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PUBLIC HEARING

before

THE ASSEMBLY INSURANCE COMMITTEE

on

Insurance Problems Experienced by Public Entities

February 28, 1986
Municipal Building
Parsippany-Troy Hills,
New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Ralph Loveys, Chairman
Assemblyman Gerald Zecker, Vice Chairman
Assemblyman Karl Weidel
Assemblyman John K. Rafferty

ALSO PRESENT:

Laurine Purola
Office of Legislative Services
Aide, Assembly Insurance Committee

New Jersey State Library

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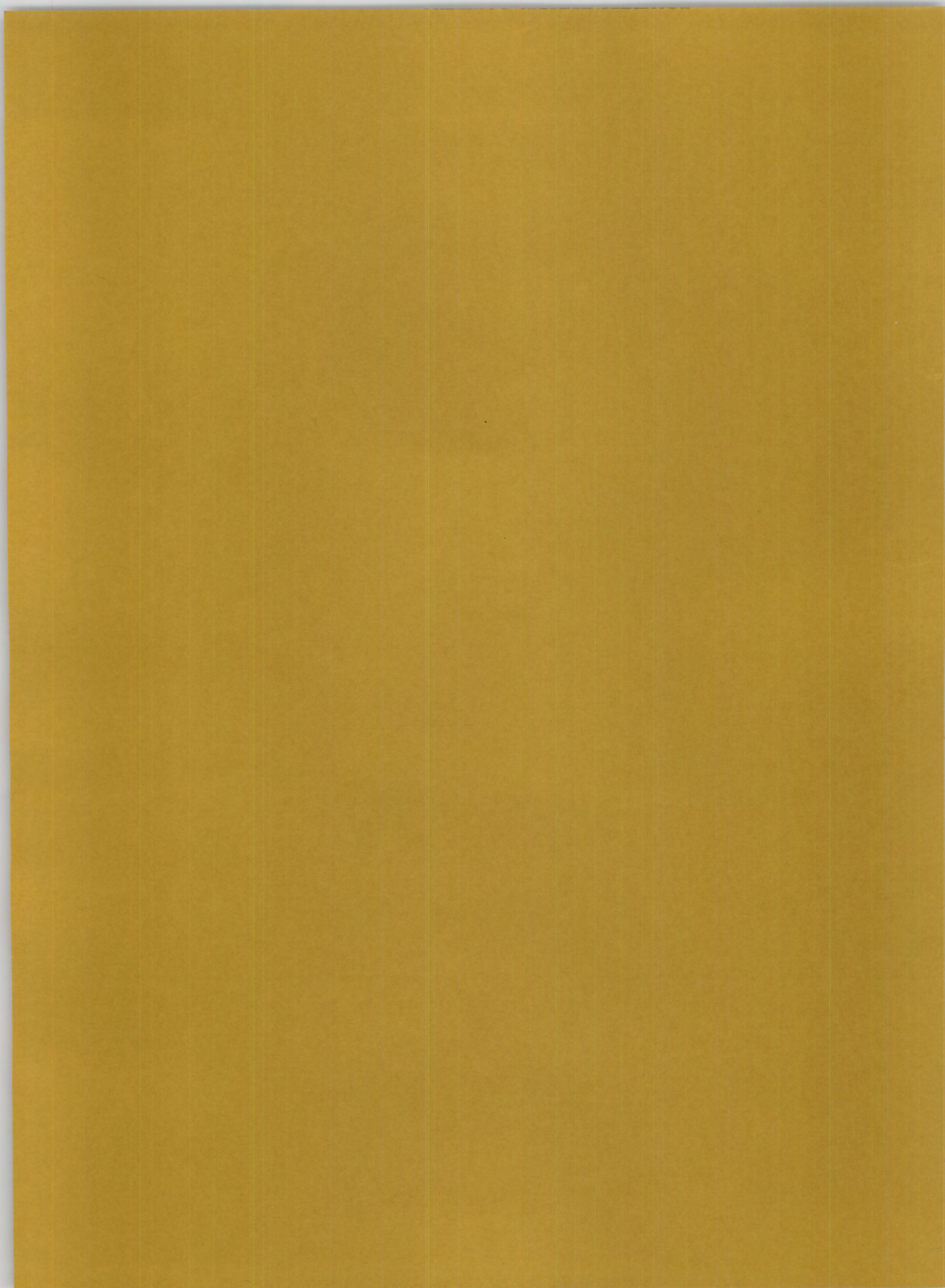


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ASSEMBLYMAN RALPH A. LOVEYS (Chairman): I would like to call this hearing to order, and at this time introduce the Assembly panel. The members who are with us today are Assemblyman Karl Weidel, Assemblyman Jack Rafferty, and Assemblyman Gerry Zecker. I'm Ralph Loveys, and this is Laurine Purola, our Aide to the Committee, and our new Aide, Kathy Poole. I was hoping that Mayor Priore would be here at this time so I could personally thank him for his hospitality today, but I'm sure I'll see him before the day is out.

I want to welcome you today to the last of three public hearings which the Assembly Insurance Committee is holding on the subject of public entity insurance. As you are all well aware, the lack of availability and the cost of liability coverage for public bodies is a matter of great concern.

We have heard testimony from public officials whose municipalities have had premium increases which have amounted to as much as 2000% over the previous year's premium. This is not a new problem. As most of you know -- and as Pat Allocca (phonetic spelling) pointed out to me today -- 25 years ago he attended hearings such as these in Trenton, and as most of you know, there were similar problems in 1968 and in 1977. In both cases, the crisis passed and no legislative solution appeared to be necessary.

The present crisis, however, seems to be somewhat different. There are fundamental problems within the commercial insurance industry itself. Heavy losses have caused premiums to be raised sharply. A number of reinsurers have either left the market or substantially limited their writings. Uncertainties about the possible effects upon municipalities of litigation relating to pollution liability have caused insurers to be wary of writing insurance for public bodies because of the potentially immense exposure to loss.

Some of the industry's problems may have been caused by, or at least aggravated by, commercial deregulation. We do

not know this to be the case, but it is one of the aspects of the problem which we intend to examine. Clearly, measures must be taken promptly to ensure that insurance coverage is available to public bodies at reasonable rates.

We have come into these hearings with no preconceived ideas as to the appropriate solution to the problem. We are here to listen to your testimony and to assess precisely what the nature of the problem is, and then we will formulate a legislative package which we hope will provide a lasting solution, rather than a temporary response to the immediate problem.

We will appreciate hearing from you about the kinds of coverage you have, your claims experience, and the problems you have experienced in securing coverage at a reasonable cost. We seek your cooperation in sharing your views with us fully, so that we in the Legislature can create legislation which, when it emerges, will be something which will contribute to solving the problems which so many of us are facing in this area.

Again, this is the third hearing that we have had on this subject matter. Hopefully, we in the Legislature can produce some meaningful bills within the next 10 days to 14 weeks, for introduction. At least this is our goal.

So, at this time, we will have our first testimony. I would like to call on Freeholder Walter Luger. Walter, if you would come forward, please. Mr. Luger, I think you said Mary Lou Doner, Director of the Office of Risk Management, is with you. Mr. Luger.

F R E E H O L D E R W A L T E R L U G E R: Mr. Chairman, members of the Committee, ladies and gentlemen: I am Freeholder Walter Luger, and on behalf of my Board I wish to welcome you to Morris County.

I am Chairman of the Morris County Board of Chosen Freeholder's Administration and Finance Committee, and it is in that capacity that I am addressing you today. With me is Mary Louise Doner, our Director of Risk Management.

I want to thank you for giving me this opportunity to discuss one of the most pressing problems we in local government face today.

I think we all recognize that we are talking about money, spending more for insurance and getting less, with no prospects of anything changing for the better in the foreseeable future.

To give you some dimension to Morris County's insurance problem, our 1986 budget had to include an increase in premiums of almost 37%, skyrocketing from \$5.9 million to more than \$8.1 million, with the same policies covering fewer items, and I know this tale will be repeated ad infinitum as your inquiry crosses the State.

However, it is not my function to serve as the bearer of bad tidings, but to offer a few suggestions from my Board that may be of some use in your deliberations.

First, we support the concept of legislation that would cap the liabilities of local governments. The mechanisms could involve specific thresholds and specific caps, except in cases involving proven criminal acts.

Next, we would urge this Committee to take volunteers out of the line of fire, for appointees who serve without pay on advisory boards, committees or commissions are discovering that they, too, may be assuming financial liability in suits directed against the agencies on which they serve.

Without this protection, we will almost assuredly find that the pool of able, public-minded citizens who serve without pay and often at great personal cost, will no longer be willing to serve once they become aware that they are placing their personal fortunes at risk.

Third, we suggest this board investigate the possibility of using court-appointed masters to settle those disputes that could not be avoided, with the decisions on fees and awards subjected to binding arbitration.

Often the ancillary costs of litigation are not considered when the insurance issue is discussed, but Morris County is facing a very real need for two new judges of the Superior Court to help keep up with the growing number of negligence cases clogging our courts. I need not remind you that the price of justice is equivalent to buying a Rolls Royce when a pickup truck should do.

We are not unsympathetic to the plight of the insurance carriers who are besieged by an increasingly litigious society and the rising costs of jury settlements, but local governments are seeing their budgets pushed higher and higher by costs over which they have no control and cutbacks in Federal and State aid.

There has to be some limit set, or else we are faced with the dreary prospects of initiating higher and higher taxes which will have to be absorbed by the local property taxes, and, in the final analysis, the homeowners who are already finding their tax burdens climbing faster than their incomes.

If you have any questions, Mrs. Doner and I will attempt to answer them, and again, let me thank you for this opportunity to share these thoughts with you. We are also submitting Mrs. Doner's statement in writing, and I believe she is going to make that statement now.

ASSEMBLYMAN LOVEYS: Why don't you do that, and then we will ask questions, if we have some.

M A R Y L O U I S E D O N E R: In 1985, most local governments fell victim to a new foe, "the insurance industry." Stories of exorbitant premium increases have become commonplace. Morris County is no exception.

All of us in local and County government have been charged with various responsibilities for our taxpayers. We are all required to perform risky functions on behalf of our citizens. Examples of "risky" functions found in Morris County are:

- 1) Our Department of Aging with its eight nutrition sites;
- 2) Our County College of Morris with 11,000 students;
- 3) Our jail with 220 inmates;
- 4) Our nursing home with 442 beds;
- 5) Our Mosquito and Shade Tree Commissions with insecticides and pesticides;
- 6) Our parks with 22 recreational facilities;
- 7) Our Private Industry Council with 600 participants in its Summer Youth Program;
- 8) Our Public Works Department with 294 miles of roads and 1200 culverts and bridges;
- 9) Our Sheriff's Department with law enforcement investigations and operation of the jail, court security, and services to municipalities;
- 10) Our prosecutor's office with 50 full-time detectives and investigators;
- 11) Our Probation Department which sponsors the Community Service Workers Program; and,
- 12) Our vocational school with 1200 students.

I am sure that this list of risky functions sounds very familiar to those present here today.

Since we are all required to perform these services on behalf of our taxpayers, those of us in local and County government are exposed to more litigation. As a result, we have no choice but to adequately protect ourselves through insurance or alternative strategies. This used to be a relatively easy and not financially burdensome task. But in 1985, local and County governments have had to say "adios" to this notion. I feel relatively safe in saying that at this time, in our State of New Jersey, almost all public entities have either had their premiums increased, their coverages reduced, their limits pruned, or otherwise suffered an overall decline in their ability to effectively transfer risk.

Since Morris County has a sound Risk Management Program, loss control has been good. In 1985, the County had less than \$20,000 in outstanding general liability claim reserves.

Despite this excellent loss history, the County faced a very sizeable premium increase this year at renewal time; namely, an increase in cost from \$600,000 in 1985 to \$1,315,000 in 1986, a 220% increase.

Perhaps the hardest hit was our Morris View Nursing Home facility. During 1985, only two claims were reported to the insurance carrier. Investigation has indicated that these claims were frivolous and in all probability can be successfully defended. Yet despite this, the liability insurance premium for the nursing home rose from \$14,000 in 1985 to \$132,500 in 1986, a 946% increase.

Morris County also has had to deal with reductions in coverages in 1986. This year, the County has lost its \$15 million excess policy. Although we are currently attempting to place this coverage, the picture looks bleak.

Everyone gathered here today would have no problem agreeing that a crisis does exist. We must put on our thinking caps and look for solutions. We must not rollover and play dead.

An area for consideration is in tort reform. The idea of tort reform is not new. To effectively manage risk, predict losses over a period of time, and establish sound loss funds, local and County governments need the certainty that can be afforded by reforms in our civil justice system; for example:

- 1) Consideration should be given to limiting economic damages and placing limits or awards for pain and suffering. We must stop playing Russian roulette when a case goes to trial;
- 2) The use of attorneys' contingency fees needs to be examined and either limited or their existence made known to the jury and the judge;

3) Mandatory use of mediation and arbitration before a claim can enter the court system;

4) Set requirements for structured settlements for both the plaintiff's recovery and the attorney's fees; and,

5) Local and County governments should be allowed to recover defense costs on frivolous lawsuits.

In closing, it is crucial that Federal, State, County, and municipal governments work together to position themselves to cope throughout this crisis. I urge this Committee to see if any adjustments in statutes or regulatory rules are deemed in the public interest.

ASSEMBLYMAN LOVEYS: Thank you. Walter, I have one question for you, if you will. I assume you are aware of Senator Lesniak's bill regarding excess funding.

MR. LUGER: Yes.

ASSEMBLYMAN LOVEYS: And the League, I think, has taken a position on that. Are you aware of this particular bill, and what is your feeling about it on a mandatory basis?

MR. LUGER: Yes, I am aware of it. As a matter of fact, this past Monday -- I am also the Morris County representative to the New Jersey Association of Counties and am on the Legislation Committee for that group -- we endorsed the bill, so we definitely are in favor of it. This would-- If I remember correctly and if I am speaking about the same bill -- I think there were several -- this is the one where you are going to have some limit -- approximately \$500,000 -- to a municipality, and after that you will have a State pool. Certainly, I think we would support that kind of a concept. I think it is just something that has to happen.

I think we had some questions about it being mandatory, but I don't know how else you could do it. It just seems to me that if you don't, the people who are having the real problems, and the claims, and so forth, will be there, and any others won't be there, and that sort of defeats, I think,

the purpose of everybody's sharing of this, as far as the purpose of insurance is concerned.

ASSEMBLYMAN LOVEYS: And, Mary Lou, for you, if you will, could you indicate at all what types of claims have been filed against the County and to what degree, monetarily, in the last year or so?

MRS. DONER: In the last five years, we have only had one claim with a reserve of over \$500,000. The allegation brought against the County was for an icy road condition on one of our County roads. The majority of the suits filed against the County address the issue of a dangerous road condition, or a road defect, or a bridge design of some type. I would say that that takes about 75% of the claims filed.

The additional 25% will probably be a fall-down in one of our County buildings or in an arena ice-skating accident, or something to that effect. But about three-quarters of them are alleged dangerous road conditions.

ASSEMBLYMAN LOVEYS: Any questions? Yes, Mr. Zecker?

ASSEMBLYMAN ZECKER: Did the Chairman limit you to five minutes of testimony? You both talked so fast, but you brought up a lot of good points. We will be getting copies of your testimony, right?

MR. LUGER: Yes.

ASSEMBLYMAN ZECKER: You alluded to an approximate 37% increase, but I thought you said \$5 million to \$8 million in insurance.

MR. LUGER: Yes, \$5.9 million to \$8.1 million, and that's, I think, our total coverage.

ASSEMBLYMAN ZECKER: Predominantly, you know, where was the-- The liability policy went from \$600,000 to 1.31. That's not even including your excess policy?

MR. LUGER: We don't have one.

ASSEMBLYMAN ZECKER: No, you said you had a problem placing your \$15 million excess.

MRS. DONER: We do have an excess policy right now in the County. Last year, I believe it was-- I have the figures back there, but it was approximately-- It went from, like-- There was almost a 1000% increase. It went from, like, \$15,000 to, oh, \$300,000, or something like that.

ASSEMBLYMAN ZECKER: Last year?

MRS. DONER: Yes.

ASSEMBLYMAN ZECKER: The excess policy?

MRS. DONER: The one excess policy that we were able to write. We had, last year, \$25 million in excess coverage.

ASSEMBLYMAN ZECKER: Oh, wait, this is very important. Where does your excess policy begin? It caps out at \$25 million. Where did it begin, at \$5 million or \$3 million?

MRS. DONER: We have-- Our primary coverage caps out at \$1 million.

ASSEMBLYMAN ZECKER: Okay, so--

MRS. DONER: Last year we had two excess policies: one for \$10 million--

ASSEMBLYMAN ZECKER: Yes?

MRS. DONER: --and then another one for \$15 million above the \$10 million. We were not--

ASSEMBLYMAN ZECKER: What happened to those two last year?

MRS. DONER: Do you mean for this year, for '86?

ASSEMBLYMAN ZECKER: Well, you've lost them for this year?

MRS. DONER: We've only lost the \$15 million above the \$10 million.

ASSEMBLYMAN ZECKER: What were the premiums on those?

MRS. DONER: If you want me to go back-- I have that.

ASSEMBLYMAN ZECKER: Well, maybe you could supply the Committee with those premiums.

MRS. DONER: Okay.

ASSEMBLYMAN ZECKER: Do you know who they were written with?

MRS. DONER: Yes, they were written with the Great American Insurance Company.

ASSEMBLYMAN ZECKER: You obviously went back to Great American--

MRS. DONER: I'm sorry, the American Insurance Company.

ASSEMBLYMAN ZECKER: American, okay. You went back to American and said, "Why are we having problems?" -- right?

MRS. DONER: Mmm hmm.

ASSEMBLYMAN ZECKER: What answer did they give you?

MRS. DONER: Reinsurers.

ASSEMBLYMAN ZECKER: Pardon?

MRS. DONER: The reinsurers.

ASSEMBLYMAN ZECKER: They said the problem was the reinsurers?

MRS. DONER: Yes.

ASSEMBLYMAN ZECKER: Did you go to the reinsurers?

MR. LUGER: I can tell you that at one point they said that they were not going to renew the policies. We happen to have, we think, a pretty good agent, and he got together with the powers in the particular company, and we were fortunate to have them at least continue the coverage, but with a substantial premium increase. So, I--

ASSEMBLYMAN ZECKER: The reason is, I have been asking everyone who testifies-- When the carrier says, "We are not going to write it," or "We are going to increase the premium," you know, and your loss ratios are as good as you say they are, the obvious question would be, "Why is our insurance going up?" or "Why is our excess being cancelled?" and the answer that we have been getting on the reinsurance problem is general market conditions. That has been what the communities or the counties have been told. Is that the answer? I don't mean to lead you

on, but is that the answer you have been given -- general market conditions?

MR. LUGER: I think basically that is what they are saying to us. I think they are probably unhappy about some of the regulation, very frankly, that they have been receiving from--

ASSEMBLYMAN ZECKER: Yeah, but see, you think that. They have been making statements. That is what we want to find out. You know, there's got to be something better than a vague statement like "general market conditions." They don't put anything specific on it. Have they told you anything specific that is happening in your County that is leading them not to write excess insurance, or increasing the premiums the way they are?

MR. LUGER: No. I think with the ratio of the loss (indiscernable) we had, there is no reason for it, so they are just saying, "Just the market conditions." That's basically it. They're covering themselves, that's all. I don't think that there is a good basis for it in this particular County, and yet, our premiums have gone from what they were to what they are now.

As a matter of fact, we have been trying to get public officials' liability insurance for a number of years, and we finally got a quote this year. The quote was somewhere in the neighborhood of \$355,000 for no coverage. They weren't willing to take any risks, so we decided, in fact, that Morris County will self-insure as far as the public, and we have begun our own fund. We have appointed a Board of Commissioners, and we will undertake our own public liability -- officials' insurance.

ASSEMBLYMAN ZECKER: Ralph did ask you the one question, you know, about your loss runs. You stated that in '85, it was approximately \$20,000 in liability--

MRS. DONER: Which is excellent.

ASSEMBLYMAN ZECKER: Then my question to you was going to be -- and Ralph asked it -- the previous four years-- Were you trying to hide something from testimony?

MRS. DONER: Oh, no, no.

ASSEMBLYMAN ZECKER: Was your experience just as good during the whole five-year period?

MRS. DONER: During the whole five-year period, we have had only one claim with an outstanding reserve of \$500,000 or more. We have had no claims with outstanding reserves that--

ASSEMBLYMAN ZECKER: It's reserved at \$500,000; it has not yet been settled?

MRS. DONER: No. It's reserved. The case is still in litigation.

ASSEMBLYMAN ZECKER: Up until this year -- during the previous four years -- what was the percentage of growth on the premiums? Did you have anything generally?

MRS. DONER: I would guesstimate it at about no more than 10%, I would say. (consults with Mr. Luger) Yeah, about 10%.

ASSEMBLYMAN ZECKER: So for the previous four years, about 10% a year in increase, and then this year, the kind of numbers that we have been hearing.

ASSEMBLYMAN LOVEYS: Mr. Zecker, excuse me, just for one--

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN LOVEYS: The reason I didn't pursue the \$500,000 claim is, it happened to be in Florham Park when I was Mayor of the community. (laughter) So-- I only say that in jest.

ASSEMBLYMAN ZECKER: Let's get into that more. Did it involve Ralph at all? (laughter)

No, if you could just get to the Committee the names of the carriers, you know, I think that would be interesting. I would like to know more about that and, you know, your

five-year loss run and the names of the carriers you had during the past five years. We are going to be calling on many of the carriers for, possibly, their explanation as to why this is happening. I think your example is a good example of a well-run County that is now being asked to pay exorbitant amounts for insurance, and are being restricted in getting the kind of insurance that you need.

I thank you for your testimony.

ASSEMBLYMAN LOVEYS: Mr. Weidel, questions?

ASSEMBLYMAN WEIDEL: Mr. Luger, from your testimony, you're fortunate in that you are still getting carriers to write your insurance, except for your public officials' insurance, right?

MR. LUGER: Yes, we agree with that.

ASSEMBLYMAN WEIDEL: And your excess on the last \$15 million?

MR. LUGER: Yes.

ASSEMBLYMAN WEIDEL: When the insurance companies -- when they said something to you about reinsurance, did they elaborate on it? Did they just say they couldn't get reinsurance, or did they indicate that they didn't want to pay the premium for reinsurance?

MR. LUGER: They primarily indicated that they didn't want to renew the policies, and they just attributed it to market conditions. Really, they're saying that they don't want to be in this business. That is the impression we're getting. They're not saying it directly to me or to Mary Lou; they're saying it to our agent, who is Jack Predo (phonetic spelling). As I say--

ASSEMBLYMAN WEIDEL: And they don't get specific as to whether or not they can get reinsurance or whether or not they don't know what the liability is that they are trying to cover under the standard policy. They just say market conditions. That covers a lot of things, doesn't it?

MR. LUGER: They say that, and then they say that with some of the losses-- I guess there have been some tremendous losses. I understand that pollution is becoming more and more of a problem. So, apparently, there have been at least one or two pollution settlements around the State, and the indication is that they don't want any part of that. And Morris County is looking at a solid waste problem situation, as are most counties in the State, so the insurance carriers are saying, "We don't want any part of it because we know it's risky, and there is going to be a lot more of it." That is all part of the general market that they are telling us about. They're saying, "We just don't want it."

ASSEMBLYMAN WEIDEL: As sort of the lead agency or, you know, the County government here in Morris County, you have carriers which are writing your insurance except for those two exceptions. Do you hear from your municipalities as to whether or not they are self-insured?

MR. LUGER: I don't believe-- I know some municipalities have spoken about it. The problem we have, of course, is with losses. I think they are in the same situation as we are. I don't think they are getting the coverages that they want; they are getting the tremendous premium increases, and so forth. Are you talking about some kind of a cooperative effort between the County and the municipalities? I think that has been broached. We have a League of Municipalities here in this County and we have touched on it from time to time, but I don't think we have done anything serious up to this point. It becomes a problem because in Morris County, of course, our first concern is for the taxpayers of the County, and the taxes that we raise, and we happen to have excellent loss records, and so forth. We are anxious to maintain those.

So, if we were to form some kind of a pool with the municipalities, it might have to be on a selective basis, or it is conceivable that we would have the same problem as far as

them participating as we are having getting insurance -- as they are having getting insurance. However, that may all change. If there is no other market, maybe we are going to have to look at it. And I'll tell you very frankly, more self-insurance is part of our plans. We certainly will be investigating that possibility, first of all, on a County basis only; that is, the County family, which would include the College, some of our Commissions, anything that is really part of the family.

I think if we do well in that area, if that is the way we finally go, then of course we would certainly consider doing something with our municipalities, if that is the only alternative that is left, because obviously the municipalities are the same taxpayers that we are serving, you know, as County officials.

ASSEMBLYMAN WEIDEL: Thank you very much.

ASSEMBLYMAN LOVEYS: Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: Just one question for Mrs. Doner. You mentioned the 946% increase in insurance coverage for the nursing home. Is that one year?

