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

before

SENATE AND ASSEMBLY COMMITTEES ON LABOR RELATIONS

on

Pending Workmen's Compensation Bills

Held:
April 22, 1970
Assembly Chamber
State House
Trenton, New Jersey

Members of Committees present:

Senator Francis X. McDermott [Chairman, Senate Committee]

Senator Matthew J. Rinaldo

Assemblyman Robert K. Haelig, Jr. [Chairman, Assembly Committee]

* * * *

I N D E X

Index [Continued]

Index [Continued]

SENATOR FRANCIS X. McDERMOTT (Chairman): This meeting will now come to order.

The purpose of this public hearing today is to present testimony and evidence on workmen's compensation problems that currently exist in our New Jersey Law.

It appears that there are quite a few interested parties here today. We have numerous speakers who wish to testify. We will endeavor to secure the presentation of all of the views of the people present today. To that end, those of you who have written statements, may I suggest to you that if you wish you may forego the opportunity to present them verbally and we will file them with the record and it will become part of the record and of the transcript of this hearing; or if you do wish the opportunity to present your views and you have a prepared statement, may I suggest to you that you condense your oral presentation and we will take both your oral presentation in its condensed form and your fully prepared remarks and make them part of the record too.

We have a list of speakers here, some of whom are very pressed for time this morning and they asked previously to be put on early. We have endeavored to follow the requests of the speakers and put them in the order in which they signed up here.

The Committee that is present here today is

both the Senate Labor Relations Committee and the Assembly Labor Relations Committee meeting jointly. I am Senator Frank X. McDermott from Union, Chairman of the Senate Labor Relations Committee, and my Co-Chairman is Assemblyman Robert Haelig of Middlesex County, Chairman of the Assembly Committee; we are joined by Senator Matthew Rinaldo of Union County who is a member of the Senate Labor Relations Committee; and the young lady on my extreme right is an Assembly Aide who has been loaned to us by the Eagleton Institute, Miss Judy Chirlin. I presume that some of the other Legislators who serve on either the Assembly or the Senate Labor Relations Committee may show up and at such time I will introduce them to the group.

The first speaker will be Mr. Charles Marciante of the State AFL-CIO. Mr. Marciante, will you please identify yourself and your affiliation for the purpose of the record?

C H A R L E S M A R C I A N T E: My name is Charles Marciante, I am President of the New Jersey State AFL-CIO.

I would, at the outset, like to present our Assistant General Counsel, Victor Parsonnet.

First off, I would like to thank the Joint Senate and Assembly Labor Relations Committee for this opportunity to present our views on the very important

subject of workmen's compensation.

We have, for your review and reference, a 19 page statement covering the 19 legislative proposals to amend the Workmen's Compensation Law. Rather than belabor the Committee at this hearing today, we submit this statement as our position paper.

Foremost, we briefly wish to express our support of Assembly Bills 81, 146, 148, 149, 273, 309, 320, 379, 404, 407, and Senate Bills 193 and 443.

We reject, as a step backward, Assembly Bills 147, 150, 202, 216, 656, and Senate 236.

S-205 we would support if the bill were amended and proper standards in the legislation describing unfair discrimination were clearly outlined.

Our principal purpose today, of course, is to ask your favorable consideration of A-407 which is a State AFL-CIO sponsored bill. It will, among other things, increase the permanent partial payments from the ridiculously low figure of $40 per week to the present level of two-thirds of the State's average weekly wage.

We submit that $40 a week won't support a single man, let alone a working man and his family. You must realize that in this crazy economic state that we are in today this will hardly support his family and a home. We very strongly urge that the permanent partial benefits be revised upward and on a percentage formula

to meet the ever-increasing cost of living and to provide these injured workers a chance.

A-407, if adopted, would provide that opportunity.

As I said, we have submitted a 19 page statement on the legislative proposals before both the General Assembly and the Senate and, as I said, we submit that for your consideration.

SENATOR McDERMOTT: Assemblyman Haelig, do you have any questions?

ASSEMBLYMAN HAELIG: No, I have none.

SENATOR McDERMOTT: Senator Rinaldo?

SENATOR RINALDO: No.

SENATOR McDERMOTT: Thank you very much for coming here today, Mr. Marciante, and, as stated earlier, we will make this prepared statement a part of the record. (See p.128)

MR. MARCIANTE: Thank you, Senator.

SENATOR McDERMOTT: Thank you, Mr. Parsonnet.

MR. PARSONNET: Thank you.

SENATOR McDERMOTT: The next witness to be called is Dr. Henry Kessler. Would you identify yourself, Dr. Kessler, for the purpose of the record?

H E N R Y H. K E S S L E R: I am Henry H. Kessler, Medical Director of the Kessler Institute for Rehabilitation. I have been identified with the problems of the disabled for fifty years and I was on stage in 1919 when the first 1% law was passed under the auspices of Colonel Lewis T. Bryant, the then Commissioner of Labor, and Governor Walter Edge, and I have watched the agony and the ecstacy of the industrial disabled down through the years and I am here to support Assembly Bill 273 submitted by Mr. Fontanella.

I am here also on behalf of what I call The Lost Continent. This is a place where men, women and children live lives of quiet desperation. This continent has no borders, it has no government, it has a soul but no voice, it has been distilled out of the courage and the tragedy of millions of its inhabitants, and this is the world of the disabled.

Over the fifty years I found that the greatest obstacle to the rehabilitation of the injured worker has not been money; it has been the prejudice of the man on the street. Despite centuries of enlightenment, the average man still regards an individual with an impairment or defect as in league with the devil, the sins of iniquity, and evil spirits. And this prejudice is taken over by the employer when he is asked to employ a physically handicapped worker who is

vocationally trained. He says, "Yes, I'd like to hire this man but I am afraid he is accident prone, I'm afraid he can't do a good day's work, I'm afraid the insurance company will raise my premium." So what is he really saying? He's saying, I hate to have a cripple around me.

This attitude of prejudice has been the greatest stumbling block, and if this bill would remove one of the roadblocks and facilitate his employment, then I'm for this bill.

I can tell you how serious this aspect of prejudice is when I, who have been in this work for fifty years, was faced by this problem myself. My son was in England learning how to make artificial limbs at the biggest factory in the world and he was 27 years of age at this time and he wrote home, "Dear Dad and Mother: I have found the girl I want to marry and she is an amputee." My friends said, "Now look here, Henry, aren't you carrying this rehabilitation gambit a little too far? Haven't you done enough for the cripples of the world without bringing them in your own home?" We were on a spot. We went to England, we saw this girl and we fell in love with her. I said to my son, "Jerry, if you don't marry her, I will."

This prejudice is so great that if you can remove the roadblocks, as this law provides, and make

the opportunity for this individual to be employed, it would be that much easier.

In looking over the bills, there are two aspects that I would like to refer to and in this respect I may appear to be critical. One aspect is, why did it take you so long to arrive at this state when this thing was originally enacted way back in 1919. And the other is this, we can enact this law but unless employees know about this law we are going to still have the age-old prejudice.

May I refer you to a work called "Rehabilitating the Disabled Worker," edited by Professor Berkowitz of Rutgers University, on page 99, in which he says: "In a survey conducted by the Subcommittee on Subsequent Injury Funds of the International Association of Accident Boards and Commissions, it was found" - this is 1960 - "it was found that most employers in Iowa and New Jersey were unaware of their state's second injury fund law. Responses from Iowa indicated that at least 75% of the respondents were unaware of the law, a result identical to the New York experience. In New Jersey at least 70% of the respondents were unfamiliar with the law."

So it's important not only to pass this law but to educate the employees to make them aware of this great boon to the industrial disabled by removing one of the great roadblocks that we have, the road-

block of prejudice.

Thank you.

SENATOR McDERMOTT: Thank you, Dr. Kessler.

The next witness will be Assemblyman Alfred Fontanella.

For the purpose of the record, would you please identify yourself?

A L F R E D E. F O N T A N E L L A: My name is Alfred Fontanella, I represent the 14th Assembly District which includes Paterson and part of Passaic County.

Mr. Chairman, I am here in support of two measures which I have proposed to the General Assembly. One is Assembly Bill 310, which endeavors to do away with the distinction between referees and judges in compensation; and the second bill, A-273, which is in fact the second injury fund.

I am not going to belabor the Committee or the people here present at this public hearing with details of the legislation. I merely wish to state that I feel very strongly about these two measures and I ask that the Committee give these measures very, very thorough consideration and release them for a floor vote as soon as possible.

With respect to the referees, I feel that since we have increased the salary and the qualifications of the individuals who are now judges of compensation, a

sharp disparity exists between the wages of the referees and the judges, and that, I feel, is an unfair condition existing within the Department of Labor and Industry and I think that this legislation will remedy that unfairness.

Also with respect to the second injury fund, we have a number of very, very knowledgeable individuals in this area that will address the Committee, Dr. Kessler having just addressed it, and I am not going to belabor the Committee any longer. I have an old principle for public speaking - stand up to be seen, speak to be heard, and sit down to be appreciated. I hope I'm appreciated.

SENATOR McDERMOTT: You may rise to leave.

Thank you very much, Assemblyman Fontanella.

The next witness is Mr. Jack O'Brien.

Mr. O'Brien, would you identify yourself for the purpose of the record?

J A C K O ' B R I E N: My name is Jack O'Brien. I am here on behalf of the Workmen's Compensation Association. That body was formed in 1947 with its main purpose to assist in the betterment of the administration of workmen's compensation. It is composed of a cross section of everyone who deals in workmen's compensation. We have representatives of insurance companies, self-insured, lawyers for both sides, doctors for both sides, and all people

who deal in the field. We have studied these bills, we've had study commissions and we had reports to our executive committee. We have a policy, because of the nature of our membership, to avoid comments on substantive law and I will confine myself to those bills which deal with administrative problems and express the unanimous opinion of the Executive Committee as to the various bills I comment on.

The first is A-81 which gives the widow one year after the death to file a claim for workmen's compensation. As the law now stands, she could be out before her right accrued. If a man had a clear-cut work-connected heart attack and because of fear of his job did not file a claim for two years and one day and then died, all rights would be barred and the widow whose right accrued on that day would have no right because two years had elapsed.

The bill purports to remedy that and the Association would support the bill if there were an ultimate limitation. The difficulty with the bill as it presently stands is that if it were passed tomorrow anyone who died their widow could say, "My husband had a heart attack 30 years ago and that contributed to his death," and the petition would be within time.

We suggest that you borrow from the occupational disease section and add language such as - and we don't presume to tell you the language but on line 17, after

the word "longer" perhaps add "provided, however, that all such claims must be filed within two years of the last payment of workmen's compensation or within five years after the accident, whichever is later." That would give the widow an opportunity in all cases where there is a reasonable probability of causal relationship.

With an amendment of that nature, we would support A-81.

A-146, which provides for a direct appeal to the Appellate Division, we are firmly behind. We feel that it will give more consistency in opinion, it will avoid an extra delaying and costly administrative step by eliminating the appeal to the County Court where many of the judges are really not interested in compensation and can't give it the time that the cases should have because it's only the important cases that get up to the appellate tribunals.

A-147 provides for lump-sum settlement. We are strongly in favor of that. Many difficult cases go through the courts, a lot of money is expended by both sides, that money could better go to the injured workman who might well lose his case, or the widow who might lose the case.

We would suggest that consideration be given to making an addition to it to provide that in the event

of a lump sum settlement, which is approved by a supervising judge of compensation, the decision have the effect of a dismissal. And the reason for that would be to avoid the problems of claims against that by TDB or Blue Cross which would complicate the settlement procedures.

A-149, the rehabilitation bill. We feel that that is a valid and good bill. Practically speaking, there haven't been many cases in which there has been a reduction of compensation once an award has been entered and the good of getting men suitable for rehabilitation early would far outweigh any loss to the companies.

A-150, dealing with recreational activities. As you know, a number of companies have cut down on what they have sponsored because of the compensation problem. If that passes, the chances are they will resume encouraging such activities and it will be to the benefit of a great many people, and we, therefore, support it.

A-310, the Referees bill. We are completely behind this. We feel that these men who are now referees are very able and very capable and can do a good job. We feel that the grandfather clause will protect against any future non-lawyers. The three non-lawyers are very well qualified. We feel that in the longrun the type of appointment which will come because of making everyone a judge will lead to better

personnel and better results and to the advantage of everyone.

A-379 we are opposed to because we feel it would be very cumbersome and difficult to administer.

S-433, of course, is the same - direct appeal to the Appellate Division. We're in favor of that.

I have only one other comment that I should like to make and that is in answer to a great deal of publicity about the high cost of lawyers and doctors in workmen's compensation.

We have studied the records and, as all of you know, fees are assessed partially against the employer and partially against the employee when the attorney's fees and doctor's fees for the petitioner's experts are assessed. A careful examination of the figures for the year 1968 reveals that adding all of the monies paid to petitioners' doctors and petitioner's lawyers by petitioners comes to only 7% of the award which is a very low, fair figure and considerably lower than the impression created by the publicity of recent days. That figure is the same as it was in the year before.

Thank you very much.

SENATOR McDERMOTT: Thank you, Mr. O'Brien.

Mr. Richard Traynor. Mr. Traynor, will you please identify yourself for the purpose of the record?

R I C H A R D J. T R A Y N O R: Mr. Chairman, my name is Richard Traynor. I am a former Referee, Formal Hearings, of the Division of Compensation, and a former Judge of Compensation.

I thank you for this opportunity to appear today before you. I have many comments which I would like to make on many of the bills which are before the Committee, but I did have an opportunity to make comments on many aspects of the legislation which is before you in the former hearings which were held in this Chamber last year.

I would like to concentrate my comments today on Assembly Bill 310 which has to do with the category of Referees, Formal Hearings.

Whatever comes of these hearings and whatever legislation is passed by the Legislature of the State of New Jersey will only be as good as the people who administer the bill in the field.

There is presently pending in the State of New Jersey approximately 44,000 cases, formal cases, claims for compensation benefits. These are handled by some 25 judges and 10 referees - there are 13 referees, some of which are on informal hearings. The administration of these cases and the justice which is done depends, to a large extent, on the men and women who administer the act.

I favor Assembly Bill 310 which would abolish

the title of referee and make all of the hearing officials judges of compensation. The present category of referee, formal hearing, is a category in which the men, and in this case one woman who serves in that category, perform functions which are, for the most part, judicial in nature and compliments the work of judges of compensation. They hear and make awards in the majority of the cases at the pre-trial level in the State of New Jersey in the administration of the Compensation Act. Because the work which is done by the referee is so important, so vital, and because of the judicial nature of the work, I favor, as this bill does, the abolition of the title of referee and transferring all officials to the title of judge of compensation.

Now I had personal experience as a referee, formal hearing, in the handling of the pre-trial list which the referees are now confined to, and I also had the experience of working with cases as a judge of compensation. I think that there is no question that by making all of the hearing officials judges of compensation you, the members of the Legislature, will assist greatly in the better administration of the act under which the benefits of compensation are paid.

I would point out to you that presently, as a result of the hearings of last year, judges of

compensation are paid $27,000 a year. This Legislature of the State of New Jersey saw fit to correct an injustice, an injustice in the salaries of the judges of compensation which had existed for so long and you raised their salaries, and that is a commendable thing. There presently, however, is a great salary disparity. The salary of the referees, formal hearing, ranges from $12,603 to $16,383, which means that over a period of years these people, who are performing functions very similar to the judges of compensation, are, for their efforts, getting an unconscionably lesser salary. And I think it is incumbent upon this Committee to recommend to the Legislature and the Legislature to vote and pass Assembly 310 so that we can be assured that proper salaries will be paid for the referees who would then become judges, and that the administration of the Act would then all be by judges of compensation with the benefits derived.

I would like to state that I would entertain questions from the Committee, if there are any, in reference to this area.

SENATOR McDERMOTT: Assembly Haelig, do you have any questions of this witness?

ASSEMBLYMAN HAELIG: No.

SENATOR McDERMOTT: Senator Rinaldo?

SENATOR RINALDO: No.

SENATOR McDERMOTT: Thank you very much for your presentation, Mr. Traynor.

Mr. John Mullen. Mr. Mullen, would you please identify yourself for the purpose of the record?

J O H N R. M U L L E N: Thank you, Senator. Mr. Chairman, my name is John R. Mullen. I appear today as Chairman of the Workmen's Compensation Committee of the New Jersey State Chamber of Commerce. My capacity is Vice President of Personnel and Labor Relations, for Ethicon, Inc., which is one of the subsidiary companies of the Johnson & Johnson Organization.

We are here today to advise this Committee of the concerns which the State Chamber has, and its many members, with respect to the workmen's compensation climate in New Jersey.

The statement that I have submitted to you and to the ladies will detail specifically some of our comments and concerns with respect to legislation that is pending and under review by your Committee. (See p. 147)

I think that our main concerns can be narrowed down to save you some time and to permit the other gentlemen, who are here today, to be called promptly.

Our concern is the fact that the magnitude of the workmen's compensation cost increase that has been seen in the past six or seven years in the State of New Jersey has been staggering. With the figures that are presently available to us, 1968 being the last

reported year, by the State of New Jersey on the matter of workmen's compensation, in the six years, including 1968, 1962 to 1968, workmen's compensation costs in the State of New Jersey rose almost $100 million, in fact nearly doubled, - I think that's about a 92% increase on the costs that were previously recognized and established for the State of New Jersey prior to that time. And in that six year period employment in the State of New Jersey increased by 17.6%. Of course, we're delighted that employment in New Jersey has risen in that period of time and continues to rise, but I think the magnitude of the workmen's compensation costs that have accrued during that period of time is something that we should all be very much concerned about, certainly as we compare ourselves with our neighboring states and, of course, we do that from time to time because industries that are located in the State of New Jersey concern themselves with possible expansions here, other industries that look to New Jersey as a possible site for expansion examine workmen's compensation costs.

I don't mean to pretend that the workmen's compensation cost is the sole factor or the most important or most crucial factor in an industry's making a determination as to whether or not it will either expand or in fact locate in the State of New Jersey, but it is a significant consideration and I

think the factors that exist in our neighboring states put us to somewhat of a disadvantage.

In our neighboring states, for example, - in Pennsylvania and Delaware the workmen's compensation costs are approximately three times what they are in the State of New Jersey; in New York they are about one-third higher - I'm sorry, the New Jersey costs are about three times as high as Pennsylvania and Delaware, about one-third higher than New York and about twice those of Connecticut. That isn't to say that there is an exact comparison that exists between the compensation provisions of those states or that we are trying to put ourselves back on an exact plateau with Connecticut, Delaware, Pennsylvania or New York. But what we are saying is that these factors are significant and should be considered by us in making determinations as to whether or not the Workmen's Compensation Act should be improved, should be amended. And in addressing yourselves to any amendments, I think you must come back to the fact that our costs have skyrocketed right off the page.

There are several significant reasons, I think, for the increase in the cost of workmen's compensation in New Jersey. Of course, we've all heard the term "nuisance award" bandied about and certainly in the minds of the members of the State Chamber of Commerce the nuisance award is a significant factor in our

workmen's compensation picture. And before any attempt should be made to examine the rates that are in effect in the State of New Jersey in the workmen's compensation area, we feel that your Committee should carefully examine the cause and the reasons for the magnitude of the funds that are expended in the nuisance area. Of course in the nuisance area we're referring to claims that come before the Division of Workmen's Compensation where there is little or any proof of loss of time, little or any proof of loss of function, little or any proof of expenditures, of doctor's bills. And let me say that these cases represent a significant portion of the nuisance award situation. And the employers in the State of New Jersey, I think, are concerned that the dollars that they spend for workmen's compensation, and we recognize that this is a laudatory, worthwhile, absolutely necessary program, but those dollars ought to be appropriately directed to the most deserving beneficiaries.

We think one of the ways to correct the matter of the nuisance situation, that is where there are awards without any evidence of permanent impairment or loss of function, is to come up with a definition which would give our courts, give our judges, give our referees some standard by which they can make judgments with respect to the legitimacy, if you will, or the equitability of paying claims for alleged disabilities.

That definition might be as follows. It appears in A-202 and we commend it to you for your consideration. We cite:

"Disability total in character and permanent in quality and disability partial in character and permanent in quality, shall mean a permanent impairment caused by accident or compensable occupational disease which restricts the function of the body or of its members and which also lessens an employee's working ability and which is accompanied by demonstrable objective evidence."

Too frequently we see a number of nuisance cases where there is no real objective evidence of the man's disability. The man complains of a feeling or of a concern but there is no visible evidence of the impairment of his function and we think that to put the definition of permanent disability, which appears in our statutes, into its proper focus and take it away from the situation that we find in workmen's compensation today where we really aren't talking permanent disability, we're talking existing disability, and on the basis of existing disability claims are paid. I think as you look back in the history of the statute the intent was that workers who are injured on the job or who suffer work-connected injuries, those men are entitled to compensation if in fact they suffered a permanent impairment.

So we would suggest to you that perhaps this definition would be of great help and great benefit in eliminating, in controlling and somewhat restricting the magnitude of the nuisance awards that are paid in the State of New Jersey today.

Another area that we think very definitely demands your consideration is the matter of the heart case. And we all know and we are all familiar with the fact that during the past eight or ten years the courts in the State of New Jersey have held with almost unbelievable frequency that if a worker suffers a disabling heart injury he's entitled to workmen's compensation benefits, with very little substantial proof that that heart injury was, in fact, work connected.

I think that we've seen cases in the State of New Jersey where a worker who suffered that heart injury has been able to recover almost on the basis of the fact that he was employed whether in fact there was a substantial unusual effort involved which precipitated his "work connected accident." We think the interpretations in New Jersey have, in fact, made the employer an insurer of the health of his employees and though all of us suffer natural deterioration of the heart our employers in fact are required to insure us from a workmen's compensation point of view against that natural deterioration.

We would suggest to you that to put the balance

of fairness back into this area of heart that corrective legislation is necessary. We think that the petitioner should be required to show by the believable evidence that such injury or death involved a happening or event beyond the normal routine duties of his employment without which that injury or death would not have resulted.

We believe that this legislation, if enacted into law, would be very salutary for the reason that employers look very carefully in the pre-employment physicals at the condition of perspective employees. And in many instances where a man appears in apparent good health yet has every indication that he might be a good candidate for a coronary, he often suffers from a real disability in finding a proper employment opportunity for himself. Furthermore, if he has once suffered a disabling heart injury, he suffers an impairment in his work opportunities in that employers are reluctant to put the man back in the same kind of job that he was in. This has some severe psychological effects on the man and in fact it hinders employers too. But if we could change the law in the State of New Jersey with respect to heart injuries, as we suggested, we feel that the employment opportunities would be opened up, we feel that employers would be properly held accountable and liable for truly work-connected, work-produced heart injuries

that are suffered by employees. But in so many of the cases that are occurring today - in fact, in the figures of the Division published in 1968 there were 780 heart cases which the Division indicated represented almost $6.5 million in awards. So we think that the magnitude of the number of cases, the magnitude of the number of awards justifies your very careful concern.

We would suggest too that the State of New Jersey has reached the time where it could very well benefit from an occupational hearing loss bill. We would commend for your favorable consideration Assembly Bill No. 656.

Assembly Bill 146 and Senate 443, which deal with appeals from the Workmen's Compensation Courts to the Appellate Division are recommended by the New Jersey State Chamber of Commerce. We recommended them last year, they were passed, they went to Governor Hughes and Governor Hughes conditionally vetoed similar legislation on the grounds that the then caseload in the Appellate Division was so severe that he could not at that time justify setting up a separate part or imposing upon the Appellate Division this additional caseload with Workmen's Compensation cases. He indicated in his conditional veto message too that at that time there were not sufficient funds to set up a separate part of the Appellate Division to

handle the Workmen's Compensation appeals. He opined at that instance that he hoped that perhaps in the year 1970, after July of 1970, funds could be made available to set up that separate part of the Appellate Division. So we would like to go on record, as did Mr. O'Brien, favoring the establishment of a separate part of the Appellate Division for the hearing of Workmen's Compensation appeals. We think this would really cut down the time from the filing of the petition to the ultimate determination of the case which would be of great benefit to the employee and of benefit to the employer as well.

We would agree too with Mr. O'Brien's position with respect to A-147 which would permit lump sum settlement.

We would also agree with Mr. O'Brien that the bill proposed by Assemblyman Parker be amended to provide that the direct settlement would have the force and effect of the claim petition.

The matter of recreational injuries, which are covered by A-150, we would favor. We think that by providing that unless there is a direct benefit to the employer that recreational injuries should be held to be noncompensable. We feel that this legislation would encourage more employers to provide recreational programs for the employees and would be of great

interest and benefit to the employees without penalizing the employer for exercising this kind of interest in his employees' welfare.

We would commend for your interest and consideration Assemblyman Vreeland's Bill, No. 202, which would increase the permanent partial disability benefits to $45.00 a week, would provide for the objective definition of permanent partial disability, which I referred to before, which would eliminate the two-thirds average weekly wage fluctuation and set a flat maximum for temporary total disability and which would provide and include some of the heart provisions that I've referred to.

You presently have pending before you several bills dealing with the Second Injury Fund. Assemblyman Fontanella spoke to one. There is also Assembly Bill 379 and Assembly Bill 404 which deal with the Second Injury Fund. We think that the focus of attention certainly should be on the Second Injury Fund but there are such serious considerations and involvements that a separate study should be made of this area. We would prefer, therefore, to go on record as being opposed to those bills that presently deal with the Second Injury Fund and to recommend to you that a separate study commission be created to really get into and study this area. From what I know, the Workmen's Compensation Study Commission touched on the matter of Second Injury

Fund but I do not believe that they really delved into the heart of that fund, the financing of that fund and the possible expanded utilization of that fund. And I think that any changes now by our Legislature would impose further drains on that fund that would be premature until all situations are studied.

With respect to Assembly Bill 148, which would extend from five to ten years the statute of limitations on occupational disease cases, we have not been significantly convinced that there is any occupation disease that justifies this kind of extension of our statute of limitations.

With respect to Assembly Bill 149, which provides that if an injured employee has submitted to physical or vocational rehabilitation as ordered by the Rehabilitation Commission there could be no review of his award on the basis of diminished disability, we are opposed to that. However, we would not be opposed to an amendment to that bill which would provide that an award could not be reviewed during the period that the individual was undergoing rehabilitation.

We would also favor the comments made by Mr. O'Brien with respect to Assembly Bill 81 which relates to the extension of the statute of limitations in death cases.

You have heard some comments with respect to Assembly Bill 216 which provides in part that the first

7 1/2% of permanent partial disability would be subject to the maximum current weekly compensation of $40 and that permanent partial disabilities that were held to be in excess of 7 1/2% would be otherwise treated. We think this is a fallacious approach to the matter of permanent partial disability. I really can't conceive that there would be much success in defending or representing to the Division that a case was worth less than 7 1/2% if in fact a case is worth more than 7 1/2%. I think instead of eliminating the nuisance award situation and the abuses that we feel exist in this area this would really open up a Pandora's box of further abuses that would aggravate a situation rather than resolve and settle some of the problems that exist in this area.

There is another bill that I would like to refer to and that is Assembly 309 which would modify the present law to exclude from the common law immunity certain persons who are in the same employ as the injured employee or the employee who was killed on the job, and we really see no reason or no evidence of any need to change the traditional principle that compensation is paid without regard to fault and because of that concept an employee has lost his right to proceed against his fellow employee or his employer on a common law basis.

You have heard sufficient testimony today with respect to the matter of making referees judges of compensation. We feel very strongly that this is a matter that the Division of Compensation should be concerned with and their recommendations and their rationale with respect to the wisdom of that proposed legislation should carry more weight than our own.

I would like to say that we are absolutely opposed to Assembly Bill 320 which would provide compensation for wages lost by the petitioner and by his co-employees who attend workmen's compensation hearings. I don't have a sufficient base in our controlled situation to think that we would be able to see that these witnesses attend only legitimate hearings. I think that by paying for the time lost in attending these cases we are in fact encouraging the unnecessary filing of unjustified claims.

Assembly Bill 407, about which you heard some comments earlier, is strongly opposed by the Committee.

