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

before

THE LABOR RELATIONS COMMITTEE OF
THE SENATE AND GENERAL ASSEMBLY AND THE
BANKING AND INSURANCE COMMITTEE OF THE
GENERAL ASSEMBLY.

ON

SENATE BILLS NOS. 57 to 63 and ASSEMBLY BILLS
NOS. 360 to 365 and 464 and 465 - [WORKMEN'S
COMPENSATION]

Held:
February 24, 1969
Assembly Chamber
State House
Trenton, New Jersey

Members of Committees present:

Senator Wayne Dumont, Jr. Chairman, Senate Labor Relations Committee
Assemblyman Barry Parker Chairman, Assembly Committee on Banking and Insurance
Assemblyman Joseph F. Scancarella, Chairman, Assembly Labor Relations Committee
Senator Edwin B. Forsythe
Senator Matthew J. Rinaldo
Assemblyman Alfred E. Fontanella
Assemblyman Herbert J. Heilmann
Assemblyman Walter E. Pedersen

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I N D E X

SENATOR WAYNE DUMONT, JR. [Chairman]: Today's public hearing will please come to order. There are a number of Senate and Assembly Bills which are to the best of my knowledge virtually identical. Assembly Bills have been introduced by Assemblyman Barry Parker, Chairman of the Committee on Banking and Insurance, and Senate Bills have been introduced by me as Chairman of the Labor Relations Committee.

There are three committees really involved in this public hearing - the Labor Relations Committee of the Senate and also of the Assembly, and the Banking and Insurance Committee of the Assembly. The gentlemen who have arrived here today from the three committees are as follows: Senator Edwin Forsythe of Burlington County on my right here, President of the Senate in 1968 and President Pro-Tem. of the Senate in 1969; Assemblyman Barry Parker of Burlington County right here, Chairman of the Assembly Committee on Banking and Insurance; and members of that Committee, to our far right here and your left, Assemblyman Walter Pederson of Camden, a member of the Banking and Insurance Committee of the Assembly; and over here to my left and your right is Assemblyman Herbert Heilmann of Union County, a member of the Assembly Labor Relations Committee; and Assemblyman Alfred Fontanella of Passaic County, a member of the Assembly Banking and Insurance Committee. As others arrive, we will acknowledge their presence.

Now these bills have been introduced pursuant to the Report of the Workmen's Compensation Law Study Commission which was rendered last July, 1968. The Commission was headed by Former Superior Court Judge David Nimmo who did an extremely

capable and dedicated job in chairing the Commission. Assemblyman Parker and I both served as members of it and, as other members of the Commission appear - there may be some here now - we will also acknowledge their presence, because they will be available today to answer any questions that any of us cannot answer. Speaking for myself, there are many that I cannot answer, so I'm glad we are going to have expert help here, which will include the Director of the Division of Workmen's Compensation in addition to Judge Nimmo, and I believe Arthur Mead is also due who is a member of the Commission.

We will call as the first witness today because he has another engagement in Washington later on today, Washington, D.C., Joel R. Jacobson, President of the United Automobile Workers of New Jersey. Mr. Jacobson.

J O E L R. J A C O B S O N: Thank you, Senator Dumont, Senator Forsythe, Assemblymen Pederson, Parker, Heilmann, and Fontanella.

Before I begin, I must with great haste indicate that I am not the President of the UAW in New Jersey or Detroit. I'm afraid this would shake up Mr. Walter Reuther considerably if he heard it, but I appreciate your thought. I do speak, however, in my capacity as Director of Community Affairs for the United Automobile Workers, and we have some fifty thousand members in the State of New Jersey employed in the large industrial plants throughout the State and, while there will be other speakers from the labor group here today later, and I suspect we may be in major substantive agreement on these

particular bills, I do want to say for the record that I speak only for the UAW and no one else here does speak for the UAW. I make this point because there may be opportunities in the future for differences to be registered and I want to make it plain who speaks for whom.

I also want to say at the outset that I am not a lawyer and I find myself unqualified to discuss legal matters. I would like to confine myself mainly to matters of what I suppose could be called philosophic substance concerning workmen's compensation. And with that limitation, I would like to discuss in detail, if I may, the bills before you, Because the bills of the Assembly are identical, I will refer only to the Senate Bills.

There are three bills which the UAW supports without any reservation. They are S-58, S-61 and S-62. With regard to the latter, I ask the question as to whether it has been ascertained that the Appellate Division of the Superior Court could in fact do the job that S-62 asks you to do; that is, a judgment that must be made by the professionals in the field. I merely suggest the asking of the question.

With regard to S-63, we are in opposition. This is a bill that would exclude recreational activities from compensation, a right which has long been sustained and on the record and which is now recommended be deprived to injured workers. Our feeling is that such recreational activities are not a unilateral benefit to the employee alone - they provide substantial benefits to the employer in such intangible items as morale and goodwill. If I may be bitter enough to

comment, there are some employees in the State whose morale and goodwill need improvement. This is a regressive step contained in S-63, and we are opposed to this bill.

With regard to S-60, we are opposed to S-60. This is an attempt to give legal sanction to an existing extra-legal procedure. While I suspect the motivation is admirable, it appears to me that the wisdom of the implementation is to be questioned, because this bill would encourage lump settlements and, in our judgment, will dilute gains which have been earned over the years and in fact would encourage some employers to raise all sorts of contrived defenses in the hope of forcing an attorney to take the lump sum which is less than the actual entitlement.

I must say that the language of this bill frightens me. I could refer you, sir, to page 2 of S-60, lines 55 to 57. After a settlement has been reached, the bill goes on to say: "Such settlement shall be a complete surrender of any further right to compensation or other benefits under the statute." This is pretty plain and conclusive language about future rights and, being somewhat cynical, I have a suspicion that there might be involved here a hope that somebody might be able to put one over on an injured worker and then deprive him of any opportunity for corrective action or recourse for recapturing what is his in the future.

I would like to indicate that there have been studies made of the lump settlement problem in New Jersey. During the time when Carl Holderman was Commissioner of Labor, he had a two or three-year study made of the problems of lump

settlements, and it was an amazing story. Unfortunately, I don't have the specifics with me but they can be provided to you. As I recall it, for a period of two or three years there was a random selection of lump settlements that had been made and the Division of Workmen's Compensation, at the instruction of the Commissioner of Labor, Carl Holderman, reviewed these lump settlements and, after the review had been completed, several thousand cases had been reopened and an average of between five hundred and eight hundred dollars per case was given to the worker voluntarily without any question. So it appears to me that the evidence already on the record indicates that there are opportunities here for evils, and we therefore oppose S-60.

Now with regard to S-57, the major bill, there are several items there I would like to discuss with you, and I would ask you to infer from my silence on a particular provision that we are not opposed to it and probably in support of it. I am only speaking of those on which we have some comment or are critical. I am quite critical of the attempt to limit benefits to the first 7-1/2 per cent in partial permanent cases. In most instances, while the bill claims to increase compensation from $40 to $60, in most instances or at least many instances there will be no increase whatsoever.

The language of the Commission's report continually uses the language, the words "small," "minor" and "nuisance" in referring to these cases. I would submit that 7-1/2 per cent of total award, which would amount to $1650, is not small

nor minor nor a nuisance. In my opinion it is rather large, major and quite important, and I think this is a unilateral, subjective analysis of what is small and that we find it totally objectionable. We would recommend that there be no limitation whatsoever and that the increase in permanent partial benefits be across the board $60, again with no limitation whatsoever.

We also object to the backward step which is recommended in deducting from the benefits of the worker and the claim he might have received from, as the bill calls it, "legal society benefit plan, suit or proceeding." This takes away from the injured worker something he now has, and I might say violates the spirit of the second injury fund. It is entirely possible that a man could have recovered completely from such a prior accident and still, under this particular provision, be deprived of his just due. This provides only limited coverage and, therefore, we are opposed to it.

On page 6, in the paragraph concerning cardiovascular injury, beginning with line 1954, I suspect there has been an error in draftsmanship. I would call to your attention the error. I honestly believe it was procedural rather than substantive and would cause a rather serious problem, and I would like to call it to your attention so it can be corrected.

There is a dangerous omission and it is not clearly spelled out that where there is a difference between what the employer pays and what disability is left, the difference should be paid by the fund. I would suggest that the language that should be included in this paragraph can be found on page 5 beginning with line 27, which says:

"The employee shall be entitled to compensation benefits for such previous loss of function, to be paid from the funds provided under sections" and it cites the section. Again I say, I suspect this was poor draftsman. I hope that's all it was.

I would now like to point out what I consider to be a most serious omission throughout the entire proposed statute. At no point in this bill is there any mention at all of who is to pick up the tab for medical care which is now paid by the employer. Medical care is an integral part of the benefit structure of workmen's compensation and this bill should make crystal clear that medical care to cure or relieve an injured worker should be paid by the employer and/or the fund. This is a vital point; we consider this to be a most serious omission, and under no conditions could we support the bill unless this particular provision was provided.

Finally I would like to discuss page 12 of S-57 and also S-59 in the same context. I speak with a great deal of candor because I realize that in some circles this may be somewhat controversial. Lines 97 to 99 provide for costs and a reasonable attorney's fee to be provided in injury fund cases now as is allowed in other cases. S-59 would provide a salary boost for judges of compensation amounting to roughly 50 per cent.

As a man who has spent my entire life in the Labor movement, dedicated to the principle that you are entitled to a fair day's wage for a fair day's work, it is difficult to

talk in opposition to increased income for other individuals and I do not do that. What I do do, however, is suggest that this be placed in its proper perspective and that we apply priorities to needs with regard to workmen's compensation, because if you are going to increase the judges' pay and you are going to increase the lawyers' pay - and I suspect from the silence about the doctors they are apparently quite satisfied with what they are getting - it appears to me that what is being done here is that the workers are being provided with a piddling increase for certain small categories and the other gentlemen are being taken care of handsomely. I would suggest as a practical matter that before any increases be given to any other category, at least remove the 7-1/2 per cent limitation in partial permanent cases so that $60 across the board is provided so that you can say that this is truly a workmen's compensation bill and not a negotiating collective bargaining procedure for other gentlemen.

Now having said that, I want to say plainly that there are gentlemen who serve injured workers as attorneys whom I consider to be men of high integrity and true dedication and the injured worker has no better friend than some of the lawyers who are sitting here today who represent the injured workers. There are, however, and it's unfortunate, others involved in this field who do not have the same motivation or dedication, and I have asked time and time again what we can do to root out from the practice of workmen's compensation those individuals, but nobody has given me an answer. I can only express the fond hope.

This, gentlemen, is as quickly as I can possibly give

you our reaction to the proposed bills, and I thank you very much for the courtesy you have extended me in permitting me to speak first.

SENATOR DUMONT: Thank you, Mr. Jacobson. Are there questions by members of the various committees of Mr. Jacobson?

ASSEMBLYMAN PARKER: I have one, Mr. Jacobson. On page 12 of S-57 where do you get out of that in the lines that you read that there is going to be an increase in attorneys' fees? I see nothing there that refers to 34:15-64, the general rule-making power of the Commissioner to set the fees. The fees are already set by him with a maximum of 20 per cent.

MR. JACOBSON: That is not now pertaining to second injury fund cases.

ASSEMBLYMAN PARKER: They are not set in second injury cases at all?

MR. JACOBSON: No. There has generally been an award by the Judge of Compensation of roughly $150, $175, or $200 - sometimes $225 - but this would provide an open end as high as 20 per cent.

ASSEMBLYMAN BARKER: And you are opposed to that?

MR. JACOBSON: Well, I didn't say I am opposed to it but I am pointing out - this is a workmen's compensation bill - that I would like to see compensation for the workers. Let me point out, sir, that the charge to the Commission had 3 specific recommendations: (1) An employee is to be justly compensated for all injuries covered by the law; (2) that the highest possible rate of employment of the handicapped

be encouraged; and (3) that speedy and efficient procedures for the disposition of claims be provided. There is nothing in there to say that the Commission was to look into salary increases for judges or attorneys, although I suppose that could fall into the general category of administrative efficiency.

ASSEMBLYMAN PARKER: But under 34:15-64 the Commissioner would have the right to set the fees and could set them at the same rates that are now set for others. I don't see how this necessarily is going to give an increase to attorneys in their fees.

MR. JACOBSON: Well, the opportunity to rate it as high as 20 per cent, in fact will be higher than the normal practice in the past.

SENATOR DUMONT: Are there any other questions?

Mr. Jacobson, I take it you support without reservation three of these measures, S-58, S-61 and S-62 and their counterparts in the Assembly bills.

MR. JACOBSON: Yes.

SENATOR DUMONT: The language you mention in regard to S-57, you suggest that the language be taken from page 5 and transferred to page 6, or added on page 6 -

MR. JAC OBSON: Added.

SENATOR DUMONT: - and left on page 5 as well.

MR. JACOBSON: That's right. What I'm asking for there is that the same provision be provided for a cardiovascular injury.

SENATOR DUMONT: Any other questions of Mr. Jacobson?

[No questions]

SENATOR DUMONT: Thank you, sir.

Is Director Koransky here?

JUDGE KORANSKY: Yes, I'm here.

SENATOR DUMONT: Would you like to make a statement, Mr. Director?

H E R B E R T K O R A N S K Y: I would be happy to answer any questions. I did not come prepared to make a statement, but I would be happy to answer any questions the Committee may have on any of these bills.

SENATOR DUMONT: Thank you. I might point out that Mr. Koransky served as a member of the Workmen's Compensation Laws Study Commission.

Is Judge Nimmo here? [No response] Apparently not yet.

I understand that Louis C. Jacobson of the Workmen's Compensation Study Commission is here. Do you have any statement you want to make, Mr. Jacobson?

L O U I S J A C O B S O N: No, Senator, we worked on this report and it is the position of the Commission, and as Director Koransky stated, if there are any questions I can enlighten the Commission on or any members of the audience, I would be very happy to do so.

SENATOR DUMONT: Thank you.

Louis Hemerda who is a member of the Commission and also desirous of being a witness is present. He is representing actually today the New Jersey Self Insurers' Association. We will hear Mr. Hemerda next.

L O U I S H E M E R D A: Thank you, Senator and gentlemen: I am appearing here today as President of the New Jersey Self Insurers' Association. I did have the benefit of sitting as a member of the Law Study Commission and I might just say at the moment that I am a member of the minority of that Commission report. Today I will confine my remarks to what the New Jersey Self Insurers' Association feel is important to their existence because, as you all know, the Self Insurers' very existence is based on workmen's compensation, on self insuring workmen's compensation.

We have a series of bills before us and I might just say that there are three of these bills which we unequivocally support - Senate Bill 60 and its counterpart A-361; Senate Bill 61 and its counterpart A-360, and Senate Bill 63 and its counterpart A-364. These bills probably will be rehashed but in these bills are facts that we as self insurers have fought for for years and we feel that these are good bills, these are bills that should be passed and will benefit workmen's compensation in general in the State of New Jersey.

With respect to the other bills that are before us today, let me just make some comments: Senate Bill 59 and its counterpart A-476 which would have the Judges of the Division of Workmen's Compensation appointed by the Governor with the advice and consent of the Senate and the salaries of the Judges of Compensation shall be the same as those of the County District Courts. We as self-insurers approve the principle of a raise in salary for our Judges of Workmen's Compensation.

However, we feel that this bill is not the bill to do it. We favor the Judges to be appointed by the Governor with the advice and consent of the Senate, but the second part of this bill leaves us in a little bit of a quandary- what happens to the formal Referees? What is their salary? What happens to the Director's salary? Could it be that the Judge of Compensation is going to get more money than the Director? What happens to the status of the Judges of Workmen's Compensation under this particular bill? Are they removed from Civil Service? Do they stay in Civil Service?

Our main objection to this bill, gentlemen, is not to object to an increase in salaries for Judges but we feel that this bill as it is now worded will not solve the over-all problem within the Division, but will bring up additional problems, as I have mentioned before. So we feel that this bill needs some working on, it needs some elaboration, it needs some specific spelling out as to what happens, what category they will be placed in, what happens to our Referees at formal hearings, their salaries, and what happens to the salary of our Director, and so forth. We don't oppose, gentlemen, the raise in salary for the Judges. We feel that this rather sketchy 10 to 15 line bill is not the bill to be introduced and passed in this particular area.

Senate Bill 58 and its counterpart A-363. We oppose this bill as self-insurers frankly because I personally am not quite sure as to why and what this bill calls for, I was a member of the Law Study Commission. I wasn't a faithful

100 percenter; I missed some meetings unfortunately through no reason of my own. I imagine this particular subject must have been taken up at that time. However, just reading this bill - and I call your attention to line 13, the italicized part of it - "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."

Now I wish I had been in those sessions where this was discussed that I might have a better insight, but to me this wording in the bill says this: "Mr. Respondent, under no circumstances at any time will you have the right to have an employee examined to see if any rehabilitation or any medical treatment has done any good to diminish the disability." That's the way I read it and unless we get enlightened a little bit more, we feel that this takes a fundamental right away from an employer and under no circumstances at any time can we do it. I don't know how often this is done. I don't know how important this is, but we as self-insurers feel that employers should not be deprived of certain rights that they may have.

Senate Bill 62 and its counterpart A 362, which would increase the statute of limitations on occupational diseases from the current 5 years to 10 years. We oppose this bill. We oppose it for several reasons. Number 1, it hasn't been too long ago that your legislature took into consideration extending the statute of limitations. I assume and presume that it went into it thoroughly, and the only area in which they felt at that time, a couple of years ago, that the statute

of limitations should be increased was in the area of radiation. I sat in the committee hearings. To my recollection, the main arguments for increasing the statute from 5 to 10 years was beryllium. I think that was brought before us. Well, I don't think we have a beryllium problem too much any more, but I don't feel that even before the Law Study Commission, or even at this time, that there is sufficient fundamental documentation that was either presented to our Law Study Commission or that anyone has presented to us today which would justify at this time increasing the statute of limitations in occupational diseases from the current 5-year statute.

As I mentioned before, it was just two years ago, or approximately two years ago, when our legislature took this problem into consideration and came up with the factor that the only thing of concern at the moment was radiation diseases, and in that area the statute was extended. So the self-insurers do oppose Senate 362.

Now we come to Senate 57 which is a catch-all bill which includes all of the other major areas that were not fractionalized or taken out and submitted in these individual bills. The self-insurers as an association opposes Senate 57 as a bill. There are some good things in there that we do not oppose and that we do favor. There are several things in there that we strenuously object to.

I will just briefly go through it and bring out some of the highlights and the position of the self-insurers on them.

Our permanent partial disability rate - $60. I was a

member of the Law Study Commission and I sat faithfully through there and I think there were two people who came before that Commission and argued for an increase in the permanent partial rate, and I think that can be documented in the hearings. One was Mr. Jacobson who has left and the other one was Mr. Marciante - both gentlemen on behalf of labor. And I think I'm right; they were the only two people that documented or even came before our Commission and said, "Look, we've got to have an increase in the permanent partial rates."

The $60 rate in this bill I think was drawn from inference. For some reason or another, our entire Law Study Commission had the idea that our main purpose, our main purpose for being in session, was to increase the permanent partial rates, and that was going to come regardless of what testimony we had and what testimony we didn't have before that Commission.

Again, we favor an increase in the permanent partial rates but we favor a modest increase in the permanent partial rates and I think it's unconscionable for an increase from the current $40 rate to go to a $60 rate. So we oppose the permanent partial rate that is included in S-57.

The cut-off of 7-1/2 per cent at the old rate. We as self-insurers should jump for joy in that particular area because, as everybody tells us - the District Attorney tells us, and by "us," I mean the self-insurers - you're going to save money, you're bound to save money; you're going to save money because the first 7-1/2 per cent is at the old rate before we tack on the new rate. And so we save money. But that sometimes and oftentimes is not the primary interest of

the self-insurers, to save money all the time. We don't particularly favor this 7-1/2 of cut back because we feel that if a person is injured and has a disability, he is entitled to that money just as much whether it is a minor or a major disability.

We were told that the 7-1/2 cut-back is going to take care of our "nuisance" awards which a lot of you don't believe in. This is not going to take care of our "nuisance" awards. We as self-insurers have always felt that instead of this roll-back, if we had a good substantial definition of what constitutes a permanent disability, something that our hearing officials could actually put their teeth in - I don't like to use those words - but a good definition, that would take care of our "nuisance" awards, not this roll-back to 7-1/2 per cent. We don't favor a roll-back. There are certain things in here we do favor: The increase for enucleaton of an eye from the current 25 weeks to 50 weeks. We favor an additional payment for an amputation, because if one of our employees has an amputation that's a serious injury, so he should get the scheduled law and we favor the concept of an additional 25 per cent of that particular member for an amputation. But we kind of raised our eyebrows a little bit - we would not like to have our hearing officials use that additional 25 per cent to assess attorneys' fees on. So while we approve the concept of the additional money for the employee who has an amputation, we have some reservations whether that additional should be used to constitute part of the attorneys' fees.

We as self-insurers have always been in favor of a good second-injury fund. Frankly at the moment I don't know what a good second-injury fund would be. But this bill S-57 on the face of things relieves employers from liability or workmen's compensation payments where pre-existing disability either cardio-vascular or any kind could be established, but they throw that pre-existing on the fund to be paid from a second-injury fund. We don't as self-insurers favor that concept because we as self-insurers, along with the insurance industry, fund that particular fund and we're not quite sure whether a person who comes into our employ and brings in with him a previous disability - whether we as representing industry should be responsible for payment for that pre-existing disability from a fund which is actually funded by the employers and the insurance industry.

We would like to have a good second-injury fund and I say at the moment I wish I knew what that could be.

I have leafed through this now fairly sketchily; I know there are a lot of people to testify. On S-57, as an association we oppose it. There are certain parts of it that are good and there are certain parts we feel would be detrimental to a good workmen's compensation law in the State of New Jersey.

Before I cease my remarks, I would, however, like to call your attention to another workmen's compensation bill which is not on the agenda to be taken up today but which I feel this Committee certainly should look into, and that is Assembly Bill 279.

Thank you very much, gentlemen.

SENATOR DUMONT: Are there any questions of Mr. Hemerda?

Assemblyman Pederson?

ASSEMBLYMAN PEDERSON: You say you oppose the maximum of $60 a week in this bill?

MR. HEMERDA: Yes, sir.

ASSEMBLYMAN PEDERSON: Do you have a figure to suggest?

MR. HEMERDA: I do have a figure to suggest, sir, but I am going to qualify that figure. We as self-insurers feel that in our workmen's compensation system somewhere there should be a reasonable definition to take care of our so-called "nuisance" awards that would make sure that the person who doesn't have a legitimate disability doesn't get compensated and the person who does have will get adequately compensated. If we had that, I would talk to you about a $60 rate, but we don't have it and we don't anticipate getting it. So without that, I'll say to you right now that we would go along for a $5.00 increase in the permanent partial rate, with all things being equal as they are right now, knowing, of course, we don't have the definition and knowing, of course, we are not going to get any more relief in our nuisance area awards that we have had in the last 10 or 15 years. So, sir, under those circumstances, we are prepared to tell you now that we would go for a five dollar increase.

SENATOR DUMONT: Thank you.

Assemblyman Parker?

ASSEMBLYMAN PARKER: Mr. Hemerda, first I think I should call your attention to the fact that A-476 is not identical to S-59 including the raises. This ties in the Civil Service

aspect of the judges of compensation.

To answer one of your other questions or pose it to you in reverse, it is my understanding that the Director of the Division of Compensation himself can be a judge or in many cases is a judge and has the authority to sit as a judge, so I would think that his salary probably would be commensurate with that of the judges of compensation also.

MR. HEMERDA: I appreciate that part but, Mr. Parker, you said "probably." That's what we are up against. Is his salary going to be the same? Is it not? Even in your own words, it probably would be the same.

ASSEMBLYMAN PARKER: Well, as a matter of fact, I believe most of the Directors are judges of compensation or have been. Isn't that correct? I think Director Koransky is the only one who hasn't so designated himself.

MR. HEMERDA: I think so. I'm not quite sure.

SENATOR DUMONT: Is that correct, Director?

MR. KORANSKY: My recollection is that my three predecessors also had appointments as judges of compensation. I don't have such appointment nor is there any reason to assume that the following directors would have such appointment also. In other words there is a separate appointment. Under the statute, you are correct, the director may sit and hear cases. In so doing, he doesn't sit as a judge in compensation but sits as director with separate powers.

ASSEMBLYMAN PARKER: Mr. Hemerda, in reference to S-57, I would like to ask you what your definition would be. It is my understanding your definition would be the subjective-

objective symptoms. Is that what you are referring to? I would point out that on page 3 we did put in a definition, lines 75 to 77.

MR. HEMERDA: I would be glad to give you my definition. I think that our definition that we would be glad to live with and certainly not be hard to get along with when we are talking about rates would be disability, total in character, permanent in quality, and disability partial in character and permanent in quality shall mean a permanent impairment caused by an 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.

ASSEMBLYMAN PARKER: And what do you mean by demonstrable objective evidence?

MR. HEMERDA: I mean where a doctor can examine an employee and find something objectively wrong with him, and the easiest way to say it is as compared to the subjective complaint, "Doctor, I can't stand up. My back hurts," and oftentimes we in industry will know - or do know. We will have several doctors examine him and objectively they can't find anything wrong with the man, and yet subjectively he's in bad shape. All we want is - well, I can't say it any better than have some objective evidence by which somebody should assess that there is a difficulty.

ASSEMBLYMAN PARKER: What do you mean by "objective"? Can you describe when a person has an objective injury as opposed to a subjective injury? Give me an example.

MR. HEMERDA: Objective disability.

ASSEMBLYMAN PARKER: Yes, disability.

MR. HEMERDA: I wish I were a doctor. Let me take a back case, because that is our normal gripe along the way. I suppose they are muscle spasms and I suppose there is a tightness along the area somewhere, and I suppose there are limitations of bending and things like that which are objective. It might be no muscle spasm is found or any of those things, yet verbally according to the patient he couldn't even sit up straight. Objectively - I may not be getting it across but I mean something a doctor can find either by looking or feeling or -

ASSEMBLYMAN PARKER: Well, isn't this depending on the time of the examination, for instance, a muscle spasm, and couldn't that be transient in nature and come and go, depending on the work strain or stress on any particular given day?

MR. HEMERDA: Oh, yes, Mr. Parker. I just picked the term "muscle spasm" because I don't know too many medical terms. I just picked that term out. Certainly there should be some other objective demonstrable evidence other than just objective.

ASSEMBLYMAN PARKER: The problem I am trying to get to is how are we going to define this and how is the doctor going to describe it for us and how is he, on one examination, to say or not say that a person has this?

MR. HEMERDA: I don't know. Without an educational system or without some kind of re-educating our doctors who

follow the "comp" courts and without also a kind of re-education system to our hearing officials at the same time.

ASSEMBLYMAN PARKER: You are familiar with the Chamber of Commerce Report with an analysis of the Workmen's Comp Law for the United States?

MR. HEMERDA: I should be. I haven't seen that.

ASSEMBLYMAN PARKER: Do they provide for such a definition or do any States provide for any such definition of demonstrable evidence?

MR. HEMERDA: Offhand, I don't know, Mr. Parker.

SENATOR DUMONT: Anything else?

ASSEMBLYMAN PARKER: I think that's all I have.

SENATOR DUMONT: Assemblyman Fontanella?

ASSEMBLYMAN FONTANELLA: Mr. Hemerda, how would you fit into your definition psychosomatic disabilities or neurological disabilities which are totally and basically subjective?

MR. HEMERDA: That is an area we haven't considered too much of a type. I think the symptoms there as you have mentioned as total psychosomatic, in those instances again we just have to take the word of a doctor.

ASSEMBLYMAN FONTANELLA: Wouldn't it be more reasonable to take the word of the injured person. He is the one who is suffering.

MR. HEMERDA: In these neurological areas.

ASSEMBLYMAN FONTANELLA: Right.

MR. HEMERDA: Yes, substantiated by the doctor's statement as to whether it is reasonable or not under what he has, to have these symptoms that are expressed to the doctor. I think in

those instances it would be.

ASSEMBLYMAN FONTANELLA: I haven't been able to follow the objection to the increase in the amount of permanent and partial disability. What other objection is there than that you just don't want it?

MR. HEMERDA: I don't say that we just don't want it, because I would say, in fact, we will favor an increase even without getting anything else to tighten up the current procedure. Our objection in the Association is this: We think it is unconscionable from a $40 to a $60 rate. Even in the past history of workmen's compensation, we have grown along with it from way back when the rates were $20 and $25. There has always been a modest increase. Again, no one has satisfied me with a particular argument as to why it should go from $40 to $60. Everybody says, "Sure, the cost of living and everything is going up. Let's raise the rates, let's raise the rates." But nowhere have I been satisfied that the current rate of $40 for permanent partial is justified to be raised to $60 permanent partial.

ASSEMBLYMAN FONTANELLA: I am sure you understand that the President of the United States has got a $100,000 raise this year; the members of the Congress got $12,500; the Judges of our courts in New Jersey got $5,000, which is $100 a week, and you mean to tell us that $20 a week to an injured workingman is unconscionable?