MRS. DONER: One year.

ASSEMBLYMAN RAFFERTY: That was from \$14,000 to approximately--

MRS. DONER: \$133,000.

ASSEMBLYMAN RAFFERTY: Thank you.

ASSEMBLYMAN LOVEYS: Thank you very much.

MR. LUGER: Okay. Thank you all.

ASSEMBLYMAN LOVEYS: Before I call the next person to testify, I would like to inform all of you that we have some 22 people listed to testify today, and that's all right with us. We'll take all the time we can, because the subject matter is so vital to all of us. But just as a way of information to you, and to everyone else out there, I would like you to know that this is the third hearing. We've heard people-- Close to

20 have testified thus far. We have 22 today to testify, and we have yet to hear from an insurance company; however, we do not have an insurance company listed to speak before us today.

I am suggesting to everyone that that will not be the case; that will not continue, for we plan in the very near future to make sure that we have testimony from the insurance companies.

At this time I would like to call on the Mayor of West Orange, Sam Spina. Mayor?

M A Y O R S A M U E L S P I N A: Assemblymen, ladies and gentlemen: I am Mayor Samuel Spina of the Township of West Orange. Seated next to me is Martin Corwin, our Business Administrator.

I somehow feel that West Orange served as the focal point of the insurance crisis. I think we certainly created an awareness not too long ago when it was discovered by us that we had absolutely no insurance, that our cars were out on the road without insurance cards. I can't help but feel that there are many municipalities throughout the State that are not totally aware of what type of coverage they have at the present time, or how much it is going to actually cost them. Many municipalities are going to find out the hard way that they are basically self-insured.

Our problem arose when the insurance company that was insuring us last year went out of business. As a result, we didn't have any coverage for this year. So we scrambled about, found that it was extremely difficult, if not impossible to get policies, so we opted for a self-insurance program. However, through some local problems, that did not come to fruition, and, at the moment, it probably will come back.

Our problem was, where do we go without any insurance? We finally did get an outfit from out of State, which is not approved or not rated -- I believe they are the terms -- not admitted in the State of New Jersey, which means

that the Insurance Fund does not guarantee anything. Now, we have had experience in that field because two of the insurance companies that we have been doing business with have gone out of business, both Transit and Ambassador. So, it was very important to us that we get an approved insurance company.

I am not here to dwell on what caused the problems, but what can be done to help to alleviate the crisis. There are a number of situations. I think most municipalities better look at the deductible part of their insurance policies and their maximums, because they are going to find out that they are paying an awful lot of money for very little coverage. There are probably more exclusions in the policies than there are inclusions, and in many cases, municipalities are putting money down without even having the policy in their hands.

First of all, we would suggest that there must be a cap on the amount of any suit. It could be a variable type of cap dependent upon the condition we are dealing with. There certainly should be a cap put on the pain and suffering aspect of any case.

Two, there must be some sort of sanctions placed against the person, or an attorney, who files a frivolous suit, perhaps a monetary penalty, because in many cases, what does one have to lose by filing a suit against a municipality? Most municipalities are covered by an insurance company which is very impersonal to the municipality, and they will very readily pay a small amount -- \$20,000, \$30,000 -- to get rid of what is a nuisance suit.

Claims must be investigated and processed in a very prompt manner. We have cases going back to 1984 which have not come to fruition. This is unheard of. This is the responsibility of the insurance company or their adjuster. The insurance company does not seem to put its heart into defending a municipality. It would much rather pay the nuisance fee -- whatever it may be -- to get the case out of the way, instead

of going to trial and fighting it. And perhaps there is justification for that, because when they do go, there may be a sympathetic jury which says, "Oh that's just too bad what happened to that person. I think he should get two or three hundred thousand dollars," whereas the nuisance value may only be \$20,000.

Suits against a municipality should be initiated only for matters directly attributable to them. This comes back to the deep pocket theory. If I were an attorney -- and I'm not -- I would certainly sue the municipality, the County government, the State government -- I'd sue everybody in sight, because that is the fashionable thing to do, and somewhere along the way you might get someone who has a very minor -- a very minor -- part of responsibility. It seems grossly unfair that because of incompetence or negligence on the part of someone, of their own doing, they end up drawing the municipality into the case, and because the municipality-- Maybe a branch of a tree came down in front of a stop sign when the wind was blowing or something, and the municipality is the one that is hit with the total amount, or the bulk of the settlement.

There must be culpability on the part of the person bringing suit against a municipality. It seems totally incongruous and ridiculous that a person who is violating the law by breaking into a municipal building, or a school, who injures himself, then turns around and sues the school or the municipality, and is usually awarded a very handsome fee, or a handsome settlement. That's utterly ridiculous. If a person is breaking the law, he should have no rights to sue a municipality or a board of education or any other body.

There should be structured payments so as not to decimate a municipal treasury, so if a municipality is hit, or an insurance company is hit with a million dollar case-- And that's what we are all worried about, ladies and gentlemen, the

big hit. We can deal with the \$20,000, the \$30,000, the \$100,000 case, but when a big hit comes along of \$6 million or \$7 million, then you've got a problem. That should be structured so as to pay it over a long period of time.

There should be no payment to an insurance company or a broker until the policy is written and issued. This is particularly true of non-approved, out-of-state insurance companies. We had this opportunity and, as I said, there were more exclusions. It doesn't seem to make sense in this day and age, when everyone is environmentally conscious, to have environmental issues excluded.

West Orange is sitting on a pile of radon down there -- radium, which is causing a radon problem -- and any day we can get hit with a suit, and even if we had insurance, for which we would have to pay a considerable amount of money, it wouldn't do us any good, because that is an exclusion. Asbestos is an exclusion; child molestation is an exclusion; professional police liability is an exclusion. Good heavens, what's covered?

Consideration should also be given to establishing a State-sponsored excess coverage pool. I think this is what Assemblyman Loveys was talking about. Senator Lesniak's proposal that there should be an excess coverage pool, funded by the State as a start-up, and then to be financed by municipalities. It could be similar to an assigned risk, which is now in effect for auto insurance, but there must be controlled premiums and there must be a threshold established.

Thank you for this opportunity to be with you. If you have any questions of either my Business Administrator or myself, we will be more than happy to answer them.

ASSEMBLYMAN LOVEYS: Thank you, Mayor. Just in response to one of the things you mentioned earlier about the risk management programs of municipalities, we're finding out that what you're saying might be, in fact, very true, that a

lot of communities do not have the programs that we were hoping to find that they had. It might be well worth this body, or another body, having maybe a little educational program for our communities and municipalities on the risk management area. That was a very good point that you brought out.

I've got some questions to ask you, but maybe-- Gerry, do you have a question for Sam?

ASSEMBLYMAN ZECKER: No. Mayor, I would just like to say that you brought up 10 good points, and I think I speak on behalf of the entire Committee. I think you zeroed in on most of our concerns and came up with a lot of good suggestions that we, too, are looking into.

Rather than dwelling on the problem, you have come up with many solutions which I think are excellent.

MAYOR SPINA: Thank you, Assemblyman.

ASSEMBLYMAN ZECKER: We are looking into them. I think you and I happen to agree on many of these issues. You know, having been a mayor of a large city, I think it really hurts when a criminal breaks into a property and one of our police officers accidentally shoots him, and we have to settle for \$30,000 or \$40,000. I think it is ludicrous. I happen to agree with you very strongly on that, and many of your other points.

I thank you for coming up with the solutions, rather than reiterating the problems.

MAYOR SPINA: Assemblyman, if I may just tailgate on what you said, a horror story, in our municipality an incident occurred. Our police did their duty. They arrested the people. Charges were brought against the people. The people pleaded guilty in court, and the next day they went out and sued the Police Department, the Chief, the Council, and myself. Now that just doesn't seem right after they pleaded guilty in court.

ASSEMBLYMAN LOVEYS: Mr. Weidel?

ASSEMBLYMAN WEIDEL: Sir, would you-- Mayor, would you and your Business Administrator enlighten me on this non-admitted carrier that you have insurance with? Who can you serve process on with a non-admitted carrier? How do you control them? Suppose they just say, "We'll take your premium," and when you have a claim they don't pay it?

MAYOR SPINA: Assemblyman, that's it.

M A R T I N C O R W I N: Well, that is the question I was asked, and the answer is, you go to Illinois and you try to get your money back. Our recommendation is to not even take it. It was throwing a half a million dollars away. You had to give it up front without a policy on a binder, not knowing what was covered or what was not covered.

One of the things that is happening now with insurance companies' costs of claim, legal and so forth-- It used to be outside the limits of the claim -- of your policy. Now, it is going to be included. This is why if you ask the question of most people, "Do you have a policy?" most do not have a policy; they have a binder. The insurance companies are waiting for approval to have a form written that excludes -- that includes part of bases, the cost of claim, which means that if you have a policy that has a deductible, you are going to pay for the legal defense and the cost of that claim.

We were offered coverage with huge deductibles. Basically, I think, since I have been there, the biggest claim we've had, I think, was a \$300,000 claim when someone was playing softball and slid into second base. Our claims have been rather small. So basically, when you are going for a policy which is going to exclude a \$100,000 base, and will give you coverage up to \$1 million, they ought to charge you close to \$300,000 for the same coverage, which, if you look at it, you're paying total money and not having any coverage.

What's happening is, these basic amounts of exclusion are basically self-insurance retentions. Most municipalities

are probably not even providing for these items in their budgets. Most municipalities don't have excess over \$1 million, so if you do end up with a claim, there is no provision in budgets to cover this.

ASSEMBLYMAN WEIDEL: But, you're not-- If you'll excuse me, sir-- Don't you feel uncomfortable. You say you are going to have to go out to Illinois to see if you can chase them down to pay.

MR. CORWIN: We're not going because the Mayor refused to sanction the increase in budget to do it, and where three members of the Council wanted to do it, they can't. So the administration has secured that this will not happen unless the whole Council wants to do it. I guess maybe the Brooklyn Bridge will be up for sale again and we can sell that, too, or buy it.

MAYOR SPINA: Assemblyman--

ASSEMBLYMAN LOVEYS: Karl, you understand, too, the area which they are talking about now is only found in the surplus lines. We've got some difficulties in that area as well.

ASSEMBLYMAN WEIDEL: See, I learned yesterday -- which I never knew before -- that reinsurance carriers are not regulated. I'm trying to get-- When the insurance companies come in here-- I never realized it, but there is no regulation whatsoever on reinsurance carriers. So, a legitimate company that is admitted to do business in New Jersey is going out on the market, whether it is New Zealand, or Australia, wherever they can go -- England, or France, or wherever, Japan -- to buy reinsurance, but the reinsurance carriers-- I guess they're tiptoeing because the reinsurance carriers could walk away from them, too, and the rates that they charge.

I have another bill in which, of course, the lawyers don't like, but we'll have to see how that works out. You know, a lot of people testified about the insurance companies,

and not to be the devil's advocate, but they don't have to do business in New Jersey. They don't have to do business in Pennsylvania, or Ohio. I am always concerned that we, as a single State, can say to the carriers, "You can't do this," or "You have to do that and you have to do this." We may be out of line with the other 49 states, and somebody could turn around and we could end up with a State insurance company trying -- which we are doing with Lesniak's bill in a way, a State fund -- and we will end up with no insurance companies. State money in an insurance business -- I don't know where that is going to lead.

Are we talking about something that really should be done on a Federal level so we get some standardization?

MR. CORWIN: Well, by the time we wait for the Federal government to function, we could all be bankrupt.

ASSEMBLYMAN WEIDEL: Okay. Well then, would you say, sir, that what we ought to be able to do is to work a compromise between why the carriers don't want insurance -- some way to relieve them of some of the liability? You know, we just blightly say, "Oh, I can take care of the \$25,000 claim. I can take care of the \$50,000 claim," yet if your insurance premium goes from \$25,000 to \$100,000, all hell breaks loose because it went up three times what it was. But then in the other breath, we say, "Well, we don't worry about that \$25,000. We take care of that."

So, are we trying to-- Would you hope -- from your testimony to this Committee -- that when we come up with legislation-- Do you hope that we come in with some kind of a standardization and let there be a large deductible, let you take care of those things, limit the type of negligence, the frivolous suits part, so an insurance carrier can look at a policy and say, "We'll write this type of policy"? Is that what we're trying to-- Or who are we blaming?

MR. CORWIN: You're trying to get back to the point years ago when very few suits were allowed against municipalities. You're getting back to that point because, in fairness to the insurance companies, they are not going to take a premium of \$50,000 and pay out a \$3 million claim.

ASSEMBLYMAN WEIDEL: But the courts have eroded that, haven't they?

MR. CORWIN: Well, the courts are guided by the legislation of the land. The legislation should be to prevent and limit this from happening. That will then limit the exposure.

ASSEMBLYMAN WEIDEL: All right.

MR. CORWIN: Your biggest reinsurer -- Lloyd's of London -- has major problems. The insurance companies lay off their bets to the reinsurance companies. Something happens, and boom, they're gone. That's what you're coming up with now, alternatives with reinsurance. It's really not an alternative because you still have to self-insure the retention; you still have to self-insure the deductibles. You still have to come to the--

I don't believe that you can avoid a legislative solution. It has to be done; it has to be done quickly. It can't go on for much longer. But, do you know what's funny? We've only had the auto insurance under assigned risk. We've only had three claims because -- you know why? People say, "Why sue the municipality?" They like to sue the third party because the third party has money, because if you sue a municipality, basically you tell them, "Hey, sue us." They are not going to go to court and sue us. A lawyer will take a case and brief the court, but never try it if it is less than \$4,000 or \$5,000, because his share is not worth it.

So they play the game, and that is where a lot of small claims against insurance companies (indiscernable). Insurance companies settle because why pay \$10,000 to defend a

case when you can buy it out for two or three. That was one of the problems. With self-insurance, it's not going to happen, but this is not-- It's like Russian roulette. It's not the way to go. We may get by with it. We have self-insured our Workmen's Comp. In fact, the excess carrier on the compensation raised our premium 50%. So I told them to pack it, "I don't want it," because we've never had a claim, and I don't know how many people had claims that exceeded the threshold on compensation. So, instead of making 100% profit on \$25,000, he is now going to make zero profit on 38. We don't need it.

So, that's a position that was a good choice because we'll win. But, on the liability portion, we can't win unless the Legislature limits the exposure that a municipality or a county can have. And basically, if you look over the whole insurance industry -- doctors with their malpractice -- they'll pass it on to a patient. We'll pass it on to the taxpayer, but some businesses can't. What's going to happen is, where they can't get liability, they can't pay their taxes, so in the long run that domino effect will come back to us because the financial, or treasury will be reduced by the effects of the total. It's not only municipalities. Maybe because we're public it comes to light and people listen to us more readily than they would a business.

I had a friend of mine who rented Rent-A-Wrecks. He had 12 cars. It was paying \$6,000 for liability insurance. They raised him to 33. Do you know what he did? He went out of business. It's a small thing, but this is what, in effect, is happening. I think the insurance companies have been swallowed up, mostly by conglomerates, by people who really are not insurance people, who really don't care about what the effect is, but just bringing dollars in. So, when the interest rates were high, that was fine. They took the money in,

invested it out, bought land, did what they had to do. When the interest rates went down, they got caught.

So now they say, "Let's make it up," but instead of nickeling and diming it and doing it gradually where it is not a killer, they decide all in one shot to, "Let's triple, quadruple, 10 times, 20 times, and get it back at one time." What they did was cause a problem. The same way with all of us. We all have insurance on our houses. If someone comes and says, "We want to charge you \$100,000," you're going to stop and say, "Do I want to pay it?" You reach a point where you say, "Is it too costly to insure? What am I insuring?" And so far, the only things that I have seen in policies that will be covered-- If a missile from Mars hit this room today, we're covered. That's how ridiculous the industry is becoming. We are just pawns in this situation.

We sit as public officials trying to put together a budget. How do you put together a budget? What are you supposed to put in? What are you supposed to drop in to cover these contingencies? It's a problem, and as I go back, there is only one solution. It's a legislative solution which must be done rather quickly if we are to survive, because I guess one municipality -- a small one -- that gets hit for a large amount of money, will go bankrupt. Most of the municipalities will be able to raise the taxes, but a small one won't be able to do that.

So, the seeds of disaster have been planted. We don't have to wait for one to come before action is taken.

ASSEMBLYMAN LOVEYS: Mr. Rafferty, do you--

ASSEMBLYMAN RAFFERTY: Just one brief comment, Mr. Loveys. I want to thank the Mayor and the Business Administrator for appearing. Their testimony was very substantive and we appreciate it. And, Sam, you see two former mayors here -- and this is for the other local officials in the audience -- who will give you a little idea that we sympathize

with what you are going through -- two former mayors and councilmen. I am a Mayor with six years on the Council. Karl was a Freeholder for years in Mercer County. So we're just not coming in from the cold as Assembly people. We do have that experience. We have been through it, and we know what you are talking about. I just wanted to let you know that, and the other individuals who will testify subsequently.

MAYOR SPINA: Thank you, Assemblyman.

ASSEMBLYMAN RAFFERTY: It was good seeing you.

ASSEMBLYMAN LOVEYS: Thank you, Jack. You want to make one comment, Gerry?

ASSEMBLYMAN ZECKER: Yeah, just one comment on that \$3,000 to \$4,000 case. Many times the insurance companies do have to defend them, and the defense costs are \$20,000. That is one thing that you left off. The best file, sometimes, is the closed file, and it is a shame, because sometimes the defense costs become so high that it is economically more practical to settle that claim. I agree with you that a lot of the nuisance cases are costing carriers a fortune, which, in turn, is passed on with increased dollars.

ASSEMBLYMAN LOVEYS: Gentlemen, thank you; thank you so much.

Before I call the next person, I would like to recognize Senator Brown from District 26. Leanna, nice to have you here.

S E N A T O R L E A N N A B R O W N: (speaking from audience) Thank you, Mr. Chairman. I would just like to congratulate you and your Committee for holding this hearing in Parsippany. It has been a long time since we have had an Assembly meeting chaired here. I think it is testimony to the good turnout that you have here this morning that this is, again, a very key issue. I wish you all well and greetings from this part of the State of New Jersey.

ASSEMBLYMAN LOVEYS: Thank you, Leanna. At this time, I would like to call on Mr. Phil Kirschner of the New Jersey Bar Association. Maybe, Phil, you will have a little bit of the other side of this.

P H I L K I R S C H N E R: Thank you very much, Mr. Chairman. I'm Phil Kirschner, representing the New Jersey State Bar Association. We thank the Committee for taking a look at the cause of the unconscionable rate increases being suffered by public entities and liability insurance. We are well aware of the dramatic rate increases being suffered by public entities and, indeed, by many in the commercial liability field, including lawyers.

The Association, however, believes that much of your investigation into the causes of the rate increases will show what both Ralph Nader and Bob Hunter from the National Consumer Insurance Organization say is a manufactured crisis in the liability insurance market. That kind of thing has also been echoed in a seminar before the League of Municipalities. As many of you know, David Grubb, who is from the Department of Insurance here in New Jersey, and who works very, very hard on this municipal liability issue, was quoted as saying that municipalities are considered high risks, yet our claims experience suggests just the opposite. And he is very, very right. There is nothing, nothing at all in the claims experience that justifies rate increases of the type municipalities have gotten -- 500, 600, 1000, 2000%. I think if you asked all of the people here, and at your other hearings, each one of them would tell you that their own claims experience has been minimal, that they have not suffered many claims, or big claims, in terms of payout. Where are all these claims? Where are the claims justifying rate increases of five, six, ten times? What companies are paying out?

The only thing I have seen is a statement that -- even from the industry -- claims have increased 100% in four years.

I don't know whether that is true or not, but taking that at face value, that's 25% a year. Where do the companies get off charging municipalities and counties 900% in Hamilton Township, 1000% in Clifton, and places like that, with those kinds of rate increases? It's unconscionable. There's nothing in the claims experience that justifies that.

Therefore, before proceeding on some drastic revisions in the tort system, we urge you to find out the answers from the companies. What have been the number of claims, the rate of claims increases? What has been the rate of payout? See if it approaches anywhere, anywhere near 500%, 600%, 700%. I'm pretty sure you'll find that the answer is no, that it doesn't, that none of these people here today, or in the other parts of the State, have experienced anything in terms of their number of claims, or claims payouts, anywhere near that. It just doesn't exist.

I think what we have seen -- the events concerning the increased costs of liability insurance -- has been part of a strategy whereby the companies put pressure on the premium ratepayers, who then put pressure on their legislators for some relief. We don't think that you should permit that to happen and permit them to get away with it, because if you do, every time they feel that their profits are not enough, they are going to try the strategy again, and again, and again, if they get away with it.

The problem has been in the insurance market, not in the amount of claims or the total number of claims. The Association recognizes that the legal system and lawyers are easy scapegoats. It's easy to blame. Everybody looks at it and says, "Ah, uh-huh." If this were anything else-- That's why sometimes I'm a little amazed to see that the people who are getting hit with these costs, sometimes suspend their common sense. If it were anything else-- If it were the cost of cars going up five times, six times, ten times, they would

be all over the manufacturers of cars. Or the costs of other kinds of vehicles or municipal supplies; they would be all over the suppliers. But since it is the cost of insurance, or related to the legal system, people just say, "Oh, it's the legal system. Yes, we know you insurance companies have real problems. We will suggest reforms in those areas and do your bidding." That's ridiculous, I mean, when they themselves know that in their own towns and in their own counties they haven't suffered those increases. They haven't suffered those claims. It's always this mythical, "Well, it's in somebody else's town." But, you have gone all over the State, and I don't think you have found those towns that have suffered those increases, and certainly not on the statewide level. They're just not there, as the Insurance Department has said in terms of the State, or the League of Municipalities.

I don't really know -- since there have not been many specific bills in front of you -- about getting into a number of the alternatives that have been suggested. But one that we really feel strongly about -- and I'll get into others, if you want -- is the suggestion that there be some sort of cap. Again, you have to find out how many claims there have been where there have been payouts of whatever the cap is, if it's a half a million, whatever. I think from what I know, the answer was that last year there were three payouts, or possibly four, over \$500,000, in the whole State.

So what good would a cap do? And even in those three or four cases, generally those kinds of claims are reserved for the most serious injuries. The people who you hurt are not the nuisance people, the people getting \$2,000 and \$3,000. You're hurting the most seriously injured people by a cap. That's just not fair.

Another thing a cap does is, it rewards those who do the most harm. "If you really harm somebody a lot, we'll limit your liability to a certain amount. If you only hurt somebody

a little bit, well, that's okay, we'll pay the full freight." There's no sense in that. You know, a cap is just very arbitrary. You just pick a number, and it's just arbitrary. It has no relation to the damages suffered to the victim. It would be as arbitrary -- and I would turn it around -- that those asking for a cap, I suppose, would also support a minimum. You know, if you do prove your case, let's have a minimum of \$10,000. If you prove your case and you win, let's have an arbitrary floor, also, if you are going to have an arbitrary ceiling. That, of course, is ridiculous, and so is a cap. You just can't pick a number out of the air and say we are going to pay 'x' amount of dollars as a minimum and 'x' as a maximum.

The other thing I would implore you to do when many of these revisions in the tort system are being talked about is, look at the experience of other states. You know, it's great that people come into New Jersey and the insurers and say, "Well, let's have a cap, and let's do something with the tort system, and fees, and things like that." Go ask your colleagues, other legislators and mayors in other states, States like Pennsylvania and Iowa and Minnesota. Those are states that have some of the things that are being talked about now. Their municipalities also -- 500, 600, 1000% rate increases. There is no difference there. Call anybody you want, in any state across the country, any of your colleagues, and they'll tell you the same thing. Their municipalities are having the same problems and many of those states have the kinds of solutions that are being asked to be imposed here. There is no difference. They are having the same problems out there, too.

We think that the alternatives, both in the long-term and the short-term, are some of the following, which you should look into: One is competition in the insurance market. Right now, one of the problems is there is no place to go. There is

no other place to go. That is why there is some of the panic. If there was another outlet, if there was some competition, I don't know that we would see the problems as dramatic as they are, but there isn't. You should look into alternate ways for providing that competition, whether it be through other kinds of institutions, whether it be through self-insurance, whether it be through pools, whether it be through-- There's a bipartisan bill -- Senator Lesniak's -- and I think Assemblyman Shinn's, the reinsurance pool. Reinsurance is a tremendous problem. Assemblyman Weidel is right, they are not regulated either at the State or the Federal level.

Commercial deregulation should be looked at to see whether that was a good thing. Apparently, it has not been good in terms of looking at the types of rate increases since that act went into effect.

We think all these things should be looked at before a sort of quick fix is taken, or sort of drastic revisions in our tort system are enacted. You should ask what would be the effects of those enactments, and why haven't they worked in other states? The problem really lies, we truly believe, in the industry. There is nothing to back up the types of increases that are being suffered now. We really believe that a complete investigation of this crisis is warranted.

Thank you.