I think in summary those are our comments and I think that we feel that the workmen's compensation area is a very, very proper subject for continuing review by the New Jersey Legislature. You can't act and review this in one year and then put it away and think we can forget about workmen's compensation for five or ten years in the future. It must be under continuing scrutiny in order to provide for the

employee who is legitimately suffering from a work-connected injury. We think, however, as we've indicated, that the costs of New Jersey's Workmen's Compensation are going really into orbit and justify your very definite concern for some of the abuse areas in our present program. We think that if the modifications and suggestions that we have made are favorably considered by your Committee that New Jersey will have a better economic climate, employers will be treated fairly and the employee who is injured on the job will receive the just compensation to which he is entitled.

Thank you very much.

SENATOR McDERMOTT: Are there any questions?

SENATOR RINALDO: I have a couple of questions, Mr. Mullen. Would you say that the major abuse in the Workmen's Compensation Law in New Jersey is the so-called nuisance or consolation awards?

MR. MULLEN: Oh, I think that very definitely is the major concern of the industries that are represented by the Chamber. I would have to agree to that, the nuisance award area and the heart situation.

SENATOR RINALDO: All right. Now, in the nuisance award area, could you tell me where or how the definition that you propose or endorse in Assembly Bill 202 was derived?

MR. MULLEN: It was derived from a study of the Workmen's Compensation Statutes which exist

throughout the United States. We attempted to examine statutory language that was in effect in various jurisdictions and then we attempted to take from that language which would provide a yardstick for our referees and our judges in making a determination as to whether or not a claimant was entitled to compensation for an alleged work-connected injury.

SENATOR RINALDO: Is this definition currently in the law in any other State?

MR. MULLEN: No. This definition as it is presently presented to you, to the best of my knowledge, does not appear in any statutory language in the 50 states in this Union.

SENATOR RINALDO: Would you further state that any major reform of the Workmen's Compensation Statutes in this State cannot take place, or any omnibus bill, cannot pass without an inclusion of this particular definition or some other definition that would eliminate the so-called nuisance or consolation awards?

MR. MULLEN: I don't see how we can get to point 2, which is the rates that should be paid to an employee injured on the job, - we can't get to the question of statute of limitations, we can't get to the question of so many other things unless we resolve the major problem that is facing employers today and, in fact, facing employees. I think attitudes build up between employer and employee sometimes because of this

nuisance award situation. And I think it very definitely is the first premise that you have to consider. We think, again, we're offering something to you that has not in fact been tried per se in other states of the Union and yet New Jersey has never been shy about moving ahead in the area of Workmen's Compensation, whether it was in the matter of the enactment of a statute, which we did in 1911, or whether it was in the matter of the heart injury or what; we've never been reluctant to move ahead and examine into the facts and circumstances and come up with appropriate rationales on matters of this type. So I would not be reluctant to take this step. I can't in all honesty say to you that if this definition were adopted X dollars would be saved on our compensation bills. I do think, however, that this definition or this yardstick would be available to the courts, to the judges and referees in the Division of Compensation, and would be a very legitimate hurdle over which an injured employee would have to jump. And I don't mean it's an unconscionable hurdle. It requires simply that the employee show by objective evidence that he has some loss of function. And I think, as I indicated before and I'm personally acquainted with a number of cases where there hasn't been a loss of function, there hasn't been any loss of wages, there has been almost negligible or de minimis medical bills. And I think that this

definition would be of great help and great benefit in permitting a control of an abuse situation. And I am sure that I speak for the employers represented by the New Jersey State Chamber that we would be very favorably inclined to favor other pending legislation if in fact this definition were enacted by the State of New Jersey.

SENATOR RINALDO: All right. Now we come to the point that I think I was trying to make. I agree with you completely when you say that it appears that a definition must be established before any of the other reforms can take place, before the rate question can be settled, the benefit question I should state properly, and, quite frankly, I took a very active interest in the Workmen's Compensation Laws before becoming a member of the Legislature and since becoming a member of the Legislature I have noticed that no major reforms have taken place and I will respectfully disagree with you when you say that the Legislature hasn't been shy because, quite frankly, - and I notice there are primarily employer representatives here - the Legislature has been shy, and it appears to me that one of the reasons seems to center around this particular definition, particularly because of your testimony that this is the definition that's needed. The testimony wasn't read but right here the testimony that's going into the record of the AFL-CIO

that it's just about the worst definition in the world, that it's too strong, that it will defeat the very purposes of the Act and, to be very practical about it, it further appears to me that both groups in this State, the employer representatives, on the one hand, the labor representatives on the other hand, are so powerful and so influential that we have in fact, during the past couple of years at least, reached an impasse where neither bill passes without one side giving in, in some respect, or the other side. So what I would like to ask at this point is, would you accept any other definition or do you have an alternative to present, a definition that perhaps would accomplish the same purpose but is not quite as strict, you might say?

MR. MULLEN: Senator, I don't think I have an alternative definition but I think there would be no question about the fact that the employers of the State of New Jersey would be willing to take a good hard look at an alternate proposal that might possibly achieve the same kind of result that we hope to achieve by this definition. I don't think we've closed our minds to other possible alternatives or avenues that may remedy some of the abuses that in fact exist in this area. We have struggled long and hard in trying to come up with this as a reasonable approach and we are convinced in our own minds that an employee who had a legitimate work-connected injury would not be prejudiced by this

definition.

However, again I would like to reiterate that if your Joint Committee came up with some alternative that you would want us to look at, we certainly would be very happy to give that our immediate attention and call our various subcommittees together and try to examine the pros and cons.

SENATOR RINALDO: Well perhaps as a suggestion it might be a good idea for your group to even take the initiative and come up with an alternative. The reason why I state this, quite frankly, is in an endeavor to be helpful because I saw what happened the past two years on similar legislation with this definition and I see what's happening this year. It appears to me to be a major stumbling block to any reform and certainly reform is needed because of the high cost of compensation in this State and the small amount of compensation dollar that actually goes to the injured workman. This certainly indicates that something is drastically wrong and it has to be corrected. But it also appears to me that unless this impasse, the determined attitude on both sides to have it their way or not at all, is resolved and ended once and for all that real reform isn't going to take place and we're going to drag on like this year in and year out with the same type of hearings, the same positions by both sides and nothing really happening, and it

distresses me to see nothing happening.

MR. MULLEN: Well, I think I can guarantee to you that our positions are not so fixed or not so inflexible that we can't examine other alternatives. I would suggest to you, however, that the alternative of having two separate rates for injuries that are minor injuries and major-minor injuries is ludicrous. If anyone thinks that that's the answer to the Workmen's Compensation cost problem in New Jersey today, they're just dreaming because from my limited experience in working within the Workmen's Compensation Courts it just is inconceivable that any results could accrue other than an increase in the magnitude of the award to the individual.

SENATOR RINALDO: Thank you.

SENATOR McDERMOTT: Thank you, Mr. Mullen.

MR. MULLEN: Thank you.

SENATOR McDERMOTT: Mr. James Horan.

Mr. Horan, would you please state for the record your association?

J A M E S R. H O R A N: My name is James R. Horan and I am President of New Jersey Motor Truck Association with offices at 160 Tice Lane, East Brunswick.

The New Jersey motor Truck Association is a trade organization composed of over 900 member companies representing motor truck owners and allied industry groups of every type and description.

WE APPRECIATE THIS OPPORTUNITY TO EXPRESS OUR THOUGHTS ON THE SUBJECT OF WORKMEN'S COMPENSATION GENERALLY AND TO ADDRESS OURSELVES SPECIFICALLY TO SOME OF THE BILLS BEFORE YOU THIS MORNING.

WE ONLY WISH WE HAD MORE EXPERTISE ON THESE MATTERS SO THAT WE COULD MAKE A SUBSTANTIAL CONTRIBUTION TO THE WEALTH OF INFORMATION THAT WILL BE BROUGHT TO YOUR ATTENTION TODAY; WE FEEL CONFIDENT HOWEVER THAT MUCH EXPERT TESTIMONY WILL BE GIVEN AND WE NEED NOT APOLOGIZE THEREFORE FOR ADDRESSING OURSELVES TO THE PROBLEM WITHIN THE PARAMETERS OF ORDINARY BUSINESSMEN WHO ARE FACED WITH RISING COSTS ON ALL SIDES.

IN THAT CONTEXT WE APPROVE OF ASSEMBLY 202 WHICH ELIMINATES A FLUCTUATING MAXIMUM AND SETS A FLAT RATE; WE APPROVE OF INCREASING THE WEEKLY MAXIMUM SCHEDULE. WE OPPOSE ASSEMBLY 216 AND ASSEMBLY 407 SINCE THEY WOULD CONTINUE THE FLUCTUATING MAXIMUM.

BUT RATHER THAN SPEND FURTHER TIME ON THESE BILLS PERMIT ME TO FOCUS YOUR ATTENTION ON CERTAIN INEQUITIES WHICH OUR MULTI-STATE CARRIERS HAVE BROUGHT TO OUR ATTENTION.

THE MANUAL RATE FOR TRUCK DRIVERS, CLASS 7219, is:

$5.98 IN NEW JERSEY

$3.50 IN NEW YORK

$3.00 IN MARYLAND

$2.35 IN DELAWARE

$2.25 IN PENNSYLVANIA

ONE MEMBER WITH ANNUAL PAYROLL COSTS NEAR $2,000,000. ADVISES THAT LAST YEAR HIS WORKMENS COMP COST IN NEW JERSEY EXCEEDED 10% OF HIS PAYROLL WHERE AS IN NEW YORK IT WAS 6 1/2% AND IN PENNSYLVANIA 3 1/2%. HIS EXPERIENCE IN ALL THREE STATES WAS RELATIVELY THE SAME.

ANOTHER MEMBER STATED THE CASE DIFFERENTLY BY CITING THE FOLLOWING FIGURES AS ACTUAL COST PER $100. OF PAYROLL:

$4.52 IN NEW JERSEY

$1.99 IN DISTRICT OF COLUMBIA

$1.75 IN DELAWARE

$1.65 IN MARYLAND

$1.26 IN PENNSYLVANIA

THIS ALARMING DIFFERENTIAL COULD PERHAPS BE BETTER UNDERSTOOD IF THE DISABILITY SCHEDULE WAS WEIGHTED HEAVILY IN NEW JERSEY'S FAVOR. THE OPPOSITE IS HOWEVER TRUE.

IN A PUBLICATION RELEASED BY THE UNITED STATES CHAMBER OF COMMERCE COMPARING BENEFITS AVAILABLE IN MARYLAND, NEW YORK, PENNSYLVANIA AND NEW JERSEY, OUR STATE RUNS A POOR THIRD; THE BENEFITS IN NEW YORK IN SOME CASES ARE ALMOST 100% GREATER THAN IN NEW JERSEY.

FOR EXAMPLE: $17,080. CAN BE AWARDED IN NEW YORK FOR THE LOSS OF A HAND, WHEREAS $10,500. IN PENNSYLVANIA AND $9,200. IN NEW JERSEY IS AVAILABLE FOR A SIMILAR INJURY. LET ME EMPHASIZE AGAIN THIS IS DESPITE THE FACT THAT WORKMENS COMP COSTS IN NEW JERSEY ARE 60% HIGHER THAN NEW YORK AND 160% HIGHER THAN IN PENNSYLVANIA.

IT'S NOT DIFFICULT TO IMAGINE THEREFORE THAT ALL OTHER FACTORS BEING EQUAL AN EMPLOYER WILL LOCATE IN AN ADJOINING STATE RATHER THAN BE ATTRACTED TO DOMICILE IN NEW JERSEY AND BE SUBJECT TO PROHIBITIVE WORKMENS COMPENSATION RATES.

THE RATES OF COURSE ARE A REFLECTION OF THE COST AND A SUMMATION OF THE EXPERIENCE. AND WE COULD CITE ANY NUMBER OF SPECIFIC INSTANCES OF GLARING INEQUITIES THAT DRIVE UP THE COSTS.

WE CHOSE ONE AS BEING REPRESENTATIVE. OUR EXAMPLE COMPARES TWO FORMAL AWARDS ISSUED WITHIN TWO MONTHS OF EACH OTHER TO TWO DIFFERENT EMPLOYEES OF ONE OF OUR MEMBER COMPANIES:

EMPLOYEE A LOST THREE WEEKS FROM WORK WHEN HE SUFFERED CONTUSIONS OF THE SKULL, BACK AND ANKLE AS HE SLIPPED IN GETTING DOWN FROM A TRACTOR AND HIS AWARD TOTALLED $1,100.

EMPLOYEE B WAS AWARDED $1,320. ALTHOUGH HE ONLY LOST ONE DAY FROM WORK WHEN HE SPRAINED HIS THUMB IN SHIFTING A GEAR LEVER.

WE RECOGNIZE THAT NOTHING IN THE BILLS BEFORE YOU TODAY WILL CURE THIS TYPE OF SITUATION BUT WE SINCERELY HOPE THE COMMITTEES AND THE LEGISLATURE IN ITS WISDOM WILL CONCERN ITSELF WITH CURING THE ADMINISTRATIVE PROCEDURES WHICH PROVIDE AWARDS WITH LITTLE RELATIONSHIP TO EQUITY AND WHICH CAUSE AN EMPLOYERS WORKMENS COMPENSATION COSTS TO SKYROCKET ALL OUT OF PROPORTION TO THAT WHICH IS PAID OUT IN SURROUNDING STATES.

WE THANK YOU AGAIN FOR THE OPPORTUNITY TO ADDRESS YOU THIS MORNING.

SENATOR McDERMOTT: Mr. Horan, Assemblyman Haelig would like to ask you a question.

ASSEMBLYMAN HAELIG: Sir, could you very briefly tell us how it is that the specific award that you mentioned before which is possible for the loss of a limb is so much higher in New York State than it is in New Jersey yet you have the accompanying situation that the total cost apparently in New Jersey is significantly higher for Workmen's Compensation to the employer than it is in New York State?

MR. HORAN: The reason obviously is in the structure of their rates payable for those items.

ASSEMBLYMAN HAELIG: Does this relate directly to the question of nuisance claims as we heard mentioned before in prior testimony?

MR. HORAN: Not directly, I don't think. It sets the rates in the case of New York, for example. The volume of nuisance cases in our State would contribute to that no doubt.

ASSEMBLYMAN HAELIG: Does this come about because of a difference in the New Jersey law as compared to the law in New York State or in Pennsylvania, the volume of nuisance complaints I am talking about?

MR. HORAN: Yes, I certainly feel it does.

ASSEMBLYMAN HAELIG: Is there any legislation before us today that would, in your opinion, correct this situation?

MR. HORAN: 202 would contribute a lot to this

correction.

SENATOR McDERMOTT: Thank you very much, Mr. Horan.

Mr. LeRoy Thomas. Mr. Thomas, will you please identify yourself for the purpose of the record?

L E R O Y S. T H O M A S: I am Leroy S. Thomas, President of the South Jersey Chamber of Commerce.

Mr. Chairman, I have submitted the written text of my statement. In consideration of the valuable time of this Committee and also not to be redundant with the statement previously made by the representative of the New Jersey State Chamber, I would prefer, with your permission, to have this brief personal appearance show evidence of the concern of our Chamber as to this subject and rely on our written statement to convey to your Committee the feelings of the some 500 businessmen who are members of our organization. (See p. 156)

SENATOR McDERMOTT: Well, thank you very much, Mr. Thomas, for your written presentation. It is part of the record and we sincerely appreciate your presence. Thank you again.

Mr. Richard Williams. Mr. Williams, will you please identify yourself for the purpose of the record.

R I C H A R D W I L L I A M S: I am Richard Williams, Chairman of the Legislative Committee for the New Jersey Self Insurers' Association.

We are grateful for the opportunity to present

our comments at the hearing and since we have a written presentation I will not take up your time to read all of the material that is in it. (See p. 159)

I would like to make some brief comments on two of the bills, if I may, sir.

On 202 - this bill, which includes an objective definition of permanent partial disability which we hope will correct the nuisance and consolation award problem, is favored by our Association. Other features of the bill which we feel would be most favorable to establishing a sound and equitable Workmen's Compensation Law in New Jersey are as follows:

It would eliminate the 2/3 of average weekly wage fluctuating maximum and sets a flat $90 maximum rate for permanent total disability, temporary total disability and death. It would increase the maximum permanent partial disability benefits from $40 to $45 per week and provides additional benefits for enucleation of an eye or amputation of a major member of the body. It allows an employer credit for pre-existing disability. Provides for lump sum settlements. Eliminates appeals to the County Courts. Provides that compensation for cardiovascular disease is payable where the work effort or strain involved an event or happening beyond the normal and routine duties of employment.

We would also like to comment on Bill A-407.

This provides that the Director of Workmen's Compensation be appointed by the Commissioner of Labor and Industry without reference to the Civil Service Law instead of by the Governor with the advice and consent of the Senate as under the present law. We feel that this important appointment should be made by the Governor with proper senatorial approval.

We oppose the creation of an appeals board within the Division of Workmen's Compensation to review judgments issued by the Division. An appeal board controlled by the Commissioner of Labor and Industry is inconsistent with the generally accepted concept that an appellate body should be independent and free of any influences in the area in which it has been created to function. Benefit increases should be considered concurrently with the curtailment of the ever-increasing cost of minor permanent partial awards. We would consider increasing the maximum permanent partial disability benefits from $40 to $45 providing the bill contains an objective and sound definition of disability, as given in A-202.

I believe it is the Committee's knowledge that an employee can be awarded permanent partial benefits of $40 per week and still retain his regular wages and receive his regular wages. As a matter of fact, he usually does and this $40 payment, of course, is tax free.

If the injury is not severe, for example, a simple fracture without a residual disability and he receives permanent partial disability award, he would receive either his full wages plus the $40 per week or, if unable to work, he would receive 2/3 of his pay up to $91 a week which is tax free, in addition to the $40 permanent partial award. In all cases medical bills are paid in full. Let me cite two examples:

An employee was tightening a nut with a hand wrench, the wrench slipped off the nut and he struck the back of his hand on a sharp piece of metal, lacerating him. He went to first aid where the laceration was cleaned and a bandaid put on it. He received a permanent partial award of $184, although he never lost any time from work and continued to draw his regular wages.

The second example. An employee sustained a simple fracture of the right wrist. She continued to work full time and lost no wages. She filed a Workmen's Compensation claim and was awarded 34 1/2 weeks at $40 per week for a total of $1,380, in spite of the fact that this disability did not affect in any way her ability to do her regular job. This type of disability is classified as a minor permanent partial disability which accounts for over 55% of the Workmen's Compensation costs. In an overwhelming majority of such cases there is no time loss from wages.

Industry must make a strenuous objection to the free choice of physician concept. Under our present system, employers seek to provide the best medical care available. They do so from motives of sound economy. The better the care, the swifter the recovery and the lower the permanent disability. Treatment of industrial accidents almost constitutes a sub-specialty among the specialties.. Most physicians in the specialties see only an occasional industrial accident. The present method of medical treatment must be maintained because these physicians are highly expert in the care of industrial injuries and diseases, widely experienced and always readily available. Besides losing control of providing the required treatment, free choice of physician would increase industry's costs. In addition to the cost of maintaining its present medical facilities, employers would be subjected to uncontrolled outside medical costs. Dr. Warren Draper, Executive Medical Director of the United Mine Workers Health & Welfare Fund, attributed the failure of the fund's "free choice" concept to the fact that the doctors selected by the employees often were not the proper ones to treat the employee's injury or ailment. The expansion of the 2% Fund needs thoughtful consideration. As we recommended in our comments in the written presentation on A-379, we suggest that a study commission be appointed to con-

sider this subject.

Thank you, sir, for the opportunity.

SENATOR McDERMOTT: Gentlemen, any questions?

(No questions)

Thank you very much, Mr. Williams.

Ladies and gentlemen, we will now take a short five-minute break for several purposes. As you have noticed, we have two ladies here who have been working very assiduously since we started and I think we will give them an opportunity to take a short break.

Secondly, those of you who have come in after this hearing started and wish to testify, would you please come forward during the break and sign your name on the yellow pad.

Thirdly, I would like to remins those of you who have come here with prepared statements that if you wish you may present the prepared statement and forego the oral presentation. If so, we will make it part of the record and those of you who wish to follow that suggestion may comeup and approach us during the break and hand us your prepared text.

Thank you.

(Recess)

SENATOR MC DERMOTT: This hearing will now come back to order, please.

For the purposes of planning your day, this Committee will continue the hearing until one o'clock. We will then take a luncheon break for an hour and commence the hearing at two o'clock and continue on through the afternoon until we have heard all of the witnesses.

I have just been informed that another hearing has been scheduled in here in the Assembly Chamber for two o'clock. I thought it had been scheduled for the Senate Chamber, but they moved it over here. It will be an extremely brief hearing, I can assure you. It is on a highly technical subject, staggered Senate terms. Those of you who want to learn a little bit about the constitution of terms in the Senate are welcome to sit in, but I presume the hearing will last somewhere around five or ten minutes and then we will continue the Workmen's Compensation hearing.

Again I repeat, those who would like to present their testimony in a prepared statement, we are quite willing to accept their statement and make it part of the record.

Mr. Richard Brown, please. Mr. Brown, will you please identify yourself for the purpose of this record.

R I C H A R D B R O W N: My name is Richard Brown. I am the President of Suburban Transfer Service, Incorporated, in Carlstadt, New Jersey, and the Vice Chairman of the Employers Legislative Committee of Bergen County.

In behalf of the Employers Legislative Committee

of Bergen County, I have submitted a statement and I will make no further comments on the statement, other than to ask that it be made part of the record and to inform the Joint Committee that this statement was prepared by workmen's compensation experts from five of our leading corporations in Bergen County and was adopted yesterday by sixty some odd members of the Employers Legislative Committee of Bergen County unanimously at their meeting.

We originally did intend to have a witness come and testify on this. Unfortunately the witness became ill this morning, so I am serving a double function.

I had planned to testify as a small businessman who is seriously affected by what I feel to be an extremely inequitable workmen's compensation law in the State of New Jersey.

My company has less than 30 employees. Our field is department store transportation. We deliver the goods to the branch stores. Our competitors are mostly in New York State. One of the reasons we lose business to them is because they do have a substantially less costly workmen's compensation law. For this reason we support Assembly Bill 202. However, I do not feel that this bill goes far enough. I would like to give three brief reasons why.

About three years ago an employee came to me and asked for three weeks off in order to have a knee injury which he sustained at a baseball game taken care of. It had to be operated on. I said, "You can have the three weeks off,

but I am not going to give it to you with pay," which was what he was insisting upon. About a month later after he returned to work, one day I find a workmen's compensation accident claim coming across the desk covering this injury. Since the dispatch office is right under my office, that day later on when I heard him come in, I came right downstairs and confronted him before a number of witnesses with this fact that this was a baseball injury that he had sustained and had nothing to do with work. He admitted this readily in front of a number of witnesses and said, "Tough luck. I'm going to --" Well, I don't want to go into the exact conversation. It was crude to say the least. With this, I went to our insurance company's attorneys and said, "I think we should prosecute this case for fraud. We have witnesses. The man admitted this was a fraudulent claim in front of people." They said, "Forget it. You can't do anything about it." I went to my attorney. He studied a lot of case law. He came to the same conclusion. He could not find a single case in the history of the Workmen's Compensation Act, in the administration thereof, where anybody has ever been convicted of fraud.

The second story, even briefer: I called a man into my office recently who had filed for a claim and was about to be awarded a couple of thousand dollars. The attorney for that case is in this room. I confronted the driver and said, "You've lost no time. We paid all your wages while you were out of work for two or three days. We paid all your

medical bills. You have no permanent injury of any kind, do you?" He said, "No, I have no permanent injury of any kind." I said, "You used to be one of the most honest men I ever met. What has happened to you?" And he said, "This is easy to get and I need the money."

Now the third story regards a telephone conversation with a referee that I had one day after our safety man came back and advised that the case had not been taken up - it had been taken up in some sort of executive session with the referee - and our company was not given an opportunity to testify. I called the referee with regard to this and he said, "What do you care? The insurance company pays the bill."

Now the three points that I have made here are, first of all, that we have to do something in our statute to eliminate fraud or at least take some steps to minimize the possibility of fraud and not make it an open game. Number two - and a very important one - is the demoralizing effect on the working man that encourages an honest man to become dishonest because the law is too easy. And, thirdly, we need a much better administration of this law and referees and judges who don't take the attitude, "What do you care? The insurance company will pay the bill." Thank you.

SENATOR MC DERMOTT: Thank you very much, Mr. Brown.

[Statement filed by Mr. Brown in behalf of the Employers Legislative Committee of Bergen County can be found on page 168 of this transcript.]

SENATOR MC DERMOTT: Mrs. Susanna Zwemer, please. Mrs. Zwemer, would you introduce yourself for the purpose of the record.

M R S. S U S A N N A P. Z W E M E R: My name is Susanna P. Zwemer, President of the Consumers League of New Jersey and I have with me Miss Mary L. Dyckman and Mrs. Beatrice Holderman. We wish to discuss in depth the Second Injury Bill (A 273) and receive your comments and suggestions. Mrs. Holderman will read her prepared statement on A 273 and then, if time permits, we will briefly discuss the other workmen's compensation bills of concern to us, which are listed here. Thank you.

SENATOR MC DERMOTT: Thank you, Mrs. Zwemer.

Mrs. Holderman, would you identify yourself for the purpose of this record.

M R S. B E A T R I C E H O L D E R M A N: Yes, Beatrice Holderman, a member of the Board of the Consumers League and before retirement in 1968, Director of the New Jersey Rehabilitation Commission, and you can see why we are so deeply interested in this A 273.

First, let me say thank you for the opportunity of appearing with the Consumers League before you this morning. This bill and similar bills before, a little different in nature, have been before the legislative body really over a period of ten years, but nothing so far has been done. You have heard Dr. Kessler and some other people talk about

the real need for the kind of legislation which would encourage employment of handicapped people. I will try and abstract from the statement that you have before you because of time.

Basically in our work in rehabilitation we find all too often people who have really severe disabilities either caused by accident, disease or birth, after they have gone through all the phases of rehabilitation, medical, skill training, they can't find a position through a real fear on the part of the employers - not that he doesn't want to employ them, but he is apprehensive relative to the workmen's compensation benefits that he might have to pay as a first accident if an accident indeed occurs.

We need to be concerned about it in our state, I think - not "think" - I know - because of the number of people that we know that have handicapping conditions and yet are very able and capable of doing a job. For instance, someone who is born with a withered arm or may have suffered an accident where there is no arm, there may be some apprehension that this person can't do the kind of work that they should or that they would be prone to an accident. After an injury of any kind, whether it is work-connected or not, and the person submits to rehabilitation, goes through the rehabilitation process, he may indeed be able to do some work that he has never done before and do it much more effectively. I think most of you in this room know - I would hope you do - many people who are handicapped, whether it be in unskilled, the skilled, or the professional field, and who are making a

significant contribution to our society. So, therefore, it is important that there be the kind of climate to encourage employment of handicapped people.

Under the present law, the employer has no assurance of help from the Second Injury Fund because its use is so restricted. The fund can be used only for certain permanent and total disabilities. No medical care is provided and many of the most costly injuries, including death, must be paid for entirely by the last employer. The result is that many employers hesitate to employ the individual because, as I said, of fear of a heavy workmen's compensation cost.

The need for a Second Injury Fund that would pay part of the compensation for severe second injury, including both fatal and non-fatal, has long been recognized throughout the United States. There are, I believe - and Miss Dyckman can attest to this - at least 18 states in the nation at the present time that have enacted more liberal legislation relative to the Second Injury Fund. Our neighbor, New York, has and Florida and Minnesota - and I am talking about one with some safeguards - and I read the other day that North Dakota had enacted more liberal legislation in this field. There has been a concern, and certainly on the part of our fine Workmen's Compensation Study Commission, about this particular problem. In 1962, the Ozzard Commission was also concerned about this. The United States Department of Labor and the Council of State Governments in their attempt to come up with a model workmen's compensation law were also

concerned. And I know from personal experience in working cooperatively with insurance companies that they are anxious too for an improved Second Injury Fund. I think you know that there is a cooperative rehabilitation program between the Workmen's Compensation Division and the New Jersey Rehabilitation Commission and through this rehabilitation unit - I say this because it is important as far as this legislation is concerned - through this rehabilitation unit in Workmen's Compensation, people come to the attention of rehabilitation early and this makes all the difference in the world, both medical and attitudinal, in the desire to get out of a situation and know that you can get out of a situation which is pretty catastrophic. The people in this unit have worked with both the judges in compensation, the insurance people, and medical people, and all of them have been most cooperative in trying to as early as possible get the person to rehabilitation.