MR. HEMERDA: Now you are kind of backing me in a corner. Let me say this, and I think I included it before,

and when I say "administration" I am talking about - and I have to talk about it whether a lot of people believe it or not - "nuisance" awards, people who are getting something who shouldn't be paid. We don't object to the guy if he is really disabled getting a higher rate; in fact, I inferred that if we could get a definition, if we could get some tightening-up procedures, I might not be here now on behalf of my Association objecting to a $60 rate. We may take another look at that particular thing. But the money isn't going to where it should go. If we favored the $60 rate. we would be right back in the same area that we are now with a lot of the people who don't deserve it getting the bulk of the workmen's compensation money. We don't object to the injured being compensated. We certainly favor the increase in enucleation; we favor the additional money for amputations. Our organization feels that the person who is hurt, really hurt, should get what he is entitled to but unfortunately our system is such at the moment that the person who is really hurt in a way suffers because of the so-called abuses in our nuisance and permanent partial area that have been going on and are currently going on.

ASSEMBLYMAN FONTANELLA: Just one further question. You indicated, Mr. Hemerda, that only two individuals appeared before the Commission who favored the increase in the rate of permanent partial disability, two individuals. Let me ask you, how many individuals do you represent?

MR. HEMERDA: We represent 53 of the leading largest industrial firms and utilities in the State of New Jersey

which has several hundred thousand membership in the State of New Jersey.

ASSEMBLYMAN FONTANELLA: Do you know how many people Mr. Jacobson and Mr. Marciante represent?

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

SENATOR DUMONT: Mr. Pederson?

ASSEMBLYMAN PEDERSON: Mr. Hemerda, getting back to this rate again, it seems to me an employee who is injured doesn't have much opportunity to supplement his income in any manner, so I was wondering how you would justify a $40 or $45 rate, or even a $60 rate against the unemployment rate; in other words, it would seem to me that the man who was injured would be entitled to at least as much as a man who was unemployed.

MR. HEMERDA: I agree with you, sir, but you must remember that the person who is getting this $40 or $45 rate, or so-called $60 rate that this bill calls for, is getting that while he is working. He is getting that in addition to his regular salary, because if he were not working he would be under our temporary disability TB rate, so that he is supplementing actually - this current $40 or $45 or the $60 recommended in this bill is a supplement - he's getting that in addition to his regular salary because at that particular time the temporary disability period is over and he is now back to work.

ASSEMBLYMAN HEILMANN: But there could be instances when, because of his injury, he could not go back to his former position and maybe he would have to take less money. Isn't that true?

MR. HEMERDA: You mean the hourly rate?

ASSEMBLYMAN HEILMANN: Yes.

MR. HEMERDA: Oh, I can understand there possibly could be cases where if a fellow was making three dollars an hour, he may have some restrictions and he may have to go back to two seventy or two eighty, is that what you mean, sir?

ASSEMBLYMAN HEILMANN: In actuality he will not be supplementing his original salary because he may be taking a cut in his original salary.

MR. HEMERDA: I can visualize there may be instances like that, sir.

ASSEMBLYMAN PARKER: Well, actually, Mr. Hemarda, isn't the payment of permanent to permit the workman who has got a permanent disability to recoup some of the money he lost while he was on temporary? You are only paying two-thirds of the average weekly wage. A man who is making $160 a week, the maximum he can get under our law now is $82 or $83 a week. If he out for ten weeks with a broken leg or something, isn't really the payment of permanent intended to help the injured workman recoup some of his losses for that period of time?

MR. HERMERDA: I'm not sure I've ever heard of putting it in that context, that the reason you pay a man permanent disability is to help him recoup some of the time that he lost, because in many instances we will pay permanent disability without lost time at all, and I think the majority of the times and the greater percentage of times we will pay for permanent partial is when there has not been any lost time.

ASSEMBLYMAN PARKER: Well, that is true in some cases there is, but I would say in the majority of the cases there is lost time, and I think the facts will substantiate that.

Let me ask you one further question: In reference to the definition that was put into S-57 and the recommended definition under the Commission's report, I take it you find that completely unsuitable.

MR. HEMERDA: Yes, sir, because it doesn't do any more, sir, than we have operated for the last 10 or 15 years. It is nothing new. That definition is what we have been operating under and what our hearing officials are going under, and that's why we find it objectionable.

ASSEMBLYMAN PEDERSON: In the same manner. The definition that worries me a little is because as I understand our definition here is that anything that impairs the former efficiency of the body, where, if I heard you correctly, you said it impairs the efficiency to perform the normal duties of the worker.

MR. HEMERDA: The employee's working ability - it impairs the working ability.

ASSEMBLYMAN PEDERSON: Well then there would be a possibility where, say, an office worker lost his little finger in a pencil sharpener, he could still think and write and, under your definition, he would get compensated.

MR. HEMERDA: It could be, unless he had an amputation or something like that.

SENATOR DUMONT: Mr. Hemarda, the definition you suggest and your interpretation of it reminds me a little bit of an Army physical, as a matter of fact. In other words, the patient may come in with something that he thinks is wrong with him but the doctor, of course, disagrees and says "You're going back on duty rather than the hospital," and, of course, there is no middle ground. You are either on duty or in the hospital. I don't think that is necessarily what you've got in mind but that is the reaction I tend to get from your definition.

MR. HEMERDA: It's not necessarily what I have in mind, although I do want to leave the impression that before a doctor should determine whether someone has a disability, he should find more than just the fellow saying "I don't feel well."

SENATOR DUMONT: Well, don't you think that the definition recommended by the Commission - and I perhaps ought to quote that definition: "Loss of physical function or that which detracts from the former efficiency of the body or its members in the ordinary pursuits of life" - you don't think that definition would satisfy what you have in mind at all?

MR. HEMERDA: No, sir.

SENATOR DUMONT: Now you mention you've got some doubts about this special fund, as we call it in the report, or second injury fund, but you do not, as I understand it, recommend how it could be improved. What are your questions or doubts about it?

MR. HEMERDA: Our doubts as an Association on this second injury fund are twofold: Number 1, if a person brings in a preexisting non-occupational disability to work with him and on top of that suffers an accident, we are not quite sure whether we should just pay for limits of that accident and if the previous non-occupational disability was aggravated that should be paid from the fund. We think that that person brought that in with him and he should at least foot that particular part of it. If a fellow comes in with a palsied hand and then has an accident on top of it, we feel then that they should pay for the part they caused, but whether or not the fellow should be recompensed from the fund for that palsied hand, we are not quite sure. We are not quite sure of the fund for a second reason, because any payments out of that fund would be financed by industry, by the insurance company, and then we again think that, should industry in general be saddled with paying for presumably servile nonoccupational incidents that a person has brought with him into the employment because he suffered an accident on top of it.

Actually our concern is twofold; one, should that pre-existing nonoccupational condition be paid out of the fund, and Number 2, how should that fund be funded?

SENATOR DUMONT: Well, now, you've raised those questions. What recommendations do you make then with respect to correcting it? Assuming for the moment that your arguments are true, what recommendation do you make with respect to correcting this particular piece of legislation?

MR. HEMERDA: Our recommendations are that the pre-existing condition not be recompensed at all.

ASSEMBLYMAN PARKER: In other words, you want us to legislatively overrule the Belt decision in that line of cases that preceded it. Do you know what I'm referring to?

MR. HEMERDA: Yes, I certainly do. I was going to say: if necessary, yes, sir.

ASSEMBLYMAN PARKER: Well, it would be necessary because under the law as it now is you are paying for that pre-existing disability. You, the insurance carrier for the employer, are paying the full amount of disability. Now you don't feel that the second injury fund would spread that risk and which now, incidentally, would include under this bill all public employers and self-insurers and everybody else to pay into the fund and not on the basis of claims but on the basis of premiums written - that this wouldn't be a better way of spreading that risk?

MR. HEMERDA: I have to agree with you, it would be a way of spreading the risk but we as self-insurers do not favor that particular concept.

ASSEMBLYMAN PARKER: You want us to go backwards then and say that we no longer want to compensate under the type of situation set forth in Belt in the prior decisions for pre-existing disability or injury.

MR. HEMERDA: I would like to see legislation to that effect, yes.

ASSEMBLYMAN PARKER: I say that's what you're advocating. Is that correct? That's your position as I see it. From what

you have said, that's the position you are advocating that you want us to take, to overrule these decisions legislatively?

MR. HEMERDA: I would say yes.

SENATOR DUMONT: Are there any other questions of Commissioner Hemarda? [No questions]

All right. Thank you, Mr. Hemarda.

Mr. Marciante has to get back to Newark, I believe, and therefore asked to testify early, so I will call now Charles H. Marciante, New Jersey State AFL-CIO.

C H A R L E S H. M A R C I A N T E: Senator, first off I would like to thank you and the members of the Tri-Commission for having us appear before you. I would like to state that there is also with us the Executive Vice President of the State AFL-CIO, Mr. Richard Lynch, former Assemblyman here for several years, and with me is our Assistant General Counsel Victor Parsonnet.

Basically on the Senate bills I would like to put remarks to them since they seem to be the most inclusive. And I say basically we support Senate 58, 59, 61 and 62. We are strenuously opposed to Senate bills 57, 60 and 63.

We would also like to call your attention to Assembly Bill 212 which we vigorously support.

I would like to just briefly make a comment on the question put forth by Assemblyman Fontanella as to the statement made by Mr. Hemerda, wherein he said that only two people appeared before the Law Study Commission. To answer Assemblyman Fontanella's question, the two names mentioned were Mr. Jacobson and myself. The State AFL-CIO and the UAW

Both he and I were speaking for them. The UAW, as stated by Mr. Jacobson, represents some 50,000 members. The State AFL-CIO represents some 650,000 members. So there are 700,000 if you are talking about numbers. We are chartered by the National AFL-CIO to represent our people both legislatively and politically.

There was also a statement made by Mr. Hemerda as to his definition, one that he would like, describing permanent partial disability. You will recall, Senator Dumont, we started in 1962, I believe, on this discussion of workmen's compensation and we worked very closely with you at that time up until about 1964 or 1965. There was a bill introduced in 1964 or '65 - I don't recall right now - Senate Bill No. 282, which contained the definition as put forth by Mr. Hemerda, wherein the phrase "demonstrable objective evidence" appeared. This phrase, as you know, we were violently opposed to and justified it to the members of the Senate and Assembly where no action was taken on Senate Bill 282 which contained that particular phrase.

There seemed to be an attempt to clarify what demonstrable objective evidence is. If I might give a lay interpretation, demonstrable objective evidence would be as a matter of similarity as your collar is buttoned directly under your belt buckle. That would give you demonstrable objective evidence for determining disability.

However, returning to our statement, which I will read:

May we express our appreciation for this opportunity to testify before you and to present our point of view concerning the proposed legislation presented by Senate Bills 57 to 63, inclusive.

These 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 have been 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 setting 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 and offers 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 colors 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 condemns 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:

SENATE BILL NO. 57

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 has 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 refers 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.

The other provisions of Senate Bill No. 57 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, Line 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, if they are to be incorporated with the changes proposed for partial permanent disability, we would 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.

SENATE BILL NO. 58

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

SENATE BILL NO. 59

This bill would provide for appointment of Judges of compensation by the Governor with the advice and consent of the Senate,

rather than appointment by the Commissioner.

We believe this change would result in the selection of more highly qualified persons which would result in ultimate improvement of the system.

We, therefore, support Senate Bill 59.

SENATE BILL NO. 60

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 computation of awards so that, where justified, lump sums may be paid. We believe that this method of computation should be continued.

We are, therefore, opposed to Senate Bill 60.

SENATE BILL NO. 61

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 Senate Bill 61 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.

SENATE BILL NO. 62

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.

SENATE BILL NO. 63

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, is, therefore, unreasonable and should be defeated.

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.

Gentlemen, that concludes my testimony. If you have any questions, the Assistant General Counsel and I will endeavor to answer them.

SENATOR DUMONT: Are there any questions of Mr. Marciante?

Assemblyman Pedersen?

ASSEMBLYMAN PEDERSON: This last bill you spoke of, Mr. Marciante, Senate Bill 63, it is your opinion that social activities and recreational activities do definitely benefit the company and, therefore, should be covered under the Compensation Law?

MR. MARCIANTE: That is correct.

SENATOR DUMONT: Any other questions? Senator Forsythe?

SENATOR FORSYTHE: Mr. Marciante, on this partial permanent, would you consider a limitation that would prevent any payments from being in excess of normal wages of an employee? You refer to a violin player. In other words, there is no loss of wages.

MR. MARCIANTE: Oh, yes, we do.

ASSEMBLYMAN PARKER: Mr. Marciante, in reference to Senate Bill 57, I take it your main objections are that it doesn't go far enough or it doesn't go as far as you would go which you have in for several years, 66-2/3 for permanent.

MR. MARCIANTE: That's right.

ASSEMBLYMAN PARKER: That's your basic objection.

MR. MARCIANTE: Right.

ASSEMBLYMAN PARKER: That's all.

SENATOR DUMONT: Mr. Marciante, Assembly Bill 212 which you say you vigorously support - is that the bill of the AFL-CIO?

MR. MARCIANTE: Yes, it is.

SENATOR DUMONT: Are there any other questions? [No questions].

Thank you.

We will take a 5-minute recess.

[R E C E S S]

SENATOR DUMONT: We will reconvene the hearing and get under way.

We will call as the next witness Mr. John O'Brien, representing the New Jersey Workmen's Compensation Association.

J O H N W. O ' B R I E N: Senator Dumont and members of your panel, I want to thank you for permitting us to express our thoughts here. I represent the Workmen's Compensation Association which is a body made up of those who are actively practicing in workmen's compensation. Most of the lawyers who appear on either side, most of the doctors who appear on either side, and most of the investigators

belong to this Association. Our chief interest is in the advancement of the compensation system and those bills which increase the efficiency. We do not take positions as a body on matters which are favorable to one side or the other as it were. For that reason we do not take any position on S-57, 58, 62 and 63 as a body. We strongly support S-59, 60 and 61.

I would like to make a couple of comments on S-57 as an individual. On page 2, line 50, in dealing with heart conditions, the word "functional" as an adjective is used -

SENATOR DUMONT: Which bill is this that you are talking about?

MR. O'BRIEN: S-57, line 50, the adjective "functional" is used and it is a word of art in medicine and deals with a disability which is usually psychiatric in origin and, therefore, the use of that word may lead to some misinterpretation. When you speak of a functional disability in medicine you are talking about a disability that has no organic basis.

The other comment I would make is on page 11, lines 50 to 59. While I have no personal objections to that and rather prefer it, I merely want to point out that in the case of Wechsler vs. Lambrecht the Appellate Division made strong criticism of ability to move against the fund without any specific individual representing that fund. Apparently the courts would have some worry and concern about not having a person -

ASSEMBLYMAN PARKER: Excuse me. If you don't mind, you've been a little formal and I will interject. I think

the definition of functional disability refers to the definition as put in in Section C on page 3. The reference to functional disability is not toward any particular medical term but to the legal term as we have tried to define it in Section c, which says: "to be loss of physical function."

MR. O"BRIEN: Physical function used as a noun is perfectly fine and doesn't have another connotation. I merely want to call to your attention the possibility of a mis understanding at some time, because in heart disease especially there is what you call "cardiac neurosis," which is purely a medical functional disability.

Now we have no comment at all on S-58. On S-59 we strongly support the bill. There were comments made this morning about the Director and the Referee, and I think it would be very easy for you to insert a provision that the Director shall always get X dollars more than the Judges of Compensation to take care of that aspect of it. We support the bill for many reasons.

Today law students who graduate from law school even before they pass the bar are taken. Last year the New York firms started them out at $15,000 a year and now that has been moved up to $18,000 a year for the next class, I am advised, and it seems a little bit ridiculous that men of stature and experience in handling many cases where they require expert medical knowledge and dealing with cases that can bring over $200,000 in widow cases should be getting only about as much as a non-lawyer starts out for. We need

to draw top men, we need to hold top men, we need to pay them enough to keep them there and to also avoid any possible temptation. I think that the recess provision is a very good one, both for them to give them a little more time away from their daily hearings to do other things that come up, and it would also be helpful to the lawyers who need an occasional day in the office.

We very strongly support S-59 as an Association.

On S-60, we support that. Now I think we should go back to the very beginning of workmen's compensation. Workmen's compensation was started as a form of compromise. In the early days before you had workmen's compensation, one person would receive a tremendous award and ten people would receive nothing. The system was set up to supplement wages so that everybody would get a little bit and avoid the economic disruption. S-60 goes along with that basic proposition. A lump sum enables you to avoid, because it usually indicates where there is a long trial in prospect where the defense has at least the color of a good defense and frequently a good defense - it enables them to use the money it will cost to take that case through the courts, to use some other money based on a possibility you are going to lose some of them, to give more people a little less and a quicker rate; in other words, where you have a lump sum settlement, it's usually done on one of the first or second days as the case comes up before the Judge of Compensation. The Judges of Compensation are thoroughly qualified to protect against the misuse of that and, as a matter of fact, I think it

could do better justice because most of my work is on the defense side and I have had cases where I felt very badly about winning. Unfortunately not every lawyer who represents the petitioner is of the quality who should handle some of the most complex cases, and you do have some injustices under the present act because of the inexperience and unwillingness of those lawyers to get somebody to help them with the tough cases. Those lawyers could be brought into chambers by the Judge and compromises could be worked out that would be far better for everybody. I feel it will help the efficiency, it will prevent long trials and will do more good than harm and, therefore, we strongly support that.

S-61, I don't think there is anyone who would disagree, even the County Court Judges, that the Judges of Compensation have far more expertise in medical terms, in medical knowledge, and the philosophy of compensation than do the County Court Judges who have so many other duties. They don't have the time to get deeply interested in the field, to follow the cases, to follow the medicine, and most of us feel that it's rather an exercise in futility to go to the County Courts. It's a waste of time because they are not able to give you the kind of review that should be made. So we strongly support a move which would eliminate the County Courts and go directly to the Appellate Division. We would not oppose an Appellate Court within the Division if that were considered desirable.

With respect to S-62 and 63, again we take no position.

Thank you very much. Are there any questions?

SENATOR DUMONT: Any questions of Mr. O'Brien?

ASSEMBLYMAN PARKER: Mr. O'Brien, just one. In reference to S-60, basically this is the practice, is it not?

MR. O'BRIEN: Well, it's done sort of sub rosa, yes; there are many lump sum payments made under various guises that do not perhaps quite meet with the present legislation.

ASSEMBLYMAN PARKER: Actually aren't they done under a form of dismissal?

MR. O"BRIEN: Well, it depends on who the respondent is more than anything else. Each respondent has his own favorite way. My favorite way is to, after dismissal, require an appeal on the view that perhaps the county court has authority to approve settlement for cases that reach it. Other companies insist on doing it under Section 16. I have some serious doubts in my own mind as to how that will stand up if it ever gets tested at a later date. All methods are used, depending on what the respondent's attorney thinks is the best way for his company. And I think they are good. I don't think that anybody who is intimately involved in the practice of compensation feels anything other than that they are good. It is the people who stand back from the outside and from a theoretical standpoint have objections to it.

ASSEMBLYMAN PARKER: What you are saying then is that some respondents, mainly because they don't get credit for it in their ratings, refuse to go along with this type of situation and you have an anomaly where some go along with it and some don't, but the practice is somewhat used in the trade.

MR. O'BRIEN" That's right.

ASSEMBLYMAN PARKER: And this would make it legal and put in the statutory authority for it. Is that correct?

MR. O'BRIEN: That is correct.

ASSEMBLYMAN PARKER: And it goes one step further in providing for a supervising judge of compensation to do this rather than just a judge of compensation.

MR. O'BRIEN: Well, that provision, of course, as an Association we have no specific feeling about it but my experience with the Judges of Compensation has been that most of them are thoroughly qualified to do it, and I don't think you need the added provision of a supervising judge, however. That is not of a major moment.

SENATOR DUMONT: Mr. O'Brien, my recollection is that in the original omnibus bill of last year, the recess provision was included. I think it came out of S-59 and, if I recall correctly on this, the reason was because it is not included in the statutory law with respect to other judges and, therefore, it was thought there might be some conflict by putting it in with respect to Judges of Workmen's Compensation. Have you any comment with respect to that?

MR. O'BRIEN: That was S-59.

SENATOR DUMONT: Yes, the recess provision. Because you mentioned it when you were reviewing S-59 in your statement.

MR. O'BRIEN: I think that is one of the problems with the recess provision - I'm strongly in favor of it. I think it should be and I think one of the problems was a

Civil Service problem. Since they were under Civil Service, it would be a problem of other Civil Service personnel having the same time off. However, I don't think there is any reason in the world why you can't recognize that different jobs have different requirements and if you legislate it as such there is nothing in any way to prevent you from doing it and it is certainly warranted by the type of work they do. And by a comparison between their jurisdiction and the District Court Judges, they certainly in my opinion have a more difficult job in that they have to be expert not only in the law but in the medical field as well and handle cases involving much more money and, generally speaking, more cases per week.

ASSEMBLYMAN PARKER: On the same topic, are you familiar with the cost and expenses, etc. allowed to Judges of Compensation as compared with those of the Superior Court Judges and the County Court when they're traveling?

MR. O'BRIEN: I'm sorry, I'm not. I know that they do have mileage provisions but I understand that because of financial reasons they have been somewhat curtailed this past year, but I don't know enough about it to discuss it with any degree of authority.

ASSEMBLYMAN PARKER: Maybe the Director can answer that.

MR. KORANSKY: As I understand, Mr. Parker, you are asking whether or not the judges and referees receive mileage presently?

ASSEMBLYMAN PARKER: Well, any of their costs and expenses. I don't know whether there is any problem, but

how does it work with the Division?

MR. KORANSKY: They are receiving now no mileage expense at all for their travel. As you know, they are assigned to various parts of the State, sometimes quite far from their homes. They had been receiving mileage until the budgetary limitations made it impossible, until the money ran out. We don't know whether there will be sufficient in the next budget or not, although we have been requested to pick that up.

ASSEMBLYMAN PARKER: Have you appeared before the Appropriations Committee?

MR. KORANSKY: No.

ASSEMBLYMAN PARKER: When do you propose to appear there?

MR. KORANSKY: I haven't been asked and I don't know whether the Commissioner has been asked on this subject or not.

SENATOR DUMONT: How much mileage did they get?

MR. KORANSKY: Ten cents a mile.

SENATOR DUMONT: When did the money run out?

MR. KORANSKY: Approximately two or three months ago. I am advised there are some moneys left but not sufficient to pay them all, so we are paying the ones who have the longest trips. That's all we can handle.

ASSEMBLYMAN PARKER: If I may, and I don't want to get off into a particular area, and I know you are doing something about providing not only adequate expenses for the judges, quarters, etc., but I know you are aware of the problems that exist in South Jersey in some of the areas

and I know you are doing something about it. Does this have anything to do with the expenses that are allocated? I mean, why aren't they given sufficient money to compensate them for traveling and their necessary expense and personnel and also for quarters to put the Compensation Judges in an adequate place, speaking about the Camden, Burlington and the Gloucester area where we have a particular problem.

MR. KORANSKY: As you know, the budget of each department or division is made up well in advance, and we made our budget sufficient to accommodate all the expenses. It wasn't approved in the full amount, incidentally. I don't think any department is. The amounts we had, we used and are using now, as I say, in a lean mixture fashion and it is insufficient to go around. It just so happened I made an emergency budgetary request for an additional appropriation but as of now I haven't received any response on that.

ASSEMBLYMAN PARKER: Has that been brought to the Governor's attention, to his office?

MR. KORANSKY: I don't know if it has or not. I have made the request for the department for this emergency appropriation.

ASSEMBLYMAN PARKER: The reason I ask that, and I am concerned about it, is that it hasn't been brought up in the Governor's leadership conference.

MR. KORANSKY: I don't know but as far as the quarters are concerned, I know there is an on-going program to improve the quarters throughout the State. I believe you will find in Camden in the future you will have more adequate quarters,

and I think in Mt. Holly also.

ASSEMBLYMAN PARKER: I just wondered if a lack of funds was one of the reasons that was curtailing some of that. That's why I asked about it.

MR. KORANSKY: Also long-range planning requires if we don't build for now, we have to look to the future . The population explosion will require more court space, etc.

SENATOR DUMONT: Mr. Director, to follow up on that, you have been endeavoring to work out with the respective county boards of freeholders this space problem.

MR. KORANSKY: Well, some of these counties, of course, do not require as much space. We have been in constant touch with the Boards of Freeholders to see if there is space we can utilize on a per day or per month basis that we need in order to give us adequate quarters. Usually this arrangement is satisfactory in a temporary fashion because eventually the courts as they grow, the judiciary, will require that space. That means we will have to move and find other quarters. So we have to adjust our schedules to the needs of the county, the freeholders and other agencies who use those rooms. Sometimes this is difficult and scheduling is a problem. The ultimate objective is to have our own quarters that we lease and that we can call our own without being interfered with. We have been working on this at least since I have been Director.

SENATOR DUMONT: Well, I know the same problem exists in North Jersey as apprently exists in South Jersey.

MR. KORANSKY: That's underway there also.

SENATOR DUMONT: Are there any further questions of Mr. O'Brien? [No questions]

Thank you very much, Mr. O'Brien.

Incidentally, before we proceed, I want to introduce to you Senator Matthew Rinaldo of Union County who arrived just a short time ago. He is a member of the Senate Labor Relations Committee.

I will call Mr. John R. Mullen, New Jersey State Chamber of Commerce.

J O H N R. M U L L E N: Senator Dumont and other Senators and Assemblymen, members of the Committee: We are very delighted to appear here this morning before your body to review with you some of our concerns with respect to proposed workmen's compensation legislation in the State of New Jersey.

I am Vice President of Personnel and Labor Relations for Ethicon, Incorporated, a subsidiary company of the Johnson & Johnson organization. I am serving now as Chairman of the Workmen's Compensation Subcommittee of the New Jersey State Chamber and in that connection I appeared before the Workmen's Compensation Study Commission to present the "brief" of that organization with respect to workmen's compensation problems in the State. So on behalf of the Chamber and the thousands of businesses and industries that it represents we express our appreciation for the opportunity to be heard today on this vital subject matter.

As you are well aware, the State Chamber has for years considered very, very carefully the matter of workmen's compensation, and it is somewhat unique, I think, that the

first New Jersey statute on workmen's compensation was passed the same year that the State Chamber came into existence.

Our concerns, of course, in recent years have been with the spiralling costs of workmen's compensation and the fact that although various and sundry bills have been considered by both houses of the State Legislature from time to time, very little, if anything, was done to correct what so many of us considered to be abuses that have existed and crept into the workmen's compensation practices in the State of New Jersey.

As your expertise is of a higher plane than mine, I will not spend a great deal of time in detailing for you many of the facts and figures that we presented to the Workmen's Compensation Study Commission with respect to the economics of the workmen's compensation problem in the State of New Jersey. Suffice to say that New Jersey stands rather alone with respect to the cost that its employers bear or stand with respect to expenditures for workmen's compensation. I think we in New Jersey and particularly members of the group that is employing the workmen would tend to share the view that has been expressed by representatives of Labor today that the matter of cost is not the singular point upon which we should dwell to any great extent. The most significant aspect of the problem is the determination of the question of whether or not the employee who is injured on the job is compensated fairly and justly for the injuries which he in fact sustains. I say

"in fact sustains" because the great attention and great focus that should be made by this Committee this morning and the focus that should have been made, and I think was to a great extent made, by the Study Commission is in the area of the so-called minor nuisance awards. That is a problem that needs control. Until such time as the legislature comes to grips with the resolution of the nuisance award problem, and parenthetically I say that to the employee injured, I don't think he enjoys reference to his "minor injury" as a nuisance award. I refer, of course, to the employee who is legitimately and honestly injured. I don't refer to the great frequency of cases where there has been no loss of time, where there has been no loss of function, and yet our workmen's compensation courts and hearings are crowded with cases where the employee is seeking compensation for alleged injuries which do not impair his ability to work, his ability to perform, his ability to be a useful member of the industrial community. And that is why I think you must come to grips with the controversy in this area.

As I indicated, New Jersey stands rather alone with respect to the workmen's compensation costs. A New Jersey employer, for example, for his workmen's compensation coverage spend a dollar. His counterpart in New York spends 73¢, in Connecticut 54¢, in Delaware 38¢, and in Pennsylvania 35¢. True, we can examine in detail the comparisons of the legislative packages in those States, of the statutory packages in the workmen's compensation area and find out, well, we don't want to treat our injured employee in

New Jersey the same way he is treated in some other States with respect to legitimate injuries, except I think we do want to exercise some degree of prudence and wisdom in controlling unnecessary expenditures where they can be controlled in the State of New Jersey.

I think it is not so much the fact perhaps that we have in New Jersey a more sophisticated workmen's compensation program or package - I don't think that's what is driving our cost so much above those of our industrial neighbors with whom we in fact compete for talent. We in fact compete for new industries and new companies, but it's a fact that we have allowed the matter of the nuisance award to run away from us.