ASSEMBLYMAN LOVEYS: Phil, I have a couple of questions. We've heard testimony from public officials during these hearings. They indicate to us that municipalities are defendants in multi-party suits under the doctrine of joint and several liability. Eventually the municipality ends up paying a huge pot of the settlement, way more than the degree of the percentage of their involvement in the case. It has been alleged by others that this happens primarily because the attorneys, if you will, are going after the deep pockets.

Now, would you, would your Association, oppose legislation in this particular area of the doctrine of joint and several liability? What do you have to say about this particular situation?

MR. KIRSCHNER: Well, it certainly would depend on how it is structured. Generally, we are supportive of the doctrine of joint and several liability. The reason is, it is a balancing of the equities. The theory underpinning joint and several liability has always been that you may have, in a multiple defendant suit, a number of parties who are negligent to some degree. On the other side, you have a victim who, most times, is not negligent at all. And for the time being, we will just put aside those few cases where there is some contributory negligence by the plaintiff. But, most of the time, there is no contributory negligence by the plaintiff. So you have a victim who is not at fault at all.

The feeling has been that if somebody has to bear a little extra burden, better it be the people who are thought at least somewhat, than a victim who hasn't been at fault at all. And that entities -- public entities -- or just general organizational entities, are able to, at least in some way, insure against that kind of loss. An individual is not. An individual would have to bear that burden completely.

ASSEMBLYMAN LOVEYS: Excuse me, Phil. The example given to us was something in the neighborhood of \$690,000 for three defendants, two of whom had coverage of \$15,000, totaling \$30,000, and the municipality -- which I think was proven, at that time, 2% negligent -- ended up paying \$630,000, or something like that. You say that's fair?

MR. KIRSCHNER: I'm saying I don't know if in that case there was any contributory negligence by the plaintiff.

ASSEMBLYMAN LOVEYS: In that case there was, but it was very, very minor.

ASSEMBLYMAN RAFFERTY: Mr. Chairman, 35, 35, 28, and 2.

ASSEMBLYMAN LOVEYS: Okay. So, it was very, very minor.

MR. KIRSCHNER: I would have to look into that case because, even then, the municipality should not have been liable, if you're saying that there was 25 or 35% contributory negligence by the plaintiff. Okay?

ASSEMBLYMAN LOVEYS: Forget that percentage of negligence. The point I'm making is, the municipality, to the best of my knowledge, was only 2% in the negligent area, but ended up paying close to, or over, \$600,000 in a \$700,000 suit.

ASSEMBLYMAN ZECKER: There were three defendants, Ralph.

ASSEMBLYMAN LOVEYS: Yeah.

ASSEMBLYMAN ZECKER: The plaintiff was ruled 28% negligent.

ASSEMBLYMAN LOVEYS: All right.

ASSEMBLYMAN ZECKER: The two defendants were 35 and 35; the public entity was ruled to be 2% negligent. You know, 35 and 35 is 70, and 28 is 98, and 2% for the public entity. There were limits of liability, \$15,000 on the two defendants. The judgment was in the high numbers, so the money had to come out of the 2%, you know, the 2% negligence which was the public entity, and what was it, Ralph, \$690,000?

ASSEMBLYMAN LOVEYS: Six hundred and some odd thousand dollars.

ASSEMBLYMAN ZECKER: The public entity paid the 690 and had the right, you know, of subrogation against the negligent parties.

ASSEMBLYMAN LOVEYS: Right.

ASSEMBLYMAN ZECKER: They claimed bankruptcy, and the public entity had to pay the 690. So, privately, you would probably agree with us that that stinks. As a member of the

Bar Association, you are probably going to take the position, "Well, that happens once in a while."

MR. KIRSCHNER: Well, it does happen once in a while, you're right.

ASSEMBLYMAN ZECKER: Well, if it happens once to one municipality, it could bankrupt a municipality, Phil.

MR. KIRSCHNER: But I think what you have to--

ASSEMBLYMAN LOVEYS: No, the point is, if we want to move forward and produce legislation to see that that does not happen to municipalities, what is going to be our position?

MR. KIRSCHNER: Well, again, it would have to depend on how it is structured. Number one, I would like to see how often that happens, because first of all, you are only talking about multiple defendant suits, which are not the majority of suits. Most of the time there is not more than one defendant.

ASSEMBLYMAN LOVEYS: Fine. You wouldn't have any problem with it then if we did that?

MR. KIRSCHNER: No, I didn't say that.

ASSEMBLYMAN LOVEYS: Privately?

MR. KIRSCHNER: No, we would have a problem because I think you have to look at the situation. Again, perhaps there might be an exception where there is contributory negligence by the plaintiff, where the victim is not at fault at all. Okay? That victim wasn't at fault at all; the other defendants were at fault at some point. You use the 2% example. In the typical case, it is not 2%; in the typical case it may be 40 or 50 or 60% negligence. All right, 2% is a good argument if you're pushing that kind of reform, but it is generally the extreme case, and it is usually certainly not that low. It is more like 40, 50, 60, even 80 or 90%.

We have to look at the totality. We also have to look at the impact. What if we did that? Would there be any impact on rates. I can assure you-- Look at the other states which have done away with joint and several liability. Ask your

colleagues in other states what their experience has been in municipal liability. They will tell you, "We're having the same problems you are in New Jersey."

ASSEMBLYMAN LOVEYS: Yeah, I understand. As far as the rates as concerned, I might suggest to you that that is another area that we are going to look into, and we will probably do something because we know if we do something to stop or reduce the litigation in the State of New Jersey, then for sure we want to see that our experience in this area is taken into account when they do produce a rate that we have to pay in the insurance premiums. So, that we will be looking into.

One other area. It's been suggested, maybe to some of us too, that if a cap were included in some type of legislation, that the premium would be reduced. This has been suggested. I say to you, if our experience in the State -- statewide -- has been so low as far as any huge settlements are concerned, why would you object to a cap if we can reduce the premium by doing so?

MR. KIRSCHNER: Well, number one, I don't think you will find that the evidence says, in other states, that it reduces the premium.

ASSEMBLYMAN LOVEYS: I'm talking about the State of New Jersey.

MR. KIRSCHNER: I don't think you will find that at all because, number one, we're talking about so few cases at that. The reason that we--

ASSEMBLYMAN LOVEYS: Phil, excuse me. Maybe you didn't hear me, or maybe I didn't explain what I meant. You told me, in your testimony, that in the history and the experience in the State of New Jersey-- The experience has been very few cases with huge settlements. Did you not make that statement?

MR. KIRSCHNER: That's right.

ASSEMBLYMAN LOVEYS: If that is the case, why then would you object to us capping if we got word that that would reduce the premium?

MR. KIRSCHNER: Because, number one, it is a perversion of the system. It's just arbitrary. Even if it were just one case, even if there had been no cases over \$500,000 -- whatever the cap is -- I'm pretty certain you will find out that the number of cases is very, very small at that level. It's just not the right thing to do, for the reasons that I reiterated before. It is just arbitrary. You're hurting the people who have the worst injuries at that level. The few people--

ASSEMBLYMAN LOVEYS: But if we took care of that catastrophic area, would you then agree that it could be capped?

MR. KIRSCHNER: Well, we don't like the idea of a cap, but if you do--

ASSEMBLYMAN LOVEYS: But if the catastrophic area were taken care of?

MR. KIRSCHNER: If the victim is made whole, then we certainly would take another look at it.

ASSEMBLYMAN LOVEYS: Okay. I don't-- Mr. Zecker, do you have anything?

ASSEMBLYMAN ZECKER: Phil, so that we are not attacked that we are anti-attorney -- all right?-- By the way, if either one of my two daughters came home and told me she was marrying an attorney, I would be very happy for her. I want you to know that. (laughter) Not right now though, because they're only 10 and 12 years old. At 10 and 12 -- if it was going to be a couple more years, I would be very, very happy. I am not anti-attorney; none of us here are anti-attorney. I allude to the testimony that was given by Mayor Spina and Martin Corwin. They said-- Their concerns are about those shotgun types of suits, where the municipality is brought in. Right? They are not primarily negligent. They may be 5, 10,

15% negligent because a branch broke and blocked the stop sign. Maybe during a snowstorm or an icy period, potholes were created -- which many times happens within a 48- to 72-hour period -- those types of situations. An automobile accident; the week before a truck hurts a sidewalk. Do you understand what I'm saying? Not primarily liable. They suggested that we work on legislation that will try to get to the point where very few suits are allowed against public entities, and avoid the deep pocket attack and the nuisance claims.

Now, you're concerned about the serious injuries. Would you not agree that this Committee could honestly address the situation where those two, three, four -- the nuisance claims, the small ones, Phil -- are taken away from the public entities? The ones where we are dragged in; the municipalities are dragged in as third-party defendants. Do you understand what I'm saying? You know, Phil, that the nuisance ones, if every one of them were defended, most insurance companies would wind up going out of business, because their defense costs-- You know, many times you go \$15,000 and \$20,000 to defend a case where you do get a no-cause, that you could have settled for \$2,000 to \$3,000. That is why the carriers settle a lot of these nuisance claims.

Would you really be against us for trying to eliminate that type of nuisance legislation?

MR. KIRSCHNER: Well, I understand that goal. Again, I think you know that we have always looked at any reasonable claim. For instance, in the pollution liability area, or the hazardous waste area, the Bar Association did not--

ASSEMBLYMAN ZECKER: Pollution liability is very rarely nuisance value. Those are usually \$10 million and \$20 million demands.

MR. KIRSCHNER: I understand, but--

ASSEMBLYMAN ZECKER: The small ones, Phil?

MR. KIRSCHNER: I'm saying in those areas, the Bar Association has not opposed efforts, and we--

ASSEMBLYMAN ZECKER: But, how about the small ones, Phil?

MR. KIRSCHNER: Again, you're talking in a vacuum. We don't like to see, you know, frivolous claims because we strongly believe that most claims are not, and the few that are cause us more trouble because they taint all the other people who have legitimate causes of concern.

ASSEMBLYMAN ZECKER: Agreed. So we might have your support -- or your organization's support -- on legislation that would take out frivolous claims. We might.

MR. KIRSCHNER: Right, depending on what the claims are.

ASSEMBLYMAN ZECKER: That's fair.

ASSEMBLYMAN LOVEYS: Mr. Rafferty and Mr. Weidel, any questions for Mr. Kirschner? Karl, anything?

ASSEMBLYMAN WEIDEL: No. I've listened to Mr. Kirschner for a long time. He says the same thing at every public hearing. I like him.

ASSEMBLYMAN LOVEYS: Jack, do you have anything?

ASSEMBLYMAN ZECKER: Are you single?

MR. KIRSCHNER: No. (laughter)

ASSEMBLYMAN WEIDEL: I don't mean it that way. (laughter) I like him. I could say something; yeah, I will, now that I have been enticed. Phil, you will fight to the end, and I admire you for it. You're a representative of the lawyers and you're doing a good job as their Executive Director. But in all my years in the Legislature, I have never seen you give one inch on the right of lawyers to sue anybody for anything for whatever they want. We've asked, and we've asked, and we've asked, and you come in, and your testimony here is, "It's all the insurance companies; it's all the entities." It's never what the lawyers are going to do.

"Investigate this"? You investigate it. You have a bunch of lawyers who would be glad to to--

ASSEMBLYMAN LOVEYS: I would just as soon you didn't respond, because we have an awful lot of people here who want to testify.

ASSEMBLYMAN WEIDEL: Okay, I'm finished.

ASSEMBLYMAN LOVEYS: Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: No, I have nothing.

ASSEMBLYMAN LOVEYS: Phil, thank you very much.

Mayor Priore, I saw you enter the room. I don't know what your schedule is today. I wanted to publicly thank you for allowing us to be here today. Did you care to say anything, Frank, at this time?

M A Y O R F R A N K P R I O R E: No, I'm listening.

ASSEMBLYMAN LOVEYS: You're listening. Thank you very much. Drew Karpinski? May I call on Drew, who is the past President of the Professional Insurance Agency? Maybe we'll hear now from another different angle.

D R E W K A R P I N S K I: Mr. Chairman and members of the Committee, I want to thank you for the opportunity this morning to address you regarding the liability insurance problem facing the State of New Jersey.

I am here in several capacities. I am immediate past President of the Professional Insurance Agents of New Jersey. I am their legislative chairman this year. I am also currently the Chairman of the New Jersey Insurance Task Force on Environmental Issues, which is an all-industry group that is attempting to ask questions similar to the questions you're asking, and discussing some of the points that are being discussed here today and at your other meetings. We are working very steadily on a project that I will refer to a little later in my testimony.

I am also a professional insurance agent located here in Parsippany, New Jersey, insuring more than 2000 insureds in

the State of New Jersey -- both personal and commercial in nature -- having the technical ability to provide my insureds with the professional service they need. Not being an insurance company, and understanding, I think, to a certain degree, the insurance problems faced by many of the people today, the perceptions from our group, I think, reflect interactions and familiarity with problems in a uniquely informed way.

If I could, I'd just like to take a minute to restate what we see as the liability problem. The liability problem as we see it today has been caused in good part by substantial change in the American tort liability system. Simply put, we have moved from a fault-base system aimed at restitution for damages, to an alternative mechanism for compensation. While insurance readily available at very reasonable premiums fueled this trend over the past few years, the industry finds itself no longer able to do so.

Tort law has changed significantly, particularly the concepts of fault and proof. Starting with the asbestos cases of the '70s, toxic wastes, and Agent Orange cases, State and Federal courts have effectively replaced the necessity of a causal connection between activity and the injured party with the concept of joint and several liability, which was just discussed, I think, quite well.

Following this line of thinking, when an injury occurs, but individual liability is not established, it is presumed that all parties are fully liable. I think the case that we just heard cited, cited that very well. This concept has become the thought process for massive tort and latent liability cases, such as the approximate \$6 million Jackson Township case.

In addition, the burden of proof used to be on the plaintiff. Today that burden is increasingly borne by the defendant. Courts are increasingly using probability of

causation of risk in place of proof. It has been most recently reported that local governments -- and this is quite a staggering figure -- incur about \$1 million annually in defense costs, with a record number being threatened by bankruptcy. I believe there is a town -- a city -- Tucson, East Tucson, or West Tucson -- I just heard while I was down in Washington that, in fact, has filed bankruptcy.

There are three developments that have contributed significantly to the cost of civil justice. First, damages for pain and suffering, different from compensating damages for economic loss, have risen substantially. Secondly, punitive or exemplary damage awards to punish defendants for acts of malice or gross negligence have increased dramatically in amount and number. And, thirdly, attorneys' fees have grown at a phenomenal rate.

For example, it has been reported that in the 1950s, legal defense accounted for five cents of every insurance premium dollar. In 1983, legal defense accounted for 25 cents of every insurance premium dollar. Currently, it is estimated that the cost has risen to approximately 33 cents of every insurance premium dollar.

Regarding product liability claims, for every 66 cents received by claimants, 77 cents is being paid out in legal fees.

Here's some additional interesting and pertinent statistical information. In 1984, one private lawsuit was filed for every 15 Americans. In 1962, the first \$1 million verdict was handed down. In 1982, the number rose to 251, and in 1983, it rose to 360 -- 360 lawsuits in excess of \$1 million. In 1984, the average product liability award equaled \$1.07 million. The average medical malpractice award was \$950,000. Since 1950, the number of civil trials in Federal courts that lasted greater than 20 days increased more than 1000%.

In a recent case history, an expert gymnast was

awarded \$14.7 million against the manufacturer of a gym mat. Another jury awarded \$804,000 against the Corning Company because the company, quote, "Failed to warn the owner that the dishes might fall and shatter if stacked five deep with their lids inverted in the kitchen cabinet." End of quote.

Kentucky Senator, Mitch McConnell, stated that the theory in the gymnast case was that the manufacturer failed to warn the gymnast of the potential danger in doing one and a half roll-out flips onto a mat that was 18 inches thick.

Roughly two million cases are filed every year in state courts. Civil filings in Federal courts are up from 67,700 in 1965, to 274,000 in 1985. It should be noted that 57,000 of those suits were brought by the government regarding defaulted loans, but the number is still staggering.

A recent Rand Corporation sample of 9000 jury awards found that when the defendant was a corporation, the average award was \$161,000. When it was the government, the average was \$98,000. But, when it was an individual, it was \$37,000.

Aggravating the tort liability system and leading to the current problems of availability and affordability of insurance is the court interpretation of insurance policies. To be more specific, courts have interpreted standard policy language in ways never intended by the insurance company underwriters. The impact of liability insurance pricing and availability is clear. A basic fundamental of the concept of insurance is the ability to predict. The results of typical damage cases, such as the Jackson Township case, make predictability impossible. It destroys the rationale of the concept of insurance.

That Jackson Township case that we hear so much about did the following: Insurance policies were interpreted by the courts to provide gradual pollution coverage, when the intent was to provide sudden and accidental coverage. An occurrence was considered a continual exposure, rather than a specific

event. And, finally, policy limits were applied to each part of the occurrence, thereby stacking liability limits and creating unlimited liabilities. Predictability was destroyed; policy language agreed to by insurance company drafters and policy holders no longer applied; the exposure could no longer be calculated or priced, given this court action. And, this action retroactively affects hundreds of thousands of policies dating back many years.

Lloyds of London's Chairman, Peter Miller, said, and I quote: "Nobody should complain about a system if that system can tell him clearly what liabilities they face. But, the way matters have transpired in the United States means that the American legal system does not do that." End of quote.

What is going on? Having broadly addressed the problem, the next pertinent question is, what is happening? First, it is important to note that there is much activity beginning on both the State and the national level. Since the law is largely a State matter, events on this level are extremely significant.

Through 1985, 42 states have introduced a total of 264 bills relating to liability insurance. Forty-seven were enacted into law in 28 states. Of the 47, 21 relate to civil justice reform. For example, in California, a Fair Responsibility Act will be on statewide ballot. The Act intends to revise joint and several liability to apply only to actual direct economic loss, not pain and suffering.

Washington is seeking to pass a law like the one in California, which limits attorneys' fees in malpractice and pain and suffering awards to \$250,000. Michigan, Nevada, Oregon, Montana, and Alaska have similar type activity going on.

In Georgia -- this is very interesting -- 50 state trade and industry organizations are focusing on state legislative tort reform as a group -- not just industry people, not just government people, but everybody is affected. In

effect, what has happened is, many people from different backgrounds and different interests have come together to work on the problem.

Illinois is following a similar approach with 30 organizations involved. Other states with similar activities include Texas, New York, Indiana, Pennsylvania, Florida, Louisiana, and Kansas.

As a member of the Professional Insurance Agents of New Jersey's legislative team, I visited Washington, DC earlier this week, and I learned that President Reagan has set up a tort policy working group with eight task force forces to examine the tort system and its effect on cost and availability of commercial insurance, and to recommend possible changes.

A lot of what we are considering -- what we are talking about -- is very definitely national in scope and social in nature. In visiting the various members of the New Jersey Congressional Delegation, we found a growing concern and involvement with the U.S. court liability system and a recognition that this problem, including the environmental liability issue, transcends the issue of liability insurance and is, in fact, social in nature. Legislative activity is definitely beginning to occur.

The U.S. Supreme Court has begun issuing rulings. For example, it upheld an Indiana high court's prohibition of suits against health providers, unless the claimant's case was first decided by a medical review panel. The California cap of attorneys' fees was upheld, as well.

The American Tort Reform Association was recently created in Washington, which consists of 24 business, professional, and government groups. It includes the American Medical Association, the American Trucking Association, and the American Society of Association Executives -- again a coalition of different people, not just governmental people or insurance industry people or municipal people, but a wide variety of

people.

It should be noted finally that the New Jersey Insurance Task Force on Environmental Issues -- the group that I alluded to earlier -- has recently completed an expansive report on environmental liability. Recently given to the printer, the report will include a summary of current legislation and regulations affecting environmental liability in New Jersey. We think it's probably the most comprehensive piece of information pulling all of that information together, and it will discuss important subjects of joint and several liability, the negligent standard, and state-of-the-art defense dealing with the major and immediate liability problem area. The report is expected to be ready for distribution on March 1.

What to do: Having restated the problem, the \$1 million question, of course, is, what do we do now? And, I keep hearing that. I heard that down in Washington. I hear it when I'm down in Trenton. I hear it when I talk about it with my customers. Clearly, we must be careful--

ASSEMBLYMAN ZECKER: Excuse me, Drew.

MR. KARPINSKI: Yes?

ASSEMBLYMAN ZECKER: Are we going to get copies of this, or do we have to write all of this down?

MR. KARPINSKI: Yes, yes.

ASSEMBLYMAN ZECKER: Then we'll listen. Thank you.

MR. KARPINSKI: Clearly, what we must be careful to avoid are quick fixes -- Band-Aid type remedies that will not deal with the root causes of the liability problem, and in the long run, only serves to exacerbate the situation. Mandated pools, for example, which have been discussed here this morning -- an alternative risk-bearing mechanism -- in and of themselves do nothing to alleviate the problems being faced today.

An excellent example is the medical insurance crisis in New York that led to a JUA reciprocal mechanism thought by

some to resolve the problem. It is a very, very similar experience in many ways. Because of the long tail regarding liability claims, it took several years for New York to realize the root causes of the medical insurance crisis. It was dealt with and, therefore, the mechanism has not worked.

Specifically-- What I'm saying specifically is that this was begun in the 1970s, and they are now sitting there looking at the last figures -- a \$535,924,000 deficit in that JUA, which is essentially a pooling-type mechanism. In New Jersey, we have a mechanism here -- very similar -- and we should take a look at that, I think. There, too, the experience is not favorable. We're running \$65 million in the red there.

There are 10 medical malpractice JUAs throughout the country, and as of June 30, 1985, they are collectively running in the red \$1.47 billion. Now, the reason-- I think the reason is that this concept -- this pooling concept -- in and of itself does not do anything to address the problem. And what concerns me is that when I hear a discussion concerning the mandated pool, it is looked at as a solution to the problem, which clearly, it's not. I'm really happy to hear today for everybody's benefit that we are talking about-- We are going beyond that and talking really about the problems that are there, because they have to be dealt with if, in fact, we're going to resolve the situation.

Clearly, the liability problems must be resolved regardless of the insurance, self-insurance, or pooling mechanism being used by businesses, professionals, manufacturers, or public entities. And, incidentally, all of these alternatives are currently permissible under New Jersey law. We have pooling in the State of New Jersey. We have Bergen County pools; we have pooling of school boards. Pooling exists; self-insurance exists; and, insurance exists -- all different ideas, different mechanisms to handle the burden of

risk.

Having resolved the real problem, all risk-bearing mechanisms become viable alternatives, readily available at affordable prices. And, this is extremely important. If we resolve the problems, you're going to find that those three mechanisms are going to compete very well with one another, and that's healthy. That's the way it should be. If the problems are sufficiently resolved, these different alternative mechanisms will compete with one another, as they should, and as they should be and are available in the State of New Jersey.

An interesting point: One municipality in Bergen County recently -- very recently -- purchased insurance. I'm talking about 1986. And I know you don't hear too much about this, but the fact of the matter is, the purchase of the insurance was less than the entrance into the pool. That's kind of an interesting happening that's going on.

I want to, if I could, because we've been talking about and reading about experience -- claims' experience-- I have heard-- Where are the numbers from the industry that support some of what's been going on? I have information from the Reinsurance Association of America that has collected data regarding liability, other than liability -- other than automobile, excuse me. It's excess experience. That is, excess of a primary layer, and it also excludes asbestosis and medical malpractice claims. It goes back to 1980, and it's very interesting. Liability claims take 15 years for them to really -- for us to really see the total claims' picture.

For instance, 1980 developed, in the first 12 months, \$30.8 million in claims' experience. That same 1980 experience, at the end of 24 months, was \$83.4 million. In 36 months, it was \$124.2 million. In 48 months, it was \$171.7 million, and in 60 months, \$214.2 million.

Now, it's suggested-- The numbers show that in five years, you get about a 22% reading of what the total impact of

the claims are going to be for that earlier year -- 1980. The fact of the matter is that \$30.8 million in 1980 is probably going to grow to about a billion dollars in 15 years -- in terms of the claims that will be paid out over 15 years for occurrences that happened in 1980.

The way information has been gathered to date, we have not been seeing this because we're really looking at short term. We're looking at experiences of last year, of experiences of the last three years in terms of what's been going on. The point is that some of these things don't surface until later on in years, as we can see from these figures. I have that exhibit, and I will pass that on to the Committee, as well.

The specifics: It's necessary as a first measure, I think-- Some suggestions-- It's necessary as a first measure to set up a New Jersey Market Assistance Program, as has been done extensively across the United States. Such a Market Assistance Program requires active participation by the insurance industry to be sure that coverage can be provided where needed. The Market Assistance Program should be available to groups where there is a critical need to fill the insurance void and should have the ability to be expanded to other groups as needed.

Point two: Consideration should be given to amending the new insurance regulation in New Jersey that controls policy cancellations and coverages provided. Given some modification, the effect could be some additional market availability and greater participation on a voluntary basis in the Market Assistance plan.