Measures to broaden the use of the Fund have been introduced, as I said before, over a period of years but have not been enacted really basically due to inadequate financing. The problem of financing has now been corrected by the establishment of a new and more adequately financed fund recommended by the Nimmo Commission and this change was made in 1968. A 273 provides for amendments to the new formula by providing that all self-insurers, including government agencies, shall pay their share of assessments. The fact that some government agencies have been entitled to

benefits from the fund without contribution to it has created some inequity.

The principal features of A 273 are:

It protects employers of handicapped workers by limiting their liability in second injury cases to the compensation needed in the first 156 weeks and the first $2500 of medical costs. Where the worker's condition requires benefits beyond these limits, the employer would be entitled to reimbursement from the fund.

It safeguards the Second Injury Fund from overuse by limiting its use to the very severe injuries. There would have to be an injury and medical costs over and above the 156 weeks.

A pre-existing condition is not limited as to type or case but must be serious enough to be a recognized and significant obstacle to employment. The subsequent injury may be any compensable injury including heart cases, but must result in a disability materially and substantially greater than the subsequent injury alone.

I believe you have a copy of the statement that accompanied the bill itself but was not included in the bill when it was printed at the early part of this legislative session.

You know that there are three parts to this bill and I won't go into that because of time. I will indicate here, however, and it is in the testimony, that the new plan for the broader use of the Fund begins on page 4, paragraph 3,

to the end, and you will note that the benefits apply from January 1, 1971, if the law is enacted,and indeed we hope it will be. Benefits for subsequent injuries incurred prior to this would be under the provisions of the old law.

I think it is important at this time to emphasize the definition which appears on page 4, paragraph 5 of the bill: "As used in this act ' previous permanent disability' means any previous permanent disability regardless of cause or type, including cardiovascular functional disability, which is or is likely to be a hindrance or obstacle to employment." Only then, as indicated on page 5, would the Fund reimburse for fatal and non-fatal injuries serious enough to have exceeded 156 weeks of compensation and the first $2500 of medical benefits.

We know too from our experience in working with the Workmen's Compensation Division that the percentage of the more seriously disabled is relatively small. This 156 weeks we feel would be an aid to safeguard the fund. In New York they have 104 weeks. This was enacted about 20 years ago and they found it has been helpful and indeed really limits some of the litigation process that is necessary.

In summation, the enactment of A 273 will encourage the employment of handicapped workers through broader and more equitable use of the fund. Effective safeguards are provided to limit the use of the fund to the more severe injuries and prevent its over-use, as indicated. We certainly urge your favorable consideration. Thank you very

much.

[Mrs. Holderman's written statement can be found on page 173 of this transcript.]

SENATOR MC DERMOTT: Thank you, Mrs. Holderman. Is there anything further, Mrs. Zwemer?

MRS. ZWEMER: We would like to make one comment from our prepared statement on Assembly 404 and I will ask Miss Dyckman to do it.

SENATOR MC DERMOTT: I see we have a team effort here.

M A R Y L. D Y C K M A N: I will be glad to do it.

Assembly 404 is a proposal to increase the benefits to totally and permanently disabled workers and the widows and children of those killed in years past when the rates were lower. One of the most unsatisfactory parts of our law is that there is no way to increase their rates when conditions change. Some of them are still being compensated on rates before World War II. As you can imagine, that's pretty low.

This bill proposes to give them supplementary benefits, bringing it up to what the rate would be for the same injury today, using the Second Injury Fund as a source of funds. The Consumers League has recommended doing that repeatedly. To our great regret, we cannot endorse that plan this year because the new Second Injury Fund as constituted does not promise, as far as we can see, to produce a big enough fund to do that as well as what it has to do if the Second Injury Fund program is to be adequate.

There are several other proposals before you in other bills to use the Second Injury Fund for purposes that are not directly second injuries, some of them very good. Of course, the fund could be increased to take care of those things, but it is financed by assessment on employers and carriers. It will have to be considerably bigger for the second injuries alone.

So our position on this is that while we think it is one of the most important proposals before you, one of the most important changes that need to be made, we have at the moment no planned suggestion for adequate financing and, therefore, can endorse it only in principle. That is on 404.

Now I would be glad to answer questions about our interest in the Fontanella Bill and our studies of it if anyone has any questions.

SENATOR MC DERMOTT: There are no questions.

MRS. ZWEMER: Thank you very much.

SENATOR MC DERMOTT: Thank you ladies for coming here today. We appreciate your presentations.

[Written statement submitted by Mrs. Zwemer on behalf of the Consumers League of New Jersey can be found on page 178 of this transcript.]

SENATOR MC DERMOTT: Mr. Jerry Finn. Mr. Finn, would you please identify yourself for purposes of this record.

J E R R Y M. F I N N: Mr. Chairman, my name is Jerry M. Finn. I am an attorney in Newark and practice with the law firm of Goldberger, Siegel and Finn. I am the Legislative Chairman for the American Trial Lawyers Association

and I am also the President of the New Jersey Branch of the American Trial Lawyers Association. As such, I have been privileged to criss-cross the country and observe personally in the field the work in other Workmen's Compensation Commissions and Divisions throughout the United States and contrary to the implication of some of the former speakers, I think we now have in New Jersey one of the finest workmen's compensation systems in the country.

Some of the reasons for that are that the Appellate Courts have been very forward-looking. The Legislature has kept up with changes. They have done much. There is much to be done. Some of these measures we will go into in brief; a resume and a formal statement will be presented to the Committee later. The third reason as I see our level of efficiency and competency is the staff itself. An administrative agency, as you know, is only as good as the staff that mans it. You can give them all the legislative help you are able to and yet the system may not succeed without the proper administration in the office and in the courts.

On balance, we have an extremely fine staff of hearing officials and of administrative officials within the offices of the districts of the Workmen's Compensation Division. The Legislature has seen fit, and wisely so, to make all Deputy Directors Judges of Compensation and later to increase their salaries to the level of the County District Court judiciary. However, there is existing a substantial anomoly between the Referees of Formal Hearings and the Judges of

Compensation, not only in the measure of their salaries. As you have heard from Dick Traynor, the Referees of Compensation are recompensed between $12,000 and $16,000 a year, while the level of the salaries of the Judges of Workmen's Compensation is now $27,000. This, as you can imagine, may very well create a morale problem within the Division. It is something which must be corrected and it is something which can be corrected if the measure, Assembly 310 now before the Committee, is passed.

Aside from the question of money - aside from the recompense to these Referees - there is an issue with respect to their authority and control and their ability to dispose of cases which should not be overlooked. You have heard that there are presently 44,000 pending claims before the Division. This number increases. The ability of the hearing official presently as a Referee to dispose of claims is limited. They have substantial lists - sometimes daily between 35 and 40 cases. They do not presently have the authority to control the disposition of many of those cases where there is no agreement between counsel to give them that authority. I submit to you that with the passage of this legislation, not only will the discrepancy in salary be corrected, and I don't mean to overlook the seriousness of that, but their ability to dispose of cases will be greatly increased and therefore the efficiency of the Division of Workmen's Compensation of New Jersey will be enhanced.

This is Earth Day and throughout the country we will be hearing all kinds of warnings about how air pollution

and water pollution will destroy systems which we treasure and which we need for our survival. I have an Earth Day prediction with respect to the Division of Workmen's Compensation. I submit to you that if this situation with respect to Hearing Officials is not corrected, the Division of Workmen's Compensation will die of morale pollution and caseload pollution. I think it is that serious.

There is a question which has been raised by some outside of this Chamber concerning three men who are presently serving as Referees, Formal Hearings, for Workmen's Compensation who are not attorneys. I think it is worthy because of the individuals involved that we consider them as individuals. They are John Boltas, John Burke and Emil Calcagni. The baby of this group with respect to length of service in the Division of Workmen's Compensation of the State is Emil Calcagni. He came into the Division in 1948. The other two, Mr. Burke and Mr. Boltas, both came in in 1934, John Burke six months later than John Boltas. These men are as competent as any men presently hearing cases on any level in the Division of Workmen's Compensation to wear a robe, to be called a Judge, to have the authority to decide cases. I may say that during the course of their service to this State, they have literally decided hundreds of thousands of cases. I think there should be no question that A 310 should include a grandfather type clause, such as we have in the Tax Division and the qualifications of Magistrate, to preserve this title for these highly-competent, highly-respected men, respected by

the Bar, respected by their colleagues. They too should be Judges of Compensation. They should be compensated on the same level as their colleagues.

With respect to other bills pending, the American Trial Lawyers Association is strongly opposed to Bills A 202 and A 656. I am always touched by the concern of certain witnesses on behalf of certain interests for the injured working man rather than the employer's pocketbook.

With respect to Senator Rinaldo's question concerning definition, I feel, sir, that there is no need for a further definition other than that which we now have. Under our present law, a case which involves no permanent disability should not be compensated. I think this gets back to a question of competency of the hearing official. If we have continued competent hearing officials being paid substantial salaries, those cases which are not compensable which do not concern permanent injury will not be compensated.

I might point out to you in that respect - we have heard something about frauds in the Division of Workmen's Compensation - our statistics reveal that in 1958 there were approximately 251,000 reported industrial accidents. I stress the word "reported" because I am confident that there are many, many more thousands which just never get reported because the workman himself either is not aware or feels that they are minor in nature and not worthy of reporting. Of those 251,000 cases, only 67,000 of them were compensated through the Division of Workmen's Compensation. Now there

are certain obvious conclusions which can be drawn from that. Obviously, from time to time there are frauds in every system. But certainly the number of frauds which we encounter in the Division of Workmen's Compensation is minimal at most.

The American Trial Lawyers Association, New Jersey Branch, favors the bill of Mr. Parker, Assembly 216, which bill was substantially in accordance with the Study Commission of 1968 Report. It is a reasonable compromise, we feel, and we do support it.

We support A 407. We support A 146 and we support in principle A 404, which is the Second Injury Fund increase, although,as was previously stated, we have no suggestion at the present time for the financing of that particular bill. We do support it in principle.

We support A 146, the Lump Sum Bill. We support A 81, the one year statute of limitation death claim bill. We support A 149, the Rehabilitation Bill.

In conclusion, gentlemen,through such hearings as this and through the foresight of our Legislature, I am sure that the Division of Workmen's Compensation and the law of Workmen's Compensation of the State of New Jersey will continue to be in the forefront throughout the country. Thank you.

SENATOR MC DERMOTT: Mr. Finn, Assemblyman Haelig wishes to ask a question.

ASSEMBLYMAN HAELIG: Just very briefly, sir - you

alluded to the New Jersey system as the best in the country.

MR. FINN: Well, I said one of the finest.

ASSEMBLYMAN HAELIG: One of the finest - excuse me. Yet we heard considerable testimony here earlier this morning that nuisance claims have been successful where injuries resulted in no loss of work, no loss of function, and no real disability, and they talked in terms of $600 or $800 or $1200 or $1300. We also heard testimony to the effect that the workmen's compensation costs in New Jersey are substantially higher than they are in other surrounding states. I wonder if you would address yourself to these two areas of concern.

MR. FINN: I must confess, Assemblyman, that I haven't made a comparative study with respect to the rates and I am really not competent to answer that question.

With respect to the nuisance cases, I abhor that definition or that word. I don't think there is such a thing as a nuisance case. I think each case must be considered on its merit and with all due respect, I don't think an $800 or a $1200 case is a nuisance case. I think that $800 or $1200 case, if the rates were properly fixed - if the benefits were properly fixed - would be a $2400 case or a $1600 case if the man were being properly compensated. And I think that built into our law, you have defined in your question to me a case which is not compensable and for which a man should receive no compensation. If you tell me that a man lost no time, if you tell me that he has lost no function, if you tell me that he has no real permanent injury, he

should be turned away at the gate. Many of them are and perhaps more should be. However, I will accept your definition if you want to call it a nuisance case, although again I dislike the term. But if that is your definition of a nuisance case, I accept it fully and I say that man should recover no workmen's compensation and I suggest to you that under the present status of the law he would not recover or should not recover.

SENATOR MC DERMOTT: Senator Rinaldo has a question.

SENATOR RINALDO: I think my question has been answered by your response to Assemblyman Haelig's question. But certainly I think that as a result of the testimony here today and cases that have previously been submitted to us and to me in particular by employers, it appears obvious that there are instances where there is no loss of time, there is no disability, the person is still receiving an award, and this certainly is grossly unfair both to the employer and particularly to the employee. This is one area, I think, where both management and labor agree that the employee is not getting his fair share because the wrong people are being compensated.

Now if you feel that this inequity is already covered by our existing law yet it isn't being handled properly, what is your answer? Since you say that no new legislation is needed inasmuch as you testified that a definition of disability is not needed, and assuming for the moment that we accept the fact that these cases or awards are being handed

down, how would you propose that this problem be corrected?

MR. FINN: Well, you asked me to accept the hypothesis which has not been proven to me frankly. There are cases of smaller awards. To me, these are not nuisance cases. Each case, as I said before, has to be judged on its merits. I know of no statistic anywhere where a breakdown has been made of the validity of a $600 case as opposed to the non-validity of a $600 case. I am sure there are cases reported to you by employers where the employer felt his employee should not recover. I submit to you, sir, that that issue has been judged by a competent Judge of Compensation who has made the determination that the distinguished Assemblyman has referred to, and that is, that there is in fact a permanent disability. In other words -- I'm trying not to beg the question and yet I am saying to you that you include in your question to me a definition which I am not willing to accept. I am not willing to accept that on a wholesale basis persons who are not disabled are recovering. I don't think that is a fact.

SENATOR MC DERMOTT: Thank you very much, Mr. Finn.

Mr. Andrew Kalmykow. Mr. Kalmykow, would you please identify yourself for the purpose of this record.

A N D R E W K A L M Y K O W: Mr. Chairman and members of the Committee: My name is Andrew Kalmykow. I am Counsel for the American Insurance Association, an organization of casualty and property insurance companies, most of which write workmen's compensation insurance in New Jersey, as well

as throughout the United States. I deem it a distinct privilege to appear before you here today.

I have prepared a statement which I have presented to you. But the purpose of my remarks this morning is to introduce a slight sense of urgency to these proceedings.

I had occasion not too long ago to appear before a somewhat similar Committee of the United States Congress, chaired, incidentally, by two distinguished Representatives of the State of New Jersey, and they indicated the question of compensation was fairly high on their agenda as a matter of interest. So we have here not only considerations of statewide importance but considerations of national importance with somebody looking over your shoulder. And the solutions which they might find might well be detrimental to the interest of a particular locality. So I would urge very strongly that in this particular area that we have been discussing here today - and I have especially in mind the partial disability problem - that some resolution of that question be made. It is high time some sort of compromise were achieved in this case.

I think some people have lost sight of the fact that maintenance of the status quo in this area condemns people who have suffered serious injuries to a low scale of benefits. I have had occasion to defend this system and it is very hard for me very frankly to be able to answer why in the great State of New Jersey $40 a week for partial disability, and that includes severe injuries, is also

applicable. I think that in this case it is only logical and fair to provide compensation for these injuries that either have a loss of use or complete loss of a member or affect working ability. That is the rule that is applicable in practically every state in the country and certainly that seems to be a fair criterion of compensability and I urge that upon you, but I think even more important - there are various ways in which this problem can be handled - is a resolution of this problem to the satisfaction of everybody.

The other brief mention that I want to make goes back to the Second Injury Fund. As insurance carriers, we are vitally interested in rehabilitation and we have had the pleasure of working with Mrs. Holderman and it has been very helpful throughout the years. But I notice that one bill here, Assembly Bill 216, would load the fund with all kinds of charges that do not properly belong on Second Injury Funds and also I am quite hazy as to what cases are payable out of the fund and which are not and I think that may very well add to the problems rather than to detract from there.

There is the bill that has been mentioned, Assembly 273, and I think if you are planning to broaden the fund that might well serve as a vehicle. But there should be some changes made, such as knowledge on the part of the employer and possibly indication in a more definite way as to what constitutes a handicap, what is the pre-existing condition that is payable out of the Second Injury Fund.

Thank you, Mr. Chairman. If I can be of any help in answering any questions, I would be very happy to do that.

SENATOR MC DERMOTT: Thank you very much for your presentation, Mr. Kalmykow.

[Written statement submitted by Mr. Kalmykow can be found starting on page 180 of this transcript.]

SENATOR MC DERMOTT: Mr. Ted Peirone. Would you please identify yourself for the purpose of this record, Mr. Peirone.

T E D P E I R O N E: My name is Ted Peirone, Vice President of Getty Machine and Mold Company, Passaic County. I am here today as Chairman pro tem of the Social Insurance Subcommittee of the State Employer Legislative Committee. I will present to you the representative views of the more than eight hundred member companies of the ELC in New Jersey, that together employ close to three-quarters of a million people in this State.

I am going to skip part of the prepared statement to save time.

Along with the increased costs of doing business, we are extremely concerned with the rapidly rising costs of workmen's compensation. Besides the fact that the benefits costs rise with the increases in average earnings, there is the very real problem of mushrooming costs of medical and hospital services, which are constantly adding to the workmen's compensation cost burden.

On the other hand, we very much want to deal with

the hardship of the injured employee, who is disabled and must cope with continually rising living costs at a time that his earning capability is curtailed due to occupational disability.

To briefly state our desire, we want to increase benefits, but not for those who have no residual disability, and whose only claim to benefits appears to be that they were involved in an accident.

We recognize that much legislation that has been introduced this year is constructive.

Assembly No. 147, with its provision for binding lump sum settlement, is a good bill. It includes protection for the employee through representation by his attorney and approval of a judge of compensation, and finalizes an agreement by all parties.

Assembly No. 150 is good legislation which relieves the employer of responsibility for incidents which occur during social or recreational activities, and are not for the benefit of the employer beyond health and morale improvement of employees.

Assembly No. 379 shows a keen understanding that something must be done to fairly remove the responsibility from the latest employer for injuries and handicaps of previous vintage, if such handicapped people are to obtain employment of their own choices and skills. However, payment for this from the "second injury fund" will not change the problem, since the cost of the pre-existing condition is

not removed and, in most cases, is duplicated where an award has been paid for the original injury.

As employers who are aware of abuses and shortcomings through actual and close experiences, we offer the following, based on these experiences.

We are opposed to bills which would increase the time limitations for instituting and reopening claims. An example is Assembly No. 81, which would allow opening claims within one year after death. After long periods of time, most records become lost or destroyed, and it is quite impossible to locate witnesses able to recollect events which happened five, six and more years before, negating the establishment of facts at such belated hearings.

Assembly No. 149 prohibits a review on the grounds of diminished disability if the injured employee has submitted to rehabilitation. We can see no reason why it is not right to modify compensation regardless of how it came about that the disability diminished. This bill would discourage employers and insurers from financing and making available rehabilitation.

Mandating the choice of physician to the employee, as in Assembly No. 407 and Senate No. 193, would open the door to costly and unscrupulous practices. Employers use the best qualified doctors and medical facilities, as this is the best way to keep costs down and quickly return the employee to his job. With free choice of physician, many fine in-plant facilities will have to be eliminated, and the result will be delayed medical attention and less qualified

first aid. Doctors handling many compensation cases naturally have the expertise and facilities required, through much experience. Free choice would bring in family doctors who, in many cases, could not give as expert and ready treatment as would those constantly handling work-related injuries.

Assembly No. 309, opening liability at common law, would also tend to discourage in-plant personnel from on-the-spot first aid. This bill could result in more severe disabilities, and even in unnecessary deaths, by placing the "good Samaritan" in jeopardy.

Another bill that would increase litigation and costs, is Assembly No. 320, which would require employers to pay employees for time spent at hearings, even though the purpose of the hearing is to make claim against the employer. This parallels S 400, whereby the employer would have contributed to a fund which would be used to finance a strike against the employer. In the case of severe injury, the wage loss would be minor compared to the amount of award. For minor injury cases, this provision would increase costs and the quantity of hearings.

Because of our critical concern over high costs mentioned earlier in this statement, we are naturally opposed to Assembly Bills No. 216 and 407, as well as to Senate Bill No. 193, for their many high cost factors, such as the increases in benefits and the duration of benefits, without enough concern to corrections in other areas to help offset inequities.

We feel that Senate No. 441 opening workmen's compensation benefits to a new group, public employees who already receive disability pensions from another source, will suddenly add a great deal of cost. Why were they excluded up until now?

From the foregoing, we hope to have simply stated how we feel about changes proposed in the law. We have saved for last Assembly No. 202, which appears more than any other bill to go part of the way towards fulfilling our desire to increase benefits and reduce inequities.

A 202 recognizes, as do employers, that a large part of workmen's compensation costs goes into awards where there is no residual disability, awards for injuries that are not truly "disabling," injuries that do not really impair and lessen the employee's working ability, meriting an award beyond compensation for lost time.

The natural result is that these awards are made at the expense of those who are truly, permanently disabled and whose abilities are really impaired.

We believe that the revision to a set weekly maximum compensation, the elimination of liability for pre-existing injuries and cardiovascular conditions, and the definition of partial disability permanent in quality, will create enough savings without unfair treatment that benefits for the truly disabled and impaired could be meaningfully increased, as they are under A 202, and still provide a cost climate that will be acceptable to employers.

Thank you for your consideration.

[That portion of Mr. Peirone's statement which he did not read can be found on page 188 of this transcript.]

SENATOR MC DERMOTT: Thank you very much, Mr. Peirone.

Mr. Joseph Smith. Mr. Smith, is that Mr. Walker with you?

MR. SMITH: Yes.

SENATOR MC DERMOTT: Are both of you going to testify?

MR. SMITH: Just one.

SENATOR MC DERMOTT: Mr. Smith, will you identify yourself for the purpose of this record.

J O S E P H W. S M I T H: I am Joseph W. Smith, President of the Taylor Wharton Company at High Bridge, New Jersey. We are the oldest continuous producer of iron and steel, having started in 1742

We came here today because we have a notice that said you are interested in listening to employers, that you didn't want a polished statement, we are to state our views simply and directly, and that's what you are going to get.

We have a plant at High Bridge, New Jersey, that employs 300 people and our workmen's compensation cost in 1969 amounted to $203,000. We also have a comparable plant at Easton, Pennsylvania, which is 15 miles away, employing 350 people and our 1969 workmen's compensation cost was $14,500. We have at present some 138 occupational disease cases pending out of the 300 employees. Since January of 1969, we have had 96 new cases filed. These 138 cases that

I am talking about are principally those which involve respiratory, heart, neuropsychiatric disability and hearing loss. We are not speaking of any claims for broken legs or cuts, bruises, what not.

Our workmen's compensation cost is about at present here 5 per cent of our sales dollar. And frankly with the present trend, we are not confident just how much longer we can go on.

In 1966 we had an employment of 550 people. Our decision was to shrink this back as much as possible in order to reduce or cut back on the adverse effect of this workmen's compensation situation and we are down to 300 now. By the same token, we have expanded in our other plants in Pennsylvania and one in Ohio and one in Birmingham, Alabama, by at least that many people. We are a division of Harsco Corporation which has many plants throughout the land. We have a lot of land at High Bridge, New Jersey, which is zoned industrial and on numerous occasions have been turned down by the corporation to expand on that available land because of the bad experience in workmen's compensation at the High Bridge Plant.

We have cases where men take off 6, 8, 10, sometimes even 20 at a time to gather together in cars and on one occasion we understand a bus to go to the attorneys to file a claim. We had such an example as late as last Monday when suddenly 7 people were off on personal business and we can assume that within 3 weeks or so we will receive another set

of these claims here. The claims that I am talking about that are paid or the awards which were made, I should say, involve loss of time that represents the employees taking off for that day to file a claim. The awards, of course, go anywhere from a few hundred dollars to several thousand dollars for various things.

Some cases in point - we have a very modern pattern shop, a wood pattern shop, and on retirement one of our pattern makers filed for loss of hearing and received an award in excess of $3,000. There is probably nothing more peaceful or clean than working in a wood pattern shop. In fact, most of our employees have radios and they listen to music while they are in there. We have truck drivers who have driven trucks throughout their full employment and have filed and have collected for loss of hearing. We have a case where an individual broke his leg and while the leg, itself, cost us around $18,000, we weren't too bothered by that except when they came along and filed for lungs at the same time and filed also for heart. He collected on the lungs and we presume he is going to collect on the heart, which presumably is aggravated by the broken leg. Then we begin to wonder about the entire situation.

I think if we have made a mistake in our particular situation it is because we did not make public our experience. We didn't make it public because we were hopeful that it might have been an early rash several years ago that ran through the organization and that the experience would drop

off, but this is not the case. It is increasing each year.

I think that once people in other industries who have not been affected by this learn how easy it is to collect for hearing loss or for heart, they too will take this easy road to get more money.

We don't know the answer. We do know that we like the experience we have had in Ohio and the way that the compensation is administrated there. We like the experience in Pennsylvania too. We think it is fair - fair to the employees and to the company alike. We highly question the need to have all of these moneys tied up with insurance carriers on these claims which are pending and that amounts to thousands and thousands and thousands of dollars. We question whether the entire area of workmen's compensation might be better administrated directly as a state activity, such as unemployment compensation. Certainly with the experience we have had, this record of ours, which is 228 years old now, cannot long endure. Thank you.

SENATOR MC DERMOTT: Mr. Smith, do all of the claimants have the same attorney?

MR. SMITH: We have here since January of 1969 - 63 claims came from one firm, 28 from another and then 3 firms had the balance - one firm had three and the others one each.

SENATOR MC DERMOTT: So you are saying that one firm really had the majority of the claims?

MR. SMITH: 63 of the 96.

SENATOR MC DERMOTT: Do you suspect that there is any

collusion involved here?

MR. SMITH: Well, with our experience we have a lot of suspicions that don't center in any particular area.

SENATOR MC DERMOTT: You have no evidence of running cases? I am sure you know what I am talking about.

MR. SMITH: We have no specific evidence nor have we tried to obtain any really. We do hear through the grapevine that certain things have happened and certain people are present at union meetings and encourage people to file claims. In 1969, for example, there were 105 occupational disease awards. I think you have to draw your own conclusion on what is happening.

SENATOR RINALDO: I just have one question: Do most of the cases involve hearing loss?

MR. SMITH: The cases of which I speak involved principally two areas; one is respiratory. They used to say lungs, but now the reports here simply say "occupational respiratory condition and complications arising therefrom" and from that, an award is made.

SENATOR RINALDO: That constitutes a majority of the cases?

MR. SMITH: That is the majority of the cases and the hearing loss, of course, says something very similar.

SENATOR MC DERMOTT: Are you strictly a mill operation? Do you do any mining?

MR. SMITH: No.

SENATOR MC DERMOTT: Any other questions? [No response.]

Thank you very much, Mr. Smith. It was a very dramatic presentation.

Dr. L. K. Collins. Dr. Collins, would you please identify yourself for the purpose of this record.

D R. L O U I S K. C O L L I N S: I am Louis K. Collins, M.C., representing the Medical Society of the State of New Jersey. I am a former President of the Medical Society and at present am Chairman of the Council on Medical Services. I appear before you at the request of our Society's President, Dr. Nicholas A. Bertha, to present, in his behalf and in the name of The Medical Society of New Jersey, this statement of opposition to Senate Bill 466. We appreciate the privilege of participating in this public hearing under the joint sponsorship of the Assembly and Senate Committees on Labor Relations.

The Medical Society of New Jersey urges the rejection of S 466, as it does concerning S 463, S 464, and S 465 because all these measures would -- in disregard of fact and of the public interest -- recognize chiropractors as having the same competence and legal and professional status as do fully licensed physicians and surgeons.

