is any point to that at all, in these discussions?

MR. BARCLAY: I did not and that is why I was rather surprised when it was brought out this morning, and I think it would be a very poor basis -

THE CHAIRMAN: I just want your interpretation of the decision. You gather that there is no question of any jurisdictional rights here?

MR. BARCLAY: I didn't find that at all.

THE CHAIRMAN: And, as a matter of fact, the Court has indicated that the Legislature had not acted, and since there

was a rule, interpreted by the courts in the past, stemming from the DiMatteo case in 1925, the Court felt, that in its judgment, they ought to correct a court misunderstanding, so to speak.

MR. BARCLAY: That's right.

THE CHAIRMAN: Isn't that true?

MR. BARCLAY: That's right.

THE CHAIRMAN: And the Court never questioned the right of the Legislature to adopt a policy which was sound for the public?

MR. BARCLAY: That's right. As I read these cases, I thought they were merely correcting what they thought to be an erroneous construction of law, going back to those eighteen forty-six days, or something in England on that trust theory, which has been gradually disproved. Of course, it was repudiated in England many years ago. They did say in there, and nobody can question that, that the Legislature could, if they wanted to, limit liability. Of course, they didn't have to put that in there, we knew that without their stating it.

THE CHAIRMAN: Yes. Now, you have indicated that you felt that the \$10,000 limit of liability was inadequate. Now, you know that the bill which is before the Governor is the Assembly Substitute?

MR. BARCLAY: Yes.

THE CHAIRMAN: And under the Senate Bill, of course, there would be complete immunity, even greater than existed before the Supreme Court decision.

MR. BARCLAY: Yes, that's right.

THE CHAIRMAN: Now, do you recommend that not only do we hold hospitals liable, but also hold charitable schools and

charitable orphanages, any sort of institution that is operated by a religious or charitable -

ASSEMBLYMAN CONNERY: Any eleemosynary institutions.

MR. BARCLAY: Yes, I don't make any distinction. My feeling is that these organizations that get into these fields voluntarily, should go in there and assume the risk. I don't think they can say "We're going to get into this field, but if we get in, we're going to play according to our rules, that we're not going to be liable, everybody else is liable, the individual is liable" but when three people get together and they start something, then they are going to be liable, but I say no distinction between the church, the school, the hospital. I feel that as to all of them, the only protection they should have would be a top limitation for catastrophes.

THE CHAIRMAN: What would you say would be a practical limit of liability other than that fixed by the Legislature?

MR. BARCLAY: Well, as I suggested, I'm thinking - we've been talking, you people rather have been talking today about limits of \$100,000, \$300,000. I'm thinking in terms of a catastrophe limit of \$250,000, somewhere in that neighborhood.

THE CHAIRMAN: Well, would you leave the liability unlimited, or in view of the testimony that you have heard here today, would you suggest or recommend any particular amount of liability?

MR. BARCLAY: I would say something in the neighborhood of \$250,000 as a top limit, whether it's one person, or a catastrophe loss, just to protect them, which - I feel that would be hard for somebody -

THE CHAIRMAN: Well, I'm not talking about non-catastrophic situations. I'm talking about the single individual, as we have limited it under the Assembly Bill.

MR. BARCLAY: My thought would be that the \$250,000 would still be a fair figure. Not that you're going to get many of these, we know that, but I still think the \$10,000 is grossly inadequate.

THE CHAIRMAN: And do you predicate that \$250,000 liability on the basis of what these gentlemen said before on the rates?

MR. BARCLAY: Yes, on the basis of the rates.

THE CHAIRMAN: And is that why you are saying that?

MR. BARCLAY: That's right.

THE CHAIRMAN: Have you any other reasons to assign?

MR. BARCLAY: No. I think the cost, as you have seen here, for \$100,000 limit - somebody might say \$100,000 - the difference between the cost of \$100,000, \$200,000 or \$300,000, is a matter of a few dollars. After you get beyond ten, it's a question of how far you want to go. But I don't see any sense at all in a \$10,000 limitation.

THE CHAIRMAN: Can you tell us what, in your opinion, is the basis reason for the change as suggested by the Supreme Court? What is the theory of the Court?

MR. BARCLAY: Well, of course, I think you will recall wasn't it Justice Jacobs saying that we should be just before we should be generous. Actually, I find very little to justify this. I mean, other than this immunity we have here it's a general proposition that anybody shall be responsible for the acts of

himself and his agent. If he's negligent, he's liable. I don't see any reason to grant this immunity. I think it's too far reaching.

THE CHAIRMAN: What was the reason for the immunity before the Supreme Court's decisions in the recent cases, do you know?

MR. BARCLAY: I am not clear. As I say, we have had a lot of theories advanced -

THE CHAIRMAN: Was it just a matter of public policy?