We are all familiar with the attention that New Jersey has gotten over the years because of such cases as Dwyer and others. For years, I think, people throughout the nation - other State Legislatures, other State Divisions of Workmen's Compensation have looked at our State. We have an outstanding Supreme Court; we have had over the years an outstanding legislature, and we have had a rather liberal Division of Workmen's Compensation, and I don't use that term to disparage. Naturally attention has been focused, but again these people who have looked admiringly at the State of New Jersey in these areas are now taking second thoughts with respect to how right, how prudent is New Jersey in letting its workmen's compensation costs spiral out of all just proportion and just relationship to the actual facts involved.

We think, therefore, I may repeat, that the critical area for review is the matter of the nuisance award. I think, therefore, that if we can take a look at the legislation proposed by you, Senator Dumont, and Assemblyman Parker and some of the other workmen's compensation bills that are presently in the hopper, we might be able to get a better perspective on the treatment and resolution of the problem.

We think, speaking for the companies represented by the New Jersey State Chamber of Commerce, we will have to take exception to the provision in S-57 and Assembly Bill 365 which increases the weekly benefit for permanent partial disability to 66-2/3 per cent of the weekly wages received at the time of the injury, subject to a maximum weekly benefit of $60 a week and a minimum of $15 which was the provision in that bill. The bill also provides that the first 7-1/2 per cent of the permanent partial disability would be subject to the maximum current weekly compensation rate of $40. We don't feel that this is a practical basis upon which to resolve the problem of the "nuisance award." I think that by fractionalizing your approach with respect to what is a minor injury and what is not a minor injury and by treating that minor injury with a specified rate of compensation and by treating an injury which you classify as major, anything above 7-1/2 per cent, as being entitled to additional compensation in excess of that $40 rate and up to the $60 rate, just does not come to grips with the facts of life.

For those of you who have practiced before the Division of Workmen's Compensation and know of the agonies of trying to resolve with any degree of sincerity and honesty the extent to which that employee has been injured and to apply a rate of compensation, you know that the problems are not easy to resolve. To attempt to be Solomon and say that the fellow who suffers a 6-1/2 per cent disability is entitled to compensation at the rate of $40 but if he were 7-3/4 or 8 per cent disabled he would be entitled to compensation in excess of that, I don't know that we would have much fun in selling this concept to our injured employees. I think that industry would be much better off if the yardstick were the same. I think too that when you get into the question of whether a case is worth 3-1/2, 4-1/2 or up to 7-1/2 or whether it's worth more, it's almost like getting into the problem or hassle of the extent of the disability and pegging that disability at a point where counsel fees are in order. We know that sometimes abuses sneak into our practice because the award has to be at a certain per cent before the counsel fee position comes into play.

I think we're looking for trouble, we are looking for prostitution of the basic and fundamental concepts of workmen's compensation and that is compensating justly the worker who has been honestly injured. So I would suggest to you that as you study this bill further, you back away from this concept of providing a different compensation rate for the employee who suffers an injury less than 7-1/2 per cent from that paid to the employee whose injury exceeds that in severity.

I would also suggest to you that the matter of the rate of compensation for permanent partial disability should be one where there is a fixed dollar amount paid for the disability as the rate rather than the fluctuating percentage. I think this is not only easier to administer, I think that it's fundamentally fair that the rate be pegged for this type of injury and for the periods of time we are talking about.

I would suggest also that all these proposals or suggestions on my part on behalf of the State Chamber go for naught unless we can put the squeeze on the control of the nuisance award. I think we can come to grips with this or get our arms around the problem only by a proper definition of the disability. And while I think that the definition which appears, I believe, on page 3 of Assembly Bill 365, on page 3 of Senator Dumont's bill, is movement in the right direction, I don't think that it has completely solved the problem that we're confronted with. I would suggest, therefore, that although the Committee has not been called together per se to review Assembly Bill No. 279, which is by Mr. Gimson and Mr. Vreeland, I would suggest to you that the definition on page 8 of that bill, beginning with line 19, is a preferable one. We have heard some comments and criticisms with respect to that definition earlier this morning and, if I may, I would like to read it to you again.

On line 19 the definition begins: "'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."

So frequently, and I alluded to this in my testimony before the Study Commission, we will have employees come and we will be talking with them with respect to an injury which they suffered. We will ask them whether that last compensation case related to the left hand or the right hand. Frequently they are hard put to remember, or they will refer to their left leg as opposed to the right leg. While these are extreme cases, perhaps they are as extreme as the statement with respect to the violinist earlier in the day. But they are cases that will illustrate the points involved, and that is that so frequently there has not been a loss of functional ability, there has not been a loss in terms of the man's ability to go out and perform the job for which he's been hired and to which he returns upon the conclusion of his compensation case. As most of you know who have dealt with unionized plants or have dealt with plants that have not been unionized, most employers are hard put to say to John Jones who has suffered an injury, when he comes back and has concluded his medical treatment, "John, I'm sorry but you can't return to that job because you suffered the 10, 15 or 20% disability as has been adjudicated by the Workmen's Compensation Division." As a very practical matter that John returns and in 90 per cent of the cases returns to his former job and we go on as if that man had not suffered any injury and as if that

man were in fact a one hundred per cent able-bodied man, despite the adjudication that he was in fact impaired in his working physical ability.

I think, therefore, that tying into our definition the requirement that there must be a lessening of the employee's working ability, in fact brings the Workmen's Compensation Act back in focus, and I am hopeful that this will be favorably considered.

When we get into the area of demonstrable objective evidence, we get into an area which I think the scholars will quarrel about. I think that those who practice before the Division will recognize that some ailments, some disabilities - in fact, most - that are suffered by our employees, if they have in fact been suffered, can be established by this evidence, this credible evidence which would point to the fact that there is a restriction of motion, there is an inability to straighten up, there is a limp or the loss of a finger or a restriction in the use of the hand, or something of that sort. Too frequently we have cases where the employee had nothing but his own subjective symptom, which makes it extremely difficult, I think, for the judges of compensation with their expertise, and makes it extremely difficult for some of our doctors and practitioners. I think, therefore, by imposing this element of proof that there be demonstrable objective evidence, we are saying we think there ought to be more required than simply, "I have an ache or a pain."

I think with respect to the matter of the second injury clause that has been incorporated, if you will, into your

consideration, this is a matter that I feel personally, and I think that I can speak for the State Chamber, has not received the study and consideration that is warranted either by the Workmen's Compensation Study Commission or by our Legislature. I think that this is truly a matter that should be considered separate and apart from an omnibus, if you will, workmen's compensation bill.

While the Workmen's Compensation Commission offered so many the opportunity to come in and be heard, I think that there are special considerations in the second injury fund that do require special hearings, special bills, and I would prefer, speaking for the State Chamber, that the matter of the second injury clause be removed if at all possible from your consideration of the Workmen's Compensation amendments at this time.

I might also indicate to you that we find objectionable the proposed change in the stipulated duration of the permanent total disability. Such payments are now payable for the lifetime of the claimant. The increase in the weeks' duration, therefore, will not serve to increase his compensation. It will have some effect, I think, on the fee paid to the petitioner's attorney.

We have no objection to the payment of additional benefits for amputation of major members or the enucleation of an eye, nor do we object to the definition of a hand as is included in Senator Dumont's bill and Assemblyman Parker's bill. We do agree with the provision allowing an employer credit for a pre-existing disability, but we are

concerned about the open end feature of the second injury fund proposal and, as I indicated, we believe the second injury fund should be a matter of special consideration. We object to its being utilized or subsidized as uninsured employer's funds because this penalizes the employer who faithfully fulfills his obligation in contributing to the fund. We think the problems of the uninsured employer are problems that the Division can deal with in other ways.

If I may, I would like to comment on some of the other bills that have been introduced and are under review by your Committee.

Senate Bill No. 58 and Assembly Bill No. 363 provide that if an injured employee has submitted to physical or vocational rehabilitation as ordered by the Rehabilitation Commission, then there can be no review of his award on the basis that the disability has diminished. I think in fact that the situation is that it is very rare indeed when an award is subsequently reduced because of this provision that entitles an employer to request a review because of reduction in the disability. I think, however, in this day of rights and privileges, when everybody is saying that you can't do this to me, or I'm entitled to this or that, I do think that the employer is entitled, if the circumstances are such as to warrant it, to come in and request that review. I think it's an infrequently utilized provision, but I do feel it's a provision that is worthwhile under certain circumstances and should not be denied the employer. I, therefore, suggest to you that our State Chamber is opposed to this bill even

though we are extremely excited about an employer seeking rehabilitation. We encourage our employees to do that and we adjust their working hours and things of this nature to in fact accommodate the injured workmen so that he can once again become a full and productive member of the industrial community. But to deprive the employer of the right, under appropriate circumstances, to seek a reduction, we feel is inappropriate.

Senate Bill No. 59, as introduced by Senator Dumont, proposes that the Judges of the Division of Workmen's Compensation shall work full time and their salary shall be the same as County District Court Judges. We think it's entirely appropriate that the matter of compensation of the Judges of Workmen's Compensation Division be reviewed. We think, however, that in view of the study presently under way in the State of New Jersey to determine appropriate levels of compensation for other members of the Executive Branch of Government that the determination as to the extent of an increase for the Judges of the Division of Workmen's Compensation should await those determinations.

I am personally concerned with respect to some of the comments that Assemblyman Parker raised as to the atmosphere, if you will, of the Division of Workmen's Compensation. I think that those of us who have had any experience, limited though it may be, in practice before the Division are horrified with respect to the conditions under which the workmen's compensation law is practiced. I think if we are going to consider elevating the status and the prestige and the

compensation level of our Judges of Compensation and of the other members of the Division, we should seriously consider the entire atmosphere and try to elevate workmen's compensation practice from other than slum court situations. There are so many situations and instances in New Jersey where the "comp court" is squeezed into any available closet practically where the facilities are not clean. You are asking an employee to come down and try to have some respect for the practice and some respect for the award that is passed out to him, and I think we don't encourage this type of respect by permitting the Division to practice the way they do. Again this may well relate to matters of appropriations but I think that if you are talking about increasing the prestige of your judges, you have to increase the prestige of the entire practice which may be a difficult thing indeed.

Senate Bill No. 60, introduced by Senator Dumont, and its companion Assembly Bill 361, introduced by Assemblyman Parker, would permit lump sum settlements under the workmen's compensation law while the petitioner and respondent are desirous of settling the controversy and have the approval of the presiding judge. There is no question but that this bill is worth while. It recognizes the practice that in fact exists, as Mr. O'Brien and Assemblyman Parker previously indicated. There are various means and methods by which the practitioners before the Workmen's Compensation Division can accomplish the same method. I think we ought to cloak the desirable practice of a lump sump settlement in an aura of

respectability and recognize that it is in fact desirable and does in fact benefit both the employee and the employer.

Senate Bill No. 61, also introduced by Senator Dumont, and Assembly Bill No. 360 which was co-sponsored by Assemblyman Parker and Assemblyman Fontanella eliminates the appeal to the county court in workmen's compensation cases. There is no question but that this would facilitate a better and a uniform resolution and determination of workmen's compensation matters. I think that there is no question but that the Appellate Division will be faced with a problem in terms of the volume of the workmen's compensation cases that reach it in very quick order, but I am convinced that the Supreme Court can handle that.

The Appellate Division review I think would eliminate the disparity that now exists from county to county with respect to the interpretation of what should be in fact common workmen's compensation problems. I think that by moving it right to the Appellate Division you will be saving time, you will be saving money, and you will be more equitably resolving the compensation questions that exist throughout our State.

We would, therefore, urge your favorable consideration of Senate Bill No. 61 and its companion Assembly Bill No. 360.

Senate Bill No. 62 and Assembly Bill No. 362 sponsored respectively by Senator Dumont and Assemblymen Parker and Fontanella, extend from five to ten years the statute of limitation with respect to occupational disease cases in

New Jersey. As you know, we previously considered what to do in the radiation cases and have extended the statute of limitations for that particular problem. I haven't been convinced that there has been any testimony presented to the Workmen's Compensation Study Commission which justifies an across-the-board increase in the period of limitation. I would suggest, as sophisticated illnesses and occupational diseases come to the fore, that they ought to be treated on a special basis as we have treated in the past in the State of New Jersey such problems as those resolving out of the radiation situation. I would suggest, therefore, that the State Chamber is opposed to an across-the-board extension of the statute of limitations from five to ten years and would suggest, therefore, that you consider our request in that area.

Senate Bill No. 63 and Assembly Bill No. 364, again sponsored by the same gentlemen, Senator Dumont and Assemblymen Parker and Fontanella, provide that injuries or death, which result from recreational and social activities and which are not a regular incident of employment and which do not produce a benefit to the employer, shall not be compensable. I think this makes sense. So many times today an employer is setting up a social or recreational activity that does in fact have no tangible relationship to the work effort. It's provided as an additional fringe, if you will; it's provided as an additional benefit to the employee to make his or her life a little more worth while, a little more enjoyable, a little more fun. I think we've come a long way from the day when a company sponsored a team in a sophisticated baseball league or football league and

received a tangible benefit from it. I think that very little tangible benefit, in fact, accrues to the employer with respect to his posture in the community by the bowling league where he may be one of 25 other companies that have three or four hundred of its employees participating in a league some night in the week or several nights in the week. I think the employees, in fact, get a devil of a lot out of these activities and the employer receives some very substantial indirect benefits. The employees are out in a relaxed atmosphere recreating together and they get to know and respect each other much better than they do when they are in a completely work atmosphere. This is the kind of benefit that the employer derives but I don't think it's the kind of benefit to which the workmen's compensation law ought to attach.

Gentlemen, those are some of the comments that we feel should be considered by you in studying this very important and very critical problem.

Again, I would like to indicate and repeat that the State Chamber of Commerce and the businesses and industries that it represents are not concerned solely with the matter of cost but we are seriously considered to be concerned with the matter of what is right, what is just, and what is equitable for the injured employee. We think if you take the approach of compensating the employee who in fact has suffered a discernible injury, in fact has lost time, in fact is now suffering a reduction in his ability to perform a job, then we are going to be bringing into true focus and into proper

perspective the role and the function of workmen's compensation laws in the State of New Jersey.

We very much appreciate the opportunity to be heard and if there are any questions we will attempt to entertain them.

SENATOR DUMONT: Well, Mr. Mullen, I think we are going to have to hold an interrogation of you until this afternoon because I told Mr. West of the New Jersey Farm Bureau he would get on before lunchtime. I know he has a statement to make and we are going to have to break pretty soon for that purpose.

MR. PARKER: I would like to direct some questions to you after the recess, especially as to your costs and your definitions.

SENATOR DUMONT: Thank you. Mr. Mullen.

I will call Mr. Arthur H. West, New Jersey Farm Bureau.

A R T H U R H. W E S T: Senator Dumont, Members of the Committee: My name is Arthur H. West, Allentown, New Jersey and I appear here today to speak on behalf of the 4,000 members of the New Jersey Farm Bureau.

First of all, let me make it plain that my only knowledge of workmen's compensation laws is based on my own personal experience as a farmer faced with paying the cost involved and what little knowledge I have picked up as an officer of the Farm Bureau and my association with other employers. I do not pretend to understand the intricate details of the present act, nor do I understand all of the detailed changes proposed in the bills being considered at this hearing.

I do know one thing, however: The cost of workmen's compensation in New Jersey is already the highest or among the highest of any State so far as farm employment is concerned and already represents a major item in the cost of producing crops and livestock in New Jersey.

Let me compare our present rates in New Jersey with some of the nearby States. For fruit farms, the New Jersey rate is $5.53; that is, with a $100 gross payroll, compared with $3.81 in Connecticut, $4.00 in New York, and $2.85 in Pennsylvania. For dairy farms, the New Jersey rate is $8.00 compared with $3.81 in Connecticut, $6.00 in New York, and $2.85 in Pennsylvania. For vegetable farms the New Jersey rate is $3.59 compared with $3.81 in Connecticut, $3.10 in New York, and $2.85 in Pennsylvania. I do not have comparable rates for all of the other States but from my association with Farm Bureau leaders across the country, I am painfully aware that the New Jersey cost is much higher than other States.

Now I am not enough of an expert to fully understand why this is so but I do know that our farmers in New Jersey have to compete with these other States when we go to sell our products in the marketplace. If our costs are significantly out of line, we find it most difficult to compete in the market.

I realize that farming is considered to be a high accident industry, and this is no doubt one of the reasons for the high cost of workmen's compensation, but I cannot believe our New Jersey farms are that much more prone to accidents than farmers in surrounding States. The reason for the high

rates must lie elsewhere. I suspect a part of the explanation might lie in the details of the Act itself and that another portion of the blame is in the administration of the Act and in the liberal way in which rulings are rendered. I suppose no one really knows the extent of abuse that is tolerated in the administration of this program.

From what I understand of the bills under consideration, they would further liberalize the benefits of the acts but would do relatively little to bring about any reform. If this is true, then passage of these bills would further penalize New Jersey farmers and place them at still a greater disadvantage with farmers in other States.

We are supporting a bill now before the Assembly that would make workmen's compensation coverage mandatory on farm workers. We fully realize farm workers need protection and compensation like all other workers, but we must constantly be concerned about the growing cost as it becomes an even higher percentage of total wage costs.

With the approval of the Department of Banking and Insurance, we are currently working on a plan in South Jersey to experiment with a group approach to workmen's compensation. This entails the keeping of separate records on claims within the organized group, operating a safety promotional campaign within the group, with the possibility of the insurance carrier paying a dividend to members of the group if the experience warrants it. This effort further indicates our growing concern about the cost of workmen's compensation.

We appreciate the opportunity to present these views

and hope you will give our concern in these matters careful consideration as you deliberate on the passage of these bills. We cannot support them as they are now written.

SENATOR DUMONT: Are there any questions of Mr. West?

ASSEMBLYMAN PARKER: Just one, Mr. West. Where did you get the figures on the cost?

MR. WEST: From the insurance companies that are writing in the three States involved.

ASSEMBLYMAN PARKER: Do you know what they are based on?

MR. WEST: The State Rating Bureau.

MR. PARKER:Do you know what factors are taken into consideration on these? Are they the same in each State?

MR. WEST: These are categories in each State so far as agriculture is concerned on vegetable farms, fruit farms, with different rates for each classification. In these states they are catalogued the same.

ASSEMBLYMAN PARKER: As far as you know, each State takes in all the same factors in determining their rates?

MR. WEST: I can't answer that. I don't know that.

SENATOR DUMONT: Well, Mr. West, I am wondering why the rates here that you have quoted - you have three different rates for three different types of farming operations. In New Jersey every one is different; in Connecticut they are identical, and in Pennsylvania they are identical. In New York they are different. Do you have any explanation of that?

MR. WEST: No, this is something the farmers can't understand in New Jersey, why these rates are different in each category in New Jersey and they are the same for all types of farms in these other States you mention.

SENATOR DUMONT: Mr. Director, do you have any explanation for that?

MR. KORANSKY: No, I don't. Perhaps Chief Judge can answer that.

MR. JUDGE: I have no knowledge, Senator. I suggest to you that the Rating and Inspection Bureau would be able to give you an answer immediately. As you know, the Division does not go into the question of rates.

SENATOR DUMONT: Is there anybody here from that bureau today?

ASSEMBLYMAN PARKER: They weren't invited. We probably should hear from them.

A N D R E W K A L M Y K O W: My name is Andrew Kalmyknow of the American Insurance Association. I might be able to throw some light on this particular question. In most of the other states mentioned there is not compulsory coverage under the Act and the limited amount like the voluntary elections do come under the law. So there is just the one class. The State of New York has brought agricultural employment under the Act and there is some feeling that certain classes of agricultural employment are more hazardous than others where there is different equipment used, and the difference is intended to reflect that distinction.

SENATOR DUMONT: Well, are agricultural workers under the Act in New York, Pennsylvania and Connecticut, do you know?

MR. KALMYKOW: I believe in New York they are under the

Act and I think in Connecticut also. They are not in Penna.

ASSEMBLYMAN PARKER: So what you are saying, Mr. Kalmykow, is that there are different factors taken into the rating in each of these particular areas?

MR. KALMYKOW: Right.

ASSEMBLYMAN PARKER: Do you have any idea what the actual total outlay or cost for employee would be in these different States? Would New Jersey be that much ahead of New York, for instance - which is more liberal, incidentally, than the New Jersey statute? Isn't that correct?

MR. KALMYKOW: That's probably right.

ASSEMBLYMAN PARKER: New York is more liberal in all its payment features and the second injury fund than is the State of New Jersey. Is that correct?

MR. KALMYKOW: Well, the benefit levels I just venture to say New York went up to $85 maximum for temporary total last year and a $70 maximum for permanent cases, and there is some differential in those areas.

ASSEMBLYMAN PARKER: Well, they have the broadened second injury fund that we are proposing here and I just can't see how the rates could be higher in New Jersey than in New York. It's just physically impossible. They aren't, are they?

MR. KALMYKOW: The second injury fund frankly doesn't affect the over-all rate too materially. I think it's merely a matter of distributing costs rather than over-all expenses.

ASSEMBLYMAN PARKER: Do you have any idea what the cost per employee is? Not the rate. I don't know what the rate

means here. Total costs. If you have ten employees in New Jersey for farming, what it would cost as against ten employees in New York doing the same type of farming?

MR. KALMYKOW: I didn't know this was coming up. I can get the rate for you if you are really interested.

MR. WEST: I can also get you these breakdowns if you care for them. These are based on $100 gross payroll, New Jersey rates.

SENATOR DUMONT: I think we ought to have something on that.

Senator Forsythe?

SENATOR FORSYTHE: Mr. West, do you have knowledge as to whether the experience rating is available for farmers under our rate structure in New Jersey?

MR. WEST: No, it is not. We have, of course, the assigned risk which is on the other end of what you are talking about but we don't have the experience rating.

SENATOR FORSYTHE: As a matter of fact you refer to an attempt through a cooperative method of trying to get this available.

MR. WEST: We are just now trying to get this available. We have received permission from the Department of Banking and Insurance to propose a program to them which we are attempting to do.

SENATOR FORSYTHE: Do you know whether the primary reason is that the farm payrolls just are not of sufficient size to come under the experience rating program that is available to other employers?

MR. WEST: That could be. I can't answer that at this time but I will find out.

ASSEMBLYMAN PARKER: But as far as you know, and maybe Mr. Kalmykow can answer this - in New York and these other States they take into account the experience rating, I guess.

MR. WEST: New York does through a group program, I do know this. Now whether they do on an individual basis or not, I don't know. But there is a safety group operating in New York that takes this into account.

ASSEMBLYMAN PEDERSEN: The proposal you have under consideration here would lead me to believe that perhaps your Association feels that the rates as promulgated at the present time are too high in comparison to the exposure then and you feel you could save money and, therefore, I would assume that maybe the rates are not proper under the present set-up.

MR. WEST: That is correct. We feel that the rates are too high for the amount of losses that are incurred on our farms and we have reason to believe, if we can get this into an individual group where we can keep these records accurately, we can prove this.

SENATOR DUMONT: Are there any other questions of Mr. West? [no questions]

This afternoon Assemblyman Parker will preside as Chairman of the Assembly Committee, and the hearing will resume at 2:15 P.M. and, Mr. Mullen, will you hold yourself available for questioning this afternoon. Thank you very much.

I want to acknowledge the presence of Assemblyman Joseph Scancarella, Chairman of the Assembly Labor Relations Committee.

[R E C E S S]

(Afternoon session)

ASSEMBLYMAN PARKER: All right, gentlemen, can we get started? I would like to open up the afternoon session.

If we could, Mr. Mullen, rather than having you proceed right at this moment, Mr. Vineri has asked that he go on for a second, he is not feeling well and he will be only a couple of minutes.

All right, Mr. Vineri.

M A U R I C E M. V I N E R I: My name is Maurice M. Vineri and I am representing the New Jersey Industrial Union Council, AFL-CIO.

Mr. Chairman and members of the Committee, I am very grateful for your indulgence in getting me here in a hurry so I can get out of here. With me is the Counsel for IUC, Mr. Jack Lerner.

In order not to be repetitious, my two good labor brothers did speak earlier this morning and I would just like to make a couple of comments.

As President of the IUC Council, I would like to address myself to Senate Bill No. 57.

Gentlemen, when the hard-fought battle for the Workmen's Compensation Law was won, more than 50 years ago, the compensation rate was based on a formula of two-thirds of the injured worker's wages. As the years passed, the compensation rate did not keep pace with the rising cost of living. Not until the 1967 amendments was there recognition of the usual objectives of the Workmen's Compensation Law, that is to give to the injured worker two-thirds of his wages earned at the

time of his accident.

However, there is still a limitation on the two-thirds of wages paid to a maximum of the average weekly wages earned by all employees covered by the Unemployment Compensation Law which shall be computed by the Commissioner of Labor and Industry.

IUC takes the position that to the skilled worker whose standard of living is geared to his earnings and who is crippled and maimed by an industrial accident which renders him totally and permanently disabled, to ask that this worker and his family live on less than two-thirds of his salary is not only unjust but merciless and cruel.

We ask you to increase the rate to two-thirds of actual wages for all accidents that render a worker totally and permanently disabled.

As to the partial permanent disability, this bill raises the compensation rate from $40 to $60 per week except for the first 7 1/2% of the injury, and still keeps the rate for that at $40 per week. We take the position that this is unrealistic and should be geared to two-thirds of the actual wages.

There have been some improvements made in S-57, such as for the amputation of an arm or a leg, enucleation of an eye, which is from 225 to 250 weeks, 25% on amputation, and also that any three fingers constitute loss of a hand.

Beyond this there has been no overhauling of the schedule of losses, which has not been raised for many, many years.

I suppose we could just say ditto to everything but, as I said,I don't want to be repetitious, therefore, I just want to state that for those reasons we oppose S-57; we are in favor of S-58; we are in favor of S-59; we oppose S-60; we favor S-61 and S-62; and the last, that is, Senate Bill 63, we oppose this.

I heard one of the previous speakers mention something and it reminded me of a story many years ago, having worked in a plant, and it might interest you to know there was no union in the plant at that time, but two of the management groups were having quite an argument on whether they should support a baseball team or not, and those who favored having the team, because they said it did the company so much good, won out and they had a baseball team.

I mean to say, if a person injured in that kind of an activity should be deprived of compensation it certainly wouldn't be the right thing to do. And the same goes for bowling teams. Companies sponsor bowling teams, they certainly gain by them, it's a mutual benefit, and we certainly should not narrow the benefits to employees.

Gentlemen, I just want to say in closing that I am very appreciative of the fact that you put me on as the first speaker this afternoon, and I want to thank all of you for listening to me and if you have any questions that I might be able to answer I will be only too happy to.

ASSEMBLYMAN PARKER: I don't believe we have, Mr. Vineri. Thank you very much.

MR. VINERI: Thank you very much, gentlemen.

ASSEMBLYMAN PARKER: All right, Mr. Mullen, would you be kind enough to come forward again, please.

Gentlemen, Mr. Mullen has come back for questioning, if anyone has any questions they would like to direct to him.

ASSEMBLYMAN PEDERSEN: Mr. Mullen, you compared the cost to New Jersey with four other states, I believe?

MR. MULLEN: Yes, sir.

ASSEMBLYMAN PEDERSEN: And we were the highest of the five states.

MR. MULLEN: That's correct.

ASSEMBLYMAN PEDERSEN: Are we the highest in the nation?

MR. MULLEN: In terms of unemployment cost, to the best of my recollection, there is no other industrial state that pays a greater amount of compensation cost than we do, in terms of premium dollars.

ASSEMBLYMAN PEDERSEN: But there are, I believe, other states that do pay greater benefits than New Jersey?

MR. MULLEN: Oh, I think in some areas there are certain states that do pay a greater benefit. My point this morning was not so much what we offer our employees, the injured employees, in terms of benefit costs. I think what we have offered in the way of workmen's compensation benefits and protection we are not to be criticized for that, and the employers are not saying, all right, let's step back into the dark ages and walk away from workmen's compensation; we're not asking you to do that. What we are asking you to do is to compensate the employee who was, in fact, honestly injured, we want to compensate him fairly and adequately for

his injury. We don't want to continue to perpetuate the situation that most employers find themselves in where they are paying compensation for what have been referred to as minor or nuisance award cases when in fact there has been no loss of function, there has been no impairment of the man's ability to perform the job, no loss of time.

ASSEMBLYMAN PEDERSEN: You mentioned Pennsylvania and Delaware, in particular. Now their benefits, I assume, are less than the State of New Jersey pays?

MR. MULLEN: Yes, they are.

ASSEMBLYMAN PEDERSEN: -- which would have a reflection on the rate.

MR. MULLEN: Yes, they are.

ASSEMBLYMAN PEDERSEN: What, in your opinion, would be the reason for the high rate in New Jersey?

MR. MULLEN: It's very clear, at least in my way of thinking and representing today the members of the New Jersey State Chamber of Commerce. It's our feeling that the reason for the substantiality of the disparity between New Jersey's workmen's compensation costs and those of our nearest competitor, New York, for example, that was 73¢ last year compared to our dollar, is the fact that, number one, we pay such a tremendous number of these permanent-partial cases, these tremendous numbers of nuisance cases.