The effect of S 466 would be to recognize the services of a chiropractor as medical or surgical services under the Workmen's Compensation Act, or any standard health and accident, disability, sickness or other insurance policy, or coverage under labor-management trustee plan, union welfare plan, employee organization plan, employee benefit plan, or any private insurance

or welfare plan. On the basis of this recognition, S 466 would declare a chiropractor entitled to compensation under the Workmen's Compensation Act or the other designated coverages.

As a matter of fact, a chiropractor is neither qualified nor licensed to supply medical and/or surgical services. He is licensed only to practice chiropractic, which is defined in New Jersey law as "A system of adjusting the articulations of the spinal column by manipulation thereof." The licensing statute prohibits to the chiropractor the use of endoscopic or cutting instruments, the prescription, administration, or dispensing of drugs or medications for any purpose whatsoever, the performing of surgical operations excepting manipulative adjustments of the spinal column, and the signing of any certificates required by law concerning reportable diseases, or certificates of birth or death... Even by implication to suggest, as this legislation does, that the chiropractor is the equal of the licensed physician and surgeon, capable of rendering medical and surgical services, is contrary to fact and to the protection of the public.

It is a matter of record that:

a) No chiropractic school is accredited by any recognized educational accrediting agency in the United States.

b) Chiropractors are not granted health commissions as officers in the United States Armed Forces.

c) Chiropractors are not eligible for appointment as staff officers or allowed to practice at United States Veterans Hospitals.

d) The Health Careers Guidebook, published by the U. S. Department of Labor, does not include chiropractic in its listing of health careers.

e) Chiropractors are excluded from rendering service under Medicare and in a special report to the Congress (December 28, 1968), the then Secretary of HEW, Wilbur J. Cohen, specifically recommended that "chiropractic service not be covered in the Medicare Program."

That HEW report referred to above (e) is titled "Independent Practitioners Under Medicare." It presented to the Congress the following conclusions and recommendations:

Conclusions

1. There is a body of basic scientific knowledge related to health, disease, and health care. Chiropractic practitioners ignore or take exception to much of this knowledge despite the fact that they have not undertaken adequate scientific research.

2. There is no valid evidence that subluxation, if it exists, is a significant factor in disease processes. Therefore, the broad application to health care of a diagnostic procedure such as spinal analysis and a treatment procedure such as spinal adjustment is not justified.

3. The inadequacies of chiropractic education, coupled with a theory that de-emphasizes proven causative factors in disease processes, proven methods of treatment, and differential diagnosis, make it unlikely that a chiropractor can make an adequate diagnosis and know the appropriate treatment, and subsequently provide the indicated treatment or refer the patient. Lack of these capabilities in independent practitioners is undesirable because: appropriate treatment could be delayed or prevented entirely; appropriate treatment might be interrupted or stopped completely; the treatment offered could be contraindicated; all treatments have some risk involved with their administration, and inappropriate treatment exposes the patient to this risk unnecessarily.

4. Manipulation (including chiropractic manipulation) may be a valuable technique for relief of pain due to loss of mobility of joints. Research in this area is inadequate; therefore, it is suggested that research that is based upon the scientific method be undertaken with respect to manipulation.

Recommendation [This is still the recommendation of the HEW Report.]

Chiropractic theory and practice are not based upon the body of basic knowledge related to health, disease, and health care that has been widely accepted by the scientific community. Moreover, irrespective of its theory, the scope and quality of chiropractic education do not prepare the practitioner to make an adequate diagnosis and provide appropriate treatment. Therefore, it is recommended that chiropractic service not be covered in the Medicare Program.

In substantial support of the foregoing utterances by the Secretary of HEW, the Health Insurance Association of America, through its Board of Directors acting on 28 October 1969, approved a policy statement concerning "Limited Practitioners" which concludes with the following statement:

"The member insurance companies of the Health Insurance Council, mindful of their obligation to assure the American people that the highest possible quality of medical care is being provided, support the concept that the providers of health care should base such care on scientifically-established methods of diagnosis and treatment. These companies also realize how vital it is for practitioners who hold themsevles out as qualified individuals to treat human illness and disease to have adequate initial and continuing education and training. Further, such education and training, at a minimum should be conducted in institutions that are accredited by recognized educational accrediting agencies."

The AFL-CIO Executive Council recently declared: "Of equal importance to holding down costs is the maintenance of quality care in the medicare program. Of immediate concern is the threat to quality care represented by the drive to include less than fully qualified medical practitioners such as chiropractors in the medicare program. At stake is the direct access to the billions of dollars for health care being provided the elderly by the medicare program. Medicare should not become a vehicle for exploitation of the health

needs of the elderly. The AFL-CIO opposes any change in the medicare law which would open up the program to unqualified practitioners." ... The basic principle of the AFL-CIO position applies equally to inclusion of chiropractic under Workmen's Compensation as it does to inclusion under Medicare.

Apart from the inherent hazard to the welfare of the people of New Jersey in giving unmerited status to chiropractic and chiropractors, these bills would render another serious disservice by opening the door to increasing demands for compensation under Workmen's Compensation and other mechanisms...

For all the foregoing reasons, The Medical Society of New Jersey urges that S 466 be rejected.

SENATOR MC DERMOTT: Senator Rinaldo has a question.

SENATOR RINALDO: Doctor, are you aware of the fact that there are reported workmen's compensation cases in this State in which medical doctors have referred workmen's compensation patients to chiropractors for certain treatments and adjustments?

DR. COLLINS: I never heard of it. Do you have any documented cases? I never heard of one.

SENATOR RINALDO: Yes, there are a number of such cases on record.

DR. COLLINS: Just so you don't get mixed up with ostepathic physicians.

SENATOR RINALDO: No. I am talking about chiropractors. I am aware of the difference between an osteopath

and a chiropractor.

DR. COLLINS: I don't know of any cases myself - no, sir.

SENATOR RINALDO: There are such cases. I was just wondering whether or not you were aware of this fact.

Assuming for a moment, since you are not aware of it and taking my word for it, that there are such cases, do you still feel that the injured workman then who is referred by a licensed medical doctor to a licensed chiropractor for certain adjustments should be denied the benefits of the Workmen's Compensation Act?

DR. COLLINS: In that case, I would not, no. But we do not feel they should be the primary ones without being referred to by someone else. If the patient on his own - and he may know this chiropractor - he may have been going to him for something else and he may want to go to him for this. I could bring in documented cases of broken necks, people still in wheel chairs from one manipulation, and things like that. Now do you want them to be the primary ones to decide how they are going to treat this? I refer some people to osteopaths, which was unheard of ten years ago. We didn't speak, just like we didn't speak to the homeopaths fifty years ago. But that is different - we have changed our minds. Now whether I would refer a patient if I thought -- but I don't believe in this so I wouldn't do it most likely. But some that do perhaps -- I would like to see the cases, myself.

SENATOR RINALDO: Personally, you don't believe in

it.

DR. COLLINS: No, sir.

SENATOR RINALDO: Would you be in favor of repealing the law which allows chiropractors to practice in the State?

DR. COLLINS: You know there is a bill - the Medical Society had something to do with introducing it - trying to prevent the future licensure. Now the House of Delegates of the Medical Society in May in Atlantic City last year - resolutions were brought in by component societies trying to do just what you said, get rid of all the licensed chiropractors - have no more - none, period. And the Medical Society did not go along with that, feeling that men that were licensed by this State did not deserve to lose their means of livelihood. But we are opposed to future licensing of chiropractors whom we do not feel have the qualifications to treat the public in New Jersey.

SENATOR RINALDO: You are opposed personally?

DR. COLLINS: Absolutely, and so is the Medical Society of New Jersey opposed to the future licensing of any chiropractors in the State of New Jersey.

SENATOR RINALDO: On the other hand, you favor the payment of workmen's compensation benefits to an injured worker who has been referred to a chiropractic physician by a ---

DR. COLLINS: I am not speaking for the Medical Society. I am speaking personally because I had never heard of this being done. But if you say it has been done and you have

documented cases and if some M.D.'s or D.O.'s believe that a bone cracker, as some of the men used to be called - I mean the osteopaths were called that - believe in the validity of this and that it can help someone, then I think it would be all right. After all, you want to get the patient well. If the M.D. or the orthopedic man or someone can't improve him and one of them feels and has seen in the past that a chiropractor can help and wants to refer him, I personally would go along with that.

SENATOR RINALDO: In other words, if the chiropractor can treat the patient and help him to get better, you don't feel that the patient who is covered by workmen's compensation should be forced to pay for these services out of his own pocket?

DR. COLLINS: Only if he is referred by an M.D. or a D.O. would I ever think of that.

SENATOR RINALDO: O.K. Thank you.

SENATOR MC DERMOTT: Since there are no further questions, thank you very much, Doctor, for appearing here today.

Prior to recessing, I would like to introduce into the record a written statement by a Mr. Richard Secrest. [Mr. Secrest's statement can be found on page 189 of this transcript.]

Any of you other witnesses who are under pressure of time who would like to introduce a written statement at this time and forego an oral presentation, you may be free

to do so.

We will continue this hearing shortly after two o'clock this afternoon and we hope to conclude by three o'clock.

[Recess for Lunch]

Afternoon Session

SENATOR MC DERMOTT: We will now reconvene the Workmen's Compensation hearing.

Mr. Paul Franz, please. Mr. Franz, will you please identify yourself for the purposes of the record.

P A U L F R A N Z: My first name is Paul - Paul Franz. I practice law in the City of Elizabeth. I spent eight years in the Division of Workmen's Compensation, which should perhaps give me some status to speak on Bill 310 which is really the assimilation of Referees to the title of Judge of Compensation. Prior to that, I had represented the Hartford Insurance Company and now I have an active compensation practice.

I urge strongly the passage of 310 for the following reasons: The present Referees in the Division of Workmen's Compensation have a great deal of experience that is not being wasted but I think could be implemented and used by the citizenry and the State, the administration in general, but more important than that Referee work essentially is directed toward something called a pretrial hearing, which is really a duplicity of effort. As the Committee knows, pretrial hearings have by and large been abolished in the upper court in so far as automobile tort negligent work is concerned, so they recognize that a pretrial hearing may have some value, but it is largely a user of time.

I listened with some interest to the testimony of the representative of the Taylor-Wharton Company when he said

that time is being lost by their employees when they attend hearings. If Referees were permitted to be Judges and have all the privileges that Judges have, there would be considerable less lost time by individual petitioners and, of course, industry would also gain from this saving of time. The administration of the Compensation Division would also gain considerably by giving these men the power to adjudicate a case almost on the spot. But more important than that, if Referees are not recognized and not rewarded and not used, the State, I think, will suffer a great loss as it has in the past.

I am sure that the Legislature has heard accusations from the new left that government is not responsive to the needs of people. I am sure you are bombarded by that remark constantly. But here you find someone perhaps a little older with gray hair saying that to ignore this bill will cost the State in general a great deal. Now it has already cost the State government a great deal in the past because Referees have left this Division and I know of three, I being one of the three, that now make three or four times more money than they made as Referees out in the private practice of law. So you find if someone is capable and competent, you will not be able to retain their services in the State. Very recently a Judge of Compensation left before the recent raise to $27,000 and I suppose I shouldn't be telling you something about his personal affairs, but he just couldn't make enough money to support a family his size.

I think he had five or six children.

The criticism, trying to be a reasonably good lawyer and anticipating the criticism levelled at passing this bill, making all Referees Judges of Compensation, is briefly in a nutshell that there are a number of Referees who are lay people, and that is true. But at the same time, these Referees have spent a minimum of twenty years in the study and administration and observation of the operation of the Compensation statute and I suggest that they are as competent as perhaps most of the present Judges of Compensation because they lived with this system. They grew up with this system. They gave their entire tenure of employment with the State to this system. So these people know the act historically and, of course, you realize that most of a Judge of Compensation's work concerns itself with medicine and the evaluation of disabilities and these men are perhaps better equipped than many of the Judges to conduct this particular kind of a program.

I think by way of analogy you can also consider the fact that we in this State have lay magistrates and there are still a number around, not a great number, and they are being phased out. So the precedent for having lay judges is not a new one and I suppose way back we had lay judges in the Court ofErrors.

I urge this Committee quite strongly if you are really interested in being responsive to the injured man, being responsive to industry, being responsive to State

administration in general, to consider 310. Thank you.

SENATOR MC DERMOTT: Thank you very much, Mr. Franz.

Mr. John Voorhees. Mr. Voorhees, will you please identify yourself for purposes of this record.

J O H N V O O R H E E S, J R.: My name is John Voorhees. I am affiliated with S. S. Voorhees and Sons in Union, New Jersey.

Gentlemen, our courts have rewarded settlements which are entirely too high for the accident involved. Men losing no pay and not disabled have received thousands of dollars through our company. I don't believe workmen's compensation was intended to do this. Workmen's compensation should offset a man's loss of pay and any medical expenses he may incur. Thank you.

SENATOR MC DERMOTT: Thank you, Mr. Voorhees.

Mr. Morley Cole, please. Mr. Cole, will you identify yourself for the purposes of this record.

M OR L E Y G. C O L E: My name is Morley Cole. I am an officer of the Interstate Concentrating Company located in Kearny, New Jersey.

Basically we are a small company and I am delighted to come here because as far as we are concerned this becomes kind of a court of last resort to us. We basically process metalic residues. We employ for the most part somewhere around 30 or 35 people, mostly unskilled labor.

Before I go into the sum and substance of our own

company, I would like to comment on something that was said earlier this morning. I find myself appalled and distressed that a representative of the American Trial Lawyers' Association, New Jersey Branch, which is an august body, can maintain, as he did in his presentation, that we live here in New Jersey in the best of all possible worlds in so far as New Jersey Compensation Laws are concerned. And yet when a probing question is addressed to him with reference to his contention, his reply is that he is not qualified to answer. I can understand this. But it seems to me he might at least volunteer that someone in his organization whom he represents, perhaps more qualified, can reply to the inquiry.

Specifically in so far as our company is concerned, as I say, we are a small company and we are reaching a point where we wonder whether we can continue to operate in New Jersey where we have operated for many years. We have found our compensation costs have quadrupled over the years, and not too many years. Let me put it in more perhaps understandable terms. When we open up our doors on a Monday morning, we have to pay out - we are faced with paying out in compensation approximately $300 to $350 a week. That is before you open your doors, before you start work. You have to have this at the end of the week to meet your compensation costs. We are insured by the New Jersey Manufacturers Casualty Insurance Company. Gentlemen, that is a rough nut for a small company and we have been assured - not advised but assured - that these costs will mount.

Let me cite three cases in point. Mention was made again by the representative from the American Trial Lawyers' Association that there are no fraudulent cases. As a practical matter, as a practical consideration, you can't dress this up in verbiage and camouflage the practicality of the matter. Let me give you three instances.

We had one employee who had complained of vomiting spells. We called him in and asked him if he wasn't feeling well and suggested that he go see a doctor. He said he didn't have money to see a doctor so we advanced him $25. The next thing we knew we were presented with a claim from a law firm that the employee had sustained a back injury while at work. There had never been any previous mention of a back injury. The employee was awarded in this case $810.

A second instance: An employee had been in an automobile accident and had incurred an injury for which he had been paid whatever the award was by whoever the authorities were. A short time later he turns around and says he had tripped over a can in our plant and sought to collect and did collect for the same injury. We told New Jersey Manufacturers it seemed to us that the thing was dead to rights, that the facts were there and that we would like to fight this. A recommendation as to an award was made. We said we didn't see how we could accept the recommendation in view of the facts. We were told that practically the best expedient would be to accept the award at the risk of the employee being

awarded a greater sum later.

A third case, in more recent weeks: An employee with a record of alcoholism - as I said, for the most part we employ unskilled labor - was admitted to a sanatorium. This has gotten now to the point where you get a mimeographed form filled in by the law office. We received one advising us that we were going to be sued because the employee had contacted T.B. while at work.

No fraudulent claims? It seems to me that the long arm of coincidence reaches out here where in almost all instances you have two or three law firms representing all the employees - whether they be in a sanatorium, they know about it; whether they be in a hospital, they know about. Even if the man is walking the streets, that long arm of coincidence reaches out and they seem to know about it.

I suggest to the representative of the American Trial Lawyers' Association that in his cross-country tours that he spoke about that he stop into our plant. I will open our files to him.

In conclusion, I repeat that I deem this a court of last resort. Unless something is done, small companies such as ours will have no alternative course except to either go out of business or seek to locate elsewhere. Thank you.

SENATOR MC DERMOTT: Thank you, Mr. Cole.

Mr. Herbert Cooper. Mr. Cooper, will you please identify yourself for purposes of this record.

H E R B E R T C O O P E R: I am Herbert Cooper, President of Cooper Alloy Corporation in Hillside, New Jersey.

Mr. Chairman, to me it was no coincidence that I should have decided to come down to this hearing today and that Mr. Smith of the Taylor Wharton Corporation decided to come to this hearing today because our problems are so nearly identical that it can only be that they are related for very specific reasons. The main reason is that the Taylor Wharton Corporation in High Bridge, New Jersey, and Cooper Alloy Corporation in Hillside, New Jersey, are the two largest and practically the only two remaining steel foundries in North Jersey. North Jersey in past years - I am now going back 25 or 30 years - was quite a center of the foundry industry, iron foundries, brass foundries. My father started the business in 1931 in Elizabeth and we are still running the business and we employ approximately 250 people. Mr. Smith employs approximately 300 people.

Our experience - and I don't want to be redundant - is very, very similar to Mr. Smith's. Our compensation costs have soared tremendously in the last three or four years and I would like to give you some facts as far as the compensation rates for steel foundries in the State of New Jersey as against other competitive states.

The manual rate, that is, the average of all the foundries of the State of New Jersey, at the present time is $9.83 per $100 of ordinary payroll. Now that is modified by

experience ratings, of course. Our experience rating is approximately 100 per cent. So we are paying roughly $10 per $100. Most of our competition is in the State of Pennsylvania. The rate there is $1.85 per $100. We have a competitor in Wisconsin. The rate is $2.74 per $100. In Ohio the state operates the compensation system entirely and it is not done through insurance companies. But I do know that the rate is in the order of magnitude of Pennsylvania and Wisconsin, around a $2.00 figure per hundred. In New York, which has relatively liberal benefits, the rate for steel foundries is $4.70 per hundred. In the State of Alabama, the rate is $2.46 per hundred.

I won't go into the details as to how many claims for occupational injury, so-called lung, chest, etc. Mr. Smith went into this thoroughly and I could document this from our files ad infinitum. The problem is that the so-called partial disability, no lost time or permanent disability, has become intolerable. Many of these claims we thoroughly believe are fraudulent, although no one can prove they are fraudulent; it is literally impossible. The proof that is adduced in the compensation court is subjective and even in cases where there is no objective proof, that is, medical testimony, x-rays, etc., invariably petitioners are awarded something because they went to the trouble to get a lawyer and go down to court.

In the area of heart claims, we, of course, - this is well known in the State - have a very serious problem because

as the law is now written and the way the courts have interpreted it, any influence of the man's work above de minimis, which is a pretty fine line, is considered compensable.

I would like to tell you gentlemen about a case which may eventually be famous, but it happened at our plant. I can speak of it at first hand. I will explain to you later why. We had a man who worked for us in the chemical laboratory. In a steel foundry there is a fair amount of hard work, grinding, pouring metal, lifting weights and so on. But this man worked in the chemical laboratory. He did carbon analyses, which meant he took a slug of metal about one inch in diameter and with a big power drill he drilled about two grams out of it. He had to do this analysis about 25 times a day. He took the sample and put it in a furnace which worked electrically automatically and it burned off the carbon. The resulting CO_2 is absorbed in a little blub and all he had to do was take the bulb and weigh it. Then he reported his findings to another man in the laboratory. This man did this work for a year and a half. Previous to that he had been a welder. He was not too good a welder, I must admit. He had several citations in his record and he wasn't doing good work. So he was transferred to the laboratory and did very good work. He even got a merit raise. He came to work on this particular day. The testimony of his co-worker was that he seemed to be about the same at the end of the day as he was at the beginning of the day. He did his work. He had no complaints. He went home. He went

to bed. At four o'clock in the morning he died. We were presented with a case that this man died of work-connected heart failure. After analyzing the case rather thoroughly, although a settlement was proposed to us in the back room of the compensation court, we decided if there ever was a case where a man didn't really do anything in his work that could conceivably have contributed to his death, this job was the job. So the case was heard. Plaintiff claimed - the petitioner's family claimed that he was under extreme pressure in doing his work, that the citations in his record bothered him and he was worrying about them, even though the citations were when he was a welder and was a year and a half previous. Testimony showed that the job could not take longer than seven minutes to do because the apparatus took just that long to operate, but that he had at least ten minutes to do the job. The power drill was shown - pictures were shown. It had a handle about that long (indicating) and testimony was that he had to drill and pull down on it for one or two pounds to get the sample out. Suffice it to say, the case was found for the petitioner and the award was $50,000. The case is presently being appealed before the Appellate Division.

I say I can speak of this personally because this is a job a child could do. I did this job when I was 16 years old in high school. I worked in the summer in the chemistry lab. There is nothing to the job. It is completely routine. The amount of time taken probably is no more than

50 per cent of the day and as a result you have considerable time to just sit around on a stool or smoke a cigarette or do whatever you like.

In any event, things have reached a rather serious past. Although our premiums are not quite as high as Mr. Smith's are, if this situation continues we will some day reach that figure. But we have made certain decisions. One decision is that we will not expand our operation in New Jersey. We have built a plant in Alabama - and that's why I mentioned the rate of Alabama - for the production of stainless steel castings down there. We are very concerned over the ability, for instance, of the steel foundry industry which in the State of New Jersey now boils down to literally two companies, Taylor Wharton and ourselves, and other companies who may eventually run into the same problem through the development of a large number of cases for occupational disability.

It is a very serious problem. We spend ourselves $15,000 a year on protective equipment to protect our employees against breathing dust, hearing, glasses, etc. And we do not have a high accident record. But this has no bearing upon our compensation rate and as a result I believe that it is a problem that the Legislature must face because in order to be fair to the employee--The employee I heard in some of the testimony has relative small benefits for legitimate so-called broken arms, legs, etc. and yet the amount of money being paid out in claims today in the State is very, very

high. The rates are so high in this State that if I came to set up a plant today and if my father didn't set it up 40 years ago in New Jersey, this would be the last state I would put a steel foundry. The State I know spends a lot of money to bring industry into the State. I know Public Service has a lot of ads. Nowheres do they mention the situation as far as workmen's compensation is concerned.

So I can only say I know I would be very happy to open up our files for this Committee for the perusal of some of the most interesting cases that we have to show to give background on this. But the problems must be faced that people are collecting claims where there is no lost time or permanent disability and these claims are mounting up beyond all proportion. The problem of heart death cases is also very serious as you can see from the case I mentioned to you. You don't really have to do anything. All you have to do is show up for work today the way the courts so indicate and if you should happen to die, you will collect. The other side of the coin is that we had another employee who had the misfortune of dying on January 1st of this year at nine o'clock in the morning at home. Now this fellow worked outside. He did a fair amount of heavy lifting. So you might say on the basis of what I have just said that he ought to be able to collect. Unfortunately December 31st was also a paid holiday at our plant. So as a result this man had not been to work for two days. Maybe a claim won't be filed for him. I don't know. But it seems rather peculiar that if he

had died the day before, he probably would have had as good a case as this first case I mentioned. This I think illustrates the inconsistency in the way the law is being administered.

I can only echo what Mr. Smith said that the future of our 250 employees is very seriously in doubt and this is probably one of the major problems that we have to face today. Thank you very much.

SENATOR MC DERMOTT: Thank you very much, Mr. Cooper.

Mr. John Bachalis. Will you please identify yourself for the purpose of this record, Mr. Bachalis.

J O H N B A C H A L I S: Yes, I will. Thank you very much, gentlemen.

My name is John Bachalis. I am Vice President of the New Jersey Manufacturers Association. I am sorry I don't have a presentation, but then I don't intend, gentlemen, to repeat a point by point blow description of our position on all of the legislation that is currently in the Legislature.

I would like, however, simply to bring to your attention some information which has perhaps not been talked about.

It seems in this area of workmen's compensation, you find that everybody wants to be a good guy and there is no indication of whose money they want to spend in being such a good guy, and it is a very important consideration as the testimony here has been unfolded during the entire day that there is a considerable amount of money which appears to be wasted in areas of minimal effect.

Mention was made earlier that there were three omnibus bills for consideration, one of which is Assembly Bill 202, and that bill in addition to incorporating some corrective features provides for an increase of $5 in the permanent-partial benefit amount. We costed out those figures and the cost came to $18 million. Additionally we costed out Assembly Bill 216 and the cost of that one came to $38 million. And if you will remember in A216 it provides that there will be no increase in the benefit amount for the first 7 1/2 per cent of permanent-partial disability, that it will remain at $40 and thereafter would increase to $60.

Then we finally had Assembly Bill 407 and that bill provides that all permanent-partial disability will be on the basis of two-thirds of the individual's average wage and the maximum established as two-thirds, I believe, of the average wage of the employee covered by the Unemployment Compensation Law. Or is it 50 per cent? I don't recall it precisely now. But we costed that one out too and that one came out to a cost of $75 million.

Now what is the principal problem? I think perhaps A 202 demonstrates pretty substantially what has been borne out here, that just a nominal increase in the permanent-partial disability rate calls for a very substantial amount of money to be expended in premiums and it shows, I believe, quite conclusively that the very large portion of the cost is in the permanent-partial disability end. In fact, an analysis of the awards shows that approximately 80 per cent is in that

area. Eighty per cent of the cost is in the permanent-partial disability area. It probably brings with some force, I believe, the need to establish some kind of criterion or standard for determining permanent-partial disability.

As you know, gentlemen, I was fortunate or unfortunate enough to serve on the Workmen's Compensation Study Commission and it was very interesting, especially the discussions that took place at that time. And I would like to quote just several excerpts from transcripts of the hearings which will perhaps indicate that the problem is not unknown to the practitioners who are in this thing day in and day out, the so-called guys on the firing line.

One Commission member said: "I will guarantee you in 50 per cent of the cases in small awards, they are unwarranted. But in the other 50 per cent of the cases, they are not only warranted but perhaps should require a greater award."

Another member said: "Personally I put in the record that I am not completely convinced many of these minor injuries should be compensated at all."

A labor leader testified: "I am concerned that the injured worker gets more. Frankly, I am concerned, if I can be brutal and say, 'The chiseler be eliminated.'"

Another comment: "Going back on the record I might say this has applied to me too,that someone said when they were a young lawyer, they lost cases they should have won, and when they had more experience, they won cases they should

have lost, so that in the over-all picture, they evened themselves out. I mention that only because of the fact that the Senator indicated that sometimes before vacations when they need a new refrigerator or television set, people deliberately fall and then claim an injury. I think that this is covered already by the act as far as willful injuries are concerned. But unfortunately this does happen and it is difficult when a man complains for a judge to determine whether he is honest in his complaints or whether they are just feigned complaints."

The fact that the Workmen's Compensation Commission went to the extent of providing that the first 7 1/2 per cent of the permanent-partial disability award should not have been increased beyond the present $40 indicates that there is knowledge that there is something wrong in some parts of that area of permanent-partial disability. What perhaps is a little discouraging is that with all of the expertise of people who have intimate knowledge on the subject - and this would include the American Trial Lawyers' Association and everyone else - no one, but no one, comes up with any kind of solution. So it becomes necessary for people like ourselves to be the so-called "bad guys" and to suggest that there be some definite criterion or standard established to determine permanent-partial disability.

I would like to reinforce the statements of the gentlemen who have talked about the various premium rates. Occasionally we do a little take by trying to find the various

common industries in the various states, being sure that we don't pick, say, one employer in this State and then there are 30 or 40 of them in another state, because it sort of shews the data. We try to pick out a lot of common ones, such as bakeries, breweries, laundries, construction industry, hotels - and I am skipping around - the electrical industry and so on. Out of these, we have approximately 33 - and I want to point out in these 33 classifications, in 27 of them, more than 80 per cent, New Jersey ranks either number one or number two. And of the 27 cases, 15 are number one and 12 are number two. We have one instance here where New Jersey in this ranking of the so-called 12 or 13 industrial states, New Jersey is 12th and that is in newspaper publishing. That is the only one that has that distinction of being below the 50 per cent line. The rest are above and they go down to 1st, 2nd, 3rd or 4th. In fact, there are only 3 that are in 4th place. So premium costs are high and I think this is a problem that should be of major consequence to the Legislature when it attempts to act on legislation in this area because it certainly is affecting the very thing that is most important to New Jersey and that is the attractiveness of this State for new industry but also the attractiveness for the industries that are here to expand.