MR. BARCLAY: I think it was pretty much public policy and it was under this trust theory, that the money in the trust shouldn't be dissipated for some other use, but as Prosser and others have pointed out, that's not a valid argument. If the trustor, if he had no immunity, he had no right to grant immunity to the trust or the beneficiary.

THE CHAIRMAN: It has been suggested here today, that one of the reasons that the Court decided as it did, was the fact that Justice Jacobs felt that there was adequate insurance coverage available. Now, do you have any opinion on that?

MR. BARCLAY: I don't think that that was one of the underlying reasons for his conclusions.

THE CHAIRMAN: Assume that it was, do you have any opinion as to whether or not there are adequate coverages available?

MR. BARCLAY: From what I have heard here today, I would say that there is ample coverage available. I think it is also shown by the fact that in these other states-in New York, California, in these other states-these organizations have gotten insurance and they are continuing to operate. I don't

feel it's going to be the end of the world.

THE CHAIRMAN: You don't agree with the Scott theory, under the Scott trust theory, that after all these charitable organizations receive these moneys from various people, and these moneys are really dedicated for the use of those people and not for the payment of claims. Now, do you agree with that theory?

MR. BARCLAY: No, I do not. In other words, my feeling is that no one has the right to set up machinery that's going to be exempt from liability for its own acts. That's what it amounts to. In other words, I'd be liable if I did it. I can set up a trust which would be immune, and that to me is a fallacious argument. I think if I set up a trust, the trust should have the same responsibility as I would.

THE CHAIRMAN: Are there any further questions, Mr. Connery?

ASSEMBLYMAN CONNERY: Well, do you disagree with the Legislature? Some years ago, in establishing immunity for municipalities and counties for injuries occurring in public buildings?

MR. BARCLAY: There you have a little different proposition, you are getting into the "king can do no wrong" philosophy.

ASSEMBLYMAN CONNERY: Do you agree with that? Do you agree with the sovereign immunity that the State enjoys, that no one can bring an action for personal injuries as the result of the negligence of any agent or employee of the State of New Jersey?

MR. BARCLAY: I'm not whole heartedly in accord with it,

I'll be frank on that, although it doesn't behoove me to question it, I guess. But I think that has been whittled away pretty well in some of these municipal decisions. I mean, you have seen where it has just been by construction, but they've whittled that down pretty well.

THE CHAIRMAN: If you were sitting as a member of the Legislature and you had that practical problem as to whether or not you could hold a municipality or some other agency of the State, would you follow the doctrine that you are suggesting here, to hold them liable?

MR. BARCLAY: Frankly, I'm perhaps an individualist. I am more inclined to give the individual the benefit of the doubt. I think the State or the Federal Government should not be allowed to run somebody down and just walk off and leave him for dead. I mean, I think that's the reason we have these federal statutes where they can be sued nowadays, and I think that in time this immunity will be dissipated or disappear by legislative enactment.

THE CHAIRMAN: Do you approve of the enlargement of the federal sphere of suits?

MR. BARCLAY: I do. Only I think the other things stem from hundreds of years ago when we had the King and the Queen, etc., and they were pretty much a law unto themselves. But I think today we have outgrown that.

THE CHAIRMAN: That would tend to make your reasoning logical, wouldn't it?

MR. BARCLAY: I hope so.

THE CHAIRMAN: All right, sir.

ASSEMBLYMAN CONNERY: In other words, you are in favor of abolishing the immunity that the State enjoys, the immunity that the counties enjoy, the immunity that the municipalities enjoy, right on down the line?

MR. BARCLAY: That's right.

ASSEMBLYMAN CONNERY: All right. Let me ask you this, though: You did say, Mr. Barclay, that there were three choices, or really three alternatives when a person suffers an injury, either the victim himself will have to bear the loss, or, I think you said, the public would have to bear the loss; he might become a public charge if he were destitute and was unable by reason of his injury to continue in his employment, or for other reasons, or that the loss should be directly fixed and placed on the shoulders of the individual who caused it.

MR. BARCLAY: That's right.

ASSEMBLYMAN CONNERY: Well, now, isn't it a fact, or wouldn't it necessarily follow that with your insurance rates increasing one hundred percent, one hundred and fifty percent, two hundred percent, that that increased rate is going to have to be absorbed somewhere, it's going to have to be placed somewhere, and wouldn't it, therefore, follow that the rates that are charged the persons who are admitted as patients into the hospitals, are going to increase, and that in the long run they are the persons that are going to bear the loss? The patient who is able to pay, or may not be able to pay, but actually goes out and borrows money and straps himself, and

sells his property to come in there for adequate medical treatment, isn't the loss going to fall on him?