Point three: Consideration should be given to the segregation of the pollution liability issue, which should be dealt with as the social issue it, in fact, is. Such an approach would make other liability insurance more affordable, and I think this is something that really should be zeroed in

on. I would speculate that -- and this is a personal speculation -- but I would speculate that liability premium reductions might reach as high as 25 or 30% or more. If we were to take the pollution problem out of the insurance contract, isolate it, and deal with it separately--

Point four: Consideration should be given to the establishment of a mandatory arbitration system regarding small liability claims.

Five: Legislation should be considered to do away with the doctrine of joint and several liability, replacing it with several liability only.

Point six: Consideration should be given to addressing legal court fees, such as sliding fee schedules, contingency reporting laws, and disclosure.

Point seven: Consideration should be given to limitations on pain and suffering damages in terms of caps, standards, or both.

Point eight: Consideration should be given to the abolition or regulation of punitive damages.

Point nine: Given the fact that this issue impacts not just on municipalities, school boards, or insurance companies, but product manufacturers, truckers, professionals, and more, I suggest consideration be given to the formation of a coalition of industries, perhaps through their trade associations, to deal with the issues, make their findings known, and more importantly, make recommendations.

Specifically regarding municipalities, consideration should be given to limiting liability and capping awards. The vehicle to do so already exists, I think -- Title 59 -- and perhaps we can take a look at that. It should be noted that 28 states have already taken action in this direction.

Point eleven: Consider eliminating or limiting a municipality's liability for damages which punish public entities for their conduct or procedures.

Point twelve: Consider the elimination of joint and several liability with respect to public entities.

Point thirteen: Consider limited immunity for essential high-risk activities of public entities, such as waste disposal.

Point fourteen: Consider the permission of juries to be advised of awards from other sources.

Point fifteen: Consider methods of encouraging public entity risk management which can reduce exposures, improve loss experience, and lead to premium reduction.

In summary, the focus is on tort reform, with emphasis on the public entity sector, by necessity. Given the occurrence of a meaningful task force, I project the insurance marketplace, as well as the alternatives thereto -- being pooling and self-insurance -- will respond if positive action is taken -- becoming available, affordable, and providing the best of alternatives to consumers of their products and services. I suggest that this is the only direction and solution.

Thank you.

ASSEMBLYMAN LOVEYS: Drew, thank you. It's quite apparent, you've done your homework. Let me comment on a couple of the areas that you mentioned.

You don't suggest the excess fund, as I understand it, because you say it doesn't solve the problem. I must point out, though, the excess fund, as it is being described to us today, will not be able to work unless it done by law. It has to have statutory significance, and the fact that we're mandating it, or will be mandating it, it has to be done by law.

But, it is also interesting to note that you endorse a map plan that I think is under way, when at the same time, that certainly won't be solving any problems either. Don't you agree?

MR. KARPINSKI: I think it's worth trying. I think--

ASSEMBLYMAN LOVEYS: I'm not saying it's not worth trying.

MR. KARPINSKI: Yes.

ASSEMBLYMAN LOVEYS: I'm suggesting to you that it's not going to solve the problem.

MR. KARPINSKI: No, it's not. No, it is not. I agree with you.

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

ASSEMBLYMAN WEIDEL: No.

ASSEMBLYMAN LOVEYS: Mr. Rafferty?

ASSEMBLYMAN RAFFERTY: I have no questions.

ASSEMBLYMAN WEIDEL: We're going to have that testimony, aren't we, though?

ASSEMBLYMAN LOVEYS: We're going to have the testimony, yes. Mr. Zecker?

ASSEMBLYMAN ZECKER: There is probably about three hours of discussion, but we'll have it later on. You bring out a lot of good points and, you know, you generate a lot of thought. I'm sure that some of us will be contacting you for further comments. Thank you.

ASSEMBLYMAN LOVEYS: Drew, thank you.

MR. KARPINSKI: Thank you.

ASSEMBLYMAN LOVEYS: Is Mr. Yaniro, Chatham Borough school system, with us today? Vincent is not-- (not present) Mayor -- is it Colicchio? -- from Wanaque? Mayor? Excuse me, Mayor, do you have your clerk with you also? Do you want her to testify also?

MAYOR JUD COLICCHIO: Yes. Yes, if we could.

ASSEMBLYMAN LOVEYS: She could come up and be with you, if you'd like that. Thank you, Mayor.

SUSAN O'NEILL: We welcome the opportunity to address the Assembly Insurance Committee. I am Susan O'Neill, the legislative chair person for the Morris County Association

of School Business Officials, and this is Vince Yaniro. He is the Business Administrator in the Chatham Borough Board of Education, and he is also representing the Morris County Association of School Business Officials.

We represent 41 school districts in Morris County, and I'd like to first open by saying that we sympathize with the municipalities in their plight -- their insurance plight -- but we are also experiencing them too. And we would like you to hear us out, and also to help you along with anything you need from us.

I have given you testimony today. I will go through that testimony, and I have some additional highlights on that.

In the past few years, elements such as asbestos, the Jackson Township pollution case, hazardous chemicals in the workplace, toxic waste, and now, of lately, radon, have affected our insurance rates. We have been hit with exorbitant increases in premiums, even though most of us do not have the exposures to these elements to justify the increases. The insurance companies are passing along these increases by spreading them over all of the school districts. Schools have been placed in the high risk-- Schools have not been placed in the high-risk category all along. In fact, at one time only a few years ago, insurance companies were avidly seeking the business of school districts because we were such a good risk.

Now it appears that our rates are reflective of what is labeled as a high-risk group. We find this unfair and unreasonable. We agree with previous testimony today. Experience rate districts, on their own losses, have an appeal process for those districts who go in excess of what their budgets are -- their coverages are. They have an appeal funding process for them.

David Grubb, Special Deputy to the State Insurance Commissioner, said recently that New Jersey municipalities have received an unfair rap and are considered high risk, but

claims' experience suggest the opposite. He indicated that something is out of control. We couldn't agree more to this statement, since it is also very true of school districts.

The dollars that are put into insurance eat away from education programs and cut into services in other areas. Several districts have to apply for a budget cap waiver before the Commissioner of Education specifically due to insurance increases. One district in particular had to use all of its surplus contingency funds and does not know what it will do if faced with an emergency. Many others had to dip into surplus to cover insurance costs. Those of us who did not have much surplus to begin with had to reduce staff programs to cover these insurance costs, or pass along the increase to the taxpayers.

To indicate several specific instances of exorbitant increases, one district's 1984 excess liability policy was written with \$5 million worth of coverage at a premium of \$1000. Although this \$1000 premium was low, in 1985, the premium came in at \$52,000 and reflected a drop of coverage from \$5 million to \$3 million.

Another district's 1985 school policy was dropped from a three-year policy to a one-year policy, with a premium for the one year of 40% of the premium for the three years. The coverage was also cut from \$10 million to \$5 million. Several relevant coverages were excluded.

These are only two examples of nightmare stories from school districts. Not only are there exorbitant premiums being experienced, but cuts in coverages and exclusions have to be dealt with in all school districts. Asbestos and sexual harassment are just a few of the exclusions.

Premium increases are spread all over the board. We have data with anywhere from a 21% increase on up to a 157% increase. And, I detail the various increases of the districts that are experiencing the harsher increases in insurance.

School districts can't bear this type of burden. Of late, there has been much talk of self-insurance pools. I caution the Legislature in relation to these. This is a good concept and can work, but not with everyone. It is a risk that each school district takes. Some districts involved in self-insurance pools are facing problems right now. Reinsurance costs, if reinsurance insurance can be obtained, have escalated tremendously. The stop losses increase; the break even point goes up with reinsurance. This area -- this entire reinsurance market -- should be reviewed, especially if the recommendation is to go towards self-insurance.

We commend Assemblyman Zimmer and the co-signers of Assembly Bill 1797 for sponsoring the one-year exemption from the 5% cap for municipalities for insurance increases. We urge that you consider the same type of legislation and exemption for school districts. Even though this will not solve the problem permanently, it will give the Legislature a year to work on problems to review the insurance market to see what can be done.

We urge the Legislature to take measures to control the insurance market and spare school districts -- all public bodies -- the burden of escalating insurance costs. Help us to find cost-savings measures. The insurance increases have not hit all school districts. They have affected many. The municipalities certainly have been hit the hardest. We know it's only a matter of time that the ripple effect will catch up with us.

We stand ready to assist you in any way possible. If you need additional information -- if you'd like to talk or meet with our entire Association or our Committee -- we stand ready, and I do have my telephone number down, if you'd like to follow up. Thank you for the opportunity.

ASSEMBLYMAN LOVEYS: Thank you, Susan.

V I N C E N T Y A N I R O: Thank you. Mr. Chairman, members

of the Committee, my name is Vincent Yaniro. I am the Business Administrator of the Chatham Borough School District.

On behalf of the Chatham Borough Board of Education, I would like to request some legislative relief from the insurance problems we have recently encountered. Specifically, our general liability and automobile insurance have increased 93% this year. Our umbrella liability insurance policy has increased 317% this year. These increases come after many years of very favorable claims' experience.

Our agent and other sources in the insurance field indicate to me that there is no other market available. We are at the mercy of the insurance companies in terms of coverage and premium rate increases.

The freeze on policy cancellations is a step in the right direction. However, something has to be done about premium increases. Insurance increases have played a major factor in depleting in one year what was previously considered an adequate reserve account. The impact on next year's budget is twofold.

First, for the first time in five years, we are exceeding our budget cap and are thus forced to apply for a budget cap waiver. In conjunction with this measure, we have also been forced to make program and staff reductions to help accommodate anticipated insurance increases next year. Thus, we are forced to allocate an increasing portion of our limited resources to insurance, rather than educational programs for the children we serve.

I understand that municipalities have been granted some relief from the cap for insurance increases. I urge that this also be considered for school districts.

I would also like to relate to you our recent experience with our school board liability insurance policy. Last year at this time, we signed a three-year policy with a \$3 million limit of liability at a fixed annual premium cost. A

few weeks ago, at the end of the first year of the three-year policy, we received a cancellation notice from the insurance company. They cited their inability to obtain the necessary reinsurance. I immediately filed a complaint with the New Jersey Department of Insurance, but as yet, I have received no word on my appeal.

Our agent was successful in having the company continue coverage, but at reduction from \$3 million to \$1 million coverage, and at a premium increase of 39% for the one-year premium.

Once again, we were forced to accept the coverage, since there is no other market available. I might add that to my knowledge, we have never placed a claim against this form of insurance.

Once again, the Chatham Borough Board of Education would like to request any form of legislative relief you can offer. Thank you. I don't have additional copies of this testimony, but I'd like to mail them in tomorrow.

ASSEMBLYMAN LOVEYS: That would be fine; thank you. Do you have any questions, Gerry? (negative response) Any questions down this way? (negative response) Thank you very much.

I think what we'll do is call on maybe one more person to testify, and then maybe take a half an hour break for lunch, if that's agreeable with everyone.

Is Mr. Paul McDougal here from the Town of Dover? (not present) Mr. Weinstein from South Orange Village? (not present) Is the Mayor of Wanaque present? (not present) Maybe we won't-- How many here wish to testify? One, two, three, four, five, six, seven. Armando, why don't you go on, and then we'll have a break for lunch, if that's all right with everyone. Then we'll resume in about a half an hour. Armando, would you-- Castellini.

A R M A N D O C A S T E L L I N I: Chairman Loveys, members

of the Committee, I don't have any prepared text, other than those exhibits. I do have a few notes.

First, I come to you today in several capacities: One, as a taxpayer in the State of New Jersey, and as someone who has been born into the insurance business. I've been in it all my life as an agent and a broker, and more recently, for the past six or seven years, primarily as an insurance consultant and educator in New Jersey and throughout the United States. I have any number of years of experience in New Jersey and nationally with the insurance industry -- the Insurance Trade Association -- the rating bureaus, etc. I think my background speaks for itself.

I'm gravely concerned about the issues that we're discussing today, but I think that we have to expand those issues and the problems of the governmental entities to cover a much, much broader range of general liability unavailability and pricing problems, and general unavailability of pricing problems for all types of insurance.

I'm familiar with Senator Lesniak's recently introduced legislation on the governmental -- intergovernmental excess liability pool. I have a draft copy of it, and I spoke to Special Deputy Commissioner Grubb about it about a month ago. It's a temporary solution for treating symptoms, but it is certainly not a cure. As a taxpayer in New Jersey, I have some very grave reservations and concerns about the ultimate consequences of such legislation. It may very well be necessary on an interim basis, but I have grave reservations, and I specifically requested that Grubb give consideration to putting a Sunshine clause in the bill. Let it act for a certain number of years, and then automatically be repealed.

In any event, the legislation that is addressed by this Committee -- legislation that is put forth by this Committee -- must stop treating symptoms and look at a cure of the illness. We are, with the intergovernmental excess

liability bill, with a number of the solutions that have been offered today, putting a kerchief to a runny nose instead of going to the doctor for medication.

The insurance industry would have us believe that the explosion in tort litigation is the sole and exclusive cause of their problems -- the problem of unavailability of insurance and the price of insurance. There is some legitimacy there. There has been a substantial increase in claims' frequency -- the number of suits made. There has been, in the past five or ten years, a substantial increase in the average cost -- dollar cost -- of every claim that is paid by the carriers. There have been increases in defense costs and litigation fees. There is no doubting that. But, I suggest to you that the increases that I've referred to have no basis, in fact, for the type of rate increases that are in this exhibit.

I support, and I think many of the people who testified here today do support, a general reform of our tort law. Don't restrict, don't limit, your look at tort law reform to those portions of tort law or negligence law that will have an effect on governmental entities. Look at general tort law reform. I support repeal of the Joint Tort (indiscernible) Act, or at least major amendments to joint and several liability.

The industry has some points. They have been beaten and battered. But, I think we have to look at what the root cause of the problem of the unavailability of insurance is, and we've heard a lot of testimony about it today. You will continue to hear testimony about it. There is an unavailability problem for every type of class of risk in this State, not just governmental entities.

We have trouble getting insurance for the Main Street merchants. The unavailability problem, I don't think we address by legislation, other than to make the companies act responsibly, because the unavailability problem and the root

problem of the unavailability problem is not the increase in litigation or the increase in claims. The unavailability problem is that the companies are beaten and battered and bruised and bleeding because of the massive price competition which they engaged in from 1979 to 1984.

Reinsurance carriers have beaten, battered, been bruised, and bloodied because of the intense rate competition and the pressures put on them by the primary carriers from 1979 through 1984.

We have lost substantial amounts of reinsurance capital. Why? Because the European capital that came into the market in 1979 or 1980 came in at the wrong time, and we had to compete on price. They were bloodied, and they went home with their capital. And, they reduced the reinsurance capabilities and reduced the insurance capacity.

Certainly, primary carriers are having reinsurance problems today, but don't let them point the finger at reinsurance and say, "That's the sole cause of our problem." Reinsurance is not available today, or is not available at affordable prices, because the primary carriers for five years forced reinsurance companies to compete, and reinsurance capacity left the market because of that.

If we want to look at the root cause of our availability problem today, it is the financial conditions of the company -- an adverse financial condition in many, many cases, a great many of cases. Hundreds of insurance companies are on the National Association of Insurance Commissioner's watch list right now -- 600 or 700. The watch listings are in a shaky financial condition. And, why are they in a shaky financial condition? Because of the increase of tort litigation? No. Increased claims' costs? No. If they had been charging the rates they should have been charging from 1979 through 1984, their loss ratios would have been substantially differently from what they are, and their

financial condition would substantially be different from what it is.

There is some truth and veracity on the companies' side. We have argued long and hard. This is my third time around in 15 years of activity in the insurance industry at a national level -- my third time around in looking for tort law reform. It didn't happen the first two times. I'd like to see it happen this time, and I agree, we need some changes there. But, let's not point fingers all in one direction. We have to understand the industry and its own greed and avarice, chasing the buck for investment purposes. It is one of the major reasons for the dilemma we face today.

I am amazed that I haven't heard any testimony at all this morning about why rates and premiums have gone where they've gone. In the Main Street, America exhibit, the delicatessen, the clothing store, the gift shop are exemplified for you here. (referring to chart) I've given you the 1980 rates and premiums, and the 1986 rates and premiums, with the highest rated territory and the lowest rated territory in New Jersey. And because I am here in Morris County, I've given you Morris County rates. You can look at that exhibit and see 600% and 700% increases in six years. Can there be any justification or any legitimacy in 3, 4, 5, 600% rate increases for Main Street, America? They don't have the Jackson Landfill problem. They don't have the governmental exposures, the deep-pocket problem. I'm talking the Main Street delicatessen. There is no legitimacy to these numbers.

Going back to why I'm amazed that I haven't heard any testimony today about why rates have increased, it's because of well-intentions on your part, intended to make competition work in the marketplace.

The Commercialized Deregulation Act of 1980: This Act was passed by the Legislature with good intentions and good purpose. It virtually destroyed the ability of our Department

of Insurance to regulate insurance carriers on what they do with commercial insurance coverages, forms, rates, and classification systems. That's why we have the 3, 4, 5, 600% increases for Main Street, America on liability rates, and that's why municipalities, counties, and other governmental entities, and school boards are seeing the 2, 3, 4, 5, 100, 1000, or 10,000. I've seen an example of a new rate increase of 10,000% in one state.

We need to address general tort law reform, but we also need to address our existing insurance legislation, and more particularly, we must have either drastic and major amendments to the Commercialized Deregulation Act or its outright repeal. And, the repeal or the amendment must give specific authorization and direction to the Insurance Commissioner to investigate every commercial insurance rate filing made since 1980 to see whether those are legitimate or illegitimate numbers.

Now, I don't profess to be an insurance actuary, but I've been exposed to insurance rating bureaus and insurance companies over the last 15 years, enough times in the various departments, to have a little bit of knowledge about this so-called actuarial science. If anybody would like to pay me a consulting fee, I'll tell them exactly why the insurance rates are what they are now. There are peculiar numbers they are using; they are not legitimate and accurate numbers; and somebody is playing games with us someplace. I honestly believe that they know they are playing games.

Now, I'm here partially to represent a client who presented me with a problem.

ASSEMBLYMAN LOVEYS: Armando, we're going to stick strictly to municipalities now. I don't want to go into the general liability aspect of it.

MR. CASTELLINI: Okay.

ASSEMBLYMAN LOVEYS: We intend, just for your

information and for others that might be here-- We intend to do this very thing in the very near future, but we're going to hold it right to the municipal liability area.

MR. CASTELLINI: All right. Then that will be the end of my testimony because I think-- The major portion that I think we need to look at is the tort law reform -- in a much broader aspect than just governmental entities, and I think we need to look at the existing insurance legislation and regulation.

ASSEMBLYMAN LOVEYS: Thank you very much.

MR. CASTELLINI: If you have any questions, I'd be happy to respond.

ASSEMBLYMAN LOVEYS: Any questions? (no response)
Thank you very much.

At this time, we're going to take a break. In 30 to 35 minutes, we will resume.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN LOVEYS: Next I would like to call Wes Caldwell. Wes, if you would, please? Let us know the 170-odd people or firms that you represent.

W E S C A L D W E L L: Good afternoon, Mr. Chairman. You have before you a written statement, which I won't read from. I'll try to highlight. You can see what an optimist I am. The statement begins, "Good morning."

My name is Wes Caldwell. I'm a Vice President with the American Insurance Association, and we represent over 170 property and casualty companies. Our companies write almost half of the commercial liability premiums in the country, and in New Jersey, and a similarly large percentage of municipal liability premiums.

Before I get into specifics, let me give you some background about what's going on in the market today. There are several long-range trends that we have to consider first. One is that throughout the country and in New Jersey in particular, over the last couple of decades, there has been a very rapid expansion in the liability system -- an expansion of different kinds of new liabilities, different theories of recovery, and an expansion of awards and number of lawsuits.

There is also a trend that has been with us for many years in this industry, and it's cycles in pricing and in availability. Traditionally, capital comes into the industry. There is an expansion of supply. Prices get cut. When they get to the low point, capital is reduced, prices begin to go up, and this has gone on for many years.

But, this last cycle is the longest and most severe we've ever seen. It happened-- Several things converged on this industry beginning in the late '70s. There were historically high interest rates, and as all of you know, insurance companies invest the reserves that we put up to pay claims. On what we call the long-tail lines of coverage, like municipal liability, Drew mentioned earlier today that you can look at lost development over a period of years, and it may be 7, 8, 10, 15 years before the claims are fully paid for a given year of an occurrence. On those long-tail lines, those investments will be earning returns for many years before the claims are ultimately all paid out.

When interest rates were at 15 or 20%, companies were competing very vigorously for the cash flow to get those investment dollars and to invest. The companies were reflecting the investment returns in their prices. We knew that we could-- Our companies knew that they could write business at an underwriting loss, but still have a bottom line profit because of the investment returns that would come in.

But, at the same time, as companies began cutting

prices to get that cash flow and keep market share, and new capital was coming into the industry because of these high-investment returns, the companies did not realize how rapidly the liability system was expanding, and they didn't realize how quickly investment rates would come down. And, between 1979 and 1984, prices were cut quite dramatically.

I think every time I've heard municipalities or businessmen testify about '85 premiums compared to '84 premiums, we've asked them what they were paying in 1979 or 1978, and you'll see that there isn't much of a difference. What happened between '79 and '84 was, in some cases-- I can remember brokers telling me in 1983 or 1984 that by shopping around, they could get a quotation from a company that was 40% below what they paid the year before with a different company.

Some of the companies that were leading the charge on price cutting are no longer with us. Between 1984 and 1985, there were 40 insolvencies in the property and casualty industry. As one of the witnesses pointed out this morning, the NAIC -- the National Association of Insurance Commissioners -- has now a couple of hundred companies on the watch list, which means they want the regulators to take a very careful look at their financial condition, and monitor those companies.

The-- In New Jersey, as I mentioned, the tort liability system has expanded greatly, but I think the municipalities really present the best example of the deep-pocket approach. The case that the Committee members discussed this morning is not atypical at all. I think Phil Kirschner tried to lead you to believe that that's a rare case, but I think most municipalities will tell you that they are being brought into every auto accident case now because of lower limits.

If you have-- In New Jersey, the minimum limits are 15 and \$30,000. If you have a severe injury where someone has, let's say, \$1 million worth of medical expenses, and so on,

that attorney is going to reach out and grab a government entity, whether it be a county government or a municipal government, because it's not very difficult to prove some degree of negligence against a government entity. If it's an auto accident and it happened on a roadway -- the lighting may not have been perfect, the signs may not have been perfect, the road condition may not have been perfect -- it's not too hard for a plaintiff's attorney to bring a municipality in and at least stick them with some portion of liability. Once he has done that, as you pointed out this morning, he's got the deep-pocket, because the municipality may have \$1 million worth of coverage, and if the judgment comes in at a million dollars, they are going to pay that million, less 15,000. It's that simple. And, it's one of the problems that has led to the exploding costs for municipalities.

A couple of years ago, they said that they wanted the option of pooling, and they have that now in New Jersey. That hasn't solved the problem. It has given them another mechanism. But, those pools have to collect the money to pay the liability costs, and those pools are facing the same problem that insurance companies face.

Other problems we have had in New Jersey and elsewhere, as Drew pointed out this morning, are problems with contract language. If you write a contract, and it says, "We're going to cover only accidental and pollution events," and the courts tell you, "Well, that's okay. You're going to cover a gradual pollution event under this language," we don't know how to price that kind of situation. It's unpredictable.

We have been working very hard trying to develop new contract language to make it more impermeable to judicial misinterpretation, but one never knows. When an underwriter takes on a risk, he can't tell that the new clause that we've written to exclude pollution liability-- He doesn't know whether that will stand up in court or not.

Another problem that was mentioned this morning-- Another key part of it is reinsurance. Lloyds has pulled back dramatically on the amount of reinsurance coverage it offers in the U.S., particularly on the liability lines because they've lost an enormous amount of money, and they can't predict what their losses are going to be.

Let's talk about today in the municipal market in New Jersey. Clearly, the days when municipalities could shop around for a bargain basement price are gone, and underwriters are very cautious about making coverage available. Pricing is much higher than before. But, New Jersey has a particular problem that I hope will be addressed soon -- the emergency regulation, which was adopted last fall. It was well-intended. It was intended to protect insureds against abuses in cancellations and non-renewals. It did that, but at the expense of going too far. It was so restrictive that insurance underwriters have been very cautious about taking on any new business while that regulation is in place in its current form, because if they do, they're afraid they can never get off it.

Now, I know that the Department is considering amendments to that regulation. I would hope they'll be adopted soon, and I think once that happens, we can see a map program put in place in New Jersey that'll work. We formed one in New York. And, the day before yesterday, the two Committees that work the Market Assistance Program -- the producers and the underwriters -- sat down with the Department, disposed of 30 risks-- The 30 applications that were pending before the map that needed to be placed were disposed of in one day, and an agreement was made on an informal basis to take percentages of the applications based on market share. So, that program is working. It has solved New York's problem, but they don't have anything in place like New Jersey does right now on cancellations and non-renewals. They will have-- We have been

working with the Legislature to develop a responsible bill that will prevent abuses without going too far. We have, in fact, developed a model bill that we've been trying to put in place around the country.