ASSEMBLYMAN PEDERSEN: Minor injuries?

MR. MULLEN: Minor injuries, nuisance, what-have you, whatever phrase you use you are going to be disparaging somebody, but, in comparison, no other state in the union, to

my knowledge makes the kind of outlays that we do for that type of case. They are policed a lot more rigidly in other states.

ASSEMBLYMAN PEDERSON: Would the enforcement of the safeguard for the workmen in the State of New Jersey have anything to do with the number of accidents or injuries? Do you feel that our enforcement is not rigid enough?

MR. MULLEN: Well, in terms of the efforts of the State of New Jersey, it seems to me that during the course of my testimony before the Commission we indicated our feelings in that regard, that I think the State of New Jersey could take on a greater role in the area of worker's safety. I think, by and large, however, the vast majority of the members that comprise New Jersey's businesses and industries are doing what can be done and what should be done to protect the safety and welfare of the employees. Worker's safety I think is something that requires constant emphasis. And an employer who has a plant where he receives the Governor's award, for example, for no lost time injuries during the course of the year, - if he doesn't keep up his emphasis the next year his track record is not going to be as good. I think the same thing is required from Trenton.

ASSEMBLYMAN PEDERSEN: Are you aware - I'm from South Jersey - that if you have a complaint a safety complaint in South Jersey you have to come from the Newark Office to get someone out to view your complaint?

MR. MULLEN: No, sir, I'm not.

ASSEMBLYMAN PEDERSEN: Thank you.

SENATOR FORSYTHE: Mr. Mullen, do you have any information or can you tell us, on this problem of definition of these partial-permanent awards what New York has, for instance, in the way of a definition. Is this a part of the difference between our costs and their costs?

MR. MULLEN: Our definition here, that we have recommended in the Gimson Bill, and which goes beyond the definition that appears in Senator Dumont's Bill and Assemblyman Parker's Bill, is one which has been agonized about by members of New Jersey businesses and industries for, well, at least the last 8 or 9 years that I've been agonizing along with them. It does not come from the New York definition. New York is a wage loss State and their definition is quite different from ours.

We think that this definition imposes three legitimate hurdles, if you will, in an effort to bring into focus and to insure the compensation of legitimate injuries. And those three requirements or hurdles are, of course, the restriction of the function of the body, number one, accompanied by a lessening of the employee's working ability, and, thirdly, if accompanied by that demonstrable objective evidence. And, if you will, our definition perhaps is the bastardization of all that we could find that was good from other states. We tried to compare definitions as they existed throughout the nation. I don't think you will find any definition that is exactly like the one that's been proposed in this bill which we favor.

SENATOR FORSYTHE: Well, let's stay with these five

states. You say New York's is a wage loss definition. What is the case in the other states that you referred to, Pennsylvania and Connecticut?

MR. MULLEN: In none of those, to the best of my knowledge, do we have a definition that's like the definition which we propose.

ASSEMBLYMAN PARKER: Actually, in Pennsylvania it's a wage loss theory too. New York is a wage loss and, I believe, Delaware. Is that correct?

MR. MULLEN: Yes. I'm sure of New York and Pennsylvania. I am not quite sure what the philosophy is in Delaware.

ASSEMBLYMAN FONTANELLA: Mr. Mullen, there are two areas, which you discussed, which are particularly interesting to me. You have used the word "abuses" a number of times. It would appear to me that you take an a priori position with respect to abuses, that abuses occur. It would appear to me that abuses can occur either because the position is unethical, the attorney is immoral, or the judge is incompetent. At whose doorstep do you lay the abuses?

MR. MULLEN: Mr. Assemblyman, I don't know that I'd like to say that the abuse is one for which the Assembly is responsible or one for which the Senate is responsible or one for which the members of medical profession of the State of New Jersey, those that practice before the Workmen's Compensation, nor would I like to suggest that the judges in the Workmen's Compensation Division are incompetent. I think most of these men possess special degrees of

competence which is wonderful to behold. However, even if you practice only to a limited extent in the Division of Workmen's Compensation you find that the atmosphere is completely different than in the practice before the other courts of the State of New Jersey. And I think that there has been a relaxation in terms of the requirements of proof that have been accepted, that doesn't exist as much throughout our courts in the State of New Jersey, those courts that come under the jurisdiction of the Supreme Court, for example.

So I don't think that I can say that petitioners' attorneys are those that perpetuate or encourage these abuses; I couldn't say that all the employers of the State of New Jersey are blameless for many of the abuses that have occurred in the Division of Workmen's Compensation; but I do think there is probably a little bit of fault on all of us and I think all of us are a little bit responsible for the fact that the practice in the Division of Workmen's Compensation has gotten away from what we in the State Chamber feel is the true concept and the true rationale behind this law, that is to compensate an employee who is in fact injured for the injuries which he has suffered.

ASSEMBLYMAN FONTANELLA: Well this is particularly the point. You're telling me that there are abuses and we would like to know where the abuses lie. Now you're telling us that the Chamber of Commerce says their are abuses, that employers say there are abuses, but I would like to know where are the abuses? I don't know any employer who ever sits through a compensation hearing, sits

there week after week and learns the procedure; I don't know any members of the Chamber of Commerce, either of the State or the county wherein I reside, who sit there continually to view the practice. So I would like to know where are these abuses?

MR. MULLEN: I think it's pretty evident that one of the areas of abuse is the fact that the Division of Workmen's Compensation - I indicated, of course, the first thing you have to consider is the atmosphere that is created, and when you've asked these judges in the Division of Workmen's Compensation to practice under circumstances that are less than desirable, in office areas that 90% of the businesses in the State of New Jersey wouldn't operate in, you're naturally encouraging them to - I think you are encouraging a very unhealthy atmosphere.

ASSEMBLYMAN FONTANELLA: How does that affect the rate?

MR. MULLEN: All right, now, secondly, I think, - you talk about abuses. You allow - when I say "you" the State of New Jersey allows a man to come and testify that he has injured his fingers or he injured his hand, there is no objective evidence of the fact of the injury, - for example, there might not be any scar, there might not be any visible restriction in the use of that hand, but, nonetheless, he gets some medical testimony and on the basis of that medical testimony an award is made.

Now I'm not sure that all of that medical testimony is legitimate either, if you're going to ask me that question.

ASSEMBLYMAN FONTANELLA: In other words, there is a

doctor who presents this report, there is a medical legal expert who must appear on behalf of the petitioner and testify before the referee or before the judge.

MR. MULLEN: Right.

ASSEMBLYMAN FONTANELLA: Now you are telling me that possibly the abuse is there.

MR. MULLEN: I think the abuse exists on the part of the Division, I think it exists on the part of some of the physicians that testify. I think that the judge in the Workmen's Compensation Court still has to rule on the evidence that's presented. Merely because I recite that I have an ache or a pain, I think much more is required; and merely because a physician who did not treat the injured employee, based upon the testimony or the complaints that have been passed on to him by an injured employee some year, maybe, or two years after the fact of the injury, - he's offering opinion that based upon that complaint it is his best view that the case is worth thus and so.

I really don't know how to get around that but I think that in many cases awards are predicated on testimony that I don't think is much heavier than that.

ASSEMBLYMAN FONTANELLA: You speak of an area called "minor disabilities" or "nuisance claims," I was not a member of the Commission, I don't know how much discussion revolved about that word or that concept, but what is a nuisance claim? Will you please explain that to me?

MR. MULLEN: All right. Now once again I think when we say "nuisance", anytime we characterize we're disparaging

some people who legitimately belong within that category.

ASSEMBLYMAN FONTANELLA: For the purpose of this discussion, we're not going to disparage anybody.

MR. MULLEN: But I think that when we say "nuisance" award, we are talking about a case where there has been probably no lost time, no loss of function, and yet the fellow has made a complaint with respect to an "accident" which he suffered and, because of that complaint and because he in fact filed a petition, he's compensated. Our figures, I think, showed that 60% - in fact my testimony before the Commission said that chiefly, first of all we found a predominance of minor permanent-partial cases closed represented those in which no compensable time was lost by the employee.

I know you have heard this story before but this is what the facts reveal. Second, we found that 60% of all the awards examined were minor permanent-partial award cases made up of no lost time or lost wages.

Now employers have indicated that as many as 71% of their cases represented no lost time.

ASSEMBLYMAN FONTANELLA: In other words, you're saying that the degree of disability is directly proportional to the amount of time a man loses from work.

MR. MULLEN: No, I'm not saying that, I'm not saying that at all. But I am saying that in so many of the cases where there has been no lost time or no loss of wages there has, in fact, been no loss of function and no objective evidence of disability or injury. And that is why

the definition proposed in the Gimson bill we think makes sense because it requires that there be that objective evidence. In the vast majority of no lost time cases you will find little if any objective evidence.

ASSEMBLYMAN FONTANELLA: Thank you.

SENATOR RINALDO: Mr. Mullen, it appeared to me that despite the questions regarding abuses that yourtestimony indicated that most of the abuses that exist can be eliminated by the inclusion in the law of the statute you propose; yet you also went on to say, and correct me if I am wrong, that for 8 or 9 years this definition has been kicking around and there have been efforts to implement it into law. Then further you went on to relate, in response to a question, that no state that you know of has such a definition and it's really a compilation, you might say, of the best features or what you feel are the best features of certain existing definitions.

Now, after listening to all of this testimony and also the comments of other people who aren't favorably disposed to the definition or any resolution of the problem, you might say, would you or could you tell me of any state that has a definition on the books now that you feel would be acceptable and that would solve the problem, because I don't think there is anybody on either side of the fence, labor, management or even in the public, who wants a law on the books where the costs are apparently extremely high, the benefits, in some instances, extremely low, and the person that I think is getting hurt in the final analysis

seems to be the worker, the one that we certainly want to benefit. And when I say "worker", of course, I hope everybody realizes that I mean the legitimately injured worker in an accident arising out of and in the course of his employment.

So, since there seem to be so many barriers to this particular definition, for 8 or 9 years it has gotten nowhere, is there any other definition that you feel would be acceptable, or any existing definition that is law in any other state?

MR. MULLEN: Well, Senator, while I appreciate the concern and the legitimacy of the question, I think that New Jersey has never been timid in the past about striking out for what is right, just, and what is appropriate under the circumstances.

I think that the Workmen's Compensation Law, like any other law, goes through a period of evolution and, regrettably, I think, we have gotten away from the fundamental concept of workmen's compensation. And that's why I think that the definition that we propose or that we have endorsed is a very acceptable one.

I can't tell you that the mind of man can't come up with a better one. We would be happy to look at any other definition. I don't think that the definitions on page 3 of the bills proposed by Senator Dumont and Assemblyman Parker go quite far enough, because I think we have in fact tried to include in this definition some way of really giving the judges in the Division of Workmen's Compensation something upon which they can, in fact, hang

their hats and say, all right, on the basis of the law as it is today and as it has been defined in our recently enacted statute this is what you must show in order to recover and we feel, John Jones or John Mullen, that the complaints that you've manifested don't fit themselves into this definition and, therefore, you're not entitled to recover.

I don't think that this definition is unworkable from the standpoint of the Division; I don't think it's impractical from the standpoint of the petitioner's attorney; and I think it's fundamentally fair with respect to the position that the employer should and does take.

In answer to another aspect of your question, I don't, per se, know of any other state that has a definition that is exactly like this one.

SENATOR RINALDO: Well, they must have definitions that are workable because certainly you mentioned many states in your testimony where you at least inferred that the workmen's compensation system, as it works there, is acceptable to you. There's a difference in cost --

MR. MULLEN: No, I didn't say acceptable. I don't think I was called upon as a representative or Chairman of this Committee to judge whether the system in the State of Pennsylvania, for example, or the system in Delaware or Utah or California was acceptable, per se. I think that the employers in the State of New Jersey, by and large, recognize the wisdom in the New Jersey Compensation Statute. That is not to say that we feel that the statutory enactments on workmen's compensation or the treatment given to the statute

by Director Koransky's Division or the interpretations of the courts in the State of New Jersey, you know, are our cup of tea. I don't know if they have to be exactly, either. But what I am saying is that we feel that with a sophisticated statute the statute ought to be interpreted in such a sophisticated manner that only those who are in fact entitled do in fact recover, and we feel that there are far too many people who receive far too much money for what we consider to be negligible or de minimis injuries. And if we can get away from that, I think we're to be commended. We do much more in the State of New Jersey in the way of permanent disability than, for example, New York. But our awards are much more significant to the injured employee than to the guy or to the gal who would suffer that particular injury in the State of New York.

I don't think I want to compare New Jersey with New York or any other state; I think we want to stand on our own two feet and we want to do what we in New Jersey think and what we've asked the Legislatures, over the years, to do for our people. But I do say that one of the significant disparities that has to affect our rate as compared to the rate that exists in Delaware, Pennsylvania or New York, even if you discount the fact that they're on a wage loss philosophy and we're not, we're on a scheduled benefit, - one of the significant factors has to be the amount of money, the amount of dollars that we're paying for nuisance or minor or these junk cases. And I hate to disparage the guy or the gal with a legitimate injury but there's many a guy and gal that I

personally have seen go to Workmen's Compensation who doesn't, in fact, have a legitimate compensable injury. And I think with these kinds of definitions or requirements in our definitions that this would be a step forward. Otherwise, you know we're going to continue to escalate the cost of workmen's compensation.

Now the employer who wants to locate in the State of New Jersey - workmen's compensation costs are not the first thing that he looks at but, if he's a sophisticated business man, that's probably one of the costs of doing business that he will examine. The employer in New Jersey who wants to expand his operation, workmen's compensation costs are not the first thing he looks at but if he's sophisticated and intelligent he does examine what his costs of doing business are to determine whether he's going to stay in New Jersey or build that other plant in Texas or Illinois or South Carolina or Colorado or somewhere else. And we think, without disparaging the employees, we can do what should be done for them within the framework of a new definition.

ASSEMBLYMAN FONTANELLA: One last question. Your definition, the new definition that you're proposing or suggesting, is basically physical in quality, there has to be objective measurable symptoms. How would you compensate those individuals who have disabilities which are not objectively measurable? For instance, the individual who has sustained a heart attack and as a result thereof this seriously curtails his personal activities, he's afraid, he has a neuropsychiatric disability as a result thereof,

he's afraid to play, to be involved in the affections of his wife, for any reason whatsoever. We have the woman who may have seriously scarred her hand or lost two fingers of her hand and is most embarrassed, she has a psychological disability as a result thereof. How would you measure this? Is there an objective test so that a judge can put his teeth into it or would you suggest that under those circumstances your definition is not applicable?

MR. MULLEN: No. I think the definition is very much applicable in those instances as well. I think number one, for example, you mentioned the heart case. I think there are some very, very discernible objective symptoms of the heart attack which can be discerned by a physician.

ASSEMBLYMAN FONTANELLA: But I mean the fear that goes with it, not the disability to the muscle itself.

MR. MULLEN: I know. You mentioned several things and I will try to touch them all.

We find that in most instances there is some discernible evidence about psychiatric overlay to an injury, for example the gal who suffers some cosmetic damage or disturbance or the man who has lost some fingers or maybe even that person who suffered a heart attack, work connected or otherwise, and they may manifest themselves in the form of tremors in the hand or in the fingers or in the eyes. There are many, many discernible symptoms which the doctors are expert enough to recognize. And I think where there are no discernible symptoms then I have some questions as to whether or not the complaint is a legitimate one, whether we're

talking about a purely psychiatric case or whether we're talking about psychiatric overlay.

ASSEMBLYMAN FONTANELLA: I'm talking about a purely psychiatric case.

MR. MULLEN: I think that this definition is workable. If that guy or gal comes in and says, you know, that they're afraid to work now, or something, and there is no objective evidence of their complaint or their disturbance, I find it very difficulty to make an award - if I were a judge, I would find it very difficult to make an award under those circumstances. I think that they can fit themselves into this definition and I think that most doctors would probably say they could - and yet I'm not privileged to speak for the Medical Association.

ASSEMBLYMAN FONTANELLA: Thank you.

SENATOR DUMONT: Mr. Mullen, on the Gimson bill, as you referred to it, wasn't that bill actually drafted by the Chamber of Commerce or by the business groups in the State?

MR. MULLEN: The bill was, in fact, drafted by a number of people. I think Mr. Gimson was one of the authors, just like most bills.

SENATOR DUMONT: Well, I mean, you favor that bill and, of course, the AFL-CIO favors A-212, which is a bill from their organization.

MR. MULLEN: I, personally, and speaking for the Chamber, Senator, could care less whose bill is passed. What we have indicated is that -- in other words, if the bill comes under the sponsorship of one person or another, what we are concerned

about is the contents of the bill. We indicated that, of the bills proposed, 57 and 365, by yourself and Mr. Parker, - we indicate in many, many areas that we are in full agreement with some of the improvements that you are making in the Workmen's Compensation Law of the State of New Jersey. One area of reservation we had was in the definition which we felt did not go far enough and, in fact, Mr. Gimson did work with us on that bill to assist us on that and in what we consider to be the fractionalization of the approach to the minor injuries.

SENATOR DUMONT: Well I'm not questioning the sponsorship of any bill; I couldn't care less about that either. I'm trying to point up the difficulty which I've been involved in, in workmen's compensation, I think every year since 1955, practically, because of the fact that as I review this morning's testimony the only one of the seven Senate Bills I can find any fairly unanimous agreement about is the one that would bypass the county courts, and perhaps even the county court judges would like that one too.

Now the next thing here, you indicated that you oppose the 7 1/2% cutback from $60 to $40, I believe it is. What was your reason for opposing it?

MR. MULLEN: Well, there's no question. Some people said, why oppose something of that nature because isn't it going to save you money? All right. Number one, I don't think it's going to save us money even though they're two different rates. I don't think it's a practical solution to the problem because I think that the tendency will

be to have estimates of disability come in in excess of 7 1/2%, so you are going to be elevating yourself out of that ballpark anyway. I think that there ought to be one rate, Senator, for the disability. I don't think there ought to be several rates.

SENATOR DUMONT: Well I don't think the purpose of having a different rate, in the minds of the Study Commission, at least, was just for the sake of having different rates; I think the purpose of it was to try, I believe, to cut down to some degree on the number of minor injury claims that would be filed.

MR. MULLEN: I don't think that's the way to do it.

SENATOR DUMONT: Well, what would you suggest?

MR. MULLEN: I think that the one rate with a tightened definition of what constitutes a disability may well be the answer.

SENATOR DUMONT: And you don't care for the definition that's presently in S-57 that came out of the Commission's Report.

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

SENATOR DUMONT: Now you mention, in connection with the special fund or special injury fund that you think that this is a subject that ought to be studied in depth separately. Now exactly what do you recommend in connection with the special injury fund or a second injury fund?

MR. MULLEN: Well I think our real concern with respect to the second injury fund, one of the areas, is the matter of financing that fund and the fact that the fund must,

of necessity, remain solvent, and perhaps by throwing too many things into the fund we're going to lose what little solvency we have left. And I do think, therefore, that there is a subject, a legitimate subject, for review and that is, number one, is the method of financing appropriate; and, two, is there a better way to handle it; three, should we put more of our eggs into that second injury basket and, if we do, what's going to happen. Personally, I think this is a subject pretty much unto itself with respect to need for study.

SENATOR DUMONT: You feel that the Commission did not go deeply enough into this subject. Is that correct?

MR. MULLEN: Yes, sir, I do.

SENATOR DUMONT: And do you also feel that broadening it to include contributions by agencies of government, at the various levels of government, to cover public employees' workmen's compensation drainage on any fund - Do you think that's bad too?

MR. MULLEN: No, sir, I don't think that's bad. I think that's probably a legitimate area of interest and concern. But I don't know, again, whether that's going to give us the base that we're going to need.

To be very honest, - I tried to be honest all day but with respect to this particular area, I'm not an expert in the area of financing that second injury fund and I've been concerned that the fund does not have the stability or the sound fiscal health that would justify greater demands, which would support greater demands being placed upon it.

SENATOR DUMONT: Well, speaking for myself, I don't know a lot about second injury funds either, but in casting around for something better than we have today, we looked at the New York system which does involve public agencies as well as private, and that was one of the reasons, basically, why this recommendation was made.

MR. MULLEN: That recommendation - I don't have any problem with respect to involving those other levels of government and agencies, but I have problems satisfying myself that that, in and of itself, will be sufficient to give us the sound second injury fund that we want in the State of New Jersey.

SENATOR DUMONT: Thank you.

ASSEMBLYMAN PARKER: Is the New York fund solvent?

MR. DORN: I believe the New York fund is financed in the same manner as New Jersey has now started to finance this program.

ASSEMBLYMAN PARKER: Meaning on the percentage bill we passed last year.

MR. DORN: I think their costs have gone up. Their costs have skyrocketed.

ASSEMBLYMAN PARKER: Well is the fund still solvent, Peter?

MR. DORN: Well, under the automatic provision, I would say it had to be solvent.

ASSEMBLYMAN PARKER: Well it was on a percentage basis before, what 1, 2, 3 percent before, and they went on an automatic percentage pro rata funding, is that correct?

MR. DORN: Yes.

ASSEMBLYMAN PARKER: But the fund is now solvent?

MR. DORN: As I understand it but I think New York does have some criteria for second injuries, you have to have some showing or some definition of what a pre-existing disability is which, at present, the New Jersey bill does not show it. So there is a difference between the two programs.

ASSEMBLYMAN PARKER: That's written in the '57 bill, Peter. Well, that's getting off the point. There are definitions in there on that.

Mr. Mullen, and I'll try to be brief, when you refer to the nuisance claim or small claim or those that are bearing such a tremendous cost on the system, what percentage of disability do you attribute that to? One percent? two percent? What area are you talking about there.

MR. MULLEN: Where would I consider the cut-off to be?

ASSEMBLYMAN PARKER: Yes, of disability, one percent of partial-total, two percent of partial-total?

MR. MULLEN: I suppose there would be no question in my mind that your 7 1/2% would have to include those. I think it perhaps goes too high.

ASSEMBLYMAN PARKER: Well, what do you classify as a nuisance? Can you give me a percentage figure that you would classify as a nuisance?

MR. MULLEN: I think that we see a lot of 5% cases that are 5% cases for reasons other than the extent of the disability of the man.

ASSEMBLYMAN PARKER: That's not what I asked you. I asked you if you would give me some area that you considered as a nuisance.

MR. MULLEN: I tried to answer you. My answer was not meant to be facetious but meant to say that probably something less than 5%.

ASSEMBLYMAN PARKER: All right, what, four?

MR. MULLEN: No, I'm saying under 5%.

ASSEMBLYMAN PARKER: Well, five percent, do you know what that amounts to in number of weeks and in total dollars?

MR. MULLEN: It depends upon the --

ASSEMBLYMAN PARKER: Well, it's $1,100 isn't it? And you would say anything under that, including that, is a nuisance or minor claim.

MR. MULLEN: Well, I don't know if I can say anything. I think that somewhere in there - certainly a minor claim as compared to some of our more major problems and more major aggravations of the human body. But I would include in what we consider to be nuisance cases, basically not cases where you determine on a percentage but cases that certainly the percentage is going to be a feature of it but there would have been no lost time, there would have been no impairment of the function of the body, per se. And these I consider to be nuisance cases, they may be settled for, you know, $400, $500 or $600.

ASSEMBLYMAN PARKER: Well, what I want to get at is that you're saying that these five percent of the cases are the tremendous total of cases that cause you to have your

costs go up so high. Is that correct?

MR. MULLEN: I don't know if I follow you, when you say these five percent of the cases.

ASSEMBLYMAN PARKER: You testified here today that the nuisance cases create a big drain on your fund.

MR. MULLEN: They may be sixty or seventy percent of our cases.

ASSEMBLYMAN PARKER: You say sixty or seventy percent?

MR. MULLEN: Right.

ASSEMBLYMAN PARKER: Would you believe, if I told you, that according to the 1965 statistics it was only 17.55 percent of the cases?

MR. MULLEN: That's not what I've experienced.

ASSEMBLYMAN PARKER: These are from the Division. You may look at them when you have finished.

That's all I have.

Does anyone have anything further?

Thank you.

MR. MULLEN: Thank you.

ASSEMBLYMAN PARKER: Next I would like to call on Mr. Andrew Kalmykow.

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 137 stock 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. Congressional legislation has been urged. It is very likely that serious consideration will be given to this subject by the Congress at this session.

For many years insurance companies were neutral on many aspects of workmen's compensation, particularly benefits. We felt our function was to pay the amounts which legislatures in their wisdom deemed it advisable to prescribe in their various laws. More recently we have felt that we should express opinions on this subject based on our considerable experience.

We are very pleased to see the subject of workmen's compensation receiving the careful attention by the New Jersey Legislature indicated by this joint hearing today. This constitutes an opportunity to perform a valuable service both to labor and industry in the state.

Certain features of the New Jersey Workmen's Compensation Law have over the years had the effect of depressing benefit levels for more severe injuries while providing substantial payments to persons who suffer little or no disability and who suffer little or no wage loss. We believe this situation to be inequitable.

I noted this morning that there was an indication that the $40 a week benefit was inadequate. I would like to remind these gentlemen that that maximum was payable in

all cases, no matter how severe the disability, until '62; and the $45 maximum was applicable until 1967. This is what happens because of the effect of these provisions to which I have just made reference. The people who are seriously hurt are penalized.

In this respect the Workmen's Compensation Law Study Commission found: "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 subjective complaints)."

We believe that this situation exists primarily because of the provisions of Paragraph 22 of subsection (c) of section 34:15-12 of the Revised Statutes, relating to "other cases". This provision covers not only cases of partial loss of use of members or organs listed in the schedule of permanent partial disability, but also "other cases" where "physical function is permanently impaired."

We respectfully wish to point to the fact that this phrase has been interpreted by the courts and in turn by administrative authorities to require the payment of compensation for very minor injuries where no actual disability exists and where there is no loss of earning capacity as though such injuries caused permanent partial disability. These injuries have included minor abrasions requiring only first-aid or one or two office calls to a doctor and no loss of time. In other states such injuries would not be held to constitute permanent partial disability.

The legislation under consideration does not amend said paragraph. Instead it attempts to define partial disability in terms of loss of physical function the very term which has caused existing difficulty. I attach hereto a suggested amendment to paragraph 22 which we believe to be preferable. At the very least the words "or that" at the end of line 75 and beginning of line 76 should be omitted.

We believe that adequate compensation should be paid for injuries causing disability, but at the same time industry should not be made liable for substantial payments when there is no disability. Compensation is primarily directed at replacement of wage loss due to work injury.

In this connection we note that maximum weekly compensation for partial disability under the legislation in question would be raised to $60 a week except for cases where partial disability does not exceed 7 1/2% where the current maximum of $40 is retained. The actual amendment to subsection (c) of section 34:15-12, however, is not completely clear. It seems to refer to the first 7 1/2% loss of any member, even where disability is greater. It may be pointed out in this connection that estimates of disability are difficult to make and much controversy is likely to arise whether or not disability in a particular case does or does not exceed 7 1/2%.

It is desirable to make liability under workmen's compensation laws definite so that payment can be made with the least amount of litigation. And I think that's a very important aspect of this whole picture.

We are also concerned over the proposed amendments relating to the second injury, formerly called 1% fund. 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 when the liability of the individual employer ends and the liability of the fund begins. An employer may very 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 handicapped. Few persons are physically perfect. Yet they are not 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. We suggest the following changes:

1. That preexisting disability should be substantial so as to constitute a real handicap to employment. It could,

for example, be indicated that it should be one which if compensable would have required payment of compensation for a specified number of weeks possibly 150 or some other appropriate figure. In Wisconsin a 250 week period is so specified.

2. To avoid difficult questions of apportionment of liability between the fund and the employer, a specified number of weeks be indicated in excess of which the fund would be liable. In New York a 104 week period is so specified.

3. To assure continuity of payment, the employer or carrier continue payment but be reimbursed from the fund after the specified period of payment is reached.

4. Eliminating the provision in the bill making the fund liable for all compensation in excess of 550 weeks. The fund has a great many liabilities under the bill. There appears to be no sound reason why it should take over the liabilitiy in all cases above 550 weeks.

5. Adequate provision be made for defense of the fund.

And 6th I haven't listed in my statement but I would suggest that some provision be made that the previous disability be known to the employer. Certainly it's no handicap to employment, nobody knows that it exists.

The proposed legislation would impose extremely heavy liability upon this special fund. Not only would it be made liable for a vast additional number of preexisting conditions, including heart disease, but also compensation for employees of uninsured employers, as well as costs and attorney's fees.

These additional liabilities would not seem to be an appropriate charge on a second injury fund. It may be noted that all maximum limits on the size of the fund have been removed and that replenishment of the fund under recent legislation has been made automatic.

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. I think that again is a very important consideration which I would like to bring to the attention of you gentlemen.

We also have some concern about Senate Bill 58. This would prohibit review on the ground that disability has diminished where an employee has submitted to physical or educational rehabilitation ordered by the Rehabilitation Commission. We appreciate the reason why that was put in but we are somewhat concerned that this may somewhat serve to discourage the rehabilitation effort and the re-employment of persons who may have been injured at work.