MR. BARCLAY: That may be. It probably would work out that way, but I think that that would be preferable to spreading it out over - I don't know how many patients they have -but we'll say ten thousand patients that go through some hospitals. I think this loss would be better paid by those ten thousand people than it would by some poor individual that happens to be injured to the extent of fifteen - twenty thousand dollars.

ASSEMBLYMAN CONNERY: Well, isn't it a fact, Mr. Barclay, that the way a hospital costs, medical treatment is increasing at the present time, that the average working man, even with his Blue Cross coverage, and Blue Shield coverage, and we know the rates are increasing there, can't actually afford to become ill; he can't afford to become sick and if you are going to place an additional burden on him, on the man who is a prudent man, the man who has made every effort to protect himself against illness and sickness, do you think he can afford to bear the loss?

MR. BARCLAY: Well, we're getting ourselves right back to the proposition then whether it's going to be - I'm just trying to figure out here - ten thousand people who go to the Mercer Hospital each year, or whether it's going to be the three or four that happen to be thrown out of bed on their necks.

ASSEMBLYMAN CONNERY: In other words, you feel that the paying patient, that the loss should be spread out among the paying patients, because obviously the destitute patient, the

indigent patient, who has no money, he isn't going to bear it. It's going to be passed along to the paying patient, isn't it?

MR. BARCLAY: You are assuming now there is no insurance.

ASSEMBLYMAN CONNERY: No. I'm assuming that the hospital is going to be required to pay additional insurance premiums in order to protect itself against these eventualities. Now, by absorbing that additional cost, or by that additional cost of insurance being placed on the hospital, it's going to have to be spread out somewhere - the money has to come from somewhere. Now, isn't it going to come from the paying patient? Aren't the hospitals going to raise their rates? Don't you think that is what is going to happen?

MR. BARCLAY: I wouldn't be surprised if they would. I don't think they would raise them high enough to make it a disadvantage. I mean, I think they have a figure some place, on what they call the out-patients, it was something like six cents or something that was going to go to ten cents. Well, suppose the out-patient does pay another ten cents, that isn't going to be a great burden on him.

ASSEMBLYMAN CONNERY: Well, I don't know that we are dealing with the right figures. We are dealing, it's true, in pennies there, but I think it has been stated by the experts who testified that the rates increase anywhere from a hundred percent to a hundred and fifty percent, and as I read it here, in some situations, or as I heard it, up to two hundred percent the rates are going to increase. Now, we don't know, of course, what the overall premium is that is paid by an average institution.

MR. BARCLAY: I had one other figure in mind. I thought this morning they said that the rate per bed had increased \$6.00, I think, in Ohio - from \$4.00 to \$11.50. Am I right on that?

ASSEMBLYMAN CONNERY: It increased from \$4.00 to \$11.50 in Ohio. That was the statement that was made, and I think confirmed by -

MR. BARCLAY: So that would be \$7.50, if I'm right.

ASSEMBLYMAN CONNERY. Yes, from \$4.00 to \$11.50 - almost \$12.00. That's about 200 per cent.

MR. BARCLAY: All right. Now, if we spread that over 365 days, we get about two cents a day. Am I correct in that? - the yearly rate. If we divide that by 365 days, that means that they have to increase the rate on that room substantially two days a day. Now to me, I submit, that wouldn't be intolerable.

ASSEMBLYMAN CONNERY: I don't follow your figures there. Let's assume that the hospital is paying \$5,000 in insurance premiums in 1957; the immunity is taken away from them and their insurance rates increase two hundred per cent. They are going to pay \$15,000 in 1958, aren't they?

MR. BARCLAY: Well, you have to divide that \$15,000 by all the patients who are in there during that whole year. I mean, I'm taking the room as a unit.

ASSEMBLYMAN CONNERY: Well, somebody is going to have to absorb the additional \$10,000.

MR. BARCLAY: I don't quarrel with that.

THE CHAIRMAN: Well, I think we are down to the question of either sharing the wealth or sharing the responsibility.

MR. BARCLAY: That's right.

THE CHAIRMAN: You want them to assume the responsibility, too; it should be shared?

MR. BARCLAY: That's right.

ASSEMBLYMAN CONNERY: What wealth were you referring to that was going to be shared, because, as I understand it, we are talking about religious and charitable institutions. So I don't think we are talking about spreading any wealth.

THE CHAIRMAN: I use the idiom, "Share the wealth." We talk about sharing the wealth and he's talking now about sharing the responsibility. That's what you mean to say, isn't it?

MR. BARCLAY: That's correct.

THE CHAIRMAN: Have you anything further, Mr. Connery?

ASSEMBLYMAN CONNERY: No. Thank you very much, Mr. Barclay.