I am very sorry that earlier on this same subject Senator Rinaldo had asked a question whether any other states in the nation had a definition that was similar to the one being suggested - and I am sorry I don't have a copy of it

here. But recently, this past year or last year, Utah passed a proposal of that sort. Why Utah? Well, Utah had a particularly distasteful problem concerning uranium miners and as a result they ran into some tremendously and enormously high workmen's compensation costs and they found it was necessary to do something because everybody and his uncle were coming in to claim benefits. So they established a definition that is very similar to this and perhaps in some instances, as I recall it, it is even more restrictive.

I would like to make just one more comment and I would urge for your very serious consideration Assembly Bill 656. This is the bill that deals with occupational hearing loss. Just as there is no criterion for determining permanent-partial disability in the Workmen's Compensation Act, there is no criterion for determining occupational hearing loss. As a matter of fact, it seems to be whatever method the judge decides to use. And if you review this particular piece of legislation, you will find it accepts most of the most accepted authorities who have established standards, the American Standards Association for one, and it also gives a very scientific method of determining it and pre-testing for hearing loss. It also gives credit for presbykousis or old age, recognizing that that is a problem too.

I would urge rather than accept someone who is as completely unqualified as myself to talk about hearing loss that perhaps you might want to consider inviting to your closed-door Committee meetings some of the learned otologists

who could talk with scientific knowledge on this subject. You see I don't want to get in trouble with the Medical Society.

But this bill, I believe, is worthy of consideration and it does attempt to establish the very thing that has been complained of here earlier, that lack of definite standards seems to be moving our compensation costs into orbit.

I might also in conclusion say that from this data I have on premium rates we had established some charts which show that New Jersey leads the pack.

That is all I would like to comment on, sir.

SENATOR MC DERMOTT: Mr. Bachalis, do you know what the total cost of workmen's compensation is to employers each year in New Jersey?

MR. BACHALIS: Well, I believe the total premium is somewhere in the area of $265 million.

SENATOR MC DERMOTT: $265 million?

MR. BACHALIS: That's right. That would probably be for 1969 or 1970.

SENATOR MC DERMOTT: That is about a sixth of our State budget.

MR. BACHALIS: It is a high figure. Of course, in addition to the permanent-partial disability awards, you may recall that it was during the previous administration that Assembly Bill 760 was passed and that bill established an escalating benefit. It also established a benefit for permanent, total, death and temporary disability. On an annual basis it

is recomputed as 2/3rds of the statewide average wages of individuals covered by unemployment compensation. So currently that rate is at $91 and I would anticipate that next year it will probably be at $96. So it is proceeding quite rapidly into a much higher area than is provided for by our neighboring states. I don't recall of any neighboring state other than perhaps the District of Columbia which is under the Longshoremen-Harbor Workers Act which provides benefits that high.

SENATOR MC DERMOTT: Thank you very much, Mr. Bachalis, for your testimony.

Alex Turak. Mr. Turak, would you please identify yourself for purposes of the record.

A L E X T U R A K: My name is Alex Turak. I am a member of the law firm of Margolis, Turak and Gordon, and to cast my position properly, we represent the independent unions of New Jersey and a number of A.F.of L. and C.I.O. unions. I have the honor of being a member of Governor Hughes' Workmen's Compensation Study Commission so I trust I can bring some light to bear on this hearing today.

We have heard quite a bit about statistics and dollars. We haven't heard much about human injury and human suffering and there has to be some correlation between the two. Now statistics can be used for almost any purpose. For example, we were told that the cost of compensation had gone up something like $100 million from 1962 to 1968. What was not told to us was that the payroll in New Jersey had gone up

from slightly over $9 billion in 1962 to over $13 billion in 1968, which was a $4 billion increase in payroll and contrasted to that there was only an increase of $100 million in workmen's compensation.

We are told about injuries which have no permanent disability and yet awards are made and I beg to differ. I have here the annual report of 1968 of the Division of Workmen's Compensation. I assume it to be authentic and accurate. In 1968, industry - this is not labor, but industry - reported in their first report of accidents, 251,000 accidents. In 1968, 83,755 cases were processed, of which 67,449 cases resulted in awards. That is on page 2 of the report. Therefore, on that basis, something like one-quarter of the total number of injuries reported by industry was compensated for or employees received compensation therefor.

Now it has been stated that the cost of insurance has gone up. On page 12 of the same report, the loss ratio as far as insurance companies are concerned, went from 63.5 per cent in 1967 down to 59.18 per cent in 1968. So the trend has been down and not up.

We worked on the Study Commission from March 1967 through July 1968. We heard a lot of testimony. We did a lot of digging. We tried to get the facts and come up with something that would help the State. One of the measures that we recommended was enacted by this Legislature and that was the pay increase for Judges in a slightly modified or reduced version from what we had recommended. And we honestly

trust that you gentlemen will give the same consideration to A 310 for the reasons already so adequately expressed here. The Referees are far behind the Judges in salary.

Very frankly, we had an awful lot of trouble in trying to get some idea of -- well, we didn't call it nuisance awards - we called it minor awards. Someone came up and said, "Well, anything under 50 per cent of total is a minor award." The Insurance Association came in and said, "Anything under 25 per cent of total, that's a minor award." We tried to get a definition of what constitutes permanent injury and what doesn't constitute permanent injury. And we did come up with a definition. It is no secret. I think Senator Rinaldo asked before and I have here the report of the Workmen's Compensation Law Study Commission, dated July 1968,and on page 11 it states, and I quote: "The recommended definition is as follows: [again quote] 'Loss of physical function or that which detracts from the former efficiency of the body or its members in the ordinary pursuits of life.'" I am sure that copies of this should be available. I see Referee Burke sitting there and I trust he could get copies for those who might be interested. But this is a recommendation of a definition for permanent injury that the Study Commission after hearing much testimony came forward with. It is different than A 202. I think it is more realistic and results in greater justice to the injured worker.

As to the rates, again we hear the cost of compensation

rates. As I recall it was at my suggestion that the Study Commission afforded one full day to labor and one full day to industry and insurance companies to have their day in court, so to speak, on the question of permanent disability. Labor came in and said we want the same rate for permanent disability as there is for temporary compensation and that in 1967 was $80. Industry, the State Chamber and the Self Insurers Association came and said, no, let things alone - leave it at $40. Now we haven't had any increase in the rate since 1962. I think the effective date was July 1, 1962, as to permanent disability or partial-permanent and the cost of living has gone up and everything has gone up. So we took a middle road, we of the Study Commission. We adopted a $60 rate. But because of the cries all the time of industry that the lesser injuries or the minor injuries were being paid at a greater amount than they felt should be paid and to make peace if we could on that score, we provided that the first 7 1/2 per cent disability be at the maximum rate of $40. Any disability in excess of that would be at the $60 rate. The $60 rate would apply, of course, to amputations all the way down the line.

Now this horrendous bill or idea would result - for example, if a man sustained a fractured metatarsal, he gets 10 per cent disability of the foot. Under the present law, he gets $800 for that. Under our proposal he would get $900. I don't think that is going to rock anybody particularly.

We had a great many complaints from industry in

connection with the Belt Case and they are singularly silent on that score today where you take a man with some handicap, he is hurt on the job and the employer is responsible for the end result. We took that into consideration and that was covered in our resolution and is covered in the bill which has been introduced, A 216, by Assemblyman Parker who was a very active member of the Commission himself and I think he knows whereof he speaks.

We, for example, in the Study Commission recommended direct appeal to the Appellate Division. That has received substantial support all day long.

We also recommended lump sum settlements in disputed cases with proper safeguards and that has received substantial support.

There is one bill that has come up which flies contrary to everything we hold dear in Jersey law and I have reference to Bill A 656, the so-called loss of hearing bill. It has always been New Jersey law and Jersey justice if a working man or working woman sustains permanent disability as a result of an occupational injury or an occupational disease that that person receive compensation for such injury or disease. A 656 for the first time tries to set up discriminatory and special legislation which would carve away the loss of hearing cases. It is completely unwarranted, completely unnecessary.

Let me explain how the loss of hearing cases are conducted to date. There are otologists, trained ear men.

They examine - one for the petitioner and one for the respondent. They take audiograms and by means of an audiogram they can advise us, number one, if there is a hearing loss and, if so, the extent of the hearing loss, and they can further tell us specifically if the hearing loss is due to exposure to noise or is due to some other cause. There is a characteristics curve on the audiogram which tells them almost immediately. Well, it tells them immediately.

I would dare say in handling several hundred loss of hearing cases that at the present time we have less problems in dealing with loss of hearing cases in New Jersey because of the fine work done by the otologists on both side than we have in almost any other field of disability or permanent disability in the State of New Jersey.

What this bill does - it says first of all, the first 15 per cent loss of hearing that a man sustains, he is not going to get compensated for. He doesn't get paid. So he is deprived of 15 per cent loss of hearing right off the bat. Secondly, they changed the rule on presbykousis, which is from age 50 on. They drop it to 38 so that a man of 50 loses another 6 per cent hearing loss because of presbykousis. So that is 21 per cent hearing loss or 42 weeks at $40, the present rate, that he is losing because of this bill.

It sets up artificial standards and standards that I think would be virtually impossible to follow as a guide in determining whether or not there is a substantial noise environment which would cause loss of hearing. It does not

provide in any way for loss of hearing in one ear and we have had cases -- we had one case where a man had 100 per cent loss of hearing in one ear which was not in any way related to his work. In the other so-called good ear the man had a 50 per cent loss of hearing due to noise exposure and he was paid for loss of hearing in one ear. Under A 656 there is no provision for payment of loss of hearing in one ear and, frankly, it may be unconstitutional as a deprivation of property without due process.

Now they set up decibel levels and they start with 92 if you work four hours, 95 decibels if you work for two hours, and 107 decibels if you work for one hour. But they don't say anything if a man works with 85 decibels all day long or at a 90 decibel level all day long or an 80 decibel level all day long. It is not covered in the act.

I have here a reprint of the Bethlehem Steel Company's little booklet. It was put out by Ingersoll-Rand. And the definition industry gives to noise is, "If noise makes normal conversation difficult, the noise may be enough to damage your hearing. The louder the noise, the more damage it may do." That's industry's definition. I can assure you that normal conversational tones run from 35 to 50 decibels. Consequently noise level at 75 decibels is from 50 per cent to 100 per cent more than normal conversation and obviously trying to conduct a normal conversation in a noise level 50 or 100 per cent above that normal conversational level is difficult. So there is no real test as to 92 or 95

or anything of that sort. In addition, individuals differ in susceptibility. Certain individuals are more susceptible. Two men work side by side in the same racket all day long. One man has 40 per cent loss of hearing; another man may have a 10 per cent loss of hearing.

So this is really a fraud on the working man. A working man can get a loss of hearing and not get a penny for it.

The worst thing about this new law, it provides that a man cannot file a claim until six months after he is last exposed to noise. Mr. Jones work for A Company for 25 years. The plant shuts down and he goes to work for B Company. B Company has an audiogram taken on him and they find he has a 50 per cent loss of hearing due to noise. But he can't file his claim against A Company because he has to wait six months, but he has to support his family so he gets a job a week or two after A Company shuts down. Now he works for B Company for three years. He gets a job -- he can't stand the noise anymore -- he gets a job which is quiet. He is a night watchman or what have you. Now six months go by and he files a claim for loss of hearing. He now comes in and he has a 60 per cent loss of hearing. B Company says, "Fine. Under 656, we took a test on you - you had 50 per cent loss of hearing when you came to work for us and we get credit for that 50 per cent loss of hearing. Now you have 60 percent and we'll pay you the 10 per cent." He says, "That's fine from you, B Company, but how about the 50 per cent loss of

hearing that I have over and above that 10 per cent?" And if this bill is passed, the answer by B. Company will be, "The Legislature of the State of New Jersey says you cannot collect for that 50 per cent loss of hearing, even though you have it." And that would be, I think, a deprivation of property without due process.

If I may on a slightly personal basis, I think I am one of the culprits at Taylor Wharton. I assure you, Senator, there are no runners. The recommendation is from worker to worker and I am proud that they do recommend us. Unfortunately-I don't know whether the gentleman is here from Taylor Wharton - unfortunately Taylor Wharton is 200 years old and unfortunately has a reputation of being the noisiest and the dustiest foundry in the State of New Jersey if not east of the Mississippi. The nature of the beast is such in a foundry that it be dusty and that it be noisy. There are castings, there is sand flying all over, smoke, dust, fumes. They pore molten metal. They have chippers with pneumatic air guns and they have grinders and there is an infernal racket. It is just the way the business is run, unless the company starts spending money on cutting down on the noise and cutting down on the dust.

I can assure you from personal experience in one case a supervisor of Taylor Wharton testified - he had been there nine or ten years - and as I recall his testimony he said there was dust three to four inches thick on the floor and it had not been swept in the nine or ten years he was there.

He said they had exhaust fans in the ceiling about thirty feet up and that during the course of the day, during the course of every day and during the course of each week, there was so much smoke, there was so much dust, there were so many fumes pulled up by the exhaust fans that you couldn't see the exhaust fans on account of all the muck below it. One of the cases involved a crane operator who moves the crane back and forth. He is in an open cab 20 feet above the ground. He had to ride through all of this dust.

Now in these loss of hearing cases, as I said before, we had no problems. The gentleman mentioned a man who received over $3,000 for loss of hearing. In that case I think that the estimates of disability by both the insurance company doctor and by our doctor didn't vary by 2 per cent. I am not even sure if the insurance company doctor was 1 or 2 per cent higher than our doctor or our doctor was 1 or 2 per cent higher than the insurance company doctor. And there is no doubt but that it was due to noise. Now the pattern shop may be quiet, but the pattern man takes the patterns out into this awful racket in the foundry and he is exposed to noise at least half the day and that is how he got his loss of hearing plus he had worked in the foundry before that.

As far as dust cases are concerned, pulmonary cases, in practically almost every Taylor Wharton case that I myself have been involved in, there has been disability found not only by the petitioner's doctor but by the respondent's doctor.

I don't know if you have had experience with men who get silicosis or pulmonary involvements. They can have chronic bronchitis with a chronic cough. They can have pneumoconiosis with pulmonary fibrosis and cough and get short-winded. They can develop emphysema from exposure to dust and these are serious pulmonary conditions because they breathe I don't know how many times every minute and how many times every day. And this like loss of hearing - pulmonary disability and the loss of hearing disability are just as permanent, they are just as irreversible as the amputation of a finger or a hand or a foot. It does not get better. It is not like a fractured bone, as time goes on it tends to heal. When a man leaves a job, he doesn't have to wait six months to ascertain his loss of hearing. His loss of hearing is fixed when he last works and it doesn't get better in six months or six years or anything of the sort.

So I say to you in all sincerity, there is one very valid, legitimate way in which industry can save money on workmen's compensation. We have urged it. We have through our unions gotten safety committees to urge it, and that is for industry to install and put into effect various and sundry devices and means to cut down on the occurrence of accidents, the occurrence of occupational diseases and, if they cannot be avoided, to minimize the effect of the occupational diseases and save money that way - not to fight the man tooth and nail every time he files a claim, even though the company knows he has permanent disability. Thank you.

SENATOR MC DERMOTT: Thank you very much, Mr. Turak.

Mr. Tomkinson will be out last witness. Mr. Tomkinson, would you identify yourself, please, for the purpose of this record.

H E N R Y T O M K I N S O N: My name is Henry Tomkinson. I speak for the Raritan Valley Regional Chamber of Commerce Industrial Relations and Legislative Affairs Committees. We appreciate this opportunity to speak on workmen's compensation.

We have seen the costs of Workmen's Compensation double in the last six years. And it does put Jersey as the top cost state. Many companies who have plants in other parts of the country in various states confirm this and we are quite anxious to help New Jersey get back in the position where it can attract more jobs, more industry and to help in hiring the handicapped.

The member companies in the local Chamber, which is made up of 600 members, prepared a list of the major points requiring improvement, with examples and recommended bills, which they feel are for the best interests of all concerned.

1. In the Workmen's Compensation Law Study Commission reports recently submitted by the Majority and Minority, there were documentations of the long unresolved problem in the permanent partial type of awards at the bottom of the scale - namely for very minor, de minimis injuries or disabilities where there are payments for no functional loss or impairment. Examples of these are well-healed cuts and fractures, subjective

muscle strains, minor cosmetic cases, calluses, etc. Likewise there was reference to the need for higher weekly payments for the most severely injured employees. We agree and the two problems can be solved if worked out together.

Certainly a clearer definition of permanent partial disabilities and impairment which restrict the function of the body, such as in A202, could be agreed to by legislative, judicial, and administrative groups. This agreement could free funds now paid to persons with no objective disabilities. These funds could be transferred in progressively higher amounts to the more critically injured permanent partial disability cases. This is a slightly different approach, requiring joint agreement of all concerned in settling these two difficult problems. It means the intent of the definition is first clearly agreed upon and honored in the future as part of a package. It should have the backing of all, since the more deserving cases would benefit.

If there is interest in such a solution by the Senate and Assembly Labor Relations Committees, further details could be developed as cost figures become available. A202 makes a start in solving the problems, but the $45/week maximum permanent partial disability benefit would have to be amended to maintain the current $40 up to 25% disability and to progressively larger amounts awarded in the higher % levels.

2. Heart cases should only receive an award where there has been unusual physical or mental strain which is definitely above normal duties and activities. There should be no liability for non-work

related or prior cardiovascular conditions. There is a long history of examples of cardiovascular cases, a number of which were not really work related. Most of us spend over three-quarters of our lives away from work where we proceed at various peaks of exertion. A202 provides clarification to help separate the normal cardiovascular degenerative disease cases from those definitely an employer responsibility.

3. Provide credit or offset for previous accidents and diseases, thus making the employer liable only for additional injury or disease if work related. Pre-existing disability, be it congenital, heredity, or incurred, should not be compensated out of the Second Injury Fund, which is paid for solely by employers. Hiring of handicapped under conditions existing now tends to expose employers to a higher degree of risk than warranted and a full study of this Fund is indicated, which could lead to more of the handicapped being hired. Back cases are one example of this problem. A202 provides for these previous injuries in an equitable way.

4. Hearing loss should be offset by an adjustment for the usual loss of hearing over the years, known as "presbycusis". A statute for the measurement of hearing loss is needed. This is another area where the handicapped could be hired when the employer only becomes liable for any subsequent work-related hearing loss. A656 provides for the presbycusis and standard measurement.

5. Permit lump sum settlements when requested by petitioner and approved by Judges of Compensation. A147 and A202 provide for this.

6. Recreational and social activities should not be an employer liability unless a regular incident of employment. A150 and A202 cover this logical step.

7. Appeals go directly from Judges of Workmen's Compensation to Superior Court, Appellate Division. S443 and A202 properly take care of this time and cost saving to all.

8. Occupational and degenerative diseases should only make a person eligible for an award where there is clear evidence of work connection. No awards should be paid by the last employer if a disease was already present before hiring, as in the case where an employee previously had a fungus condition yet received an award. Another recent case of a man having cancer of the lungs resulted in a large award due to his starting to slip while walking, which caused a slight wrenching of the neck, but not a fall or blow. It was alleged to have accelerated his death by an infinitesimal amount of time. Other degenerative diseases like arthritis, emphysema, poor eyesight, mental disturbances, tuberculosis, etc., are further examples. Possibly any special aid for such cases, which are essentially non-work connected, could come from general health funds. I understand there are several states that do this.

I appreciate your interest in trying to help on breaking this log jam which I think we would all be glad to see straightened out. Thank you.

SENATOR MC DERMOTT: Thank you very much, Mr. Tomkinson. Are there any further witnesses?

MRS. BREMNER: As a private citizen I have a question.

SENATOR MC DERMOTT: Will you come to the microphone, please,

and identify yourself.

MRS. BREMNER: Yes. I am Mrs. Bremner from Rutherford, New Jersey. My question is this: There has been so much allegation of fraud in various cases. What is the injured party's responsibility in proving the injury or isn't there any?

SENATOR MC DERMOTT: Senator Rinaldo will answer your question.

SENATOR RINALDO: If I heard your question correctly, it was: What is the injured party's responsibility in proving the accident?

MRS. BREMNER: Yes.

SENATOR RINALDO: I guess the simplest way to answer that would be to state that under our existing law for him to collect anything whatsoever he is supposed to prove that there has been an accident arising out of and in the course of the employment. Of course, there have been many liberal interpretations of this particular part of the law by the courts to a point where it has been stretched rather drastically, you might say, and goes far beyond that. People have been compensated, for example, participating in recreational activities, going to and from work, repairing cars in parking lots, etc.

MRS. BREMNER: My specific question was in relation to the questions from the gentleman this morning who said he felt some of the injuries followed other problems. I think it was this morning when the gentleman felt that some

of the claims followed problems that the employee had at home.

SENATOR RINALDO: This could be possible. He was probably alleging that in some cases the accident did not arise out of and in the course of employment, but as a result of something occurring outside of the scope of employment. Of course, if I understand the law correctly in this particular instance, the burden of proof is on the employer to prove that it didn't happen in an accident arising out of and in the course of the employment and I trust you can appreciate this is a rather difficult task.

MRS. BREMNER: I think perhaps it is too difficult for the employer.

SENATOR MC DERMOTT: Are you referring to the situation described by Mr. Brown of Suburban Transit who talked about the man who said that he was injured off the job and told everybody but who said, "Yet I am collecting." When Mr. Brown said to him, "Are you honest?" He said, "Yes, I am, but it's easy money." Is that the situation you are talking about?

MRS. BREMNER: Yes.

SENATOR MC DERMOTT: Well, there is nothing further I can say other than the fact that evidently this man collected even though he shouldn't have collected because his injury was not work connected by his very own statement. Thank you very much.

MR. BACHALIS: May I make one little comment?

SENATOR MC DERMOTT: Well, if you wish to, please take the witness stand.

J O H N B A C H A L I S: Senator, since I did have the privilege of serving on the Workmen's Compensation Study Commission and since my colleague had mentioned that the majority report had come up with a definition, I think perhaps it might help if that definition were put in proper perspective. The definition is nothing more than words taken out of the case of Burbage v Lee, decided April 15, 1915, and its total import is to maintain the status quo, so that it contributes nothing which is not already a part of the Workmen's Compensation Act. It seems to me, in my humble opinion, that it becomes necessary to have some new words in the statute in order to turn the clock around.

SENATOR MC DERMOTT: You are referring, Mr. Bachalis, to the testimony of Mr. Alex Turak, aren't you?

MR. BACHALIS: Yes, I am. Thank you very much, Senator.

SENATOR MC DERMOTT: Thank you, Mr. Bachalis.

There being no further witnesses or comments -- Correction - I will defer to my co-Chairman, Assemblyman Robert Haelig.

ASSEMBLYMAN HAELIG: I just wanted to say on behalf of the Assembly Labor Relations Committee, the testimony was most helpful all day and I am hopeful that we can initiate some significant reforms before the two years of this Legislature are over. With that, I will turn it back to you, sir.

SENATOR MC DERMOTT: I hereby declare the hearing closed. However, we will keep the record open for a period of one week as at least one gentleman approached me and said he wanted to submit a written report. But after a week's time, we will close the record.

Thanks again for participating here today, and to you ladies, a special thank you. You have had a very long day, a very arduous one, and some of you are going to have an equally arduous one tomorrow. So we appreciate the imposition on you today.

[Hearing Concluded]

STATEMENT OF NEW JERSEY STATE AFL-CIO CONCERNING WORKMEN'S COMPENSATION BILLS

April 22, 1970

May we express our appreciation for this opportunity to testify before you and to present our point of view concerning proposed legislation relating to Workmen's Compensation.

Several bills purport to carry out the recommendations made by the Workmen's Compensation Law Study Commission contained in the report dated July, 1968. May we say that we were deeply disappointed not only by the nature of the report but by the apparent unwillingness of those who prepared the report even to tell the truth.

The outstanding feature of this report is contained on its first page and in its first paragraph. In this paragraph, which deals with the most important subject matter studied by the Commission, are contained some outstanding false statements which cannot be anything but knowingly false.

It is stated in that paragraph that the presentation made by the Consumers League was to the effect that an increase in benefits for Temporary Disability Benefits will not reduce claims for "minor partial permanent disabilities". Such a statement is utterly untrue and is not contained in the testimony given to that Commission by the Consumers League.

It is further stated that "representatives of both the A.F. of L. and C.I.O. agree". The oddity of this statement lies both in its ignorance and its falsity. Those who were responsible for presenting the report did not even know that there is no such thing as a separate "A.F. of L." or a separate "C.I.O." and has not been since these organizations joined a number of years ago. It is not only careless but a distortion to make it appear that the A.F.L. and C.I.O. are still separate organizations. There is but one AFL-CIO and no other.

In addition, the representatives of organized labor who testified did not agree to the astounding statement above referred to. Such a statement is false and cannot be anything but knowingly false. The position of the AFL-CIO for many years has been that the provision of reasonable benefits for temporary disability will obviate a number of small claims for partial permanent disability. As yet, no evidence exists in sufficient amount to justify or disprove such a contention.

The members of the Commission thereupon set themselves up to dispute the opinion of the outstanding expert on the subject, Doctor Larson, and to dispute the opinion also of another outstanding expert, Commissioner Reid, and the International Association of Industrial Accident Boards and Commissions. It offered merely the "concensus of opinion of those members of the Commission who have had many years of practice in the Workmen's Compensation field." There are at least one or two of those

members who we know personally to have a point of view in agreement with that of Doctor Larson, Commissioner Reid, and the Consumers League, and we urge also that it is arrogance beyond reason for those few members of the Commission who believe otherwise to dispute the experts, based only on their belief without evidence.

The arrogance of a few members of the Commission, together with the falsity of the statements contained in the first paragraph of the report, in our opinion so colored the entire report as to make it suspect throughout and to destroy its complete value.

We urge this Legislative Committee to avoid being prejudiced by a report which, by its own statements condemned itself as unworthy of credence or belief.

Now let us hasten to state that our bitter criticism does not relate to all of the members of the Commission or even to most. It relates merely to those who undertook to prepare the report for the almost automatic approval of other members of that Commission. It is sometimes unfortunate that members of a Study Commission will permit those most deeply interested in distorting its report to prepare the language of that report.

Coming now to the question of the specific legislative bills, may we indicate the position of the State AFL-CIO as follows:

ASSEMBLY BILL NO. 81

This bill proposes to extend the statute of limitations in a death case to one year after the death of the employee if such period is longer than the two-year period already provided by law. This is a reasonable proposal and should be adopted.

ASSEMBLY BILL NO. 146

This bill would provide for a direct appeal to the Appellate Division of the Superior Court.

We support the bill as being one means of securing reviews by persons more experienced in the Workmen's Compensation field. Many of our County Courts have had little or no experience in Workmen's Compensation and should not sit in review of the Compensation Division.

We have in the past urged and still urge that there should be an initial review, without costs to the Appellant, by a Board of Review within the Division. We still believe that such a Board of Review would avoid much unnecessary loading of the Appellate Court. We believe that Assembly Bill No. 146 should be adopted but we feel reasonably sure that in the near future the Appellate Division will be swamped with work and will probably seek a way out by securing an initial review as we have suggested above.

ASSEMBLY BILL NO. 147

This bill would permit lump sum payments in settlement of disputed claims for compensation. We oppose this bill on the same grounds as we have always opposed a provision for easy lump sum payments.

In many cases persons receiving lump sum payments in the past have quickly been deprived of the entire amount by reason of their inexperience in the handling of substantial sums of money. We may be called paternalistic in this approach but our paternalism is based on past experience.

It is argued that this bill would provide for a more efficient method of settlement of disputed cases. We do not think that this is correct. Section 22 already provides for a means of settlement in disputed cases although it does not provide for the payment of lump sum settlements.