We are also pleased to find that Senate Bill 61 would eliminate appeals to the county court. This is in line with a recommendation which we made to the study commission and which appears to be very desirable. Similarly we note that the statute of limitations would be extended by Senate Bill 62. We deem such extension to be

desirable.

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

I will be glad to answer any questions you gentlemen may have.

ASSEMBLYMAN HEILMAN: I notice in your letter here you make your position clear on 57, 58, 61 and 62, are you concerned at all with 59, 60 and 63?

MR. KALMYKOW: Well, I think those are interesting bills that deserve consideration. There is this question of appointment of judges. I feel that should be a matter exclusively for local consideration. I think I must emphasize the desirability of appointing individuals to that capacity who are of very high caliber. I think that's a very important aspect of that subject. And whatever were accomplished at that end I think should be supported.

As far as 60, I believe that's the bill which provides for lump sum payments. I know that there is some considerable support for that measure. I omitted reference to it on purpose because I personally happen to have some mixed feeling about it. In a number of individual cases there is considerable pressure for reaching a lump sum settlement which is presently not supported and insurance carriers are not permitted to charge any payment they make under any such arrangement through the experience on which rates are based. So here is a case where we may have to pay a very substantial amount of money and not be able to get back the consideration

of these payments in the computation of rates. We think that's a very inequitable situation and, to that extent, we would like to see that remedied. At the same time I know that lump sum payments are unsatisfactory in certain occasions and, in any event, would have to be policed very carefully, if that's the word to use.

ASSEMBLYMAN FONTANELLA: Just one question, Mr. Kalmykow. I note that your definition indicates that the injury must affect the employee's working ability.

MR. KALMYKOW: Yes, that's the recommendation I have made.

ASSEMBLYMAN FONTANELLA: Is it possible to conceive of an injury which does not affect the employee's working ability but which is a serious injury?

MR. KALMYKOW: I don't think that would be very likely to occur.

ASSEMBLYMAN FONTANELLA: Can I give you an example?

MR. KALMYKOW: I just want to explain a little bit. There have been a number of questions directed to some of the witnesses before me as to what is done in other states and how they take care of that. The provisions for partial disability, as indicated by the long discussion we've had here today, are among the most difficult to resolve in the field of workmen's compensation.

By and large, in other states there are schedules, as there are in New Jersey, for specified loss of members and loss of certain organs or vision, and then there are these so-called other cases and that's where you have your major

area of difficulty. In some instances, and I think that's the majority of the viewpoint, the compensation in the so-called "other cases" group falls on the base of wage loss. If you have wage loss then you get the difference in wage loss like you do in other types of cases. In the other group it's a percentage of total disability. And to some extent you have that in New Jersey except in New Jersey you don't compute it on the basis of disability as representing earning capacity, you represent it as a functional impairment, whatever that may be, and that has been extremely broadly construed by the courts and the administrative authorities. Because of the use of that phrase is why the so-called nuisance awards have developed in this State because constantly that particular term has been expanded.

And the third category is relating the other cases, most of the scheduled injury which it most closely resembles. Those are, roughly, the three areas that categorize the other cases as used in some of the other states. But in all of the states the attempt is made to relate the disability to some impairment in earning capacity, the ability to earn, and that's what I tried to put in this language that I suggested to this Committee. And, frankly, I think that's an equitable provision.

We would, I think, favor the complete wage loss principle but I realize that here that has not been the case over the years and probably it would be too large a departure to adopt that principle at this time. However, I do think it's reasonable to provide compensation for partial

disability only in cases where there's an actual loss or loss of use of a member on in other instances where there is some reflection on the ability to work, either present or future. And that does not mean to be - I don't know that this will give the complete answer when the courts get a hold of any language, especially with a large degree of precedent, you can never be sure where you will end up. But I thought that this was an equitable suggestion and one which might well be a basis of compromise, if we will, between the viewpoints that have been expressed.

ASSEMBLYMAN FONTANELLA: Well, I'm sure you understand that this hearing has not been called to repeal the present New Jersey Workmen's Compensation Law.

MR. KALMYKOW: I'm quite certain that that is not the case and I think it would be desirable to enable employees who have suffered severe injury to get full compensation and very adequate compensation. I think it is unfortunate to pay people who have not received any serious injury, who have not lost any ability to work and thereby deprive people who are hurt, who can't work, from an adequate benefit. And I think that's a most unfortunate effect of the situation as it has developed over the years and exists today.

SENATOR DUMONT: Mr. Kalmykow, at the top of page 5 of your statement, the written version says, "The fund has a great many liabilities at the present time." I thought the way you made the statement was that the fund has a great many liabilities under the bill.

MR. KALMYKOW: Yes. I may say that I didn't get this invitation until Friday and my statement had to be prepared in something of a hurry and this is a little misprint.

SENATOR DUMONT: Well what you mean is the liabilities to be created by the bill and not the liabilities at the present time without the bill.

MR. KALMYKOW: That's correct.

SENATOR DUMONT: All right.

ASSEMBLYMAN PARKER: Mr. Kalmykow, on the second injury fund you've had experience in New York and there the second injury fund, as you've indicated, has a 104 week period, the first 104 weeks are picked up by the employer and the balance picked up by the fund.

MR. KALMYKOW: Correct. I might say here, if I may interrupt for a minute, that New York initially, for one year only, didn't have that provision in it, it picked up everything, and the confusion was so severe, as I have indicated in my statement, that they put that in the following year to remedy the situation. I think it has worked reasonably well.

ASSEMBLYMAN PARKER: I frankly was on the Commission but I didn't go to New York when they went. But do you think that the New York language would be better for our purposes? Do you think this would cure the evils that you have indicated might prevail under this bill?

MR. KALMYKOW: Well, I don't know if you would want to copy completely the New York language. I have indicated

some of the provisions in that, some of which have been taken from New York and they are found in Maryland and some of the other states. I've also suggested one provision which comes from Wisconsin's law. They have tried a lot of different variations on their second injury fund and they ended up with this one and that's considered a state which has a pretty good compensation act. And that's why I've taken what I considered several features from several acts that might be helpful to you based on the experience that they have had.

ASSEMBLYMAN PARKER: But do you think basically the concept of the second inury fund as we have outlined it in the Commission Study Report and the bill would be workable in New Jersey?

MR. KALMYKOW: As it reads at the present time?

ASSEMBLYMAN PARKER: Yes.

MR. KALMYKOW: Well I am concerned about that because I think in practically every case an attempt would be made to charge some of that liability to the fund and, until you determine that, compensation is going to be delayed, you're going to have a lot of controversy as to the extent of disability, how much you will charge here, how much to charge there, in cases where there have been no appreciable handicap to employment, just a mere attempt to unload the liability, and you can't blame them too much for trying.

ASSEMBLYMAN PARKER: And you say that was the experience in New York, it was open-ended?

MR. KALMYKOW: That's right.

ASSEMBLYMAN PARKER: And they had to then put in the limitation.

MR. KALMYKOW: That's right.

ASSEMBLYMAN PARKER: What about Wisconsin and the other states, do they have an open-ended --

MR. KALMYKOW: They haven't tried. I think New York's is the broadest type act that is in existence and that's why I cited that particular act. The others have various modifications of the approach, quite a few different types of acts in different places.

As I pointed out, you know, just because you have a second injury fund doesn't solve all of your problems, as a matter of fact it is very likely to aggravate them.

ASSEMBLYMAN PARKER: Does New York include the cardiovascular cases in their act?

MR. KALMYKOW: Yes, it does. But only those where disability exceeds four weeks.

ASSEMBLYMAN PARKER: Thank you very much.

We will now take a five minute break.

(Recess)

ASSEMBLYMAN PARKER: Mr. Clayton, please.

O L I V E R C L A Y T O N: My name is Oliver Clayton, I am Chairman of the Workmen's Compensation Committee for the New Jersey Manufacturers Association. If you want other information in connection with that, I will be very glad to give that to you in background.

I've had approximately 45 years experience in the field of workmen's compensation, as Chairman of the Commerce

and Industry Association, Workmen's Compensation Commission in New York; I served as President of the New Jersey Self-Insurers Association; Chairman of the Workmen's Compensation Committee of the New Jersey Chamber of Commerce; and also of the Legislative Committee of the New Jersey Self-Insurers Association. I am the Administrator for Standard Oil Company and its six subsidiaries for multiple state compensation serving approximately 30,000 employees.

I would like to take the individual bills, starting here with say 58 and then perhaps finish up with 57 which I think probably embraces each of the contents of the other bills.

In connection with Senate 58, while this, I think, is an objectionable bill so far as we here are concerned, because I raise a question on this bill by saying, what about a case of total disability where complete recovery is made - and that has happened in some cases.

In looking at this bill, I made a comment at the conclusion, or the last line, and I added on it, "unless it can be shown that the said award, determination and rule for judgment was based upon a mistake in fact."

Now, this bill, as I look at it, deals with rehabilitation, and it would entice any person to go through rehabilitation. But since there is no ground for the diminution of the award, it would seem to me that it might be a little bit unfair. The over-all philosophy that I have is, what can be done for the injured man. In other words, where does the money go? Does the money which we are paying here in the

State of New Jersey go to the injured man or does it go to the periphery? That is my concern. So my objection, of course, on 58 deals with that particular point.

On 59, this one - it would seem to me we should not be taking a position on this because this deals with the salaries of the Compensation Judges.

As I understand, there is a study under consideration at the present time, or about to start, dealing with the over-all structure of work that is done. One of my real objections, of course, to this is not the amount of money which is going to be payable to the Compensation Judges, but to tie the pay of an administrative agency into a court system, I think is not the proper way.

There is one other thing on this, and nothing is mentioned here about referees. We know that in many instances over the years a compensation judge has sat as a referee in cases. We know that in practically every one of your settlements, pre-trial settlements, that a judge is brought in there. Therefore, it would seem to me that there are others included in the staff, and particularly the referees should be considered along in this. But I do say that under no circumstances should an administrative agency have their salary tied to a court procedure unless it is determined, at some later time, that the administrative agency becomes a part of the court.

On Senate Bill No. 60, we have no real objection to the contents of this bill but I have a question on it as to what is a supervising judge. We know that there are some

designated to take care of certain cases, but a question would arise in my mind under these conditions: A petition is filed, a case is set down, appearances are necessary, ultimately a pre-trial comes along, examinations are necessary and are completed, and finally it comes down to a day of reckoning, something is going to be done. On that day it is determined that there is a possibility and a probability that the matter should be settled, the parties agree. Under this bill it is necessary then to either refer the case to a supervising judge in that court, if he is available, or to adjourn the case to another date with additional costs. This to me seems a tremendous amount of expense is involved where the benefit does not go to the injured man.

On Senate 61, this I have no objection to at all, but I wonder why on this one some provision is not made for a typewritten brief to alleviate the expenses in connection with the presentation of an appeal. It is done in many instances and I think if they are going to have a modification of the law in this, with which, of course, I am in full agreement, I think that something should be done in connection with making it easier for those parties, make it cheaper for those parties to have a typewritten brief if that is possible.

On Senate No. 62, this one I just can't understand where the figure ten comes from. Here is a situation where we have an occupation disease situation, with two years beyond that date when the man knew or should have known, and we get down to these cases and in all other cases this

is going to be raised to ten years. I don't know but I suspect perhaps berylliosis had something to do with that. At the outset we had a one year limitation, then it was increased to two years, and when beryllium poisoning came into being we found that beryllium was a situation where the claim would be carried on some time later. And at that time it was agreed, or at least the law was changed, to make it five years.

Now, I do not know of any instance and I would like to be told of any instance where there is a known condition that will come beyond five. I know of no such case. Of course, it would seem fair that if such a case comes up, as it was done in berylliosis, - they had cases like that and we knew nothing about it before and then, of course, it was brought up. But I am sure you gentlemen are all aware of the fact that berylliosis is no longer brought in from this because beryllium is no longer manufactured. What other condition can raise the statute to ten years? I have searched and find absolutely nothing, so my question is, Why the ten? It could be almost anything because there is nothing to base it on, substantial or otherwise.

Senate Bill No. 63, Gentlemen. In this bill we have, under the new language, "or when the injury or death results from recreational or social activities." And when you look at Senate 57 we have somewhat similar language except that there it is referred to as "any legal society benefit plan." I don't know what any of this means and I wonder if it might not be an awful lot better to put

something in there as to really what it does mean rather than to have it put in as any social activities - recreational or social activities.

Otherwise, there is really nothing too objectionable about the fact that this is going in. Actually it seems to me that here is a situation that can be fully controlled by an employer. If he wants to have these recreational activities and social functions, he knows what the law is and he does it, of course, at his own peril. If he doesn't want to, he doesn't have to. To me it doesn't make too much difference one way or the other and I think that whether it goes in or whether it stays out doesn't make too much difference because with the law the way it is today I think it can be controlled by an employer. It can be controlled the same way under Senate 63.

Then with respect to Senate 57, it would seem to me that 57 practically embraces substantially all of the items in these individual items.

I do have some questions in connection with this. For instance, on page 2 of 57, dealing with the pre-existing degree of functional disability - now I'm quite sure what was intended when this bill was drafted, but a question arises in my mind that has to do with when an employee is working for a company and suffers a disability - let us assume that he suffers a disability of about 50% of total. He is being currently paid this 50% of total disability. He then goes back to work for the same employer with the same insurance carrier. The wording here actually

says that the employer and the insurance carrier for a subsequent injury shall be relieved of the liability for the previous disability. I think it's wrong. I don't think that that was the intent of that at all.

ASSEMBLYMAN PARKER: We better check that again. Excuse me, that was on page 2?

MR. CLAYTON: Yes.

ASSEMBLYMAN PARKER: Lines 53 and 54?

MR. CLAYTON: Lines 51, 52, and 53. Now it's in the bill on several occasions and I added some words on there that may tend to correct that, which would be, those added words, "unless such previous loss is compensable and for such loss the same employer or insurance carrier is already liable." In other words, that then would hold the same employer in. But this thing is put together on the basis that the prior disability is by a different employer and a different insurance carrier. So it's just a suggestion to you in that connection.

Another question arises in my mind under line 188, page 5 of Senate 57. Let us assume that we have an employee with a club foot. Let us assume that the disability has been adjudged by doctors to the extent of 75%, assuming this is a fact, whether it be by trial or by agreement. Now does that mean then that there is 250 weeks paid, 75% by the fund and 25% by the employer? It's just something for you to look at to see the fairness insofar as the employee is concerned.

Now under S-57, page 8, I can agree with lines 86 to 90 inclusive, but when we go beyond that there is a serious

question in my mind as to whether or not we are getting into something which is possibly unconstitutional.

The last paragraph, (k), on page 9, starting with line 107 ending with line 110, says: "In the event that dependency payments in dollars made as herein provided are less than the aforesaid minimum liability, the difference shall immediately be paid into the fund and in like manner as provided in section 34:15-94 of this Title."

Let me refer you to the case of Bryant vs. Lindsey, that is 95 New Jersey Law, 357, or 110 Atlantic 823, Supreme Court in 1920. This was affirmed by 114 Atl. 447 and the Court of Errors and Appeals in 1921, Chapter 203 Laws of 1918.

The Court, in that case said that such a tax has manifestly no relation to the police power, it is plainly not a property tax. And when we consider that it is restricted not merely to employers generally who have in their employ workmen with no dependents entitled to claim but employers of that character who are within Section 2 of the Compensation Act, we reach a tenuity of classification that seems to us to deprive the class of any logical validity and of all substantial basis.

I merely call your attention to that to see whether or not you can agree with that or circumvent that case in the authorship of the bill.

Since this just deals with the fund, I think that it's true that the public should be a part of that insofar as the paying is concerned because under the present

conditions those people who are not contributing to the fund are actually taking from the fund, and anyone who takes from the fund I think should share in the cost of that.

Now, in the appeals on that, I don't know who represents the fund, - does that mean that the State can select its own counsel to represent them or does the fund have a counsel to represent the fund?

It would seem to me that where a fund is comprised of not only insurer's money, whether it be self-insured or insurance companies, so long as my money, as a taxpayer, is in there there should be a watchdog there. If money is merely paid out simply because there is money in that fund, that's one thing; but if money is being paid out simply because there is money in there, I would like to have a representative in there to see that there is no lowering of the monies that have been put in there through the contributions made.

There is one other item that you may want to direct your attention to and that is in Senate 57, page 12, lines 97, 98 and 99. It says: "Costs and a reasonable attorney's fee as provided under Revised Statutes 34:15-64 may be allowed against the fund."

I have no objection to counsel fees being given, whether it be against the fund or who it's against, my only question is, What services would that be for? In other words, could this be for investigation of the fund? Could it be the reorganization of the fund? or could it be the mere representation at the time of a hearing to

determine how much money is going to be paid on an individual case? It doesn't say and I think that perhaps something should be included on that.

On page 3 of Senate 57, this is line 74 to line 77 inclusive. This deals with the definition, I would think. The definition as it appears in here is nothing more than a decision lifted from a case back in 1915, that was the case of Burbage vs. Lee, April 15, 1915. I thought I had the citation on that case but I can't find it here right now. That can be found in 3 Atl. 859. And I believe that probably it would be to some advantage of the court, the judge in the hearing of a case.

Right now he has this authority to decide a case and it's on this authority that he will decide cases and no one can question him as to why he does what he does because this gives him the authority to proceed.

We get two sides. One side will give a disability, the other side will give a disability, and somehow or other, they are in complete opposite views. He can make the determination as to what he wants to do, what should be done, and does it. He can always say, as has been said, and rightly so, that if either of the two parties is aggrieved at the decision given, he has the right of appeal. It's a question of fact, to begin with, and in all probability that will be the determination up above unless there is no evidence to support the award, and, of course, if that were the case, he wouldn't decide it that way anyway.

I think that if assistance is given to a judge of

compensation fixing lines within which he may go, it will not hurt an injured man; and if abuse is shown in that connection, you gentlemen are here to modify and correct anything in that connection at your next session once the matter is brought to your attention by the Division of Workmen's Compensation.

I think that will probably take care of the comments I have in connection with these bills. If you have some questions, I will be happy to try to answer them for you.

ASSEMBLYMAN PARKER: Thank you very much.

Just one comment I did want to make in reference to having somebody protect the fund. 34:15-95.1 requires or makes it mandatory that the Commissioner of Labor be a necessary party. I looked and I don't think that has been repealed. So it is my understanding that the State would have to be a party to any fund cases.

MR. CLAYTON: I think that that probably is the situation. However, --

ASSEMBLYMAN PARKER: I think someone else made the same comment earlier.

MR. CLAYTON: It is my recollection that there were special groups here. It says: "The only parties to such proceeding shall be the injured employee or his representative or dependents, --

ASSEMBLYMAN PARKER: Excuse me, where is that?

MR. CLAYTON: This is page 11 of Senate 57, lines 54 to 57, inclusive. "The only parties to such proceeding shall be the injured employee or his representative or

dependents, the employer or its representative, and any contributor, or group of contributors to the fund, or their representatives."

This is only a suggestion to you that you may want to take it into account to cover up any loopholes that there may be to try to come up with something which is not going to be upset once it gets into litigation.

MR. BACHALIS: I would like to suggest that on page 12 you will find that there are a number of deletions that delete these specific words, "including personnel, printing, professional fees, and expenses incurred by the Commissioner of Labor and Industry in the prosecution of defenses in the Division of Workmen's Compensation, and of appeals and proceedings for review of decisions on applications for benefits from said fund."

So it seems to me that the language does repeal the present method of administration or defense of the second injury fund.

MR. CLAYTON: That, of course, should not be. There should be some protection in there at least for state monies if nothing else.

I appeared before the Study Commission on November 3 and submitted a memorandum there. Whether that has been made available to you gentlemen here or not, I don't know. But the summary of that, which is a half page: "That the New Jersey Workmen's Compensation Program has been increasingly beset by a variety of ills is now generally recognized. We have sought to assemble in this statement

factual data which it is hoped the Commission will find helpful in its study of these problems."

Now at that time we submitted a lot of documentary evidence, charts and so forth, with respect to costs, costs in New Jersey compared with some of the other states; the classifications of various employment throughout 13 states, comparable classifications, and New Jersey stands out as sort of a sore thumb in connection with the costs in that connection; those figures are there. And in addition to that, as I understand, Mr. Bachalis might have some other figures here that he would like to submit to you by no later than tomorrow, if he can, in connection with figures of that kind.

We have said right along, at that meeting and prior to that time, that we are concerned with the high costs unrelated to benefit levels; we are concerned with unfair distribution of benefit dollars; we're concerned with the indiscriminate awarding of monies for minor permanent-partial disabilities.

I, personally, and I am quite sure that the New Jersey Manufacturers is concerned, not with the total amount of dollars that is paid out but we are concerned to see to it that the number of dollars paid out goes to those who are injured. Whether the rates go up for the temporary-total disability, the permanent-total disability, the death cases, cases of that kind, doesn't concern too many people, but it's these smaller partial disability cases. We feel the money should go to the others rather than to them. Now, by that I

don't mean that this all should be taken away from those people. Anybody who suffers an injury, I don't care how minor it is, if he has an injury I think he ought to be paid for it. Whether he's paid for it at the top rate or bottom rate is something else.

MR. BACHALIS: Gentlemen, I do have some cost figures that we have developed on certain aspects of Senate Bill 57. Certain data just isn't available to estimate the complete cost of S-57. I'm talking primarily about the lack of data to determine just what previous existing functional disabilities there are, what previous loss of function there is on determinations under permanent partial disability benefits, and, therefore, we have evaluated the money aspects of this program and we've dealt with the increase in the cost of benefits, taking into consideration the first 7 1/2% of the disability, the first 7 1/2% being paid at $40.00, the excess of the remaining payment over statutory funeral expenses that would be required to be paid into the second injury fund, the minimum death liability of 450 weeks at 50% of the wages, and the increases in cost for the enucleation of an eye, amputation of a hand, the arm, leg, and so on. We have found the cost of increasing the benefits is approximately 10% or $25 million.

ASSEMBLYMAN PARKER: Is this your scheduled benefits, John,or --

MR. BACHALIS: The increase to $60 maximum with the first 7 1/2% being paid at forty.

ASSEMBLYMAN PARKER: That's twenty to twenty-five

million?

MR. BACHALIS: $25 million, right.

ASSEMBLYMAN FONTANELLA: Mr. Chairman, may I interject this. If we are going to get into the cost of the workmen compensation payments that bring us into the rate making process that these companies use then we will be off on a tangent. I don't know whether that's fairly relevant. I just want to state that for the record.

ASSEMBLYMAN PARKER: I think it is relevant and I have asked Mr. Bachalis to give us these figures. I have also, I might say, realized the fact that they didn't receive notice until just the other day formally to appear and testify. I don't know why there was a delay. But these facts, I think, are highly relevant to the whole study of the bill and in particular to the Workmen's Compensation Study Commission Report.

ASSEMBLYMAN FONTANELLA: I do think they are relevant to compensation but to this particular hearing I don't know how relevant they are because we will have to go into the issue of how much money the insurance company is charging for these policies and what bases they are using for the amount of money they are making.

MR. BACHALIS: Mr. Parker, for the record, Mr. Fontanella, when these figures were prepared, these were not prepared on the basis of what insurance companies charged or how they established their rate. They were prepared on the basis of statistical data breaking down the wages by categories, the amounts of benefits they

receive and the universe on that, generally taking the data that's available to anyone as computed on that basis. That's how we determined it. We didn't consider at all insurance rate-making processes at all. This was done strictly on an actuarial basis to determine what the cost would be for this type of thing. That's all.

MR. CLAYTON: Actually this has nothing to do with the rate-making.

MR. BACHALIS: And it's all based on past data.

ASSEMBLYMAN PARKER: Yes. I have the list, Mr. Bachalis, I think maybe it's the same as you have, with a lot of the injuries and how much was spent and so forth.

I would appreciate it if you would go ahead and give us the figures, at least preliminary. As I understand it, you intend to submit a written statement too.

MR. BACHALIS: I will have it in the mail tomorrow.

MR. CLAYTON: The reason why this was not prepared for you today is because we started to work on this thing just last night.

MR. PARKER: We understand.

MR. BACHALIS: For item B, the one that calls for additional payments into the second injury fund, we found that that would amount to $6 1/4 million. And the increases in the various amounts of compensation for amputation and enucleation of an eye is about $2 1/2 million.

ASSEMBLYMAN PARKER: Is that all scheduled losses?

MR. BACHALIS: Yes. The total comes out to about $33,750,000.

ASSEMBLYMAN PARKER: I'm sorry, I didn't get the last figure.

MR. BACHALIS: $33,750,000.

SENATOR DUMONT: That's a total on the whole --

MR. BACHALIS: On those three specific items.

SENATOR DUMONT: In S-57.

MR. BACHALIS: In S-57.

SENATOR DUMONT: All right.

MR. BACHALIS: It did not include the payment of cost and reasonable attorney fees out of the second injury fund because that was never permitted in prior instances. We don't know how they determine those particular payments, or what they would include or whether they follow a consistency of payment as is currently provided under the regular workmen compensation awards.

ASSEMBLYMAN PARKER: You mean for second injury cases?

MR. BACHALIS: Second injury cases.

ASSEMBLYMAN PARKER: There would be no real objection to that, I don't think.

MR. BACHALIS: Well, there was one little questionable item we had and that was when you provide an increase in the number of weeks for amputation we question whether it was entirely proper to say that the scheduled loss for a hand is 230 weeks and then you arbitrarily add 25% of that cost, whether that 25% additional should be included in the basis for determining the --

ASSEMBLYMAN PARKER: Fees?

MR. BACHALIS: -- the basis for determining attorney's

fees, because we are attempting here to compensate the worker for the additional amputation, which is a known fact.

ASSEMBLYMAN PARKER: Well that can be corrected rather readily too, can't it, John, with appropriate language?

MR. BACHALIS: Now at the same time we have in the Study Commission, as you know, obtained certain other kinds of information rates we had received, costs from the Compensation, Rating and Inspection Bureau, which projected the cost increases for each $5.00 amount from $45 to $80, and that was based on data available August, 1967, and the net premium cost of increasing the benefits to a straight $60 at that time was considered to be $31.9 million. But in that figure, since it only includes the cost to the insured employer, it excludes the cost to self-insured, we find that approximately 13% of the cost of compensation is borne by self-insured, we would have to increase that figure by approximately that 13% to arrive at a cost figure of increasing the benefits in each one of these categories.

I will be glad to submit that to the Commission too, you should have it.

ASSEMBLYMAN SMITH: Does anyone have any questions of either Mr. Clayton or Mr. Bachalis?

ASSEMBLYMAN PEDERSEN: Do I understand the Manufacturers Association is opposed to raising the maximum weekly payment to $60?

MR. CLAYTON: Which maximum are you talking about here now, permanent partial?

ASSEMBLYMAN PEDERSEN: Permanent partial, yes.

MR. CLAYTON: Yes. We have been opposed to that. At the Study Commission we gave what we thought was a fair appraisal of that situation at that time and that is, in order to keep away from this annual hassle of how much the benefit rate shall be increased, whether it be for death or for permanent or partial or whatever it may be, since currently we have a formula by which your temporary permanent, temporary total disability is concerned. At that time we proposed that whatever rate the temporary total would be it would be a proper thing and a fair and equitable thing to protect the employees of the State to give a partial disability of 50%. But perhaps that might be a little low. Perhaps it would be better if that were two-thirds of the temporary total benefit rate for partial disability.

Now the reason I say to be fair, we know that you are never going to get a person to submit to rehabilitation so long as you dangle dollars before him. It possibly is wrong to say that any employee would be concerned with the dollars rather than to recover from the effects of his injury but we find that that is not the case at all. I found years ago, when I started to work for the Standard Oil Company, that we had a system involving a truss for the hernia cases - that's when we had the old five points under the New Jersey law. At that time you could get a truss for, I think, $12.00, and I was appalled when I went to work for the Company and found out that the Company was not giving the employees a truss on a non-compensable hernia.

What they were doing was making the employee pay $6.00 and they paid the additional $6.00. When I found out the philosophy behind it, I was then in full agreement with what happened because when an employee went in and got something for nothing he didn't care whether that truss fit or whether it didn't fit, sometimes he would wear it and many times he wouldn't wear it and he had a strangulated hernia as a result of the non-wearing of the truss. But where the employee had an interest and paid for half the cost of that truss, sure it was a small amount from the Company, it was a large amount for the employee, but since he knew that this was something that he had to pay for, the first thing he did when he got to the truss maker was to see to it that this thing fit. He would go back two or three times. This truss would last longer. He had an interest in that. And I say the same thing applies with an injury involved. If the employee goes back on the job and is given a lesser amount of disability, he is going to want to go to a Rehabilitation Commission, if one is offered to him.

We have a good Rehabilitation Commission here in New Jersey. We have difficulty in getting compensation cases to go there. I have talked to several of them and they say that practically no compensation case comes to us. I don't know the reason but I suspect the reason for it is that when the disability is reduced as a result of good rehabilitation work, credit is taken for that. Now the man doesn't know. When a man suffers an injury and receives his money the money soon disappears but the

disability remains forever. This, to me, is definitely wrong.