THE CHAIRMAN: It's a little after four now and I would suggest that we will continue this hearing and give everybody a chance to be heard who wants to be heard. We don't want to foreclose anybody. The Committee will announce through the press and other means of communication just when the next hearing will take place. If anybody in particular wants to write to me at Hobart Street, Perth Amboy, New Jersey, and ask me for the particular date that we have decided on, you will receive a reply immediately upon receipt of your letter, after we have decided when that will be.

MR. HERBERT E. GREENSTONE: ~~Mr. Chairman.~~

THE CHAIRMAN: Yes, sir. Mr. Greenstone is speaking now.

MR. GREENSTONE: Mr. Rafferty addressed some remarks in the presence of this gathering, which I think ought to be answered here, about the publication which I represent. He also made some reference to any alleged victims of charitable organizations, who were not present. Now, at ~~of~~ great hardship, three victims, allegedly, have come here, ~~at~~ of great hardship, and I would like to present briefly the particular claims from a standpoint of pointing out the inequity of the maximum limitations of the proposed bill. If I may indulge on your patience and be given five or ten minutes, I can state my cause in that brief period of time, I think.

THE CHAIRMAN: Are those victims here now?

MR. GREENSTONE: Yes, sir.

THE CHAIRMAN: Are they in the confines of this room?

MR. GREENSTONE: Yes, sir.

THE CHAIRMAN: Mr. Connery and I will allow fifteen minutes for your presentation.

MR. GREENSTONE: Honorable Chairman and interested members of this hearing: First of all, reference was made that the gallery is not packed and that those attorneys who, perhaps, might be interested in this bill, are not present. I think, however, that by counting here, there are twenty-six people attending this public hearing, and I myself can tell approximately ten people that I know are against charitable immunity. I think the record ought to reflect that - that there's not an overwhelming turnout in favor of immunity. First of all, I also want to take exception to the philosophy of Mr. Rafferty, that the right of the good of the individual must yield to the common good. In my opinion, that is contrary to our basic philosophy in our democracy that

the rights of the individual are paramount, and I think if you carry out Mr. Rafferty's philosophy, you reach a stage of government - socialism - to which we do not aspire. I think that all considerations of tort liability, rights and duties, basically turn upon individual responsibility - that the individual must pay when he invades the rights of another individual. That same principle applies to a group as well as to an individual.

Now I just want to refer to the bill itself and why I think it is objectionable.

THE CHAIRMAN: Are you talking about 204?

MR. GREENSTONE: Senate Bill 204 as amended. First of all, the bill provides for retroactive operation to January 1, 1956.

THE CHAIRMAN: I might correct you in that, Mr. Greenstone. The title there is in error and there are no retroactive provisions in that amendment.

MR. GREENSTONE: This is the printed copy that I obtained.

THE CHAIRMAN: Yes, but I understand there is an error in the title only. It has no retroactive provision.

MR. GREENSTONE: It has no retroactive operation?

THE CHAIRMAN: That's right.

MR. GREENSTONE: All right. Of course, I'm opposed to that because, in my opinion, it is contrary to our Bill of Rights.

THE CHAIRMAN: Well, if it's not present in the bill, then you are not opposed to it; isn't that true?

MR. GREENSTONE: That is correct, sir.

THE CHAIRMAN: As I say, in drafting the amendment, the title was erroneously inserted in that fashion, but the

bill itself has no retro-active provisions.

MR. GREENSTON: Now, secondly, the provision in the bill, providing immunity to all other eleemosynary institutions, with the exception of hospitals, I think is contrary to the public policy, as evinced in the Dalton case - Dalton against the St. Lukes Church, in which the Supreme Court specifically stated that they see no reason to just confine the abolition of the immunity doctrine to hospitals, and not to other charitable institutions. Basically, the public policy is the same - that the group or organization, through its agents, servants, that cause harm to another through its negligence, should pay for same, the said institutions being organized. Now, I think a very, very serious consideration, why I think this bill is bad, is that it leaves the servants of the charitable organizations out on a limb. As you know, that even prior to the Supreme Court decisions, the individual servants were liable, even though the group itself was not. But here you take the great majority of charitable organizations, and hospitals, that many people who work for these organizations, work for a mere pittance, the nurses, the internes, the young residents, the orderlies, etc., and the volunteer workers, Let's say that any of the gentlemen, who are attending this hearing, on behalf of any particular charitable organization, having been, perhaps, requested or ordered to come down here and attend this hearing - let's say this gentleman was driving his automobile on the way down on the highway and collided with a bus with school children, etc., and caused ten or fifteen people to be killed,

I don't think that individual should be held personally responsible, where he's carrying on some act on behalf of his group. The doctrine of respondeat superior should always apply that any servant acting on behalf of an organization, should be given the benefit of falling back upon his employer's responsibility.