The Division of Compensation has a means of providing commutation of awards so that, where justified, lump sums may be paid. We believe that this method of computation should be continued.

The last two sentences of the proposed amendment on Page 2, Lines 53-59, leave two serious ambiguities which in themselves destroy the value of the bill:

First, according to this language a lump sum settlement approved under the proposed bill would prevent the claimant from ever

presenting a claim against the particular employer or any other employer for any subsequent accident or injury totally disconnected from the one with respect to which the settlement is entered. This, we submit, is an outrageous interference with his rights. We believe that this was never intended by the draftsmen of the bill but that this only goes to indicate the entire incompetence of the draftsmen in understanding the problems of Workmen's Compensation.

Second, under the Workmen's Compensation Law an employee not covered by Workmen's Compensation may bring action against his employer at common law for negligence. A reading of Lines 33-39 indicate that the probabilities are that he could, if denied resort to the Workmen's Compensation Law, rely upon his common law rights for actions for negligence. This could be far more serious to the employer.

We do not believe that the Legislature should adopt legislation which is subject to such ambiguous constructions.

We are, therefore, opposed to Assembly Bill No. 147.

ASSEMBLY BILL NO. 148

This bill would increase the statute of limitations as to occupational diseases to ten years rather than five years.

While the bill is more liberal than the present Law and therefore should be supported, we feel that it ignores the basic fact that there are occupational diseases, particularly arising out of radiation,

that take 20 or more years to develop. Any restriction of the period of limitation is grossly unfair to persons who are unaware that they have been infected with such a disease. The period of limitation should commence on the day when the claimant knew or should have known of the existence of his disability. This should apply to all disabilities and not only radiation poisoning.

ASSEMBLY BILL NO. 149

The purpose of this bill is to encourage the use of rehabilitation by relieving the fear of the employee that rehabilitation will result in diminished compensation. We support the bill.

ASSEMBLY BILL NO. 150

This bill would prohibit compensation arising out of recreational or social activities conducted by an employer if those activities merely are intended to improve employee health or morale.

We submit that this is an unreasonable attempt to limit the right to Workmen's Compensation in face of the fact that such employees so injured would not be entitled to sue for negligence.

If an employee is ordered, directed or even requested to participate in recreational or social activities for the purpose of increasing employee morale, and during such activities suffers an injury, he should be entitled to collect either on the basis of negligence or as Workmen's Compensation.

This bill, therefore, is unreasonable and should be defeated.

ASSEMBLY BILL NO. 202

This is a bill which we cannot believe was seriously introduced. It is a rollback of the entire concept of Workmen's Compensation so that instead of receiving maximum benefits at the rate of 2/3rds of average weekly wages, the maximum benefit for Temporary Disability would be $90.00 a week and the maximum for Partial Permanent Disability would be $45.00. The bill would make several other changes one or two of which would be improvements such as providing for appeals to the Appellate Division and a minor improvement in the benefits for enucleation of an eye or for the loss of fingers. However, the definitions of injury requiring actual bodily injury reducing recoveries for heart disabilities providing for lump sum settlements and requiring actual functional restriction and lessening of an employee's working ability are so detrimental to the concept of Workmen's Compensation as to effectively destroy its meaning.

We trust that this bill will be defeated.

ASSEMBLY BILL NO. 216

This bill proposes a few changes to the Workmen's Compensation Law of which the major one deals with the principal question presented to the Commission -- benefits for partial permanent disability. As to its recommendation for benefits for partial permanent disability, we unhesitatingly condemn the bill as entirely improper and utterly unacceptable.

For many years, in fact for almost the entire life of the Workmen's Compensation Division, weekly benefits for partial permanent disability were equal in amount to all other benefits provided by the Act. Suddenly and over the violent objections of organized labor, this was changed solely in order to save money for employers but in complete disregard of the interests of the injured workers. This concept still remains with us and infected the thinking of the members of the Study Commission or some of them. It is now proposed to continue the concept of paying a lower weekly benefit for permanent partial disability than for any other item of disability. An arbitrary figure of $60.00 would be imposed as the maximum benefit rate for this type of disability regardless of the earnings of the individuals, regardless of the cost of living and regardless of any other consideration. The Legislature realized this defect a few years ago in establishing the 2/3rds rate but it is now proposed to continue the arbitrary figure with respect to partial permanent disability irrespective of degree. Even an 80% disability would be limited to a payment of $60.00 per week. Whereas, it is conceivable that a few years from now, with increased cost of living and increased wages, temporary benefits or permanent total benefits will equal $100.00 per week. The proposed arbitrary figure continues the political character of the law rather than to permit changes as dictated by economic necessity.

Organized labor will continue to struggle for an elimination of the arbitrary maximum in this Law until we are finally successful.

In addition, the bill would provide that for the first 7 1/2% of the disability, the maximum will be only $40.00 per week. We submit this is an outrage.

Take for example the case of a violin player employed in an orchestra who receives wages of $200.00 a week or more. An injury to any one of the fingers of his left hand which could amount to as little as 5% disability, would permanently disable him to perform his regular occupation 100% of the time. Yet, he would be limited to the rate of $40.00 per week for the scheduled period of disability.

In addition, the establishment of a $40.00 maximum for the first 7 1/2% of a partial disability imposes a much heavier penalty upon an individual for a greater injury. For example, a 50% disability of an arm equals 150 weeks. 7 1/2% of this is approximately 11 weeks. Thus, a person who has a 50% disability of an arm would receive $40.00 maximum for 11 weeks, depriving him during 11 weeks of the full benefit, whatever that may be.

Yet a person who has a 50% loss of his 4th finger, (the little finger) would have a total benefit for 10 weeks and, therefore, a reduction of his first 7 1/2 weeks would be for less than one week. The penalty for such a person, and it must be considered a penalty, would be for less than one week whereas a person suffering the loss of half an arm would be penalized for 11 weeks. We submit that this is a characteristic stupidity of the concept urged by so many people of the "nuisance claim".

We submit that there is no such thing as a "nuisance claim", even if it should be called "minor disability" as the Study Commission referred to it.

A 5% disability of the little finger is minor perhaps with regard to many work classifications but certainly not with regard to a violin player. There truly is no such thing as a minor disability and only those who are interested in saving money for employers can conceive of "minor disabilities" or "nuisance claims".

We are, therefore, utterly opposed to the proposed amendment of Section 12c of the Act indicated on Page 3, Lines 74 to 106 of the Bill.

We are also opposed most strenuously to the amendment proposed to Section 23 shown on Pages 5 and 6, Lines 187 to 194. We cannot understand the logic behind the concept here presented. A worker who is a member of a beneficial association which carries accident insurance for him would thereby relieve his employer of liability for the entire amount of the accident insurance and, therefore, be denied Workmen's Compensation for any otherwise compensable accident. It is utterly outrageous to deny a worker compensation for injuries otherwise compensable merely because he carries accident insurance in any form. We truly cannot understand the mentality which makes such a proposition.

Other provisions of Assembly Bill No. 216 are not only unobjectionable but we believe should be supported as an improvement in the Law. These relate primarily to the question of compensating for aggravated

previous cardio-vascular injury. The degree of the previously existing injury is to be paid out of the Second Injury Fund.

We believe that this will encourage the employment of otherwise handicapped persons and is, therefore, to be supported.

We support the amendment on Page 4, Lines 146 to 147, which regards the various bodily members as major members.

With respect to the amendment of Section 21 shown on Page 5, Lines 153 to 157, we respectfully believe that enucleation should also be considered as providing for an additional 25% of benefits and that, therefore, the words "enucleation or ..." should be inserted in Line 153 prior to the word "amputation".

We specifically support the proposed amendment on Page 6, Lines 209 to 213, as providing for additional monies in the Second Injury Fund.

For the reasons given above we support the inclusion of the proposed Section k on Page 8, Lines 86 to 102, but we urge that on Page 9, Line 106 there should be a provision for 66 2/3% of wages rather than 50%. The employer should not be relieved of the extra 16 2/3% at the expense of the Fund without justification therefor. We are in agreement with respect to the remaining proposed changes indicated by this bill relating to Section 94 and 95 of the Act and also support the change indicated on Page 12 and 13 of the bill.

In general the proposed changes relating to the Second Injury Fund are acceptable although they do not fully answer the needs. However, as they are incorporated with the changes proposed for partial permanent disability, we oppose the entire bill as being against the interests of the injured workers and as a simple attempt on the part of employers to avoid responsibility for adequate compensation to their injured workers.

ASSEMBLY BILL NO. 273

This bill would amend the law concerning the Second Injury Fund so as to expand its application and encourage the employment of disabled workers by providing payment from the Fund rather than on the part of employers who are frequently compelled to pay compensation for pre-existing disabilities. This bill would further prevent the use of Second Injury Fund monies for the administrative cost of the Division. We urge its adoption.

ASSEMBLY BILL NO. 309

We support the provisions of Assembly Bill 309. It was never intended by the Workmen's Compensation Act to deprive injured workers of a right of action against anyone other than their own employer in case of accidental injury. The negligence, simple or gross, of a physician, surgeon or other treating person should not be relieved because there is a liability to the employee on the part of the employer. Relieving such a person of liability might have the tendency to cause negligent treatment.

ASSEMBLY BILL NO. 320

This bill would provide that Workmen's Compensation petitioners and fellow employee witnesses who are required to attend hearings on Workmen's Compensation claims shall be entitled to lost wages and travel expense from their employer.

This is a common requirement of collective bargaining agreements but employees who are not protected by collective bargaining agreements do not receive such benefits. We believe that good employment practices require this provision and urge its adoption.

ASSEMBLY BILL NO. 379

This bill would amend the law concerning the Second Injury Fund so as to expand its application and encourage the employment of disabled workers by providing payment from the Fund rather than on the part of employers who are frequently compelled to pay compensation for pre-existing disabilities. We approve the bill. However, we prefer Assembly Bill No. 273 for the reasons stated previously.

ASSEMBLY BILL NO. 404

This bill would provide payment of compensation at current rates for persons long receiving compensation at rates so low as to be of practically no value. The increased payments would come not from the employer or his carrier but from the Second Injury Fund. The purpose of this bill is to benefit persons unable to care for themselves. We urge its adoption.

ASSEMBLY BILL NO. 407

This bill is the bill of the New Jersey State AFL-CIO which seeks the adoption of a minimum program to amend the law and modernize it. It provides for expeditious appeals, adequate and self-determining benefit rates, free choice of physician, reasonable statutes of limitation and adequate provisions relating to the Second Injury Fund. It is not a bill which the AFL-CIO considers to be the ultimate bill but one which we believe to be reasonably possible of early adoption for the benefit of the workers of this State.

ASSEMBLY BILL NO. 656

This bill was introduced to make specific provisions for compensation for loss of hearing. It is based upon allegedly scientific data which, however, is always open to change and modification as a result of newly developed data.

We oppose this bill on the ground that it fixes into law computations and formulae which should be subject to adoption or change by the Workmen's Compensation Division as the facts or cases dictate. We submit that an attempt to impose upon the Division or on the Courts a specific and limited formula is to deprive the Division or the courts of the exercise of adequate judgment which has heretofore clearly been the most effective and valuable function of our system. We, therefore, oppose Assembly Bill No. 656.

SENATE BILL NO. 193

This bill is a copy of Assembly Bill No. 407. We, therefore, repeat herein what was said concerning Assembly Bill 407.

SENATE BILL NO. 236

This bill would pro-rate compensation for occupational disease among all employers during the five years preceding knowledge by the employee of his disability. The effect of this bill would in many cases be to deprive the employee of benefits, since some of these previous employers will have gone out of business in the interim. In addition, the earlier employers' carriers will have eliminated their reserves for the purpose of covering such liability. The bill would create great confusion without providing any real benefit to employees or to the employers involved.

SENATE BILL NO. 285

This bill would authorize the Commissioner of Banking and Insurance to approve or disapprove modifications in insurance rates depending upon his finding that they are or are not "unfairly discriminatory".

We are in agreement with the purposes of this bill but it does not establish any standards upon which the question of "unfair discrimination" is to be based. In the light of the history of the insurance department, we submit that standards should be established rather than to take the risk of having improper standards applied. If the bill should be amended, so as to provide proper standards, we would be glad to support the measure. Otherwise, it constitutes too great a danger.

SENATE BILL NO. 443

This would require appeals to be taken direct to the Appellate Division rather than to the County Court. We support this proposal as resulting in an elimination of wasted time in Workmen's Compensation matters.

Before concluding this statement, we wish to emphasize that the most important single step to be taken in connection with this law is to change immediately the benighted and ridiculous rate of $40 per week for partial permanent disability.

Benefits for partial permanent disability are designed to compensate generally for the computed number of weeks that may ultimately be lost by reason of the permanent disability suffered. The number of weeks established by the law may in some cases be more than enough but in most cases are far less than are represented by the degree of loss suffered by the injured worker. To add insult to injury by valuing these weeks at the rate of $40. per week is a simple outrage. Even the rate for non-occupational temporary disabilities is now valued at one-half of the State's average weekly earnings - presently $69 a week. Yet we pay workers injured in industrial accidents at a rate of $40 a week. This is obviously not enough to keep a single person alive,

let alone enough to provide a minimum livelihood for a family.

We have predicted and continue to predict that it is this kind of degradation of the workers of our State that will ultimately cause them to rise in protest against any administration which continues this practice. We most strenuously urge that regardless of anything else that is done to improve the Workmen's Compensation Act, the benefit rate for partial permanent disabilities should be immediately and drastically revised upwards to a point where it will equal the other benefit rates provided by the law, namely, a maximum of two-thirds of average weekly earnings.

We wish to thank the Committee for this opportunity to present our point of view. We ask that in consideration of the rights of injured workers special efforts be placed upon the obligation to be fair since in cases of Workmen's Compensation it must always be remembered that in the absence of Workmen's Compensation there would be a right to an action for damages.

Such damages invariably are much higher than the amount provided by the Workmen's Compensation Act. The necessity under the circumstances to be fair and even more than fair to injured workers should be obvious to all.

Respectfully submitted,

NEW JERSEY STATE AFL-CIO

By:_____
CHARLES H. MARCIANTE
President

Mr. Chairman, members of the Senate and Assembly Labor Relations Committees, my name is John R. Mullen and I am Vice President, Personnel and Labor Relations, ETHICON, INC., a subsidiary of Johnson & Johnson. I serve as Chairman of the Workmen's Compensation Committee of the New Jersey State Chamber of Commerce. On behalf of the Chamber and its thousands of business and industry members throughout the State, I appreciate this opportunity to present our views on legislation affecting New Jersey's workmen's compensation program.

The workmen's compensation program of the State of New Jersey, involved in the very welfare of our employees, has been one of the basic concerns of the New Jersey State Chamber of Commerce since the establishment of both the program and the Chamber in the year 1911.

Yet, I need not point out that the Chamber is justly concerned with the staggering increase in the cost of workmen's compensation in New Jersey. In the six years - 1962 through 1968 - that cost has risen approximately one hundred million dollars or 92.1%, while in the same period employment rose only 17.6%.

And when we compare the most recent workmen's compensation costs in New Jersey with those of our neighboring states, we find that New Jersey's costs in comparable industries are about three times that of Pennsylvania and Delaware, twice that of Connecticut, and about one-third higher than in New York.

This makes it apparent why, when it comes to attracting new industries or encouraging existing ones to expand here, New Jersey

suffers from a serious workmen's compensation cost disadvantage. And, while markets, transportation and other physical considerations are normally ranked of greater importance in the plant location decision, New Jersey's neighboring states offer many of the same advantages. Thus our higher workmen's compensation costs, become an important factor in a company's choice between locating here or in a neighboring state.

If you gentlemen are going to recommend legislation which will improve our New Jersey workmen's compensation program, we believe that you must consider these factors. We also suggest to you that one of the basic reasons for the high cost of workmen's compensation in New Jersey is the nuisance award, that is the payment of compensation dollars to satisfy awards for injuries which are neither permanent nor disabling. All too frequently nuisance awards are based solely upon complaints without any evidence of permanent impairment or loss of function.

The intent of our workmen's compensation statute to compensate an employee for a permanent disability resulting from a work connected accident has been watered down drastically. The term "existing disability" has been used by hearing officials as a substitute for the statutory term "permanent disability". In a substantial number of cases there is little or no time lost from work, no loss of wages and little or no medical treatment. Further, our Chamber records are replete with examples where subsequent investigation revealed that the "existing disability" vanished

shortly after the hearing and some successful claimants cannot even remember which part of their body was injured. Yet in all of these cases "nuisance" awards were made.

We see no justification for any increase in permanent partial benefits with a resulting major increase in our workmen's compensation costs until legislation is enacted to correct and alleviate the "nuisance award" and other abuse situations. The first step in that direction would come from an effective statutory definition of permanent partial disability. We believe that the following definition would offer a constructive solution to this problem and yet permit payment of appropriate awards for truly legitimate injuries.

"Disability total in character and permanent in quality and disability partial in character and permanent in quality, shall mean a permanent impairment caused by accident or compensable occupational disease which restricts the function of the body or of its members and which also lessens an employee's working ability and which is accompanied by demonstrable objective evidence."

During the past few years, courts have with unbelievable frequency held that workers who suffer disabling heart injuries are entitled to workmen's compensation benefits in the most remote of work connected circumstances. In fact, it has become nearly sufficient evidentially if the petitioner can establish that he was employed. What had been considered for years to be a natural deterioration of a body function which will befall all of us, has now become an employer responsibility. I don't think that our compensation acts were intended to insure the employee against a natural deterioration

of his heart and yet this is the liability that has been imposed upon New Jersey employers by the courts. This has produced some awful side affects to the employee. If it is suspected that he might be a good candidate for a heart attack, he won't be employed even if in apparent good health. If he has suffered a heart injury from which he has recovered sufficiently to return to work, he frequently will be denied the opportunity, and if he seeks employment elsewhere his opportunities may be limited. To put some balance and fairness back into the area of heart cases, we feel that corrective legislation is sorely needed to add a requirement that to sustain a heart claim, proof should be required that the work effort or strain, involved an event or happening beyond the normal and routine duties of employment.

In other words the petitioner must show by a preponderance of the believable evidence that such injury or death involved a happening or event beyond the routine and normal duties of employment without which, the injury or death would not have resulted. We believe that in determining compensability in heart cases, this is the most equitable method and it would open up employment opportunities for workers who have suffered cardiovascular involvements. The recently published report of the Division of Workmen's Compensation for the year 1968, indicates that 780 heart cases were held to be compensable in that year -- adequate testimony that the area needs your intelligent consideration.

Another growing problem in workmen's compensation is the need for fair and equitable guidelines in the area of occupational loss

of hearing. Legislation covering this subject has been enacted in many states and we believe it is needed in New Jersey. It should be designed to provide an equitable method of determining compensable loss of hearing due to industrial noise exposure. In this connection, we commend for your favorable consideration Assembly Bill No. 656.

There are other bills dealing with workmen's compensation which the Chamber strongly supports: S-443, A-146, A-147, A-150 and A-202. These are good bills and will benefit workmen's compensation in general in the state of New Jersey.

S-443 and A-146 provide for appeals in workmen's compensation cases to the Appellate Division of the Superior Court rather than to the County Court. These bills would reduce the costs of workmen's compensation appeals and shorten the time from filing a petition to ultimate determination. They were conditionally vetoed by Governor Hughes last year for reasons of cost and the impact that this streamlined procedure would impose on the already heavy case load of the Appellate Division. He suggested that appropriations might be available by July, 1970 to support this program.

A-147 would permit lump-sum settlements of workmen's compensation cases when the petitioner and respondent are desirous of settling the controversy and have the approval of a supervising judge of compensation. We believe that the concept of lump-sum settlement is a means of curtailing the extent of workmen's compensation controversies and of permitting more timely settlements of workmen's compensation cases.

A-150 provides that injuries or deaths which result from recreational and social activities which are not a regular incident of employment and which do not produce a benefit to the employer shall not be compensable under the Workmen's Compensation Act. We believe this legislation would be a means of encouraging more employers to promote such activities for the enjoyment of their employees without penalizing them for such interest.

A-202 increases maximum permanent partial disability benefits to $45 per week; provides additional benefits for enucleation of an eye or amputation of a major member of the body; provides an objective definition of permanent partial disability; eliminates the 2/3 of average weekly wage fluctuation maximum and sets a flat maximum for temporary total disability, permanent total disability and death. This bill also contains corrective measures covering cardio-vascular diseases which as we have stated is sorely needed.

Both A-379 and A-404 deal with the Second Injury Fund. The former would impose some substantial revisions in fund application. The latter would permit increasing the rate of compensation benefits received by employees under statutory provisions formerly in effect, to the level of benefits now available under present law. We feel both statutory proposals are ill conceived. Further, we would suggest to you that the Second Injury Fund area is so important that it should receive the separate attention of a Study Commission, before any proposed legislation affecting it is considered.

With respect to the other bills that are before us today, let me make some brief comments concerning them. Assembly 81 permits claims for death benefits to be filed within two years after the last payment of compensation or within one year after the death of the employee, whichever is longer. It thus abolishes the statute of limitations in death cases leaving employers under the constant threat of defending claims for death benefits made by dependents of an employee who had sustained a compensable industrial injury anytime in his working life. We believe the present statute provides adequate protection to the employee's dependents.

Assembly 148 extends from five years to ten years the statute of limitations in connection with occupational disease cases under Workmen's Compensation. We oppose this bill due to the fact that we know of no specific occupational disease that would warrant such an extension. We are further concerned that extension of the statute of limitations would unfairly make an employer a long-time insurer of the health and welfare of his former employees.

Assembly 149 provides that if an injured employee has submitted to physical or vocational rehabilitation as ordered by the Rehabilitation Commission there can be no review of his award on the basis of a diminished disability. We do not believe that an employer should be deprived of his substantive right to petition for such a reduction especially where large sums of money have been expended for said rehabilitation. However we would support an amendment to bar the review of an award during the period an individual is undergoing rehabilitation.

Assembly 216 increases the weekly benefit for permanent partial disability to a weekly maximum of $60; provides for certain payments into the Second Injury Fund; provides that the first 7-1/2% of a permanent partial disability would be subject to the maximum current weekly compensation rate of $40, provides for payments of benefits from the Second Injury Fund for certain pre-existing disabilities.

There is no justification for an increase in permanent partial benefits until legislation is enacted to correct the "nuisance" award situation by an effective definition of permanent partial disability. The payment of the first 7-1/2% of disability at a lower rate is not the way to resolve the problem of the "nuisance" award. It takes very little imagination to foresee the vast majority of cases being resolved at a rate in excess of 7-1/2%. Instead of eliminating abuses, I am afraid that this approach would only serve to create more abuses in the compensation system.

Assembly 309 modifies the law to exclude from common law immunity certain persons in the same employ as the person injured or killed. We see no reason for a change in the traditional principle that compensation shall be paid without regard to fault or negligence on the part of the employee, the employer or fellow employees.

Pursuant to the provisions of Assembly 310, all workmen's compensation supervising referees, and referees of formal hearings would be elevated to the rank of judges of compensation. This appears to be an administrative matter for the Division of Workmen's Compensation and the Chamber has taken no position as to its content.

Assembly 320 provides compensation for wages lost by petitioner and his co-worker witnesses resulting from their attendance at a workmen's compensation hearing. We believe this measure would only serve to encourage the unnecessary filing of petitions for formal hearings without regard to the merit of the case. We are therefore opposed to its enactment.

Assembly 407 is strongly opposed. This is an extreme proposal which more than doubles the rate for permanent partial disability and imposes inordinately higher costs upon an already over-burdened program.

In closing, I would like to express the appreciation of the New Jersey State Chamber of Commerce for the opportunity to appear before you today on a matter which is so intimately concerned with the welfare of our industrial citizens and the economy of this State.

SOUTH JERSEY CHAMBER OF COMMERCE
NORTH PARK DRIVE, PENNSAUKEN, NEW JERSEY 08109
(609) 964-3400

Statement of
LeRoy S. Thomas, President
South Jersey Chamber of Commerce
Before the New Jersey Joint Senate
Assembly Labor Relations Committee
April 22, 1970

The South Jersey Chamber of Commerce representing 550 businesses employing over 100,000 individuals, located in Burlington, Camden, and Gloucester Counties, respectfully submits the following statement concerning Workmen's Compensation in the State of New Jersey.

The Chamber believes sincerely that immediate and sweeping reform in the field of Workmen's Compensation is needed. This reform should include not only legal aspects but also administrative and procedural changes in our present system. We believe that the bills which this Committee is considering today do not respond fully to this need.

We believe that our present system is not fair: it is unfair to the employer; and more important, it is unfair to the employee. Seriously injured employees and their dependents are not being sufficiently compensated. Employees with minor and sometimes imagined injuries are grossly overcompensated. This results in abnormally high costs to employers to the detriment of the more seriously injured employees.

We further believe that meaningful Workmen's Compensation reform

should envision the following:

(1) Permanent partial and permanent total injuries should be payable only where there has been "subjective demonstrable proof." In this regard, we endorse A.202.

(2) We support the concept of an expanded second Injury Fund which will provide an incentive for employers to hire the handicapped. We are, however, uncertain that present or proposed means of financing this fund has been substantiated actuarially.

(3) We support the requirement that the first seven days of disability not be compensable until the employee's disability reaches twenty-eight days at which time the first seven days of disability would be picked up and compensated. We note that no bill before this Committee contains such a provision.

(4) Though we realize that serious disabling injuries, particularly amputations, can never be adequately compensated, we endorse the Workmen's Compensation Law Study Commission's recommendations to increase benefits for amputations of any scheduled member and enucleation of an eye.

(5) In contrast, we believe that benefit amounts which are normally paid out for minor and sometimes imagined injuries with no loss of physical function and frequently with no loss of earnings should not be automatically increased. Furthermore, we have serious reservations concerning the means by which the amounts of such benefits are determined in that these means fail to be objective, are unrealistic, and totally ignore the basic underlying question of liability.

(6) We endorse the principle of lump-sum settlements which are final and conclusive on all parties. In this regard, we endorse A.147.

(7) We also believe that legal reform is not in itself the full answer; there must also be reform in the area of implementing the Workmen's Compensation law. To this end we would suggest that this Committee give due consideration to the serious question of the qualifications and objectivity of those people empowered with the administration of Workmen's Compensation. The Committee might in this regard consider the establishing of a Study Commission to analyze this area.

In conclusion, the South Jersey Chamber of Commerce is extremely concerned with the trend toward general increases in benefits and liberalized procedures and attitudes which afford access to additional and/or increased benefits. This burden, when coupled with Federal, State and Local taxes and today's inflation will very likely press many employers to the point of financial instability and lead to reductions in jobs. Those concerned with industrial development in the Garden State well know that New Jersey Workmen's Compensation law is one of the major deterrents to attracting new industry.

We thank the members of this Committee for their courtesy and attention.

NEW JERSEY SELF INSURERS' ASSOCIATION

COMMENTS ON WORKMEN's COMPENSATION BILLS

SENATE & ASSEMBLY COMMITTEES ON LABOR RELATIONS

PUBLIC HEARING - APRIL 22, 1970

A-81 - Extend time for filing for death benefits to one year after death.

In its effect this bill would extend the statute of limitations in death cases to one year after death. If this bill becomes law, employers will face a constant threat of defending claims for death benefits made by the dependents of any employee who had at any time in his working life sustained a compensable industrial injury.

A-146 -Would permit appeals to Appellate Division.

Comments - The original bill (S-61 - 1969) was vetoed by Governor Hughes. The present bill has overcome the objections given in the Governor's veto message. We favor passage of this bill since it is a means of reducing the expense of appeal and may result in more uniform decisions.

A-147- Lum sum settlement.

Comments - We favor this bill since it may facilitate such settlements and tend to limit workmen's compensation controversies. The bill contains safeguards that protect the injured worker since these kind of awards would be made only when counsel and the judge of compensation agree that a settlement of this nature would be in the best interests of the petitioner.

A-148 - Increases time limit for filing occupational disease claims from 5 to 10 years.