I think we'll find that once the regulation is modified and a map program is put in place in New Jersey, that the availability problems will go away. As I mentioned earlier, there is pooling, so there is a mechanism available which would also answer your concerns about, what if the Legislature makes significant changes in the tort law -- will that be reflected in prices? I think the answer is, it has to be because as long as you have pools in New Jersey which compete with insurance companies, those pools will reflect the changes in their loss costs, and we would have no choice but to compete with them on that basis.

I think the areas that you should particularly look at in the tort law: One that can't be emphasized too much, especially for the municipalities, is the joint and several problem. There is no reason why a municipality or another government entity should be forced to pick up the lion's share of a plaintiff's award if they have a minimal degree of fault. There are lots of different ways to approach it. I leave that to the legislative process to work out, but I'll just mention a few of them.

In California, the initiative would eliminate joint and several for the non-economic losses. That initiative will be on the ballot in June, and I'm told it's expected to pass. They have found enormous public support for it, which was a little bit surprising because it's difficult to imagine the public really being aware of what joint and several liability is. But, they are, and they're concerned about the fairness of it.

Another way to approach it is, I've seen a bill or two in New York which would set a threshold. Below a certain

percentage of fault, you'd have only a portion of liability. You know, you'd set it at whatever number you wanted. But, let's say if you were less than 40% at fault, you'd only be responsible for your proportionate share. If you were more than 40% at fault, you'd have joint and several liability.

Again, that area is important. How it is addressed is something that involves balancing the interests of the plaintiff and the municipalities. But, I would say in this instance, it is a little bit different from other areas where the Legislature might not have too much sympathy for businessmen or doctors. But, in the municipal instance, you're talking about the public on both sides of the equation. It is the public who are the victims, and it is the public who are the taxpayers. The question is, how much are they willing to pay to protect themselves? So, in that case, I think you can balance the scales a little bit differently than you do in other areas.

Another area that I think is important, and from a fairness point, it should be easy to address, is the collateral source rule. Currently, I believe under New Jersey law, you are prohibited from introducing in evidence any collateral sources of recovery that the plaintiff might have. If his medical bills were paid for by his health insurance carrier and the like, that can't be introduced at the trial. There is no reason why you shouldn't not only reverse that, but go one step further, and cut out from the judgment against a municipality any collateral sources of recovery. There is no reason why the plaintiff should recover twice from two different sources.

The third area that I think is very important to address is some sort of limitation on non-economic losses -- the pain and suffering. That can be done in a number of different ways too. I heard Phil Kirschner say this morning he didn't think there was any way you could pick an arbitrary number, and say you can only recover \$100,000 or \$200,000 for

pain and suffering. But, you could do it as a multiple. You could say, for example, that your award for non-economic losses can't exceed twice the amount of your actual damages. There are many ways to address it, but I think the courts and the juries have not only applied the concept erratically, so that one plaintiff may get a very large amount for pain and suffering, and another plaintiff may get a relatively smaller amount, but they've clearly increased significantly over the years the awards for pain and suffering. And again, is it a question of, how much is it fair for the municipality to pay for that element of damages? So, some form of limitation on pain and suffering, I think, is very important and could save significant amounts of money, without in any way making the plaintiff less whole, because you wouldn't be affecting his economic recovery.

Some solutions you may be asked to address, I think you should look at very cautiously. One would be any sort of mandatory market for insurance, much like the Assigned Risk Plan, or what has been replaced in New Jersey with the Joint Underwriting Association. Again, if you have another mechanism, as you do here -- pooling -- there is no need to mandate that insurance companies provide the coverage. But, if you do mandate that insurance companies provide the coverage, let me tell you what happens.

We have seen it. Your auto market, I think, is a good example, but there have been other examples in other states. Once you say that companies have to take a certain percentage of business -- either through an Assigned Risk mechanism, or a Joint Underwriting Association -- then underwriters begin to say to themselves, "Every new risk I write gives me an additional piece of bad business from the pool or the Assigned Risk Plan, and traditionally, since those pools have been regulated politically as far as rates go to hold down the rates in the residual market, that means each new piece of business

you write gives you a piece of underpriced bad business from the pool." What that does is, cause underwriters to cut back on voluntary writings, and it begins to expand the size of your pool. Eventually, the pools have to pay the piper, but it may take 5, 10, 20 years before the problems become evident.

But, in the meantime, you may have destroyed the voluntary market. Again, I would seriously urge the Committee to consider the three areas of tort reform that I mentioned. We would be happy to give you our thoughts in terms of drafting and other information.

I would like to mention that as far as data goes, there are some numbers in my statement that I think I could provide you with additional data that you may find interesting in terms of the frequency and severity of claims in the municipal area. I think may even be able to get that for New Jersey. The Insurance Services Office, which files rates for a couple of hundred property and casualty companies was able to give me specific data on New York when I needed it -- on municipal lines in New York. The numbers were really surprising, and I hope I can those kind from New Jersey.

To give you one example, the loss ratio-- What a loss ratio is, is the relationship between your losses to your premiums. In New York, in 1984, the loss ratio on municipal liability was 2.6, which means for every dollar in premiums taken in, \$2.60 was paid out. That would explain dramatic price increases. And, I think we can find those same kind of numbers for New Jersey, and I hope to be able to share them with you shortly.

That's it. I thank you for your time, and if you have any questions, I'd be happy to answer them.

ASSEMBLYMAN LOVEYS: Thank you, Wes. Jack, you have -- you've got a number of questions. Let me see if I can post the first one properly.

You talked about how the insurance companies were just

accepting and writing premiums just to get the money for the cash flow. And, you indicated the premium costs that was mentioned by some of the -- people from the municipalities, they were comparing the '84 and the '85 premiums. And then you indicated, let's -- I didn't hear anyone mention the '79. If we started in 1979 -- and this is going to be difficult for you to answer, I'm sure -- but if we took a typical premium in '79 and moved it to '85, do you think that we would be seeing some of the increases that we are seeing today, such as 2000% or 1000%?

MR. CALDWELL: No. No. I think what-- Well, let me give you an example, and this, I think, would be typical. The numbers won't be exact, because I don't have a particular case in front of me. But let's say, a municipality in 1978 that was paying \$100,000 for coverage, you may find that in 1979, it paid \$80,000. In 1980, it paid \$65,000. In 1981-82, it may have gone down to \$30,000, at the low point. Now, bringing that up to an adequate level in 1985, it may have jumped from 30,000 to 110,000, which sounds like an enormous increase, but it's only \$10,000 more than it was in 1978.

ASSEMBLYMAN LOVEYS: That's completely irresponsible, on the insurance company's part, to do that. Completely.

MR. CALDWELL: There were many--

ASSEMBLYMAN LOVEYS: You're suggesting then, really, what we have to do is regulate. That's what you're telling me.

ASSEMBLYMAN WEIDEL: That's what I want to ask. That's-- While you're on it, Mr. Chairman, let's go over this deregulation, and whether we should go back to regulation.

ASSEMBLYMAN LOVEYS: When you get your opportunity, Karl, you go after it.

ASSEMBLYMAN WEIDEL: All right.

ASSEMBLYMAN LOVEYS: But that's the point. If that's what they did, then you're telling us -- I think you're telling us, "Hey, we should be regulated. We're irresponsible."

MR. CALDWELL: There-- No, I don't think I'm saying that. But I'm telling you that when you have a very competitive industry, like ours is-- Remember, you have hundreds of insurance companies out there competing with each other for business--

ASSEMBLYMAN LOVEYS: Where are they now? I haven't seen them. We're looking for competition now.

MR. CALDWELL: Well, I mentioned to you what the particular problem is in New Jersey. But, it's happening around the country. Underwriters, particularly in the difficult lines that have had the enormous rises in losses the past couple of years -- they've very gun-shy. They're not out there vigorously competing. They're very reluctant.

ASSEMBLYMAN LOVEYS: But Wes, when you tell us that -- in all seriousness, when you tell us that, can't you understand the other people up here saying, "Hey, look at these guys. They're making money -- they're only fooling you"? You know, this really is the crux of the problem, I think. You're being very -- you have been, and they've showed -- they haven't been responsible at all.

MR. CALDWELL: Let me tell you-- You know, everybody was part of the problem. And when I mean everybody, I mean that insurance consumers -- the municipalities -- were well aware that they could shop around, and did. Remember, in the old days, if you went with the Hartford Insurance Company for your municipal coverage, you stayed with them, year after year, and they developed a loss control program for you, and safety and engineering programs, and so on. But, in the period between '79-84, you as a municipal official who is in charge of insurance coverage, knew that if you shopped around, you could save a significant amount on your premiums.

So, companies weren't offering those kind of long-range programs anymore. Everybody was running around for price brokers -- and agents were doing it, companies were doing

it. The companies that were forcing others to follow their lead in price-cutting were trying to hang on to market share, understanding that they were writing business at a loss, if -- Ambassador, a New Jersey company now in receivership.

ASSEMBLYMAN LOVEYS: That's a Vermont company.

MR. CALDWELL: Well--

ASSEMBLYMAN LOVEYS: That's beside the point.

MR. CALDWELL: Yeah, that's right. They had their offices here--

ASSEMBLYMAN LOVEYS: It's really beside the point.

MR. CALDWELL: But Ambassador-- I was with Ambassador's receiver yesterday, and he was telling me that they were writing day care coverage at one-quarter of the ISR rate. Well, now they're insolvent, but any company that tried to follow their lead in that market was going to lose its teeth.

I-- You know, one of the problems is that any kind of regulatory law you have throughout the country, some states have prior approval for commercial insurance rates. Most states don't-- Most states have what we call a competitive rating law, where you have to file your rates and they're subject to challenge. But you can use them without getting approval first.

None of those State regulators came after this industry and said, "You're charging too low a price." And remember, their responsibility is to regulate solvency, above all to protect the public. But the New Jersey Commissioner and the New York Commissioner--

ASSEMBLYMAN LOVEYS: I accept that. I accept that to be fact, too.

MR. CALDWELL: Yeah.

ASSEMBLYMAN LOVEYS: I think we realize that, too.

MR. CALDWELL: And, you know, those laws are supposed to be in place to protect both sides of the equation -- to

protect the public from rates that are too high, and to protect the public from rates that are too low.

ASSEMBLYMAN LOVEYS: You indicated, I think, if there was some tort reform-- if we did certain things in certain areas that you suggested, that the insurance company, yes, will -- true, they'll be there to write insurance. In fact, there's a lot of companies out there. The competition will be good.

It would be-- Two things. Do you think that will be true in the reinsurance market?

MR. CALDWELL: Yes, but it won't happen immediately. The reinsurance market has already pulled back significantly.

ASSEMBLYMAN LOVEYS: But if the reinsurance market isn't strong and healthy, then it's going to inhibit what you can do in the first level market.

MR. CALDWELL: Well, understand what the reinsurance market is telling us. I was with a fellow yesterday who was with -- Corning, I guess. And he was telling me that in all their international ventures, where they're a partner in a project, they used to routinely take the responsibility to buy the insurance. Now they shift that on to the international partner, because reinsurance -- and we're talking about high-levels, on the kinds of projects they're involved in -- reinsurance in other areas of the world, insuring those exposures, is readily available. But for North American and Canada, the reinsurers are saying the legal system has run amok: "We can't figure out what to charge you as a reinsurance premium because we don't know what the courts are going to say next year, or five years from now, when we have to pay the loss."

So, I think this whole country has to readdress the tort system, and I think it will, over the period of the next five or six years.

ASSEMBLYMAN LOVEYS: What's your view, if you will,

about the so-called claims-made policy?

MR. CALDWELL: I think the one big advantage to claims-made is that it does away with the argument, or the problems with what we call incurred but not reported losses. Every time you get into a debate with lawyers over the cost of losses, they say, "Well, wait a minute. When you say you're reserving a million dollars for a particular loss, or a particular line of business, that figure includes losses that you say you will have to pay, but you don't know about it yet." That's the long tail on the coverage. When you're dealing with pollution liability or something like that, you know there are going to be losses out there that you don't know about yet. They're going to come in. Statistically, it can be demonstrated.

But that incurred but not reported factor is fairly big in a line of coverage where it's a fairly large percentage of the loss reserved in a line that doesn't mature until 15 years after the policy is written. In claims-made, you know at the end of the year, or within a short period of time after the end of the year, what claims were made that year. So, it's much more accurate in terms of pricing the dollar needed in premiums, and it does away with any need for an insurance company to make a big projection on how much is going to have to be paid out in the future.

So, I think it's helpful to the regulator, I think it's helpful to the underwriter, and the only thing that you have to do, from the standpoint of the insured, is make sure that what we call tail coverage is going to be available.

Now, in a municipality--

ASSEMBLYMAN LOVEYS: What kind of coverage?

MR. CALDWELL: I'll explain that in a second.

ASSEMBLYMAN LOVEYS: Tail coverage?

MR. CALDWELL: Tail coverage. In other words--

ASSEMBLYMAN WEIDEL: Tail? Sounds dirty.

MR. CALDWELL: In a municipality, it probably doesn't matter because they're going to be in business forever. But take a doctor. If you wrote a claims-made policy for a doctor, when he retires at age 65 and stops buying insurance coverage, he still may have claims against him that come in when he's 70. So, he's got to buy protection from the last company that sold him a claims-made policy for the tail of liability, okay? What normally happens is, when a claims-made form is approved, the regulator insists on a provision in the policy for the tail coverage that says, "We guarantee to provide you tail coverage at no more than double what your last year's premium was, for the complete exposure." So, that can be taken care of, and it really-- As long as you have that kind of protection, claims made from the standpoint of the insured is no different. He's still going to have an insurance company there to pay the claim.

ASSEMBLYMAN LOVEYS: Let me mention now, or talk about, just the rates and how they're set -- for the moment, if you will. What would you think the insurance company's attitude would be if we give you a hypothetical situation-- Let's assume that the State of New Jersey takes some necessary steps and reduces litigation, to a degree. Would-- And if we introduce legislation, for example, that we want the New Jersey experience to be only involved in rate-setting for New Jersey, what would be their attitude? Because as I understand it now, regardless of what we do in New Jersey, we're taking the national information to develop a rate.

MR. CALDWELL: Let me try to answer your question without making the answer too complicated. The Insurance Services Office, which is what most of my companies use as a rate filer, represents a couple of hundred companies that do business throughout the country. Some of what they file in a particular state is directly related to the experience in that state, and some is on a national basis. But, on a line like municipalities, the rates that they're filing in New Jersey are

largely determined by New Jersey's claim experience. Expenses may be determined by national figures, but the actual losses, which are the biggest chunk of the premium or the biggest chunk of the rate filing for municipalities, would reflect New Jersey's losses.

So, if you said -- you, the Legislature -- said, "We're passing these tort reforms, and we insist that within six months, every company re-file its rates for municipal risks in New Jersey to reflect the estimated impact of these changes on New Jersey rates," I wouldn't see a problem with it.

ASSEMBLYMAN LOVEYS: So, if I heard you correctly, if the insurance companies were not irresponsible -- as we all agree they were between '79-84, for example -- you're telling me today that the average increase in premiums across the board for the public entities would have been based on New Jersey experience and their loss experience.

MR. CALDWELL: Yes.

ASSEMBLYMAN LOVEYS: So, really, if they had just been going up proportionately, as from '79 on -- or the CPI, if you will -- then today, no one would be in here clamoring or screaming or yelling. Is that your position?

MR. CALDWELL: Yes. That's true. If the companies had charged the rates they should have charged between 1979 and 1985 or '84, the difference between what they're paying in 1985 and what they paid in '79 would be relatively modest. If I had to pick a number, I'd say on the order of 20%.

ASSEMBLYMAN LOVEYS: Okay. Try to answer this one, then -- and I didn't lead up to this. But a recent survey of a number of municipalities indicate that in the group that was surveyed, \$42 million in premiums were paid. Now, we're talking the State of New Jersey.

MR. CALDWELL: What year?

ASSEMBLYMAN LOVEYS: I think it was-- within the last, say, five or six years.

MR. CALDWELL: Okay. You don't know which year it was, but it was one of the years--

ASSEMBLYMAN LOVEYS: There were -- \$42 million were paid in premiums -- somewhere in that area. They had only \$8 million in claims.

MR. CALDWELL: And this was a survey done of a certain number of municipalities?

ASSEMBLYMAN LOVEYS: Yes.

MR. CALDWELL: All municipalities, or just--

ASSEMBLYMAN LOVEYS: No, a number of them.

MR. CALDWELL: A number.

ASSEMBLYMAN LOVEYS: So, I mean, if \$42 million in premiums and \$8 million in claims-- How does this -- an experience like that-- Why the high -- even with the irresponsibility that took place in that period of time?

MR. CALDWELL: I will give you the numbers that -- I hope I can -- I know I have them on a national basis, and I'm pretty sure I can get them, if they're not available now, specifically for New Jersey. I'll give you the numbers that show you what the companies paid out on losses in New Jersey, during that same period of time compared to the premiums I collected. And if I have those numbers--

ASSEMBLYMAN LOVEYS: We'd like those, very much.

MR. CALDWELL: Yeah, if I can get them, you'll have them.

ASSEMBLYMAN LOVEYS: We would like them.

Mr. Weidel?

ASSEMBLYMAN WEIDEL: I would like to ask you some questions. Actually, in the business, during this time of good times when they could reinvest in money market funds at 17 and 18%, I understand an agent would have a risk -- we'll say a restaurant and a hotel, and so forth -- maybe the premium's \$70,000, and you get the renewal from the company. And you go to the insured with a \$70,000 renewal premium and the insured

will laugh at him and say, "I got a \$50,000 quote," because somebody had come in and looked at the policy, and some company was hungry for the \$50,000.

So, the producer or the broker went back to the company and said, "You sent me a policy or quote for \$70,000, which was the same as last year." He's sitting there with a quote for 50, and the underwriter says, "Don't worry about it, we'll write it for 40," because they wanted the cash. Now, when those companies-- Under the laws in New Jersey, now, that's over with now and as you said, we're going back. And if you relate it to five years ago, the premium wouldn't be that much now, but because of this turmoil, it got in to make it look like all these people testified -- "My rates went up 200% or 300%."

I remember when Sheeran was the -- running around the halls in the Legislature. We had to pass a law because a couple of automobile carriers went out of business. And we had to pass a law to surcharge all other policy holders to pay the claims of the companies that went out of business. And it was almost like, "buyer beware," but yet we have an Insurance Department, and these companies that went out of business had already, in New York, been in trouble -- or Massachusetts, had been in trouble. We'll just call them the Ace Indemnity Company. Massachusetts--

MR. CALDWELL: Pennsylvania-- I remember. It was Gateway Insurance Company.

ASSEMBLYMAN WEIDEL: Yeah, Gateway. And here, our Department set there and waited, and they were prohibited from doing business in a couple states because they were gone insolvent. And "buyer beware" held-- It's just that we don't worry about it. You buy wherever you get the premium; whatever is off-manual -- elevator insurance was real cheap by a couple of companies. And then they go insolvent, and everybody else has to pay for them. That reflects on the Insurance

Department. I hear nobody-- When Ken Merin took over as Commissioner, he said, "We're out-gunned -- and we're out-manned, and we're out-gunned. We've got a little Department here, and we can't compete -- we can't regulate." Sheeran had said so. I said, "Why didn't you close up Gateway when you knew the Insurance Commissioner in the -- Pennsylvania and New York had closed them?" "Well, you know, well, we had a lot of insureds, and we didn't want to disturb them." So, my question is, nobody comes forward and says, we ought to make our Insurance Department substantial. We ought to give them the tools in which to function properly.

Mrs. Gluck testified yesterday in front of a Senate Committee. She has one actuary. She's going to put another one on in a couple of months, and another one on in a couple of months, and she's trying to substantiate. How, in the name of God, can an Insurance Department with three actuaries-- Hell, I'll bet you State Farm must have 20, right in the one company. I mean, why don't we--

MR. CALDWELL: Let me tell--

ASSEMBLYMAN WEIDEL: --Everybody that's part of this. Why don't we talk about this problem?

MR. CALDWELL: Don't think for a minute that the New Jersey Department, and the departments around the country, didn't know that the industry was underpricing its product. They did.

ASSEMBLYMAN WEIDEL: Now, we're into deregulation that Mr. Loveys said, when I get my turn. Didn't we make a mistake by allowing companies just to charge what they wanted?

MR. CALDWELL: No, because you've got other states around the country that have prior approval laws for commercial insurance rates. And you know what happened in those states? The very same thing. No regulator is going to tell you, when you make a rate filing that reduced premiums, "I won't accept it. Bring your premiums back up." That's a political

reality. I mean, if you were a regulator, you would find--

ASSEMBLYMAN WEIDEL: All right. I'm glad to hear you say it. But do you mean to tell me that if I were -- you and I were actuaries for the New Jersey Insurance Department, and a company comes in with prior approval and says, "We're going to charge \$100 for two elevators in a 15-story building," and you look at them and say, "You can't do it." "Oh, don't worry about it, because we're invested in the money market. We're going to have \$6 million in premiums when we invest that. That's why we can write it."

MR. CALDWELL: No, it's even more-- It's even simpler than that. When you make the rate filing that says, "I'm going to cut my rates 50% for commercial elevators," the Insurance Department just accepts it, and that's it.

ASSEMBLYMAN WEIDEL: All right, Wes.

MR. CALDWELL: And if it's a prior approval state, they stamp the big "Prior Approval" on it. That's the reality.

ASSEMBLYMAN WEIDEL: Okay. But you like deregulation, then.

MR. CALDWELL: Yes. And I think the consumer of insurance has benefitted from it for about five years in New Jersey with very low prices -- prices that were too low to support the product.

I would hope that--

ASSEMBLYMAN WEIDEL: But did he really benefit if the insurance companies went out of business, and if now we're facing reality? That's a mirage, isn't it?

MR. CALDWELL: Now remember -- and you hit on it before -- you have a Guarantee Association, which we have in New Jersey, and we have in every other state in the country. It's easy for the regulator to say, "Well, I don't care if they charge too little because if they go out of business, I've got a Guarantee Association that's going to protect the consumer." So, why should I take the political heat of telling a company

to raise its rates when I know that I'm protected with a backup mechanism anyway?

ASSEMBLYMAN WEIDEL: Well, that's a philosophy, then, that we -- a public policy position that we in the Legislature -- I keep saying this -- have to make a decision. Why would you take a company -- for instance, like the Aetna Casualty or the Hartford Insurance Group -- that's been in business for 2-300 years, used to have loss programs, used to work with their agent, used to work with their clients, and have a relationship-- What are we saying? The accountants say to me, you know, they used to have the relationship with our clients, and "we used to do business, and we knew their business, and we worked with them over the years, professionally. Now, it's all -- everybody grabs. We can have a guy, he'll be a client for 12 years, and some accountant comes in and says, 'I'll do it for a thousand. Don't pay Wes \$5,000, I'll do it.' " So, you've lost-- Maybe the whole -- our whole society has lost some kind of "stick-to-it"-ness, and--

MR. CALDWELL: One of the problems in the municipal area -- and I'm no expert on municipal law in New Jersey, so maybe you can help me -- but throughout the country, one of the problems is, either by law or by practice, the public bidding of insurance contracts. So, you've told the insurance industry, in effect, when you have public bidding, that the only thing that counts is the lowest quote. So, it doesn't count-- You can't come in and say, "Well, we have a better loss control program, and we'll be with you 20 years from now." No. The law says, with the practice in this municipality is, the lowest premium quote is the one we take. So, I mean -- you know -- maybe that's something that should be re-examined.

Another problem from a municipal standpoint is that while rates were coming down, or prices were coming down, that municipality didn't put aside the money to pay in 1985 -- "No,

it was wonderful. I paid \$100,000 last year; I budgeted for \$100,000 this year, but it only cost me \$70,000. I can spend that \$30,000 on some other program." You know, municipal budgeting is a year-to-year thing that, you know, it may be nice when the prices are going down, but it really hits you hard when there's an upswing.

ASSEMBLYMAN WEIDEL: Catches you some day.

MR. CALDWELL: Sure.

ASSEMBLYMAN WEIDEL: Now, would you please-- I really would like to have an answer to this. A company that you represent is writing municipal insurance, we'll say, for the City of New York. A tough one.

MR. CALDWELL: They're self-insured, but that's--

ASSEMBLYMAN WEIDEL: Okay, but just -- we'll use it. Now, they want reinsurance. When they go to a reinsurance carrier, is it-- I mean, I want to know this answer. Does a reinsurance carrier say, "We want 50% of your rate, 60% of your rate, 20% of your rate, in order to re--" Since they aren't regulated, in other words, do they go out on the open market, do they go to the-- Now, in other words, when there wasn't claims; when things were going good, they could reinsure. Now, what is this problem with the reinsurance market? Is it the percentage that they want, that they charge on the policy? Plus, the inability to -- to -- to characterize their losses. I want to know, if you can tell me -- how are rates set by the reinsurance carrier?