THE CHAIRMAN: What you mean to say there, I believe, Mr. Greenstone, is that the individual alone should not be held liable -

MR. GREENSTON: Exactly.

THE CHAIRMAN: For its negligence.

MR. GREENSTON: Take the young nurse, a nurse working in a hospital, everyone knows they are underpaid for the tremendous work they do, these young nurses; either they have to pay for insurance themselves, or else, rely upon the hospital to furnish that insurance for them, and if the hospital does that, of course, there is no reason why the hospital of itself should not be primarily liable.. If the hospital does not do it, it's a hardship to the nurse.

ASSEMBLYMAN CONNERY: You do believe that the individual should also be held liable?

MR. GREENSTONE: Oh, yes, because the liability is derivative, but the limitation of ten thousand dollars, I think, is inequitable.

Query - and first of all, the bill provides in line 5, "amounts not exceeding ten thousand dollars," and line 6 says, "of any one accident". It does not say ten thousand dollars for each person, and query - in an operating room where you

have anesthetics, oxygen, X-ray - a portable X-ray is brought in and a spark develops and there is an explosion and a number of people are injured severely - the ten thousand dollars would have to be "divvied up" amongst all the injured.

Now, in regard to the paying out of claims: As Mr. Rafferty pointed out, on 78 claims they paid out \$3300.

I requested that these people come here because, as a lawyer, when they come into my office and ask me for advice, I would find it most difficult to explain to them the charitable immunity doctrine and why, after the Supreme Court rendered these decisions, our Legislature, which is supposed to be amenable to the will of the people, would suddenly do something which I personally feel is inequitable.

I thought that they should come down and see government in operation. I asked two people, and I don't want to mention their names and I don't want to mention the institutions involved, because litigation is pending, but I will supply the Committee, if they so desire, with the names and the institutions. One lady, and there's no point in bringing her down, but she's here, is the mother of a child who was born prematurely in a hospital and put in an incubator and given excess oxygen. It has been well known in medical science that excess oxygen will cause permanent and total blindness and a condition called retrolental-fiberpleasies. Now, I ask you, would anyone sitting here as a jury award \$10,000 - of course, assuming we prove liability - and feel that that would adequately compensate the woman suing and her husband on behalf of this

infant child for the horrible condition of going through life totally blind.

I have another case of the same nature from Toms River, and there is another gentleman here from Trenton whose wife gave birth to a child and was discharged from the hospital and, because of the alleged after-birth, the wife died and he has 10 children to bring up.

Now, query, what is the value of his loss? He must wait on and take care of 10 children. Would you say \$10,000 would cover that? I mean, these are individual hardships and, certainly, we don't want to bankrupt any organization that affords care, but is it such a terrible hardship - and I'm a poor mathematician, but I figured out that the difference between 5 and 10 coverage on a hospital, let's say with 500,000 square feet, at the figure given of \$1.08 per hundred square feet - with 500,000 square feet, to get 100,000 to 300,000 coverage, the cost would be \$5400; whereas, with the 5 and 10 policy at the figure of fifty-two cents, the cost would be \$2600.

THE CHAIRMAN: Did you say \$2600?

MR. GREENSTONE: \$2600.

THE CHAIRMAN: As against how much?

MR. GREENSTONE: \$5400.

So you are getting 20 times the coverage for double the cost, and I think that is pretty good business. And I say, spread over all of the patients who come into the hospital, that isn't a burden that would be difficult to assume.

In closing, may I state that I am a representative of the American, State, and Essex County Bar Associations.

I am also a member of the legislative committee of

the State Bar Association, although I am not authorized to appear on this particular matter, because it was never discussed, to my knowledge. And I am also President of this Group, this organization called the National Association of Claimants' Compensation Attorneys, and if the worst thing they say about us, is that we go out and fight for the people that are injured, and we try to fight hard, and get them as many rights as we can, then I think its worth being criticized in that regard.

THE CHAIRMAN: Mr. Greenstone, you say you're not authorized to speak on behalf of the New Jersey State Bar, notwithstanding the fact that you are a member of its Legislative Action Committee?

MR. GREENSTONE: I say that to my knowledge it still has not been discussed to date.

THE CHAIRMAN: Can you understand why the State Bar would not have called a special meeting for the particular discussion of this bill, which is of such importance throughout the State?

MR. GREENSTONE: Well, that would have to be taken up, perhaps, with the President of the State Bar, although I do know that I was on the New Jersey State Council, for the past year, and I received my appointment as Legislative Representative within the past month, and because a new President was elected, I suppose the committees are getting organized. It's a matter of organization.

THE CHAIRMAN: Well, there have been other members - and there are other members on this committee, aren't there?

MR. GREENSTONE: Oh yes.

THE CHAIRMAN: Do you know why they haven't come here to evince an interest in this?