Comments - We oppose this bill. The subject of the extension of the statue of limitations has been discussed in prior legislative workmen's compensation studies. There were no findings that there was a need for it in occupational diseases other than ionizing radiation, which was recently increased by statue. In the absence of compelling reasons for an extension, none appear warranted.

A-149 - Prohibits review of rehabilitated workmen's compensation cases.

Comments - The members of our Association encourage rehabilitation; however, this bill would take away the substantive right of the employer to any review of the employe on the basis that the disability has diminished. Therefore, we oppose the bill. We suggest that the bill be modified to indicate that no review would be permitted while the injured worker is undergoing rehabilitation; but a review would be permitted when rehabilitation has been completed and there is reason to believe that the disability has diminished.

A-150 - Recreational Activities

Comments - We favor this bill as a means of encouraging employers to promote recreational and social activities which are not a regular incident of employment and which do not produce a benefit to the employer, but are solely for the entertainment of the employee.

A-202 - General Workmen's Compensation Bill

Comments - This bill, which includes an objective definition of

permanent partial disability which we hope will correct the nuisance and consolation awards problem, is favored by our Association. Other features of the bill which we feel would be most favorable to establishing a sound and equitable Workmen's Compensation Law in New Jersey are as follows:

Eliminates the 2/3 of average weekly wage fluctuating maximum and sets a flat $90 maximum rate for permanent total disability, temporary total disability and death. Increases maximum permanent partial disability benefits from $40 to $45 per week. Provides additional benefits for enucleation of an eye or amputation of a major member of the body. Allows an employer credit for pre-existing disability. Provides for lump sum settlements. Eliminates appeals to the County Courts. Provides that compensation for cardiovascular disease is payable where the work effort or strain involved an event or happening beyond the normal and routine duties of employment.

A-216 - General Workmen's Compensation Bill

Comments - Though some amendments offered by this bill may be acceptable we strongly oppose the bill as a whole. We feel there is no justification for an increase from $40 in permanent partial benefits until legislation is enacted to correct and alleviate the so-called "nuisance" or unjustified small award situation by an effective definition of permament partial disability. The provision for payment of the first 7 1/2% of a permanent disability at a lower rate is indication that the drafters of the legislation recognize that a problem exists

but this cannot be construed as taking effective remedial action to eliminate the problem. We feel it is an impractical approach to the situation. We recognize the potentialities of a good Second Injury Fund. This is a broad and complex problem. It needs detailed study and development regarding eligibility, employer obligation, equitable financing, etc. Though we are in favor of some type of second injury fund, the open-end second injury fund proposal in this bill is not sound and would result in the fund becoming a very expensive "catch-all". In view of these complexities, we strongly urge that this important subject be given consideration by a special study group, in order that a fair and equitable solution can be reached.

A-309 - Common Law Liability

Comments - We oppose this bill since we know of no reason to change the traditional principle that workmen's compensation shall be paid without regard to fault or negligence on the part of the employe, the employer or fellow employe. An injured employe is already compensated for the end result of medical treatment in the partial permanent award granted in the vast majority of claims heard in New Jersey Workmen's Compensation courts.

A-310 - Referees to become Judges

Comments - The designating of referees as judges of compensation is a matter of departmental internal administration.

A-319 - Hypertension, heart disease, or tuberculosis incurred by paid fire or policeman considered to be an occupational disease.

Comments - The New Jersey Workmen's Compensation Law provides the means of determining whether or not a disease is of occupational origin. It would be grossly unfair to municipalities to be forced to pay workmen's compensation to every member of its police or fire departments who incurs hypertension, heart disease or tuberculosis.

A-320 - Hearing Attendance Pay

Comments - This bill will encourage absence from work by the petitioner and by any of his fellow employes when he would care to call as witnesses. This measure would greatly increase the high cost of New Jersey Workmen's Compensation costs.

A-321 - Double compensation awarded when employer fails to comply with State Labor Department orders.

Comments - The Commissioner of Labor has adequate enforcement powers under labor statue to insure compliance with his orders.

A-379 - Expand 2% fund

Comments - The expansion of the 2% Fund is a complex problem that embodies more than the phase covered by this bill. An intensive review of the coverage to be provided, the overall financing, the potential liabilities, and the methods of evaluating pre-existing and partial disability is needed. Since the 1968 Study Commission did not make an in-depth study of the Second Injury Fund, we recommend that the

Legislature establish a Second Injury Fund Study Commission.

A-404 - Expand 2% Fund

Comments - This proposal to increase payments from the 2% Fund to the current amount should be one of the items considered in the total review of the Fund. See comments made on bill A-379.

A-407 - General Workmen's Compensation Bill

Provides the Director of Workmen's Compensation be appointed by the Commissioner of Labor and Industry without reference to the Civil Service Law instead of by the Governor with the advice and consent of the Senate as under the present law. We feel that this important appointment should be made by the Governor with proper senatorial approval.

Comments - We oppose the creation of an appeals board within the Division of Workmen's Compensation to review judgments issued by the Division. An appeal board controlled by the Commissioner of Labor and Industry is inconsistent with generally accepted concept that an appellate body should be independent and free of any influences in the area in which it has been created to function. Benefit increases should be considered concurrently with the curtailment of the ever increasing cost of minor permanent partial awards. We would consider increasing the maximum permanent partial disability benefits from $40.00 to $45.00 providing the bill contains an objective and sound definition of disability. The definition should state, "For injuries producing a disability partial

in character and permanent in quality shall mean a permanent impairment caused by an accident or occupational disease which restricts the function of the body or its members and which also lessens an employe's working ability and which is accompanied by demonstrable objective evidence."

Industry must make a strenuous objection to the free choice of physician concept. Under our present system, employers seek to provide the best medical care available. They do so from motives of sound economy. The better the care, the swifter the recovery and the lower the permanent disability. Treatment of industrial accidents almost constitutes a sub-speciality among the specialities. Most physicians in the specialities see only an occasional industrial accident. The present method of medical treatment must be maintained because these physicians are highly expert in the care of industrial injuries and diseases, widely experienced and always readily available. Besides losing control of providing the required treatment, free choice of physician would increase industry's costs. In addition to the cost of maintaining its present medical facilities, employers would be subjected to uncontrolled outside medical costs. Dr. Warren Draper, Executive Medical Director of the United Mine Workers Health & Welfare Fund, attributed the failure of the fund's "free choice" concept to the fact that doctors selected by the employes often were not the proper ones to treat the employe's injury or ailment.

The expansion of the 2% Fund needs thoughtful consideration. As we recommended in our comments on Bill A-379, we suggest that a study commission be appointed to consider this subject.

A-656 - Occupational Hearing Loss

Industry has become increasingly concerned about the need for fair and equitable guidelines in this area. Many states have enacted legislation covering this field. We feel that legislation specifically designed to provide an equitable method of determining compensable loss of hearing due to industrial noise exposure is needed. This bill will fulfill this need.

A-706 - Common Law Disability - See comments on Bill A-309.

S-193 - General Workmen's Compensation Bill - See comments on Bill A-407.

S-236 - Proration of Occupational Disease Award

Comments - To assess part of a compensation award against a company that did not contribute to the cuase or progression of an occupational disease is grossly unfair. A bill is needed that would establish the exposures that result in occupational disease. This is a complex subject and should be developed by a study commission.

S-285 - Compensation Insurance Rating - Not of interest to self insurer.

S-441 - Workmen's Compensation for County & Municipal Employes -

Comments - This bill does not concern industry. It deals

with public employes. A similar previous bill was vetoed by Governor Hughes because of the cost.

S-443 - Appeal Procedure

Comments - The original bill (S-61 - 1969) was vetoed by Governor Hughes. The present bill has overcome the objections given in the Governor's veto message. We favor passage of this bill since it is a means of reducing the expense of appeal and may result in more uniform decisions.

S-466 - Chiropractors entitled to compensation

Comments - The question of considering chiropractors services to be medical services should be decided by the medical associations. In 1968, the Governor cited the statue that places certain limitations upon the chiropractic services in giving his reasons for vetoing a similar bill. Therefore, we feel that there is no reason to re-open this subject.

STATEMENT SUBMITTED BY RICHARD BROWN

Presentation of statement before Assembly and Senate Labor Relations Committee Public Hearing on Workmen's Compensation bills scheduled for hearing, 4/22/70 in Trenton, New Jersey.

My name is Richard Brown. I represent the Employers Legislative Committee of Bergen County.

Our organization appreciates the privelege to state our views on the following Workmen's Compensation bills which we understand are scheduled for consideration. We do not wish to burden you with redundant reasons for either support or opposition to these bills as I am sure the larger employer organizations such as the New Jersey State Chamber of Commerce, The New Jersey Manufacturers Association, the state body of the employers legislative committee and the New Jersey Self Insurers Association have already stated the reasons for support or opposition in much more detail than we intend to do. Our feelings, however, regarding this pending legislation, do not differ from these other groups.

Of paramount importance and interest to us and which we feel will overcome many of the inequities as well as abuses, is Assembly bill A202.

We do not believe that any of the features in this bill will in any way or manner be injurious to the injured workman who requires medical attention, rehabilitation, monetary benefits for the necessary time lost or monetary benefits for permanent disability, whether it is partial or total. This bill does not lessen to any extent the benefits to which an injured workman should be entitled. Neither does it in any way prejudice a widow or other dependents who are entitled to dependency benefits. As a matter of fact, the benefit rate for injured employes who lose time from work is compensated for more than 66 2/3% of the average weekly wages, if one considers what real wages are after deductions for Federal income tax, social security and State unemployment tax. There must also be considered the cost of going to and coming from work in arriving at real wages.

One specific point that we would like to call to your attention is that the benefit rate as contained in the present law as well as A-202; under section 34:15-12 (a) although specifically stating it is for Temporary disability (lost time) also applies to Permanent total disability benefits as well as dependency benefits. Whatever is done with the rate under this specific paragraph without changing its construction will also apply to other benefits as mentioned.

The construction of this paragraph standing alone is misleading. (If questioned refer to paragraph b and j which is for permanent total disability and dependence benefits and which refers back to paragraph (a) for application of the rate).

We are hopeful that a definition of disability as contained in A-202 will eliminate the results of minor lacerations, scratches, bruises and contusions which are being considered as permanent disability under the interpretation of our present law. If this is accomplished we also feel that the increase as recommended in this bill should be considered. This area in Workmen's Compensation is one of the most unrealistic areas that must be dealt with. On the other hand we feel that this bill will compensate more justly those employes who suffer severe injuries. Definition in disability of the hand is extended and an additional benefit is proposed for those injured workmen who are unfortunate enough to sustain amputations.

We are also hopeful that this honorable body will seriously consider the features in this bill dealing with pre-existing cardiovascular disability and other pre-existing conditions. We feel that the employer should not be held liable for disability as a result of congential anomalies, constitutional diseases or non-occupational accidents that pre-exist a compensable accident. It can well be imagined that an employer, under our present situation in this area of Workmen's Compensation would be reluctant to hire well qualified people due solely to these pre-existing conditions.

We are also hopeful that serious consideration will be given to the definition as contained in this bill regarding accident to the heart. We will not burden you with case histories and explanations regarding this most important area as you are probably already aware of the many decisions handed down in these latter years since the Dwyer-Ford case. As you know if you hire a young married man who is well qualified otherwise but has a heart condition, you are hiring a potential liability of upwards of $200,000 if he should decease and leave a widow whose age would be 30.

We feel that serious consideration should also be given to the feature of taking appeals directly to the Superior Court. This will eliminate a step that is costly and time consuming to both employer and employe.

Insofar as the other bills scheduled for public hearing a brief comment on each is submitted herewith although we do not consider any of these bills of less importance.

A-147 and S-443: The features of these bills are contained in A-202 and we will not repeat our feeling with reference to them.

A-81 - We are opposed to this bill for the same reasons that the other large employer organizations state.

A-141 - We are opposed to this bill. Although the right of the employer in the present law is rarely sought the employer should still retain this right, if after rehabilitation there is proof that the disability has definitely diminished.

A-150 - We favor this bill for the same reasons that the other large employer organizations state.

A-216 - We oppose this bill as a whole for the same reasons the other large employer organizations state.

A-309 - We oppose this bill for the same reasons as stated by the other large employer organizations.

A-310 - We oppose this bill as unnecessary. Referees in the Division act as mediators in an attempt to eliminate long and costly trials. It seems that the reasons behind this bill would be to increase the salaries of the Referees. This would seem to be an administrative problem and if an increase in the salaries of Referees is justified we should not do it by attempting to change administrative functions in the Division of Workmen's Compensation.

A-320 - We oppose this bill as it could destroy the Compensation by Agreement philosophy of our law. It would increase litigation; it would prolong litigation. It would increase compensation costs and open up a new avenue for further abuses. The Division of Workmen's Compensation's Annual report of 1968 reveals that in 1968 the total number of compensated cases disposed of is as follows:

Formal cases	67449
Informal cases	31120
Direct Payment Cases	21682

If this bill were passed - it could conceivably eliminate Direct payment cases, and affect the employer-employe relationship in this area.

A-379 - We oppose this bill at this time. We agree with other employer organizations that a special study group be set up in order that a fair and equitable solution can be reached.

A-404 - We oppose this bill at this time for the same reasons as stated regarding A-379.

A-407 - We strongly oppose this bill for the same reasons as the other large employer organizations state.

S-443 - We favor this bill on the appeals procedure.

S-466 - We oppose this bill for reasons as stated by the larger employer organizations.

CONSUMERS LEAGUE OF NEW JERSEY

Statement by
Mrs. Beatrice Holderman

We appreciate the opportunity of appearing before you. As a Board member of the Consumers League of New Jersey, with a background of services as Director of the New Jersey Rehabilitation Commission before retirement in 1968, Mrs. Zwemmer, our President has asked me to supplement her observations relative to pending Workmen's Compensation legislation. My remarks will be concerned with A-273-Fontanella which proposes amendments to the 2nd Injury Fund provisions of the Workmen's Compensation Act.

The Consumers League of New Jersey endorses this bill. It indeed will open the doors of opportunity for handicapped people, enabling them to be independent rather than dependent.

We at present have an effective cooperative program for early referral and rehabilitation of handicapped workers in the Rehabilitation Unit in the Workmen's Compensation Division. It is discouraging however to a worker who is able and capable after rehabilitation services to often find it difficult or impossible to secure employment. We need to be concerned about employment possibilities for people with handicapping conditions who are able and capable, not only for their independence but the skills they can bring to our economy and savings in costs to family and community when employment is not possible.

Under the present law, the employer has no assurance of help from the 2nd Injury Fund because its use is so restricted. The Fund can be used only for certain permanent and total disabilities. No medical care is provided and many of the most costly injuries, including death must be paid for entirely by the last employer. The result is that many employers hesitate to employ the handicapped person for fear of increased workmen's compensation costs.

The need for a 2nd Injury Fund that would pay part of the compensation for all severe second injury cases, including both fatal and non-fatal injuries, has long been recognized. It was recommended not only by the recent Workmen's Compensation Study Commission, the 1962 Ogzard Commission, the U.S. Dept. of Labor, and the Council of State Governments. From personal experience in working cooperatively with insurance companies in the rehabilitation of injured workers, I have found that they too desire an improved 2nd Injury Fund. Measures to broaden the use of the Fund have been introduced every year for at least ten years but could not be enacted due to inadequate financing. The problem of financing has now been corrected by the establishment of a new and more adequate ly financed Fund recommended by Nimmo Study Commission. (Ch. 319 P.L. 1968). A-273 provides for amendements to the new formula by providing that all self insurers includinggovernment agencies shall pay their share of assessments. The fact that some government agencies have been entitled to benefits from the Fund without contributing to it has created an inequity.

The principal features of A-273 are -

It protects employers of handicapped workers by limiting their liability in second injury cases to the compensation needed in the first 156 weeks and the first $2,500. of medical costs. Where the worker's condition requires benefits beyond these limits, the employer would be entitled to reimbursement from the Fund.

Safeguards the 2nd Injury Fund from overuse by limiting its use to the very serious injuries.

A pre-existing condition is not limited as to type or case but must be serious enough to be a recognized and significant obstacle to employment. The subsequent injury may be any compensable injury including heart cases, but must result in a disability materially and substantially greater than the subsequent injury alone.

I believe you have the Statement of Purpose not included in the bill when printed but which accompanied it. A copy is attached to this statement.

You realize A-273 is in three parts.

Amendments to 34:15-94 clarify the intent of the author in that public agencies shall pay their share of the new Fund.

Section 2, Page 2 Lines 1 through 88 amend 34:15 - 95 by deleting lines 73 - Page 3 to line 88 - Page 4 because of superfluous wording.

The new plan for broader use of the Fund begins on Page 4, Paragraph 3 to the end of the bill. You will note that benefits applicable under the provisions of this bill will apply from January 1,1971,; Page 4, Paragraph 6. Benefits for subsequent injuries incurred prior thereto are subject to the provisions of the old law.

The definition at the end of Page 4, Paragraph 5 states "As used in thisact "previous permanent disability" means any previous permanent disability regardless of cause or type, including cardiovascular functional disability, which is or is likely to be a hindrance or obstacle to employment." Only then, as indicated on Page 5 would the Fund reimburse for fatal and non-fatal injuries serious enough to have exceeded 156 weeks of compensation and the first $2500. of medical benefits.

In summation, the enactment of A-273 will encourage the employment of handicapped workers through broader and more equitable use of the 2nd Injury Fund. Effective safeguards are provided to limit the use of the Fund to the more severe injuries and prevent its over use, as indicated previously. We urge your favorable consideration.

STATEMENT TO ACCOMPANY ASSEMBLY BILL #273 - By Assemblyman Fontanella

The fundamental aim of a second injury fund is to permit the employment of handicapped workers without hardship on the part either of the worker or his employer.

Under the provisions of most compensation acts as originally written, the employer at the time of an employee's subsequent injury was liable for all of the compounded disability, with the result that workers with previous permanent injuries were seldom employed.

Statistics show that disabled people often are better workers, are less prone to sustain subsequent injuries, and are above average in faithfulness and loyalty. The purpose of second injury fund legislation is to facilitate the employment of the physically handicapped by limiting the financial responsibility of the employer at the time an employee's subsequent injury occuring in his own employment, at the same time compensating the worker for his combined disability through the imposition upon the fund of the balance of the compounded disability.

By removing an employer's fear of increased workmen's compensation costs, second injury funds enhance the employment opportunities of disabled workers. By enabling the payment of full benefits for his resulting disability they free him from the need and humiliation of seeking charity for himself or his family.

Under present New Jersey law, our second injury fund relieves an employer from paying benefits only in certain specific cases where the subsequent injury and the previous disability in combination result in total permanent disability. This narrow application deprives our law from accomplishing the full objectives of such legislation as outlined above. The present bill helps to eliminate this deficiency.

The bill broadens the protection afforded an employer. He is assured that if a worker with a prior permanent disability suffers a subsequent compensable accident in his employment resulting in a combined disability materially or substantially greater than would have resulted from the subsequent injury alone, then his

net liability will be confined to 3 years of compensation and $2,500. in other benefits (such as medical, surgical and hospital care). Any benefits paid in excess of these limits will be reimbursed to the employer from the fund.

This bill does not restrict the previous permanent disability as to cause(such as accident, disease, congenitality, or military action) or as to type(such as heart disease, epilepsy, back injury, or occupational disease). However, as a qualifying basis for benefits from the fund, the extent of the previous permanent disability is restricted to that degree of disablement which would prejudice an employee in getting employment.

The subsequent permanent injury likewise is not restricted as to type and includes any compensable permanent disability (including heart disease, epilepsy, back injury or occupational disease).

With respect to subsequent permanent injuries occurring on or before December 31, 1970, the present law, (Section 2, as amended, in this bill), will be applicable and controlling.

As to a subsequent permanent injury occuring on or after January 1, 1971, the provisions of sections 5 to 12 on this bill will govern. These provisions follow substantially the recommendations of the United States Department of Labor and the International Association of Industrial Accident Boards and Commissions. Similar legislation has been enacted in the State of New York and more recently in Florida and Minnesota.

Benefits payable under both the present law and the proposed new provisions to be effective next year, will be paid out of the new Second Inury Fund created in 1968 to replace the old 1% Fund. The new formula for assessments adopted at that time was designed to keep the Fund solvent.

Amendments to the new formula, proposed in section 1 of this bill, provide that all self insurers including government agencies shall pay their share of assessments. This was not the case under the 1% Fund and the fact that some government agencies were entitled to benefits from the fund without contributing to it created an inequity.

STATEMENT ON BEHALF OF THE CONSUMERS LEAGUE OF NEW JERSEY
AT THE WORKMEN'S COMPENSATION HEARING BEFORE
THE LABOR RELATIONS COMMITTEES OF THE LEGISLATURE

April 22, 1970

My name is Susanna P. Zwemer, President of the Consumers League of New Jersey and I have with me Miss Mary L. Dyckman and Mrs. Beatrice Holderman. We wish to discuss in depth the Second Injury Bill (A.273) and receive your comments and suggestions. Mrs. Holderman will read the prepared statement on A. 273 and then, if time permits, we will briefly discuss the other workmen's compensation bills of concern to us.

A.81 APPROVED

One of the weaknesses in the Law is found in the inadequate time limit allowed for death claims. We recommend the enactment of Assemblyman Heilmann's Bill allowing dependents of a worker fatally injured one year after the date of death or two years from the date when the injury occurred or two years after the last payment of compensation. It is entirely possible for a worker to die of an occupational injury where proof that it was of occupational origin was not available within the two year limit now allowed and sometimes not until after death through an autopsy.

A.147 DISAPPROVED

We oppose this Bill because the individual must waive all future claims if he accepts a lump sum settlement. Invisible damage may not be known to the individual at the time of settlement. The injured worker is cut off from medical benefits which cause a barrier to rehabilitation. A quick final settlement, with instant funds available, may sound attractive at the time, but in the long run would harm the worker's chance of recovery and independence.

A.148 APPROVED

We endorse this Bill reluctantly to extend from five to ten years the time in which a victim of a slow developing disease must file a claim before it is "forever barred". Ten years is less cruel than five but still just as cruel to those who cannot file within ten years, as has happened to workers who contract diseases like beryllium poisoning or the recently discovered malignancy resulting from exposure to asbestos. It is unnecessary because there is another time limit that applies to these diseases requiring that a claim must be filed within one year after the worker or his widow knew or ought to have known the nature of the injury and its relation to employment. Obviously it cannot be field without that knowledge. The "forever barred" clause should be deleted, leaving one year time limit after knowledge intact.

A.149 APPROVED

This Bill obviates a review on grounds that the liability has diminished where the individual has submitted to rehabilitation. We are pleased that your Committee has reported it out for a vote.

A.150 DISAPPROVED

This Bill denies compensation now allowed for an injury from recreational or social activities unless the worker can prove that they are regular incidents of employment and "produce a benefit to the employer beyond mere improvement in employee health and morale." The wording seems to increase obstacles in the way of legitimate claims. How is the worker to prove that the social or recreational activity was a benefit to the employer? Each case should be decided on its merits.

A.202 DISAPPROVED

A multiple purpose Bill which would, among other things, take from injured workers rights they now have, replace the flexible maximum ceilings for total disability, both emporary and permanent, or death, by a fixed dollar maximum similar to the very unsatisfactory dollar ceiling formerly in effect. A wholely inadequate $45.00 ceiling for permanent partial disabilities. The detailed changes in wording which is not explained might require considerable litigation to clarify.

A.216 DISAPPROVED

This multiple purpose Bill includes proposals to change the benefit rates for permanent partial disabilities and make more extensive use of the pooled fund known as the Second Injury Fund. Regretfully we find that the proposals for benefits for permanent partial disability are unsatisfactory. For more details on our analysis, please see the Statement on the 1969 identical Bill at the Feb. 24, 1969 Hearing.

A.310 APPROVED

The purpose is to make supervising referees and referees of formal hearings judges of compensation. Last year's Legislature increased the salary of compensation judges to $27,000 a year. This Bill would give referees who do the same work as judges the same title and salary. They should have the salary and the authority.

A.404 APPROVED IN PRINCIPLE

This Bill proposes one of the most important changes needed in the Act. It would provide supplementary benefits to persons totally and permanently disabled by a work injury and to widows and children of men fatally injured in the past when benefits were lower than they are now. A totally and permanently disabled person is entitled to compensation for 450 weeks and sometimes for life. Children of men killed at work are entitled to compensation until age 18 and widows for the duration of widowhood. However, they receive only the weekly benefit rate which was in effect when the injury occurred.

There is no provision in the Act for increasing those benefits to current rates. Some are getting less than half the amount that would be allowed for the same injury today. We heartily agree with the objective of A.404 but we cannot endorse it except in principle because of inadequate financing. It is proposed to pay the supplementary benefits out of the Second Injury Fund -- it is doubtful whether the Fund as presently constituted could carry the extra load. If a satisfactory way can be found to finance the extra benefits, we would endorse this Bill with enthusiasm. This is a change from the position we took last year when we recommended using the Second Injury Fund for this purpose. Since then, further experience with that Fund as rewritten in 1968 indicates that it would not be adequate for the purpose of this Bill.

A.656 DISAPPROVED

This Bill supplements existing provisions for occupational hearing loss. Hearing loss is now compensable and has been for a number of years. There is no Statement to indicate why these complicated provisions should be added.

S.443 APPROVED (Revised from last year's S.61 regarding appeals to Appellate Division of Superior Court. We endorse this again with the understanding that suitable appropriation will be made for the additional judges needed)

STATEMENT SUBMITTED BY ANDREW KALMYKOW

STATEMENT OF AMERICAN INSURANCE ASSOCIATION
SUBMITTED AT JOINT HEARING OF THE NEW JERSEY
SENATE AND ASSEMBLY COMMITTEES
ON LABOR RELATIONS, APRIL 22, 1970

My name is Andrew Kalmykow, I am Counsel for the American Insurance Association, an organization of casualty and property insurance companies, most of which write workmen's compensation insurance in New Jersey, as well as throughout the United States. I deem it a distinct privilege to appear before you today.

These companies are vitally interested in the satisfactory operation of workmen's compensation laws. Most recently these laws have been subject to critical scrutiny on the federal level.

The recent coal mine legislation already specifies the benefit levels and the conditions under which payment must be made with respect to pneumoconiosis. Although I believe some of these conditions are unreasonable, states will have to comply with them if federal jurisdiction is to be avoided. It is very probable that the Congress will give further attention to workmen's compensation at this or certainly at the next session. I believe that the states can best determine how best to serve the needs of employers and employees within their borders. However, resolution of problems that exist is necessary otherwise less satisfactory solutions may be imposed.

I had the privilege of appearing at a similar hearing last year. At that time I called attention to the situation in New Jersey relative to compensation for partial disability. I believe that this is the most pressing problem in New Jersey.

For years benefit levels have been depressed because under provisions of the law as interpreted by the courts substantial payments must be made to individuals who suffer little or no disability and who suffer little or no wage loss. Because of this situation compensation for partial disability generally, even for serious injuries has been kept low. I believe that the $40 a week level presently in effect for such cases is not realistic. At the same time I can readily appreciate the reluctance of paying greater benefits to individuals who suffer no disability and keep on working at full wage, just because they have received a minor injury.

In most states compensation is payable in permanent partial disability cases for loss or loss of use of members or where the injury is such as to impair the ability to work and earn full wages. In New Jersey the problem is concentrated on the interpretation placed on the provisions of paragraph 22 of subsection (c) of section 34:15-12 of the Revised Statutes relating to "other cases". I believe it would be equitable if this provision were to be amended to provide compensation for permanent loss or loss of use of members and organs named in this schedule, or in other cases where physical function is permanently impaired so as to lessen materially the employee's working ability. Suggested language for such an amendment is attached.

Some of the other legislation under consideration such as Assembly Bill 216 deals with this subject but I believe in less satisfactory manner. However, I would strongly urge some resolution of this problem. I believe that this is one area where compromise has long been overdue.