MR. CALDWELL: The rates are set by a reinsurance company -- and I used to work for one, so I have somewhat of an idea. They come in and look at the company's portfolio, the particular line of business that they're going to reinsure. They look at how they underwrite it; they look at how their claims operation works, and they figure out what it would cost them to back-stop that company for whatever--

ASSEMBLYMAN WEIDEL: Oh, excuse me. You don't do it

per line, you do it by the book of business?

MR. CALDWELL: There's two kind of reinsurance. One is called treaty reinsurance. That means you have a contract between the reinsurer and the reinsured, saying that on this category of business -- municipal liability, for example -- we'll take 50% of your losses, or we'll take a million, excess of a million. You can structure it any number of ways, but we'll take a piece of that line of business.

ASSEMBLYMAN WEIDEL: Okay.

MR. CALDWELL: And we'll do it for a price.

ASSEMBLYMAN WEIDEL: Okay.

MR. CALDWELL: The price is not going to be proportionate, because you've got acquisition costs -- the insurance company has costs that -- just to get that business on the books, that the reinsurer won't have. In other words, you've got marketing costs, you've got to pay commissions to agents, you might be advertising -- whatever. Those costs are not--

To give you an example, let's say, you've got a million dollars' worth of premium on municipal liability in New Jersey. Well, \$25 million of that may have been acquisition costs, so there's no reason why a portion of that should go to the reinsurer. But, they'll take a piece of the net premium for a piece of the exposure. And they'll price it based on what they think it's going to cost them to provide you with that piece of coverage -- which can change. And what happened -- a lot of money came into the reinsurance industry in 1979, just like it did to the primary industry, because of high investment returns. And the reinsurers get even longer to invest that money than the primaries do, because if they're writing at high levels, where you're going to provide coverage of aggregate claims over \$25 million of exposure, maybe 10, 15, 20 years before you hit the limit and have to pay.

ASSEMBLYMAN WEIDEL: Okay. Now, you're speaking of

treaty reinsurance.

MR. CALDWELL: Right. The other kind--

ASSEMBLYMAN WEIDEL: I would assume that that's out the window now; there isn't much of it.

MR. CALDWELL: No. What's out the window is the other kind of insurance.

ASSEMBLYMAN WEIDEL: Oh. The individual--

MR. CALDWELL: The other kind of reinsurance is called facultative reinsurance, and that's done on a particular risk. A municipality comes to the -- Aetna, and says, "I want \$5 million worth of coverage." Aetna says, "Let me check with my reinsurer. If I can find someone who'll take four million over one million, I'll give you policy." That kind of coverage has gotten very tough to find these days. Treaties have been cut back, but it's still there in the major U.S.--

ASSEMBLYMAN WEIDEL: What I want to know-- What I want to know is the reason for the rates being so high, relation to the -- what the reinsurance carrier is saying it wants to reinsure. If the City of Parsippany wants a rate from a company, the company will go to a reinsurance carrier and they'll say, "We want \$100,000 to reinsure Parsippany policy for \$5 million." So, the domestic company comes to Parsippany and says -- they're not telling them, but they're saying, "It's going to cost us 100,000 to reinsure. We need \$200,000 for that premium." Is that the way it works?

MR. CALDWELL: Yes. The reinsurance carriers-- Over that same period of time that primary writers were experiencing heavy losses at inadequate premiums, the same thing happened on a magnified basis to reinsurers, because the number -- the frequency of claims, and the severity of claims that pierced that reinsurance level was much higher than anybody anticipated--

ASSEMBLYMAN WEIDEL: Do reinsurance companies reinsure themselves?

MR. CALDWELL: Yes. It's called retroceding.

ASSEMBLYMAN WEIDEL: Oh, Jesus. So, now we have a company in the Bahamas-- Some fast operator set up a company in the Bahamas to reinsure -- which they are -- and they say to the Aetna, "We need \$100,000 to reinsure Parsippany." And there's nobody regulating them. The Aetna's gone wherever the market will give them a facility. And if they'll go to the underwriters and they'll say to themselves, in their little room in Hartford, "We need the best reinsurance we can get. It's going to cost \$100,000. So, we go to Parsippany, we tell Parsippany we want \$200,000 from them to write a policy." Now, this company in the Bahamas that's charging the Aetna \$100,000-- And they say Parsippany may have a big loss. We're writing a \$5 million-- Now, they go to another company and reinsure their money?

MR. CALDWELL: Yes. In fact, the only way that the property and casualty industry-- Remember, it's much different from life insurance or even property insurance, where the losses are fairly predictable. Casualty insurance is a very risky business. And by everybody reinsuring and retroceding, it spreads around the exposure so much that when there's a big disaster, and you read that-- MGM Grand's a bad example, but--

ASSEMBLYMAN WEIDEL: The Chicago fire.

MR. CALDWELL: Whatever -- a big fire, and you hear about one company paying out millions of dollars in claims, they're not really paying all of that out. The actual payments are coming from 50 different companies.

ASSEMBLYMAN WEIDEL: Okay, but there's no way -- just one more question, please. There's no way you can regulate these, are there?

MR. CALDWELL: They are regulated, and probably the only way they can be regulated-- What every state has is a provision in its laws that says you can't take credit for your reinsurance--

ASSEMBLYMAN WEIDEL: I can't what?

MR. CALDWELL: You can't take credit for-- Remember, when you're getting rid of a part of your liabilities, theoretically, that should give you an advantage on your balance sheet. You should have less on the loss side, and -- you know. You can't take credit for that reinsurance unless it's with a reinsurer licensed by this State, or you have a letter of credit backing it up.

So, that's the way in which the reinsurance protection is regulated. The quality of that reinsurance has to be either controlled by licensure in the State -- and many, many reinsurers are licensed to do business in New Jersey, and therefore regulated in terms of their solvency and so on -- or there has to be some financial backup satisfactory to the regulator, to assure that that protection is going to be there.

ASSEMBLYMAN WEIDEL: Thank you.

ASSEMBLYMAN LOVEYS: Mr. Zecker, in Mr. Rafferty's absence?

ASSEMBLYMAN ZECKER: I think there's a lot of shots being taken, Wes, because you're the first company man that we've had in our--

MR. CALDWELL: Well, I wore my bulletproof vest today, so--

ASSEMBLYMAN WEIDEL: No, it's knowledge--

ASSEMBLYMAN LOVEYS: Excuse me, but before you continue, you do represent -- you said -- approximately 50% of the companies that write in New Jersey--

MR. CALDWELL: I'd say, almost half of the commercial liability insurance written in New Jersey is written by our companies.

ASSEMBLYMAN LOVEYS: Thank you.

ASSEMBLYMAN ZECKER: Wes, since you do have a personal background in insurance -- correct?

MR. CALDWELL: Yes, in fact, Jim Sheeran was my client

at one time. I was in the AG's office when he was Commissioner.

ASSEMBLYMAN ZECKER: I think we all would agree that insurance companies, at least, for the most part, look upon experience as a major factor in establishing rates for insurance, isn't that correct?

MR. CALDWELL: Correct.

ASSEMBLYMAN ZECKER: What I'm having a problem with is, in the State of New Jersey, there are municipalities and counties that are good risks and municipalities and counties that are bad risks, correct?

MR. CALDWELL: Right.

ASSEMBLYMAN ZECKER: Now, when you have a case of a group of municipalities, let's say, that are excellent risks -- no problem at all -- why are they either being dropped, or why are they being quoted rates that are unbelievable? There is no rationale to experience -- you know -- on some of these premium quotations.

MR. CALDWELL: Remember-- You want to finish your--

ASSEMBLYMAN ZECKER: Is your answer that you've already answered -- that the New Jersey market is being looked at, on a whole? Is that the answer?

MR. CALDWELL: No, I don't think so. I don't think that's the answer you want, to your question.

ASSEMBLYMAN ZECKER: I don't want an answer. I just have a serious problem -- and let me even expand the problem a little further. I can understand an insurance carrier being a little bit reluctant -- let's say, a municipality that might have an exposure of a radon site, or a closed municipal dump. But even taking those exposures out -- say it's a municipality with absolutely no radon exposure, absolutely no dump sites, and still the rates are brought up, you know, really ridiculous amounts. Why is it being done?

MR. CALDWELL: Every municipality has a pollution exposure whether they have their own landfill site or not.

They all have garbage operations, and those -- they cart their waste to a site somewhere, and with joint and several strict liability for pollution in New Jersey, that it may be the best operation in the State as far as being sure that their not putting toxic waste into the dumpsite. But with joint and strict several liability, they're still going to be on the line for the whole ball of wax, if people are injured 15 years from now.

ASSEMBLYMAN ZECKER: You're saying, then--

MR. CALDWELL: And which means an underwriter has--

ASSEMBLYMAN ZECKER: You're saying that, you know, in a worst-case scenario, the fact that a municipality or 20 of them use the Hackensack Meadowlands as their dumpsite, that if something is exposed 15 years from now, that one out of 15 cities will have its share of exposure 15 years down the road?

MR. CALDWELL: Yeah. And let me give you a more realistic picture of it. That dumpsite might be used by 20 municipalities that are all pretty good guys. They have state-of-the-art technology, and they're--

ASSEMBLYMAN WEIDEL: They have clean garbage.

MR. CALDWELL: Clean garbage, right. But ABC Schlock Chemical Company might be using that site too. And ABC Schlock is going to be out of business 15 years from now, but those municipalities will be there to pay the claims. And that means, from an insurance underwriting standpoint, even though they're pretty good guys and they have pretty safe operations, we've got to charge them the premium that reflects the fact that they could pay the full loss beyond their own responsibility, at a future point.

ASSEMBLYMAN ZECKER: So then, Wes-- And I'm going to-- It's the City of Clifton, 10th largest City in the State, and we set up a self-insurance program. Basically, we had our first one million of coverage with \$125,000 on any one claim. We had to meet that 125, okay?

MR. CALDWELL: That was your deductible, or your self-insured retention.

ASSEMBLYMAN ZECKER: We also had-- No, our deductible, in effect, was \$470,000 in the aggregate. But if any one claim had come in at more than 125, the carrier would come in.

Now, the coverage for that first million was 123-eight. The four million excess, okay -- the umbrella premium was 58,000, and the administration fee from Rasmussen, five years ago, was 25,000, has moved in five years to 27,000, and they've been satisfied with their administration fee -- a really great experience for a five-year period. The one claim-- I'm not even going to mention what the claim is, it's so ridiculous -- it involved a police officer stopping two people. The driver was sober, the passenger was drunk; ultimately, there was an accident -- guess who was behind the wheel? The drunk driver, and the sober passenger was now suing.

Okay. The renewal premium-- If the total came to 209,000, including the administration fee, the new premium is \$2,121,000, less, in five years, no insurance company paid out a penny. Everything came in under the self-insurance portion. No exposures, no dumpsite -- nothing has changed in five years, to increase exposure in that municipality. Are you telling me that-- Are you telling me that the dumpsite potential -- we dump in the Hackensack Meadowlands -- that dumpsite potential is one of the write-ins for increasing that premium from 209 to 2.1 million?

MR. CALDWELL: I'm telling you, it's part of it. And--

ASSEMBLYMAN ZECKER: Oh. How big a part of it, Wes?

MR. CALDWELL: --let me ask you a question for a second.

ASSEMBLYMAN ZECKER: No, how big a part of it?

MR. CALDWELL: Well, I can't tell you how scared underwriters got when they read that Jackson Township case.

ASSEMBLYMAN ZECKER: Is it 20-25%?

MR. CALDWELL: Everybody thought they--

ASSEMBLYMAN ZECKER: Is it 20-25% of their factoring?

MR. CALDWELL: I can't put a number on it, but everybody in the industry thought that when they were writing general liability policies in New Jersey for many years, that they knew what they meant when they said sudden and accidental. And when the court says, no, you didn't mean sudden and accidental, you meant gradual -- it was a lot of sudden and accidental things, well -- what's-- We've now got a policy--

ASSEMBLYMAN ZECKER: "The legal system has run amok." Your quote.

MR. CALDWELL: Let me mention another thing. I'm sure you probably haven't had an auto accident in five years. I haven't. My premiums have gone up.

ASSEMBLYMAN ZECKER: That's 23, Wes.

MR. CALDWELL: Okay. What do we do when we buy insurance? We spread the risk. If we charged every insured, based on his own particular exposure, than the guy who has the million-dollar loss is going to have to pay a million-plus in premiums next year. You can't do that. It's spread out. There may be many municipalities that have very small claims, and very infrequent claims, but there's a lot of municipalities -- and on the whole, there's been a lot of claims and a lot of dollars, and it's cost us money.

ASSEMBLYMAN ZECKER: But on the facilitated reinsurance -- if you had a risk similar to the one that I've just described -- I mean, I can understand premiums going up, and I can understand where, on reinsurance -- you know, you're due for an increase. But when an umbrella premium goes from 58,000 to 1,059,000, -- I mean, it just seems like something is wrong there. I can understand where that 58,000 umbrella premium should go up to, let's say, 100,000 -- let's say, 150.

Where are they pulling numbers like one million and 59,000, for a \$4 million umbrella? Where are numbers like that coming from?

MR. CALDWELL: Let me give you an example. Maybe this will make it clear.

At the 'map' meeting at the New York Insurance Department on Wednesday, one of the companies there -- and I won't mention their name -- agreed to take a percentage of the business that came into the 'map' based on their market share, on liability premiums. And when that gentleman left the meeting and explained to me what went on and what they had agreed to do, he said to me, "But you know, we're still not going to take any of it outside of the 'map'." I said, "What do you mean -- you're not going to write any in the voluntary market?" He said, "No." I said, "Why not?" He said, "Because even with that pollution exclusion, that has been approved in New York," and the same one -- I'm not sure whether it's been approved in New Jersey, or whether it's still pending, but I think it's going to be approved. And it's broad; it just says, "This policy does not cover pollution exposure anyhow, anyway." He says, "My underwriters are not at all convinced that the courts are going to uphold that when they get the bad case where people are severely injured, and there's a big, fat insurance pot out there, that the courts are not going to find a way to say, 'You didn't really exclude it.'"

So, fear is part of the problem today, too, because you've got companies that have just gotten out of it. There are major members that I've got, that were in the municipal market for years, and they just said, "We can't handle it anymore. We don't know what the price is going to be; we don't know what the charge -- we'll just stay out of it, and stick with lines of business, where it's calmer and safer to write our premiums."

ASSEMBLYMAN ZECKER: Wes, we have asked the agents that have come to us -- and these are only agents or brokers,

not really representatives of the company -- what would this Assembly Committee have to do to improve the market. And they've made suggestions, and the next question is, if everything was done -- tight restrictions were put in -- if all that was done, how long would it take for the insurers to react and get back into the market with competitive rates? And the agents and brokers have testified that it wouldn't be one year, it may not be two, may not be three years; they would then want to measure the experience. And what you're saying, indirectly, is that this Committee almost cannot do anything to solve the problems -- the crisis -- in insurance, at least with public entities, in one year, or two years, or three years.

MR. CALDWELL: Let me tell you what happened--

ASSEMBLYMAN ZECKER: Isn't it possible -- the possibility's that insurance carriers, by doing that, are going to be running a little bit amok?

MR. CALDWELL: Let me tell you what happened in New Jersey the last time you had an availability problem for municipal insurance.

The New Jersey Supreme Court made it clear 10 or 12 years ago that the doctrine of sovereign immunity was in trouble, unless the Legislature did something to provide a remedy for people that get injured through the fault of public entities. The Supreme Court was just going to open the doors to liability. That led the State to adopt the New Jersey Tort Claims Act. The approach of that act is to say, there shall be no liability except in the following kinds of cases. So, it was worded as, immunity with limited exceptions.

One major writer of municipal liability, back in the mid-70s or maybe early 70s, decided that that was a wonderful opportunity to make big bucks in New Jersey, because, with this very narrowly drawn tort claims act, there would be very few claims made against municipalities successfully, and that this would be a real opportunity for them to make money. And they

came in and took over a huge share of the market.

After they found out what the courts were doing to that Act, and how they were interpreting it in New Jersey, they started to lose their teeth. They had written the business at inadequate rates. Instead of doing what probably would have been the sane thing, and that is, just raise their prices to account for what the courts were doing for the Act, they said, "We're getting beat; we're going to pull out of the market." When they did that, other companies said, "Well, they were the biggest company writing it; they must know what they're doing. We'll hold back too."

Well, with the Department, we set up a map in those days, and once underwriters sat down at a table and started looking at these individual risks and making rational judgments on whether they can underwrite them, they did. The prices were higher than what the market had been at that time, because the market was underpriced. But it can be done, it will be done; a map will work in New Jersey, and the reflection of whatever you do as a Legislature, in terms of cutting down loss costs, is guaranteed because of the existence of the pools. Those pools have an incentive to underprice right now. I mean, they have every reason to want to keep their prices below the levels that might be needed.

So, if there are changes made that allow them to tell their members, "Hey, we're going to reduce your assessment next year by 25%, because we now have joint and several liability reform and we have caps on pain and suffering," the market's going to have to meet that competition. Even though there are companies that have gotten out of it, for the most part, my big members are going to write municipal insurance today, tomorrow, and 10 years from now. We don't want to lost that market to the pools or to anybody else.

ASSEMBLYMAN ZECKER: I think you realize that the Legislature would have a rough time in drafting legislation to

do away with the court system, even though some of us would like to. But is it the kind of thing that insurance companies can live with, if we are making the attempts? Are the carriers going to react? That, I think, is the big question.

MR. CALDWELL: Yes. Yeah. I don't think -- you know, you will-- If the Legislature does something significant -- and part of the problem, I've got to tell you, is that in the past, every time we're asked -- we as an industry -- are asked to testify, "If we do this, that and the other thing, what's it going to do in terms of the price?" And we're always very reluctant to put a number on it, but some actuary somewhere will sell his soul and come in and say, "Well, we'll put that at 25%."

What happens is, you ask that question and then when it gets through the legislative meat grinder, it comes out so watered down that nobody's going to price it at 25%.

ASSEMBLYMAN ZECKER: You're right.

MR. CALDWELL: You know. So, sure, pure joint and several reform -- that's a very significant thing. But you know and I know that when it gets through both houses of the Legislature, and gets the Governor's signature on it, it's going to be somewhat modified. It's not going to be a pure approach.

Same thing with any cap on awards. In New York, they did a number of reforms for medical malpractice in recent years. And, you know, it was wonderful to say, "Well, we got structured awards now in New York." Well, yeah, you got it, but it's so weak that it really didn't do much to the system.

ASSEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN LOVEYS: Let me ask you this. Karl, we're going to get back to you again on this.

ASSEMBLYMAN WEIDEL: Sure, sure.

ASSEMBLYMAN LOVEYS: Going back to Gerry's question, and what's happening in Clifton in the premium jumping --

skyrocketing, you alluded to the strict liability area. Is there a statute of limitations that plays a significant role here? Is there one -- what is it?

MR. CALDWELL: In New Jersey, the courts long ago fashioned a discovery rule. You don't even-- It's not by statute, it's by long-standing case law in New Jersey, that the statute of limitations, which I guess is two years for personal injury claims, does not begin to run until you're aware you have an injury. That started out with medical malpractice cases years ago, where the doctor would leave a sponge in or a scalpel or something. Well, until you know you've got a problem, the statute doesn't begin to run in New Jersey, so that the statute of limitations was not a problem in Jackson Township. Once-- Whether they had an injury, was a problem. But the statute of limitations was not, because once they became aware that there was a problem, that's when the statute begins to run. And that applies across the board no matter what kind of case you're talking about.

ASSEMBLYMAN LOVEYS: And I guess we couldn't say that you've got to know that the sponge was left in. It's not up to -- for you to find out later on. We couldn't do something like that.

MR. CALDWELL: Well, certainly, the reason why that's happening in most states around the country -- either by case law or by statute -- is, it's pretty unfair to tell someone, "You're barred from bringing a suit even before you know you have an injury." So, on these latent exposure kinds of things, if the asbestosis doesn't manifest itself until 20 years after you began to get exposed to it, how can you tell someone, "Well, it's 20 years after it started, so you were barred 18 years ago from bringing suit"?

ASSEMBLYMAN LOVEYS: Is it correct-- Would this be a correct statement to make, from what I gather, from what your testimony -- that if there was legislative action taken, that

the insurance, yes, will be available, but certainly might not be affordable? Is that a fair statement?

MR. CALDWELL: No. I'm going to say this, that prices in the aggregate are still, I don't think, fully up to adequate levels. And remember that the liability system is still expanding. You know, while we sit here and talk, courts are coming out with new decisions.

ASSEMBLYMAN LOVEYS: What I'm saying is, right now -- municipalities, if you will -- let's stick to that -- are saying that they can't afford the liability insurance. What you're saying is, yes, if certain measures are taken -- do take place, insurance will be available but maybe not affordable.

MR. CALDWELL: Remember, what I started off saying in the beginning was that the first thing that has to be done is this -- the regulation that's in place has to be modified, because that's got underwriters just scared to death to take on any new business.

ASSEMBLYMAN LOVEYS: I understand that.

MR. CALDWELL: But that aside, if the Legislature does something significant that saves loss costs, what I would recommend should be done at the same time is, requiring within a period of time, that companies come in and make new filings to reflect the anticipated savings. I wouldn't mandate a number. You have no better ability to do that than I do. But actuaries, at the Insurance Department--

ASSEMBLYMAN LOVEYS: Well, you know opposition on the verbal threshold. We don't want to rate-set.

MR. CALDWELL: But I think you could-- Remember, even under the Commercial Deregulation Act in New Jersey, those rates have to be filed. And I don't care what the Department says, if they look at the act, they've got the power to challenge those rates, and to reject them, so that if you said, "We're doing this, that and the other kind of reform," and within six months, every rate filer has to come in and re-file

its rates to reflect an appropriate amount for the anticipated savings, I think that can be done. And I think the actuaries at the Department and at the companies can figure out a good guesstimate on-- You know, nobody knows, ultimately, how much those things are going to save until--

ASSEMBLYMAN LOVEYS: You would anticipate, though, there would be some savings, though?

MR. CALDWELL: Oh yeah, I would.

ASSEMBLYMAN LOVEYS: In a different light, or a different group?

MR. CALDWELL: But again, it depends on how significant they are. If it gets so watered down--

ASSEMBLYMAN LOVEYS: Okay. I understand.

MR. CALDWELL: --that it's eyewash instead of real, you know--

ASSEMBLYMAN LOVEYS: Mr. Weidel, you had another question, I think?

ASSEMBLYMAN WEIDEL: I'd like to just tell you an example that came to my attention.

A broker wrote a liquor store and a restaurant for 30 years. The liquor store and the restaurant was sold to two young men. They borrowed money to buy it. The broker went to the new owners, and their attitude was, "Tell me about insurance." And they told them what the sellers had. Their answer to the response was, "What do we need?" He said, "You need workman's compensation, under law. You need fire insurance on your building, because you have a mortgage. You need some-- You have a loan -- a personal loan -- on your contents, and the bank will require that. And you should have errors and omission insurance or liquor liability." The guy says, "Do I need that?" He said, "You do need it." He said, "I can't afford it."

Now, the broker had errors and omissions insurance. He packed up his bag, and he went home and he issued the

policies that the insured wanted. Six months later, a man comes in there and he has two drinks. And he leaves the tavern. And one of the owners served him the drinks. He was perfectly-- As far as the bartender and the owner was concerned, he was fine. He stopped at another tavern. Three hours later, he got in his car and he started down a main thoroughfare. And he ran into a young lady, and her two legs were amputated.

Suit was brought by the attorney representing the young lady. He sued the second bar, and the first bar. The attorney that he hired -- the first bar -- to represent him said, "Sue the broker. Did he give you a letter to the effect that you needed errors and omissions insurance?" The broker said, "No, I set down with him at his desk, and we went over the policies that the previous owner had -- which he had, liquor liability." The errors and omissions carrier for the broker for the first, came to that broker and said, "We're going to spend \$100,000." The broker only spent \$6,000 a year for premiums. He hit the ceiling. "You're going to spend a hundred--" He says, "I'm going to go back to the errors and omissions carriers, and I'm going to suggest to them that they pay \$100,000 so we don't have to go to court." Now, I don't know what the second tavern had to pay during the thing, but I know-- Now, that isn't anything that we can do to protect--

MR. CALDWELL: Sure you can.

ASSEMBLYMAN WEIDEL: What?

MR. CALDWELL: If you do--

ASSEMBLYMAN WEIDEL: We, as a legislator.

MR. CALDWELL: Yeah. If you reform the doctrine of joint and several liability, even if you can bring that broker's errors and omissions policy into the action and get the court to find some responsibility there, what do you think the percentage would be, on an overall basis of that suit?

ASSEMBLYMAN WEIDEL: It's very little.

MR. CALDWELL: It's got to be minimal. Minimal. So that, sure, your proportionate share of a big judgment might be involved in that kind of a case, but it would be a small amount to pay.

ASSEMBLYMAN WEIDEL: Okay.