MR. GREENSTONE: That, I don't know. This notice was published in the New Jersey Law Journal.

It is very unfortunate that the lawyers in this State are so apathetic when it comes to the public rights of the people even before there are damages. As Mr. Connery pointed out, when the pocketbooks were affected on the contingency arrangements, at the Supreme Court contingency regulation hearing, many of them turned out. It's a very unfortunate commentary on our profession, and all I can say is that you try to stir up some interest by these very important public hearings in which you people have shown such great interest on a hot summer day to come down here and attend and the lawyers themselves don't attend. But, as Mr. Barclay ably pointed out - and I must say I have great admiration for his philosophy and his comments - perhaps we few who do come down speak on behalf of the thousands who have not been injured and perhaps for those who in the future may be injured.

Of course, they are not organized. You don't have a New Jersey State Patients' Association - people who organize to protect themselves when they enter a hospital.

As a matter of fact, my wife told me about a magazine in a beauty parlor, Harpers Bazaar, published in July, in which there is an article "What's Happened to Florence Nightingale," and this article goes on about how the patient in a hospital doesn't get the real attention he needs.

MR. GREENSTONE: At this point, I do want to bring out we in New Jersey have a Department of Institutions and Agencies. This Department has published a manual of standards, and the Department, of course, controls the private hospitals and the charitable hospitals, and so forth, and this manual sets up certain standards, and we say that the enforcement of these standards, and the violation of same, are very important to the welfare of the people. Now, if hospitals carry insurance, these insurance companies have the most wonderful safety engineer. You're dealing here with a great preventive safety measure, and these safety engineers, they could come in and look at an operating room and see whether there is any explosion risk from the use of oxygen, and X-ray, electrical equipment, and advise these hospitals and give them good advice and good care, which perhaps the administrator and the other servants in the hospital are not able to give, and in a way, insurance against liability will help safety in these institutions, and furthermore, if there have been violations of these standards, and hospitals are made to pay, you can rest assured that the insurance company will call attention to the wrong in the violation of the standards and regulations of the State to these hospitals and see that they don't happen again. In that way the welfare of the people will be better.

ASSEMBLYMAN CONNERY: It is true, isn't it, Mr. Greenstone, that although there are not many lawyers present here, that this subject has been discussed at many, many meetings in the past, a number of articles, and so forth, have been written, and that the New Jersey Law Journal recently, after the Farley

MR. GREENSTONE: Well, it might be this - it might be that the lawyers have so much confidence in their legislative representatives that they are willing to leave it to George to do the right thing.

ASSEMBLYMAN CONNERY: Chairman Stepacoff and I would love to believe that, Mr. Greenstone.

THE CHAIRMAN: All right, thank you very kindly.

Mr. Tomasin?

MR. JOHN TOMASIN: Honorable Chairman, I realize you stayed over your time and I'm limiting myself to three minutes, and I will attend the subsequent session to be heard at greater length. At this time I would simply like to say, however, that I - before I begin, I understood the Chairman to say some minutes ago, that if the so-called stranger came to visit someone and fell, that he wouldn't be a beneficiary but a stranger, and that seems contrary to the Bickel case.

THE CHAIRMAN: No -

MR. TOMASIN: I didn't think you meant that -

THE CHAIRMAN: No, I didn't say that.

MR. TOMASIN: O. K. Then I think the one problem in the bill is that when it speaks of beneficiaries, we have a very vexing problem on the so-called beneficiary, and it just doesn't mean a patient, as a lot of people think it means, but it can mean other than patients, people come simply to visit, have nothing to do with the hospital, and fall.

THE CHAIRMAN: They would not be beneficiaries.

MR. TOMASIN: You say they would not be beneficiaries?

THE CHAIRMAN: They are strangers.

ASSEMBLYMAN CONNERY: Now, I disagree with the Chairman on that because there is a reported decision. My recollection is --

MR. TOMASIN: That's the problem in the Bickel Case.

THE CHAIRMAN: Let us hear Mr. Connery out, please.

MR. TOMASIN: I beg your pardon.

ASSEMBLYMAN CONNERY: You may correct me but it has been my understanding that a visitor - and as a matter of fact a particular situation where the mother of a patient was visiting her daughter in the hospital and, through the negligence of the hospital, suffered injury, it was held in that case that the mother, being so closely identified to the daughter would be classified as a beneficiary of the hospital's benefaction and, therefore, would have no right of action against the hospital. That's my understanding.

THE CHAIRMAN: Well, I think we are engaging in semantics at this point. We understand that while there is a beneficiary rule - usually those are the people who are being treated by the hospital - there are exceptions to the rule and whether you call it a stranger or a beneficiary, you realize there are certain exceptions to the beneficiary rule. Mr. Connery and I both agree that that particular individual would be able to sue the hospital in that case. But whether we call him a stranger or a beneficiary is purely academic. Wouldn't you say so?