There are a number of bills before you for consideration but time does not permit a detailed discussion of each. However, some of them deserve comment. Several bills propose amendments to the second injury

fund created in section 34:15-94 et seq. Insurance companies are vitally interested in encouraging the employment of the handicapped. They have been among the leaders in rehabilitation. The American Insurance Association publishes and has distributed hundreds of thousands of leaflets and pamphlets designed to assist the hiring and placement of the physically impaired. Our Association and its member companies have also cooperated closely with the New Jersey Division of Workmen's Compensation and the New Jersey Rehabilitation Commission. Provisions for second injury funds should clearly indicate what is the liability of the employer as compared to that of the fund. It is not at all clear under ~~the draft~~ A. 216 when the liability of the individual employer ends and the liability of the fund begins. An employer may well hesitate to hire a handicapped individual if he has to engage in extensive litigation to determine this.

Moreover, a second injury fund should not be a means of evading liability in cases which do not really involve employment of ~~the~~ persons handicapped with respect to employment. In case of injury payment of compensation may well be delayed, while attempt is made to charge all or part of this cost to the fund.

If the second injury provisions are to be broadened we believe that H.B. 273 which is somewhat similar to Assembly Bill 379 could constitute a reasonable vehicle for such legislation. However, we would urge that it be required that the preexisting condition be of a serious nature which really handicaps a person in obtaining employment. Few of us are perfect physically and without some such provision attempt may be made to charge the fund in practically all cases where disability exceeds 156 weeks.

Preferably such preexisting disability should be one which if compensable would entitle a person to compensation for say 100 weeks. It should also be provided that the employer should know of this preexisting condition. If he were not aware of it it could hardly constitute a handicap to employment.

Adequate defense for the fund is essential. It is not clear under Assembly Bill 273 whether a defender is to be appointed in each individual case or on a permanent basis for all claims against the fund. The latter course would be preferable.

Assembly Bill 216 would place a very considerable additional liability on the fund placing upon it the responsibility of all compensation in excess of 550 weeks. The fund has a great many liabilities at the present time. There appears to be no sound reason why it should take over the liability in all cases above 550 weeks. That fund should also not be made liable for claimant's attorneys' fees. This bill would also place additional liability on the fund with respect to preexisting conditions, funeral expenses section 34:15-12 (e) on page 6. Compensation for employees of uninsured employers section 34:15-95 on page 10 and section 34:15-120.2 on page 12, as well as cost and attorney's fees. These additional liabilities would not seem to be appropriate charges on a second injury fund.

It should be recognized that problems in compensation administration and operation are not necessarily solved by transferring liability to a special fund. As a matter of fact, such problems are apt to be aggravated under such a system. Neither the employer nor the insurance carrier would feel responsible for the particular claim and the fund may very well not be equipped to service claims of this type.

We also have some concern with reference to Assembly 149. This would prohibit review on the ground that disability has diminished where an employee has submitted to physical or education rehabilitation ordered by the Rehabilitation Commission. We are somewhat concerned that this may discourage rehabilitation efforts and the reemployment of a person who may have been injured at work.

Is is essential that medical care furnished to injured employees be the highest caliber. Specialized medical and surgical skills are frequently required in the treatment of work injuries and occupational diseases. We,therefore, believe that Assembly Bill 407 which would permit chiropractors to treat workmen's compensation cases would not serve the best interests of employees and their employers in New Jersey.

We are pleased to find that S. B. 443 would eliminate appeals to the county court. This is in line with a recommendation which we had made to the study commission and which appears to be very desirable.

We appreciate very much this opportunity of appearing before you and trust that the foregoing will be of some assistance to you in your deliberations.

AK:JN

4/21/70

Paragraph 22 of subsection (c) of section 34:15-12 of the Revised Statutes be amended to read as follows:

22. In all lesser or other cases involving permanent loss of [,] or [where] the permanent loss of usefulness of a member or organ named in the above schedule [any physical function is permanently impaired], the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. In cases where any physical function other than that of such member or organ is permanently impaired so as to lessen materially the employee's working ability [in which] the disability [is] shall be determined as a percentage of total and permanent disability and the duration of the compensation shall be a corresponding portion of 550 weeks. Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, either party may appeal to the Division of Workmen's Compensation for a settlement of the controversy.

NOTE: New matter underscored. Matter in brackets to be omitted.

Brief comment on all of the bills follows:

Assembly Bill 81 - extending time limiation to file claims in death cases - this bill is satisfactory but the sentence beginning with line 17 indicating payment constitute an agreement should preferably be omitted.

Assembly Bill 147 - permitting lump sum payments - we know legislation of this type is favored by some. However, we take a neutral position on this legislation.

Assembly Bill 149 - prohibiting modification of awards in case of rehabilitation - we believe to be unsound as having a tendency to discourage rehabilitation efforts.

Assembly Bill 150 - relating to recreational activities - is satisfactory.

Assembly Bill 202 - contains many amendments to the compensation law, many of which have been discussed in the main part of our statement. We would not be opposed to this measure even though some additional changes would appear desirable.

Assembly Bill 216 - this bill which contains many amendments is commented on in the main statement.

Assembly Bill 309 - permitting malpractice suits against physicians and co-employees - this bill is undesirable. Workmen's compensation should provide the exclusive remedy.

Assembly Bill 310 - this would constitute all referees to be judges of compensation - judges of compensation should be carefully selected and blanket appointments such as this appear to be undesirable.

Assembly Bill 320 - payment of lost wages for attendance at hearings - appears to be unsound.

Assembly Bill 379 and Assembly Bill 273 - relating to second injury fund are commented on in the main statement.

Assembly Bill 404 - additional compensation for obsolete benefits - no objection to this bill on principle but amendments in text are necessary.

Assembly Bill 407 - this bill contains many amendments - creation of an appeal board may have value but the provisions as to appeals from the findings of this board may need clarification. With respect to free choice of physician, selection from a panel would seem preferable. The change in the statute of limitations is in section 34:15-34 is desirable.

Brief comment on all of the bills follows continued.

Senate 112 - relating to contractual liability of political subdivision - does not appear to relate to compensation.

Senate 285 - relating to rate filings with the Commissioner of Banking- is satisfactory. Although we find that existing laws reasonably meet current requirements.

Senate 441 - relating to compensation for retired employees - appears to be a matter primarily for the state administration.

Senate 443 - provides for appeals to the appellate division - is desirable.

Senate 466 - permitting chiropractors to treat compensation cases - is very objectionable. It is essential that the best medical care to be provided to injured employees.

AK:JN
4/21/70

PORTION OF STATEMENT OF TED PEIRONE WHICH HE DID NOT READ INTO THE RECORD.

My name is Ted Peirone, Vice President of Getty Machine and Mold Company, Passaic County. I am here today as Chairman pro tem of the Social Insurance Subcommittee of the State Employer Legislative Committee. I will present to you the representative views of the more than eight hundred member companies of the ELC in New Jersey, that together employ close to three-quarters of a million people in this State.

Most, or all, of the legislators are familiar with the workings of the Employer Legislative Committees of New Jersey and, thus, are aware of the wide participation and careful consideration involved in working with the Legislature towards our goal "to make New Jersey a good place for jobs and business." I want to assure you that the comments which follow are the result of this careful consideration by knowledgeable people from our member companies.

STATEMENT OF RICHARD SECREST

Vice President

S & M Electric Industries

Trenton, New Jersey

Employer of approximately 70 people - electrical service to industrial customers.

Our average workmen's compensation cost per employee hour is 18 cents, more than total cost of Blue Cross-Blue Shield, major medical and life insurance combined for one entire family.

Our top rate workmen's compensation cost per employee hour is 28 cents - almost $12 a week. That's a big chunk of total overhead.

Bad awards contribute to this high premium rate. Our experience factor is approximately .891 and we still pay, pay, pay.

Please stop the inflationary avalanche.

STRAWBRIDGE & CLOTHIER

CHERRY HILL

TO THE NEW JERSEY JOINT SENATE-ASSEMBLY LABOR & RELATIONS COMMITTEE:

As an employer with growing business activity in New Jersey, we support the statement of the South Jersey Chamber of Commerce concerning changes in Workmen's Compensation laws.

We agree that an objective definition of permanent partial disability must include the demonstrable proof of disability, and that the employer should be allowed credit for pre-existing disabilities. We are opposed to the elimination of the employer's right to review awards and petition for a reduction in cases where the disability has diminished. Also, we do not favor awards for disabilities resulting from recreational activities which are incidential to, and not a regular part of, employment.

Our past experience indicates that Workmen's Compensation awards in New Jersey are disproportionately greater in both number and expense when compared with our Pennsylvania and Delaware locations.

Further liberalization of the New Jersey Workmen's Compensation law together with proposed limits on the rights of the employer seem inappropriate at this time.

We appreciate the opportunity to support the statement of the South Jersey Chamber of Commerce and thank you for the consideration given to our comments.

Respectively,

George L. Cullen

George L. Cullen
Vice-President for Personnel

April 21, 1970

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

April 17, 1970

Honorable Frank X. McDermott
Senate of the State of New Jersey
State House
Trenton, New Jersey 08625

Dear Senator McDermott:

We appreciate the opportunity to submit the attached statement for inclusion in the record of your April 22, 1970 hearings on Workmen's Compensation. This statement points out certain areas of the New Jersey Workmen's Compensation Law which you may determine are in need of clarifying and other areas where you may feel changes are in order. As we indicate in the statement, we would be pleased to meet with your committee to elaborate on any of the points discussed.

With best regards.

Sincerely yours,

Signed Charles F. Eason

Charles F. Eason, Assistant for
Workmen's Compensation and Radiation
Records, Office of the General Manager

Attachment:
As stated

cc: Honorable Robert K. Haelig, Jr.
The State Assembly
State House
Trenton, New Jersey 08625

STATEMENT OF ATOMIC ENERGY COMMISSION
RE NEW JERSEY WORKMEN'S COMPENSATION LAW

Prior to a discussion of our specific recommendations for improvement of the New Jersey workmen's compensation law for the radiation worker I would like to supply you with some background information on the Commission's interest in workmen's compensation for the radiation worker.

The Commission's interest in adequate compensation for the injured worker dates back to the Commission's inception. This interest was emphasized at the 1959 hearings on employee radiation hazards and workmen's compensation before the Joint Congressional Committee on Atomic Energy. These hearings were significant in the history of workmen's compensation in that, for the first time, a Congressional Committee examined the adequacy of workmen's compensation laws as they applied to radiation workers.

The Committee subsequently prepared a summary-analysis which identified certain provisions as the minimum that should be included in workmen's compensation statutes if the statutes were to deal adequately with radiation injuries.

In 1962, further hearings on workmen's compensation and the radiation worker were conducted by the Labor Subcommittee of the House Education and Labor Committee which was considering a proposed Federal radiation workers compensation act, introduced by Congressmen Zelenko and Price.

In 1962 a joint Labor Department-AEC research study project on workmen's compensation problems related to radiation injury was initiated. This resulted in a joint Department of Labor-Atomic Energy Commission sponsorship of three studies. These studies were conducted and are valuable contributions to the Government's cooperative effort to assess the entire radiation hazard and compensation problem. These studies took cognizance of unparalleled record of safety in the radiation industry and also pointed out areas where there was need to improve workmen's compensation coverage as it applies to the radiation worker.

In January 1965, representatives of State Industrial Commissions, labor, management, the medical profession and insurance carriers met in a workshop sponsored by the Department of Labor and the AEC to review the subject of Federal grants-in-aid to State workmen's compensation agencies to help meet the special problems of radiation and other slowly developing occupational diseases.

As a result of these studies and on the unanimous recommendation of its Labor-Management Advisory Committee, the Commission adopted in October 1965 eleven standards for workmen's compensation. These have been endorsed by a number of employee and employer groups, the Council of State Governments, and others as constituting a desirable goal for providing adequate coverage for radiation workers. (See Attachment)

After the adoption of these standards the Commission launched a program to encourage the states to update their workmen's compensation laws and bring their laws more in agreement with the eleven recommended standards.

With this as background I would like to discuss New Jersey's interest in the radiation industry and our recommendations for improving the New Jersey Workmen's Compensation Law.

As you are aware, New Jersey has and is continuing to play a vital role in the use of nuclear energy. New Jersey ranks third among the states in the number of AEC byproduct material licenses with 498. There are also 35 AEC source material licenses and 20 special nuclear material licenses which have been issued to New Jersey licensees. In the future nuclear energy will play an increasingly important role in the supplying of electric power to the residents of New Jersey. Currently there is one power reactor in operation, two more are under construction and another is planned in the State of New Jersey.

When you consider the above figures along with the facts that there are about 5000 dental x-ray machines, 4500 medical x-ray machines, 800 industrial x-ray machines and 9 accelerators, you can see that the radiation industry plays an important role in the state and that the number of New Jersey residents employed in the radiation industry must be quite substantial. It is for this reason the state legislature might want to give serious consideration to amending the New Jersey workmen's compensation law to provide more adequate protection for the radiation worker. The New Jersey workmen's compensation law in regard to our 11 standards compares favorably with the laws of most other states. However, there are certain areas where you may conclude clarification is necessary and other areas where you may feel changes are in order.

We would respectfully commend the following areas to your consideration:

Compulsory Law

The New Jersey Law is elective (Article II 34:15-7-9). The Legislature might want to consider joining the majority of the other states in making its Workmen's Compensation Law compulsory in light of the fact an injured employee is more likely to find prompt and equitable redress for radiation injury under workmen's compensation laws than in pursuing a tort action. We realize it is rare occasion when an employer or an employee elects not to be covered by the New Jersey Workmen's Compensation Law, however, we feel it would be in the interest of both the employer and the employees to have the law made compulsory.

This is consistent with the position of the Council of State Governments and the IAIABC (International Association of Industrial Accident Boards and Commissions).

Extraterritoriality

In view of the mobility of many radiation workers such as industrial radiographers, it is very important that the workmen's compensation law provide extraterritorial coverage for the radiation worker. The New Jersey law does not have any provision for extraterritorial coverage although the New Jersey courts have consistently held the law applied to injuries received outside the state if the contract for employment was made in New Jersey -- Hi Heat Gas Co. (1934) 170 Atl 44. The legislature might want to consider having the New Jersey workmen's compensation statute reflect the views of the court.

Broad Second Injury Fund

The AEC is concerned that employers in the radiation industry may be inhibited from hiring individuals who have worked previously in the radiation field for fear that if the individual becomes totally disabled due to occupational radiation exposure they will be held totally liable for the payment of workmen compensation benefits even though the employee's injury may be partially the result of exposure received while in the employ of another. The Special Fund provisions of the New Jersey law could be enlarged so that though the last employer in whose employ the individual was exposed would be held primarily liable for compensation he would be able to receive contribution from the Special Fund if he could show the employee's condition was due in part to exposure received while in anothers employ. Currently the New Jersey statute does not cover the above situation (34:15-95).

Vocational Rehabilitation

We feel strongly that workmen's compensation laws should encourage individuals to avail themselves of Vocational Rehabilitation services. In this regard we note that Assembly Bill 149 would accomplish this objective by amending the New Jersey Workmen's Compensation Law as follows:

> "In the event that an injured employee shall have submitted to such physical or educational rehabilitation as may have been ordered by the rehabilitation commission, there shall be no review on the ground that the disability has diminished."

We believe such an amendment would act as an incentive for individuals to seek rehabilitation with the net effect of returning injured employees to the work force. The above change in the New Jersey Law was recommended by the New Jersey Workmen's Compensation Law Study Commission in its July 1968 report.

We believe that if the legislature enacts the changes we have discussed the result will be an improved workmen's compensation law for the radiation worker.

We appreciate very much the opportunity to present our position to your committee and would be pleased to appear before the committee if you believe it would be helpful.

ATOMIC ENERGY COMMISSION'S
WORKMEN'S COMPENSATION STANDARDS

Compulsory Law

The law should be compulsory and not elective. Compensation must be secured by insuring with an authorized insurance organization or by self-insurance adequately regulated.

Numerical Exemptions

The law should apply to all employers, regardless of number of employees and whether a profit or non-profit organization with exceptions for household and causal employees if desired.

Extraterritoriality

The law should have extra-territorial effect; that is, an employee of an employer in a cooperating State should be covered when working in another State on temporary assignment.

Waivers Prohibited

Contracts waiving an employee's rights under the act shall be expressly prohibited.

Second Injury Fund

A second injury fund should be established. Such fund should provide for coverage of injuries which may result from cumulative exposures, even though no exposure accumulated under any single employer would be by itself compensable.

Time Limit

The time limit for filing a claim should start when the employee knows of his disability and that it may be radiation caused, and after disablement.

Coverage of Radiation Injury

The law should provide full coverage of occupational diseases or specific language covering radiation injury as compensable.

Full Coverage of Medical Expenses and Physical Rehabilitation

The law should provide for complete coverage of medical expenses, without limit of time. This should include physical rehabilitation of the injured employee, if necessary.

Vocational Rehabilitation

The law should provide for retraining of workers whose exposure prohibits them from returning to their former jobs. If this period is treated as additional lost time due to the injury, the employee would have income as provided for in the workmen's compensation law.

Authority to Review Medical Care

The workmen's compensation agency should be authorized to review the medical care and to supervise and control medical care with the advice of appropriate medical advisory bodies.

Lump Sum Settlements

The workmen's compensation agency should be authorized to review proposed lump sum settlements which may waive liability for aggravation and later development of disease.

SUBMITTED BY JOEL R. JACOBSON, United Automobile Workers Union

AN ANALYSIS

OF THE

NEW JERSEY WORKMEN'S COMPENSATION LAW

UAW REGION 9

16 Commerce Drive

Cranford, New Jersey

Martin Gerber
Regional Director

Edward F. Gray
Ass't Regional Director

Joel R. Jacobson
Director of Community Relations

New Jersey CAP Council

Earl Stutzman, President

Vincent Tavalaro, Secretary-Treasurer

John Koziol, Vice President

Michael Demech, Vice President

April, 1970

The United Automobile Workers union is pleased at this opportunity to submit for the record, our analysis of the operations of the New Jersey Workmen's Compensation law. A verbal presentation was not possible at the scheduled public hearing of the Senate Labor Relations Committee because the date of the hearing, Wednesday, April 22, 1970, fell during the week the UAW was holding its 22nd Constitutional Convention in Atlantic City.

The UAW concern with Workmen's Compensation is directed toward 3 major objectives:

1. The necessity to have on our law books, a liberal, humane and workable act.

2. A benefit structure which is geared to providing an injured worker a substantial share of the compensation dollar.

3. Competent administration of the act, so as to insure the injured a speedy and efficient remedy.

It is our opinion that none of these objectives has been reached and that further progress will require substantial amendment to the law.

Unfortunately, none of the bills under consideration at the public hearing brought the injured worker in New Jersey any closer to the three objectives outlined earlier.

To the contrary, it has become abundantly evident that while the law has been established to aid the injured worker, in fact, he is not the principal recipient of the law's largesse.

The sad fact is that the injured worker in New Jersey is receiving a declining share of the workmen's compensation dollar, while the insurance companies, the doctors, and the judges, the lawyers -- all of whom are, or should be, incidental to the law -- are the major beneficiaries of the statute.

Listed below are statistics for selected calendar year experiences, which identifies the amount of the compensation premium dollar (loss ratio) which has been returned to the injured worker.

(more)

CALENDAR YEAR	EARNED STANDARD PREMIUMS	BENEFITS (INCURRED LOSSES)	LOSS RATIO (% OF PREMIUM DOLLAR FOR INJURED WORKER)
1925	9, 495, 823	7, 062, 824	74. 38
1930	14, 985, 119	10, 383, 477	69. 29
1940	19, 008, 331	12, 275, 410	64. 58
1950	39, 827, 781	24, 985, 664	62. 73
1960	103, 386, 776	63, 767, 284	61. 68
1965	146, 964, 369	88, 994, 558	60. 55
1966	161, 290, 435	99, 912, 218	61. 95
1967	191, 663, 727	121, 706, 685	63. 50
1968	232, 314, 072	137, 477, 633	59. 18

The statistics above reveal plainly that in 1925, early in the operation of the law, the injured worker received almost 75¢ of every premium dollar in benefits.

Over the years, this figure has eroded slowly, and in 1968, the last year for which such information is available, the loss ratio was down to 59. 18¢, a substantial drop from the 1967 figure of 63. 50¢.

In 1968, then, almost $100 millions did not go to the intended beneficiaries of the Workmen's Compensation Act.

A good question follows quite naturally. If the injured worker did not receive this huge amount of money, where, then, did it go?

In 1968, legal fees paid to petitioners' lawyers and physicians for court proceedings alone, amounted to $11, 385, 401 or 16. 9%, an increase from 16. 5% for the previous year. The fees paid to respondents' lawyers and physicians was $7, 861, 468.

Computed as a percentage of the amount of compensation upon which these fees were fixed, $66, 945, 923, the combined fees of $19, 246, 869 for legal and medical testimony received by both petitioners' and respondents' lawyers amounted to 28. 7%.

(more)

Aside from the bitterness which injured workers feel when they realize how heavy a drain on the fund is made by those for whom the fund was not created, there is an additional irony when one reads in the annual report of the Compensation Rating and Inspection Bureau that the more than $19 millions in fees paid to doctors and lawyers are listed under the category "Total In Behalf of Workmen".

Under the present adversary system in workmen's compensation, it is conceded that attorneys and physicians do have a role to play. Our objection is not to their participation in the system, but, rather, to the inordinately disproportionate share of the premium dollar which flows into their hands, rather than that of the injured worker.

However, there is a still greater evil which lurks behind the smoothly-contrived reports of the Compensation Rating and Inspection Bureau. While attorneys and physicians merely benefit handsomely from Workmen's Compensation, the insurance carriers are simply wallowing in profits from their coverage of this insurance.

In 1968, after the insurance carriers returned $35,471,300 to policy holders in premium returns and dividends, an additional $26,538,933 was retained by them for 'commissions to producers, or other acquisition costs, administration, audit and profit and other contingencies'.

Acquisition costs for mutual companies are nothing more than built-in profits, inasmuch as these companies do not utilize brokers to secure compensation business.

Furthermore, the mutual companies are writing an increasingly-larger share of Workmen's Compensation insurance. In 1960, mutual companies, such as New Jersey Manufacturers, Liberty Mutual and American Mutual wrote 52.5% of the carrier business. In 1968, this figure jumped to 63.3%

There is little wonder, then, that one never reads about any workmen's compensation insurance carrier attempting to cancel policies as their confreres do in automobile insurance.

A recent ruling by the Commissioner of Banking and Insurance required all automobile insurance companies to declare the return on their investment of premium dollars, so that these funds would not flow solely into the pockets of the insurance companies, but would benefit those who pay the premiums in the form of lower rates, or higher benefits.

(more)

In Workmen's Compensation, a similar ruling is required. The statute should require all insurance companies to disclose the return on their investment of the premium dollar, so that this money will not be used for the exclusive profit of the mutual companies, but will be returned to the injured worker in the form of higher benefits.

It is a sad fact to observe that the New Jersey Workmen's Compensation Act in recent years has achieved this dubious distinction:

(a) insurance companies' profits, (b) compensation judges' salaries, (c) lawyers', and (d) doctors' fees have all zoomed upward, while the (e) injured worker is getting less and less of the premium dollar.

There appears to be substantial merit to the argument that injured workers residing in those jurisdictions where workmen's compensation is operated under a state fund, receive a greater share of the compensation dollar than do injured workers in New Jersey.

It is our contention that a state fund would operate in a more efficient and humane manner, by returning as much as 80¢ or 90¢ to the injured worker, at a significantly lower cost to the employer.

There is one final point to be made, concerning the efficiency of the present system.

In 1954, the backlog of formal cases stood at approximately 10,000 cases. Sixteen years later, there are now pending 44,470 cases.

In 1954, the starting salary of a Judge in the division was $9,600. Today, a judge of compensation receives $27,500, roughly three times as much.

There appears to be no relationship between the salaries earned by these judges and their rate of productivity in settling pending cases.

New Jersey's injured workers are being short-changed, while everyone else reaps a harvest.

We call upon the Legislature to reverse this pattern, by re-casting the Workmen's Compensation law to serve the three objectives outlined earlier in this testimony.

STATEMENT OF THE AMERICAN MUTUAL INSURANCE ALLIANCE
SUBMITTED AT THE JOINT HEARING OF THE NEW JERSEY SENATE AND
ASSEMBLY COMMITTEES ON LABOR RELATIONS, APRIL 22, 1970

The American Mutual Insurance Alliance is a trade association representing the majority of the major casualty mutual insurance companies. Our member companies write approximately 35 percent of the workmen's compensation premium countrywide, and approximately 50 percent of the premium developed in New Jersey. We are, therefore, deeply interested in the workmen's compensation bills under consideration by these respective committees. There has been, and will undoubtedly continue to be, a good deal of interest by members of Congress in the overall workmen's compensation system in relationship to benefits received by injured employees. We commend the New Jersey Legislature for their foresight in viewing their law with an intent to improve their system. We appreciate this opportunity to present our statement, and it is with the same view in mind that we make the following comments.

There are many bills pending that would attempt in one way or another to solve what I consider two extremely important problems; the distribution of the benefit dollar thru permanent partial awards and the role of a second injury fund in the hiring of the handicapped. Rather than discuss bills, I will address my remarks directly to these problems.

It has always been our belief that an injured worker should receive a form of compensation for a permanent residual loss, but we also feel that the distribution of benefits must be equitable, compensating the seriously disabled sufficiently without over compensating those individuals who suffer little or no disability. The Law Study Commission apparently facing the same concern, concluded that "The Commission is aware of the fact that there are numerous compensation awards for

injuries which are not serious and which cause, at most, very questionable functional disability (mostly on the basis of subjected complaints)..." We feel that this situation exists because of the provision in paragraph 22 of subsection (c) of section 34:15-12, which compensates for "other cases" where "physical function is permanently impaired," in addition to partial loss of use of members or organs as scheduled. We would point out that through court interpretation and subsequent administrative decisions, this phraseology has created situations of payment where the injury is minor and actual disability non-existent. If this situation is allowed to exist, some compensation dollars will continue to funnel to employees where disability is virtually non-existent and employment unhampered instead of making the same dollars available to those with serious impairments. Certainly, the present $40 weekly maximum compensation rate for permanent partial disability awards is low for those with a serious impairment. We suggest that this can be corrected by eliminating the abuses discussed and thus creating, thru increased benefits to those deserving individuals, a better distribution of the benefit dollar.

We are also concerned over some proposals relating to the second injury, (so-called one percent) fund. The insurance industry as a whole is vitally interested in encouraging the employment of the handicapped. Our association has been instrumental in supporting this viewpoint through the developments of pamphlets on this subject, as well as individual counseling. We feel, however, that a second injury fund should set forth clearly the liability of the employer as compared to that of the fund. Only in this manner does it appear feasible that the objectives can be met. We feel that the method of distribution as proposed under some bills would not clearly set forth the employer's liability, nor that of the fund, but would instead leave the matter up to judgment. We feel that the following elements should be part and parcel of a proposed change:

1) That the pre-existing disability should be substantial so as to constitute a real handicap to employment.

2) In order to solve the question of apportionment of liability between the fund and the employer, we suggest a specified number of weeks be indicated in excess of which the fund would be liable. In this regard, we note that New York, as an example, has a 104 week period for employer liability and so specifies this amount.

3) It is vital that the employee be compensated without a period of transformation. We therefore feel that the carrier should continue payments beyond the specified point and be reimbursed from the fund at an appropriate date.

4) We feel also, that the provision making the fund liability for all compensation in excess of 550 weeks should be eliminated as there appears in our opinion, to be no sound reason why it should take over the liability in all of these cases.

5) We feel also that adequate provision should be made for the defense of the fund. We might also point out that the proposed legislation would create heavy liability upon this special fund, as compensation for employees of uninsured employers as well as costs and attorneys fees would be included as well as a vast additional number of pre-existing conditions including heart cases. We feel, therefore, that this deserves close scrutiny.

We would also like to comment on the proposals that would prohibit review of a case on the ground that disability has diminished as a result of an employee's involvement in a physical or educational rehabilitation program as ordered by the Rehabilitation Commission. Our concern here is that a provision such as this may discourage rehabilitation efforts as well as the re-employment of a person who has been injured at work.

We appreciate the opportunity of being allowed to file this statement with the respective committees, and sincerely hope that our comments will be of some assistance to you in your deliberations.