MR. CALDWELL: And remember--

ASSEMBLYMAN WEIDEL: We will have to-- We, as a Committee, will have to address this, probably in some type of legislation. But I want to ask you -- and I'm not criticizing your companies, but I am-- The companies have gotten to such a degree that they're scared that nobody has any authority anymore. In other words, it comes from the home office. We have an underwriter somewhere who says, "I'm sorry. We can't write restaurants; we don't want to write doctors, we can't do this." The long-haul truckers -- who wants them? But yet, a manager in Kansas can say, "I can make money until it comes out my ears on long-haul truckers, because they're on interstate highways and they go from one town to the other, and I could make money," but the home office won't let them write long-haul truckers because the overall book of business -- New York and Pennsylvania, New Jersey's bad for long-haul truckers.

So, the insurance companies-- You're not admitting it, but what is really happening is, the municipal liability insurance, they don't -- the guys in the ivy towers, they don't care whether Parsippany is a good insured or a bad insured. They don't want it.

MR. CALDWELL: Karl, I'll be the first to admit -- and I won't name any companies--

ASSEMBLYMAN WEIDEL: On a national-- They don't want it. Nothing we can--

MR. CALDWELL: There have been some dumb decisions made on both sides of this bad cycle that we have just lived through. There were bad decisions made in terms of keeping market share, and competing with irresponsible prices. And

there are bad decisions being made now. Instead of looking at your book of business and being more careful how you underwrite, and try to weed out the riskiest business, there are some companies that have made the decision, "We're losing money in this line; we're going to get out of it." I don't think that's bright and I don't think it's farsighted. But yeah, those kinds of decisions have been made.

There are a lot of other companies -- many of the ones that I represent -- who have not done that, or who have made decisions generally, to get out of line. But when a state like New York or New Jersey comes to them and says, "We want your help on a 'map' program," we're in."

ASSEMBLYMAN WEIDEL: That brings me back to your testimony -- and you're one of the few, and I want to congratulate you. You're one of the few-- We don't have a 'map' program in New Jersey.

MR. CALDWELL: That's right.

ASSEMBLYMAN WEIDEL: So you would suggest that there be legislation, number one--

ASSEMBLYMAN LOVEYS: No, that-- Karl, that is--

MR. CALDWELL: You don't need legislation.

ASSEMBLYMAN WEIDEL: You don't-- That's just--

ASSEMBLYMAN LOVEYS: No, but-- We don't presently, but there is a 'map' program right now being planned, and will be implemented soon. That I do know.

ASSEMBLYMAN WEIDEL: Oh, I didn't know that. I didn't know that.

MR. CALDWELL: That's right. That's right. The only reason it's been delayed, as I mentioned to you, is that regulation. We explained to the Department that with that regulation in place, in its current form, if we promised you that the companies would take the business, we'd be kidding you, because with that regulation, the underwriters are just scared to death to take on a new piece of business. But--

ASSEMBLYMAN WEIDEL: But if that could be adjusted, and we had a--

MR. CALDWELL: And I think it will be. I--

ASSEMBLYMAN WEIDEL: --an effective 'map' program, we might.

MR. CALDWELL: I think, next week there's going to be an amendment published.

ASSEMBLYMAN WEIDEL: Okay. Now, this-- Develop strong contractual language to sort of prevent unexpected judicial -- that should be legislation?

MR. CALDWELL: Probably, it would be nice. I don't know that the Legislature would give companies any greater assurance that the courts are going to interpret the legislation properly, than we are assured--

ASSEMBLYMAN WEIDEL: Well, then that's up to the Insurance Department, to--

ASSEMBLYMAN LOVEYS: You want a Constitutional amendment, like Mount Laurel II? Karl, you're not going to get it.

ASSEMBLYMAN WEIDEL: No, but I'm just wondering, Ralph--

ASSEMBLYMAN LOVEYS: Yeah.

ASSEMBLYMAN WEIDEL: --how we can change the format in the contract.

ASSEMBLYMAN LOVEYS: I understand.

MR. CALDWELL: I think-- Let me put it this way. One thing that you're going to have to look at in the long range -- every state is going to have to, and the Federal government is going to have to -- is the pollution liability problem. It is no longer, in any way, insurable.

ASSEMBLYMAN WEIDEL: But that's out in New Jersey now. We've excluded it.

MR. CALDWELL: We've filed--

ASSEMBLYMAN LOVEYS: But the judges haven't. That's

what you're saying.

MR. CALDWELL: We've filed language that has said, "In this contract, it's now excluded." Whether that will stand or not, I don't know; but I'm telling you that the problem is one that's going to have to be dealt with through other than the insurance mechanism. EPA has estimated something like \$100 billion to clean up the known sites -- and that's just cleanup, that's not the cost of injuries and property damage that may result in the future. There isn't enough money in our industry to take care of the potential problem that exists with respect to pollution.

Somewhere along the line, legislatures are going to have to devise a different way -- a different way of paying for those exposures than can be provided through insurance. And once that's done, presumably it would be an exclusive mechanism -- maybe some kind of a compensation system for victims of pollution or whatever.

ASSEMBLYMAN WEIDEL: All right. The claims-made forms -- do we have that in New Jersey?

MR. CALDWELL: I don't think the Department has approved it.

ASSEMBLYMAN WEIDEL: Do we have tail coverage, like you mentioned for --

MR. CALDWELL: I'm sure that the filings that were made included the provision for tail coverage. Nobody would file it without it. You know how--

ASSEMBLYMAN WEIDEL: But it hasn't been approved.

MR. CALDWELL: That's my understanding, that the Department has refused to approve the form.

ASSEMBLYMAN WEIDEL: So, all the things that you're suggesting, we almost can't do.

MR. CALDWELL: No, I think the big area that you've got to concentrate on is the tort reforms, the limitations on non-economic damages--

ASSEMBLYMAN WEIDEL: Now, here we go again. Now, here we go -- and we've got my friend Phil, sitting there. He doesn't want that.

MR. CALDWELL: Sure. I can understand that. I have friends that I went to law school with who are trial lawyers today, and I keep telling them that--

ASSEMBLYMAN WEIDEL: Probably your wife's an attorney. She won't talk to you when you go home at night.

MR. CALDWELL: But I mean, in a way the courts and the trial lawyers are killing the goose that laid the golden egg. I have to be candid with you. For years -- while Phil and I may not have joined hands and worked together -- in fact, the insurance industry and the trial lawyers were on the same side. Every time the courts created a new liability, they made a new market for us. I mean -- "Oh, product liability. What a wonderful idea. We'll sell you coverage on that." Or, "Medical malpractice -- that's great." You know.

But now, if it gets to the point where the insureds can't afford to pay for the coverage, and the insurance companies can't figure out how to price it, we diverge interests. The system has gone amok.

ASSEMBLYMAN LOVEYS: And the sad part about it is, we're going to try to make the ruling between these two guys, and we're going to be the only ones that are wrong.

ASSEMBLYMAN WEIDEL: Let's take both of them to a gym. (laughter) Lock the doors, and we'll come out with a compromise.

ASSEMBLYMAN LOVEYS: Jack, do you have something?

ASSEMBLYMAN RAFFERTY: No, no.

ASSEMBLYMAN LOVEYS: Let me just say again, in passing -- and alluding back to what Karl said earlier, about some philosophy or society, if you will. I think one of the main problems, or areas of why we have a dilemma today is because of the philosophy of our society -- at least, the society of the

Northeast, and that is, "Give me something for nothing, and let's sue, sue, sue." I hope--

MR. CALDWELL: The concept of fault is gone. I'm convinced of that, that it's a question of--

ASSEMBLYMAN LOVEYS: It's frightening.

MR. CALDWELL: --there's an injury, and we've got to find somebody to pay for it.

ASSEMBLYMAN LOVEYS: It's absolutely frightening.

Wes, I appreciate your testimony today. We do plan to have some additional hearings in the liability area -- in the private sector, if you will -- in the very near future. I would hope, when you hear of our public hearing dates, that you would please attend and again testify.

MR. CALDWELL: Let me just mention two quick things before I leave. One thing to keep in mind, that even though the-- I think the single most important thing -- for municipalities especially, but across the board -- is the joint and several liability problem. If you do it for municipalities, you automatically shift the burden on to other defendants. So, the business community wouldn't be happy to see you--

ASSEMBLYMAN LOVEYS: Heard you loud and clear. Heard you loud and clear.

MR. CALDWELL: Okay. And the other thing that I didn't mention, as an area of reform that I think you ought to look at, is what we call state-of-the-art defense. In New Jersey, there is a case -- Bischiotta (phonetic spelling) -- it was a product liability case. And in essence, it said, "Even though you did everything you could have done way back then, when you made the product, we're going to hold you to today's standards."

ASSEMBLYMAN LOVEYS: I understand that completely too, but bear in mind, without help from the Federal government, that particular area -- it's almost futile what we do.

MR. CALDWELL: No, but it's an area that applies to the municipalities as well, because if you're running a landfill operation--

ASSEMBLYMAN ZECKER: Incinerator sites. State of the art; we hear it all the time.

MR. CALDWELL: --and, you know, you're told that if you have 'x' kind of a liner, blah-blah-blah, it's going to be safe forever. And later on, you find out it wasn't, and you were doing everything you could, you can still be--

ASSEMBLYMAN LOVEYS: Standards of today, not of 20 years ago.

Thank you so much for your testimony.

MR. CALDWELL: Thank you.

ASSEMBLYMAN LOVEYS: I appreciate it.

Let's see -- Michael Soccio, Randolph Township. Michael?

M I C H A E L S O C C I O : Good afternoon. My name is Michael Soccio. I'm the Finance Director for Randolph Township.

I would like to submit this statement to the Committee on behalf of the Randolph Township Council. The Committee has received a copy of this statement, and also, a copy of the Township's five-years loss experience and five years' premiums that they have paid.

Randolph Township appreciates the hearings scheduled by Assemblyman Ralph Loveys and the Insurance Committee regarding the increase in municipal liability insurance. The Township Council makes the following statements regarding the increase in municipal liability insurance:

1.) The Township of Randolph has an excellent loss experience record. The Township's losses for the last five years for both general liability insurance and automobile liability insurance has average \$22,700. And, the premiums for the past five years have averaged \$61,780. Even with the Township's excellent lost experience record, the Township

liability insured premium has tripled over last year's.

2.) The Township's excess liability insurance -- \$5 million coverage -- has been cancelled by its previous insurance carrier due to the insurance company's inability to obtain insurance through the reinsurance market. The Township has received a proposal for excess liability insurance, \$5 million coverage from another insurance carrier for an approximate cost of \$60-70,000 -- an increase of 700%.

The Township of Randolph would like some assistance from our legislators to correct this difficulty in obtaining liability insurance, particularly in the instances such as Randolph. The Randolph Township Council would again like to thank Assemblyman Ralph Loveys and the Committee of Insurance for the opportunity to express its comments regarding the increasing cost of municipal liability insurance.

Thank you.

ASSEMBLYMAN LOVEYS: Thank you very much. Any questions, any additions?

ASSEMBLYMAN WEIDEL: I--

ASSEMBLYMAN LOVEYS: Go ahead, Jack. Sure.

ASSEMBLYMAN RAFFERTY: Mr. Soccio, how many people are in Randolph?

MR. SOCCIO: Population, approximately 19,000.

ASSEMBLYMAN RAFFERTY: I have no further questions, Mr. Chairman.

ASSEMBLYMAN LOVEYS: Thank you very much.

MR. SOCCIO: Thank you.

ASSEMBLYMAN LOVEYS: Mr. Rick Prill from Boonton?

R I C K P R I L L: Mr. Chairman and members of the Committee, I would like to take this opportunity to thank you -- to speak before you.

My name is Rick Prill. I'm the Administrator of the Town of Boonton. Mayor Bucco had planned on attending this hearing, but unfortunately, he had a personal matter to attend

to, so--

ASSEMBLYMAN LOVEYS: Say hello to Tony for us.

MR. PRILL: I will -- so he couldn't make it.

I don't have anything to hand out to you, due to the fact that I didn't know I would be speaking to you until about a half-hour before the meeting was adjourned.

In your two or three hearings throughout the State, and this hearing, you've heard extensive testimony on, I guess, what would be considered the big issue -- the large picture. I'd like to shift gears for just a moment and explain a problem that the Town of Boonton is experiencing that is a very serious problem for the municipality, and I believe about 100 other municipalities throughout the State are experiencing the same thing. And the best way that I can illustrate this problem is just to go through some very simple mathematics.

In 1985, our budget for insurance was \$56,000. Our general liability and umbrella liability policies come due in the middle of the year. At that time, we were informed that our policy premiums were going to double. The governing body had to adopt an emergency appropriation of \$50,000 to cover these increases.

So, basically, our expenditure for insurance in 1985 was approximately \$106,000, which included this \$50,000 emergency appropriation. Unfortunately, this year, the State is now saying, "Town of Boonton, take that \$50,000 appropriation and put it inside the cap for '86." So, we're being penalized \$50,000. Now, using the five percent cap, we only have approximately \$110,000 worth of an increase that we can increase from our '85 to our '86 budget. Subtract \$50,000 right off the top, and we're down to \$60,000. Subtract approximately \$20,000 for pension increases, which we have no control over, and we're now down to 40. Another \$20,000 for garbage, we're now down to 20. I'm good at putting together a tight budget, but when I only have \$20,000 of what I consider

discretionary money for salary and wages, and other expense increases -- I'm good but I'm not that good.

I realize that there's legislation in the works that would amend the current legislation, to take these emergencies outside the cap--

ASSEMBLYMAN WEIDEL: That just passed last week.

MR. PRILL: Did it just pass?

ASSEMBLYMAN WEIDEL: Yes. Zimmer. I was a co-sponsor.

MR. PRILL: I wasn't aware of that. Okay. I had heard rumors that the Governor was not inclined to go along with that -- I don't really know.

ASSEMBLYMAN LOVEYS: Well, the way it passed the Assembly, it has to now pass the Senate. Do you know who wrote the cap law in the State of New Jersey? He happens to be the President of the Senate. Now, I'm not going to suggest what the President of the Senate is going to do, but I don't know if he's going to have too much success in having that cap law passed in the Senate. So, maybe the Governor will never see it. You might have to go to referendum.

MR. PRILL: That's very possible.

What we're faced with in the Town of Boonton -- and I'm sure a lot of other municipalities are, too -- is the difference between putting together a workable budget, if that \$50,000 could be put outside the cap, or putting together an unrealistic budget and trying to survive through the year. Very simple. I'm not dealing with big numbers, compared to the hundreds of thousands and the millions that you're dealing with, but for a small community like Boonton, these small numbers are very significant.

ASSEMBLYMAN LOVEYS: I think everything is relative. Fifty thousand here might be comparable to five million someplace else--

MR. PRILL: Yes, I agree.

ASSEMBLYMAN LOVEYS: --but it hurts you just as much,

we agree. We know the problem; we're aware of that particular problem, and you're not the first municipal official who's brought that to our attention, either.

MR. PRILL: Well, any support that you could give us in trying to get this legislation through, we'd appreciate it very much. Thank you.

ASSEMBLYMAN LOVEYS: Thank you, and thank you for appearing.

ASSEMBLYMAN RAFFERTY: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes.

ASSEMBLYMAN RAFFERTY: The cap is six percent -- isn't it six percent now?

MR. PRILL: We are allowed -- we can go to six percent, but there are tradeoffs.

ASSEMBLYMAN LOVEYS: But they could have to go to referendum -- that's the only thing--

ASSEMBLYMAN RAFFERTY: No, I mean six percent. It is six percent now; it has been--

MR. PRILL: Well, we have the option of either going with five percent or six percent. Going with six percent, there are certain tradeoffs -- items-- Money that's outside the cap now would have to be brought back inside the cap. So, there is the offsetting factor.

ASSEMBLYMAN RAFFERTY: I see. So, that's not helping you out any.

ASSEMBLYMAN WEIDEL: Mr. Chairman?

ASSEMBLYMAN LOVEYS: Yes.

ASSEMBLYMAN WEIDEL: Could I ask this gentleman a question?

ASSEMBLYMAN LOVEYS: Sure.

ASSEMBLYMAN WEIDEL: It doesn't really have anything to do with insurance, but-- The Division of Local Government -- and please, I'm just asking for knowledge-- In a situation like that, do you go to the Division of Local Government before

you do anything, and explain your problem? Is there any relief there, or do they have to stay by the law?

MR. PRILL: Not that I'm aware of. The only recourse that I'm aware of is going to referendum.

ASSEMBLYMAN WEIDEL: Okay.

ASSEMBLYMAN LOVEYS: I don't think Barry Sokolowski (sic) is going to move into that area. It would have to be done legislatively, Karl.

ASSEMBLYMAN WEIDEL: I gotcha.

ASSEMBLYMAN LOVEYS: Thank you very much, Rick.

At this time, I would like to call on Jim Weinstein, South Orange Village. How are you, James?

J A M E S W E I N S T E I N: Fine, how are you?

ASSEMBLYMAN LOVEYS: One of the younger South Orange Village Councilmen, you might say -- or Committee members.

ASSEMBLYMAN WEIDEL: Hi, Jim.

MR. WEINSTEIN: Hi.

I--

ASSEMBLYMAN WEIDEL: Is this where Pat Dodd was from?

MR. WEINSTEIN: Excuse me?

ASSEMBLYMAN WEIDEL: Was Pat Dodd from South Orange? Used to be?

MR. WEINSTEIN: West Orange. East Orange -- One of the other ones.

ASSEMBLYMAN RAFFERTY: One of the Oranges.

MR. WEINSTEIN: Our person of fame is a member of the other party. I won't mention his name.

What I've presented to you are three pages which are three different memos that we've gotten in the past month. The first one details what's happened to our insurance coverage in the past year. The second one shows, in the middle of the page, our preliminary estimates of what the various costs were going to do to the budget as far as tax points.

For your information, our tax rate -- because our

valuation is so screwed up -- is two -- excuse me, 204 -- 244 for South Orange and our total is 804 on 51% valuation. So, in other words, the increase that we were initially faced with was about 50 points on a 244 rate, which is, you know, a 20% increase in taxes, most of which was in taxes.

The final page-- You know, we've gone through budget hearings; we have eliminated 10 positions. We eliminated our Shade Tree Department, to go contract it out, as a budgetary matter. We are very seriously contemplating cutting policemen and firemen, and basically, it's all to pay an insurance bill. Because even though you've helped us on the cap, and allowed us to take the insurance out from under the cap, we can't raise taxes 20%. And I don't believe we can even raise taxes 10%. And there's a majority on my Council that agrees with me, that we can raise taxes six, seven, eight percent at the most; and the question is, you know, what kind of insurance are you going to get?

If you go back to the first page, the numbers show pretty clearly what's happened to our general liability. The interesting number is the umbrella liability. We have \$500,000 per incident on general liability, and the umbrella policies are two different policies that total \$10 million.

We have not yet gotten a quote for umbrella liability. Even with the Commissioners ruling that you must insure, again, at what you were previously insuring, we have not yet gotten a quote that we will get \$10 million worth of umbrella liability. So, we just estimate that it's going to cost us \$200,000. And we paid last year's premium just so that nobody could say, you know, that we were not following up. But therefore, we're in a real quandary. I said-- Well, our feeling is that we should pay our general liability, if only to get the umbrella policy; that it's the big claim of over \$500,000 that we're worried about.

So, therefore, we'll pay the general to get the

umbrella. Soon, we're going to find out that we're not going to get the umbrella. No matter what the insurance commissioner says, we're not going to get the umbrella. Therefore, why are you destroying a budget to just pay the general? This year, we will pay -- if you add on the dental plan and the workman's comp, which are not included here -- close to a million dollars in insurance, if we choose not to self-insure. That's in the budget, that this year, for the first time, will break \$10 million.

So, the increases in total are 500%, but in those two areas -- are you can see -- close to 1,000%. It's been such a shock to us, because we actually thought this year, even with employee -- even with our contracts coming up, we thought that after a month of pushing everything around, that we could fit everything in, and then the insurance thing hit us last month. Everything's out the window right now, so I'm not sure, after hearing everything that's gone on for the last 45 minutes that I've been in here-- You guys are in a tough spot. I'm glad I'm not in your shoes.

But I wonder if the only solution is some kind of statewide pool, which the State of New Jersey runs, and says, basically, to hell with the insurers -- every town is going to pay based on certain things. For instance, South Orange doesn't have a dump, so we pay less than a town that does, but, South Orange has 15,500 people, and they'll pay on a pro-rated basis, along with all the other towns. And I wonder if that's the only way to do it.

ASSEMBLYMAN LOVEYS: Jim-- And you want -- you'd like to do this, you think?

MR. WEINSTEIN: I think that's the only solution.

ASSEMBLYMAN LOVEYS: The fact that you don't have a dump, and you'd like to get involved in the policy or the premiums, or the action -- the court action that could take place in the communities that do have a dump.

MR. WEINSTEIN: No, no. I would-- If the entire State--

ASSEMBLYMAN LOVEYS: You realize that you would be doing that?

MR. WEINSTEIN: I realize that. If the State of New Jersey said every one of New Jersey's 567 municipalities is going to be insured by the State of New Jersey, and they're going to pay, based on -- you know, if you've got a dump, you pay more than if you don't have a dump, but everybody's in it together, and that's it. You know, that's a Bergen pool 50 times larger than the Bergen pool. But the problem with the Bergen pool-- We sent our administrator and our Village counsel to the meeting in Freehold, at which the Bergen pool was spoken about. They don't seem to have that much coverage. They don't seem to have more than -- they have the half a million dollars' worth of coverage, and then they have an excess policy coverage for a million dollars more than that. Is that--

ASSEMBLYMAN LOVEYS: I don't know what Bergen's doing.

MR. WEINSTEIN: Okay. We had been hearing that a county pooling operation is the solution to everyone's problems. And yet, when our administrator and our counsel came back from the meeting, they were not that impressed. They did not feel that they were getting -- that Bergen was getting as much insurance, and that South Orange had a phenomenal deal.

Now, one of the reasons that South Orange does not wish to-- I'm also told that there's 30% of the towns in the State that don't have any -- aren't right now having any liability insurance whatsoever. They just are going straight self-insurance, or not paying the premium. I guess that might have been in the Star-Ledger -- is that--

You know, one of the reasons that we are not going to do that is because, quite frankly, we had an awful experience last summer with our day camp. And, you know, we want to be

insured. We had allegations of sexual abuse, and the County Prosecutor was involved, and all that. And, for that reason, we do not feel comfortable with just saying, drop it -- forget about the liability, even though we've eliminated the day camp. We still don't feel comfortable being without it, because of having been burned. Nevertheless, you have to make choices. And when it's going to be 10% of your budget, that's way out of line.

ASSEMBLYMAN LOVEYS: For your information, I'm informed that 30% of the municipalities don't have excess--

MR. WEINSTEIN: Excess-- Okay. But they're all still paying general liability?

ASSEMBLYMAN LOVEYS: Jim, thank you for your testimony. You know we understand your plight.

MR. WEINSTEIN: Thank you. You must have heard--

ASSEMBLYMAN LOVEYS: You know, you've heard today, we're attempting -- we're going to attempt to do something. Any questions?

MR. WEINSTEIN: That's right. You must have heard this from dozens of towns before, I assume, so-- I admire your fortitude, and being all over the State and all day here today.

ASSEMBLYMAN ZECKER: That's why we're here, Jim -- because of those problems.

MR. WEINSTEIN: Thank you very much.

ASSEMBLYMAN LOVEYS: Thank you. Does anyone else wish to be heard today? Yes, if you will, sir.

ASSEMBLYMAN WEIDEL: I've got to congratulate this gentleman, for staying as long as he did.

ASSEMBLYMAN LOVEYS: Yes, he's got perseverance if nothing else.

ASSEMBLYMAN WEIDEL: He knows all about the insurance problems now.

M A T T W A R D: My name is Matt Ward. I'm from the City of Clifton, and I would like to just echo what Gerry Zecker said

before about Clifton's situation.

I was at a Council meeting, which -- in our Clifton Council recently -- which voted for a self-insurance policy of \$750,000 to cover the amount of losses that we had of \$743,000 during the previous four or five years, I believe, during the policy. That policy we were going to have would be going up to two million -- \$2.1 million that Assemblyman Zecker mentioned--

ASSEMBLYMAN LOVEYS: Excuse me, Matt. You said your name was what?

MR. WARD: Ward.

ASSEMBLYMAN LOVEYS: Ward?

MR. WARD: Ward, W-A-R-D, last name.

ASSEMBLYMAN LOVEYS: Are you a Councilman?

MR. WARD: No. Just an average citizen.

ASSEMBLYMAN LOVEYS: Oh, you're just a citizen from Clifton. Okay.

MR. WARD: Is that okay?

ASSEMBLYMAN LOVEYS: Surely. Go ahead.

MR. WARD: I think the argument that was presented by the insurance man that was here before is totally wrong when he says the consumers have benefitted over the five-year period. That would be analogous to the deficit argument that goes on now. You don't pay for it now, you pay for it later. So, when you come up with an argument that says the consumers benefit, that's not really true, because we really didn't benefit, because now we're paying for it now -- either directly, as citizens, through our taxes, or indirectly, through any type of tort reform as possible victims.