ASSEMBLYMAN CONNERY: No. I disagree with you, Mr. Stepacoff. In that particular case the person would not be considered a stranger but would be considered a beneficiary. We're speaking of the visitor. Now, to distinguish that situation where

a volunteer fireman or ambulance driver is taking a patient into the hospital, or let's say, the milkman is delivering milk, or a hundred and one other situations, where a stranger comes in and is injured, in that particular situation the immunity does not exist and the stranger has a right of action. But with respect to visitors who are in the hospital to visit patients, then I think under that one decision at least, as far as relatives are concerned, they would be classified as beneficiaries and would have no right of action, and the right of action would be barred by the immunity doctrine.

MR. TOMASIN: And by adopting the beneficiary language in this bill, the vexing problem of a visitor being called a beneficiary is continued. But to go to the next point - I stated - First of all, my name happens to be John Tomasin. I happen to be the Town Attorney of the Town of Guttenberg, but am not speaking in any way for the Town of Guttenberg, in Hudson County. I also happen to be the New Jersey State Judge Advocate of the Disabled American Veterans. I am not speaking for the Disabled American Veterans, although veterans and disabled veterans particularly, are in hospitals a lot, and I believe they will have a statement of opinion pertaining to this problem in the near future. I do not, however, speak for them. I happen to have a client, I did not see the NACCA letter, I'm just a lawyer and when I heard about the hearing, the client who heard it too, asked to come down with me. Now, in this bill, there's a ten thousand dollar limitation. Now, this client happens - I won't mention the hospital or the client - it's in

the courts now, this client happens to have been injured, and as we claim through the negligence of the hospital. He has, up to the present date, expended in cash money over \$17,000.00 on doctor bills and hospital bills alone. He has undergone seven operations and three cystoscopes, lost a testicle and lost true income of \$20,000.00, in lost income alone. Now his expenses alone, the actual hard money that he put out of his pocket, far exceeds that sum, not to mention the loss of the testicle, the permanent disabilities that he has, and the pain and suffering that he underwent. This is only one case - you can't decide a question like this on one case - you can't decide it on a torn dress case, you can't decide it ^{on} /a tough case, but the point that I'd like to bring out at this particular time on this one subject is this - if the doctrine of immunity is sound and comports with the public policy and the general total moral climate of our times and of our people, then don't give these people anything. But if it's unjust, if it bothers you not to give them money when they've been injured, and it's obvious there is something wrong when a man is injured through no fault of his own, through the negligence of someone else, it's obvious that something sticks in your craw, you cannot say to him, "Well, we won't give you anything". Once you say to him "We know you're entitled to something", by God, then justice demands that he should get exactly what he is entitled to, not something less or something more. It's completely erroneous to say, let's have immunity and we'll have some coverage, and we'll pay out some time and other times we won't pay out.

That becomes a matter of privilege and a matter of grace, not justice.

THE CHAIRMAN: Yes, but Mr. Tomasin, isn't that bound up with the problem also, of whether or not these institutions can exist with tremendous claims against them?

MR. TOMASIN: I'm glad you asked me that question, because in the case, the decisions are collated by the court, and among other things, they specify the various states that have discarded the immunity theory. Well, not only has it been discarded in New York in '57 and certain other states in '56, '54 and '53, which is five years already, and no chaos is apparent, but if the opinion is read, the actual cases are cited in the citations there, where other states have discarded it, for example, in Iowa in 1950; Vermont, 1950; Puerto Rico in 1948. Continuing on, I see Alaska has a 1941 case, and there's a 1954 case. 1951, Mississippi; 1941, Florida; going to 1940 in Oklahoma; 1939, in New Hampshire and 1920 in Minnesota, and there has been no apparent chaos there that we've ever heard, that the hospitals had to close, that the charities were ruined, or anything of that type. The 1920, the 1939, and the 1940 and '41 dates are very relevant on that. I think, if I may just take one more minute, and I know that I'm holding you, I think that when the Court, in a very well reasoned and well briefed opinion, as we all know, this was not a slipshod quick opinion, the indications were cast before the hospitals knew which way the wind was blowing, and then this well reasoned opinion was stated. If I may respectfully say, as one individual person, that the

Legislature should not precipitously go in and overturn that ruling even though the court admits that, in hospital cases at least, it has a perfect right to do so. Let that law stand as it exists and see what experience comes of it for a short trial period. If abuses come in and if some need arises for immunity, put the immunity in, not simply go in and overturn the court because of an alleged future possible chaotic condition, of which there is and can be no proof and which the experience in other states seems to contradict.

With that approach, I say the justice of it will be the thing that is emphasized, because we emphasize not immunity but liability. Immunity is something unusual, and I respectfully submit that the case and the reasoning for the case should stand as the law.