ASSEMBLYMAN PEDERSEN: Just one comment, Mr. Chairman. New Jersey, I think, of all the industrial states has the lowest rate and to me this --

MR. CLAYTON: The lowest rate for what?

ASSEMBLYMAN PEDERSEN: What we were just speaking about.

MR. CLAYTON: Partial disability?

ASSEMBLYMAN PEDERSEN: Permanent.

MR. CLAYTON: Oh, no.

ASSEMBLYMAN PARKER: He's looking at the United States comparison prepared by the Chamber of Commerce. He's talking about the actual rates.

MR. CLAYTON: What is Maryland, say?

ASSEMBLYMAN PEDERSEN:Maryland is $55. I'm looking at limitations on permanent total.

ASSEMBLYMAN PARKER: That's on total. He's talking --

MR. CLAYTON: On the partial New Jersey is not the lowest.

ASSEMBLYMAN PEDERSEN: Where is partial?

MR. CLAYTON: Massachusetts I think is $20.00, unless that has been modified in the last year.

ASSEMBLYMAN PEDERSEN: Well, just on some of these that have to do with permanent total.

MR. CLAYTON: That's a different animal. We don't argue that.

MR. BACHALIS: I think the difficulty in attempting

to arrive at what would be a fair rate in the permanent partial area is that in the great majority of cases the benefit is not a wage substitute, it's a wage supplement. The individual is back to work and he is getting an award on top of his salary; whereas in the other areas you do have it strictly as a wage substitute. I think this is why you find that there is considerable difficulty in trying to arrive at some kind of rate.

ASSEMBLYMAN PARKER: Certainly, but he has lost income while he was injured too and this would help compensate for it.

MR. CLAYTON: Do your records show that Massachusetts is $20.00?

ASSEMBLYMAN PARKER: I don't see anything on partial permanent. This is occupational, scheduled losses. On total New Jersey appears to be in the bottom third. On scheduled losses it appears that there are 17 states, including the federal government, under the Federal Employee's Compensation Act, that are higher than New Jersey.

MR. CLAYTON: That could be. I say, though, that in Massachusetts, probably one of your outstanding states, in connection with rehabilitation I think Liberty Mutual is doing a tremendous job in that. And they say that the success of that is based upon the low rate for partial disability. In other words, how do you increase the initiative of the employee to go to rehabilitation. That's what we would like to get and have people get back on to the rolls and regain their dignity. That would be my

proposal.

ASSEMBLYMAN PARKER: Does anyone have any other questions?

ASSEMBLYMAN FONTANELLA: I would just like to say one thing, Mr. Clayton. You mentioned something to the effect that people don't go for rehabilitation and you don't understand why.

MR. CLAYTON: Yes.

ASSEMBLYMAN FONTANELLA: Given that some thought, because I've had that problem before, it is not the fact that money is dangled before the citizens of the State of New Jersey - whatever they get, they get because the law says they're entitled to it - but I can say this, that the working people of this State, when injured at work, the first contact that they have with the doctors of insurance companies does nothing but turn them away from these doctors, they don't get the personal treatment that they would like to get and possibly they fear that in rehabilitation they are going to get the very same impersonal treatment, and this is what turns them away.

MR. CLAYTON: Well, as I said before, I just don't know. I have inquired from these various rehabilitation centers as to why it is that they don't get them and they come up with the answer that they just don't know. So I can't say what the reason is. It could be many reasons. You may be absolutely right in what you say. I just don't know. But I would like to get more people who are injured and who suffer disability into rehabilitation

clinics or get them somewhere so they will regain the function that has been lost as a result of an injury. That's my concern. Where they get it from is immaterial, as far as I'm concerned, but they ought to get it. We ought to do something which should encourage those employees to do that.

SENATOR DUMONT: Mr. Clayton, you indicated that you are opposed to this $60 increase but what are you for? Are you for any increase above the present $40?

MR. CLAYTON: Well, yes. As I said before, I have proposed to the Study Commission, when I was there before them, that instead of having it on an annual argumentative basis and trading back and forth, why not tie this thing to the formula that we have at the present time. We have a formula which establishes the rate for temporary total, for death, for permanent total disabilities. Why not make it two-thirds of that, whatever rate that comes out to be, which is far greater than what we're paying at the present time and then it's a part of the formula and there are no more scraps in connection with the rates involved.

SENATOR DUMONT: There also is a dollar maximum too, isn't there, as far as the rate is established for permanent total and temporary total and permanent partial?

MR. CLAYTON: Yes.

SENATOR DUMONT: Well you want to change all of those, do you?

MR. CLAYTON: No.

MR. BACHALIS: Temporary total, permanent total and death cases escalate annually.

MR. CLAYTON: That's right.

MR. BACHALIS: A minimum of $3.00 I think is what you can expect over a long period of years.

MR. CLAYTON: That's based upon the formula in existence right now.

ASSEMBLYMAN PARKER: Your proposal then, John, is to pay two-thirds of the average weekly wage?

MR. CLAYTON: No, no. What I'm saying is, whatever benefit rate is established for temporary total disability, if there be a partial disability resulting from that same injury a two-thirds of whatever the temporary total rate amounts to. That's all I'm saying.

ASSEMBLYMAN PARKER: In other words, it would go up every year.

MR. CLAYTON: Yes, that would be tied up and down. In other words, this is not a permanent, not a fixed thing but it's tied into the formula and if the formula for the arriving at your permanent total, your temporary total is fair and just, and you must have thought that or you never would have put it in the law, then the other follows that that should be just as just.

ASSEMBLYMAN PARKER: Well, two thirds of the - what is it $83 now?

MR. JACOBSON: $86.

ASSEMBLYMAN PARKER: $86. That's $57.

MR. JACOBSON: $57.33 that we suggest as opposed to $60. This is a good formula.

ASSEMBLYMAN PARKER: This is what labor wants.

MR. BACHALIS: I was wondering who he was speaking for.

MR. CLAYTON: I didn't know that's what they wanted.

ASSEMBLYMAN PARKER: We have struck a responsive chord here somewhere.

MR. CLAYTON: Well, I don't know. I suggested at the Commission meeting that we have it at 50%. And as I said, perhaps that might be low. I just don't know. But this was the recommendation. You have the report, you can see what I said in that, check it any way you like to, and I think perhaps if you talk two-thirds of the benefit rate perhaps that might be the thing, although I am amazed to find that labor is interested in that. I didn't know that.

MR. BACHALIS: Another very important factor that you have to take into consideration is what is going to be the cost. You can't proceed on the assumptions of the last Legislature that the cost of A-760 was going to be $14 million when in fact the cost of that was in excess of $34 million. And it seems to me that this was perhaps one of the failings of the Workmen's Compensation Study Commission when it suggested its proposals which are embodied in these particular bills. Even with an appropriation from this Legislature, that Commission did not employ an actuarial study of the cost projections on these entire bills. It should have been done because the money was there and yet it's left and then we can get a criticism from Mr. Fontanella that, well we've got to go

into a lot of other subjects here. But these are the types of things I think that need to be resolved before you establish a benefit rate.

ASSEMBLYMAN PARKER: Well, actually, Mr. Bachalis, we did project this, as you know, we've discussed it, we went up and talked with Mr. Klein and he indicated that he wouldn't be able to give us any accurate figures, if I recall. I do recall that we had discussed this on the Commission level. I agree with you, we probably should have required him to go ahead and run it. I mean, I think that's fair comment but I do recall that we did discuss it and there was talk about getting it and that was put to Mr. Klein and he indicated that it would be very difficult for him to have a cost study run on it. Of course, this was before the report was put in the form of a bill.

MR. BACHALIS: That still follows that they could have employed a renowned actuarial firm such as Woodward & Fondiller,who are known nationally throughout the United States,to perform a study for it. However, that's water under the bridge.

MR. CLAYTON: Of course, this would cost more money, there's no question about that, but it could be saved on some of those other cases that they've been talking about, the so-called - I think they've said the minor cases, the nuisance awards, whatever the name they have tied in with that, I don't know, there are all sorts of names for it.

ASSEMBLYMAN PARKER: All right. Does anyone have any further questions?

Thank you very much, Mr. Clayton and John.

MR. JACOBSON: In defense of the Commission may I just say a word in connection with what was just said about hiring an expert to compute for us?

ASSEMBLYMAN PARKER: Yes, Lou, certainly.

MR. JACOBSON: We had the figure from the Director's office. We knew exactly how much it was going to cost. We knew that this was a $20 million increase in compensation payments. We didn't need an actuarial study for this. Why did we have to throw this money out? If John had attended a few more of those Commission meetings he would have known that we kicked this around for many hours.

ASSEMBLYMAN PARKER: All right. I do recall that but the figure on which that was done - I'll give you a chance, Mr. Bachalis, -- the figure on which that was done, in all fairness, Mr. Jacobson, was without any actuarial studies and the Commissioner, including I think Mr. Meade who worked on that, had no actuarial figures and Mr. Bachalis was right on that.

Mr. Bachalia, I don't want to get into recriminations here between various members.

MR. BACHALIS: May I just make a mild statement here?

ASSEMBLYMAN PARKER: All right, go ahead.

MR. BACHALIS: For the edification of those who are here, I attended, I think, as many meetings as anybody on the Commission did because there were quite a few absences and I can recall all too specifically the manner in which the $20 million figure was developed. As you may recall, we had the figures from the Compensation Rating and Inspection

Bureau and then one of the Commission members very arbitrarily said that if we chop out 7 1/2% without any increase this will represent about a one-third cut in the total cost since the cost was about $30 million that would amount to about a $10 million reduction and the cost would be $20 million. This is hardly an actuarial technique nor an actuarial skill.

Thank you.

ASSEMBLYMAN PARKER: Thank you.

I just want to say for the record, so that there is no confusion, there were no actual actuarial studies performed. There were cost estimates prepared and how they were prepared I don't really know.

I know we have several ex-Judges of Compensation here but I would just like to take a couple of minutes. I wanted to get Miss Dyckman and Mrs. Holderman on and, with that in mind, I hope the Judges will be short in their comments.

Judge Kaltz.

M A U R I C E A. K A L T Z: Mr. Chairman and members of the Committee, I have been here so long I almost forgot what I was going to say. However, I know you have been very indulgent.

I speak here without any active interest in workmen's compensation, as such, but I have been on the Bench from November, 1947 until April of 1968, and after that I was a Consultant for the Department for two months in cases involving what they would consider as serious

problems.

At the outset I might say that the mere fact that this is called an administrative agency should not detract one iota from the monumental job that the judges in Compensation perform.

I was a Supervising Judge for some 15 years. I sat in every vicinage in this State. When I began in 1947 the caseload of formal cases was 18,000, and in this year, in 1968, it was 36,000. The total amount of awards in formal cases in 1968, I am advised, totaled between 75 and 80 million dollars. There is no bench in the State of New Jersey which has handled and distributed and awarded that type of money. In the 20 years or, in fact, as long as the Department has been in existence there has never been a complaint made about the judicial performance of any of the judges or any reflection by any agency or anybody in authority about the manner in which the courts were conducted, despite the rather smug reference to slum courts.

Some of you on this Committee are well known in compensation matters and you know that they are regarded, the Judges in Compensation, as expert in their field, expert in the sense that they have perhaps a broader medical knowledge than many doctors. And to illustrate the point, if you went to your opthamologist with a pain in the stomach, he wouldn't know what to do for you; if you went to your internist with some problem with your eye, he wouldn't know what to do for you; and in the course of years the Judges in Compensation meet with every phase of

the problems that affect the human individual, and these range from the schizophrenic to the psychotic; from the acceleration of an underlying cancer to every known cardiac disease, be they infarctions or phlebitis; from fractures of the hip and the knees and the legs to herniated discs; from aggravation of ulcers to the various types of hernia and their relationship to trauma; from diseases of the lung, such as anthracosis, silicosis, asbestosis, and the like; and all that knowledge makes them expert in their field.

I've heard men speak here today who do not feel kindly toward the Division for some reason or other, but even they conceded that the Judges in compensation have an expertise. They sit without juries, they mull the differences of opinion between the litigants and they are eminently successful even at the pre-trial level in disposing of an innumerable number of cases. They are an administrative agency only because they are not in the court system. And it seems to me that they are eminently qualified to be regarded in the same category as at least the judges in the district court. They dispose of more cases. The average Judge in Compensation disposes of some 2300 cases a year. Now this is quite a caseload. Some produce probably more, some less, but in no event has any Judge in Compensation produced, to my personal knowledge and in my experience, less than 1,000 cases a year.

It is for this reason, as a former member of that Bench, and knowing the work that they do, that I strongly urge you to give serious consideration to S-59.

ASSEMBLYMAN PARKER: Does anyone have any questions of the Judge?

Thank you very much, sir.

We have also Judge Litowitz here and Judge Napier is here. Do you want to testify?

JUDGE LITOWITZ: I believe Judge Traynor will speak.

ASSEMBLYMAN PARKER: All right, fine. Judge Traynor.

R I C H A R D J. T R A Y N O R: My name is Richard J. Traynor. I am a recently resigned Judge of Compensation, approximately 4 months ago. I served in the Workmen's Compensation Court as a Referee for just short of a year and, after a short period of private practice in the Workmen's Compensation Court and civil courts I was made a Judge of Compensation and I served for something more than three years as a Judge of Compensation.

The reason I can appear before you here today is because I am no longer a Judge and the reason I am no longer a Judge is because I could not live on the money that was paid to me as a Judge of Compensation. I do have a family, a young family, but my wife and I have always regarded ourselves as frugal people, we did not live in lavish fashion, we faced all the expenses that everyone else faces, and I found that because of the burden which was placed upon me with my family, which is typical to most of the Judges, I could not survive on the wages that were paid and I resigned.

I wanted to remain a Judge of Compensation. I enjoyed my work. There is a tremendous responsibility

which rests upon the shoulder of the Judge of Compensation. Whatever bill you pass or whatever group of bills you pass in relation to Workmen's Compensation, they are only as good as the men who implement the bill. I am not speaking now only of the administrative staff that staffs the Trenton office. I am talking about the hearing officials out in the field.

Whatever you do with respect to your legislation, it is only as good as the Judges who carry out that legislation in the field. And for that you depend upon talented, skilled, able, dedicated, conscientious individuals. And you should pay them a living wage. You should pay them so that they don't have to bring brown paper bags to work, like I did. I was reduced in the last few months, serving as a Judge, to bringing my lunch to work. I don't want to be dramatic in my personal story as to why I couldn't live on the salary but I took home about $13,000 a year after the normal deductions. Part of that was pension, I think about $750 a year was deducted for pension. But I found that I could not survive and I was falling behind in attempting to live. I found that despite my own feeling, I was conscientious but I worked hard, there are men in this room who know and have tried cases before me as late as five and six o'clock in the evening, and this was on many occasions, this is not in isolated instances. I sat in Morris County, Somerset County, Warren County, and Sussex County. And, because of the few Judges of Compensation that we have to service the many cases in excess of 30,000 cases a year, formal cases,

it is imperative that many of these men sit sometimes until five and six o'clock at night.

When you hear the testimony as a Judge of Compensation you are not finished, as are many of the Judges of the Civil Courts. The Judge is the Judge and the Jury. He is the trier of the fact as well as ruling on the law.

At the end of a civil case, the Judge of a Civil Court frequently puts in the hands of the jury the decision. A Judge in Compensation cannot do that. The Judge must make findings of fact which are his obligation under the statute and under the Appellate Division and Supreme Court cases.

To make findings of fact after you have spent a long and wearying day hearing cases, you have to sit nights and weekends at home going over the medical testimony of the medical witnesses and the lay witnesses that you've heard to decide your case. This calls for the Judge not only to be concerned with the normal workday but weekends and evenings.

And, gentlemen, it's a discouraging thing when you have young men recently out of law school appearing before you who are making more than you are, after your own training as a lawyer and serving as a lawyer and sitting as a Judge in Compensation, with your background and training to have young men recently out of law school, because of a shortage of lawyers today, making more money than you are. It's discouraging and depressing. It's frustrating. But any Judge who is worth his salt realizes

that he has got to do the job nonetheless and they do it. But it's difficult and I felt that I could not continue on as a Judge. I wanted to remain as a Judge, desperately. I like the job of Judge of Compensation but I felt that I had to leave, I just couldn't live on it.

Now some of these cases that the Judges decide run into several days of trial. You may end up with, as I have done, after 11 days of trial with almost a foot high of testimony, medical testimony and lay testimony. You have to go through all of that and decide your case. I have had opinions of mine run as long as 50 pages. I am not alone. All of the Judges of Compensation are called upon to do the same thing.

Now I don't mean to imply that all of the cases are this difficult or this involved. The fact is that many of these cases are whittled down and disposed of by settlement because of the knowledge and expertise of the Judge of Compensation and the impartiality and skill which he brings to a settlement conference. So that with his skill in handling cases of a complicated nature through the years, as Judge Kaltz alluded to, he's able to accomplish what the law tries to achieve, a fair and equitable disposition of cases.

Now I want to say this. I always considered myself as being there as a Judge to try a case without regard to favors to either side. I think that the best protection which industry has and which labor has is fair, conscientious, skilled judges. And the Act and the litigants who are

processing their cases under the Act will get their best protection by having fair, impartial, highly skilled Judges. In my opinion, and I appear in Superior Court and other Courts in the State, - in my opinion, the most skilled Judges of our State should be in the Workmen's Compensation Court because of the special problems which inhere in a Workmen's Compensation hearing. The Judge has to rule on evidence, he can only decide a case based on competent evidence, he has to decide questions of fact and law and he has to pay careful attention during the course of the trial because he has to decide the case.

So that, gentlemen, if you are left with no other impression, I trust that you'll be left with the impression, so far as my own comments here today, that you are left with the impression that your Act, which I think is a good one, - by the way I'm in favor of the lump sum settlement, it's desperately needed, it's a frustration not to be able to achieve an equitable settlement of a case without the ability to do it with a lump sum settlement approval. The present technique which is frequently used, Section 16, Dismissal, is inadequate. Lump sum settlements are needed. So far as this question of nuisance awards, there has been a lot of discussion here today which adds up to one thing. I heard a lot of comments about people coming to grips and wrestling with this whole problem for years as to what to do with so-called nuisance awards. Gentlemen, there's no such thing as a nuisance award. There is either a measurable, compensable disability or there's a dismissal.

I have dismissed cases, and other Judges have, who after hearing the evidence decide that the petitioner has not preponderated by the greater weight of the credible evidence in establishing a measurable disability and his case is dismissed. If on the other hand he does preponderate in the proofs and establish a measurable disability, he's to be compensated. There is no such a thing as a nuisance award. The terms are mutually exclusive and the key to solving that problem, which has been discussed here under 7 1/2% and under 5%, and so on, - the key to solving that problem is put judges in the field trying these cases who are skilled, who are conscientious, who are properly paid, who are trained and who will make a decision as to what is compensible and what is not. And if you will do that, if you put good judges, and we do have good judges, - let's upgrade the Court so that we will always have good judges and attract the very best men and you will solve that whole business of so-called nuisance awards.

Gentlemen, I'm going to thank you very much for the pleasure of appearing before you, Mr. Chairman and other members of the Commission. I feel very strongly - I felt so strongly about this question of raises for judges that I resigned because I just couldn't live on it. And, as I say, I wanted to remain as a Judge and I couldn't. So I would urge you most strongly, back up your legislation in these other areas with properly paid Judges of Compensation.

ASSEMBLYMAN PARKER: Are there any questions?

ASSEMBLYMAN PEDERSEN: Yes. Judge, so far as your main comments are concerned, I would certainly agree with those, but when you said that they either have a claim or it's a dismissal then would I assume from that that you do not favor the 7 1/2% at a lower rate in this proposed bill?

MR. TRAYNOR: It's all right, I would guess. I personally would say, for this reason, I'm largely guided by an influence, to some extent, by my former colleague, now deceased and of happy memory, Judge Ferster, who was a great one for doing studies on things like this, and as I recall it was his conclusion that quite a bit of the money which was paid in Workmen's Compensation was - if I'm recalling correctly now and I hope I am -- was paid in the cases 7 1/2% and under, or at least it involved the greater number of cases. And because of a possible great increase of compensation costs on the insurance companies and then reflected on society, because of that he favored, and many of the Judges do and the Commission certainly favors, payment at the present $40 rate for injuries which are not nearly as serious as other injuries, below the 7 1/2%.

Now, what does that mean? Does that mean it's a nuisance award? No. It simply means that there's an eye to the cost of compensation, and that eye is toward the many, many cases which fall into this category. And I favor, I'd like to see $60 across the board from 1% on up but with the thought that there has to be some

consideration given to the cost of Workmen's Compensation the thought is, as I understand it, pay the awards which are not nearly so serious on the basis of $40. And, as I say, that should not categorize these as nuisance awards. There are no nuisance awards. It's either no measurable disability and the Judge should dismiss the case or there's measurable disability.

ASSEMBLYMAN FONTANELLA: Just one question, Mr. Traynor. Would you favor having the Judges chosen by the Governor with the advice and consent of the Senate and have their salaries approximate the salaries of District Court Judges? Would you rather have them remain in the Division and be paid salaries established in the law?

MR. TRAYNOR: I favor the present bill. I want to say this, so far as the present bill is concerned. First I will answer your question.

I do favor the appointment of Judges of Compensation by the Governor with the advice and consent of the Senate. It's such an important court that it should be upgraded to at least the equivalent of the District Court and probably to the Superior Court. In any event, the salary provisions are very close. In the Superior Court and the District Court there is only $2,000 difference.

I think that it's an important Court. I think that the present provision, or at least the proposed provision of appointment by the Governor with the advice and consent of the Senate, would keep in the public's eye and in the eye of the Legislature and those people who are concerned

with this problem the importance of this Court. And I think that when judges are serving in such an important task and being paid adequately the Legislature should have some say as to who is appointed.

Now the bill presently does not provide for all of the hearing officials. I think if the present title of Referee were abolished and they were all made Judges it would be salutary because frequently cases are not settled before a Referee when they are brought in before a Judge for settlement because the Judge has authority which a Referee doesn't have. I would abolish the title of Referee and make them all Judges and do it that way.

ASSEMBLYMAN FONTANELLA: Except where you have non-attorney referees.

MR. TRAYNOR: Under the statute there can be no appointment to Workmen's Compensation Court, either as a Referee or as a Judge, unless the man or woman being appointed is an attorney. Now there are some individuals, there are three Referees, formal hearing, who are of long standing and are highly valued employees of the Division of Workmen's Compensation. They could be given special duties as Judges of Compensation. And certainly after these three individuals are no longer with the Division, which will probably be in the near future because of the years they have been with the Division now, you wouldn't have the problem any more.

ASSEMBLYMAN HEILMANN: Judge, I want to compliment you on your statement. It's only too bad you didn't get

on that stand a little bit earlier this morning because I've been bothered all day by this nuisance value problem. But from what you have said, I would gather that a lot of these cases that they call nuisance cases you decide upon testimony as given to you by the doctors or by the people who come in to represent the fellow before you and you either dispose or make a settlement of the case. Right or wrong?

MR. TRAYNOR: That's right. You would either dismiss the case as not warranting an award of compensation or you would make an award of compensation.

ASSEMBLYMAN HEILMANN: So there is no question in your mind then that when you dispose of a case this is one of the so-called nuisance cases that they're talking about.

MR. TRAYNOR: When you say "dispose," you see the word dispose --

ASSEMBLYMAN HEILMANN: I mean when you deny.

MR. TRAYNOR: When you deny compensation, I wouldn't categorize it as a nuisance case, I would just say that --

ASSEMBLYMAN HEILMANN: Well I don't either but the people that sat here all day today were evidently referring to those kind of cases.

MR. TRAYNOR: They may be. I might say this, by the way. With respect to comments which I've heard today concerning quantum of disability, how can you measure partial permanent disability, let's have objective signs before we award a man some compensation. There are many, many disabilities which don't reflect themselves in objective

signs. For example, if a man hits his head he may then get, and frequently does, what is known as a post-concussion syndrome. What is a post-concussion syndrome? A syndrome is an aggregate of symptoms which lead to a disability. The medical doctors will get on the stand and they'll say if the man has dizziness, if he has headaches, if he has nausea, and so on, these are cardinal signs of a post-concussion syndrome. These are all suggestive and yet the symptomatology is there and the man does have a disability; or frequently the common low back cases where a person suffers a low back sprain, he may not have any spasm, he may not have objective signs of disability but he washes his face in the morning on his knees because he feels the pain. And when he testifies under oath, let's keep this in mind, gentlemen, - when a man comes in to testify in a Workmen's Compensation Court he testifies under oath, he takes his soul in his hands before God and he says, I am suffering this pain. Now if on cross examination the other lawyer is able to demonstrate him a liar, we throw him out as a liar. But if the man is not demonstrated to be a liar and if he's credible in his testimony and if he proves his case by a preponderance of the evidence, his testimony, the lay and the medical witnesses, the expert witnesses, then he's entitled to an award, and it's not nuisance.

ASSEMBLYMAN HEILMANN: We need guys like you back on the bench. (Applause)

ASSEMBLYMAN PARKER: Judge, before you leave, let me, if I can, get into an area that maybe you haven't really touched except on the surface.

I'm concerned about raising the standard of the Court, Workmen's Compensation Court, and I think you alluded to this a little bit, but I'm concerned about the conditions for the workmen, the judges and the court itself, without attendants and in some areas they are in cellars and any other place. Would you care to comment on what you think would be the appropriate upgrading of the system that you would feel necessary.

MR. TRAYNOR: During the time I sat on Workmen's Compensation I sat quite a bit of the time in a former garbage room of the Somerset County annex building. It was converted from the former garbage room downstairs in the cellar into a so-called court room with a little elevated platform there for the Judge, an entirely, hopelessly, inadequate facility. The Chambers were the next room behind it, just partitioned off. Some of the most important cases I had to deal with were in that little former garbage room.

There's no question about it, it degrades the system of justice in the State of New Jersey. It's degrading to the Judge who sits there, the lawyers who practice there, and to the people who come to court. Justice Vanderbilt said the two most important courts in the State of New Jersey are the United States Courts and the Workmen's Compensation Courts because 90% of the people who get to

court come to those courts.

And I have frequently heard petitioners say, I didn't get a hearing, I was taken into this little room and these guys were in there and my lawyer and he sat with this fellow who is called the Judge and they went through this little thing and that's all I know about my case.

They don't have the feeling that they've been to court.

Almost all of our courts are inadequate. I thoroughly agree with those witnesses who have appeared today and who said that we must upgrade the physical facilities of the Workmen's Compensation Court. Our budget - I think Judge Napier probably knows the figures - it's a scandalously small budget in relation to the premiums which are collected to run our compensation program. I think it's about $175 million a year in insurance premiums, there's about $72 million a year paid out in workmen's compensation benefits but part of that's informal so there's about $62 million, or so, paid out in workmen's compensation awards on a formal level.

The whole package goes together. You must upgrade the facilities so that the Judge has a little more dignity when these cases come before him. These cases are extremely important to these individuals, both sides. I consider both litigants, the insurance company representative and the petitioner. But it is most especially important to the injured workman. He wants to feel that he's getting an opportunity on his one and only day to prove his case and he should be able to do it in an atmosphere which is somewhat judicial and which it is not today.

ASSEMBLYMAN PARKER: What you're saying then is, throughout the State they don't have actual courtrooms?

MR. TRAYNOR: Well many of the facilities are good. They've upgraded quite a few of the Workmen's Compensation Courts in many of the counties, Essex, Bergen, and other counties, the courts have been upgraded, that is to say the physical facilities. I think more upgrading is necessary to lend the appropriate dignity to the courts which should be lent.

ASSEMBLYMAN PARKER: Now in your courts do you have any assistants, clerical assistants or court assistants or any other court personnel?

MR. TRAYNOR: In some of the larger counties. This is another very sore point with the hearing officials. In many of the large counties they have one or two individuals which are known as sergeant-at-arms. He really serves as an information focus when the petitioners come in and there are maybe anywhere from two, three or five or ten or more judges. But except for this one individual known as the sergeant-at-arms, who exists in only several of the counties, the very largest counties, the Judge functions alone.

I worked without a secretary on the scene for the last two and a half years. My Secretary was in Paterson and I got to Paterson one day a month and then on that day I had to work half a day as a hearing official. So I almost never saw my secretary. This is a little bit unusual. This is not the usual situation. I don't want to create a wrong impression. But when you are sitting as a Judge of Compensation or as a

Referee, there is no one between you and the lawyers who must come before you. You have to have your door open so that they can get to you and explain their special problems. There is no sergeant-at-arms, there is no attendant, such as in civil courts, and this is desperately needed.

I would favor, without question, at least one attendant for every two judges, or one attendant for every judge, if possible, so that the judge who is discussing maybe a fatal case which involves ultimately possibly $200,000 to a widow if she is a young girl and lives under the legislation you gentlemen passed last year, if he's discussing an important case which may involve a five day trial, he doesn't want to be bothered with people barging in to say, Judge, can I have an adjournment on number 22 because I have to go here or there or I don't have my doctor's report. It is vitally necessary to provide the judges of Compensation with some sort of attendants.