So, when that argument is made, that is really not a true argument in the sense that consumers benefit. We really haven't, in that sense of the word, because the bill has got to be paid now. We're not talking about '79 through '84; this is 1986. So, when that argument is used, it's really not an accurate argument.

My main thing with this is that deregulation, as far as I'm concerned, has totally failed. It's sort of like that argument that Plato used in his Republic: who guards the guardians? We can't have the insurance companies guarding themselves; it just does not work. The fox cannot watch the henhouse. You have to have some kind of oversight, either through direct State regulation of some kind or another -- like we do with the auto insurance, where there is a constant monitoring of what is going on. The insurance companies, obviously, are fretting about this, and I think they realize that there is a serious attitude now, with the Legislature -- both in the Assembly and possibly in the Senate -- to have some kind of reform. But, their attitude -- and I think that you made a great question, Mr. Chairman, when you said that they will do something if we just limit tort reform -- no, they're not. I think that's only one aspect of it. I think you have to have that coupled together.

I wouldn't want to see anybody who goes through an amputation, as the Assemblyman said, to have those caps put on them. When you lose the right to walk, there is no amount of money that can compensate for that. When you can't breathe except through a respirator, there is no amount of money, that you can put a cap on and say, "That's a fine settlement for them." Because the insurance company that does this -- that underwrites this in the head office, they're looking at it as a loss. In Kansas City, Seattle or Chicago or wherever they are, they don't know the particular situation or the day-to-day care that a person has to go through.

So, when you look at permanent disability, there shouldn't be a cap on that. I think, on frivolous lawsuits -- that's a different story, now. And I think there's a number of people who go into court with a hangnail, and you have attorneys who are pressing for it because they get a third or more for the contingency fee. And all you have to do is watch

these commercials on television, with Jacoby & Meyers, that tell you exactly what to sue for, when to sue, and where to go to it.

We live in a litigious (sic) society, so there has to be some kind of movement on tort reform. But I think what we have to do in the State of New Jersey is to do what New York did under Governor Cuomo, which is to have Governor Kean call a commission of people in the different parties involved, the Chamber of Commerce, the Bar Association, the insurance groups, consumer activists; also, from the municipalities, and key leaders from the Legislature, because each of these groups has an interest group and lobbyist in Trenton. Whatever you propose, these are the very groups that are going to water down the proposals as they go through them, if they're not in their own interests. So, I think by bringing them together -- at least, by having a blue-ribbon panel -- you'll have one gigantic commission that's going to come out with something, and then you'll have time for the hearings to take place upon the results, and based upon what they come up with as far as the conclusion.

I think what New York is doing is a good idea, because each one of those groups -- the Chamber of Commerce, the Bar Association, the insurance groups -- they all have powerful lobbyist groups inside the State Capitol. If they don't see something being done according to their own interests, they're going to fight to preserve what the status-quo is. I think, by having Governor Kean call a statewide commission, and having people from those particular groups on it, and to have a timetable set-- In New York, Governor Cuomo is going to receive a report by March 31st. So, if New Jersey were to follow suit, maybe a 30-60 day period would be necessary to have some kind of comprehensive report done.

Self-insurance, as it's done in Clifton, is only a stopgap. We're a very urbanized town; I'm sure Assemblyman

Zecker could fill you in on all the details of business and industry that goes on. We are criss-crossed by many major roads. The possibility of being hit on a lawsuit, directly or indirectly, is so great that we can't afford to be in a situation where we're paying even \$5-10 million on a lawsuit. And, with the situation in Montclair -- our neighbor to our side has gone through with radon, I don't know what they do with coverage when it comes to taking care of that particular situation.

But I honestly feel that if the Governor is involved with calling a commission on this, and that these forces are then able to get together and argue it out as far as what kind of reform has to be done, they at least can say they played a role in what goes on here. Other than that, I think this is just going to be a piecemeal basis and they're going to strip away every motive that goes on, if they think that they're positions are being threatened. And that's how-- They're the ones that are going to water it down. It's not going to come any other way but from those particular groups.

I just want to mention one other aspect of this. With tort reform, I think you can put some reasonable caps on that, but I think they have to be looked at very seriously. The injuries of asbestos, toxic waste, other permanent injuries can not be capped. I think, when someone loses the right to see, the opportunity to walk, those are things that just can not be placed caps on. (sic) And unfortunately, we have to reach a settlement somewhere, with our court system -- and maybe an amendment might be necessary, even, to our Constitution -- so that the courts themselves are not going to change this thing, so much so that whatever serious work in reform is done is going to be thrown out the window on one court case.

So, I urge that this Assembly Committee -- and I thank them for the opportunity to speak -- look at it from that comprehensive viewpoint, because band-aids are just not going

to solve the situation. Thank you.

ASSEMBLYMAN LOVEYS: Thank you very much, too. We appreciate that.

That gentleman in the rear with the blue book -- do you care to-- Sir?

UNIDENTIFIED AUDIENCE MEMBER: (speaks from rear of room) No, sir. Just here to listen and (inaudible) get educated here.

ASSEMBLYMAN LOVEYS: Nice to have you here. Routine business?

ASSEMBLYMAN RAFFERTY: I think that guy might be a spy -- off the record.

ASSEMBLYMAN LOVEYS: That'll end the testimony.

(HEARING CONCLUDED)

to solve the situation
ASSEMBLYMAN [unclear] very much
appreciate that
that gentleman the year of the
you care to-- Sirs
UNIDENTIFIED MEMBER (opposite
room) No. sir. I have to finish and
educated here
ASSEMBLYMAN [unclear] nice to have you here
business
ASSEMBLYMAN [unclear] that guy might be a spy
off the record
ASSEMBLYMAN [unclear] that is the fact

(CONCLUDED)

APPENDIX

APPENDIX



F. & H. ASSOCIATES, INC.
INSURANCE EXCLUSIVELY

520 Speedwell Avenue • P.O. Box 113 • Morris Plains, N.J. 07950 • Phone (201) 267-5720

TOWNSHIP OF RANDOLPH

COMMERCIAL AUTO POLICY

	<u>Premium</u>	<u>Total Losses</u>
1981 - 1982	\$21,585	\$5,470
1982 - 1983	23,526	6,083
1983 - 1984	26,384	7,920
1984 - 1985	33,370	1,675
1985 - 1986	26,074	1,485



F. & H. ASSOCIATES, INC.

INSURANT EXCLUSIVELY

520 Speedwell Avenue • P.O. Box 113 • Morris Plains, N.J. 07950 • Phone (201) 267-5720

TOWNSHIP OF RANDOLPH
SPECIAL MULTI-PERIL POLICY

	<u>Premium</u>	<u>Total Losses</u>
1981 - 1982	\$36,773	\$ 7,738
1982 - 1983	42,135	49,144
1983 - 1984	30,762	18,963
1984 - 1985	32,409	5,169
1985 - 1986	35,882	9,545

LX



The Township of South Orange Village

SOUTH ORANGE • NEW JERSEY
07079

THE VILLAGE HALL
201 • 762-6000

February 13, 1986

M E M O R A N D U M

TO: BERTRAND SPIOTTA, VILLAGE PRESIDENT
FROM: JOEN MOSCA, JR., VILLAGE TREASURER
SUBJECT: INSURANCE PREMIUMS COMPARISONS

For your convenience I have analyzed the insurance premiums paid in 1985 and have reflected the increases in the proposals for 1986 coverage. In addition to these increases, the Village can expect approximately a \$40,000 increase in health and dental coverages.

	<u>1985</u>	<u>1986</u>	<u>Increase</u>
General Liability	31,360	*360,175	328,815
Umbrella Liability	14,800	200,000 (est)	185,800 (est)
Auto Policy	36,240	* 97,159	60,919
Property Package	32,661	57,158	24,497
Public Officials Liability	3,423	3,423	-
Fire Auxiliary Policy	271	271	-
Boiler & Machinery	848	959	111
Law Enforcement Liability	11,475	30,028	18,563
Garagekeepers Liability	2,449	4,812	2,363
Excess Workmen's Compensation	<u>12,650</u>	<u>14,500</u>	<u>1,850</u>
	Total 146,177	768,495	605,489
		*Finance Charge	
		<u>20,629</u>	<u>20,629</u>
/lc			
cc: Board of Trustees	TOTAL	789,124	626,118
Village Counsel			

2x

MEMORANDUM

January 31, 1986

TO: Village President
Board of Trustees

FROM: John Mosca, Jr., Village Treasurer

SUBJECT: Preliminary Budget Status and Tax Rate

Insofar as our Budget review is in the preliminary stages, the initial impact on the Local Tax Rate appears extremely high. Preliminary Budget request including uncontrollable mandated costs reflect an increase of 52 points or approximately a 21% increase in taxes.

For your review I have outlined below the increases in two categories:

<u>General Budget Requests</u>			<u>Mandated/Uncontrolled Cost</u>		
Salaries (6% Est.) & Other Expenses	17 pts	7.0%	Debt Service	4 pts	1
Revenues	8 pts	3.3%	Revenue Sharing	1 pt	
			Insurance	18 pts	7
			Reserve for Uncollected Taxes	4 pts	1
	<u>25 pts</u>	<u>10.3%</u>		<u>27 pts</u>	<u>11</u>

As our Budget review continues the 25 pt preliminary increase in General Requests will improve accordingly.

4x



The Township of South Orange Village

SOUTH ORANGE • NEW JERSEY

MES D. WEINSTEIN, Village Trustee

Correspondence Address:
117 Vose Ave., Apt. 34
South Orange, NJ 07079
(201) 762-1608

February 28, 1986

MEMORANDUM

SUBJECT: INTERIM BUDGET STATUS AND TAX RATE

After one month of budget cutting, including the elimination of the Shade Tree Department and the reduction in force of 10 positions, salaries and operating expenses should go from a 17 point increase to 11 points, but insurance should go up even more.

General Budget Requests

Mandated/Uncontrolled Cost

Salaries (6% Est.)					
& Other Expenses	11 pts	4.5%	Debt Service	4 pts	1.6%
Revenues, Losses	8 pts	3.3%	Revenue Sharing	1 pt	.5%
			Insurance	22 pts	9.0%
			Reserve for		
			Uncollected Taxes	4 pts	1.6%
	<hr/>	<hr/>		<hr/>	<hr/>
	19 pts	7.8%		31 pts	12.7%

/jb

5x

STATEMENT BY THE BOROUGH OF MADISON ADMINISTRATOR
BEFORE THE ASSEMBLY INSURANCE COMMITTEE

Parsippany-Troy Hills Township Hall
Friday, February 28, 1986, 10:00 A.M.

The current crisis in Municipal Liability Insurance has had an extremely adverse impact upon the Borough of Madison. Madison has been penalized with non-renewals and severe increases in premiums despite the fact that a five year history of Madison's claims and losses shows the Borough to be an excellent risk.

In the past five years there has been only one claim filed against the Borough's liability insurance which exceeded \$10,000. Our losses have averaged \$18,000 per year and last year's premiums totaled \$90,000. Yet, just three days ago the Borough received notification that Madison's umbrella liability coverage will not be renewed and will expire effective March 28th. The reasons for this non-renewal is not due to excessive claims by the Borough, but rather due to the inability of the insurance company to obtain reinsurance protection. For months Madison didn't know the status of this policy. It was due for renewal January 1st. In August Borough staff asked our Broker for a quotation. Each week we would inquire and each week we would be told that there was some delay but a quotation would be available soon. As the staff read of the crisis in the newspapers and the renewal date was past; Madison realized it better shop around despite the fact that we had been dealing with the same nationally known Broker for over ten years. In anticipation of a non-renewal the Borough instructed four different insurance agents to secure alternate umbrella coverage. To date no such coverage has been found.

In September of 1985 the Borough called together seven other towns and had Fred S. James & Company analyze experience information to determine whether pooling might help. First we found that nothing could be done until January of 1987 as State requirements only allow pools to be formed January 1st of each year and there was not enough time to get the information together by January of 1986. Next our Broker informed us that there wasn't an umbrella insurance carrier ready, willing and able to cover the pool.

I think what I am trying to say is that Borough of Madison, one of the most respected communities in Morris County, finds itself completely helpless with regard to obtaining insurance. We have 30 days before we lose ~~\$50,000~~ worth of coverage and no company interested in selling a policy at any price.

The Mayor and Council are anxious to see action on the part of the State to end this crisis. Monday, March 3rd, the Governing Body will consider supporting the adoption of Senate Bill S-1718. This would provide excess liability insurance coverage for Madison and all other governmental entities throughout the state. However passage of this legislation would relieve the Borough of only one of the problems it currently faces.

Madison's general liability and auto liability policies expired December 31, 1985. The insurance companies issued binders extending coverage but to date the Borough has not received new policies nor have any firm premiums been received. Without knowing insurance costs Madison has not been able to introduce its 1986 municipal budget. For the first time the Council will be forced to rely upon guesstimates rather than exact figures for a line item that may exceed \$500,000.

Another concern of the Borough is the increased appearance of what is called "claims-made policies". If an insurance company goes out of business in New Jersey or sets time limits for claims to be filed, a municipality may find that a claim is not covered for a period in which it paid a high premium for coverage. It may force a town to stick with the same carrier year after year despite the company's high rates.

The insurance crisis has also indirectly impacted upon the operations of Madison. On a few occasions contractors have been unable to perform work for the Borough due to their inability to obtain liability insurance. Some important things are not getting done because there is no insurance.

Finally, I question the success of the edict set forth by Governor Kean in November. While the intent was sincere in attempting to protect municipalities it now appears the opposite is true. The ruling which requires all insurance companies to provide renewal of policies has embittered the insurance industry and eliminated competition. Municipalities are at the mercy of their present carrier as no insurance company is willing to accept new business in the State of New Jersey.

I pray that the insurance Commissioner and representatives of the insurance industry sit down immediately and work out their differences.

72M

Mr. Chairman, I am Thomas B. Ahear, a CPO from Philadelphia and a member of the Executive Committee of the Independent Insurance Agency of New Jersey. As an insurance agent, I represent both insurance companies and the consumer - a position which permits a broader perspective on this and other issues otherwise common to the insurance industry.

In the brief time allotted, I'd like to outline a number of contributing factors to the availability/affordability crisis and suggest some possible remedies.

INDEPENDENT INSURANCE AGENTS OF NEW JERSEY

Testimony: There is no getting around the fundamental importance of the test itself. However, there may have contributed to the current crisis.

TESTIMONY

Improvements in insurance markets, the long-term availability of risks rendered unmanageable by the courts and law will only be restored by changes in the system. Such changes need to be neither dramatic nor painful to our fundamental interest in sustaining a civil justice system accessible and fair. But a reevaluation of our current system and compensation and evidentiary standards to name just three - is responsible.

ON

INSURANCE AVAILABILITY CRISIS

and could go a long way toward restoring the predictability, and therefore the insurability, of certain risks.

Reinsurance Markets: The big missing link in today's insurance market is reinsurance. The insurance that insurance companies carry to permit coverage of large risks. The absence of this reinsurance capital contributes to reduced overall availability and lower limits of coverage. Reinsurers' confidence has been shaken - for so they tell us - by the unpredictability of contract interpretation. And, they say, a return to American markets by reinsurers will be facilitated through use of a new "claims-made" contract which attempts to limit exposure strictly to the term of the policy. Finally, reinsurance costs, since they are largely uncontrollable, are a big factor in the affordability of insurance now available.

Mr. Chairman, I am Thomas B. Ahart, a CPCU from Phillipsburg and a member of the Executive Committee of the Independent Insurance Agents of New Jersey. As an insurance agent, I represent both insurance companies and the consumer - a position which permits a broader perspective on this and other issues otherwise common to the insurance industry.

In the brief time allotted, I'd like to outline a number of contributing factors to the availability/affordability crisis and suggest some possible remedies.

Tort Trends: There's no getting around the fundamental importance of the tort issue. Whatever else may have contributed to the current crisis, and whatever else may be done to seek improvements in insurance markets, the long-term insurability of risks rendered uninsurable by the courts and law will only be restored by changes in the tort system. Such changes need be neither dramatic nor harmful to our fundamental interest in sustaining a civil justice system both accessible and fair. But a reevaluation and reform of the concepts of fault, compensation, and evidentiary standards - to name just three - is reasonable, and could go a long way toward restoring the predictability, and therefore the insurability, of certain risks.

Reinsurance Markets: The big missing link in today's insurance markets is reinsurance: the insurance that insurance companies carry to permit coverage of large risks. The absence of this reinsurance capacity contributes to reduced overall availability and lower limits of coverage. Reinsurers' confidence has been shaken - or so they tell us - by the unpredictability of contract interpretation. And, they say, a return to American markets by reinsurers will be facilitated through use of a new "claims-made" contract which attempts to limit exposure strictly to the term of the policy. Finally, reinsurance costs, since they are largely uncontrollable, are a big factor in the affordability of insurance now available.

Insurance Company Management: Having acknowledged the effects of tort trends and reinsurance on today's markets, the insurance industry must be clear-eyed and candid about its own contribution to the current crisis. By this I mean the price cutting binge (when double-digit interest income could offset underwriting losses) which was totally unjustified by loss and expense experience and totally at odds with the need for reserve and surplus strengthening.

"The industry" has paid a terrible price for the folly of cash-flow underwriting. It has weakened its public credibility and sapped both its financial strength and that of the reinsurers.

Another largely controllable reaction to the real availability crisis in lines of insurance such as environmental liability has been to treat less obviously troubled risks with the same defensive mentality. To be sure, steps must be taken to shore up reserves and protect against future, unsustainable losses where the courts and laws have conspired to render risks uninsurable. But not all risks have been similarly undermined, nor all underwriting made as unfathomable as the celebrated examples of pollution and professional liability. As my national association's President, Mr. Richard Taylor, recently remarked: "Underwriting is the science of trying to find a way of writing a risk -- not trying to find a way to get out of writing it. It seems now the underwriters are trying in most cases to find a way to get out of writing a new piece of business." No amount of changes in the tort system or in reinsurance availability will prevent the persistent recurrence of today's crisis if not accompanied by industry reform of pricing and underwriting policies.

Economic Trends: More than most industries, insurance -- because of long-term exposure, reserving against future loss, and claims losses -- is affected by swings in the general economy. As the criticism of insurance company pricing practices in a high interest rate economy imply, the dramatic drop in interest rates over the past few years has taken its toll on insurance company profitability and surplus which is all the more reason for the industry to avoid exaggerating this natural vulnerability by illconceived pricing and underwriting decisions.

Claims Losses: Statistical arguments are always slippery, but insurance industry statistics show an industry-wide net operating loss last year for the first time ever, and we believe them. Others' statistics reach different conclusions, and, beyond a rudimentary level of understanding quickly reached by those of us unschooled in the actuarial sciences, it is frankly difficult to know what ultimately will come of this furious debate. As an insurance agent, I know what I see in the market, and I see many of my companies hurting financially -- in part from the self-inflicted wounds of price-cutting a few years back, but in part too from economic circumstances beyond their control.

Until an objective, knowledgeable statistician can be called in to sort out all the numbers, the existing statistical evidence should at the very least signal caution in drawing firm conclusions or pursuing policy decisions which could further weaken an already financially strapped industry.

Competitive Marketplace: Although highly regulated, the insurance industry is a member in good standing of the competitive, relatively free market. From this fact, a couple of general points should be made: (1) short of turning the insurance industry into a public utility of mandated, take-all-comers coverage, it is simply an economic fact of life that not all risks will be insurable at all times, or at low prices, and (2) criticism of, and proposed solutions to, insurance industry "cash-flow" underwriting bump up against this free market fact: the decision to offset underwriting losses with high investment income was also a decision to pass along to the consumer the benefits, in lower prices, made possible by that market. What would public reaction have been if at the time of record interest rate investment income, the insurance industry had not competitively lowered the price of its product? These are the quirks and complexities of the competitive marketplace which must be taken into account.

With that outline of the multiple causes of the availability/affordability crisis, what can be done to help improve the current market?

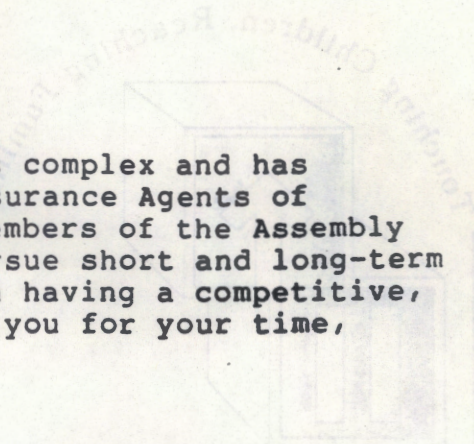
The Independent Insurance Agents of New Jersey feel that two avenues should be pursued. First, tort reform should address in a modest but effective way the tort issues which may have the greatest long-term effects on insurance markets: costs of litigation, apportionment of fault, punitive damages, and others which may fit into individual state law contexts.

Second, the insurance commissioner has the authority to ensure that insurance rates are neither inadequate (too low), excessive (too high), or unfairly discriminatory. That existing authority should be supported and used. Specifically, IIANJ recommends and supports regulation for company solvency, including disclosure of financial data and the strengthening and protection of state guaranty funds. We also support our current regulations dealing with notice of mid-term cancellation, non-renewal, and premium increases.

Finally, in the market, we encourage voluntary market assistance plans to help hard-to-place risks find coverage on a short term basis. Also in the market, although an unknown quantity in terms of marketability and restoration of reinsurer participation in American markets, the new, industry "claims-made" form may help provide coverage where there is none now, and should be given a chance to work.

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Mr. Chairman, insurance availability is complex and has no simple causes or cures. The Independent Insurance Agents of New Jersey stand ready to help you and other members of the Assembly and Senate better understand this issue and pursue short and long-term remedies which reflect the public's interest in having a competitive, financially sound insurance industry. I thank you for your time, and I'd be happy to answer your questions.



The Honorable Assemblyman Kovacs and Members of the Committee:
Upper Passaic County Head Start currently serves 438 children, all residents of Wanaque, West Milford, Piscataway, Pompton Lakes and Wayne.
We have been covered by Hartford Insurance since September 1984 for General Liability, Fire and Contents. Our liability premium for the period 9/27/84 - 9/27/85 was \$1,377. However, our premium for the period of 9/27/85 - 9/27/86 was increased to \$2,014 representing a 45% increase.

I must point out that our liability insurance does not contain sexual abuse coverage nor have we had any claims since the inception of our organization of five years.

The climate of the insurance industry made it impossible to obtain a lower rate of premium if we could obtain any at all. The suggestion of lowering the limit of liability coverage from \$500,000 to \$100,000 was not possible as we are mandated by the State of New Jersey, Department of Human Services, Bureau of Licensing to maintain a \$500,000 limit. (See Manual of Standards for Child Care Centers, 12-7.2).

The excessive increase has not been justified by Hartford because only if we are a "day care agency" and that we have to appear in a court of law with individuals with regards to sexual abuse cases. As a Head Start we have the highest staff to student ratio over profit and not-for-profit day care. We are highly regulated by State and Federal agencies and we screen our staff strictly.

Head Start provides important services for many children who so desperately need them and these unsubstantiated increases are directly affecting them as they become increasingly more difficult to afford this insurance.

Thank you for your consideration of the comments in your Committee deliberations.

PAUL A. RABASZSKI, Financial Officer

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Touching Children, Reaching Families



UPPER PASSAIC COUNTY HEAD START INC.

547 Ringwood Avenue

Wanaque, N.J. 07465

(201) 839-4748

Sharon Wien - Executive Director

February 28, 1986

The Honorable Assemblyman Loveys and Members of the Committee:

Upper Passaic County Head Start currently serves 138 children, all residents of Wanaque, West Milford, Bloomingdale, Pompton Lakes, and Wayne.

We have been covered by Hartford Insurance since September 1984 for General Liability, Fire and Contents. Our liability premium for the period 9/22/84 - 9/22/85 was \$1,977. however, our premium for the period of 9/22/85 - 9/22/86 was increased to \$5,034 representing a 255% increase.

I must point out that our liability insurance does not contain sexual abuse coverage nor have we had any claims since the inception of our organization of five years.

The climate of the insurance industry made it impossible to obtain a lower rate of insurance if we could obtain any at all. The suggestion of lowering our limit of liability coverage from \$500,000 to \$100,000 was not possible as we are mandated by the State of New Jersey, Department of Human Services, Bureau of Licensing to maintain a \$500,000 limit. (see Manual of Standards for Child Care Centers 10:122-7.5).

The excessive increase has not been justified by Hartford Insurance only that we are a "day care agency" and that we have to absorb the high claim payouts made to individuals with regards to sexual abuse cases. As a Head Start we have the highest staff to student ratio over profit and not-for-profit day cares. We are highly regulated by State and Federal agencies and we screen our staff strictly.

Head Start provides important services for many children who so desperately need them and these unsubstantiated increases are directly effecting them as it is becoming increasingly more difficult to absorb this increases.

Thank you for your consideration of these comments in your Committee deliberations.

Ruth A. Radhuber, Financial Officer