I want to say one thing before I remove myself: I think it is completely fallacious to say that because a great number of the membership of the bar is not present today that means they favor the bill, because I think the only logical thing that can be said of their absence, if anything, is that they all know about the Supreme Court case, that that's the law at the moment and they are not going to come down here to change it. By staying away, they are not trying to convince you to do something and, therefore, they are favoring you not to do something. They are favoring you to leave the law the way the Supreme Court left it; that is, with no immunity, and nothing else can be gathered from their absence here.

I know I have encroached on your time. I did not stay within the three minutes. I will address you, if I may, at a later occasion.

Thank you for your attention.

ASSEMBLYMAN CONNERY: Just one question I would like to ask you, Mr. Tomasin. It's certainly clear to me that you do not approve at all of any limitation of recovery or right of recovery.

MR. TOMASIN: I'm not in favor of immunity except, as the gentleman said, a catastrophe-

ASSEMBLYMAN CONNERY: You would approve of that?

MR. TOMASIN: Yes. A great catastrophe, three, four hundred thousand dollars for one incident, like an explosion.

ASSEMBLYMAN CONNERY: But isn't it true, though, that there are situations where a limitation is almost absolutely essential or necessary? Look at the limitation that is imposed in the Workmen's Compensation field for injured workmen, don't we impose a limitation there, on the amount that the injured workman can recover against his employer?

MR. TOMASIN: Right, but that's because we give workmen compensation coverage and payments to people without fault. It isn't a question of negligence - this is a question of negligence. We say here "Pay because you're negligent". Workmen's Compensation pay regardless of whether you are negligent or not. That's the distinction I make.

ASSEMBLYMAN CONNERY: Well, how about the Warsaw Convention agreement, that United States is a part of, where they impose a limitation on the right of a passenger who is injured in transcontinental flights, and I think the limitation there is limited to around \$8500.00 or \$9000.00.

MR. TOMASIN: Somewhere around nine, ten or eleven, I don't know, but very erroneous; in fact, Congress, as I understand

gave Gypsy Markoff some money because she had been in such terrible shape. I disfavor that type of limitation. I think the reasons for it are outweighed by the quality of justice. I, of course, subscribe to Mr. Greenstone's statement that we do not have a collective society where the extreme submersion of the individual good must be made for the good of the so-called general welfare.

That is true, of course, to a certain extent but our country is different from other countries in that we consider the individual. "Do justice though the heavens fall." is what they say in some of the courts. You should do justice and when a problem or abuse arises and is identified, then solve it, but don't anticipate something that may not even exist and know that you are doing an injustice to do that.

ASSEMBLYMAN CONNERY: Of course, there are situations where the right of the individual is subordinate; for example, when a man is drafted into service in defense of his country, and many situations like that.

MR. TOMASIN: Sure, that's right. You can't have civilized society without it. But I say, carried to an extreme, the mere statement that let's submerge the individual and not give a good reason for it, a convincing reason for it, should not prevail.

ASSEMBLYMAN CONNERY: Thank you.

THE CHAIRMAN: Just one other question, Mr. Tomasin. You, as a lawyer, and we as lawyers must realize that extreme positions, either without a limit of liability --

MR. TOMASIN: Bad cases make bad law, right.

THE CHAIRMAN: Not only that, but you can't expect, practically speaking, the Legislature to go to an extreme; and of necessity we must compromise many times in order to effect legislation. You understand that?

MR. TOMASIN: Yes.

THE CHAIRMAN: And oftentimes the end product is not the result of the individual thought as to what might be absolutely right but sometimes we have to settle for what we can get. Isn't that true?

MR. TOMASIN: Yes, it is.

THE CHAIRMAN: And, fortunately or unfortunately, that may be an answer to this problem. Wouldn't you say?

MR. TOMASIN: I think that's an extremely forceful argument.

THE CHAIRMAN: In other words, what I am trying to say is that while we recognize the wisdom of both sides in this case, we must be practical about it in terms of satisfying the great segment of our people who are both pro and con. You understand that problem?

MR. TOMASIN: I do understand that practical problem. And by taking an extreme position you can probably get nothing.

THE CHAIRMAN: That's right.

MR. TOMASIN: I understand.

THE CHAIRMAN: All right. Thank you.

Well, we decided that we were going to finish with this gentleman. We were supposed to close this hearing at four o'clock and we are forty minutes beyond that time. Unfortunately, we can't get double pay for overtime. Mr. Connery and I are

really operating on our vacation time but we have no objection to that, either.

Now, in fairness to the people who would like to be heard, we will set a date for further hearings within a reasonable time and you will be given ample opportunity to testify.

The meeting is adjourned.

(Hearing adjourned)