ASSEMBLYMAN PARKER: Now one further question. I know it's getting late. About the expenses, travel, and so forth, of the judges, what has been the practice there? Is there sufficient funds?

MR. TRAYNOR: Well I understand that the funds have now run out but it depends on where the judge is assigned, if he's assigned to his home county, his home office, he receives no expenses at all.

ASSEMBLYMAN PARKER: Just going from his home to his office.

MR. TRAYNOR: He receives no expenses, right. If he's

assigned, for example, to a county which is other than his own home county where he lives and that county where he's assigned is his home office he gets no travel expenses at all. If he, on the other hand, is assigned to some other county he does receive ten cents for mileage.

ASSEMBLYMAN PARKER: What about vacation?

MR. TRAYNOR: This is another sore point. The judges of Compensation have to rely upon something which is entirely unfortunate. The judges, in order to earn a four weeks vacation during which time the Compensation Courts are closed must go every fourth week-end to Newark for a meeting which is a board meeting, all the judges are members of the Board and all the referees go and the administrative staff, - attend these meetings to keep up on data within the Division and to receive instructions from the Director and to discuss cases and so on. But, additionally, they attend these meetings to earn credits so that instead of getting 12 or 15 days a year vacation they can get the full vacation. And this is not right. The judges should be able to get the equivalent vacation as the judge of the District Court without having to travel to Newark once a month.

ASSEMBLYMAN PARKER: That's all I have.

ASSEMBLYMAN FONTANELLA: Mr. Traynor, in relation to that I heard a story once which I thought was a story but maybe it's fact, let me know, that if a judge doesn't attend one of these meetings on Saturday, a judge of Compensation, he has to come down to Trenton and work in the office, or something like that, to make up?

MR. TRAYNOR: No, to the best of my knowledge, he loses a day's vacation. Personally it has never happened to me and I doubt if it has ever happened to anyone else.

ASSEMBLYMAN FONTANELLA: Thank you.

ASSEMBLYMAN PARKER: Thank you, Judge.

We are going to try to finish. We have several people who have been waiting here all day and I know some of you want to leave and I know these ladies - how many people wish to be heard?

(Discussion off the record)

ASSEMBLYMAN PARKER: Senator Dumont raises a question about the length of time some of you may want to speak and we certainly want to give everyone an opportunity to be heard but, by the same token, it is getting late and we might have to make some arrangements for another day.

(Discussion off the record)

ASSEMBLYMAN PARKER: Mr. Gelman, could you make a short statement while the ladies are handing out their written material?

C A R I G E L M A N: I will be very happy to.

I represent the Workmen's Compensation Committee of the Passaic County Bar Association and we have taken up three of the bills, none of which refer or relate to any substantive benefits.

I refer you to Senate 61, which is the bill providing for the shortcutting of one of the appeal steps. As a Lawyer, we always respected and understood the appellate practice in any State Agency to go directly to the Appellate

Division, except in Workmen's Compensation appeals. Now with the burdensome volume of business before the Courts and because of the fact there is no moral or legal reason for honoring the extra appellate step, I think this year, as in all other years wherein some attempt was made to remove that step, - I think this year the Legislature should actually remove that step from the practice of law.

With respect to S-60, our Association feels that this bill should be approved. I know that some of the organizations appeared and felt that there would be an opening up of perhaps some misgivings in the practice of approving lump sum settlements but I think it's purely in the selection of the words "lump sum". I think we all agree that some settlement should be arrived at where long arduous trials perhaps against the interests of both parties are anticipated and both sides feel they should be resolved by settlement and some settlement should be agreed upon. And if it means the use of the words "lump sum" have to be removed from that bill, I would so recommend it.

With respect to S-59, I think both of the Judges who preceded me covered that subject adequately and we concur with those Judges and we concur with the bill.

Thank you very much.

ASSEMBLYMAN PARKER: Thank you very much, Mr. Gelman.

Next, Mrs. Zwemer.

M R S. S U S A N N A P. Z W E M E R: We appreciate the opportunity of speaking at this hearing on the bills which have been recommended by the Workmen's Compensation Law Study Commission and including Senate Bills 57 to 63 and Assembly Bills 360 to 365.

My name is Mrs. Susanna P. Zwemer and I am President of the Consumers League of New Jersey. I wish to introduce Miss Mary L. Dyckman, Chairman of the League's Workmen's Compensation Committee, and Mrs. Beatrice Holderman, a member of the League's Executive Committee, and each of us will discuss specific bills.

I am starting with Senate 62 which has to do with Occupational Diseases.

The League has had a long history of concern for the victims of occupational diseases which are slow in developing and require special flexibility in the law to protect the rights of the workers to workmen's compensation. Radiation poisoning has no cut-off date for the filing of claims under the amendment two years ago which permitted a claim within one year "after the employee knew or ought to have known the nature of the claimed disability and its relation to his employment."

The same criteria should apply to all occupational diseases. We consider the 10-year limitation on the application for claims as a half measure which denies compensation to victims of those diseases which do not manifest themselves until after ten years, and we think the ten years should be deleted and it should read just

like the radiation poisoning for all occupational diseases.

New Jersey has the highest concentration of chemical and asbestos industries of any State. A recent study of the U. S. Department of Labor and the Atomic Energy Commission, entitled "A Parallel Study on Workmen's Compensation Claims arising from Exposure to Asbestos and Beryllium," states that beryllium may have a latent period of at least 20 years, and asbestosis usually, from a study in South Africa, has a latent period from exposure to dust and the development of the tumor, and that's cancer, to at least 30 years.

We were recently featured in the Washington Post when I was there about the cases of asbestosis that we have, and "mesothelioma" they call it. So much so that the U. S. Public Health Service is now making a study, a project. Very immediate in their estimate in this document, there are 48 claims already of asbestosis or mesothelioma.

It is not necessary that the last employer bear all the costs. A number of States have apportionment of liability either by law or through a voluntary program. Another method is a pooled fund for cases that come in after a certain period of years.

Miss Dyckman will start with Senate 57.

M A R Y L. D Y C K M A N: My name is Mary Dyckman and I am Chairman of the Committee on Workmen's Compensation of the Consumers League.

These bills, S-57 and A-365 contain two of the principal recommendations of the Workmen's Compensation Law Study

Commission, namely, changes in the benefits provided for a worker with a permanent partial disability and a plan for much more extensive use of the pooled fund known as the "Second Injury Fund." Both are areas in which the Consumers League is well aware that changes are needed. Regretfully, we find the proposals for benefits for permanent partial disability unsatisfactory and with so many faults and inadequacies that we advise against their enactment. Instead, we suggest that that part of the plan be severed from the rest so that the excellent Second Injury Fund proposals which are much needed may be considered on their own. Assuming that it is the intention of the committees to take up first the less controversial proposals, we first offer our comments on the Second Injury Fund.

New Jersey pioneered in the establishment of such a fund long ago to encourage employment of the handicapped. Unfortunately, it was hedged around with so many restrictions and safeguards that it has never been used for more than a fraction of the cases where it could help the handicapped. At present the Fund can only be used if the worker is left permanently and totally disabled. Fortunately for all concerned, we have relatively few such cases to compensate.

Of the 249,278 first reports of work accidents recorded in 1967, most recovered after medical care only. Of the 58,936 more serious cases who received cash benefits as well as medical expenses, 8,923 received temporary benefits

only during the healing period. Of the rest, there were only 125 permanent total cases; that is, only that number who could be considered for the Second Injury Fund. There were 342 fatalities and, for some unexplained reason, our Second Injury Fund never covered deaths, but there were 49,546 workers left with permanent partial disablement. Therefore, if the Second Injury Fund is to accomplish its purpose, it must be made available to pay part of the cost of the more serious permanent partial cases. The Commission's plan to do this is, in our opinion, the most important change proposed for the use of the pooled fund.

However, there are other situations where a pooled fund could be used to advantage, notably to supplement the inadequately uninsured employers' fund. All this extended use of the fund has suddenly become possible because of a new and much better method of financing it that the Study Commission also proposed. That proposal was so badly needed that it was written into law last year by the passage of Assemblyman Parker's excellent bill for the purpose.

We foresee two obstacles to the success of the extended use plan which we believe could be eliminated by amendment. The method of administration of the proposed plan is to continue the present Second Injury Fund provision which leaves much to be desired. First it requires that the cost of compensation be apportioned between the last employer and the Fund, case by case, by a representative of the Workmen's Compensation Division.

As you have just heard, the judges really have got

other things to do besides that.

The payments from the Fund are to be paid directly to the worker by the administrator of that Fund.

Our neighbors in New York have found a more convenient and economical arrangement. Recognizing that there is often no clear-cut dividing line between the amount of the award that should be apportioned between the employer and the Fund, they found another solution. New York law provides that the last employer pay the weekly benefits and medical costs, as he does now in most New Jersey cases, but that he be entitled to reimbursement from the Fund for whatever indemnities or medical care are needed in excess of 104 weeks, or two years.

This plan has worked so well in New York that other States already have adopted it. The Council of State Governments recommends it rather than the case by case apportionment. You may also wish to consider a variation of that plan proposed in the excellent bill, Assembly 398, by Assemblyman Hirkala and referred to the Assembly Committee on Labor Relations.

The other amendments needed are to safeguard the enlarged Fund from overuse or misuse. The safeguards needed are well known from rather bitter experience elsewhere. They are described in detail in the suggested wording of the Council of State Governments in their book.

The Hirkala bill contains most of them. Most important, in our opinion, would be to limit the preexisting condition

for which the fund could be used for disabilities sufficiently serious to be a real handicap to employment and known to the employer in advance of employment; that the subsequent injury leaves as a result a permament disability substantially greater than before; in other words, they must both be serious things; and that the use of the fund be limited to the most serious permanent disabilities, i.e. those that would entitle the worker to more than 2 years of weekly benefits. Assemblyman Hirkala's bill suggests 3 years.

Now about the permanent partial injuries. Our reasons for disapproving the permanent partial awards are as follows:

First, it is based in part on a misunderstanding by the members of the Commission of our testimony on May 12, 1967. Attached to this statement is a copy of a letter from the Chairman of the Commission, Judge David A. Nimmo, to Senator Dumont and Assemblyman Parker explaining about it.* The misinterpretation appears in the opening sentence on page 4 under "Findings and Recommendations on Partial Permanent Disability" of the report. It was just a mistake. The fact that we were misquoted is not of major importance, but what is important is the statement on that page showing that the Commissioners based their plan on a consensus reached despite the opinion of some of the foremost authorities on workmen's compensation in this country - Dr. Arthur Larson, the International Association of Industrial and Accident Boards and Commissions, and a report from that Association made by a Special Committee on the subject of permanent partial

*Page 127 A

disability compensation. The plan which our Study Commission offered appears to disregard the advice available from these sources and it differs in important detail from proposals from the IAIABC, from the Council of State Governments, and other standard-setting agencies.

In fact, the Commission's plan would appear to be an untried experiment without precedent except that New Jersey has had some slight experience with a dual maximum plan under which permanent partial cases receive smaller weekly benefits than other categories of injuries. The purpose of that plan was to reduce the number of permanent partial cases and it was not successful. It produced no reduction between 1956 and 1965, the first nine years it was tried.

The Commission's Report indicates that the members felt obliged to do something to reduce the number of small awards. There is no question that New Jersey compensates a high proportion of small injuries, very small ones. We share the concern on that problem. However, the plan the Commission proposed to deal with the problem is to make weekly benefits for all partial permanent injuries lower than for other categories and for comparable situations. This plan it seems to us is both unsound and inadequate to accomplish the main purpose of the law.

The Commission has proposed arbitrarily to declare that any injury determined to be less than 7-1/2 per cent is not serious. That is not in the bill; it is in the report, however. They announced that. That is at least a questionable assumption, very questionable, on which to write a law. Obviously an injury of more than 7-1/2%

though is more serious than one below that level. But even for those above 7-1/2 per cent, only $60 weekly benefit is proposed. The more serious permanent partial injuries, which include everything less than total, may be almost as bad as the totally disabled kind. Total disability doesn't mean inability to work. Many people within the total class do work and so do the slightly less badly injured in the partial permanent class. But yet under this plan, a worker with a combination of permanent disabilities which leaves him perhaps 50 per cent disabled will not only receive just half the number of weeks of benefits as for the total disablement but will receive at least $26 each week less for the time he gets it.

Furthermore the totally disabled, most of whom get weekly benefits equal to two-thirds of their earnings when injured, may receive them for an extended period beyond the 550 weeks for as long as the disability continues and, if necessary, for life with deductions for earnings, if any. But the man in the permanent partial category, although the law states that he too should get two-thirds of his usual wage, cannot get more than $60 a week or less than half the average wage in New Jersey. If, at the end of 275 weeks of benefits, he is still disabled, no extension of benefits is provided. Why these serious partial permanent cases should receive so much less per week than the total cases, as well as for a shorter time, is not explained in the report.

It is implied in the report that the lower rate for permanent partial cases is because there are so many of

them and the pressure on the Commission was to do something about "nuisance cases." Just how serious is the "nuisance case" problem is unexplained. We would like to know. The Consumers League has urged for several years that this alleged abuse deserve investigation. We know that the former Director of the Workmen's Compensation Division, Mr. Franklin, tried to get some names when he was faced with this kind of accusation, and he wanted some identifying information to make an investigation but he never succeeded in getting this from those who made the assertions. The Consumers League also tried to run down these stories and enlisted the aid of a former member of the Legislature who consulted us about having them investigated. These allegations reflect unfavorably not only on the workers but also on the Division for permitting the alleged abuses. Yet neither the workers nor the Division have been given a chance to defend themselves. Before the Legislature acts on a change in the law which assumes the allegations are true, we suggest that an official investigation be ordered by the Legislature.

Thank you very much.

MRS. ZWEMER: Senate Bill No. 63 - Recreational Injuries. 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."

This proposal is contrary to what most progressive states are doing. From our correspondence with the U. S. Bureau of

Labor Standards, we have learned that more and more of these claims are being recognized by other States.

In reading some of the recent court decisions, it seems to us that rigid limitations should not be written into the law but that each case should be adjudged on its merits. The community is involved when no provision is made to care for the family when a company can defend lack of compensation on the definition of "regular incident." Although the wording is vague, it seems to increase the 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? Does this mean a pecuniary benefit, an increase in profits, greater productivity, etc., all divorced from "mere improvement in employee health and morale"? I don't know about the coffee break, but when you go across the street to get one, maybe that will be ruled out.

SENATE BILL NO. 61 - Change in Appeals Procedure.

It is proposed to have appeals go straight from the Workmen's Compensation Division to the Superior Court, Appellate Division, without first going to the county court.

The Consumers League supports this change. It is an important step towards making appeals less costly in time as well as money.

SENATE BILL NO. 59 - Appointment of Compensation Judges.

It is proposed to have the judges of compensation appointed by the Governor with the advice and consent of the Senate instead of by the Commissioner of Labor and Industry, to fix their salaries as the same as for full-time judges of

county courts, require them to work full time, and prohibit their engaging in law practice.

The Consumers League is entirely in favor of raising the judges' salaries, at least to the extent here proposed.

The proposed change in the method of appointment is a radical one. At present, only the Director of the Division is appointed by the Governor, and the judges, formerly called Deputy Directors, worked under the direction of the Director and could be, and we think should be, assigned other duties than judging contested cases. In the Council of State Government's suggested law, it is recommended that the officials who hear cases (called judges in New Jersey) should have other responsibilities for administering the law.

We suggest that change in appointment be laid over for further consideration. Reasons advanced for it in the Commission's Report do not appear adequate to support it.

Mrs. Holderman will speak on Senate Bills Nos. 58 and 60.

M R S. B E A T R I C E H O L D E R M A N: Gentlemen, I appreciate the opportunity of appearing before you. As a board member of the Consumers League of New Jersey, with a background of service as Director of the New Jersey Rehabilitation Commission before retirement last August, - you see they had me busy again in some other phases that concern people - Mrs. Zwemmer, President of the League has asked me to supplement her observatilns relative to the pending workmen's compensation legislation. Before doing so, I would be remiss if I did not indicate appreciation for the research, study, time and

recommendations made by the Workmen's Compensation Law Study Commission for the improvement of the present Act, as well as the thoughtful consideration given by Senator Dumont and Assemblyman Parker in developing the present bills. My comments will concern rehabilitation, medical supervision, benefit adjustments, lump sum settlements, and provision for benefits for persons whose occupations need to be considered in the light of potential earning power; minors, people in training related to their occupations such as apprentices, doctors serving an internship, and nurses in training.

Rehabilitation. Under S-57 and A-365 we recognize and appreciate the desire to improve conditions for the employment of handicapped people through the use of the special fund under Sections 35:15-94 et seq., where previously existing functional disability of the cardio-vascular system is established by competent evidence, and in other permanent and total disabilities where such disability results from a combination of the effects of an injury and pre-existing disability or disease. However, the difficulty of properly discerning medically a previously existing functional disability of the cardio-vascular system would be difficult to administer, placing the hearing official in the position of estimating previous disability. It could also contribute to a greater degree of litigation. I think that was brought out by some testimony previously.

May we suggest that a further study of this section be made with consideration given to establishing the Special

Fund on the basis of the time-proven Special Fund in New York where the Fund becomes operative after 104 weeks. And this has been discussed with you before. This follows the recommendation, as you know, of The Council of State Governments in their Suggested State Legislation for Workmen's Compensation.

May we also suggest consideration of a change in the wording "physical or educational rehabilitation" to "physical, psychological, or vocational rehabilitation." You can, of course, translate "physical or educational" but it is suggested there be a little more definitive definition as far as that was concerned.

S-58 and similar Assembly legislation. We appreciate the consideration given in the provision which obviates review on the grounds that liability has diminished where the individual has submitted to rehabilitation. May we suggest consideration for change here also relative to the wording "physical or educational rehabilitation" as I suggested before. Individuals involved in rehabilitation generally have severe disabilities and overcome difficult obstacles in returning to remunerative occupations. I am saying that in relation to the fact that if there is a dimunition and they have overcome some severe hurdles, due consideration should be given that this should not be reviewed again. I would like to add here - it is not in the testimony here but, for your information, less than five per cent of the cases that come to the attention of the Workmen's Compensation Division have severe enough handicaps

so that they are subjected to or can receive vocational rehabilitation and not have a substantial disability which is a handicap to employment either in holding or securing a job. We roughly estimate there are about five per cent or less severe cases and it seems to me that in your good judgment you took this into consideration when you said there should be no review if they had submitted to a rehabilitation program. Often this rehabilitation program may well go for five years and possibly longer. He may well be able to earn a living after that time and overcome some severe hurdles.

I should like to note that there is excellent liaison between the Workmen's Compensation Division and the New Jersey Rehabilitation Commission through the rehabilitation unit located in the Workmen's Compensation Division, contributing to early referral of cases for rehabilitation services.

Weekly benefits during rehabilitation. This wasn't part of the legislation but it is a suggestion. To encourage rehabilitation, as well as avoid hardship conditions, pending an award and employment, provision should be made for weekly benefits to the injured workman during his vocational rehabilitation as may have been ordered by the Rehabilitation Commission. From experience we know that one person in ten may go back to work who is in a rehabilitation program, because if they don't have any funds there may be delays in workmen's compensation court in the award and the Rehabilitation Commission can only where it is justified give a weekly allowance of $20 a week. There may be a family involved and cost of transportation to the rehabilitation facilities, so there really are no funds

coming in. The judges often will tell you that they don't want to go on welfare so consequently they will go back to work before they are ready, and this, indeed, could impose a further handicap so far as the employer is concerned in a second injury.

This has been discussed at quite a number of national conferences and Mr. Kalmykow has been involved in that and I think he touched briefly on that this morning too.

Medical Care. Inasmuch as the law provides for medical care for restoration to health and independence wherever possible, it is essential that the Worklmen's Compensation Division have a medical director. It is suggested that the amending legislation make provision for the Director of the Workmen's Compensation Division, after consultation with the Medical Society of New Jersey, to appoint a full-time Medical Director whose duties will be to evaluate the medical care the workman is getting in order to insure optimal medical treatment and rehabilitation, instituting such action of a regulatory and educational nature as may be needed, and also establishing a Medical Advisory Committee to the Division, at a salary commensurate with the duties of his office and in line with present-day economies.

We found with the Rehabilitation Commission that when we were able to get a Medical Director there were substantial benefits as far as medical services were concerned and the education of the medical community, which indeed could contribute a great deal more to workmen's compensation in the kind

of reports and sometimes the difference between the doctors sometime saying 90 per cent and 10 per cent. In the long run it would be an investment. They have tried, I know, but so far they haven't been able to get anybody.

Benefit Adjustment. In order to insure equitable treatment for all persons now receiving Workmen's Compensation benefits as a result of amendment of the present Act, the following provision is suggested. This is a recommendation made by the Council of State Government in their 1965 volume "Workmen's Compensation and Rehabilitation - Program of Suggested State Legislation."

Mr. Chairman, I will not read this but it is attached to my statement.* I think we all know what it is and we were very pleased to note, the League was pleased to know, that Assemblyman Garibaldi has pretty much covered this under Assembly Bill 195. We understand also that Ohio has such a provision. There may be other states but this just came to our attention.

Lump sum settlement. S-60 and similar Assembly legislation. There have been many studies in many states concerning such settlements and invariably they show that the worker suffers through such agreements. Often adversity influences agreement. Many times funds received are lost through injudicious handling resulting in the individual becoming a public charge. People with the best intention in the world are going into businesses they shouldn't be going into and the first thing you know there are no funds left. The principal damage is that this cuts him off from medical benefits where invisible damage may not be

* Pg 129 A

known to him at the time of the settlement. Often too this is a barrier to rehabilitation which will help restore him to independence. May we suggest that this subject be further studied. Then should amendment be included, institute safeguards not only of Division of Workmen's Compensation supervision but also include a provision that the right to medical care, if required, be covered within a given period.

Benefits considered for special cases. May we suggest that study be made relative to establishing benefit provisions where injury or death occurs to individuals who have not had an opportunity to establish potential earnings; minors, people in training related to their occupations such as apprentices, doctors serving an internship, nurses in training. We understand that California as late as 1959 had a special provision in their workmen's compensation law for such cases.

I would like to end by saying to you that it's encouraging to all the people who are here today and to those who are interested in workmen's compensation in the law that you are holding these hearings, and I want to express our appreciation for the opportunity of presenting our statement.

ASSEMBLYMAN PEDERSEN: Mrs. Zwemer, in your recommendations on S-59, you are suggesting that the judges be assigned other responsibilities for administering the law. Now in view of the testimony we heard from Judge Traynor, I was wondering whether your group would like to reexamine the recommendation. It seems to me they had quite a caseload.

MRS. ZWEMER: I think you should ask Miss Dyckman.

MRS. DYCKMAN: I wasn't a bit surprised to hear what

he said. I have known several of your judges personally, I know how very hard they work, and I know they haven't had time to do anything else. Nevertheless, I think it is desirable that they should be chosen and we should have more of them too with time to do some of the other things than be just judges. This is a very important judicial appointment but they also have other functions that could be performed very usefully. New Jersey doesn't do it much because they keep their noses to the grindstone with hearing cases. The Council of State Government's plan is very interesting on that. They call them hearers, the people who do the first hearings, and would give them other duties and also want to be sure they work together as a unit; they are not chosen separately; they are chosen by one person for one particular purpose.

I know the reason for the desire to have the appointment system changed. It doesn't seem to us quite convincing to make such a radical change now. I think what we need chiefly are more judges and more money for judges. The salary, of course, is very important. I know that Judge Furster was a personal friend of mine and I think worked himself to death on this thing. He loved the work and he did devote an enormous amount of time and he died young. Judge Napier has just had a heart attack. We put a fearful amount of work on them and don't pay them enough.

SENATOR DUMONT: Mr. Chairman, this is not a question but is simply a tribute that I feel is long overdue, at least on my part, to Mrs. Holderman, because in the years when she served so well and with so much dedication to the problems of

the Rehabilitation Commission I talked to her many times about problems in our area and I can say she was not only completely cooperative but she did everything humanly possible to place these people in satisfactory employment and to serve them in any way she could. I think she deserves a lot of credit from all of us for the great work she did in that capacity.

MRS. ZWEMER: We were very fortunate in having her advice.

I would like to say that $40 a week is awful. I have in my purse a letter from a wife who says' "How can you live on $40 a week, $160 a month." I think it's awful. I think you have to consider the worker too.

ASSEMBLYMAN PARKER: Well, in Europe it doesn't make any difference whether it's a workmen's compensation claim or how the disability occurs, the community makes the arrangement to pay it. Isn't that true in Germany, in Denmark, and in these other countries? They don't necessarily say it's a workmen's compensation claim or what, but it's a social benefit and that's why the definition is inserted in there. That's why we put in there "payments from other social benefits."

MRS. DYCKMAN: Canada does too.

ASSEMBLYMAN PARKER: Canada does?

MRS. DYCKMAN: In some places.

ASSEMBLYMAN PARKER: In other words, it's a cost of society to pay for these people, not just the employer. That's one of the reasons why we tried to broaden the second injury

fund.

I have a question for Mrs. Holderman on page 3. In your weekly benefits during rehabilitation, I assume you mean here where the temporary has run and the permanent has not been awarded, because most of these people -

MRS. HOLDERMAN: There isn't any loss as far as workmen's compensation is concerned. They are without anything during the time they are waiting for a hearing. The individual is at a disadvantage because the award has not been adjudged nor has he been able to go back to work, so the family really has had no means of income unless there are other children there. So he is less likely, if he is able at all, to take advantage of rehabilitation but certainly if he isn't able to take advantage of it maybe he would have to go on welfare. This is a problem. Now many of the insurance companies today, through cooperation, are very helpful and do advance these payments of their own volition, not that they have to, but it's been discussed nationally and they feel basically this would be very good if this were done. In the long run it comes from the award but it's merely an advance -

ASSEMBLYMAN PARKER: I see. In other words, you propose this as an advance that could be reimbursable to the carrier or deducted from the award for permanent partial disability.

MRS. HOLDERMAN: Of course, you would have to have the insurance company's agreement to it. The insurance company indeed would have to agree to this if it were given. Most times they do; they are very conscious of the fact that they have other than liability responsibilities today. We find as a result of working with them today, we find they are very,

very helpful. I still say "we."

ASSEMBLYMAN PARKER: Does anyone have any further questions? (No questions)

I would like to thank you very much. I'm sorry we had to make you wait so long, there are several others here and there is always somebody who wants to come up for a few seconds.

MRS. ZWEMER: We thank you very much.

MRS. DYCKMAN: I enjoyed hearing all the others too. I always like to hear them all.

ASSEMBLYMAN PARKER: I have a name here that looks like Louis Winer. Is he here?

L O U I S W I N E R: Mr. Chairman and members of the Committee, I am appearing here first as a representative of the Morris County Bar Association and, second, as a practicing attorney of 35 years' standing. I think I have practiced in every court in the State, from Senator Dumont's Warren County all the way down to Atlantic County, the Magistrate's Court up to the Supreme Court of the State of New Jersey, and my principal concern, and I say I am concerned about this after 35 years of practice, is the status of the workmen's compensation court, because from what I have seen of the compensation court in this county and every other county it's a third or fourth-rate court. They put them in every place they can find. In Belvidere they have given them a court room, in Somerset County they agreed to put them in a basement or somewhere on the roof, in Bergen County they put them out in left field somewhere, alongside the American Mutual

Insurance Company, in Morris County they have given them three horrible rooms where there is no privacy, and I am on the Morris County Bar Association, and perhaps now with the new court house there they have given us something over there. There is no dignity. The salaries are horrible. I have a friend whose son is graduating from Georgetown Law School, he has a job now with the Arnold Fortas firm in Washington, and he starts out from law school at $18,000 a year. Our workmen's compensation judges, I understand, are getting $19,000. So we have a boy getting out of law school at eighteen and a man spending half his life on the workmen's compensation bench is getting nineteen. It's a good comparison.

I would like to see something done. As I say, it's a serious matter. I'm 60 years old and may have another five years of practice, so I surely have no interest in this matter except upgrading this court. I would like to see it as part of the entire court system. It has no dignity. I knew Judge Traynor before he resigned and after he resigned. I am a personal friend of a lot of the judges - Judge Furster, Winfield and the rest of them. After 35 years you know some of them. There is no dignity. They haven't got a secretary; they haven't a library; they have no place they can sit down and call their own. There is no dignity. I'm a petitioner's man; I represent one respondent perhaps in a year, some poor slob who doesn't have insurance so I represent a respondent. The rest of the time I am representing petitioners and, believe me, there is no dignity. It isn't the judge's fault. He doesn't have

the facilities.

The last count I had there were 36,000 formal cases handling compensation - by a handful of men. Now take the budget you have in the Superior Court, and I think at last count, although I might be wrong, there were 40,000 cases pending in the upper courts. Take your budget in the upper court and you'll see you have court attendants, you have a sergeant-at-arms, you have the whole works in there; you walk in and they open the door for you, and there's a man sitting in there with a machine; each of the judges have a law clerk. I know Senator Dumont is a practicing attorney and Mr. Parker is a practicing attorney, and you know the routine as well as I do. But you go in a comp court and these judges have nothing. And I appeal to you as a practicing attorney and I'm sure you recognize the fact that I have no axe to grind. I'm here on my own time at my own expense and have lost my own day. I am asking, not for myself, because in another five years I'm finished; I've had it, The younger generation is coming up and you can take your own count of 36,000 compensation cases a year - I think that's the count of 1968 as against 40,000 upper court cases - so let's make it part of the upper court system. Let's pay a man what he's worth. And, believe me, in the last five or six years, I've seen some awful "ding-a-lings" put in there as judges of the compensation court and I don't like the system. I think we should have a system where the Governor, with the advice and consent of the Senate, appoints the judges. I have nothing against that. I don't think the way they do it now is the right way, because you have one man

doing it.

I don't know how many of you fellows practice in the comp court. I know I do, and I meet these judges, and I don't like it; I don't have to bow to them, I don't have to kow-tow to them; I have been in the system too long; and I can tell them what I think of them and it isn't complimentary. But it doesn't do justice any good, because, as Judge Traynor said, or ex-Judge Traynor said, more people have an idea that the court system through the workmen's compensation court and the magistrate's court handle more cases than all the other courts in New Jersey put together.

Gentlemen, I wish to thank you for permitting me to take this time and if there are any questions, I will be glad to answer them.

ASSEMBLYMAN PARKER: Thank you very much. Sorry you had to wait so long.

I will call Pete Shebell.

P E T E R S H E B E L L: Mr. Chairman and gentlemen, I appear here on behalf of the Monmouth County Bar Association. You have already heard from Judge Kaltz and former Judge Traynor and they have set forth all the reasons that the Morris County Bar considered and, in considering these reasons, it by resolution requested the adoption of Senate Bill No. 59. I just wanted to come here to tell you that you will subsequently receive a written resolution from the Monmouth County Bar Association, and that we in Monmouth County feel that Senate Bill No. 59 should be passed for the reasons already heard. It's late and I am not going to repeat them

all again.

ASSEMBLYMAN PARKER: Do you have any comments on any of the other things from the Bar Association?

MR. SHEBELL: No, the Bar Association took no position on any of the other matters that you are considering today so I am not at liberty on behalf of the Bar to say anything about the other things.

ASSEMBLYMAN HEILMANN: Are you in favor of S-61? Everybody else seems to be in favor.

MR. SHEBELL: If you want a personal opinion, that's one thing, but I am only here speaking on behalf of the resolution passed by the Bar.

ASSEMBLYMAN PARKER: How are your facilities down in Monmouth County?

MR. SHEBELL: I think we have fine facilities. The facilities in Monmouth County today are, I think, good, very good. I think that Judge Napier will go along with that. However, I can recall the time when two or three years ago they sat in Convention Hall, Asbury Park, because they had no place else to go. The County had put them out of the court room there in Freehold because they needed the space themselves. So arrangements were made and they were sitting in makeshift rooms in Convention Hall in Asbury Park and also in a sun pavilion in Asbury Park. I tried cases in those particular facilities and actually it is a terrible situation when you bring clients and you bring doctors, and the public in general sees this type of thing going on in a court of the State. I understand from what I have heard from others around the State

that there are in other areas of the State inadequate facilities and certainly it is degrading to the whole system of law to have this type of thing and I certainly think that you gentlemen should see that something is done and that this is not permitted and the thing that happened in Asbury Park shouldn't be permitted to happen again.

ASSEMBLYMAN PARKER: Thanks very much.

MR. SHEBELL: Thank you, gentlemen.

ASSEMBLYMAN PARKER: I will call Jacob L. Balk.

J A C O B L. B A L K: May I first double in brass. I have been asked by Miss Ruth Rabstein, who was here the greater part of the day, to convey a message to the Committee. She was here representing the Workmen's Compensation Committee of the Mercer Bar and she asked me to inform you that the Bar by resolution approved of Senate 59 and the Assembly Bill which is the counterpart of that.

I am also authorized to inform you with regard to S-59 that over a year ago the Workemn's Compensation Committee of the State Bar Association considered the aspects which are part of S-59 now, and at that time I was present and they passed a resolution approving in essence the provisions of S-59 raising the judges' salaries and appointment by the Governor.

Now somewhere along the line that resolution didn't get to the trustees in order to make it formally official, but I believe it has been presented to the trustees already and you will probably be in receipt of the official State Bar resolution itself on that point.

Tomorrow afternoon the Workmen's Compensation Committee of the State Bar is meeting to consider all the other bills which are presently before you and no doubt you will hear from us after that meeting.

Now I appear here as the secretary of the Lawyers' Committee on Workmen's Compensation. I don't know if you gentlemen have ever heard of that Committee but it is an ad hoc committee which was organized about three years ago following the defeat of S-82 when that came up for passage in the Senate and the Assembly. This Committee was organized for the purpose of seeing whether or not a group of practicing attorneys without any political connection or without any official connection with any industry, etc., whose chief and common interest was the practice of workmen's compensation, could come up with an answer to some of the problems that have been troubling you gentlemen all down the years with regard to workmen's compensation.

This Committee consisted of seven people. I was one of them. It covered every aspect of interest in the workmen's compensation field. There were representatives there of the self-insurers, of insurance carriers, of Labor Unions, of the petitioner, and representatives of the respondents directly, and I think it was representative of the field of workmen's compensation. Although we had no official position, no official standing, because of the nature of the group of men who composed this Committee we were afforded somewhat official recognition. For example, in the course of our meetings which lasted over a period of 2 years, we met every Thursday night for a period of 2 years right straight through the summer. We interviewed the

Chief Justice, Justice Weintraub; we met with the Director of the Division of Workmen's Compensation; we met with various judges of workmen's compensation; we met with doctors, expert doctors in the field; we met with officials of labor unions; directly and indirectly we solicited the opinions of various people in industry, various people connected with insurance companies, and we felt that we had gotten information from every possible source. We had a consultation with Dean Larson whom I am sure you will recognize is one of the outstanding experts in the field of workmen's compensation, and we commissioned a study by two professors of economics and sociology and rehabilitation at Columbia University to give us some academic information, if you will.

There were several things that we directed our attention to: Number 1, was it possible to define a compensable injury or compensable occupational disease. And the answer was no. After we had come to our own conclusion we issued a challenge to anyone who could come up with a definition of a compensable workmen's compensation condition or injury or disability which would hold water. That challenge has never been met.

We tried to determine whether or not there was such a thing that could be legally or practically designated a nuisance claim, and we came up with the answer that you cannot classify any claim as a nuisance claim and I think you got one of the answers to that today from Judge Traynor. Either a man has a disability or he doesn't have a disability. If it's a disability, no matter how small, to him it's very, very important and the law cannot judge between the minor and the major. The

law can only do what the law is designed to do. And we issued a challenge to anyone to come in with a definition of a nuisance claim. That challenge has never been met.

Now because of the composition of this Committee, I cannot take any position here today on some of the bills which are before us, but I can tell you this, that the work of this Committee over a period of two years was done in close consultation with the various interests which these attorneys represent. It would serve no point for me to publicly state the names of the men who were on this Committee, but if your Committee deems it important I will be glad to supply it by letter. But they represent some of the outstanding men in the field of workmen's compensation, men who have literally devoted their lives to it. I think at one time we determined that the span of years served by these seven people, and I was the youngster in the lot, was over 200 years. Their work and their contributions to this committee, as I say, was done in close consultation with the people that they represented - the Unions, the self-insureds, and among the self-insureds we had Johns-Manville, Ford Motor Company, Western Electric, General Electric - the largest employers of labor in this State.

I can say to you without specifying the individual items of S-57 that in principle the contents of S-57 were considered by this Committee and, in consultation with their principals, it was accepted by this Committee that their principals could live with the provisions of such a bill as S-57 and, although for public purposes, they would not admit to being in favor of

these provisions and they were not in favor of them, yet, as a matter of compromise, they could live with them. That was our position and we made this position known at the time.

There is one thing I can tell you we were all unanimous on, as we were on the other aspects of our considerations because nothing that we recommended was on the basis of consensus. It was something that we could all agree upon and this was the basis upon which we received credence from the people that we consulted and that we made our efforts known to. We were all in agreement that the judges of workmen's compensation should be appointed by the Governor with the advice and consent of the Senate, we were all in agreement that they should have enhanced standing at least to the extent that they would be comparable to a district court judge, with the same salary and the same emoluments and privileges of a district court judge because, for reasons that have already been most dramatically presented to you today, they deserve it. They work hard and, not only for their benefit but for the benefit of the people of this State, that court deserves dignity, and they don't get dignity when they start off, I think, at $14,000 a year, when I, as a hiring attorney, know that if I try to get a law school graduate to come to work for me, his asking price is $15,000 and he wants to know how many years he'll have to be with us, if he decides to stay, before he will be eligible to become a partner in the firm.

We must take these things into consideration so that people do not look down their noses at workmen's compensation judges and patronize them. "Well, he's a judge of compensation;

he probably couldn't make a living as a practicing lawyer." That's not so. These men are there for the same reason that there are judges in the Superior Court and in the District Court. They have a desire to serve in a way that is different from my desire to serve. I couldn't sit as a judge. I don't have the judicial temperament, but if these people are born to it and want to serve society that way, they are entitled to be compensated with dignity.

We are also in favor of the lump sum payment. And, incidentally, I must digress to correct something that was said this morning by Mr. Joel Jacobson to the effect that a study has been done of lump sum settlements over a three-year period and that they found that the petitioners had been grossly underpaid. That is absolutely not so. He was acting under a misapprehension. The study he referred to was a study that was initiated by Director Parsekian which studied the direct settlement which had been made by employers to petitioners, and these were the ones that were called back and they found that they had been grossly underpaid. There has never been any study of lump sum payments. Frankly, lump sum settlements are not recognized by the statute but, without them, our system would be in a shambles. They are very important because workmen's compensation cases, as you have already learned, are not black and white. They very frequently present questions where the case may very easily go one way or another. Unfortunately you don't know it until maybe two years have gone by, or the case has gone up on appeal to the Supreme Court over a period of five years. It

becomes an all or nothing proposition and it should not be so. I have had petitioners' widows, come to me after they have received a check, a substantial check for total benefits, but after a period of five years from the death of their husband they have said to me, "Mr. Balk, I thank you very much but what good is it now? I lost the house. I had to take my boy out of college. I had to go to work and send my children to a nursery home. Things happen which can never be repaired because, under the system as it now exists, if you are going to insist on a full trial, the matter may not be adjudicated for five or six years. I have taken the position that when I enter into a settlement, I know that it is not proper under the act, but I take the position as an attorney, I do what I think is best for the petitioner, and I am ready to go before anybody and justify what I have done. But I do say that it should be made legitimate, so to speak, and it will serve a very useful purpose, not so much in moving cases fast, but in getting money to people when they really need it desperately. A man is working. He is getting a salary of $300 a week; he's getting along fine; he's paying off a mortgage on a house; he's paying off on a car; he's paying off maybe $5,000 worth of furniture, and he is killed. Everything stops. So the wife gets social security. It's barely enough to keep the table going. The result is that by the time the case comes to trial and is adjudicated, she's lost the house, she's gone out to work, their little children are involved - I said it before and I'll repeat myself because it's really a terrible thing - the children go into a nursery or into a foster home. Families are broken up and things can never be put together again. And

I say that is very, very important.

Also I can state this: We feel that an appeal, a direct appeal to the Appellate Division is very important because it will save time. I am not so much concerned about the amount of trouble for the courts because what the county courts don't get the Appellate Division will get. But I think the Appellate Division will be able to set up a system for handling these things much better than the county courts. I, in my own personal experience, have argued these cases before the county courts and waited one year, two years, or as much as two and a half years for a decision from the county court. We have been told very frankly by many of the county court judges that they don't know what it's all about. They don't understand workmen's compensation. Some of them never had a compensation case in their life and, just dealing with negligence and tort loss every day as they do, they just cannot fathom the mysteries of workmen's compensation. So they put off the decision for months and months and months until finally they have no choice and they get it out.

I think I've covered, gentlemen, what I wanted to say unless there is something else.

SENATOR DUMONT: I just want to thank you, Mr. Balk, for your letter to me, dated February 8, 1969, in connection with S-59, and I appreciate your having written about it. It's a very good letter and I appreciate it.

MR. BALK: Thank you, sir.

ASSEMBLYMAN PARKER: This Committee, this lawyers' committee, you say that most of them indicated that they could

live with the provisions of S-57?

MR. BALK: Yes, sir.

ASSEMBLYMAN PARKER: And this is made up of representatives of industry and self-insurers?

MR. BALK: Yes, sir. I thought it was an open secret but if it hasn't come to your attention, this is a fact.

ASSEMBLYMAN PARKER: Well, no. We expected pretty much this but -

MR. BALK: - even the Labor representatives told us thay would have to fight for their two-thirds but somewhere along the line they could live with a decent compromise.

ASSEMBLYMAN PARKER: I'm sure Labor could. I'm not worried about Labor. That's why I asked the questions of Mr. Marciante and Mr. Jacobson that I did. But I'm concerned, especially since Mr. Bachalis is now back in the room, with the cost factor if this is going to cost another $35 million. This is a substantial amount of money. I'm just saying that as the sponsor of the bill. I sat on this Comp Committee and we estimated, Lou and the rest of us estimated - a guessimate, I guess, with all due respect - $20 million dollars. This was taken from some of these figures that Judge Napier got us, really, and we interpolated backwards and I think I was in on some of that figure, and I respect N.J.M. with their cost figure. That's why I asked that specific question if it was pretty unanimous in your group.

MR. BALK: Well, you heard the statement of the gentleman from the New Jersey Manufacturers Association. He said he is willing to concede up to $57, it comes to. Of course, also

7-1/2 per cent was part of our consideration and we felt that would save them money. Incidentally, some of the gentlemen here kept repeating that if you go in on that basis they will see to it that the figures come in above 7-1/2 per cent. This is not 7-1/2 of total; this is the first 7-1/2 per cent.

ASSEMBLYMAN PARKER: Yes, so in other words, at 8 per cent you are only getting the additional week at $40 a week. I think most of the members of the Committee realize that -

MR. BALK: Which brings us again to something that we came up with which was our conclusion and which had been told to us by Dean Larson and which Judge Traynor very forcifully brought before you. The Workmen's Compensation Statute is only as good as the jduges who administer it. Now I for one moment don't think that any judge is going to temper his awards on the basis if he is going to get it over that 7-1/2 or not. It just doesn't work that way, believe me. I haven't been in it for the longest while but I've been in it enough to know that it just doesn't work that way. They are there to do a decent job. They know that unless both sides of the fence come to respect their fairness and impartiality they are going to get bogged down in long-winded trials and are not going to be able to get things going. The judges just don't work that way.

ASSEMBLYMAN PARKER: You can't get justice on a shoestring.

MR. BALK: That's right.

ASSEMBLYMAN PARKER: There was one other question I wanted to get your thought on - the second injury fund. There

seems to be some general consensus on that. Maybe I'm misinterpreting it, but with some of these provisions, with some amendments, do you have any experience? I know you are from North Jersey but do you have any experience with the second injury fund? Do you have any thoughts with reference to that?

MR. BALK: Well, I have had quite a bit of experience with it. Of course, we go in on it now on the basis where there has been a previous condition or injury which has been unrelated to the present condition either by way of being aggravated or exaggerated.

ASSEMBLYMAN PARKER: I meant in New York. I'm familiar with it. I don't know whether the rest of the members are familiar with it.

MR. BALK: I don't know enough about the New York. I just have ideas about it. Jack, are you familiar with New York?

ASSEMBLYMAN PARKER: The reason I asked is that Mr. Kalmykow made some recommendations and so did Mrs. Zwemer and Miss Dyckman.

MR. BALK: Unfortunately, it's impossible really to get any statistics out of New York on their experience. They just don't respond to this type of thing.

ASSEMBLYMAN PARKER: I was hoping that somebody from New York would be here. This gentleman from Utica Mutual whom I talked to - and they have a substantial volume in New York and a lot of experience - he didn't show up today. Maybe we can have him down separately. You are the last witness.

Does Judge Napier or anyone else wish to speak. Judge Litowitz was here specifically - maybe we should hear from him. I asked that he and Judge Hill be here specifically to attest, as Judges of Compensation, to the conditions in Camden, Burlington and Gloucester counties. I think they are particularly bad. Maybe we should have a written statement from them.

SENATOR DUMONT: If we are going to have many more witnesses, I think we ought to set another day for that because it's not fair to Mrs. Hart and Miss Brown.

[Discussion off the record]

ASSEMBLYMAN PARKER: Judge, did you want to testify at all about that?

M A R K L I T O W I T Z: I didn't come prepared to make a statement, Mr. Parker, but I would answer some questions if there were any questions. I realize from general information that the conditions in Camden are being corrected.

I think the keynote, gentlemen, if there is a keynote, to the proceedings, would be the necessity of increasing or upgrading the dignity of the court and the dignity of the facilities in order that the people who appear before us, acting as judges of compensation, know that they have been in a courtroom and have received a fair trial in their workmen's compensation case and all the aspects of it - the salary aspect, the facilities aspect, and the emoluments, as it were,- all part and parcel of it. Without upgrading the Division we will not achieve our over-all purpose, which is, of course, to dispense, supervise and adjudicate workmen's compensation cases

as they come before us.

ASSEMBLYMAN PARKER: Judge Napier, I take it you didn't want to make any official comment.

A L F R E D J. N A P I E R: No, except we are aware of the promblems in so far as these aspects are concerned and we are working on them.

ASSEMBLYMAN PARKER: Right. Is there anyone else who would like to be heard? Any other comments?

SENATOR DUMONT: Before we close the hearing, there is a letter here that I think doesn't have to be read into the record but it is from the American Mutual Insurance Alliance of Chicago, Illinois, which indicates that it's a trade association representing the majority of the major casualty mutual insurance companies. Their statement also indicates that their member companies write approximately 35 per cent of the workmen's compensation premium countrywise and approximately 50 per cent of the premium developed in New Jersey. They will be sending a later statement on these bills and that statement should be included in the record when it arrives.

In addition to that, there is a written statement here from Arthur S. Hyde, President of the A. L. Hyde Company, in Camden County, who serves as Chairman of the State Employer Legislative Committees of New Jersey. This statement should be put in the record also because he did not personally testify today but left this written statement.

I might say in addition to that I have received numerous letters from attorneys around the State - I won't try to identify them - all of them expressing concern about the salaries and working conditions of the Judges of Workmen's Compensation.

MR. BALK: Thank you, gentlemen.

SENATOR DUMONT: Thank you, Mr. Balk.

The hearing stands adjourned. Thank you very much.

[A D J O U R N E D]

Copy of Letter from the Honorable David A. Nimmo,
Chairman of Workmen's Compensation Law Study Commission
January, 1969

To Assemblyman Barry T. Parker and Senator Wayne Dumont

Regarding misinterpretation of the Consumers League's statistics on page 4 of the Report. These copies distributed by the Consumers League with Judge Nimmo's permission.

Enclosed is a statement submitted to me by the Consumers League of New Jersey. The Commission Report cited the League's submission of statistics as indicating there would be no reduction of claims, (page 4). While the statistics as yet do not show a reduction of claims, the League does anticipate that given time there will be a reduction.

The statement enclosed clearly states the League's position.

I trust that the bills introduced that are not controversial will be pushed for enactment, leaving others for debate.

With warm personal regards,

(Signed) David A. Nimmo

To: The Honorable Barry T. Parker
115 High Street
Mount Holly, New Jersey

Senator Wayne Dumont
South Main Street
Phillipsburg, New Jersey

In the recent report of the Workmen's Compensation Law Study Commission there was a misunderstanding and misinterpretation with relation to material presented by Miss Mary L. Dyckman of the Consumers League of New Jersey.

Miss Dyckman has explained that her statement to the Commission did not say or imply that the recent (1967) increase in temporary (total) disability benefits for work injuries would not reduce the number of claims for very small permanent-partial injuries. On the contrary, the League anticipates that there will be such a reduction.

The League agrees with the opinion of Dr. Arthur Larson that the principal reason for the high proportion of New Jersey awards for relatively small permanent-partial disability has been "the conspicuous inadequacy of New Jersey's temporary weekly disability benefits which seems to have led to the growth of small permanent-partial awards as a kind of rough and ready way to make up for that inadequacy."

The International Association of Industrial Accident Boards and Commissions made a similar comment in a recent committee report which states in part: "too often a worker is paid inadequate benefits during the healing and rehabilitation period and there is a tendency to use a permanent-partial disability award to supply the worker with funds to permit him to pay some of his bills."

Since Dr. Larson made the statement quoted, the Legislature has replaced the inadequate old rates with a new and much better plan under which a worker temporarily disabled by a work injury will, in most cases, receive a weekly benefit for living expenses equal to 2/3 of his earnings when injured. This is the minimum amount recommended by the IAIABC and other standard-setting agencies as necessary for the living expenses of the injured worker and his family, in addition to the medical care to which he is also entitled.

Now that that standard has been written into law, the Consumers League anticipated that the injured workers will have a better chance to recover and be relieved of the economic pressure which in the past has so often made them feel that they must claim compensation for even the smallest permanent disability in order to get the money needed for living expenses.

Consumers League of New Jersey

January 13, 1969

BENEFIT ADJUSTMENT

When the maximum weekly income benefit rate is changed as provided for in this legislation, any person who has been totally and continuously disabled for over two years, or any widow or widower who is receiving payments for income benefits under this act in amounts per week less than the new maximum for total disability or death shall receive weekly from the carrier, without application, an additional amount calculated in accordance with the provisions of this section. The carrier shall be entitled to reimbursement from the Special Fund created by Section 55 for the additional amount so paid.

a) In any case where a totally disabled person, or a widow or widower is presently receiving the maximum weekly income benefit applicable at the time such award was made, the supplemental allowance shall be an amount which, when added to such award, will equal the new maximum weekly benefit.

b) In any case where a totally disabled person, or a widow or widower is presently receiving less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the new maximum determined by multiplying it by a fraction, the numerator of which is his present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

Industrial Group Service, Inc.
SPECIALISTS IN WORKMENS COMPENSATION INSURANCE
85 WORTH STREET NEW YORK 10013 (212) 966 3380

February 24th, 1969

Assembly Banking & Insurance Committee
State House
Trenton, New Jersey

Re: Senate Bills No. 57, 58, 59,
60, 61, 62 and 63
Assembly Bills No. 365, 363,
361, 360, 362, 364 and 279

Gentlemen:

We are writing you on behalf of our client, Pioneer Industries of Carlstadt, New Jersey. We wish to voice our opinion of the above proposed bills,

Senate Bill No. 57 and Assembly Bill No. 365 should be defeated inasmuch as the present "nuisance" award situation is still continuing and would be enhanced at the expense of industry. The open-end second injury fund proposal would add even more to the heavy cost burden of New Jersey's industry.

Senate Bill No. 58 and Assembly Bill No. 363 should be defeated inasmuch as it would remove the employer's incentive to rehabilitate injured employees.

Senate Bill No. 59 should be designed to enhance the improvement of the quality of hearing officers in the Division of Workmen's Compensation.

Senate Bill No. 60 and Assembly Bill No. 361 should be passed in its entirety as it should aid in curtailing the number and extent of controversies in Workmen's Compensation.

Senate Bill No. 61 and Assembly Bill No. 360 should be passed as a means of reducing Workmen's Compensation litigation expenses.

Senate Bill No. 62 and Assembly Bill No. 362 should be defeated inasmuch as it unnecessarily increases the burden of a respondent in such a claim. In addition, there has been no need shown for making such an extension of the statute of limitations.

Senate Bill No. 63 and Assembly Bill No. 364 should be passed inasmuch as it removes the burden from an employer who is interested in promoting the health and welfare of his employees through recreational and social activities.

Assembly Bill No. 279 should be passed in its entirety. This bill is one of the first truly equitable proposals in the field of Workmen's Compensation that we have seen in New Jersey for a long time. It would provide for the increase of benefits where they are needed while at the same time providing a stable base from which the law can be administered and reasonable costs derived.

Unless some drastic improvement is made in making New Jersey's Workmen's Compensation Law realistic from the standpoint of labor and industry, New Jersey will begin to see an exodus of the industry it has strived for so many years to attract. Any further irresponsibility in the form of fluctuating maximums and expost facto laws regarding benefits on old cases, will undoubtedly make the heavy burden of Workmen's Compensation in New Jersey and unbearable burden.

We urge your interest and action in accordance with the above.

Respectfully,

INDUSTRIAL GROUP SERVICE, INC.

Eugene N. Pollock

ENP:rb

BY: Eugene N. Pollock

Statement by the
State Employer Legislative Committees of New Jersey

Joint Public Hearing
on
Workmen's Compensation

Senate Labor Relations Committee
Assembly Banking and Insurance Committee
February 24, 1969

My name is Arthur S. Hyde, President of the A. L. Hyde Company, in Camden County. I am currently serving as Chairman of the State Employer Legislative Committees of New Jersey, the organization on whose behalf I speak.

The ELC is an organization of employers numbering some 1600 persons representing over 825 companies throughout the state. There is a County ELC in 20 of the 21 counties throughout the state, with representatives from just about every kind of industry. As an organization, the ELC is devoted to working for a better business climate in the State of New Jersey. Employer concern for jobs and job opportunities gives added impetus to the ELC's stated objectives. As of last year, employers active in the ELC represented over 606,000 job opportunities. The ELC works to maintain a climate conducive to creating and protecting more and more of these opportunities each year.

Accordingly, the ELC strives to support legislation which it feels will better the over-all business image portrayed by the State of New Jersey. Conversely, the ELC will oppose legislation which it feels to be detrimental to that same image.

One area of chief concern to employers is the state's workmen's compensation program. It is for this reason that we appear today to comment on the legislation which is the subject of this hearing.

I should like to state first that the ELC is in complete accord with three other state-wide organizations which have already testified before this committee:

The New Jersey Manufacturers Association, the Self-Insurers Association, and the New Jersey State Chamber of Commerce. We share their opinions regarding Senate bills #57 through 63 and Assembly bills #360 through 365.

We are very much aware of the importance of a united employer front - and we are united. In discussing a point or two concerning two of the bills, we are only adding emphasis rather than seeking to show difference of opinion.

Senate bill #57 and Assembly bill #365 purport to modernize the state's workmen's compensation program. But far from hitting the target of reform, these bills would insure extension of liability to employers for all the ordinary disabilities of life which man incurs. This is completely contrary to the basic purpose of a workmen's compensation law.

The failure of either bill to provide a meaningful definition for permanent partial injuries while at the same time increasing the maximum benefits therefor is difficult for us to accept. We feel that far from tightening up the system of permanent partial awards, S-57 and A-365 would bring about no practical change in the "nuisance awards" area. Add to this the extension from 450 to 550 weeks for total benefits for permanent total disability - to be paid whether the employee lives that long or not - and the bills make the program far more expensive than it is today. We understand that the increase in costs could go as high as $35 million annually. This would be in addition to costs recently imposed by reason of passage of A-760 (1967) which added $34 million.

At a time when employer costs are going up it would seem to us that the job of the state legislature would be to do what it can to see that unnecessary increases in government mandated costs are avoided. Our members find in discussions with their counterparts in other states that there is a broad view that New Jersey legislation borders on the extremes of costs, thus making it difficult to favorably consider this state for industrial development purposes.

We refer specifically to such recent legislation as S-400 (strike benefits and higher unemployment compensation costs), A-760 (workmen's compensation) and others.

We respectfully urge the committees to reject Senate bill #57 and its Assembly counterpart. And, for the record, we wish to acknowledge our support for Assembly bill #279 which more accurately reflects what we believe to be the proper method for improving the workmen's compensation program.

STATEMENT OF THE AMERICAN MUTUAL INSURANCE ALLIANCE
SUBMITTED TO THE NEW JERSEY SENATE COMMITTEE ON LABOR RELATIONS
AND THE ASSEMBLY COMMITTEE ON BANKING AND INSURANCE
REGARDING SENATE BILLS 57, 58, 59, 60, 61, 62, 63
AND THEIR COUNTERPARTS ASSEMBLY BILLS 360, 361, 362, 363, 364, 365

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.

Addressing ourselves first to Senate Bill 57 and Assembly Bill 360, we feel that some of the provisions encompassed therein would fall far short of improving the workmen's compensation law in New Jersey. 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. The proposals in these two pieces of legislation under consideration do not consider amending paragraph 22 to correct this situation, but instead under section 34:15-12, subsection (c) would including wording which would define "partial disability" as partial in character and permanent in quality as loss of physical function or that which detracts from the former efficiency of the body or its members in the ordinary pursuits of life. We respectfully submit our feelings that this would further compound the problem rather than correct it. We feel that other than the scheduled items, any physical function that is permanently impaired should be material to the employee's working ability.

We are also concerned over the proposed amendments relating to the second injured, 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 development 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 these 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 Senate Bill 58 and companion Assembly Bill 361. The proposal here would be to 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.

JSStickles:rms